

Voir Dire Concepts

March 14, 2014

Major Topics

- Theory of jury selection
- Planning for jury selection
- Roundtable

Theory of Jury Selection – “Jury Deselection”

- Three I's of jury selection
 - o Identify (jurors you don't want)
 - o Inform (jurors about the law & your case)
 - o Impression (you leave on the jury of yourself)
- **Identify is first priority** – allow the wrong juror & you'll lose/hang
 - o **You must get them talking!!**
 - o **If you do all the talking, you won't learn who to kick**
- I look for jurors with a stake in an orderly society
 - o Long-term jobs
 - o Long-term marriages
 - o Jurors with adult kids with good jobs/education
 - o Jurors with young kids
 - (Another DDA says: People I could have lunch with)
- I am very cautious about people who have much more prestige than typical jurors and people who are marginalized by societal norms
- **“Inform”**
 - o Introduce your theme
 - o Expose jurors to potential problem areas of your case
 - Word your question so a response ID's a juror you don't want
 - If they won't go with you, you've ID'd a juror you don't want
 - o Expose jurors to the law, particularly novel areas of the law
 - Word your question so a response ID's a juror you don't want
 - If they disagree with the law, you've ID'd a juror you don't want
 - o Re-habilitate fence-sitters
- **“Impression”**
 - o Trust, Confidence, Professionalism

Planning for Jury Selection

- Identify potential problem areas for your case
- Identify potential problematic jurors
 - o Those opposed to your theory/theme
 - o Those opposed to your client's position
- Identify legal doctrines you'll want to discuss
- Plan to weave your theme into questions
- Plan your questions for each area identified above

One Way to Do It

- **3 Categories**
 - o Jurors I know I don't want (3)
 - o Jurors who will be acceptable (2)
 - o Jurors I'm undecided about (2-3)
- **Theme** – Introduce your theme of the case to the jury / define the terminology
 - o Good Samaritan laws vs. defense of others
- **Memorize the names**
- **Questioning**
 - o Powerful language first question
 - o Broad questions to the group – raise your hand
 - o Craft questions to expose bad jurors, not good jurors
 - o Follow-ups with people who came to light during prior questioning
 - o Communicate to other jurors why someone is unsuitable

What You Cannot Do

- You cannot excuse jurors based on their membership in a protected class / cognizable group:
 - o **Don't violate the rules – ever.**
- You cannot tell the jury the facts of your case
- You cannot ask jurors how they would vote if the facts were a particular way

Roundtable on Common Issues in Misdemeanor Jury Selection

- **Driving Under the Influence**
 - Common weaknesses
 - Common defenses
 - Common biases
 - Prior convictions among jurors
- **Other types of misdemeanor cases as requested**