



THIESSEN

LAW FIRM

DWI VOIR DIRE; Accident with High Breath Test

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Strangers

- ◎ “Show them yours and they’ll show you theirs.”
- Gerry Spence
- ◎ Best thing in my life & Worst thing
- ◎ Never gonna ask a question that I won’t answer
- ◎ Client – chose me with his and their future
- ◎ Afraid to hand this case over to complete strangers
- ◎ Looking for 6/12 fair minded jurors

Defense Counsel's Role

- ⦿ NOT here in defiance of DWI laws
- ⦿ Opinion crime – difference in opinion
- ⦿ Citizen's Lawyer – placing checks on the police and DA

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Drinking

- ⦿ “Drink, Drive, Go To Jail” – Not true
- ⦿ Okay to drink, then drive – that’s the law
- ⦿ NOT okay to be intoxicated and drive
- ⦿ Regularly, Occasionally, Rarely, Never, Not Any More?
- ⦿ Alcohol Related Events?
- ⦿ MADD?

Police Officers

- ◎ Anyone related to a police or retired police?
- ◎ Anyone related to a DA?
- ◎ Better judge of what's normal for you? Police or spouse, friend

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Driving

- How many drivers have hit a car or an object?
- Was it deliberately?
- Deliberates? Or Accidents? Why?
- Weren't Intoxicated?
- Feel afterwards?
- Less room for error – motorcycle or a car?
- Injured? Seriously injured?
- Ambulance/ Life Flight – what happens in there?

Machines

◎ **TAXALYZER 5000EN**

- › Reliable? 2%, 20%, 40% margin of error
- › Self Checking for Accuracy
- › Recalled in Numerous States
- › Newer Model Available (8000)
- › Current Model Not Produced Anymore
- › Citizen Cannot Purchase
- › Source Code is Unknown and “Proprietary”
- › Not Warranted to Calculate Numbers

Machines (part 2)

- › Not Available for Independent Testing
- › Destroys Evidence
- › Operator Just Pushes Buttons
- › “Scientist” Rarely Checks In Person
- › Any Inconsistencies in Data
- ◎ Common Sense vs. Ridiculous Number
- ◎ PICTURES

Presumption of Innocence

- Only 1 Presumption – Innocent
- NOT – intoxicated, officer judgment correct, officer administered tests properly, machine is working properly, Bubba didn't forget any subtractions
- Compass – Takes you home – Not Guilty

Burdens of Proof

- P.C. – to arrest or write a ticket
- Preponderance – 51%, civil, 1 million dollars
- Clear and Convincing – CPS, child fell on swings
- BEYOND
- A
- REASONABLE
- DOUBT

Which Way Do They Lean?

◎ TV CHANNEL

1. Nightly News w/ Brian Williams
2. Extreme Home Make Over
3. Nancy Grace

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Courage

- ◎ Stand on your own and believe in your doubt
- ◎ CRIM trial
- ◎ Can I count on you to remain true to your doubts and provide Mr. Smith a fair trial? (each juror)

Not Strangers Anymore

- ⦿ Look forward to introducing Mr. Smith's case to you
- ⦿ Not strangers anymore

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Voir Dire: Where You Win!

- Always refer to each juror by name, not number.
- Show personality and emotions.
- Share something endearing about yourself.
- Citizen's lawyer, not there in defiance of DWI laws.
- Drinking patterns
Regularly, Occasionally, Rarely, Never, Not Any More
- Ask open ended questions and loop down the row.
- Capitalize on great answers.
- Acknowledge and deal with your difficult facts.
- BT- Thermometer/ Taxalyzer 5000EN
- BEYOND A REASONABLE DOUBT.
- Presumption of Innocence.
- 5th Amendment.
- Rehabilitate.
- Know how to preserve the record.