



**THIESSEN**  
LAW FIRM

# DWI VOIR DIRE; Accident and Enzymatic Assay Blood

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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

- ◎ Happy Everyday Airlines – hypothetical
  - > Best prices, clean, 1 free checked bag UNDER 50lbs
  - > If you lie and bag over 50lbs - \$2k and 180 days in jail
  - > Bubba – big guy (300 lbs), lifts bags all day, FAA license
  - > How do you measure? GC scale too long & expensive
  - > HEA scale – Bubba measures his weight, then grabs bag, and subtracts weight
  - > SNOW – unusual, snow boots, hat, gloves, big coat, big breakfast, chili lunch, lots of water
  - > How does that make you feel?



# Machines (part 2)

- ◎ Problems:
  - > Did he tare the scale?
  - > Subtract clothes, food, drink in order to be reliable
- ◎ Problem with Scales: naked or rocks in pockets
- ◎ Can't differentiate where weight comes from!
- ◎ 200lb bag – 4x the limit, know how it looks
- ◎ Common Sense vs. Ridiculous Number

# 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?

- 10 Criminals
- Crimes Range from Capital Murder to Tail Light
- 9 are Guilty, 1 is Not Guilty
- Convict ALL or Let ALL Go????

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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.
- 5<sup>th</sup> Amendment.
- Rehabilitate.
- Know how to preserve the record.