

# Voir Dire

Upholding Justice One Client at a Time

TCDLA

Laredo, Texas

October 30, 2015

# **A trial is a STORY about EMOTIONS**

- The reason why good BOOKS, PLAYS, SONGS and MOVIES are successful
  - Because they tell as STORY
- People naturally follow STORIES
  - Because they are EMOTIONALLY TRUE

**“Trials are storytelling, nothing more... The problem is that we, as lawyers have forgotten how to speak to ordinary folks... Lawyers long ago abandoned ordinary English.”**

**-Gerry Spence**

# ***What is the emotional truth?***

- **Factual truth  $\neq$  emotional truth**
- Does the story *feel* true?
- Does what you are saying *feel* true?
- Why do great stories “ring true”?

# The Jury is your only SAVIOR

- The jury will only rescue your client if they have an emotional bond with your client
- The jury will only form the emotional bond if they trust you to tell a true story
- They will only trust you if you are totally honest with them

# Technical Approach vs. Emotional Approach

- Technical Approach
  - Analytical side of the Juror's Mind
- **Emotional/Communicative Approach**
  - Appeals to the Emotion Truth of the Case
  - People make decisions based on there emotions
  - Why was Tony Soprano the Hero?

# Voir Dire is Organic

- Voir dire is not a speech
- Every voir dire is its own relationship between you and the jury
- Voir dire is a connection
- No one can tell you what to “say”

# Emotional Approach to Voir Dire

- **What if you had no Strikes?**
  - Communicate as if you didn't
- Building a relationship with your jury
- Share who you are
- Listen, Listen, Listen
- Rethink:
  - Educate/Eliminate



# **I don't want a fair Jury**

- I want a jury that is fair to me
- I want my jury
- I want my clients jury

# Friendship with the Jury

- Juror should be my friend
- If I don't trust them why would they trust me
- There must be a friendship
- For them to be my friend I must respect them and care about them
- There must be respect

# Most lawyers Don't Trust the Jury

- Most lawyers cross examine the Jury
- Most lawyers want to exclude the juror
- Jurors know that the lawyers game is to get rid of the juror
- *If you are being emotionally honest, they will believe you*
- *What is the emotional truth?*

# **Show me yours and I will show you mine**

- A juror will not reveal themselves unless
- You reveal yourself
- Know yourself

**Be Yourself!**  
**Know Yourself!**

# Be Real

- If you are afraid, say it
- If you are mad, say it
- If you have anxiety, say it
- If you have bias, say it
- If you are wrong, admit it

# Be Real

- Try to be real all the time, not just in trial
- You don't have to be perfect
  - Because your NOT!
- The Jury will save you if you are genuine

# YOU MUST TAKE RISKS

- The *MAGIC* is in the *RISKS*!!!
- Be creative
- Be ok with failure
- The Jury will save you if you are genuine



# **Seven Steps to Voir Dire**

# Voir Dire

- Identify **Danger Points**
- Where does the Danger come from with me?
- Share my **fear**
- Invite Jurors to share/show theirs
- **Accept** and **honor** the Jurors gifts
- Build a **Tribe**
- Include Yourself and Client in the **Tribe**

# 1. Identify those matters that trouble you about the case

- *IDENTIFY DANGER POINTS*
- What are YOU afraid of?
- NOT what you THINK the jury is afraid of
- Brain storm this BEFORE trial
- Start with your *DANGER POINTS*

# 1. Identify those matters that trouble you about the case

- ***DANGER POINTS***

- Just the charge “Sexual assault of a Child”
- Why would a victim make it up?
- My client confessed
- My client is a ex-con
- This is my first Aggravated Rape case
- The accuser is a child

## 2. Explore your personal feelings about the matters that trouble you

- *What are the feelings you have about those **Danger points**?*
- *Where does the **Danger** come from with you?*
- *What is the emotional truth?*

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### 3. Determine why you are troubled

- *What in **my life** has cause **me** to be feel this way?*
- *Why am I so concerned about issue\_\_\_\_\_*
- Its not necessary to suggest the jury has the same concern.
- The jurors will agree or disagree or add to it

### 3. Determine why you are troubled

- ***DANGER POINTS***

- Just the charge “Sexual assault of a Child”
- Why would a victim make it up?
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## 4. Share your feelings about the matters with the jury

- *Share your **fear***
- ***BE HONEST about your FEELINGS***
- *If you are being emotionally honest, they will believe you*

## 4. Share your feelings about the matters with the jury

- ***DANGER POINTS***

- Just the charge “Sexual assault of a Child”
- Why would a victim make it up?
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## 5. Invite the jury to share their feelings about the matter with you

- *Invite Jurors to share/show theirs*
- *Once you have been honest with them, they will feel comfortable being honest with you*
- *Do any of you feel the way I do about \_\_\_\_\_*

## 5. Invite the jury to share their feelings about the matter with you

- ***DANGER POINTS***

- Just the charge “Sexual assault of a Child”
- Why would a victim make it up?
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## 6. **Accept and honor the gifts that jury gives you**

- ***Accept and honor the Jurors gifts***
- Every answer from every juror is a gift
- It is information about how they feel about the case or **Danger points**
- Even hostile jurors will give you gifts
- Let other jurors save you

## 6. **Accept and honor the gifts that jury gives you**

- ***DANGER POINTS***

- Just the charge “Sexual assault of a Child”
- Why would a victim make it up?
- My client confessed
- My client is a ex-con
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## 7. Continue to share your feelings and invite the jury to share theirs

- *Build a **Tribe***
- *Include Yourself and Client in the **Tribe***
- If you are honest and share and they share back, you will form a **Special Group**
- ***No two groups are alike***

# Build a Tribe

- Build trust
- Connect the Jury to you and other jurors
- Let the jury save you



# Voir Dire

- Identify **Danger Points**
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- Share my **fear**
- Invite Jurors to share/show theirs
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# Reasonable Doubt

- Lawyers use the law as a loop hole to get guilty people off
- How can you represent a person who is guilty of a crime
- Hard for people to understand that it is not my job
- My job is to get a fair and trial
- Not my job to get him off
- How many of you think that it's a loop hole

# Ugly Client/Confessions

- Would an innocent person confess?
- Why would innocent person confess

# Right to Remain Silent

- He may not take the stand
- Anyone who takes the 5<sup>th</sup> is guilty, Right?
- Why your someone not take the stand?

# Is Power Point is Ok?

- Power Point is OK
- Don't let it be a cruch



# Lets talk!

- Are you the right Juror?
- Is this the right case?
  - If you don' t talk, we won' t know
- Why is your job important?
- Do you want a good lawyer?
- Does a fighting lawyer mean you are guilty?



**Is Richard Lopez  
Not Guilty?**

# **What is the “Presumption of Innocence”?**

- Who’s job is it to prove this case?
- Do we have to do anything in this case?

# What does it mean to “presume”?

- Webster’s Dictionary:
  - to expect or assume especially with confidence

# **When does “Presumption of Innocence” begin and end?**

- Begins: NOW
- Ends: at the END of the case
- When will you make up your mind about this case?

# **What can you assume or presume about this case?**

- Can you assume anything else about the case?

# **Are there Two Sides to a Story?**

- When should you decide who's story is correct?

**Is there a difference between  
not guilty and innocent?**

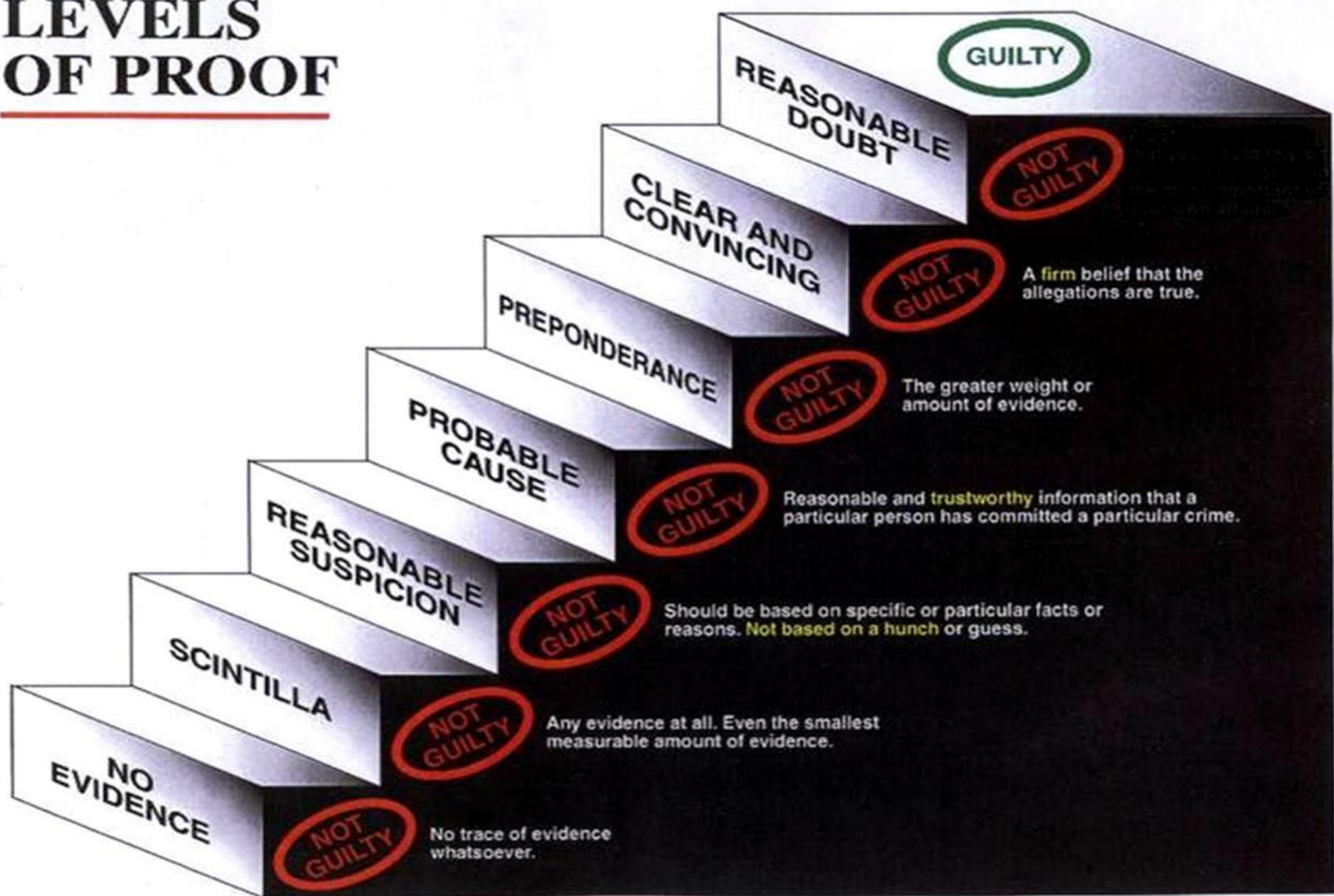
**Burden of Proof:**  
**Proof Beyond Reasonable Doubt**



# **What is Proof Beyond Reasonable Doubt?**

- Do you have a doubt about the proof?
- Are you a reasonable person?
- How much proof is enough?

# LEVELS OF PROOF



**Is there doubt in the  
prosecutors case?**

**Are you a reasonable  
person?**

**NOT SURE = NOT GUILTY**

# **Does an accused person need to testify?**

- Why would an accused person not testify?
- What does it mean to have the right to remain silent?

# **Does the defense have to put on any evidence?**

- Why wouldn't the defense present evidence?
- Why wouldn't a defense witnesses want to come testify?

# **Have you ever been accused?**

- Accused by enemy?
- Accused by misinformed person?
- How does it feel to be wrongfully accused?
- What would you do?

# A Good Defense

- Do you want a good lawyer?
- Does a fighting lawyer mean you are guilty?
- Shouldn' t innocent people fight just as hard or harder?



**Do CRIMINALS have too many  
rights?**

**Do CITIZENS have too many  
rights?**

**Do YOU have too many  
rights?**

# **Do you want to be fair?**

- Is the Presumption of innocence fair?
- Is the Burden of Proof fair?
- Is the Right to Remain Silent fair?
- What if you were on trial, would you want fairness?

# **Bias of Witnesses**

- Why would witnesses be biased?

# **Have you or a relative ever been a victim of crime?**

- Assault?
- Robbery?
- Sexual Assault/Rape?
- Relative or friends murdered?
  
- How strong are your feelings?
- **Should you be able to defend yourself?**

# **Why would a Complaining Witness Not tell the Truth?**

- Angry?
- Confused?
- Misinformed?
- Complacent?
- Mistake?
- Biased?
- Did someone lie to them?
- Or just liar?

# **Standard Operating Procedures?**

- Why do Police Department have SOP' s?
- Why should SOP' s be followed?
- What happens when SOP' s are violated?
- How do we insure that SOP' s are followed?



# **Crime Scene Analysis**

- Should police look for evidence of a crime?
- Should police look for the weapons of crime?
- Should police photograph the “crime scene”

# **Do police have a duty to investigate a crime properly?**

- Why is a good, thorough police investigation of a crime important?

# **What is chain of custody?**

- How important is it to preserve evidence?
- Do Police departments lose evidence?
- Is evidence sometimes destroyed?
- How do ensure that evidence in a case is preserved?
- What if evidence not preserved, what do we do?

# Ethical Duties of Police

- Should police be honest?
- Should police try to invent there own evidence?
- What should the public do when police break the rules?
- What should jury' s do when police break the rules?

**Who has relatives in Law  
Enforcement?**

**Do Police always tell the truth?**

**Do Police always follow the rules?**

**What are ways that we insure that  
Police tell the truth?**



**What are ways that we insure that  
police follow the rules?**

# **Why might the Police say something that was not the truth?**

- Confused?
- Misinformed?
- Complacent?
- Mistake?
- Forgot to investigate everything?
- Too busy?
- Biased?
- Did someone lie to them?
- Or just Big Fat Liar?

**Will you promise to give \_\_\_\_\_ a fair  
trial and be impartial?**

**So.. Are you the right juror?  
Is this the right case?**