

# JURY SELECTION

Nicole Blumberg

Child Abuse Unit Chief

Manhattan District Attorney's Office

# CASES WON AND LOST DURING JURY SELECTION

- “Voir dire” is a French term meaning “to see to speak”
- Questioning of prospective jurors by court and lawyers
- Can be awkward but important part of trial
- Prospective jurors often do not openly admit biases

# CASES WON AND LOST DURING JURY SELECTION

- Law schools teach that purpose is objectivity and fairness
- In reality, lawyers seek to select jurors who will favor their side
- Comes down to **ELIMINATION, EDUCATION, INGRATIATION**

# ELIMINATION: WHO DO YOU GET RID OF?

- Get rid of obviously unfit jurors
- Pinned on the bulletin board of a former ADA:
  - No ladies with hats
  - No kooks
  - No overly religious people
  - No people with more than three cats

# CASE ANALYSIS IS CRITICAL

- Who are the parties?
- Do parents believe the child?
- Strengths and weaknesses of the case
- Talk it over with someone else
- Write out your questions, making them open-ended and well worded

# GENERAL RULES OF ELIMINATION

- People whose religious or philosophical beliefs prevent them from judging or convicting other people
- People who are crazy
- People who are going through personal crises
- People who have trouble making weighty decisions

# GENERAL RULES OF ELIMINATION

- People who are overly anxious to serve or be excused
- People who have been convicted and believe they were treated unfairly
- People who do not work well in a group
- People who cannot or will not accept facts of the case

# GOOD JURORS FOR PROSECUTION

- Person who has lived at same address for many years and have stake in community
- Person who has worked at same job for many years
- Person who is in a happy relationship
- Older person who has greater life experience and tend to be more conservative

# GOOD JURORS FOR PROSECUTION

- Well dressed person with good hygiene and body language
- Person whose job requires managing, supervising, and decision-making
- Person who has prior jury service

# ELIMINATION RULES FOR CHILD SEX ABUSE CASES

- People who have been accused of sexual abuse
- People who cannot rely upon word of a child
- People who cannot understand delayed disclosure, blending, and inconsistencies

# ELIMINATION RULES FOR CHILD SEX ABUSE CASES

- People who require more than word of one person
- People who think children should be treated the same as adults
- People who require DNA, video, and physical injury evidence

# ELIMINATION RULES FOR CHILD PHYSICAL ABUSE CASES

- People who believe incidents involving parents and children should be private matters
- People who think parents have permission to discipline their child in any way they feel is appropriate
- People who think partners or stepparents can discipline child in any way they feel is appropriate

# EDUCATION AND PERSUASION

- **Issues in Every Case**

- Proof beyond a reasonable doubt, not all doubt
- Prove elements of crime, not every fact
- Likelihood of inconsistencies
- Law does not require any particular type of proof
- Strength of case
- Trials are not like TV

# EDUCATION

- **Create a list of issues pertaining to your trial**
  - Biological parent
  - Teacher
  - Delayed and partial disclosures
  - Confession or partial confession
  - Psychological issues

# EDUCATION

- **Create a list of issues pertaining to your trial**
- Abuser married or in significant relationship
- In same room or home at time of abuse
- No physical findings
- Cannot remember all of the details or focus on different details
- Demeanor on witness stand

# INGRATIATION

- **Does the jury find you credible?**
- Voir dire is first opportunity for jury to see and hear you
- Need to try to be likable and fair
- Do not be afraid to ask the tough questions
- Encourage jurors to be honest
- Do not talk down to people
- **Be yourself, unless you are loathsome—then be someone else**

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

- **I. Not Television**
- Not actors—not polished or scripted
- No dramatic twists or endings
- Do not have to like the witnesses

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

## ▪ II. Issues

- One witness
- No video, weapon, or force
- Issues with victim
- May not remember all the details of something that happened years ago (taking kids to park, baseball game, etc.)
- Children might focus on different details than adults

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

## ▪ III. Response to a Sex Crime

- Can we agree that there is more than one way to respond to being a victim of a sex crime?
- Can you think of reasons why someone might not report a crime? (Fear shame, no one will believe you, finances, don't want to break up family)
- What if the victim is a child?
- Partial disclosure
- Child is now a 19-year-old young woman

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

## ▪ IV. Child Abuse and Pedophiles

- What does someone who molests a child look like?
- Can it be someone who otherwise seems nice?
- Can a child molester be married?
- Can it occur in a household where other people are present?

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

- V. Personal Information from Jurors
- Get them talking

# SAMPLE VOIR DIRE: CHILD SEX ABUSE

- **VI. Hesitation to Convict**
- Get assurances that they can convict if you prove your case

# CONTACT INFORMATION

- Nicole Blumberg
- 212-335-3628
- [BlumbergN@dany.nyc.gov](mailto:BlumbergN@dany.nyc.gov)