

# Jury Selection

## I. Intro

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R-

Q. Does any one know any of the parties?

## II. Purpose of Jury Selection.

To find 12 people who can make a decision about this case in a fair and impartial way. In other words, 12 people who will wait until they have heard all of the facts before making up their minds.

*Not everyone is the "right" juror for every case. Example of the car theft-*

Remember, no one likes crime. That is not the criteria to be on this jury. You have to be able and willing to make the State prove this case to you beyond a reasonable doubt before finding that the R committed the offense.

## III. Role of a Juror.

Follow the Law

Decide the Facts

## IV. Law applicable to this case.

### A. Juvenile Law.

In Texas, if you are between the ages of 10 and 17 and you commit a crime you are prosecuted pursuant to the Texas Family Code. The prosecution seeks to prove that you committed delinquent conduct and that you are a child in need of supervision. In juvenile law the emphasis is on punishment and rehabilitation. Once a juvenile is found delinquent he or she can receive different kinds of punishment than an adult. There are several options that we will go over in a minute.

*Q. Does any one of you believe that juveniles should not be prosecuted of crimes?*

*Q. Does any one have friends or family members that are involved in the juvenile system?*

*In this case we have charged the respondent with engaging in delinquent conduct by committing the offense of manslaughter. Let's talk about that law.*

### B. Manslaughter. Sec. 19.04 TPC

A person commits the offense of Manslaughter if " a person recklessly causes the death of an individual."

"Recklessly" is defined in the TPC Sec. 6.03 (c):

"A person acts recklessly or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all circumstances viewed for the actor's standpoint.

Let's think of an example: Imagine a few kids out late at night, hanging around a highway overpass. Maybe they are drinking beer, tagging the concrete posts. One finds a big rock, the size of a cinderblock, and is playing around with it. He holds it up over the guardrail above the traffic below. There is a steady stream of traffic below. The other kids tell him to put it down, that it is dangerous to dangle it over the traffic below. The kid's fingers slip and he drops the block. It falls to the traffic below, onto a car. The driver of the car has an accident as a result of the block crashing into her windshield. She dies an hour

later as a result of the injuries she receives at the scene. The actor is guilty of manslaughter. He knew the risk. He took the risk any way. The victim died as a result of the risk.

C. Criminally negligent Homicide Sec. 19.05 TPC

Is a lesser-included offense of Manslaughter and in many instances the jury will have the opportunity to consider both. Lets examine the difference between the two.

A person commits an offense if he causes the death of an individual by criminal negligence.

"A person acts with criminal negligence, or is criminally negligent; with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Let's look at an example of negligent homicide: using the same example as above, imagine the kid is throwing rocks instead off of the overpass into oncoming traffic.....

The difference is basically 'did the actor know the risk and ignore the risk' versus 'should the actor have known the risk?'

D. Presumption of Innocence.

E. Burden of Proof in a juvenile case is "beyond a reasonable doubt."

**V. Deciding the Facts.**

A. Evidence in a case.

1) Testimony from witnesses under oath.

- Lay witnesses
- Law enforcement
- Expert witnesses

2) Medical records.

3) Physical evidence.

- Ballistics/bullets/casings
- Serology/blood samples
- Autopsy/cause of death
- Photos
- Fingerprints

B. Witness Credibility.

- State does not pick witnesses
- Teenagers
- Blaming the victim syndrome

There will be evidence that the teenagers in this case were using marijuana, including the victim. Would this keep you from being able to fairly decide what happened?

C. Sympathy

- No place in first phase of trial
- May be relevant in punishment phase.

**VI. Punishment phase.**

A. Texas has a bifurcated trial system.

B. Juvenile law traditionally requires the Judge to decide the punishment.

- C. In some instances the jury will decide punishment. In this case the jury will be allowed to decide the punishment if a true verdict is made.
- D. The jury must first make a determination that a disposition is necessary. You base this decision on the facts of the case and the background and the child.
- E. Range of punishment for a 2<sup>nd</sup> degree felony is zero to 20 years. This sentence would begin with a commitment to a Texas Youth Commission and may result in a possible transfer to the adult prison system.
- F. If the child is assessed a sentence of 10 years or less the jury can also considered probation.

*Q. Can everyone here consider the entire range of punishment? From probation to 20 years in the Texas Department of Corrections?*

*Give example about teenage daughter dating...*

#### **VII. Respondent's 5<sup>th</sup> Amendment right against self-incrimination.**

- no one can be called as a witness against themselves.
- you cannot hold this decision against the respondent.
- you do not give the respondent "extra credibility" for testifying.
- judge the respondent the same as any other witness, i.e. why is he saying what he is saying, what is his motive to lie or tell the truth, etc.

# Jury Selection for the Prosecution

## I. Introduction.

This is arguably one of the most important phases in your trial process. You are deciding upon the 12 people who are going to decide your case. It is important to like, even love the process of voir dire. If you approach this as an unimportant time, a chore to "get through," then you will miss an important opportunity to begin the trial with the jury already on your side. Remember, you know everything about your case. The jury will never know everything you know, so it is important to really prepare for jury selection and figure out what type of person you need and what sorts of evidence and decisions each juror will face if selected. And remember- call it jury selection!

## II. General Purpose.

You are trying to educate a group of people about the law and how the law pertains to your case, and you are attempting to deselect those persons who are predisposed to not follow the law, who will be confused by the law, or who will hold you to a higher burden of proof than the law requires.

## III. Teach vs. Learn Approach

Prosecutors and defense attorneys have different approaches to jury selection. I break the process into two styles: teach vs. learn. Both styles have merit however not every person can accomplish both styles. I have found that for most prosecutors handling juvenile cases, the teach approach yields better results. Most potential jurors come into the process a little bewildered and want direction. I like to take the role of a teacher and attempt to give them as much information as I can without straying too far off subject.

### A. Learn all you can about bias and leanings without offending potential jurors.

Give permission to a venire person to reveal bias. Give an example of bias. "You walked out of your house today and found that your car had been burglarized. You had to coordinate a ride to court for jury duty. You get here and discover that this is an auto burglary case. Maybe you are not the best juror for this case! Or maybe you would have no problem serving." Discuss. Use the line: Not everyone is the right juror for every case.

### B. Teaching jurors requires keeping control over process and informing potential jurors.

Give the panel confidence in you. Act like a teacher. Use lines like: "That is a great question. Let me answer that for you..." Treat the defense attorney with respect.

### C. Always maintain fairness and invite a high standard of scrutiny.

Welcome the burden of proof. Shore up venire person against challenges for cause. I.e. "You must make the state prove this case against the respondent. That is what I am requiring of you. Will you agree to convict this person only if and when I prove each of the elements?"

- i. Save sarcasm for trial!
- ii. Present yourself as the most credible person in the courtroom!

## IV. The "Learn" Approach.

I have colleagues who are masters at this technique and several defense attorneys are good at this approach as well. I have included a site to an article for your review explaining how to utilize this method but will not cover it here because I am not someone who uses this method in its pure form. [How to Conduct a Meaningful and Effective 30-minute Voir Dire in a Criminal Case, by Robert Hirschorn and Stacy Schreiber.](#)

## V. Special Issues.

- A. Child abuse/molestation cases
  - children give different kinds of testimony
  - children don't usually lie to get into trouble
  - how would you feel discussing your last sexual encounter in front of a room full of strangers
- B. Parties cases
  - all parties are responsible for crime, punishment may vary
  - give examples like the party who only points out the victim
- C. Sympathy for juveniles
  - remind panel that sympathy is only a factor for punishment, not adjudication.

**VI. Tell the Jury this is a job and tell them how to do the job.**

- A. Two basic job requirements: Follow the Law and Decide the Facts.
- B. Go into specific areas of the law that apply and DON'T "TALK JUST TO HEAR YOUR SELF TALK!"
- C.

# Sample Voir Dire for Juvenile

I. Intro: names and type of case

II. Purpose

III. Role of a Juror

- A. Follow the Law
- B. Decide the Facts

IV. The Law

- A. General Principles.
  - Juvenile Law overview: include determinate if necessary
  - Presumption of innocence
  - Burden of Proof
- B. Law specific to offense charged
  - Elements of offense
  - E.g. Burglary
  - Consent, ownership, etc.

V. Deciding the Facts

- A. Types of evidence.
  - Direct
  - Circumstantial
  - Physical, scientific
- B. Types of witnesses.
  - Lay witnesses
    - Children
    - Relatives of accused
  - Police
  - Experts

VIII. Bifurcated trial system

- A. Punishment
  - Range of punishment
  - Qualifying venire person on range
  - Multiple charges run concurrent
- B. Role of sympathy

IX. Send "Thank you" notes to jurors.

**\*\*USE A SEATING CHART FOR NOTES\*\***