

**TOP TEN TIPS FOR WINNING
YOUR CASE IN JURY SELECTION**

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***TOP TEN TIPS FOR WINING
YOUR CASE IN JURY SELECTION***

1. DEVELOP THE THEORY OF YOUR CASE
2. MAKE A FEAR LIST
3. HUMANIZE YOUR CLIENT
4. COMMUNICATE THE THEORY OF YOUR CASE TO THE JURY
5. EXPLAIN THE ELECTION NOT TO TESTIFY
6. EXPLAIN PROOF BEYOND A REASONABLE DOUBT
7. MAKE THE JURY AWARE OF FALSE ALLEGATIONS
8. IDENTIFY THE LOGICAL THINKERS VS. THE EMOTIONAL THINKERS
9. DEAL WITH YOUR CLIENT'S PRIOR CRIMINAL RECORD
10. WHEN AND HOW TO TALK ABOUT THE PUNISHMENT PHASE

STANDARD VOIR DIRE OUTLINE

THE STATE OF TEXAS

vs.

I. INTRODUCTION

- A. Uninteresting, tedious, time consuming - confess longer than prosecutors
- B. To be as thorough as possible to see that an innocent man is not convicted - little bit of system dies - do you think every accused is entitled to that?
- C. Important - Two Reasons
 - 1. To accused - to get to know how you feel - 12 most qualified to sit in judgment
 - 2. To jurors - time to ask questions - not sure about - not comfortable
- D. Absolute candor
 - 1. for me, for the accused, for yourself, and for the system
 - 2. If you feel it, tell me - I need to know - not fair to start any other way
- E. Twelve open minds - If prosecutor would tell the truth, he would want 12 police officers.

II. FEAR LIST

III. WHAT DID THE DEFENDANT DO? RAISE HANDS

- A. Presumption of Innocence

1. 6th grade civics, lip service, hard to apply
- B. Not new for Defendant
- C. Just because a person is charged with a crime, it is no evidence of his guilt
1. No witness before Grand Jury
 2. Traffic ticket
- D. State of Texas decides what to charge and the State must prove every element beyond a reasonable doubt.
- No one has passed on whether state can prove his guilt beyond a reasonable doubt
- E. Accused does not have to bring you any evidence
- Not a question of who proved what
- F. Hold strong to the presumption of innocence until both sides are through - argument - charge
- G. Just because the accused is so unfortunate to be charged sitting here is no evidence of his guilt
- H. Accused of something you didn't do? Remember how you felt - Accuse someone else? Remember how you felt. Do you believe a person can be accused when they are really not guilty?
- I. If you had to vote right now, do you have any feelings as to guilt or innocence at this moment?

IV. ***DO YOU KNOW ?***

- A. Witness(s) ?
- B. Judge ?

- C. District Attorney's Staff ?
- D. Law Enforcement Officers ?
 - 1. Close friend(s) ?
 - 2. Family members ?
- E. Know anyone else on jury panel ?

V. ***PRIOR JURY EXPERIENCE***

- A. Preponderance v.s. Reasonable Doubt
Fed reasonable doubt, compare money vs. people's lives
- B. Reach Verdict
- C. Foreman
- D. Grand Jury

VI. ***VICTIM OF CRIME***

- A. Complainant
- B. If a person is wrongfully accused should system be strong enough to find him not guilty

VII. ***REASONABLE DOUBT***

- A. Proof of such a convincing character that a reasonable person would not hesitate to *rely* and *act* upon it in the most important of his own affairs
- B. Could be Reasonable Doubt for you and not for someone else
- C. Basic standard in all criminal cases from traffic ticket with fine only to

sending a man to the penitentiary

1. In a traffic ticket case, it might be sufficient to convict on the opinion of a police officer alone, BUT
 2. Where a citizen has been accused and could go to the penitentiary, you might want more
- D. Require the state to bring you all the evidence that might tend to show what really happened on the day in question.
- E. You might want and you are entitled to:
1. Consistent and reliable, unquestionable testimony
 2. Evidence to corroborate what witnesses say
 3. Physical evidence recovered
 4. Physical evidence connected to the accused on trial
- F. Possibilities are endless, *but you* decide whether or not the prosecution has removed any and all Reasonable Doubt
- G. 100% of the elements
1. Doubt as to certain facts might cause reasonable doubt as to an element
- H. Vote your own conscience - not as a team
1. Not as articulate as others - your vote just as important as the more talkative jurors.
- I. Require cold hard unquestionable facts

VIII. ***JURY FUNCTION***

- A. Judge of facts - or lack of facts
- B. Based on what you hear from witness stand. Is it sufficient?
- C. Decide whether or not the prosecution proved it
- D. Not anyone's fault if evidence is not sufficient to convict
- E. Judge of law. Court will not require you to take an oath to follow a law you do not believe in.

IX. ***DISCUSS LAW***

- A. Prosecutor went over elements - not every homicide is a murder
- B. Defensive charges

X. ***FAILURE TO TESTIFY***

- A. On the horns of a dilemma
- B. Can you think of a reason why the accused would not testify?
- C. Not a question of who proved their side of the case
- D. Would you require the accused to bring you any evidence showing he is not guilty before you could acquit him?
- E. How many of you have been accused of doing something you didn't do?
Many times it would be very difficult to prove that you didn't do something.
- F. Prosecution has a duty to prove it and remove any and all reasonable doubt from your minds

XI. ***CREDIBILITY OF WITNESS***

- A. Conflicts, blue socks v.s. black socks

- B. Weight to be given their testimony
- C. Everyday life
- D. Clear, consistent, reliable and supported by evidence
- E. Sales pitch or chips fall where they may

XII. PUNISHMENT

- A. Bifurcated Trial - two phases
- B. Application for probation
- C. 5 - 99 years, life, fine
- D. Consider full range of punishment
- E. Good faith consideration to probation

XIII. INDIVIDUAL QUESTIONS

- A. Presumption of Innocence
 - 1. Hold strong until you are convinced beyond any reasonable doubt -
WAIT
 - 2. Even if you think there is a possibility or probability that the accused is guilty, will you vote "Not Guilty" if you have a reasonable doubt?
 - 3. Won't feel badly about not doing what the State of Texas wants if you have a doubt?
 - 4. Will require the State to prove 100% of the elements, and prove beyond a reasonable doubt that it was not done in self-defense.
 - 5. If State of Texas only proves 99%, you will find the accused "Not Guilty?"

6. Do you believe that a person can be charged and not guilty?
- B. Failure to Testify
1. Defendant not required to offer any evidence
 2. Not a question of who proved what
- C. Vote Your Own Conscience
1. Make friends, etc.
 2. Require cold hard unquestionable facts
 3. Not conjecture, guess work, speculation or innuendo
 4. Do not supply evidence if the evidence is not there or creates a reasonable doubt. Vote "Not Guilty" and not feel badly that you did not do what the State wanted you to do.
 5. Do not guess a man into the penitentiary
- D. Case Specific Questions