

**Jury Selection
for
Prosecutors**

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Capitalize on your Credibility

- Most citizens dislike crime.
- Most citizens respect prosecutors, unless they have a specific reason to dislike or distrust.
- Your job is to maintain and enhance this positive attitude.
- And ferret out those who are anti-state or unsympathetic to the facts of your case.

Find your Personal Style

- How? What first impression do you make?
- Ask co-workers, friends, neighbors and family members. This will yield a theme.
- Create a style that enhances your personal traits. It must be uniquely yours!
- Your style must be sincere. It cannot be a copy of someone else.
- Examples of dress, voice, mannerisms.

Select Your Theme

- Talk to non-lawyers about your case.
- Talk to people with various backgrounds and philosophies.
- Make your theme clear, simple and relatable.
- Outline your opening so you know exactly what you know your facts will show.
- Know what the defenses will be.

Know Your Court

- Know your time limits.
- Know how much instructing the judge does.
- Many judges are not going to allow questionnaires.
- Find out when strikes for cause can be urged.
- Know your courtroom participants and the seating arrangements.

Trial is Drama!

- Distinguish your drama from TV.
- Identify the roles of the actors, including the defense attorney. (style, demeanor, etc.)
- Use power point if possible.
- Use space well. You are in charge of the case and the space.
- Act smart but not elitist! Do not say "voir dire"!

ID Leaders On Your Panel

- **By appearance:** notice dress, scholarly, positions of respect.
- **By interaction:** notice how others interact with leader.
- **Leaders must id with you and your case.**
- **Be wary of certain professions on your jury: If possible-No lawyers on jury!**

Discover Bias and Prejudice

- **Give example of your own bias.**
- **The victim of car burglary example.**
- **Explain that bias can be overcome.**
- **Get jurors talking!**
- **Save pro-state jurors by appealing to the sense of community responsibility.**
- **State needs fair jurors also!**

Inoculate Jurors

- **Invite a high standard of scrutiny.**
- **Presumption of Innocence.**
- **Burden of Proof Beyond a Reasonable Doubt.**
- **Save sarcasm for trial.**
- **Qualifying the jury on the range of punishment in Determinate cases.**

Batson Reminders

- **Batson V. Kentucky** states that using preemptory challenges to strike venire panelist on basis of race violates the Equal Protection Clause.
- Applies to all races, not just the respondents.
- Applies to gender.
- Not to religion, age, physical disability or sexual preference.

Protecting Your Strike

- State must give a race neutral reason for strike.
- Must be able to articulate your reason into the record.
- Examples of race neutral reasons:
 - Employment or educational background.
 - Health problems or clothing appearance.
 - Body Language- like juror sleeping!

Special Issues

- **Juveniles- Why do we care?** (even 10 year olds are responsible for their conduct).
- **Law of Parties- The other guy did it!** (explain what constitutes “attempt to assist”).
- **One witnesses cases- Is that all you have?**
- **Sexual Abuse Cases-Why would she lie?**

To Sum it Up...

- No one know your case better than you.
- At times the jurors will have to walk out on a limb for you while you connect the dots.
- If they trust you and like you, they will make that walk for you.
- It is your job to give them the tools, and...
- They will be your voice of reason in the jury room!

The End

Jury Selection For the Prosecution

Introduction

Jury Selection is one of the most important aspects of your trial. The assumptions made and the tactics used are considerably different depending on whether you represent the state or a respondent. This paper focuses on jury selection from the perspective of the prosecution. I begin from the viewpoint that most citizens dislike criminal conduct and generally view the prosecution in a positive light and with some degree of respect, unless they have specific experiences that have eroded that respect; therefore, your job is to capitalize on their positive impressions and further establish that trust. In this process you must ferret out those who are decidedly anti-state or unsympathetic to the specific circumstances of your case. You also must keep in mind that you are not only looking for a jury that will convict on your facts, but also assess a punishment, if applicable, that satisfies the standard that you have set.

I have tried various criminal and juvenile cases over the past 20 years and read numerous articles and chapters on Voir Dire. I do not subscribe to just one method, but instead suggest you collect as much information as possible and forge a method drawn from various sources that matches your personal style. Read everything that you can find on the subject and watch as many jury selections as possible because there is no substitute for watching juror interaction with various lawyers. I have included sources at the end of the paper with material that has helped me.

Finding Your Personal Style

We all have a potential personal style that best reflect our strengths and minimize our weaknesses. Your first task is to determine what your personal style is. There are some strategies to accomplish this: have a few co-workers give you feed back about the first impression that you make; ask your relatives to describe your personality in three words; ask your non-lawyer friends how they would describe you to someone who doesn't know you. It is important that you ask people who know you well and others who only know you superficially. They need to be honest and you must have thick skin! This discovery process should yield a theme. Are you laid back and approachable or are you formal and professional? Are you energetic, even hyper or are you methodical and patient? From this feedback you can hopefully create a style that enhances your personal traits. Your use of personality will lend credibility and sincerity to your engagement of jurors. For example, if you are perceived by most as a formal, methodical and exacting person, the "good-old-boy, chatting on the back porch" style will not work for you. What ever style you develop must be sincere and incorporate your best style.

I have divided jury selection styles into two general categories that I describe as the "teach" approach and the "learn" approach. I have colleagues who are masters of the "learn" technique. This technique is embodied to a large degree in the work of litigator Robert Hirschorn. This approach lends itself particularly well to the defense because it follows the prosecution's lengthy introduction of legal concepts. It also encourages jurors to open up and reveal bias and prejudice. I have attached a reference to Hirschorn's article for your review.

I will focus on the method that I refer to as the "teach" approach because this is the method that works for me. It is particularly well suited to the prosecution because we have the job of initially educating the panel and covering numerous legal concepts. Through our personal style we should always be perceived as knowledgeable without being elitist, and in charge of the case and the space. This allows you to take on a role of teacher and leader which can be very effective. I recommend a book by Edward Wright, How to Use Courtroom Drama to Win Cases (1987). I have successfully utilized a lot of his strategies through out the years in various types of cases. What works in an adult capital murder or aggravated sexual assault prosecution may not work in a juvenile capital or sexual assault, but many of the general principals are the same. Much of what I am covering comes from Mr. Wright's book.

General Purpose

Focus on the big picture at all times with a clear picture of your goals. You are trying to educate a group of people about the relevant law and how the law applies to your case. You are attempting to deselect those persons who are predisposed to thwart the law, who will be confused by the law, or who will hold you to a higher burden of proof than the law requires. You want individuals who are sympathetic to your issues; a group of people who like you, trust you and to some extent, like each other. You will know your case better than the jury will ever know it, and at times, while you connect the pieces of your case together, the jurors will need to follow you and even walk out on a limb for you. If they like you and trust you they will be willing to do this.

Select and Know Your Theme

The only way to know your theme is to talk your case out- with people who are not lawyers! Choose people with different backgrounds and political philosophies because the feedback is better. Tell your mother, your spouse, your neighbor, etc. Have them tell you what they need to know to give you a guilty verdict and the term of years you seek. It alone and consider what issues or facts would be most important to you as a juror. Craft your theme so that it is clear, simple and relatable to the average juror.

Plan an outline of your opening- complete several drafts and by the time you finish include only what you are sure your facts will show.

Determine what the defense is likely to argue, paying special attention to what the defense can actually show versus what they can only allude to or speculate

about. This will allow you to anticipate and narrow defenses and weakness of your case. Next plan your basic closing and work out particular arguments and your points of persuasion. This preparation is essential when you are speaking with venire persons, responding to their questions.

Trial is Drama

Remember, to potential jurors this a drama! Most will have little if any experience with the process so their expectations will be based on television and the media. You can address this by explaining to the panel how unrealistic this view is-but you still better have them interested and to some degree entertained. Use visual aides, especially power point if possible. Many jurors expect this in our technical society. This is also a tool that will keep venire persons interested. It is always better to augment what they hear with visuals.

Dress well. Jurors have an idea what they think lawyers should look like and how prosecutors should dress in particular. This does not mean a suit necessarily, but something fairly conservative and always neat and clean. A signature look can work really well for some people if it is sincere and fits their personality. I know a male prosecutor who always wears a patriotic tie in trial and jurors seem to love it. If you are the type that embodies the “busy public servant look”, which is otherwise described as the rumpled shirt, scuffed shoes and non-matching jacket, you best be clearly prepared and eccentrically smart! Very few can pull that look off, but those who do earn the respect of the panel for possessing substance over style. Another assistant district attorney I know collects and wears very unique antique jewelry in trial and she consistently receives positive comments from jurors afterwards. The key is to adopt a style that is sincerely yours and that fits with your personality. That consistency will strengthen your credibility and add interest to the drama.

Utilize the courtroom space well. Walk around in front of the panel so that every potential juror can see your face. This is your only time to talk to them like a real person so use every day language, not legal jargon. Listen carefully to their questions and do not assume you know anything about them. Craft your answers in a way that will not offend any reasonable juror in the panel. This means that you cannot let your own bias show. Modulate and fluctuate your voice and show some excitement at times. Act like you are enjoying the process-even better- actually enjoy the process! This will make the jurors want to be a part of the upcoming adventure.

Identifying Leaders on Your Panel

Prosecutors spend a lot of time worrying about individual persons when putting together a jury and we often forget the importance of the dynamics between the parties. Consider how each person will contribute to the mix and create potential conflicts. Recognize persons who hold positions of leadership or respect in daily life. You can accomplish this by knowing what their job is, or noticing how they look, dress or even just how they interact with others on the panel. For instance, very outgoing friendly persons or those who don't mind

standing out will often be leaders on your jury regardless of age or occupation. They may be a leader for the defense rather than the state, so make sure the leaders you leave on your panel are going to work for you and not against you.

Look for people who have experience relative to the matter being litigated, and those who work together in the same field or for the same company. Know the big companies in your area, like Toyota or USAA.

Note persons who actively participate in voir dire and the reaction of the others to that person. Is the “talker” alienating some on the panel or do others appear to respect or defer to the “talker”? Observe the impact jurors have on one another. Most importantly, the leaders must like you or identify with you and your case if you expect that juror to be your ally in the prosecution. You need all twelve jurors to work for you and the defense just needs one to determine the outcome of the trial.

Note of caution: do not leave any attorneys on your panel- no exceptions! And be wary of anyone who is obviously trying to get on the jury unless you are very certain they are on your side.

Every Question Should Have a Purpose

Every question you ask should help you win. Either the content or the form of the question should help create mood, and help further establish your credibility and your case. Jury selection comes before opening statement so you begin telling your story through your questions in jury selection. Through questions you set your stage and theme, and introduce characters to the drama.

Discover Bias and Prejudice without Offending Potential Jurors

This sounds easier than it is! The best way to figure this out is to watch several jury selections and watch how venire persons respond to questions from lawyers. Watch body language, tone and verbal interactions and you will see how easy it is to offend someone without trying. Give permission to the venire person to reveal any bias by giving an example. For example, say to the potential juror, “Suppose you walked out of your house today to drive here and found that your car had been burglarized. You had to call the insurance company and the police and you had to coordinate a ride to court for jury duty. You are annoyed and stressed and you discover that this case is an auto burglary case. Maybe you are not the best juror for this case.”

Next you can explain how this experience does not necessarily make them unfit to serve. You have introduced prejudice in an innocuous, non-threatening way. Now you can explain further and shore up those jurors who are strong for the state. You can tell the panel, “On the other hand, no one likes crime. Being opposed to auto theft does not mean you can’t be fair on all car theft cases. Do you realize this defendant should not pay for the crimes of others? You must agree to only convict if and when the state has done its job. If I don’t prove the defendant committed this crime beyond a reasonable doubt then you must find the defendant not guilty. Do you agree? Do you agree to make me

do my job before you convict? Does anyone disagree?" You have now inoculated jurors to defense questioning.

If you get the sense that people are trying to get themselves excused from the panel by showing their pro-state opinions, remind the panel that the county needs and deserves fair jurors just like the defense. Appeal to their sense of community responsibility.

The "Teach" Approach

Give the panel confidence in you and your ability. Act like a teacher. This approach requires giving the jury room to express their opinions while maintaining some control over the process. Use lines like: "That is a great question. Let me answer that for you." Or, "That is an interesting question. Has anyone else wondered about that? Would anyone like to suggest an answer?"

Have proper and easily understood answers ready for responses. You must be a reliable source of information that the jury looks to for guidance. Don't stumble around or give the defense a legitimate objection to your answer.

Always Maintain Fairness and Invite a High Standard of Scrutiny.

I cannot over emphasize this enough. The prosecutor must welcome the burden of proof. This is how you shore up venire persons against challenges for cause. You must be the one to tell the panel that you have a job to do and you are going to do your job before asking them to do theirs. Remind them it is okay to "wonder what the respondent is charged with." Remind them that it is only natural curiosity to speculate, but what they cannot do is prejudge the case even before they have been sworn in and heard evidence. Instruct them that if they were asked right now how to vote on this respondent's guilt or innocence then that they would have to vote "not true" because they have not heard any evidence. You want to give them the tools to respond to any "tricks" by the defense regarding bias. Tell them that fair people will wait until they have heard the evidence in a case before making a decision. Everyone wants to think of themselves as fair.

Note of caution: Save sarcasm for trial. If used at all, sarcastic responses will only be appreciated until after the panel identifies with you. If used carefully it can be an effective tool to show your frustration with ridiculous answers or comments by the witnesses or the defense. Don't attempt humor unless you are really funny, but don't be afraid to join with the panel in response to a funny situation or comment.

Explaining the Presumption of Innocence and Burden of Proof

The prosecutor has the benefit of being the first person to introduce the concepts of Presumption of Innocence and Burden of Proof and you must capitalize on this opportunity to present the state's perspective. Often times the judge will introduce the jury to these concepts before turning the panel over to you. Regardless, do not forgo your opportunity to cover these important topics with the jury before the defense's voir dire. In doing so, you have the ability to inoculate the venire persons against the defense attorney's challenges for cause.

When explaining Presumption of Innocence, remind jurors that a defendant is presumed innocent at the beginning of trial and that the presumption does not fall until the state has done its job of proving the case beyond a reasonable doubt. Explain that it is a legal presumption, not a factual presumption, and that you welcome the opportunity to overcome the presumption.

When explaining Burden of Proof, tell jurors that the legal standard is not proof beyond all doubt or beyond a shadow of a doubt. Advise the panel that the only way a person would be convinced beyond all doubt is if they saw the crime happen with their own eyes, and then they would be called as witness and not be eligible to serve a juror. This common sense explanation allows jurors to understand the state's burden in practical terms. You remind the panel that this is not an impossible standard and one the state meets routinely; that in fact the prisons are overflowing with people convicted beyond a reasonable doubt.

Can Jurors Consider the Full Range of Punishment?

In determinate sentence cases the prosecutor must qualify jurors on the range of punishment applicable to your case. This can be dicey when you are trying to find people who can equally consider giving a convicted murderer a sentence of probation up to 40 years. The law requires a juror to be able to consider this entire range of punishment available and a lot of jurors are challenged for cause on their stated inability to do this. The key for the prosecution is the word consider, and remember that under Standefer v. State, 59 S.W.3rd 177 (Tex. Crim. App. 2001), the juror cannot be committed to a particular set of facts when making this decision.

First explain what consider means. There is no legal definition so use a common sense approach. I use every day examples like allowing my 16 year old daughter to go a date. Considerations include: where are they going, who is going, when they are going and what time will they be home. I consider allowing her to go all the way up to the big night and may take one look at the boy on a motorcycle and say no to the date. Remind jurors that "to consider means to honestly think about it before making your mind up- but you can just as equally choose no over yes." When questioning your venire persons on whether they can consider the full range of punishment on, for instance, a murder, remind them that not all murders are the same. Compare a mercy killing to a cold blooded stabbing and note that each is technically a murder but will merit very different punishment. Again, do not let the defense attorney commit jurors to a specific set of facts, particularly facts that mirror your case.

The Standefer case sets out the test for commitment questions to a venire person. A commitment question is only valid when one of the possible answers will give rise to a challenge for cause. You can also object to repetitious questions, misleading questions, confusing questions and vague questions.

Batson Reminders

Batson v. Kentucky, 476 US 79 (1986), states that using preemptory challenges to strike venire panelists on the basis of race violates the Equal

Protection clause. Batson applies to all races, not necessarily just the race of the respondent. It also applies to gender. It does not apply to religion, age, physical disability or homosexuality. Each strike by a prosecutor must be supported by race and gender neutral reasons that can be articulated. Examples of race neutral reasons include not only a venire person's answers to questions during voir dire but also appearance, employment, educational background or health problems. Body language can be a reason as well, for example a venire person who sleeps during jury selection can be excluded. When you are making your strikes, discuss with your partner the race and gender neutral reasons for your strikes and jot down notes on your work sheet so they are easily available to state into the record if challenged.

Conclusion

Jury Selection is a critical stage in the prosecution of your case. If you complete the necessary home work you have the opportunity to educate the jury and present your key issues in a light most favorable to your case. Equally important, voir dire allows you capitalize on your credibility with the jury and introduce the jury to you and your drama in a way that makes them want to participate in the administration of justice.

Sources

Texas Criminal Procedure; Robert Dawson and George Dix, 1984, Matthew Bender pub.

How to Conduct an Effective 30-minute Voir Dire in a Criminal Case; Robert Hirschorn and Stacy Schreiber, article

Prosecutor Trial Notebook, 2004 ed.; by Matthew Paul and Diane Burch Beckham, published by TDCAA, Austin, Texas.

How to Use Courtroom Drama to Win Cases; Edward Wright, (1987); Prentice-Hall, Englewood Cliffs, N.J.

Table of Cases

Batson v. Kentucky, 476 US 79 (1986)

Standefer v. State, 59 S.W.3rd 177 (Tex. Crim. App. 2001)

Example One
Jury Selection

I. Intro

Jill Mata	Joe Gonzales
Leticia Cortez-Ramirez	R- Juvenile Jones

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 anyway. 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. Let's 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 of 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 of 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. I need to ask you about marijuana. 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 2nd 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?

<Explain what "consider" means giving an example. I use the example of my daughter dating....I consider letting her go out after asking a lot of fact finding questions but once I see the boy at the door I may decide no. I have considered all the factors but still decide against letting her go.>

(give your examples of cases meriting the low end to high end of punishment...)

a. Respondent's 5Th Amendment right against self-incrimination.

-no one can be called as a witness against themselves.

-you cannot hold this decision against the respondent.

-if anyone wonders about this on the jury you must stop and them and remind that me that this cannot be considered.

-If the defendant takes the stand and testifies you hold them to the same standard as every other witness and judge their honesty based on motive, common sense, etc.

Example Three
Jury Selection

I. Intro

For the State:

Jill Mata
Leticia Cortez-Ramirez

For the Defense:

Michael Sawyer
Denny Callaghan

R. 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. Media.

There has been a lot of media coverage of this case. State synopsis: murder of Meda Childress, at the LaBella Apartments involving her 14-year-old son and his 14 year-old friend.

Who has heard about this case?

You don't really know what happened unless you were there or actually spoke to the witnesses.

Have you already formed an opinion?

You can have an opinion but people do not get convicted in our country until the State has proved the case against them. We have to do our job before you decide a person's guilt. **Do you agree?**

Can you agree to remain open-minded and not make up your mind until you have heard all of the evidence?

IV. Role of a Juror.

Follow the Law

Decide the Facts

V. Law applicable to this case.

a. Certified Juvenile

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. If a child is 14 years or older, and charged with a first-degree felony or capital felony, he may be certified to stand trial as an adult. That decision is made in a separate hearing before the judge. The state presents evidence about the crime and about the background of the child, and the court decides whether to certify the child. Once a child is certified they are treated just as any other adult in district court. That is what happened in this case.

- Q. Does any one of you believe that juveniles should not be certified to be tried as an adult?
- R. Does any one have friends or family members that are involved in the juvenile system?

In this case we have charged the defendant with committing the offense of capital murder.

The indictment is the charge: the way in which we get the case to court and it tells you what the state must prove.

On or about 22nd day of September 2004, JH did intentionally cause the death of an individual, namely Meda Childress by strangling her with a deadly weapon, namely a belt, that in the manner of its use and intended use was capable of causing death and serious bodily injury, and JH was in course of committing or attempting to commit the offense of Robbery of Meda Childress.

Let's talk about that law.

b. Capital Murder. Sec. 19.03 TPC

A person commits the offense if "the person commits murder and

1) victim is a peace officer

2) D is in course of committing kidnapping, burglary, robbery, agg sex assault, arson, obstruction, retaliation or terroristic threats."

3) murder for hire

4) D kills more than one person

5) D kills child under 6 years

6) D kills a judge in retaliation

And a few others scenarios that we won't cover now.

Basically Capital Murder is Murder plus something aggravating.

c. **Murder.** 19.02 TPC - What is murder?

Is a lesser-included offense of Capital Murder and in many instances the jury will have the opportunity to consider both.

A person commits an offense if he:

- a. **Intentionally or knowingly causes the death of an individual.**
- b. Intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual
- c. Commit or attempts to commit a felony and in the course he commits an act clearly dangerous to human life that causes the death of an individual.

Intentionally means that you meant to do it. It was your conscious objective or desire to engage in the conduct or cause the result.

Knowingly means that you know it will happen. You are aware that your conduct will cause the result.

Law Of Parties 7.01 TPC

Law states that a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, the conduct of another for which he is

criminally responsible or both. Each party can be charged with the offense.

Criminal Responsibility 7.02 TPC

A person is criminally responsible for an offense committed by the conduct of another if:

- i. Acting with the kind of culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense;
- ii. **Acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or**
- iii. Having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

Accomplice Witness Testimony 38.14 TCCP

You may hear testimony from the co-actor.

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed.

- iv. ANY evidence connecting D to crime is enough.
- v. Test for "tending to connect" is to eliminate from consideration the accomplice witness testimony from the case and examine the testimony of other witnesses to determine if there is evidence connecting the defendant to the crime. EG. Victim is killed with gun in his car. Co-actor testifies that he and friend car jack victim and friend shoots V in car. Without co-actor's testimony the state still gives you DNA evidence that links victim's blood to friend; or gun is found on friend when friend caught; or friend's fingerprint is found on

v's car; or friend later tells his girlfriend he shot victim and girlfriend testifies.

Robbery 29.02 TPC

A person commits an offense, if in the course of committing theft and with intent to obtain or maintain control of the property, he:

vi. **Intentionally, knowingly or recklessly causes bodily injury to another;** or

vii. Intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

**the actor does not have to actually acquire the property to commit robbery.

d. Presumption of Innocence.

e. Burden of Proof is "beyond a reasonable doubt."

VI. 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. Motive Evidence

-Not always evident

-Look at the facts

c. Witness Credibility.

-State does not pick witnesses

-Teenagers

-Co-actors

d. Sympathy

-No place in first phase of trial

-May be relevant in punishment phase.

VII. Punishment phase.

a. Texas has a bifurcated trial system.

b. Range of punishment depends on the crime.

c. Capital Murder has 2 options: death or life (40 years before parole eligibility).

d. Juveniles convicted of capital murder can only receive Life Sentence and the court automatically assesses it after the jury finds guilt.

Knowing this, can you fairly decide the guilt innocence of a defendant knowing that the court will assess punishment automatically?

VIII. Range of punishment

1. for murder is 5-99 years or life. A defendant is eligible for parole in 30 years.

2. if child is assessed a sentence of 10 years or less the jury may also give probation for murder.

Q. Can everyone find a 16-year-old defendant guilty of Capital Murder knowing that the sentence is automatic life?

Q. Can everyone here consider the entire range of punishment?

-Give example of teenage daughter dating

Q. From probation to 99 years or life in the TDC for Murder?

-Imagine a case that warrants probation: mercy killing

-Imagine a case that warrants life sentence...

IX. Respondent's 5th 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.

X. Written Confession by Defendant.

1. You may have a question from the court that asks you to determine whether the confession was freely and voluntarily made.

2. Talk about confession law and police responsibility in taking confessions: Police are supposed to solve crimes and get to the truth; they are not counselors or clergy!

They are allowed to use tricks if it leads to the truth, give examples....

Sample Outline

Jury Selection 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
 - i. Elements of offense
 - ii. E.g. Burglary
 - iii. 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
- Bifurcated trial system
- Punishment
- Range of punishment
 - Qualifying venire person on range
 - Role of sympathy

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

