

Criminal Voir Dire And Jury Trials

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Funded By A Grant From The Texas Court Of Criminal Appeals

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Resources

www.tjctc.org

- Deskbooks, Forms, Charts and Checklists
- Recordings, Webinars, and Self-Pace Modules
- Legal Question Board and Legal Calls

www.sll.texas.gov/legal-help

- Has Texas Laws and Court Rules

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SRL Packets

What are they?

- Self-Represented Litigation Packets
- Information packets and forms you can give to parties who are not represented by a lawyer in your court to help them understand the process.

They are available at <https://www.tjctc.org/SRL>

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Trial Scripts:

Found near the end of Trial Notebook Deskbook

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Voir Dire

- Process of eliminating potential juror to sit on jury
- County/court must determine which jurors to excuse for qualifications, exemptions, and excuses
- Parties ask questions related to case to decide if potential jurors can be fair, unbiased, and capable

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Right To A Jury Trial

Parties in a criminal case are **entitled to a jury trial – it is the default!**

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General Juror Qualifications

- Look at voir dire bench card handout
- General qualifications are listed there
- Check with county to see if the jurors are screened by qualifications before they get to you
- If not, you must ask the questions!

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Exemptions From Jury Service

- Look at voir dire bench card handout
- General exemptions are listed there
- If person meets exemption, court must excuse them if person desires
- Exempt person may choose to still serve if they like
 - Example: 75-year-old person can still serve on jury if they so choose

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Excuses

The Court can excuse a party who they believe has a sufficient excuse.

The Court cannot excuse a prospective juror for an economic reason without both parties being present and approving the release of that juror for that reason.

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Things That The Parties Cannot Ask:

Repetitious questions

Irrelevant or immaterial questions

Commitment Questions – a party cannot try to make a potential juror commit to a verdict based on facts other than something that would prove they were not impartial.

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Question Examples

- ✓ If I proved all of the elements of the offense beyond a reasonable doubt, could you convict?
- ✗ If the Defendant refused a breath test, would you convict?

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Group Question 1

Work with your table:

- Come up with at least three improper voir dire questions
 - If they are repetitive question examples, must have some variance among questions
 - Repetitive questions only count as 1 of the 3
- Nominate table spokesperson who will share your answer
- **Bonus points for people who can provide real life improper voir dire questions asked in your courtroom**

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Strike, You
Are Out!

- **Peremptory Challenges/Strikes**

Each side can strike three (3) people from the jury pool without telling the court a reason

Batson Challenge – either side can argue that the other has used preemptory strikes to eliminate otherwise eligible jurors because of **race, ethnicity, or sex**

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Party Makes A Batson Challenge

- One party objects that the other is striking a juror based on race, ethnicity, or gender.
- Court must ask for the reason juror is to be removed
- Court then determines if it was neutral and not actually related to race, ethnicity, or gender

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Batson Case Information

The State's duty to provide a race neutral explanation does not demand an “explanation that is persuasive or plausible” but only one that is “facially race-neutral,” even one that is “silly or superstitious” satisfies Batson. *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995).

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Batson Case Information 2

The factors to be considered in determining whether the explanation offered by the State is not racially neutral are: (1) reason given not related to facts (2) lack of meaningful question of the juror (3) persons with similar characteristics not struck (4) questioning to evoke a certain response without asking the same question of other jurors (5) group bias not shown to apply to the challenged juror. *Whitsey v. State*, 796 S.W.2d 707 (Tex.Cr.App.1989).

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Batson In Real Cases

The following were found neutral (allowable) reasons to strike:

- That black male had long, unkempt hair, a mustache and beard was race neutral. *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995).
- Striking a black juror for his occupation as a social worker is race neutral. *Frazier v. State*, 909 S.W.2d 255 (Tex.App.—Houston [14th Dist.] 1995).
- Juror's employment was one with which prosecutor had not had "good luck." *Tompkins v. State*, 774 S.W.2d 195 (Tex.Cr.App.1987) affirmed 490 U.S. 754, 109 S.Ct. 2180, 104 L.Ed.2d 834 (1989).

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Challenge/Strike for Cause

- A request that a prospective juror be struck, meaning removed or dismissed, because there is a specific reason to believe the person cannot be fair, unbiased, or capable of serving as a juror
- Unlimited number!

Strike, You
Are Out
Again!

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Common Challenges For Cause

- Unfair bias for or against law enforcement
- Personal relationship with one of the parties that creates a bias
- Experience with the justice system that creates bias/prejudice

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Common Challenges For Cause 2

- Sovereign citizens—could not find anyone guilty or do not believe courts have authority
- Witness in the case

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Common Challenges For Cause 3

- Related to party within 3rd degree consanguinity or affinity (Government Code Ch. 573)
- Cannot consider full range of punishment

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Giving Them The Third Degree

(c) An individual's relatives within the third degree by consanguinity are the individual's:

- (1) parent or child (relatives in the first degree);
- (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and
- (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Govt Code Ch. 573

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Discussion Questions Based on Case Law!

You will discuss the questions on the slide at your table

- You must decide if person was struck for cause (assume no rehab of witness)
- Describe why or why not for each
- Nominate table spokesperson who will share your answers

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Group Question 2

- 1) Juror says they will find someone guilty unless there is no doubt in their mind that they did it.
- 2) Juror who could not reach a decision unless defendant testified or put on some evidence.
- 3) Juror who has bias or prejudice against the offense but not against the defendant.

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Group Question 3

- 1) Juror saw the case on the news and formed opinion about defendant. However, upon questioning, said he could put it aside and base decision on only facts and law presented in the case.
- 2) Juror read news article and formed opinion about defendant, which influenced his belief in defendant's guilt.
- 3) Juror believes that no peace officer could tell a lie from the witness stand.

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Group Question 4

- 1) Juror believes peace officers above other people but recognizes that peace officers could tell a falsehood from the witness stand.
- 2) Juror knew victim and witnesses but could set that aside and base verdict on the evidence.
- 3) Juror expressed doubts about a point of law, but after explanation by the court stated she would follow the law whether she liked it or not.

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Group Question 5

- 1) Juror equivocated as to her mindset on being unbiased.
- 2) Juror believed that mere nudity in film was obscene in obscenity case regardless of community standards.
- 3) Juror would require proof of motive in murder case.

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Group Question 6

- 1) Juror required some evidence to remove his feeling that defendant was a little bit guilty of something.
- 2) Juror's husband served in grand jury that indicted the defendant, but they had not discussed the case.
- 3) Juror so preoccupied with personal problems that he could not be fair.

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Can A Jury Serve For Multiple Cases?

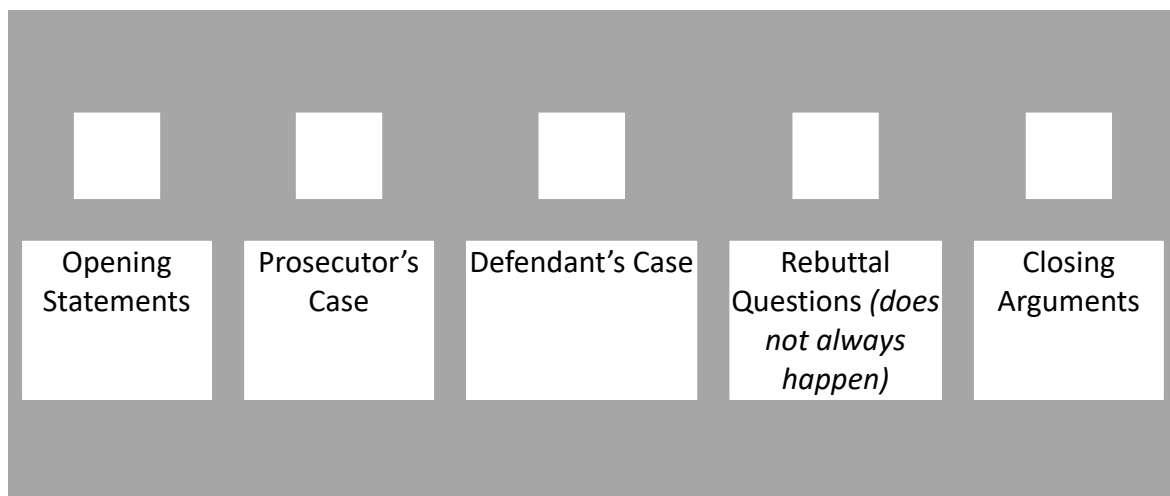
- **No**, the parties in each case must be allowed to go through the process of jury selection
- One jury for multiple cases would be a violation of due process

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Criminal Trials

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Basic Trial Outline – Handout



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Criminal Cases

What is the charge?

What statutes should I have easy access to?

Keep a copy of the Rules of Evidence on your bench (physically or digitally).

Has a jury charge been submitted to the court?

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Control of the Courtroom

The court should exercise reasonable control over the presentation of evidence and examination of witnesses.

TRE 611

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Common Terminology Used During Trial

Pass the
witness

Step down

Approach the
bench

Outside the
presence of
the jury

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Exclusion of Witnesses

- Witness who are not parties can be kept out of the courtroom while others are testifying
- Attorneys will request this by “invoking the rule”
- The court **may** do this on their own, but **must** do it if a party requests it

TRE 614

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Continuances/Postponement

Balance being fair and maintaining an effective docket

Many courts allow one continuance per side as a standard

Can be written or oral motions

Exception in a criminal case: If the defendant has less than 3 business days' notice of a trial, the court **must** grant a motion for continuance
CCP Ch. 29

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Issues for Pretrial Conferences/Hearings

Criminal:

- Prosecutor and defendant may meet separately to discuss a possible plea bargain
- Jury charge
- Discovery
- Admission of evidence
- Trial procedure/what to expect
- Number of witnesses
- Interpreters

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The Judge is the Empire/ Referee

- The next part of trial is where each party (prosecutor/defendant) calls witnesses and submits evidence to the jury
- The judge's job is to keep things fair and make sure that parties follow court procedures
- In criminal cases, the prosecutor goes first

Why?

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Beyond a Reasonable Doubt

Clear & Convincing

Preponderance

Probable Cause

Reasonable Suspicion

Common Levels
of Proof

Scintilla

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Criminal Burden of Proof

Beyond a reasonable doubt.

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What If There Are Legal Issues?

- **If you are aware of them before trial**

- Look up TJCTC deskbooks and board questions
- Check with other judges
- Look up legal standard

Remember to not get into the facts or pre-judge a case.
You are not researching facts/parties, **just the law.**

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What If There Are Legal Issues 2?

- **If you are aware of them at trial**
 - Ask the parties to provide you the authority that they are relying on
 - Take a recess and follow procedure on previous slide

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Can a judge subpoena a witness without a party requesting it in a criminal case?

1. Yes

2. No

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Jury Trial—Criminal Cases

- All cases for trial must be set for jury trials **unless** the defendant waives the jury trial in writing. *CCP 45.024*
- Court may not charge defendant for jury fee
- If defendant fails to appear, cost of empaneling jury may be assessed against them

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Jury Trial—Criminal Cases 2

- Costs include juror pay and cost of jury summons mailing
- Can release obligation to pay for good cause
- Defendant may be held in contempt for failing to pay this, but court must take precautions to not jail a defendant who does not pay due to inability

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Jury Instructions & Charges

- In all cases you may give basic instructions
 - **Juror Instruction Handouts**
- In Criminal cases, you also formally charge a jury with instructions that include definitions of the law and elements of the offense
 - TMCEC has a jury charge bank that can be found on their website here:
<https://www.tmcec.com/resources/jury-charges/>

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Criminal Punishment?

- Two trial phases: guilty/not guilty and punishment
- Normally, jury decides guilty/not guilty, and judge decides punishment
- However, defendant can elect in writing, before voir dire, for the jury to assess punishment as well.

CCP 37.07, Sec. 2(b)

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Jury Deliberations

After the evidence is finished, the jury will go to the jury room where they can discuss and make a decision on the case.

They will provide their decision in the form of a verdict that the judge will read in open court.

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Questions During Deliberations

- If jurors have a question during deliberations, they should write it down and have the bailiff take it to the judge
- The judge will then speak with the parties in open court to draft the agreed-upon answer
- Then, the judge sends back a written response or brings the jurors into court to provide them with the answer
- The most common appropriate answer:

“Thank you for your question. My response to you is the following: you should rely on your memory as to what was said and what you saw.”

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Does the jury criminal verdict have to be unanimous?

1. Yes
2. No
3. Sometimes

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Verdict Forms

- Important to have forms that ask all the questions that you need the jury to answer!

<https://www.tjctc.org/tjctc-resources/forms.html>

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Polling the Jury

- A party may request that the jury be “polled” after the verdict is read.
- This means that the judge will ask each juror individually what their verdict is.

Code of Criminal Procedure 37.05

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What happens if the jury cannot come to a decision?

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Instruct Jury

- Tell the jury to go back and spend more time unless they have been back for a long time. You can use the amount of time it took for evidence to be completed as a guidepost for how long a jury should deliberate before a mistrial should be granted.
- Allen charges (also referred to as dynamite, nitroglycerin, shotgun, or third-degree charges) refer to jury instructions given to a hung jury urging them to agree on a verdict.

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Allen Charge Example

“I am going to ask that you continue your deliberations to reach a verdict. This case is important to the parties, and they have prepared for this case. If you cannot agree, we will have to start this whole process again, and that is costly to the parties and the county. No one is asking you to give a false verdict, but I am asking you to give a little more time to see if a verdict can be reached. Thank you for your hard and important work.”

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There must be a written judgment in **every case!**

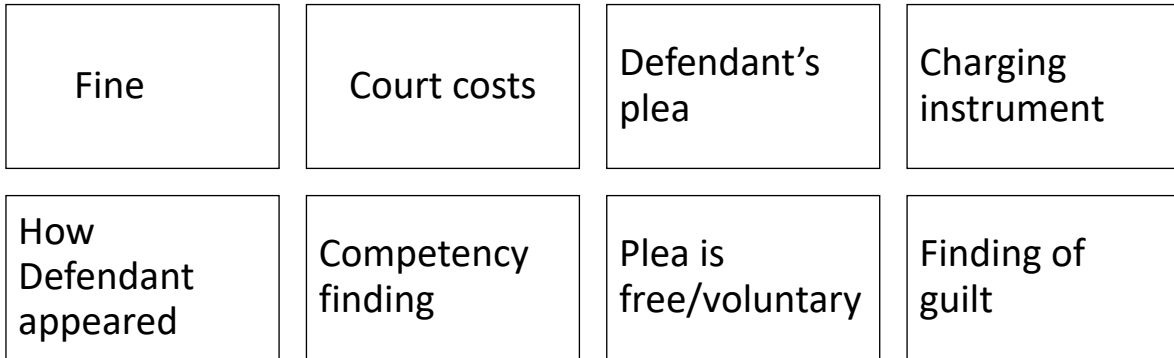
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Should information about a payment plan be in a criminal judgment of conviction?

1. Yes
2. No

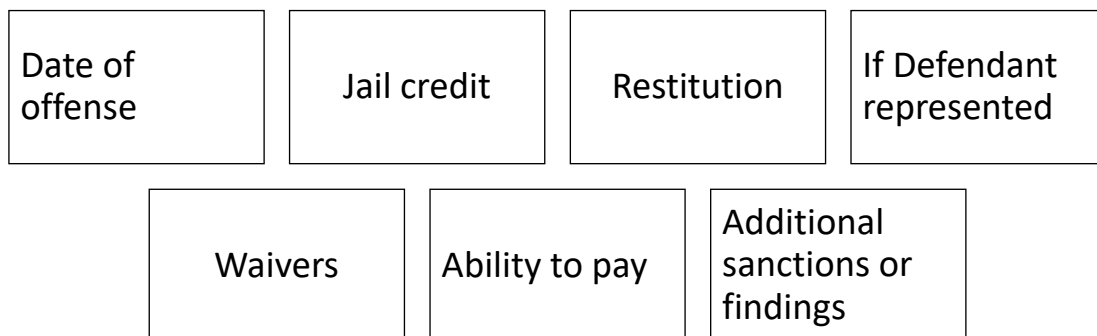
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Key Parts of a Criminal Judgment of Conviction



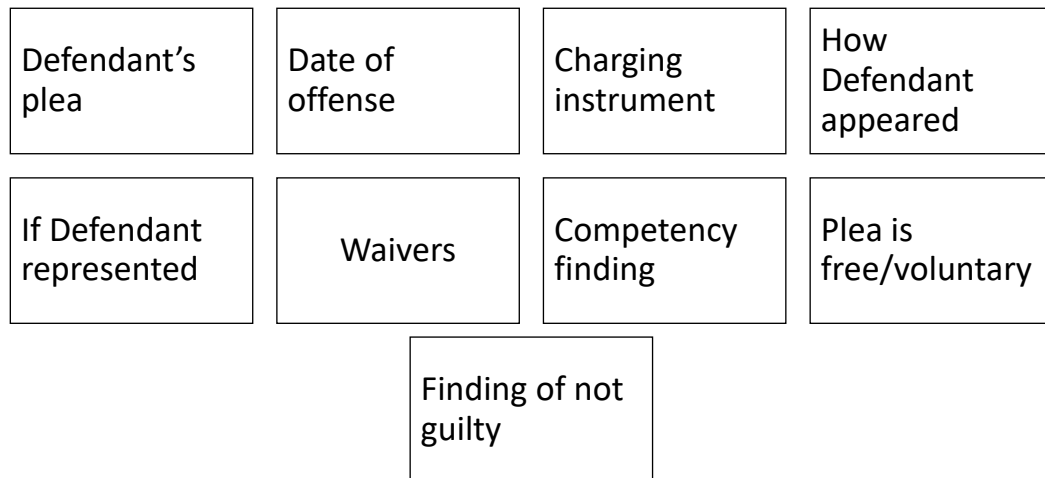
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Key Parts of a Criminal Judgment of Conviction 2



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Key Parts of a Criminal Judgment of Acquittal



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Acquittal And Dismissal

- Acquittal and Dismissal are not the same thing and should not be used interchangeably
- Dismissal is usually only by prosecutor motion or a mistrial
- After a judgment of acquittal, the court must inform the defendant of their right to an expunction
 - Be careful when dealing with criminal episodes with multiple charges

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Questions?

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Thank You!

Do not forget to fill out your evaluation.

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