

Happy Friday everyone.

I am back again with things I wish I had known during practice, things that have changed, interesting tidbits, and random tips for practice. Welcome back to:

# SHERI'S SIDEBAR



"Earlier you testified, and I quote:  
'I wouldn't hurt a fly.' And yet police  
found this unregistered weapon in your  
home, along with several dead flies."

When is the last time you filed a motion to prevent the State from arguing irrelevant information, misrepresenting the facts, the law, or other inappropriate arguments you know a prosecutor makes? The time has come to stop allowing the State the presumption of anything with the jury.

"Success is the sum of small efforts, repeated day in and day out." — Robert Collier

"Dripping water hollows out stone, not through force but through persistence."  
— Ovid

**Do you think that the time has come to fight back on the methods the State uses which it cannot explain, the discovery it does not provide, and the manner**

**in which it is misrepresented to our Client's jury such that convictions are occurring which should not have happened? Then let us pick up our SWORDS, NOT ONLY OUR SHIELDS and FIGHT.**

A shield is defined as "An article of defensive armour carried in the hand or attached by a strap to the left arm of a soldier, as a protection from the weapons of the enemy." The Oxford English Dictionary. "Weapons as a class of thing are usually subdivided between those that were defensive and those which were mainly used offensively. Shields were defensive; spears, clubs, bows and arrows etc. were all offensive." <http://web.prm.ox.ac.uk/Kent/shieweap/shldsgen.html>

The double-edged and straight, pointed blade made the sword a good weapon for use in any combat situation. However, its effectiveness was generally not as good as other weapons specifically designed for certain combat situations. As such, [the knightly sword](https://www.thecollector.com/medieval-warfare-weapons-example-how-they-were-used/) was chosen for everyday use and was popular for [dueling](https://www.thecollector.com/medieval-warfare-weapons-example-how-they-were-used/) in one-on-one combat. <https://www.thecollector.com/medieval-warfare-weapons-example-how-they-were-used/>



*"I see. And precisely what methods did you use to determine that my client was a 'bad boy'?"*

- 1. Are you aware that when blood is drawn at the hospital for a medical purpose, the type of blood tested is not the same type of blood tested if the blood is drawn specific to a search warrant specific for blood alcohol content?**

- a. What do you do with this information?
- b. How has the State been improperly convicting our clients with this information?? On DUI's, Veh Assault, Veh Homicides...

**Hospital/Medically Drawn Blood tubes - This method can lead to a high probability of false-positive ethanol results, especially in cases involving catastrophic car accidents.**

- Have no chain of custody
  - You don't know whose hands have been on them or what conditions they were drawn under
- Blood drawn for blood alcohol testing requires "10 conversions" by the nurse/phlebotomist; which is turning the test tube over top to bottom then bottom to top and back and forth 10 times.
  - Shaking them rapidly violates protocol and negatively effects the results, invalidating the methods and therefore the results. SOP phlebotomist draw manuals.
    - This is because it causes blood clots or hemolysis  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2903030/>
    - Hemolysis: the rupture or destruction of red blood cells
  - Medical tubes are bundled together in bank teller tubes and sent flying across the hospital "stat" to the lab for quick tests for the Drs to be able to make quick decisions for treatment
- Hospital blood is NOT BLOOD
  - Blood draw blood is WHOLE BLOOD
  - Hospital blood is plasma/serum
  - **THERE IS NO STANDARD CONVERSION RATE** for plasma or serum to whole blood if plasma/serum is tested for BAC!!
  - The range is HUGE! Some studies say the conversion rate range is 17% to 59% of the number of the serum/plasma. Other studies say it is 14% to 38% of the serum/plasma number to get a whole blood number!
    - So if you have a .143 number from a medical blood draw, even if there was an average of say 80%, the client did not have a .143 BAC, it would be only .095 but the RANGE is anywhere from .02002 (14%) - .08437 (59%). BARELY meeting the .08 – NO WHERE NEAR .143 But again, no way to tell where in that range it falls, so it cannot be used at all!
  - AND NO 2 PEOPLE ARE THE SAME! So no average can be used!

- THEREFORE, any blood sample taken from a medical blood draw that is serum/plasma you need to do a MIL to exclude/suppress because it is not reliable!
  - The State CANNOT prove the accuracy of the number or what that number means if it is serum or plasma.
  - Our client is not the average person because there IS NO Average person!

**2. Are you aware of how important the way you FRAME an issue is, whether to the court or to the jury?**

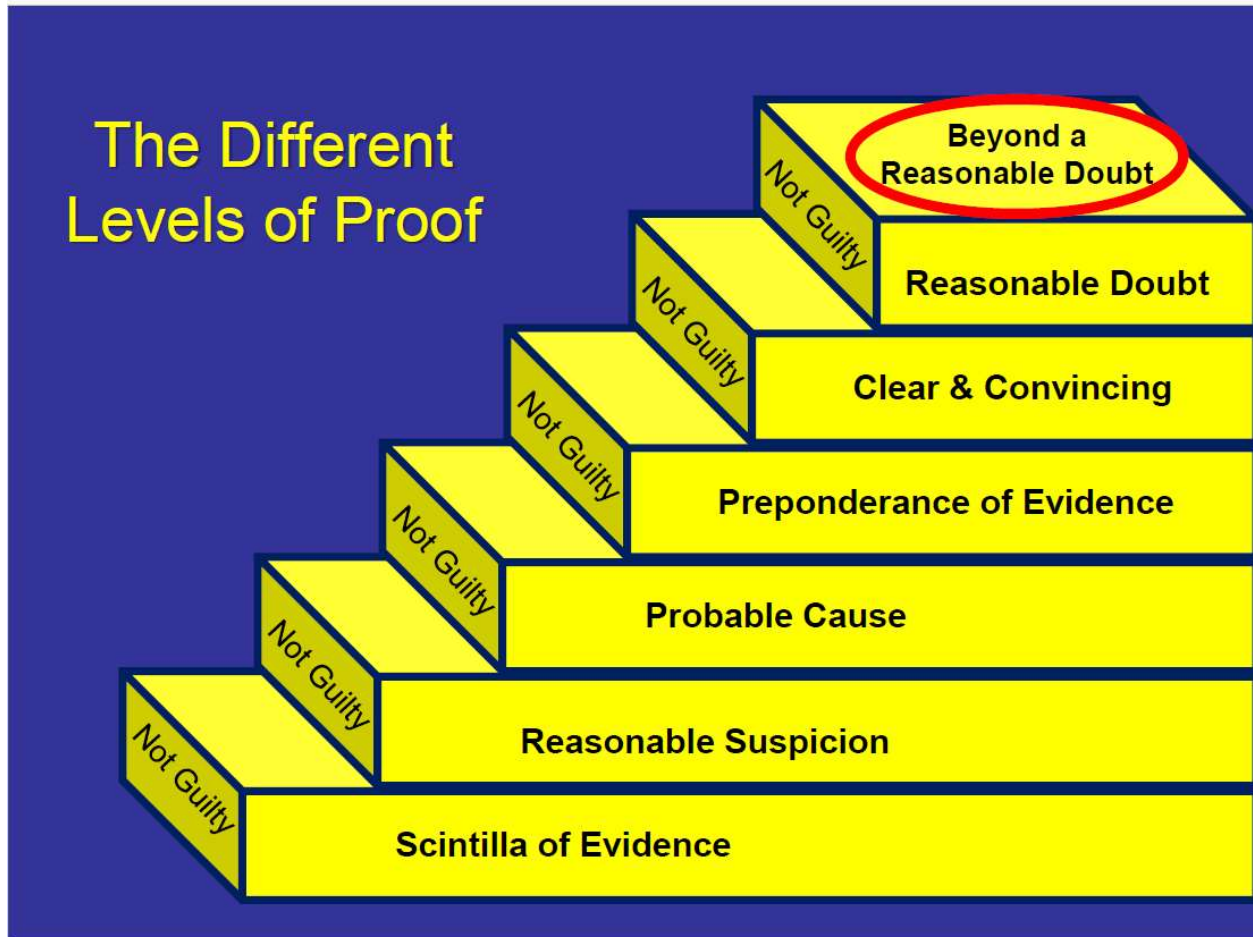


"Your honor, this photo is not my client's footprints in the mountain snow. This is a belly button full of lint because the officer had his body camera on backwards."

**How many attorneys have seen this chart graphic below? Since law school?  
How many have used it in Voir Dire or Closing? WHY NOT?**

- Is it because you don't know how to frame it for proper impact?
- Are we not as defense counsel always looking for a method to demonstrate to the jury how very difficult of a standard the burden on the State is to prove their case "beyond a reasonable doubt".

- What if you used a Power Point and put the steps up one at a time – or even better, used a column graph with HUGE increase between them to demonstrate how much difference there are between each standard even more so than these little steps – and describe them in such a way that it does impact each juror?



Frame it so it is personal, make them FEEL what reasonable doubt means.

Beyond a Reasonable Doubt is not an easy standard to meet.

- In WA our bottom stair/column would be SUBSTANTIAL evidence, not Scintilla of evidence.
  - The State must provide SUBSTANTIAL EVIDENCE PROVING the charges before the case can even be given to a jury & to support a verdict.
  - Without SUBSTANTIAL EVIDENCE, You MUST find CLIENT'S NAME not guilty.
- The next HIGHER, MORE DIFFICULT TO MEET standard is Reasonable Suspicion.

- This is the standard in Washington the police need to perform a traffic stop on a person's car if they are speeding, or fails to stop at a stop sign; or to make contact with an individual on the street, in a store, in a parking lot – whatever the facts of your case may be close to or include.
  - Even if the State meets this standard, CLIENT'S NAME must be found not guilty.
- The next HIGHER, MORE DIFFICULT TO MEET standard is Probable Cause.
- Be strategic. Don't use the low standard of arrest, the jurors don't feel that because they don't know what that feels like. Use a standard that they would feel.
  - Probable Cause is the standard a police officer would have to have to get a search warrant to enter our homes, any person's home and search it without the person's agreement to do so.
  - Because we have constitutional rights and Fourth Amendment Rights, without Probable Cause, police cannot get a search warrant to enter a person's home and search it.
  - Even with Probable Cause, CLIENT'S NAME must be found not guilty.
- The next HIGHER, MORE DIFFICULT TO MEET Standard is the Preponderance Standard.
- This is the standard under which most civil cases are determined, it means 50% +.
  - In criminal law, even if you are MORE THAN 50% sure, CLIENT'S NAME must be found not guilty.
- The next HIGHER, MORE DIFFICULT TO MEET Standard is CLEAR & CONVINCING.
- What does that mean, right?
  - (Don't define it, make the jury feel how high the burden is for the State to meet)
  - The State would have to meet the Clear and Convincing Standard in order to take a person's children away from them, despite the Parent's Constitutional Right to Parent and other rights.
  - Despite this extremely high standard, even if the State were to meet this standard of clear and convincing, CLIENT's NAME would have to be found not guilty.
  - \*\* NOW YOU HAVE THEM FEELING HOW HIGH OF A STANDARD BEYOND A REASONABLE DOUBT IS
    - They can come into my home without consent
    - They can take my kids away
    - And I still cannot convict this guy – the state must provide MORE? Ok, now I kind of get it, it does not mean just any old, I think he did it so I will go along with everyone else.

- Then Finally, the HIGHEST STANDARD – BEYOND ALL REASONABLE DOUBT
  - Proof beyond every reasonable doubt
  - You must be 100% free of REASONABLE DOUBT if you convict
    - The state will object inevitably
  - Then you ask the Court for the State to explain to the jury and to you and the Court - Which REASONABLE doubt, or how many REASONABLE doubts the jury can have then?
    - The State looks like an idiot and you move on.
  - THEN YOU ALSO EXPLAIN for the followers in the group: ALTHOUGH YOUR VERDICT MUST BE UNANIMOUS, YOUR REASONABLE DOUBT DOES NOT HAVE TO BE UNANIMOUS!
  - You do not have to explain or fight, or get agreement from any other juror on YOUR reasonable doubt.
  - EACH INDIVIDUAL juror can have their own independent REASONABLE DOUBT to acquit!
  - ONLY THE VERDICT must be unanimous, NO agreement on the reasonable doubt is required! (no surprise if the State objects again, although there are not grounds).



“My client was hunted down, arrested, held against his will and forced to defend himself. Let’s not forget who the real victim is.”



I have had an extremely long week and am always properly advising you all to rest, relax, and take time off. Accordingly, as it is beyond business hours where I am, and I have been working long hours, it is a short publication this week.

Apparently, the medical prognosis for attorneys who do not rest, take time off and get at least 7 hours of sleep regularly is not getting any better! You never know who your next client will be....



HAVE A GREAT WEEKEND ALL! YOU ARE AWESOME! Give 'em hell. Pick up your swords and shields and go into battle! Just wait until Monday 😊

Sheri

**"Always stand on principle ... even if you stand alone." John Adams**

Sheri's Sidebar Editions are archived here: <https://defensenet.org/resource-category/sheris-sidebar/>