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| **STATE OF TEXAS** | **CAUSE NO.**§ | **IN COUNTY CRIMINAL** |
|  | § |  |
| **VS**. | § | **COURT NUMBER** |
|  | § |  |
|  | § | **COUNTY, TEXAS** |

# DFENDANT’S MOTION TO SEAT DEFENDANT AT COUNSEL TABLE

**NEAREST TO THE JURY**

Now comes the Defendant and moves that this honorable Judge allow Defendant to sit at the counsel table nearest the jury throughout the duration of the entire trial. Requiring Defendant to sit at the counsel table farthest from the jury is inconsistent with due process because it takes away the presumption of innocence and denies the Defendant a fair trial.

1. **REQUIRING DEFENDANT TO SIT AT COUNSEL TABLE FARTHEST FROM THE JURY FOR**

**THE FULL LENGTH OF TRIAL IS INCONSISTENT WITH DUE PROCESS**

Forcing the defendant to sit at the counsel table farthest from the jury burdens the presumption of innocence because this distance places the defendant at a disadvantage at trial. This disadvantage impairs the fairness of a trial.

## A.THE COURT HAS A DUTY TO EXAMINE COURT ROOM PRACTICES

**FOR UNFAIRNESS**

Though the practice of seating the defendant at the table farthest from the jury is a tradition accepted by most trial courts, there is a need to evaluate this tradition to assure that the defendant receives a fair trial. To implement the presumption [of innocence], courts must be alert to factors that may undermine the fairness of the fact-finding process. *Estelle v. Williams,* 425 U.S. 501,

503 (1976). In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. *In re Winship,* 397 U.S. 398, 364 (1970).

The Supreme Court emphasized the need to scrutinize courtroom practices in *Estelle v.*

*Williams* where the court reviewed a case involving the effect of a defendant wearing prison garb during trial. In *Estelle* the court stated:

The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny. Courts must do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience. *Estelle*, 425 U.S. at 504.

Courts must review their practices when there is a probability that those practices may negatively impact a defendant’s rights. This is true of the custom that the State sits at the counsel table closest to the jury. A court must review this practice because there is likelihood that jurors may base their decisions on something other than the evidence at trial and proof beyond a reasonable doubt.

## B. REASON, PRINCIPLE, AND COMMON HUMAN EXPERIENCE

The court’s analysis of court practices should be based on reason, principle, and common experience. Reason, principle, and common experience reveal a number of reasons why counsel table seating arrangements can influence jurors and negatively effect a defendant’s due process rights.

First, the court must keep in mind that jurors are generally not aware of the custom that the State sits at the table closest to the jury. Nor is the court likely to instruct or inform jurors that this is customary. A juror’s lack of knowledge can cause them to draw any number of conclusions. Jurors can infer from common sense that the defendant has been placed far from them in order to protect them because the defendant is dangerous, violent, or undesirable. This would be a natural conclusion given the care and diligence most courts take in insuring the integrity of juries. Jurors are monitored by bailiffs and given instructions to make sure they are not influenced improperly. The care taken to protect juries and the lack of knowledge about seating practices could easily lead jurors to make a negative judgment on the defendant’s character that is entirely unrelated to the evidence. In fact, the judicial system is so concerned that jurors may make conclusions of guilt based on the notion that a defendant is violent or non-law abiding that it has limited the circumstances when such character evidence can be admitted against a defendant in the rules of evidence. *See Tex. R. Evid. 404.* It makes little sense to guard a defendant from evidence that may lead a jury to decide a defendant is guilty for an improper reason but institute a practice that can lead a jury to find a defendant guilty for the exact same improper reason.

Basic principles of fairness also suggest that the State should not be seated at the table closest to the jury. The common justification given to explain why the State is seated at the table closest to the jury is that the entire burden of proof is on the State. This response tacitly admits that the seating arrangement gives the State some advantage or is meant to balance the defendant’s rights to presumption of innocence and proof beyond a reasonable doubt. There is not a reason to diminish the defendant’s rights in this way especially when the result of seating the parties in this way can actually burden the defendant’s rights.

It is not uncommon for adversaries in other contexts to trade sides halfway through a contest or switch sides to assure that neither party receives an unfair advantage where money is involved. For example this is the common practice in football, basketball, tennis and other sports, which involve two adversarial teams or players. Where liberty is involved, the founders always gave the citizen accused added advantage.

Research and scholarly studies have show that mere proximity can influence the way people perceive others. For example, one study showed that eye contact increased when persons were close to each other. Anthony Chapman, *Eye Contact*, *Physical Proximity and Laughter: A Re-Examination of the Equilibrium model of Social Intimacy,* 3 Social Behavior and Personality 143, 149-50 (1975).

Another study suggested that when non-disabled people were put in close proximity to disabled persons, negative feelings about disabled people lessened in general. Meyer, Gouvier, Duke, & Advokat, *Influence of Social Context on Reported Attitudes of Non-Disabled Students Toward Students with Disabilities, 45 Rehabilitation Counseling Bulletin 50, 52 (2001).* Another study found that a person tends to have positive evaluations of the relationships of others when the people being observed are closer to each other. Wellens & Goldberg, *The Effects of Interpersonal Distance and Orientation Upon the Perception of Social Relationships,* 99 The Journal of Psychology 39, 45 (1978).

Attached is a scholarly article by Mimi Coffey, which addresses space proximity from the social sciences and proves due process is violated by this common practice.

These examples and this paper show how seating the State at the table closest to the jury can result in unfairness that can violate defendants due process rights.

## PRAYER

For these reasons, Defendant requests this court allow Defendant be allowed to sit at the counsel table nearest the jury throughout the duration of the entire trial.

## CERTIFICATE OF SERVICE

I hereby certify DEFENDANT’S MOTION TO SEAT DEFENDANT AT COUNSEL TABLE

NEAREST TO THE JURY was served on District Attorney by hand delivery on

This day of, ,2009.

Respectfully Submitted,

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