

Lawyer's Role



Attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

Preparing for a trial:

This is a monumental task. Attorneys must:

- Interview witnesses
- Collect evidence
- Outline arguments
- Prepare opening remarks
- Try to think out and plan the other side
- Prepare closing remarks

During the trial, the attorneys must listen to every word that is said, take notes, ask questions, think on their feet, and try to outwit and out maneuver the other side. The three keys to doing the job well are:

1. Planning carefully and thoroughly before the trial begins
2. Thinking clearly and logically at all times during the trial
3. Speaking clearly and effectively during the trial

Prosecutors:

Present the case for the state against the defendant. It is their responsibility to accumulate testimony, facts, and evidence which will build their case against the accused. The burden of proof falls on their side. They must charge the defendant with any or all of the basic counts outlined in the criminal charges against the defendant. By questioning witnesses, they try to convince the judge or jury that the defendant(s) is/are guilty beyond a reasonable doubt. They suggest a motive for the crime and will try to refute any defense presented by the defendant. They must also ask the jury to find the defendant guilty of one of the counts.

Defense attorneys:

Present the case for the defendant(s). They offer their own witnesses to present their client's version of the facts, gather evidence, and prepare arguments to help substantiate their client's innocence. They may undermine by the prosecution's case by showing that the prosecution has failed to prove its case beyond a reasonable doubt, that the prosecution's witnesses cannot be depended upon, or that their testimony makes no sense or is seriously inconsistent. *Remember: the burden of proof falls on the prosecution.* The defense does not need to prove the defendant is innocent. However, anything the defense can do to help establish the defendant's innocence will prove helpful.

Each attorney will:

- Conduct direct examination
- Conduct cross-examination
- Do the necessary research and be prepared to act as a substitute for the other attorney

Preparing for a case:

It would be difficult to overemphasize the importance of preparing your case before the trial actually begins. In real courtroom situations, attorneys work for days/weeks preparing themselves for trial. Each side has a group of investigators who search for and interview witnesses and track down and uncover bits of evidence.

1. Several days before the trial begins, opposing attorneys meet to make sure everyone understands the charges the prosecution will bring against the defendant.
2. Create a "Timeline of Events."
3. Create a list of witnesses to be interviewed and write questions to ask of each of the witnesses.

Witnesses:

The witnesses will be the key to building your case. In Law Street Library, you determined the strengths, weaknesses and important information to share during the trial for each witness.

Something to remember is that you will need to question the witnesses for both sides of the case. Some witnesses may have information valuable to you in developing your arguments and other witnesses may have information that will be useful to the other side. You will want to review witnesses you feel are important **several times** before the trial begins.

Building your case:

When you first begin to build your case, things will appear to be jumbled and confused. During the Information Desk, your team organized this confusion into some kind of logical order. Your case should be built on a single premise or idea – *the defendant is guilty of the act: or the is not guilty of the act*, depending upon which side you are on. To support your premise, you should have a series of arguments supported by facts. You should also have one or more witnesses who can provide testimony to support or confirm each argument.

Some possible prosecution arguments in a murder case might be as follows:

- the prints were the only ones on the gun
- the defendant was seen arguing with the victim only an hour before the murder took place

On the other hand, the defense arguments might include the following:

- the defendant had not seen the gun for several months
- the defendant was somewhere else when the murder took place
- the victim's neighbor had threatened to kill him only a week before the murder

Order of Witnesses:

The order in which you call your witnesses to testify is often very important. Each witness you call should be able to provide testimony that supports one of your major arguments. You should call your witnesses in an order that proves your arguments. List your witnesses in the order you plan to have them testify. After each witnesses' name make a note showing the argument the witness will support.

Opening Statement

Your opening statement is important for several reasons. First, it makes the initial impression on the jury. The first impression is very important because if it is logical, well presented and easy to follow the jury will be impressed. If your opening statement is poorly prepared, then the jury might conclude that the rest of your case is the same.

While the opening statements of both sides are similar, there are some differences.

- **Prosecution**

Your opening statement should start by explaining the charges being brought against the accused. Next, briefly outline what you intend to present in your arguments. Conclude by stating the importance of the crime and the need to make sure that justice is served. *Avoid presenting details or specific facts at this point.*

- **Defense**

You should open by summarizing the arguments you intend to present and then make sure the jury understands that the burden of proof lies with the prosecution. Stress that if the prosecution does not prove beyond a reasonable doubt that your client is guilty, then the jury must find the accused innocent. You may also generally refute the basic points the prosecution intends to make. *Avoid presenting details or specific facts at this point.*

Each side's case

- The prosecution presents its case first, delivering an opening statement to the jury,
- When the prosecution is finished, the defense makes its opening statement.
- Following both opening statements, the prosecution will present its case against the defendant. The prosecution will call of their witnesses to the stand first and will conduct direct examination. The defense will have the opportunity to cross examine each witness, if they wish, before the witness leaves the stand.

- After all of the prosecution witnesses have testified, the defense will begin to call their witnesses to the stand for direct examination. The prosecution will have the opportunity to cross examine, if they wish.

NOTE: *As the trial progresses, you may find it necessary to modify questions by adding new questions or crossing out questions that you determine are no longer necessary.*

While the opposition's witnesses are testifying, you should take careful notes of their testimony. Write down the witnesses' name and all the important remarks that he/she makes. You will want to use these notes during cross-examination and at other points later in the trial. Save all your notes and keep them organized for easy reference.

- Finally, the prosecution will give a closing argument to the jury to summarize their case and make any final important points. After the prosecution delivers a closing argument, the defense does the same. You may wish to modify the closing argument you prepared in order to address something important that may have come out during the trial.