

# THE TRIAL PROCESS

## THE PURPOSE

“Equal Justice Under Law” are the words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person in this country has the freedom and security to enjoy the benefits of life in a democratic society.

According to the democratic principles on which American society is built, every person should have a free and equal opportunity to pursue individual goals and desires. However, so that one individual’s pursuit of happiness does not infringe upon another’s, the citizens of this country, through the electoral and legislative processes, agree upon certain guidelines for their behavior. These guidelines comprise our system of law.

However, at times individuals come into conflict with one another, in spite of the system of laws. The reasons for conflict are varied. Laws do not cover every possible situation. Often individuals involved do not know or understand the law. In certain cases an individual deliberately chooses to break the law.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society.

Several solutions might be considered:

- 1) a clarification of the rights of the parties;
- 2) a determination of right and wrong, or guilt and innocence;
- 3) a direction to one individual to take certain actions to make up for harming another’s rights; or
- 4) even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes. However, going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication or with a third person.

Three common ways of settling disputes without going to court are:

- (1) **negotiation**, in which the parties talk face-to-face;
- (2) **mediation**, in which the parties talk through a third person called a “mediator” who helps them find a common ground on which they can agree to a solution; and
- (3) **arbitration**, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an "adversary process." This means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute who then renders a decision. The "impartial" third party that renders the decision can be a judge or a jury. The judge or jury functions as the "Trier of fact."

## **THE PARTIES**

A trial revolves around an argument involving two or more people. The people who bring their argument to the trial are called the "parties" to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the "prosecution," and the person who is the object of the complaint is the "defendant."

In a criminal trial, a person is accused of a particular act that the law calls a crime, such as murder, robbery, or fraud. The person who does the accusing is the "prosecutor." The prosecutor speaks on behalf of the government, which in turn represents the people of the state or nation. The person who is accused of the crime is the "defendant."

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

## **THE FACTS OF THE CASE**

Long before a trial actually takes place, some argument or incident occurs. Perhaps there is a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the "case" Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the trier of fact is to decide which facts are correct.

## **THE EVIDENCE**

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by

their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all of these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "evidence."

Evidence may take several forms including:

- (1) *Testimony*: a person, called a "witness," tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
- (2) *Documents*: letters, notes, deeds, bills, receipts, etc., that provide information about the case.
- (3) *Physical Evidence*: articles such as weapons, drugs, clothing that can provide clues to the facts.
- (4) *Expert Testimony*: a professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

## **THE BURDEN OF PROOF**

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence, and the way the judge or jury considers the evidence and makes a decision. One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the "burden of proof."

In a civil case, the person who brings the case to court and does the complaining (the prosecution) has the burden of proof. Prosecutions must convince the judge or jury that these facts are correct "by a preponderance of the evidence," meaning that their evidence is slightly more convincing than the defendants' evidence. Some refer to this as meaning that 51 percent or more of the evidence supports prosecutions' side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state's case. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some state that "beyond a reasonable doubt" means that the trier of fact (judge or jury) must be at least 95 percent sure that the prosecutor is correct.

## **THE DEFENSE**

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents the prosecution or prosecutor from meeting the burden of proof. Defense

evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the prosecution presents a witness who testifies that the defendant was speeding just prior to hitting the prosecution's car in an intersection. The defense could then present a witness who tells the court that the prosecution, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the prosecution's case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways:

1. presenting evidence to show that the defendant was not present at the scene of the crime (called an "alibi");
2. showing that the defendant was acting to protect him/herself (self-defense); and
3. presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

## **PREPARATION FOR TRIAL**

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney's job, therefore to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorneys for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called "discovery." Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make "affidavits," which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a "deposition," which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions for attorney preparation are contained in the next section.