

## THE TRIAL

When the jury selection is complete the trial can proceed. Sometimes the trial begins the date the jury is drawn; often it begins a day or two after jury drawing and it might begin even later.

All trials follow an established order of events and the role of the jury is essentially the same in all of them.

It is the responsibility of the jury to hear the evidence, to decide what the facts are and then to make a final decision based upon those facts and upon the law which the judge explains.

The party which initiated the action - the plaintiff in a civil case or the prosecution in a criminal case - will present its side first. The defense may then present its evidence. Then, sometimes the plaintiff or prosecution will give additional evidence as a rebuttal. The defense may then do the same. This order of presentation is one reason the jurors are told to form no opinions until all of the evidence is in.

The trial will begin with opening statements by the attorneys. These statements are not evidence; they are what the attorneys intend to prove during the trial. In some instances the defense may choose to make no opening statement or it may delay opening remarks until after the plaintiff or prosecution has presented its case.

The evidence is the sworn testimony of witnesses or physical exhibits such as documents, records, weapons or various other articles.

Most of the testimony will be given by witnesses answering the attorney's questions. The attorney calling a witness will question the witness first in what is called direct examination. The opposing attorney may then question the witness in what is called cross examination.

There are many complex rules about presenting or admitting evidence. These rules are applied in each case by the judge. It is the judge's responsibility to make all decisions about what testimony, documents or other matters the jury can legally consider as evidence. The jury must never consider any matter which has been ruled inadmissible by the judge.

Occasionally one attorney may "object" to an action or question by the opposing attorney, or to a statement by a witness. The judge will rule on the objection and the jurors must abide by the ruling. If the judge sustains the objection, the jury may be told to disregard the statement of the witness. In that case the statement must not be considered as evidence and jurors must not use it in reaching their decision in the case.

Sometimes the judge will rule on the objection without comment by the attorneys. Sometimes the attorneys and the judge will discuss it in front of the jury. On other occasions the discussion will be at the judge's bench out of the hearing of the jury. In some instances the jury will be asked to go temporarily to the jury room to allow full discussion in the courtroom on questions of law or procedure which must be decided by the judge.

Understandably, jurors can get upset by frequent or long waiting periods in the jury room. All that can be asked of jurors is that they be patient, for important issues of law or procedure are being resolved that are necessary to the proper presentation of evidence to the jury.

When all parties have finished presenting their evidence, the attorneys will make their final arguments to the jury.

The plaintiff or prosecution will make its argument first. Then the defense will present its argument. The plaintiff or prosecution has the right to have the last word and may make a final closing argument. These arguments are not evidence; they are merely the attorneys' comments on the case.

After all of the evidence has been presented and the attorneys have given their final arguments, there remains one very important matter before the jury can begin its deliberations. This is the giving of the instructions by the judge, called "the jury charge."

This giving of the instructions by the judge is an explanation of the law as it applies to that particular case. It is an explanation to the jury of how to consider the evidence given during the trial. The jury must fully accept the judge's explanation of the law. The jurors may disagree about the facts of the case but not about the law.

The judge, at this point, will also appoint one of the jurors as a foreperson. It is up to the foreperson to keep order during the deliberations and to give all jurors a fair chance to express their views.

The case is now in the hands of the jury. All that has gone on before has been directed to this moment.

The jury must now try to reach a verdict for one or the other of the parties.

Even at this point jurors should keep an open mind and respectfully consider the opinions of others. The free exchange of all ideas among the jurors is essential.

If at first the jury is not unanimous, it must continue to discuss the case and try to reach a verdict. A juror should never be afraid to change his/her mind when it seems reasonable to do so. A juror should not change his/her mind, however, unless convinced that he/she should.

To reach a verdict the jurors must weigh and consider, according to the judge's instructions on the applicable law, the evidence that was presented. No other matters should be considered. Jurors must not be swayed by prejudice or sympathy.

If a question is raised about the instructions, or if further instructions seem necessary, the jury can ask the court officer to tell the judge that clarification is needed. If there is an important disagreement among the jurors over a particular part of the testimony they can ask that the court reporter read back that part. The judge decides whether such requests should be granted.

The jury must reach the final verdict by reason and careful deliberation. In all cases, the verdict must be unanimous - that is, all jurors must agree with the verdict. When a verdict has been reached, the court officer will tell the judge and court will be called back into session. The verdict will be delivered according to the judge's instruction. At this point the jurors may be asked individually whether they agree with the verdict.

After the verdict is reached, the jury will be discharged with the thanks of the court. The jurors may now return to their homes and personal affairs until they are next needed in court.