



## Judges in the Classroom

### The Trial Process

#### **Source:**

Tarry L. Lindquist, educational consultant, adapted this lesson from a unit entitled State of Washington v. Herschel C. Lyon, which she wrote with Julia A. Gold and Margaret Fisher. The Board for Judicial Administration Public Trust and Confidence Committee member, Jean Kang, edited the lesson in 2019. For more information, contact the Administrative Office of the Courts (AOC), 415 12<sup>th</sup> Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: [www.courts.wa.gov/education/](http://www.courts.wa.gov/education/).

#### **Objectives:**

1. Students will explain the purpose of trial procedures.
2. Students will describe at least one alternative to the trial process.
3. Students will identify roles and terms used in the trial process, such as parties, defendant, plaintiff, prosecutor, case, evidence, testimony, witness, documents, physical evidence, etc.
4. Students will demonstrate an understanding of the "burden of proof."
5. Students will name the parties to a case in both a civil and a criminal trial.
6. Students will identify the major steps in a trial.

#### **Grade Level:**

Grades 5-12

#### **Time:**

One class period (approximately 55 minutes)

#### **Materials:**

Assigned by the teacher the day prior to the judge's visit:

- One copy of Handout 1 (The Trial Process - Overview) for each student
- One copy of Handout 2 (The Trial Process - Worksheet) for each student
- Select and download a short trial or mock trial from YouTube or the internet.

Note: Prior to the judge's visit, the teacher should work with the students to review Handout 1. Also, the teacher should have students complete Handout 2 and bring it to class the day the judge visits.

Ready to be distributed by the judge:

One copy of Handout 3 (Steps in a Trial - Worksheet) for each student

One copy of Handout 4 (Steps in a Trial - Overview) for each student

**Procedures:**

1. Begin the class by introducing yourself to the students and telling a little bit about what you do, if this is your first class.
2. Ask the students to take out the worksheet they completed for today's class (Handout 2). Show the YouTube or other video of a mock trial or real trial.
3. Ask students questions from their worksheet and have them apply their answers to the trial they are watching on the video.
4. This part of the lesson should take about 20 minutes. Verify and extend their answers. Correct their misunderstandings or inaccurate responses. Frequently check students' understanding of the vocabulary of a trial by asking questions.

For example, ask students: What would the defendant do? Now, who is the prosecutor? What is the role of a witness?

5. Pass out Handout 3 (Steps in a Trial - Worksheet). Tell students that their next task is to put the steps in a trial in order as they deem appropriate. Tell them they have three minutes to work independently on the steps. Explain that once they have put the steps in order, they should compare their answers with a person sitting next to them. Ask students if they understand the assignment. Give them about five minutes to compare and change any answers they wish.
6. Ask individual students to share what they have put first, second, third, etc. Ask them to describe what they think happens at each step. Once again, verify and extend their correct responses or clear up their misconceptions. Sharing stories of your own experiences is a powerful way to increase the students' understanding. Spend approximately 20 minutes on this activity.
7. Pass out Handout 4 (Steps in a Trial - Overview). Give the students a few minutes to review. Students should make sure their worksheet reflects the correct order. Ask if there are any further questions regarding the trial process.

## HANDOUT 1

### The Trial Process – Overview

#### The Purpose

The United States declared its independence from England over 200 years ago. At that time, Americans said every person has a free and equal opportunity to pursue life, liberty, and happiness. Sometimes one person's pursuit of happiness interferes with that of another person. To help with the conflicts this interference can cause, the citizens of this country agreed to certain guidelines for their behavior. These guidelines are what make up our system of laws.

The reasons for conflicts between persons vary. A person might not know or understand the law. A person might choose to deliberately break a law. Laws do not cover every possible situation.

Sometimes one individual comes into conflict with another individual. Sometimes the conflict is between an individual and the government. At other times an individual may offend the general will of the people.

These disputes need to be settled in a way that fits the democratic principles of our society. The resolution might be stating the rights of both parties; determining guilt or innocence; directing one person to make up for harming another; or imposing a fine or sentence as punishment for breaking the law.

A trial is one way to settle disputes. However, going to court usually should be the last resort. People should try to work out their problems. Three common ways of settling disputes without going to court are:

- (1) *Arbitration* -- a third party, called an arbitrator, hears the complaints and makes a decision that the parties have agreed in advance to abide by (follow). This is a process less formal than a trial.
- (2) *Mediation* -- the parties talk with the help of a third person, called a mediator, who helps them find a compromise or a common ground on which they can agree to a solution
- (3) *Negotiation* -- the parties talk face to face and try to settle the conflict or reach an agreement

When these methods fail, parties in dispute sometimes go to trial to find a solution. This way of settling disputes is called *litigation*; litigation is where one party files a lawsuit (legal contest carried on by the judicial process) against another person and they have a trial in court to resolve the dispute.

This system followed by courts to try cases is called the adversary system or process. In this procedure, there are two different sides who turn to a third, impartial party. This means that two or more persons who are in conflict present their arguments and evidence before a third party who is not involved in the dispute. This third party makes a decision. The third party can be a judge only or a judge and a jury. The job of the judge or jury is to be the trier of fact.

### **The Parties**

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

In a civil trial, one person is complaining about something another person did or failed to do. The person who does the complaining is called the **plaintiff**. The person he/she is complaining about is called the **defendant**.

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

Usually both parties will hire lawyers and instruct them to prepare the case and make arguments for them in court.

### **The Facts Of The Case**

Long before the trial actually happens, some argument or incident occurred. The argument or incident involves many facts, which together make up the **case**. Persons on opposite sides of a case often will view facts quite differently. This disagreement over the facts forms the basis for what is to be decided at 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 judge or jury is to decide which facts are correct.

### **The Evidence**

The judge or jury often 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, which is obtained through the discovery process**.

Evidence may take several forms including:

**Testimony:** a person, called a **witness**, tells the court what he/she saw, heard, did, or experienced in relation to the incident in question.

**Documents:** letters, notes, deeds, bills, receipts, medical records/bills, etc. that provide information about the case.

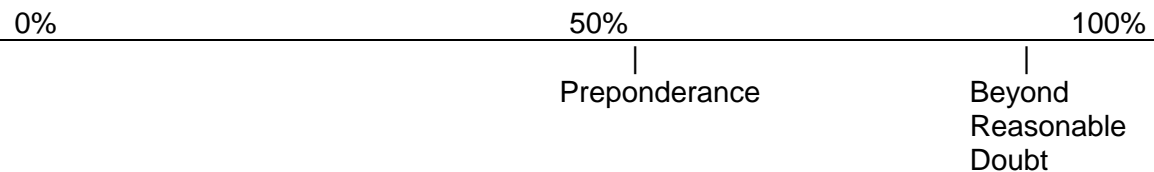
**Physical Evidence:** articles such as weapons, drugs, clothing, etc. that can provide clues to the facts.

**Expert Testimony:** a professional person, someone not involved in the incident, who can give medical, scientific, or other instruction to the judge or jury to help decide the case.

### The Burden of Proof

There is a law of evidence or a rule called the **burden of proof**. The burden of proof is the obligation or necessity to prove the facts that are in dispute at a trial. In a civil case, the person doing the complaining (the plaintiff) has the burden of proof. This means he/she must convince the judge or jury that the facts are correct by a **preponderance of the evidence**, meaning their evidence is slightly more convincing than the evidence of the defendant. This means that at least 51 percent of the evidence supports the plaintiff's side.

In a criminal case, the burden of proof is much stricter, because the defendant may go to prison if found guilty. Therefore, the prosecutor must convince the judge or jury **beyond a reasonable doubt** that the accused committed the crime. Some say this means the judge or jury must be at least 95 percent sure that the prosecutor is correct.



### The Defense

The complaining or accusing parties (the plaintiff or prosecutor) usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents them from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party.

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

- presenting evidence to show the defendant was not present at the scene of the crime (called an alibi).
- showing that the defendant was acting to protect himself/herself (self-defense).
- presenting evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

### Preparation for the Trial

Attorneys are responsible for collecting all the evidence that supports the side of the case they are representing and for deciding how to use that evidence at the trial.

In general, there should not be any surprises at the trial. Opposing attorneys must let each other know what evidence they have collected through the discovery process. This makes sure the trial is fair.

## HANDOUT 2

### The Trial Process – Worksheet

NAME \_\_\_\_\_

**Directions:** After reading Handout 1, answer the following questions.

1. What is the purpose of a trial?
2. Describe at least one alternative to the trial process.
3. List three kinds of evidence and tell the difference.
4. Explain the "burden of proof" rule for a civil case.
  - How does this differ from a criminal case?
  - Who has the "burden of proof" in most cases?
5. Name the parties to a case in a civil trial.
6. Name the parties to a case in a criminal trial.

7. Explain the roles of the following persons at a trial:

– Attorneys:

– Judge:

– Jury:



### HANDOUT 3

#### Steps in a Trial – Worksheet

NAME: \_\_\_\_\_

Place the following steps (letters "a" through "n") in a trial in order next to the numbers.

<b>ORDER</b>	<b>STEPS IN A TRIAL</b>
1. _____	a. closing argument by the plaintiff's attorney or prosecutor
2. _____	b. opening argument by the plaintiff's attorney or prosecutor
3. _____	c. closing argument by defendant's attorney
4. _____	d. opening argument by defendant's attorney
5. _____	e. cross examination of plaintiff's or prosecutor's witnesses
6. _____	f. direct examination of plaintiff's or prosecutor's witnesses
7. _____	g. cross examination of defendant's witnesses
8. _____	h. direct examination of defendant's witnesses
9. _____	i. opening of the court
10. _____	j. verdict
11. _____	k. rebuttal argument by plaintiff's attorney or prosecutor
12. _____	l. swearing in of the jury
13. _____	m. deliberations by the jury
14. _____	n. judge's final instructions to the jury

## HANDOUT 4

### Steps in a Trial – Overview

1. **Opening of the Court** -- The clerk of the court opens the court by announcing that the court is ready to begin. He or she also introduces the judge.
2. **Swearing in the Jury** -- The clerk of the court or the judge asks the jurors to take their seats. He or she then announces the case, asks them to swear or affirm that they will act fairly in listening to the case, and reads aloud some instructions about the case.

The judge asks counsel (the attorneys) to introduce themselves.

3. **Opening Statement or Argument by the Plaintiff's Attorney (or Prosecuting Attorney)** -- This lawyer begins by telling the jury the important information about the case. This includes the parties in the case and the facts that led to the lawsuit. The plaintiff's attorney presents an overview of the complaining party's version of the case (or the prosecuting attorney presents an overview of the prosecutor's or government's version) to the judge or jury.
4. **Opening Statement or Argument by the Defendant's Attorney** -- This lawyer begins by stating his or her name and the defendant's name. The jury is told that he or she will try to prove that the plaintiff's attorney or the prosecutor does not have a valid case. The defense attorney then presents an overview of the defendant's side of the case to the jury.
5. **Plaintiff's (or Prosecution's) Direct Examination of Their Witnesses** -- The plaintiff's attorney calls the witnesses for their side (or the prosecuting attorney calls the witnesses for the government) one at a time to the front of the room. The clerk of court asks each witness to swear or affirm to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer.
6. **Defense's Cross-examination of the Plaintiff's (or Prosecution's) Witnesses** -- During cross-examination, an attorney tries to get the other side's witness to admit something that will help his or her client. The attorney may also try to show that a witness is not dependable.
7. **Defense's Direct Examination of Their Witnesses** -- The defendant's attorney calls the witnesses for their side one at a time to the front of the room. The clerk of court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer.
8. **Plaintiff's (or Prosecution's) Cross-examination of the Defense's Witnesses** -- During cross-examination, an attorney tries to get the other side's witness to admit something that will help his or her client. The attorney may also try to show that a witness is not dependable.

9. **Judge's Instructions to the Jury** -- The judge explains to the jury what the principles of law are in the case. He or she asks the jury to make a fair decision about the case.
10. **Closing Arguments** -- Each attorney sums up the main points that help his or her client's case. The plaintiff's attorney (or prosecuting attorney) is the first to present the main points. The defendant's attorney then makes an argument. Finally, the plaintiff's attorney (or prosecuting attorney) has a chance to react to the defense's comments; this is called rebuttal.
11. **Jury Deliberations and Verdict** -- The jury talks about and makes a decision in the case. In a real trial, the jury leaves the courtroom and goes to a separate room to discuss the case. Once the jury makes a decision, it reports back to the courtroom and the judge announces the verdict. If the defendant waived a jury trial, the judge issues a verdict.

### HANDOUT 3

#### Steps In A Trial – Worksheet

#### Answer Sheet

NAME: \_\_\_\_\_

Place the following steps (letters "a" through "n") in a trial in order next to the numbers.

<b>ORDER</b>	<b>STEPS IN A TRIAL</b>
1. <u>i</u>	a. closing argument by the plaintiff's attorney or prosecutor
2. <u>l</u>	b. opening argument by the plaintiff's attorney or prosecutor
3. <u>b</u>	c. closing argument by defendant's attorney
4. <u>d</u>	d. opening argument by defendant's attorney
5. <u>f</u>	e. cross examination of plaintiff's or prosecutor's witnesses
6. <u>e</u>	f. direct examination of plaintiff's or prosecutor's witnesses
7. <u>h</u>	g. cross examination of defendant's witnesses
8. <u>g</u>	h. direct examination of defendant's witnesses
9. <u>n</u>	i. opening of the court
10. <u>a</u>	j. verdict
11. <u>c</u>	k. rebuttal argument by plaintiff's attorney or prosecutor
12. <u>k</u>	l. swearing in of the jury
13. <u>m</u>	m. deliberations by the jury
14. <u>j</u>	n. judge's final instructions to the jury