Criminal Trial Procedures: An Overview

**Most criminal trials follow a uniform set of procedures. Here's a step-by-step guide to the process.**

The many legal procedures associated with modern criminal trials have developed over centuries. States and the federal government follow a largely uniform set of procedures.  Assuming that the criminal trial is carried out to completion, those procedures are as follows:

**Judge or Jury Trial.** The defense often has the right to decide whether a case will be tried to a judge or jury, but in some jurisdictions both the prosecution and the defense have the right to demand a jury trial. Juries consist of 12 persons in serious felony cases, but some states allow for as few as six person juries in less serious misdemeanor cases.

**Jury selection.** If the trial will be held before a jury, the defense and prosecution select the jury through a question and answer process called **"voir dire."** In federal courts and many state courts, the judge carries out this process using questions suggested by the attorneys as well as questions that the judge comes up with on his or her own.

**Evidence issues.** The defense and prosecution request the court, in advance of trial, to admit or exclude certain evidence. These requests are called **motions "in limine."**

**Opening statements.** The prosecution and then the defense make opening statements to the judge or jury. These statements provide an outline of the case that each side expects to prove. Because neither side wants to look foolish to the jury, the attorneys are careful to promise only what they think they can deliver. In some cases, the defense attorney reserves opening arguments until the beginning of the defense case.

**Prosecution case-in-chief.** The prosecution presents its main case through **direct examination** of prosecution witnesses by the prosecutor.

**Cross-examination.** The ***defense*** may cross-examine the prosecution witnesses.

**Redirect.** The prosecution may re-examine its witnesses.

\*\* EACH witness will go through the same procedure:

1. Direct Examination (PROSECUTION)
2. Cross Examination (DEFENSE)
3. Redirect (only covering info discussed in Cross Examination) (PROSECUTION)

**Prosecution rests.** The prosecution finishes presenting its case. After “resting” no more witnesses may be called by the prosecution.

**Defense case-in-chief.** The defense presents its main case through direct examination of defense witnesses.

**Cross-examination.** The prosecutor cross-examines the defense witnesses.

**Redirect.** The defense re-examines the defense witnesses.

\*\* EACH witness will go through the same procedure:

1. Direct Examination (by the DEFENSE this time)
2. Cross Examination (by the PROSESCUTION this time)
3. Redirect (only covering info discussed in Cross Examination) (DEFENSE)

\*\* Repeat for EACH Witness of the Defense

**Defense rests.** The defense finishes presenting its case.

**Prosecution rebuttal.** The prosecutor offers evidence to refute the defense case.

**Settling on jury instructions.** The prosecution and defense get together with the judge and craft a final set of instructions that the judge will give the jury.

**Prosecution closing argument.** The prosecution makes its closing argument, summarizing the evidence as the prosecution sees it and explaining why the jury should render a guilty verdict.

**Defense closing argument.** The defense makes its closing argument, summarizing the evidence as the defense sees it and explaining why the jury should render a not guilty verdict -- or at least a guilty verdict on a lesser charge.

**Prosecution rebuttal.** The prosecution has the last word, if it chooses to do so, and again argues that the jury has credible evidence that supports a finding of guilty.

**Jury instructions.** The judge instructs the jury about what law to apply to the case and how to carry out its duties. (Some judges "preinstruct" juries, reciting instructions before closing argument or even at the outset of trial.)

**Jury deliberations.** The jury deliberates and tries to reach a verdict. When defendants are charged with serious felonies, all jurors must agree on a verdict (the jury must be unanimous). Some states allow for non-unanimous verdicts (for example, if 10 out of 12 jurors agree on a verdict) in less serious misdemeanor cases. If less than the requisite number of jurors agrees on a verdict, a jury is "hung" and a case may be retried.

**Sentencing.** Assuming a conviction (a verdict of "guilty"), the judge either sentences the defendant on the spot or sets sentencing for another day.