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## County Eye Newsletter

Two weeks ago we began with the discussion of the jury system with the selection process for a criminal jury. This week what happens after the jury is seated and sworn will help explain the process of the trial itself.

Jury selection usually takes most of the first day of a trial in Kerr County. Once the jury is seated in the jury box and has received their admonishments from the judge, the first phase, the "case in chief" portion of the trial begins.

The burden of proof in a criminal trial is borne by the state's attorney, the prosecutor. Under rights protected by the U.S. Constitution and the Texas Constitution all defendants are innocent until proven guilty.

Often people ask "why does it take so long to get a case to trial?" The answer is because the prosecutor wants to be sure all evidence has been discovered, all witnesses questioned, and the evidence and witnesses have been prepared for presentation to the jury.

The prosecutor gets one chance...if the prosecutor fails to convince the jury that the defendant committed the crime then the trial ends with a not guilty verdict and someone who may have been guilty walks out of the courtroom a free person.

Each side, the prosecutor first and then the defense gets the opportunity to make an opening statement to the jury. The prosecutor can make additional comments before beginning the "case in chief" but the defense gets only one opening statement. Remember, statements made by the attorneys are not considered evidence in a trial.

Next the prosecutor representing the state presents witnesses and evidence which can include photos, forensic evidence results and other exhibits. Depending on how much evidence there is to present dictates the time this phase of the trial takes.

The defense attorney has the task of cross-examining each of the prosecutor's witnesses and, in turn, the prosecutor gets to cross-examine all defense witnesses.

One the state rests their case in chief then the defense attorney presents witnesses and evidence to prove the defendant is innocent. This phase normally is much shorter than the prosecution's case in chief.

When all of the evidence and witnesses have been presented by each side, both sides rest and then each side closes. The judge then prepares the formal charge for the jury. The charge is a document that is agreed on by both sides that outlines the statutory law and explanation of the charges against the defendant and includes the verdict pages to be signed by the foreman of the jury once a verdict has been determined.

The judge reads through the charge with the jury and then each side, prosecution and defense, makes a closing statement. The state's prosecutor goes first and sums up for the jury all of the evidence. Then the defense attorney makes a closing statement refuting the evidence and encouraging the jury to

**find the defendant not guilty in their deliberations. The state then has a second chance to close and to convince the jury to convict.**

**Once the closing statements are completed, the jury retires to the jury room to deliberate on a verdict. All the physical evidence presented in the trial is available to the jury to examine. They can talk to each other but nobody else during their deliberations.**

**If they have questions they must write out the question, give it to the bailiff and then he gives it to the judge. They can ask to review testimony but often the answer they receive on any other question is, “be guided by the law” which is included in the formal charge that the judge gives to the jury.**

**Nobody can predict how long it will take a jury to reach a verdict, sometimes only minutes, more often hours but occasionally it will take more time. Kerr County judges like to complete this part of the trial before going home to prevent any jury member from being influenced by outside forces.**

**Once the jury reaches a verdict they return to the courtroom and announce their verdict. In Texas the verdict must be unanimous. If the defendant is found guilty he/she has two options, to allow the jury to determine punishment or have the judge set the sentence.**

**If the defendant opts for the jury to do punishment then the trial moves immediately into the punishment phase which usually takes much less time than the case in chief. If he/she chooses to have the judge determine the penalty then the jury is excused and the judge hears the punishment evidence.**

**Sometimes the defense will request a PSI (Pre-Sentencing Investigation) be completed before the judge determines the sentence. The PSI is done by the probation department and can take up to a month to complete so the sentencing is postponed.**

**The next County Eye will discuss the process of determining the appropriate punishment for a convicted criminal and the frustrations that jurors often express after the punishment verdict has been determined when they learn “the rest of the story”.**