

The PROSECUTION

The prosecution is responsible for bringing charges against an accused. The prosecution must begin with their *opening statement*. This is a short statement as to why the accused should be found guilty of the crime they are accused of. The defense then follows with their own opening statement saying why the accused is innocent.

Then comes the *presentation of the state's case* in which evidence is provided through the testimony of witnesses in order to prove the defendant's guilt. The defense lawyer is allowed to cross-examine any witnesses the prosecution presents, in order to find fault in their testimony. If at any time the defense asks a witness a question that the prosecution thinks is unfair or inappropriate, the prosecution can *object*, which means the judge will either *sustain* and stop the questioning, or *overrule* and let the questioning continue.

The defense then presents their case using witnesses, and the prosecution is allowed to *cross-examine*. Once both sides have presented their case, the prosecution once again leads the way, giving their *closing argument* first. The closing argument is the summary of why the defendant should be found guilty.

Then it is up to the judge to decide as to whether the defendant is innocent or not.

The prosecutor in the case of Lizzie Borden is William H. Moody.

Prosecution's Strategy

In trying to prove Lizzie guilty beyond a reasonable doubt the prosecution will present evidence to establish:

- 1) Lizzie's motive for the murders.
- 2) Her premeditation (design or plan to kill).
- 3) Her opportunity to commit the crime.
- 4) That she had the means (weapon) and capacity (physical strength) to commit the crime.
- 5) That her actions after the crime (lying, concealing information, destroying suspicious material) showed her guilt.
- 6) That her alibi did not hold.

You should use your two days of preparation interviewing your witnesses and preparing the questions you are going to ask them. You will want to come up with the best questions possible to make your case. You and the witness should come up with the answers together. This is known as *preparing the witness*. Your witness list is as follows. You do not have to use all of these witnesses. You can pick and which ones you feel will make your case the strongest:

(C) = character witness (E) = expert witness

- 1) *Thomas Kiernan*: is an engineer who will testify that Lizzie was well within the distance to commit the murders at hand (E).
- 2) *John V. Morse*: Lizzie's uncle who was visiting at the time of the murders. Will show that Lizzie avoided spending time at home (C).
- 3) *Bridget Sullivan*: the housekeeper for the Borden. Sullivan will testify that Lizzie was the only one with the opportunity to kill the Borden since she was the only one in the house when Mrs. Borden was killed (C).
- 4) *Dr. Seabury W. Bowen*: the Borden family doctor who lived across the street from them. He will testify to how the bodies were when he found them (E).
- 5) *Adelaide Churchill*: neighbor who saw Lizzie shortly after the murder. Will testify to Lizzie's behavior soon after the bodies were found (C).
- 6) *Alice M. Russell*: long-time friend of Lizzie and Emma Borden. Will try and establish that Lizzie had plotted her parents' murder (C).
- 7) *John Fleet*: assistant city marshall who interviewed Lizzie soon after the bodies were discovered. Will testify that Lizzie seemed to act hostile towards her step-mother even after her death (E).
- 8) *Officer Philip Harrington*: Police officer who interviewed Lizzie. Will testify that Lizzie told him where she was during the murders.
- 9) *Officer Michael Mullaly*: Another officer who Lizzie told a different version of her whereabouts than she had previously (E).
- 10) *Officer William Medley*: Police office who investigated the barn Lizzie Borden claims she was in when the murders took place. He will testify that the barn seemed unused and that no one had been there the time Lizzie said she was there (E).
- 11) *Dr. William Dolan*: medical expert who will testify that Lizzie could have committed the wounds and when the deaths occurred (E).
- 12) *Dr. Edward S. Wood*: a toxicologist who examined the hatchet and Lizzie's clothing for bloodstains (E).
- 13) *Dr. Frank W. Draper*: medical examiner who determined the hatchet found in the basement could have been the one used in the murder (E).

- 14) *Anna H. Gifford*: a dressmaker who often made clothing for Lizzie. Her testimony will show how Lizzie hated her step-mother (C).
- 15) *Lucy Collet*: was sitting on a porch facing the passageway leading to the Borden barn. She will testify she did not see anyone leave or enter the Borden premises (C).
- 16) *Thomas Bolles*: had been washing a carriage in a yard near the Borden house. Will testify that he also did not see anyone suspicious near the Borden yard (C).
- 17) *Patrick McGowan*: worked in the stone yard behind the Borden's house. Will testify he hadn't seen anyone leave the Borden house (C).
- 18) *Joseph Desrosier*: worked in the stone yard behind the Borden's house. Will testify he hadn't seen anyone leave the Borden house (C).
- 19) *John Denny*: worked in the stone yard behind the Borden's house. Will testify he hadn't seen anyone leave the Borden house (C).
- 20) *Hannah Reagan*: the matron of the Fall River police station. Will testify she overheard an angry exchange between Lizzie and her sister Emma that could show her guilt (C).

WITNESS LIST

According to the law, both sides must be made aware of any witnesses the other side is going to call.

Since you are permitted to cross-examine each witness, you might want to jot down possible questions you would ask each of these witnesses in order to make their testimony look bad.

Defense's Witnesses

(C) = character witness (E) = expert witness

- 1) *Mark Chase*: a worker in a stable near the Borden house. Will testify that he saw a carriage parked up the hill from the Bordens (C).
- 2) *Benjamin Handy*: a doctor who passed by the Borden house the morning of the murders. Will testify he saw a man outside the Borden house (C).
- 3) *Herman Lubinsky*: an ice-cream peddler who drove by the Borden house on August fourth. Will testify he saw Lizzie in the Borden as she says she was (C).
- 4) *Charles E. Gardiner*: owned the stable where Lubinsky kept his horse. Will verify that Lubinsky was indeed where he said he was on the day of the murder (C).
- 5) *Everett Brown*: a teenager who was in the barn prior to Officer Medley investigation of it. Will show that the Officer's testimony is not valid (C).
- 6) *Thomas Barlow*: a teenager who was in the barn prior to Officer Medley investigation of it. Will show that the Officer's testimony is not valid (C).
- 7) *Sarah Hart*: a woman who was near the Borden house on the morning of the murders. Will testify that she saw a stranger near the Borden house (C).
- 8) *Walter P. Stevens*: a reporter for the Fall River Daily News. Will testify that he walked around the barn before Officer Medley checked it out, discrediting his testimony (C).
- 9) *Thomas Hickey*: a reporter for the Boston Herald. Will show that Mrs. Reagan's testimony about Lizzie and her sister, Emma, was false (C).
- 10) *Emma Borden*: sister to Lizzie and daughter of the deceased Mr. Borden. Will testify that she thinks Lizzie did not commit the crime and did not need money so did not have motive.
- 11) *Mary A. Raymond*: a dressmaker who had worked with the Bordens for eight years. Will testify about the dress Lizzie supposedly wore the day of the murder.

12) *Lizzie Borden*: the main suspect in the murder of her father and step-mother. Will testify to her whereabouts during the murder and how she came across the bodies.

The DEFENSE

The defense is responsible for defending the accused against the allegations of the prosecution. After the prosecution gives their *opening statement*, the defense gives one of their own, giving their reason why they believe the charges brought against the accused are false.

The prosecution then presents its evidence, calling witnesses to the stand to back up their charges. The defense has the opportunity to *cross-examine* these witnesses in order to ask questions and find fault with their testimony. At any time during the prosecution's questioning, if the defense feels there has been an improper or inappropriate question, they may *object*. The judge will either *overrule* and allow the questioning to continue, or they will *sustain* and prevent the question from being asked.

Next, the defense calls its own witnesses to the stand. These witnesses are to disprove the allegations of the prosecution. The prosecution is allowed to cross-examine as well, to find problems with the testimony.

Once both sides have presented, each side gives its *closing argument*, the prosecution going first. In the defense's closing argument, they will want to sum up the weaknesses in the case that the prosecution presented and try to put in the jury's mind a shadow of doubt about their client's guilt.

The defense attorney in the case of Lizzie Borden is Andrew Jennings.

Defense's Strategy

In trying to prove Lizzie not guilty beyond a reasonable doubt, the defense will present evidence to cast further doubt on damaging testimony given by prosecution witnesses. In addition, the defense will offer other theories to establish:

- 1) The possibility of an unknown assailant.
- 2) Lizzie Borden's alibi.
- 3) Reasonable explanation for Lizzie's behavior after the murders.

You should use your two days of preparation interviewing your witnesses and preparing the questions you are going to ask them. You will want to come up with the best questions possible to make your case. You and the witness should come up with the answers together. This is known as *preparing the witness*. Your witness list is as follows. You do not have to use all of these witnesses. You can pick and which ones you feel will make your case the strongest:

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JUDGE

The judge is the key officer of the court. They control the proceedings of the case, and their principal job is to administer the law. A judge is essentially the boss of the courtroom, however, their opinion in the case is unbiased. In other words, they do not pick sides.

If the courtroom is becoming noisy or out of hand, the judge may call for *order in the court*. If someone misbehaves in the courtroom or fails to follow a judge's orders, that person may be cited with a *contempt of court*.

While hearing a case, the lawyer who is **not** questioning the witness may disagree with a question being asked. This is known as *objecting*. A lawyer objects because they believe the question is either unfair or improper. The judge has two options when a lawyer objects. They can either *overrule*, which means allow the questioning to continue as it has been, or they can *sustain*, which means the lawyer cannot continue to ask the question.

Your job in this activity is one of the most important. You control the pace of the court case and must keep things moving along. The case should proceed in the following order upon your directions.

Will the prosecution give their opening statement

The prosecution always goes first. This starts the case off and sets the tone for what the prosecution is going to try and prove.

Will the defense present their opening statement

This is the defense's response to the accusations of the defense

Will the prosecution call their first/next witness

The prosecution will call six witnesses to the stand.

Would the defense like to cross-examine the witness

The defense can cross-examine any witness the prosecution uses.

The witness is excused

The judge says this everytime the lawyers are finished with a witness

Will the defense call their first/next witness

The defense will also call six witnesses to the stand.

Would the prosecution like to cross-examine the witness

The prosecution can cross-examine any witness the defense uses.

The prosecution will now give their closing argument

The prosecution will sum up their case and why the accused should be found guilty.

The defense will now present their closing argument

The defense will sum up the weaknesses in the prosecution's case and why the accused should be found innocent.

