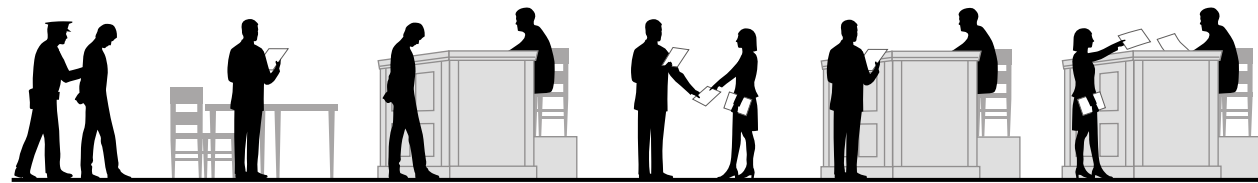


How it should work ...

From arrest through conviction and appeal, a criminal proceeding is an intricate set of steps intended to ensure that justice is done. The system provides numerous checks and balances so that wrongful prosecutions are caught as early as possible and defendants' rights are respected at each step.

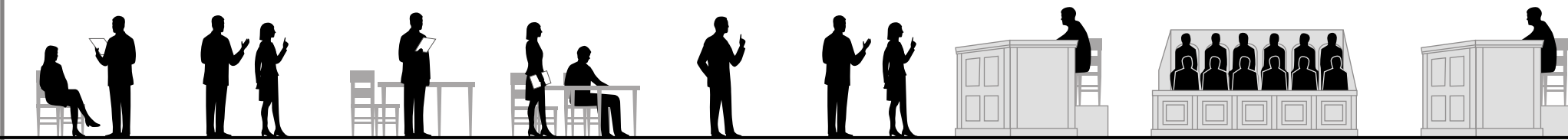
PRETRIAL



- 1 Arrest**
Police take suspect into custody.
- 2 Charge**
Prosecutor determines whether evidence is sufficient to charge suspect with a crime.
- 3 Arraignment**
Defendant enters plea; judge makes sure attorneys are appointed for defendants without resources. Judge also considers bail.
- 4 Discovery**
Prosecution and defense exchange evidence, especially material concerning witnesses and statements they have made. The discovery process begins pretrial but can continue throughout the proceeding, as new evidence arises.
- 5 Preliminary hearing**
Judge determines, after presentation of evidence, whether probable cause exists that defendant committed the crime and should go to trial.
- 6 Pretrial motions**
Judge may be asked to decide such issues as discovery disputes or requests for change of venue. Final pretrial hearing involves requests to exclude or permit contested evidence, although rulings may be delayed.

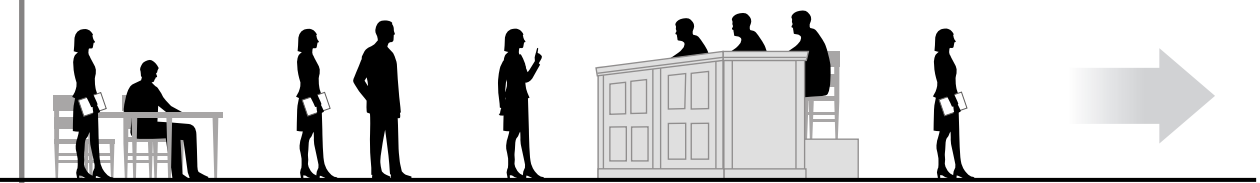
Most defendants agree to plead guilty before a trial begins.

TRIAL



- 7 Jury selection**
Prosecution and defense select jurors. Some may be disqualified if they exhibit potential bias; each side also has a limited number of peremptory challenges to disqualify unwanted jurors without stating a reason.
- 8 Opening statements**
Prosecution and defense each provide road map to their case.
- 9 Prosecution case**
Prosecution presents its witnesses. Defense not only may cross-examine these witnesses, subject to prosecution's objections, but it also may object to any steps by the prosecution that it considers prejudicial or improper under the law. The judge may sustain or overrule objections, and allow or ban prosecution evidence.
- 10 Defense case**
Defense presents its witnesses, subject to prosecution cross-examination. The judge may allow or ban defense evidence. Because prosecution has burden to prove guilt, defense may elect to present no evidence.
- 11 Rebuttal evidence**
If defense has called witnesses, prosecution can call additional witnesses, subject to cross-examination, to respond to defense case.
- 12 Closing arguments**
Prosecution argues that evidence requires jury to find the defendant guilty. Defense insists guilt has not been proved, or argues for a different interpretation of the evidence. Prosecution gets final chance to respond in rebuttal argument. Both sides may object to improper statements made during closing arguments.
- 13 Jury instructions**
Judge instructs jury on law and how it should be applied to facts presented at trial.
- 14 Jury deliberations**
Jury considers case and may ask to inspect evidence or have portions of trial record repeated.
- 15 Verdict**
Jury announces charges on which it has reached unanimous agreement, and those — if any — about which it cannot agree.
- 16 Sentencing**
Judge imposes sentence, after considering recommendation from probation officer who reviewed case, victim statements, and statements from defendant and other interested parties.

APPEAL

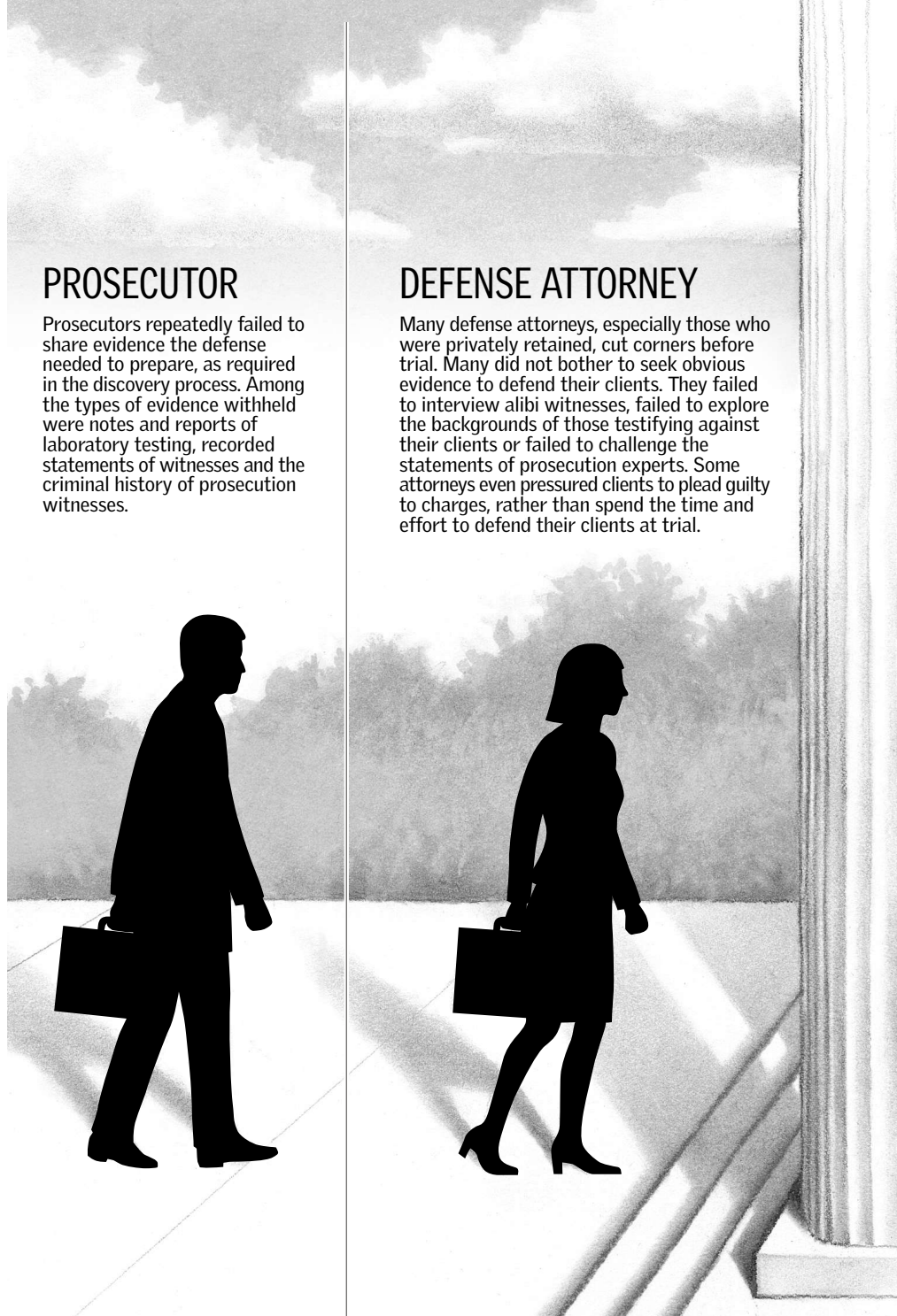


- 17 Appeal initiated**
In non-capital cases that end in conviction, defense has right to appeal to 6th District Court of Appeal. New attorneys are hired — or appointed for indigent defendants — and attorney general takes over prosecution. Lower court prepares transcript that becomes part of appellate record.
- 18 Opening briefs**
The defense outlines allegations of errors during trial, especially on part of prosecutor or judge. Attorney general replies to defense brief, arguing for verdict to be upheld; defense then files reply to prosecution brief.
- 19 Oral argument**
Defense has right, which can be declined, to present oral argument to three-justice panel assigned to case. Because appeal involves only issues in the trial record, no witnesses are called.
- 20 Decision**
Three-justice panel issues order upholding, modifying or overturning the conviction. The panel's accompanying opinion explains its legal findings. Justices will either respond to each allegation of error or rule that lack of proper objections eliminated need for ruling.
- 21 Collateral appeal**
If defense wants to go outside record — either contending new evidence has arisen, challenging defense attorney's failures at trial — it does so in a separate habeas corpus filing. Justices may deny collateral appeals without explanation.
- 22 Further appeals**
Defendant may appeal to state Supreme Court, which is not required to accept case. Defense may later turn to federal courts if issues of federal constitutional law are involved.

... and what can go wrong

The Mercury News' review of Santa Clara County cases found that problems occurred all along the way — involving witnesses, evidence, courtroom arguments and judicial rulings. In many cases, questionable behavior by a prosecutor, defense attorney, judge or the appellate court appeared to have had a powerful impact on the defendant's fate.

PRETRIAL



PROSECUTOR

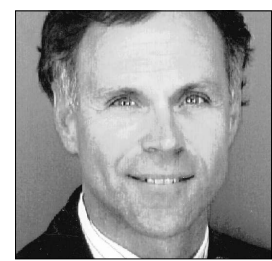
Prosecutors repeatedly failed to share evidence the defense needed to prepare, as required in the discovery process. Among the types of evidence withheld were notes and reports of laboratory testing, recorded statements of witnesses and the criminal history of prosecution witnesses.

DEFENSE ATTORNEY

Many defense attorneys, especially those who were privately retained, cut corners before trial. Many did not bother to seek obvious evidence to defend their clients. They failed to interview alibi witnesses, failed to explore the backgrounds of those testifying against their clients or failed to challenge the statements of prosecution experts. Some attorneys even pressured clients to plead guilty to charges, rather than spend the time and effort to defend their clients at trial.

EXAMPLE

Discovery



Waite

A jury deadlocked over whether David Blackstone was sane when he killed his mother. Before a second hearing, prosecutor Peter Waite notified the defense that he had decided not to call the psychologist who testified to Blackstone's sanity at the first trial. But Waite withheld the reason for that change of heart: The psychologist had altered his opinion and concluded that Blackstone was insane. The judge told the jury that Waite had committed misconduct by withholding the evidence. Waite recently said it was a mistake on his part.

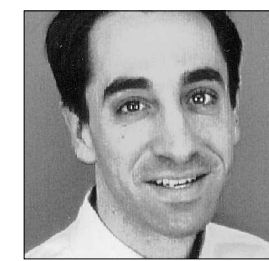
Inadequate preparation

The defense investigator on Marcus Keyes' theft trial quit working after attorney Kathleen McCassey's check bounced. And, Keyes said, McCassey failed to pursue the witnesses whose names he gave to her. Insisting she "left no stone unturned," McCassey denied in a court hearing that Keyes gave her those names — but a witness list she had submitted to the court belied her claim because it contained some of them.

Pressure to plead

Attorney Stuart Kirchick told client James Wood that if he did not plead guilty to assault, his former probation officer was likely to fly in from Colorado to testify against him at trial. Wood gave in to the pressure. Kirchick later acknowledged that he heard about the probation officer from the prosecutor and did not check the information himself, nor did he explore whether such testimony would be allowed at trial.

Revealing forbidden evidence



Rosen

The judge in James Abarquez's trial for sex crimes forbade any mention that the defendant's family had threatened witnesses against him — because there was no evidence that the defendant was personally responsible for the threats. But when Abarquez took the stand, prosecutor Jeffrey Rosen asked him whether he knew that his family had threatened witnesses. The appellate court later agreed the question violated the judge's order.

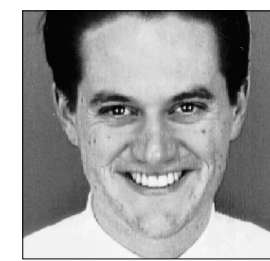
Misleading juries about facts or law



Stringfield

In the drive-by shooting trial of Robert Carter, prosecutor Jaime Stringfield argued strongly against the defense attorney's suggestion that Carter could be convicted on reduced charges. She told jurors, "All of that is geared at one thing that no rational person has been willing to do on this case yet, and that is plea-bargain, give 'em a deal, cut 'em some slack." In fact, the prosecution had offered Carter a plea bargain, which was refused. An appellate panel overturned Carter's conviction because of Stringfield's misleading statement.

Improper closing argument



Baker

Prosecutor Robert Baker told a jury that if Saul Soto truly was innocent of drug charges against him, he could have taken the stand and told the jury himself — an argument that violated the defendant's constitutional right not to testify. In the same closing argument, Baker sought to convince jurors of the strength of the evidence against Soto by saying he had previously dropped cases without enough evidence, a claim unsupported by the facts of the case. And he said the defense attorney's job was "to confuse" the jury. The judge sustained objections against the latter two statements, and the appellate court criticized Baker for the constitutional violation.

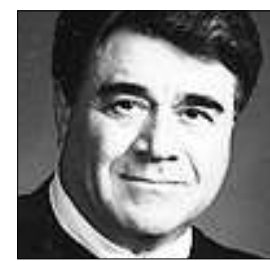
Permitting prosecution evidence



Wetenkamp

In Steven Lee Scroggins' trial on weapons charges, a key question was whether Scroggins knew that ammunition was present on the inoperable bus on which he lived. As prosecutors sought to prove his knowledge, Judge Jean Wetenkamp allowed testimony about an old photograph, also found on the bus, of someone who resembled the defendant holding an assault rifle. The appeals court said Wetenkamp erred, concluding there was little logical connection between the question of Scroggins' guilt and a picture of the someone who might not even be him.

Forbidding defense evidence



Biafore

Judge Joseph Biafore allowed prosecutors in a manslaughter trial to introduce the portion of Mark Brunson's statement to police in which Brunson admitted picking up a board and hitting the victim in the head multiple times. But Biafore excluded another portion of the statement, in which Brunson — who had been stabbed repeatedly by the victim — insisted he had not intended to kill him. The appellate court later said Biafore's selective decision was an abuse of discretion.

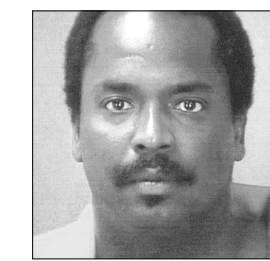
Improper jury instructions



Creed

In John Pedraza's trial on drug charges, Judge Daniel Creed neglected to tell the jury as it prepared to begin deliberations that it must be convinced of guilt "beyond a reasonable doubt," perhaps the most basic of all jury instructions.

Failing to present case



Hamilton

Deputy Public Defender Bramlett Hamilton did not call as witnesses to a bar fight the bartender and other customers, who would have said the victim was belligerent and had gotten into another fight earlier that night. Hamilton later contended the witnesses would not have aided Kerry Frugio's defense on battery charges because it would sound to the jury as if everyone in the bar was ganging up against the victim.

Failing to object

As Tin Nguyen went on trial for murder, the judge in the case prohibited any reference to Nguyen's alleged membership in a gang, saying it could bias the jury against him. But the prosecutor repeatedly mentioned the issue — asking four witnesses whether Nguyen was part of the "Black Dragon" gang, and referring repeatedly to him as a gang member in his closing argument. Defense attorney Patrick Tondreau did not object to the references.

Misstating facts



Cottle

Randy DeCastillo's attorney argued that the shackles his client had to wear in court improperly influenced the jury. The appellate panel, in an opinion by Presiding Justice Christopher Cottle, rejected the argument, saying there was no evidence the jury saw the shackles more than briefly. In fact, a separate petition to the court made clear that the shackles, which were padlocked to the courtroom floor, were regularly in view. But the court rejected that petition also, without comment.

Improper waiver



Bamattre-Manoukian

During Jeffrey Keyes' trial for murder, Judge Robert Aherm limited the attorney's ability to challenge alternate jurors — a move the prosecutor and defense attorney agreed was improper. Later, an alternate juror that the defense would have excluded joined the panel, and in the next court session, the defense attorney objected to the selection process. But Associate Justice Patricia Bamattre-Manoukian, writing for a two-member majority, said that the defense attorney had waived his right to raise the issue by waiting too long. The dissenting justice said, "I would be hard pressed to find a case where application of the waiver rule was less justified" as a reason to dismiss a claim of error.

Harmless error

Sean O'Neal was convicted of assault at his second trial, after the first jury had deadlocked. The victim's identification was shaky. But jurors were told that both the victim and O'Neal's father recently had the windows of their homes broken by an unknown vandal. The prosecutor suggested this vandalism tied O'Neal to the assault. O'Neal's attorney argued that the window evidence should not have been admitted. Writing for the court, Associate Justice Patricia Bamattre-Manoukian dismissed the complaint, saying there was no indication the evidence made the difference in the verdict. In fact, there was — the window evidence had been excluded from the first trial. The appellate court would not consider that fact, however. It forbade O'Neal's attorney to submit the transcript of the first trial as part of his case.

TOTAL IN STUDY

58 cases in which evidence was not turned over promptly

19 instances in which defense attorneys failed to prepare their cases adequately

11 cases in which attorneys improperly pressured defendants to plead guilty

37 cases in which evidence was improperly disclosed at trial

24 cases in which misleading facts or law

24 cases in which prosecutors made improper arguments

54 cases in which judges allowed prejudicial prosecution evidence

49 cases in which judges improperly prohibited defense evidence

48 cases in which faulty instructions to jurors were given

21 cases in which attorneys presented inadequate defense case

60 cases in which defense attorneys failed to challenge behavior that harmed their client

30 cases in which opinions misstated facts or law

5 cases in which opinions contained dubious claims of waiver

6 cases in which opinions improperly minimized the impact of errors