

Case Preparation

In TBP, you have a responsibility to your client, whether you represent the Defendant or the State, to present the best case you can on their behalf. You can only fulfill your responsibility if you are prepared. Even if you are lucky enough to win your case, you failed in your ethical and moral responsibility if you came to court unprepared.

Do not think that after you gain some experience in TBP you do not have to prepare. In fact, as you gain more experience you will realize how much preparation it takes to represent your client.

In TBP, you will receive your case materials three weeks prior to the trial date. If you begin to prepare immediately, using the schedule below, you will not be caught “scrambling” at the last minute to get things done. You should not rely on your co-counsel to prepare the case; each of you are equally responsible for the trial.

Case Preparation Schedule

Week One (3 weeks before trial)

- Read the case materials, become familiar with the facts and the people involved.
- Identify the charge, and research the elements of the crime.
- Contact your co-counsel to divide pre-trial preparation tasks
- Identify and contact each witness, obtain general information about their knowledge of the facts and whether they are available to testify at trial.
- Contact your Senior Attorney (AFTER YOU COMPLETE THE TASKS ABOVE. NEVER WAIT FOR YOUR SENIOR ATTORNEY TO CONTACT YOU.)

Week Two (2 weeks before trial)

- Meet with your Senior Attorney, develop strategies for (1) proving each element of the crime if you are prosecution, or (2) introducing defenses to any element of the crime if you are defense. (NEVER WAIT LONGER THAN THIS WEEK TO MEET WITH YOUR SENIOR ATTORNEY.)
- Speak with each listed witness again to obtain any follow up information suggested by your Senior Attorney. (If you are having trouble contacting a witness, call TBP office for assistance. NEVER WAIT LONGER THAN THIS WEEK TO SPEAK WITH YOUR WITNESSES.)
- Identify and speak with any other potential witnesses suggested by your Senior Attorney. (If a new witness must be subpoenaed, call TBP office to issue the subpoena.)
- Contact your co-counsel to divide trial tasks.

Week Three (During the final week before trial)

- With the help of your Senior Attorney, develop a theory of the case, and use the theory to draft an outline for an opening statement, direct examination, cross examination, and closing argument.
- Co-counsel should exchange their outlines, so each counsel knows the entire case.
- Contact your witnesses with any final questions or issues, and make sure they will be at trial.
- Contact TBP office with any last minute logistical questions.

These are your responsibilities. **If you do not have time to properly prepare your case, if you do not have time to follow this schedule, do not sign up for a case.** By signing up for the case, you are promising to do it right. If you do not prepare, you are in breach of your duties to your client. This is called malpractice and you will get written up. A write-up could negatively affect you if you want a letter of recommendation from TBP staff or Senior Attorneys.

Working With Co-Counsel

- Tasks should be divided equally. One of you should do opening, the other should do closing, and you should split witnesses as evenly as possible.
- You should be prepared to do everything in the case in the event that your co-counsel has an emergency and cannot be at trial. This means you absolutely cannot wait until the last minute to prepare. If you have an emergency, and you have not prepared your portion of the case, you will leave your co-counsel in a bad spot and your client will suffer, for which you BOTH are responsible.

Plea Bargains

The prosecution should never rely upon a verbal plea bargain as a reason not to prepare. Unless the Defendant pleads guilty in writing, the prosecution must prepare for trial. Otherwise, the case will go forward at the scheduled time and, if the prosecution is not prepared, the charges will be dismissed.

Homework for Case Preparation.

(Use the sample case file located in Appendix A). Chose to be prosecution or defense counsel. Read the sample case file. Think about what information is not there that could help your case. (For example, in a shoplifting case, maybe there was more than one security guard watching the suspect but only one is listed, or maybe there were price tags near the clothing found at the scene that could prove the clothing was from that store? In a battery case, maybe the defendant was defending himself, maybe the victim was much larger than the defendant, maybe the victim was bullying the defendant.) Think about different scenarios or information that could change the case. List at least 10 of your ideas on the next page. Be ready to discuss these in class.

Answers for Homework for Case Preparation

Case Strategy

1. Look up the **statute** (law passed by legislature) or the **ordinance** (same thing as a
2. 1. Meet with your Senior Attorney. Advise them on what you found out during your witness interviews. Together, determine a strategy for court. Basically, this is a plan on how you are going to prove your case. If you are prosecution, you want to have the strongest possible case that will prove beyond a reasonable doubt that the defendant did, in fact, commit the crime in question. If you are defense, you want to be able to cast a doubt on the prosecution's case. You want to be able to poke enough holes in their story to not meet the burden of proof. Remember, as defense, you do not have to prove your client's innocence. Defense does not have to prove anything.
- 3.
4. 2. Contact any witnesses with any follow up questions.
- 5.
6. 3. Contact opposing council. Defense, find out what evidence the prosecution may have. Remember, if your case is weak, you may want to negotiate.
- 7.
8. 4. Arrange to meet with your client and/or any witnesses prior to court. Court starts promptly at 5:30 p.m. Allow plenty of time to talk with witnesses so you will be finished in time. Court will not be held up.
- 9.
10. **Please Note: other than Trial by Peers court peer counselors may only meet their clients in person at the Trial by Peers office or at their Senior Attorney's office.**

Defense Strategy

The defense strategy becomes apparent once the defense council finds out what evidence the prosecution may have and the defendant's version of what happened. The strategy itself is not the version of the story the defendant. There may be numerous versions of the "truth" that exist. The defense strategy is fitting together the version of events that best benefit the defense. This does not mean making up false stories. For example: a victim's version of an assault may be similar to the defendant's except for who initiated the confrontation. Self- defense may be an explanation for striking the victim.

The strategy should:

1. be consistent with objective explanations for evidence (for example, why the defendant's fingerprints were found at the scene of a crime).
2. have the potential to gain sympathy of the jury (for example, the victim had been bullying the defendant for weeks prior to the incident in question).
3. should give an explanation for events that took place

Coaching the Defendant

Defense counselors are obligated to provide the strongest defense as possible. This includes preparing the defendant for court. This does not mean to tell them what to say. Instead, it means properly readying the defendant for trial by letting them know what to expect.

This can include:

1. using interviewing techniques that will stimulate their memory
2. have defendants relate to events in chronological order
3. fully explain to the defendant the charge/s against him/her
4. letting them aware of the evidence the prosecution has against them
5. advising them what questions you are going to ask them on the stand
6. explaining the importance of not straying from what is asked of them

Common Defenses

1. Presumption of Innocence – A defendant is innocent until proven guilty. It is the prosecutor's job to convince the jury of their guilt. If they cannot prove this, then the defendant goes free. The defendant does not have to say or doing anything on his/her behalf.

2. Proving Guilt Beyond a Reasonable Doubt – This is a hard standard to meet. All defense has to do is argue that doubt exists. The prosecutor did not do a good enough job in proving the defendant's guilt.

3. Self-Defense – The underlying belief that a person has a right to protect oneself. The defendant admits to the crime but is justified because of they were threatened by the other person's actions. When considering this defense, you must think about who was the aggressor, if the force used by the defendant was reasonable, and if the defendant's belief that self-defense was necessary a reasonable one.

Handouts:

1. Common Offenses in TBP

Common Offenses in TBP

NRS 200.481 Battery

“Battery” means any willful and unlawful use of force or violence upon the person of another.

NRS 200.571 Harassment

A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(1) To cause bodily injury in the future to the person threatened or to any other person; (2) To cause physical damage to the property of another person;

(3) To subject the person threatened or any other person to physical confinement or restraint;
or

(4) To do any act which is intended to substantially harm the person threatened or any other person with respect to his physical or mental health or safety; and

(b) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.

NRS 205.240 Petit larceny

1. Except as otherwise provided in [NRS 205.220](#), [205.226](#), [205.228](#) and [475.105](#), a person commits petit larceny if the person:

(a) Intentionally steals, takes and carries away, leads away or drives away:

(1) Personal goods or property, with a value of less than \$250, owned by another person;

(2) Bedding, furniture or other property, with a value of less than \$250, which the person, as a lodger, is to use in or with his lodging and which is owned by another person; or

(3) Real property, with a value of less than \$250, that the person has converted into personal property by severing it from real property owned by another person.

(b) Intentionally steals, takes and carries away, leads away, drives away or entices away one or more domesticated animals or domesticated birds, with an aggregate value of less than \$250, owned by another person.

NRS 205.275 Offense involving stolen property

1. A person commits an offense involving stolen property if the person, for his own gain or to prevent the owner from again possessing his property, buys, receives, possesses or withholds property:

(a) Knowing that it is stolen property; or

(b) Under such circumstances as should have caused a reasonable person to know that it is stolen property.

NRS 206.010 Destruction or damage of property by unlawful assembly Whenever any persons unlawfully assembled pull down, damage or destroy any dwelling house or other building, or any shop, steamboat, vessel or other property, they severally are guilty of a public offense proportionate to the value of the property damaged or destroyed.

NRS 244.3691 “Graffiti” defined

As used in this section and [NRS 244.3693](#) and [244.3695](#), “graffiti” means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn or painted on the public or private property, real or personal, of another, which defaces such property.

NRS 392.480 Disturbance of school; threatening or assaulting pupil or school employee; interference with persons peaceably assembled within school for school district purposes

1. It is unlawful for any person to disturb the peace of any public school by using vile or indecent language within the building or grounds of the school.
2. It is unlawful for any person to threaten or assault any pupil or school employee: (a) Within the building or grounds of the school;
(b) On a bus, van or any other motor vehicle owned, leased or chartered by a school district to transport pupils or school employees; or
(c) At a location where the pupil or school employee is involved in an activity sponsored by a public school.
3. It is unlawful for any person maliciously and purposely in any manner to interfere with or disturb any persons peaceably assembled within a building of a public school for school district purposes.

WITNESSESPROSECUTOR

Who do you contact first?

Victim

Who else do you contact?

All witnesses listed in police report. Arresting police officer.

All others named by any witness you speak with.

Who can't you contact?

Defendant

What do I do when I first contact a witness?

Your initial contact will be by telephone so make sure you introduce yourself and explain to the witness why you are calling them.

Be prepared to explain what the trial by peers program is, most of the witnesses will not know at this point that the case has been referred to our program.

Start by asking very open ended questions

—What happened?

- Where were you?
- What did you do/see?
- Who was present?
- Why did you do what you did?

Use follow up questions to flush out the details, identify issues and other witnesses.

DEFENSE

Defendant

All witnesses listed in police report.

Arresting police officer. All others named by any witness you speak with. No one, all witness can be contacted.

Your initial contact will be by telephone so make sure you introduce yourself and explain to the defendant that you are their attorney.

Start by asking very open ended questions

- What happened?
- Where were you?
- What did you do/see?
- Who was present?
- Why did you do what you did?

Use follow up questions to flush out the details and identify issues, other witnesses and defenses.

Set an appointment to meet with your client in person at least once before trial.

PROSECUTOR

If this is a key witness attempt to set an appointment to meet with them in person so you can better evaluate them as a witness.

Contact other persons who are potential witnesses and use the same procedure.

What kind of issues might need follow up?

Re-contact any witness who provided you with information that conflicts with that of another witness. Consider meeting them in person so you can better evaluate credibility.

What should I do right before trial?

- Contact all witnesses before trial to confirm they will be appearing.
- Verify that they know where the court house is and what time court is.

—Answer any questions they may have as to what will be involved in court (procedure, what is expected of them, etc. . .)

—Inform them as to what they should wear and how they should act. Contact TBP Staff and make sure your

witnesses have all been subpoenaed. What do I do if a witness doesn't show up for trial?

As long as you served them with a subpoena you can request a continuance from the court, if they were not subpoenaed, the court will probably deny the continuance.

DEFENSE

Contact other persons who are potential witnesses and use the same procedure.

Re-contact any witness who provided you with information that conflicts with that of another witness. Consider meeting them in person so you can better evaluate -credibility.

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Contact TBP Staff and make sure your witnesses have all been subpoenaed.

As long as you served them with a subpoena you can request a continuance from the court, if they were not subpoenaed, the court will probably deny the continuance.

PROSECUTOR

What do I do if the witness changes their testimony on the stand?

You can then impeach the witness by using a prior inconsistent statement.

What do I do if the witness does not remember?

Attempt to refresh their recollection. You can do this by offering to let them see a prior statement that they wrote immediately after the incident.

DEFENSE

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