The Scarlet Ibis

Unit 1 PBA

You are now going to write either an opening or closing argument for a jury in regards to Brother’s guilt or innocence in the tragic events of story. The opening speech sets the stage for the trial to come, introduces the topic and presents the evidence that will be seen or heard. A closing speech reminds the jury of what has already been presented and sums up the major points or ideas. You need to remember that a prosecuting attorney is arguing for Brother’s guilt and that a defense attorney argues for his innocence. In order to be persuasive to a jury you need to include evidence from the text—weaving it in with your own words, ideas, and interpretations. You should also focus on two major persuasive techniques—using logic and evidence, and appealing to the emotions of the situation. The graphic organizer will help you with the first persuasive technique and your own beliefs and reasons will help with the second. Finally, remember that because this is a speech, you might want to consider focusing on word choice, repetition, and sentence fluency when writing. You should consider reading aloud to yourself as you draft your speech.

Consider the roles of the Prosecuting Attorney and the Defense Attorney

The role of Public Prosecutions in the justice system

**Proceeding on a charge**

The police send a file for prosecution to a Prosecuting Attorney. The prosecutor then considers two questions when deciding if a charge should proceed.

First, the prosecutor decides if there is reasonable likelihood of a conviction. The prosecutor studies the evidence from the police to determine what will be admissible and if it is solid enough to get a conviction. The prosecutor must also consider the defence that the accused may use.

Second, the prosecutor decides if it is in the public interest to prosecute. The following factors are considered:

* seriousness of the offence;
* mitigating or aggravating circumstances;
* personal circumstances of the accused;
* staleness of the alleged offence;
* prosecution’s effect on public order, morale or public confidence in the administration of justice;
* availability of alternatives;
* frequency of the offence in the community;
* concern in the community over the offence;
* likely sentence; and
* attitudes and interests of the victim.

The following factors are not considered when deciding whether to proceed:

* race;
* national or ethnic origin;
* colour;
* religion;
* sex;
* sexual orientation;
* political associations, activities or beliefs of the accused, victim or other involved parties; or
* political advantages or disadvantages to government or political parties.

If the matter goes to court, it is the duty of the prosecutor to present the case for the government in a fair way and to keep the court fully informed of all information relevant to the issues the judge will have to deal with. Regardless of the result of the trial, a prosecutor is satisfied if the trial has been fair to the public, whose interests the prosecutor represents, and to the accused.

**The Defense Attorney**

## Protecting Rights of Accused

* Under the U.S. Constitution, anyone charged with a crime is entitled to be represented by counsel; if the accused cannot afford an attorney, one will be appointed for him. This attorney is often termed defense counsel. The primary responsibility of a defense attorney, according to the Supreme Court, is to represent her client with courage and devotion and to render effective, quality representation. At the same time, she is also subject to the court's rules of conduct and ethics, and can neither lie to the court nor encourage her client to do so.

## Assuring Exoneration When Charges Unproved

* A defense attorney must provide competent legal representation whether or not she believes her client to be innocent of the crime charged. A determination of guilt or innocence is not part of the defense attorney's task. It is the prosecutor's job to present strong enough evidence to convince a jury "beyond a reasonable doubt" that the person accused is guilty of the crime as charged; it is the job of defense counsel to point out to a jury the ways in which the prosecutor has failed to meet that standard.

## Law Enforcer and Advocate of Justice

* One of the roles a defense attorney undertakes is that of a law enforcer. Defense counsel polices the police at the same time they ensure their clients' constitutional rights are protected. For example, the police are legally obligated to advise someone they are arresting of his right to remain silent. If they have not done so, the defense attorney asks the judge to throw out any statements the accused might have said. Likewise, a coerced confession is excluded. As a defense attorney conscientiously protects her client's rights, she is also enforcing the legal rules the police and prosecutor must follow.

## Offiicer of the Court

* A defense attorney, however, must be more than an advocate for her client. As an officer of the court, she also owes a duty to the court to behave ethically and honestly. These roles and responsibilities can clash, as when the attorney knows her client intends to lie under oath. Her duty to guard the client's communications to her as confidential may conflict with her ethical duty to the court. There are many viewpoints on what attorney actions are appropriate in this scenario, but the American Bar Association Model Rules of Professional Conduct require the attorney to take action to prevent his client's false testimony.

Look at the following chart to solidify your understanding of the task involved:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Role | Audience | Format | Topic | Strong verb |
| Defense Attorney or Prosecuting Attorney | Jury | Opening and/or Closing Arguments at a Murder Trial | How responsible for Doodle's death was the Brother? | Persuade |