

Opening Statements & Closing Arguments Guidebook

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Opening Statements:

Opening statements are the first time you get to present your case to the jury (in the case of mock trial the judge). So you'll want to pick your words wisely. Notice that this is called the opening *statement* not the opening *argument*. At this time you should not be making arguments (if you do it's technically objectionable but MJP does NOT allow objections during opening statements and closing arguments). After any pre-trial matters the Prosecution or Plaintiff team will present their opening statement first, then the Defense team will present their opening statement. In MJP your openings have a time limit of 4 minutes. In my experience with this time constraint you should aim for opening statements to be anywhere from 3 minutes 15 seconds to 3 minutes 45 seconds. You don't want to run out of time but you also want to make sure that you cover all the content you need to. Let's see what exactly you'll be judged on for your opening statement per MJP rules. Judges should look at if an opening statement tells a story, establishes LOVID (Location, Offense, Venue, ID, Date), gives previews of witnesses, discusses burden of proof, explains theme/theory (if you don't know what those terms mean check out the resource on theory and themes), and asks for a verdict.

With that rubric in mind let's talk about organization. We can think of the opening as four sections: Intro, Law, Witnesses, Conclusion. The intro should have a few sentences that serve as a hook to grab the attention of your audience, should include your theme, and a story section. The story section of your opening should be in the beginning. And we can think of "story" as essentially your theory. Throughout the beginning of your opening you should explain your theory. In general this should be about a third of your opening or so. You need to make sure you properly explain the important aspects of your theory. Now, there's a couple ways that you can begin your opening statement. You can start off by stating your theme. For these resources imagine a prosecution team has the theory that the defendant committed murder for a life insurance policy and their theme is "money was the motive" defense team has a theory that the police run a faulty investigation and their theme is "they went with the first answer, not the right one" So one strategy would be to start the opening just saying "They went with the first answer, not the right one" then go into their story. Some teams may decide to launch right into their story and mention their theme where they think it's right. Either strategy is good, however if you decide to go with the latter you want to really emphasize your theme to make it clear to the judge.

Important distinction here. Like I mentioned there shouldn't be arguments in an opening. So instead of saying "On the day in question the defendant changed the life insurance policy on the victim" or "Throughout the investigation the police had one suspect and one suspect only",

you should say “Today the evidence will show on the day in question the defendant changed the life insurance policy on the victim” or “You’ll see that throughout the investigation the police had one suspect and one suspect only” You certainly don’t need to have caveat statements like that before every fact you introduce (especially if a fact is stipulated to or agreed about) but make sure to include statements like that before your important facts. Again we are giving an opening statement and not an opening argument, bigger facts should be more open because no evidence has been produced yet.

Next let’s talk about LOVID. This is something that only prosecution teams have to worry about (you actually don’t need to worry about it at all in civil cases) LOVID is just something that you’ll weave throughout your opening. For example in your opening you don’t need to physically ID the witness during your opening, but you should mention their name. During your story you should mention the location and venue that the crime took place at. When you talk about the burden of proof you’ll naturally discuss the offense the defendant is being charged with.

Your story section should end with a transition into what I refer to as the law section of the opening. This is the section where both sides should explain the law involved in the case. This includes the charges (in a criminal trial) or claims (in civil trials), elements of those charges (what the prosecution or plaintiff must prove), and the burden of proof. In a civil trial that burden is by the preponderance of the evidence, that means more likely than not to be true. In a criminal trial that burden is beyond a reasonable doubt. It could be helpful to try to find an analogy to explain the burden. Now if you are the defense you don’t need to say exactly what the prosecution says because it could be redundant, but don’t be afraid to point out something that the prosecution didn’t mention.

Next you’ll want to introduce your witnesses. In MJP you have two witnesses that you will call every time, but you can decide what order you will call the witnesses. You should introduce your witnesses in that order. You should introduce their name and the reasons why you’re calling that witness. You can say something like “we expect so and so to testify to ___”, “today so and so will tell you___”, or “when so and so takes the stand you’ll learn___”.

After you talk about your witnesses you want to go into your conclusion. Your conclusion should just be a few sentences to wrap up your opening to really set up your case and try to convince the jury (or judge) that your case will come to the correct conclusion. Then you want to ask for a verdict. If you are defense that will be not guilty or not liable if you are prosecution or plaintiff that will be guilty or liable.

Now let’s circle back to theme. You can’t just say your theme once and call it a day. In general you should mention your theme at least three times throughout your opening, but a good theme should be able to be weaved throughout the entire opening. In general I like to mention the theme twice by the time the story section is done, once or twice when discussing witnesses, and then once again in the conclusion. If your theme can’t be worked in that amount of times, you may want to consider tweaking it.

And that's it! Your opening should pretty much be the same every time you give it (defense teams may want to have slight tweaks depending on what the prosecution/plaintiff team says in opening) so your opening should hopefully be easy to memorize, and especially for a speech like an opening you should try your best to memorize it. My advice is to just try to remember your opening a section at a time then string it all together.

Good luck and as always make sure to have fun

Closing Arguments:

In mock trial the closing argument is your last chance to score some points so like the opening you want to spend your time wisely. For MJP you have 5 min to give your closing argument, if you are a prosecution or plaintiff closer you then have 3 minutes to give a rebuttal argument based on what the defense closer said.

It's important to note that at this point we are not giving a closing statement, or a closing summary, we are giving a closing *argument*! You should be making arguments about the case based on the facts and evidence! Now what exactly are you being judged on when you give a closing argument? Judges are looking for closings that argue the evidence not just restate it, reestablishes LOVID, relates back to the theme of opening, connects the dots of testimony of all witnesses, argues elements and burden of proof, and asks for a verdict.

With that rubric in mind we can talk about organization again. The close should also have four sections: Intro, Law, Arguments, and Conclusion. Similar to the opening, the intro can begin with the theme and should have something that gets the attention of your audience, maybe a really important thing a detective said or a really incriminating piece of evidence or statement from the defendant. Then the rest of your intro shouldn't completely regurgitate the story from the opening but remind the jury why you are prosecuting or suing someone.

Then, if you're clever the transition from essentially "why are we here" should easily lead to you discussing the law of the case. At this point the jury has heard the law twice so both closers can afford to be a little more simplified and brief, but again defense closers pay close attention for anything the prosecution or plaintiff misses.

At this point I want to address a common question "how much of my closing can I memorize verses write during trial". I've given closing arguments for eight different mock trial cases and I'd say about 60%, but you should be prepared to adapt any part of your close at any time. For the most part you can prewrite your law section, and what your introduction and conclusion say is (again be prepared to tweak parts based off of what happened in trial). Odds are you have a good idea what arguments you're going to make so while you can prewrite transitions between arguments, but (and I cannot stress this enough) never ever ever prewrite all of your arguments. While you know what witnesses the other side will call and you'll probably have a good idea what they're going to say. You should begin figuring out the exact words of your argument when the other side begins giving their opening statement. This is important because if you reference a piece of evidence that didn't come in or you say a witness said something in trial when that didn't happen, it becomes obvious that you weren't necessarily paying attention in

trial. Now mistakes may happen and you'll accidentally say something that didn't come out and it's not the end of the world we've all done it. Just try your best to avoid that.

After you discuss the law it's time for you to apply the law with your arguments. Now there are a few ways you can do this. The way I recommend is to talk about each element you have to prove and talk about the evidence (exhibits and testimony) that proves or disproves that element. You can also go through each witness and talk about the pros and cons of the witnesses and talk about the facts that came out with that witness that proves or disproves an element. Or maybe you have a set of different arguments that will tie together testimony and exhibits and combined they will prove or disprove the elements. What's important is that you do your best to have a clear structure that is easy to follow.

Let's take a quick detour and talk about LOVID. Again if you're in a civil case don't worry about this. Defense teams don't be afraid to point out if the prosecution didn't establish part of LOVID. Prosecution teams similar to opening you should naturally integrate each aspect into your close. In your story you'll naturally talk about the location and venue and you'll naturally say the defendant's name. In the law section you will talk about the offense.

After you've made your arguments it's time for your conclusion. This should just be a few really well thought out and convincing sentences to put a nice bow on your team's case. After that simply ask for a verdict.

The defense close and prosecution/plaintiff rebuttal have the added task of responding to what the other side said. Defense closers, as tempting as it may be, you will not be able to adequately respond to everything that the other side said while still establishing your case. My advice is as you are developing your arguments you will naturally have time to take small jabs at the other side's case and poke holes in their theory. The important thing to keep in mind for the defense close and prosecution/plaintiff rebuttal is that while you may be responding to something, you want to appear in control. So, having good organization is key. Prosecution/plaintiff closers, again you will not be able to respond to everything the other side said. While you have three minutes for rebuttal my advice is to take no more than a minute and a half and pick two to three points you have good responses. It may also be tempting to reiterate your arguments and squeeze in your theme, be wary of this. While reiterating your points is certainly a good thing, it must fit in naturally. If your response to defense arguments does not allow you to restate your theme I would advise you against mentioning your theme.

Theme Flips:

Theme flips are something that both closers and defense openers have an opportunity to do. A theme flip is when you change something in the other side's theme and use it against them. While this is a fun thing to do and it can certainly gain you points I would only advise them when you are confident in the theme flip. Some themes are hard to flip so rather than using one that doesn't make a whole lot of sense you would likely see better luck focusing on the other aspects of your speech. The best place to put theme flips are in the beginning or end of your speech (I would lean more towards the beginning) or in an appropriate spot in your arguments. Defense openers I'd say the best spot is in the beginning of your open. Ultimately a theme flip

should be something that you and your co-counsel mostly agree on for how to flip it and when to use it.

And that's it! Openings and Closings may seem scary but they are very fun when you really get into them. Good luck and as always make sure to have fun!