

Opening Statements Handout

Once the jury has been chosen, the attorneys for both sides deliver an **opening statement** about the case to the jury. Opening statements outline the facts that the attorneys expect to prove during the trial. An opening statement should present the jury with an orderly and easy to understand version of the case from the attorney's perspective.

In criminal trials, the prosecuting attorney goes first. Usually the defense gives its opening statement immediately afterwards.

You will be either an attorney on a team for the prosecution or the defense. You will meet with your team and list the most important facts from your assigned point of view. Once you have done that, write a short opening statement.

Writing an Opening Statement

To prepare an opening statement, attorneys must organize and outline the entire case they intend to prove at trial. A good opening statement:

- * Explains what the attorney plans to prove and how they will do it.
Presents the events of the case in a clear, orderly sequence.
- * Suggests a motive or emphasize a lack of motive for the crime.
- * Is not argumentative. Tell your story without arguing what the case is about.
 - Arguments are for closing statements.
 - Puts forth your theme/theory of the case.
- * "your catch-phrase:" a sentence relating to everyday life:
 - i.e. "wrong place at the wrong time."
 - 1 or 2 sentences - Theory (What is this case really all about?)
- * Summarizes your story
 - Be creative: Use adjectives "It was a dark and stormy night" to give jury a picture of what is going on in your case.
- * Gives a road-map at the end.
 - Give the jury a guide for listening to your case
 - We want the jury to pay attention so explain what should they be listening for.
 - Defense: 1 to 3 pieces of evidence that they are going to see or hear.
 - i.e. - "You will hear Kai say"
 - "You will see a bag of money"
 - Prosecution: What are you going to prove?
 - i.e. - Police had probable cause
 - Police had consent
- * Repeats your theme.
 - Repeat your "catch phrase"

Attorneys usually begin their statement with a formal introduction:

"Your honor, ladies and gentlemen of the jury, opposing counsel, my name is [full name], representing [the state or the defendant] in this action."

The attorneys then turn to the jury and begin their statements.

Opening statements often include such phrases as:

- * The evidence will show that...
- * The facts will prove that...
- * Witness [name] will be called to testify that...

Now exchange papers or read statements to each other. The group should either choose the statement they think is the clearest or rewrite the statement using the best of all of the statements.

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OPENING STATEMENT

- First impressions are lasting impressions!
- Tell the story.
- Focus on the people.
- Stick to the facts - not your opinion.
- Remember the law.
- Give the jury a theme - a psychological anchor.
- Present yourself as credible - trustworthy - believable.
- Be enthusiastic!

DIRECT EXAMINATION

- Let the witness tell the story.
- The witness is the STAR!
- Elicit exciting, vivid testimony.
- Present your witness as credible.
- Use open ended questions - don't lead your witness by the nose!

CROSS EXAMINATION

- Start and End crisply.
- The lawyer is the STAR!
- Know the probable answer before you ask the question.
- Listen to the witness' answers.
- Don't argue with the witness.
- Don't ask the witness to explain.
- Keep control of the witness.
- Don't ask the one question too many! - Make your point, STOP! And sit down!

CLOSING ARGUMENT

- Now is the time to argue!
- Summarize the evidence.
- Draw conclusions.
- Repeat the theme - repeat the theme - repeat the theme.
- Tell the jury what you want.
- After all - you're a winner!

Adapted from *Trial Techniques* Thomas A. Mauet.

Theme

The theme of your case is a one sentence catch phrase that reminds the jury why your side should win. Below is a list of catch phrases. Study this list, review the facts of the case, and brainstorm as many themes as you can that will fit your case. Use a theme from those suggested here or create your own.

Catch Phrases:

- This is a case of he said she said.
- If it doesn't fit, you must acquit.
- The elevator doesn't go all the way to the top.
- The sun always rises in the east.
- To be or not to be. (Shakespeare).
- Justice is the harvest of nations. (Robert Hughes Fleicite de Lamennais).
- If it looks like a duck and walks like a duck, it's probably a duck.
- Two bricks short of a load.
- A bee in your bonnet.
- Do as I say, not as I do.
- Grass is always greener on the other side.
- If a tree falls in the forest...
- If you have time to lean, you have time to clean.
- In one ear and out the other.
- Skeleton in the closet.
- Like a bull in a china shop.
- One bird in the hand is better than two in the bush.
- You catch more flies with honey than you do with vinegar.
- If any question why we died, tell them because our fathers lied. (Rudyard Kipling).
- Quit while you're ahead.
- Every Cloud has a silver lining.
- Feed a fever starve a cold.
- All the news that's fit to print. (New York Times).
- A stitch in time saves nine.
- Haste makes waste.
- All personal secrets have the effect of sin or guilt. (Carl Gustav Jung).
- As a rule we disbelieve all facts and theories for which we have no use. (William James).
- Seek the truth, Listen to the truth, Teach the truth, Love the truth, Abide the truth, And defend the truth, Unto death. (John Hus).
- Now what I want is, Facts...Facts alone are wanted in life. (Charles Dickens).

Opening Statements Handout

I. INTRODUCTION

A. Attention Grabber- (use a 'catch phrase')

B. Introduce Yourself

II STORY

A. Theory- In chronological order

1. What happened first...

2. What happened next...

3. Finish story/theory

Closing Arguments Handout

Closing arguments are given after both sides have completed questioning witnesses and presenting evidence. These arguments give the attorneys a chance to summarize their cases, review the testimony of witnesses, and make a last appeal to the judge or jury.

Guidelines for an Effective Closing Argument

An effective closing statement should:

1. Be emotionally charged and strongly appealing (unlike the calm, rational opening statement).
2. Only refer to evidence that was admitted during the trial.
3. Emphasize the facts that support the claims of your side.
4. Note weaknesses or inconsistencies in the opposing side's case.
5. Summarize the favorable testimony.
6. Attempt to reconcile inconsistencies that might hurt your side.
7. Be presented so that notes are barely necessary.
8. Be well organized (starting and ending with your strongest point helps to structure the presentation and give you a good introduction and conclusion).
9. Focus on reasonable doubt. The prosecution should emphasize that the state has proved the elements of the crime beyond a reasonable doubt. The defense should raise questions suggesting that reasonable doubt exists.

Proper phrasing includes:

"The evidence has clearly shown that.

"Based on this testimony; there can be no doubt that..."

"The prosecution has failed to prove that..."

"The defense would have you believe that . . .

10. Conclude with an appeal to convict or acquit the defendant.

Write a closing statement and be prepared to present it and listen to others' closing arguments as well. Use the Guidelines to both write your argument and rate others' arguments.

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