Opening Statements Handout 1

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

- (1) 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 in 1-2 sentences
- * 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.
- *Defense: 1 to 3 pieces of evidence that they are going to see or hear.
- *Prosecution: What are you going to prove?
- * Repeats your theme.
- (2) 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...

Lesson 2: Opening Statements Handout 2 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 B. Tell what the EVIDENCE will show 1. "The evidence/facts will show that...

2. "The evidence/facts will show that
3. "The evidence/facts will show that
III. ROADMAP - Tell the jury what they are going to hear and see. A. "First you will hear the Prosecution
B. "Then you will meet and hear the Defense
C. "Finally you will listen to Closing Arguments

Writing Questions

Writing Direct and Cross Examination Questions

Your team should develop questions for the witness you are assigned to.

The prosecution must prove guilt beyond a reasonable doubt. It must bring up evidence in its favor and anticipate and attempt to weaken the impact of evidence against it. The defense must raise every reasonable doubt it can.

Since you can only cross-examine witnesses about what they testified about on direct examination, cross-examination questions can be difficult to write in advance. But the witnesses' statements should give you an idea of what witnesses are likely to be asked on direct, and you can write cross-examination questions accordingly. You should then be alert during direct examination so you can get rid of any inappropriate cross questions you have developed.

Direct Examination of Witnesses

Direct examination takes place when lawyers call their own witnesses to the stand and ask them questions.

Form of Questions

Generally, attorneys ask questions so that witnesses will give short answers, not too long or rambling. In direct examination, attorneys usually may not ask leading questions. A leading question is one that suggests the desired answer. It usually elicits a "yes" or "no" answer. Often, leading questions are really statements with something like, "isn't that right?", "isn't that so?", or "didn't you?" tacked on the end.

For example, this question would be proper on direct examination (assuming that the fact was in issue): "Mr.

Stevens, when did you and your wife adopt Charles?" This one would be improper: "You and your wife adopted Charles two years ago, is that correct, Mr. Stevens?"

Cross-Examination of Witnesses

After direct examination, the lawyer for the opposing side cross-examines each witness. Cross-examination has two purposes. It is designed to:

(1) clarify the witness's testimony from the other side's point of view, and

(2) give the opposing side an opportunity to impeach the witness-that is, to attack the witness's credibility.

Form of Questions

While leading questions (e.g., "You drank like a fish that night, didn't you, Mr. Saski?") are usually not permitted during direct examination, they are allowed during cross-examination. Cross-examination questions are limited to matters that were brought out on direct examination. In other words, cross-examination may not go beyond the scope of the direct examination.

Closing Arguments

In this activity, students take the role of attorneys developing closing arguments in the case of

- 1. Each student should:
- * Choose to represent either the prosecution or defense.
- * Review the witness statements and consider the main points brought out in witnesses' testimony in the previous activity.
- * Develop a three-minute closing argument (250 to 750 words).

Be sure to follow the "Guidelines for an Effective Closing Statement.

Guidelines for an Effective Closing Argument

An effective closing statement should:

- 1. Be emotionally charged and strongly appealing
- 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 clear up inconsistencies that might hurt your side.
- 7. Be well organized (starting and ending with your strongest point helps to structure the presentation and give you a good introduction and conclusion).
- 8. 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 . .
- 9. Conclude with an appeal to convict or acquit the defendant.

The Trial

Basic Trial Procedures

Courtroom and participants

judge attorneys witnesses jurors bailiff court reporter media observers

Beginning the trial

Bailiff announces: "All rise. T	he Court of	is now in session, the
Honorable Judge	presiding."	Everyone remains standing until the judge
enters and is seated. The jud	dge then asks the	e attorneys for each side of the case if they
are ready to begin the trial.		

The trial

1. Students deliver opening statements.

Attorney for plaintiff rises and introduces him/herself: "May it please the court and ladies and gentlemen of the jury, my name is ______, counsel for _____ in this action." Attorney for Plaintiff always delivers his/her opening statement first. (no longer than 5 minutes) Defense attorney gives his/her opening statement immediately after.

2. Testimony of witnesses.

Plaintiff witnesses are called first. Order of witness presentations are determined by strategy, i.e., chronologically into overall story. Direct examination of plaintiff witnesses includes cross examination by defense and redirect examination by plaintiff. Defense case-in-chief then proceeds with direct examination of witnesses called by defense and cross examination by plaintiff, etc.

3. Closing arguments

The plaintiff presents its closing argument (no longer than 5 minutes). The defense will then present its closing. The plaintiff (because it has the burden of proof) has up to two minutes to present its rebuttal closing.

4. Finding

If there is a jury, they may retire to another room to deliberate, or deliberate "fishbowl" style, letting the trial participants in on their thoughts. If fishbowl style is selected, it is very important that the attorneys and witnesses remain silent throughout the deliberations. If the jury makes their decision in private, they can be asked to comment on the process, or how they came to their decision, either as a group or individually. They can be asked questions such as: Were some parts of the trial more important than others? Did either side forget to introduce any importance evidence? Could either side have been more effective or successful in their direct or cross examination of the witnesses?

Trial

*Key Step: Trial Procedures

Strict rules ensure that each side in a trial will have an equal chance to present its case. A judge must make sure that each side follows these rules closely. The major procedures observed in a criminal court trial are outlined below.

1. Jury Selection

In all criminal jury trials, the first step is impanel, or select, a jury. Prosecution and defense attorneys pose questions to prospective jurors. The judge may also take an active role in the process.

2. Opening Statements

After calling the court to order, the judge will ask for the trial to begin with opening statements from the prosecution and defense. The opening statements outline the evidence each side intends to present during the trial. The prosecution delivers its opening statement first. The defense attorney usually follows immediately with a statement, but may delay it until after the prosecution presents all its evidence.

3. Presenting Evidence

The prosecution presents its side of the case first. This is called the prosecution's **case-in-chief**. It usually consists of introducing material objects called exhibits (e.g., a gun), as well as questioning prosecution witnesses. After the prosecution has finished presenting its side, the defense may introduce its exhibits and witnesses. Both exhibits and witnesses' testimony are trial evidence. Strict rules of evidence must be followed, however, before either is allowed into the trial. Attorneys conduct **direct examination** when they question their own witnesses. After direct examination, opposing attorneys **cross-examine** the witnesses. Lawyers conduct cross-examination to test and find weaknesses in the testimony of their opponents' witnesses. They may also try to put doubts into the minds of the jurors about the believability of these witnesses.

4. Closing Arguments

After each side has presented all its evidence, each side makes a closing statement to the jury. In these closing arguments, attorneys summarize what has been established or not established during the trial. The closing argument presents attorneys with their last chance to persuade the jury. The defense delivers the first closing argument to the jury. The closing argument of the prosecution ends the evidence phase of the trial.

5. Instructions to the Jurors

Following the closing arguments, the judge gives instructions to the jury. These instructions state the law that applies to the case. The judge reminds the jurors to base their verdict solely on the evidence admitted during the trial. Since the prosecution has the burden of proof, the judge instructs the jurors to find a verdict of guilty only if the state has proved its case beyond a reasonable doubt.

6. Jury Deliberations

After hearing the judge's instructions, the jury leaves the courtroom and meets in a jury room to decide on a verdict. Jury members first select a foreperson who will lead their discussions. The jury then reviews the evidence and votes on a verdict. Although the U.S. Supreme Court has ruled that unanimous verdicts of guilty or not guilty are not mandatory in all criminal cases, almost every state still requires them. Several votes may be necessary before the jurors arrive at a unanimous verdict. If after a reasonable time, the jurors cannot reach a unanimous verdict, they become a hung jury." The foreperson will report this fact to the judge. If the judge believes that further jury deliberations are futile, the judge will declare a mistrial. The prosecutor will then have to either request another trial with a new jury or drop the charges against the defendant. If the jury returns a unanimous verdict of not guilty; the defendant goes free. When the jury unanimously finds the defendant guilty the judge will set a date for a sentencing hearing.