

Opening and Closing Statements

Opening Statements

Opening statements allow counselors to provide the court with a guide or road map of what is about to happen during the court proceedings. First impressions are important! Opening statements acquaint the judge and jury with the case and outlines what you, as peer counselors, are going to prove through witness testimony and the admission of evidence. Prosecution counselors make the first opening statement followed by the defense since prosecution has the burden of proof. This statement is addressed to the jury and it is the first time you talk to the court. Jurors have a hard time paying attention to opening statements when the counselors just read their statements from a piece of paper. You will want to have eye contact, be energetic, and be engaging without being too dramatic. You will want to be confident in your case and in what you have to say.

Components of an Opening Statement

- Greet judge and jury.
- Introduce yourself.
- Who you represent.

Content of the Presentation

- Describe the offense or problem behavior and the circumstances surrounding it.
- Present a believable and persuasive case theory (for “guilty” cases include how the harm can be repaired, the needs of the defendant, and the role of the community in the recommended sentence).
- Present a short summary of the facts that support case theory.
- Mention of the burden of proof (the amount of evidence needed to prove the fact) and who has the burden in the case.
- The applicable law.
- Summarize evidence to be introduced, including witnesses, in an organized, engaging, and memorable fashion.
- Recommend a sentence (only in “guilty” cases).

Communication

- Speak plain English.
- Make good eye contact with jurors and be aware of body language. Gain a positive rapport.
- Speak in a confident manner and appear confident.
- Speak loudly and slowly so the jury can understand you.
- Vary inflection.
- Use the future tense in describing what you will do (i.e., “The facts **will** show”, or “Our witnesses’ testimony **will** prove”).
- Use persuasive language.
- Be brief and concise.
- Have a theme. Tell a story.
- Summarize the main ideas.
- State only what you know you can prove or that will be admissible in evidence. You do not want to create a situation where you promise the jury they will hear something, and then they do not receive that testimony or evidence, because the other side will likely point that out in the closing statements.

Avoid

- Legal jargon
- Lecturing
- Trying to impress the jury with your IQ or knowledge
- Using words if a visual aid would be better
- Too much narrative detail about witness testimony. Lengthy explanations and flowery words only lose the jury's attention.
- Exaggeration and overstatement of facts that may not be proven
- Do not argue the law
- Reading too much
- Defense should not repeat undisputed facts in its opening

Do not repeat yourself time and time again

Closing Arguments

Closing arguments happen at the end of the trial, with the prosecutor going first followed by the defense, and a final word from the prosecution. The objective of the closing argument is to provide a clear and persuasive summary of the evidence you presented to prove your case, along with the weaknesses of the other side's case, and to argue for your position. This is where you put all the pieces together for the jury and judge. Peer counselors cannot talk about issues outside of the case or about evidence that was not presented in the court proceedings. Closing arguments cannot be fully prepared in advance since many times unknown information arises during trial.

Components of the Closing Argument

- Thank the judge and jury for their time and attention.

Content

- Give a summary of the case. Isolate the issues and describe briefly how your presentation addressed these issues.
- Refer only to the evidence presented in court (witness testimony and physical evidence). Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses.
- Be very careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed. Never overstate the facts or your position. NEVER CITE TO ANY TESTIMONY OR EVIDENCE THAT DID NOT COME IN
- Respond to claims made by the other side that are unwarranted or that conflict with their view.
- Make argument based on what happened in court. Argue your case by stating how the law applies to the facts as you have proven them.
- Remind the jury of the required burden of proof. If you have the burden, you must convince the court that you have met it. If you do not, you must convince the court that the other side has failed to meet its burden. Remember it is not your job to define the burden of proof. This is defined in the jury instructions. On the defense side, focus attention to the burden of proof being beyond a reasonable doubt and the fact that the prosecution has that burden.
- (For "guilty" cases) explain why the recommended sentence increases the defendant's understanding of the effect of his or her actions, offers an opportunity for the defendant to repair harm caused, increases skills in the defendant, and promotes community safety. Review how the testimony and evidence support the recommended sentence.

Communication

- Make good eye contact with the jury.
- Speak in a confident manner. Be positive, serious, and credible.
- Speak loudly and slowly so the jury can understand you.
- Be careful not to invade the jury's space.
- Vary inflection.
- Use a minimum of notes. Do not read your closing argument.
- Be an advocate – forcefully urge your point of view. Avoid a boring review of the facts.
- Be brief and concise.
- Summarize how you have proven each of your main points. Use the same outline you used in your opening statement. BUT DON'T REPEAT TIME AND TIME AGAIN!
- Reinforce any graphic terms or phrases from the trial.
- Explain what you want (Guilty/Acquitted) and give them the reason for doing it.
- Feel free to move around and use body language and eye contact to your advantage.
- Use ridicule carefully, for while it can be effective, it is also dangerous.
- Present only the major weaknesses of your opponent's case and the main strengths of yours.
- Avoid illogical or confusing arguments.
- Avoid weak words such as "we believe" or "we think", etc. Saying what your "opinion" is about the case does not do any good because what matters is what the jury thinks in the end.
- Avoid "golden rule" argument and watch for this from the other side.
- Argue your side, but don't appear blind to the other side's arguments. Fairness is important.

Taken in part from:

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Sample Opening Statements

Defense Sample Opening Statement

Good evening, Your Honor, ladies and gentleman of the jury, my name is _____, and I represent the defendant, _____. On (date) my client, _____ was falsely accused of the crime of _____. Throughout this hearing you will hear from _____ (Defendant's name) and witnesses stating that _____ (Defendant) did not commit _____ (crime). Please keep in my during the testimony of prosecution's witnesses that it is up to the State of Nevada to prove beyond a reasonable doubt that _____ (Defendant) committed the offense. Thank you.

Prosecution Sample Opening Statement

Good evening, Your Honor, ladies and gentleman of the jury, my name is _____, and I represent the State of Nevada in this case. On (date) the defendant committed the crime of _____. (Details NRS with definition) During this hearing, you will hear from the victim, _____, who will tell you in his/her own words what happened and how the defendant hurt them by his/ her careless actions. You will also hear from witnesses describing the incident. Along with the police officer's testimony, I will prove to you that the defendant is guilty of _____ (crime). Thank you.

