Opening Statements

1. Plaintiff/Prosecution (plaintiff = civil case; prosecution = criminal case.)

Opening statements should inform the fact-finder (the jury or judges) of the nature of the facts of the case. The attorney presenting the plaintiff/prosecution's opening statement should first address the Court by asking **"May it please the Court?"** and acknowledge the attorneys for the defense, **"Opposing Counsel."** The attorney should then introduce him/herself and the client, **"I am Perry Mason and I represent Wanda Smith, the plaintiff in this case."** or **"I am Perry Mason and I represent the people of the state of California in this case."**

The attorney should then briefly outline the facts and circumstances that brought the case to court. The attorney should tell the court which witnesses he/she will be calling and the attorney should summarize the key facts to which each witness will testify. He/she should also identify the importance of any documents that will be introduced during testimony. The attorney should conclude with the remedy or request for relief they seek. **"The prosecution asks that the defendant, Bugsy Malone, be found guilty of murder in the first degree."**

The opening statement should not contain too much detail; excessive detail is likely to tire or confuse the Court. The opening statement should not exaggerate or overstate the plaintiff/prosecution's case or refer to specific evidence. Instead, it should state what the attorney anticipates will be presented at trial; to this end, student attorneys should use terms such as **"The evidence will show"** or **"Today we will hear."**

The opening statement should provide the facts of the case from the client's point of view; but the opening statement should not be an argument. An argumentative opening statement risks reprimand from the Court. The opening statement should anticipate what the defense attorney will say.

It is important not to pace back and forth during the opening statement. Maintaining eye contact with the jury will help you make a persuasive opening statement. Most attorneys find it helpful to memorize the opening statement, and to refer to an outline to help them keep their place. Students are strongly discouraged from reading the complete text of the statement, as this causes loss of eye contact.

2. Defendant

The purpose of the defendant's opening statement is to deny that the plaintiff/prosecution has a valid case and to provide a general outline of the facts from the standpoint of the defendant.

The defense attorney who delivers the opening statement should address the Court: **"May it please the Court?"** and acknowledge opposing counsel: **"Opposing counsel."** The attorney should also introduce her/himself and the defendant.

The defense attorney should then tell the Court the general theory of the client's defense and discuss the facts that weaken the plaintiff/prosecution case. The attorney should outline what each witness will testify and then conclude.

The defense attorney should avoid repeating facts which are not in dispute. Like the plaintiff/prosecution, the defense should not make an opening statement that is argumentative or exaggerated.

Suggestions regarding eye contact, memorization, and the use of an outline discussed in the plaintiff/prosecution section also apply to the defense attorney.

Calling Witnesses and Direct Examination of Witnesses

After opening statements the attorney who examines the first witness should stand and ask the Court **"May I proceed?"** When the presiding judge indicates you may continue, the attorney calls his/her first witness: **"The plaintiff/prosecution calls Bugsy Malone to the stand."**

Direct examination is when the attorney asks his/her own witness questions on behalf of the party the attorney represents. The purpose of direct examination is for the attorney to present the evidence necessary to warrant a decision by the Court which is favorable to the client. All of the elements of a law or criminal charge must be brought into evidence through the testimony of witnesses or through documents.

The attorney attempts to ask questions of the witnesses which will result in the client's side of the case being presented in the most favorable light. Through the witness' testimony, the key facts of the case should be presented clearly and explicitly to the Court. The attorneys should attempt to convince the judge of the soundness of their client's case.

The attorneys for the plaintiff/prosecution first conduct the direct examination of each of it's own witnesses. After the plaintiff/prosecution has examined all of its witnesses, and the defense has cross-examined the plaintiff/prosecution witnesses, an attorney for the plaintiff/prosecution should stand and tell the court, **"Your honor, the plaintiff/prosecution rests."** The attorney for the defense will conduct direct examination of the defense's witnesses after the plaintiff/prosecution has rested its case.

During direct examination it is best to ask clear and open-ended questions. Attorneys should try to phrase their questions to begin with "who," "what," "when," "where," and "how," or ask witnesses to "describe" or "explain." Asking long or confusing questions, or asking questions that call for a narrative response are likely to result in objections from the opposing counsel. Attorneys should be a friendly guide for the witnesses to tell their stories.

Often attorneys are hesitant to bring out facts which are negative to the case they are trying to present. Keep in mind that opposing counsel will be certain to bring out those facts while presenting their side of the case. It is helpful for an attorney to bring out the negative side of the case in order to present the information in the light most favorable to the client. The Court is likely to feel that counsel is presenting a case that is open and honest if the attorney brings up the negative aspects of her/his client's case during direct examination.

Cross-Examination of Witnesses

Each direct examination is followed by a cross examination. During cross examination the attorney for the opposing party asks questions of the witness. Cross examination allows the opposing attorney an opportunity to secure admissions from the opposing witness that will tend to prove his/her client's side of the case. The attorney asks questions of the opponent's witnesses in an attempt to discredit those witnesses and negate the opponent's case.

Witnesses may be cross-examined regarding both those things to which they testified during direct examination and the other information contained within their witness statement included with the case materials. Their in court statements and their affidavit together

comprise the "scope" of their testimony. During cross-examination, the attorney should ask questions which will explain, modify or discredit what a witness said during direct exam. The attorney should examine the witness's statement prior to trial to decide what evidence is favorable to his/her case and attempt to address that evidence during cross examination.

During cross-examination, attorneys should ask narrow questions that lead the witness to the answer. "Yes" or "no" questions are very effective during cross examination. Attorneys should not ask questions that give the witnesses the opportunity to explain their sides of the story, as it may be damaging to the client's case. Leading questions (those which suggest the answer) are appropriate during cross-examination, but not during direct examination.

It is especially important to maintain courtroom etiquette when conducting cross-examination. Be fair and courteous, and do not harass the witness by speaking harshly or deliberately asking a question over and over. Keep in mind that it may be helpful to your client's case when a witness does not provide an answer to a question.

The attorneys for the defense will conduct cross-examination of each of the plaintiff/prosecution witnesses immediately after each direct examination has been finished. The attorney's for the plaintiff/prosecution will conduct cross-examination of each of the defense witnesses after each of the defense attorneys has completed his/her direct examination.

Re-Direct and Re-Cross-Examination

Re-direct examination can be conducted after cross examination. Attorneys are allowed to conduct re-direct examination of their own witnesses in order to provide further explanation of any answer given by the witnesses during cross-examination. It is extremely important that the attorney who conducts the direct examination of the witness pay close attention during cross-examination of that witness in order to decide if re-direct examination is necessary.

Re-direct examination is necessary if the cross-examination hurt the witness's testimony by forcing the witness to acknowledge facts which appear more favorable to the opposing team. It may be necessary if the opposing attorney prevented the witness from fully explaining the response to a cross-examination question. Re-direct examination should not be used simply to repeat the original direct examination. Re-direct examination must be in response to something that occurred during cross-examination: it must be within the scope of the cross-examination. As with direct examination, the attorney should not ask leading questions of the witness. Direct and simple open-ended questions are the best.

Re-cross-examination can be used by opposing counsel only after an attorney has conducted a re-direct examination of his/her own witness. Like re-direct, it provides an opportunity to further explain the witness's response to a question asked by the other side. It must be in response to something that occurred during re-direct examination: it must be within the scope of the re-direct examination.

Closing Arguments

In closing arguments, the attorney should summarize the highlights of the witness' testimony and the documents as they support his/her client's case and should use those facts to undermine the opponent's case. During the closing argument, the attorney should try to establish a persuasive link between the facts of the case and the law. Attorneys are not allowed to discuss evidence that has not been admitted at trial during the closing argument;

therefore, it is important that all of the attorneys on a team cooperate to ensure that all of the evidence important to the client's case has been brought out during examinations.

The closing argument, like the opening statement, is not evidence. The closing argument is different from the opening statement, however, because the attorney argues the client's side of the case. Essentially, this means that the attorney is allowed to explain to the Judges why his/her client should win. The closing statement should be an organized, well reasoned presentation which emphasizes the strengths of the client's case and addresses the flaws of the opponent's case.

In preparation for a mock trial, the attorney who will present the closing argument should plan the argument well in advance; this planned argument should be based upon the facts she/he expects will be brought out at trial. However, the attorney presenting the closing argument must be extremely flexible and must listen carefully; she/he should take notes throughout the entire trial in order to refer only to evidence which has actually been admitted into trial.

An attorney must present the closing argument in a style which is comfortable to her/him. Some attorneys prefer a loud, strong style while others prefer a calm, persuasive presentation. It is important for the attorney to settle on a style that is comfortable and appropriate to the client's case. The attorney should not read from a written text of the argument, though an outline may be helpful.

The attorney should begin the closing argument with **"May it please the Court?"** Each closing argument should be concluded by confidently requesting that the jury grant the decision her/his client seeks.

The plaintiff/prosecution will be the first to present the closing arguments, the defendant's attorney will then immediately present his/her closing argument.

Each closing argument should acknowledge the **burden of proof**.

The burden of proof refers to the quality of evidence that a party must produce to convince the Court of the truth of the claim they are making at trial. The plaintiff/prosecution has the burden to produce the evidence to prove to the Court the matter on which they are asking the Court to rule. In a criminal case, the burden of proof is always **beyond a reasonable doubt**. In other words, the prosecution has the burden to provide evidence to show that the defendant is guilty of the crime of which he/she is accused beyond any doubt that is reasonable. This does not mean that no doubt can exist in the minds of the Judges in order for the Judge to issue a guilty verdict; it only means that the doubt must be beyond reason.

In a civil case, the burden of proof is by a preponderance of the evidence. Proof by a preponderance of the evidence means that if one were to weigh the quality of all the plaintiff's evidence against the quality of all the defendant's evidence, one side would outweigh the other. The Judges will decide in favor of the party that provides the greater weight of the evidence. This burden is not as great as the burden in a criminal case.

The reason for the difference of the burden of proof between civil and criminal cases results from the difference in what is at risk. In a criminal case, the defendant runs the risk of losing his/her liberty, which is an inalienable right guaranteed by our Constitution. In order for the Court to deprive a person of that liberty, the Court must be convinced beyond a reasonable doubt that the defendant is guilty.