

# MOCK TRIAL PART V

## AN OPEN AND SHUT CASE, THAT IS -- HOW TO OPEN AND HOW TO SHUT

by M. Donna Ross

The start and stop of it is that in Mock Trial the opening sets out the map for the trip to the beach that is the trial. The closing lets everyone know if you deserve to bask in the sun's golden rays or if you are about to get burned.

The opening corresponds closely to the introduction in the first affirmative speech in debate, and the closing corresponds nicely to what the last rebuttal should do in the ideal debate.

These two times are the ONLY two times the students can actually **make speeches**. In these two and these two alone students can interpret the facts and try to make sense of things -- maybe even persuade the listeners. Conclude that these are the 10 most precious minutes your side has -- 5 to open and 5 to close. Don't waste a second. Here are the most common time wasters in openings.

1. *Speed*: Your evaluators are not used to listening at debate speed. Even if they know how to, they won't do it. So, practice self-control. Go at a rate that anyone can follow. Use pauses and emphasis. Think "real world". (Estimate the opening at 550 words, tops.)

2. *Distractions*: Your evaluators are not used to listening to attorneys speak from written scripts. They find such notes extremely obnoxious and amateurish. Thus, if you cannot memorize your opening with perfection, write four or five key words on a piece of paper, then extemporize each section. Lay the paper down and look at it only when moving from section to section. **DO NOT JUST READ A PAPER EVEN IF YOU'RE A GOOD READER.** Have eye contact and gestures. Be alive.

3. *Being argumentative*: This is tricky since you really want to be argumentative (read that as persuasive) but you're not allowed to do much in that department because the evaluators will try to disregard it and will even take off points for overdoing it. Think of the trial this way. The people who will decide matters are brought together to hear about the case for the first time **IN YOUR OPENING**. Your job is to lead them to understand what happened,

the legal problem posed by what happened, and exactly what your side wants from them. You can see that covering all this is a real challenge for just five minutes. (P. S. Don't delude yourself that your evaluators have read the case even if they had it well ahead of time.)

4. *Dragging in gunk*. Many cases contain many pieces of information that are just plain worthless. If you can't tell killer from filler, you look simple. Focus.

So, those are things to avoid -- what are you supposed to do? The first thing is **KISS** it. (Keep it simple, stupid.) You must find a way to make the case -- no matter how complicated -- seem easy to understand. Boil the whole mess down to a single sentence or even a phrase that your side can hang all the other facts and testimony on. Think Perry Mason title -- this is the case of the \_\_\_\_\_. Fill that in to get a handle on simplicity. Here are a few samples: "This is the case of the landlord who couldn't stand children." "This is the case of the boy who thought he could model his way to other people's money." Remember though, never to call your story a **STORY**. That sounds like fiction. Call it a "series of events" which become "an account".

**Gerry Spence, the flamboyant Wyoming lawyer had this to say in the April 1986 American Bar Association Journal:**

**"What is a complex case?"**

**"I tried one in Chicago a couple of years ago with hundreds of boxes of documents that filled a room as large as a cow barn with enough paper to feed all the goats in Egypt. But it was not a complex case. . . I never have tried a complex case. . . all cases are reducible to the simplest of stories."**

Here are some common themes that come up time after time.

Prosecution --

1. **MOM** -- The defendant had means, opportunity and motive.

2. The defendant was the only one who could have done it.

3. The preponderance of evidence points to the accused.

Defense --

1. Victim of circumstance

2. Set up by others

3. The real culprit could have been anybody

4. No **credible** evidence

OK. So, now we have a theme. Let's start the speech. If you have not introduced your team, do that and have each one stand. Ideally, you will be able to do that before timing begins.

Now, Tease them -- that is -- T's 'em. As you talk through the 5 parts of the opening tick off these t's.

Theme

Timeline

Testimony

Target

Tie up

Tease the listeners, but please them first by showing that you have good courtroom manners. Use these words to make a nice impression, "May it please the Court." This is the polite and traditional way to ask the judge if you may begin. After making eye contact with the judge, you may start unless she indicates that you should wait.

Start the opening by painting a word-picture to introduce your **theme**. Trace the events leading up to the crime or issue to be decided. Use future phrasing such as, "The evidence will prove". (Some think the word "prove" is argumentative - so you might use "show".) Use forceful action verbs and short words in short sentences while trying to tell only straightforward facts. (But, don't pass up any opportunities to color things your way. For example, on defense, just a mention that the opposing witness is the defendant's *former* boss will register an emotion with most listeners.) Get rid of most modifiers and all extra words and sounds. Economize.

T's 'em. After establishing **theme** and **tracing the timeline**, introduce your witnesses and forecast the highlights of their

**testimony.** End by **targeting** exactly what you want the jury to do, and **tie** everything up with a last mention of your theme.

DON'T LET YOUR OPENING WRITE CHECKS THAT YOUR CLOSING CAN'T CASH. You can't afford to fail in or bail out on anything you promise to prove.

So, that is how to open. How do we close? Easy -- tease them some more. The main difference is that we've had about 2 hours to hear all about the case. By the time closing rolls around, many items brought up in the opening won't matter any more. Others will be just too small to worry much about. The case will pivot on only a few issues. There are three t's to the closing.

1. Start with the **theme** and show how you've proved everything you promised in the opening.

2. **Triple trump** -- isolate the 3 key points the other side might be winning. Answer each as efficiently as possible. Be sure these are the real issues upon which the case turns.

3. Now, **tell the tale** again as your side has proved true. This time include the verdict your side expects.

Special tips for Prosecution and Defense:

*Prosecution:* The prosecution speaks first and has the option of reserving time for rebuttal. Use the first three minutes to do parts one and two. (A good strategy is to make several challenges for the defense to answer.) After the defense closing, use your last 2 minutes to answer one really compelling point the defense brought up and to sell the overall case in the finale.

*Defense:* Start by answering all the challenges and points against you as efficiently as may be. Then, focus on your theme. Remember, it has to leave an impression that will last through anything else the prosecution has to say. Do all you can to stress the importance of one point that you know the prosecution can't prove.

Break out the Hawaiian Tropic -- opening and closing are just a day at the beach. Your mock trial future's so bright you've got to wear shades.

Next time "Cross Examination."

*(M. Donna Ross, 1995 District Chair of the year, is co-host of the 1998 Gateway Nationals.)*