

Your 10-Step Plan for Your Mock Trial Pretrial Argument

Guide your team through these steps to help them confidently argue their pretrial motion. After going through this process from start to finish, they'll be ready to go up against even the best lawyers out there!

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Step 1: Identify the exact issue

For example, is the defendant trying to keep the prosecution from using a particular piece of evidence at trial? If so, what is that evidence?

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Step 2: Write down the argument, plus the two (or more) supporting sub-arguments

- What are you arguing? For example, are you trying to keep evidence in, or are you trying to exclude it from trial?
- What's the basis for your argument?
- What are the 2-3 sub-arguments that support your argument?
- Do you need to win on all of their sub-arguments, or just one/some?

Hint: Look at the case packet to see if the arguments are spelled out for you.

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Step 3: Analyze case law

- Write a 2-3 sentence summary of each case, including its facts and the court's holding.
- For each case, determine which sub-argument(s) it relates to.
- Draw analogies between your case and the cases with a holding that supports your argument.
- Distinguish the cases with holdings you don't like.

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Step 4: Draft argument using case law

First, prepare the argument for the first sub-argument.

- Identify the cases that deal with the first sub-argument's issue. Focus on just these cases.
- Find the landmark case dealing with this issue, and write an explanation of this case.
- Look at how the other cases interpret, apply, or discuss the landmark case. Decide which of these cases you want your judge to follow and explain how your case is similar. Write down those explanations.
- Consider preempting your opponent's arguments by distinguishing cases they're likely to rely on.

Repeat this process for all other sub-arguments.

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Step 5: Add discussion of Constitution and/or statutes

Introduce the Constitution or statute by telling the judge what it says. Relate it to the argument you're making.

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Step 6: Read and record draft arguments

- Using a hard copy of your draft argument, read it out loud and make a recording as you read. Pay attention to spots that are awkward to read out loud. Underline or highlight those awkward spots.
- Listen to the recording. Note any parts that are hard for a listener to follow along with.
- Update your draft argument by rewriting the problem spots you discovered.

Repeat this process a few more (no more than 3) times. Don't get dependent on the written argument or use it as a script.



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Step 7: Practice using an outline, not a complete written argument

- Deliver the first sub-argument using just an outline:
 - Make a list of the laws (Constitution, statutes, cases) you're discussing.
 - Verbally explain your argument. Referring to your list of laws, discuss each law and how it supports your first sub-argument.
 - Pretend you're speaking to someone. Don't get hung up on reciting what you wrote word for word.
 - Keep practicing until you can argue the first sub-argument without notes.
- Repeat this process with the second (and any other) sub-arguments.
- Then, practice delivering all sub-arguments one after the other.

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Step 8: Add introduction, conclusions, and transitions

- Your argument's introduction tells your judge exactly what you want and why you should get it. And the conclusion summarizes your arguments and asks the judge to grant or deny the motion.
- Prepare a one-sentence introduction and one-sentence conclusion for each sub-argument. This helps your argument flow better and will make it easier for your audience to follow it.

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Step 9: Prepare for judge's questions

- Brainstorm questions the judge might ask. Write each question on the front side of an index card. Answer the question verbally, and on the back side of the card, write notes or phrases to remind you of your answer.
- Start quizzing yourself with the flashcards. As much as you can, practice saying your responses out loud.
- Every time you practice delivering their argument, interrupt yourself randomly to draw a random flashcard. Practice answering the question and resuming your argument.



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Step 10: Plan for rebuttal

- Make a list of some of the best arguments opposing counsel might make. For each of these arguments, prepare a response.
- A rebuttal should focus on just one or two of the arguments made by opposing counsel.
- When you're in competition or scrimmage, listen to opposing counsel's arguments and the judge's questions. Make a list. Circle the best argument or two on the list.
- When delivering your rebuttal, give response to first circled argument, then (if applicable) give response to second circled argument.

Practice, practice, practice!

Practice your argument literally every day, everywhere. Update as necessary, but don't get caught up tweaking every single detail.

You've got this! Now, have fun and do good.

