

Effective Opening Statements

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Your first opportunity to address the jurors is often your best opportunity to get them on your side.

THE OPENING STATEMENT is one of the most important components of any trial. It is your first opportunity to present the case to the jury, and to shape the jury's perspective of the entire trial. The opening statement also is your first opportunity to present yourself to the jury,

and to establish the kind of credibility that will persuade jurors to trust the testimony, documents, and other evidence that you eventually will submit for their consideration. A superb opening can set you on a path toward winning the case, but a disastrous opening may be diffi-

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cult to overcome. Thus, the content and the presentation of your opening statement must be developed with care.

HOW TO THINK ABOUT YOUR OPENING

- Your opening statement should serve as a preview of the anticipated testimony, exhibits, and other evidence. Think of the opening statement as a forecast, designed to provide a general understanding and provoke further interest, like the kind of preview you might see on the inside jacket of a novel. The jacket text that introduces a novel typically does not confuse the prospective reader with an overly detailed chronology of events; it does not bore the reader with a recitation of the characters' names in the order they will appear in the book; and it does not command the reader to feel a certain way about the story contained in its pages. Instead, the jacket text captures the essence of the book in a way that gives the reader a general sense of the book's theme, entices the reader to proceed further, and leaves the reader to make his own judgment regarding the final meaning of the story. That is the way jurors should be left at the end of the opening statement—with an understanding of the case's theme, an eagerness to learn more, and an appreciation for the ultimate judgment they will be asked to make.

Theme Of The Case

In the opening statement, a lawyer should provide the jury with a theme that will serve as a framework for every piece of evidence the jury hears during the case. The theme should communicate how the evidence will fit together, and why your client's position in the case is the right one. For instance, a lawyer defending a discrimination case may have a theme of "unheeded warnings" to communicate that the plaintiff had a chance to improve his or her performance before termination, but failed to take advantage of the opportunity. Plaintiff's counsel

in the same case may have a theme of "repeated disciplinary actions, all motivated by race." Obviously, expressing a theme is difficult to do without bordering on argument—which is improper in the opening statement—but courts generally allow a lawyer to state a theme at the beginning and end of the opening statement, as long as the rest of the opening is not argumentative.

Summary Sentence

A good way to develop a theme is to try to describe your case in one summary sentence, without legalese, as you might do if you were explaining your case to a non-lawyer family member. Get to the heart of the issue—think about the parties' motivations, and the reasons events unfolded the way they did. Answer the question: What really happened here?

Perhaps the case centers on someone's personality flaw. In the employment context, a plaintiff's lawyer may focus on a sexual harasser who "can't take no for an answer"; a defense lawyer's theme may focus on an employee's "refusal to accept her own failure." Perhaps the theme of the case is a situation, such as "a company where minorities are routinely kept in lower-level jobs" or "a supervisor forced to make difficult choices when the company hit hard times." Whatever the theme of your case, make sure it is a concept that resonates with people from all walks of life, and one that is borne out by the evidence you will be presenting during the trial.

The First Thing You Say

Often, the easiest way to present a coherent theme is to state it in a straightforward manner as your introductory sentence: "Ladies and gentlemen, this case is about unfair competition by the defendant." In other situations, the theme may come out more subtly, as you tell a story that slowly unfolds. Regardless of how the