

# 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.*

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**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

theme is presented, make sure it is absolutely clear by the end. Before all of the witnesses and documents are presented to the jury, make sure the jury knows exactly what they should be listening for—from your point of view. (While you can't argue your position, you can arrange the facts in such a way that only one conclusion is inevitable.)

### **Don't Waste Time Getting To The Theme**

Many lawyers waste the precious first few minutes of their first impression by shuffling through papers, explaining the purpose of the opening statement, thanking the jury for their time and service to the community, or going through lengthy introductions of co-counsel and client representatives. The first impression should be more compelling. Be ready to begin your opening as soon as the moment arrives. Stand up quickly and start speaking with confidence, demonstrating immediately that you are prepared and sure of what you're saying. Tell the jury something interesting in your first few sentences, and then return to the more mundane tasks of introductions and thanks. For example:

"The defendant had a contract with Smith Corporation. He promised that, in exchange for three years of employment at a substantial salary, he would not take Smith's customers and employees when his employment ended. The defendant has broken this promise. When his employment with Smith Corporation ended last December, the defendant stole five clients and three employees, and caused Smith Corporation to lose \$10 million in business. That is why we are here today. Ladies and gentlemen, my name is John Jackson. Together with my co-counsel Sue Jones, I represent Smith Corporation. Sitting with us at the plaintiff's table is Robert Smith, the President of Smith Corporation. In this trial, we ask you to hold the defendant responsible for his wrongful acts."

### **Set The Scene**

After introducing your theme, you must set the scene of the case, building upon the framework you have presented. Narrate the scene and introduce people and documents as they naturally fit into the theme of the case—do not present a witness-by-witness catalogue of testimony. For instance, tell the jury how they will learn about the plaintiff's poor job performance. Tell them they will hear from the plaintiff's supervisor, who will explain that the plaintiff was warned on numerous occasions that her attention to detail needed improvement. Explain that the documentary evidence will support the supervisor's testimony, as the jury will see four years of steadily worsening performance reviews. Tell them they will hear from a human resources manager who will put those reviews in context, and compare the reviews to others received by employees company-wide. Present the people and evidence in the context of a story, and the jury will look forward to hearing the story unfold as the trial progresses. This way, the facts will not seem confusing and unrelated as they are presented during the direct and cross-examinations. Instead, the jury will remember your narration and recognize each character of your story as he or she appears in the trial.

### **No Argument In The Opening Statement**

Jurors are not supposed to form an opinion about the case until they have heard all of the evidence. Accordingly, as stated above, arguments are improper during opening statements, because arguments may not precede the introduction of evidence. (Note the meaningful difference between the terms "opening statement" and "closing argument.")

### **The Problem**

How can a lawyer introduce the case without arguing? Generally, if the opening state-