

I. Introduction

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

As a general rule, counsel may not argue during opening. Rather, the 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.

II. Elements of the Opening Statement

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 their 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.

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

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Karin Nielsen-Saines



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