

October 30, 2015

PRACTICE POINTS

Five Tips for Engaging Opening Statements

The opening statement provides the first impression of the case and shapes the impressions of the jury.

By Farrah Champagne

Share:



The opening statement provides the first impression of the case and shapes the impressions of the jury. An opening statement forecasts to the jury the evidence they will see and hear during the trial—it allows the jury to know what to expect and to be able to understand the evidence when it is presented. The opening statement should not contain argument; rather, it should be a factual statement that lasts from 10 to 30 minutes.

Start Your Membership Today!

[Join the ABA's Section of Litigation](#) and gain value and insight in your career, no matter your experience level. Signing up is easy and grants you member-only access to the latest news, information, and thinking on litigation strategy.

textbetter

LANDLINE TEXTING BUILT FOR LAW FIRMS

GET STARTED 14-DAY FREE TRIAL
no credit cards required

212-897-9793

Hi Melissa, your appointment is confirmed for 9/15/2020 at 10:00 AM.

212-897-9793

Hi Jacob, your appointment is confirmed for 9/11/2020 at 11:00 AM.

Present the Theme of the Case

Lawyers should have a one-sentence theme for their cases. Emotionally based themes often serve as anchors, creating impressions for the jury that linger until the time the verdict is decided. Themes keep the jury's attention and help them organize information. Relying on a theme and hearing a story that incorporates the theme helps make the information enjoyable and easier to comprehend. Lawyers should engage their audience during trial, and effective themes combined with engaging stories can fight juror boredom. Lawyers have a better chance later of persuading the jury if the jury likes their opening statements. For example, a defense attorney may focus on a self-defense based theme: "This case involves a traumatic experience where a young lady lost her life and a young man is struggling to keep his."

Present your theme immediately and catch the jury's attention. For example:

This is a case about a man who has been harassing, stalking, and threatening my client, Kelly Sanders, after she ended a romantic relationship with him. Ms. Sanders lived with the Respondent for about three years, and they share a 2-year-old child together. Ms. Sanders came into the relationship with another child who is now 6 years old. They separated a few weeks ago because the Respondent began drinking much more than usual, threatening her life, insulting her, and encouraging the kids to join him. That is why we are here today, ladies and gentlemen of the jury. My name is Jack Jill, and I represent Ms. Sanders. In this trial, we ask you to grant her request for a Civil Protection Order.

Tell a Story

Themes and storytelling are what make opening statements engaging and effective. The story of the case tells the jury what happened chronologically either from the viewpoint of the plaintiff or defendant. When giving an opening statement, the lawyer should place her side in the best possible light and tell a story that will make the jury want to decide in her favor. Jurors often base their decisions about the case on the impression received during the opening statement.

Lawyers can connect with the jury by telling an enjoyable story. These stories are persuasive and become embedded in a juror's mind when they make sense, are stated in plain language, and have a beginning, middle, and an end. For example, tell the jury how they will learn about the plaintiff's lack of knowledge. Tell them about how the plaintiff was not at the restaurant when the incident occurred. Explain that the evidence will support the employee's testimony and the jury will see

that the employee was acting professionally as stated in the employment contract. Tell them they will hear from the other employees who were at the restaurant on the night in question and they will put the actions in context. Present the people and the evidence in story form and the jury will be sitting on the edge of their seats in eager anticipation.

In addition, metaphors and sensory language help engage jurors. Vivid words like *rowdy* or *steamy* and words that describe activity, such as *dancing* or *singing*, activate the senses and make the listeners feel as though they were actually participating in the experience. A jury will become more engaged if they are induced by language to become a participant in the story.

Assemble the Facts Persuasively

Present the facts in the order that will advance your conclusion. If you want to convey that the person fell after the milk had spilled, present the events by describing the puddle of milk on the floor, and follow immediately with the slip and fall. Communicate the connection or lack thereof between the spill and the fall, with the timing and sequence of your presentation. Let the facts speak for themselves.

Bad Facts

When should you let the bad facts out? Do you talk about them in the opening if they are likely to come out at trial? There are several options.

You can address bad facts in your opening to “cut the sting” before they are raised by opposing counsel. You can present all of the issues in your opening for credibility purposes. If the jury believes that you are willing to expose the problems with your case, you may seem more credible.

The other way to address the harmful information is to wait until the information comes out. If a lawyer exposes the harmful information, it may taint the case and draw greater attention to the information. The trial will provide the lawyer with the opportunity to address any charges that the other side will make.

A lawyer must essentially make a determination on a case-by-case basis as to whether to introduce the bad facts. If plaintiff’s counsel introduces the negative information, it may not be necessary for defense counsel to bring it up again in her opening statement.

Make a Connection with the Jury—Do Not Read Your Opening

Do not read your opening statement. Instead, practice several times and speak directly to the jury. Making eye contact with individual jurors shows that the lawyer believes in her case and is familiar with the events at issue. An outline of the case is more permissible if referred to sparingly, but leave the script at home. Also, be friendly. Do not be afraid to smile.

Conclusion

Conclude your opening by telling the jury what you would like them to do at the end of the case: “I just ask that you please keep an open mind about this case until you hear all of the evidence. I also ask that you return a verdict of not guilty for the defendant, Officer Dally. Thank you for your attention.”

Conclude confidently with a clear message and be sure that the jury understands your position about the facts of the case and their role for the remainder of the trial.

Opening Statement Checklist

- State your theme immediately in one sentence.
- Tell the story of the case without argument.
- Persuasively order your facts in a sequence that supports your theme.
- Decide whether to address the bad facts in the opening or not.
- Do not read your opening statement. Practice, practice, practice.
- Bring an outline, if necessary.
- Ask the jury to rule in your favor.

Farrah Champagne is an attorney with the Women's Law Center of Maryland in Towson, Maryland.

Copyright © 2015, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).

ABA American Bar Association |

[/content/aba-cms-dotorg/en/groups/litigation/committees/trial-practice/practice/2015/5-tips-for-engaging-opening-statements](#)