

Opening Statement Basics

1. Develop your theory of the case before writing your opening statement. Your theory of the case consists of a simple, logical story explaining your version of “what really happened.” It must be consistent with the evidence you have, and with the jury’s common-sense notions about how things occur.
2. Start and end with a phrase that summarizes your theme and makes a strong first impression. Reference that theme at the end of your opening statement as well, to leave a lasting picture in the jurors’ minds.
 - “This is a case about taking chances.”
 - “Revenge. That’s what this case is about.”
 - “The Acme Corporation refuses to do business the American way. That’s why we’re here today.”
3. Introduce yourself and your case.
 - “Ladies and gentlemen of the jury, my name is Jo Smith and I represent the plaintiff, Linda Hue.”
4. Introduce the essential witnesses the jury will hear from during the trial and preview their testimony.
 - “During the course of this trial, you will hear from several witnesses. Officer Jones, a 25-year police department veteran, will describe the scene of the crash when she arrived five minutes after the accident. Mary Smith, a homemaker and mother of three, will tell you what she heard as she walked her children to school just one block from the crash site.”
 - “Listen when Dr. Johnson tells you what happens to a rib cage when it is struck by a two-ton car, and you will know why Jo Jones can no longer work or support her family.”
5. Present facts in an organized, simple, chronological way. Discuss enough facts that the jury can get an accurate overview of your case, while avoiding cramming so many facts into your opening statement that the jury gets confused.
 - On May 1 at 6 a.m., Jim was driving his car north on 1st Avenue, on his way to work. A few minutes later, as he turned right onto Pine, a green VW van slammed into the passenger side of Jim’s car. As he lay in the car bleeding immediately after the crash, Jim realized he couldn’t feel his legs. Ten minutes later, the ambulance arrived and took Jim to Harborview Medical Center....”
6. Demonstrate your enthusiasm, confidence and integrity through your tone of voice, demeanor and delivery.
7. Be a storyteller, describing actions vividly, and using emotions and drama where appropriate.
 - “Folks, let’s walk through the defendant’s plant and watch as they manufactured the brake system that failed to work properly. The process starts at the front of the assembly line...”

- “This case is the story of Mary Martin, who was a lifetime resident of this city. She had completed college and had just started her job as a graphic designer with Smith Arts. She had her own apartment for the first time, and she felt very excited about her new life. It was around 2 a.m. on December 1 when the nightmare started. She was sleeping, alone in her apartment. Suddenly she was startled by a noise. At first she thought it was outside. But when she heard it the second time, she knew what it was: the creak of the wooden floor in her living room. Mary knew then that a stranger was inside her house.”

8. Describe your client to the jury in a way that creates empathy for his/her situation.

- “Ladies and gentlemen, I’d like you to meet John Smith. John, please stand up. John is an accountant. He worked steadily for Acme Accounting for 15 years, supporting himself and his four children. He has lived in this community his entire life. Before April 15, 1992, John was a healthy man. He enjoyed hiking and skiing with his family. But on April 15, everything changed.”

9. Avoid arguing or stating personal opinions.

- “He was traveling 50 miles per hour in a 30 miles per hour zone.”
- NOT – “He was racing his car, buzzing past everything in his path.”
- “He drove off the road on a clear, dry day on a straight section of the road.”
- NOT – “He was a loose cannon, charging down the road completely out of control.”
- NOT – “I know what it’s like to be the victim of a crime. I was myself was robbed when I was a college student.”

10. Anticipate and explain potential weaknesses in your case. (Trying to hide the weaknesses will damage your credibility with the jury.)

- “On the Sunday night of the accident, John went to work as usual. At 4 p.m., when his shift got out, he and several of his friends from work went to Frank’s Tavern, as they often did, and he had a couple of beers. After about one hour, John left to drive home to have dinner with his family.”

11. At the end of your opening statement, ask the jury to return a verdict for your client.

12. Try to avoid using any notes when you deliver your opening statement. NEVER read an opening statement. At most, take one crib sheet listing the major points you want to cover. The more eye contact you make with the jurors, the more compelling and persuasive your opening statement will be.