

OPENING AND CLOSING STATEMENTS

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OPENING STATEMENTS

Apart from jury selection, this is the lawyers' first opportunity to speak directly to the jurors. This is a critical part of the trial and should be 1) concise, 2) planned, 3) energetic and 4) organized. Lawyers are given wide latitude in presenting their case in opening statement, especially in civil cases. The initial impression you make during your opening statement will sit with the jury throughout the trial.

DO:

1. Stand in front of the jury, in the middle, a few feet back.
2. Make eye contact with each juror. Don't stare one or two jurors down.
3. Be honest.
4. Be yourself.
5. Be conversational - don't use flowery language or "legalese" – break it down for them as if you were explaining your case to a non-lawyer parent or sibling.
6. Get the bad stuff out there, without emphasis.
7. Use photos or other blow-ups. Juries love visuals. Use the same ones in opening and closing. You can show a jury anything you reasonably expect will be admitted into evidence.
8. Make it short. An average civil case opening should be no longer than 15-30 minutes. A criminal case is probably more complicated and might take longer but it is still better to save the longer talk for closing. Jurors have a short attention span.
9. Have 4-6 topics (*for example, in a car wreck case you might have 1) facts of accident, 2) claims and defenses, 3) causation argument, 4) importance of credibility, and 5) what verdict you want*)
10. Call the other party "the plaintiff" or "the defendant."
11. Call the other attorney Mr. or Ms., don't call them by their first name.
12. Be consistent with wording (crash/collision vs. accident/incident) throughout opening and entire case.
13. Tell your story chronologically.

14. Tell the jury they are the judges of the facts and the credibility of the witnesses, they can accept or reject testimony.
15. As the defense lawyer in a civil case, emphasize that all elements must be proven to their satisfaction.
16. As the plaintiff lawyer in a civil case, emphasize that the burden is “more probable than not.”
17. Tell the jury exactly what you want them to do for you – tell them what verdict you want.
18. Take good notes of the other lawyer’s open – often she/he will say something you can use against them later.

DO NOT:

1. Stand behind a podium or a desk.
2. Get in the jury’s personal space.
3. Thank the jurors over and over again – this just sounds condescending when used too much and it wastes time.
4. Say “The evidence will show” to start every sentence – this is not required.
5. Read from a script. Your opening should be memorized. If it is concise, this should not be difficult.
6. Misrepresent anything. They will remember it and punish your client for it.
7. Tell the jury you are going to prove something you might not be able to prove.
8. Tell the jury you are calling a witness you might not call.
9. Tell the jury what you say is not evidence. The Judge will instruct them about that – you don’t need to reinforce it.
10. Attack the other side.
11. Call your client, “my client.” If they are older, call them Mr. or Mrs. If they are younger, call them by their first name.
12. Argue.
13. State personal opinions (“I believe,” “I think,” “I know”).
14. Put your hands in your pockets or lean against the table – this is too informal

CLOSING ARGUMENTS

This is probably the most fun part of the trial, apart from cross-examination. As with openings, lawyers have broad discretion. Now is the time to “argue” your case and show some emotion.

DO:

1. Be energetic and passionate. No need to yell, though.
2. Get right into your argument – don’t waste those precious first few minutes thanking the jurors, telling them what an honor they have, how much attention they have paid, how important their role it, etc. For example, the first words out of your mouth are: “The defendant killed for one reason – revenge,” “Taking responsibility for your own actions. Now you know why I said at the beginning that this case is about taking responsibility.”
3. Use visual aids. Use the ones you used in opening to pull everything together. Use blow-ups of jury charges that are favorable to you.
4. Use the language of the jury charges. When you track the language of the charge, the jury then hears the Judge tell them exactly what you told them. This adds to your credibility.
5. Ensure that the plaintiff’s attorney gives a dollar figure in her/his first opening. She/he cannot save that for the second closing because it does not give the defense attorney a chance to respond.
6. Say something like, “I suggest to you” when you want the jury to accept your opinion as fact.
7. Object if the other lawyer talks about something that is not in evidence, comments on your failure to call a witness, or otherwise makes an improper argument. Make sure to get a ruling and if it is severe enough, move for a mistrial. You must object to any improper comment to preserve the argument for appeal. Most court reporters in Madison County do not transcribe closings. Be sure to ask the Judge to hear you outside the hearing of the jury and state you want your objection and her/his ruling on the record. State the specific grounds for your objection so that you do not waive any error that may have occurred. If the objection is sustained, you can move for mistrial. A motion for mistrial must be made before the jury is instructed. If the case is going well for you, don’t move for mistrial.
8. Tell the jury that if they have a question, they should always go to the law for guidance.
9. Answer some of the juror’s unanswered questions by posing the question and suggesting the answer. Or emphasize that the other side cannot answer the question.

DO NOT:

1. Tell a hokey story. These usually come off as rehearsed or made-up.
2. Recite every fact that came out. Hit the high points.
3. Go over 30 minutes.

4. Read from a script.
5. Directly state your opinion or personal beliefs.
6. Talk about “red herrings.” This is so overdone.
7. Attack your opponent personally. Focus on the facts and the law.
8. Confront your weaknesses. This takes the steam out of the other lawyer’s argument.
9. Take the bait if the other lawyer poses questions about unimportant things. If you address it, it gives it importance it should not have.
10. Show emotion during the other lawyer’s closing.
11. Copy another lawyer’s style. The jury will see that you are uncomfortable and mistake it for uncertainty about the strength and credibility of your case.
12. As the plaintiff, do a rebuttal just because you get the chance. It’s better to not do it than to stand up and say one or two weak sentences. Have an outline ahead of time about the points you will emphasize in rebuttal. Do not just respond to questions raised by defense counsel.