



Tactical Use of Opening Statements

Seminar Topic: This material provides an in-depth examination of the process and procedure of the fundamental presentation of an opening statement in civil litigation to gain a trial advantage.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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Timed Agenda:

Time	Description
00:00:00	Program Start
00:00:31	Introduction
00:00:36	Tactical Use of Opening Statements
00:00:53	Opening Statement
00:01:09	Parties Order of Proceeding
00:02:13	Pitfalls during open statements
00:05:29	Preparation of Opening Statement
00:14:20	Opening Statement Outline
00:15:10	Introduction
00:20:52	Parties
00:23:26	Scene
00:25:13	Instrumentality
00:29:19	Date, Time and Weather
00:31:40	Issues
00:34:25	What Happen/How It Happen
00:39:08	Liability Basis and Non-Basis
00:40:52	Anticipating and Refuting Defenses
00:43:23	Damages
00:59:13	Conclusion
01:03:11	Program End

Tactical Use of Opening Statements

Opening Statement

- ILCSS.Ct.Rule 235
- As soon as the jury is empaneled the attorney for the plaintiff shall make an opening statement. The attorney for the defendant may immediately follow with an opening statement. An opening statement may not be made at any other time, except in the discretion of the trial court.
- Parties have a right to make an opening and closing statements and the decision to make statements is not left to trial judge's discretion. *People v. DeRossett*, App.4Dist. 1992, 178 Ill.Dec.244, 237 Ill.Appl.3d 315, 604 N.E.2d 500.

Parties Order of Proceeding

- ILCSS.Ct.Rule 233
- The parties shall proceed at all stages of the trial, including the selection of prospective juries as specified in Rule 234, opening and closing statements, the offering of evidence, and the examination of witnesses, in the order in which they appear in the pleadings unless otherwise agreed by all parties or ordered by the court. In consolidated cases, third party proceedings, and all other cases not otherwise provided for, the court shall designate the order.
- Whenever the plaintiff has anything to prove in order to secure a verdict, the right to open and close belongs to him and it is not within discretion of trial court to limit or deny that right. *Washer v Tanner*, App.1968, 100 Ill.App.2d 157, 241 N.E. 2d 202.

Pitfalls during open statements

- Directed Verdict on Opening Statement. In certain jurisdictions failure to set forth a proper cause of action can lead court to enter a direct verdict. The standard for court interpretation is that the opening statement must be more than lack of definiteness, the court must determine that after resolving all doubts in plaintiff behalf there would be no cause of action that could be presented during the trial of the matter. *Cherny v Fuentes* 271 Ill App.3d 1071, 649N.E.2d 519 (1995)

- No statement should be made in counsel opening statement to the jury that counsel does not intend to prove or cannot prove at trial. Hilgenberg v Kazan 305 Ill.App.3d 197, 711 N.e.2d 1160 (1999)
- Admission of counsel within their authority, as their client's agent can make binding admission during opening statement that can be used by an adverse party. As such, transcript of opening statements should be ordered as part of your daily copy.

Preparation of Opening Statement

- Know your file.
- Review all jury instruction that will apply.
- What statutes and cases will be used in the matter.
- Known your local jurisdiction and local rules.
- If from out of town view the Court room and get feel for the people in the venue.
- Prepare your closing statement prior to commence of opening statement.
- Every case has a theme and no more than three or four critical issues that should be made clear to the jury from the opening statement through your witnesses through the closing argument.
- Understand what visual aids can be used during opening statements as photographs, models and other demonstrative evidence.

Preparation of Opening Statement

- Know your opening statement so that you are not reading from notes or written paper throughout the presentation. Lawyers position and delivery are important.
- Your statement should be clear, forceful and positive and your selection of words should be strong and basic vocabulary.
- You should not overstate your case and not include an all extensive production of what the evidence will show. You need to state facts you expect to produce that will persuade the jury in your favor.
- Unless your believe is critical for case, one should would not volunteer weakness in your opening statement.
- Required material. Need your trial note book, any trial handbooks either personally prepared or through publishers, know your rules of evidence and local rules and Supreme Court Rules that may apply.

Opening Statement Outline

- Introduction
- Parties
- Scene
- Instrumentalities
- Date, time and weather
- Issues of matter
- What happen/How it happen
- Liability basis or non-basis through evidence/facts
- Plaintiff/Anticipate and Refute Defenses
- Damages/Civil cases
- Conclusion

Introduction

- Your theme of the case.
- Explain the purpose of the opening statement.
- How trial is conducted.
- Demonstrate your abilities.
- May it please the Court, counsel, members of the jury my named is Tom Dunn. I represent the Defendant Joe Doe in this matter.
- What we are telling you is now is not considered evidence.
- There are two sides to every story.
- The purpose of the opening statement is to give you an overview of the case. Then give the jury your theme of the matter.

Parties

- Introduction of the essential characters, both parties and critical witnesses to be used in the matter.
- A Plaintiff attorney should build up his client and make him or her a person the jury can relate to and sympathize with in the case.
- Juries expect your client to be dressed appropriately and conduct themselves appropriately and will observe there attendance at trial and compare your client with actors on television.

Scene

- The scene of the occurrence is the most important part of the case and has to be described so the jury can visualize it. This is where the attorney paints the picture for the jurors.
- Effective use of Court approved exhibits and position before the jury.

Instrumentality

- Instrumentalities is an important part of a personal injury, malpractice or product liability case. They involve autos, machinery, equipment and products.
- Attorney needs to use the same picturization as used to describe the scene of the occurrence.

Date, Time and Weather

- Counsel must determine if the date and precise time of an event are important, or the weather conditions are significant. If so, you will need to describe in complete detail.

Issues

- The defense counsel should describe the picture of how the accident occurred in vivid detail. The denials must done with conviction from counsel. Need the jury to forget the plaintiffs version of the matter.
- Plaintiff normally proceeds directly to how the matter happen.

What Happen/How It Happen

- You have set the stage of the case and the jury has a mental picture for you to describe the action.
- Your description has to be a logical progression, easy to follow and must be given from the most advantageous position for your client.
- It has to be uninterrupted with no distraction in the court room.

Liability Basis and Non-Basis

- This is the plaintiff's emotional peak of their case. Need to put all the facts together to show that their client is entitled to win the matter.
- Defense counsel is not to dispute or directly challenge the plaintiff ability to prove facts but to suggest to the jury disputed events that will not be persuasive or convincing and demonstrate their own position and conclusions.

Anticipating and Refuting Defenses

- This is time for the plaintiff to make their decision if a short statement of the anticipated of the defense will be made.
- This is a tricky situation for plaintiff's counsel.

Damages

- Plaintiff should not short change their request for damages.
- Jury must understand they are seeking fair and just compensation.
- Need to describe symptoms, diagnosis, immediate treatment and any and all prognosis and out of pocket expenses and recoverable damages.
- Plaintiff will then need to make a decision if they will request a precise dollar amount.
- The defendant will present their position for any regret for the occurrence and firmly state it was not his client's fault.

Conclusion

- Both plaintiff and defendant need to conclude the opening statement by directly advising the jury that the facts will support their side of the case and ask for a verdict in their favor.