

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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Kabindra Sharma

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Table of Contents Sample Strong Opening Job Interview Statements

1. Understanding the eBook Sample Strong Opening Job Interview Statements
 - The Rise of Digital Reading Sample Strong Opening Job Interview Statements
 - Advantages of eBooks Over Traditional Books
2. Identifying Sample Strong Opening Job Interview Statements
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Sample Strong Opening Job Interview Statements
 - User-Friendly Interface
4. Exploring eBook Recommendations from Sample Strong Opening Job Interview Statements
 - Personalized Recommendations
 - Sample Strong Opening Job Interview Statements User Reviews and Ratings
 - Sample Strong Opening Job Interview Statements and Bestseller Lists
5. Accessing Sample Strong Opening Job Interview Statements Free and Paid eBooks
 - Sample Strong Opening Job Interview Statements Public Domain eBooks
 - Sample Strong Opening Job Interview Statements eBook Subscription Services
 - Sample Strong Opening Job Interview Statements Budget-Friendly Options
6. Navigating Sample Strong Opening Job Interview Statements eBook Formats

- ePub, PDF, MOBI, and More
 - Sample Strong Opening Job Interview Statements Compatibility with Devices
 - Sample Strong Opening Job Interview Statements Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Sample Strong Opening Job Interview Statements
 - Highlighting and Note-Taking Sample Strong Opening Job Interview Statements
 - Interactive Elements Sample Strong Opening Job Interview Statements
 8. Staying Engaged with Sample Strong Opening Job Interview Statements
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Sample Strong Opening Job Interview Statements
 9. Balancing eBooks and Physical Books Sample Strong Opening Job Interview Statements
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Sample Strong Opening Job Interview Statements
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Sample Strong Opening Job Interview Statements
 - Setting Reading Goals Sample Strong Opening Job Interview Statements
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Sample Strong Opening Job Interview Statements
 - Fact-Checking eBook Content of Sample Strong Opening Job Interview Statements
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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