

THE OPENING STATEMENT

A “Structure” Approach To Drafting

Professor Jules Epstein¹



TEMPLE UNIVERSITY
Beasley School of Law

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in trial advocacy courses for law
students.

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THE OPENING STATEMENT

A Structure Approach

INTRODUCTION:

There are several functions of an opening statement. The most prominent are:

- Communicating the essence of the case to a group [jurors] or individual [judge] who have no familiarity with the facts and surrounding circumstances.
- Using a story² to help that audience appreciate and thereafter contextualize the various items of proof when they are presented across the trial, as there is rarely a case that unfolds as a simple, uninterrupted, narrative.
- Linking the case to a theme, a moral message that resonates with the audience and makes them want to rule in your favor. [That thematic statement can then also be used in witness examinations to reinforce the point.]
- On occasion doing damage control, both to soften the impact of devastating proof that you know will be allowed in at trial and to ensure that you have credibility with the audience as opposed to being seen as someone who hides facts.
- Finally, establishing a “bridge” to the closing argument where the theme will be returned to and the question of *why* your assertions made in your opening are true and warrant relief.

The purpose of this guide is to teach the drafting of an opening that can achieve these goals by focusing on structure. The guide begins with a simple structure and then adds to it in subsequent versions to show how and where added components [such as damage control] can be inserted. The guide does not discuss whose voice the opening can be spoken in – the victim’s, the blameworthy defendant, a bystander. Those can be addressed after structuring the opening is mastered. The guide begins with the opening of the moving party; it then turns to a defense opening, again using the structure method.

The use of a “structure” approach with consecutive incremental adjustments has support in “scaffolding theory.”

² Occasionally the defense opening – especially in a criminal case - will not have a story in the traditional sense but instead relies on a failure of proof. This guide does not address that type of opening, which of course must be preceded by a jury *voir dire* that tests receptivity to and primes jurors for the burden of proof defense.

Scaffolding instruction allows students to use the sequence learned in academia to self-scaffold for new applications of existing knowledge and skills in practice. "Scaffolding is the idea that people integrate new information into existing frameworks of knowledge."

Schneider, Using Scaffolding Techniques For Legal Research Instruction, 2 LEGAL INFO. REV. 61, 69 (2016-2017)(citation omitted). "Scaffolding exercises in a legal environment course have two rewards: they build on a student's acquired knowledge to increase student knowledge as well as teach students how to apply the law to problem solving." May, Using Scaffolding To Improve Student Learning In Legal Environment Courses, Journal of Legal Studies Education, Volume 31, Issue 2, 233–248, 234 (Summer 2014).

A WORD OR TWO ABOUT WORD CHOICE:

There are several critical aspects of word choice in an opening. None is the subject of this drafting guide, but each must be kept in mind.

The first is that the opening is a “statement” and not an “argument.” The line between the two is sometimes elusive, but there are some general principles to keep in mind to avoid an objection. They are:

- No comments on whether and/or why a witness is unbelievable or credible.
- No comments as to what counsel believes.
- No reference to proof that won’t be adduced.
- No overt play to emotions.
- Avoid rhetorical questions.
- No ‘send a message with your verdict’ comments.
- In a criminal case, where the accused has no burden of proof, there can be no comment in the prosecution of what the jury will (or won’t) hear from the defense.

As one scholar explained, the more you keep the opening to a first person telling of what transpired you are not arguing. A similar view is that it is safe to mention if a witness will testify to that fact/opinion. While it breaks up the story-telling flow, one or two “the evidence will show” introductory phrases will almost always protect the advocate from an “argumentative” objection.

The second issue is to be descriptive. It is never “the accident was terrible,” as that lacks precision. It is “the car was hit so hard that it was pushed across the highway and ended up with the roof crushed below the steering wheel.”

The third, and perhaps most important, is to speak in plain language and not legal-ese. Nothing is more effective than you telling the story as you would to a friend in a coffee shop. “Before” instead of “prior” is one simple example – we never say “and prior to that” in the coffee-shop discussion.

THE MOVING PARTY'S OPENING

The Simplest Structure

The opening is a four part presentation:

1. The 'hook'
 - a. An opening paragraph that creates some tension and leads to why we are here today
2. The story
 - a. The simple telling of what happened and what kind of a case this is
 - i. Within "what kind of case this is," a minimal exposition of the law, as going into the law in depth is not likely to be allowed.
3. How will you know that
 - a. Now describe some of the ways the jury will learn
 - i. E.g. The cellphone records, the expert, the defendant's own words, the video
4. What you will ask for.

An illustration.

The Hook – It was a Friday March 21, another day when Jules Epstein took the train from work and went to the bike rack. The rack where he locks up his bike every day, getting some exercise to and from the train. Helmet on, turn on the flashing rear light, start pedaling home. What should have been a four minute ride. But as he approached the first corner, where he had the right of way, a car was coming. Coming on the cross street. Coming to the stop sign. And the driver was on their cellphone. Jules got to the middle of the intersection, but he didn't get home.

The Story – Members of the Jury, what happened next is no surprise. The car went through the stop sign without even slowing down. Hit Mr. Epstein. Hit him so hard that he was knocked fifteen feet through the air. So hard his helmet, strapped to his head, flew off. So hard that his body flipped off the bicycle and landed on his right shoulder. His collarbone broke. And he lay there, with that flashing light on the bike of his bike still going, the red light on and off on his face. That's how the neighbors found him; that's where he lay until the emergency medical responders came. And this [show photo] is what was left of the bicycle.

Jules was taken to Northeast Hospital, transported on one of those back boards to keep him from moving. Treated in the E.R., he left with his arm in a sling and a message: No

bicycling, no strenuous activity, no swimming. No holding anything in your arms. And the outcome? Six weeks like that, missing the chance to hold his newborn grandchild.

This is a case of what the law calls negligence. We must prove that it is slightly more likely than not, that the driver did not use ordinary care and that this failure caused harm. And the evidence will show that with ease and beyond dispute.

How will you know that? You will learn everything I told you:

- Jules will describe that day, the helmet, the flashing light to alert drivers, the start of the ride home, the right of way at the corner, the unbelievable feeling of being knocked through the air, and all he suffered.
- Neighbors will come in, along with the EMT, to say how they found Jules.
- You will see the hospital records and the xray.
- The driver's cellphone records will prove they were texting, not watching.
- And the driver's own words, just five, will finish the proof. Because when the police came and asked "what happened," the driver said "It must be my fault."

The ask. Members of the jury, the law will be clear. Ordinary care is doing what everyone knows is the first rule of driving – keep your eyes on the road. When you don't do that, it's negligence. And when you don't do that and someone gets hurt, you have to take responsibility. That's why, at the end of this trial, I will return and ask you to say to this defendant "it was your fault." Because people can't take their eyes off the road.

The Slightly More Elaborate Structure –

The opening is a four part presentation **with a theme**:

1. The ‘hook’
 - a. An opening paragraph that creates some tension and leads to why we are here today
2. The story
 - a. The simple telling of what happened and what kind of a case this is
 - i. Within “what kind of case this is,” a minimal exposition of the law, as going into the law in depth is not likely to be allowed.
3. How will you know that
 - a. Now describe some of the ways the jury will learn
 - i. E.g. The cellphone records, the expert, the defendant’s own words, the video
4. What you will ask for.
5. **The theme – a moral statement that will make the jury want to rule for you and justifies your cause.** [NOTE – *Where* the theme goes is a matter of debate. Some prefer it as the first words out of the advocate’s mouth; some argue for its placement at the end of the first paragraph; and some suggest leaving it until near the end of the opening, after you have earned the trust of the audience by presenting a credible statement of the case. The following illustration uses the second approach; but this author strongly endorses using it near the end of the opening. If used at the beginning it might be stated once again near the end, but repeated regurgitation may make the statement sound staged and not natural.]

An illustration.

The Hook – It was a Friday March 21, another day when Jules Epstein took the train from work and went to the bike rack. The rack where he locks up his bike every day, getting some exercise to and from the train. Helmet on, turn on the flashing rear light, start pedaling home. What should have been a four minute ride. But as he approached the first corner, where he had the right of way, a car was coming. Coming on the cross street. Coming to the stop sign. And the driver was on their cellphone. Jules got to the middle of the intersection, but he didn’t get home. **Why – because people are supposed to keep their eyes on the road, and this driver didn’t.**

The Story – Members of the Jury, what happened next is no surprise. The car went through the stop sign without even slowing down. Hit Mr. Epstein. Hit him so hard that he was

knocked fifteen feet through the air. So hard his helmet, strapped to his head, flew off. So hard that his body flipped off the bicycle and landed on his right shoulder. His collarbone broke. And he lay there, with that flashing light on the bike of his bike still going, the red light on and off on his face. That's how the neighbors found him; that's where he lay until the emergency medical responders came. And this [show photo] is what was left of the bicycle.

Jules was taken to Northeast Hospital, transported on one of those back boards to keep him from moving. Treated in the E.R., he left with his arm in a sling and a message: No bicycling, no strenuous activity, no swimming. No holding anything in your arms. And the outcome? Six weeks like that, missing the chance to hold his newborn grandchild.

This is a case of what the law calls negligence. We must prove that it is slightly more likely than not, that the driver did not use ordinary care and that this failure caused harm. And the evidence will show that with ease and beyond dispute.

How will you know that? You will learn everything I told you:

- Jules will describe that day, the helmet, the flashing light to alert drivers, the start of the ride home, the right of way at the corner, the unbelievable feeling of being knocked through the air, and all he suffered.
- Neighbors will come in, along with the EMT, to say how they found Jules.
- You will see the hospital records and the xray.
- The driver's cellphone records will prove they were texting, not watching.
- And the driver's own words, just five, will finish the proof. Because when the police came and asked "what happened," the driver said "It must be my fault."

The ask. Members of the jury, the law will be clear. Ordinary care is doing what everyone knows is the first rule of driving – keep your eyes on the road. When you don't do that, it's negligence. And when you don't do that and someone gets hurt, you have to take responsibility. That's why, at the end of this trial, I will return and ask you to say to this defendant "it was your fault." **Because people need to keep their eyes on the road. Not on their phone.**

The Slightly More Elaborate Structure – One More Time

The opening is a four part presentation **with a theme and damage control**:

1. The ‘hook’
 - a. An opening paragraph that creates some tension and leads to why we are here today
2. The story
 - a. The simple telling of what happened and what kind of a case this is
3. How will you know that
 - a. Now describe some of the ways the jury will learn
 - i. E.g. The cellphone records, the expert, the defendant’s own words, the video
4. **Damage control**
 - a. **Front the bad fact [never as primacy or recency] so that you have credibility and can make it less bad**
5. What you will ask for.
6. **The theme – a moral statement that will make the jury want to rule for you and justifies your cause.**

An illustration.

The Hook – It was a Friday March 21, another day when Jules Epstein took the train from work and went to the bike rack. The rack where he locks up his bike every day, getting some exercise to and from the train. Helmet on, turn on the flashing rear light, start pedaling home. What should have been a four minute ride. But as he approached the first corner, where he had the right of way, a car was coming. Coming on the cross street. Coming to the stop sign. And the driver was on their cellphone. Jules got to the middle of the intersection, but he didn’t get home. **Why – because people are supposed to keep their eyes on the road, and this driver didn’t.**

The Story – Members of the Jury, what happened next is no surprise. The car went through the stop sign without even slowing down. Hit Mr. Epstein. Hit him so hard that he was knocked fifteen feet through the air. So hard his helmet, strapped to his head, flew off. So hard that his body flipped off the bicycle and landed on his right shoulder. His collarbone broke. And he lay there, with that flashing light on the bike of his bike still going, the red light on and off on his face. That’s how the neighbors found him; that’s where he lay until the emergency medical responders came. And this [show photo] is what was left of the bicycle.

Let me pause here. Jules was on his way home after a celebration at work. A celebration where he had two glasses of wine. But what you will learn is that the wine didn't run a stop sign. Jules had no stop sign. Only the driver did.

Jules was taken to Northeast Hospital, transported on one of those back boards to keep him from moving. Treated in the E.R., he left with his arm in a sling and a message: No bicycling, no strenuous activity, no swimming. No holding anything in your arms. And the outcome? Six weeks like that, missing the chance to hold his newborn grandchild.

This is a case of what the law calls negligence. We must prove that it is slightly more likely than not, that the driver did not use ordinary care and that this failure caused harm. And the evidence will show that with ease and beyond dispute.

How will you know that? You will learn everything I told you:

- Jules will describe that day, the helmet, the flashing light to alert drivers, the start of the ride home, the right of way at the corner, the unbelievable feeling of being knocked through the air, and all he suffered.
- Neighbors will come in, along with the EMT, to say how they found Jules.
- You will see the hospital records and the xray.
- The driver's cellphone records will prove they were texting, not watching.
- And the driver's own words, just five, will finish the proof. Because when the police came and asked "what happened," the driver said "It must be my fault."

The ask. Members of the jury, the law will be clear. Ordinary care is doing what everyone knows is the first rule of driving – keep your eyes on the road. When you don't do that, it's negligence. And when you don't do that and someone gets hurt, you have to take responsibility. That's why, at the end of this trial, I will return and ask you to say to this defendant "it was your fault." **Because people need to keep their eyes on the road. Not on their phone.**

The Slightly More Elaborate Formulation – And THREES (an alternative to the pure story model)

The opening is a four part presentation with a theme and damage control and three points to organize around:

1. The ‘hook’
 - a. An opening paragraph that creates some tension and leads to why we are here today
 - i. A list of three points that make organizing and remembering the story easy
2. The story
 - a. The simple telling of what happened and what kind of a case this is
3. How will you know that
 - a. Now describe some of the ways the jury will learn
 - i. E.g. The cellphone records, the expert, the defendant’s own words, the video
4. Damage control
 - a. Front the bad fact so that you have credibility and can make it less bad
5. What you will ask for.
6. The theme – a moral statement that will make the jury want to rule for you and justifies your cause.

An illustration.

The Hook – It was a Friday March 21, another day when Jules Epstein took the train from work and went to the bike rack. The rack where he locks up his bike every day, getting some exercise to and from the train. Helmet on, turn on the flashing rear light, start pedaling home. What should have been a four minute ride. But as he approached the first corner, where he had the right of way, a car was coming. Coming on the cross street. Coming to the stop sign. And the driver was on their cellphone. Jules got to the middle of the intersection, but he didn’t get home. Why – because people are supposed to keep their eyes on the road, and this driver didn’t. And you will know that for three reasons – the bicyclist was safe; the cellphone use wasn’t; and the driver confessed.

The Story – Members of the Jury, what happened next is no surprise. The car went through the stop sign without even slowing down. Hit Mr. Epstein. Epstein with the right of way. With the helmet. With the red flashing light to let car drivers know “I’m here,” Hit the safe bicyclist so hard that he was knocked fifteen feet through the air. So hard his helmet,

strapped to his head, flew off. So hard that his body flipped off the bicycle and landed on his right shoulder. His collarbone broke. And he lay there, with that flashing light on the bike of his bike still going, the red light on and off on his face. That's how the neighbors found him; that's where he lay until the emergency medical responders came. And this [show photo] is what was left of the bicycle.

Let me pause here. Jules was on his way home after a celebration at work. A celebration where he had two glasses of wine. But what you will learn is that the wine didn't run a stop sign. Jules had no stop sign. Only the driver did.

Jules was taken to Northeast Hospital, transported on one of those back boards to keep him from moving. Treated in the E.R., he left with his arm in a sling and a message: No bicycling, no strenuous activity, no swimming. No holding anything in your arms. And the outcome? Six weeks like that, missing the chance to hold his newborn grandchild.

And just as the bicyclist was safe, cellphone use wasn't. You will learn that the driver, looking away from the road, missed the stop sign. Missed the flashing light on the bicycle. Missed seeing Jules.

This is a case of what the law calls negligence. We must prove that it is slightly more likely than not, that the driver did not use ordinary care and that this failure caused harm. And the evidence will show that with ease and beyond dispute.

How will you know that? You will learn everything I told you:

- Jules will describe that day, the helmet, the flashing light to alert drivers, the start of the ride home, the right of way at the corner, the unbelievable feeling of being knocked through the air, and all he suffered.
- Neighbors will come in, along with the EMT, to say how they found Jules.
- You will see the hospital records and the xray.
- The driver's cellphone records will prove they were texting, not watching.
- And then there is the third reason you will know this is exactly what happened. He confessed. The driver's own words, just five, will finish the proof. Because when the police came and asked "what happened," the driver said "It must be my fault."

The ask. Members of the jury, the law will be clear. Ordinary care is doing what everyone knows is the first rule of driving – keep your eyes on the road. When you don't do that, it's negligence. And when you don't do that and someone gets hurt, you have to take responsibility. That's why, at the end of this trial, I will return and ask you to remember – the bicyclist was safe, looking at a cellphone wasn't, and they confessed – and to say to this

defendant “it was your fault.” Because people need to keep their eyes on the road. Not on their phone.

THREES – A SECOND, MORE TYPICAL, ILLUSTRATION.

The Hook – It was a Friday March 21, another day when Jules Epstein took the train from work and went to the bike rack. The rack where he locks up his bike every day, getting some exercise to and from the train. What should have been a four minute ride ended instead into a trip to the hospital and a broken collarbone. An accident that didn’t have to happen; an accident caused by this defendant looking at their cellphone driving. An accident that was 100% the fault of the driver who forgot that most basic of safety rules – keep your eyes on the road. And you will know that for three reasons – the bicyclist was safe; the cellphone use wasn’t; and the driver confessed.

The Story – Let me start with the bicyclist. When Jules Epstein got off the train that night, he put on his helmet, turned on his bike safety lights that let cars know “I’m here,” and drove the same route, one where he knew where each stop sign was. When he got to the corner he had no stop sign – only the cross traffic did. No car was in the intersection or even at the crosswalk – so he drove on. The car went through the stop sign without even slowing down. Hit Mr. Epstein. Hit the safe bicyclist so hard that he was knocked fifteen feet through the air. So hard his helmet, strapped to his head, flew off. So hard that his body flipped off the bicycle and landed on his right shoulder. His collarbone broke. And he lay there, with that flashing light on the bike of his bike still going, the red light on and off on his face. That’s how the neighbors found him; that’s where he lay until the emergency medical responders came. And this [show photo] is what was left of the bicycle.

Let me pause here. Jules was on his way home after a celebration at work. A celebration where he had two glasses of wine. But what you will learn is that the wine didn’t run a stop sign. Jules had no stop sign. Only the driver did.

Jules was taken to Northeast Hospital, transported on one of those back boards to keep him from moving. Treated in the E.R., he left with his arm in a sling and a message: No bicycling, no strenuous activity, no swimming. No holding anything in your arms. And the outcome? Six weeks like that, missing the chance to hold his newborn grandchild.

Let me go to that second point. Just as the bicyclist was safe, cellphone use wasn’t. You will learn that the driver, looking away from the road, missed the stop sign. Missed the flashing light on the bicycle. Missed seeing Jules.

This is a case of what the law calls negligence. We must prove that it is slightly more likely than not, that the driver did not use ordinary care and that this failure caused harm. And the evidence will show that with ease and beyond dispute.

How will you know that? You will learn everything I told you:

- Jules will describe that day, the helmet, the flashing light to alert drivers, the start of the ride home, the right of way at the corner, the unbelievable feeling of being knocked through the air, and all he suffered.
- Neighbors will come in, along with the EMT, to say how they found Jules.
- You will see the hospital records and the xray.
- The driver's cellphone records will prove they were texting, not watching.
- **And then there is the third reason you will know this is exactly what happened. He confessed.** The driver's own words, just five, will finish the proof. Because when the police came and asked "what happened," the driver said "It must be my fault."

The ask. Members of the jury, the law will be clear. Ordinary care is doing what everyone knows is the first rule of driving – keep your eyes on the road. When you don't do that, it's negligence. And when you don't do that and someone gets hurt, you have to take responsibility. That's why, at the end of this trial, I will return and ask you **to remember – the bicyclist was safe, looking at a cellphone wasn't, and they confessed – and to say to this defendant "it was your fault."** **Because people need to keep their eyes on the road. Not on their phone.**

OPENING SECOND

Opening second is a blessing and a curse. If the moving party has opened effectively, it is as if the floor of the courtroom has tilted in their favor. They have set the tone; they have defined the injury; they have generated anger or resolve; and they, of course, have the primacy advantage.

This means a few things:

- The defense must get the floor back to neutral.
- The defense does not have to retell the basic facts of the case (as doing so will bore the jury).
- The jury expects your first words to go right to the core of the case.
- You have some advantages:
 - If they omit a critical fact, you make them look bad/unethical when you reveal it.
 - You know what theory they are pursuing, so you know what points of your draft opening to include and which to discard.
 - You get to tell the jury that this is not a case of “X” if your opponent exaggerates the danger or the conduct.

So what this means is that you have a draft opening that assumes the jury will have heard the story basics *but not* the facts supportive of your side. [Of course, if your opponent is a poor story teller then you need a version that tells more of the story.] It is with this in mind that the next pages show structures for a defense opening.

THE DEFENDING PARTY'S OPENING

The Simplest Structure

The opening is a four part presentation:

1. The refutation
 - a. An opening paragraph that gives a denial of culpability with a good reason
2. Why we are here
 - a. Acknowledge the loss but explain that trial is about responsibility
 - i. Possibly advert to what opponent's burden is
3. The rest of the story/why opponent is wrong
 - a. Personalize your client
4. What you will ask for

An Illustration

The Refutation: On Friday March 21, a terrible accident occurred. But it was that – an accident. An accident where a bicyclist went too fast, forgot to pay attention because they went that route all the time, and ignored basic safety. And an accident that was not the fault of John Driver, who was not on a cell phone but was driving carefully.

Why We Are Here: If this were a case about whether a person getting injured is serious there would be no trial. Everyone agrees. But this is a case about responsibility for that injury. It is understandable that when a person gets hurt they look at someone else to blame. But when they bring a lawsuit and says “it’s entirely your fault” they have to prove it. And it can’t be just on some of the facts, it has to be with all of the facts. Facts that we will make sure you hear and see.

The Rest Of The Story: Members of the jury, this is John Driver. He also lives in that neighborhood and knows it well because he takes his children to school there five days a week. And on that day Mr. Driver was heading home to his children, coming from work at Temple Hospital.

What happened at that corner? My opponent is correct – John had a stop sign and the bicyclist didn’t. But here’s what you weren’t told. John did stop at the stop sign, something he will tell you and an independent witness saw. John only went after looking both ways. And that bicycle with the red light? It was on the back of that bicycle, good for drivers behind the cyclist but not for John.

Approaching that corner there is a hill that the bicyclist was on. The bike picked up speed, the bike made the turn, and all of that happened in a split second *after* John stopped at the sign and looked both ways.

The Ask: A trial is about making a fair judgment on all facts, not some. Those facts will show an accident, a true, could-not-be-prevented by John Driver, accident. And they will show that the plaintiff has not proved their claim that “Mr. Driver, you are 100% to blame.” And that is why, at the end of this trial, I will return and ask you to return a verdict that says “not liable.” The light was on the back of the bike, the hill made the bike go too fast, and John Driver stopped.

The Slightly More Elaborate Structure

The opening is a five part presentation **with a theme.**

1. The refutation
 - a. An opening paragraph that gives a denial of culpability with a good reason
2. Why we are here
 - a. Acknowledge the loss but explain that trial is about responsibility
 - i. Possibly advert to what opponent's burden is
 - ii. **The theme – a moral statement that will make the jury want to rule for you and justifies your cause.**
3. The rest of the story/why opponent is wrong
 - a. Personalize your client
4. What you will ask for

An Illustration

The Refutation: On Friday March 21, a terrible accident occurred. But it was that – an accident. An accident where a bicyclist went too fast, forgot to pay attention because they went that route all the time, and ignored basic safety. And an accident that was not the fault of John Driver, who was not on a cell phone but was driving carefully.

Why We Are Here: If this were a case about whether a person getting injured is serious there would be no trial. Everyone agrees. But this is a case about responsibility for that injury. It is understandable that when a person gets hurt they look at someone else to blame. But when they bring a lawsuit and says “it’s entirely your fault” they have to prove it. And it can’t be just on some of the facts, it has to be with all of the facts. Facts that we will make sure you hear and see. **Because safety is a two-way street.**

The Rest Of The Story: Members of the jury, this is John Driver. He also lives in that neighborhood and knows it well because he takes his children to school there five days a week. And on that day Mr. Driver was heading home to his children, coming from work at Temple Hospital.

What happened at that corner? My opponent is correct – John had a stop sign and the bicyclist didn’t. But here’s what you weren’t told. John did stop at the stop sign, something he will tell you and an independent witness saw. John only went after looking both ways. And that bicycle with the red light? It was on the back of that bicycle, good for drivers behind the cyclist but not for John.

Approaching that corner there is a hill that the bicyclist was on. The bike picked up speed, the bike made the turn, and all of that happened in a split second *after* John stopped at the sign and looked both ways.

The Ask: A trial is about making a fair judgment on all facts, not some. Those facts will show an accident, a true, could-not-be-prevented by John Driver, accident. And they will show that the plaintiff has not proved their claim that “Mr. Driver, you are 100% to blame” **because safety is a two way street.** That is why, at the end of this trial, I will return and ask you to return a verdict that says “not liable.” The light was on the back of the bike, the hill made the bike go too fast, and John Driver stopped.

The Slightly More Elaborate Structure – One More Time

The opening is a five part presentation **with a theme and flipping the plaintiff's theme.**

1. The refutation
 - a. An opening paragraph that gives a denial of culpability with a good reason
 - b. **Taking the plaintiff's theme and flipping it [using it against them]**
2. Why we are here
 - a. Acknowledge the loss but explain that trial is about responsibility
 - i. Possibly advert to what opponent's burden is
 - ii. **The theme – a moral statement that will make the jury want to rule for you and justifies your cause.**
3. The rest of the story/why opponent is wrong
 - a. Personalize your client
4. What you will ask for

An Illustration

The Refutation: On Friday March 21, a terrible accident occurred. But it was that – an accident. An accident where a bicyclist went too fast, forgot to pay attention because they went that route all the time, and ignored basic safety. And an accident that was not the fault of John Driver, who was not on a cell phone but was driving carefully.

Why We Are Here: If this were a case about whether a person getting injured is serious there would be no trial. Everyone agrees. But this is a case about responsibility for that injury. It is understandable that when a person gets hurt they look at someone else to blame. But when they bring a lawsuit and says “it's entirely your fault” they have to prove it. And it can't be just on some of the facts, it has to be with all of the facts. Facts that we will make sure you hear and see. **Because safety is a two-way street. And bicyclists – they need to keep their eyes on the road too.**

The Rest Of The Story: Members of the jury, this is John Driver. He also lives in that neighborhood and knows it well because he takes his children to school there five days a week. And on that day Mr. Driver was heading home to his children, coming from work at Temple Hospital.

What happened at that corner? My opponent is correct – John had a stop sign and the bicyclist didn't. But here's what you weren't told. John did stop at the stop sign, something he will tell you and an independent witness saw. John only went after looking both ways.

And that bicycle with the red light? It was on the back of that bicycle, good for drivers behind the cyclist but not for John.

Approaching that corner there is a hill that the bicyclist was on. The bike picked up speed, the bike made the turn, and all of that happened in a split second *after* John stopped at the sign and looked both ways.

The Ask: A trial is about making a fair judgment on all facts, not some. Those facts will show an accident, a true, could-not-be-prevented by John Driver, accident. And they will show that the plaintiff has not proved their claim that “Mr. Driver, you are 100% to blame” **because safety is a two way street.** That is why, at the end of this trial, I will return and ask you to return a verdict that says “not liable.” The light was on the back of the bike, the hill made the bike go too fast, and John Driver stopped.

The Slightly More Elaborate Structure – One Last Time

The opening is a five-six part presentation with a theme, flipping the plaintiff's theme, and calling out your opponent's exaggeration.

1. The refutation
 - a. An opening paragraph that gives a denial of culpability with a good reason
 - b. Taking the plaintiff's theme and flipping it [using it against them]
 - c. Reminding the jury that the case is not the extreme danger your opponent posited.
2. Why we are here
 - a. Acknowledge the loss but explain that trial is about responsibility
 - i. Possibly advert to what opponent's burden is
 - ii. The theme – a moral statement that will make the jury want to rule for you and justifies your cause.
3. The rest of the story/why opponent is wrong
 - a. Personalize your client
4. What you will ask for

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