

# Developing Themes to Shape Jury Perceptions

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Developing your themes early on in litigation is important. Once you hone in on the arguments that will resonate most with a jury, you can develop a strategy around those arguments and begin to tell your client's story in a way that appeals to a juror's sense of fairness and justice. In this video, Proskauer partner [Evandro Gigante](#) discusses the importance of developing themes in litigation with the jury in mind.

## Transcript

**Evandro Gigante:** When in litigation, it's very important to develop the themes of the case early, those being the arguments that you plan to rely on. And they could be informed by the law and by the regulations. But oftentimes they are going to be driven by the facts. I like to focus on not just what the law or the regulations are that dictate how an employer should act or not act, but also how a jury is going to react to a certain set of facts. And I think that is important, both at the pre-litigation stage when the employer or my client is in the position to actually create a set of facts by responding to a set of circumstances on the ground in a certain way. When you do that, you have the ability to help write the facts before it ever gets to a jury. When you're in litigation on the other hand, you're generally presented with a set of facts. And there you need to think about what your themes are going to be in the case. Because those are going to be the arguments and the theories that drive your litigation. And when doing that, I'm very focused on thinking about how a jury is going to react to the facts and what facts are going to resonate most with that jury.

In my experience, doing that not just presents the best outcome for a client that's looking to protect itself and its employees, but also best positions that employer for whatever claims or allegations may someday be coming down the road, so as to say to that plaintiff's lawyer, that employee's lawyer, listen, the employer acted reasonably in this case. These are the steps that the employer took. And then it becomes much more difficult for someone on the other side to turn around and say that the employer's actions were unreasonable or somehow unfounded.

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# "Knowing how a jury is going to react to a set of facts is key in planning both pre-litigation and litigation strategy."

Evandro Gigante, Partner, Litigation

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In litigation, you may end up arguing, as you often do, about things that may not matter as much at the end of the day compared to things that are actually significant for your case. And so for me, I like to develop those themes early, and I like to develop them with the jury in mind so that I can put myself in the shoes of the jury and say to myself, what is it that's going to matter to this jury? What did this employer or this company do in this particular set of circumstances that shows that it was acting reasonably, that shows that it was exercising a certain amount of judgement and fairness with its employees? And those are the types of themes that I think you want to drive when you're in litigation.

Remember, a jury reacts to fairness and justice. And if you can develop your themes along those lines, it will position you best to defend your client's case and drive those themes throughout the entire litigation.

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