

# **A Practical Guide to Persuasive Opening Statements**

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## **PURPOSE**

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*The opening statement provides the most significant opportunity you will have to persuade the jury that your client is right and should win the case. In order to achieve success in your opening, take a step back from the case for a moment and put yourself in the juror's frame of mind. The jurors have their own fears and anxieties about the trial process and their role in it. In addition, they have never been exposed to the case that you have been living with for months, or maybe even years. This is the time to lay out the reasons you should win in a simple, well thought out manner.*

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### ***Capture the jury's imagination***

The opening statement is your first chance to capture the jury's imagination and speak directly about the merits of your case. This is crucial because the opening colors how the jury will receive the rest of the evidence you present. If the jury perceives you in a positive light, they will be more receptive to both you and your client. Of course the converse is also true. If the jury has negative perceptions about you, they will be less likely to side with you. A successful opening statement will directly influence the manner in which jurors interpret the rest of the evidence presented. In essence, the jury will filter all evidence through the lens that you create in the opening. Therefore, it is imperative that you capture the jury's imagination from the outset and involve them in the trial.<sup>1</sup>

### ***Persuade***

You learned in law school that argument is not part of the opening statement, "they would call it opening argument if you were supposed to argue." While argument is prohibited during opening statements, persuasion is not. Argue without arguing. This comes from confidence in preparation and delivery.

### ***Establish credibility and build a rapport with the jury***

Hold yourself out as a credible source of ideas and information. Jurors will be more persuaded not only by the language you use, but also your whole demeanor and presentation style. Make the jury want to side with you. This includes personalizing your client and conveying sensitivity towards the jurors' fears and anxieties about the trial process.

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<sup>1</sup>Lubet, Steven, *Modern Trial Advocacy: Analysis and Practice*, 335 (NITA, 1993).

### ***Develop a theme***

Develop a theme for the case and tell a story based around that theme. Through visualization and imagery the jury will better identify with your client. The theme should be simple, straightforward, and memorable. Repeat it throughout the opening and give the jury something they can take to deliberations.

### ***Explain the burden of proof and the facts that meet that burden***

Jurors need to understand what the plaintiff is required to prove. A straightforward and simple explanation of the burden of proof will aid the jury in weighing the evidence from the outset.

### ***Simplify the issues***

Make the jury recognize the real issues of the case. Your job is to simplify the case as much as possible so that the jury can filter through the extraneous information and get right to the heart of the matter. The opening statement is not the time to impress the jury with your vocabulary or intelligence. It is the time to convey your case to the jury so they know what to expect in trial and why you are right.

### ***Cardinal Rules of Opening Statements***

- Absolutely never oversell, overpromise, or exaggerate in any way the strength of your proof or the weakness of the defense.
- Get to the point. The essence of your proof (the theme) should be expressed clearly within the first minute or two of your opening.
- Communicate your theme in words and phrases familiar to the jury, i.e., “The defendant can’t have it both ways.” “They had five golden opportunities.”
- Speak only as long as is necessary. When carefully and creatively prepared, less really is more.
- Repeat your theme at least several times in your opening statement. Never assume that simply because you said it clearly one time, that the jury will get it. The key to opening is to tie all the meaningful facts together into a well-

defined image or series of images consistent with your proof.

- Be a protector of your client at all times.
- Remember you are attempting to communicate in a heartfelt and creative way. Unless you can engage jurors so that they want to become involved, all the intensity, brilliance, and competence you can muster will likely be to no avail.
- It is important to prove early on that your case is fairly brought. Relieve the jury's fears about deciding wrongly and show them that you are entitled to win.
- Use simple and effective exhibits to help engage the jury and to explain your proof. Pictorial displays, diagrams of human anatomy and surgical procedure, blow ups of medical records, and mockups of defective products or parts are useful tools.

## **BASICS OF PERSUASION**

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*Your opening statement should be designed to make the maximum impact upon the jury. While argument is prohibited, your opening statement should be persuasive and memorable. You have to win their attention and make them believe what you are saying. Here are some fundamentals to keep in mind when preparing your opening statement.*

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### ***Facts***

- Studies show that 80% of jurors make up their mind during the opening statement and their opinions never change.<sup>2</sup> In other words, there is truth to the old adage that first impressions tend to last.
  
- We remember 10% of what we read, 20% of what we hear, 30% of what we see, and 50% of what we hear and see. Where appropriate, use visual aids to reinforce key elements of the case. Make the jurors remember your key issues and take them to deliberations.

### ***Primacy-Recency Principle***

The first and last things presented are more likely to be remembered and influence overall impression. Every case has its peaks and valleys of attention. During the opening statement, the jury's attention is at one of the highest peaks it will reach during trial. Make sure to take advantage of this situation. The primacy- recency principle is not only relevant to the opening statement as a whole, but also to the first and last minutes of the opening statement. Make sure that you capture the jury's attention from the outset and end on a high note.

### ***Repetition***

Repetition increases memorability. Reinforce key points by repeating them in different manners. Use a combination of visual, verbal, and physical techniques for reinforcement.

### ***Steps to Persuasive Communication***

There is no *one* secret to persuasive communication, but rather persuasion is a process of inter-related stages or steps. Each person subconsciously goes through a

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<sup>2</sup>Jeans, J.W., *Trial Advocacy*, 199 (1975).

process of iterations in interpreting what he or she is presented. Each step contributes or detracts from the final effect. Persuasion is not a destination in and of itself, but rather a journey through these various stages.

- First, you must get and maintain attention on key points.
- How accomplished? Through development of a theme-based story, and using persuasive presentation techniques to make critical points more memorable
- Second, the jury must receive the message accurately.
- How accomplished? Again, through development of a theme based story. Examine your opening statement from the viewpoint of a juror. Would you understand it without prior knowledge of the events? Make sure your message is clear and understandable.
- Third, the jury must believe the information to be credible and accurate.
- How accomplished? First, you must believe that the information is accurate and credible. The jury will pick up on your belief through your mannerisms. Other ways to establish credibility are:
  - Establish the source of the information
  - Through deductive reasoning and logic
  - Use of physical facts and actual evidence
  - Use numbers and figures to support what you are saying, especially when discussing damages
- Fourth, the jury must be motivated to act.
- How accomplished? A call to action through accountability and jury identification with your client. Give the jury a reason to side with you.

Rhetorical questions involve the jury and help motivate them to act.

- Fifth, the information must be consistent with normal human experiences of right and wrong (i.e. appeal to the jury's sense of justice).
- How accomplished? Show how the specific facts of your case fit into the greater framework of justice. Stress a broadened theme. "This case isn't just about a car wreck, it is about responsibility. . . ."

***Other considerations***

You must have a genuine belief in your client's cause. Jurors pick up on non-verbal cues that show your sincerity. Here is a list of considerations to ensure persuasiveness:

- Understand your clients and the jury
- Do not overstate
- Acknowledge the weaknesses in your case

## **ORGANIZATION**

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*There are a variety of ways to tailor the organization of the opening statement to your specific facts. However, there are some common methods to organize your opening statement so as to maximize the impact upon the jury. A compelling and persuasive opening statement starts with organization. Organize your facts around a memorable theme and tell the story of your case.*

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### ***Theme-based***

One effective method of organizing your opening statement is to formulate a theme that logically explains the greatest number of facts. A central theme is memorable, and assists the jury's assimilation of the evidence. A theme-based opening provides the jury with the conceptual framework for the facts and the emotional undercurrent of the case.

- Your theme should be able to answer the question, "What is this case all about?" Let the jurors know the bottom line.
- Make sure that the theme is consistent with the evidence of your case. This aids in making you more credible and ultimately allows the jury to side with you.
- Use common sense in developing your theme. Make sure that it is consistent with normal human experiences and does not contradict an indisputable fact.
- Make sure the theme is clear and concise. Use different language to reiterate and emphasize the theme. Make sure the jury remembers the message and have something to take back with them to the deliberation room.
- Stress accountability. Show the jury why your client should win.

### ***Tell a story***

“[The] Opening statement is simply storytelling. If you can present your case to the jurors in a clean, simple, understandable way, maintaining their interest and accomplishing the various objectives we shall talk about, you have done your job.”<sup>3</sup>

- It is most effective to tell a simple story as though you were an eye witness to the event itself. This is best accomplished through use of present tense verbs rather than past tense. Present tense allows the story to unfold for the jury. Compare the following two examples:
  - Past tense:
    - “Mr. Brown saw that the light was red and slowly stopped. He looked in his rearview mirror and saw the defendant’s car approaching. The defendant was not going to stop. Mr. Brown braced himself for the collision.”
  - Present tense:
    - “Now Mr. Brown sees the light is red and comes slowly to a stop. He looks in the rearview mirror and sees the defendant’s car approaching. It isn’t going to stop. Mr. Brown braces himself for the collision.”
- Bring the jury into the story through visualization and imagery. Make the jury imagine themselves at the event.
- Effective story telling captures the jury’s imagination and allows them to see the events unfold in their mind.
- Incorporate your theme throughout the story. Make sure the jury understands the theme of the case and make the smaller details augment the story. Telling a theme-based story is the most effective way to get and hold the jury’s attention.

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<sup>3</sup>Leonard Decof, *Art of Advocacy: Opening Statement* §§1.04, 1-10 (1982 & Supp. 1991).

### ***Methods to Avoid***

- Chronological - Use chronology sparingly. Chronological organization is undoubtedly important in helping jurors to understand the sequence of events. But simply starting from the beginning and describing what happened does not present the evidence in a persuasive manner. Narrating a story does not hold the interest of the jury or promote your client's cause. Chronological organization is an easy trap to fall into, but be creative, find new ways to hold the jury's interest.
- Witness by witness - A preview of what each witness is going to say suffers from the same infirmities as chronological organization. It does not present the case in the most persuasive manner and can be just plain boring. Weave witness testimony and other evidence throughout the story to support your theme and augment your story, but do not base the opening simply on the witnesses.

### ***Candor or Suspense?***

Do you tell the jury all the facts, or do you hold back and create an air of suspense? There are advantages and disadvantages to both. With candor you get the full benefit of primacy and repetition and thus persuasiveness. With suspense you can peak the jury's interest, and keep strategies from opposing counsel. However, being open and honest with the jury rarely backfires while suspense may. For example, suppose you tell the jury that you have something that will "blow this case wide open," and when it comes time to reveal it, the jury is less than impressed. Here you have overpromised to the jury. While there are risks to creating suspense throughout the trial, it may be necessary in cases where the information must be kept from opposing counsel.

## **PREPARATION**

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*Preparation as in most things is crucial to a persuasive opening statement. Not only will it give you the confidence to stand in front of the jury and tell your client's story, but also it will help you to organize the entire case. Start at the beginning, review your notes and put yourself in your client's frame of mind.*

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### ***Get to know your clients and their families***

This may sound obvious, but you need to step into the life of your client. This means more than simply meeting with the client at your office or talking over the telephone. Spend some time just talking about daily life. What does your client do during the normal day? How has his or her life been affected by the events? What were they like before? After? Ask about family life, hobbies, anything that will give you a better picture of what it is like to be your client. You must be able to answer these types of questions not only to present an effective opening statement, but also to prepare for the entire trial.

- Ask your clients to prepare a daily journal of what they are going through and READ this journal carefully.
- Meet with your clients at their house. It may seem impractical at times, but it is much easier to get a picture of your client when you see their daily life.
- Don't only ask questions specific to the case, but try and get a general feel for the personality of your client.

### ***Rehearse but not rehearsed***

Before you step foot into the courtroom you should be able to tell the story as if you were talking to someone who has never heard anything about it. Practice telling the story to yourself while in the car. It is easy to become involved in the case and make assumptions that the jury will not understand. Try to think back to when you started gathering facts for the case. What were the questions you had? What did you want to understand more about? This will put you in the mind frame of the jury and help you simply tell the story about your case. As one author put it:

“An opening should be well thought out, written down in outline form or in full, rehearsed, and rehearsed again . . . It is during practice aloud that the structure, content, flow, and delivery are sharpened . . . [The] opening

statement should be rehearsed until it flows smoothly and until notes are abandoned. Unlike examination of witnesses, the opening statement allows direct communication between the trial lawyer and the jury, and looking at notes is a distraction. Do not be afraid of the word ‘rehearse’; if sincere, your delivery will sound honest and believable, no matter how many times you have practiced.”

***Prepare exhibits and visual aids well in advance***

Preparing exhibits and visual aids is an extremely time consuming process. It will always take longer than you think. The last few days prior to trial are hectic, and you do not want to spend them refining exhibits. Once the exhibits are prepared, practice using them in your opening. Awkward handling of the exhibits can take away from the impact of your opening statement.

***Keep a trial notebook***

Great ideas can come at anytime. Anytime inspiration comes to you, write it down and just put it in your trial notebook when you get to work. When it comes time to sit down and plan your opening statement you will be thankful that you did. Each file should have a section for ideas for opening arguments.

## **LAW OF OPENING STATEMENTS**

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*There are two fundamental basics when discussing the law of opening statements. First, argument is impermissible. Second, only admissible facts may be discussed. For the most part, as long as you follow these two general propositions then you should not have any legal issues within your opening.*

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- Opening statements are expressly provided for in criminal cases.
- In civil cases, opening statements are a matter of fixed custom (not statute), and withholding permission for an opening statement may be grounds for error.
- The content of the opening may not include facts that you do not expect to prove.
- Opening statements may refer to legal issues but should not argue questions of law. Legal propositions or contentions may be stated.
- The opening statement may be the basis for a summary judgment or directed verdict. “There is no question as to the power of the trial court to direct a verdict for the defendant upon the opening statement of plaintiff’s counsel where that statement establishes that the plaintiff has no right to recover.”
- It is improper to assert your own personal opinion about the client’s innocence or justice of the cause. Furthermore, counsel may properly argue the credibility of a witness, so long as counsel does not insinuate that his or her statements are based upon personal knowledge or relationship with the witness.

### ***Objections***

Objections are fairly unusual during opening statements. A general convention has developed that most attorneys will try to avoid objecting during opposing counsel’s opening. This is due to the fact that an objection may backfire and make you look rude for interrupting another lawyer when speaking directly to the jury. Although uncommon, there are situations in which objections are appropriate.

- The primary objection is to improper argument by opposing counsel. Most judges will sustain this objection only when opposing counsel egregiously violates this rule. Thus only object when it appears that opposing counsel is headed toward an extended argument within his or her opening.
- An objection should also be raised when opposing counsel makes a lengthy discourse on the law, and especially a misstatement of the law.
- It is also objectionable if counsel expresses his or her personal opinion during the opening statement. Counsel cannot assert personal knowledge or vouch for the credibility of witnesses.

Be cautious when objecting to opposing counsel's opening statement, and be wary of possible opportunities for objections within your own opening. Judicious use of objections is advised to ensure that the jury does not perceive you in an unfavorable manner.

## CONTENT

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*The content of your opening is critical to ensuring that the jury wants to side with you. Coupled with effective organization, your opening should include information designed to really drive your theme home to the jury. Make sure you follow through on the promises you deliver to the jury, and then tell them how you followed through on summation.*

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### ***Use “good” evidence***

Present evidence that is true and provable. Use the facts which are most essential to your case and the facts least likely to be disputed.

### ***Inadmissible evidence***

Never discuss inadmissible evidence. You do not want to over-promise and under-deliver, this is the best way to have your opening statement backfire. Err on the side of safety when determining what types of evidence may be inadmissible.

### ***Avoid using too many modifiers***

Watch the use of modifiers such as adjectives and adverbs. These words tend to sound more like opinions rather than statement of fact. A more effective approach is to try and incorporate more nouns and verbs in the opening. This may seem counterintuitive but compare the following two examples.<sup>4</sup>

Over-use of modifiers:

“It was a heinous, horrible crime. The defendant’s actions were inhuman and awful. He brutally grabbed at the victim’s gold chain, fiercely yanking it away. He left an ugly, ugly bruise on the victim’s neck. Unsatisfied with the proceeds of the armed robbery, the defendant then coldly and wantonly stabbed the victim twice, leaving his jacket lying in a bloody heap. It was indeed a cowardly act, taken against a defenseless victim.”

Virtually no modifiers:

“The defendant placed his knife against the victim’s body. Without waiting, he grabbed the gold chain from the victim’s neck and

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<sup>4</sup>Examples adapted from: Steven Lubet, *Modern Trial Advocacy: Analysis and Practice*, 364 (NITA, 1993).

wrenched it until it snapped, leaving bruises on the victim's neck that didn't heal for over a week. Although he had already taken what he wanted, he twisted the knife into the victim's shoulder, turning it as he pushed, and watched as the blood welled to the surface. Then he stabbed the victim again, until the blood soaked the jacket all the way through."

### ***Exhibits and visual aids***

Make sure to use exhibits and other visual aids to augment your opening. Remember the laws of persuasion, jurors are more likely to retain what they hear and see. Hold favorable visual aids close to your body to show acceptance and unfavorable objects away from your body to show disdain. In addition to displaying actual exhibits that will be admitted into evidence, you may also use visual aids that are likely to help the jury to understand the eventual trial evidence. The visual aids must fairly summarize the evidence, they cannot be misleading, and they cannot be argumentative. Show the visual aids to the court, prior to trial, in order to obtain advance permission for their use. Here are some basic rules to consider when preparing visual aids:

- Make only one point or one comparison on each visual aid you use.
- Use a maximum of six or seven words per line and use a maximum of six or seven lines.
- Present the information on a point by point basis so that attention is fixed and paced. Limit the distractions, so that jurors cannot read ahead or jump to conclusions about what is being presented.

### ***"Inoculate" the jury to persuasion from opposing counsel***

Inoculation refers to identifying opposing counsel's arguments and exposing their weaknesses (one caveat: make sure the other side is going to present the argument). Through inoculation you can increase the jury's resistance to persuasion and show them how opposing counsel's propositions are easily refuted.

### ***Anticipate weaknesses in your case and address them***

Anything that might damage your case should come out of your mouth first. Address the problems in your case. Damaging evidence should be anticipated and

discussed. The “sting” of this evidence is removed by portraying it in the best light. Not only is the impact of the evidence diminished, but you will build credibility with the jury as being open and honest. When discussing the weaknesses in your case, make sure that you do not directly identify opposing counsel’s argument. A better method is to address it without letting the jury know what you are addressing. For example:

Directly identifying opposing counsel’s argument:

“The Defendant will testify that my client never put on his turn signal before turning right. But that is not true, Mr. Brown makes a habit to use his turn signal and specifically remembers putting it on prior to the defendant hitting him. In addition, Mr. Green, the passenger, will testify that he saw Mr. Brown put on his turn signal.”

Addressing the argument without identification:

“Now Mr. Brown is preparing to make the right hand turn. As was his habit, Mr. Brown puts on his turn signal. Mr. Green, the passenger, also sees him put on his turn signal. They begin to make the turn and. . .”

### ***Make use of rhetorical questions***

Rhetorical questions aid in persuasion by guiding the jurors to search for answers, and in some cases, implying answers of their own. For strong cases, place the rhetorical questions near the beginning of the opening and imply the answer through the rest of the presentation. Rhetorical questions are also effective when placed near the end of the presentation to address the weak points of your opponent’s case.

### ***Grab their attention from the outset***

In the first 30 seconds of the opening, you should convey the enormity of the injury and state the theme of your case. Utilize the principle of primacy to make sure that the jury understands where you are coming from. Many attorneys start out the opening statement by simply introducing themselves, their client, explaining how the trial process works, and then begin discussing the case. This information may be pertinent but there is no rule that says it has to be addressed first. Utilize primacy, don’t waste the potential to make a strong impact by going through formalities.

***Stress liability then lay out the damages***

GENERAL RULE: In most cases you will elect to discuss liability first. Many jurors are skeptical toward trial lawyers and plaintiff lawsuits. It is important to prove early on that your case is different from those frivolous cases they have read about or heard about. Do not ignore damages, but stressing damages without first establishing liability is fraught with risks. Once you have established liability, then discuss the damages. Make sure the jury understands everything that your client has been through, and give them the bottom line of what you are asking. Use real numbers and back them up with the facts. The liability portion of your opening statement should include the following:

- The favorable aspects of your client's background and personality
- Background location and circumstances of the injury producing event
- Facts supporting each required element of the plaintiff's theory of recovery
- Definitions of technical terms and subjects
- Names of eyewitnesses, their opportunity to observe, and what they observed
- Any favorable admissions, (include as a visual aid) and experts
- Discuss the problems in your case

EXCEPTION: There may be situations in which you want to address damages first and then explain liability. This normally occurs when liability is questionable, but the injury is severe. Here the jury may identify with your client and be less interested in liability and more interested in restitution.

***Personalize your client***

Put the jury in your client's shoes. In telling your story, you want the jury to get a feel for what it is like to be your client. Juries will identify with your client when you use visual images.

***Use powerful language***

To augment your thematic story it is necessary to use words that evoke strong reactions. These phrases should be memorable and forceful without sounding exaggerated. The following is a list of some forceful phrases for an automobile case.

Collision	Needless/Senseless/Endless
Tragedy	Avoidable collision
Maximum side-impact	Innocent
Recipe for disaster	Fault
Crippling injuries	Smashed
Catastrophic consequences	Wreck
Tearing	Impaled
Frail	Defenseless
Crash	Moment of impact
Mangled	Ripping

***Language Comparisons<sup>5</sup>***

<b>NEVER</b>	<b>BETTER</b>
I'm here on behalf of...	I represent
My client	Mr. Jones
This is a complicated case	There is one simple reason we are here

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<sup>5</sup>Adapted from: Mary Lynn Tate, *Comparisons between Effective and Ineffective Opening Statements and Summations in Neck and Back Injury Auto Cases*, a presentation for “The Absolute Litigators Conference,” April 19-20, 1996 in Nashville, Tennessee.

Pain and suffering	Human losses Suffering and pain Trauma
Compensation	Loss Damage Reimburse Payment Restitution
Strain, Sprain	Tissue damage Muscle damage Stretched muscles, ligaments Tear Rupture Inflammation Hemorrhage Disruption
Whiplash	Extension, hyper-extension Hyper-flexion Traumatic cervical injury Acceleration extension injury Compression Sub-luxation
Hairline	Split, crack

<p>The evidence will show...  The evidence will allow you to  Conclude...  I will demonstrate...  I suggest...  I contend...</p>	<p>I will prove...</p>
<p>Soft tissue</p>	<p>Muscles, ligaments, fibers</p>
<p>Accident</p>	<p>Crash; wreck  Collision</p>

## **DELIVERY**

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*Every attorney has his or her own presentation style. Think of your opening statement the same way as if you were relating a story to a friend or colleague. Keeping this in mind will help you to remain conversational with the jury and be yourself. If you particularly like another person's speaking style, make sure that you personalize it to fit into your personality. What works for some people may not work for everyone. Remember you want to develop a rapport with the jury through credibility and trust. Too much dramatic flair may seem disingenuous, but not enough may make your opening less than memorable.*

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### ***The cardinal rules:***

- Do not read your opening statement word for word.
- Do not memorize your opening statement.
- Make an outline of the opening with some notes and then have a conversation with the jury.
- Talk to every juror and make eye contact with each juror.
- Speak with confidence and authority.

### ***Use straightforward language and eliminate legalese.***

Winston Churchill once said, "Short words are best, and the old words when short, are best of all." In other words, use language that is simple to understand and established in the language. This means avoiding the use of legalese when speaking to the jury. You are simply telling a story not trying to impress them with your large vocabulary. Use simple straightforward words to illustrate your points, but be careful not to "speak down" to the jury. They will be able to tell if you are being condescending.

### ***Create images with words***

Image and color words create a visual picture. Imagery thus created has more impact and is more memorable. This requires using bold, powerful language such as:

- Concise language, straightforward and to the point

- Short sentences
- Compelling words
- Select the criteria of how you will choose your words: offensive, good taste, anger (make sure it is appropriate to the circumstances), emotion.

### ***Avoid “filler” language***

Eliminate the following forms of speech:

- Hedges such as “I think” or “maybe.”
- Intensifiers such as “very” or “definitely.”
- Hesitation used as a pause such as “well,” “ahhh,” “ummm.”

### ***Dress appropriately***

Make sure that your physical appearance is neat and clean. Remember that people associate the message with the messenger. You do not want to appear ostentatious or tattered. Shined shoes, pressed shirts, and a minimal amount of jewelry are a must. You want to appear neutral but formal.

### ***Use gestures appropriately***

To the extent that it is allowed, you can augment your opening statement through gestures and movement. When transitioning from one subject to another, let the jury know that you have shifted gears by simply taking one step to the left or right. This movement can be subtle, but the jury will pick up on the cue.

When gesturing for emphasis you can get the jury’s attention by simply moving closer to them to drive home key points. But remember personal space. You do not want the jury to feel uncomfortable or that you are towering over them. A good rule is to stand no closer than 6 feet to the jury and no further than 10-12 feet.

### ***Vary your speech***

Varying the rhythm and volume of your presentation will provide emphasis to those points you want to drive home. Sometimes a whisper grabs the jury’s attention more than speaking louder. The pace of your speech can also provide the

effect you want. For example, when describing the moment of impact in a car collision you may want to increase your speaking pace to illustrate the chaos occurring during the crash. Some considerations for varying your speech:

- Rate
- Pitch
- Intensity
- Flexibility
- Quality
- Fluency
- Expressional patterns

### ***Show respect in the courtroom***

You must be respectful at all times within the courtroom. Respect to jurors, to judges, and to witnesses. Be respectful not because you are trying to gain favor with the judge or someone else in the courtroom, but because it is appropriate. Be respectful to all witnesses unless and until the witness has demonstrated through conduct or testimony that he or she should be treated differently.

### ***Appear committed but not partisan***

When you show that you are willing to do anything for your client or his cause, you lose credibility with the jury. Show that you are committed to your client, but not unreasonable, or that you have lost objectivity. With this in mind, avoid two things: First, do not call your client, “my client.” When you do this, you remind the jury that you are speaking on behalf of someone else. Of course you want to refer to “the defendant’s lawyer” and “opposing counsel’s client.” Second, it is not necessary to call your client by his or her first name. This is a signal to the jury that you are trying to ingratiate yourself with them. They will pick up on this and be turned off by it. Make sure you say “Mr. Smith” or “Mrs. Smith,” courtrooms are formal places.

## **ADDITIONAL CONSIDERATIONS**

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*Following is a list of various do's and don'ts for your opening statement. Some may touch on the main ideas emphasized above, or some may simply stand alone as more minor things to think about.*

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### **DO. . . . .**

- Be yourself.
- Define the issues.
- Communicate with each member of the jury.
- Repeat key phrases and your theme throughout the opening.
- Get to the point. Your theme should be discussed within the first two minutes of the opening.
- Communicate your theme in words and phrases familiar to the jury.
- Speak only as long as necessary.
- Stress liability. Prove that your case has been fairly brought. Then stress the damages.
- Use appropriate demonstrative aids.
- Explain the damages.
- Do explain your theory so the jury can integrate the evidence.
- Do speak in short simple sentences, but not condescending.
- Disclose the weaknesses in your case.
- Appeal primarily to reason with moderate emotional appeal.

- Utilize the persuasion principles of primacy and recency.
- Stress accountability.
- Make eye contact with the jurors.
- Make good use of rhetorical questions.
- Make the jury imagine themselves at the event and re-live it through your words.
- Do provide empirical evidence. Jurors like to hear numbers.
- Tie the opening into a well planned closing. Show the jury how you fulfilled your promises and how opposing counsel did not.
- Do use decorum and be formal, but not rigid or stuffy.

### **DON'T . . . .**

- DON'T ever, ever, waive the opening statement.
- DON'T use legalese.
- DON'T over-personalize your opening, keep your opinions out and state the facts.
- DON'T detract from the formal atmosphere of the court. Practice decorum.
- DON'T equivocate such as: “I believe the evidence will show. . .” “I suggest to you. . .” “We expect. . .” Be firm, confident, and convinced such as: “The truth of the matter is. . .” “We will prove. . .”
- DON'T oversell, overpromise, or exaggerate in any way the strength of your evidence or the weakness of the defense.

- DON'T use disclaimer language similar to, "What I say today is not evidence."
- DON'T discuss the weaknesses of your case until you highlight the proof necessary to win.
- DON'T speak longer than an hour, preferably 20-40 minutes should be enough.
- DON'T overwhelm the jury with details.
- DON'T detail the testimony of specifically named witnesses. Tell a story.