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PERSPECTIVE

# Practice tips for a great opening statement

By Dan L. Stanford

To paraphrase a George Burns line: the secret of a good opening statement is to have a good beginning and a good ending – and to have the two as close together as possible. Most trial consultants and legal writers will say that over 80% of jurors make up their minds after opening statements. What I believe is that most jurors have a strong sense of whose side they believe after opening statements, and they tend to give much greater weight to the evidence presented by that side while discounting or even dismissing contrary evidence offered by the other party.

Regardless, the importance of a great opening statement cannot be overstated. Because every opening statement has a beginning, middle and end, this article will provide some practical tips for all three areas.

## A strong beginning

Start out strong with words that will grab the attention of the jury and establish your credibility; forget what you may have learned in some basic seminars.

Don't ever say your opening statement is not evidence. For example, don't start out by saying "Good afternoon, ladies and gentlemen, as you know, my name is Jane Smith and I have the privilege of representing the plaintiff in this case. My opening statement is not evidence, but rather, what I expect the evidence to show. It's like showing you the

puzzle picture on the box, with all the pieces to come later being the evidence." Sounds good, but convinces no one. It serves only to diminish your opening statement. Instead, come up with a beginning that will grab the jury's attention

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and get them involved in your client's case: "On Friday, February 5, 2017, it was unusually dark and cold when John Jones kissed his wife goodbye and left for work. Little did she know the importance the memory of that last kiss would have." Or: "For years Rhonda Wilson trusted people and saw only goodness. All that trust was broken, in April of 2018, when Rhonda discovered..."

Second, be sure to hit the theme of your case early in your opening statement. Through careful questioning of the jury panel in voir dire, you should have already begun to condition the jurors to the theme of your case, but your opening statement must be used to reinforce it and drive it home. In every case, you must develop a memorable theme in a persuasive manner by relating your theme to juror values, like personal responsibility, honor, integrity, duty, courage or fair play. Use your theme to tell a persuasive story.

From the defense perspective, you want to be the lawyer in the room who doesn't overreach or

exaggerate, but rather simplifies everything for the jury. Many good defense opening statements start with, "you are going to hear a lot of evidence in this case and a lot of claims by the plaintiff, but at the end of the day, this is really a very

simple case. This is a really simple case about..." –and then hit your theme.

## A clear ending

Just like it's important to start strong, it is equally important to finish with a strong and clear ending to your opening statement. Many lawyers appear to get tired by the end of their opening and fail to finish strong.

Finishing strong means telling the jury exactly what you will want them to do at the end of the case. Don't be shy. Be direct and be specific. If you represent the injured victim, tell the jury exactly what you believe just compensation would be, and don't be afraid to talk about specific numbers. Talk about the damages and condition them to thinking about the big numbers you want. And don't be apologetic.

On the defense side, be equally direct and let the jury know at the end of your opening statement what you expect their ultimate verdict to be: "At the end of this case, I will stand before you for

the third time, and I will ask you, based upon all the evidence presented, to render a defense verdict for my client on all claims."

A strong and clear ending is as important as a strong and convincing start.

## Some tips for the middle

Take command of the courtroom like the powerful lawyer you are. Consider reintroducing all parties and all people in the courtroom, including opposing counsel, opposing parties, the bailiff, the court clerk, the court reporter, and perhaps even the judge!

In telling your persuasive story, develop who the main characters of the story are (especially your client), develop what the conflict is among the main characters of your story, and tell the jury about a fair resolution to the conflict.

**Dan L. Stanford** is a Senior Trial Attorney and CalBar Certified Legal Malpractice Specialist who has prosecuted hundreds of such cases throughout California.



Get comfortable using technology, like PowerPoint or similar presentations. Jurors today expect a show, not someone reading from a prepared script. Use portions of the videotaped deposition of the adverse party. Use a timeline and blowups. A good timeline with corresponding blow ups becomes an effective outline for your opening statement. They allow you to get away from just reading your notes.

Try not to use legal terms, but if you do, take the time to explain them. Don't assume that jurors know the meaning of "plaintiff," "defendant," "interrogatories" or "depositions." Always call your client by name and refer to the other party as Plaintiff or Defen-

dant. Personalize your client and generalize the opposition.

As a plaintiff's lawyer, remember you get no rebuttal to the defense opening statement, so be sure and deal with what you know will be the defense's strongest points. Don't let the jurors hear it first from the defense. Soften the blow by framing it your way. This helps further establish your credibility with the jury. It shows them you know all the facts, you're not hiding anything, or trying to pull the wool over their eyes.

Don't start out with or use the phrase, "the evidence will show." It's weak. Save it for one special occasion: When opposing counsel objects. In today's climate,

don't be afraid to walk the line of making argumentative statements. "No one could believe what happened to Peggy Ryan." Or "The conduct of the defendant was offensive and outrageous." Counsel will object. Each time they do, state, "The evidence will show..." and repeat verbatim what you just said. Two things will happen. First, they won't object a second time because you've used the magic words "the evidence will show." And, second, after a few times, they will stop objecting altogether because they'll realize you are re-emphasizing the statement each time by saying it twice!

Finally, never, ever say anything in your opening statement you

cannot prove. Your personal credibility with the jury is one of the biggest factors that will dictate whether you win or lose. Remember that at every stage in the trial and in everything you do, especially your opening statement.

This column is the fourth in a series of 6 monthly articles:

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Sept. – Expert depositions in preparation for trial

Oct. – Tips for successful jury selection

Nov. – Practice tips for a great opening statement

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