



### Opening Statements

by *Melissa Stull*



The opening statement is your first opportunity to tell your story to the jury and is the catalyst for the remainder of your trial. It is your chance to explain your client's position and plant the first seeds of your claims or defenses in the minds of the men and women who will be charged with determining the outcome of the case you have been working up for months, if not years.

The first time you are faced with addressing the jury with an opening statement can be both thrilling and terrifying. Keep the following tips in mind when preparing for your first opening statement:

**Be a teacher.** Aside from the voir dire, which depending on your jurisdiction could have provided very little information regarding your case or could have been wildly informative to the jury, the opening statement is the first time the jury will hear *your* side of the story. The case has probably been your life for the last several months, you have lived and breathed the facts and law since the complaint was filed, you know the exhibit list by heart, the witnesses are on your speed dial, you know the facts and the law to the last minutiae. While this will no doubt serve you well at trial, it can also inhibit your ability to teach the case to the jury. You need to be able to get back to the basics and walk the jury through what they need to know before listening to the days or weeks of evidence ahead. People like to learn and you want the jurors to look to you for learning opportunities.

**Establish your credibility.** Simply explaining the key terms and concepts to the jury creates instant credibility. While "operator presence system," "reasonably foreseeable," or "peritoneal mesothelioma" may be terms that are commonplace in your vocabulary, your jurors may not have even a basic understanding of the key phrases that will be thrown around during trial. Take a few moments to explain common terms not only to better inform your jury, but also to increase your credibility in the courtroom.

While it is important to effectively teach the jury about *your* claims or defenses, it is also important to paint a clear picture of the case as a whole. You want the jury to look to your side of the table for the truth; in other words, you want to relay to the jury that you are most knowledgeable about the case so that later in the trial the jury will look to *you* for the facts.

**Admit your weaknesses.** By no means should you point to every piece of evidence that is damaging to your case, but you are often well served by being straightforward with the jury about the aspects of your case that can harm you. This not only reinforces your credibility with the jury, but also takes the surprise out of damaging evidence when the opposing party introduces it. This approach allows you the first opportunity to explain to the jury the significance of the evidence, so that it is not a surprise later in the case, effectively taking the sting out of your opposition's position.

**Relate to the jury.** While it will not win the case for you, it is good for your jury to like you. At a minimum, it certainly is not in your best interest to begin the trial with the jurors *disliking* you. Make eye contact. If appropriate, smile once in a while. Don't get caught up in legal jargon; use words that the jury will understand. At the same time, do not talk down to the jury. Always be respectful.

**Practice.** Prepare a well thought out statement, ensuring that all of your major points are clearly explored and that you have touched on every area that needs to be addressed in your opening. Now practice. What sounds good on paper does not always sound right when spoken, so don't just read your notes over and over, but actually say the words out loud. Deliver the opening statement to the partner or paralegal on the case. These are the people who know the case as well as you and can point out any areas that you may have overlooked or provide valuable insight into areas that need further explanation. Then practice on your spouse, your friend, or even your child. These are the people who know nothing about the case, i.e., people who are in the exact position of your jury. After delivering your opening, ask your audience what additional information they would like to know and ask them to repeat back the themes and concepts to you to ascertain whether they understood your story.

**Don't practice too much.** Practice makes perfect, but too much practice can make you sound scripted and unnatural. You want to tell the jury a story, not recite a memorized speech. Often times emotion can be lost if you are confined to the script that you have practiced down to the very last pause. The best opening statements I have witnessed were delivered by lawyers who were relaxed, knew their facts, and appeared to be having a conversation with the jury.

**Be organized.** Ensure your opening statement follows a logical pattern that your jury can follow. Avoid jumping between topics and instead organize your opening statement around your case themes. Your themes should be the common thread throughout the trial, tying together your opening statement, direct and cross examinations, and closing argument. Your themes provide a great roadmap for your opening, and consequently, what to expect during the trial.

**Do not argue.** There is a reason opening statements are not called opening arguments. Your opening statement is not the place to make arguments, and doing so is objectionable. The last thing you want during your first exposure to the jury is to draw an objection to your opening statement. Not only does it hurt your credibility with the jury, it can cause you to lose your train of thought and potentially derail the flow of your opening comments.

I was once at a trial where a seasoned lawyer delivered an opening statement so argumentative that he drew more than five objections, all of which were sustained by the judge, causing him to manually skip through over twenty slides of his prepared PowerPoint. The attorney was visibly flustered, lost his momentum, and his client settled by the end of the day.

Avoid being argumentative by telling the jury what your expert witnesses will say, what you will prove through the testimony, and what the evidence will show. Tell jury what they can expect to hear throughout the trial and save the argument for your closing.

**Be comfortable with your technology.** If used properly, PowerPoints, videos, animations, exemplar products, and slideshows can all be powerful aids during an opening statement. Unfortunately, however, such aids are just one technical difficulty away from being a distraction or, worse, damaging your credibility.

**Mind your nerves.** You feel your heart pounding, your palms are sweaty, your knees are shaking, you have a case of dry mouth, and your mind suddenly goes blank, the brilliant prose you have practiced in anticipation for this moment is gone without a trace. Relax. Your feelings are not uncommon; even the most experienced lawyers get a case of the butterflies before delivering opening statements to the jury.

While it is fine to be nervous—in fact, sometimes good nervous energy can enhance your performance—it is important to keep your nerves in check. You do not want the jury to see fear in your expression or be distracted by your unsteady voice.

The best treatment for a case of nerves is preventative medicine—be well prepared. If well prepared, you can take comfort in the fact that you know your case better than anyone else in the room, you have practiced your statement in front of an audience, and you know precisely the message you wish to convey.

Breathe deeply, bring water to the podium, hold on to the sides of the podium for the initial minutes of your statement until your hands stop shaking, schedule some movement into your statement—anything from basic hand gestures to prove a point, to the use of demonstratives or products to show the jury how something works can both relax you and distract you from your nerves.

Above all, have confidence. You are in the position to deliver an opening statement because your client, the partner, or more likely both believe in your abilities and think that you will do well. Remind yourself that you have worked hard to get to this point, take a deep breath, and deliver those familiar words, “Ladies and gentlemen of the jury . . .”

***Melissa Stull** focuses her practice on product liability defense, with significant experience representing manufacturers of agricultural, industrial, and environmental equipment. She has litigated cases for worldwide manufacturers of environmental equipment, represented one of the nation’s largest utility services companies, and defended one of the country’s largest medical device manufacturers in a nationwide MDL case.*