



Nicole Hurtado of The Ferraro Law Firm. Courtesy photo

COMMENTARY

Opening Statements: Striking While the Iron Is Hot

Opening statement offers an invaluable opportunity to make a strong first impression. It sets the tone for how the case unfolds. The opening statement provides the first real chance to connect with the jury and gives them their first glimpse of the story you are about to tell.

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Anyone who has ever seen a TV or movie courtroom drama is familiar with the exciting and tide-turning end scene. The attorney rises, faces the jury, and delivers a closing argument that changes everything. It's great stuff. Cinematic magic, even. But, in my view, not all that true. I believe there's another point in a trial that tends to be significantly more influential than the ultimate summation, and Hollywood should take a closer look at it: the opening statement.

Experience has taught me that opening statements are a crucial part, if not the most important part, of any trial. No single aspect of a trial will win a case. A trial is a full narrative, with each part contributing to the final verdict. However, an opening statement offers an invaluable opportunity to make a strong first impression. It sets the tone for how the case unfolds. The opening statement provides the first real chance to connect with the jury and gives them their first glimpse of the story you are about to tell.

As human nature dictates, we are naturally predisposed to form judgments quickly and hold on to them. Consider how we initially react to stories told by friends, diagnoses told by doctors, or pitches told by entrepreneurs—we are all more likely to believe the first impression we form. This phenomenon, known as confirmation bias, means jurors will often cling to their initial impression of the case.

Once jurors form an opinion based on the opening statement, they may search for evidence that supports their initial opinion, while dismissing anything that contradicts it. If the attorney is persuasive from the start, jurors may well adopt that narrative as their own. That perception can be incredibly difficult to shift later in the trial. Research behind confirmation bias shows that individuals tend to remain loyal to their position even after evidence shows it to be false.

Therefore, if you do not seize the opportunity to establish your case from the outset, you risk playing a never-ending game of catch-up (or facing a trial that ends in an unfavorable verdict). The key is to make sure jurors know exactly what they must pay attention to as the trial unfolds.

When trial begins, jurors are alert, fresh and eager to listen. It is the optimal opportunity to capture their attention and draw them in with your narrative before the fatigue of a lengthy trial sets in. If the opening statement is compelling, jurors will stay engaged and follow the narrative as it unfolds.

Opening statements can also demonstrate to the jury that the lawyer is prepared, organized and credible. Lawyers must instill confidence in the jury from the outset, assuring jurors that they are in capable hands. Moreover, this is the chance for lawyers to demonstrate that they truly care about the case. Lawyers must demonstrate that they are not just there to win, but that they are there to ensure justice is served. Sincerity is everything.

The opening statement is a carefully crafted roadmap that directs the jury's attention to what matters most. It requires a central idea or message that encapsulates the heart of the case, otherwise known as a theme. Once the theme is established, a case introduction should follow and then a concise summary of the story that will unfold.

Next comes the burden of proof and the jury's duty. This is crucial for setting the legal context of the case—what they need to understand in terms of law and what they will be asked to decide. Jurors must also understand the roles witnesses and evidence play, to comprehend how each piece of the puzzle fits together.

The best openings not only outline the facts but also anticipate the questions and doubts that may arise. Addressing potential concerns up front can help alleviate confusion and build trust with the jury.

While no part of a trial can “win” a case, the opening statement can make an irreversible impression upon jurors. Setting the stage, engaging the jury, and providing a clear roadmap for the trial establishes everything that follows and ensures that jurors have the right framework to process the evidence and arguments.

In the trial world, starting strong is not just a useful strategy—it's a necessity.

Nicole Hurtado is an associate attorney at The Ferraro Law Firm in Miami. She focuses her practice on catastrophic personal injury cases and mass tort litigation. She earned her J.D. from Emory University School of Law with a concentration in civil litigation and dispute resolution. Hurtado was a former director of the Emory Law mock trial team and recipient of the best advocate award at the 2023 Harvard Crimson Cup National Mock Trial Competition, among other mock trial accolades and trial advocacy awards.

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