

Presenting an Effective Opening Argument

By Molly S. Askin

There you stand. Two rows of jurors look at you expectantly. Is each juror sitting alertly, perched forward, anxiously awaiting your opening argument? Or is each juror imagining they have just been cast as an extra on their favorite television legal drama? How will you match up? How will you hold their attention?

While you do not have a team of savvy scriptwriters and well-timed commercial breaks, you do have a strong mind, great legal training, and (hopefully) the law and facts of the case on your side. All you have to do is let the jurors know why they will decide the case in favor of your client. Here are some tips to help you accomplish that goal:

- ◆ **Learn some Greek.** As any ancient Greek philosopher would tell you, ethos, logos, and pathos are the key elements to making an effective argument. You want to construct your argument to appeal to each juror on several levels. First, ethos builds trust in you, the speaker. The jury will be watching you and listening to you. You must speak and act in a way that demonstrates you are competent, reliable, and accurate. Second, logos appeals to the intellect. You want to present your argument in a way that gives each juror rational and cognitive reasons to decide the case in your favor. Third, pathos speaks to the emotional side of an argument. You should use adjectives and present your case so each juror can relate to the story you tell. As you construct your opening argument, keep this Greek triumvirate in mind. Present your case in a way that speaks to each element.
- ◆ **Introduce your case with a theme (and choose your words carefully).** The first words you utter to the jury can have a lasting impact. The jurors are paying attention; no one's mind has wandered (yet). Take this opportunity to start strong. "Ladies and gentleman, this case is about. . . ." Be short and sweet. In a few words, tell the jury what your case is. Tell them how they should decide your case and why. In your first sentences, you want to establish rapport with the jury (ethos), make a clear statement of your case (logos), and develop empathy (pathos). This can be accomplished by immediately introducing the jury to the key people and key words that establish your theme - the same words that will reappear throughout your case. Choose each word in your theme carefully, and make sure each word will be helpful throughout your entire case. The key words you use to establish your theme should appear often during examination and cross-examination of witnesses and during your closing argument. Repeating the theme in your case is essential because at the end of your time with the jury, you want each juror to remember your case in the words you used to describe it.
- ◆ **Introduce yourself.** Once you have provided a brief overview and introduction to the case, take a moment to introduce yourself and your client to the jury. Also describe important evidence and key witnesses the jurors will hear from during trial. This step will help establish your reliability and trustworthiness in the minds of the jurors. While some might advise you to introduce yourself before introducing your case, remember that you are in front of the jury to represent your client and tell your client's story. It is best to let words that describe your case be the first words the jurors hear.
- ◆ **Tell your client's story in their language.** Everyone has a story. Your opening argument is your first chance to tell your client's story. While you are well-versed in your client's story, remember that the jury is hearing it for the first time. Make sure your story makes sense to a new listener and flows logically. While you learned about your client's story in a certain way, consider presenting it to the jury in a different way. Does the story make better sense when told in chronological order? Is it clearer to tell your client's story by describing the roles different people played (for example, plaintiff/defendant, driver/pedestrian, consumer/manufacturer, insured/insurer)? Does the story flow more logically if you organize it by discussing main events or locations? After making this determination to help present your client's story, also remember that each juror comes to the trial with his or her own story. Use the knowledge you gained during voir dire to your advantage. As you tell your client's story, choose words and use analogies that help the jurors relate to your client. Tell your client's story in language familiar to the jury.
- ◆ **Describe the opposing side's weaknesses.** As you present your client's story, anticipate the other side's arguments and weave their weaknesses into your opening argument. Using language such as "the defense will try to show you. . . , but. . ." can help identify the holes in the opposing side's case. Be careful that you maintain good rapport with the jury. Do not dwell on the other side's weaknesses or let them become the focal point of your opening argument. Mention only the opposing side's main weaknesses, and use them to reinforce your client's story.
- ◆ **Address your weaknesses.** You know your case inside-and-out, and you know which facts you wish were not there. While it is important not to dwell on your weaknesses, it is equally important not to appear to be hiding them. Do not let the jury be surprised to hear something about your client from the other side for the first time. Your honesty will establish your ethos with the jury, and when you identify the weaknesses yourself, you can control them by explaining them in a way that reinforces the logos and pathos in your argument.
- ◆ **Tell the jury what they should decide (and why).** As you near the end of your opening argument, be explicit. Tell the jury what they should conclude from the evidence they will see and testimony they will hear at trial. Match up your client's story with the law and let the jury know what you want from them in the end. Since you have already let them know they can trust you (ethos), and they can identify with your client (pathos), in your conclusion, show them how drawing a certain conclusion makes good sense (logos). Finally, remember that while this article refers to an opening argument, you cannot make true "arguments" quite yet. Employ the phrase "the evidence will show" to tell the jury what conclusions you want them to draw.
- ◆ **Use your space.** Show that you are comfortable with your client's story and in control of the courtroom by moving around as you present your opening argument. Before arriving in court for your opening argument, make sure you have a good idea of the physical layout of the room. Is there a desk or podium? Know where the judge, jury, bailiff, stenographer, and opposing counsel will sit. As you practice your argument, consider how your movements and gestures can help bring your client's story to life and add appropriate emphasis to key points. Practice speaking and moving in a way that feels and looks natural. If possible, videotape yourself presenting your argument and watch the video. Be careful that your movements make you appear calm and in control. Avoid movements that undermine your credibility or might distract jurors from your client's story.

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Practice, practice, practice (don't memorize, memorize, memorize). Your familiarity with your case will greatly affect each juror's confidence in you and your client's story. Practice your opening argument so many times that you know it inside-and-out. Know your theme, every key word, and each person, place, idea, concept, and theory you will describe to the jury. It is essential to not memorize your opening argument word-for-word because you do not want to lose your place in front of the jury and stumble with your words. If you know your opening argument by heart, you will be able to cover key points without following a script. By speaking from knowledge and not from memory, you will appear to be more sincere and help win your case.

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