

Association of Business Trial Lawyers--Orange County Chapter
Opening Statement Techniques from the Masters
March 11, 2020

Twelve Rules for Openings in Jury Trials

1. ***Start strong and save your introductions for later***—know what you intend to say and get their attention. Avoid “throat-clearing,” save introductions (if any) until later, and thank the jury for their service (if not already done in voir dire) in the closing after you start strong with a story and theme.
2. ***Have a theme and tell a story.*** You should be able to state your theme of the case in one sentence, and the beginning of your opening should incorporate it.
3. ***Never over-promise.*** Make sure you will be able to prove it if you are going to say it.
4. ***If you have and can use good documents, use them.*** You are arming jurors with ammunition they will need to advocate for your position in deliberations.
5. ***Keep any demonstratives simple.*** Strongly consider the how accessible your demonstratives are before you present any complicated timelines or demonstratives.
6. ***A roadmap can be useful, but don’t call it a roadmap.*** Also be brief, and don’t start or end with it.
7. ***Deal with bad facts, documents, and evidence.*** As a plaintiff, expect that the defense will present facts that are bad for you, and anticipate them. As a defendant, know that a good plaintiff’s opening will review unfavorable facts, documents and evidence and be prepared to deal with them possibly in detail.
8. ***Order your facts and evidence with an eye toward primacy and recency.*** People remember things mentioned first and last better than things mentioned in the middle.
9. ***Practice and memorize; do not read your opening.*** You should practice your entire opening, and especially the first and last two minutes. If you cannot memorize your opening, work from an outline if at all possible.
10. ***Avoid death by Powerpoint.*** Hopefully you have at least outlined your opening in detail, but that detailed outline does not belong in a Powerpoint for the jury. If you use Powerpoint, it should be used sparingly and to highlight exhibits and evidence, not as something to read from.
11. ***Use the phrase “the evidence will show” sparingly or not at all.***
12. ***If appropriate, cover note-taking and what to pay attention to.*** In a long trial, juror notes can be key. Encourage note taking, including date, part of day, witness and exhibit numbers.