

COURTROOM  
PSYCHOLOGY  
AND TRIAL ADVOCACY

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### A FINAL WORD: OPENING STATEMENTS

The opening statement is the opportunity to win the hearts and minds of jurors. Do this by making a movie in the mind that touches the heart of each juror.

First, forget you're a lawyer. Be a storyteller. Be a teacher. Practice your story everywhere with every person. Develop your theme into a thirty-second sound byte that repeats throughout the trial. Work the complete story into a two-minute summation focused on the who, what, where, how, and, most importantly, why of the story. Reach your listeners' hearts. Be the person whom the jury trusts and, ultimately, the side for which the jury will root throughout the trial.

Second, choose words that create pictures in the minds of the jury. Invite the jury to hear your story as if they were watching a movie. Avoid the nit-picking details. Relate the facts to everyday experience. Be descriptive, but avoid hyperbole and emotion. Talk about the real people with first-hand knowledge. Use the words of the witnesses. Emphasize the words and events with color. Use blow-ups, timelines, charts, and other technology to put snapshots of your movie in the mind's eye of each juror.

Finally, return to the hearts of the jurors. Make fairness the goal of your story. Tell your story so that the jury reaches the moral before you. Choose words that enroll the jury in righting wrongs committed by your opponent. Every person wants to be treated fairly and given a fair opportunity. Focus the jury on the unfair actions/decisions of the other side. Jurors want to reach a fundamentally fair result even where that result may not be the legally correct result.

In a recent trade secret theft/unfair competition case, two corporate giants sued each other on similar theories. To a lay person, critical components of the competing products appeared disturbingly similar. The defense story started in the lab of its scientist, continued with e-mails between the scientist and the corporate plaintiff, and finished with the corporate plaintiff preventing the

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scientist from working in her field of expertise for three years. As a result, the corporate defendant was unable to bring its competing product to market for one and one-half years. Counsel for the defense focused the opening story on two points: (1) the plaintiff's failure to identify the specific trade secrets that the scientist was prohibited from using and (2) the plaintiff's business strategy to use the litigation to keep the competitor's products from coming to market. The jurors may not have understood the technology at issue in the case, but they certainly understood that the corporate plaintiff destroyed the scientist's ability to continue her life's work.

— Nancy J. Geenen, Partner  
Foley & Lardner