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ADVOCACY

Legendary litigators share their advice on crafting your best opening statement

BY ALLISON LEOTTA

After months of preparation, you finally have the chance to try your case. The jurors follow you expectantly as you stand, take a deep breath and say—what?

What do you say? How should you say it? The answers to these questions are crucial to your entire case. A trial can be won or lost based on choices you make in your opening statement. It's your first chance to frame the narrative, win the jurors' sympathy and establish your own credibility.

Most of us know the basics: Tell a good story, weaving the evidence with themes that will resonate with the jurors' common sense and life experience. But what's the best way to do that? Bang on the table or shoot the breeze? Attack immediately or hold your fire? Most important, how do you connect with strangers who can't talk back but will determine the fate of your case?

This topic is important enough to merit articles in two consecutive issues of the *ABA Journal*. And they follow a different format from a previous article I've written for the *Journal* about how to be an effective storyteller in court. I asked 11 of the most renowned trial lawyers in the United States to share their secrets to a great opening. Together, they provide an invaluable glimpse into the art of persuasion.

Here are their responses, in their own words, although slightly edited.

PHILIP BECK: BE A GOOD TEACHER

Philip S. Beck tries commercial cases throughout the United States. His subject matter includes product liability, audit malpractice, commercial disputes and intellectual property. His noncommercial cases include the 2000 presidential recount litigation in Florida, where he represented George W. Bush, and a wrongful imprisonment case in which he obtained a \$15 million



Philip Beck.

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verdict for a man who served 15 years in prison for a murder he did not commit. He is at Bartlit Beck Herman Palenchar & Scott in Chicago.

Most trial lawyers agree an opening statement should tell a story that provides the jury with an emotionally satisfying framework for evaluating the evidence. But what if the jury isn't ready to listen to your story? This happens to defense lawyers all the time. After the plaintiff's lawyer finishes her opening, you may be looking at a jury box filled with stern faces and crossed arms.

In such a case, I structure my story to calm the jurors down and overcome their initial hostility before getting into the meat of the dispute. I do this by going into "teaching mode" early in the opening.

For example, in a pharmaceutical case, I start with the disease the drug was designed to cure—how it diminishes the quality of life. Next is how doctors have tried to treat the disease over the years. The idea is that, in medical science, each advance carries with it some risks. The most recent advance will be my client's efforts to develop a safer and more effective treatment.

I purposely get a bit "sciencey" in this discussion. I want the jurors to feel good about themselves for understanding the medical issues and to feel good about me for helping them understand. If they view me as the teacher, they are more likely to believe my story on the more controversial aspect of the case.

Another benefit of this approach is it supplies a villain and a hero that every good story requires. The villain is the disease. The heroes are people like my client, who labored to defeat the villain. It is heartbreaking that the plaintiff is one of the few people who experienced the medicine's warned-against side effect, but that is no reason to punish a company that has bettered all our lives.