

Presenting a live 90-minute webinar with interactive Q&A

Personal Injury Opening Statements and Closing Arguments: Preparing and Delivering, Handling Objections and Related Motions

Developing and Presenting a Persuasive Roadmap; Delivering a Convincing and Memorable Case Summation

THURSDAY, SEPTEMBER 20, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Mark W. Davis, Co-Founder, **Davis & Brusca**, Princeton, N.J.

Robert F. Glass, Partner, **Glass & Robson**, Atlanta

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**PERSONAL INJURY OPENING STATEMENTS
AND CLOSING ARGUMENTS:**

**PREPARING AND DELIVERING, HANDLING
OBJECTIONS, AND RELATED MOTIONS**

September 20, 2018 Webinar

PRESENTED BY:

- Mark W. Davis, Esq.
- **Davis & Brusca, LLC**
- Princeton, New Jersey

- www.dbtriallawyers.com

Robert F. Glass, Esq.
Glass & Robson, LLC
Atlanta, GA

www.glassrobson.com

OPENING STATEMENTS

OPENING STATEMENT:

Why it is important?

- You are creating a **FIRST IMPRESSION**, both of yourself AND your case
- Confirmation Bias: Approx. 65% - 80% of jurors reach a verdict consistent with their initial impression of the case

WHAT CAN A GOOD OPENING STATEMENT DO FOR YOUR CASE?

- Establish trust & Engagement
- Showcase your Competence & Authority
- Focus the Juror's impressions on the "story" of the case you want them to remember & carry with them through the case & into the jury room

Opening Statements: Key Elements

- Storytelling
- Credibility
- Explaining why you are there
- Begin to dismantle claims/defenses
- Set reasonable expectations
- Empower the jury as the last chance for hope for your client

Opening Statements: Key Elements

- Storytelling:

- Use the present tense
- Use photographs/demonstratives
- Keep it interesting with adjectives and descriptive words
- Get the jury's attention and establish a theme early on
- Practice, practice, practice

Opening Statements: Key Elements

• Credibility and Candor:

- First impressions go a long way (“Give me good jury selection and a compelling opening statement and the case is won” – Gerry Spence)
- Be careful with advocacy. Don’t “over advocate” without first establishing your credibility to the jury
- Be respectful of the jurors and your opposition
- Don’t promise what you can’t deliver

Practice Tip: “Tell it, Don’t Sell it”

- The right to “advocate” is based on Trust
- Trust is *given to you* by the jury, but must be earned.
- Lawyers are not well-regarded or trusted by the general public

- For these reasons, many argue it is better to **AVOID ADVOCACY** in an opening and simply give “THE FACTS”
 - BUT you can still **FOCUS THOSE FACTS** to show why YOUR STORY is the “RIGHT” story

Opening Statements: Key Elements

- **Why are We Here?**
 - Establish yourself as the leader of the trial
- **Begin Dismantling Claims/Defenses**
 - What can you expect to hear from the opposition
 - “Let’s put that in perspective”...
- **Setting Expectations**
 - Do not overpromise
- **Empowering the Jury**
 - Emphasize the importance of their role

Opening Statements: Demonstratives

- Is a picture is worth 1,000 words?
- **Option 1: Tell the Story:**
 - “Because of the wreck, Ms. Smith had to have some plates put in her neck to secure her spine after the surgery”
- **Option 2: Show the Story...**

Post-Surgery X-rays

April 16, 2015



Opening Statements: Using Opposing Party's Pleadings

- Opposing counsel rarely expects to see their pleading responses after they have been filed
- Using their own words against them seems to get the attention of the jury, especially when it contradicts what the lawyer will say
- In an injury case, how often do you hear the defense say, "we accept responsibility for the wreck?"
- What are they accepting responsibility for?

IN THE STATE COURT OF [REDACTED] COUNTY
STATE OF GEORGIA

CHRISTINE [REDACTED],)
)
Plaintiff,) CIVIL ACTION
)
v.) FILE NO. [REDACTED]
)
ANGELA [REDACTED])
)
Defendants.)
_____)

REQUESTS FOR ADMISSION

Please admit the following:

10.

Please admit that you are liable to Plaintiff for the physical and emotional pain and suffering she has incurred and will incur as a result of the subject collision.

Response: Denies.

11.

Please admit that you are liable to Plaintiff for the medical expenses she has incurred and will incur as a result of the subject collision.

Response: Denies.

Opening Statement Pitfalls

- Too much reliance on your notes/outline;
- Using legalese or complicated words;
- Taking up too much time;
- Disparaging the opposing party or their counsel;
- Advancing too much argument rather than expectations of what the evidence will show.

When Should I Start Drafting my Opening?

- Do it EARLY: As in, during the Discovery Phase
- Your Opening should evolve with your case if you want to control the story of the case
- Consider your closing when you frame your opening.
- Tell them what you will prove, and then go and PROVE IT!

FINAL FRAMING

- Best done **Weeks** before your trial
- You should practice the opening to “test drive” your message to an audience
- Be humble and willing to modify to improve the impact

TIPS FOR DELIVERY

- **Follow an outline** – not a pre-written “statement”
 - Keeps it Cohesive
 - May help to have key transitions written out
- **Structure:**
 - Studies show “Fact based” approach is usually best
 - Be sure to introduce Key Terms & Positions, as the jury is a “blank slate”
 - Be sure to tell an **ENGAGING** story, or you’ll quickly lose them!

TIPS TO FOCUS YOUR STORY

- **Focus on the conduct of “others”**: A jury will likely be more critical of the one “in focus”
- **Consider where your story *really* begins**: Try to shift the jury’s impression of those who had “control” over the outcome.
- **What emotions can/should you seek to elicit?** Can you trigger the juror’s collective “fear”, “anger”, “disgust” or “hope” to work for you?

Who are the “GUARDIANS” of your Story?

- DON'T try to be the “source” of the information:
 - You are a LAWYER, not a witness. The jury will not trust you yet and the judge may even tell them not to!!
 - Your role is to **Teach** the jury, but source your information to particular witnesses, documents or events.
- EVERY IMPORTANT FACT should have a “guardian” to back it up

VISUALS

- **Use them to engage the jury & reinforce memory**
 - Jurors will remember more of your story if you combine your speech with visuals.
 - Keep it simple & uncluttered
 - Use “color theory” where possible
 - Consider using static boards to give “signposts” to jurors who’s minds stray
- **TIP:** Use of visuals may require a formal motion or other judicial permission

INTRODUCE ALL KEY TERMS & PRINCIPLES

- Your should be a “blank slate” - don’t assume they know ANYTHING
- Your job is to teach them the key points they need
- **DON'T OVERLOAD THEM, OR YOU'LL LOSE THEM!**

MOTIONS

MOTION PRACTICE FOR OPENING / CLOSING

- **Motions in limine:**
 - Take nothing for granted, including the fact that there will or will not be a basis for appeal
 - What will best set your case up?
- **Do you want visuals?**
 - Do you need a motion?
 - Are your statements properly factual or “tied to facts” in evidence?
- **Bottom line:** Anticipate your opponent & research your response PRIOR to trial if possible.

TIPS FOR MOTION PRACTICE

- **Be Clear & Succinct in ANY Application:**
 - Consider your audience
 - Judge or clerk may have *a lot* of motions to read.
 - Are you ultimately writing for the Judge? Law Clerk? Appellate Court?

TIPS FOR MOTION PRACTICE

- **Keep it Simple:**
 - Frame the issue as you would your opening – target the speech to a 6th – 8th grade writing level when possible
 - Avoid citing 100 cases. Focus on the Best ones (or one).
 - Short paragraphs. Single issue sentences.

TIPS FOR MOTION PRACTICE

- Concede the obvious & don't over-reach
 - This will enhance your credibility with the court, which can go a VERY long way for you.
 - Credibility is king! Seek it WHEREVER you can!!

TIPS FOR MOTION PRACTICE

- **Make your exhibits EASY for the court to access & read**
 - Consider pasting them IN THE DOCUMENT when possible
 - This will avoid the “hunt” caused by the dreaded “see exhibit ...”

CLOSING ARGUMENT

Closing Argument: Key Elements

- Don't rehash the entire case: Hit the high points;
- Describing events of trial that support your theme advanced in opening;
- Speak with conviction;
- Show emotion when appropriate;
- Maintain a big picture view;
- **Ultimate objective: Arm your favorable jurors with the facts to advocate for your client in jury deliberations.**

TIPS FOR CLOSING EFFECTIVELY

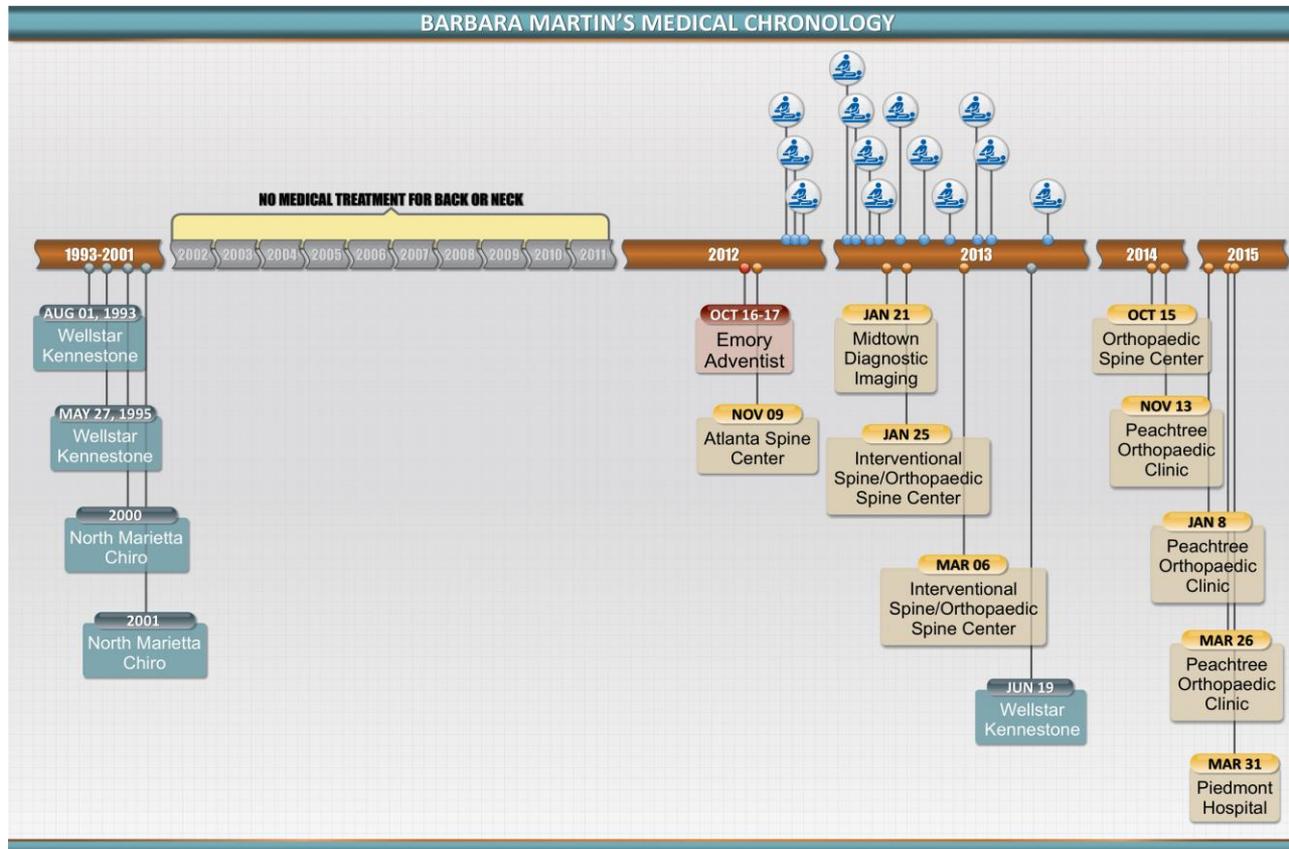
- Consider Making Exhibits from your Jury Instructions
 - Explain them to the Jury while they see the words the judge will ultimately read to them
 - Call out the facts & evidence which prove the various elements and tie them back to the witnesses to provided the evidence

Bolster and Rebut Using Demonstratives: Hired expert vs. Treating Provider

Hired Gun versus Lynn's Doctors

Dr. Jeffries	Dr. James Chappuis and Dr. Lee Kelley
<ul style="list-style-type: none"> <input type="checkbox"/> Not seen at Lynn's request <input type="checkbox"/> Never met Lynn <input type="checkbox"/> Never talked to Lynn <input type="checkbox"/> Never taken medical history <input type="checkbox"/> Never examined <input type="checkbox"/> Not an orthopaedist <input type="checkbox"/> Not a surgeon <input type="checkbox"/> Reviews films all day <input type="checkbox"/> Not allowed to operate <input type="checkbox"/> Never performed spinal fusion <input type="checkbox"/> Testified for Sharon Ware & Associates over 500 times in his career <input type="checkbox"/> Made millions of dollars testifying people are not hurt without treating them <input type="checkbox"/> Testimony is bought and paid for <input type="checkbox"/> Discredited by Dr. Kelley <input type="checkbox"/> Admits what Dr. Kelley and Dr. Chappuis say is correct: asymptomatic before wreck, then wreck need for surgery 	<ul style="list-style-type: none"> <input type="checkbox"/> Seen in person at Lynn's request <input type="checkbox"/> Personally examined and treated Lynn <input type="checkbox"/> Took her medical history <input type="checkbox"/> Personally reviewed MRI films <input type="checkbox"/> Board-certified orthopaedic surgeons <input type="checkbox"/> <u>Operate on their own patients at the patient's request</u> <input type="checkbox"/> Help their patients on a daily basis <input type="checkbox"/> Conclusions based on first-hand treatment and medical opinions <input type="checkbox"/> Dr. Kelley: Seen Lynn's cervical spine with his own eyes <input type="checkbox"/> Dr. Kelley: watched and monitored Lynn's recovery from surgery <input type="checkbox"/> Not hired by anyone other than Lynn, the patient

Bolster and Rebut Using Demonstratives: Prior Treatment for Same Body Part - Timelines



ARMING THE JURORS TO CONTINUE YOUR WORK

- Your Goals:

1. Convince those you can convince
1. Give ammunition to your acolytes to continue your advocacy in the deliberation room
1. *TELL THEM* THEY CAN HOLD OTHER JURORS ACCOUNTABLE TO UPHOLDING THE LAW

TIPS FOR CLOSING EFFECTIVELY

- **Be Cohesive & Concise**
 - Frame & TEST your closing before you give it
 - Follow & reinforce your opening
 - Reuse your Exhibits & Documents
 - Defuse your opponent through their words as much as possible, but weave it into YOUR case
 - Avoid: "My opponent claims"
 - Use Video Clips & Demonstratives where possible

Damages: Asking for the Money

- Medical bills and Lost Wages: “The easy part”
 - Use a demonstrative or PowerPoint listing medical bills so the jury can see and write them down
- Non-economic damages
 - Be creative with ways to extrapolate a large lump sum to a daily/weekly/yearly amount
 - For hourly rates, compare a modest amount you ask for to the hourly rate of the opposing side’s experts’ hourly rate
 - Use Mortality Table for permanent injuries

Closing Argument: Pitfalls

- Talking “at” the jury instead of with them;
- Not making and maintaining eye contact;
- Negative statements about opposing counsel;
- Not emphasizing that this is the client’s one chance for justice.