**Features of Persuasive Openings**

Persuasive opening statements include many features:

*First*, they present a clear theme of the case. A good theme provides the jurors with both the conceptual framework for the facts and the emotional undercurrent for the case. Themes should be short and concise. A good rule of thumb is to think of a short phrase or sentence that jurors could use to answer the question, "What kind of case are you sitting on?" For example, "This case is about a company who polluted our water just to make more profits," would be a potential theme in a toxic dumping case.

*Second*, persuasive openings are well-organized.  This is not as obvious as it sounds.  The theme is reinforced by the content of the presentation and manner in which it is made.  Consideration is given to the placement of key information or points in the presentation, capitalizing on the presence of primacy and recency effects.  Primacy and recency refer to the principle that information is remembered best when encountered first or last, respectively.  The issue of when primacy or recency effects will dominate is complex.   However, as a rule, information encountered in the middle of a presentation is remembered least well.

*Third*, effective opening statements take advantage of persuasive techniques such as rhetorical questions and inoculation strategies, carefully weaving them into the fabric of the presentation.  Rhetorical questions help persuasion by guiding the jurors' search for answers and, in some cases, implying answers on their own.  For strong cases, placing rhetorical questions near the beginning of the presentation or subdivision of the statement fosters persuasion because the answers will be forthcoming.  However, for weak cases, rhetorical questions placed in the beginning of the presentation reduce persuasion because the answers to these questions are either not forthcoming or are equivocal.   Rhetorical questions are also effective when placed near the end of the presentation when they address the weak points of the opponent's case.

Inoculation is a technique which increases the resistance to persuasion.  As the name implies, this technique is analogous to the medical technique of inoculating patients to increase their resistance to disease.  Inoculation in persuasion occurs by exposing jurors to a weakened version of the opponent's arguments and successfully refuting these arguments, thus making the jurors aware of counterarguments to the opponent's position.  When the opponent later raises the argument, jurors are able to more successfully resist it.

*Fourth*, persuasive opening statements enable the jurors to see the case from the client's perspective.  They take jurors  from the realm of the outside observer to that of an actor in the event being recreated by describing the events as seen through the client's eyes.  This shift in focus enables jurors to have greater empathy for the client.  Obviously, jurors cannot be asked to "put themselves in the party's shoes." However, jurors will be placed in those shoes by an opening statement that effectively walks them through the case.

*Fifth*, persuasive opening statements do not ignore problem areas in the client's case.  Damaging evidence is anticipated and discussed.  The "sting" of this evidence is removed by portraying it in the best light.  Not only is the impact of the evidence attenuated, but the attorney is viewed as being more open and honest by jurors.

*Sixth*, effective opening statements call into question the credibility of critical opposing witnesses, where possible. Knowing in advance that witnesses have credibility problems in their testimony strengthens the listener's resistance to persuasion by those witnesses, thus reducing their effectiveness.

*Seventh*, good opening statements take advantage of the fact that jurors must understand key legal standards and terms *before* they view the case in order properly to integrate the information.  In view of this, key terms are briefly discussed in language that jurors can understand.  However, noncritical legal terms and procedures or long digressions as to the law detract from the persuasiveness of the presentation and are not included.

*Eighth*, persuasive opening statements are presented with confidence.  The language is "powerful." It is direct, not qualified.  In addition, the choice of words and phrases used is important.  Words used to describe a person, object or event which are differentially "loaded" produce different perceptions in the minds of jurors.  Persuasive opening statements take advantage of this fact with words being chosen that produce the most favorable psychological impact.

*Finally*, the attention level of the jurors at the opening statement stage is at one of the highest points during the entire course of trial.  Persuasive opening statements capitalize on this fact by making full use of the statement and not shortchanging the presentation.With this overview in mind, there are a number of recommendations that can be made. While not meant to be exhaustive, what follows is a list of 13 recommendations. The watchword for considering these recommendations is flexibility. These recommendations must be tailored to fit each case, given its unique characteristics.