On Trial

Advocacy Skills
Law and Practice

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the plaintiff's damages and no doubt you will want to pay close attention to that as well.

8. *Use Demonstrative Evidence:* It is helpful in many cases in outlining the essential story to use demonstrative evidence. This may range from schematic diagrams and aerial photographs of accident scenes, to overhead projections of a document of considerable importance or to an anatomically correct model of the human knee showing the various bones and ligaments, etc. It may help, for instance, to explain the nature of the evidence to come as to the injury to the plaintiff's knee if the latter such model is used.

These items will not be in evidence yet, and accordingly their use may be contentious. This problem can generally be resolved by agreement with counsel or by requesting the permission of the trial judge to refer to such demonstrative evidence which, if not terribly contentious, will usually be granted by the trial judge upon counsel's undertaking to properly prove the model.

9. *Mention the Law Only as Necessary:* The opening address is intended to give an outline of the facts and thus mention of the law is seldom necessary except on occasion in the most general way. This is usually done in connection with a statement to the jury as to the issues they must decide. It may be necessary, for instance, in a wrongful dismissal case, to tell the jury that they will be called upon to decide whether there was "just cause" and go on to explain that generally the law provides that an employer cannot terminate an employee without reasonable notice in the absence of just cause.

10. *Discard Excess Verbiage:* The opening address should be very much to the point, which is to outline the facts and issues. There is no room for direct emotional content, nor for any lengthy soliloquies on our justice system or anything of that nature. Even if it was permissible, it would not remotely be appreciated by a jury at this stage of the proceedings.

11. *Avoid Technical Material:* Do not allow the opening to sink into a lengthy explanation of technical evidence at any stage. Do not try to explain such evidence to the jury in the opening. Simply make reference to the conclusions of any such expert, if that is deemed necessary and desirable for the opening, and save the examination-in-chief of that expert to explain the technical material in an appropriate way.

For example, the following statements might be made in the opening address: