

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

September 17 - 21, 2018

Phoenix, Arizona



OPENING STATEMENTS

Presented by:

RENE SCHENKS

Deputy Maricopa County Attorney
Phoenix, Arizona

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015

ELIZABETH ORTIZ
EXECUTIVE DIRECTOR

Opening Statements

Purpose:

This is a _____ of State's Case

Get the Jurors' _____

Build _____

Get Jurors' to think like _____

Why Care?

First _____

Establish _____

Primacy & Recency

Tie _____ & _____ together

Building the Opening:

DON'T DO THAT! (aka: Things to Avoid)

Over promise

_____ Talk and _____ Talk

_____ Introductions—_____ introduction

What I say is not evidence...

The evidence will show....

The purpose of an opening statement is...

The witness will testify that ...

Tell story from investigating officer's point of view

Argue

Ignore State's weaknesses and defenses

Vouching

DO THIS....

PREPARE

6 Ps: _____

ADVANCE _____ and _____

Tell a story that the jurors can _____

_____ the victim(s) and witness(es)

Draw the sting on weakness

Use visuals

Opening
Statements

PURPOSE = PREVIEW

- Get their ATTENTION
- Build TRUST
- Think like YOU
- Present your THEME

WHY CARE ABOUT
OPENINGS?

- 1st Impression

Jurors Knowledge of Lawyers

First Impression

**How you present yourself,
Is how people first view you.
What are you showcasing?**

First Impression

—YOU—
NEVER
get a second
CHANCE
TO MAKE A
Great
FIRST
IMPRESSION

WHY CARE ABOUT OPENINGS?

- **1st Impression**
- **Credibility**
- **Primacy & Recency**
- **Tie Theory and Theme Together**

THEORY & THEME

<u>THEORY</u>	<u>THEME</u>
<p>Why the LAW says you win</p> <ul style="list-style-type: none">• Legal = Elements who, what, when, where• Factual = Testimony why and how	<p>Why the jury WANTS you to win</p> <ul style="list-style-type: none">• Moral Persuasion• This is a case about...• What did D do to deserve punishment?• What morals do we share as a community that make this illegal?

THEORY

- **How was the crime committed?**
- **Accomplice liability or actual defendant's acts?**
- **Actual or Constructive Possession?**
- **APC or Driving? Both?**

**You can live without a theme;
you will die without a theory.**

THEME

- Short simple statement about case
- Helps to organize & remember case

BUILDING THE OPENING

BUILDING THE OPENING

- **THEME**
- **STORYTELLING**
- little law
- **DIRECTION**
- **THEME**

THEME

Phrase or Idea

- Why should the jurors care?
- Explains what the Defendant did that deserves punishment
- How is Defense going to try and beat you?
- May address case's weakness

THEME

Other Places to Find a Theme:

- Defendant's statements or actions
- TV Commercials
- Inspirational Quotes
- Cartoon Characters

Theme

Combine Evidence & Theme

STORYTELLING

Storytelling

Complex → **Simple**

Boring → **Interesting**

Dull → **Exciting**

Storytelling

- **Decide Order**
- **Point of View**
- **Bad Facts**
- **Anticipate Defenses**
- **Delivery**

Storytelling

Delivery

- **Impact of Communication**
 - **7%** = What you say
believe their eyes and ears, not your words
 - **38%** = How you sound
volume and inflection, less on quality of voice. It's their impression of you.
 - **55%** = How you look
clothes, facial expression, stance, leaning of body, hands and eye movements

Albert Mehrabian, UCLA Professor

little law

- **Not the main focus**
- **State it. Don't argue it.**

END STRONG

- **Tell the Jury What you Want**
– *HINT: Find the Defendant Guilty*
- **Theme**
– *Don't forget: Primacy & Recency*



Do Not Over Promise
What You Can Prove!



Misstate Facts



Avoid:
COP TALK & LAWYER TALK

**Vehicle
Exited the Vehicle
Assaulted Victim
Resisted Arrest**





Excessive Introduction
The Evidence will show...
What I say is not evidence...



Read Your Opening Statement



Use Notes



DO THIS...



DO THIS...

Prepare, Prepare, Prepare

6 Ps:

Prior Preparation Prevents

Piss Poor Performance



DO THIS...

- **Personalize the Victim / Witness**
- **Use Your Evidence**
- **Use Visual Aids**
- **Use Deliberate Movements**



Believe in Yourself!



Opening Statements

S. René Schenks
JC-East, Assistant Bureau Chief
Maricopa County Attorney's Office
schenksr@mcao.maricopa.gov
