OPENING "ARGUMENT"

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I. INTRODUCTION

What do Opening Statements, Book Dust Jackets, and Movie Trailers have in common? They all attempt to catch the eye of an audience and, in a very short time, convince them to buy the product at issue whether it is a position in a lawsuit, a book, or a movie ticket. Effective ones will, through words and images, create a sense of positive anticipation. Given the time and space limitations governing this presentation, no attempt will be made to discuss every aspect of crafting an opening statement that will captivate the jury and cause it to consider all of the evidence it will hear in a manner most favorable to the plaintiff. Instead, a short discussion of the goal of opening statement and several suggestions at how to achieve that goal will be offered.

II. THE GOAL OF OPENING STATEMENT.

Some lawyers say that the goal of opening is to allow the attorney the opportunity to tell the jury what the case is about. If that were true, we would just let the judge do the opening for us. No, the goal of the opening statement is the same goal shared by every other part of the trial - to convince the jurors that our client should prevail. If we are simply telling the story, without thinking about how the process of doing so will aid us in prevailing, we are wasting a valuable, perhaps the most valuable, opportunity we have in a trial to do so.

Legions of authors have described the opening statement as an essential part of winning a jury trial. Accordingly, it will be assumed the reader is aware that studies show that first

impressions made during the opening often continue all the way through verdict, that the rule of primacy is best complied with when we have the opening and the first chance to tell the jurors who should win and why, and that our credibility as lawyers is established during the opening statement and this credibility, as much as the facts can have a real impact on the ultimate result achieved. Empirical research certainly supports this idea[1]. This is where we will introduce our theme (hopefully already hinted at during voir dire), tell what the defendant did wrong, tell how the plaintiff is a responsible person who was wrongfully injured, and deflect the best parts of the opponent's case.[2]

III. INTRODUCE THE THEME - A STORY WITHOUT A THEME IS NOT MUCH OF A STORY - IT IS JUST TALK.

A car crash is not a sterile legal event. Instead, a car wreck is an every day tragedy involving real people with real damages. Our task is to convince the jury that the plaintiff we represent is entitled to prevail and to full compensation. This can only be accomplished through the effective presentation of the facts within the framework of the law which governs the case. This process requires the successful litigator to develop a theme which will carry the case through, over, and sometimes around the many obstacles which make up the plaintiff's legal theory and that of the defendant.

The best way to present the facts of a case is to tell a story. The most memorable stories are those which both illustrate a moral and which can be summed up in a phrase or two. In the realm of trial practice, the moral to our stories is our legal theory and the phrase or two which captures the essence of our moral/legal theory is our trial theme.

A. THE TRIAL THEME IS THE HOOK ON WHICH THE JURY WILL HANG ITS VERDICT.

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1 Spiecker and Worthington, The Influence of Opening Statement/Closing Argument Organizational Strategy on juror Verdict and Damage Awards, *Law and Human Behavior*, Vol. 27, No. 4, August 2003.

2 Nations and Singer, Communicating During the Trilogy of Persuasion: Voir Dire, Opening and Summation.

The American Heritage Dictionary of the English Language defines theme as "[a] topic of discussion, often expressible as a phrase, proposition, or question." "Themes link narrative and argument to show the role of human action in producing the particular plot. These stories don't just happen, but they are caused by the actions of the parties."[3] Another author puts it this way: "[t]he theme is the 'storyline' of the case. . . . [It is] the soul or moral justification of your case. It is rooted in human behavior and sociocultural attitudes, and is sometimes more intuitive than analytical."[4] Put still another way, the "theme should be that explanation of the facts which shows the moral force is on your side."[5] "Strong themes crystallize complex concepts and arguments, fixing in jurors' memories the ideas they represent."[6]

All of the above sounds impressive, and certainly each of the sources quoted above should be read when the curious trial lawyer finds the time, (perhaps while waiting for the jury to return), but the definition which is most useful when attempting to choose a theme is this:

> A trial theme is the single phrase which lends credibility, through human experience, to your version of the facts. An effective trial theme will leave a jury with no choice but to apply the facts, presented within the framework of the legal theory of recovery, and award you a verdict.

The trial theme is *not* the legal theory of recovery. The legal theory of recovery is the *why* of your case and the theme is the *how* of your case. For example, in a typical intersection case the legal theory, that is the reason *why* you are entitled to recover, is almost always that the defendant failed to yield the right of way. The themes which are applicable to such a case are as broad as the imagination of the trial lawyer, who will tell the story of the crash through in opening statement, closing argument, and through the voices of his or her witnesses illustrated by exhibits. *Negligence* is not a theme - it is a legal theory. *Careless failure to prevent injury* is a

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3 Robert V. Wells, *Techniques of Expert Practitioners,* §6.08 p.209

4 Purver, Young, Davis & Kerper, *The Trial Lawyer's Book: Preparing and Winning Cases,* §6:3 p.86-87

5 Lake Rumsey, *Master Advocates' Handbook*, p.1

6 Amy Singer, Jury-Validated Trial Themes, *Trial*, October, 1994

theme. Note the emotional difference. Talking about negligence does not establish emotional or psychological responses in the jurors. Talking about a defendant's careless failure to prevent injury evokes a variety of emotions and images, which are likely to aid the plaintiff in obtaining a fair recovery.

B. DEVELOP THE THEME AS EARLY AS POSSIBLE - BUT BE READY TO CHANGE IT – EVEN DURING TRIAL IF NECESSARY.

The theme needs to be developed as early as possible. Every case must be prepared as if it will be tried and every effective trial has a theme. While the theme may evolve as the facts develop, it should nevertheless be considered when answering discovery, when taking depositions, and when conducting settlement discussions.

In fact, it is good practice to begin thinking about an effective way to tell the plaintiff's story even while you are being told it the first time. Write down everything that comes to mind with regard to the theme and put it in a file. Most importantly, think about the theme when you are thinking about the legal theory of recovery - the two, though separate, nevertheless, go hand in hand. Sometimes they even share the same words. "The value of the trial theme is that it (1) personalizes case issues and (2) helps jurors form impressions - and impressions win [and lose!] lawsuits."[7]

C. DON'T SHOW YOUR CARDS UNTIL YOU HAVE TO - BLUFF IF YOU CAN.

Keep the theme to yourself. Do not share it with the defendant. Counsel for the defendant can figure out your legal theory of recovery fairly easily (this is true even though you may have several theories which can be pursued at once) because most cases are simply not that complicated from a legal point of view. But unless you spill the beans, he or she can only guess at the theme you will use to convince the jury to apply the law to your client's advantage. A theme can be so effective that the jury will even ignore or nullify the law if the story convinces it

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[7] *Id.*

that such a course of action is the only way to reach a just result. Remember, the theme is the moral justification for your verdict.

Sometimes *sandbagging*, while never ethical or appropriate with regards to matters of trust, is appropriate with regards to the strategy of how you will proceed at trial. There is nothing wrong with allowing the defense to think your trial theme is X when it is actually Y. A defendant who is totally prepared to rebut a theme, not used, is certainly at a decided disadvantage when you pursue an entirely different theme once at trial.

D. REMAIN FLEXIBLE AND READY TO CHANGE.

Be ready to refine or totally change the theme. A theme painting the defendant as the devil incarnate, which sounds wonderful when you hear your client's version of the story, may prove totally inappropriate when you depose the soft-spoken, frightened, gray haired elementary school teacher who ran into the back of your client on her way to church choir practice. It might even prove necessary to change the theme after you hear the defense counsel's ridiculous opening which makes even the judge look up and smile. Similarly, a sub-theme often arises from the defendant's opening.

E. THE THEME MUST FIT.

An effective trial theme will fit the law, the facts, and the people involved in the trial. In order to develop a theme which will carry you to victory you must know the law which will govern your case. Not only must you understand the law supporting your cause of action, and right to recover damages, you must also consider and understand the rules of evidence which will govern what facts can be used to illustrate your theme. If your theme is best illustrated by inadmissible testimony, it will not be very effective. Try to focus your theme - damages or liability. While focusing on one issue or the other is usually a good idea, in the rare case where it is possible, find a theme which covers both liability and damages.

Knowing the law is not enough. The formulation of a successful theme also involves the consideration of the various human factors involved in the trial of a case. The following people must be considered:

(a) You - Do not choose a theme which you are not comfortable presenting during voir dire, opening and closing argument. Do not violate the cardinal rule of trial advocacy by trying to be someone you are not. If you can't tell your friends your trial theme with a straight face, you need to choose another theme. Studies prove that jurors can read our body language in a way that can convince them that the words we speak are not the truth. Indeed, as much as 50% of the information jurors pick up during opening statements is from our body language.[8] Accordingly, no matter how eloquent our words, if our body language is giving us away as liars the jury will know.

(b) Defense counsel - Always consider who will be trying the case. If the opposing lawyer is a jerk, themes such as *good should prevail over evil* or *small victimized by big* might be considered. However, always keep in mind that the defense lawyer who is an overly aggressive jerk during a deposition may well be able to appear to be as sweet as sugar once in court. Go to the courthouse to watch your adversary work as part of your trial preparation. How he or she conducts voir dire, opening, and cross examination may be surprising. Also consider the theme the defense is likely to use. Remembering always that your first real time to speak to the jury is during the opening and if an attack on opposing counsel backfires because moments after you finish the defense lawyer leaves his wolf's clothing at his table and stands before the jury as a humble victim, your case is in real jeopardy.

(c) Plaintiff - Consider all aspects of your client. Physical appearance, age, voice, education, occupation, income, and attitude play an important role in selecting an effective trial theme. Look for unique hobbies - shattered dreams and ambitions. A theme which attempts to

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[8] Noland, *Opening Statements, Ten Points in Making an Effective Opening Statement*.

tell your 6'7" 300 lb. client's story as one of the weak plaintiff, in need of the jury's compassion, versus the strong defendant might not be the best one.

(d) Defendant - Again, all personal factors must be considered. Look especially closely at the defendant's attitude towards his liability. Remembering always that it is the defendant's conduct that caused this case to come to trial. A phrase taken from the defendant's deposition is often a good theme.

(e) Witnesses - Sometimes an analogy or description by a witness can be very inspirational in choosing a theme. The witness who describes the defendant as driving like a "bat out of hell" can very well be the foundation of an effective trial theme. Medical depositions are great sources for trial themes because you can be certain, long before trial, of the exact words which will be spoken by the medical witness.

(f) Jury - If you choose as your theme a phrase which the jurors have never heard, you have failed to choose an effective theme. Consider everything about the jurors. Education, country versus city, age, race, religion, and employment. Even consider what sports teams and radio stations the jurors are likely to follow.

(g) Judge - This is important both in the selection of the theme and its use at trial. Some judges will allow you to begin developing your theme in voir dire and others will not. This kind of personality difference will help you decide whether to choose a subtle or obvious theme.

In addition to reviewing all of the human factors involved in the case, look closely at the facts relating to liability, causation, and damages. Unique or unusual facts can often serve as the basis for the most compelling themes. Consider extremes of knowledge, finances, size, speed, and weight. Look closely at the level of intoxication of drunk drivers. Look carefully at the opportunities the defendant had to avoid causing or contributing to the event. Consider both sides of the plaintiff's injuries - *what was lost and what is left*.

F. USE THE THEME.

No matter how great the theme, it will be of no benefit if not properly used. Themes need to be verbalized communicated directly or by inference to the jury - as early as voir dire, but especially during opening statement - and again through every witness and closing argument. In fact, if the theme is discovered early enough, it should be used in depositions as much as possible. You may find it quite easy to incorporate a theme into the hypothetical question during medical depositions.

In most auto tort cases the medical evidence comes into evidence through deposition testimony taken months before the actual trial date. Unless the theme has been considered prior to the deposition, it will obviously not be a part of the testimony, and a golden opportunity will have been lost. It is a fairly simple matter to include words "owned by the plaintiff" and the theme itself when questioning a physician. If a case involves a theme about the defendant's failure to prevent an injury, the physician can be asked various questions using the words "prevention" and "prevented" to bring home the theme.

Other themes are obvious and do not need to be verbalized as often as the evidence will leave the jury with the impression you intend. This is especially true with contrast-type themes. Even these unarticulated, subtle, themes must be hammered home and developed at every opportunity. Sometimes the theme can be referenced during objections - "I object to the relevancy of this line of questioning, your Honor. This case is not about *my* client's *past* driving record, it is about the defendant's huge truck smashing into the back of my client's small car."

It is imperative that your witnesses know the theme of your case. This will help them understand the importance of their testimony and they will often naturally tell their story as a chapter consistent with the theme of the trial story itself. Witnesses like and need to know the context within which their testimony will fit. Meet with the witnesses, in a group, before trial, to educate them about the theme. Witnesses who are aware of the theme will usually assist in the presentation of that theme to the jury.

A word of caution is in order. If you choose a theme which is too clever or too cute, or which fails to fit the facts, it will be used against you with devastating effect.

The theme can be considered the "Mantra" of your trial. To be repeated, referenced, illustrated, and expanded upon at every turn. Sometimes an alliterative theme such as Death, Despair, and Destruction will prove effective. This continually repeated theme will, like an effective advertising jingle, "echo in the Jury's mind when they retire" to decide your client's fate. Lake Rumsey, *Master Advocates' Handbook*, p.4.

IV. FOCUS ON THE IMPORTANT STUFF

Too often lawyers lose sight of the forest for the trees. This is a huge mistake in opening statement. There is a simple cure for this. First, keep in mind that it is essential to introduce the big parts of the case before talking about the little ones. Second, boil the case down to a ten word telegram. By doing so, you will keep your eye on the trees and not the leaves.

A. PUT THE ROCKS IN FIRST

After working on a case for several years we should know every detail. We know more about what happened than the people who were there. We know every grain of sand, - we know it all. The problem is that too often we want to tell it all too. That is a mistake. A way to avoid this is to think of the courtroom and the jurors' minds as big empty bowls that we have to fill with facts. And we can think of the facts as rocks, sand and water. Rocks being the big facts, sand being the details, and water being the minutia that fills the gaps. If we put the water in the bowl first there will be no room for the more important sand and rocks. If we put the sand in first there is no room for the rocks although the water will still fit. Accordingly, if we are to get the important facts in we must put them in the bowl first.

This is accomplished by first discovering what the rocks are and then insuring that all are covered (i.e. put in the bowl) during opening. One of the best ways to discover the rocks is by using focus groups. One of the worst ways is to stubbornly decide that we know the case so

much better than everyone else and their failure to agree with our ideas as to what constitutes big rocks is caused by their stupidity, not our choice of rocks!

B. GET THE CASE DOWN TO TEN WORDS

Katherine James of ACT Communications suggests that the use of a ten word telegram is an essential aspect of case preparation. It is. No trial tip I can share with you is more valuable that the suggestion that in preparing for trial, and particularly in preparing for opening statement, that you condense the case to a ten word telegram that describes the event. In a case with more than fifteen depositions, around ten expert witnesses, and a difficult explanation for why the event occurred the telegram read: BIG TRUCK, FATIGUED DRIVER DOSES, PEDESTRIAN KILLED, HUSBAND CHILDREN DEVESTATED.

V. TELL THE STORY

Every CLE that mentions opening statement tells us to "tell a story". But they don't tell how to tell the story. This paper is different.

A. FOCUS ON THE WRONGFUL CONDUCT OF THE DEFENDANT

In times past we were told to focus on the plaintiff and his horrible injuries. Recent studies tell us this is a mistake[9]. Instead, we must focus on the conduct of the defendant. We must educate the jury, during our opening, that the defendant is liable, that it had the power to avoid the event, and that through its choice of actions it caused the events. We must show how the defendant must accept responsibility for its actions. We must focus on a human being, even when suing a corporation, who has failed to accept the responsibility for the decisions that caused the event. Describe the positive choices and acts made by the defendant instead of describing its failure to act. For example, the defendant did not merely fail to yield the right of way. The defendant chose talk on his cell phone instead of paying attention as he approached the intersection.

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[9] There are lots of studies to support this. But perhaps the best source is to attend an American Association for Justice *Juror Bias Seminar* and hear it directly from the mouths of the expers.

B. CHRONOLOGICAL ORDER IS NOT THE ONLY WAY TO TELL A STORY

The simplest way to tell a story is in the order it happened. But that is not always going to be a very compelling presentation. Sometimes a multiple-track story in which the conduct of all of the players is discussed simultaneously is more effective. That is a lot harder than going by the calendar, but it can be more likely to bring the jury into the story and give the emotional tie to your version of the events that will compel them to rule for your side. However, it is not always the best method.[10]

C. USE PRESENT TENSE

In order to truly take the jury to the place of the event so that it can see how the defendant's acts caused the plaintiff's injuries, the story must be told in present tense. This can be very difficult to the inexperienced lawyer. It can only be accomplished by practice, practice, and more practice.

The use of the present tense in the telling of a story is not universally agreed upon. It seems that lawyers and trial consultants almost universally recommend this method, while English teachers and "story tellers" seem to favor the past tense as the preferred communication method. Perhaps the difference exists because English teachers and story tellers are encouraging communication of past events as histories with no desire to persuade and n many ways persuasion is more important than history to trial lawyers. Some of the most respected trial lawyers in America certainly recommend present tense; and to me it certainly seems to be a more effective method of evoking an emotional connection with the juror and bringing a long passed historical event to life.

But how, one must ask, do we tell a story in present tense? Too often, we get a good start, only to slip into past tense shortly into our opening creating a jumbled mess that is difficult

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[10] Spiecker and Worthington, The Influence of Opening Statement/Closing Argument Organizational Strategy on juror Verdict and Damage Awards, *Law and Human Behavior*, Vol. 27, No. 4, August 2003.

for the jury to decipher – much less connect to. Remember, the goal is to get our message (legal theory and trial theme) into the subconscious of the jurors so that they consider the evidence in the context we have created. Howard Nations suggests thinking of telling the story as if dealing with moving pictures and still images. The big scene (weather, family, hopes, introductions) described with long flowing sentences as if a grand motion picture and the impact of the car wreck and its immediate consequences with short powerful sentences as if each sentence was an individual photo.[11] This is great stuff, but staying in present tense remains tricky at best.

I have discovered that the simple technique of describing photographs, or even a movie, of the various scenes and people important to my opening (keeping in mind my ten word telegram and rocks, sand and water tools of organization) is effective. By telling the jury what I am seeing I will always be speaking in the present tense. Instead of looking back at the defendant's actions and describing them in the past tense as follows: "John Smith was in a bar. He drank too much, he staggered out to his car, he drove eighty miles and hour, and he failed to

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[11] Nations and Singer, Communicating During the Trilogy of Persuasion: Voir Dire, Opening and Summation.

> In such an opening statement, describe Mary in detail, the clothes she was wearing, the weather conditions, her car and what she was seeing as she was driving through town. Slowly bring them to the scene (movies). It is the 4th of July weekend; Mary is thinking of the steaks that she has to buy which Phil is going to barbecue for the family this evening. She is in a good mood as she thinks of the joy which she always gets from the family outing each 4th of July and looks forward with anticipation to the afternoon; she thinks of the weather and is grateful that it is a beautiful, clear day, perfect for barbecuing outside and perfect for the games which the family loves to play out doors on this beautiful, cheerful holiday afternoon. (Change to stills). Suddenly there is a crash. The car is thrusting forward. Mary feels her head snap back. She feels the blow of her head against the headrest. There is sharp pain in her neck. She feels the muscles and fibers in her neck being ripped and torn. She feels the hemorrhaging and bleeding. She feels her car ram the car in front of her. Her body feels out of control. She is whipped forward by the second crash. Her head hits the steering wheel. Mary feels nothing else.
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> The culmination of the movie style to set the scene is achieved with long, flowing, descriptive sentences. The still shots to describe the tragic event offer an interesting counterpoint and change of pace to hold the jury's attention. This also graphically illustrates how Mary's life moved from one of a peaceful flowing existence to being emotional, unpredictable, and out of control in an instant.

stop at the red light", try looking at the pictures you have in your mind and describing them to to the jury: "John Smith is in a bar. He is drinking too much. He staggers out to his car. He accelerates to eighty miles and an hour, he fails to stop at the red light." The present tense version takes the juror to the bar in real time and they can see, in real time, the mistakes John Smith is making. They get a sense that the tragedy can be prevented. In the past tense, the story is just a historical narrative.

Note that in past tense the verbs end in "ed" and words like "was" are used. In present tense the trick is to end the verbs with "ing" and "s". He drinks or he is drinking, instead of he drank.

D. USE THE RULE OF THREE

Jurors need to be told everything three ways. In opening is the best time to start doing so. The defendant is not just careless. Instead, the defendant was "sleeping, dozing, and driving". This kind of repetition freezes a concept in the jurors' minds and has a certain rhythm that it easily remembered.

E. THINK ABOUT PAVLOV

Use the opening to condition the jurors to have certain expectations just as Dr. Pavlov did with his dogs. Stand a certain way and in a certain place when talking about a certain exhibit and when that exhibit is used later with the same physical cues, the jury will recall your opening. But do not take away your own credibility by building an expectation and failing to deliver on it.

VI. KNOW HOW JURORS LEARN AND DELIIVER WHAT THEY NEED

Our job as advocates, especially during opening statement, is to teach jurors the facts they need to know to reach a decision favorable to our clients. To be successful in the courtroom, we must develop the teaching skills of a great sixth grade social studies teacher. Effective teaching skills include the use of presentation skills - demonstrative and illustrative - necessary to educate a jury as to why our client should win. Successful educators know that there are three basic kinds of learners in the average class. Students are either auditory, visual, or kinesthetic learners.

(There is also a small group known as global learners, but as these jurors benefit from all types of evidence they are not treated separately here.) These students grow up to be jurors and continue to learn in these three ways. Auditory learners are educated by what they hear and place less importance on what they see. Visual learners are educated by what they see and are less able to pickup information from what they hear. Kinesthetic, or hands on, learners want to learn by using their tactile senses.

Most information in a courtroom is in the form of oral testimony or oral presentations during opening statement and closing argument, and the auditory learners have a ready source of information and an advantage to help them reach a verdict. But pure auditory learners are in the minority. The secret to victory is thus to be on the side that convinces the visual and kinesthetic learners. The party that proves its case to these learners will get their votes in the jury room. These non-auditory learners, in fact the majority of humans, are convinced by evidence they can see or touch. Effective demonstrative evidence used during opening will reach these jurors and give them an understanding of our case that they can use in the jury room. Using words that appeal to their senses – "it is a cold night, ice crunches under the tires as the car pulls out from the bar, a bitter wind is blowing, the sky is without stars" – will take the jurors to the scene.

VII. USE EXHIBITS

Demonstrative evidence is not limited to being used during the trial and presentation of evidence. Just as demonstrative evidence can aid a witness in explaining an element of his testimony, so too can it assist counsel in his opening statement and closing argument. There is statutory authority for the use of demonstrative evidence and aids during opening and closing argument. O.C.G.A. §9-10-183 provides that:

> "In the trial of any civil action, counsel for either party shall be permitted to use a blackboard and models or similar devices in connection with his argument to the jury for the purpose of illustrating his contentions with respect to

the issues which are to be decided by the jury, provided that counsel shall not in writing present any argument that could not properly be made orally."

While this statute uses the term "argument", and while an opening is supposed to be a "statement" and not an "argument", the statute applies to both.[12]

Keep in mind that most evidence rulings, including those relating to the use of demonstrative evidence, are in the discretion of the trial judge.[13] Accordingly, before spending thousands of dollars on a piece of demonstrative evidence, if there is any doubt at all about the usability of the demonstrative evidence at trial, as either evidence or only for demonstration or illustrative purposes, a motion in limine should be filed and an appropriate order obtained. Of course, counsel should keep in mind that sometimes it is better to risk wasting money than to give up the advantage of surprise[14].

Demonstrative evidence is limited only by the imagination of the advocate. Certainly, the Georgia courts have been liberal in allowing the use of demonstrative evidence. As early as 1881, the Georgia Supreme Court recognized the benefits of allowing models and drawings to be used at trial to illustrate issues in a trial[15]. While models and drawings are commonly associated with being demonstrative evidence, trial lawyers are no way limited to physical items. Courts have approved a physical demonstration by a witness of the effect of an injury[16], as well as sounds[17]. Of course, diagrams, drawings and sketches[18] (diagrams and sketches can be used

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12 *Lewyn v. Morris*, 135 Ga. App. 289, 217 SE2d 642 (1975). In this case, although it was error for the trial court to refuse to allow the plaintiff's counsel to use a diagram to explain the positions of the cars involved in the collision, the error was deemed harmless.

13 *Hudson v. State*, 24 Ga. App. 668, 168 SE2d 912 (1933); *Christian Construction Co*. v. Wood, 104 Ga. App. 713, 123 SE2d 10 (1961)

14 In Federal Court, the pre-trial orders used in the Northern District prevent surprise use of demonstrative evidence and care must be taken to list all demonstrative evidence which will be used.

15 *Augusta and Summerville Railroad Company v. Dorsey*, 68 Ga. 228 (1881)

16 *Pidcock v. West*, 24 Ga. App. 785, 102 S.E.2d 360 (1920)

17 *Central of Georgia Railroad v. Collins*, 232 Ga. 790, 209 SE2d 1 (1974)

18 S*avannah Ice Delivery Company v. Ayers*, 127 Ga. App. 560, 194 SE2d 330 (1972)

even if the diagram or sketch is not admissible into evidence[19]), and photographs[20] are also proper forms of demonstrative evidence. In fact, in certain situations usually involving such things as bank cameras, a photograph can almost be self-authenticating[21]

But it is important not to use too much during the opening. The focus has to be on establishing a relationship of trust with the jurors. Don't let too many toys and exhibits get in the way of establishing that bond.

VIII. CONCLUSION

An opening statement may well be the hardest part of preparing a case. This is because it really has to be prepared. It can't be a seat of the pants presentation. It can't be a random collection of facts. It must be a carefully crafted presentation that accomplishes its only goal: to help the advocate win his case.

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19 *Long v. Serritt*, 102 Ga. App. 550, 117 SE2d 216 (1960)

20 *Smith v. State*, 202 Ga. 851, 45 SE2d 267 (1947)

21 O.C.G.A. § 24-4-28