

Opening Statements in California: Principles, Strategy, and Practice

An effective opening statement does more than tell the jury what evidence it will hear. It provides a framework through which jurors can understand, organize, and evaluate that evidence as the trial unfolds. For experienced trial lawyers, the challenge is to accomplish that persuasive purpose while remaining within the legal boundaries governing opening statements.

California courts recognize that an opening statement serves an important orienting function. It prepares jurors to follow the evidence and understand its “materiality, force, and meaning,” while providing a “story line” into which the evidence can be placed. *People v. Navarro* (2021) 12 Cal.5th 285. The most effective openings therefore do not simply provide a table of contents for the trial. They give jurors a coherent way to understand the case.

I. The Purposes of Opening Statement

A strong opening generally accomplishes four things: **orientation, organization, credibility, and narrative.**

Jurors should leave opening statement understanding who the important people are, what happened, what the parties actually dispute, which facts will matter, and what evidence deserves particular attention. The lawyer's task is not to tell jurors everything that will happen during trial. It is to identify the facts and evidence that will allow them to understand what the case is really about.

This requires selection. An opening organized witness-by-witness or exhibit-by-exhibit may accurately preview the trial without helping the jury understand it. A more effective opening ordinarily organizes the evidence around a coherent theory of the case.

II. Building the Opening

Although there is no universal formula, effective openings frequently contain several common elements.

The beginning. The opening moments should introduce the case rather than the lawyer. Lengthy introductions and procedural preliminaries sacrifice valuable attention. A concrete fact, event, decision, or conflict can immediately place the jury inside the case.

The theme. A useful theme is more than a memorable slogan. It provides a simple explanation for why the events occurred or why the evidence matters.

The story. Jurors need an understandable account involving people, events, choices, and consequences. Chronology is often useful, but chronological order should not become an end in itself. Evidence should be presented in the order that makes the case easiest to understand.

Proof anchors. Counsel should identify the relatively small number of witnesses, documents, photographs, admissions, or other evidence that will carry particular significance. Previewing those items allows jurors to recognize their importance when they later appear during trial.

The difficult fact. Counsel should make a deliberate decision about whether to disclose unfavorable evidence before the opponent does. Addressing a difficult fact can enhance credibility and reduce its impact, but unnecessarily highlighting marginal evidence can be counterproductive. The question is not whether bad facts should always be disclosed; it is whether the jury's eventual understanding of the case will be improved by hearing the fact first from counsel.

The destination. Jurors should understand the ultimate factual questions they will be asked to decide. Counsel can orient the jury toward the verdict without converting opening statement into closing argument.

III. The Legal Boundaries

Opening statement permits counsel to describe evidence that counsel reasonably and in good faith expects to introduce at trial. Counsel should not state facts that cannot or will not be supported by admissible evidence. See *People v. Navarro* (2021) 12 Cal.5th 285; *People v. Planagan* (1944) 65 Cal.App.2d 371.

The distinction between permissible explanation and improper argument is not always obvious. An opening may be persuasive, and counsel need not pretend to be indifferent to the evidence. But opening statement is not an opportunity to argue inferences untethered to the anticipated evidence or to make assertions that counsel cannot support at trial.

The phrase “the evidence will show” does not itself transform argument into a proper opening statement. Trial courts retain authority to control the scope of opening and to prevent counsel from using it as a substitute for closing argument.

IV. Admissibility and Motions in Limine

Every significant factual assertion in an opening should survive a simple question:

How will this fact get into evidence?

That question is particularly important when anticipated evidence implicates hearsay, character or prior-act evidence, settlement communications, subsequent remedial measures, expert testimony, Evidence Code section 352, or an unresolved motion in limine.

Counsel should therefore conduct an “admissibility audit” while preparing the opening. Evidence that is unquestionably admissible can ordinarily be previewed confidently. Evidence requiring a particular foundation or an unresolved evidentiary ruling requires greater caution. Evidence the court has excluded should not be indirectly placed before the jury through opening statement.

Motions in limine should also be considered from the opposite perspective. Before trial, counsel should identify potentially prejudicial matters an opponent may attempt to mention during opening and, when appropriate, obtain an express ruling regarding whether those matters may be referenced.

V. The Problem of Promises

Opening statements create commitments.

Every statement that “you will hear,” “you will see,” or “the evidence will show” potentially creates a promise that opposing counsel can revisit during closing argument. California courts have recognized the strategic consequences of promising evidence that is never produced. See *Lafrenz v. Stoddard* (1942) 50 Cal.App.2d 1.

Counsel should distinguish between evidence that is virtually certain to be introduced and evidence dependent upon witness availability, foundation, an evidentiary ruling, or a client's decision to testify. The greater the uncertainty, the more carefully counsel should frame the preview.

Credibility earned during opening can persist throughout the trial. So can credibility lost through exaggeration or an unfulfilled promise.

VI. The Defense Opening

Defense counsel faces a somewhat different strategic problem. The plaintiff or prosecution often begins with a natural affirmative narrative: something happened, someone caused it, and consequences followed.

The defense should ordinarily resist becoming merely reactive. “The plaintiff cannot prove the case” may accurately describe the burden of proof, but it may not give jurors an alternative framework for understanding the evidence.

When the evidence permits, an affirmative defense theory can explain not merely why the opposing party's account is wrong, but what actually happened or why the disputed event has been misunderstood. At the same time, defense counsel must decide how much evidence to promise where the defense strategy depends primarily upon deficiencies in the opposing party's proof.

VII. Objecting During Opening Statement

Objections during opening present tactical as well as legal considerations. An objection may prevent prejudicial information from reaching the jury or preserve an important issue, but it can also emphasize a statement that might otherwise pass quickly.

Counsel should consider the seriousness of the violation, the prejudice created, whether an immediate ruling is necessary, whether the issue can be addressed outside the jury's presence, and whether an instruction can effectively cure the problem.

The best time to resolve a foreseeable opening-statement dispute is often before either lawyer stands up to address the jury.

VIII. The Civil Nonsuit Issue

California civil practitioners should also remember Code of Civil Procedure section 581c, which permits a defendant to seek nonsuit after the plaintiff's opening statement under limited circumstances.

Nonsuit following opening statement is disfavored and should not become a routine interruption of trial. It may nevertheless be available where plaintiff's counsel has undertaken to state the facts expected to be proved and those facts, even if established, would be legally insufficient to support recovery. See, e.g., *Russell v. Soldinger* (1976) 59 Cal.App.3d 633; *Durant v. Los Angeles Unified School District* (2021) 62 Cal.App.5th 712.

The doctrine provides another reason for counsel to understand the relationship between the anticipated evidence and the elements that must ultimately be proved.

IX. Common Opening-Statement Problems

Even experienced trial lawyers can undermine an opening by attempting to accomplish too much. Recurring problems include lengthy introductions, excessive detail, organizing the presentation around witnesses rather than the case theory, overpromising evidence, ignoring an unavoidable unfavorable fact, relying on legal terminology instead of ordinary language, and burying the most important evidence deep within the presentation.

Opening statement should not sound like a trial brief being read aloud. The lawyer's task is to make a complicated evidentiary record understandable before the jury encounters it.

X. Practical Takeaways

Three principles provide a useful framework for preparing almost any opening statement:

First, give the jury a story rather than a table of contents. Jurors need an organizing theory that allows them to understand why individual pieces of evidence matter.

Second, do not promise evidence unless you know how you intend to prove it. Every significant factual assertion should be supported by a realistic plan for admissibility.

Third, tell jurors what to watch for. A strong opening identifies the evidence that will matter and equips jurors to recognize its significance when they encounter it during trial.

Ultimately, a good opening statement tells jurors what the evidence will be. A great opening statement influences how carefully and intelligently they listen to that evidence while maintaining counsel's credibility and respecting the proper boundaries of opening statement.