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# Keep your story memorable and admissible

## Balancing narrative and law in opening statements

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In California courtrooms, opening statements are often a jury's first exposure to the case. This moment represents a powerful opportunity to present a clear, compelling story. As the first impression jurors receive, the opening statement must strike a delicate balance between engaging storytelling and strict adherence to California's evidentiary standards. Here, simplicity is key. Drawing inspiration from Occam's Razor – the principle that the simplest solution is often the best – attorneys can craft narratives that resonate with jurors while adhering to the

legal framework. Using insights from literature, psychology, and law, attorneys can craft effective opening statements that engage jurors while staying within the legal framework.

### The legal framework of opening statements in California

California law emphasizes that opening statements must be limited to evidence that counsel intends to present and believes will be deemed admissible. In *People v. Navarro*, the court held that "Counsel should confine their remarks in an opening statement to evidence they believe in good faith will be available and admissible." (*People v. Navarro* (2021) 12 Cal.5th 285, 317.) Attorneys are

prohibited from mentioning evidence they cannot or will not prove, as such behavior is considered misconduct. Similarly, *Hawk v. Superior Court*, underscores that counsel must not reference evidence unless they have a good faith belief it will be admitted. (*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 121.)

As the CACI instructions clarify, "An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show." This reminder underscores the function of opening statements as a preview, helping jurors understand the general structure of the case, without presenting any arguments. (CACI 101.)



The courts apply these standards to ensure that opening statements remain a preview, not an argument. Attorneys should use this opportunity to lay out the facts they believe are supported by admissible evidence and to clarify the parties' respective duties. For example, in a negligence case, you may explain the duty of care the defendant owed and how their actions allegedly breached that duty, as long as this aligns with the evidence you intend to present. However, attorneys must avoid straying into argumentative language or speculative assertions about the duties or motivations of the parties. The focus should be on presenting a neutral and fact-based preview of the evidence related to those duties.

By adhering to these principles, counsel can maintain credibility with the court and the jury while effectively setting the stage for their case.

### Using storytelling to help jurors remember facts

While the rules of admissibility restrict the facts an attorney can present in opening statements, they don't prevent storytelling. Your job as an advocate is to tell your client's story. The opening statement is your first opportunity to allow your client's story to be heard clearly, accurately and ethically. Psychology has shown that stories are far more memorable than isolated facts. Cognitive psychologist Jerome Bruner famously noted that people are 22 times more likely to remember information when it's shared in a story format. This makes storytelling a critical tool for helping jurors retain key details.

When presenting your narrative, ensure it is both accurate and honest about your client and the defendant. The credibility of your case depends on the integrity of your presentation. Jurors are tasked with evaluating the facts, and they will scrutinize any inconsistencies or overstatements. A straightforward, fact-driven narrative is the most effective

way to ensure that jurors can focus on the real issues at hand.

Repetition can also play an important role in helping jurors retain essential information. It strengthens memory by enhancing the connections between neurons at their synapses, where communication occurs. Reiterating key facts throughout the trial aids understanding and reinforces their memory. This is particularly important in trials where jurors must absorb and recall a substantial amount of evidence during deliberations.

As Dr. Seuss aptly observed, "Sometimes the questions are complicated, and the answers are simple." This rings especially true in the courtroom, where complex cases often boil down to basic themes of fairness, accountability, and responsibility. In opening statements, our job as attorneys is to translate complicated legal issues into straightforward stories that resonate with the jury.

For example, in a slip-and-fall case, the case may involve a series of safety regulations, inspection logs, and expert testimony on hazard prevention. But the heart of the story is simple: A person was going about their day and suffered a painful, life-altering injury due to someone else's negligence. By framing the case in this way, you are not bypassing the legal details, but rather, providing jurors with a lens through which they can better understand the facts and evidence presented during the trial. They begin to understand that, at its core, this case is about accountability for a preventable harm.

By using broad, relatable themes – such as accountability, fairness, or resilience – you can help create a clear framework for jurors to process the evidence. For instance, in a personal injury case, describing the real-life challenges your client now faces due to their injuries emphasizes the human impact of the defendant's actions. This approach ensures that jurors can fully grasp the significance of the evidence they are reviewing.

### Guiding principles for a narrative-driven opening statement

Here are some strategies for crafting a compelling opening statement that balances storytelling with strict adherence to California's admissibility rules:

- **Frame the opening around universal themes:** By focusing on universal concepts like fairness, responsibility, or safety, attorneys can engage jurors without arguing or presenting contested evidence.

- **Preview evidence with caution:** According to *Navarro* and *Smith*, it's crucial that all references to evidence are made in good faith and are anticipated to be admissible. Avoid over-promising specific evidence; instead, use language such as, "You will hear testimony that sheds light on..." This phrasing implies but doesn't guarantee details, reducing the risk of inadvertent misconduct.

- **Acknowledge the limits of opening statements:** As *People v. David* reminds us, clarifying to jurors that opening statements are neither evidence nor argument reduces the risk of prejudicial misconduct. (*People v. David* (1939) 12 Cal.2d 639, 650, 86 P.2d 811.) This reinforces that your opening statement serves only as a guide to what you believe the evidence will show.

### Conclusion

Opening statements, when crafted within the bounds of California law, allow attorneys to engage jurors through the power of storytelling without overstepping legal boundaries. By focusing on relatable themes and ensuring all statements are rooted in a good faith belief of admissibility, attorneys can establish a memorable narrative that resonates on both an emotional and intellectual level. Through a careful balance of storytelling and adherence to evidentiary standards, the opening statement becomes a compelling, legally sound foundation for the trial ahead.



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