

## The Ball Opening's Opening Salvo:

***Alignment: the Double Big Bang***



## 12/1/16 Revision

David Ball, with additions by Artemis Malekpour

Questions? [Artemis@consultmmb.com](mailto:Artemis@consultmmb.com) or [ball@nc.rr.com](mailto:ball@nc.rr.com).

Properly done, parts 1 and 2 of the Ball opening statement work together to accomplish only one goal: juror Alignment. **Alignment means leading the juror to his own *independent conclusion 1) that the defendant did something wrong, and 2) that you are right.*** Alignment is easy once you've learned to meticulously follow the instructions below. Alignment is one of your most important tools for making up the jurors' minds your way – even before you start your “who we're suing and why” section.

Other than the goals of Alignment, postpone everything else until Part 3. This is because you cannot Align at the same time as *anything* else. Parts 1 and 2 are now *solely* to Align. Limiting them to Alignment takes discipline because it does not seem intuitive and it changes what you've been doing. But jurors' minds attend to only one thing at a time. And Alignment is too important and effective to screw up.

Alignment is effective because it brings the juror's unconscious brain right onto your trial team at the best possible time. It's easily done – if you use **zero** advocacy. **Zero** hint of persuasion. **Zero** information unnecessary to Alignment. Not one word. Shh!

You Align by using ***Umbrella Rule + one (or, rarely, two) Sub-Rules + the Story of What the Defendant Did.*** Used right, these components magnify the power of the rest of opening – nearly dispositively.

Those components Align by bringing the juror **to believe *on his own*, with no persuasion or push from you, that the defendant did something wrong.** Once there, the juror starts to believe something even more important: **that you are right.**

He's Aligned!

He's Aligned to the case by his own self-created belief the defendant did something wrong. *Bang!*

He's Aligned to you by his own self-created belief you are right. *Bang!*

This double Alignment is unconscious and deep-seated, so the unconscious brain clings it tight. The juror's Aligned brain is now your ally. **Alignment ==> Ally.** Get it?

Alignment's initial beliefs, in themselves, are neither strong nor case-determinative. But they rapidly create the steps to get there. Here's how: Once someone comes *on his own* to even a weak initial belief, he unconsciously processes all new incoming information in one of only four ways. All four increasingly reinforce or protect the juror's Alignment beliefs (defendant did wrong, you are right). By midway through opening, Alignment has led to jurors being nearly ferociously on your side.

Here are the four:

First: When each new incoming piece of information (i.e., everything else you're going to say in opening) supports the juror's initial Alignment beliefs (you and your case are right), her brain, like every human's, unconsciously and invariably gives that new incoming support greater weight than would a neutral brain. That greater weight, in turn, strengthens the initial belief. So the cycle goes on and strengthens itself as it goes.

Next: the newly strengthened belief gives the *next* piece of incoming support even greater weight than it did the first time, strengthening the belief even more. This strengthening cycle continues through the end of your opening. Done well, it continues throughout trial and closing.

Snowflake to snowball to avalanche. All unconscious, so the juror feels 100% objective.



This is "confirmation bias." It can be overcome only by overwhelming conflicting information or

by highly motivated and disciplined analysis.<sup>1</sup> So relax. Your jurors at this point have no such conflicting information and no such motivation. By the time they hear conflicting information (Defense opening), the snowball is too big to melt. Your confirmation bias is now confirmation Godzilla – *if* you Align correctly and follow the usual steps of the Ball opening. Aligning is easy. Following the steps for the rest of opening is not so easy. But you gotta do it.

Now, what happens to confirmation bias when a new incoming piece of information – such as those in the defense opening – contradicts the initial belief? One of three things:

- The Aligned brain assigns little or no weight to the conflicting information, or
- Twists the conflicting information into a supporting point, or
- Ignores (quickly forgets) it.

So on your behalf, the Aligned brain *undermines* all incoming conflicting information. Including conflicting arguments. Yay!

The Aligned brain auto-rejects conflicting expert testimony.

The Aligned brain strongly tends to see every gray area in your favor.

So learn to Align. It's the easiest thing in the Reptile's arsenal, and one of the strongest. Here it is:

Good morning.

[*Umbrella rule*]: A driver// is never allowed// to needlessly risk the public's safety.

[*Sub-rule*]: So drivers must look where they're going. If a driver does not and as a result injures someone, he's responsible for the harm.

Now let me tell you the story of what happened in this case:

Two years ago. Highway 85 through town.

Joe Ryan crashes his truck into the back of a car.

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Confirmation bias can be your strongest friend – or enemy – in many ways. It is an essential part of undermining defense experts, as you learned in the introductory Reptile seminar, “Welcome to the Revolution.” For further info how to use confirmation bias, email Artemis or me for “the Fire article.” [artemis@consultmmb.com](mailto:artemis@consultmmb.com) or [ball@nc.rr.com](mailto:ball@nc.rr.com).

Unprompted, every juror's initial belief is, "Not looking, obviously." That's their self-created initial belief and it creates the other initial belief: That you and your case are right. You didn't even say the driver was speeding. The juror created that initial belief 100% on his own.

Now try a different sub-Rule:

Good morning.

A driver is never allowed to needlessly risk the public's safety.

So a driver must follow at a safe distance. If he does not and as a result injures someone, he's responsible for the harm.

Now let me tell you the story of what happened in this case:

Two years ago. Highway 85 through town.

Joe Ryan crashes his truck into the back of a car.

This time the jurors conclude on their own that Joe Ryan followed too close. Again: Alignment. Ta da. Bang.

Alignment in 70 words! The Big Bang of trial, out of which all else flows.



Ain't it purty?

And both ways, the accompanying initial belief is the same: **you and your case are right**. Ta da, ta da! Bang bang. Now the Aligned juror's brain snowballs everything in the rest of your opening into an avalanche burying the defense opening. And by the time you start testimony, the avalanche is poised to kick butt. The defense never dreamed of this nightmare. They won't even know it's happening. *If* you Align and open right.

Now, it does not win the case. It sets up the juror's brain to go on and win it for you. Nor did the Big Bang did not create life on Earth. But it sure created the forces that inevitably did.

**If you want to use Don’s approach** (saying “...to protect us all from harm,” which you ought to do), I suggest that you just delay it a minute or two until the start of Part 3: Why We’re Suing – where Alignment will give it far more impact. So, for example, in Why We’re Suing you’d say,

We’re suing Sally Driver for violating the rule that drivers must look where they’re going *to protect us all from harm, .*

### **Selecting the sub-rule to accomplish Alignment:**

When the defendant violated more than one rule, choose the one (or, *very* rarely, two) that most easily, simply, and clearly accomplishes Alignment. You’ll get to the others soon enough. So if a defendant ER doctor violated 1) the rule against sending an unstable patient home, and 2) the differential diagnosis rules, and 3) a safe-medication rule, you’d probably want to select the first for your Alignment process because it’s probably the easiest to work into this process. The only criterion is this: **which violated sub-rule most easily/simplely/clearly gets you to Alignment?** If you’re not sure, write out separate starts of opening for each and you’ll see which to choose. It need not be the most important rule violation, because you’ll almost immediately do all the others in Part 3, Why We’re Suing.

### **Why No Advocacy?**

The one undeniable principle of persuasion is to allow someone to feel they’ve come to a conclusion *on their own*. Advocacy, even minimally implied, renders the conclusion suspect in the juror’s mind, killing Alignment and starting them off with thoughts about whether you – “advocate” can be trusted. At the start of the opening, jurors trust few lawyers. You might be an exception. See Artemis’s note below.

### **Why make Alignment the singular goal of Parts 1 and 2 of opening?**

So as not to distract from Alignment. And you want it working before you start Why We’re Suing, to maximize its effect.

### **Why didn’t David tell us about Alignment?**

Well, I thought I had. My bad. But as Artemis and I helped many of you on your openings and saw how others were doing them, it became clear that I’d buried my explanation of Alignment deep in TMI (too much information), and been insufficiently clear about it.

### **What is David doing to make up for it?**

Penance. I watched curling for two stultifying hours. In the first minute of the third hour a glowing light came down upon me, and up from out of my coffee cup spake a scary voice and sayeth, “You’re forgiven for this – as well as for denying you smacked Joey Genovese in third grade.” So I’m clean. I hope you are too. If not, watch curling.

### **Opening Statistic per Artemis Malekpour**

Don Keenan and the Keenan/Ball College teach you to add a statistic at the start of opening. Artemis agrees – but only under certain conditions. When those conditions are not met, she advises placing the statistic later – in the Tentacles section (part b) of “Why We’re Suing.” Here’s what she says about it:

We all agree that the statistic is a powerful Tentacle of Danger, essential to show how often this kind of rule violation causes harm, the great harm the violation can do to all of us, and why we need others to follow the rule and be held accountable when they don’t. This proves the mayhem that results from the rule violation. And it’s not just a plaintiff’s lawyer saying it. The numbers come from independent, credible sources.

David is most comfortable when you delay the statistic until you get to the tentacle-spreading section of opening – Part 3 – about what’s dangerous *in general* in violating the rule. He’s always worried about anything coming too early that can sound like advocacy. But I’ve seen that if an attorney has already established credibility with the jury – either through good works in the community, a solid reputation, coming into the courtroom, of actually caring about safety, or the ability to establish a connection with the jury in voir dire that’s rooted in trust and a juror mentality of “I want to follow you, Plaintiff’s Attorney, so show me the way” – then starting the opening with a statistic can be an incredibly powerful, effective, and attention-getting eye-opener.

But that’s a big “if.” In order to start with a statistic without seeming too early like an advocate, you have to be able to judge whether the jury is already with you and believes you. Otherwise, you’ll waste a great statistic on deaf or defiant ears. Because, as we well know these days, anyone can make up anything for their own gain and try to hoodwink others to buy into it. Especially statistics, including their sources.

Here’s where we are in this country today. Almost everyone paying any attention to the 2016 elections or our political climate is convinced that we are inundated with fake news, fake claims, and fake information. So there’s growing skepticism and distrust among Americans about believing what we hear. What someone is willing to believe depends on what they think before they hear it, as well as who the source is and what’s in it for them. And it heavily depends on whether the juror *wants* to believe the information is true. That’s where alignment comes in.

Once a juror comes to her own conclusion that the defendants did something wrong (through no advocacy on your part), now she wants to decide your way. And now she’s receptive to and more trusting of your statistics and your sources. So if your jurors are not with you as you’re about to give your opening, don’t pull the trigger too soon on what can be one of the most powerful weapons in your arsenal.



Briefly: do you have a personal presence of non-advocacy sufficient to avoid coming across too early as an advocate when you deliver the statistic right at the start of opening? If you do, then do it. If not, hold the statistic until later. In most openings that will be in just two or three minutes.



