

# “Punch Your Jurors in the Mouth During Opening Statement”

## THE IMPORTANCE OF THE FIRST 30 SECONDS IN OPENING STATEMENT

By Elliott Wilcox

Whether you like it or not, jurors **will** judge you based upon their first impressions. Your first impression determines whether the jurors will listen to you, how much they'll like you, and whether or not they'll find you credible. A bad first impression isn't necessarily set in stone, but it will take a tremendous amount of effort to overcome their initial “gut reactions,” so that means a negative first impression can taint every other interaction you'll have with jurors.

So, if first impressions are so important, why do so many attorneys present such **lousy** first impressions during opening statement?!? Think about the last 10 opening statements you heard. Out of those openings, how many times did you hear the lawyer take advantage of the power of “primacy” to create a powerful first impression? Probably not many, right? In most cases, attorneys completely **waste** the first moments of their opening statements.

### A Tale of Two Openings: Identical Facts, Different Outcomes

It doesn't mater how important your case is. If you don't capture the jurors' attention in the first moments of your opening, they may pay less attention (or *no* attention) to what you say. For example, look at the first 144 words (about one minute) of the prosecution's opening statement from one of the most famous cases of the 20th century, the O.J. Simpson murder trial:

*Your Honor, Judge Ito, Mr. Cochran and Mr. Shapiro and Dean Uelman, to my*

*colleagues seated here today in front of you and to the real parties in interest in this case, the Brown family, the Goldman family and the Simpson family and to you, ladies and gentlemen of the jury, good morning. I think it's fair to say that I have the toughest job in town today except for the job that you have. Your job may just be a little bit tougher. It's your job — like my job, we both have a central focus, a single objective, and that objective is justice obviously. It's going to be a long trial and I want you to know how much we appreciate your being on the panel. We appreciate the personal sacrifices you're making by being sequestered. We understand that can be difficult.*

Why does the prosecutor think that the jury's job will be tough? Don't they think they've got a good case that will persuade the jurors? Rather than grabbing the jurors' attention and demonstrating the strength of their case, the prosecution begins by essentially saying, “This is gonna be long, it's gonna be painful, and you're gonna have a hard time reaching a verdict.” The next few minutes aren't any better. By the time he eventually gets around to talking about the murder, there's a substantial risk that the jurors tuned him out, because he didn't give them any reason to listen to him.

Now compare that example with the first 148 words (again, about one minute) of the opening statement given in the civil case:



*These are the most valuable seconds in your entire trial*

“During trial, you're in a constant battle for your jurors' mindscape. If you don't give them a compelling reason to listen to you, something else will attempt to occupy their thoughts.”

*On a June evening, the 12th of June, 1994, Nicole Brown Simpson just finished putting her ten-year-old daughter, Sydney, and her six-year-old son, Justin, down to bed. She filled her bathtub with water. She lit some candles, began to get ready to take a bath and relax for the evening. Nicole then called the restaurant and asked to speak to a friendly young waiter there. Nicole asked this young waiter if he would be kind enough to drop her mother's glasses off. The young man obliged and said he would drop the glasses off shortly after work, on his way to meet his friend in Marina Del Rey. The young man's name was Ron Goldman. He was 25 year old. With the glasses in hand, Ron walked out of the restaurant, walked the few minutes to his apartment nearby, to change. He left the restaurant at 9:50 p.m.*

Doesn't he do a better job of grabbing your attention and making you want to continue listening? That's why you want to grab your jury's attention, preferably within the first 15-20 seconds of your opening statement, and give them a compelling reason to listen to you. Don't squander this opportunity by wasting their time describing how a trial works, re-introducing yourself, or thanking them for their time. During the entire trial, the jurors will **never** be more interested in what you have to say than during these first few moments of your opening statement. Yet how many times have you heard attorneys waste the first moments of their opening statement with empty phrases like these:

- *"This is what we lawyers call an opening statement..."*
- *"I appreciate the time and the attention that I know you will devote to this case today..."*
- *"Opening statement is our chance to tell you what the evidence will show..."*
- *"My name is James Minster, and it's my privilege to represent Kyle Lauten..."*
- *"An opening statement is like..."*  
— *a roadmap..."*  
— *a recipe..."*  
— *the table of contents to a book..."*  
— *the cover of a jigsaw puzzle box..."*
- *"Jury service is an honorable tradition, and I want to thank you for taking time out of your busy schedules to serve on this jury..."*
- *"Opening statement is my chance to show you how the pieces of the puzzle fit together..."*
- *"Before I begin, let me remind you that what Mr. Wadsworth said is not evidence, and what I say isn't evidence, either..."* [This last phrase is the worst of

the bunch. Why not go ahead and tell the jurors, "Ignore everything I say, because it doesn't count"?!?]

Do any of those statements grab your attention, compel you to listen to the rest of the case, or persuade you to find in favor of their clients? What a wasted opportunity! During trial, you're in a constant battle for your jurors' minds. If you don't give them a compelling reason to listen to you, something else will attempt to occupy their thoughts. In the back of their minds, they're wondering how long the trial will take, whether their spouse will remember to pick up the kids from daycare, what's happening at work while they're gone, and a thousand other random thoughts. They do their best to push those thoughts out of their heads, but if you don't engage them, those thoughts will creep back in. That's why it's essential the first words out of your mouth say something *significant*, so the jurors want to listen to your entire opening statement. Before you can create persuasive and attention-grabbing opening lines, you'll need to follow Yoda's advice and "unlearn what you have learned." Here are three quick and easy guidelines for things **not** to say in the initial moments of your opening statement:

### 1. Don't Introduce Yourself (Again)

When the trial began, the judge told the jurors who you were. Then you probably introduced yourself again during jury selection. Why would they want to hear you talk about yourself again during opening statement? Your client's *story* is the star of the case, not you. At the end of the trial, it won't matter if the jurors forget your name, forget your face, or even go out of their way to completely erase all memories of you from their memory banks. When the trial is over, the only thing that will matter is whether or not they see (and believe) the story of what happened to your client. So don't waste any time talking about yourself during opening statement – you're not that important.

### 2. Don't Suck Up

Another common mistake is the gratuitous "thank you" designed to ingratiate you with the jury:

- *"Thank you so much for being here..."*
- *"My client and I really wanted to thank you for performing your civic duty today..."*
- *"Jury duty is a special privilege and the most sacred of your citizenship duties..."*

- *“I appreciate the time and attention that I know you will devote to this case today...”*
- *“Jury service is an honorable tradition and I want to thank you for taking time out of your busy schedules to serve on this jury...”*

The biggest problem with these types of statements is that they're often insincere. Too many lawyers attempt to curry the jury's favor with hollow praise. This tactic rarely works, because jurors easily see through the insincerity. There's nothing wrong with (sincerely) thanking jurors for their service, but wait to express your gratitude until sometime later during your opening.

### 3. Don't Describe How an Opening Statement Works

Some lawyers begin by telling the jurors what an opening statement is:

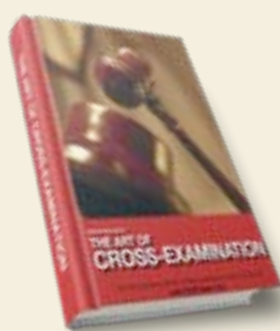
- *“An opening statement is my chance to outline for you what the evidence will show...”*
- *“This is my chance to show you how the pieces of the puzzle fit together...”*
- *“An opening statement is like a recipe for a cake...”*
- *“This is what we attorneys call an opening statement...”*

Thanks to the countless legal thrillers and jury trials on TV, your jurors have more than a passing familiarity with the legal system, so there's no need to describe how a trial works or how an opening statement works. Don't bog the jurors down with this information. Besides, none of that information helps the jurors see the events that led up to trial or shows why your client deserves to win.

**Remember:** These first few moments are your best chance for grabbing the jury's attention and getting them to listen to you. Don't squander that opportunity on something that won't help you win your case. Give them a reason to listen to you within the first 15-20 seconds, and your jurors will be hooked for the rest of your opening statement! ■

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