

212 Madeline Drive  
Monrovia, CA 91016  
Los Angeles and Nationwide

# HARRY PLOTKIN

## JURY CONSULTANT

(626) 975-4457  
YourNextJury.com  
harry@yournextjury.com

### **November 2013 Jury Tip: "Don't educate your jurors in every case"**

One of the great misconceptions held by trial lawyers is the thinking that you always have to thoroughly educate your jurors about the issues during trial. I understand why you might feel that way. Yes, trials often involve advanced, complex issues. Even relatively simple trials involve a couple of specialized issues that jurors won't immediately understand. And yes, the vast majority of jurors won't know much if anything about issues like prior art in patents, the interactive process for disabled employees, the difference between material and non-material breaches in contracts, or any of the host of advanced issues that a trial can involve. But don't lose sight of your goal, which should be to persuade and win. Remember that you're a lawyer, not a professor, and teaching doesn't always help you win trials.

My point is simple but not always intuitive: you should only spend time teaching your jury if you need to change how your jurors understand the issues in order to win. Said another way, you should only educate your jury if their current assumptions about the issues make them difficult to persuade. For some, this may sound wrong: how can I possibly win if the jurors don't properly understand the issues involved in the case?

I absolutely understand and agree that jurors rarely understand the issues in complex cases, from patents to architecture to business and finance and medicine. But the reality is that your jurors NEVER start from zero, even when they know nothing about the issues. No matter how confused or uninformed, jurors will always have expectations, and those expectations are hugely important. When I say "expectations," I mean that every juror has their own understanding of the issues involved in a case. It's true that these expectations may be completely wrong or oversimplified or misinformed. But for one of the sides in trial, these oversimplified or misguided assumptions work in your favor and make the juror receptive to your case.

For example, some jurors assume that every complicated-sounding medical condition sounds serious and scary and should be treated as an emergency. As a plaintiff attorney in a medical malpractice case, these jurors will already be on-board when you argue that the defendants should have treated the plaintiff with more urgency, without you having to spend time teaching them about the science. And in fact, the more you teach them about the science, the more these jurors may get the sense that this particular condition was actually less serious than they first imagined. Sometimes your jurors' assumptions and expectations are better than the reality. I've seen it often: jurors often assume that "trade secrets" are highly confidential and valuable, but in some cases they are surprised at how pedestrian the actual trade secrets seem.

Just to clarify, I am not advocating the idea of misleading or somehow tricking your jurors. I am not suggesting that you intentionally cause confusion or encourage your jurors to misunderstand. What I am suggesting is that spending time and effort educating

your jurors in trial is not automatically a good idea, and in many cases could be counter-productive.

To begin with, educating your jurors about complex issues is a difficult and sometimes impossible task. I've worked on trials with incredibly complex issues that would take an engineer months to learn, yet the court gave each side just a few days to put on their cases. Good luck educating the jury about the issues, while somehow finding the time to also put on your evidence and persuade your jury in just a few court days. Every minute you spend trying to educate the jury, especially in your precious opening statement, is one less minute spent persuading the jury on the important themes and evidence in your case. Even when you must educate the jury to change their expectations about the issues, you'll usually have to oversimplify the lesson for them.

Lawyers simply don't have enough time in trial to give jurors a complete and thorough education on any topic, so you'll have to accept that your jurors will always be somewhat confused and ignorant about the issues. If our court system truly wanted to fix this problem, then every trial should last at least a few months. Bring on the guest lecturers, and give the jurors weekly comprehension exams to make sure they're learning and understanding. But since that's never going to happen, you need to accept the reality that you cannot and should not try to thoroughly educate the jury in every case.

Instead, you'll need to make three critical choices at the outset of every trial: do I want to strike or keep the jurors who are informed about the issues, who have experience and training and understanding in the issues? What will the baseline expectations of my uninformed jurors be? And do I need to change those expectations by educating the jury, or leave those expectations alone if those assumptions pre-dispose the jurors to be receptive to my case?

Frankly, the best way to learn about the baseline expectations and assumptions the uninformed 95% of the jury pool has is to focus group your case. If not with a formal focus group with a jury consultant, you can informally focus group these expectations by talking with people you know from all walks of life. Ask your mail carrier or your neighbor or your grocery clerk or accountant what they think they know about the issues in your case. This is your best opportunity to learn what most of your jurors will assume about your case issues, and whether or not these assumptions are good or bad for your case. Don't feed them any information or try to educate them: just ask them what they think they know without correcting them. You need to get a sense BEFORE trial of whether your jurors' raw assumptions will be helpful or harmful, and whether or not you'll need to change their minds and overcome their wrong expectations.

During voir dire, you can learn about your jurors' expectations by asking some questions that start with phrases like "what is your understanding of..." There are certainly other ways of asking voir dire questions to find out what your jurors think and assume and expect, like "have you ever seen or dealt with something similar to figuring out how much a valuable asset is worth before buying it?" You'll learn just as much from the analogous situations the jurors bring up as how they dealt with the situation. Perhaps

your jurors will equate the responsibilities of the seller of a patent to the seller of a home. Perhaps they'll equate the responsibility of a surgeon in a medical malpractice case to an auto mechanic. Their choice of analogies will give you critical insights into how they will think about your case issues and how they will impose their assumptions onto your case.

Only once you have a sense of what most people assume about your case issues, and a sense of what your actual jurors know or think they know about the issues, will you be able to decide whether or not you need to educate your jurors or let their expectations go to work for you. And never forget that your time to persuade-- as well as your jurors' focus-- is your scarcest commodity in trial, so don't squander your time or the focus of your case on subjects that aren't helpful in persuading your jurors and winning them over.

*Harry Plotkin is a jury consultant in Los Angeles but practices nationwide. Mr. Plotkin specializes in jury research, assisting trial attorneys in jury selection, and developing persuasive trial themes and opening statements.*