

February 2011 Jury Tip: “Jurors choose the simplest, clearest message”

"I believe in a universe that is too complex for any of us to really understand. Each of us has an organized way of thinking about the world—a paradigm, if you will. But the problem is the real world is vastly more complicated than the image of it we carry around in our heads."

The quote you just read didn't come from a psychologist or a philosopher or a jury consultant, but it provides an excellent insight into how people—and jurors—struggle with complexity and view the world. Strangely enough, the speaker was Red Sox owner John Henry in Seth Mnookin's baseball book "Feeding the Monster," an unlikely source for a lesson about jury trials but a brilliant one nonetheless.

Most people are uncomfortable dealing with complexity. We like to believe we understand the world around us. We like to imagine that we can clearly see causes and effects in action, and identify those causes clearly. Ask most people, and they'll tell you that the Civil War was caused by "slavery," that the recession we're in was caused by "bad mortgages," or that "defense wins championships" in sports. Each of these situations involved complex combinations of factors, but the natural human tendency is to ascribe simple, elegant explanations that make "common sense" to otherwise complex situations. The complex interaction effects between thousands of unequally-weighted variables can't possibly be processed by the human brain, and no human being wants to bother trying. Instead, we prefer to imagine that phenomena are shaped by an obvious, straightforward cause or two. And more often than not, our explanations are oversimplified or inaccurate.

So most people don't like dealing with complexity, and create simplistic, unrealistic explanations to convince ourselves that we understand how the world works. Usually this self-delusion is harmless. But the problem for you (the lawyer) and me (the jury consultant) is that trials are usually complex, and that jurors are guilty of self-delusion in trial. Jurors usually try to over-simplify cases, sometimes to the point of misunderstanding. Presented with two opposing experts—one offering a clear, oversimplified explanation and the other offering a confusing, scientifically-valid explanation—the jurors will usually opt for the clear, wrong one that makes "common sense." Presented with two sides of a case—one presenting an honest, realistic view of a case with complicated explanations and the other presenting an irresponsibly simple, inaccurate view of the case—the jurors will usually believe the simple explanation.

This doesn't mean that jurors are idiots. They have a good reason for choosing simple, understandable explanations over confusing, complex ones. Most jurors don't know what Occam's razor is, but most of us instinctively agree with what it says. It's human nature to believe that it's simpler to explain the truth than it is to create a convoluted lie.

The more complex your case is, and the more involved and technical and convoluted the real explanation of liability, causation, and damages are, the more you will need to distill your case into a brief, simple, clear explanation to present in your opening statement that makes instant “common sense” that your jurors can immediately understand. Imagine that you have only 30 seconds to present your entire case and explain yourself to your jurors—what would you say? Your jurors need to be given a simple, compelling paradigm that can fit inside their heads in one piece and that can stand on its own, even if they don’t understand the complexity of your evidence and your experts. The reality is that, by the end of the trial, your jurors might not understand or remember or process all of the complex information that will enable them to realistically understand the case. The reality is that 30 seconds may be all the time and patience your jurors will give you, so you better be prepared to make use of that 30 seconds. Simply put, your entire message needs to fit into your jurors’ heads, no matter how small some jurors’ craniums might be.

Please don’t misunderstand what I’m saying. I’m not suggesting that you mislead your jurors. I’m not instructing you to abandon your job of responsibly presenting the whole truth to the jury and of giving your jurors all the information and evidence. If the prosecution or defense of your case involves a complex, realistic explanation, you need to present the truth to your jury, no matter how complex. But I’m also saying that you need to distill your complex explanation into a message that is not only brief but also clear and convincing on its own.

I wish I could tell you exactly how to distill your complex, confusing case made up of a dozen tangential issues and technical explanations into a perfectly persuasive sound bite, but it would be impossible. Each case is too different and complex to give you a one-size-fits-all solution. But I can give you some guiding principles to help you make your too-complex-to-believe case clear and convincing, even when you’re trying arcane patent or investment or engineering cases with issues that your jurors know nothing about.

Remember what I’ve argued time and time again: your message will only be accepted if it conforms to what your jurors already believe. Make sure that your simple message conforms to your jurors’ points of view and values and matches what your jurors already believe. Messages that follow the formulaic script of “this is yet another example of” something the jurors already believe to be prevalent in the world are often the most persuasive, but are only successful if your jurors already believe that trade secret theft or employment discrimination or insurance bad faith are rampant.

Translating arcane cases that your jurors know nothing about into commonly-experienced analogies that your jurors feel comfortable understanding helps. Few jurors have any frame of reference for the due diligence process involved in venture capital investment decisions or acquiring a business, but most jurors have bought a used car and maybe a house. Jurors have no problem applying the principles they use in inspecting a car to what a litigant should have done when investing in a complex asset, fairly or not. If you need to emphasize that the principles are different, you have to explain why to your jury in terms that they can understand. Even better are analogies that borrow from situations that your jurors have specific understanding of based on their jobs or the experiences

they've talked about in voir dire. Making your message fit into the paradigm of the world that your jurors carry around in their heads works well.

As important as the facts, evidence, expert opinions and minutiae of your case are, those facts are less important than the oversimplified paradigm of your case that your jurors carry into the deliberation room in their heads. Use your facts, evidence, experts, and witnesses to shore up your jurors' confidence in that little story you've planted in their heads, but recognize that the story has to make sense on its own.

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. He can be reached at 626-975-4457 and at harry@yournextjury.com.