

212 Madeline Drive
Monrovia, CA 91016
Los Angeles and Nationwide

HARRY PLOTKIN

JURY CONSULTANT

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

October 2011 Jury Tip: “Frame your case within a central premise”

Those who know real estate will often tell you all that matters is “location, location, location.” In trial, the same can be said about context, context, context. No juror views a trial in a vacuum; instead, your jurors judge your case and your evidence and the litigants through the filter of their own unique point-of-view. And whether they realize it or not, your jurors’ points-of-view are heavily influenced by assumptions they’ve made about your case and your client that aren’t necessarily based on the evidence.

In other words, no matter how strong you think your evidence might be, no evidence ever speaks for itself to a jury. The context in which your jurors view your case matters much more than your evidence, because the context influences everything. If you were asked to review a comedy and were shown *The Godfather* for the first time, you’d probably hate it. If you were served your favorite appetizer as a dessert, you’d probably think it was awful. If you were searching for an auto mechanic and interviewed a great accountant by mistake, you’d probably think he or she was incompetent. These are silly examples, but the reality is that our assumptions and expectations about people and situations influence how we interpret and judge them.

So in trial, if you want your jurors to be persuaded by your evidence and your arguments, you’ll have to help shape the context in which your jurors view your case—a context that I sometimes call “the central premise.”

In the back of every juror’s mind, every trial has a central premise that shapes how your jurors interpret everything presented to them in trial. Your jurors don’t consciously think about their central premise on a conscious level; people are rarely aware of the cognitive assumptions they’re making. Usually, the central premise is an unspoken assumption that your jurors create from their own pre-existing beliefs, the same way you might instinctively assume that a used car salesman’s first price is inflated but that a cousin offering to sell you her used car is probably giving you a fair price. A central premise is the instinctive assumption your jurors make about what they believe motivated the litigants in the situation at hand. It is the invisible but persuasive framework through which your jurors filter all of the ambiguous things they hear during trial—and which subjectively colors and re-interprets everything they hear.

The central premise is the key ingredient in explaining “what really happened” to your jurors, but of course it’s different for every case. In personal injury or discrimination trials involving disability damages, the central premise often involves the question “does this plaintiff really want to keep working?” Once a juror has a central premise set in their mind, it becomes so influential and pervasive that it becomes next-to-impossible to persuade the juror with mere facts. You have to change their central premise, the context in which the facts are set and the WAY the juror thinks about the case, to change their mind. It’s possible to convince a juror that a lazy plaintiff has real, disabling injuries or

deserved a work accommodation, but it's not easy. Once a juror decides that the plaintiff is lazy and doesn't really want to work, that juror will give extra scrutiny and skepticism to evidence about the plaintiff's injuries, experts, and damages.

The central premise in medical malpractice trials often involves the jurors' opinion of whether or not the situation was truly an obvious emergency. Jurors who are convinced that a plaintiff's symptoms indicated an "emergency situation" will judge the evidence and actions and inactions and potential negligence of doctors and hospitals by a much different standard than those who don't view the obvious symptoms or red flags as obvious emergencies. Here's another example: in recent years, the central premise of many business trials has involved the recession. In employment trials, intellectual property trials, and unfair competition trials, I have seen jurors judge the actions of a company according to how the economy was doing at the time, often giving companies much more leeway if they believe the company was motivated by financial distress. It may not seem to be legally relevant, but jurors will usually view the identical actions of booming and struggling companies differently, so the central premise matters.

Obviously, not every assumption your jurors make is the "central premise" of your case. You will have to identify which assumption about your case is truly the most important in determining how jurors might view your case and interpret your evidence differently, based on what they're assuming. Jurors make many assumptions during trial about all kinds of things—who to trust, what really happened, how the verdict is going to impact the community—but the one assumption that will primarily influence how they view the trial is how they feel about the motives of the plaintiff and defendant.

One of your most essential goals in trial should be to establish a favorable central premise in your jurors' minds by identifying the facts that best establish, for your jurors, what the parties were really interested in doing. You need to figure out the most important battle to win in trial, by identifying the issue that is the most telling about whether or not your client did the right or wrong thing. Often, the issue may be seemingly irrelevant in the eyes of the law and to liability, but that doesn't matter to your jurors. What they find important makes it relevant.

Keep in mind that your central premise is often removed from the liability issues in your case. In a product liability trial for example, the central premise may often involve how committed to safety and testing the manufacturer was. These issues are completely separate from whether or not the product was safe, but how serious the company seemed to take safety testing tells your jurors everything they think they need to know about how likely the company would be to knowingly sell a defective product. The next time you get ready for a jury trial, think about the central premise that will get jurors to trust your client. What back-story will you need to tell to convince your jurors that your client was honestly motivated, and how can you convince them that your client was committed to doing the right thing all along?

As I've said, this back-story is always shaped initially by your jurors' pre-existing beliefs, but you have an opportunity to shape your jurors' central premise at the beginning of trial, when their assessment of the situation is still pliable. If you've ever watched a mock jury deliberate, you probably know that every juror inevitably has his or her own version of "what really happened" after watching the same trial as the other 11 jurors. This is primarily because every juror has developed his or her own central premise, and so each juror has interpreted the evidence differently and inserted their own assumptions accordingly. As I've written so many times before, your jurors' initial, default central premise will depend entirely on the pre-existing beliefs they brought into trial. But just because your jurors may make some initial assumptions doesn't mean you can't reshape their central premise, as long as you do it immediately (in your opening statement), while it's still pliable. Once jurors decide what they believe is truly going on in your case, they'll use the premise to color everything else you say from then on.

I wish I could give you a simple template to figure out what the central premise in your next trial might be, but unfortunately each case is so unique that it would be impossible. The most important message of this tip is that, the next time you get ready to try a case to a jury, you'll need to do much more than assemble strong, compelling evidence. You'll even need to do more than develop persuasive trial themes and incorporate them into a strong opening statement. You'll need to take a step back and identify the context in which your version of the case makes sense, and in which the opposing sides' interpretation of the facts and evidence don't. Once you've identified your central premise, you need to focus your persuasive efforts there first and foremost.

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.