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# Why Are You Telling Me That?

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Have you ever heard a lengthy joke and started wondering, “Where is this going? It better be worth it.”?

The longer the buildup, the more your mind wanders and the less you expect a worthwhile payoff. A mystery novel that takes too many twists and turns makes a satisfying resolution less likely because there is too much to reconcile coherently. The same holds true for legal diatribes (long, winding opening statements; intricate, piecemeal expert examinations and the like). Anything that causes jurors to ask, “What’s the point?” has not been presented well.

## Why?

It is easier to stay focused and motivated and to understand the relevance of information when one has a head-

line to know where the information is going and that it is worth paying attention. Though counsel knows where he or she is heading and why, the jury may not. Without knowing why, jurors feel subjected to random information for its own sake, which taxes their attention. They question its relevance and importance. They feel they are not being considered as the audience.

Staying focused until the end to appreciate the meaning of the mosaic, piece by piece, as it brings the full picture into view, requires knowing what the final puzzle is supposed to look like before viewing the pieces individually and assembling them. However, many attorneys wait until the end to tell jurors what the picture will look like, in part due to legal procedure and in part due to their own style. This is not how jurors’ minds work.

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## Where Is Rome?

The same evidence can lead lawyers and jurors to different destinations, because litigators' reasoning method (inductive) conflicts with jurors' reasoning method (deductive).

Litigators are required to build foundations, block by block, from the bottom up, before reaching conclusions. They are trained to wait and see—to attend to specific details until a pattern emerges that forms a theory. Hence, lawyers tend to present jurors with a series of facts, assuming that jurors will wait for and then recognize the pattern after the pieces stack up to reach the same conclusion.

However, jurors start at the end and work backward, forming a general theory into which they fit specific evidence from the top down. (How early the theory is formed—whether at jury selection, opening statements, or otherwise—is a separate debate.) Once a juror's theory is formed, new information is filtered through that theory and tested for how well it fits with the theory. Information confirming the theory (evidence, jury instructions, etc.) is selectively attended to; ill-fitting information is missed, ignored, forgotten, or distorted to fit the theory, through cognitive dissonance.

Evidence does not change jurors' minds as much as their minds change the evidence. Remember the infamous "glove demonstration" in the O.J. Simpson criminal trial? Those who believed he was guilty saw it as proof that he was faking the misfit. Those who believed he was innocent saw it as proof that it did not fit. No one changed their mind because of it.

An up-front theory provides jurors with a map that enables them to see where you are going and to follow you. Jurors need to know that the punch line will be worth it before hearing a long joke. They need to see the map before going on the journey with you. Following are ways to provide the map.

## You Can Make Everyone Happy

To satisfy the conflicting needs of the law, the record, the judge, yourself, and last but not least, the triers of fact (jurors), you can:

- Use case themes: short, memorable phrases that outline your case and conclusions in your opening statement and that are repeated throughout trial.
- Reinforce case themes and key points with visuals and repetition.
- Provide "evidence sandwiches": simple bottom

lines/detailed information as filler/recap of bottom line.

- Speak "bilingually": Translate legal and technical lingo into layman's language for the jury.
- Anticipate and address consequences of the jurors' verdict options in terms of their lives.
- Tell a simple story (with a start, middle, and end), and fit your evidence into it, not vice versa.

You can overcome common, known and avoidable obstacles to jurors, by starting with the end and making clear what your point is and why it matters, so jurors are more willing to follow you there.

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