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Simplify, Simplify...Until It Hurts

By G. Christopher Ritter

Most trial lawyers know that the art of presenting a case lies in simplifying it enough to make it powerful, palatable and persuasive. And certainly lawyers aren't the only ones who understand this: Writers, philosophers, and marketing types have advised us to "keep it simple" for millennia. As Henry Thoreau famously noted, "Our life is frittered away by detail ... simplify, simplify."

Simplifying is important because it helps you find the sweet spot of interest for your audience - the spot where comprehension and interest converge and boredom has not yet set in. Put another way: The more time you spend on a topic, the more likely your jurors are to understand it. But the more time you spend on a topic, the more likely you are also to bore your jurors. And once they're bored - once they're done with your chronology, technical explanations and carefully crafted line of reasoning - they're not absorbing your information, and they're not as likely to advocate for your position in the jury room.

Conversely, if you end your presentation too early (thereby stopping short of that sweet spot), you miss a valuable opportunity to continue teaching your jurors.

Most often we think of "simplifying" an argument as "subtracting" elements - i.e., taking out the information that fogs up, convolutes or otherwise distracts from your main thesis.

Subtraction is best used when you have too much material or you find that you're repeating certain data. And it's harder to do than you might think. That's because it's human nature to get attached to our favorite facts and ideas-particularly those that feel especially inspired, or took a long time to collect and develop.

I often tell clients they need to pass up the good for the great. In other words, in order to get people to focus on your great facts and ideas, you may need to eliminate the good but perhaps extraneous facts and ideas in your presentation, because too many extraneous ideas will actually confuse your jurors, not enlighten them.

To start the elimination process, stop asking, "What should I get rid of?" Instead ask, "What should I keep?" The best way to start that thinking process is to consult your jury instructions, which list the minimum of what you need to prove in order to establish your claim or defense. Once you have this information, determine how to make your prima facie case with as few witnesses and exhibits as reasonably possible. Then add only those facts that help capture or keep the jurors' interest, help the jury understand your case, or provide you with the material that you will need for your closing argument.

About 80 percent of all our simplifying is done via subtraction. But there are other ways to simplify, including the *addition* of information. Seem counter-intuitive? Think of your worst nightmare expert testimony-the one where the expert starts out talking about the Governmental Accounting Standards Board and ends on the not-so-high note of a description of post-employment retirement benefits in school districts. Such trial presentations suffer not from too much information, but from too little, because they need some kind of context - some introduction of basic concepts - to catch the jurors' attention and understanding.

By way of example: Several years ago we were working on a case in which we needed to prove that American Samoa is very small. We started by saying that the population is 46,773, but we knew very well that most jurors can't "picture" that number. So we added more information by showing a trial graphic in which 46,773 seats in the L.A. Memorial Coliseum (which holds 92,000 people) were shaded out. By putting the territory's population in that context, we were able to show how small American Samoa really is.

Sometimes expert testimony gets so complicated so fast that jurors suffer what I call the "Yikes! Alarm." It goes off when jurors start thinking, "Yikes, there is no way I can understand this stuff!" And though it's common, it's dangerous, because once the jurors tune out, they're no longer thinking about you, your witness or the case at hand. They're likely counting the hours until lunch.

When you simplify by division, you basically divide and conquer. First you break up that big chunk of technical material into smaller, more easily digested units. Then you figure out how best to present even those smaller units to your audience.

In one recent case, for instance, we were working with a lawyer whose client had been accused of age discrimination. Specifically, the plaintiffs claimed that people over 40 (who were presumably more highly compensated) were routinely given bad performance reviews so that the company could fire them. And employees under 40, who made less, got the higher performance reviews.

The expert witness our client hired created a regression model that showed this theory was not, in fact, correct. However, when most people hear the word "regression," their "Yikes" alarms go off.

Our challenge? To graphically show the expert's calculation, without using the word "regression" or even "calculation." Instead, we illustrated the relevant factors in a case like this: i.e., age and employee performance.

Though the material was complex, our solution was relatively simple. We created different colored icons of people to represent their age groups. (That is, green was under 30; blue was 30-39, etc.) Each icon represented five employees.

Then we created a chart with three columns, each of which represented a grade that an employee could get in a performance review (i.e., A, B or C). If age discrimination had been occurring, all (or most) of the icons representing people over 40 would have been in the "C" group. But in the end analysis, the icons were evenly distributed across all three performance areas. By breaking down the information, the jurors more easily understood the expert's testimony and, as a result, ruled in favor of our client.

Conversely, sometimes the best way to simplify big numbers is to use multiplication. That is, you start with small units and then extrapolate to large numbers.

In one case, 3,000 plaintiffs were seeking \$90 million for unpaid overtime they had put in over the course of four years. Ninety-million dollars is a lot of money - so much so that during mock jury trials, the jurors balked at awarding such an amount - despite the large size of the class.

In our first attempt to persuade the jurors, we used simplification by division. That is, we started with \$90 million, divided that amount by the number of class members, and then divided that quotient by four years, to show that the average amount per year per plaintiff was \$7,500. Even with that breakdown, the mock jurors felt that \$90 million was still too much.

So we decided to take the opposite approach. Rather than starting with the big number and dividing it up into smaller, more palatable numbers, we had one plaintiff tell the jurors her story: How she routinely worked 60-70 hours per week, for instance, but was only paid for 40 hours of work; how she even had to work-without pay-on the morning of her wedding day.

We then presented a handful of other plaintiffs, each of whom had equally egregious stories to tell. In the wake of this testimony, the jury had no problem understanding why each of them was entitled to \$7,500 per year for four years-and how that added up to \$90 million. In this case, the judge and jury awarded \$210 million.

Sometimes you need to try more than one approach to simplifying material. That's because the more that trial lawyers understand a case, the harder it is to remember how complicated the material is for laypeople hearing it for the first time. As with all things in life, however, having several simplification tools in your toolbox gives you a range of options for reaching your goal: Making your case as simple to understand as possible. If simplicity comes from cutting back, do it. If you decide your jurors need more information, do that too, or break it down, or extrapolate it, or whatever you need to do. The process of simplifying will help both you and your audience understand your case more deeply.

G. Christopher Ritter is chief of visual trial strategy for The Focal Point, a litigation strategy and graphics firm in Oakland. A former trial lawyer, he is author of "Creating Winning Trial Strategies and Graphics," published by the American Bar Association. He can be reached at chris@thefocalpoint.com.