Seeing the Invisible

By G. Christopher Ritter

Several years ago, a very tragic story hit the newspapers in San Francisco. At 5 p.m. one autumn evening, a 22-year-old mother went down to Pier 7, lovingly undressed her three children — ages 6, 4 and 16 months—and threw them into the bay.

All three drowned.

It's the kind of story that evokes extreme feelings in communities — and in jurors. The defense team understood this, but they also knew the defendant was insane. As such, they knew it was critical to help the jurors stay focused — despite their emotions — on the team's key arguments, which were designed to: convince a jury not to convict the defendant of first-degree murder (which is what the district attorney had charged her with); keep this mentally ill woman out of prison (which is where the district attorney wanted to send her); and send her instead to a facility where she would receive long-term psychiatric treatment (which is what she desperately needed).

To do this, the defense needed the jurors to understand two primary concepts: the nature of the woman's mental illness (schizophrenia) and how this illness might make her unable to control her actions. This is harder than you might think as the word "insane" is used irreverently in everyday language ("You take that route home from work? That's <I>*insane*<I>!") Further, young mothers on welfare don't always elicit compassion – especially if they kill their children.

There comes a time in just about every case when a complex concept needs to be explained. It may be a scientific concept ("What is DNA?"), a legal concept ("What is uniformity in tax law?"), a number ("How long is a hundred million years?") or a process ("How does the market for electricity work?").

Such concepts are hard to explain linguistically and even harder to visualize. This is where trial graphics can really make a difference. A trial graphic allows what are essentially invisible concepts (genes, uniformity, electricity markets) to be made visible. They spare the jurors long-winded explanations that run the risk of being both boring and incomprehensible. In their place, trial graphics give jurors shortcuts to understanding that are engaging, comprehensive and memorable.

Take the aforementioned murder case. Most laypeople would understand that the mother was insane once they learned that: she said God had told her that if she drowned her kids, they'd instantly become "part of His [God's] team in Heaven"; she said that same God had told her she could take a bus to Heaven anytime to visit them; lab tests showed she was not on drugs (legal or illegal) when she threw her children into the bay; and while in jail, she sent her children letters — lovingly decorated with hearts and rainbows, always addressed to Heaven, where her children "lived."

But thinking the defendant was insane didn't guarantee that the jurors would understand that mental illness is a disease versus a made-up defense perpetrated by the woman's lawyers to get her off the hook. "This was one of our biggest challenges," said Teresa Caffese, chief attorney with San Francisco's Office of the Public Defender. "Not everyone understands that mental illness is often caused by chemical imbalances in the brain and that it is as real as other physical illnesses, like cancer or diabetes."

To overcome that hurdle, a slide show was developed to illustrate the biochemical nature of schizophrenia, as well as its relationship to Parkinson's disease. The first image showed a scale with a beaker full of acetycholine at one end and a beaker full of dopamine at the other end. In a normal person, we explained, the scale was balanced. But while in Parkinson's, there is too much acetycholine, in schizophrenia there is too much dopamine. Just as no one blames the Parkinson's patient for shaking, Caffese emphasized, no one should blame a schizophrenic patient for hearing voices — even those directing her to kill her children. One of the crucial connections we wanted jurors to make was: "Why is society so willing to see that Michael J. Fox and Muhammad Ali have very real diseases (i.e., Parkinson's disease) but are unwilling to understand that schizophrenia (which is caused by the same chemicals as Parkinson's disease) is also a 'real' disease?"

Two timelines were also developed. The first outlined the day the defendant drowned her children. It showed all of her actions, including her waking, feeding and dressing the children at 6 a.m.; visiting the Embarcadero with them from 10 a.m. to 2 p.m.; behaving erratically at 4 p.m. (as described by witnesses); throwing the children into the bay at 5 p.m.; and then getting picked up, interrogated and eventually committed to a psychiatric ward that evening.

"This graphic helped the jury to remember all the details of that day, as well as illustrate the psychotic nature of the woman's behavior," Caffese said. "It was something they could refer to

over and over. It also helped me remember the salient facts of the case, which helped me present my story and worked as a guide to the expert witnesses during their testimony."

A second timeline showed the history the woman's illness —which stretched, unfortunately, back to her teen years and included the seven times she had been institutionalized for her behavior. "This chronology further reinforced the idea that schizophrenia is a severe illness," Caffese said. "It also negated any supposition by the opposition that her mental illness was contrived, in the short-term, just for a defense."

Finally, as part of the jury instructions, we presented a magnetic board that listed the possible (and potentially confusing) convictions that could be imposed: first-degree murder; second-degree murder; assault on a child resulting in death and involuntary manslaughter. As Caffese discussed each option, she put a question mark over its box on the board and explained which elements would need to be in place for that conviction (i.e., intent to kill or malice). If the elements weren't in place for that option, she put a red "X" over it.

"This was a very powerful tool," Caffese said. "I could feel the jurors' eyes upon me as I used it, because they were very engaged. It also gave them an analytical process to use in the jury room during deliberations."

Of course, some of the "visible" elements that often become "invisible" during trial are the names and faces of witnesses. To help jurors keep track of the varied witnesses in this case, photos of them were affixed to a poster board to which Caffese referred during trial. "This tool made it so much easier for everyone to remember who said what and with what demeanor," Caffese said.

Together these trial graphics illustrated a number of concepts that would be hard for jurors to visualize — including the biological nature of a severe mental illness and a guide to relatively complicated jury instructions. The jury ended up convicting the woman of second- (not first) degree murder and, more importantly, she was found to be not guilty by reason of insanity. At this time, she remains confined to a mental health facility and is responding well to her treatment, in part, I like to think, because we made the very "invisible" disease of schizophrenia a real, visible, knowable disease for the jurors.

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