

## The Importance of Analogies

Imagine this scenario: You're defending a major chemical company against charges that smoke from one of its incinerators poisoned residents in several adjacent communities. One of your challenges is to explain the concept of a "no-effect level," as well as describe how regulators use that level to calculate safety standards for individual chemicals. It's a complex topic that draws on arithmetic, chemistry, biology, toxicology, and intricate descriptions of modern manufacturing processes.

Asleep yet? Just imagine the effect on your jurors.

The fact is, we attorneys expect a lot of our jurors. We expect them to give up their day-to-day lives to resolve problems they've never considered, for people they've never met. We expect them to learn and master complex topics in just a few short days, when the attorneys and their expert witnesses have had months—if not years—to learn about the subject. We expect them to stay awake through what can be hours of mind-numbing technical detail.

And in return for all this work, we expect—or at least hope—that they'll decide for our side.

But I'll let you in on a secret. The key to winning over jurors isn't burying them in scientific detail, technical jargon, and detailed descriptions of mechanical processes. The key is to teach them just enough about the topic to be able to make your point. And one of the best ways to teach jurors is by using analogies.

### **“Compared to what?”**

Analogies work because jurors (like all humans) start learning unfamiliar facts by connecting them to facts, concepts, or emotions they already know. As Edward Tufte, the great guru of information architecture once said, the single most important question that you must help your audience answer is “Compared to what?” Once your learner knows what the new stuff is *like*, he can move on through the unfamiliar information with greater comfort and comprehension.

It's as if the juror is standing at the base of steep cliff and you're showing him the first foothold.

That was an analogy, by the way.

### **Types of analogies**

An analogy is really any kind of rhetorical tool that increases understanding by tying two apparently disparate concepts together. Such tools include:

*Metaphors:* A figure of speech in which a word or phrase denoting one object or idea is used in place of another, so as to suggest a likeness between them. That is, you might say, “Glaucoma is *a thief of sight*” versus “Glaucoma can lead to blindness” or “The company was hemorrhaging money,” rather than “The company's expenditures far exceeded its revenues.”)

*Similes:* A figure of speech comparing two unlike things, by using the terms “like” or “as”. In a simile, you would say, “Glaucoma is *like* a thief” or “It was *as if* the company was hemorrhaging money”.)

*Real analogies:* You can also compare two different objects specifically to illuminate the qualities of one of the objects. Compare a DNA strand to a zipper, for instance, or the way computer memory works to a parking lot with lettered rows and numbered stalls. The sky’s the limit with such comparisons.

### **Shortcuts to understanding**

Analogies are like secret routes through dense downtown areas. Sure, you can take the crowded main roads, stopping at every light at every intersection. Or you can cut through a couple of alleys, zip along a side street that has no traffic lights, and arrive at your destination 15 minutes faster—and blissfully unaware of all the traffic jams you missed along the other route.

Analogies, in other words, are short cuts to a juror’s understanding. (And yes, that was another analogy.)

In trial, analogies often serve three purposes.

First, they are used to introduce **key terms or concepts**. For instance, we once helped a lawyer who had a case in which he had to explain what happens to the validity of a contract if certain terms are missing or haven’t been fully agreed to by both parties. More specifically, he had to explain that the missing information only invalidates the contract if the information was “significant,” which means that its inclusion or exclusion would alter the terms of the contract.

For many jurors, listening to a lengthy discussion about these terms would be boring at best and confusing at worst. So we helped this attorney come up with a trial graphic that compared a contract to a jigsaw puzzle. Some pieces, we explained, could be left out without compromising the picture, but if you left others out, the picture would lose its intended meaning.

Second, analogies are used to explain **the relevance of key numbers**, especially numbers that the average human brain can’t grasp. For instance, in toxic tort cases, plaintiffs will often argue that no concentration of a certain chemical is safe. And defendants will often try to explain the notion of a “no-effect level,” i.e., the level at which a chemical’s concentration will cause no harm to a human—which may be expressed in parts per million or even billion. That’s hard to imagine. One way to illustrate it, however, is to compare concentrations of chemicals to falling off a building. That is, just because a fall from a 20-foot high platform would be dangerous doesn’t mean that a fall from a one-inch high platform would also be dangerous.

Finally, analogies can be used to **thematically counter a defendant’s affirmative defense**. For instance, let’s assume that an affirmative defense consists of a series of elements, **all** of which must be satisfied in order for the defense to be effective. For an analogy, you could show the difference between a brick wall (which will remain standing even if you remove a stone or two or three) and a Roman arch (which will collapse if one piece is missing). And then you could

point out that the same is true of your adversary's defense – if even one piece is missing, the whole thing collapses.

### **Will analogies decline and fall?**

Rhetoricians sometimes say analogies are a weak form of argument because, even if two items are alike, differences inevitably arise and the analogy breaks down.

This is true.

But rhetoricians are looking at the wrong end of the analogy. Analogies are most effective when used as *introductions*. In other words, they are strongest at the beginning of the story or when you first introduce a concept. Analogies used this way help provide an orienting view to the juror. They help the juror begin to answer the question, “Compared to what?”

As such, beware that you can't just stop with an analogy. If the analogy is going to be effective, you ultimately need to find ways to supplement the analogy with real and sufficient facts. Once you explain what a “significant” term is in a contract, for instance, you can talk about the ways in which your client's contract did not contain the significant “missing pieces,” which rendered it invalid. Once you describe how the effect of gravity—which is dangerous at 20 feet—isn't at all dangerous at one inch, you can start to explain how chemicals likewise may be dangerous at high concentrations but harmless at low concentrations. And once you explain how Roman arches tumble if you take out one stone, you can show how your adversary's argument likewise tumbles when you take out just one element.

This way, when your jurors go out to deliberate, you can be sure the structure of your argument was built on a solid foundation of understanding. And yes, that was an analogy, too.

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