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To Win, Litigators Need to Leverage Jurors' Commonalities

By G. Christopher Ritter

When you look over the 12 jurors who will decide your case, it's easy to think that you (along with your client, your witnesses and your judge) have very little in common. With the possible exception of an emergency room at a large metropolitan hospital or the bleacher section at a professional baseball game, few locations attract (and hopefully hold the attention of) such an apparently diverse group of individuals as the jury box.

Unfortunately, that diversity is not something that we, as attorneys, always respect. One colleague of mine, for instance, once observed that the members of her jury shared nothing except the "same area code and an inability to come up with an excuse to get struck for cause." After surveying a different jury, another colleague noted that the only time she had seen a more diverse group was in the cantina scene in the original "Star Wars" movie.

Such comments are amusing but not particularly constructive. The truth is those people sitting in the jury box have more in common with us than what at first might seem apparent. Yes, individual jurors are very distinct (e.g., your jury may include an impoverished 25-year-old white man and a wealthy 63-year-old black woman; a distinguished scientist with a Ph.D. and a high school dropout; a woman who is a stay-at-home mother and one who is the vice president of a bank). But collectively, jurors share a lot more with one another - as well as with the witnesses, parties and lawyers in a courtroom - than not. Understanding this will make your ability to *educate* your jurors much easier, because you'll understand how to connect with them.

After years of watching cases unfold in the courtroom, I've come to realize that the best attorneys actually act as teachers for their jurors - people who truly want their jurors to *learn* the facts at hand and respect their jurors for wanting to do a good job. Such educators aren't any less the advocates - or any less adversarial, by the way. They just know that the fastest way to a juror's heart is through his or her mind - and the fastest way *through* a juror's mind is via the ideas and values we all hold in common.

What can you possibly have in common with these fellow citizens in the juror box? Psychoanalytic pioneer Carl Jung talked about the "collective unconscious" - or the idea that each person's psyche is part of a "reservoir of the experiences of our species" that has been passed across both generations and societies. As such, Jung theorized, our unconscious minds include images, patterns and themes (better known as "archetypes") that all humans understand, simply because they are human.

Some of the best known of those archetypes include the hero, the outcast, the star-crossed lovers and the femme fatale, as well as the quest, the initiation and the loss of innocence. And if you tap into those archetypes - by portraying a betrayed investor as having lost her innocence, for instance, or a crusading activist as a hero - you tap into deep emotions in each and every one of your jurors.

In addition to the collective unconsciousness, it's important to be aware of the collective *consciousness* of a group of people - the fact that your jurors, though cut from very different cultural and economic cloths, probably come to the courtroom with certain

ideas and abilities. Call it common sense, horse sense or street smarts, those ideas and abilities include: a tendency to understand new concepts by comparing them to familiar concepts; beliefs that the whole community shares; metaphors, stories, analogies, verbal expressions and witticisms that participants understand intuitively; and shared assumptions and presumptions.

These kinds of common connections are what make the jurors' collective decision-making process possible - and what make it possible for you, as a litigator, to communicate with, educate and persuade those jurors about your side of the case.

Jurors (like all people) start learning unfamiliar material by connecting it to material with which they are already familiar. That is, once jurors know what the new stuff is *like*, they feel confident enough to go to the next level of learning more. If you want to explain a money-laundering scheme, for instance, explain that it's like washing dirty fingerprints off a towel. Or if you want to explain how epilepsy seizures occur, compare the seizures in the brain to lightning in the sky (both involve bursts of electrical activity).

Yes, your jurors may come from different cultures or social classes. But there's a pretty good chance they believe that exploiting children is wrong, altruism is good, rape cannot be tolerated and caring for the elderly is important. Other beliefs that most people share are that people who work hard should be rewarded, that bad things happen to good people and that no one should be allowed to "get away with murder." As basic ideals held by large groups of people, you can use them to appeal to your jury's common sense of decency.

Stories, metaphors and expressions provide shortcuts to understanding because the references are loaded with long-held cultural references and values. Most of us know, for instance, that David and Goliath is a story of a small youth who defeats a larger, more experienced warrior. Using the analogy is an easy way to get jurors to understand what it's like for an independent retailer to battle a Big Box store.

Similarly, you could use Hansel and Gretel to describe homeowners lured by too-good-to-be-true mortgage offers. Or use "stuck between a rock and a hard place" to describe a drug dealer asked to snitch on higher-ups, "from the frying pan to the fire" (said dealer is released from his reduced sentence) or "like scaling Mt. Everest" (the dealer tries to go straight). Whatever the narrative you're trying to impress on your jurors, using adages will provide your audience with an instant, gut-level understanding from which they can build.

Although no one should traffic in most forms of prejudice, there are certain preconceived ideas that jurors tap into to great effect. Fortunately, the law has worked actively to eliminate the worst and most blatant prejudices: those that discriminate based on ethnicity, gender, and religion. Nevertheless, many people believe that insurance companies are out primarily to make money and therefore can't be trusted. Similarly, many people believe that government workers are uncaring bureaucrats, that certain companies always take good care of their people and that certain other companies do not. Sometimes these perceptions hold merit, other times not. But the fact is they exist and present advantages and disadvantages to lawyers, depending on which side they are advocating.

Whether it's unconscious or conscious, a metaphor or a simile, the cultural understandings that you share with your jurors provide the framework upon which every single case, no matter how factually complex, is ultimately resolved. Acknowledging and respecting this allows you to be a far better advocate for your client and a far better teacher for your jurors. The judicial system, after all, relies on people being able to form coalitions and come to group decisions. By leveraging the qualities we all share, you're more likely to get that kind of unity - the kind, that is, that you need to win your case.

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