



## Working With Your Jury

### Reaching Jurors on Different Levels

A successful lawyer is one who knows how to persuade jurors, that much is obvious. What is less obvious is that jurors are persuaded on several different levels. One level that is often ignored is the different ways in which we each perceive information, our unique perceptual modes.

An individual's perceptual mode determines the primary way that individual perceives events and situations (see it, hear it or feel it). That is not to say that people who favor a visual mode, for example, only experience the world through their eyes. Rather, they first and predominantly experience the world in visual terms. Visually oriented people make use of the auditory and feeling modes, but only secondarily.

How does this apply to the courtroom?

Each of us tends to express and receive information in our preferred perceptual mode, to the relative exclusion of the other modes. Many men, for example, are visually oriented, and thus are focused on the visual. Women are frequently more kinesthetically (feeling) oriented, and relate to kinesthetic expression.

Figure out how you see the world: are you more likely to say "I see what you mean" "I can't picture it" (visual), or "That sounds good to me" "Doesn't ring a bell for me" (auditory), or "I understand how you feel" "I want to get a handle on this" (kinesthetic)?

Deliberately express yourself in all three modes during trial; make a conscious effort to communicate in those modes that are not your predominant one. In so doing, you will more effectively reach and therefore persuade all the jurors, not just those who resonate to your native mode.

### Use Analogies to Facilitate Juror Identification

Dictionary.com defines an analogy as "a similarity between like features of two things, on which a comparison may be based; a comparison between two things, typically for the purpose of explanation or clarification" which is the very reason that makes analogies so powerful in persuading jurors. Your jurors come from a variety of life experiences, and may not have a clear understanding or ability to relate emotionally to a given issue of key importance to your case. An analogy is an efficient and effective way to accomplish that. For example, the critical importance of cooperation on a surgical team may be compared to that on a baseball team. However, analogies only persuade under certain conditions.



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*Dr. Noelle C. Nelson is an internationally respected psychologist, author and seminar leader. Her work as a trial consultant and psychologist requires the study and understanding of people – real people – not the theoretical customer or employee discussed at business schools. As a result, her approach to solving the issues facing businesses and workers today does not come from an MBA perspective but rather from the experience she has gleaned from her 25-plus years in the rigorous world of business litigation.*



1. Make sure your analogy suits your jury. If your jury is young, analogies from the Depression or WWII will not only fail to have the desired impact, they may bore your jurors. Not good. If your jury is primarily female, sports-oriented analogies should be used sparingly. Respect the life-experience of your jurors (most often revealed through juror occupations), and tailor your analogies accordingly.
2. Make sure your analogy is accurate. If it isn't 100% accurate, opposing counsel will be quick to turn your analogy against you.
3. Avoid overstatement. An analogy is persuasive only if it is backed up by your facts. When you seek emotional connection with the jurors without paying sufficient attention to the logic underpinning your analogy, you lose credibility.

## The Jury and Gen Xers

Gen Xers are getting older. They are the generation bumping up against the Boomers who are slowly but surely on their way out. Which means you are seeing more of them in the jury box – individuals born between roughly the mid-1960s and early 1980s, who are now in their late 30's to mid-50's. They are no longer entry-level hires, they've moved up into managerial or supervisor ranks, or commonly, headed off into entrepreneurial ventures of all types and sizes.

Why does this matter to you?

Gen Xers are still among the more skeptical, if not downright cynical, generation. Thus, when it comes to liability, Gen Xer skepticism tends to favor the defense because Gen Xers aren't particularly emotionally swayed. They require more data, more evidence, and the science behind it, in order to find liability.

Liability is a major obstacle for plaintiff's attorneys when arguing in front of Gen Xers, so if your jury box is loaded with Gen Xers, be sure to back up every argument with as much documented evidence as possible.

The downside for the defense is, once Gen Xers are convinced of liability—especially Gen Xers in their late 30s and 40s—they will award higher damages than any other generational group. Gen Xers believe that people should be held accountable for their own actions. Awarding substantial damages is a way of holding people accountable.

The solution is the same as for plaintiff—but in the opposite direction. As the defense, do everything you can to back up your arguments countering liability with documented, “hard” evidence, so as not to be hit with a big award. ➤

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***An analogy is an efficient and effective way for jurors to relate emotionally to issues of key importance to your case.***

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