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Winning Trials: Turning the Courtroom into the Classroom

by Grant J. Shostak



While a doctoral student studying andragogy (the art and science of adult education), the author noticed what appeared to be similarities in the techniques used by trial lawyers and those used by teachers of adults. To better understand these similarities, the author conducted a study investigating the degree, if any, to which successful attorneys incorporate adult learning instructional approaches into the way they conduct trials. Specifically, the study aimed to uncover whether successful trial attorneys utilize strategies in the courtroom that are similar to the andragogical approaches used by teachers of adult learners. If jurors are considered adult learners (within the context and confines of a court proceeding), it

might follow that the best lawyers are those who are the best teachers. The study concluded that the most effective and successful attorneys incorporate methods of adult educators to inform, teach, instruct, and ultimately persuade jurors.¹

The methods used by successful attorneys rest on a foundation of six assumptions of adult learners. These assumptions, originally developed by the “father of adult learning theory,” Malcolm Knowles, differentiated adult learners from child learners and outlined the basis of adult education, or andragogy. Specifically, Knowles’ assumptions state that (1) the adult learner has a clearly developed self-concept; (2) the life experience of the adult learner will have

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a direct impact upon how learning takes place; (3) the readiness of the adult learner to learn will influence how new skills and concepts are adopted and retained; (4) the immediacy of the material's application will influence its relevance to the adult learner; (5) the motivation of the adult learner will impact learning outcomes; and (6) the reason the adult learner wants to learn will also influence learning outcomes.² These assumptions inform how adult educators connect with and instruct their adult students, whose purposes for learning and whose life experiences differentiate them from younger students. In the study, the participants incorporated – knowingly or unknowingly – key components of Knowles' six assumptions and applied them to the presentation of their cases, effectively treating jurors as adult learners within the context of the courtroom.

Following Knowles, a later pioneer in the field of andragogy, John Henschke, reported seven factors that determined the effectiveness of adult educators. Henschke created a survey instrument (called the Instructional Perspectives Inventory, or IPI) that provided the framework for examining the andragogical orientation of teachers of adults.³ He found that the most effective adult educators shared common approaches, understandings, and characteristics that contributed to a high level of "andragogical orientation." Henschke's seven factors take into account Knowles' assumptions concerning the nature of adult education and the motivation and goals of adult learners.

To study successful trial attorneys, the author, with Henschke's assistance, created a modified version of IPI, reframing the seven factors to fit the courtroom context, in which trial lawyers are viewed as adult educators and members of the jury are viewed as adult learners. It was hypothesized that successful lawyers would show a high degree of andragogical orientation, when examined by the seven factors modified from Henschke's IPI. These seven factors include: (1) lawyer empathy with jurors; (2) lawyer trust of jurors; (3) planning and delivery of trial presentation; (4) accommodating juror uniqueness; (5) lawyer insensitivity toward

jurors; (6) juror-centered learning processes; and (7) lawyer-centered learning processes. Both Knowles' six assumptions of adult learners and Henschke's seven factors for measuring andragogical orientation were shown to underpin the methods employed by successful trial attorneys when presenting cases to juries.⁴

The first of the seven factors, lawyer empathy with jurors, was reflected in the responses of a majority of participants, who reported feeling empathetic to jury members' responsibility. One participant explained: "I truly believe that most jurors want to do a good job. I think that most of them take it very seriously. I think when it comes to understanding the law, the principles, the facts, they're usually very diligent. They feel like they have an important job to do and, and they're taking their job very seriously." Connected to this notion of empathy, and to gain the trust of jury members (the second factor), all participants emphasized the importance of authenticity, credibility, and actively building trust between themselves and the jury. As one respondent put it: "[A]s we approach the presentation of the case, we [must] never lose sight of the fact that every single thing that is done within the perception of the jurors can influence them. Every single thing. And this is not limited to just inside the courtroom."

The third factor, planning and delivery of arguments, was described by all respondents as critical to the successful outcome of a trial. One participant explained the importance of presentation and delivery as an integral part of persuasion in the process:

[I]t's important to be sure to lay this foundation. As lawyers, we are focused, in the preparation for a trial...on achieving a certain result. And that result will flow from the structure of the trial itself which, necessarily, keys us into the rules that will apply and the particular idiosyncrasies of the rules of that particular court, as well as the rules and the propensities of a particular judge.

The meticulous planning and delivery of arguments is directly related to creating a credible

and accurate depiction of events. One participant explained: “[One must] make sure [to] present the case in a strategically sequenced manner that is based on . . . facts or arguments that really are difficult to disagree with and that allow [the jury] to come to [the desired] conclusion on their own.” Nearly unanimously, the study participants asserted that the planning and delivery of an effective presentation (one that includes relevant and accurate information, delivered by a credible attorney) increases the likelihood that the jury will deliver a favorable verdict.

The fourth and fifth factors address the lawyers’ understanding and accommodation of the “uniqueness” of each juror, which includes learning differences, personality differences, ages and life experiences, socio-economic backgrounds, and levels of motivation for serving on the jury. In Henschke’s assessment, lawyer sensitivity to learner uniqueness improves learning outcomes, while insensitivity to learner uniqueness hinders learning outcomes.⁵ In the context of the courtroom, lawyers who are sensitive to juror uniqueness are able to facilitate more effective relationships with jurors, leading to better trial outcomes.

The study participants reported having varying levels of sensitivity toward jurors and their life experiences. Most respondents acknowledged the importance of using visual aids, diagrams, and “as many different techniques as possible” to accommodate the variety of learning style differences among jurors. Also under the umbrella of uniqueness, some participants identified jurors’ past experiences and personal characteristics as helping to facilitate – or impede – achieving the desired outcome. One of the participants explained: “I think when it comes to adult learning, you’ve got to take into consideration [what] the best way [might be to] present to [each] individual juror . . . without straying too far away from your original plan.” Whether they considered juror uniqueness to be an asset or a liability to achieving the desired outcome of a case, nearly all study participants acknowledged the critical role that juror uniqueness plays in both selecting jurors and the presentation of arguments.

Finally, factors six and seven, pertaining to a juror-centered vs. lawyer-centered approach, likewise indicate that using a more juror-centered approach will lead to stronger relationship with the jury. In the adult classroom, the use of learner-centered approaches that directly involve and engage the students (e.g., role play, collaborative group work) increase student engagement, while the use of teacher-centered approaches (e.g., lecture) generally reduce student engagement. Like successful adult educators, successful lawyers are those who skillfully engage jury members to teach, inform and persuade them to the desired outcome. Many of the interviewees reported trying, to the extent possible, to take into account not only how individual jurors would receive their presentations but also what would most effectively engage them.

In short, the study concluded that successful trial lawyers rely upon and apply a set of andragogical assumptions and understandings that guide them in their efforts to connect with and engage jurors, and, ultimately, to educate and persuade them toward the desired outcome. These andragogical assumptions, though derived from adult education, were shown to apply to trial practice. Based on the results of this study, it can be understood that the andragogical assumptions outlined by Knowles and the inventory of factors concerning andragogical orientation developed by Henschke both provide a framework for trial attorneys to successfully connect with jurors as active, critical participants in a trial, leading to a greater likelihood of successful outcome.

How might the results of this study be of use to a trial lawyer wanting to improve their courtroom persuasion skills? Simply put, attorneys should keep in mind and utilize andragogical assumptions and concepts. Treat jurors as learners, actively participating in their learning experience. Make attempts to connect with jurors as your collaborators to build a partnership and an empathetic relationship with them; trust them to make informed decisions based on the well-planned and skillfully delivered arguments. Be authentic. Pay close attention to your actions inside and outside of the courtroom, as you can never tell when a potential juror may be watching. Accept and accommodate

juror uniqueness with the understanding that it is not something to overcome, but rather that it informs the very nature of the jury as a whole. Finally, present your arguments with as much of a juror-centric approach as possible. Such an approach will not only increase the engagement of the jury, but may also increase the likelihood that the jury will ultimately find in favor of your client.

In the adult education classroom, adult learners are considered active participants in the construction of their own learning, which is why engagement is

critical to the learning process. In the courtroom, jurors actively participate in the carrying out of justice. It is of critical importance that they be engaged with the material and details of the cases they hear, as conveyed through the trial lawyers. Successful trial lawyers are incorporating andragogical methods to win trials, and you can, too. Andragogy has an application in the courtroom setting, and it is expected that the most competent and skilled attorneys who also possess high levels of andragogical orientation will have the most successful trial outcomes. ♣

- ¹ In the study, the author surveyed and interviewed a sample of highly successful trial lawyers (selected from among the recipients of the Missouri Bar Foundation's Lon O. Hocker Award for trial excellence) regarding their methods and approaches to presenting cases, particularly pertaining to their opinions and considerations of the needs of the jury. Their responses were quantified through statistical analysis in order to draw conclusions regarding their andragogical orientation. Based on the results of the study, it was concluded that successful trial lawyers generally share a set of andragogical principles that have been adapted for use in the courtroom setting. See Grant Shostak, "The Intersection of Andragogy and Courtroom Practice" (2019). <https://digitalcommons.lindenwood.edu/dissertations/90>.
- ² S.B. MERRIAM & L.L. BIEREMA, L. L., *ADULT LEARNING: LINKING THEORY AND PRACTICE* (2014).
- ³ John Henschke, *Identifying appropriate adult educator practices: Beliefs, feelings and behaviors*, presented at Proceedings of the Eighth Annual Midwest Research to Practice Conference in Adult, Continuing and Community Education. St. Louis, MO: University of Missouri. (1989) Retrieved from: https://trace.tennessee.edu/cgi/viewcontent.cgi?article=1457&context=utk_IACE-browseall.
- ⁴ In the quantitative portion of the study, a trend toward an andragogical orientation was demonstrated. The most telling data, however, was revealed in the qualitative portion of the study: of all those interviewed, every participant used or relied upon many of Knowles' six assumptions of adult learning and Henschke's seven factors of successful adult learning outcomes. The data revealed that the attorneys adapted Knowles' assumptions of adult learners for use in the courtroom. This adaptation was most evident in discussing the attorneys' trust of jurors and use of multiple modes of presentation to accommodate differences in jurors' learning styles. The results of this study suggest that andragogy has a place in trial practice. Shostak, *supra* note 1.
- ⁵ Henschke, *supra* note 3.

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