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The Intersection of Andragogy and Courtroom Practice

by

Grant Shostak

A Dissertation submitted to the Education Faculty of Lindenwood University

In partial fulfillment of the requirements for the

Degree of

Doctor of Education

School of Education

The Intersection of Andragogy and Courtroom Practice

by

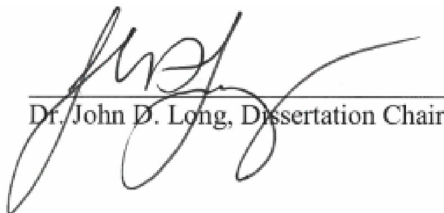
Grant Shostak

This dissertation has been approved in partial fulfillment of the requirements for the

Degree of

Doctor of Education

at Lindenwood University by the School of Education



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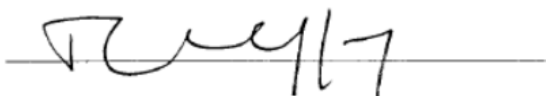

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Date

Declaration of Originality

I do hereby declare and attest to the fact that this is an original study based solely upon my own scholarly work here at Lindenwood University and that I have not submitted it for any other college or university course or degree here or elsewhere.

Full Legal Name: Grant Jason Shostak

Signature: ______________ Date: 7/26/19

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The author wishes to thank his wife, Stacey, and his children, Morgan, Payton, and Carson. Likewise, the author wishes to thank his brother, Elliott, and sisters, Leslie and Pattie, as well as in-laws, Carol, Charles, Barry and Nancy. They have been a source of support and encouragement. Of course, thanks are due to the author's committee members, Drs. Long, Henschke, and Guffey. So much was learned from each of you. Thank you isn't enough. We really do make a pretty good team. All of your help is appreciated. Lastly, thank you to my parents, Burt and Arleen. I wish you were here to see this, Dad. Without even knowing it, you were the first andragogue I knew. Your continued desire to learn and improve sets an example for us all.

Abstract

Learning takes place not only in a traditional classroom setting, but in a plethora of avenues outside of the lecture hall. Learning paradigms like life-long learning and Andragogy, the teaching of adults, have been used by adult educators for fields such as education, finance, accounting, law enforcement, nursing, technology, and many others. A review of the existing literature has revealed an absence of the application of andragogy to the courtroom setting. This paper investigates and discusses the andragogical orientation of successful trial lawyers in Missouri. This study has shown that successful trial lawyers have adapted and share particular principles of andragogy for use in the courtroom setting. In particular, this study investigated the winners of the Missouri Bar Foundation's Lon O. Hocker Award (n.d.) for trial excellence to quantify their andragogical orientation.

Key words: andragogy, trial lawyer, Missouri Bar Foundation, Lon O. Hocker.

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to effectively use andragogy to educate the decision makers in a trial – the judge or jury. For example, when following andragogical methods, a successful trial attorney's presentation will be helpful and trustworthy to the judge or jury. Which, in turn, should lead to a successful outcome at trial. Likewise, using Figure 4, one may start at the end – a successful result in court and work backwards to see the factors that comprise a compelling courtroom presentation. 96

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Chapter One: Introduction

Introduction

When thinking about learning, many people tend to think of formal classroom education. While the traditional school setting is one example of a space in which learning takes place, there are many informal opportunities for learning to occur. Such opportunities are not limited to spaces in which the main purpose is education. For example, individuals may learn when called to serve on a jury. Specifically, jurors, while performing their civic duty, are often required to learn about a matter with which they possess little familiarity or experience and must make decisions that affect the legal rights of the parties to the case.

The lawyers representing clients in trials are tasked with presenting the best cases for their clients in an effort to achieve the best possible results. While lawyers present their clients' cases in a courtroom, their presentation may be considered a learning opportunity for members of the jury. Ultimately, through their presentations, trial lawyers "teach" the jurors why their clients' version of events is the correct one, in an attempt to win the case being argued. Interestingly, despite the high stakes often associated with trials and the presentation and delivery of trial arguments, law schools do not require law students to have a background in education. Students can attend law school with an undergraduate degree in any field. In essence, trial lawyers must effectively present their clients' cases to decision-makers, whether judge or jury, often without explicit training in how best to do so. One thing that all decision-makers have in common in this context is that they are all adults.

Andragogy is a method or theory of teaching adults. Andragogy was defined as "the art and science of helping adults learn" (Knowles, 1968, p. 351). Andragogy encompasses techniques for adult learning and posits certain basic assumptions about adult learners, essentially differentiating their learning from the learning of children, in an effort to help the adult educator facilitate learning.

Andragogy was not limited to simply improving learning in the adult education classroom context but has also been incorporated into various contexts in which adults may be conceived of as learners, including business, education, religion, and athletics (Henschke, 2004; Lubin, 2013). It has also been used to assess and improve employee or subordinate satisfaction in the workplace (Wang & Bryan, 2014). It has even been used to improve training for law enforcement officers and skiing (Birzer, 2003; Robinson, 2009). Because lawyers attempt to persuade adult jurors, andragogy—and what it has to offer concerning adult learning—is relevant to making effective presentations in the courtroom. A review of the literature revealed no studies attempting to determine the andragogical orientation of trial lawyers.

Rationale of the Study

A simple Google or Westlaw search for books and articles on trial strategy or trial practice will reveal a plethora of information. What is common among the search results is that there are many different approaches to presenting a winning courtroom argument. For example, in 2009, plaintiff's trial lawyers Keenan and Ball proposed a strategy that was described as revolutionary. In their book, *Reptile: The 2009 Manual of the Plaintiff's Revolution*, Ball and Keenan (2009) laid out a strategy intended to help trial lawyers representing clients injured through the negligence of others to better prepare and present

their cases. What differentiated Ball and Keenan's "reptile strategy" from other legal strategies was that it focused on the defendant's conduct—as opposed to the injury and impact upon the plaintiff, on which traditional trial presentations normally focused. Ultimately, Ball and Keenan (2009) urged plaintiffs' lawyers to begin thinking of their case strategies from the earliest possible moment. The authors called upon plaintiffs' lawyers to show jurors that defendants' conduct created a dangerous situation that not only harmed the plaintiffs but also had the potential to harm the jurors or their loved ones (Greeley, 2015). The idea was to get jurors to think not only about any given plaintiff's injury as an isolated incident but to show the jurors that an incident like the one being tried could also happen to members of the jury or people they knew.

The science behind the reptile strategy, although disputed, is rather simple. In the 1960s, neuroscientist Paul MacLean theorized that human brains are essentially made up of three parts. According to MacLean, this three-part brain, also called the Triune Brain, is composed of the neocortex, the limbic system, and the reptilian brain. According to this theory, the neocortex controls language, logic, and planning. The limbic system controls emotion, reproduction, and parenting. The reptilian brain is said to encompass the most primitive aspects of man and is focused on survival (Greely, 2015). With this brain theory in mind, Ball and Keenan (2009) proposed that to recover the most compensation and biggest awards for injured plaintiffs, plaintiffs' attorneys needed to persuade the jurors by appealing to the reptilian areas of their brains. Essentially, if a juror felt threatened, the reptilian portion of their brain would take control in an effort to ensure survival. In the context of a trial, if a juror believed that a defendant had committed an act that was potentially harmful to the juror or a juror's loved one, then the

juror would respond by punishing the defendant with a harsh sentence. As such, Ball and Keenan (2009) taught plaintiffs' lawyers to frame their cases in terms of safety rules and the ways in which the defendant had violated those rules (Greely, 2015). Regardless of the validity of the science behind the reptile strategy, Ball and Keenan (2009) taught plaintiffs' lawyers, essentially, to get jurors to envision themselves in the shoes of the plaintiff. In other words, the jurors no longer saw the trial as being about an isolated event in time but rather about an incident that could have happened to them. The results of plaintiffs' lawyers using the reptile strategy, although anecdotal, were very impressive.

While the reptile strategy and andragogy, at first glance, may not appear to have much, if any, connection, upon further examination, a clear connection can be made, as the role of the trial lawyer can be considered that of a teacher, or one who guides the understanding of the jurors. Specifically, trial lawyers seek to shape the understanding of jurors by using an approach that frames the jurors' understanding of events in a particular way. To do this, trial lawyers use the reptile strategy to attempt to make a personal connection between the event at issue and each juror. To increase the likelihood that a juror will personalize the event being tried—and not distance him or herself from it—the lawyer presents possibilities that appeal to the jurors' senses and emotions. This strategy effectively encourages jurors to think, "This could happen to me or a loved one." If this personal connection is made, it reasoned that jurors care much more about the matter at issue. Likewise, making a connection with a student is a foundational element of andragogy. The six assumptions of adult learners were founded on the teacher being able to "reach" the student because the teacher understood the differences between adult and child learners.

The andragogy connection to effective trial techniques was not made by chance or coincidence. To illustrate this connection, one can look to the efforts of another great trial lawyer who taught a very different method of trial persuasion from that of Ball and Keenan (2009). Spence's (1986, 1997, 1998, 2010, 2013) abilities in the courtroom were unparalleled. Spence tried and won some of the most difficult criminal and civil cases. In addition to his skills in the courtroom, he spent countless hours helping other lawyers learn how to successfully present their cases. To that end, he founded the Trial Lawyers College in Wyoming. While there, lawyers learned the techniques and skills that Spence had spent a lifetime perfecting. Unlike in a traditional law classroom setting, the lawyers in Spence's classroom learned skills such as how to effectively present their clients' stories and also how to know themselves as complete human beings (Nolte, 2011).

One of the key components of the Trial Lawyers College was psychodrama. While psychodrama is typically used in the mental health field, it has a specific application in training lawyers. At the Trial Lawyers College, psychodrama was used to help the lawyers re-learn creative thinking and strategies for working on their own mental and emotional health (Cole, 2001). Through the use of psychodrama, Spence (1986, 1997, 1998, 2010, 2013) taught the lawyers how to examine their clients' cases, and in effect, step into the various roles of the individuals pertinent to the case. By understanding the various actors' roles, the lawyers could best tell the clients' stories. For example, by understanding an event from the client's perspective, Spence was able to create compelling and moving scenes in a courtroom that came to life for the jurors. He (and his students) were able to paint "word pictures" that were far more effective in conveying a message than were traditional trial arguments. The author recalls an

example of Spence's trial method whereby an attorney gave a closing argument on behalf an injured female plaintiff as though the plaintiff's bathroom mirror were talking to the injured woman, telling her that despite the scars from the defendant's negligence, she was still beautiful. This type of preparation has led to very successful jury verdicts, for both plaintiffs and defendants.

The cornerstone of Spence's (1986, 1997, 1998, 2010, 2013) success was credibility. According to Spence, a trial is essentially a contest of credibility. The most credible lawyer is the one that effectively convinces the jury that their client's case is the most just (Spence, 2010). Again, while at first blush there may not appear to be any connection between Spence's methods and andragogy, such a connection exists. In andragogy, while several important factors contribute to successful learning outcomes, teacher empathy with learners, teacher trust of learners, and teacher sensitivity to learners are among the most critical to the success of adult learning outcomes (Wang & Bryan, p. 152). In andragogy, the teacher must "initiate, establish, and maintain reciprocation with learners in empathy with learning, trust of learners, and sensitivity toward learners" (Wang & Bryan, p. 152). Importantly, "If reciprocating with learners in empathy, trust, and sensitivity is exemplified, [students] may learn something, which, otherwise, they may have learned less well, more slowly, or not at all" (Wang & Bryan, p. 152). In short, best practices in andragogy states that "a lack in the combination of empathy, trust, [or] sensitivity seriously hampers the learning process" (Wang & Bryan, p. 152). Logically, the best teachers of adults truly understand their students, just as Spence (1986, 1997, 1998, 2010, 2013) taught that lawyers must understand their clients.

Andragogy may be best viewed as a set of guidelines or principles in teaching adults. The premise of andragogy is based on certain assumptions or differences between adult learners and child learners. First, adults are self-directed learners, meaning they take ownership or responsibility for their learning. In addition, adults bring much more life experience to their learning than children do. Next, for children, learning tends to be driven by the subject matter, while adult learning often focuses on solving specific problems and reaching practical outcomes. These differences support Knowles' (1968, 1980) contention that adults must be taught and communicated with differently than children (Birzer, 2003).

Viewed through an andragogical lens, a trial lawyer is essentially a teacher tasked with teaching adults—the jury—that their client's case is the correct version of the story. Knowles (1968, 1980) proposed that there are six assumptions related to driving adult learning. These assumptions are related to (1) the adult's need to know or learn something; (2) the experience the adult brings to the situation; (3) the adult's self-concept; (4) the adult's readiness or willingness to learn; (5) the adult's problem-centered orientation to learning; and (6) the adult's internal motivation towards learning (as cited in Wang, 2014). With these assumptions in mind, examining trial lawyers in relation to andragogical principles opens the door to possible new perspectives in trial advocacy and persuasion.

Purpose of Study

The purpose of this study was to identify the relationship, if any, between success as a trial attorney and andragogical orientation. Since the time of the establishment of the first democracies, there have been myriad legal techniques and practices used to sway or

influence juries. While time-tested methods such as studying under a more experienced attorney or simply learning by doing have been of significant value, this study sought to explore some more strategic, tactical trial advocacy practices through an andragogical lens to determine whether there are any overarching or integrated themes.

To examine successful trial lawyers' propensity towards andragogy, a modified survey based on the Instructional Perspectives Inventory (IPI, Henschke, 1989) was utilized. The IPI is a survey designed to measure adult educators' orientation towards andragogy. Using a Likert rating scale, the IPI measures seven factors related to andragogy: (1) teacher empathy with learners; (2) teacher trust of learners; (3) planning and delivery of instruction; (4) accommodation of learner uniqueness; (5) teacher insensitivity toward learners; (6) learner-centered learning processes; and (7) teacher-centered learning processes (Henschke, 1989). Stanton's (2005) research indicates that the IPI is reliable. With the assistance and authorization of Dr. Henschke (1989), the creator of the Instructional Perspectives Inventory, a modified form of the IPI, (MIPI-Trial Lawyer) was designed for use in examining the orientation towards andragogy of successful trial lawyers.

This study examined both quantitative and qualitative information to study trial lawyers' orientation towards andragogy. To examine this orientation, interviews were conducted with random participants. The interview questions were guided by the information gathered from the MIPI-Trial Lawyer instrument.

Research Questions and Hypotheses

The author investigated the following research questions:

Research Question 1 (RQ1): To what extent is there a relationship between andragogy in practice and the trial of lawsuits, as demonstrated by successful trial attorneys?

Research Question 2 (RQ2): What is the relationship, if any, between the lawyers' age, gender, and andragogical orientation?

The hypotheses for this mixed-methods study are as follows:

Hypothesis 1 (H1): There is a correlation between successful trial lawyers and andragogical orientation, as seen in the following variables: (1) empathy with jurors; (2) trust of jurors; (3) planning and delivery of trial presentation; (4) accommodation of juror uniqueness; (5) lawyer insensitivity towards jurors; (6) incorporation of juror-centered learning processes; and (7) incorporation of lawyer-centered learning processes.

Hypothesis 2 (H2): There is a correlation between gender, attorney success, and andragogical orientation.

Hypothesis 3 (H3): There is a correlation between age, attorney success, and andragogical orientation.

Methods

This research study uses a mixed-methods design by incorporating both qualitative and quantitative approaches. Using a mixed-method design allows for the examination of different types of data, which provides an advantage over using a study with a narrower scope (Fraenkel, Wallen, & Hyun, 2012). Using a mixed-methods approach strengthened the study because it allowed for triangulation—combining different methods of study to examine the same subject (Patton, 1990).

For the purposes of this study, the author settled on a method to determine who met the requirements of the designation "successful attorney." Each year, the Missouri Bar Foundation awards outstanding trial lawyers the Lon O. Hocker Award (n.d.) for trial excellence, a designation that began in 1955. The MIPI-Trial Lawyer survey was sent to all Lon O. Hocker Award (n.d.) winners with accessible mailing addresses, along with instructions for how to complete the survey, and a self-addressed, stamped envelope for its return. After scoring the surveys, a convenience sample was collected, and interviews were conducted with some of the award-winning attorneys. The interview was designed to elicit information about how foundational andragogical principles were used by the subjects in lawsuit trials.

Study Limitations

This study has several limitations. First, the participant pool was limited to lawyers from the state of Missouri. It is possible that attorneys from other states might have different beliefs or practices. Second, the participant pool was limited to the Lon O. Hocker Award (n.d.) winners that were available. Some award winners had passed away, while others could not be reached via email. Third, it is possible that non-award-winners might respond differently than the participants. These limitations minimize the applicability of this study to attorneys in general.

Definition of Terms

Andragogy. Andragogy is the theory and practice of educating adults. The term reflects the type of instructional design that addresses the specific educational needs of adults as opposed to children (Knowles, 1980). People above the age of 24 are typically

considered to be non-traditional or adult learners (National Center for Education Statistics, 2016).

Instructional Perspectives Inventory. The Instructional Perspectives Inventory (IPI) is an instrument designed to assess an individual's degree of andragogical orientation in his/her work. It is a 45-question, paper-based survey created by Dr. John Henschke (1989).

Learning. Learning is "the act or process by which behavioral change, knowledge, skills, and attitudes are acquired" (Boyd, & Apps, 1980, pp. 100-101).

Lon O. Hocker Award. This Missouri Bar Foundation award is awarded annually to three lawyers under 40 who are members of The Missouri Bar. The awardees must embody "the high-caliber attributes of a trial lawyer, including professionalism, demonstrated ethical conduct, demonstrated balance between zealousness and honor, strength and courtesy, and confidence and respect. They must possess a quick wit in the courtroom that is supported by meticulous preparation in the pursuit of truth" (The Missouri Bar Foundation, 2015, para. 1).

Pedagogy. Pedagogy is the discipline that deals with the theory and practice of education and primarily concerns itself with optimizing instruction (Vieira, 2009).

Reptile theory. Reptile theory asserts that an attorney could prevail in a trial by appealing to the primitive, fear-based part of jurors' brains. The reptile strategy purports to provide a blueprint for succeeding at trial by applying advanced neuroscientific techniques to pre-trial discovery and trial proceedings (Ball & Keenan, 2009).

Successful trial attorney. For purposes of this study, a successful trial attorney is defined as a recipient of the Missouri Bar Foundation's Lon O. Hocker Award (n.d.), given annually to three attorneys under the age of 40 for outstanding trial achievement.

Trial advocacy. Trial advocacy is the area of legal practice concerned with achieving desired outcomes in trial proceedings. It can be broken into two primary categories: skills that accomplish individual tasks (tactical skills) such as juror selection; developing and delivering opening statements and closing arguments; and examining witnesses; and those skills that integrate those individual actions to achieve greater effects and to drive unfolding events toward the advocate's desired outcome (strategy) (Drier, 2012).

Summary

Learning is not limited to formal settings but can occur almost anywhere. Andragogy, the teaching of adults, was applied in all sorts of settings outside of the classroom environment. One such setting concerning adult learning is in the courtroom. Jurors can be thought of as students and lawyers as teachers. A review of literature did not reveal any studies concerning the andragogical orientation of trial lawyers. This study attempts to identify the orientation, if any, of successful trial lawyers.

Chapter Two of this study describes the relevant andragogical research applicable to learning as it may apply in the courtroom setting. Chapter Three discusses the research method and design to study the orientation, if any, of successful trial lawyers.
Chapter Four is an analysis of the data collected in the study, while Chapter Five discusses the findings and future impact of the study.

Chapter Two: Review of Literature

Introduction

In this chapter, the foundation of the research study is discussed. Sections on adult learning, trial practice, and the intersection of trial practice and andragogy are included. The pairing of trial practice and andragogy represents a previously unexamined area of research.

Adult Learning

Andragogy has three meanings. First, it refers to the scholarly or academic study of adult learning. It also refers to the theory and approach to adult learning and education championed by Knowles (1968, 1980). Lastly, it is used as a catch-all term to refer generally to adult education, learning, methods, and academic study (Reischmann, 2004).

The word "andragogy" was first used in 1833 by Alexander Kapp, a German high school teacher. In his writing, Kapp used the term to describe lifelong learning and the importance of self-reflection and life experience in learning. Lindeman was the first to write about andragogy and its application in teaching adults in the United States, but it was American educator Knowles (1968, 1980) who brought andragogy to the forefront in the 1960s (Reischmann, 2004). Reischmann further stated Knowles' work did not have much of an impact on the study of andragogy in Europe (2004). Knowles's work in andragogy was based upon the self-directedness of the adult learner and the belief that the teacher should be more of a facilitator than an "oracle" who passed down knowledge to the student (Reischmann, 2004). Knowles is commonly referred to the father of andragogy (Bates, 2009).

In examining andragogy, it can be helpful to begin with an overview of the assumptions regarding all learners, including both children and adults. Pedagogy concerns itself with the teaching of children. Pedagogy dates back to seventh century Europe (Ozuah, 2005). Pedagogy, like andragogy, was founded on several basic assumptions about learners. Classic, or traditional pedagogy essentially assumes four things about child learners. First, pedagogy assumes that the learner is dependent upon the teacher. In other words, the child learner does not yet know what they need to know. Second, pedagogy assumes that learners learn best by subject matter. This assumption is evident when looking at the typical K-12 curriculum, which is broken down by subject, such as mathematics, biology, etc. Third, classic pedagogy assumes that learners are not internally motivated to learn but rather must be motivated externally through rewards and punishments. Lastly, traditional pedagogy assumes that the learner's life experience plays no role in the learning process (Ozuah, 2005). It is important to note that many of the assumptions underlying traditional pedagogy are being challenged at this time by developments in our understanding of child development and psychology; such understandings are changing not only the ways in which pedagogy is understood but also the methods and approaches used in K-12 instruction (Ozuah, 2005).

Andragogy concerns itself with the teaching of adults. The crux of andragogy lies in its assumptions concerning adult learners. These assumptions include (1) that the adult learner has a clearly developed self-concept; (2) that the life experience of the adult learner will have a direct impact upon the ways in which learning takes place; (3) that the readiness of the adult learner to learn will influence how new skills and concepts are adopted and retained; (4) that the immediacy of the material's application will influence

its relevance to the adult learner; (5) that the motivation of the adult learner to learn will impact learning outcomes; and (6) that the reason the adult learner wants to learn will also have an influence on learning outcomes (Merriam & Bierema, 2014).

As human beings mature, they gain a clearer self-concept and become more self-directed in their learning. Adults typically see themselves as both independent and responsible for their own actions and learning. When individuals begin to take on personal responsibility as adults, they also accept more responsibility in controlling their own education (Merriam & Bierema, 2014). While this assumption may make sense intuitively, it is not without criticism. For example, clearly not all adults are capable of being solely self-directed in their learning. A person's maturity and level of intelligence factors in to their ability to self-direct. Likewise, many learners are not knowledgeable enough about a particular subject to be self-directed (Blondy, 2007). The second assumption regarding adult learners deals with their experience. While a child's life experience may not yet provide sufficient context from which to draw in the educational setting, an adult has typically had significant life experience, and andragogy accepts that such experience will be instrumental to how adults learn—as well as the fact that such life experience will inform the ways in which adults will respond to the new learning experience itself. This is to say that in a learning setting, an adult learner will process new information through the lens of their own experiences. It can be argued that the life experience of children—although limited—is equally influential in guiding children's learning experiences. In this way, the life experience of adult learners (and any other adults engaged in learning situations) becomes a sort of roadmap to help facilitate learning (Merriam & Bierema, 2014).

Critics of this assumption argue that age is not necessarily determinative of the significance of one's experiences. This objection can be applied to the assumptions of pedagogy as well. Specifically, the life experience of children, although necessarily more limited in scope than that of adults, is no less real and no less significant to the child's learning experience than the role of life experience is to adults in learning environments. They argue that even adults with considerable life experience are not defined by that experience alone. Specifically, critics assert that beyond life experience, andragogy should also account for the cultural differences that impact individuals' learning experiences (Blondy, 2007). The counter-argument to this from the andragogy camp is that even though people learn in different ways based upon their experiences and maturity levels, humans all essentially learn in the same way (Yonge, 1984).

Finally, critics contend that experience also does not take into account the impact that social contexts or cultural factors have on learning (Pratt, 1991).

The next assumption of andragogy relates to the readiness of adult learners to learn and focuses on the social roles of adults as playing an integral role in adult readiness to learn. For example, as a person grows and develops, they take on many social roles, including that of employee, spouse, parent, etc. Each of these roles requires a different knowledge base. For example, a single person without any children would likely lack interest in learning parenting skills. However, an adult learner who is a parent of young children may feel quite ready to learn such skills (Merriam & Bierema, 2014).

Critics of this assumption contend that social roles do not necessarily have a direct bearing on learner interest or readiness because some adult learners do not know or choose what they should learn. This argument is supported by noting that in many

instances, an adult learner does not voluntarily attend or take courses (Blondy, 2007). For instance, it is not uncommon for professional fields to require members to complete various continuing education requirements. As just one example, The Missouri Bar requires practicing attorneys to attend 15 hours of continuing legal education every year (The Missouri Bar, 2017).

The fourth assumption of andragogy relates to the immediacy of application for what is being learned. This assumption presumes that the more immediately applicable the new material is, the more effectively adults will internalize it. Simply put, most adults want to learn something that has an immediate application to them (Merriam & Bierema, 2014). Indeed, this principle can and should also be applied to children, whose perception of what is or is not relevant to their lives directly affects how they internalize new material. Similarly, the fifth assumption of andragogy relates to the motivation for learning. While children may receive significant external motivation to learn (because they are required by law to attend school, for example), adults are often (though not universally) internally motivated to continue their education. For example, a small business owner may want to increase his or her client base and therefore will need to learn new marketing techniques in order to do so (Merriam & Bierema, 2014).

The final assumption concerning adult learners relates to the fact that adult learners needed to know why they are learning something. If an adult knows why what they are learning is important before the learning task begins, it is much more likely that they will retain what is being taught (Merriam & Bierema, 2014). In examining the differences and similarities between andragogy and pedagogy, the question that emerges is whether there is a difference between the types of training required for teachers of

children and that required for teachers of adults. As of the writing of this paper, all K-12 teachers receive some basic minimum criteria or certification before they are able to teach. As such, K-12 teachers typically have more training in learning theories and approaches than do faculty members at institutions of higher education (Minter, 2011).

To teach adults, simply possessing subject matter knowledge is usually considered sufficient to be hired as an adult educator (Henschke, 1998). However, according to Henschke, a lack of formal training in teaching methods and approaches for adult educators is not a good practice, as most adults pursuing their education do so voluntarily and may leave or stop attending if their needs are not being met. Therefore, it is important for teachers of adults to have gained some understanding of the needs of adult learners (Henschke, 1987).

Henschke (1987, 1989, 1998, 2004, 2013) believes that a training program for teachers of adults must be based upon five principles, or building blocks. The first building block centers on the teacher's beliefs and notions about adult students. This principle focuses on the teacher's understanding of the adult student and the assumptions about adult learners based upon Knowles's (1968, 1980) work in the field (Henschke, 1987). The second building block focuses on teacher interest in both the subject matter and the students, the teacher's ability to communicate, to be prepared, and the teacher's knowledge of the subject matter. Next, Henschke's adult educator training program examines the learning process itself. Learning must be understood as a process, as opposed to simply the act of providing information about a subject. According to Henschke (1987, 1989, 1998, 2004, 2013), learning does not just occur in one setting but

rather over time as the student wrestles with and digests the information. The learner can then best use and apply the knowledge learned (Henschke, 1987).

The fourth building block revolves around expanding the teacher's repertoire of teaching techniques that bring the classroom experience to life. These techniques include variations on the traditional lecture, including demonstrations, use of learning teams, etc. While it may seem self-evident, students learn best when they are interested in and highly engaged with the subject matter. Bringing a classroom to life captures more of the students' interest. The last building block, and the one Henschke (1987, 1989, 1998, 2004, 2013) considers the most important, is the implementation of the learning plan. While it seems simple enough to set a learning plan out on paper, implementing such a plan in the classroom is difficult to do because teaching is fluid. No one technique works best all of the time. Henschke suggests that implementation of a learning plan is best achieved when a teacher is able to develop a sense for sequencing in order to further students' learning. In this way, the teacher's attitude towards students and themselves serves as a guide for controlling the pace and sequencing (Henschke, 1987).

Andragogy is particularly suited to effective teaching and learning. To begin with, andragogy focuses on two of the most important principles relative to learning: (1) the active participation of the learner and (2) the usefulness and application of the material to the student (Seaman & Fellenz, 1989). Accordingly, in this context, the teacher's role is to design lessons that encourage the student's active participation, as well as to demonstrate the usefulness and application of what is being learned. While concepts or theories play a role in the learning process, the students learn best when the teacher demonstrates the application of the knowledge. Such emphasis makes practical

sense, as students are more likely to put in the time and effort when they consider the material to be useful (Patterson & Pegg, 1999).

When the word “educator” is used, many people think of those individuals classically trained to be teachers or professors. In the field of adult education, an educator is one who helps or assists adults in learning, whether in content matter or skills. Therefore, “adult educator” is a term that encompasses a broad category of roles, including executives, supervisors, administrators, leaders, and people in formal educational fields (Henschke, 1998). According to Henschke, modeling is what drives the quality of an educator’s performance. In other words, effective instruction depends on the teacher’s ability to provide instruction that models what is being taught (Henschke, 1998). Students not only learn from what is being said but also by observing what is being done. Teachers are models to their students. According to Henschke, a teacher must be willing to “be themselves,” modeling active involvement with and enthusiasm for the material to students (Henschke, 1998). In Henschke’s (1998) experience, andragogy is dependent upon the adult educator being themselves, sharing their passion for the content matter. In promoting authenticity within both educators and students, andragogy encourages self-directed learning. In order to further advance self-directed learning, teachers must focus on the needs of the learner to help them become more self-directed.

In applying andragogical methods, a teacher must focus on making the learning meaningful by encouraging active participation from the students. In doing so, the teacher may spend a significant amount of time on the practical application of the content. This helps the student see the immediate benefit and application of the content

(Patterson & Pegg, 1999). By providing increased attention to the meaningfulness and application of the content, the teacher becomes a facilitator and resource for students. Accordingly, when presenting material, the teacher should attempt to present the material in a way that touches upon the interests and concerns of their students. Short lectures, role playing, and small group work are often effective methods for presenting and reviewing material (Patterson & Pegg, 1999).

Despite this definition, most educators of adults receive little formal training in adult education (Henschke, 1998; Minter, 2011). But when considering its particular demands, it becomes clear that they should. Andragogy is not simply a method but a belief in the transformative power of education. This belief helps teachers understand that all learners are unique and to foster a caring attitude toward their students. An educator must act in a manner consistent with these teaching beliefs. Lastly, an adult educator must be the embodiment of trust. When adult students trust their instructors, learning outcomes are improved, and the relationship between teacher and student becomes characterized by "interrelatedness, mutual assistance, give and take . . . cooperation, [and] collaboration" (Wang & Bryan, 2014, p. 152). Specifically, trust "contribute[s] to learner satisfaction with the learning situation" and "lead[s] the learner . . . to want to stay in the learning situation" (Wang & Bryan, 2014, p. 152). Trust extends beyond simply honoring commitments and encompasses the students' and educators' trust in the learning relationship and process (Henschke, 1998).

Similar to Henschke's (1987, 1989, 1998, 2004, 2013) belief that andragogy is something of an attitude, Patterson and Pegg (1999) argue that andragogy is based upon the mutual respect between the students and the teacher. The teacher has a very difficult

role: to help set and maintain a climate in which all students feel free to be themselves. In such a context, students should feel free to disagree with one another and still be accepted as part of the learning environment. To help facilitate this open and respectful learning environment, the teacher must often relinquish some of the traditionally assumed power afforded to the "teacher" and share it with the students (Patterson & Pegg, 1999).

In addition to promoting feelings of mutual respect between the teacher and students, best andragogical practices also rely upon empathy and encourage collaboration. In this environment, students feel like they are equals with each other and with their professor. Accordingly, the teacher works with the students to help determine students' learning needs and objectives, and to decide collaboratively on evaluation methods. To that end, teachers often employ learning contracts in the andragogical classroom as an effective learning tool (Patterson & Pegg, 1999).

Besides the classroom experience, teachers of adults also focus on outside learning activities. To help increase the experience base of the learners, teachers often use internships or field experiences. In addition, students may often learn from the experiences of guest speakers when appropriate (Patterson & Pegg, 1999).

Along with the approaches of the adult educator, another important aspect of adult learning is the student's motivation to learn. Wlodkowsky (1993) studied ways to improve adult motivation to learn. In so doing, Wlodkowsky described the hallmarks of the most motivating adult instructors. These instructors shared a number of common characteristics, including thorough knowledge of the subject matter, presented in a way that benefits adult learners. Walk through any professional development conference or similar program and you may see many knowledgeable presenters. Very few of these

presenters, however, are actually focused on providing something beneficial to the adult learner in the audience. Often, professional development presenters fail to consider the problems or information that those attending the presentation need help addressing in the jobs. In contrast, instructors who most successfully motivate adults to learn know this and focus their presentations on providing something that benefits the adult learners in the audience.

Adult instructors who are able to motivate their students are also those who are able to empathize with them. These instructors understand the needs of their students. Rather than simply providing what they believe a student needs to know, the empathetic adult educator takes the necessary time and effort to determine what the students want and need to learn. The instructor then uses this information to consider the best way to provide that instruction to their students. Unsurprisingly, motivating adult instructors are also enthusiastic about learning and about their students. Finally, motivating instructors of adults are able to convey lessons and instructions in a way that is easily understood.

While the andragogical approach outlines a set of assumptions about adult learning, it is important to review the ways in which adults learn. While there is little consensus on the number of learning theories and how those theories may be grouped, for purposes of this paper, some of the most popular learning theories and their application to adult learning will be examined.

Learning theories can essentially be viewed through two lenses: behaviorist and cognitive. To begin, those subscribing to the behaviorist orientation generally subscribe to three main assumptions about the learning process. Behaviorists believe that learning should be focused on behavior rather than internal thoughts; that outside influences, such

as the environment, impact a person's behavior; and that the key to understanding the learning process is based on concepts of contiguity and reinforcement (Merriam & Caffarella, 1999). Behaviorist learning theorists contend that learning occurs through observation and reinforcement, both positive and negative. (Baumgartner, Lee, Birden, & Flowers, 2003). A behaviorist orientation is most readily observable in vocational adult education. Here, a specific set of skills is identified relative to a particular trade, and adults are taught those skills. Likewise, the behaviorist orientation is also seen in human resource development, wherein adults receive on-the-job training (Merriam & Caffarella, 1999).

In contrast, those with a cognitive learning orientation focus on the internal processes of the learner's mind as opposed to the observable behavior of the learner. A cognitive learning approach suggests that the learner's mind in not simply a place in which information is "deposited" but rather one in which the information must be examined, worked, and manipulated in order to solve a problem or develop a response. With respect to adult learning, cognitive learning theory aligns with andragogical theory. Constructivist learning theorists contend that learning is not something that is simply obtained but is instead is constructed or built by the learner. Constructivists contend that learners take in information and integrate additional information to construct meaning. For example, a student who learns basic math skills can apply those skills to an ordinary transaction at the grocery store to determine whether they received the correct amount of change back from a purchase (Baumgartner, et al., 2003).

Trial Practice

Communication is an important skill for a trial attorney. In a trial, a lawyer communicates with clients, witnesses, other attorneys, judges, and most importantly, jurors, who decide the outcome of the case. A lawyer's communication style may impact the jurors' verdict (Cowles, 2011). Lawyers are trained to communicate effectively, and therefore, they are expected to have superior communication skills (Cowles, 2011; Hobbs, 2008). However, some argue that lawyers are not explicitly taught communication skills in law school. For example, Spence (1997) stated:

> [L]awyers are not trained as dramatists or story tellers, nor are they encouraged to become candid, caring, and compassionate human beings. Most could not tell us the story of Goldie Locks and the Three Bears in any compelling way. We would be fast asleep by the time they got to the first bowl of porridge. (pg. 113)

A review of law school curricula reveals that the American Bar Association accrediting body does not require a particular set of courses that constitute a law degree. That being said, however, most law schools have a core curriculum or set of courses that include courses in civil procedure, criminal law, criminal procedure, contracts, evidence, property, constitutional law, torts, professional responsibility, and legal research and writing (Taylor & Gardiner, 2010). As communications courses are not generally required, it is from the core courses that lawyers are expected to gain necessary skills to practice law.

To some extent, law schools use both pedagogical and andragogical learning principles. Law schools most often use the case study method and Socratic Method (Taylor & Gardiner, 2010). The case study method is attributed to Christopher Columbus

Langdell. In the 1870s, Langdell introduced a method of study wherein students were taught legal principles by reading court decisions (Dow, 2014). With the Socratic Method, the professor questions students in an effort to teach the legal principles (Taylor & Gardiner, 2010).

All of the instruction in law school is provided within an environment of extreme competition. One lawyer compared his law school experiences to his experiences in coaching football at Texas Tech University. Unlike medical school, where once a student is accepted to the school, great efforts are made to ensure the student's success and continuation through graduation, law schools accept outstanding students yet expect that many of them will not continue on through graduation. This is similar to how football teams recruit highly skilled athletes and work them tremendously hard to ensure that only the most dedicated and best stay on the team (Leach, 2009).

Given that law schools do not require courses in effective communication for trial practice-related skills for graduation, it is not surprising that articles and books abound on how lawyers can improve trial practice skills. A simple search of continuing legal education programs through The Missouri Bar for the reporting period of 2017-18 reveals a number of trial practice-related educational programs. Many famous lawyers have likewise written extensively on trial practice-related topics. Spence (1986, 1997, 1998, 2010, 2013), a famed trial lawyer, by 2017 had written 16 books and founded the Trial Lawyer's College where he, along with others, helped lawyers become highly skilled advocates and orators (Spence, 2013). When Spence spoke, trial lawyers—both experienced and unexperienced—listened. If lawyers had baseball cards, it was said that the Spence card would be the most valuable of all (Bradford, 2002). Additionally,

Spence's argument in a famous case was described as on the same level as Lincoln's Gettysburg Address (Caldwell, Perrin, & Frost, 2002).

Spence (1986, 1997, 1998, 2010, 2013) was discussed extensively in a law review article attempting to determine the defense lawyer who may legitimately be called the "Lawyer of the Century." In attempting to determine the lawyer who deserved such a mantle, Uelmen (2000) surveyed Arizona lawyers handling death penalty and criminal cases, as well as a number of law students. Spence's (1986, 1997, 1998, 2010, 2013) name came up among all respondents. In describing Spence's accomplishments, Uelmen noted that Spence was lead counsel in the Karen Silkwood case, the trial of Randy Weaver, and the trial of Imelda Marcos. At the time, and even in 2017, these were sensational cases. In addition, Uelmen noted that Spence was a frequent commentator on legal topics and that he spent significant amounts of time and energy teaching lawyers to be become better advocates for their clients (Uelmen, 2000).

Spence (1986, 1997, 1998, 2010, 2013) had a number of methods and principles for winning trial advocacy. First, Spence believed that anyone is capable of crafting a winning argument (Rodriguez & Doherty, 1996). According to Spence, a successful argument is really akin to presenting a winning story. Just as children love to hear stories, so do adults. Stories are the most persuasive tool that a lawyer has (Rogdriguez & Doherty, 1996). He advised students against emulating or using someone else's style and recommends that each trial lawyer find his or her own style instead. When lawyers are able to find their own style, Spence argued, they are able to be more compelling, more authentic, more credible, and, ultimately, more successful (Bolduc, 1995). Spence (1986, 1997, 1998, 2010, 2013) contended that the problem of failure to pesuade juries is

simple: Lawyers who forget how to appeal to jurors on a human level, how "talk like regular people" (1986) fail to connect and, as a result, fail to win cases. It is indeed not uncommon for lawyers to forget that jurors are human beings, and often, lawyers' own fears or inhibitions prevent them from speaking from their hearts during trial. They may be afraid to show their own true feelings or may simply feel awkaward or unnatural speaking passionately in court. However, Spence (1986, 1997, 1998, 2010, 2013) said authentic, credible emotional connection is critical to success in arguing cases. He asserts that a lawyer's persuasive power does not come from clothing or gimmicks but rather from inside the lawyer. The lawyer is most powerful when genuine. When a lawyer is "real" and shows real emotions, such as fear, compassion, and caring, the lawyer is more likely to win (Spence, 1998). Finally, says Spence, being genuine or authentic results in being seen as credible. In Spence's view, a lawyer can be the smartest person in the room with the best oratory skills, but without credibility, the lawyer's chance of successs is diminished (as cited in Archibald, 2007).

Of course, preparation for trial is important in creating a winning argument. Likewise, intellect and legal training are necessary to help the lawyer discuss and frame the issues in a trial. Emotions, however, are what connect the lawyer to the finders of fact. Ironically, lawyers are taught to take their emotions out of their arguments. At the Trial Lawyers College, Spence taught his methods for winning advocacy to lawyers and judges who had shown a desire for protecting the rights of individuals. Importantly, said Spence, successful trial lawyers must not only connect with members of the jury but must also connect empathetically with their clients in order to speak authentically and passionately on their behalf. Spence taught participants to "step inside of the skin" of a

client to better understand the facts of the case and to effectively present the client's role in the case to a judge or jury.

One attendee of Spence's (1986, 1997, 1998, 2010, 2013) 23-day program, Passen (2015), walked away from a class with Spence having learned four very important lessons. First, Passen (2015) learned about the effectiveness of using role reversal. Examining a case from another person's point of view is very helpful in preparing a lawyer's case and developing a story. The power of this technique also has applications outside of the courtroom. Likewise, accepting and displaying one's own feelings is a very powerful tool. In fact, doing so makes the attorney credible. In addition, lawyers should seek out creative outlets. Most lawyers are logical or analytic thinkers and do not do well expressing themselves creatively, despite having engaged in creative play as children. Seeking out such activities makes the lawyer more human. Lastly, lawyers must examine themselves critically and accept themselves. In its simplest form, lawyers must trust themselves before they can ask a jury to trust them during a trial (Passen, 2015).

One of the main techniques instructors at Gerry Spence's Trial Lawyer's College use is psychodrama. Psychodrama explores problems among groups, peoples, and organizations through dramatic action. Moreno developed this technique. Typically, psychodrama is done in group form, wherein group members assist each other in developing answers or solutions to problems. Through dramatic techniques, group members learn how to be spontaneous and creative in their search for truth (as cited in Sison, 2009).

Psychodrama is used to help attorneys become more effective storytellers. As discussed previously, many lawyers have not been taught to be good storytellers. Lawyers are in fact taught to remove their emotions from their analysis of facts. Additionally, a trial is not inherently conducive to storytelling because the story of the case is often presented in a disjointed and piecemeal fashion. However, these realities do not excuse the lawyer from being an effective advocate, said Spence. To mitigate these conditions, psychodrama allows lawyers to learn and communicate the story of their case. By using role reversal, for example, the lawyer gets to see things from the client's point of view. Another psychodrama technique is soliloquy. When using soliloquy, the protagonist (the client) is asked to verbally express his innermost feelings that might not normally be shared. The client's verbalizing of feelings that would ordinarily not be verbalized permits the lawyer to explore the client's feelings and emotions (Cole, 2001) and formulate a more persuasive story to communicate to the jury on the client's behalf. Another technique used in psychodrama is doubling. When using this technique, a group member acting as the lawyer attempts to "double" (act as) the protagonist (client) and presents or hypothesizes a possible take on how the protagonist likely felt or may have acted in the situation. The protagonist can accept or reject the double's proposed idea, or even modify it. This allows the protagonist to capitalize on other group members' thoughts or ideas concerning the event or situation (Cole, 2001). Finally, psychodrama sometimes includes the technique of mirroring. In this technique, a group member is asked to repeat an act done by the protagonist and to attempt to follow it as closely as possible. This allows the protagonist to see/observe what they had done. Mirroring allows the protagonist to further explore possible contradictions in feelings and body

language and gain a deeper understanding of their own feelings or reactions to an event (Cole, 2001).

Through all of these techniques, the lawyer gains a much deeper understanding of the case. Rather than just scratching the surface as to how the parties involved in a situation may have felt or have been affected, using the psychodrama techniques allows the lawyer to come as close as possible to "experiencing" the situation as if they were present when it occurred. This, in turn, allows the lawyer to present a much better story in the courtroom. Even with such techniques, one remaining challenge for lawyer advocacy lies in the methods lawyers use to gather information from their clients. Typically, a lawyer simply asks the client for information. This method, however, prevents lawyers from learning the full story of a case. When using psychodrama, however, the lawyer may come to an understanding of the facts on a much deeper level. From that, the lawyer may prepare better legal theories. Simply put, better lawyers have collected more facts, which allows them to present a better story (Cole, 2001). For example, in presenting a rear-ended automobile collision case, simply presenting evidence that the car crash took place and that the defendant ran into the back of plaintiff's car and caused injuries may be legally sufficient to make a case. However, simply presenting the bare minimum, does not mean that the case would be compelling or persuasive. A better lawyer would present more context about why the defendant ran into the rear of plaintiff's car. Perhaps the driver was texting and not paying attention. An even better lawyer would be able to present evidence in a way that allowed the jurors to experience the case and feel how the defendant felt. For example, perhaps the

defendant was rushing because he was late to a meeting and thereby caused the crash (Cole, 2001).

Spence's (1986, 1997, 1998, 2010, 2013) techniques are not the only way to present a winning case in the courtroom. Taking an alternative approach to Spence's techniques for connecting with jurors through compelling storytelling and psychodrama techniques, Keenan taught lawyers to help jurors identify with their clients by getting them to personalize the events and focus on the potential harm caused by a defendant's actions. Keenan represented individuals who had been seriously injured. His results in trial were unparalleled. As of 2017, Keenan had won 115 verdicts or settlements of more than one million dollars. Of these, he had received five verdicts or settlements in excess of ten million dollars and one in excess of 100 million dollars (Filisko, 2007).

Ball and Keenan, authors of the book *Reptile: The 2009 Manual of the Plaintiff's Revolution,* set about transforming the way personal injury lawyers tried cases (Derr, 2016). Plaintiffs' lawyers who used the Ball and Keenan's (2009) reptile trial technique claimed that they had secured verdicts and settlements in excess of $4 billion dollars (Marshall, 2013). Through the use of the reptile technique, plaintiffs' lawyers attempted to move the focus off the plaintiffs' injuries, and onto the potential injury that could be (or could have been) inflicted upon the jurors by the defendants' actions. In other words, instead of encouraging the jurors to think about a plaintiff's injuries in the case, the reptile technique prompted jurors to think about the fact that they themselves could have been injured by the defendant's conduct (Wojcicki & Greeley, 2016).

The reptile technique was premised upon the idea that all persons have a survival instinct. If the plaintiffs' lawyers could trigger the jurors' survival instinct, then the jury

would award large verdicts to the plaintiff. If a lawyer could appeal to the jurors' fears, these fears would overpower any logical or reasoned arguments presented to the jurors (Weitz, 2010). The reptile technique was founded on the research of Dr. Paul MacLean. Dr. MacLean developed a theory about the evolution of the human brain, which he called the triune brain. Under this theory, the brain evolved in three stages. The first brain structure to evolve was called the reptilian brain, or as Dr. MacLean termed it, the proto-reptilian formation. It was called the reptilian brain because it essentially controls instinctive behaviors, and its ultimate goal is self-preservation. The reptilian brain is what controls people's "fight or flight" response (Chestek, 2015). After the reptilian brain developed, the limbic system was formed. The limbic system deals mainly with emotional responses, and according to Dr. MacLean, it amplifies the reptilian brain's goal of self-preservation. Lastly, the neocortex evolved. Rational thought is formed in the neocortex. Its main orientation is not toward the self-preservation of the organism; rather, it has an external world focus (Chestek, 2015). While we may think of these three areas of the brain as separate, they are interrelated.

While there was debate about the science behind the reptilian brain, the methods put forth by Ball and Keenan (2009) were undoubtedly effective. In order to demonstrate the potential harm and danger to jurors, the reptile technique involves procuring the defendant's admission of guilt. To do this, plaintiffs' lawyers use a progression of questions to interrogate the defendant's witnesses, beginning with questions that pertain to general safety and danger rules and moving on to specific safety and danger rules. Each stage of the progression builds upon the previous stage, with the ultimate goal of the defendant admitting fault (Kanasky & Malphurs, 2015).

During the questioning progression, the plaintiff lawyer using this method of questioning would begin by obtaining the defendant's agreement to a general safety rule. The general safety rule would be one that the defendant would almost assuredly readily agree to and one which had very little controversy. Having obtained agreement about this rule, the plaintiff's lawyer would then proceed to obtain agreement from the defendant about a general danger rule. Upon obtaining agreement to both general safety and danger rules, the plaintiff's lawyer would then apply specific case facts to those rules. In doing so, the plaintiff's lawyer would create internal conflict within the defendant because the specific case details, when applied to the general rules, would contradict the rules. Since the defendant had already agreed to the general safety rules, attempts to explain differences or caveats between the agreed-upon rules and the facts of the case (in which such rules were violated) would be difficult, if not impossible. Ultimately, the internal conflict within the defendant after thorough questioning would typically result in the defendant admitting fault (Kanasky & Malphurs, 2015).

While the reptile method has for the most part been applied to personal injury cases, Ball and others have successfully expanded this application to the defense of criminal cases. Likewise, the concepts and techniques may be generally applied to persuading judges as well (Chestek, 2015).

Trial Practice and Andragogy

The techniques and approaches presented by Spence (1986, 1997, 1998, 2010, 2013), Keenan (2009), and Ball (2009) are not the only methods for teaching trial persuasion. Bar associations across the United States offer continuing legal education seminars on various methods of trial persuasion. Law libraries abound with books and

magazine articles on trial practice as well. However, all trial practice methods have the same goal of assisting the attorney in presenting the best cases possible for their clients.

The areas of trial practice and andragogy may seem unrelated. It may seem unclear how andragogy would inform effective trial techniques because of the different areas in which they occur. For example, the courtroom is far different than the typical classroom. In a classroom, the teacher is free to teach the class as he or she see fit. In a courtroom, strict rules of procedure are in place. Lawyers may not simply present their client's cases as they would like. The rules of procedure do not allow lawyers to talk directly to or ask questions directly of jurors once jurors are selected to decide the case, nor do the rules allow jurors to talk directly to the lawyers or clients. All communications are required to go through the judge, while the jury listens and observes the lawyers' questioning.

Likewise, a lawyer may not stand before the jurors and simply present their client's case. They must instead present their client's case through the questioning of another person—the witness. Sometimes, a witness may even be adversarial to the lawyer and client because they do not share the same interest in the outcome of the trial. Presenting a case through the questioning of a witness who claims the attorney's client robbed them at gunpoint, for example, presents unique challenges that the teacher of a class does not encounter. Adding to the difficulty of presenting a case through the questioning of witnesses is the fact that the rules of procedure allow the opposing counsel to question the same witness. So, a lawyer may make some significant points for the client with a particular witness, only to see that progress disappear under the questioning of opposing counsel.

Despite these clear contextual differences, many similarities may be found between andragogy and effective trial practice, particularly when the assumptions of andragogy are examined. To begin with, in a trial of a lawsuit, the decision makers, be they judge or jury, are adults. Both the trial lawyer and adult educators, to be effective, must understand their audience. Just like the adult educator, who attempts to connect with students by tailoring teaching activities to meet students' needs for material that is useful and that may be applied in daily life, so too does the successful trial lawyer tailor the presentation of evidence that will be of use to the judge or jury in deciding the case. Often times, a trial lawyer must make strategic choices regarding whether or not a particular piece of evidence will help or hurt the client's case.

Just as Spence (1986, 1997, 1998, 2010, 2013) went to great lengths to establish credibility with the decision makers, so too must an adult educator establish credibility and trust with the student, and lawyers with jury members. As Henschke (2013) explains, trust is the most important factor in adult education. The best learning environment is one in which the students know that the teacher truly cares for their well-being and learning. The same sentiment is echoed by Spence, particularly when he encourages his students to rediscover who they really are as human beings. In addition, Henschke (1987, 1989, 1998, 2004, 2013) discusses the efforts that an adult educator must take to make sure that the actual learning environment is warm and welcoming. Naturally, many adult students returning to a classroom may be anxious or nervous upon their return. Anything an adult educator may do to help reduce that anxiety improves the learning experience. Similarly, Spence, when he was still arguing trials, always took a few moments to introduce those that worked in the courtroom, such as the clerk of the

court, court reporter, and so on, to help reduce a juror's anxiety from being in an environment that was foreign to most of them.

Likewise, Ball and Keenan's (2009) attempts to personalize the issue within a case to the decision maker is similar to an adult educator's efforts to find a way to demonstrate to adult students why the subject matter of the lesson is relevant to them. Just as the student learns best when they understand why they need to learn something, so too do members of the jury make the best decisions when they clearly understand the concepts and details of the case. Logic dictates that jurors, when they understand the importance of a concept to the issue being decided, not only better understand the context of the case itself but also have a greater interest in the outcome of the case.

Finally, adult educators and successful trial lawyers also share their efforts to understand their students or jurors. Focusing attention on understanding students in an adult class setting helps the educator plan the lesson and design the curriculum. Similarly, understanding jurors helps trial lawyers prepare the best cases possible. Decisions on the material presented, the style in which material is presented, as well as the pace of the presentation, are impacted by an educator's or trial attorney's understanding of the students or jurors. Given these similarities, there is a common ground among effective trial persuasion practices and andragogy.

Summary

For adults to learn, a formal educational setting is not always necessary. Andragogy, the teaching of adults, was applied to many settings well beyond the classroom walls. Andragogy was used in many fields, including healthcare, criminal justice, business, and even the training of auto mechanics. Given the widespread

application of andragogical principles to such diverse fields, it is likely that andragogy has a place in the trial of lawsuits. While at first blush andragogy may not seem like a natural fit, upon further inspection to fit becomes obvious. In a trial setting, attorneys attempt to persuade a fact finder, judge or jury, to side with their respective clients. Under our system of law in the United States, there is no dispute that they are adults.

A review of methods and practices of some famous and outstanding trial attorneys, Spence and Keenan, reveals that they use what appear to be concepts consistent with andragogical principles. Both Keenan and Spence attempted to persuade jurors by making, within the confines of a trial setting, a personal connection with them and the issues involved in the case. Spence (1986, 1997, 1998, 2010, 2013) taught extensively that the key to being a successful trial attorney is the attorney's need to be genuine or real when trying a case. These concepts sound squarely within in adragogical teaching.

While courtroom procedure places certain limitations and restrictions on how an attorney may interact with the jurors or judge in a trial proceeding that are far removed from those in a classroom setting, it is clear that attorneys are applying andragogical concepts successfully in the trial setting. While research has not revealed any such studies involving andragogy and trial lawyers, it appears that andragogy has such a place.

Chapter Three: Methodology

Introduction

The literature review in Chapter Two described the tennants of andragogy as well as some successful methods of trial practice. This chapter explains the methodology used to collect the data and the analyses used in this study. This research study uses a mixed method, non-experimental, cross-sectional and exploratory research design. The data come from the survery and interviews conducted by the researcher between March and November 2017 in St. Charles, Missouri.

Purpose of the Research

The objective of this study was to assess andragogical orientation level, if any, of successful trial lawyers, in general. The study also aims to explore the association, if any, between age, gender and trial lawyers' andragogical orientation. To explore possible associations, the researcher examined the relationship between age, gender, and (1) empathy with jurors, (2) trust of jurors, (3) planning and delivery of trial presentation, (4) accommodation of juror uniqueness, (5) lawyer insensitivity towards jurors, (6) incorporation of juror-centered learning processes, and (7) incorporation of lawyer-centered learning processes.

Research Design

There are essentially three types of research design. They are qualitative, quantitative, and mixed methods designs. Usually, quantitative studies are distinguished from qualitative studies in that they use numbers while qualitative studies use words. While this is a shorthand way to distinguish them, it is more accurate to distinguish quantitative and qualitative studies based upon their philosophical underpinnings

(Creswell, 2009). They may also be distinguished from each other based on the research methods they employ (Mackenze & Knipe, 2006). There are four world views or paradigms that guide research: post-positivism, social constructivism, advocacy/participation, and pragmatic. In each of these paradigms, the researcher subscribes to a different set of beliefs or orientations about the research being undertaken (Creswell, 2009).

Post-positivism is sometimes called the scientific method. Those subscribing to this view contend that causes probably determine outcomes. Often, theories within this paradigm are tested by measuring an observation. Post-positivists contend that the social world can be measured just like the natural world. Post-positivists guard against researcher, as research must be value free. Those subscribing to the post-positivists view most often use quantitative methods of research (Mackenze & Knipe, 2006).

Constructivism focuses on studying the human experience. Constructivists contend that reality is shaped by the participant's views of the topic of the research. Often, constructivists begin not with a theory but rather with an idea that develops as the study progresses (Mackenze & Knipe, 2006). Next, those subscribing to the advocacy/participation paradigm contended that research should be blended or combined with politics or a political agenda. In this way, the research has the potential to bring about improvements in the participants lives (Creswell, 2009).

The last lens or worldview considered is the pragmatic paradigm. Unlike the other paradigms, the pragmatist does not subscribe to any particular philosophy or theory, but rather focuses on the problem being researched. For that reason, mixed methods research is one of the main ways pragmatic research is conducted. Under this view, the

researcher considers and chooses the best methods for gathering and analyzing data (Mackenzie & Knipe, 2006).

Before conducting this study, the author practiced law for many years. From personal experience, the author understands that trial lawyers regularly look for ways to improve their advocacy skills. For many lawyers, particularly those who are paid only if their clients receive an award or settlement through a contingent fee arrangement, their livelihoods depend on their effectiveness. The researcher was interested, just as Spence was, in exploring ways to improve advocacy outcomes, especially on behalf of individuals who are often under-served by the legal system.

The researcher viewed this research problem through a pragmatic lens. Accordingly, the paradigm and research questions played a significant role in the selection of methods of data collection and analysis (Mackenzie & Knipe, 2006). With a pragmatic world view or approach, a mixed method research design is most often employed (Wahyuni, 2012). Mixed methods research combines at least one qualitative and one quantitative component. The ultimate goal of combining these two methods is to strengthen the research and further the field of study. Combining both quantitative and qualitative components increases the validity of the study, by using one set of data to corroborate another (Schoonenboom & Johnson, 2017).

Mixed method studies may include one type of method that dominates the study or they may include multiple methods of equal significance. The current study employs both quantitative and qualitative methods equally, and the results were combined at the end of the research process (Schoonenboom & Johnson, 2017).

The point at which quantitative and qualitative aspects of a mixed method study are joined is the point of integration. The most common place for the integration of data is in the result stage. Here, the results of the components are added and integrated. This study follows the most common form and integrates the quantitative and qualitative components at the result stage. By using both types of data, the results of both methods can be triangulated, or compared, to determine whether the methods obtained the same result (Schoonenboom & Johnson, 2017).

The study undertaken here used a mixed method, nonexperimental, cross-sectional, and descriptive design. The research employs both qualitaitve data, quantiative data. The data were collected through a survey and semi-structured interviews. Forty five lawyers were surveyed, and seven lawyers were interviewed by the researcher. The study used descriptive stastistics to discover the general position of the participants' orientation towards andragogical principles.

Hypothesis and Research Questions

The study was guided by three hypotheses and two research questions. The hypotheses for this mixed-methods study are as follows:

Hypothesis 1 (H1): There is a correlation between successful trial lawyers and andragogical orientation, as seen in the following variables: (1) empathy with jurors; (2) trust of jurors; (3) planning and delivery of trial presentation; (4) accommodation of juror uniqueness; (5) lawyer insensitivity towards jurors; (6) incorporation of juror-centered learning processes; and (7) incorporation of lawyer-centered learning processes.

Hypothesis 2 (H2): There is a correlation between gender, attorney success, and andragogical orientation.

Hypothesis 3 (H3): There is a correlation between age, attorney success, and andragogical orientation.

The null hypothesis is as follows:

H1o: There is no relationship between age or gender and andragogical orientation.

The study has two research questions.

Research Question 1 (RQ1): To what extent is there a relationship between andragogy in practice and the trial of lawsuits, as demonstrated by successful trial attorneys?

Research Question 2 (RQ2): What is the relationship, if any, between the lawyers' age, gender, and andragogical orientation?

The first question examines successful trial lawyers' orientations towards andragogy. Andragogical orientation was measured by seven factors, and each factor had minimum and maximum scores. The researcher used these scores as thresholds to assess the level of andragogical orientation of trial lawyers. The seven factors used to measure by andragogical orientation include (1) empathy with jurors, (2) trust of jurors, (3) planning and delivery of trial presentation, (4) accommodation of juror uniqueness, (5) lawyer insensitivity towards jurors, (6) incorporation of juror-centered learning processes, and (7) incorporation of lawyer-centered learning processes.

Variables

This part of Chapter Three describes the variables used in this research. The study has one dependent and two independent variables. The dependent variable is andragogical orientation. The independent variables are age and gender.

Dependent variables.

Andragogical orientation. Andragogical orientation is an ordinal variable to measure the extent to which successful trial lawyers possess the beliefs, attitudes, and behaviors of adult educators (Henschke, 1989). To that end, andragogical orientation was broken down into the following seven factors.

Empathy with jurors. Empathetic lawyers focused on the needs of the jurors and valued a close working relationship (Stanton, 2005).

Trust of jurors. When the judgement of the jurors was trusted by the lawyers trying the case, the jurors' own self-esteem and confidence in their role increased. Trust was fostered in a low-risk, relaxed environment (Stanton, 2005; Vatcharasirisook, 2011).

Planning and delivery of trial presentation. To the extent possible, lawyers should plan to present in such a way that allows jurors to participate in the planning process (Stanton, 2005). When jurors participate in the planning process, they increase their commitment to learning (Vatcharasirisook, 2011).

Accommodation of juror uniqueness. Lawyers should take into account that not every juror learns the same way. Lawyers, to the extent possible, should adjust their presentation to account for such differences (Stanton, 2005; Vatcharasirisook, 2011).

Lawyer insensitivity towards jurors. A lawyer who is insensitive or does not care about the jurors will have difficulty creating an atmosphere of respect and mutual trust (Stanton, 2005; Vatcharasirisook, 2011).

Incorporation of juror centered learning processes. Jurors bring with them a wealth of experiences that are important in the learning process. Their experiences shape and influence how they learn (Stanton, 2005; Vatcharasirisook, 2011).

Incorporation of lawyer centered learning processes. Lawyer-centered learning is the process in which the lawyer's presentation techniques provide a one-way flow of information from the lawyer to the juror—similar to a typical lecture presentation (Stanton, 2005; Vatcharasirisook, 2011).

Independent variables.

Age. Age is a categorical nominal variable and has five categories. The categories were built by the researcher.

Gender. Gender is a categorical nominal variable and had two categories: male and female. The categories were built by the researcher.

Data

The study uses two types of data: quantitative and qualitative data. Both types of the data were collected by the researcher.

Quantitative Data. Quantitative data came from the survey that was conducted among 45 respondents by the researcher.

Qualitative Data. The qualitative data were obtained by semi-structured interviews of seven winners of the Lon O. Hocker award (n.d.). The goal of an interview was to gather data on how the interviewee felt or thought about an issue or matter. According to some, the interview is the most important method of collecting qualitative data (Fraenkel et al., 2012).

Of the possible types of interviews that may be conducted, structured, semi-structured, informal, and retrospective, the researcher chose a structured interview format, as it was best for testing a specific theory or hypothesis. A structured interview is

most akin to administering a verbal questionnaire and by its nature is formal as opposed to informal (Fraenkel et al., 2012).

Measurement/Instrument

The researcher used two kinds of instruments to collect the data. The Instructional Perspectives Inventory (Henschke, 1989) was used to collect the quantitative data. The personal interview questions were developed by the researcher specifically for this study to collect the qualitative data. The detailed information about the instruments are given below.

Instructional Perspectives Inventory. In determining how to measure a "successful lawyer's" orientation towards andragogical principles, the researcher had two ways to gather information: either to develop an instrument on his own or use an already existing instrument (Fraenkel et al., 2012). This study uses a modified version of the instructional perspectives inventory first developed by Henschke in 1989.

Henschke noted that the literature concerning the necessary characteristics of adult educators appeared conflicting. For instance, some contended that the educator should identify as a learner amongst his or her students. Alternatively, some contended that the key to adult education was the philosophical viewpoint of the teacher. In examining a multitude of viewpoints, Henschke found that while on the surface, the various viewpoints may have been contradictory, when synthesized, they actually supported one another. From this, Henschke found five factors contributing to the making of a complete adult educator. They included the adult educator's "beliefs and notions about adult learners; [the] perceptions and qualities of effective teachers of adults; [the] phases and sequences of the adult learning process; teaching tips and adult

learning techniques; and implementing the prepared plan" (Henschke, 1989, p. 83). From these five factors, Henschke developed an instrument called the Instructional Perspectives Inventory, designed to measure the "beliefs, feelings, and behaviors" that adult educators needed to be effective in their field. Specifically, the instrument was designed to measure teacher empathy with learners; teacher trust of learners; planning and delivery of instruction; accommodating learner uniqueness; teacher insensitivity toward learners; learner-centered learning process; and teacher-centered learning process (Henschke, 1989). The instrument consisted of 45 questions based upon those characteristics and asked the survey taker to rate themselves on a four-point Likert scale as to how frequently they did certain things set out in the survey. The survey contained both positive and negative characteristics (Henschke, 1989).

The Instructional Perspectives Inventory was then modified by Stanton to accommodate a five-point Likert scale (Stanton, 2005), becoming the Modified Instructional Perspectives Inventory (MIPI). Since its development, a version of the IPI or MIPI was used in a number of doctoral dissertations and various fields. For instance, Vatcharasirisook (2011) used an adapted version of the instrument to examine the role of relationships between supervisors and subordinates in the workplace. Likewise, a version of the instrument was used to study nursing educators, as well as parent educators (Dawson, 1997; Drinkard, 2003).

In this study, the instructional perspectives inventory was modified to fit within the trial lawyer context so that it would appropriately measure the attorneys' orientation towards andragogical principles. The author worked with Dr. Henschke (1989) in making appropriate modifications of the MIPI for use with trial lawyers, creating the

Modified Instructional Perspectives Inventory-Trial Lawyer. After the changes were made, members of the author's dissertation committee reviewed the instrument and further refinements were made to improve the readability and clarity of the questions.

The addresses of the recipients of the Lon O. Hocker Award (n.d.) were collected and the 104 recipients of the award whose addresses were available were mailed a letter indicating that they would soon be asked to participate in a study and to be on the lookout for follow up communication. Approximately two weeks later, the award recipients were mailed the MIPI-Trial Lawyer, along with a letter from the institutional review board and a consent form. Also included was a self-addressed stamped envelope for the return of the completed consent form and survey. The recipients were advised that their responses would remain anonymous and that they were free to terminate their participation at any time.

Validity of the Instructional Perspectives Inventory. After Henschke (1989) developed the Instructional Perspectives Inventory, he administered it to almost 600 adult educators. Of those 600, almost 400 were adult learning specialist instructors. After scoring the surveys, Henschke conducted a factor analysis on the almost 400 adult educators. Based upon the results of the factor analysis, Henschke removed 11 items from the survey because they did not fit into any of the seven factors. Henschke then administered the survey to 210 teachers or faculty members at the Saint Louis Community College. After then conducting another factor analysis of the data, Henschke removed another six items from the survey.

One of the most critical aspects of an instrument is its validity—i.e., whether the inferences a researcher draws from it are of value or useful (Fraenkel et al., 2012;

Creswell, 2009). The reliability of an instrument concerns itself with consistency. The alpha coefficient or Cronbach alpha is a measure to test the consistency or reliability of an instrument (Fraenkel et al., 2012). Stanton (2005) studied the consistency of the Instructional Perspectives Inventory. According to Stanton (2005), the Cronbach's alpha for the Instructional Perspective Inventory was 0.8768. Although there is disagreement on what constitutes an acceptable value of Cronbach's alpha, there seems to be agreement that an acceptable range is .070 to 0.95 (Tavakol & Dennick, 2011).

Before conducting interviews, the researcher first determined what to ask the interviewees by considering what he specifically wanted to learn. As the ultimate goal of this research was to learn the lawyers' orientation towards adult learning principles, if any, the questions developed by the researcher were based upon Knowles' (1968, 1980) six assumptions of adult learners. By asking questions related to these assumptions and how they related to the interviewees' trial cases, the researcher gathered information relative to the interviewees' andragogical orientation. This was not a new concept, as similar questions were asked in an andragogical study of life coaches (Lubin, 2013). The questions were reviewed with the author's dissertation committee to ensure the questions were focused on gathering the sought-after information (See Appendix A).

Data collection. After obtaining the preliminary requests, the researcher moved into substantive questions. The researcher was mindful to allow adequate time for the interviewee to answer and provided clarification when asked. Upon completion of the interview, the researcher thanked the interviewees for participating. The interviews were then transcribed and reviewed for accuracy.

Sampling

To conduct this study, one of the first hurdles was to identify successful trial lawyers. This was no easy task. To begin with, one must consider that the range of lawsuits is as varied as one's imagination. Lawsuits can be either civil or criminal and can range from injuries to contracts to intellectual property as well as criminal acts. Given the varied range of lawsuits, defining success is difficult. For example, a high dollar jury award may be considered as successful as a minimal jail sentence in a criminal case. In an attempt to settle upon a commonly accepted definition of a successful trial lawyer, this study looked to the Missouri Bar Foundation for help and found the Lon O. Hocker Award (n.d.) for Trial Excellence. The Missouri Bar Foundation's Lon Hocker Award is given to a very small number of attorneys each year, all under the age of 40, for exemplifying the best in trial advocacy. Since its inception, the award was given to just over 100 attorneys. Each year, attorneys are nominated by fellow practicing lawyers, and a committee of the Missouri Bar Foundation selects the winners.

The sample size for this study was 49. Seven were participants of interviews and 42 were participants of the survey. The respondents were assigned a number, and the author, using a simple random sample, physically drew seven numbers for semi-structured interviews. The author then emailed or called the respondents associated with the numbers drawn and arranged for a telephone interview after consent to an interview was obtained. At the agreed upon time, the interviews were conducted as described above.

Ethical Considerations

At the outset, the researcher developed an interview protocol, which was a way to record information obtained in the interview (Creswell, 2009). The protocol used in this study involved contacting the interviewees by telephone and confirming their identity. Interviewees were then read a statement in which the researcher identified himself as the interviewer. Next, the researcher confirmed that the interviewees understood that the interview was voluntary and could be stopped at any time. In addition, the researcher confirmed that he had consent to record the interview.

Data Analysis Procedures

Analysis of quantiative data. Descriptive statistics, independent sample one-way ANOVA and multiple regression tests were used to analyze the quantitative data. Version 23 of Statistical Package for the Social Sciences (SPSS) software was used for this purpose. An independent-sample one way ANOVA and multiple regression analysis models were built to identify the relationship between dependent and independent variables to see if there was difference in means of male and female lawyers in terms of their andragogical orientation. One way ANOVA was used to compare the means of two or more independent groups to determinine if they were statistically different from one another (Kent State University Library, 2017). Likewise, one way ANOVA was used to compare the means of ages groups to determine if they were statistically different from one another.

Analysis of qualitative data. A thematic analysis approach was used to analyze the data. The researcher transcribed all recordings of the interviews. A colleague—a doctoral student in social work at the Brown School at Washington University in St.

Louis—cross-checked three randomly selected recordings and transcripts in order to make sure that the interviews were transcribed accurately. The transcripts have been secured in a confidential place, and the names of the respondents were not recorded on them in order to protect the privacy and anonymity of the respondents and the confidentiality of the information they provided. Before entering transcripts to the TAMSAnalyzer software, the researcher read them several times to familiarize himself with the data and to see what patterns occurred in the data. In the pattern capturing process, the initial codes were generated and documented where similar patterns emerged. Then, codes were categorized under similar labels. Categories were combined under overarching themes. Themes that were relevant to the research question for this paper were selected to determine the relationship between successful trial lawyers and andragogical orientation.

Summary

The purpose of Chapter Three was to describe the research design and statistical tests employed to conduct this study. It also describes the data analysis methods, variables, study setting, data collection methods, and instruments that were employed for the purpose of the study. It specifically describes each variable and identifies the steps of the analysis. The next chapter, Chapter Four, will report the findings.

Chapter Four: Results

Introduction

Chapter Four represents findings of the data that were collected by the quantitative and qualitative methods to determine the andragogical orientation level, if any, of successful trial lawyers. This chapter includes descriptive statistics of participants and their general results for each factor of andragogical orientation, including their total score. The andragogical orientation level included factors such as (1) empathy with jurors; (2) trust of jurors; (3) planning and delivery of trial presentation; (4) accommodation of juror uniqueness; (5) lawyer insensitivity towards jurors; (6) incorporation of juror-centered learning processes; and (7) incorporation of lawyer-centered learning processes.

This chapter also includes results of the independent one-way ANOVA and simple regression, as well as the themes that emerged from examination of the qualitative data. SPSS Statistical software was used to analyze the quantitative data. TAMSAnalyzer Statistical software was used to code and discover common themes in qualitative data. The results of the analysis for both data follow in this chapter.

Results

The purpose of the study is to assess the andragogical orientation level, if any, of successful trial lawyers. The study also aims to explore the association, if any, between gender and age and overall andragogical orientation. Descriptive analyses were run to describe characteristics of those attorneys who participated in the study. Descriptive analysis was also used to assess the andragogical orientation of the participants based on seven factors that measure andragogical orientation. In addition to the participants'

responses to each factor of the andragogical orintation, this chapter also includes a descriptive analysis of each particiapnt's responses for the overall score used to determine their andgragogical orientation. The total score of the andragogical orientation is the sum of the seven factors which measures the andragogical orientation.

It was hypothisized that there is difference between gender and age of the participants in the total score among participants. To explore whether there was a difference in the participants' overall andgragogical orientation based on gender, an independent sample one-way ANOVA was conducted. To explore whether there was any association between age of trial lawyers and their overall andragogical orientation, a simple regression was performed to build a model to predict the possible association between total score and age of the trial lawyers. Age was included in the regression equation with a coefficient, allowing it to predict dependent variable values with a minimum number of errors. Results are given below.

Characteristics of participants. The study participants ranged in age from 34 to 81 years of age. To describe the age of the participants, age was created as a categorical variable on an ordinary scale as given in Table 1 below. Five age categories were created and include in the following groups: 30-40 group, 41-50 group, 51-60 group, 61-70 group and over 71. As seen from Figure 1 below, of the 42 participants, 16 fell within the 41-50 years range. This age group represented the largest number, or 38.1% of the total number of participants. The next largest group was the 51-60 years group, with 11 participants, or 26.2% of the total number of participants. Next came the 71 and above group, with 7 participants, or 16.7% of the total number of participants. Following close behind was the 61-70 years group with 6 participants, or 14.3% of the total number of

participants. The smallest age group was the 30-40 year of age group, with two participants, or 4.8% of the total number of participants. Table 1 below describes the age of the study participants.

Table 1

Age Categories of Study Participants

Categories	Frequency	Percent	Valid %	Cumulative %
30-40	2	4.8	4.8	4.8
41-50	16	38.1	38.1	42.9
51-60	11	26.2	26.2	69.0
61-70	6	14.3	14.3	83.3
71 & above	7	16.7	16.7	100.0
Total	42	100	100	

Participants were asked to identify themselves as male or female. Of the 42 participants, 34 identified themselves as male and 8 identified as female. Accordingly, 81% of the participants were male, while 19% were female.

Table 2

Gender of Study Participants

Gender	Frequency	Percent	Valid %	Cumulative %
male	34	81	81	81
female	8	19	19	100
total	42	100	100	

As all participants had to have been a practicing lawyer in the State of Missouri, all of them had obtained a juris doctor or equivalent degree. With that understanding, the participants were asked to identify the highest degree obtained other than a juris doctor, *i.e*., master's degree or bachelor's degree. Of the participants, 33 indicated that they had obtained a bachelor's degree. That group comprised 78.6% of the total participants.

9.5% of the total number of participants, or four participants, indicated that they had obtained a master's degree. The remaining 11.9% of the participants, or five participants, failed to provide any information concerning this question.

Table 3

Degree of Participants other than JD

Degree	Frequency	Percent	Valid %	Cumulative %
Bachelor	33	78.6	78.6	78.6
Master	4	9.5	9.5	88.1
Missing	5	11.9	11.9	100.0
Total	42	100.0	100.0	

The participants were also asked to provide information concerning their undergraduate degree major. As described in Table 4 below, the most common undergraduate major was political science, with 8 participants, or 19%, having completed that degree. Next, was education, with 6 participants, or 14.3% having studied education. The third most popular major was business administration, with five participants, or 11.9%, having completed that degree.

Table 4

Undergraduate Major of Participants

Major	Frequency	Percent	Valid %	Cumulative %
Poli-Sci	8	19.0	19.0	19.0
Liberal Arts	1	2.4	2.4	21.4
Anthropology	1	2.4	2.4	23.8
Sociology	2	4.8	4.8	28.6
Business	5	11.9	11.9	40.5
Public Admin	1	2.4	2.4	42.9
Law	4	9.5	9.5	52.4
Psychology	3	7.1	7.1	59.5

Education	6	14.3	14.3	73.8
Engineering	2	4.8	4.8	78.6
Journalism	1	2.4	2.4	81.0
Finance	1	2.4	2.4	83.3
History	1	2.4	2.4	85.7
Economy	1	2.4	2.4	88.1
English	3	7.1	7.1	95.2
Physics	1	2.4	2.4	97.6
Geology	1	2.4	2.4	100.0
Total	42	100.0	100.0	

Findings of Quantitative Study

Description of overall andragogical orientation. To determine the overall andragogical orientation, the participants were asked to complete the Modified Instructional Perspectives Inventory – Trial Lawyer. Overall andragogical orientation was measured by the total score the participants received upon answering all questions of the survey. The survey contained 45 questions that measured their orientation towards andragogical principles expressed in seven factors, namely (1) attorney empathy with jurors; (2) attorney trust of jurors; (3) planning and delivery of presentation; (4) accommodating juror uniqueness; (5) attorney insensitivity towards jurors; (6) juror-centered learning process; and (7) attorney-centered learning process. All 42 participants completed the survey. The survey consisted of 45 questions to be answered on a Likert scale, ranging from almost never, not often, sometimes, usually, and almost always. Each answer corresponded to a numerical value, which was then totaled to calculate the participant's overall orientation towards andragogical principles.

The minimum possible score for total score on the survey was 45, while the maximum possible score was 225. As shown in Table 5 below, the lowest score was 132

and the highest score was 198. The most frequent scores were 158 and 162, with 7.1% of the participants, or three, each having received that score.

Table 5

Overall Andragogical Orientation of Participants

Overall Score	Frequency	Percent	Valid %	Cumulative %
132	1	2.4	2.4	2.4
135	1	2.4	2.4	4.8
136	2	4.8	4.8	9.5
143	1	2.4	2.4	11.9
145	1	2.4	2.4	14.3
148	2	4.8	4.8	19.0
149	1	2.4	2.4	21.4
150	1	2.4	2.4	23.8
151	1	2.4	2.4	26.2
152	2	4.8	4.8	31.0
156	2	4.8	4.8	35.7
158	3	7.1	7.1	42.9
160	2	4.8	4.8	47.6
162	3	7.1	7.1	54.8
163	1	2.4	2.4	57.1
164	1	2.4	2.4	59.5
165	1	2.4	2.4	61.9
167	1	2.4	2.4	64.3
168	1	2.4	2.4	66.7
169	1	2.4	2.4	69.0
170	1	2.4	2.4	71.4
171	1	2.4	2.4	73.8
172	2	4.8	4.8	78.6
173	1	2.4	2.4	81.0
175	1	2.4	2.4	83.3

176	1	2.4	2.4	85.7
178	1	2.4	2.4	88.1
184	1	2.4	2.4	90.5
186	1	2.4	2.4	92.9
189	1	2.4	2.4	95.2
194	1	2.4	2.4	97.6
198	1	2.4	2.4	100.0
Total	42	100.0	100.0	

Table 6 below describes the minimum and maximum score for each factor comprising the overall andragogical orientation.

Table 6

Minimum and Maximum for Each Factor

Factor Name	Minimum Possible Score	Maximum Possible Score
Empathy with jurors	5	25
Trust of jurors	11	55
Trial presentation	5	25
Juror uniqueness	7	35
Insensitivity	7	35
Juror centered	5	25
Lawyer centered	5	25

Table 7 below describes descriptive statistics such as mean, median, range, and standard errors of the participants for each factor and total score. As we can see, the mean for factor 1 is 19 (SD=.48); for factor 2 is 42 (SD=.87); for factor 3 is 20 (SD=.53); for factor 4 is 27 (SD=.52); for factor 5 is 27 (SD=.61); for factor 6 is13 (SD=.62); and for factor 7 is 14 (SD=.53).

Table 7

Descriptive Statistics of the Participants per Factor

Descriptive Statistics

	N	Range	Mean		Std. Dev.	Variance	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Std. Error	Statistic	Statistic	Statistic	Std. Error	Statistic	Std.
Empathy w/ jurors	42	11	19.02	.478	3.096	9.585	-.106	.365	-.925	.717
Trust of jurors	42	24	42.17	.867	5.618	31.557	-.656	.365	.299	.717
Trial presentation	42	12	20.26	.527	3.415	11.661	-.227	.365	-.770	.717
Juror uniqueness	42	16	26.74	.525	3.401	11.564	-.116	.365	.299	.717
Insensitivity	42	17	26.95	.611	3.963	15.705	.074	.365	-.437	.717
Juror-centered	42	17	12.67	.616	3.992	15.935	.558	.365	-.056	.717
Lawyer-centered	42	13	14.17	.527	3.414	11.654	.044	.365	-.649	.717
Total	**42**	**66**	**161.98**	**2.422**	**15.699**	**246.463**	**.209**	**.365**	**-.144**	**.717**
Valid N (listwise)	**42**									

Factor One: Lawyer empathy with jurors. With respect to lawyer empathy with jurors, the minimum score possible was 5, while the highest score possible was 25. Of the participants, the lowest score was 13 and the highest score was 24. The most frequent score was 20, with 16.7% of the participants, or seven, having received that score.

Table 8

Frequency of Factor One: Lawyer Empathy with Jurors

Score	Frequency	Percent	Valid %	Cumulative %
13	1	2.4	2.4	2.4
14	3	7.1	7.1	9.5
15	2	4.8	4.8	14.3
16	5	11.9	11.9	26.2
17	2	4.8	4.8	31.0
18	5	11.9	11.9	42.9
19	4	9.5	9.5	52.4
20	7	16.7	16.7	69.0
21	3	7.1	7.1	76.2
22	2	4.8	4.8	81.0
23	5	11.9	11.9	92.9
24	3	7.1	7.1	100.0
Total	42	100.0	100.0	

Factor Two: Lawyer trust of jurors. With respect to lawyer trust of jurors, the minimum score possible was 11, while the highest score possible was 55. Of the participants, the lowest score was 27 and the highest score was 51. The most frequent score was 42, with 14.3% of the participants, or six, having received that score.

Table 9

Frequency of Factor Two: Lawyer Trust of Jurors

Score	Frequency	Percent	Valid %	Cumulative %
27	1	2.4	2.4	2.4
29	1	2.4	2.4	4.8
34	1	2.4	2.4	7.1
35	3	7.1	7.1	14.3
36	2	4.8	4.8	19.0
37	1	2.4	2.4	21.4
39	1	2.4	2.4	23.8
40	4	9.5	9.5	33.3
41	2	4.8	4.8	38.1
27	1	2.4	2.4	2.4
42	6	14.3	14.3	52.4
43	3	7.1	7.1	59.5
44	2	4.8	4.8	64.3
45	2	4.8	4.8	69.0
46	2	4.8	4.8	73.8
47	3	7.1	7.1	81.0
48	2	4.8	4.8	85.7
49	4	9.5	9.5	95.2
51	2	4.8	4.8	100.0
Total	42	100.0	100.0	

Factor Three: Planning and delivery of presentation. With respect to planning and delivery of presentation, the minimum score possible was 5, while the highest score possible was 25. Of the participants, the lowest score was 13 and the highest score 25. The most frequent score was 19, with 19% of the participants, or eight, having received that score.

Table 10

Frequency of Factor Three: Planning and Delivery of Presentation

Score	Frequency	Percent	Valid %	Cumulative %
13	1	2.4	2.4	2.4
14	2	4.8	4.8	7.1
15	2	4.8	4.8	11.9
17	2	4.8	4.8	16.7
18	5	11.9	11.9	28.6
19	8	19.0	19.0	47.6
20	5	11.9	11.9	59.5
21	1	2.4	2.4	61.9
22	1	2.4	2.4	64.3
23	5	11.9	11.9	76.2
24	4	9.5	9.5	85.7
25	6	14.3	14.3	100.0
Total	42	100.0	100.0	

Factor Four: Accommodating juror uniqueness. With respect to accommodating juror uniqueness, the minimum score possible was 7, while the highest score possible was 35. Of the participants, the lowest score was 18 and the highest score was 34. The most frequent score was 29, with 16.7% of the participants, or seven, having received that score.

Table 11

Frequency of Factor Four: Accommodating Juror Uniqueness

Score	Frequency	Percent	Valid %	Cumulative %
18	1	2.4	2.4	2.4
20	1	2.4	2.4	4.8
22	1	2.4	2.4	7.1
23	4	9.5	9.5	16.7
24	5	11.9	11.9	28.6
25	1	2.4	2.4	31.0
26	6	14.3	14.3	45.2
27	6	14.3	14.3	59.5
28	4	9.5	9.5	69.0
29	7	16.7	16.7	85.7
30	1	2.4	2.4	88.1
31	1	2.4	2.4	90.5
32	1	2.4	2.4	92.9
33	2	4.8	4.8	97.6
34	1	2.4	2.4	100.0
Total	42	100.0	100.0	

Factor Five: Insensitivity to juror uniqueness. With respect to insensitivity to juror uniqueness, the minimum score possible was seven, while the highest score possible was 35. Of the participants, the lowest score was 18 and the highest score 35. The most frequent score was a tie between 24 and 26, with each having 11.9% of the participants, or five participants each having received that score**.**

Table 12

Frequency of Factor Five: Lawyer Insensitivity to Juror Uniqueness

Score	Frequency	Percent	Valid %	Cumulative %
18	1	2.4	2.4	2.4
21	2	4.8	4.8	7.1
22	3	7.1	7.1	14.3
23	2	4.8	4.8	19.0
24	5	11.9	11.9	31.0
25	2	4.8	4.8	35.7
26	5	11.9	11.9	47.6
27	4	9.5	9.5	57.1
28	4	9.5	9.5	66.7
29	2	4.8	4.8	71.4
30	3	7.1	7.1	78.6
31	3	7.1	7.1	85.7
32	3	7.1	7.1	92.9
33	1	2.4	2.4	95.2
35	2	4.8	4.8	100.0
Total	42	100.0	100.0	

Factor Six: Juror-centered learning process. With respect to juror centered learning process, the minimum score possible was five, while the highest score possible was 25. Of the participants, the lowest score was 5 and the highest score was 22. The most frequent score was 11, with 19% of the participants, or eight participants having received that score.

Table 13

Frequency of Factor Six: Juror-Centered Learning Process

Score	Frequency	Percent	Valid %	Cumulative %
5	1	2.4	2.4	2.4
6	1	2.4	2.4	4.8
8	3	7.1	7.1	11.9
9	3	7.1	7.1	19.0
10	5	11.9	11.9	31.0
11	8	19.0	19.0	50.0
12	1	2.4	2.4	52.4
13	5	11.9	11.9	64.3
14	3	7.1	7.1	71.4
15	3	7.1	7.1	78.6
16	2	4.8	4.8	83.3
17	2	4.8	4.8	88.1
19	1	2.4	2.4	90.5
20	2	4.8	4.8	95.2
21	1	2.4	2.4	97.6
22	1	2.4	2.4	100.0
Total	42	100.0	100.0	

Factor Seven: Lawyer-centered learning process. With respect to lawyer centered learning process, the minimum score possible was 5, while the highest score possible was 25. Of the participants, the lowest score was 7 and the highest score was 20. The most frequent scores were tied between 13 and 14, with 14.3% of the participants each having scored a 13 or 14, or six participants each having received that score.

Table 14

Frequency of Factor Seven: Lawyer-Centered Learning Process

Score	Frequency	Percent	Valid %	Cumulative %
7	1	2.4	2.4	2.4
8	1	2.4	2.4	4.8
9	1	2.4	2.4	7.1
10	3	7.1	7.1	14.3
11	5	11.9	11.9	26.2
12	1	2.4	2.4	28.6
13	6	14.3	14.3	42.9
14	6	14.3	14.3	57.1
15	5	11.9	11.9	69.0
16	3	7.1	7.1	76.2
17	1	2.4	2.4	78.6
18	2	4.8	4.8	83.3
19	4	9.5	9.5	92.9
20	3	7.1	7.1	100.0
Total	42	100.0	100.0	

Association between gender and overall andragogical orientation. One of the hypotheses of the study was that there was a difference between male and female participants in their overall andragogical orientation. The dependent variable was total score, which measured the overall andragogical orientation on a continuous scale. The dependent variable was gender of the study participants. It was on categorical scale and had two groups, male and female. The sample size was 42.

To test the assumption on association between gender and overall andragogical orientation, (*i.e*., whether the means of two groups is statistically different from each other), a one-way independent sample ANOVA was conducted. Before running the test,

all assumptions of the one-way ANOVA test were checked, and all of them met the following assumptions: (1) the dependent variable is on a continuous scale; (2) the independent variable is categorical; (3) the observations in groups are independent from each other, and there is no relationship between them; (4) there are no outliers among observations of the dependent variable; (5) the ANOVA test expects that the data is homogenous in its variance; and lastly (6) the data in the dependent variable has normal distribution. The researcher ran Levene's test of homogeneity with a significance level of .05.

Table 15

Homogeneity of Variance

Levene Statistic	df1	df2	Sig.
.156	1	40	.695

The researcher also conducted the Kolmogorov-Smirnov and Shapiro-Wilk (.891; .788) test of normality, which suggested that the dependent variable was approximately normally distributed for both groups of the independent variable because p values of both tests Kolmogorov-Smirnov (.200; .200) and Shapiro-Wilk (.891; .788) were greater than alpha level.

Table 16

Tests of Normality

	Kolmogorov-Smirnova			Shapiro-Wilk		
Gender	Statistic	df	Sig.	Statistic	df	Sig.
male	.074	34	.200*	.984	34	.891
female	.204	8	.200*	.958	8	.788

*This is a lower bound of the true significance.

a. Lilliefors Significance Correction

We can see in Figure 1 the Q-Q Plot below for both genders:

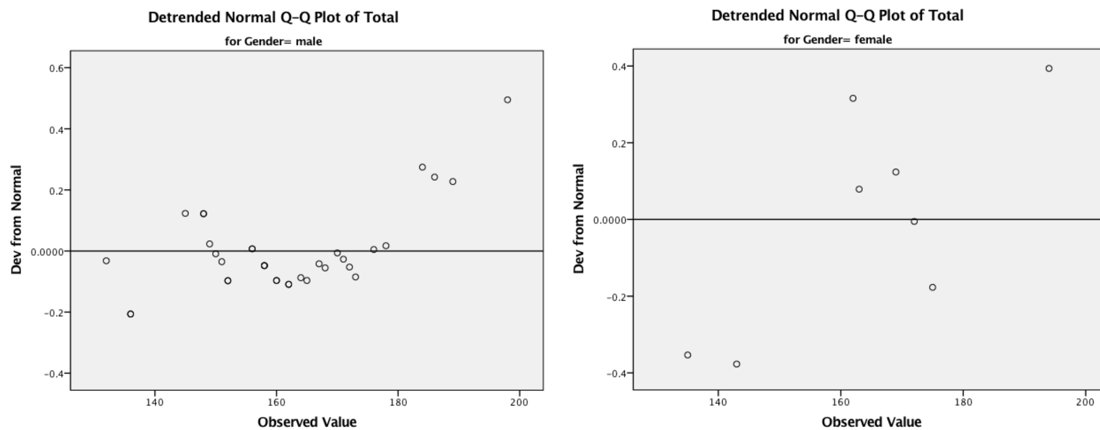

Figure 1. Q-Q Plot for Both Genders

To test the hypothesis that there is a difference between men and women, an independent sample one-way ANOVA test was performed. All 42 participants were included in the analysis. Eight of them were women and 38 were men. The mean for total score for male was 161.47 (*SD* 2.61) and for female was 164.13 (*SD* 6.54). Descriptive statistics are provided in Table 16 below. There was high range (66) in total scores among participants in the male group.

Table 17

Descriptive Statistics of Total Score, Overall Andragogical Orientation

	N	Mean	SD	Variance	Range	Skewness	Kurtosis
Male	34	161.47	2.61	232.20	66	0.303	0.403
Female	8	164.13	6.54	342.41	18.50	-.168	.170

The ANOVA test was employed to test the significance of observed differences in groups. It found no difference in the mean scores of gender groups in terms of total score or overall andragogical orientation. The ANOVA test showed that there was no statistically significant association between overall andragogical orientation and gender

groups, ($F(40)$ =.181, p=.672). (see Table 17. ANOVA test).

Table 18

Independent Sample One-Way ANOVA Test

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	45.631	1	45.631	.181	.672
Within Groups	10059.346	40	251.484		

The results of one-way independent sample ANOVA revealed that both men and women participants of the study scored the same in overall andragogical orientation. There is no association between gender and overall andragogical orientation.

Association between age and overall andragogical orientation. The researcher also hypothesized a possible relationship between age of the participants and overall andragogical orientation. To test this hypothesis, a simple linear regression test was used. The dependent variable for this study was the age of the participants. It was a continuous variable, and it was kept in its original form. The independent variable of the study was the overall andragogical orientation of participants, which was measured by their total score. It was a continuous variable. A simple linear regression was used for this study. A significance level was assigned at the 0.05 level. The model estimated the relationship between years of age and andragogical orientation. The data was analyzed in SPSS version 22.

Before running the model, all assumptions of simple linear regression were checked and reported. The first assumption of linear regression is that there is a linear relationship between the dependent and independent variables. From the scatter plot

given below, we can see a weak positive relationship between the dependent (age) and independent (total score) variables. This assumption of the regression was met by the data.

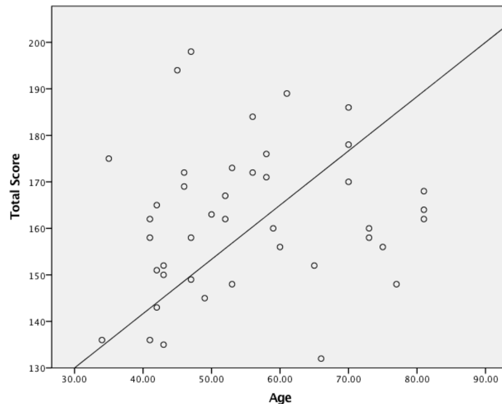

Figure 2: Scatter Plot of Variables

The second assumption of the regression was that both variables, dependent and independent, are continuous. The total score and age variables were continuous variables in the dataset. Another assumption of the regression was that error terms (residuals) in data were independent from each other, or in other terms, there was no autocorrelation between error terms. Regression also requires approximately at least 25 observations per variable, and in the instant dataset, there were 42 per each variable.

Another assumption of the regression was that the dependent variable residuals are normally distributed. As shown in the histogram and Q-Q plot below, we can conclude that the residuals of dependent variable are normally distributed.

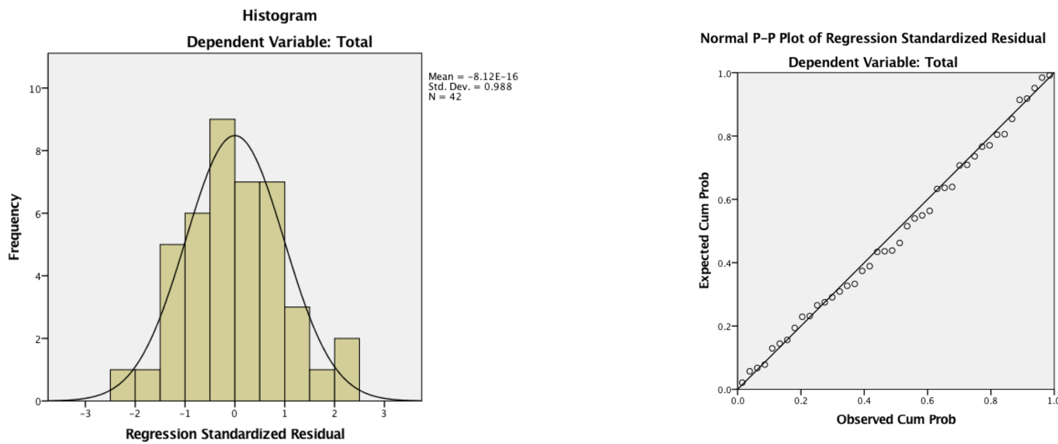

Figure 3: Histogram and Q-Q Plot Distribution of the Residuals

Another assumption of the regression is that there was homoscedasticity in the data: variance of residual terms in both variables are the same; in other words, a change in Y is the same for any X. Based on the Q-Q Plot above, the data met this requirement as well.

Results of the simple regression

Overall, 42 cases were entered to the model. The mean age of the participants was 55.33 (M=55.33; SD 15.70), and the average total score was 161.98 out of 225. See Table 19 below.

Table 19

Description of Variables

Variable	N	Mean	Standard Deviation
Total Score	42	161.98	15.70
Age of participants	42	55.33	13.49
Total N (42)			

From value of R Square below, we can say that the model fits the data poorly. Just 2.2% (R-Square .022) of variation, which is observed in the dependent variable, in total score is due to change in the dependent variable (age); in other words, only 2.2% of the

variation can be explained by changes of age of the participants. As independent variable changes, the dependent variable also changes, and that portion of the change is 2.2%, which is very little.

Table 20

Model Summary[b]

					Change Statistics				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	R Square Change	F Change	df1	df2	Sig. F Change
1	.149[a]	.022	-.002	15.716	.022	.911	1	40	.346

a. Predictors: (Constant), Age

b. Dependent Variable: Total Score

The ANOVA table below indicates that the model is not statistically significant, [$F(.911)=224.998$, $p<0.341$]. Ratio $F(.911)$ the amount explained (224.9) and unexplained (246.9) is very small, and, thus, the model is not significant (.346). Accordingly, it is not a statistically significant regression model.

Table 21

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	224.998	1	224.998	.911	.346[b]
	Residual	9879.978	40	246.999		
	Total	10104.976	41			

a. Dependent Variable: Total Score

b. Predictors: (Constant), Age

Non-significant regression equation was found between the two variables (See coefficients table below). Even though a non-significant regression equation was found, the results are reported below.

Table 22

Predictor of Total Score

Model	B	SE	Sig.	95% CI
Age	0.174	.182	.346	(-0.194,0.542)
* p<0.5 Total sample (N =42)				

If a significant equation had been found, it would have been interpreted based on the value of R^2 (0.022), 2.2 percent of variability in total score explained by the change in age of the participants. The regression equation could have been represented as [y=152.365+.174x], the total score of participants increased by .174 years' increase in age.

Based on Table 23, however, it does not appear that a statistically significant model is present to predict changes in total score.

Findings of Qualitative Study

After conducting interviews, they were transcribed. A content analysis approach and inductive method were used to analyze the qualitative data. Responses of the participants were read several times to capture the common patterns and information. After shortlisting the common patterns, NVivo, and descriptive coding methods were used, and initial codes were created. After a quality check, the interviews were converted to *"rtf"* files and were uploaded to the TAMSAnalyzer software. During the first round of the coding, the pre-developed codes were applied to each interview, and new codes were developed based on new patterns that appeared during the coding.

Table 23

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients			95.0% Confidence Interval for B	
		B	Std. Error	Beta	t	Sig.	Lower Bound	Upper Bound
1	(Constant)	152.365	10.358		14.710	.000	131.430	173.300
	Age	.174	.182	.149	.954	.346	-.194	.542

a. Dependent Variable: Total

In the second round of coding, the new codes were applied to all interviews. After coding the interviews, the codes were grouped by category. After categorizing the codes, common themes became apparent. The following five themes emerged from interviews: authentic practice, personal experience, selflessness, courtroom learning, and triumph/success. Based on data, it appears that the main reason the participants used andragogical principles in the trial of lawsuits was to win their cases.

The role of authenticity, credibility, reliability, empathy, and trust.

All participants highlighted the importance of authentic practice when they try a case. According to respondents, it is very important to be authentic in the courtroom and outside it, as well during non-work hours. This commitment to authenticity aligns with Henschke's (1987, 1989, 1998, 2004, 2013) assertion that effective adult educators must establish an empathetic and trusting relationship with adult learners and must demonstrate a commitment to authenticity, to "being themselves." While all seven of Henschke's (1989) IPI factors are considered critical to the establishment of a successful andragogical relationship, the establishment and maintenance of empathy and trust (based on authentic and meaningful interactions between educators and learners) remains among the most critical to the success of learning outcomes. Authentic practice for the interviewees meant being responsible and credible to their clients, as well as to judges and jurors; feeling and doing the right things all the time; following instructions and rules; and living the life that they propound in the court-room. One of the participants expressed it this way:

> I guess the one . . . thing I would say is that in all the CLEs that I've taught on trial presentations and, again, in mentoring younger lawyers has been . . . [to]

> emphasize that everything that you do matters. I coined that phrase a long time ago, and I see that it still is in the, in the evidence. [A]s we approach the presentation of the case, we have to 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. One of the best trial lawyers I've ever known is Gene Buckley. Gene is retired, and I [don't] know if you've ever met Gene, but Gene has always been a very upright person, [of] high integrity and . . . high moral fiber. Gene always made it a practice to never cross the street against the light. And one of his reasons was . . . that a juror or a prospective juror might happen to see [him] crossing against the light and think negatively about [him] [while he was at the same time trying cases,] championing the law, arguing the law, presenting the law, . . . and if they [saw him] disregarding the law, they might find [him] less credible.

Following instructions and rules and being credible and reliable to jurors was mentioned by the participants as an important part of authentic practice. Like Henschke's emphasis on trust, Spence's (1986, 1997, 1998, 2010, 2013) emphasis on credibility was reflected in many of the interviewees' responses. Being credible and reliable can be seen as an extension of being authentic in an intentional and particular way so as to initiate and establish reciprocal trust with the jury. One of the participants explained it this way:

> Foundationally, in every trial, there is a competition of credibility. . . . [I]f you intend to represent a client, you must be credible. Your client must be credible. You can't be shown to be unreliable for whatever reason. . . . [W]hat you've got to say has got to be reliable. That's where you start.

For participants of the study, credibility is earned by giving the jurors information that is supported by facts, figures, and a valid source. In this way, reciprocal trust is maintained. Such trust is critical in order for the jury to be receptive to the version of the case that the lawyer presents. One of the participants put it this way:

> [I]if you've established credibility and maintained credibility, . . . [then] providing the support, the corroboration for . . . the conclusions of the points that you are trying to establish becomes easier, [though] it's not automatic. You may be credible, but if you try to tell them . . . [that] two plus two is three, you're not going to be believable. They've got to see enough support for the conclusion that you wish to reach to be persuaded to reach the conclusion that you're seeking. So, again, they are going to participate in this process of persuasion by seeing evidence, facts, that support the conclusion that you are promoting.

Likewise, the attorney must be reliable. Reliability helps lawyers to earn the trust of the jurors. As one of the participants explained it:

> [Y]ou may be telling them two plus two is four, [but] if they know you to be unreliable, they will question whether two plus two is four. They might satisfy themselves fairly quickly, but things, their deliberation will start with, 'I [don't] know if I can trust that.'

For participants, credibility and reliability were critical to their relationship with jurors. This emphasis on reliability also contributed to a sense of responsibility to their clients—including a need to make jurors feel responsible for their role in deciding the clients' fate. According to one of the participants:

> I don't know if this applies exactly, but I do always, especially when we're talking about taking someone's liberty, want to give the jurors a feeling of extreme responsibility.

Lawyer empathy with jurors. In conjunction with being authentic, credible, and reliable, participants asserted that it was imperative to reciprocate with jurors in empathy and trust. Most participants were empathetic to the jury members' responsibility and trusted that most jurors did take their role as jurors very seriously. One of the participants explained it this way:

> I think that I truly believe that most jurors want to do a good job. I think that most of them take it very seriously, which I like. And so 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.

The same participant expressed his empathy for the burden facing the members of the jury, who are responsible for deciding the clients' fates:

> Well, and I think that's where it . . . ties into that principle of being driven by self-esteem . . . because I think then, . . . they're driven in their decision making and the case and in the learning process by the feeling of wanting to do the right thing, of [wanting], basically [to be] able to go home and . . . sleep at night based on their decision.

Lawyer empathy with clients. Just as effective educators demonstrate empathy for learners, effective lawyers demonstrate empathy not only for jury members but also for their clients. Such empathy is genuine and may be facilitated by the lawyers' explicit

effort to understand and relate to their clients. Many participants described a real and genuine caring for their clients, putting their client's interests above their own, and a desire to set a personal example for their clients. These acts consisted of being right to oneself all times, including in one's daily life; having leadership skills to help clients effectively; caring for clients; and being responsible for clients, for jurors, judges, attorneys, and to whole society. Caring for clients was in the center of their practice. They hoped that this care and empathy would be detected by the jury. As one of the participants explained:

> You have to be sure that you're giving the jurors a reason to care about your client. What is it that, or what is it about your client that would trigger in them a sense of concern about your client, caring about your client? Ultimately, we need to bring those things all because we want the connection to take place. We want them to care enough about our client to listen and attempt to absorb what we are going to try to communicate as reasons why the jurors should adopt our points of persuasion.

Simply put, besides presenting information that is correct and factual, many interviewees believe that winning strategies must involve caring for the client, as the decisions made by the jury affect the lives of real people. As one of the participants said:

> And at the end of the experience, . . . talking to jurors, jurors feeling [that] they've accepted the fact that they have responsibility, based on the court's instructions, and based upon the fact that they now, in the course of sitting through the trial, . . . [that they] do care about the parties, and maybe even the lawyers, and maybe the witnesses, if that's been triggered, then, then, ultimately, they need to feel that

> the verdict that they will enter . . . feels viscerally . . . right. Sometimes, and frankly, this can be one of the reasons why you might get juror nullification, but the people on the jury need to feel that what they're doing is right. As humans, sometimes we can rationalize something that probably, objectively, is wrong, but it makes us feel right to do it.

Being "right" to one's self was highlighted as an important factor. It was mentioned by one of the participants as follows:

> So we do it because it feels right. I'm not saying that jurors are [going to] do wrong, but what I am saying is, to identify, to select, to connect with reasons or, or objective things to support the conclusion that makes them feel right is relatively easy in most instances because you've got lawyers feeding them information and reasons why they could rule in favor of that lawyer. As long as it feels right, they're going to select those things to support their conclusion on a rational basis. But the rational basis is not enough. Most of the time, they've got to feel that it's right. So there are exceptions, but the majority of the time, they have to feel that they're doing the right thing.

Juror empathy with clients. Just as teacher empathy for students improves adult student learning outcomes, so too can juror empathy with clients improve trial outcomes. Since juror empathy with clients can contribute to a favorable decision or verdict, participants mentioned that they try to learn as much as possible about members of the jury in order to highlight the sameness or shared experiences of jury members and clients. One of the participants explained it this way:

> Absolutely, starting with the very first exposure that the prospective jurors have to [us], the attorneys, and the judge, and the clients, and the witnesses, [they are forming opinions]. . . . [W]e know that the internal, the personal things about the jurors are [going to] be highly influential in the conclusion that they reach, so we need to learn about them as early as possible. We need to understand them as fully as we can. In other words, try to get as much information about those internal [factors] and the things that either created or have impacted those internal factors.

The same participant continued, explaining how he would use that information to the benefit of his clients:

> And, then, we need to be having our witnesses, our evidence, our witnesses' testimony and our, our tangible evidence, connect or be relatable to those internal factors. So when we do that, then the jurors will be connecting with those things and carrying them with them into the deliberations, and more easily connect as well to the persuasive . . . points that we have made.

Participants mentioned that using the factors that have internal relevance to jurors must be done strategically. Just using them without triggering any emotions would not help win cases. Rather, interviewees acknowledge, just as Spence (1986, 1997, 1998, 2010, 2013) did, that personal connection must be utilized in order to create an authentic relationship between jury members and clients. One of the participants explained it this way:

> And so, we try . . . to find ways to trigger these sort[s] of subconscious emotions in people because at their core, most people . . . make decisions based on . . .

> 'what's in it for me?' [Maybe] not overtly, but subconsciously, [they wonder], 'how might this affect me?' . . . [S]o if we can . . . convince them through whatever the basic emotions are, even fear, that this is something they need to pay attention to, then that's helpful. But it's a challenge once you get to a real juror because, for the most part, you have to convince them that there's a need to learn, and be persuaded.

The same participant continued, explaining how he uses internal factors in his cases:

> It's not really effective to argue to jurors that you need to help someone . . . for reasons that try to tug on emotions [such as] because they're really badly hurt or because they're in a bad financial situation; that just doesn't work. . . . [S]o we need to try and find those internal factors and identify what those internal factors are. You know, . . . the exact same concept is that we try to figure out for each individual juror what their personal individual factor is and for one person it might be, you know, a religious reason. It might be a personal reason that relates to a family member for another person. And we're somewhat limited in how much we can find out about people when we question jurors, so some of it is guess work but, ideally, we'd love to know for each individual person what those internal factors are. And if we can find those out then, you know, we're constantly trying to adjust our presentation to make it something that each person identifies with.

Planning and delivery of trial arguments. Just as adult educators must spend critical time and energy devising the most effective delivery of material in order to improve adult student learning outcomes in the adult classroom, successful lawyers must

spend considerable energies considering and planning the delivery of their trial arguments. Courtroom education has its unique aspects such as requiring the presentation of relevant and helpful information—logical, valid, and reliable information. Courtroom education also requires presenters be lively, show leadership skills, and be rational. It encourages attorneys to be creative to meet the demands of diverse jurors/learners. Success in courtroom depends on persuasion, and it needs to be done professionally, ethically, and effectively through educating the jurors. It is for this reason that successful lawyers, like successful andragogues, undertake extensive planning of the trial presentation and seek to present a compelling and engaging delivery of the facts and events of the case. As one of the participants used his own experience to explain:

> [B]y the time we get to the question of whether or not they're ready to learn, we [have] tried our best to engage in them an interest in hearing about what we've got to teach them. [S]o, . . . if we have triggered that interest, now we are going to begin addressing that interest, and it's done in a variety of opportunities, not the least of which are the opening statement and the manner in which and the content of the examination of witnesses, direct and cross-examination, [is conducted].

Like successful andragogues, who seek to present new material in a compelling and dynamic way in the classroom, all study participants talked about importance of making lively presentations, and essentially guiding the jurors. This helps not only to earn jurors' trust but also to increase juror engagement with the material, which then leads to persuasive advocacy. One of the participants highlighted this role of presentation and delivery as follows:

> I think the education process of trying to get the jurors on your side so [that] eventually their verdict is the one that you want, I think that starts early on. . . . [Y]ou're trying to educate them so they come to the conclusion that you want them to.

Another participant also explained the importance of presentation and delivery as an integral part of persuasion in the process:

> [I]t's important to me to be sure to lay this foundation. As lawyers, we are focused, in the preparation for a trial, we are focused 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.

One participant mentioned that persuasion starts early in the trial process, "I'm not one of those people that I like to . . . do my opening after the State has presented all their evidence. I like to put it out there early." While planning their delivery, lawyers must bear in mind what information is going to be most relevant to the case (and, therefore, to jury members); just as adult learners appreciate learning materials that are relevant to their own lives, jurors appreciate information that is clearly and directly relevant to the case. The combination of this emphasis on planning and the effective delivery of relevant materials contributes to effective persuasion. One of the participants explained it this way:

> We never want the jurors to feel that we're wasting their time with information that is not relevant to what they there to do.

In addition to being relevant, the information presented needs to be helpful to the jurors in their deliberations. As one of the participants stressed:

> [W]ith respect to the merits of that dispute, it has created a real, genuine issue for us in educating jurors in these cases, and because, as you say, it's important for most adults to know why they need to learn something—or at least that helps them learn it if they know why. [As such], we try to, at every step of the proceeding, make sure they're aware that this is not just something that was an isolated occurrence; it happened to one person or one family, but they need to know the intricacies of the case because they might have a situation in the future or their loved ones might have a situation in the future where it applies to them.

Another participant also explained that as an adult, he would not be interested in any information that would not be useful:

> [If] I don't think something's [going to] be relevant or helpful, I don't bother to try to learn it. I mean whether it's learning what somebody said in a deposition or, learning about some particular area in the industry that's the subject of the litigation. I need to know how it's going to help me. Otherwise I don't have an interest or motivation to learn it.

Another participant also highlighted the importance of assembling relevant and helpful information for jurors:

> That's why they would need to know a certain fact or why the fact is important to them is a matter in which the lawyer should discuss with them in at least the opening statement, if not in the jury selection process, which takes place before the opening statement. And so for them to know why it's important, that's

> something that you have to tell them that you're relying on and how the pieces fit together, as though it were a puzzle, and in that regard, you can then put all the facts together to the jury.

Thus, according to participants, information presented at trial needs to be logical and syllogistic. One of the participants gave an example from his own experience: "I would much prefer to have juror come to a conclusion in their mind based on logical syllogistic reasoning before I ever state the conclusion out loud myself." And he continued, explaining how syllogistics is important in the courtroom: "We are very careful to try and build cases in a syllogistic manner like, you know, 'all men are mortals. Socrates was a man; therefore, he must be mortal.'" The information presented also needs to be credible and accurate. The same participant explained:

> And the only way to make that happen is to make sure you present the case in a strategically sequenced manner that is based on . . . facts or arguments that really are difficult to disagree with, and that allows someone to come to that conclusion on their own.

In short, the planning and delivery of an effective presentation, including relevant, factual information delivered by a credible and reliable attorney, gives jurors a "good-reason" to be involved or interested in the case:

> Some people just sort of like to solve problems, whether it's their problems or someone else's problems, and they immediately sort of get into the process of, you know, trying to figure out a solution. Other people don't. They need to really be engaged and really need to have a good reason to get engaged before they'll do it.

Bearing in mind that many of the prospective jury members who appear "most interested" in any case being tried will likely be struck from the jury pool in order to mitigate potential bias (either for or against) either of the legal parties, it falls on the lawyer to inspire interest and investment among the members of the jury that are ultimately selected, some of whom may have been selected precisely because of their stated lack of interest or knowledge of the details or nature of the case. One participant explained that this is why a successful trial attorney must intentionally connect with the jury and give jury members a good reason to be interested in the case:

> Most of the time . . . there are two sides to every case; most jurors that obviously favor one side or the other or might tend to favor one side or the other are excluded from a jury by one side or the other. And so, um, someone who already has a reason to want to learn my side of the case or a reason to want to learn the defense side of the case might be out of it, out of the case or out of the jury pool altogether. And so, we have to sort of try to create reasons that [the selected jury] should want to learn about it more than just doing their duty.

Accommodation of juror uniqueness. The personal experiences of jurors can be seen as contributing to juror uniqueness. In Henschke's (1989) assessment, sensitivity to learner uniqueness improves learning outcomes (while insensitivity to learner uniqueness hinders learning outcomes). In the context of the courtroom, lawyers who are sensitive to juror uniqueness are able to facilitate more effective relationships with jury members, leading to better trial outcomes. Participants had different insights about the wealth of personal experience that jurors and judges bring to the courtroom. Some interviewees felt that it was helpful if jurors or judges had some personal experience with the issues

involved in the case being decided because such jurors might understand the issues better. The interviewees reported having varying levels of sensitivity toward jurors and jury members' life experiences. One of the participants explained it as follows:

> They might have to make a decision about their own health care. [For example], they might have to have a similar surgical procedure. They might have to interact with the medical profession in the same way. And so, we try and temper all of our presentations with that in mind, trying to anchor a feeling in jurors that sometimes even . . . subconscious[ly], makes them, for lack of a better phrase, more interested in the subject matter.

Another participant explained that jurors or even judges with personal experiences similar to those of the client can evoke empathy for clients. Empathetic jurors can understand what the clients may be going through and may be more receptive to the version of the case that the lawyer is presenting. One interviewee put it this way:

> It's not personal, but . . . we want [jury members], either subconsciously or consciously, thinking . . . 'I could be in a similar situation someday,' or 'my family could be in a similar situation someday, and therefore I ought to pay . . . special attention to this so that I understand it if that ever comes to pass.'

As a part of sensitivity to juror uniqueness, successful attorneys must remember that jurors also possess various learning styles and take that into account during trial. The more sensitive the lawyer is to the uniqueness of jury members, including their respective learning styles, the more successful that lawyer may be in achieving desired case outcomes. One participant said:

> They always teach you that you have to remember that some people are auditory learners, some people are visual learners. So what you try to do is use as many different, if you can . . . as many different techniques as possible. If you can make something both, [auditory and visual] you know, [like the] testimony, have a visual component to it that makes sense . . . do it. You know, because then you have both auditory and visual components of learning.

One of the participants talked about the importance of using visual aids:

> [T]hat's definitely a pretty big concept. And, and you know, I actually teach trial skills at our local law school, and that's one of the things that we really get on the students about. . . . [I]t seems like common sense, but you'd be shocked at the people who won't do it. You know, if you're talking about a crime scene, like, get a diagram.

Participants also mentioned that while diverse learning styles exist, it is also important to consider common denominators among jurors and to focus on these commonalities as well:

> That's a little challenging because you're . . . presenting your case to 12 people, and what you're saying is, you know, Juror 1 might have a radically different way of learning than Juror 12, and that's something that's true. So, we have to sort of present it to the, you know, most common denominators, and rely on the collective commonsense of the jury to come together. I think that usually works. [T]he outliers . . . tend to be influenced by the majority, and so that's not as big of problem as you might think. . . . [Y]ou can't try and convince one juror of something at the expense of losing the other 11.

Another interviewee also highlighted importance of the common denominators among jurors:

> I think when it comes to adult learning, [and presenting an argument in a trial], . . you've got to take into consideration . . . how [or what] the best way [might be to] . . . present to that individual juror, but that may be different than how, you know, Individual Juror Number 12 would want it. So, you . . . have to, you know, find a way in which you can present all this without straying too far away from what your original plan was.

Some participants, however, felt that personal experiences, internal factors, and emotions can prevent jurors from making objective decisions. In this case, lawyers might consider jury member uniqueness to be a potential roadblock to the desired case outcome. One participant stated:

> [A juror can be] plaintiff-oriented [or] plaintiff-biased, so then after exploring it with them as much as I can . . . , I end up with the question, 'Well, can you set those feelings aside and listen to the evidence with an open mind and reach a conclusion that's fair, without regard to your own experiences?'

The participant went further to explain how these personal experiences might carry over into the courtroom:

> [For example, a juror might think], 'There was a bad guy in my graduating class who always tormented me, and he had curly black hair, and he looks just like that lawyer, or just like that client, and I never did like that guy. Now how, how well can they really assure me that . . . that experience won't cause them to discount

> what the witness says just because they look like the villain in the earlier life of that prospective juror?

Another participant explained that jurors' previous personal experiences sometimes create obstacles to presenting, defending, or even winning a case. As such, this attorney explained the importance of taking those personal experiences into account in trying a case. As he explained:

> If somehow a juror makes it past voir dire, and they are selected as a juror, and they do come in there with their prior experiences, their own prejudices, their own knowledge, and if . . . somehow, . . . they weren't, you know, struck for cause, . . . you're going to be stuck with [them], . . . [so] you [have to] keep that in mind, and you try to . . . get a good feeling of how those people may be and how you can combat that while you're presenting your case.

Despite such reservations, most participants explained that having jury members with personal experiences common to the issues involved in the case helped win cases. These attorneys worked to learn about juror uniqueness and get information about the jurors in the beginning of the process—and then used that information to select jurors and develop strategies based on this information. As one of the participants asserted:

> We have to drill down and look for those things when we're trying to select a jury because they're all going to come into play in the course of the deliberations. . . . [And] as we're asking the juror, the prospective jurors questions, we're asking them to disclose to us information that might reflect not only what they've learned and what they've done but, in fact, whether or not they might have a bias themselves. And then that takes us into the field of, 'all right, [who is this]

> prospective juror going to be?' [And] even a little more deeply than that, let's assume that they're making every effort to be candid, but how well do they understand themselves? How well, how articulate are they? Are they capable of responding sufficiently to a question that might get us into . . . those kinds of issues? So . . . your question really takes us into the issue of the jury selection process and jury questioning and you can see how, how very, very involved in becomes.

Ultimately, whether juror uniqueness helps lawyers win cases or whether it presents a unique sort of obstacle to doing so, interviewees acknowledged that most jurors try to do their best to serve people and that in addition being a juror, they are also human, and therefore, they have the potential to understand the client's situation:

> Most jurors, it's my belief, come in to cases trying to do a good job. [T]hey take it very seriously. We're all humans, and we all have our own . . . personal experiences, and if we can . . . latch onto something that allows jurors to identify with the issues in the case it's very helpful.

Incorporation of juror-centered vs. lawyer-centered approaches. In the adult education classroom, the use of learner-centered approaches (modeling, role playing, group work) increases student engagement, while use of teacher-centered approaches (lecture) reduces student engagement with material. In the courtroom context some of these techniques may not be possible, but many of the interviewees, to the extent they could, tried to take into account how their presentation would be received by the juror. They tried to take into account what the juror would want to hear relative to the case, rather than simply what the attorney may have thought was important.

Success in courtroom. Authentic practice, trust, empathy, credibility, careful planning and delivery, and sensitivity to the personal experience and uniqueness of jurors are among the andragogical themes that participants used to succeed in trial. All of these themes pave the path to successful trial outcomes. In short, successful lawyers effectively develop trust and empathy with jurors and clients by acting credibility and presenting reliable information; demonstrate sensitivity to juror uniqueness; and plan and deliver lively, relevant presentations, thereby effectively educating both jurors and judges. The participants in this study reported using all of these strategies and all of their communication, presentation, and advocacy skills to increase their chances of success. One of the participants explained it below:

> So, within that framework, the lawyer is thinking, ‘How am I going to be able to communicate successfully with points that I think would be persuasive to the jury?’ So, rather than expecting necessarily to educate the jury [on] something that they may not know anything about, it’s more a matter of ‘how can I get them to receive and, hopefully, adopt the points that I feel are persuasive and will result in the conclusion of the matter that I'm seeking?’

Success is also about being aware of jurors and others in the courtroom by respecting their time and presence. One of the participants explained it this way:

> And then, obviously, in closing argument, we’re going to do our best to assemble the information that’s been presented in a way that is coherent and persuasive. And all of the things that I’ve talked about have got to be addressed in the most efficient way possible. We never want the jurors to feel that we’re wasting their time with information that is not relevant to what they are there to do.

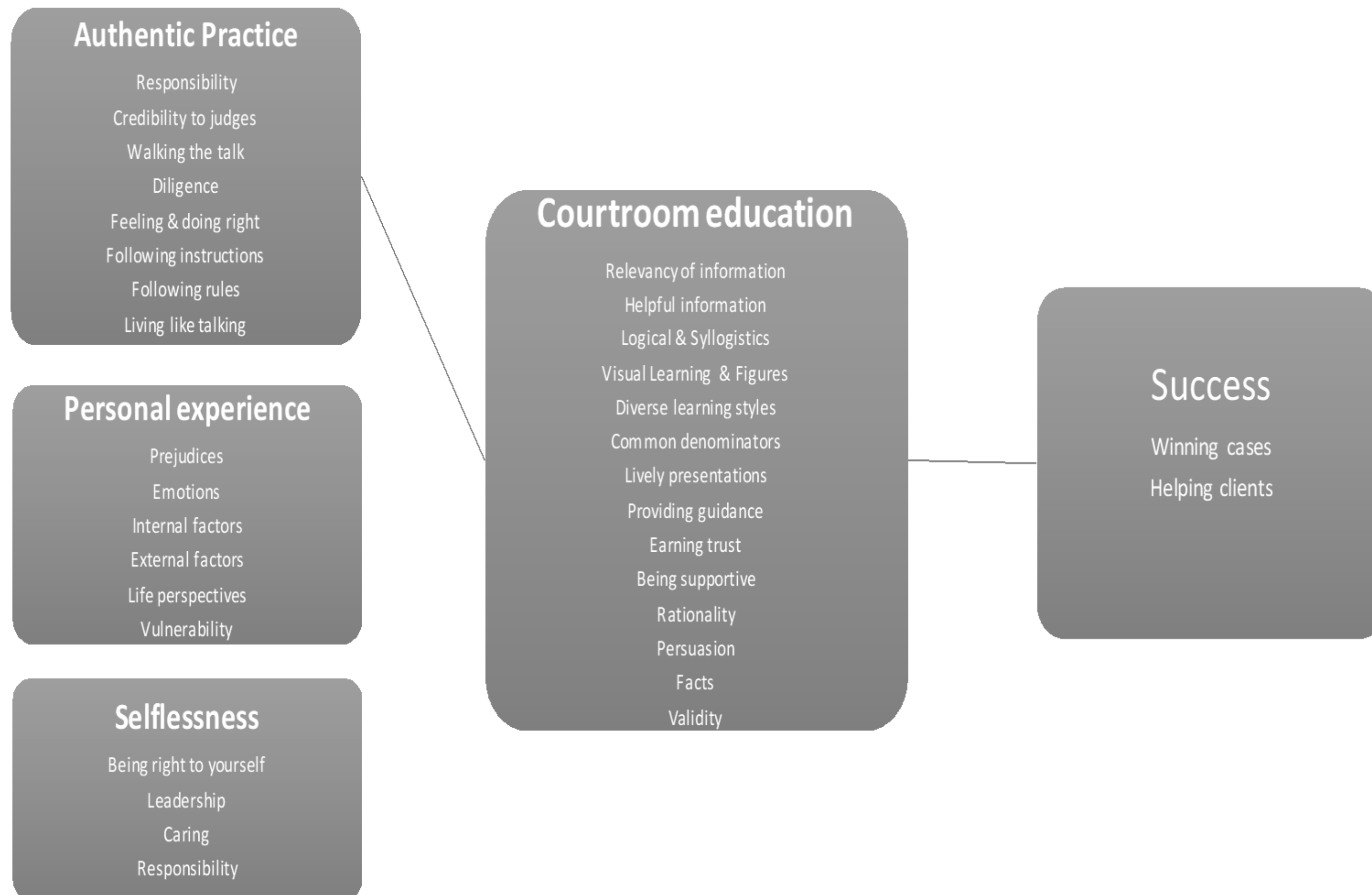

Figure 4. Combination of factors leading to successful outcomes for trial attorneys.

Professionalism also for the interviewees included using their presentation skills to help win the case:

> To a certain extent, you present to the jury as much of the fact pattern as you can, hopefully [so] that each of the jurors will glom onto one part of it or another part of it, and see how it will affect them ultimately or how it will affect the people in the case.

Taken as a whole, successful attorneys attempt to use these factors to achieve success in the courtroom. Visually, these factors may be depicted as set out in Figure 4.

The themes that emerged in the interviews, authentic practice, personal experience, and selflessness are shown on the left side of Figure 4. Listed below each of those themes are examples of how they may appear in a successful trial attorney's actions, both in and out of a courtroom. From those themes and actions, the successful attorney is able to effectively use andragogy to educate the decision makers in a trial – the judge or jury. For example, when following andragogical methods, a successful trial attorney's presentation will be helpful and trustworthy to the judge or jury. Which, in turn, should lead to a successful outcome at trial. Likewise, using Figure 4, one may start at the end – a successful result in court and work backwards to see the factors that comprise a compelling courtroom presentation.

Conclusion

Chapter Four described the data collected by both quantitative and qualitative methods used to determine the overall andragogical orientation, if any, of successful trial lawyers. It includes descriptive statistics of the participants, general results for each andragogical orientation factor, as well as their overall total score. The overall

andragogical orientation was based upon seven factors, including: (1) empathy with jurors; (2) trust of jurors; (3) planning and delivery of trial presentation; (4) accommodation of juror uniqueness; (5) lawyer insensitivity towards jurors; (6) incorporation of juror-centered learning processes; and (7) incorporation of lawyer-centered learning processes. The chapter also included results of statistical analyses of the quantitative data. Finally, this chapter included an examination of the themes that emerged from the qualitative data.

In Chapter Five, the researcher will discuss the findings of data as well as the application to the study of andragogy and effective trial lawyers, as well as suggestions for further studies.

Chapter Five: Discussion

Introduction

When people tend to think of a courtroom case or the courtroom setting, an opportunity for education and learning is typically not the first thought associated with that context. Many people tend to think of a courtroom drama that they may have seen on TV or in a movie. In addition, they usually do not think of the lawyers representing clients as "teachers" or the jurors deciding cases as "students." Yet andragogy, the art and science of adult learning, fits squarely onto and has an application in the trial of lawsuits. This stems from the fact that learning may be formal or informal. Just as one may formally undertake learning in a classroom setting, jurors are informally but nonetheless carefully and explicitly taught about the subject matter and issues being presented in the given case.

In this study, a modified version of the Instructional Perspectives Inventory, created in 1989 by John Henschke, provides the framework for the examination of the andragogical orientation of successful trial lawyers. The seven factors found in Henschke's original IPI have been modified to fit the courtroom context—where trial lawyers are the andragogues and the members of the jury are the adult learners. It was hypothesized that successful trial lawyers possess some awareness of and incorporation of andragogical practices in the presentation and trial of their cases, effectively connecting with members of the jury and, ultimately, achieving desired trial outcomes. These 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.

When a student makes a connection with a professor or teacher, they tend to have a better or more productive learning experience. Just as in the formal education setting, some trial attorneys are better at presenting their clients' cases than others. It was hypothesized for the purposes of this research that those attorneys who are better "educators" would obtain better results for their clients. This study examined the andragogical orientations, if any, of successful trial attorneys.

Summary of the Study

Andragogy was used well beyond the classroom. It was used in fields such as business, education, religion, and athletics (Henschke, 2004; Lubin, 2013). It has even been used to improve training for law enforcement officers (Birzer, 2003). When examining what a trial lawyer does in a courtroom, one can conclude that, in a sense, they are teachers of adults as they attempt to persuade adult jurors. Accordingly, it seems that andragogy, and what it has to offer concerning improving adult learning, is relevant to effective presentations in the courtroom. Surprisingly, a review of the literature revealed no studies attempting to determine the andragogical orientation of trial lawyers.

This study attempted to fill that void by examining the andragogical orientation, if any, of successful trial attorneys. After adapting the Modified Instructional Perspective Inventory (MIPI) to measure to the andragogical orientation of trial lawyers (MIPI-Trial Lawyer), the survey was given to successful trial attorneys in Missouri. The MIPI-Trial Lawyer measured seven factors related to andragogy: (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. In addition, the study examined the relationship, if any, between gender and andragogical orientation as well as age and andragogical orientation.

Discussion of the Findings

The researcher hypothesized that successful lawyers would have a high orientation towards andragogical methods. Such a result seemed likely, as successful trial lawyers are adept at persuading jurors in a courtroom setting. Essentially, they are effective at "teaching" the jurors why their clients' positions are the correct ones. As anticipated, the successful lawyers who participated in the survey tended to have an orientation towards andragogical methods.

While an examination of scores of the MIPI-Trial Lawyer did not overwhelmingly reveal high scores, the most telling data was revealed in the qualitative portion of the study. Of all those interviewed, every participant used or relied upon many of Knowles' (1968, 1980) six assumptions of adult learning and Henschke's (1987, 1989, 1998, 2004, 2013) seven factors of successful adult learning outcomes. In other words, the data revealed that the attorneys adapted for use in the courtroom Knowles' assumptions of adult learners. That became evident in discussing trust of jurors, as well as the interviewees' focus upon multi modes of presentation in an attempt to accommodate jurors' various methods of learning.

The researcher also examined the relationship between gender and andragogical orientation, as well as age and andragogical orientation. Based upon the data collected,

no statistically significant relationship was noted between gender and andragogical orientation or age and andragogical orientation.

Implications for Practice

Just as andragogy has found a place in many fields well beyond the formal classroom setting, the results of this study suggest that andragogy has a place in the teaching of trial practice. Not only does common sense compel one to find a use of andragogical methods in the effective trial advocacy, the data reveals that successful trial lawyers are using andragogical methods to win trials. This finding, however, does have some limitations, which are revealed in the study.

Given the positive qualitative information, the researcher would have expected to have seen a higher overall andragogical score on the modified instructional perspectives inventory-trial attorney. Despite having what is seemingly contradictory information, the researcher concludes, based upon the information obtained, that the successful trial attorneys are using the andragogical methods and techniques in the trial of lawsuits. It may be that the lawyers are not explicitly aware that they are using andragogical approaches in the presentation of their cases or that they are using strategies that are transparent to them. It is likely, based on the interview data collected, that lawyers' use of strategies that increase the likelihood of winning cases are in fact aligned with andragogical approaches, albeit without the lawyers explicitly identifying them as such.

Recommendations for Further Research

One item of interest, for example, became clear when reviewing the data. All of the participants were asked to provide their undergraduate major as well as other graduate degrees in collecting demographic information of the participants. However, this study

did not examine the relationship if any, between undergraduate or graduate major and andragogical orientation. Likewise, the attorneys participating in the study were also asked to provide the area of practice (such as personal injury, criminal defense, medical malpractice, and so forth) at the time they won the Lon O. Hocker Award (n.d.) and at the time they completed the modified instruction perspectives inventory. The relationship, if any, between area of practice and andragogical orientation, however, was not examined. One of the reasons that this possible relationship was not examined was that the author did not set up specific categories for areas of practice in the demographic information portion of the survey and instead allowed the participants to self-describe their area of practice. While capturing the participants' own descriptions, this did not allow for a uniform and meaningful assembly of this information. If such a study were to be conducted again in the future, it would be the recommendation of this author that the areas of practice be identified and uniformly assembled for the participants to select.

In addition, one of the shortcomings of this study is that the sample size was relatively small, with only 42 participants. It is difficult to make generalizations about an entire population of trial attorneys while only having examined this small number. In the future, a study encompassing a larger number of attorneys would be beneficial.

The results of this study suggest that the most meaningful information was collected during the qualitative portion of the study and that aspects of the quantitative study may need to be reevaluated. For example, while the data obtained from all those interviewed suggested the use of andragogical principles in the trial of lawsuits, not all of the data collected from the quantitative portion of the study suggested the same.

Conclusions

True to its definition, andragogy—the teaching of adults—has an application in the field of trial practice or persuasion. Trial attorneys, although confined to courtroom rules, customs, and procedures, are essentially teachers of adults. The jurors are their students, and the lesson plans they craft are designed to persuade the jurors to return a verdict in favor of the lawyers' clients. The data reveal that successful trial lawyers use andragogical methods in the trial of lawsuits.

Although there appeared to be a disconnect between the quantitative and qualitative data collected in this study, all interview participants unequivocally reported incorporating andragogical methods when trying a lawsuit. The use of these methods did not depend upon the area of practice or party represented. From this limited study, it appears that andragogy has an application within effective trial advocacy, and it is expected that further studies will demonstrate this.

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Appendix A

1. A principle of adult learning is that adults need to know why they need to learn something before learning it. Based upon your experience as a trial lawyer, how does this relate to how you try cases?
2. A principle of adult learning is that adults are self-directed learners – they have a need to be involved in the planning and assessment of their learning. How does this principle relate to how you try cases?
3. How do you view a juror's life and work experience in helping them reach a verdict?
4. A principle of adult learning is that adults are problem centered in their learning – they want to learn something that they can apply in their lives to help them with tasks or problems they face in everyday situations. How does this principle relate to how you try cases?
5. A principle of adult learning is that adults have a readiness to learn things they need to know. How does this principle relate to how you try cases?
6. A principle of adult learning is that adults are motivated more by internal factors rather than external factors. How does this principle relate to how you try cases?

Appendix B

MODIFIED INSTRUCTIONAL PERSPECTIVES INVENTORY - TRIAL LAWYERS

Listed below are 45 statements reflecting beliefs, feelings, and behaviors that trial lawyers may or may not possess at a given moment. Please indicate how frequently each statement typically applies or applied to you as a trial lawyer. Circle the letter that best describes you.

	How frequently do you: *(Circle the letter that best describes you)*	**Almost Never**	**Not Often**	**Sometimes**	**Usually**	**Almost Always**
1	Use a variety of presentation techniques?	A	B	C	D	E
2	Use focus groups?	A	B	C	D	E
3	Believe that your primary goal is to provide jurors as much information as possible relative to both sides of an issue?	A	B	C	D	E
4	Feel fully prepared to present at trial?	A	B	C	D	E
5	Have difficulty understanding juror's points of view?	A	B	C	D	E

6	Expect and accept juror frustration as they grapple with problems?	A	B	C	D	E
7	Within the confines of the trial setting, purposefully demonstrate to jurors that each is uniquely important?	A	B	C	D	E
8	Within the confines of trial the trial setting, have confidence that jurors will develop the skills they need to fulfill their obligation?	A	B	C	D	E
9	Search for or create new presentation techniques?	A	B	C	D	E
10	Present through simulations of real life?	A	B	C	D	E
11	Present exactly what and how you have planned?	A	B	C	D	E
12	Within the confines of the trial setting, notice and acknowledge positive changes among jurors?	A	B	C	D	E
13	Have difficulty getting your point across to jurors?	A	B	C	D	E
14	Believe that jurors vary in the way they acquire, interpret, and apply subject matter knowledge?					
15	Really listen to what potential jurors have to say during jury selection?	A	B	C	D	E
16	Trust jurors to know what their own goals, aspirations, and realities are like?	A	B	C	D	E

17	Encourage jurors to really discus the case during their deliberations?	A	B	C	D	E
18	Feel impatient with jurors' understanding of the issue(s)?	A	B	C	D	E
19	Balance your efforts between juror content acquisition and motivation?	A	B	C	D	E
20	Try to make your presentations clear enough to forestall every juror question?	A	B	C	D	E
21	Conduct group discussions in preparation for trial or during voire dire?	A	B	C	D	E
22	Establish presentation objectives?	A	B	C	D	E
23	Use a variety of instructional media? (demonstrative aids, etc.)	A	B	C	D	E
24	Use listening teams to listen for a specific purpose during trial preparation or the actual trial?	A	B	C	D	E
25	Believe that your presentation skills are as refined as they can be?	A	B	C	D	E
26	Within the confines of the trial setting, express appreciation for jurors who actively listen?	A	B	C	D	E

27	Experience frustration with juror apathy?	A	B	C	D	E
28	Value the juror's ability to learn what is needed?	A	B	C	D	E
29	Believe jurors need to be aware of and communicate their thoughts and feelings?	A	B	C	D	E
30	Enable jurors to evaluate their own progress in learning case specific issues?	A	B	C	D	E
31	Pay attention to and discuss what jurors' needs are?	A	B	C	D	E
32	Have difficulty with the amount of time jurors need to grasp various concepts?	A	B	C	D	E
33	Within the confines of the trial setting, promote self-esteem in the jurors?	A	B	C	D	E
34	Require jurors to follow the precise learning experiences you provide them?	A	B	C	D	E
35	Conduct role plays in preparation for or during trial?	A	B	C	D	E
36	Get bored with the many questions jurors, or potential jurors, ask?	A	B	C	D	E
37	Within the confines of the trial setting, attempt to individualize the pace of learning for each juror?	A	B	C	D	E
38	Help jurors, or potential jurors, explore their own relationships or feelings to the case?	A	B	C	D	E
39	Engage jurors in clarifying their aspirations or fears during voire dire?	A	B	C	D	E

40	Ask potential jurors how they might approach an issue in a trial?	A	B	C	D	E
41	Feel irritation at juror inattentiveness in the courtroom?	A	B	C	D	E
42	Integrate presentation techniques with subject matter content?	A	B	C	D	E
43	To the extent possible, develop trusting relationships with jurors?	A	B	C	D	E
44	Experience unconditional positive regard for your jurors?	A	B	C	D	E
45	Respect the dignity and integrity of the jurors?	A	B	C	D	E

PERSPECTIVE INVENTORY FACTORS

(1)	(2)	(3)	(4)	(5)	(6)	(7)
4 _______	7 _______	1 _______	6 _______	**5 _______**	2 _______	**3 _______**
12 _______	8 _______	9 _______	14 _______	**13 _______**	10 _______	**11 _______**
19 _______	16 _______	22 _______	15 _______	**18_______**	21 _______	**20 _______**
26 _______	38 _______	23 _______	17 _______	**27 _______**	24 _______	**25 _______**
33 _______	29 _______	42 _______	37 _______	**32 _______**	35 _______	**34 _______**
	30 _______		38 _______	**36 _______**		
	31 _______		40 _______	**41_______**		
	39 _______					
	43 _______					
	44 _______					
	45 _______					
TOTAL	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL

Scoring Process:

A = 1, B = 2, C = 3, D = 4, E = 5.

Exceptions being / Reversed scored items are: **3, 5, 11 ,13, 18, 20, 25, 27, 32, 34, 36, 41**.
These items are scored as follows: A = 5, B = 4, C =3, D = 2, E = 1.

FACTORS	**TOTAL**	**POSSIBLE MINIMUM**	**POSSIBLE MAXIMUM**
Attorney empathy with jurors.	______		
Attorney trust of jurors.	______		
Planning and delivery of presentation.	______		
Accomodating juror uniqueness.	______		
Attorney insensitivity toward jurors.	______		
Experience based learning techninques (juror - centered learning process).	______		
Attorney - centered learning process.	______		
Grand Total			

Appendix C

MODIFIED INSTRUCTIONAL PERSPECTIVES INVENTORY – TRIAL LAWYER

COVER SHEET

NAME:____

TELEPHONE: ________________________________

EMAIL:______________________________________

DOB:_________________________________

AGE (When awarded Lon O. Hocker Award):________________________________

DEGREE(S) EARNED, OTHER THAN JD: (e.g.) BS Business Administration, MA English, PhD History