

**THE NATURE OF MEANING:
THE ROLE OF THE TRIAL LAWYER IN CREATING AND SHAPING MEANING
DURING TRIAL**

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I. HOW MEANING IS CREATED

A. Introduction

The primary role of the trial lawyer in any jury trial is the creation of meaning for jurors who know nothing about the case for which they have been selected. Lawyers on both sides of the case present competing views of reality to the jurors, each side arguing, with confidence and honesty, that the factual reality they are presenting is correct. Not only are jurors presented with these competing views, they are also instructed as to their duty with vague, abstract concepts such as "negligence," "preponderance of the evidence," "within a reasonable degree of medical certainty," "lost chance of survival," and "deviation from the standard of care." Again, opposing counsel provide competing explanations as to what these vague, abstract terms mean. Each side argues forcefully and confidently, for example, that the plaintiffs or defendants were or were not negligent, that they did or did not deviate from the standard of care, that one side or the other has not proved the case by a "preponderance of the evidence," or that expert witnesses were not able to state their opinions "within a reasonable degree of medical certainty." Compounding the task faced by the jurors is the fact that they must ultimately place a dollar value on things such as pain and suffering, disability, disfigurement, loss of body parts and functions, loss of consortium, damage to employability, lost profits, and diminution in the value of property.

The trial becomes a process by which lawyers, through the use of various forms of communication, attempt to create meaning for the facts of the case and the concepts

upon which the jurors' verdict must be based. The actions of the trial lawyer in all phases of the trial--from voir dire to closing statements--are all designed to accomplish one thing: to create meaning for the jurors, allowing or perhaps even causing them to return the desired verdict. It follows naturally, particularly in close cases, that lawyers who are better able to create and provide meaning for the facts and concepts presented to the jurors throughout the trial, will have a better chance of obtaining a favorable verdict. An understanding of meaning, how it is created, how it evolves, how it can be influenced and shaped, and how people apply meaning to form judgments is a powerful tool that trial lawyers may use in the presentation of their cases.

This Article explores the nature of meaning and describes how understanding this process may be used by trial lawyers to maximize the effectiveness of their jury presentations. Part I looks at the process by which meaning is created. Part II discusses how meaning models function. Part III addresses the role of the trial lawyer in shaping meaning. Part IV discusses using voir dire to profile and identify jurors. Finally, Part V discusses the use of figurative language to create meaning. Since my practice consists of litigation on behalf of plaintiffs, many of the examples will center on the presentation from this perspective. However, these concepts may be used in any type of jury trial by attorneys on either side of the case.

B. Communication Creates Meaning And Order In The World

Initially, it helps to realize, how and why humans use language and symbol systems. The world is complex and filled with a mixture of things, people, actions, and processes which can, and often do, produce anxiety and confusion for humankind. As humans, we approach the world with a desire to reduce anxiety and confusion by creating order. Communication is the process by which we attempt to cope with and gain control over the world and our experiences. Through communication, humans create meaning and bring order to their world. Things, actions, and processes are placed in categories. Symbols and meanings are then attached to these categories and organized. When all of these categories have symbols and meanings that relate to them, humans can then organize them. For example, time and space are controlled with the creation of symbols and meaning systems that account for hours, days, miles, and so on. When you think about it, inches, feet, miles, and longitude are not real things that actually exist, but rather are abstract symbols that we create and use to create order. With the creation of symbol systems for miles and direction, when asked where a certain place is, instead of just pointing and saying, "over there", you may provide a precise description of the location. Happenings in the world may be

explained by reference to weather patterns, intentional acts, market pressures, fate, or the acts of various gods. The concepts of life and death may be explained symbolically, with concepts of god, heaven, rebirth, or reincarnation. The use of symbols and communication allows us as humans to create meaning for the world, lessening feelings of anxiety and confusion and allowing us to feel a sense of security, stability, order and control. The use of symbols and communication allows us to store meanings in our minds and relate to each other about things in the world without actually experiencing the things while talking about them. Humans can talk about the movie we saw a few days ago, or what happened last week, which is what sets us apart from all other living beings.

C. Meaning Resides in People, Not in Words

Any discussion about the nature of meaning must necessarily begin with the idea that the meanings for symbols and words reside in the minds of people, and not in things. Early in the study of human communication, a theory emerged that posited that meaning was contained in words, and if people would just be more clear and precise about their meanings, they would be better able to communicate. This "Container Theory" advanced the idea that words could and did contain precise and discreet meanings that could be conveyed from person to person. A speaker could select a word that contained, or was packed with a certain meaning, and through communication, send that word to a listener. The listener could then unpack the meaning and immediately understand the content therein and the meaning the speaker wanted to convey. Over time, however, this theory was disproved as it became obvious that meaning resided not in words, but in the minds of people.

This is illustrated by examining a few words such as "cigar," and "lawyer." If you asked any group of people what they thought about "cigars," there would be some people who would tell you that smoking a cigar is a pleasant aromatic experience, while others would tell you that cigars are foul pollutants that should be banned from all public places. Similarly, with regard to "lawyers," some people would argue that lawyers as a group are honorable people and the protectors of individual rights, while others would argue that lawyers are greedy individuals whose activities are bad for businesses, the medical profession, and insurance industry. While we can all agree that the word "cigar" is a symbol that is generally attached to rolled up tobacco, each of us creates our own unique internal meaning for "cigar" that is then stored in our minds. When we hear "cigar," we access our own individually stored, internal meaning for the word that may be very different from the meaning created and held by another person.

Implications Of The Fact That Meaning Resides In The Minds Of People

As trial lawyers we must never forget that meaning resides in the minds of judges and jurors, and as illustrated above, each judge and each juror may hold different meanings in their minds for the concepts and things that we are discussing and trying to prove. We can never take it for granted that a judge or a juror holds the same meaning for something that we hold in our minds. Anyone who litigates medical malpractice cases knows that jurors will hold varying views of "medical malpractice claims", some very positive, and some negative. Voir dire should and must be used to discover the meanings held by jurors about the issues in the case. In a wrongful termination claim you need to discover juror opinions about employers, workers, unions, and wrongful termination claims. How do jurors feel about taking disputes to the courthouse to be decided? How do jurors feel about medical malpractice cases? How do jurors feel about "soft tissue" injuries or "whiplash" injury claims in automobile collision cases?

Going further, not only must we as trial lawyers realize that jurors will hold differing opinions and meaning about the issues in the case, and not only must we attempt to discover jurors' opinions, and meanings, but we must be actively involved in the creation of meaning, and this process must start immediately in voir dire.

D. The Creation of Internal Models Of Meaning

Meaning also arises from models we create of the world in which we live. Through the process of experience and perception, humans create internal constructs or models or representations of the things they experience in the world. These constructs or models then function as meaning, generate behavior and decision-making, and allow us to function in the world. To illustrate, as we grow up, we experience an object or concept, and then form an image of it in our mind. This image becomes a perceptual model of the experience or thing. This model may only be an aspect of the actual thing it represents, but it still symbolizes the whole from which the model is abstracted. A symbol, generally a word, is then attached to this model, which gives the experience a permanence whereby it can be held in our mind, processed, stored, and recalled at a later time.

The perceptual model of the experience is comprised of constructs, a constellation of thoughts, feelings, and sensations, and becomes fused with the symbol or symbols attached to it in an indissoluble unity. This model, in turn, comes to represent the experience, apart from the actual experience itself. Thus, the model becomes a proxy or representation for the experience. Now, when we hear the symbol, the word, and

access the model of the thing we have stored in our mind, we do not experience it as something comprised of various elements; rather, we experience the model in our mind as being the actual thing it represents. The model is the experience. The fusion of the model with the symbol gives the experience a permanence whereby we may hold it in our mind and think about it over time.

As an example of how these constructs or models are formed, imagine a five year old girl encountering a dog for the first time. The brown furry dog comes up to the girl wagging its tail and licking her hand. The girl forms a model in her mind of this particular dog that is comprised of a cluster of thoughts, feelings, and sensations. This constellation might include the thoughts that form an image of the physical makeup of the dog, the sensations of being licked and of fur rubbing against her hand, and the feeling of happiness she has encountered. Together, these thoughts, sensations and feelings form an internal model for "dog." This model then becomes fused, in an indissoluble unity, with the word "dog," that may then be stored in the girl's mind. For the girl, this model then comes to represent "dog" to the extent that, at a future time when someone mentions the word "dog," the girl's particular model of "dog" is accessed in her mind and she experiences it through this model, even though it is not physically present.

Keeping in mind that meanings reside in people and not in words, imagine that this girl's three year old younger brother encountering the same dog the next day, but due to his younger age and smaller size he is knocked over by the dog when it jumps up to lick him and then he experiences a nip on the hand with the dog's teeth when attempting to pet the dog. The younger brother might create a model in his mind for "dog," as that of a menacing brown animal that pushed him down and bit his hand. His model of "dog" includes thoughts of a forceful brown animal with big sharp teeth, sensations of being knocked down, of teeth biting his hand, and fear of being hurt by the dog. Later, when the younger brother hears the word "dog," he will access the model stored in his mind and will experience the dog in a completely different way than his older sister. While in actuality, the dog is in actuality the same dog in both instances, each child, as a result of their differing ages, experiences, and perceptions, creates a different model of "dog" that is then stored individually in each of their minds, resulting in separate, individual meanings for the word "dog" for each child.

To clarify further, I use the term "model" because what is being created in the mind when we perceive an event is intended by our minds to be a replica representing the thing or process we have perceived. The term "image" conveys only a visual representation, whereas the term "model" conveys a more complete representation of the experience, encompassing thoughts and feelings in addition to the visual element.

It may be thought of as a "representational model," in that it is a model created by our mind to represent that which we have just experienced. I sometimes use the term "constructs" to describe these meaning models, because the models are "constructs" consisting of various combinations of thoughts, sensations, and feelings that are intended to be models of the things we experience in the world.

Further, the phrase "constellation of thought, sensations, and feelings" refers to the makeup of the models because these groupings can, and do change over time. In an instant, or gradually, due to new experiences, the cluster of thoughts, sensations, and feelings comprising a specific model may change with new elements being added and old elements being altered or deleted. I use the term "constellation" because, in the same way that a grouping or constellation of stars is seen as representing or resembling a mythical figure such as an archer or bull, the constellation of thoughts, feelings, and sensations making up our internal models are perceived by our minds as representing the things we experience in the world. Just as different constellations of stars can cause people to perceive these lights in the sky as representing differing people and things such as an archer or a bull, different constellations of thoughts, sensations, and feelings can cause people to form different perceptions of things and concepts in the world.

Thus, moving back to our example of the dog, when someone asks the girl about the dog, the model she has formed of the dog is accessed in the girl's mind. For her, this model of the dog is the constellation of thoughts, feelings, and sensations that are all fused together as one entity in her mind. While the girl's model of dog may change over time, at this exact point in time, the cluster of thoughts, feelings, and sensations that make of the model of the dog, are fused together into an indissolvable whole. The girl is not aware this is a model, and she has no awareness or understanding of separate thoughts, feelings, and sensations. For the girl, the word "dog" is the model she has created, and the model, even though it is incomplete and does not accurately represent all aspects of the dog in reality, the model becomes and for her is the "dog."

When I refer to the constellation of thoughts, feelings, experiences and perceptions being fused into an "indissolvable unity," I am referring to the fact that when we have these experiences, such as when the boy's hand is being bitten by the dog, these experiences and emotions are fused into a perceptual model that is not viewed as the sum of various parts, but is rather just experienced as the whole of the experience or thing. We are generally not aware of the various elements of our perceptual models, and when the boy hears the word "dog", he does not perceive, sort or weight the

individual elements of the model, but rather the model is simply experienced in the mind as the scary frightening thing.

E. The Evolution of Internal Models

With the passage of time, the experiences that we encounter in everyday life cause our models to evolve and change. As the children in our example grow up and move through the world, they will experience dogs with different sizes, shapes, colors, and temperaments. Their internal models for "dog" will incorporate these variations and will change and become more complex and intricate. For example, as the young boy grows to the point that dogs can no longer knock him down, his experiences with dogs may be more positive, resulting in changes of his internal model of "dog." His parents may buy him a playful friendly dog that becomes the boy's best friend. The feelings of fear are completely replaced by positive sensations and feelings. On the other hand, as the girl grows up, she might purchase a dog when she moves into her first apartment, only to learn that if she does not walk her dog every day before and after work, that when she come home after work, the apartment floor will be covered with feces and urine and her most expensive shoes will have been chewed up. Her warm and fuzzy feelings for the dog may be replaced with feelings of anger and frustration. These new thoughts, feelings, and sensations associated with the siblings' subsequent experiences will then be incorporated into their internal models of "dog."

When we are perceiving things through our meaning models, we do not view them like an object or concept constructed of parts, where we notice and are aware of the parts and elements that have been put together. The models are perceived by us as a unified and complete representation of the experience. Over time, however, due to experiences that may be either "personal" or "indirect," our models continue to evolve and change. Personal experiences are those we actually experience in person--those we see, touch, and feel for ourselves. Indirect or secondary experiences, on the other hand, are the experiences of others relayed to us by people such as relatives, neighbors, friends, and teachers, or information conveyed through media and literature.

For example, at election time we must decide upon a candidate for whom to vote. When considering our voting options, we base our decisions on the many models we have formed in our minds of the various candidates, parties, and platforms involved in the election process. Growing up, our parents may have been Democrats and we observed their personal experiences and the many positive thoughts and feelings they had about Democrats and the negative thoughts and feelings they expressed about Republicans. Whether we went away to college or moved out of our parent's home

and took a job, we were exposed to people from other parts of the country, differing walks of life, and socioeconomic backgrounds. During college we may have taken sociology or political science courses. Later, we may have married and settled down and started a family. We may have actually been involved in political campaigns on a local level, or may have simply followed the political campaigns on television, the internet and in newspapers. Moreover, prior to election time we have been exposed to many political ads and endorsements on television and may have actually watched a few debates.

All of these experiences become part of the creation, change, and evolution of our models of politicians and the various political candidates. When we are in the voting booth, we access these models. At this point, we do not consider our models to be representations of the various candidates; rather, the models we hold in our minds, for us at that time, are the candidates, which are the fusion of all of our past experiences and perceptions into one model of "the candidate." When we see two people vehemently debating the merits of candidates running against each other for the same office, these two people are really comparing the models of the candidates that they have formed in their minds. While the candidate is in reality that same human person, based on all of their past experiences and perceptions and the evolution of their various models relating to politics, each person has developed a model of the candidate that each believes is the correct model of the candidate. At that moment they have no conscious awareness that their perception of the candidate is really just their internally created models of the candidate and no they have no conscious awareness of the constellation of elements forming their models. Each person is vehemently certain that the candidate is who they think he or she is.

F. The Interaction of Meaning Models

When experiences occur, many times, more than one meaning model is accessed; thus meaning models interact. If there is no conflict between the models, they may not change. However, when conflicting models are triggered and accessed the result might be a change in each model or the formation of a new model that is a hybrid of the two conflicting models. To illustrate, people who have developed meaning models about the legal system which include negative attitudes about personal injury lawsuits, will likely experience conflicts among their meaning models if they themselves are seriously injured in a collision caused by the negligence of a drunk driver, and they are faced with the decision of whether or not to bring a personal injury claim. A conflict occurs because these people will also have meaning models relating to their own well-being, identity, health, work, ability to work, need for income, and drunk

drivers. Meaning models inevitably change when we are forced to re-evaluate a previous model from an altogether different perspective.

These people who dislike personal injury claims, have an ego, which will be discussed later, and their ego is based on and is made up of various meaning model related to "who they think they are" and "what is important to them." Their egoic meaning models will contain thoughts and feelings to the effect that their health and ability to work and support their family are more important than any other considerations and take precedence over considerations such as whether lawsuits are good or bad things. More than likely these people will either change their meaning models about lawsuits or form new hybrid models giving rise to attitudes such as "while I generally believe personal injury lawsuits are bad and should not be brought, in aggravated cases involving drunk drivers, we need to file such lawsuits to punish people like that," or "personal injury lawsuits are bad and should not be brought, unless they involve a very serious injury to my body that affects my ability to work." In my own practice, on several occasions I have had healthcare providers, when asking me to take on their personal injury case, "I don't think these malpractice claims are a good thing, but in my case malpractice really did occur."

When different chemicals are mixed together, they sometimes undergo a synthesis and form new compounds that have different qualities than either of the two individual chemicals that were combined. Similarly, meaning models interact to form new hybrid models. These new models may be accessed whenever an experience involves the original models, or perhaps the new hybrid models will only be accessed in certain situations.

As another example of how meaning models interact, I once met a woman who had just finished reading two self-help books by a newly famous author. She spent a considerable amount of time telling me how insightful this author was and how his books were changing her life. I ran into her again a few months later and asked her if she was still using what she had learned from this particular author's books. She explained that to her considerable disappointment, she had discovered that this author was a practicing Buddhist and for that reason she no longer took his work seriously. In talking further, I learned that this woman was a fairly devout Christian who believed that Buddhism was an anti-Christian philosophy, and as such she could not take any suggestions offered by this author seriously. She felt tricked and betrayed. Without knowing about this author's Buddhist leanings, the woman initially experienced his writings as insightful. However, discovery of the author's Buddhist background, triggered meaning models relating to Christianity and religion that interacted with her

previously formed model of the author's writing, causing a complete change in her meaning model of this person and hence, how she perceived this author's writings.

G. The Formation of Models Is A Dynamic And Reflexive Process Between Experience, Perception, And Our Models Of The Experience

The formation of our models involves a dynamic and reflexive process between experience, perception, and our models of the experience. That is, we experience, we perceive, and we form a model of the experience. When we next experience something, our model is triggered and we perceive the experience through our model, again, perceive and allowing changes or evolution in our models. After each experience and formation of a model, each new experience and perception is then mediated by the model we have created, so that the model of our previous experiences acts upon the new experience to produce new thoughts, feelings, and sensations. Experience triggers perception, but perception is affected and occurs through our existing models.

"Mediating" our subsequent perceptions of reality, means that once we have formed a model of a thing or concept in reality, when we subsequently experience something, our perception will be affected by, or filtered through, the existing, previously created model. Consider for example, a person who makes his first visit to the local museum with a friend and when they go through the abstract art section this friend tells him that abstract art is stupid and ridiculous and that the artists are all drug addicts trying to rip off the public by selling worthless paint on canvas for outrageous prices. If this person without scrutinizing the abstract art further, simply forms negative meaning models for abstract art based on his friend's opinion, when he next visits a gallery or museum containing abstract art, he may likely pass by the abstract art without truly experiencing it, because his perceptual meaning model for abstract art has deemed it worthless. In this way, the person experiences the art, forms perceptions of the art based on his friend's assessment, and then the next experience is filtered through his already created meaning model. In this way, our thoughts affect how we perceive reality.

As another example, a woman who has had a loved one killed by a drunk driver, may have as a result formed the opinion that drinking is evil and bad. In the future, this perception will affect how she perceives alcohol, drinking as an activity, and people who drink alcohol. It may cause her to perceive any drinking of alcohol as bad and people who drink alcohol as evil people. The experience of her loved one being killed by a drunk driver will have caused her to form perceptions and meaning models that will then mediate her future experiences in that when she is exposed to situations in

which people are consuming alcohol, she will form negative perceptions of these activities or avoid them altogether, instead of simply directly perceiving the experiences as they are in reality, which may in many situations, be fairly innocent and benign happenings. Perhaps, over time, she may share a glass of wine over dinner with a boy friend, and experience warm loving feelings over the evening, and as a result, allow this new experience to change her perceptual models of alcohol, such that in the future she will perceive situations in which people are consuming alcohol differently.

To illustrate in the extreme, people who suffer from anorexia provide an example of how our perception of the world is mediated by the models we form. Anorexics create models of themselves containing thoughts, feelings, and sensations causing them to perceive themselves as being overweight. After extreme dieting and weight loss, when anorexics look in the mirror, their perception of themselves is filtered through their model of "how they look." This, in turn, causes them to perceive they are still overweight. While they are in fact underweight, their models stored in their minds cause them to perceive themselves as being overweight. In this case, thoughts generated by our meaning models affect how we perceive reality.

This dynamic, reflexive process involved in the creation of models, involves the perception of experience which produces our models. With each subsequent experience, our perception of reality is to an extent affected by the models we have created. Thoughts, feelings, and sensations generated by perception of the new and subsequent experience, cause changes in our models, which in turn cause changes in how we perceive subsequent reality, and so on. As we move through the world, at each moment we are continually experiencing and accessing models, incorporating new information, and producing changes in our models. Our thinking involves constant and continual change and evolution of our models of reality. Paradoxically, at any one point in time, each model consists of the sum total of all of our experiences and, in our minds, feels like and seems to be a concrete, fully formed, and fixed model of reality. However, with each thought about the reality, our models change and evolve.

As we move forward we will see that different people have different models in their minds for various things, and while the thing is the same, the model each person has may be different, but for each person their model is perceived as the real thing.

H. How Thinking And Experiences Change Meaning Models

Experiences change our model, and hence our perceptions of the things in the world. The boy who was afraid of dogs, at an older age is given a small fluffy happy puppy, causing his model of dogs as something to be feared to change. Meeting someone in person that we had only known by hearsay descriptions, may allow us to see sides of the person that we had not previously been aware of causing us to change our meaning models of the person.

Thinking is itself an experience that may also cause our models to change and evolve. When we were assigned a research paper in school we would first do some initial research to gather background information about the topic. After completing the research, we would mull it over in our minds, thinking about how the information could be assembled and what implications could be drawn. We might have thoughts about various possibilities we could write about, rejecting each possibility until our thoughts seemed to crystallize and we knew what we wanted to write about. This process involved perceptions about various models representative of the information and ideas involved in the project. Along the way, our thinking produced changes in our models.

We have all had experiences in which we read a book or watched a movie we thought we understood, only to realize when discussing it with a friend over coffee that they interpreted the ending differently than we did. As we consider and think about our friend's observation, our thinking produces new perceptions that are incorporated into our models, thereby causing them to change. As these models change, new thoughts and conclusions about the ending of the book or movie are generated. I once had a friend tell me that a friend had told her that a book that she had previously read was supposed to be a metaphorical representation of a certain philosophical concept. She told me that she had not even considered or picked up on that metaphorical representation while reading the book and that she now wanted to go back and read it again. The experiencing of talking with her friend and thinking about the book no doubt changed her perception and meaning model of the book. Again, this illustrates that thinking about reality may affect the evolution of our models in the same way as personal experiences affect models.

My favorite example in this regard comes from my personal experience. I once hired a fairly young female paralegal. As a sideline activity, in the past, I had spent quite a bit of time with photography and had opened and operated a photographic gallery in which I exhibited my own photographs, along with other photographers. The woman that I was dating and went on to marry was quite attractive and was kind enough to be my model in a number of my photographs of neon nightscapes reminiscent of Edward Hopper's "Nighthawks" paintings. While I never intended these photographs to be

sexually suggestive, some of them, such as one with my wife standing in front of a motel bathed in red neon light, or while walking across the Great Sand Dunes in Colorado in a nightgown, certainly allowed the viewer to superimpose their own sensual thought onto the photographs. My photographs were favorably reviewed by the art critic in the local newspapers and my wife gained some notoriety as a model. These were always my favorite photographs and shortly after I hired this young paralegal at my law office, I decided to replace the landscape photographs in my office with several photographs in which my wife appeared. A few weeks later I while I was standing in my office looking at my photographs, my paralegal came up and sheepishly asked why I had these photographs of various women hanging in my office. I said simply that I had once been a professional photographer and that my wife often accompanied me in my travels through the city and elsewhere when I took photographs, and that at times I would ask her to do such things as "go stand in front of that motel" and she was game enough to do so. I explained that I not only enjoyed taking photographs with her in them, but that as it turned out they were my favorite photographs and that I loved looking at her. After explaining that to the young paralegal, a smile spread across her face and she exclaimed, "That changes everything." After looking over the photographs again, she again, in an even more emphatic tone, said, "This changes everything." She went on to explain that she did not realize that my wife was the woman in the photographs, and that after I hung these photographs on the wall, she began to wonder if I was some sort of philandering dirty older man who fantasized about women. She told me that the photographs had even caused her to lose some respect for my moral character, and she had even begun to worry that I was going to make some advances toward her. I explained that the woman in all the photographs was my wife and went on to explain that we went on to get married and had a solid relationship. Over the following weeks the paralegal made several comments about how, after studying the photographs, she really liked and enjoyed them and that she thought it was great that my wife and I enjoyed the process of creating the photographs together. It was clear to me that my paralegal had formed some rather negative impressions of me after viewing my photographs, but by simply telling her that the women in the photographs were my wife who I loved, that she completely changed her perceptions of not only the photographs, but also my moral fiber.

This example not only illustrates how thinking can change our perceptions and meaning models, but also demonstrates how the context in which experiences and perceptions occur, and the context in which meaning models are accessed, can change our perceptions and hence our meaning models.

As trial lawyers this is important, because we hope that as the jurors experience and think about what we are presenting during the trial that they may allow their meaning models relative the aspects of our case to evolve. Think of how exciting it would be, while trying a jury trial, to have jurors instantly change their perceptions of some aspect of our case, as a result of an explanation or illustration presented to them in the same way that the that the circumstances of my wife in my photographs was presented to my paralegal.

As will also be discussed in following sections, the extent to which our models are able to change and evolves depends on how rigid we allow our meaning models to become, how rigid our egos are constituted, and how willing we are to let in and consider new information.

I. How Models Function As Meaning and Guide Actions In The Same Way That Maps Guide Us Through The World

The models we create of our experiences and things in the world function as meaning, guide our thoughts and actions, generate behavior, and help us make decisions as we move through life and the world. In the same way that a map allows us to navigate through a territory, models guide our thoughts and behavior and help us navigate through the world.

When someone asks us if we want to smoke a cigar, as a rule, it is the previously formed model of "cigar" already formed and held in our mind that dictates our decision. When the parent of the brother and sister discussed above asked either child if they want to go over to friend's house to play with their new dog, it will be the previously formed model of "dog" that guides their decision. When faced with decisions about things, we access the applicable meaning models we have previously created, apply the constellation of thoughts and feelings to the new situation, and make our decision. In this way the models mediate our perceptions of new situation, and also impact and guide our reactions. .

We have all had experiences where someone asked us if we liked something, and we had to stop for a minute and think. After thinking for a few seconds we answered, "Yes, I guess I like that." Although we may not have been consciously aware we held that attitude or belief of "liking," the thoughts, feelings, and sensations that would give rise to that belief or attitude were present within our internal models. The new experience of being asked about something causes perception, the application of our

model, and the conscious formulation of a belief or attitude. It is the model functioning as meaning that produces the conscious expression of the attitude.

Further, as previously discussed, when we experience something, there are multiple models being accessed at any one time, and the process of applying and creating meaning is going on as a result of the interaction of multiple models of meaning. When asked by our spouse or friend if we want to go see a movie on a week night, we might access models--for example, not only do we think about whether we are interested in the subject matter of the movie, but also how late we will be out, when we will get to bed, our sleep patterns, our work schedules, what we have to do the next, and how we feel at a particular time. All of these models will interact to produce meaning, an ultimate decision, and finally, action, such as the decision to stay home because there is too much going on at work the next day. When asked whether we are going to vote in the upcoming elections, our ultimate decision might be based on a multitude of meaning models relating to such things as our upbringing as republicans or democrats, civic duty, the candidates, and the odds that our individual vote will make a difference.

J. Our Indirect Relation To The World-- We Confuse Our Models For The Real World And Begin To Relate To The World Indirectly Through Our Meaning Models

As humans we forget that the models we create are merely representations of the real world. Believing that these models are in fact the real things in the world, we begin to relate to our meaning models as if they actually are the real things they represent. We begin to relate to the world through these models. Our future experiences then become mediated by and through these models, which in turn determines how we will perceive the world and how we perceive the choices available to us. In other words, after creating the model, when something is experienced in the real world, instead of relating to that experience freshly and forming new and present perceptions based only on what we are experiencing at that time, we access the internal models we have created of the world and experience the new situation through our models. Confusing the model for the actual reality, we relate to the world through the meanings contained in our existing models. We forget that our models are simply instruments to be used like maps to help us navigate the territory. Instead, we incorrectly begin to perceive our models as an accurate representation of the territory, or reality, and we relate to the world through our internal models, instead of relating to the actual reality. As such, we no longer directly relate to and experience the real world.

Humans have been defined as "symbol-using" and "symbol-misusing" animals, separated from their natural condition, by instruments of their own making. This definition suggests that while the use of language and symbols is what distinguishes humans from other animals, at the same time, our use of language and symbols also creates a situation where we are no longer able to relate directly to reality. Confusion is a key element here. We come to relate to the world through the symbols and models we have created. We confuse the models for the actual reality and no longer relate directly to the real world.

History provides us with many examples of problems associated with this phenomenon. Women were burned at the stake in medieval times by the Spanish Inquisition because the Inquisitors created models in their minds of these women as witches. The models of these women and their behavior were comprised of inaccurate constellations of thoughts, feelings, and sensations that functioned as meaning, which gave rise to the belief that the women were witches. As such, they concluded these women should be burned to death. The Inquisitors confused the models of the women with the true reality of the women, and they then began to relate to the women through their models as if the models were the women. By confusing their models with reality, they were unable to see the women for who they really were. Likewise, Adolph Hitler created models of Jewish people as subhuman and the German State as the instrument to purge the world of Jews, Gypsies, and other minorities. For Hitler and many of his followers, these models came to represent these people in reality. Confusing the models with true reality, Hitler and his followers were unable to perceive these people accurately.

More mundane examples can be found in the models we create of politicians, movie stars, and professional athletes. We create models of professional athletes and relate to the athletes over time through the meaning models, idolizing them and having our kids buy their jerseys, only to find out that they have been taking performance enhancing drugs, abusing their spouses, and lying to the public about their behavior for years. We create incomplete and inaccurate meaning models for these athletes and then relate to the models of these people rather than the real people represented by the models.

At this point, we must remember that healthy functioning human beings, as human symbol users, also share the inability to relate directly with the real world. By virtue of the fact that we create meaning through the use of the representative models, we relate to the real world indirectly through our self-created, internally stored meanings. This is a subtle, yet profound, product of our use of symbols. However, the fact that our use of symbols prevents us from relating directly with reality does not mean we

are all suffering from perceptual problems. For most of us, the use of symbols does not create problems in our lives. Nevertheless, as students of impression, formation, and communication, this byproduct of our use of symbols and language is something we must be aware of and understand.

K. How And Why Our Internal Meaning Models Differ From The Real World We Live In Two Different Worlds

Given that our language and symbol system has created a situation in which we are no longer able to relate directly with the real world, but instead relate to the world through our internally created models, there follows another subtle and somewhat profound realization. Because of various constraints on our ability as humans to accurately perceive things in the real world, we are unable to construct completely accurate representative models of that world. As a result, there will necessarily be differences between the real world in which we live and the internal models of the world that we create in our minds. Thus, we live in two different worlds--the real world and the world created by our models in our minds. Our ability to accurately perceive things in the real world and, in turn, our ability to construct accurate representative models is constrained by three things: (1) the physical limitations of our perceptual senses, (2) the limitations of the linguistic system in which we function, and (3) our unique individual history and experiences.

1. The Physical Limitations Of Perceptual Senses

Due to the physical limitations of our perceptual senses, humans are not able to perceive the world exactly as it is. This, in turn, limits our ability to form accurate representative models of reality. First, our brains are only able to process a certain amount of information at a certain rate at any point in time. When we walk through a crowd of people in a busy part of the city, our brains will only process a certain amount of the information and stimuli that we are exposed to. There is so much information and so many things going that it is impossible for us to capture, process, and assimilate all of the activity around us. Additionally, our perception appears to focus on aspects of the environment that are important to us for one reason or another, and we tend to pay more attention to certain aspects of what is going on around us than others. For example, a young single man or woman walking down the street might tend to focus on other attractive appearing single persons. Another person interested in current fashion might be more focused on store windows or the fashions worn by others walking by. If you ask these different people to describe the street scene, while there would be some common perceptions, there would also be

descriptions given by one person that would not be included in the description given by the other person.

When teaching a communication studies class when I was in graduate school, I performed an experiment in which I told the class ahead of time that I had invited a guest speaker to come to the class to talk on a subject we had been discussing. The speaker showed up and was introduced to the class. I arranged for another person to then walk into the class claiming that they had been asked to speak and to express anger that I had also asked another person to speak. The second person expressed some anger and then threw a stack of colored papers in the air and stomped out of the class in an angry manner. I hesitated for a few minutes in order to let the students absorb the embarrassing and surprising spectacle. I then asked the first speaker to leave, and followed her to the door of the classroom and let her out the door. I then confessed to the class that this was all a staged act, and we then engaged in a discussion of what they had seen. I asked questions about the color of each speaker's hair, the color of their clothes and shoes, and the color of the paper thrown in the air. There were many differing descriptions given of the appearance and dress of the actors and of the colors of the papers thrown into the air. The discussion became humorous in that some people were willing to bet money that one speaker had on brown shoes when in actuality the shoes were black. The experiment illustrated how our brains are only able to process a limited amount of information, and process information selectively, and as a result, the models and images of things and experiences that we create in our minds, will always be to an extent limited, and incomplete and inaccurate representations of reality.

As another example, due to the limits of our auditory and visual systems, we are only able to hear sounds within certain frequencies, we are only able to see and visually appreciate a limited part of the color spectrum, and we are not able to see and appreciate things and processes occurring on an atomic, sub-atomic, or molecular level. When we walk down the street on a pleasant spring day, enjoying the sights and sounds of the world, we are constructing and formulating representative models of the world as it exists for us at that point in time and location. While the model we form of the world around us while walking down the street becomes in our minds a representation of the world around us, and hence, the meaning of the world at that place and point in time, the model is not a fully accurate representation. There are sounds occurring which we cannot and do not hear, and these sounds cannot be incorporated into our models because we are not aware of them. On any given day, we are not aware of the bugs in the grass beneath our feet, the process of decay in the limb that has fallen from a tree, or the pollen we cannot see but are inhaling. Although

the model we form of that day may be relatively accurate on one level, it is not a completely accurate model of the real world.

2. Linguistic Restraints

As discussed, language and symbols enabled us to rise above all other animals and create the incredible world in which we live today. However, this use of language limits our ability to accurately perceive the real world, which in turn limits our ability to form accurate representational models of the world. Language acts as a "terministic screen" that mediates and distorts reality, causing us to always be somewhat out of touch with reality. Kenneth Burke developed the concept of the "terministic screen" when he examined a series of different black and white photographs taken of the same object. The only difference in the photos was that each photograph was taken using a different colored filter. He was struck by the fact that something as factual as a series of black and white photographs taken of the same object, from the same angle, revealed notable distinctions in texture and even form depending on the color of the filter that was used to cover the lens. Burke went on to demonstrate that, in the same way, language acts as a terministic screen, distorting reality for humankind.

In order to communicate, we must apply symbols to things, processes, and experiences in the world. This application of a symbol to a certain aspect of reality focuses our attention on certain aspects of reality, and at the same time deflects our attention away from other aspects of reality. In order for us to use language and symbols, we are forced to engage in a process of "generalization." That is, when we experience a thing or event in the world, a particular aspect of the experience draws our attention. We then attach a symbol to this aspect of the experience, and the symbol comes to represent the experience. Such symbols focus our attention on one aspect of reality and deflect our attention away from others. The symbol we attach to this limited reality becomes a generalization of the whole because it only describes and represents a portion of the actual reality.

The symbol, that really only represents a limited aspect of the reality or event, becomes the representational model of the entire event. Once the symbol is attached in our mind to the reality, a model is formed in our mind that represents the reality to us. This model is an incomplete representation of the reality. In the future we will not relate to reality in terms of its whole and complete reality. Rather, we will relate to it through the model we have created, which represents only a portion of the thing. For example, attaching the symbol "Baptists," "Jews," or "Muslims" to individuals in a crowd draws our attention towards specific aspects of the individuals and their religion, and at the same time, deflects our attention away from many other aspects

and qualities of these people, such as their mental or physical makeup, intelligence, character, sense of humor, or their daily jobs. Labeling someone as a "priest" or a "lawyer" causes us to view the person in terms of our limiting association with these symbols and deflects attention away from their many other attributes. Calling a woman a "mother" causes us to think of her in a limited way. The label "mother" limits our thinking of her as someone involved with nurturing and caring for children and deflects our thinking away from other aspects of her makeup and personality. Calling the same woman a "lover", "mistress", or "girlfriend" causes us to focus on completely different aspects of her personality. Calling this woman who may in reality be both a mother and a wife, a "science teacher" causes us to focus on completely different aspects of her makeup. In the same way, calling a finely crafted piece of antique furniture a "chair" focuses our attention and thinking of the object as something to sit as opposed to a finely crafted piece of art, and calling a linen handkerchief a "nose rag" rather than a linen handkerchief, causes us to focus on different aspects of the use of the handkerchief.

In this regard, communication scholars note that words, whether spoken or unspoken, can trick us into thinking that by attaching a word to a thing that we then know what that thing is. In reality, by attaching a word to the thing, we may partially obscure the essence of the thing with a label. People, things and concepts that exist in the world, are multi-faceted. We are only able to perceive and understand a limited part of this reality. However, by attaching words to these things, we reduce them to something we can grasp with our minds. While this allows us to begin to develop images and ideas of things so that we can begin to understand them to an extent, and store these images and models in our minds, these words and images are not representative of the total reality.

People are born into and live within certain language systems which act as terministic screens to affect their perceptions of reality. We live and work within these systems affecting our perceptions of reality. If a woman having marital problems involving an unfaithful husband goes to see a Catholic priest for advice, the language and symbol system the priest is operating in might cause the priest to define the problem as a lack of faith in God, and his solution might involve increased prayer for the wife and forgiveness of her husband. If this same woman goes to see a lawyer for her marital problems, the language and symbol system the lawyer is operating in might lead the lawyer to define the problem as infidelity on the part of the husband, and the solution offered might involve the filing of divorce proceedings against the husband.

The abilities of both the priest and the lawyer to objectively perceive and relate to the reality of the woman are distorted and mediated by the symbol systems in which they

are operating. Priests generalize religious significance from experiences, and their models reflect this religious orientation superimposed on reality. Lawyers generalize legal significance from reality and their models reflect their legal orientation superimposed on reality. The symbols each attaches to reality and their models will reflect their orientation. Whereas the reality for the woman may simply be the desire to be free of an unfaithful husband, the priest may label the act of the wife wanting to get away from a husband as a sin with very grave religious consequences, while the lawyer may label the same acts as grounds for divorce coupled with financial consequences. The language systems for the priest and the lawyer, to an extent, constrain their abilities to objectively relate to the relative reality of woman's situation.

Due to the natural processes of selection, deflection, and generalization involved in the use of language and symbols, the symbols we attach to experience are only able to capture a limited part of the essence of the reality they are describing. This limitation of the ability of language and symbols to capture and represent accurately the complete essence of reality in turn results in the creation of models that do not accurately and completely reflect reality. The inaccuracy of our models due to the constraints of the language system creates terministic screens inhibiting our ability to relate directly with reality.

3. Unique Personal History--We All Live In Different Worlds

Our ability to accurately perceive reality and to create accurate representational models is also limited by our unique personal history, which affects how we perceive reality. In the same way the use of symbols and language selects and deflects our focus and attention with regard to our perceptions of reality, our unique personal history determines how we will perceive reality. This in turn affects our ability to form accurate representational models of reality. For example, imagine two different young children, on their first camping trip, who experience a camp fire for the first time. Around the fire various people are sitting, standing, cooking, singing, and laughing. One child moves up to the fire to be warmed, and accidentally drops a plaything into the fire. The child tries to reach into the fire to grab the dropped plaything, is burned, and experiences excruciating pain, and has to be rushed home or to the hospital for treatment. This child's perception of the fire will be affected by the unique personal experience of being burned. In perceiving the fire, the child's attention will be focused on the hot destructive power of the fire and deflected away from the many other positive aspects of the campfire experience. The meaning model this child forms in her mind will be selected to and focused on the experience of being burned and will likely generalize the destructive burning potential of the fire and form

a meaning model including thoughts about the hot destructive nature of the fire. The model will include feelings, fears, and sensations of pain. In the future when this child encounters a campfire type situation, the stored meaning model that is accessed will more than likely cause the child to conclude all campfires are bad and should be avoided, and the child will act accordingly. For this child, only the negative characteristics have been abstracted out of the reality of the bonfire and incorporated in the model.

Imagine, a second child arrives at the campfire and moves close enough to the fire to be warmed, but not close enough to be burned. There are people sitting around the fire singing and laughing, and the second child joins in. This child forms a model of the fire that incorporates positive thoughts; the fire is good because it provides light and warmth, feelings of happiness, and a sense of well-being. The child stores this model in his mind. Contrary to the first child, the second child's attention is selected to, and focused on, the positive characteristics of the fire. As such, these positive characteristics are generalized out of the experience in forming a model of the fire. When the second child thinks of a campfire in the future, the accessed meaning model will more than likely produce positive feelings, sensations, and thoughts to the effect that the campfire is something to be enjoyed.

As another example, I had a friend in college who hated hunting. He told me that as a young boy he was required to go on hunting trips with his father and he was made to retrieve the ducks and geese that were shot and to wring their necks and kill them. When he complained, he was laughed at by his father and his father's friends. This person further told me that his best friend, who grew up on a farm in Nebraska and loved to hunt, had tried for years to take him hunting. He said his friend would always try to get him to be comfortable with handling dead birds they had shot and to clean the birds for cooking. My friend said that no matter how hard he tried, he could never get over his bad hunting experiences as a child and could just not get comfortable killing and cleaning birds. By virtue of his past bad experiences with hunting, my friend developed meaning models at such a young and impressionable age, that were infused with such negative thoughts, feeling and sensations, that he could never subsequently the reality of hunting in the same way as his best friend, who loved the hunting experience. To this extent, based on their unique personal histories, with regard to hunting, the two friends live in different worlds.

In general, the objective reality of campfires and hunting is similar for all of these people. However, the unique personal experiences of these people are different, resulting in differing perceptions of campfires and hunting. Each person produces differing models of the experience, which, in turn, yields differing meanings to be

applied to future encounters relating to campfires or hunting. This results in different thinking, decisions, and behavior with respect to future experiences. The differing personal histories function as terministic screens affecting and mediating future perception of in general. For one person, negative aspects of the experience are selected out of the entire experience and given prominence, while with another person, other more positive aspects are selected out of the experience and given prominence. One child only sees the negative aspect bonfires and is not able to see the positive aspects. The other child only sees the positive aspects of bonfires and may not appreciate the dangerous aspects. Each believes their perception of the experience is an accurate perception of reality.

This unique personal history that shapes our perception may be seen as a continuum with a single experience that shapes our perceptions and meaning models on one end of the continuum, to a life long series of experiences that on the other end of the continuum. People who grow up in the inner city of Chicago will grow up and live in a different world than people who grow up in the suburbs of California. Muslims who grow up in the Middle East will live in different perceptual worlds than people who grow up in America. While a piece of beef cooked and served as "steak" is objectively exactly the same, a meat eater, a vegetarian, and some Hindus, based on their unique personal history will perceive the steak differently. As we go through life, we develop models based on our unique backgrounds, and these meaning models mediate our perception and interpretation of new experiences. Some people like plaintiffs lawyers some people dislike plaintiffs lawyers. Each person's meaning models will necessarily differ from the meaning models of others, due to their unique backgrounds and experiences. Thus, we all perceive reality in a different way. In this respect, we all live in relatively different worlds.

L. Reconciling the Fact that Internal Models Will Not Accurately Reflect Reality The Map Is Not The Territory

We must remember and be aware that our internal models of reality differ from the outer objective reality. Our maps, therefore, are not an accurate representation of the world. The great linguist, Korzybski, reminds us "the map is not the territory;" and, while the maps we make are crucial to our ability to navigate through the territory, no matter how much detail was put into the map, it would be virtually impossible to make a map that exactly represented the territory. When Korzybski explained that the "word" was not the "thing" it is used to represent, he was emphasizing that people are lulled into thinking the "word" is the "thing," and they forget that the "word" is merely

a label representing a generalization or an abstracted portion of the thing that may not account for all of its characteristics.

The same is true of our meaning models. We create models of the world that we store in our minds. In the same way we use maps to guide us through territories, we then use these models of the world to provide meaning and order, to guide us in our future experiences, and to help us determine how we will live or behave. We do not create models for the sake and purpose of creating completely accurate and perfect models. Rather, we create meaning models that are facsimiles of things in the world, allowing us to provide meaning and guiding our future perceptions, decisions, and behavior. Like maps, the more accurate our models, the more accurate our perceptions will be in terms of our ability to perceive and react directly with reality. The more accurately we are able to perceive reality, the more efficiently we are able to move through the world in our daily lives. Based on prior discussion about the constraints imposed on our ability to create accurate models by our perceptual systems, language systems, and unique personal experiences, we know we are not be able to form completely accurate models even, if we try our hardest to do so.

The meaning models each of us creates will differ to an extent from the reality they represent. Knowing that the models will differ from reality should not trouble us when we realize that these differences are a natural and unavoidable consequence of our human perceptual systems, use of language, and unique backgrounds and experiences. However, it is important to be aware of the basic principles of meaning models and the use of symbols. Our models will differ, not only from the reality they are supposed to represent, but also from the models others create. Our meaning models are not reality, and we should not confuse them as such. When these two basic principles are kept in mind, intrapersonal communication becomes the process of comparing meaning models with the reality they are supposed to represent. We must learn and appreciate how our meaning models differ from reality, and understand how we have focused our attention on certain aspects of reality and at the same time have deflected our attention from other aspects of reality. Moreover, interpersonal communication also becomes the same process of discovering meaning models of others and comparing them to our own. In a sense, much of trial practice consists of discovering the meaning models of others and attempting to create a consensus among the variously held models. As will be discussed more fully below, as trial lawyers we must enter each trial with full awareness that each juror may have meaning models different from ourselves and each other, and that each word we use may be interpreted differently by each juror. Our task will be to present the case in a way that connects with the meaning models of the jurors.

II. How Models of Meaning Function

To fully appreciate the impression formation process, it is necessary to understand several important aspects of the use and application of meaning models. The following section discusses how meaning models function.

A. Meaning Formation and Application: Conscious Versus Unconscious

Largely, the process of perception and the application of meaning models is an unconscious, repetitive process. Every thought involves the creation of meaning through the process of perception and the application of meaning. Every experience encountered produces the formation, application, or change of meaning. We are so practiced in and accustomed to this process that we are generally not aware it is occurring.

Most people have had experiences in which they were performing a task, such as driving somewhere in a car, and all of a sudden realize they have been driving for a period of time and have reached their destination. Because they were deep in thought, they cannot consciously remember all aspects of driving the car to the destinations. In these situations, their minds had been involved in perceiving what was occurring on the road; they had been applying meaning and their models had been generating decisions and behavior as to whether to stop, speed up, or turn. They had been so deep in thought that they were not consciously aware of the process occurring in their minds with regard to driving. Due to their well developed models and considerable experience with driving, however, they were able to operate the car with their mind on a form of auto-pilot. In these situations, we are engaged in unconscious, repetitive behavior, and are not consciously aware we are forming perceptions and making decisions.

This type of unconscious, repetitive thinking often occurs on a more regular basis in people who become too focused on the thoughts in their minds, in people who confuse their models with the reality they represent, and in people who develop overly rigid meaning models. People who spend too much time thinking about the past or the future tend to lose touch with the present, which causes them to lose touch with reality. These people live in the thoughts in their minds. When an experience occurs in the present, they are unable to devote the time or energy necessary to let go of their thoughts and focus their attention on the present. Furthermore, they are incapable of

perceiving and ascribing meaning to the experience, and they are not able or willing to efficiently process information and integrate it into their models.

Because conscious active thought processing takes time and energy, some people are not willing to expend this energy, preferring instead to remain lost in their thoughts. When confronted with an experience while deep in thought, these individuals find it is easier to shift into an unconscious, repetitive thinking pattern than to focus their attention on the present and actually process what is going on. They operate in a somewhat closed system of perception, failing to take in new information. As such, they continue to make the same decisions over and over again because they never take in new information and adapt. In such cases, these individuals react to the models in their minds rather than reacting to reality. That is, rather than reacting to and processing new experiences, some people, engage in a repetitive process whereby they simply perceive the experience through their already existing and formed models, which generates already existing and formed perceptions, without appreciating the new experience, and its potentially new and unique aspects. This type of thinking does not involve the incorporation of new experiences into meaning models and does not allow for the evolution of meaning models, and hence does not involve new ideas and perceptions.

People who confuse the meaning models for the reality they are supposed to represent tend to lose touch with reality. They confuse the model for the real thing, and begin relating to the model separate and apart from the reality itself. These people lose touch with reality and operate in closed perceptual systems. This results in a failure to appreciate changes occurring in the reality because they are attending to the model instead of reality.

To illustrate this point, imagine a recently married husband who creates a model of his wife based on his perceptions of her at the time of their marriage. This model is comprised of the constellation of thoughts, feelings, and sensations that he experienced at the time of their marriage. Over time, man begins to confuse the model of his wife with his real wife. He relates to the model of his wife separate and apart from his actual wife. In so doing he fails to accurately perceive his wife and fails to appreciate changes in her life and personality. The husband fails to take in new information. Over time the wife adapts to life around her, and her attitudes, values, and needs change. The husband, however, due to the fact he has confused the model in his mind with the real life wife, does not relate directly with his wife, and does not perceive the changes in his wife's attitudes, values, and needs. Thus, he does not incorporate the changed aspects of his wife into his model. One day the husband is served with a divorce petition and learns his wife has become bored with him and has

begun seeing another man. Because he has confused the model with reality, the husband has lost touch with the reality of his wife and how her attitudes and needs changed over time. Thus, the model became static over time, resulting in repetitive, unconscious thinking. Early in my career as a lawyer, when I handled divorce cases, I was hired by several men who were taken completely by surprise when they were served with divorce papers and found out to their complete surprise that their wives had been seeing other men, in some cases men that they socialized with. In several of the cases the wives appeared to hold a lot of anger toward their husbands for neglecting and discounting them over the years of their marriage. In looking back on these men I realize that some of them created meaning models of their wives, and then over the years began relating to their meaning models of their wives rather than the wives themselves. In other words, due to laziness, busy lives, or the rigidity of their meaning models, these husbands failed to notice and appreciate the changes in the wants and needs of their wives, but rather, continued to relate to them through their outdated meaning models as the women the married years before. The wives changed and the husbands failed to update and incorporate the new and changing aspects of their wives into their meaning models.

The same process occurs with people who develop very rigid meaning models that are resistant to change. For various psychological reasons, these people refuse to integrate new information into their models, which means that their perception, and hence, their behavior, will be fairly repetitive. These people tend to confuse their models with reality and begin relating to their models as reality. Since their models never change, their perceptions and decisions become automatic and their thinking becomes unconscious and repetitive.

B. Presence: Focus on the Here and Now

The extent to which we are consciously aware of our thought processes may be described as "presence," or being "in the here and now." "Presence" is the extent to which we are focused in the present moment, with awareness of how we are reacting to the experience and creating and applying meaning. Psychologists conducting group therapy sessions have learned that group members attain greater self-awareness and experience improved progress and psychological growth when encouraged to focus on the "here and now." Psychologists discovered that when people sat around and talked about the past and the future, they tended to be more constrained by their repetitive patterns of behavior. However, when the group members focused on themselves and the others in the group in the present moment, they became more aware of themselves,

their inner processes, and the processes going on in the group around them. The latter group participants was better able to break out of their repetitive patterns of behavior.

Fritz Perls, the creator of Gestalt psychology, emphasized the importance of self awareness and living in the here and now. Perls believed there were three layers, or zones, of awareness: awareness of the self, awareness of the world, and awareness of what is between the self and the world. Perls saw the zone between the self and the world as a sort of intermediate zone of fantasy which prevented the person from being in touch with either himself or the world. He thought the intermediate zone of fantasy was the zone of the mind containing our thoughts about the past and the future. Perls thought that the activity involved in this intermediate zone took up so much of our time and energy that there was very little energy left to be in touch with reality. That is, if a people spent all of their time thinking about the past or the future, they would not have enough time or energy to be aware of what was going on around them and to process their present experiences. These people became out of touch with the present moment. Perls believed the goal of therapy was to integrate the thoughts of the past and future with the real self and the real world, allowing the individual to be more focused on the real self and the real world.

The concept of staying focused in the "here and now" is applicable to the discussion of meaning. People who spend too much time in repetitive thinking, or who confuse their meaning models with reality, and people with rigid meaning models, lose touch with and become unable to relate directly to reality. These people begin relating to the world with unconscious, repetitive thinking and behavior. That is, instead of being focused on the hear and now or the self, the person simply falls back on their preformed meaning models, and relate to reality entirely through their preformed perceptual models without being completely focused on what they are actually experiencing. In other words, they seldom experience something freshly, but are always imposing a preformed meaning model on the experience and thinking, "Oh, this is like "such and so" rather than being able to perceive the new and fresh aspects of the experience as it is occurring in the present moment. The way to avoid unconscious, repetitive thinking is to maintain an awareness of the process of impression formation, and to stay focused on the present moment--the here and now. Awareness of how models are created, stored, and accessed to create and apply meaning and perception enables us to avoid the trap of repetitive, unconscious thinking. Meaning and perceptual models are necessary for us to think and communicate, but we must always be aware that we are using these models to mediate our experiences, and hence, we must be aware of our use of models and be in touch with the current experience of the reality we are experiencing.

Time spent in thinking about the past and future can be and is important, and necessary, and has its place. If we perform a task and fail, it is always helpful to try to look back and figure out how we failed, and to think about what we could do better in the future. Creativity, exploring new ideas, and "thinking outside the box" require time spent contemplating the past and future, as well as fantasizing. Problems only arise when we spend too much time thinking about the past and future, such that we do not have the time and energy to focus on the here and now, or when we begin to believe that this world of thought is the real world. That is, through repetitive thinking, confusing perceptual meaning models with the real world, and by spending too much time thinking about the past and future through these meaning models with repetitive thinking, we lose touch with what is going on around us and are unable to process new experiences happening in the now. Focusing on the present allows us to engage in the accurate perception of reality and the processing of information so we may accurately integrate new information into our perceptual models.

As we will discuss later, as trial lawyers we must understand that during trials, some jurors will engage in repetitive thought patterns, using preformed meaning models from the past, and will be thinking such things as, "Oh, here is a plaintiff's lawyer and I don't like plaintiff's lawyers", or "Oh, this is a medical malpractice case and I think medical malpractice cases are bad for society and the health system." Our job will be to try to get these jurors to focus on the here and now and to get them to stop unconsciously engaging in repetitive thinking with their preformed rigid perceptual meaning models. If we can get them out of their repetitive thought patterns and get them focused on the here and now and the actual facts and issues of the case in front of them, we may be able to allow them to experience the trial in a way that will affect how they form meaning for and how they perceive the issues of the case.

C. Components of Strongly Held Meaning Models

1. Self-Concept

Just as we create perceptual meaning models to represent things we experience in the world, we also create perceptual meaning models of our self-concept or ego. Self-concept or ego refers to the perceptual meaning model that represents "who I am." In reality, this model is really "who I think I am," because the ego is the culmination of thoughts, feelings, and sensations collected over time and integrated to form it. Like all models of perception, our ego is not who we are in reality, but rather how we see ourselves and who we think we are as a person. As is the case with all perceptual models, the ego is generally not completely accurate, and for the reasons discussed above is generally an incomplete representation of "self." Also as is the case

with other models, we tend to forget that our self-concept is merely a model, and over time we tend to confuse the model with our real "self", and we begin to relate to our perception of "self" as an actual real thing. In reality, the "self" is merely a social convention that we use to distinguish ourselves from others, but as is the case with the models we form and attach symbols to, the "self" takes on a life of its own. The ego is comprised of those perceptions we have incorporated into our model from various sources during our life time. The ego is composed of perceptions of others, our perceptions of others' perceptions, and our perceptions of our self that we have accumulated from birth to the present moment, and integrated into a model of "who we are." Related to "who I think I am", the ego also consists of various perceptions such as "what is good for me", "what I like", and "what I need to survive." Depending on the accuracy and relative strength of the model of "who I am" in relationship to other meaning models, the ego model may cause our related models to be rigid and resistant to change.

The ego is the gate-keeper for all perception and perceptual models. The ego is the protector of the self. Humans have a strong drive to protect self, and the ego is the organizing model of self protection. Virtually all thoughts are filtered in some way through the ego, which acts as a terministic screen. All experiences are mediated by and through the ego. Experiences that threaten the concept of ego, that threaten "who I think I am", "what I like" or "what is important to me", or experiences that give rise to information that is inconsistent or in conflict with the model or constellation of models that form the ego will be carefully screened, and mediated in a way that is consistent with the ego. Virtually all new experience and information is filtered through the ego. Information that conflicts with the ego will be rejected, information that is consistent with the ego may be accepted. All information will be organized in a way that is consistent with the ego. Generally when people are experiencing feelings of anxiety, it is because the ego has or is experiencing something that threatens or is inconsistent with the ego, and in order to relieve these unpleasant feelings the ego will mediate the situation, process information, and make decisions in a way that is consistent with the ego, thus relieving the stress of uncomfortable feelings. The ego is an organizing model that mediates experiences, organizes thoughts and perception, and hence drives decisions and behavior.

Without going into the reasons why, some people tend to develop egos that are very closed, rigid and resistant to change and some people develop egos that are open, fluid, flexible and subject to change with new experiences and information. As seems logical, if a person has spent a lifetime, developing a perceptual model of "who I am", the model will be resistant to the taking in of new information and change. People

with rigid egos will be resistant to change and resistant to any new information that threatens or is inconsistent with the beliefs surrounding their egos. For these people, their already formed, preconceived meanings and perceptions will drive their decisions and behavior with little room for new ideas, different decisions or changes in their behavior. These people will engage in repetitive thinking-- simply applying their preconceived ideas over and over again to new situations. People who spend a lot of time with repetitive thinking and people who spent an inordinate time thinking about the past and future, also tend to have rigid meaning models, and in the same way will process new experiences by applying their pre-existing models repetitively.

People who have very rigid meaning models, and in particular, rigid egoic meaning models, will be resistant to changing or altering their perceptions and opinions. Said in a less judgmental way, all thoughts are filtered through the ego, and we tend to filter that information based on the makeup of our ego. People with rigid egos tend to be more closed minded and people with less rigid and more flexible egos tend to be more open to accepting new information and allowing meaning models to evolve. This does not mean that people with rigid meaning models are bad people--it just means that they are less open to certain types of information and change. We all know people who are good people, but at the same time have minds like steel traps, and are difficult to engage in discussions because they are convinced that their view of reality is the true and only view.

When trying jury cases, we need to be aware that part of what we are trying to understand while obtaining information from the jurors during voir dire, is the nature of each juror's ego. Not only are we looking for each juror's perceptions about the things and concepts involved in the case, but we are also looking for information that will help us determine whether certain jurors have rigid meaning and perceptual models that will be resistant to the arguments we will be presenting in the case. Based on the information we obtain, we may make judgments about the rigidity of each juror's thought processes, and how they will filter the information presented during the trial. We are trying to determine whether they will have "open" or "closed" minds, and whether they will reject or accept the positions we are advocating in the trial. We are looking to determine whether concepts involved in the trial threaten their egos, and to determine what strategies or arguments will appeal to their egos.

People whose egos or self-concepts are built around certain activities and things are very defensive when they experience anything threatening the activities or things important to their self-concept. This is particularly true of people whose lives and egos are built around their jobs or the possession of objects. For example, the egos of risk managers who have spent their entire lives working for large corporate

manufacturers or hospitals will likely have egos strongly aligned with the beliefs of the corporations they work for. Such people will likely have formed egos and perceptual models based on their personal experience with things like lawyers, lawsuits, and product liability and medical malpractice claims. A long time risk manager of a hospital that makes a practice of defending any medical malpractice claim, will likely develop perceptions of medical negligence claims as bad things, in order to maintain consistency between their work activities, work activities, perceptual models and egos, and to avoid anxiety. The same could be said of members of any professional group, such as doctors, lawyers, priests, government workers, or business executives, whose lives tend to be built around their professional activities. The meaning models for some of these people may be very difficult to modify. It would be a gross generalization to say that all of these people in these professions have rigid egos, and meaning models, but, more than likely some of the perceptual models comprising their egos as they relate to their work, may be rigid and resistant to change.

Understanding the nature of the egoic model and that people tend to reject information that is inconsistent with or that threatens their ego allows us to develop trial strategies. While someone may have formed general negative perceptions about medical negligence cases, we may be able to get around those perception by appealing to the more basic overriding beliefs of their egos. As noted above, humans have a strong drive for self-presentation, and virtually everyone will have beliefs within their egos aimed at self-preservation. The ego no doubt contains thoughts and feelings to the effect that "my health and safety must be protected at all costs," or that "anything that threatens my life and health is bad." While a juror may believe malpractice cases are bad things, this person may also likely believe, from an egoic standpoint, that if they personally were hospitalized, they would not want to die unnecessarily due to substandard medical care. While a juror might not like malpractice claims, the juror would still want to be protected from unnecessary injury while in the hospital that could threaten their life and the ability to take care of and protect their family. You will never be able to convince these people that malpractice cases are a great thing, but you can appeal to the their basic egoic drives for protection and self-preservation by arguing that a verdict for the plaintiff in the case they are going to decide might set a precedent which will prevent their unnecessary death in the future. The more basic egoic components consisting of self-preservation thoughts and beliefs, might be accessed and allowed to supersede or override general "less basic" perceptions about malpractice cases.

2. Models Based on Personal Experiences

Models composed of constellations that are a result of our own direct personal experiences give rise to meanings that are much stronger and harder to change than beliefs arising from meaning models based on indirect or secondary experiences. For example, people who have played violent video games for many years, but who have not committed violent acts, will have created meaning models about violence brought about by video games based on their direct personal experiences. These meaning models give rise to beliefs and attitudes that violent video games do not necessarily cause people who play them to commit violent acts. These people know this to be true because they have personally experienced this situation.

Logically, it follows that if someone tries to present evidence to them, in the form of psychological studies, that violent video games cause the players to commit violent acts, the meaning models these video game players have created based on their direct personal experiences will be resistant to change based on secondary information. The meaning models they have formed through their personal experiences resist accepting and incorporating this new information into the models. This occurs because the thoughts comprising their models will tell them they know these games do not necessarily produce violent acts. When we experience something first hand, we first form our perceptions of the event and then incorporate the information into our meaning models. Thus, meaning models based on personal experience will be strong, stable, and resistant to change.

A corollary to the tendency for meaning models based on personal experience to be strong, stable, and resistant to change is that some indirect information given to us from secondary sources—such as a friend or family member—may be treated as information obtained from personal experience. For example, if I believe my brother always has and always will be honest with me, and if I have absolute trust in his perceptual abilities, then I may treat any information he gives me based on his personal experiences as if I had experienced the information myself. The strength and stability of meaning models based on secondary information will be a function of our familiarity with and trust in the source of the information. Thus, during voir dire, we will not only want to explore the personal experiences of jurors with the issues and things in the case, but also the personal experiences of their close family members.

3. Models that Contain Strong Emotional Components

Meaning models containing strong emotional components stemming from personal experiences tend to be more stable. This gives rise to beliefs and meanings that are more strongly held than models that have little to no emotional components or models based on emotional components from secondhand sources. It is one thing to read

about victims of parental, spousal, or sexual abuse, and to form models about these victims and their abusers. However, it is an entirely different thing to personally experience such abuse, and perceptions and beliefs formed by people who have personally experienced abuse will be more resistant to change than beliefs based on secondary sources.

As with models based on personal experience, models containing strong emotional components obtained from extremely respected secondary sources—such as respected and trusted family members and friends—will have the same tendency to be strong, stable, and more resistant to change than models containing no emotional component or which contain an emotional component from a secondary source not closely linked with the person forming the model. If a close family member experienced extreme grief due to losing a beloved family member as a result of a collision caused by a drunk driver, we may have a tendency to incorporate the emotional component of the indirect experience into our model as if it was our own personal experience.

D. Meaning Is Context Dependent

Meanings are dependent upon the context in which they are formed and applied. Meaning models may have components that will be applied in various configurations depending upon the circumstances surrounding the experience. Our models interact with other meaning models in different ways depending upon the context of the situation.

The example of my former paralegal employee, discussed above is a striking example of this phenomenon. When the paralegal viewed the photographs featuring attractive women that I hung on the wall of my office, she formed the perception that I had some sort of prurient interest in looking at photographs of attractive women, and even went as far as to wonder about whether I would have designs on her. When she asked me about them, simply by changing the context of the experience and telling her that the woman in the photograph was my wife who I deeply cared for and who shared my photographic avocation, she instantly changed her views about me and the photographs. It was very striking to simply say one sentence and to then hear her exclaim, "That changes everything," and was a great example for me of how context affects meaning, how meaning affects perception and the formation of meaning, and how meaning models may be changed in an instant.

As another example from personal experience, as a rule, doctors dislike medical malpractice claims and generally want to severely limit the ability of people to bring such claims. However, if a doctor's family member or loved one is the victim of

medical malpractice and sustains great damage, the doctor's meaning model relating to medical malpractice claims might conflict with self protective drives contained in the doctor's meaning model of "self", "family" and "loved one." The conflict between the meaning models may be resolved by the doctor incorporating the new experience of the injured loved one into his model of malpractice claims. He may now believe malpractice claims are unfavorable unless they involve a loved one. Alternatively, the experience of the doctor's loved one being injured may simply trigger another more basic meaning model related to the doctor's egoic beliefs to the effect that "anything that threatens my health or the health of my family is bad," and "I will or must do whatever is necessary to protect my family", and this more basic perceptual model that is aligned to the self protective motives of the ego overrides the less basic perception of malpractice cases being bad. In my practice, I have been asked by doctors to represent them or their families in malpractice claims, who began or initial interview by saying---"As a rule, I don't believe malpractice claims should be filed, but in my case malpractice really occurred." This situation may involve the interaction of several meaning models and could result in the integration of new thoughts and feelings into the old model of medical malpractice lawsuits. Conversely, it could result in a new hybrid meaning model relative to loved ones injured by malpractice, or it could simply be a case of a basic personal egoic model overriding any more generic less basic perceptual model.

A change in the context in which a meaning model is applied produces a new experience in which models are accessed, information is processed, and new information is integrated into existing models. New meanings are created along with new beliefs and attitudes. Meaning is context dependent, and experiences involving differing contexts may produce differing interactions between components of models or interactions between differing models. This gives rise to differing perceptions, beliefs, and decisions, other than those which might typically occur in a given situation. A useful corollary to this is that words mean different thing in different contexts. The words "I love you," means different things when said tenderly at night by a man to his wife, or when said by a man to a newly met woman after a night of heavy drinking at 2:00 a.m. when the bar is closing. Symbols and meaning are context dependent.

I think the "reptile theory" or "reptile" model of conceptualizing and presenting claims in trial, in part, involves conceptualizing and presenting the issues in a case in a way in which a juror's preconceived perceptions and beliefs are placed into a different context, causing them to alter the way in which they apply their meaning models. For example, a person who generally does not like malpractice claims may become open

to accepting the malpractice claim at hand if the issue of the case can be placed within a context that causes the person to apply their perceptual meaning models in a different way, which causes them to access egoic basic perception models that had not been previously applied to the concept of "medical malpractice." If the malpractice claim is recast as a process that will protect the juror and his family from a life threatening occurrence that should never occur in any hospital at any time, the juror might be more likely to be open to considering and processing the issues in the case. Appealing to the juror's fear of losing his or her health in a similar situation, places the trial into a context that is very different than the simplified defense promoted context to the effect that these cases are bad for the healthcare system.

E. Meaning Is Open

Meanings for the things and processes occurring in the world are created and applied differently by each person. Meaning is also created and applied differently by the same person depending on the point in time and the context of the experience. Moreover, meanings change over time due to the incorporation of new experiences and information into meaning models. We must always be aware that the meanings people create may be in a constant state of flux subject to change and evolution.

F. The Production of Attitudes and Beliefs Closed Minds Verses Open Minds

Our attitudes and beliefs are products of the interaction between experience and meaning models. Attitudes and beliefs do not exist separate and apart from meaning models, filed away as discrete attitudes. As a result of each experience, we access various relevant models, filter or mediate the experience through the pre-existing models, which in turn, produces new perceptions, attitudes and beliefs. After the experience is perceived, we integrate new thoughts, feelings, and sensations into our existing perceptual models, thus forming new models.

However, due to the make up of the ego and relative rigidity of perceptual models and belief systems, people form and apply attitudes and beliefs differently.

Closed Perception Models And Belief Systems

For some people, it is more important to engage in unconscious thinking about the past or future than it is to be engaged in the present. People who spend an inordinate amount of time in thought of the past and future, and who as a result, are unwilling to devote much time to processing information in the here and now, tend to engage in

repetitive thought processing. Such people make no effort to view each experience as fresh new event, but rather, apply the same meaning model over and over again to new experiences with little or no effort to appreciate and integrate new information into their perceptual models. For these people no new information will be integrated into their meaning models. As such their beliefs and attitudes remain static over time, and they will express the same beliefs attitudes regardless of the situation.

Similarly, as discussed above, some people's egoic perceptual models are so heavily invested in certain activities, experiences, beliefs and attitudes, that they are unwilling to consider any information, attitudes or beliefs that threaten or are inconsistent with their preconceived attitudes and beliefs.

Some people with rigid egoic structures are heavily invested in being right and in control, and are afraid of being wrong. Such people ignore new events, or perceive them in a manner that filters out any new information threatening their currently held beliefs or opinions. As such, they fail to integrate new information unless it is consistent with their existing beliefs. For those with extremely rigid egos and perceptual models, their ego is so invested in certain things that they ignore new experiences altogether and resist integrating new threatening information.

These rigidly held beliefs and attitudes are formed and applied because they are strongly connect to and dependent on their egos. These rigid models are comprised of thoughts, feelings, and sensations that promote the repetitive and unconscious application of unchanging meaning models to situations over time. The ego, acting as gate keeper, mediates thoughts, beliefs and attitudes repetitively over time. These people rarely experience things completely and freshly, but rather simply apply the same rigidly formed meaning model to new situations over and over again. The models become a sort of "frame" for each new experience that is superimposed upon the experience, thus giving the new experience the same meaning without regard for any new nuance or aspect of the experience. For these people predictability is of much greater significance and importance than the ability to experience and enjoy new situations and events. These people have closed systems of meaning. For example, persons with rigid meaning models, when attending new events such as workshops or continuing education events, might describe these events as "just another workshop" because instead of experiencing the workshop freshly and being open to new information that could be incorporated into their meaning models, they filter out or ignore any new information that conflicts with their currently held models. When such people come to trials as jurors they will tend to view the people things and processes with thoughts such as "oh--that is one of those trial lawyers", "this is a whiplash case", or "oh no--this is one of those malpractice cases." The role of the trial lawyer as we

will discuss below, is to break through juror's rigid belief systems and frames in order to allow them to experience the trial as a new fresh experience.

Open Perception Models And Belief Systems

People whose models are not rigid, and who are more focused in the "here and now," tend to view each experience as a new event. They access their models, attempting to perceive and appreciate the new experience as mediated through their models, and integrate this new information into the models. These people may express the same attitudes and beliefs over time, because the constellation of thoughts, feelings and sensations contained in their models, reacting to each new experience, produces the opinion. However, if the experience as perceived through their models produces new information that is integrated, the change in the constellation also produces a change in their beliefs. Open-minded people have some meaning models that are stronger than others because they are comprised of constellations of elements based on direct personal experiences, they have stronger emotional components, or they are strongly connected with their egos. However, even these models are subject to change in the right situation. Open-minded people have ego meaning models containing thoughts and feelings to the effect that it is important to perceive reality correctly, and to take in and integrate new information. To them, it is not necessarily important to be right or wrong all the time. Open-minded people place clarity in understanding and being in the "here and now" over always being right and in control of things. The attitudes and beliefs of open-minded people are in constant flux because they are always processing new experiences and information.

When people are presented with new experiences and things, in forming their attitudes and beliefs about these new events, they will access those meaning models relevant to the new events. The extent to which they will experience the new experience as something new and fresh or the extent to which they actually evaluate the new experience critically, will depend upon how open or closed and rigid or flexible their attitude and belief systems are and the rigidity of their egos and meaning models.

Understanding how meaning is created should help us as lawyers in presenting our cases in several ways.

If we are able discover each juror's individual background and the nature of their perceptions and beliefs we can begin to predict how they will decide the case. If we are able to gain a feel for how each juror will process the information and issues involved in the case we may be able to develop strategies and arguments that will appeal in a positive way to their belief systems. If by discovering the juror's

backgrounds, we are able to get some idea of their egoic models and beliefs, and the relative rigidity of their belief systems, we may be able develop arguments and strategies that will appeal to the jurors' basic egoic beliefs. Finally, our goal should always be gain the understanding to allow us to be able to present our cases in a manner in which each juror is brought out of their repetitive thought patterns, into the "here and now" so that they are able to actually hear and decide the case on the true facts and law of the case, which is really all any trial lawyer can ask for.

III. Understanding Our Role As Trial Lawyer

A. Role Of The Trial Lawyer In Creating And Shaping Meaning

Attitudes and beliefs are produced by the interaction between experiences and perceptions of the experiences as mediated by perceptual models of meaning. If we wish to impact the attitudes and beliefs of jurors, we must participate in the trial experience by introducing information in such a way as to interact with the jurors' perceptual models to produce attitudes favorable to our case. This process begins prior to trial with the evaluation of the case in order to identify the types of attitudes and beliefs jurors might hold that will be favorable or unfavorable to the case. Then, during voir dire, it is essential to try to learn as much about the jurors' attitudes and beliefs and the basis for those beliefs. Beginning in voir dire and continuing through the trial, we create meaning through our presentation in a way that will help the jurors understand their role. We also provide meaning regarding all of the people, things, instrumentalities, and processes involved in the trial. The trial and the case may be conceptualized as a structure built with various perceptual constructs and concepts, in which we assemble information in a way that will guide the jurors and allow them to reach a favorable verdict.

It is important to realize that meaning is open with regard to all aspects of the trial and all issues involved in the case. We cannot take for granted what meanings are known and understood by anyone, including ourselves. With this in mind, we work to determine where meaning may be deficient or misunderstood. As such, we then seize the opportunity to fill in the meaning for the jurors. Additionally, we need to give thought to what words, examples, metaphors, and communication strategies to use, in order to effectively communicate our message. Most jurors recognize manipulation and trickery, and efforts to mislead may be interpreted by jurors as an attempt to subvert the process of justice. What I am discussing are legitimate strategies for presenting cases that help to provide jurors with the meaning they need in order to reach a verdict. Different perceptions will arise in the minds of jurors depending on

the manner in which we structure, present, and refer to the various aspects of our case. The most important point I can make here is that, since meaning arises from the interaction of experience and perception, as trial lawyers we want to become part of the experience for jurors, and take an active role in creating perceptual meaning models with respect to the various aspects of the trial in a way that will help guide the jurors.

B. Lawyer Self-Awareness

Before each trial, self-examination is mandatory. That is, it is productive to examine our own state of mind and motives going into the trial. Race car drivers will not begin a race without examining their vehicles to make sure that everything is as finely tuned as possible. Why should we as trial lawyers be any different? I once interviewed a well-known trial lawyer just after he obtained a successful verdict in a case that had gained world wide attention. I was the editor for a monthly column in a trial journal, and I was hoping for some insight on a trial technique I could put in the article. I asked him to name his biggest challenge in handling the case, to which he replied, "the biggest challenge for me was getting up every morning and looking in the mirror and figuring out who I am." At first, I was a little disappointed in his answer, hoping instead for some great nugget of trial strategy, but upon reflection, I realized he was being very honest and profound. I suspect one of the reasons this particular lawyer has enjoyed such great success is due to his ability to continually evaluate "who I am."

Before each trial we should consider our awareness of "who I am," or "who I think I am," as a lawyer. Are the perceptions we have created of ourselves as lawyers as accurate as possible with regard to the real us? Have we incorporated thoughts and feelings into our self-concept models that produce feelings of anxiety and fear, or that produce unconscious, repetitive thinking patterns? Are we feeling positive about ourselves or are we down on ourselves as lawyers? Are we engaged in obsessive thoughts or wasting time worrying about winning or losing? Thoughts about winning or losing our cases will not necessarily be any more effective than are thoughts about winning the lottery. Rather, thoughts about how we are going to present our cases will produce positive results.

We should always be asking ourselves questions not only about the case we are getting ready to try, but our case load and practice in general, and about ourselves. How do I feel about this case? Do I like my client? Can I get up and make the arguments I need to make with a straight face? Is my client deserving? Am I taking cases I truly believe in?

In this regard, the most important thing to keep in mind is that our models of ourselves are mere constellations of thoughts, feelings, and perceptions we have picked up from various sources over the years, and that might not necessarily be the real us. Our egos and the self image we hold of ourselves, are primarily based on how we have perceived that other people see us. Are our models of self accurate? Are we so over confident that we are not accurately perceiving and evaluating our experiences? Are our egos involved in the case in such a way that we are not able to process and incorporate new information into our models? Are we spending time on the case efficiently and appropriately in the here and now, or are we so engaged in obsessive thinking about winning and losing such that we are wasting energy that could be better spent working the case?

If we determine that our perceptual models of ourselves do not represent who we really are, we need only take a step back and remind ourselves that our thoughts and feelings arise from our perceptions, attitudes and beliefs. Who you think you are determines how you act and behave. If you change how you think about who you are, you change your attitudes, beliefs, behaviors and actions. With this realization alone, we begin to free ourselves from inaccurate faulty perceptions of ego which may have been producing feelings of anxiety or unconscious, repetitive thought processes that have held us back as trial lawyers. Realizing that our egos and models of self are merely constellations of perceptions we have created and stored in our minds, and not the real us, can be a liberating and exhilarating experience because it opens the door for us to be who we want to be.

C. Creating Presence

An important aspect of trial work is maintaining a focus in the here and now and creating presence. There is a study in which a world renown concert violinist who was in New York to play at Carnegie Hall was placed in a subway location during rush hours when people were going to and from work, and as he played he was scarcely noticed by the commuters. The study concluded that people were so preoccupied and focused on their day to day activities and what was going on in their lives that they failed to notice that one of the world's most accomplished violinist was playing right in front of them. Similarly there was a study in which persons at work were given tasks to focus on, and while doing so, a man in a gorilla costume walked through the room, and many of the workers failed to notice that the gorilla had walked through the room because they had been so intently focused on the assigned work task. The significance of these studies for our purposes, are that people, tend to get involved in repetitive thought processes in their minds to the extent that they fail to pay attention

to and notice what is going on around them. This same process may well occur during jury trials and keep jurors from focusing on the important aspects of the trial. That is, jurors will come to the courtroom, so internally focused on their own lives outside of the courtroom that they do not notice what is going on in the courtroom. A juror might be so focused in her mind on the fight he had the day before with her teenaged son, that she misses the key cross-examination of the defendant's expert that your case hinges on. All jurors will, to an extent, be internally focused on their own lives as they begin a jury trial, and for that reason, they may miss the gorilla walking about in the courtroom.

People who are overly preoccupied with internal thoughts lack presence. Rather than being completely present in the now, with their total attention focused on what is happening in the space around them, they are focused in their minds on the past or the future. Given that their focus is internally in their minds, if asked to form an opinion or to express an attitude about something going on around them, since they have not been attuned to the present experience of what has been going on around them, they are not able accurately process the present experience, and will tend to respond to the situation by simply accessing and applying their pre-formed preexisting attitudes and beliefs to the situation. If such jurors who generally think medical malpractice claims are a bad thing, and such jurors are overly preoccupied in their minds about something in the past or future that has nothing to do with the case, they may be unlikely to attend to the new information in the case that might cause them to alter their attitudes and beliefs, and simply repetitively apply their preconceived attitude toward such claims to the case at hand.

As trial lawyer, you must address, not only the negative preconceived ideas of jurors, but also the tendencies of some jurors to lack focus on the present moments of the trial. If you, as a trial lawyer, do not address these negative attitudes and lack of present moment focus, these people will not pay attention to what is happening in the present moments of the trial. When I speak of creating presence in the courtroom, I am referring to a process whereby the lawyer manages the obvious things occurring in the courtroom, and ensures such events do not go unacknowledged or unsaid, and whereby the lawyer presents the case in such a manner that causes the jurors to be focused moment by moment on the case in front of them.

Being Honest, Straightforward, And Consistent.

You create presence by first being present yourself. You must be honest and forthright. You must directly address negative attitudes and beliefs. You must be consistent. You pull jurors into the here and now. You acknowledge and talk about the

elephants in the room. You develop strategies that speak to jurors' basic attitudes and beliefs--those basic ego related attitudes and beliefs that all humans can relate to. You create drama, by presenting your case as a story that takes on a life of it's own, such that, in the same manner that people want to see how each scene in the movie progresses and how the movie ends, the jurors will want to see what the next witness is going to offer and how the trial will progress. You need to create a setting in which people feel compelled to focus upon.

Consistency is one of the elements of credibility, and by being uniformly forthright, honest, straightforward and consistent, you will be liked by the jurors and will not be seen as just another one of those "trial lawyers." I once tried a case in which I had obtained a limine order to keep a certain document out of evidence. It was not particularly hurtful to my case, but was something that I knew the other side of the case would misrepresent and exploit and create a distraction with so I objected to the evidence and preliminarily the court entered an order that it would not be referred to or allowed into evidence. The attorney on the other side of the case was the type who had no respect for such orders and kept referring to the document, and I kept objecting, and the Judge kept sustaining my objection. It had finally occurred so many times, that out of frustration, and to avoid being seen by the jury as withholding key evidence, I gave in and shouted out, "alright--if you want it that bad, I withdraw my objection, here it is." To my shock, the other attorney said, "no--too late--you had your chance--we don't want it now." I realized that the jurors at that point were all sitting on the edge of their seats, watching this exchange. The lawyer went on, did not take the document and show it to the jury and made no mention of the document again. I obtained a favorable verdict and virtually every juror told me that once that happened they had no further respect for anything the other attorney said. The other attorney was inconsistent and the actions certainly did not appear forthright to the jury. If you as an attorney want the jurors to attend to you and your case, you must attend to them as jurors which is to present the appearance that you are doing everything you can to help them to reach a fair verdict. The jury could be told at the conclusion of an opening statement that, "in short, we will do everything we can to get all of the evidence before you so that you can reach a fair and just verdict."

Dealing With The Obvious Issues In The Trial

By acknowledging what the jurors are thinking, and what is happening in the space in the courtroom between you and the jurors head on, you will create presence with the jurors. When you create presence with the jurors, you cause their attention to focus on the here and now rather than allowing them to lose themselves in thoughts about something they perceive is going on, but no one is talking about. For example, we

know jurors have many different thoughts and attitudes regarding lawsuits, personal injury claims, and awarding money damages. Some lawyers believe questioning jurors about their attitudes and beliefs on sensitive subjects such as how jurors feel about personal injury claims in general, or about how jurors feel about lawsuits against doctors, corporations, or the system, is not prudent because it might poison the jury. These lawyers are concerned that if you ask such questions and a few jurors respond by saying that they thought these types of lawsuits are undesirable and drive up the cost of insurance that attitudes of the other jurors would be negatively affected by hearing these attitudes expressed by their fellow jurors. I disagree with this thinking. First, the meaning models of most jurors are not so fragile they will immediately change upon hearing the opinions of another juror. Second, as trial lawyer, our job is to determine whether any jurors may be firmly opposed to our case before the trial begins. It would be preferable to identify these jurors so we might explore the basis of their attitudes in order to decide whether to challenge them for cause or use a peremptory challenge at the conclusion of voir dire. We all know that there are negative attitudes about medical negligence claims and by acknowledging and dealing with these issues immediately in voir dire, it is acknowledging the obvious elephant in the room. Since you know that some jurors will be thinking about these issues, dealing with them directly in the "now" may allow some jurors to change their focus from internal repetitive thinking about these issues to the real issues being presented in the trial in front of them.

When sensitive issues are identified, you are then in a position to discuss jurors' feelings and to discuss with them the fact that these cases are allowed by law, and that the judge will ultimately instruct them that if the plaintiff proves the elements of their claim, as a juror they will be required to return a verdict for the plaintiff. You may then discuss whether they can set their predisposition aside and follow the law. In this situation, you are approaching these issues in an honest, straightforward manner about an issue (or attitude) you know will preoccupy jurors. In so doing, you create presence by directing their focus out of their own thoughts about their attitudes to the present moment in the trial. In a subconscious way, you are telling them they have to stay focused on what you are doing as lawyer rather than retreating to their biases.

You may create presence by discussing potential background issues honestly with jurors. For example, if we identify a juror who works as an adjuster for a major insurance company, everyone in the room will automatically think this juror must already be predisposed to voting for the defendant. Failing to recognize this and deal with it head on is the equivalent, again, failing to acknowledge that a three-thousand-pound elephant has just wandered into the courtroom. I would prefer

to talk to this juror about how most people form mind sets and get behind the people or companies they work for. I would point out that I assume the people who work for me are behind the type of work I do. I would also assume jurors who work for an insurance company generally support what their employer does and may have developed a mindset predisposed to denying claims. I might express concern that, no matter what type of evidence we presented, that they are going to deny our claim. Generally these jurors will disavow any bias and will assert they can be fair. To make my point in a lighter fashion, I may come back to them during the course of voir dire and ask, "How are you doing, Mrs. Smith? Do I still need to be worried about you? Are we still okay?" Again, what this does is simply acknowledge the obvious. While some people might not like this approach, it can also be very disarming. By inquiring into these jurors attitudes, we create presence and direct their focus in the case back to the here and now. Having done this, if these jurors end up remaining on the panel, they will still hold their attitudes, but will be more likely to maintain their focus on the evidence in the case rather than drifting off into unconscious, repetitive thinking.

Discussing sensitive issues with jurors not only helps create presence, but it may also give us some insight as to how we might be able to affect these jurors' perceptual meaning models. For example, I generally ask jurors if they believe there are too many frivolous malpractice cases filed in the courts. Almost every time I ask this question, hands go up. At that point I put my hand up too and say: "I feel that way too. I think too many unfounded malpractice cases are filed these days." In those few situations in which no hands go up, I stop and say: "Wait a minute, I know there are some of you who believe too many frivolous malpractice cases are filed these days. I feel that way, so I am sure some of you do too." At this point a few hands pop up. I then pick out a juror who raised her hand and ask why she feels that way. She might say she does not believe doctors should be sued or that medical malpractice cases are detrimental to insurance rates. I try to get the juror to divulge as much as possible with open-ended questions. I then ask her if she believes some cases are justified. If the response is "yes," I ask her to describe such cases. If she says "no," then she is subject to being challenged for cause. Most jurors realize, however, that they have to acknowledge the existence of some legitimate malpractice claims. Generally, they admit that claims where there is no question that malpractice occurred are justified. Next, I ask questions probing their willingness to follow the law and the judge's instructions even if that means they must find in favor of what they thought were not legitimate claims. I end by returning to my initial line of questions regarding frivolous verses legitimate malpractice claims, and I ask: "Are you willing to keep your mind open to the idea that our case here today is one of those good, justified cases that you described?" Or I might ask: "If we prove that our case is different from those frivolous

cases, if we prove under the law, that malpractice really did occur in this case, that we are entitled to a verdict, will you return such a verdict for us?" I realize most jurors with negative attitudes about malpractice claims will not change their opinions. I know it is unlikely that I can change their general belief about malpractice claims. Therefore, I try to do the next best thing, which is to distinguish my case from bad or frivolous cases. I attempt to persuade jurors to place my case in a category with a perceptual model that gives rise to thoughts that there are some cases that are legitimate and proper, and that my case is one of those legitimate cases. My goal is to break the link between the jurors' negative meaning model and my case. At the same time, I hope to create presence, thereby interrupting their unconscious, repetitive thought patterns regarding their attitudes about certain types of lawsuits. By dealing with these jurors' attitudes directly, we are bringing them to the present moment of trial in the space before them in the courtroom.

Another sensitive issue is the pre-conceived notion of some jurors that plaintiffs are coming into the courtroom demanding money. Many people do not like this state of affairs and as jurors, these people might spend the entire trial preoccupied with repetitive thoughts in their minds, eating away at them, because they don't like the idea of people getting money for injuries. These continued repetitive thoughts may prevent them from paying attention to the case. Knowing some jurors do not like the idea of people asking for money for their injuries, I prefer to deal with this issue in *voir dire*. I tell the jurors up front that I will be asking them to return a money verdict; that is what this case is about. I concede that this may sound crass, but that is all our civil justice system allows. By stating this issue boldly, we acknowledge their attitudes and offer explanation for our demands based on our system of justice. We interrupt negative thought patterns that jurors might otherwise engage in and bring their focus back to the true issues in the case. By asking these sensitive questions, we create awareness and consciousness through engaging the jurors' thought processes, and work to get jurors out of their unconscious, repetitive thought patterns, and turning their focus to the actual issues in the case.

During my graduate studies, I had the opportunity to be a T Group leader at the University of Kansas. The point of encounter for encounter groups occurs when all members of the group are open and honest in their communication, with a focus on the here and now and the space between us in the group. When group members maintained such a focus, we occasionally reached the point of encounter and seemingly magical things occurred in terms of interpersonal communication, personal awareness, and growth. Those were exhilarating experiences. I suspect that exceptional jury verdicts have been reached when the lawyers trying the case were

skillful enough to achieve a state of presence in the trial, where they and the jurors were focused together on the space between them, and that they reached the point of encounter together. While these types of situations do not occur very often, they are certainly a goal worthy of our aspiration.

Presenting The Case In A Way That Creates A Human Drama And Brings The Case To Life

Presenting your case in a way that creates human drama and brings the case to life is the best way to create presence and gain the full attention of the jurors. An entire book could be written about this aspect of trial work, and in fact, I spent a great deal of time discussing this in my book on trial practice. Some of the sections below summarize how the use of language and a story telling structure to create drama and bring jury cases to life.

When I was researching my book on trial practice I contacted a court reporter in order to locate the trial transcript of a case I wanted to review. The case was a very difficult, well publicized case, won by a very competent successful trial lawyer that resulted in a large plaintiff's verdict. I knew the case had been appealed and I wanted to locate a copy of the transcript. I called the court reporter who had spent every day of this several month long trial, recording each day's proceedings. The court reporter had at one time been based in Kansas City and was someone I was acquainted with. In talking to him about the trial, this reporter, who had sat through hundreds of trials, told me that for the entire two or three months of the trial, everyone was riveted on what was going on in the courtroom. The reporter told me that he couldn't wait to get in the courtroom each day to see what was going to happen and he knew that the jurors felt the same. Upon obtaining a copy of the trial transcript, I could see what the court reporter was alluding to. The case was presented and handled in a manner such that it became a human drama. The case became a morality play and all of the actors, the parties and witnesses were developed as real live, living and breathing people, with personalities, both good and bad. In reading through the transcript, it was easy to see that the jurors would all be on the edge of their seats waiting for any new development to appear. This lawyer knew how to develop presence, and his ability to do so transformed the case from a dry recitation of testimony and arguments to living breathing human drama, and a large verdict for the plaintiff.

Some of the sections in the latter part of this article below, as well as some of the other articles on my website offer specific examples of how language and communication may be used to create drama and meaning for the trial.

IV. Using Voir Dire To Create Juror Profiles

There are two basic parts to profiling and identifying jurors. The first part involves using what we know about the formation of meaning, attitudes, and beliefs in order to form juror profiles prior to trial. The second part involves gathering information during voir dire in order to determine which jurors fit the profiles we have formed. Moreover, we might also identify new juror profiles.

A. Profiling Jurors

Profiling desirable and undesirable jurors is more frequently becoming a task performed by experts with backgrounds in communication or psychology. Experts spend great amounts of time studying the psychological literature and conducting experiments in order to determine how different types of jurors can be expected to vote in certain cases. Experts use a range of methods such as examining racial, ethnic, and socioeconomic backgrounds; identifying personality types; examining the color of juror clothing; and studying nonverbal responses. Their predictions may be both accurate and valuable. However, in many jury cases, the investment in this type of expert is not merited, or the lawyer and the client simply do not have the money to allocate for this expense. Even when the lawyer can afford to hire a jury consultant, he must still be able to guide the consultant and evaluate his or her suggestions. As a trial attorney you must have a well developed strategy for profiling jurors. If we think of juror attitudes as arising out of perceptual meaning models, we may predict what type of people will hold certain types of models. The following are simple strategies that can be used for discovering these perceptual meaning models and profiling jurors.

1. Examining The Meta Issues

Before starting each trial we should examine the meta issues involved in the case. Meta issues are transcending issues involved in the type of case that is being tried, as opposed to the specific issues in the case. They might be the social, psychological, or socio-economic issues. Once the meta issues are identified, we can then begin to think about the various attitudes and beliefs that might arise relative to these issues, and in turn, what types of jurors might tend to hold these attitudes and beliefs.

The following are some of the meta issues that might be considered in certain types of personal injury cases:

(1) General issues applicable in all personal injury cases:

- (a) Whether people should be allowed to file lawsuits for personal injuries;
- (b) Whether people should be allowed to challenge the existing system through lawsuits;
- (c) Whether people should receive money for pain and suffering;
- (d) The impact of an injury to one family member on the rest of the family;
- (e) The economic impact of an injury on a family unit;
- (f) Even though the law provides the negligent party must respond in full damages, whether the negligent party should pay all of these damages if they are astronomical;
- (g) Whether mental and physical pain and suffering exists and whether it can be measured by a jury; and
- (h) The affect of these types of cases on the cost of doing business and the cost of insurance.

(2) Specific Cases:

- (a) The right of consumers (users of property) (patients) to be protected from dangerous products (dangerous conditions) (improper medical techniques);
- (b) The right of consumers (patients) to be fully instructed on the use of products (proposed treatment);
- (c) The right of consumers (users of property) (patients) to be fully warned of any dangers inherent in the use of products (properties) (proposed medical treatment);
- (d) The effect of product liability (premises liability) (medical malpractice) cases on the abilities of a business (property owner) (hospitals; physicians) to function;
- (e) The extent to which manufacturers and business owners (property owners) (hospitals; physicians) must insure the safety of consumers (users of property) (patients);
- (f) Whether manufacturers (property owners) (patients) should be made to guarantee or "stand behind" the products they make (properties they sell or rent) (medical procedures they recommend or perform);

- (g) The effects of these types of claims on the price of insurance;
- (h) Whether the safety and welfare of consumers (users of property) (patients) should always be placed above other considerations, such as operating costs; and
- (i) Whether certain groups such as physicians, by virtue of the function they fulfill, have special protections from negligence claims.

Of course, these are not intended to represent all of the possible meta issues, but they are illustrative for this discussion.

We want to look for jurors who have attitudes consistent with the meta issues in our cases. For example, if I am representing the plaintiff in a medical malpractice case, I want people who form perceptual models that give rise to meanings, beliefs, and opinions to the effect that patients have a right to be protected against medical negligence and that doctors should stand behind their work just like any other professional. I want jurors who view the patient, at best, as the person with the final say in decision making and, at worst, at least an equal partner with the doctor who will focus on patient health rather than the cost of business for the doctors and hospitals. I am looking for jurors who believe doctors should not be given any greater rights than other persons doing business and that they should not be given any exemptions from lawsuits. Most importantly, I want people who have secure perceptual meaning models and who feel fully capable and competent to judge the actions of doctors and hospitals. I want jurors who believe injured plaintiffs deserve full compensation for their losses, and who will not avoid a full and fair verdict because the amount is high.

2. Examining The Specific Issues

After identifying the meta issues involved, it is necessary to identify the specific issues in the case. As with the meta issues, once the specific issues of the case are identified, we can then begin to look for specific perceptual meaning models that will give rise to favorable or unfavorable attitudes and beliefs regarding the specific issues of the case. Once we identify meaning models giving rise to favorable attitudes and beliefs, we can then think about what types of jurors will hold these favorable perceptions.

Without going into detail, some of the issues for a medical malpractice case could be:

---Did the doctor violate the standard of care?

---Did the doctor act reasonably?

---Did the doctor really commit malpractice or is this simply a case where the plaintiff got a bad medical result, is angry, and wants to sue the doctor?

---Did the patient follow the doctor's orders?

---Has the patient done everything to protect her health?

---Was the injury caused by the doctor's negligence or was it a natural consequence of the condition that was being treated?

---What would be reasonable compensation for the plaintiff's injury?

---How has the injury impacted the plaintiff and his family?

---Who is telling the truth, the doctor or the plaintiff?

---Is the plaintiff a deserving plaintiff?

---Many other issues may be identified for a single case, but these will suffice for the purposes of this discussion.

B. Creating Pretrial Juror Profiles

Once we have identified the various issues that may arise in the trial, we may begin profiling jurors. Profiles can be developed using several basic principles: (1) people with certain demographic backgrounds may hold different attitudes and beliefs; (2) people tend to be attracted to people they view as similar to themselves; (3) jurors' attitudes, beliefs, and opinions are a product of their experiences and upbringing; (4) jurors may use their experiences to judge the various issues; (5) jurors' meanings, attitudes, and beliefs are a product of the personal experiences of close family members and friends; (6) jurors decide cases based on what is salient or important in their lives; and (7) certain personality types tend to vote in predictable ways. Use of these principles to profile jurors will be examined and illustrated in the following sections.

C. Juror Profiles Based On Demographics

Psychologists have spent a great deal of time attempting to profile jurors based on demographic information alone. From the perspective of our discussion of meaning, we may predict that people with certain demographic backgrounds develop, by virtue

of their backgrounds, models of meaning giving rise to certain general attitudes and beliefs. These demographic profiles are supported generally by psychological literature and have some value, provided we realize they involve generalization and stereotyping. Just as we pointed out in our discussion of meaning, by applying certain labels to people we are generalizing about certain aspects of a person while ignoring others. Profiles based on demographics alone are of value as long as we recognize their limitations, and use voir dire questioning of such jurors to ascertain whether the generalization holds true. It should also be noted that by placing certain people into certain categories we are not insinuating anything about their character or personalities. In other words, for various reasons, certain types of people, or people with certain types of backgrounds, develop certain types of opinions.

The following is a list of questions that could be asked of all jurors in order to obtain demographic information from the jurors sufficient to determine whether they fall into the demographic profiles:

- Marital status
- Family status (children)
- Education
- Occupation
- Employment history
- Residence history
- Activities and organizations
- Prior jury experience
- Prior involvement in personal injury litigation

Again, this list is not intended to be exhaustive. This demographic information will provide information allowing us to identify jurors falling within certain demographic profiles.

The following are examples of juror profiles based solely on demographic information. Our analysis of meta issues indicates a possible issue in a product liability case is the rights of consumers balanced against the need for businesses to be profitable. One might predict that factory workers will be good plaintiff jurors

because they will be concerned with product safety because their health, and, hence, their ability to earn a living, will depend upon it. Union workers tend to hold many of the same meanings, attitudes and beliefs as factory workers. Staunch union workers may have created self-concept meaning models that incorporate thoughts about their role as being a check and balance against big businesses and product manufacturers, making them good plaintiff jurors. On the other hand, workers at companies with unions, who have not themselves joined the union, might hold negative attitudes and beliefs about unions, and might be company line people who would make good defendant jurors. Homemaking spouses of factory workers tend to make good plaintiff jurors because they are concerned about their husbands' safety, which is in turn dependent upon product safety. These spouses would be sympathetic to the impact of an injury on the family of a wage earner. Business and insurance company owners, executives, and adjustors, tend to be good defendant jurors because they are concerned with the impact of product liability and injury claims on businesses and insurance companies.

Although these predictions may seem obvious, more subtle predictions can be made. For example, single women with children might make good plaintiff jurors because they are used to living on a limited budget, examining the quality and costs of goods and services, have had to learn to resolve disputes, and have had to make difficult decisions on their own. This type of juror might be willing to determine the standard of care for a doctor. In contrast, a housewife whose husband makes all of the household decisions would tend to be an unfavorable plaintiff juror as she would probably not see herself as competent enough to determine whether the a doctor deviated from the standard of care. One could predict farmers might not be desirable plaintiff jurors because, as a rule, they view product malfunctions and injuries as a way of life and do not believe people should always be compensated for injuries caused by defective products. Teachers tend to be good plaintiff jurors because they are aware of the need to provide proper supervision, education, and protection for children and certain elements of society.

People, who work in banks and accounting departments, and who live in worlds of numbers, figures, and accounts, tend to give low verdicts for pain and suffering. As such, people employed with banks, finance companies, and mortgage companies that have to foreclose on loans and mortgages and repossess cars and homes, would likely make bad plaintiff jurors. Their jobs require them to take actions causing emotional pain to their customers, and as a result they may have learned to detach themselves from the pain of others in order to cope with their jobs. Accordingly, jurors with these

types of jobs might detach themselves from the plaintiff's pain and suffering. These types of jurors could be predicted to return low verdicts for pain and suffer.

Having considered all the possibilities relating to the demographic background of the jurors, by now we should have developed some fairly specific juror profiles.

D. Juror Profiles On The Basis Of The Similarity Factor

Psychological studies have demonstrated that people tend to be attracted to others perceived as being similar to them. Thus, jurors can be expected to favor those litigants they perceive as similar to themselves. Meaning models are based to a great extent on our background and upbringing; thus, people with similar backgrounds and upbringing will have developed similar meaning models, which gives rise to similar attitudes and beliefs. Further, people who share similarities with each other will hold similar meaning models regarding the areas in which they are alike, which gives rise to similar attitudes and beliefs in those areas. People with like perceptual models tend to have fewer interpersonal conflicts among their meaning models and therefore experience fewer conflicting thoughts and feelings about each other, which in turn makes them feel more comfortable with each other. On a subconscious level, when people perceive someone is similar to them, they assume they also share similar attitudes about many things.

Using this theory, we can develop profiles based on the backgrounds of the plaintiffs and defendants, attempting to identify what types of jurors will view themselves as being similar or dissimilar to the parties in the case. During voir dire, the questions above for gathering demographic information help us to identify jurors who might perceive themselves as similar to the parties. After this information is elicited, we can more safely assume jurors who perceive themselves as similar to our clients may be favorable jurors for our case. I have told jurors in opening statement that "I believed that the evidence will show that the plaintiff is very much like any of you."

E. Juror Profiles Based On Juror Experiences

As discussed above, human attitudes are, to an extent, a product of background experiences and upbringing. This conclusion is consistent with our discussion of the creation of meaning. People develop meaning models as a result of their past experiences, which in turn produces attitudes and beliefs that are a product of their perceptual models. If we consider that each person's meaning models mediate their perception of reality, we can take this a step further to say that jurors will use their own personal experiences and their own perceptual models to apply meaning to the

case and to reach decision. Since we know our meaning models are a constellation of all of the thoughts, feelings, and sensations we have accumulated about certain things, there is no question the jurors' past experiences will mediate and affect the way they perceive the trial and form decisions. Studies conducted with actual jurors indicate juror attitudes are without question based on their own personal experiences, and in many cases, jurors used their own personal experiences to decide the cases. Studies have shown that, when judging a plaintiff's claim that he could not work at all because of his damaged arm, jurors used their own similar experiences and their friends' experiences to determine that the claims were not credible. Pregnant women, or women who have had children, used the beliefs and attitudes that arose from their own experiences to judge whether a pregnant plaintiff acted appropriately. As such, we can predict jurors will judge claims based on their own past experiences and background, and will have a tendency to be distrustful of claims inconsistent with their personal experiences.

This inquiry is different than using background and upbringing to determine whether jurors will perceive themselves to be similar or dissimilar to the parties. This inquiry involves looking at the specific past experiences of the jurors that may be relevant to the issues in the case in an effort to determine whether these jurors will use their own past experiences to judge the issues in the case. For example, both a juror who has severely injured an arm, but has continued to work, and a juror who has a close family member who has severely injured an arm, but has continued to work, will have formed perceptions about severely injured arms and the ability to work. While they might not have previously formed attitudes and opinions about whether people with severely injured arms may work, their perceptions will contain the thoughts and feelings relative to their personal experiences or the personal experiences of their friends. When the jurors are confronted at trial with the issue of an able-bodied plaintiff who has a severely injured arm and claims to be totally disabled and unable to work, these jurors with models based on their experience of being able to continue to work full-time jobs, will tend to be suspicious of the plaintiff's claims of total disability. We may predict people with experiences relevant to the issues in the case will use the experiences to judge the issues and facts of the case.

Jurors with specialized background and training in areas relevant to the case, require careful examination in order to determine their attitudes toward each side of the case. Jurors with specialized knowledge in fields such as medicine, law or engineering could be expected to use their knowledge to judge the issues in the case and to try to influence the other jurors with their knowledge on issues relating to such things as the nature and extent of injuries, malpractice, standards of care, or product design. These

potential jurors will be accorded special importance by other jurors due to their knowledge and could be expected to sway the other jurors. Lawyers should be wary of these jurors unless they are certain these jurors are aligned with their side of the case.

There are two components of juror background information for use in profiling jurors and identifying jurors based on their background experiences. Knowing the meta issues and specific issues in the case, we may generally prepare profiles of jurors based on their background experiences. We must then obtain additional information during the voir dire questioning to see whether the profiles hold up. For example, we might predict prior to trial that jurors who have sustained serious injury to the same part of the body as the plaintiff might be sympathetic to the plaintiff's plight and may make favorable jurors for the plaintiff. It would be fair to predict jurors with a similar injury would understand what the plaintiff has had to go through, and these jurors might also have emotional components contained within their models about their own injuries motivating them to want to help the plaintiff who has suffered a similar injury.

However, these individuals with similar background experiences need to be questioned carefully about their experiences to make sure our generalizations hold up. For example, in questioning jurors with serious arm injuries, those who have sustained serious arm injuries and who have likewise been unable to return to the workforce, would continue to be jurors that could be predicted to have formed meaning models that would be consistent with the plaintiff's case. As such, they would be favorable jurors for the plaintiff. However, as discussed above, those jurors who have sustained serious arm injuries, but who went back into the workforce and who have continued to work full time jobs, would be jurors who no longer fit the profile as favorable jurors because their meaning models would conflict with the issues in the case. Their models give rise to attitudes and beliefs that the plaintiff is not totally disabled, and his claim is therefore not credible. These jurors would tend to view the plaintiff's claims with distrust. To further illustrate, on the surface, it might appear that a hunter would be a good juror for a hunter hurt due to a defective rifle. However, in one study, in a case in which the plaintiff was a hunter, the jurors, who were hunters themselves, returned a verdict in favor of the defendant gun manufacturer on liability because they all found the plaintiff violated several of the known commandments of safe hunting.

Some examples of questions that should be asked of potential jurors to obtain specific background experiences are as follows:

Have they ever filed a personal injury claim? What was their injury? What caused their injury? Was the case resolved to their satisfaction?

Have they ever sustained an injury similar to the plaintiffs' injuries? What was their injury? What was the cause of their injury? Is their injury permanent? How does it affect their ability to function and work?

Have they ever been in an automobile collision, been a victim of medical malpractice, injured on someone else's property or injured by a defective product? Did they make claim? Did it end up in litigation? Was it settled to their satisfaction?

Have they had any experience with the instrumentalities involved in the case-that is, had the same type of surgery, spent a lot of time around an intensive care unit, worked for a manufacturer, had any experience with certain product, or adjusted collisions?

Do they have any training in medicine, training in law, or experience as a manufacturer? Do they have experience working for insurance companies adjusting accidents and injuries, or experience in quality control? Have they ever worked for a large corporation, worked in the medical profession? Have they ever worked for companies providing products and services for the medical profession?

Once the specifics of the personal experiences of the jurors become known, one can better predict how these experiences will have impacted the formation of their perceptual meaning models, attitudes, and beliefs, and whether they will be favorable or unfavorable jurors. What is important is not necessarily that jurors have had a personal experience relative to issues in the case, but rather that their personal experiences support your side of the case.

F. Evaluating The Strength Of Jurors' Personal Experiences

Our discussion of the strength of meaning models based on direct personal experiences versus meaning models based on indirect personal experiences is worth reiterating here. In an attempt to judge the personal experiences of jurors and how these experiences will impact their decisions on the issues of the case, meanings, attitudes, and beliefs based on direct personal experience will be stronger, more stable, and more resistant to change than meaning models, attitudes, and beliefs based on indirect personal experience. Jurors who have personally and directly experienced something and who have formed meaning, attitudes and beliefs about that experience, can be expected to reject and be distrustful of a party's claims conflicting with their personal experiences. When individuals personally experience a thing, phenomenon,

or a cause and effect relationship, they see it with their own eyes and experience it through their own senses. They form meaning models based on these direct perceptions of the experience, which gives rise to attitudes and beliefs based on those experiences. These attitudes based on direct personal experience are virtually unshakable.

To illustrate, jurors who have sustained a permanent neck injury as a result of a low impact collision, will likely be suspicious of a defense position that low impact collisions cannot produce permanent neck injuries. Jurors who have themselves experienced permanent soft-tissue injuries will tend to discount claims by defense attorneys that soft-tissue injuries generally do not become permanent. In trying soft tissue auto cases, I have personally found other persons on the jury panel who have suffered soft tissue injuries or who have loved ones who have suffered soft tissue injuries, and who have continued to have pain and suffering and who believe the injuries are permanent are worth their weight in gold. With each of these jurors I go through the fact that there were no broken bones, that the ex-rays were normal, that they had no surgery, all facts that match my client's case. I then discuss how their injuries have affected them. After spending half an hour to forty-five minutes talking to jurors about the soft tissue injuries they suffered years ago, and that they believe are permanent and that still cause them pain and suffering, then entire jury has generally heard enough from these jurors as witnesses to become resistant to the defense attorney's argument that soft tissue injuries are generally, only minor injuries that heal with no permanent effects.

However, you need to be careful with these profiles, because they are always generalizations. Sometimes, similar experiences by the jurors can cause them to be unfavorable jurors for the plaintiff. For example, jurors who have sustained severe injuries like the plaintiff's, but who have returned to productive full time work might be resistant to any arguments that the plaintiff's similar injuries resulted in total disability, justifying a huge verdict. Conversely, when confronted with the plaintiff's claims, these jurors might likely form attitudes that the only reason the plaintiffs are not working is because they choose otherwise. Similarly, jurors who have had extensive personal experience with certain products and have never known them to malfunction may form the attitude that a product could only malfunction if misused.

I once observed a voir dire conducted by another attorney trying a case involving a plaintiff who had sustained a herniated disc in a fall, and was claiming to be totally disabled, and who was asking for a substantial sum of money. Several potential jurors indicated that they had sustained herniated discs. On the surface, the fact of similar experiences of a herniated disc seemed promising. However, when asked how they

felt about injury claims and the plaintiff's claims that he was totally disabled, one of these potential jurors stated that he had sustained two herniated discs, but he didn't have any personal injury claim, so he had to continue to work. This statement by this juror seemed to open the flood gates and several of these jurors indicated that, while they too had sustained herniated discs, but they had families to support with no other source of money, and they were forced to continue to work full time, and had been working full time with their injury. The tone of these jurors' voices in answering these questions appeared hostile. Upon leaving the courthouse I felt bad for the plaintiff and his attorney, because watching the jury panel's reaction during voir dire, I didn't think there was any chance for a plaintiff's verdict, which proved to be true. This example, demonstrates that jurors, based on their similar personal experiences with herniated discs, could be favorable jurors for the plaintiff in one context, but unfavorable jurors in another context. While they might have been sympathetic to and good jurors for the plaintiff had he not been making a claim for permanent total disability, they were clearly not sympathetic to the plaintiff in making a permanent total disability claim. As is the case with all juror profiles based on past experiences, it is important to clearly identify the prior experiences and gain as much information as possible about the similarity of the experiences, and to then determine how these experiences will impact all aspects of the case. You cannot simply say that all hunters will be good for hunters making claims or that all people with herniated discs will be good for persons with herniated discs who are making injury claims. You must get all the facts and determine how the facts will interact will all aspects of the case.

G. Identifying The Direct Personal Experiences Of Family Members

Since we tend to treat personal experiences of close family members, loved ones, and friends we respect the same as our own direct personal experiences, it is important to include references to these people when asking the above questions about personal experiences. For example, when asking about experiences with automobile collisions, we might pose the question this way: "Are there any among you who have been injured in an automobile collision--or who have a close relative or friend who has been injured in an automobile collision?" The experience of a serious injury may sometimes be just as traumatic to loved ones and close family members of the injured person as it is to the person who sustains the injury. Jurors may have gone through experiences with family members and loved ones, and in such a way, the jurors have incorporated the experiences of the relatives into their meaning models as if it were their own experience. Particularly in the case of injuries to older people, younger family members may experience just as much mental anguish as the injured person, due to having to stand by and watch their loved one suffer. While exploring the jurors'

experiences relative to the issues and injuries involved in the case, it is essential to also gather information about the experiences of the jurors' family members and close friends.

H. Identifying Juror Attitudes And Beliefs With Strong Emotional Components

Meaning models containing strong emotional components may give rise to strongly held attitudes. For this reason, it is important to take note of jurors who express strong emotional reactions to the issues or things involved in the case. It is more difficult to discover these emotional components because many people are unwilling to display their feelings openly during the jury selection process. We may certainly ask, "Are there any among you who have strong opinions or feelings about people who bring lawsuits for money damages?" While we may get expressions of opinions, we will most likely not see the venting of emotions. We generally stumble onto strong emotional feelings when asking follow-up questions. For example, when asking follow-up questions of jurors who have indicated they have made prior claims or been involved in prior litigation, you might perceive an expression of emotion when asking, "Was the claim settled to your satisfaction?"

Emotional expressions might also be detected by asking jurors if their past personal experience will prevent them from being a fair and impartial juror. Jurors who express strong emotional feelings about the recent loss of a loved one, might have differing types of reactions to injury claims depending on the circumstances surrounding their loss. If a loved one was taken from them by the negligence of another and some of their emotion was focused on the negligent party, then this might be a good juror. If the juror's loved one developed a condition and suffered for a period of time, the juror might be sympathetic toward pain and suffering. If the loss of the loved one involved great pain and suffering caused by natural causes, on the other hand, the juror might not be sympathetic to someone claiming great pain and suffering for a knee injury, or the idea of obtaining money for pain and suffering.

Sometimes, emotional components of attitudes and beliefs are a result of the fact that the issue in question has significance to their self-concept or model of ego. The best way to discover emotional components is to ask open ended questions and to ask follow-up questions on matters relevant to the issues in the case until you feel that you understand the basis for your question. With open questions the prospective juror is more likely to share information that will allow you to gain insight into their attitudes and beliefs. In order to discern emotional components of a potential juror's attitudes and beliefs, you must maintain focus on the jurors while asking questions.

I. Identifying Juror Meaning Models With Strong Ego Involvement

Jurors with rigid ego models may be resistant to any information threatening their ego and meaning models that are closely related to their models of ego. In obtaining information about jurors, we should be attuned to those jurors whose lives center around their work, and to those jurors whose attitudes and beliefs appear very rigid. Typically, in looking for work with strong ego involvement, we look for jobs or professions requiring something more than a forty-hour work week. For many people, their position at work becomes their identity and their life. These people will have strong ego involvement with their work, and anything threatening their work or the type of work they do will be resisted. People who work as professionals, doctors, lawyers, accountants, bankers, business executives, insurance executives, and long-time government employees are people who might have strong ego models with regard to their work. This is not to say all people working in these areas will have strong ego involvement in their work. Rather, it simply means this type of employment lends itself to the development of strong ego involvement. Professionals tend to work long hours, over many years, in their work. These jobs tend to rely on networking, and as a result, much of the professional's social time is also structured around work issues. People in jobs such as these are also required to justify their company, their own jobs, and the industry they work in on a regular basis. This is such a strong personal commitment, and such a great extent of their past personal experiences have been job related, that their model of self will be strongly connected with work, and their other meaning models will have strong connections with their ego models and therefore be resistant to change. It may be predicted that long-time corporate risk managers, upper-level corporate executives, physicians, long-time corporate lawyers, and long-time insurance executives will have some ego involvement with their jobs, and that these people will tend to resist any information threatening what they and their jobs stand for. These people would obviously not make good jurors for plaintiffs in many types of personal injury claims because they might view certain types of personal injury lawsuits as challenging the system in which they work. By the same token, it could be predicted that lawyers who have devoted their law practice to plaintiffs' injury claims would have some ego involvement in meaning models favoring plaintiffs' cases.

As discussed above, under unconscious, repetitive thinking, and ego models, people who spend their time in unconscious thinking, and fail or refuse to tend to reality, develop rigid ego models resistant to change. These personality types would resist almost any type of information challenging their currently held beliefs.

Jurors appearing to be overpowering or dominating because of their wealth, prestige, power, education or position in life, will no doubt have strong ego models. They will have very strong models relating to who they think they are, and as a result may have meaning models comprised of thoughts and feelings to the effect they are more important than everyone else, they know more than everyone else, and they should get their way and have the final say in all matters. These people are to be avoided unless it is absolutely clear they are favorable to your position, because by virtue of the strength of their ego models and the thoughts and feelings contained therein, they will attempt to exert influence over the rest of the jurors during deliberations. The key with jurors with strong egos or whose work or lives are closely connected to their ego models, is to first identify these jurors. Once these jurors are identified, it is important that you determine whether they have perceptual meaning models giving rise to beliefs and attitudes favorable to your case. If not, you should avoid selecting them for your jury, because not only will their attitudes be resistant to change, but they may also try to impose their beliefs on the other jurors during deliberation.

J. Voir Dire: Identifying Jurors Based On Personality Types

There is not enough time to provide any in depth treatment about the various personality types, but there is one personality type worth commenting on before leaving this area. Psychologists have identified a personality type known as the "authoritarian personality." I was attracted to the study of this personality type in graduate school because it appeared persons who displayed authoritarian personality types would almost uniformly hold meanings, attitudes and beliefs that were favorable to defendants. Therefore, I will briefly touch on this personality type.

This authoritarian personality is very conservative, has a rigid ego, and a rigid belief structure. Authoritarian personalities reject any information conflicting in any way with previously held beliefs. Authoritarians are not open to innovative ideas, have a high intolerance for opposing beliefs, and will reject any facts, evidence, or arguments conflicting with their beliefs. Authoritarians are able to hold conflicting, irrational, and illogical beliefs, such as belief in the legal system on one hand, and a belief on the other hand that people should not be allowed to challenge the system with lawsuits. Authoritarians are knowledgeable and able to make fine distinctions about things they believe in. However, as to things they do not believe in or agree with, they will know very little and make gross generalizations. For example, they will know a lot about their own religion, but will lump together all other religions as being practiced by heathens or non-believers. Authoritarians view people with backgrounds that are different from themselves with suspicion. If authoritarians are initially predisposed

against something to begin with, they will most likely stay that way. They are, across the board, very resistant to change. Authoritarians believe authority is absolute and supreme; they would seldom challenge existing authority, and would accept or reject others based on how they viewed authority. They will readily accept information from a higher authoritarian source and will be open to a change in beliefs if the suggestion or information comes from such a higher authoritarian source. Authoritarians toe the party line.

Based on this information about authoritarian personality types, one can predict authoritarians will create meaning models including thoughts that higher authority is supreme and that people should not challenge the system with lawsuits or otherwise. Their meaning models regarding authority, and who are credible and reliable sources, include thoughts and beliefs that the organization and system are the supreme bases of authority. Authoritarians view medical malpractice, product liability, personal injury lawsuits, and other lawsuits questioning corporate and government interests as threatening to the system.

People with authoritarian personalities include high ranking business and corporate executives, high ranking executives in the insurance industry, law enforcement personnel, career governmental employees, and military leaders. In order for these people to be able to rise up through their respective fields of employment, they would have to have respect for the organizational and structural authority within the system that they are working, and they would have to form attitudes and beliefs consistent with this personality type. Of course, not all people in these types of professions have authoritarian personality types. But, these are the types of professions in which you would expect to see authoritarians thrive. Any long-time employee in a system relying on rigid lines of authority can be scrutinized as an authoritarian juror. The authoritarian personality is not limited to people in these types of employment, but rather, authoritarian personality types are likely to thrive in systems that require obedience to higher authority in order rise up through the ranks.

Authoritarians can be found in all types of employment and in all walks of life. Signs of an authoritarian personality are rigid meanings, attitudes, and beliefs based on some sort of supreme authority. A key indication of such a personality type is the unwavering belief is some sort of higher authority, such that other beliefs that are inconsistent with the authority are not tolerated and are rejected. In identifying such personality types, you are looking for rigid and unwavering attachment to certain beliefs, to the exclusion of all other beliefs. It is not so much the strong attachment to

certain beliefs, but rather the strong attachment to the point that all other inconsistent beliefs are rejected.

Authoritarians have very rigid meaning models resistant to change and the incorporation of new information. Once a juror is identified as an authoritarian personality, as a general rule, they will favor defendants and therefore be suspicious of plaintiffs. It is the lack of tolerance for opposing opinions and beliefs that sets the authoritarian apart from others.

V. The Creation of Meaning Through the Use of Language

Unfortunately, there is not enough space here to address the many ways we use language to create meaning for the jurors during the trial. For that reason, I have selected certain important aspects of the trial to discuss.

Without question, how we say something makes a difference as to how it will be perceived by others. For example, when the exact same types of handkerchiefs were placed in two separate displays on opposite sides of a store—one with a sign that read, "Fine Irish Linen Handkerchiefs - \$5.00" and the other with a sign that read, "Nose Rags - 3 for \$2.50—the Fine Irish linen handkerchiefs out sold the nose rags five to one. The handkerchiefs were the same, but one description evoked thoughts of wiping a runny nose while the other description evoked an image of a finely dressed sophisticated person. In the same way, how we as lawyers use language to present and describe the people, things, and processes involved in our cases will make a difference in the meaning models that jurors access in order to perceive and evaluate our cases. Differing models will contain different constellations of thoughts, feelings, and sensations that will be accessed and applied to the various aspects of the case. The following section addresses how we use language to create meaning in our cases.

A. Use of Words and Labels

Labels and words are used strategically to evoke certain positive or negative associations for processes, persons, or things. Labels and words may be used to provoke emotions, attitudes, and beliefs in the minds of the jurors, and therefore, we ought to think about how we are going to address the jury regarding the various aspects of the case. Telling the jury at the beginning of your case that "this is a medical malpractice case in which the plaintiff was injured" will impact the jury less than telling them that "this case is about a little boy who was needlessly injured because Dr. Jones failed to follow a rule that all doctors agree should be followed." In presenting our case, we must deliberately select labels that will provide the

appropriate positive impact. Plaintiffs, as a rule, should not be referred to as plaintiffs, but by name or by some other label that creates a favorable image. The plaintiff becomes an "innocent victim" and a deceased child is referred to as a "little boy." The defendant, on the other hand, is always the "defendant" and his or her acts are always "wrongful," "negligent," or "irresponsible." The jury's role is not simply to render a verdict, but rather, its role becomes a "great responsibility."

When we hear a word or label, we access meaning models associated with that label in order to perceive the experience. Different words and labels cause jurors to access different meaning models or create different contexts for the application thereof. If I begin my case, with the statement: "This is a medical malpractice claim in which the plaintiff was injured," the jurors will access models relating to malpractice claims and plaintiffs. This evokes thoughts consistent with the meta issues set out above, causing the jurors to evaluate my statement through those models and those thoughts and feelings. Their minds may start spinning with thoughts about the idea of medical malpractice claims and litigation. If, on the other hand, I begin with: "This case is about how ten-year-old Timmy Jones lost his vision because Dr. Smith didn't follow a rule that everyone agrees he should have followed," the words and labels used in this introduction do not necessarily evoke thoughts about the court system and malpractice, but rather cause the jury to access models related to little boys, loss of vision, and the people who do not follow the rules.

I once tried a product liability claim in federal court involving a Chinese toy manufacturing corporation. We alleged that the toy was defective and unsafe for use by children and as a result, our client was blinded in one eye by the plastic children's tent pole. During discovery it became apparent, that this Chinese corporation, did not develop any of its own toys, but rather, simply made copies of American made toys, without any quality control or risk management evaluations such as are required in the United States to insure safety of products. We sued both the Chinese manufacturer and the American distributor and we knew that the defense would try to suggest that the true defendant was the American distributor. I wanted to make sure that the jury understood that part of the problem in the manufacture and design of the toy was the fact that this toy was manufactured in a county that had no concern for the American consumers for which the toy was manufactured. I also wanted to make sure that the jury did not assume that this was similar to something made in Japan, Taiwan, or America that require more stringent risk management regulations. From the very start of the trial I referred to the toy being manufactured in "Communist" China, and I referred to the defendant as the "Communist" Chinese defendant. Returning to the idea of presence, I wanted to break through any preconceived, unconscious or

repetitive thinking that jurors might be involved in regarding manufacturers and safe practices and cause them to "wake up" so to speak, and to turn their attention to the trial with the idea that the manufacturing and vetting process for this toy might be different than are required for toys that are manufactured in the United States. I also wanted to impact the perceptual meaning models of those jurors who ordinarily might think product liability claims are bad claims. I wanted to access the more basic beliefs of their egos. I knew that I could not change the beliefs or jurors who had preconceived ideas that product liability claims were bad for business, but I thought that perhaps I could get them to distinguish my case from these bad cases. In voir dire I talked about whether or not there were legitimate product liability claims and for those jurors, as expected, everyone of course agreed that there were at times legitimate claims. I also discussed the need for safety evaluations to protect children as consumers. I wanted to distinguish this manufacturer from American manufacturers that most jurors would think of when thinking of a "manufacturer." I also believed that an appeal to the ego would be that we cannot tolerate foreign companies that manufacture dangerous products and ship them into the United States to be used by our loved ones without any safety evaluations. I wanted to trigger their basic egoic drives for self preservation. I felt that the easiest way to do so was to begin at the outset to refer to the defendant as the "Communist" Chinese manufacture. I felt that this would wake everyone up to the idea that we were not dealing with the typical American Manufacturer. From the first time I used described the defendant as the "Communist" Chinese manufacturer that I had gained the jury's attention. In fact the strategy worked so well that in the second day of the trial the defendants' attorneys began objecting and asked the Court to prohibit me from using that term. The Judge told me that he was not sure it was relevant and asked me to refrain from using the term. From that point on I began referring to the defendant as the "mainland" Chinese defendant. We obtained a verdict for our client and in discussing the case with the jurors they all stated that prior to trial that had no idea that Chinese toys, such as the one in our case, underwent no risk management or safety evaluations, and several jurors said that they hoped that our case sent some sort of message to the "Communist" Chinese manufacturers.

Different words create different impressions. When I was a young trial lawyer at one of my first CLE seminar for trial lawyers, a well known successful trial lawyer illustrated this point by pointing out that to call a man a "vagabond lover" was another way to say that "he was just a f- - -ing bum." Different words evoke different impressions. Some word descriptions of the same thing may invite more attention by jurors listening to arguments and questioning. It is one thing to tell the jury that the expert or corporate employee has become arrogant and has been so involved in

defending that corporation that he has lost sight of the truth, but it adds a little more drama to add on to the end of that statement that, "he has become blinded by his own shine."

By carefully selecting words and labels to describe the people, things, and processes involved in our case, we create meaning. How we seek to use words to create meaning has an impact on which perceptual meaning models jurors access, and how those models interact.

B. The Use Of Figurative Language

Another powerful tool that may be used for the creation of meaning is figurative language. Figurative language consists of the use of examples, analogies, metaphors, and allusions to create meaning and support for arguments. Figurative language involves the use of imaginative comparisons between things, events, and persons that are not obviously alike at all, but that resemble each other in some way. Figurative language is powerful because it grasps and defines the intangible qualities of experience and because it illustrates and holds the listener's attention. As such, it can be used to explain or illustrate difficult laws and concepts such as negligence, justice, and pain and suffering. Further, figurative language contains compacted lines of argument that invite inductive and deductive leaps. After first presenting facts and arguments in straightforward terms, lawyers may use figurative language to move to higher levels of analysis.

Figurative language functions as meaning models about things, people, and processes, complete with thoughts, feelings, and sensations about the thing being described. As discussed in the very beginning of this article, jurors are confronted with the task of trying to understand vague phrases and terms such as deviation from the standard of care and negligence. Figurative language may be used to provide ready-made meaning models, or at least ready-made parts of meaning models to the jurors. This allows jurors to incorporate these ready-made parts into their models in order to aid in their perception of the case.

For example, knowing jurors may not understand the concept of deviation from the standard of care in a medical malpractice case, and being aware that one of the meta issues in malpractice cases is the idea that jurors are not capable of determining whether malpractice has occurred, plaintiffs' lawyers may help create meaning in these areas with the creative use of figurative language. At the appropriate time in voir dire, jurors might be asked if they understand "that if you drive through a stop sign and hurt someone, you are negligent." Most jurors will understand and agree with this

concept. You may then tell them: "That's what we are claiming in this case-that Dr. Smith ran a medical stop sign and injured Timmy Jones." The analogy of running a stop sign is something that all jurors understand and constitutes a meaning model of negligence comprised of thoughts such as: there are rules of the road that are known; we all have to know the rules of the road in order to get a drivers license; we are absolutely required to follow the rules of the road under penalty of law; we know that people may be injured if we break the rules of the road and drive through stop signs; this is why we have classified violations of the rules of the road such as running a stop sign as negligence. This analogy further describes thoughts such as "running a stop sign will expose other people to danger and serious injury" and helps us appeal to the self preservation meaning models of the ego. If anyone has experienced a situation where someone ran a stop sign or a red light and hit them or almost hit them, this analogy surely will evoke those feelings. By using the phrase "running a stop sign" as an analogy, and then transforming the analogy into the metaphor of "running a medical stop sign," the same compacted line of thinking in the analogy of the traffic stop sign is incorporated into the metaphor of running a medical stop sign. The analogy now conveys that there are rules all doctors must obey, that they learn these rules when they get their licenses, we know violations of these rules will injure patients, and therefore, running a medical stop sign is negligence. The use of this analogy serves the two-fold purpose of better explaining and illustrating the concept of deviation from the standard of care, but also appeals to those basic self preservation drives contained with our egoic self concepts.

There are various forms of figurative language. An example is a case or an instance, real or hypothetical, detailed or sketchy, used to illustrate an idea or to prove that a particular kind of event has happened or could happen. It is the presentation of a single instance of a something in order to illustrate or support an argument. Examples are important and powerful because they illustrate ideas, contain compacted lines of argument, invite identification, and prompt inferential leaps from a single example to a generalization. For instance, in his closing argument in a medical malpractice case, a well know trial lawyer attempted to convince the jury the defendant hospital was negligent because, in diagnosing the plaintiff's hip injury, its staff took only a one-angle view of the hip with x-rays and therefore failed to find the fracture. As a result of this failure, the plaintiff was allowed to leave the hospital. After walking with the hip, he developed crippling arthritis. In arguing the doctors were negligent for failing to take several x-ray views of the hip, this attorney used two examples to prove his point. First, he talked about going to the grocery store to buy something as insignificant as an apple. He pointed out that shoppers do not just pick up the first apple they see and put it in their shopping cart. Rather, they pick up the apple and

inspect it from various views in order to determine whether there are defects or visible rotten parts. The lawyer then pointed out the hospital was saying they only needed one view of the plaintiff's hip, and asked, "Proper for a hip, improper for an apple?" Next, the lawyer talked about when he personally went to the store to buy a suit. He stated he would stand in front of a three-way mirror and look the suit over from all angles to make sure it was correctly fitted, that the seams were even, and that there were no areas where the suit bulged. He pointed out that he could always buy another suit, but you cannot buy another hip. He then asked the jury, "Proper for a hip, improper for a suit?"

Examples invite inductive and deductive reasoning, and in so doing create meaning models relevant to the issue in the case. In the above case, the two examples allow jurors to inductively arrive at the generalization that whenever inspecting something for flaws and defects, more than one view of the article must be examined. The examples invite the jurors to deductively move from this generalization to the conclusion that since the doctors failed to inspect more than one view or angle, they certainly conducted an inadequate inspection and were therefore negligent. These examples contained complete models of meaning functioning as compacted lines of reasoning and argument.

Analogies are comparisons between things, processes, persons, or events. By using analogies, a lawyer can present a situation familiar to the jurors, helping them form generalizations about certain situations that can then be applied to the unfamiliar situation involved in the trial. For example, in a case involving a doctor who performed part of a surgery without visualizing the surgical field, resulting in injury to the unvisualized area, what the doctor was doing could be analogized to hunting with a group of people at night, driving at night with your the headlights turned off, or driving in a rainstorm without windshield wipers. You do not hunt at night with a group of people because you might shoot someone, and you certainly should not drive at night without headlights or in a rainstorm without windshield wipers, because you will not be able to see the road and will likely injure yourself and others. This same lawyer, in explaining how in evaluating the hip for injury with an x-ray type that was of limited value was like driving your car in a rainstorm without the windshield wipers being on. With today's radiology techniques you could use the same analogy to argue that only using a CT scan without contrast to evaluate a condition as opposed to a CT scan with contrast or MRI with contrast, or a PET scan was like driving in a rainstorm without your windshield wipers on. Anyone who has driven in a rainstorm without windshield wipers will instantly form an impression.

Metaphors are figures of speech functioning like examples and analogies. They connect what is known and familiar with what is unknown and unfamiliar. Metaphors are complete meaning models about people, things and processes. Lawyers commonly describe people who suffer from conditions causing constant pain as "being encapsulated in a prison of pain." Most people, by virtue of accounts in books or on television, are aware of the conditions in prisons. The concept of a prison contains thoughts and feelings of being confined in a bleak, hopeless situation with no control or freedom. The metaphor of being encapsulated in a prison of pain allows jurors to connect the feelings they have about prisons to a person who experiences constant, unrelenting pain.

Like examples, analogies, and metaphors, allusions are tools lawyers use to persuade jurors. Allusions are references to historical events, literature, mythology, or other sources of cultural wisdom. Humans store knowledge linked to historical, mythological, cultural, or literary events or references. When a speaker alludes to an event or reference, the allusion elicits the stored knowledge, which can be used to support the argument. Allusions are commonly made to negative events, such as the Holocaust or the burning of witches by the Spanish Inquisition, to describe situations in which terrible wrongs were done as a result of faulty thinking. These allusions evoke constellations of thoughts, feelings, and sensations that may be processed in an instant on an almost unconscious level. Like analogies, allusions allow the listeners to generalize from a familiar situation to a new and unfamiliar situation. In the case regarding the fractured hip referenced above, the attorney supported his argument by alluding to the Boy Scouts and what many of us learn in our youth. He stated: "As every Boy Scout knows," you do not move a person with a fractured bone. Those jurors who were Boy Scouts have a model from their past experiences stored in their minds containing the thoughts and reasoning that you should never allow someone who might have a fractured bone in their leg or hip to walk if you do not have to because you may cause further damage.

The use of figurative language provides jurors with meaning models containing compacted lines of argument and attitudes and beliefs they may use to guide the jurors' perception of the case.

C. The Use Of Figurative Language To Create Meaning For Injuries And Damages

One of the many challenges for the trial lawyer is to reduce intangible concepts like damages or pain and suffering into concrete terms. Describing plaintiffs as having lost the use of their legs, as being paraplegics, and having incurred medical bills, does not

convey to jurors the full nature and extent of their damages. Figurative language may be used to describe the injuries and damages in a way that provides impact for the jurors. Through the use of figurative language, models of meaning may be created that are not only descriptive, but also convey feelings associated with the descriptions. With regard to a plaintiff who has suffered horribly disfiguring facial scars as a result of a defective product, the jury may be told "the plaintiff will never be able to go out again on a sunny day and walk through a crowd of people without being seen as the town freak." The jury may be told how a man who has lost the use of his legs "will not be able to walk his daughter down the aisle at her wedding and will never be able to dance with his wife." As a result of a serious injury, the jury may be told the plaintiff "will not be able to experience bringing a son or daughter into the world" and will not be able "to express that special love toward her husband in the same way that binds other couples together." Of a man with a serious injury it may be said that "at the end of the day, at night in their bed, he will be unable to express his love toward his wife in the same way that binds couples together." It may be said of someone who can no longer work and provide economically for his or her family, that he or she "will no longer be able to sit at her dinner table on Sunday, knowing that that her week's work has provided for her family." The strategic use of language brings the case to life in a way that gives jurors the next best thing to actually experiencing the plights of the parties.

D. The Use Of Storytelling Or Narrative Structure

In a typical trial, jurors are bombarded with an overwhelming mass of facts and legal concepts, and are then asked to form a decision. One of our tasks as lawyers is to integrate this mass of information into a coherent whole that can be easily understood by the jurors. This is best accomplished by using a storytelling or narrative structure. With a narrative structure, lawyers become storytellers presenting human dramas to the jury. This structure is effective for several reasons. First, stories organize information in ways helping the jurors perform interpretive operations. A storytelling structure helps the jurors locate the central action of the trial. The storytelling structure may also be used to create the central focus of the action for the jurors. For example, for the plaintiff, the central action is the negligence of the defendant and the damage to the plaintiff. The central line for the defendant may be the comparative negligence of the plaintiff.

The storytelling structure provides inferences that the jurors will need to make in order to render a verdict. When the facts unfold, there will be various elements of the story that will require interpretive inferences in order for a decision to be reached. The

storytelling structure provides these inferences. For example, consider a product liability case in which the plaintiff is seeking punitive damages because many people have been injured by the product over a period of years. Moreover, a simple warning that could have prevented the injuries was not placed on the product because the manufacturers were so intensely competitive that none of them would add the warning for fear of losing profits. The plaintiff may draw inferences from the evidence which tells a story of corporate greed in which a group of selfish corporations were competing for consumer dollars and unwilling to place a simple warning on a package for fear of losing market share to rival companies. The narrative structure is used to draw inferences that are not specifically made by the witnesses on the witness stand.

Finally, the storytelling structure adds drama and emotion to the trial. Clarence Darrow once said, "Jurymen seldom convict a person they like, or acquit one that they dislike. The main work of a trial lawyer is to make a jury like his client, or, at least, to feel sympathy for him; facts regarding the crime are relatively unimportant." The storytelling structure is one of the ways to create sympathy and affinity for the client. In the same way an author or playwright evokes sadness or joy in the reader or an audience, the skillful trial lawyer evokes sympathy and indignation in the jury. Clients are not simply plaintiffs bringing product liability claims, but are cast as real life people with feelings, hopes, and dreams that become affected by the acts of the defendants. The storytelling structure allows the lawyer to present background information about the parties to the case such that the jury is able to get to know them and like them. Through the story, the jurors are allowed to experience the trials and tribulations of the parties.

The story telling structure is also used to focus the story of the trial in a way that will appeal to specific attitudes and beliefs of jurors. In medical negligence cases, in which jurors might on one level be against medical malpractice claims, but on a more basic egoic level be very open to appeals to their more basic or "reptilian" drive for self-preservation, the case may be couched as the story of someone who went into the hospital for a normally safe and simple procedure that any of us might have to undergo some day, but was seriously injured due to medical practices that should never have occurred, resulting in catastrophic injury and damage to the plaintiff and his family. It is cast story about something that should never have to happen to anyone. The plaintiff was doing everything recommended by her doctors to protect her life by going to the hospital for this simple preventative procedure, but a doctor in the hospital ran a medical stop sign, causing severe injury.

E. Themes

The plaintiff's "story" should be constructed using various themes that state and prove the case. The storytelling structure integrates these themes. Some themes are more appropriately dealt with in opening and others in closing. For example, an obvious theme is the defendant was negligent. Within this theme, the plaintiff's claims of liability are detailed. A related theme is that, due to the defendant's negligence, the plaintiff suffered permanent injuries and damages. Within this theme, causal connection and the nature and extent of damages are developed. That the plaintiff has been wronged by the defendant's acts and that the jury must or can act to rectify this wrong is another important theme. The jury must be convinced that a wrong has been committed or that the plaintiff has been separated from, or deprived of, some right or ability, and that the jury by its verdict can rectify this wrong. In looking at the meta issues, we may note that some jurors will be concerned about giving money for pain and suffering, and for injuries that have already occurred. Jurors commonly express the idea that the plaintiff has already been damaged, and that money will not undo the injury. As such, why give people money for injuries and pain and suffering? In order to counter this feeling, the jurors must be provided with some motivation to return a money verdict for the plaintiff.

Most injury claims produce a separation issue. That is, as a result of the defendant's negligence the plaintiff has been separated from something, or has lost something, and it will be the jury's task to make the plaintiff whole. In a personal injury case, the separation or loss is caused by the plaintiff's injuries and damages. An obvious case would be a plaintiff who, as a result of a defendant's negligence, has been paralyzed from the waist down and can no longer work to support herself or her family. This separation theme may be expanded and brought to life through the use of figurative language. If the plaintiff's ability to work and provide for her family is equated to her dignity, the case becomes one in which the plaintiff, as a result of the negligence of the defendant, has been stripped of her dignity. The plaintiff will no longer be able to earn an honest wage and will no longer be able to sit at the dinner table secure that she has provided for her family; she has been stripped of her dignity. A verdict for the plaintiff is then cast as a way in which to restore the plaintiff's dignity. The jury may be told that a verdict will provide the plaintiff with the income that she would have earned over the years, or the verdict will provide income for re-education, re-training, and a handicap-equipped vehicle that will allow the plaintiff to move about or return to the workplace. The jury's verdict is recast as something that will right a wrong and restore the plaintiff's dignity.

In casting the separation issue, the jury may be described as being able to rectify, restore, fix, and help the plaintiffs. They can help the plaintiffs through this difficult

time, fix the damage that the defendant has done, restore dignity, and rectify wrongs. These types of themes motivate jurors to take action and may placate those jurors who feel that money verdicts serve no useful purpose.

A theme developing credibility is that the plaintiff was a good or noble person and the defendant behaved improperly. Conversely, a theme developing the defendant's credibility is that the defendant behaved in an honorable, professional, or competent manner, but the plaintiff failed to follow the doctor's orders, or the product's instructions, causing his injuries and damages. Within this theme, the positive and negative characteristics of the parties are developed and highlighted. As such, one party's goodness is juxtaposed against the other party's badness.

An important theme for creating meaning for the nature of the case is that the issues in the case are simple. A jury will be hesitant to assess fault and large damages in a case it does not understand. Thus, the lawyer must convince the jury that, in the final analysis, the issues are simple and the jury is competent to hear and decide the case. Jurors should be told this in voir dire, in opening, and in closing. Jurors may be told that there will be efforts to "lead us off the trail to the truth, but the issues in this case are simple if we stay on the trail" or "the issues in this case are simple if we don't go chasing Jack Rabbits."

Finally, the pursuit of justice is a theme each side of the case should always attempt to develop. The jury understands the legal system is based on justice, and therefore, the lawyer must convince the jury that her case embodies and is consistent with the pursuit of justice. Ultimately, a verdict for the plaintiff should be conceptualized as the rendering of justice. For example, in opening statement and in closing argument, tell the jury that the plaintiff is not looking for sympathy because he already received sympathy from his friends and family. Rather, the plaintiff is looking for justice. In closing, the jury may be asked to return a fair and just verdict for the plaintiff, "justice in this case will be a verdict for Mrs. Smith." If one party has behaved poorly during litigation or during the trial, their actions may be cast as efforts to subvert justice.

F. Creating Jury Purpose

An important aspect of creating meaning during the trial is creating jury purpose. While jurors may know their function is to hear the evidence and return a verdict, most jurors have vague ideas about how this is accomplished. The issues and what the jury is going to be asked to do during the trial should be outlined in voir dire. During voir dire you are not only legitimately allowed to ask jurors about their willingness to perform certain functions, but given the meta issues discussed above, it is imperative

the jury's function is outlined and discussed. Knowing jurors may have concerns about malpractice cases in general, about their abilities to determine if malpractice occurred, about money verdicts, and about awarding damages for pain and suffering, jurors should be told that one of their functions is to determine whether the defendant deviated from the standard of care in treating the plaintiff. Jurors should be asked whether they are willing make that determination. Using the same type of questions jurors should be asked, individually, whether they are willing to determine the credibility of the parties or witnesses, or whether they are willing to return a verdict for pain and suffering, disability, lost wages, and other monetary damages. By asking these questions in voir dire, you directly identify jurors who have concerns, or are unwilling to perform these tasks, and at the same time, you let the jury know what issues are ahead of them. Moreover, you are creating presence and are causing jurors to focus their attention in a way that explains what to pay attention to during trial. These questions also function as subtle forms of argument during voir dire. For example, if you strongly believe you will be able to show one party has lied or will lie during the trial, jurors should be told that there will disputes during the trial, and that they will be called on to determine who is telling the truth, and they should be ask if they are willing to decide who is being honest and truthful. These questions imply that you will prove the other party lied.

G. Setting the Tone of the Trial

Regardless of the severity of the damages, each case must be presented as being an important case for your client. This task is easier in cases with obviously severe injuries and damages, or unusual issues such as punitive damages. In cases with catastrophic injuries, lawyers commonly describe the job of the jurors in evaluating the plaintiff's damages as an awesome responsibility. You may tell the jurors you consider it an honor to be able to handle this case for your clients. Many lawyers make allusions to history to evoke feelings about the jury process. In an effort to instill in them a feeling of importance, the case and the jurors' role may be placed in the stream of the history of the legal process. Jurors may be told that their verdict will make the community a safe place to live. Lawyers may tell jurors with regard to rendering their verdict, "History is replete with instances of common people coming together as jurors to do uncommon things-I believe this is what you as a jury have a chance to do in this case."

It is hard to set this type of tone in smaller cases with little significance beyond that of the parties to the case. A description I truly believe is effective is to remind the jury that our great system of justice is founded upon the process of jurors coming together

to carefully render just verdicts in each case. Furthermore, if jurors in individual cases, because of prejudices or personal beliefs, fail to perform this sacred trust, then our great system fails. For our system of justice to work, the jury must apply the law to the facts of the case, and return a just and fair verdict.

If either side is going to ask the jury to do something for them in the form of a verdict, it is important to set a serious tone in all phases of the trial. This does not mean we cannot be human and cannot enjoy an occasional moment of levity. Rather, we must behave in a way that communicates the seriousness of our feelings towards our client, the case, and the jury system.

VI. Conclusion

This analysis of how meaning is created and applied may be used as a model to apply to all aspects of the jury trial. It is important to always be aware that meaning is open and constantly in a state of flux. The more we are able to embrace this quality of meaning rather than fight against it, the easier it will be to move through the legal system. Upon reflection, the more knowledgeable a juror is about the facts and issues in the case, the more likely the juror will be removed for cause. The parties will not want jurors who are too well acquainted with the opposition, and both sides will be wary of jurors that have extensive knowledge about the people or facts in the case. As a result, the prototype jurors are those least knowledgeable about the case. These prototype jurors are then asked to decide the very important final disposition of the case. When examined from this perspective, it is clear that the role of the trial lawyer is to create meaning for the jurors.

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