

In the Arena: The Art of Persuasion — Analogies, Metaphors and Similes

By Robert A. Creo

Earlier columns have addressed the lawyer's identity and reputation and explored self-awareness, perpetual learning, professional growth through civic service, persuasion and emotion — specifically, fear and anxiety — and the preparation and self-control necessary for engaging at the bargaining table and making initial proposals and negotiation strategies. This column continues the exploration of effective communication and persuasion by exploring the utilization of analogy, metaphor and simile in negotiation and argument.

It's All Greek to Me: Analogia

The English word “analogy” comes from the Greek word “analogia,” meaning proportion. In the classical approach to rhetoric, analogy means to reason or explain from parallel or similar cases. One definition of an analogy is that it is one idea, thing or process that informs by comparing it to another. Analogies are used not only in the communication of decisions or plans but also in creating them. An analogy has been described as containing one fact/truth within two expressions. Leaders use analogy to rally people to action.

A simile is an analogy that is express, while a metaphor is an implied one. Similes are explicit and use words such as “like,” “as” or “as if” in the comparison. The phrase, “He stalked the witness like a tiger,” is a simile. Metaphors compare two unlike objects, ideas or concepts and show the similarities between them to convey in a word or phrase what otherwise would require many words to express. For example, saying someone is a “tiger” in the courtroom invokes the image of an aggressive and crafty attorney who is determined to pounce on adversaries to devour them without mercy. This is a metaphor that brings vivid images to mind to convince the audience of the speaker's point.

Analogy Creates Efficiency

The brain uses 20 percent of the energy generated by glucose from eating. It strives for efficiency and operates initially on an automatic response system, which is then slowed down by the executive functions of the brain. Analogy transverses intellectual paths to demonstrate relationships between disparate ideas or may freshen perspectives



that confound conventional wisdom or routine responses. Analogies are shortcuts to understanding and deciding.

Analogy is all around us. Professor Douglas R. Hofstadter notes that the Tom Hanks movie character Forrest Gump, in explaining the unpredictability of life and the uncertain consequences of choices, said, “Life is like a box of chocolates.”

Analogy and Creativity

Albert Einstein said, “Growth comes through analogy, seeing things connect, rather than only seeing how they might be different.” While reading Walter Isaacson's biography, *Einstein: His Life and Universe*, I was struck by how Einstein created his theories by applying known science and mathematics to what he termed “thought experiments.” His work was not done in a lab or in the field using empirical methodology; he worked in his mind. He then tested a concept or thesis on paper by a mathematical formula. Only years later did others confirm his theories by empirical methods or by evaluating data collected in the field.

Analogies catalyze creativity, which leads to innovation and progress. Professor E.O. Wilson, the Harvard professor of evolutionary biology, stated that analogy is “the key instrument of the creative imagination.” Thinking in terms of analogies undermines lineal and default reactions to complex problems and unpredictable human behavior. Analogies support the legal arguments that the law should be applied to the facts in a specific manner to support the proposed outcome.

Analogy as Persuasion's Platform

Analogy and metaphor are comparative ways of thinking that are central to recognition, under-

References and Additional Sources

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standing, memory and decision-making. Analogy creates a paradigm and context for processing data into actionable information. Edward H. Levi, in his seminal work published in 1949, *An Introduction to Legal Reasoning*, contended that legal reasoning proceeds by analogy. The purpose of analogy is to help the decision-maker assign disparate things to their proper legal category. Effective attorneys engage in critical reflection to synthesize loads of information and documents into persuasive language to further a goal or to optimize the outcome for a client. Effective synthesis combines law, observation, language content, experience and values into deciding a strategy, plan or model on how to solve a problem.

Artful analogy communicates ideas and perspectives in a manner that makes them appear intuitive or obvious. Years ago I was role-playing as a judge in a mock jury focus group in a case involving a medical-malpractice claim in the death of a young woman following the physician's failure to treat a cancerous mole properly. The defendant physician had treated the woman by removing only half of the mole and advising her that if the biopsy were to be negative, she could return for removal of the other half sometime in the near future. The lab misread the sample and reported a false negative. When the patient returned months later, the cancer had spread and she was terminally ill with a short life expectancy. Although the lab acknowledged the majority of liability, the physician took the position that the entire liability was upon the lab and that she would have had the patient come in immediately to remove

the rest of the mole had the positive test result been reported accurately.

Counsel, in preparing for settlement discussions and trial, wanted to explore the impact of the approach taken by the physician on the jury focus group. Plaintiff counsel's theory was that by having the patient come back a second time instead of taking care of the procedure in one visit, the physician was playing the system in order to bill for a second procedure that would double her revenue. This theory was not articulated to the jury groups who were presented with the facts without argument or justification for any specific verdict. The fruits of this effort for plaintiff counsel came from the language, particularly the analogies, that the jurors used during their deliberations. The jury was observed through a one-way mirror. The jurors were outraged by the physician's conduct. A number of analogies arose in an organic manner without input from counsel. One juror said, "Who goes in to get half a haircut?" Another said, "Did anyone ever intentionally go see the first part of a movie with the plan to buy another ticket to see the rest?" One comment was, "I never bought a pair of shoes one at a time." In the subsequent negotiations, plaintiff counsel honed his presentation and communications on the platform of analogies learned while observing the jurors. This resulted in a maximum contribution of insurance limits from the physician's carrier.

Analogies Center the Audience and the Jury

A friend of mine recently served on a federal jury in an employment-discrimination

case. One analogy that stuck with the jury during deliberations was plaintiff counsel's statement that discrimination is like looking for a white rabbit in the snow: You can't see it, but you know it has been there because of its tracks. In her opinion, this integrated with the jury instructions on indirect evidence and was a benchmark to guide the discussions. When discussions meandered, someone raised the analogy to focus on the evidence.

Effective trial counsel should develop one outstanding analogy or metaphor that anchors the theory of the case and repeat it in the opening and closing statements. This shorthand may prove invaluable in obtaining a favorable outcome at trial.

Archiving Analogies and Swipe Files

Effective lawyers build a repository of analogies and metaphors that can be used for specific types of cases, transactions or negotiations. In the advertising world these are called "swipe files," templates containing proven and tested phrases, terms and materials used in successful marketing campaigns. Perhaps the derivation of the term is based upon "lazy" copywriters keeping track of the competition and warehousing the work of others. Copywriters use these templates because they have been shown to be effective in persuading the target market or audience. Lawyers can easily keep a running file, perhaps by subject area, in a Microsoft Word document. If the log is kept as notes on a hand-held phone, it may literally become a file that is swiped to access rather than being viewed as an appropriation of the work of others! ☞

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TAKEAWAYS

- Analogies, metaphors and similes help memory and understanding.
- Analogy or metaphor anchors the theme or theory of the transaction or case.
- Test your analogies on likely audience members.
- Maintain a swipe file of analogies, metaphors, similes and proverbs.



Pittsburgh lawyer Robert A. Creo has mediated and arbitrated thousands of cases since 1979, including serious-injury and death claims, complex business transactions and cases involving multimillion-dollar settlements. Among other things, he has served as a salary arbitrator

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