

THE **RECORD**ER

Overcoming Reptile Dysfunction—The Theory of Core Values in Jury Persuasion

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For decades, certain trial lawyers, particularly those representing plaintiffs, have advised us to rely on the “reptile theory” to persuade jurors. This theory claims lawyers can best motivate jurors to vote a particular way on the verdict form by appealing to the primitive reptilian portion of the jurors’ brains, thereby eliciting fear, terror and anger sufficient to lead to a favorable verdict.

After more than 40 years as a trial lawyer, law school professor, and persuasion strategist on more than 1,000 cases and several hundred trials, I respectfully disagree. I find the reptile theory simplistic and lacking in its understanding of the nuances motivating human beings (as opposed to snakes) to act.

Rather than being primarily driven by fear, terror and anger, human beings are motivated—at trial and when making other major decisions—by varying combinations of 11 core values. As discussed more fully below, very few cases involve all core values, but all cases turn on at least one and usually a handful of such values.

Core values are the fundamental beliefs and highest personal priorities driving our behavior. They inspire a feeling of purpose, which in turn motivates us to feel confident enough to decide an issue that has major consequences, like awarding a verdict to one party instead of another. With the risk of appearing grandiose think of it like this: if a person had the role of overseeing the universe for a day, that person’s core values would be the criteria by which he or she would make key decisions and judge the actions of other humans.



Chris Ritter of IMS Expert Services.

Courtesy photo

The Core Values are:

- The open-heartedness of compassion.
- The vicarious understanding arising from empathy.
- The benevolence of mercy.
- The justness and flexibility of fairness.
- The objective certainty of what I will call science.
- The steadiness of common sense.
- The desire to “take care of number one” of self-interest.
- The unquestioning certainty of prejudice.
- The sense of duty stemming from personal responsibility.
- The orderliness of what I call checklisting.
- The disturbing satisfaction of vengeance.

Conveniently, and perhaps not surprisingly, these 11 core values fall into three categories, each traditionally associated with a portion of the body connected with emotion and decision making:

The Heart:

- Compassion
- Empathy
- Mercy
- Fairness

The Gut:

- Common Sense
- Personal Responsibility
- Prejudice
- Self-Interest
- Vengeance

The Head:

- Checklisting
- Science

To explain how core values work and why they are more nuanced than the reptile theory, it is important to understand how jurors reach their verdict. In all the venues I have practiced, to win you must get the jury to agree unanimously or at least by a supermajority (e.g., nine out of 12). But what exactly are jurors unanimously agreeing on?

When I took high school math tests, providing just an answer was not enough. To get any credit, we had to show how we got to that answer. The path was as important as the end result. Jury verdicts are the opposite; in verdicts, all we care about is the answer, not the path or reasons the 12 different jurors used to get there. At trial, what must be unanimous is agreement as to which party prevails. If the jurors also had to unanimously agree on how they got to that answer, we would NEVER get a verdict.

The 12 jurors in your case may agree on the result (i.e., who wins) but they will get there for a variety of reasons—reason defined by some combination of ... that's right, you've got it, core values. One juror will get to the common endpoint based on compassion. Another will get there based on a belief that the decision is fair. A third cares nothing about compassion or fairness; instead, she is what I call a "checklister," a juror who value orderliness and reaches a verdict

after systematically mentally checking the boxes of the elements needed to establish who wins.

The fact that your jurors collectively rely on a group of core values does not mean you argue in the alternative, "Vote for me out of compassion; if not compassion, how about fairness; if you're not into 'warm and fuzzy' then do it because you can check off each of the required elements to establish my client's cause of action or affirmative defense." Instead of arguing in the alternative, you must—through a process we will discuss in a future article—engage in mental mining, determine what matters in your case, how what matters will likely trigger certain core values, and then include evidence and arguments that attract the attention and persuade various jurors on your panel with differing core values.

Let me demonstrate this with one of my actual cases, a case involving a triple homicide, of three children ages 2, 4, and 6.

I hear what many of you are thinking: "A triple homicide? I don't do criminal cases, let alone triple homicides; what does this have to do with my corporate practice?" I understand your concern; the vast majority of my practice over 40 years has been in civil litigation. But the truth is, what I learned in this case has everything to do with your practice, regardless of what types of cases you try.

Every single case is resolved based on core values, and the easiest place to see this is in the most extreme cases, and there are few more extreme than one involving the deaths of three children. In fact, it was the extreme nature of this case that allowed me to first see core values at work and to ultimately develop this theory. No one to whom I told the facts was unaffected. Each person who heard the story responded viscerally with one or more of their core values. In your practice, you may not so easily observe these kinds of reactions stimulated by core values, but I assure you they are there.

Several years ago, a single mother who was profoundly schizophrenic went to the end of a pier on San Francisco's Embarcadero and at precisely 5 o'clock—it had to be precisely 5 o'clock because the voice she heard in her head, which she was certain was God's, told her she had to act then—drowned her three children. Everyone who knew

her, including the staff of the homeless shelter where she had been staying, testified that she adored her children and was otherwise a very good mother. After the police arrested her, they tested her for drugs; she had none, not street drugs and, most tragically, not the medication she should have been prescribed for her profound mental illness. For the record, these medications, faithfully used, are known to treat the symptoms of schizophrenia effectively in most cases.

The San Francisco District Attorney charged my client with three counts of first-degree murder. As part of the defense team, we had to unanimously convince 12 jurors she was not guilty by reason of insanity.

For jurors whose core value was compassion, we emphasized the tragedy that was our client's life. We provided a timeline of events tracing her descent into mental illness, beginning when she was in her early teens. For the checklists, we stressed the legal criteria needed for a verdict of not guilty by reason of insanity and how she fulfilled each one of them. For those jurors whose core value was the objectivity provided by science, we offered evidence from psychiatric experts about the chemical imbalances in her brain that led to her schizophrenia.

For jurors whose core value was common sense, we argued they had to conclude no mother who loved her children as much as the defendant did would do what she did unless she was clinically insane. As a result of identifying and offering an evidentiary mosaic of core values, the jury found our client not guilty by reason of insanity; she was sent to a medical facility and not a prison. When we talked to the jurors after the verdict, they did

not agree on their exact reasons—some cited fairness, others cited compassion, and still others the scientific evidence and common sense. All different paths to the same verdict.

This is the first of a series of six articles dealing with my theory of core values and their corollaries as they apply to juries. The next three articles will each address one grouping of core values, those stemming from the head, the heart and the gut. Each article will also discuss which persuasion tools and arguments appeal to jurors with that core value. The fifth article will detail some of the corollaries that resonate around the core values as they apply to juries. The final article will discuss how one identifies these core values so you can put them to use to unanimously persuade your jury of people to use more than their ancient reptilian brain.

I hope you will continue to the next article.

*As a senior advisor at IMS Expert Services, **Chris Ritter** provides insightful guidance in all aspects of case analysis and persuasion strategy development, mock trial and focus group research, and witness preparation. After graduating from the University of Chicago Law School, he taught law and tried cases for almost 20 years. Ritter has worked on more than 1,000 civil and criminal cases throughout the country, including more than 200 mock jury and focus group projects. The American Bar Association published three of his books on persuasive trial strategy, two of which were ABA bestsellers.*

