

Popular Culture and Diversity In the Courtroom

By *Anthony P. Ashton, DLA Piper*

People who have known me for any length of time can tell you at least two things about me: (1) I am a trial attorney at a large firm; and (2) I know a great deal about popular culture, i.e., movies, television, and music. In fact, two other attorneys and I competed in the World Series of Pop Culture. This article will focus on the ways in which we, as trial attorneys, can learn from popular culture with regard to diversity of the trial teams that we put before juries. Although the tone of, and some of the references in, this article may seem whimsical, the message is not. Failure to utilize a diverse trial team may have the effect of creating a negative image of your client or alienating the jury. In the real world, this failure may translate into dollars and cents for your client.

A Woman Is Not Just a Man with Longer Hair

The U.S. Supreme Court recognized the potential impact of diversity in juries more than sixty years ago when it wrote: "The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded." In short, a woman is not just a man with longer hair. A male attorney's prediction of how female jurors will perceive the arguments to be made, the demeanors of the witnesses, or the evidence to be presented may be little more than a guess.

Similarly, an African-American is not just a Caucasian with darker skin. Forty years ago, the Court expanded its sentiments on the impact of jury diversity, explaining: "[W]e are unwilling to make the assumption that the exclusion of [African-Americans] has relevance only for issues involving race. When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. . . . [I]ts exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented." In short, the Supreme Court acknowledged that being black is not something that you put on and take off only in relation to legal issues concerning race.

As attorneys, it is important that we recognize that diversity in the jury pool is a modern reality that will affect not only who makes the decision but how those decisions are made. Empirical data from a relatively recent study shows that jurors on heterogeneous juries deliberate longer than those on homogeneous juries, discuss a wider range of facts, and make fewer factual errors. There is a classic motion picture entitled *12 Angry Men*. In this 1957 film, twelve white, male jurors determine the fate of a defendant. In today's world, the idea of an all-

white, all-male jury seems farfetched. Indeed, in the made-for-cable television remake in 1997, African-American actors played four of the twelve jurors, and a Latino played one juror. The producers of the remake realized how unrealistic it was to have a racially homogeneous jury. Today, the fate of your client in a lawsuit likely will be determined by a multi-racial, multi-ethnic group of men and women.

“There’s a Reason George Strait Isn’t Booked at The Apollo”

Recently, I was speaking to an in-house counsel about the staffing of attorneys for trials. She told me of a lawsuit in which her company was the defendant, the plaintiff was African-American, the jury pool was predominantly African-American, and even the judge was African-American, yet outside counsel presented her with an all-white proposed trial team. She vetoed the proposal and informed the outside attorneys that they needed to use a diverse team. A few weeks later, I heard her sentiments echoed by another in-house attorney during an unrelated conversation. My response during the second conversation was: “There’s a reason George Strait isn’t booked at The Apollo.” The second in-house attorney instantly knew what I meant and, referring to Strait, said: “No one is questioning his talent, but . . .” What both in-house attorneys recognized, and their outside counterparts failed to appreciate, is the need to know and connect with your audience.

Knowing and connecting with the audience are two of the keys to being a successful storyteller. A trial is essentially competing stories told through evidence and attorney argument. Having members of the team with different world and life views increases the chances of formulating a trial strategy that communicates the client’s story in a way that has more universal appeal. Likewise, diversity in the team decreases the chances of settling on a strategy and message that will leave some jurors unaffected, or worse still, biased against your client. Inherently, a homogeneous group will tend to communicate using tone, cadence, analogies, imagery, and vernacular that are both familiar and appealing to that group, but perhaps not to others. At the conclusion of a jury trial, the attorneys for the losing party may sometimes remark: “The jury just didn’t get it.” Rather than blaming the audience for not appreciating the story, such an attorney might do well to ask: “What was there about the way in which I communicated my client’s story that proved ineffective for the jury?” The answer may be that the jury did not identify with the story, how the story was presented, or the storyteller. Thus, it may not be that the jury didn’t get it. It may be that the attorney didn’t (and still doesn’t) get it. More important, hearing that the jury “didn’t get it” is of little consolation to a client who has just lost.

Give the Jury Someone to Root For

Another factor often overlooked is what I’ll refer to as “The Price Is Right Phenomenon.” When I was a child and had a day off from school, I watched *The Price Is Right* with my mother. Inevitably, there seemed to be at least one African-American contestant on each episode. And, consistently, my mother and I rooted for that contestant to win. We never rooted against any other contestant, and we certainly did not want anyone to cheat or otherwise bend the rules so that any particular contestant would win or lose. Nevertheless, undeniably, we enjoyed watching someone with whom we felt a connection win. I am quite sure that this phenomenon was repeated over and over again in households throughout that program’s viewership. Substituting

a game show and its audience with a courtroom and a jury, necessitates the question in every trial: “Who is the jury rooting for?”

The simple and eternal truth is that people like it when they win. In a situation where we cannot personally win, we like it when our surrogate, i.e., someone whom we perceive to be like us, wins. Thus, when assembling the trial team, it is advisable to provide the jury with persons the jurors consciously or subconsciously want to see win. A homogeneous trial team would be fine for these purposes if the jury was similarly homogeneous, which, as noted above, is a farfetched notion.

If you practice at a large law firm, your firm is likely diverse in terms of gender, race, and ethnicity. Presumably, these diverse attorneys are skilled or they wouldn't be at your firm. Increasing the diversity of your trial team may be no more difficult than utilizing someone already on your firm's payroll. If you are a solo practitioner or at a small firm with no diversity, assuming the economics work, simply team up with another solo practitioner or small firm to add diversity for the specific trial at hand.

The Make-Up of the Trial Team Influences the Jury's Perception of the Client

One of the definitions of “represent” is “to serve as a sign or symbol of.” To the jury, the attorneys at trial truly do “represent” the client. For an individual plaintiff or defendant, the attorneys exemplify the choices and demeanor of the client. For example, it is not difficult for a jury to conclude that a plaintiff who hired an overly aggressive bully as his attorney is himself or herself an overly aggressive bully. With regard to the proverbial faceless corporation, the faces of the individuals on the trial team may be seen as the faces of the corporation. A large corporate defendant represented by an all-white, all-male trial team can project an image of elitism and an old boys network, whether or not that image is accurate. Indeed, a big corporation being represented by such a trial team is a tired movie cliché used to evoke sympathy for the little guy plaintiff. Witnesses will come and go throughout a trial, but, as attorneys, we will be there day in and day out. Although there likely will be a corporate designee at the trial table, he or she likely will sit and remain silent throughout most of the trial. The attorneys will move about the courtroom, converse with the judge, and question witnesses. In addition, the attorneys will start and end the trial by speaking directly to the jury.

At bottom, as trial attorneys, we stand in for, and vouch for, our clients. We implicitly tell jurors that they can trust us and they can trust the people who chose us as their lawyers. We also sometimes expressly tell jurors that they cannot trust those who testified contrary to our client's position. It is human nature that people trust those with whom they identify. Therefore, a good trial strategy is to assemble a team that reflects the makeup of the jury. Although gender, racial, and ethnic commonalities between the jurors and the attorneys do not guarantee success, these types of commonalities serve as shortcuts by which jurors may more easily relate to the attorneys. We want them to relate to us, because, at the end of the trial, we will be the persons who tell the jurors how they should decide the issues at hand.

We Can Learn a Great Deal from Disney Channel

Anyone who has children and cable or satellite television has spent more time than they care to admit tuned into Disney Channel. The executives at Disney Channel have mastered the art of appealing to the broadest base while offending no one. Moreover, in general, the casts of their shows personify diversity, while rarely, if ever, mentioning race. Programs in which the lead is white tend to have African-American or Latina best friends, e.g., *Good Luck Charlie* or an older show such as *Lizzie McGuire*, while shows with African-American leads tend to have white best friends, e.g., *A.N.T. Farm* or an older show such as *That's So Raven*. The formula is brilliant in its simplicity. Equally important to the casting itself is that, to the audience, the race of any particular actor portraying any particular character has little, if any, impact on the character's screen time, the importance of the character, or the story being told. Thus, even when the title characters are white, the network's programs come across more as being ensemble shows than as productions having white stars/heroes, with ethnic sidekicks, e.g., *The Lone Ranger* and *Tonto*, or *Indiana Jones* and *Short Round*.

Likewise, a trial team should be perceived by the jury, as an ensemble cast. Each member should play an important and necessary role in the production. It is critical that the jury see all of the trial team members as stars, actively presenting the client's case, rather than as bit players or extras. Simply placing a woman or a person of color on a trial team is not enough. In fact, it is counterproductive if jurors perceive that certain attorneys are on the team solely for the purpose of filling the female or ethnic slots while the "real" attorneys handle the important aspects of the trial. One of the goals of having a diverse team is to have jurors identify with and connect with one or more of the team members. No one likes it when someone with whom he or she identifies or feels a connection appears to be relegated to handling seemingly menial tasks or seems superfluous. People want to drive the Batmobile, not just sit in the passenger seat. In divvying up assignments for trial, an easy analogy to remember is that the average person would rather be Batman than Robin, and nobody wants to be Alfred.

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- i. [http://en.wikipedia.org/wiki/The_World_Series_of_Pop_Culture_\(season_1\)](http://en.wikipedia.org/wiki/The_World_Series_of_Pop_Culture_(season_1)).
 - ii. *Ballard v. U.S.*, 329 U.S. 187, 193-94 (1946).
 - iii. *Peters v. Kiff*, 407 U.S. 493, 503-04 (1972).
 - iv. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, *JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY*, 2006, Vol. 90, No. 4, 597, 608.
 - v. The Apollo Theater is a landmark located in Harlem, New York, and is known as the preeminent African-American theater, having inter alia helped launch the careers of Ella Fitzgerald and Pearl Bailey, and served as the venue for performances by, among others, Lionel Hampton, James Brown, Aretha Franklin, and "Motown Salutes the Apollo." George Strait has recorded dozens of country music hits, has won numerous awards for his songs, and is considered a country music superstar.

- vi. While writing this article, I checked the Internet for George Strait's current tour schedule to verify my assumption that he is not booked at The Apollo. He's not.
- vii. Priscilla M. Elsass & Laura M. Graves, Demographic Diversity in Decision-Making Groups: The Experiences of Women and People of Color, 22 ACAD. MGMT. REV. 946 (1997) ("In diverse decision-making groups, members have different experiences, values, attitudes, and cognitive approaches; consequently, they bring divergent perspectives to the group's problem. Ideally, the availability of these varied perspectives will lead to the identification and critical examination of diverse alternatives and, in turn will create performance gains.").
- viii. Steve M. Wood, Lorie L. Sicafuse, Monica K. Miller & Julianna C. Chomos, The Influence of Jurors' Perceptions of Attorneys and Their Performance on Verdict, THE JURY EXPERT, Jan. 2011, Vol. 23. Num. 1, at 23, 24 ("According to social influence theory, it is not only the message, but also the presentation of the message and the messenger that affects the decision-making process.").
- ix. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 993 (10th ed. 1997).
- x. John DiMotto, *Lawyer Credibility in a Jury Trial*, BENCH AND BAR EXPERIENCES (Apr. 20, 2010, 4:50 AM), <http://johndimotto.blogspot.com/2010/04/lawyer-credibility-in-jury-trial.html> ("If the lawyer has no credibility, the client will have no credibility.").
- xi. If Disney Channel shows simply do not serve as points of reference for you, use the original Lethal Weapon. Both racially diverse lead characters have their own familial issues; both have their own personal theme music – for Riggs it's guitar solos by Eric Clapton, for Murtaugh it's saxophone riffs by David Sanborn; and both shoot the bad guy at the end.
- xii. Short Round, portrayed by former child actor Ke Huy Quan, was the young Asian sidekick in Indiana Jones and the Temple of Doom. He may be remembered for saying lines such as "Okey dokey, Dr. Jones," and driving a car with boxes strapped to the bottoms of his feet because his legs weren't long enough for his feet to reach the pedals.
- xiii. Karen L. Hirschman & Ann T. Greeley, Trial Teams and the Power of Diversity, LITIGATION, Spring 2009 Vol. 35, Num. 3, at 23, 25 ("Jurors view women or minority attorneys who sit at counsel table without a substantial role as 'tokens.' If the lawyer never examines a witness and does not open or close for his or her client, there is a risk that the jury will perceive the lawyer's presence as manipulative or pandering-an attempt to suggest that the client is sensitive about diversity issues.").

We asked two trial consultants to respond to Anthony Ashton's article. On the following pages, Susie Macpherson and Kacy Miller share their thoughts and then Anthony Ashton replies to their reflections.

Susie Macpherson responds:

Susan Macpherson is a senior consultant with NJP Litigation Consulting. She conducts communication research to help attorneys prepare presentations for juries, judges and ADR proceedings.

"How will the jurors react to an all white all male trial team?" "Do we need a woman at counsel table?" Trial consultants frequently hear questions regarding diversification of a trial team, and all too often they only arise when the case is fairly close to trial. As Anthony Ashton explains, there is a better question that senior litigation partners and their clients should be asking: "what benefits are we missing out on when our trial team lacks diversity?" I can confirm and endorse many of his points on the benefits of trial team diversity from my own observations

in the courtroom and conducting hundreds of post-trial interviews. What I would emphasize is that the time to be thinking about the composition of the team is well before trial.

Getting all the benefits of using diverse perspectives to develop the story that will be told at trial requires bringing those voices into the conference room at an early stage of litigation. Because there is typically greater diversity among the firm's younger lawyers, the trial team leadership often needs to consciously develop a group culture where every member has "speaking rights" to maximize participation and reinforce the value of ideas coming from a variety of perspectives. When that is the group norm, pretrial brainstorming sessions can provide the first test of the client's story, and the opposing story, against a broad array of life experiences, assumptions, and beliefs. It pays to identify early the points that may cause credibility problems with the jurors, and the unanticipated assumptions jurors could make about the evidence.

That is not to suggest that a non-white and/or female attorney on the trial team should be expected to be the expert on all jurors of his or her race, ethnic background, or gender, or to encourage the assumption that a single demographic characteristic is a reliable predictor of verdict preference. We know that the former proposition doesn't make sense and the latter is not true. The notion being endorsed here is that a story with broader appeal will emerge by looking at the evidence and the arguments through the lens of different life experiences.

In post-trial interviews, jurors often comment on the lack of diversity when the case was tried by an all-white male team from a large or mid-size law firm. The typical comment goes something like this: "They must have stopped hiring only white males a long time ago, so I can't believe they couldn't find even one person of color or one woman in their firm to help them try this case." But in my experience, jurors' harsher judgments are directed at the teams that treat diversity as an afterthought.

As Ashton points out, the expectation established by popular culture is an ensemble cast, not a team where the only person of color or the only female plays the role of the silent or subservient sidekick. Bringing a lawyer onto the team who has not had the time to learn the case well enough to play any role in the trial for no reason other than filling the quota for diversity is more likely to harm than improve jurors' perceptions of the team. Jurors are also acutely aware of any disparity between the ways in which lawyers behave 'on stage' and 'off stage' during trial. A lawyer who is introduced as a member of the team and not treated as such during breaks or out in the hallway will be readily identified by many jurors as 'the token.' This is particularly true in longer trials where jurors often give the lawyers nicknames and spend some time speculating about the dynamics of the trial team. Jurors' post trial comments such as, "he was never part of the huddle in the courtroom" or "she was usually left behind to pick up the papers during lunch" reveal what may be a surprising degree of sensitivity to this issue. This likely results from jurors' awareness of the same problem in their own workplaces where they may have seen a disconnect between the stated policy on diversity and the reality of disparate treatment. When jurors spot this problem on a trial team, it is often the unintended consequence of introducing a new member to add diversity to the team too close to trial. Selecting someone who has the skills to play a role in the courtroom does not automatically mean that he or she will be fully integrated into the team. Team building takes time.

In the era of “vanishing trials,” litigation team diversity will still be a valuable asset despite the fact that the majority of arbitrators and mediators are white males. (In recent years, we are seeing more women on arbitration panels, but there is still very little racial or ethnic diversity.) Regardless of the characteristics of the decision maker, incorporating diverse presentation styles helps to keep the listeners more engaged. Tying distinct topics to distinctive presenters can also increase the decision maker’s retention by reinforcing the process of “chunking” evidence and arguments, which is essential in complex cases. Jurors have often demonstrated this in post trial interviews where they associate a specific message or argument with the attorney who presented and/or challenged the related evidence.

Mr. Ashton’s article was not intended to be a detailed discussion of juror decision making so I’m not certain whether he meant to imply that juror identification with a lawyer of the same race, ethnicity and/or gender can be assumed, or that when identification between attorney and one or more jurors does occur it always plays a significant role in the outcome.

In my experience, jurors do not necessarily “root for” or rely on the evidence and arguments presented by a lawyer with whom they share demographic characteristics. I have heard many jurors say that they liked or could relate to one lawyer much more than the others in the courtroom, but that they also had to reject that lawyer’s argument(s) when deciding the case. Consciously or subconsciously they may indeed have been “rooting for” the lawyer they liked better, but they were also very conscious of their duty to weigh the evidence. As one juror put it, “We all liked (the losing lawyer) more than the other guy, but we just had to call it as we saw it.”

Mr. Ashton recognizes that juror identification with the lawyer is “no guarantee of success,” so perhaps he would not disagree that the strength of the evidence can easily override that factor. The composition of the jury may override it as well. And, unfortunately, the jury that is selected often does not reflect the level of racial and ethnic diversity that exists in the venire or in the venue. There are examples in many state and federal courts across the country where underrepresentation of non-white jurors is a continuing, if not growing, problem.

Studies on the impact of attorney race, ethnicity, and gender on jury verdicts and juror decision making are fairly limited and do not provide a consistent picture. For a thorough discussion of the social science literature and an indication of research in progress, take a look at Alexis Robinson’s article [The Effects of Race and Gender of Attorneys on Trial Outcomes](#) and the related commentary pieces in the May 2011 issue of *The Jury Expert*. You will find an excellent summary of the factors that make this a very challenging and complex issue to study, and get a good understanding of how little we really know about this issue.

The studies that have been done suggest that the attorney’s demographic characteristics do not have a uniform impact. For example, a study that looked exclusively at civil cases produced very different results than the studies that looked at criminal cases.¹ At this point, we can only safely say that the impact of attorney race, ethnicity, and gender depends on a large number of variables in addition to the strength of the evidence such as: the composition of the jury, the attorney’s style of communication, case type, the venue, the venire, and the characteristics of other actors in the courtroom. It is simply not possible to make any definitive general statements about how jurors’ decision making or jury verdicts are influenced when attorneys share demographic characteristics with some or all of the jurors.

Although there is no one-size-fits-all prescription for the composition of a trial team when viewed from the perspective of an individual attorney's ability to influence jurors, we do know that the benefits of assembling a diverse trial team are not limited to that dimension. There is also an inherent value in incorporating a wide variety of perspectives and styles of communication in preparing for and conducting a trial or arbitration.

ENDNOTE

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- i. Phillips, M.R. (2010). Jurors' perceptions of ethnic minority attorneys: Are we in a post-racial era? *Minority Trial Lawyer*, 8(3), pp. 1, 8-11.

Kacy Miller responds:

Kacy Miller, M.Ed is the president of CourtroomLogic Consulting, a full-service trial sciences firm located in Dallas, Texas (www.CourtroomLogic.com). Areas of expertise include pretrial research, theme development, witness preparation, graphic development and all aspects related to jury selection.

As I read Anthony Ashton's article, I found myself feeling in total agreement with some of his statements and shaking my head in disagreement with an equal number of other statements.

In the spirit of full disclosure, I am a female Caucasian. I did not grow up in a multiracial home, my high school was predominantly Caucasian and Hispanic, and I can probably count the number of minorities I knew during college (a private institution) on my fingers and toes. But I know juries. It's what I do.

In his first paragraph Mr. Ashton states, "Failure to utilize a diverse trial team may have the effect of creating a negative image of your client or alienating the jury. In the real world, this failure may translate into dollars and cents for your client."

I agree with his assertion that jurors need to feel a connection with the trial team and that an inability to form such a connection could translate into an adverse or non-ideal outcome. However, the idea that merely adding a man, woman or person of color to the trial team is the ticket to increased success or persuasion is faulty logic.

Years of pretrial research, shadow juries and post-trial interviews have taught me that good communicators and storytellers persuade jurors. I cannot think of one instance where a juror has told me that he or she rendered a specific verdict in a case because of the gender, race, ethnicity or age of the attorney.

What jurors do tell me is that they are influenced by the perceived skills, competency and professionalism of counsel, regardless of demographics. Did counsel treat the court, jury, witnesses and judicial process with the utmost respect? Did counsel have a command of the facts and arguments? Did counsel make points that were strong, clear and understandable? Did counsel present a story and themes that jurors could personally identify with? Was counsel organized? Did counsel utilize multimedia effectively and skillfully? Was counsel honest,

trustworthy, believable and likable?

If jurors perceive counsel as possessing these characteristics, the diversity of the trial team becomes secondary. Diversity is certainly important, but it should not be the driving force when assembling a trial team.

Mr. Ashton hit the nail on the head when he stated, "... in short, a woman is not just a man with longer hair . . . [and] an African American is not just a Caucasian with darker skin." While I agree, I think the client would be better served if counsel focused on the diversity of the jury rather than the diversity of the trial team.

Back in 1999, research was conducted to investigate whether jurors were more influenced by arguments from attorneys of their own race.¹ While the research focused on criminal verdicts involving allegations of sexual abuse/neglect, the findings are relevant in other causes of action. Why? Because data revealed that juror characteristics and personality traits determined whether the race of counsel mattered. Authoritarian jurors were more influenced by attorneys of the same race. The issue was the degree of authoritarian characteristics and beliefs held by the juror, not the skin color of counsel.

Steven R. Covey once famously stated: "Seek first to understand, then to be understood." This quote describes the foundation of trial advocacy. Understand your audience. Identify what matters to them. Learn how they think. Discover what makes them tick. Understand how specific values, belief systems, life experiences and attitudes shape their views. And the best way to learn what jurors think is to ask them. Test your case strategy, themes, message and delivery by conducting pretrial research in the form of a focus group, mock trial or other small group format. If you're on the right track, the jurors will tell you. If you're not, they will tell you that, too.

Rather than selecting a trial team that paints a picture of diversity, why not deliver the message in a way that appeals to the diverse jury? At the end of the day, clients need to be represented by a dynamic storyteller who is professional, honest, believable, trustworthy, and one whom advocates strenuously on their behalf. Every client hopes jurors will connect with counsel, but to do that, counsel has to connect with jurors.

Sure, having a diverse trial team is something to strive for. But at the end of the day, trial teams should be comprised of the best communicators, not just "a man with longer hair" or a "Caucasian with darker skin."

ENDNOTE

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- i. Boliver, S.E. (1999). The effects of attorney race and use of racially relevant arguments on juror decision-making. Dissertation Abstracts International: Section B: The Sciences and Engineering, 60, p. 1911.

Anthony P. Ashton Response to Kacy Miller Commentary:

With regard to the review by Ms. Miller, she seems to disagree with me and says: "... the idea that merely adding a man, woman or person of color to the trial team is the ticket to increased

success or persuasion is faulty logic” However, I think we’re actually in agreement on this point based on the following statement from my article:

“Simply placing a woman or a person of color on a trial team is not enough. In fact, it is counterproductive if jurors perceive that certain attorneys are on the team solely for the purpose of filling the female or ethnic slots, while the ‘real’ attorneys handle the important aspects of the trial” and “gender, racial, and ethnic commonalities between the jurors and the attorneys do not guarantee success”

Consequently, I do not believe Ms. Miller’s statements reflect disagreements with the article.

She also says: “Sure, having a diverse trial team is something to strive for. But, at the end of the day, trial teams should be comprised of the best communicators, not just ‘a man with longer hair’ or a ‘Caucasian with darker skin.’” My article does focus on being a better storyteller, i.e., communicator, as a key part of “knowing and connecting with the audience.” Thus, I think we’re again in agreement on the importance of having a trial team comprised of the best communicators. Any possible disagreement lies in the fact that Ms. Miller’s comment could be read to say that having the “best communicators” and having a diverse trial team are mutually exclusive. However, this is clearly incorrect. As discussed in the article, “If you practice at a large law firm, your firm is likely diverse in terms of gender, race and ethnicity. Presumably, these diverse attorneys are skilled or they wouldn’t be at your firm.”