Emotional Congruence – the Missing Link?
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Effectively presenting to the jury our client’s stories so that fair results take place in the courtroom has become a herculean feat where, even when successful, leaves us wanting. AS Frustrating and exhausting as this experience feels, trials start in courtrooms all across our Nation every Monday. And, as the old saying goes, “ready or not..., here I come”. In the midst of the stress, the constraint of the practice, let alone the fear of failure, we have abandoned the emotional connection to our clients’ stories, too busy by the legal requirements of the case, the holding of the case law, the motions in limine, the accouterments of the legal profession. And our clients are suffering the effects.

We have seen through the years of practice, and the last few years of presenting to different Associations of Justice throughout the country, how we, lawyers, have looked for solutions to this prolegomena by focusing on the “big picture”. Our good friend, Carl Bettinger, believes that it takes twelve heroes. Some would even try to dig up evolutionary theories -reptilian brain- to explain what we, as communities, do when we deliver this thing we call “Justice”.

We could embark in discussing the evolutionary progress of Justice – from vengeance to wholesomeness. Or engage in several pages of analyzing why these twelve ordinary citizens would do heroic acts. That is not my purpose. Because in doing so, we would get lost in philosophical musings and arguments that, although teasing to the rational mind, have little to do in helping you, as a trial lawyer, create that dynamic in the courtroom that moves the jury to action, the fair result that both helps the client, and funds your lifestyle.

It’s been just short of 30 years of this scenic ride we call trial practice for me. And in those years, I have seen our country change, profoundly. I have seen our nation under attack, our families hurting both physically and financially. And in the midst of it all, I have seen a corporate attitude of irresponsibility, callousness and inhuman indifference. All with the blessings of the insurance industry. For what? It seems their only goal is to extract from us more money so that they can invest it in the market for more profiting.

I am saddened and angered. Saddened that we, as human beings, are considered “units” of profit and objects that can be discarded after their purpose, obtaining our money, is satisfied. Angered that we cannot seem to break through the “frames” imposed upon us by the pundits for the Insurance Defense; frames where we are cast as greedy and opportunistic predatory liars. And even where we show -through the evidence- that they have really harmed one of us, all they have to do is shrug their shoulders in front of the jury and declaim, “greedy lawyers want to take advantage and cash in on an accident”.

What’s missing?

Is Justice not about making the plaintiff whole? What type of insanity has taken over the juries that they will punish you and me for standing up on behalf of one of them who is harmed and hurt, to both help and make our living under the laws of our land?

Welcome to the Kafkaesque nightmare the corporate world has created for us, the utopian fighters of our old democracy. It’s a brave new world out there, one where the entire population wants to trade their rights, their God given ability to pursue happiness, for the hope of slavish security. And the first step for Corporate America to be able to deliver them a lonely and perplexing slavish existence is to eliminate all the lawyers. But only the lawyers who refuse to become corporate lackeys, only the lawyers who dare stand in front of a jury sharing the truth about what happened to Mary, or John, Jamal, Ishmael, Pedro, or Laquisha.

What truth?

It would take a few volumes to even get to understand the different schools of thought on the meaning of the word “truth”. I often smile when judges tell us that the “trial is a quest for the truth”.

Enter Emotional Congruence. From what we currently know in neuroscience, neuropsychiatry and neuro behavioral neurology, the closest we can get to this concept of “truth” is the emotional reaction a human being experiences given a certain stimulus. We are all equipped with eyes, ears, noses, taste buds, and tactile receptors in our skin so that we can experience the “matter” out there we call “world”. Every stimulus is recorded and produces, since birth, processing strategies. We have rational and irrational strategies\(^1\). Rational processing deals with symbols such as numbers, principles, and syllogisms. Irrational processing deals with fast paced data (which goes unnotic ed by the left rational system) and produces feelings, which, in turn, give us messages. Fear (one of the most researched feelings) clearly prepares us to fight or flight through the message it delivers through the chemicals our brain discharges upon processing, irrationally, all the information available through smell, sound, diffuse peripheral vision, even what is called kinesthetic processing, the ability of our bodies to know its place in space.

If you were to come into the presence of a lion, you cannot help but have emotional processing responses. If later on, you tell your friends that when you see the lion,

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\(^1\) Please note how even as you read these "symbols" called words, you are experiencing emotional responses, especially if you are a male, the word “irrational” will trigger either indifference, disdain or condescendence. No worries, it’s what we males have been trained to process when we hear the word “irrational”. Problem is that what has been called “irrational” by western civilization is now understood to be right hemisphere of the brain type of processing, rich in meaning, and much more efficient in providing multi-axis information in complex situations. No wonder why we, males, need the world to be simplified into rational models to be able to function at all!
you feel “Happy”, we would all know that you are emotional incongruent. Emotional congruence is the appropriate emotional processing, given our inner chemistry, of the stimulus presented to us as human beings. Challenge is the left-brain interferes with the processing of the information because of the image we want to portray to the world. The fish that got away is always bigger, the eye of the other person involved in the fight is always worse; the woes of other people in the world are always bigger or smaller than ours...

This interference of the left-brain, the rational part of our processing, is where we are vulnerable to the attacks of Corporate America and the Insurance Defense. And we are vulnerable because the rational processing of the left-brain has nothing to do with “reality” out there... Wordsmiths have created entire universes that exist only in the imagination of the listeners and are congruent with nothing in the lives of any one. As I sit in the Burbank airport writing these words, there is a rhetorical master sitting by my side insisting to the person on the other cell phone that she has to use the words “skilled nurse behavior in the hospice experience”.  

Likewise, the Insurance Industry has created rhetorical universes and domains that have nothing to do with the emotional congruence of the moment each and each one of us actually live and experience in order to defeat the rights of the harmed person. The left-brain can come up with anything it wants in terms of using words and creating imaginations that do not exist in the emotional realm. There was a time we all agreed –through the left brain- that the Earth was flat, or that it was the sun that runs circles around the Earth.

While the imaginations of the left-brain will resist and contradict the dictates of science, they do tend to dissolve when confronted with the emotional congruence of the human being experiences. While you can argue all you want to me that you will be courageous in the presence of a lion –and you probably have a plan of action as to how you intend to carry out those steps in your mind- I invite you to be open to the

2 She knows that while we all resist talking about death, the words “skilled behavior” and ‘experience’ connotes something much more agreeable to the rational mind than “nursing in end of life care”. It’s an experience and we all have to go through it, and thus the event loses its nefarious tint.

3 Allstate created MIST (Minimal Impact, Soft Tissue) in the middle 1990s, to impose a culturally acceptable idea that upon a certain degree of impact, no possibility of injury beyond a couple of days of pain could exist. Sadly, even the plaintiff bar adopted the lingo, effectively accepting the rhetorical imposition. If the impact is low enough (5mph) and you make a claim for injuries, the “glove” of deceit and greed must fit. (all puns intended)

4 Christopher Columbus even brought evidence to the Flat Earth Society Members, but they told him he had not gone far enough, that is why he did not encounter the waterfall that everyone “knew” was there. So, the left brain will refuse to acknowledge scientific truth even when presented with impeaching scientific evidence contrary to the imagination it has created.

5 Likewise, Galileo’s friend, the Pope, ordered he be burned at the stake even where Galileo Galilei was scientific in his evidence, following Copemicus irrefutable mathematical formulas.
likely reality that the discharge of chemicals in your blood when you see the animal and hear the roar will overrun the carefully crafted machinations of your rational mind. You will either be paralyzed or run for your life. Either way you will experience the lion with your whole being.

Marcel Proust wrote his “A la Reserche du Temp Perdu” in an effort to help us recover the past and our creative energies through reliving the memories stored in our unconscious minds. Emotional congruence helps us directly access not only our energies, but also connect to the stories of the human mind stored in our client’s memories. “Everything we have experienced in our lives is stored in our minds...” is the phrase my good friend, Dan Ambrose, has coined to begin the process of accessing in real time those moments. Once we are reliving the moment, our bodies will experience the emotional congruence of the story, the real feelings and experientially registered places, dialogues, meanings, smiles... We, as the audience, will go into the space with the witness. We will be transported, and we will know their truth, through living with them the moments of their lives.

Armed with the emotional congruence of our clients’ story, what we call the truth of their damage and the irreverent irresponsibility of the defendant, we create a bond with our clients that cannot be broken by the rhetorical machinations of the Insurance Companies or the Defense Research Institute think tanks. The client becomes cross-examination proof because no “story” can withstand the “realness” of the client reliving his story. The jury’s emotional intelligence is able to discern between the attempt of the defense lawyer to confuse the plaintiff with their left-brain plan, and the client’s emotional congruence under cross-examination. We tell the appropriate story because, having gone into the emotional congruent space and relived the experience with our client, we do not need to declaim or aggrandize; we just speak softly carrying that big stick of human emotional realness.

In that sense, emotional congruence is the missing link in trial work for those of us who are called the “Plaintiff” bar. It is the key that shifts the paradigm, the element that opens the portal into the human element of the story. Too long have we looked for grandiose schemes, “the heroic journey”, “standing for the little guy” (even if the late Senator Ted Kennedy used as his favorite phrase), “making the plaintiff whole”. It is in the micro steps of this emotional relatedness, not the macro views of the justice system for all plaintiffs, that is the lever long enough to move us to action, that fulcrum where the senses come alive. It is the same bond that mothers have with their children, or fathers with their families. It’s human, it’s real. It’s emotional congruence.

Persuasion, the movement of the jury emotionally into acknowledging that what we say is more likely truth than not, starts with emotional congruence. It will be a pleasure showing you in real time, not only entering a person’s story to encounter the emotional congruence, but then immediately show you, as the audience, how to deliver the story through dynamic presentational skills...