

Friday, August 22, 2008

### Why travel a thousand miles to learn to be more real?

Â In the middle of the then-four week Trial Lawyers College in its second year, I asked myself: "I have come all the way to a ranch in Wyoming miles from the nearest paved road to learn that the essence to being a great trial lawyer is being my same real self in all situations, loving myself and others, not giving up my power to others, and crawling under the hide of those I am trying to persuade, represent, and battle? Could I not have just had that written in pamphlet or book form for me to read?" My doubts continued: "Why are we cross-examining nursery rhyme characters? If I am taking a month of my life here, can we not at least have good pre-printed fact patterns to work from?" By comparison, I immediately was taken the previous summer by the two-week National Criminal Defense College in Georgia. The program was already years in the making and polishing, and it was an accomplishment even to be admitted among the high number of applicants. All fact patterns were well-done and assembled well in advance. Each day we would handle another phase of trial preparation and execution (including client interviews, jury selection, opening, direct exam, cross exam, jury instructions, and closing). At the end of the afternoon, one of the instructing lawyers often would dazzle us in doing a demonstration of what we had just practiced earlier in the day, with the most amazing performances having been demonstrated by SunWolf incorporating a discussion of reasonable doubt into voir dire, talking to the jury as if she were in the box right with them; Lisa Wayne, doing a first-person closing of a winning battered spouse murder case; and Joe Johnson cross examining an expert witness after reeling him into Joe's realm and having him in the palm of his hand to the point of having the expert ready to return a hearty handshake after Joe had substantially diminished his direct testimony. Near the top of those performances was John Delgado, who direct-examined his murder client leading him as smoothly as if he were cross-examining, while pointing his finger at the villains who pressured a false confession, and motioning to the angels with his hand palm-down. There also was cross-examination master Larry Pozner, who at once controls witnesses by adding one new fact at a time to each question if needed, but is still able to do so in a conversational story-telling way that makes witnesses prefer to cooperate with him rather than having him turn one simple question into ten, until the witness succumbs. Ed Mallett demonstrated by example how a true gentleman can effectively enter an objection while doing it politely (to overcome any perceived rudeness of having interrupted the opponent). CrÃme de la crÃme came from Andrea Lyon, who did the opening for the battered spouse defense, making it feel like I was in the very house at the very moment when the defendant's husband would abuse his wife for the very last time. Still on the high of the well-organized National Criminal Defense College, I continued trying to make sense of the Trial Lawyers College, which still was in its infancy. As I eventually came to realize, though, both programs have been essential for me. The NCDC focuses on skills, telling a persuasive and coherent story throughout the trial, and being completely committed to and courageous for our clients. The Trial Lawyers College assumes that participants already have the basic skills to try a case, recognizes that each person is only as good a trial lawyer as s/he is a person, and works on simultaneously developing each participant into a better person and trial lawyer. One participant who ended up taking very much to the Trial Lawyers College described it early on as the Mind F\_ck, because few people are accustomed to being thrown into a group of four dozen strangers in the beautiful middle of nowhere being rewarded for baring our souls and warts, and being chastised for hiding and candy-coating them. Early on, participants were revealing painful pasts, and pasts and presents of being sexually molested repeatedly by a relative; struggling with low self confidence; coming from dysfunctional families and alcoholism; and the list goes on. It took some time for me to figure out why people would be willing to bare their souls so willingly. One soul-barer told me: "I was so f\_cked up at the time, that I would have told my story to anybody." Another told me that his life was changed by doing a psychodrama session on day two in front of the rest of the group. And there I was, waiting a very long time to reveal my warts and being careful whom I revealed them to. I did not much like the possibility of being miserable among a bunch of strangers thinking down on me if I revealed my true self. The opposite took hold, though. I recognized that my problems were pretty small compared to many others, that others would share their feces and pearls of experience with me if I shared mine with them, and that I had found a group of people with whom I could bond and enjoy eliminating the veneers and the cocktail party talk. The more we opened up to each other, the more we bonded, to the point that I can call just about any Trial Lawyers College attendee from any year and get right to a real conversation that skips the cocktail party small talk. When I returned from the Wyoming ranch, I all the more sought out kindred spirits who were not afraid of revealing their true selves versus their Madison Avenue public relations self, who were not afraid to take risks in life and to be true to themselves and their values, and who were not afraid to be real. Did I really need to travel a thousand miles away to learn all this? Yes. The lessons learned there are easy to understand but take long, concerted, and often painful effort to internalize, realize and follow. By learning and applying these lessons full-time in the middle of nowhere among supportive people, I "got it" by the end of the four weeks, and still am getting it. What is all this hype about being real? Consider this. Who will you trust more if you are a juror? A lawyer who comes into the courtroom wearing the fanciest suit and tie who is all polished with every spoken word and every choreographed and pre-scripted step, or the lawyer who looks unremarkable but talks to the jury, witnesses and judge the same way s/he

would talk to his or her best friends, without a bunch of notes intervening, and with a heart that cares not only about the lawyer's client, but also about everyone else in the courtroom, and who does not try to hide warts -- aside from needing to keep out damaging testimony through evidentiary and procedural rules -- but instead acknowledges them and persuasively puts them into perspective with the rest of the lawyer's case?Â Jon Katz

Posted by Jon Katz in Persuasion at 00:10

Jon,

Just wanted to stop by and thank you for doing what you do. From your blog to your practice you are an inspiration for us all.

Remy

Anonymous on Aug 24 2008, 19:55