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Applying theories of (jury) psychology to promote trial-lawyer wellness

MUSINGS ON HOW VOIR DIRE CONCEPTS OF STORY TELLING, CONFIRMATION BIAS AND BELIEF PERSISTENCE CAN FIT INTO OUR OWN WELLNESS

Trials may be won or lost in jury selection, through no fault in the evidence or argument of counsel. The psychological concepts of storytelling (i.e., the story model) and confirmation bias help explain why even really intelligent jurors may fail to see how the evidence supports our claims – either by disregarding evidence and arguments that challenge their pre-formed beliefs or by elevating the evidence and arguments supporting those beliefs.

While these concepts are crucial in jury (de-)selection, they can also be valuable in helping us better see and understand ourselves. If we can identify some of the crusty old stories we continue to tell ourselves – the ones that whisper (or perhaps shout) you're too [____], you're not [____] enough, you have to conform or comply in order to be accepted or loved – we can start to challenge these stories and the confirmation bias that keeps us believing them. And maybe then can we live more fully, with more compassion, contentment, and even joy.

Some sobering statistics

A 2020 survey of 1,962 lawyers admitted in California and D.C. unsurprisingly found that lawyers are “stressed, lonely and overcommitted.” Eight and a half percent of the lawyers surveyed endorsed suicidal ideation, a rate two times higher than that of the general working population. Lawyers who reported high (as opposed to low) stress levels were 22 times more likely to have suicidal thoughts. Those lawyers who reported high loneliness levels were nearly three times more likely to have suicidal thoughts. And, the odds of suicidal ideation were twice as high among men. Younger lawyers were also more likely to endorse suicidality. (Krill, P.R., *et al.*, *Stressed, Lonely, and Overcommitted: Pre-*

dictors of Lawyer Suicide Risk. Healthcare 2023, 11, 536. <https://doi.org/10.3390/healthcare11040536>.)

Krill, et al. also note, however, that a sense of relatedness – how you connect or relate to others, and whether you feel a sense of belonging at work – strongly correlates with improved lawyer wellbeing. But the legal profession, as a whole, undervalues the importance of our relationships. How many of us carve out family time, as opposed to carving out work time? How often do you pass on or cancel plans with friends because you have to finish [____]? How many special occasions (birthdays, games, concerts, or other celebrations) have you missed because of professional obligations? How much time did you believe you were unable to spend with a dying friend or family member because you had to work?

Change begins with us. I ask these questions not to shame anyone, but to question why some of us choose, and continue to choose, valuing labor production over the relationships many of us would claim are the most important in our lives. In my own life, I have found the answers to some of these questions by identifying a story I was telling myself and challenging the confirmation bias supporting it.

Storytelling – a narrative framework

The most widely adopted approach to juror decision-making is the story model. This model proposes that juries attempt to assemble the evidence into a coherent whole that is both consistent with the facts of the case and makes sense given their existing knowledge. But how a juror “makes sense” of the evidence “given their existing knowledge” is impacted by their life experiences, expectations, values, and beliefs, and may be impacted by confirmation bias. (Devine, D.J., *et al.*, *Jury Decision Making: 45 Years of Empirical*

Research on Deliberating Groups. Psychology, Public Policy, & Law, 7(3):622-727 (Mar. 2000); Bornstein, B.H. & Greene, E., *Jury Decision Making: Implications For and From Psychology*, Current Directions in Psychological Science, 20(1):63-67 (2011).)

Confirmation bias

Confirmation bias is the tendency to seek out, attend to, and better recall information (for example, evidence and arguments) that confirms one's pre-existing attitude and beliefs while at the same time discounting or ignoring information contrary to one's pre-formed opinions. Confirmation bias is the strongest when it concerns emotionally charged issues and beliefs we hold as the basis of our self-identity. (Chopra, S., *The psychology of jurors' decision-making*, Plaintiff (Jan. 2018).)

Belief persistence

An important component of confirmation bias, belief persistence suggests that once a belief or opinion has been formed, it can be very resistant to change – even in the face of compelling evidence that it is wrong. Belief persistence can also bias the evaluation and interpretation of subsequently acquired evidence. (Nickerson, R., *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, Review of General Psychology, 2(2):175-220 (June 1998).)

In other words, what we see – actually or metaphorically – depends, to no small extent, on what we look for and what we expect to see. Our confirmation bias leads us to unwitting selectivity in the acquisition and use of evidence. In fact, even intelligent individuals adhere to their own hypotheses with remarkable tenacity when they can produce confirming evidence for them. (Nickerson, *supra.*) Or,

as I call it, drinking my own Kool-Aid.

Voir dire as jury de-selection

These concepts are why jury “selection” is often the process of jury “de-selection.” Identifying those jurors whose personal life experiences – the most influential factor in shaping attitudes and beliefs – are problematic for our case is crucial. Stated differently, it is important to determine if a potential juror’s pre-formed beliefs will predispose them to confirmation bias detrimental to your case, because, for those jurors, there is no guarantee they will be able to “make sense” of the evidence to create a coherent narrative, even if you later produce evidence to a “clear and convincing” or even “beyond a reasonable doubt” standard.

Turning the mirror on ourselves

So, how do storytelling and confirmation bias fit into our own wellness? By applying these concepts to ourselves, we can identify and let go of old survival mechanisms that no longer serve us.

I am continually heartened by the care and compassion plaintiffs’ lawyers have for their clients. We care so much about doing justice for them, so often at the expense of our own well-being. Can we hold ourselves in the same care and compassion as we show our clients, and take the time to care for ourselves?

An old crusty survival story

When I was a Small Child, I had an Adult in my life with big, scary anger. Sometimes, that anger would turn into rage. And that rage was terrifying. Small Child’s brain, still developing and not yet capable of dispassionate logic, associated anger with fear and “not-love.” Small Child learned that if she were “perfect,” she would receive love and avoid fear. This is the coherent narrative Small Child created around her experience of Adult’s anger and rage. “Perfect” is who Small Child believed she needed to be to survive – who do I need to be in order to be loved?

Although Small Child grew older, her brain did not make the connection that “perfect” was a survival story. Her survival skills hardened into character traits, and

she became a first-class perfectionist. Her handwriting was impressive for a kindergartner; she never got her clothes dirty when she went outside to play; she always got As in school.

But “perfect” came at a steep cost. By the time Small Child was an Adolescent, her relationships had already begun to suffer. Because Small Child quickly learned that other people make mistakes, and those mistakes could set off Adult’s anger. So Small Child expanded her narrative and told herself that other people were not safe. Especially people who are not “perfect,” like her baby sister. So, she kept her distance and even put up walls. By the time she became an Adult herself, self-abandonment in the quest of “perfect” was such an ingrained pattern that it felt natural.

The work is not done

It took me years of inner work to find this story. My work of letting go of “perfect” and finding myself is far from finished. In fact, letting go of “perfect” in my legal work has been especially difficult, because attention to detail and thorough preparedness are highly valued traits in this field. But I’m learning that I can still be a really good lawyer without the sometimes-paralyzing need for perfection.

This journey has not been easy, but to say it has been life-changing would be an understatement – I am happier, less anxious, and more centered. I have more compassion for other people and their stories. I am still a work in progress (I don’t think I’ll ever be fully baked) but I have a lightness I did not have before.

Finding the story

What I offer here is only one way to find these stories. By no means is it the only way, and only you can decide whether it’s right for you. Again, however, this work is not easy. Your life will not magically turn into nothing but sunshine and rainbows; you will still struggle. But by letting go of your old stories, you may change your life in unexpected ways.

Rather than a linear process with a defined start and finish line, finding the story for me has been more of an ebb and flow, a mélange of identifying my character traits and triggers and sitting

with often difficult memories of my past. But since lawyers like bright line rules and many of us tend to avoid admitting to others that we need help, I will break this down into more defined steps. Again, try out what works for you and leave the rest. Make up your own process. This is not a recipe you must follow; there is no one “right” way to do this work.

Explore a character trait. What are your strongest character traits? Why are they so important to you? Perhaps you’re really principled. Maybe the story you told yourself is that following the rules kept you safe? While I’ve found the story behind my former perfectionism, I suspect I have other stories to discover.

Identify your triggers, then keep asking the hard questions. What triggers you? What makes you upset, angry, frustrated, anxious, scared, sad, humiliated, etc.? Why? For me, I would get upset when things were not done the “right” way. For example, I would get into fights with a former partner about how he loaded the dishwasher. He never loaded the dishwasher the “right” way, thus it was not “perfect” (as I defined it). Looking back on it now, it was a ridiculous thing to fight over. And now I see his inability to load the dishwasher “perfectly” was showing me my trigger, which aligned with my character trait of perfectionism.

Challenge your confirmation bias. Once I started noticing the patterns in my triggers and how those related to my character trait, I had to start looking for and questioning my confirmation bias. The following examples are somewhat exaggerated (but not all that much). “Huh, my legal reputation with this judge is not ruined forever because I missed a typo in my brief.” “Oh look, the world has not ended because of my client’s ‘mistake’ in deposition.” “It’s OK to say how I really feel, even if it’s not popular, because I’m allowed to have an opinion that someone else might get angry about.”

Find compassion and forgiveness with professional help, or not. For a long time in this process, I used the wisdom shared in Instagram posts as my therapist – no joke; there are so many teachers in this world who don’t necessarily have a PhD after their names. I’ve learned so much by keeping an open mind and heart on who

my teachers might be.

One concept I learned from Instagram on forgiveness is especially meaningful for me. Forgiveness is not about condoning the behavior; rather, it is “complete release,” freeing yourself from continuing to live in the pain caused. Through this understanding, I found compassion for my Adult, who was doing their best with the crappy emotional tools they inherited from the Adults in their life. And then I was able to free myself from the trap of allowing my pain to write my story. (Unfortunately, I cannot find the original post so I cannot credit my original teacher, but jayjaydouglas on forgiveness vs. reconciliation <https://www.instagram.com/reel/DQjykcLEV1G/?igsh=NTc4MTIwNjQ2YQ==> and yogavision sharing a traditional Náhaatl prayer on release https://www.instagram.com/reel/C_8EIM-luNlB/?igsh=NTc4MTIwNjQ2YQ== are close.)

Although I still find wisdom through Instagram, I did start therapy and got

help to “level up” my healing. I learned new skills surrounding inner-child work, which I always thought was just a bunch of woo-woo nonsense (haha, the joke’s on me). I believe that forgiveness, combined with learning to treat myself kindly and with compassion, allows for the lightness I now feel.

Or, don’t listen to me at all. Letting go of the old survival strategies can be really deep internal work. For many of us, it takes time and I suspect it stays a work in progress, and not a work completed. Not everyone is able or willing to commit to such work, and that’s wonderful, too. We are all on our own journey and, as one of my dearest teachers continually emphasizes, you are the best expert on you. If nothing in this article resonates with you and you think this is just a bunch of nonsense, fantastic! I’m so glad you are listening to yourself. Regardless of how you feel about what I’ve shared here, I wish you more spaciousness and joy in your life. You do you; there is so much power in that choice. 💎

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