

# Emotion in the Courtroom

## Persuasion or Poison

“It is with the heart that one sees rightly; what is essential is invisible to the eye.”

*The Little Prince*



### Jude Basile, TLC '94

Emotions are what make us human. Could you imagine a world without feeling? It would be a bland diet of water and white bread. Yet often times we do not allow ourselves to truly feel what is going on inside of us. We are trained as lawyers to be analytical thinkers. We are trained to be objective non feeling beings that simply apply facts to law to reach a result. This training, coupled with fear, blocks us from feeling our story and our client's story. This is an obstacle to success in the courtroom.

Stop and think for a moment about feelings. Feelings are the messengers of emotion. How we feel leads us to an emotional state. If we feel hurt, we often lash out in anger. If we feel scared, we often fight or flee because of that fear. If we feel good about a relationship, we have compassion and concern for the other person.

Joy, happiness and contentment flow from our positive emotional state. Fear, anger and resentment flow from a negative emotional state. Emotions send messages for our survival. Emotions tell us when to fight and when to run. Feelings can create desire for more or less of what is making us feel this way.

When emotions are too muted they create dullness and distance; when out of control, too extreme and persistent, they become pathological, as in immobilizing depression, overwhelming anxiety, raging anger, and manic agitation.

Emotions are the basis of most decisions. Social science and psychology is full of research that concludes that decisions are mostly based on emotion and then justified with rationalization.<sup>1</sup>

#### BALANCING THE USE OF EMOTION

How do we best use our emotion to obtain justice for the

people we represent? Misuse it at your peril. Today's jurors have been polluted with propaganda and bullshit. They believe it is our job to be emotional, dynamic, and manipulative. Jurors think we use emotional tricks to win. They are suspicious of us from the start. Even if jurors see us as credible, many think we have learned how to fake our credibility. They believe we learned this skill in law school.

Balance is the key. Knowledge and awareness of our own emotions is the starting point for the use and understanding of emotions.

#### CREDIBILITY AND THE TRIAL LAWYER

As always CREDIBILITY IS THE KEY AND THE ONLY THING WE HAVE.

To be credible, one must be authentic. We can not show emotion that is contrived or made up.

So where do we begin? We begin with ourselves. Slowing down and looking at our own lives and feelings is a must. Much has been written and discussed about the need to continue the discovery of self through psychodrama exploration of our own life. How we must continue our personal psychodrama work. We must use our personal work on the horse so we can represent our clients without our own emotional baggage getting in the way. Many times this is invisible and undetected. But it is there.

#### VOIR DIRE ON EMOTIONS

After we work on personal discovery and discovering our client's story, we are then ready for trial. But how do we approach the jurors with the emotion we have discovered? I believe it is essential to discuss emotion with the jury panel. The best place to start is during voir dire. I share with the jury that the case is filled with emotion. I admit that I sometimes feel emotions are used

to influence an outcome. I then ask the jury to share—Who else feels that way? This may be a way to introduce some of your self to the group and show you are willing to talk about emotion.

If it is an emotional case involving death or a horrible injury, we must talk about this with the jury. We should ask their permission to use the emotions of the case in trial. We should let the group discuss how they will handle this. Let them see that the defendant caused this and we must show what the defendant caused in order to help the jury do their job.

### POSITIVE EMOTIONS

Let's next think about positive emotions. After all, you do not want the jury seeing you as the constant bearer of bad feelings. For example, if you have a case that involves spine surgery, you should not introduce the damages as, "What is the price of going through this horrible surgery? Having rods and screws drilled into your neck bones. Can you imagine that pain?" This approach is negative. Who wants to imagine that? We will create a group of jurors whose foundation is rooted in negativity.

Instead, present a positive emotion to the jury. Frame the damages as, "This is a case about the price of a healthy spine and all the good things a healthy neck allows us to do. What is the price when health and the enjoyment of life are taken away?" Everybody wants to be healthy. Nobody wants to go through ugly surgeries.

This approach to positive emotions does several things. It has you presenting something favorable and is related to good feelings. So always try to frame the case and what happened in a favorable light. It also gives you credibility because no longer are you viewed as a lawyer whining about all the horrors your client went through.

Additionally, this approach ignites the juror's positive emotions. You will spark good memories in the juror's lives about what they have done because of their healthy neck and living. When you get to the bad stuff associated with the surgery, pain and disability, you can more easily associate the bad feelings or emotions with the defendant.

### LAY A FOUNDATION FOR EMOTION BEFORE SHOWING IT

Next, as a general rule, that I can almost never find an exception to break, do not show emotion in your case until you show facts that led to the emotion.

Do not jump coldly into how evil a corporation acted without first showing how they ignored public safety and injured the public. You must present the facts that lead to the conclusion the corporation is evil and ignored public safety. For example, if the corporation did not have safety wires to protect workers from falls, you need to show how easily the corporation could have installed these safety wires. Show the jury that the wires can be purchased and installed within days. How these wires save employees' lives. After you have laid this foundation, only then can you launch into the emotion of the case. You now have the jury warmed up to feel the betrayal and their cold hearted actions.

### BE CREDIBLE THROUGHOUT THE TRIAL

It is important to understand that many jurors judge us as soon as we walk into the courtroom. They see us as the least credible person in the courtroom due to the propaganda campaign of the past two decades. There is some truth that SOME plaintiff's lawyers and organizations have contributed to the public's perception of us as greedy lawyers willing to use emotion and manipulation to line our pockets. Perhaps this is a subject for another time. But we must remember that many jurors view us in this light. We have to be credible to change their opinion.

We must show our credibility in everything we do. We must tell the jury not just the facts but how we discovered the facts. How we spoke to witnesses, doctors, police, family members, coworkers, neighbors to learn the facts we are presenting. Show them what we did to discover the story. Let them know we are not making things up to just manipulate the use of emotion. We must show them that this emotion is real.

### CONCLUSION

Here is a list, by not means exhaustive, of Do's and Don'ts regarding the use of emotion in the courtroom.

#### DON'TS

Don't present conclusions; show the facts that lead to the feeling or emotion.

Don't present highly emotional exhibits without first explaining their purpose.

Don't be unprofessional with opposing counsel.

Don't make the jury cry in the courtroom without laying the foundation of the story.

Don't tell the jury how they feel unless in an empathetic way during voir dire.

Don't use witness simply for emotional appeal.

#### DO'S

Do present the factual story that leads up to the emotion.

Do spend time discovering the story and the scenes and themes that evoke emotion.

Do look at and at least try to truly feel your own emotions and feelings.

Do always try to look through the hearts minds and eyes of OTHERS. Role Reversal and empathetic listening and understanding must be practiced each day,

Do always remember that we are human because of our feelings and our ability to be empathetic. Work on it. It is our greatest tool. ⑤

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