

Face-to-Face Conversations Are a Powerful Conflict Resolution Tool

By Victoria Pyncheon

Every seasoned trial lawyer knows that in the absence of critical information, juries simply make stuff up to fill in the gaps. They, and we, do this semi-consciously and reflexively.

Psychologists tell us that we are not only "meaning making" beings, but that we are all born conspiracy theorists. Viewing a field of nonsensical, unrelated data, we naturally begin to "connect the dots" — to organize the information into a coherent, and often compelling, narrative.

Pattern making or conspiracy theorizing is a human survival mechanism. We have never been the fastest or the biggest creatures on the planet. We don't have the sharpest teeth or blend in all that well with the scenery. Our soft, easily punctured skin is not covered with a protective shell. In a pinch, we can't take a running leap and fly away from land-bound carnivores who might make us their prey.

We are, however, the canniest creatures on the planet. To avoid the tiger who made lunch of our best comrade, we surveyed the scene and committed the pattern of otherwise unrelated details to memory. Five banyan trees, a narrow stream, and a pile of rubble left by a recent avalanche means "there are tigers here."

Couple this with Fundamental Attribution Error and you have all of the ingredients necessary to

blame inadvertently caused harm on elaborate conspiracies cooked up by our untrustworthy companions — Fundamental Attribution Error being our universal tendency to over-emphasize the role of others' negative personality traits to explain why harm befell us.

So it is with our legal adversaries. Once the channels of communication have been severed by the filing of a lawsuit, attorneys and clients alike begin to make up "what really happened" based on predispositions, scattered conversations, faulty memories and scraps of documentation.

The case at issue was a costly but relatively simple lemon law dispute. The plaintiffs, Kirk Townsend and John Finn (names changed of course), had purchased a mobile home, driven it a few hundred miles, and taken it in for service on four occasions. They wanted to return the RV to the manufacturer and get their money back.

Though the defense brief never used the word "gay," their theory was apparent. Two frivolous gay men must have purchased this expensive (\$200,000) motor home on a whim, changed their minds and were now seeking any excuse to get rid of a vehicle they too hastily purchased. Whether the motor home met the lemon law tests for rescission was not the focus of the defense. The buyer's regret story — arrived at in all apparent good faith — had firmly lodged itself in the minds of the defense team and they were little inclined to make concessions.

Meeting Kirk and John in separate caucus revealed a quite different scenario. Kirk was a Vietnam veteran and lifelong motor home enthusiast. An engineer by profession, he was an auto mechanic by avocation. He and John had been domestic partners for 25 years. John sported a crew cut and wore a plaid flannel shirt. Everything about these two men in their late 50s challenged the televised "Will and Grace" stereotypes.

Unable to dislodge the gay buyer's regret theory from the defense psyche, I asked the parties to sit down and talk. I coached Kirk

and John to make their narrative short and non-rancorous and recommended to the defense that they take a "customer satisfaction; we want to hear your story" approach. It was not, however, my coaching or my intervention that broke impasse that day. It was the conversation between defense counsel and Kirk.

"You're a veteran?" defense counsel asked Kirk as he slid into the chair at the conference table.

"Really?" defense counsel asked, leaning forward with genuine interest. "I was in Saigon then too. Do you remember the X Bar at the end of Y Street?"

For the less cynical, this is simply a very quick way in which we establish friendly connections among strangers — in which patterns of unrelated and perhaps meaningless detail say "home" rather than "danger here." In this case, the grantalloon of service in Saigon before the Tet Offensive had the effect of breaking down the gay

stereotypes on which the defense "buyer's remorse" theory rested. As the prejudices crumbled, so did suspicions of a bad faith claim. When the parties once again repaired to their separate corners, the offers and counter-offers came quickly and without great resistance.

I tell this story to illustrate once again the power of face-to-face conversations to resolve a conflict that appears to be solely about money. Here, the power inherent in the shared experiences of two strangers — defense counsel and Kirk — was far more profound than the predispositions and subtle but compelling stereotypes that were causing impasse.

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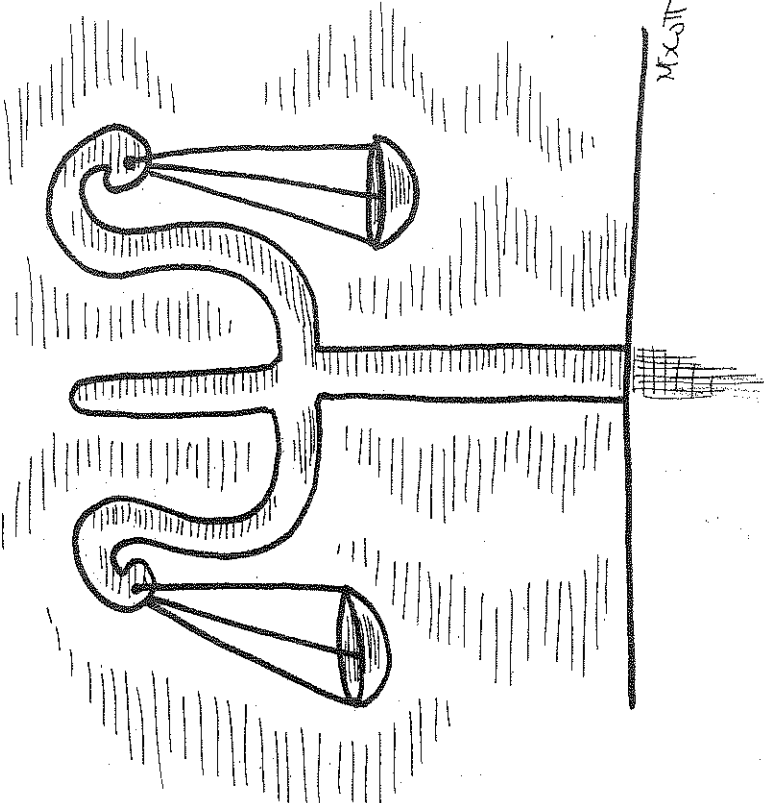
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