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Is a great trial lawyer only born, or can one be taught?

Can great trial lawyering be taught, or is one only born with it? When I was a college senior struggling to figure out whether to go to law school or business school (I preferred saving the world with a law degree, but saw a business career as a safer way to financial security), and what to do with my life in either discipline -- rather than taking a tai chi harmonious approach, not having learned tai chi yet -- a close relative panned my consideration of possibly being a trial lawyer. This relative, not a lawyer himself, viewed successful trial lawyers as being successful actors, and said I had not proven myself as an actor (I had barely acted, except for small rolls in a few elementary-school-age plays). By the way, since being real and honest is a key ingredient to being a great trial lawyer, that does differ from when an actor is part of an effort to create a fantasy setting. Fortunately, being driven to reach my goals of making the world a better place through the courtroom, despite the naysayers, I chose law school and became not only a trial lawyer, but a trial lawyer doing the cases I most love to defend. Along the path have been great teachers who have taught me that one need not be born a trial lawyer to be an excellent trial lawyer. Two of my strongest inspirations on that path are Steve Rench and Sunwolf. Steve Rench is a powerhouse of a trial lawyer and human being. On first meeting him, Steve may look like an ordinary mortal. But by the time he opens his mouth, he is an amazing persuader and caring teacher to lawyers who advocate for the underdog. When in a tense situation with an opposing lawyer or difficult judge, I often seek inspiration from Steve, tai chi mega-master Cheng Man Ching, my friend and mentor Jun Yasuda, and my friend and law partner Jay Marks. Steve Rench knows that people -- even if not all -- can learn how to be great trial lawyers. Appearing to be nobody out of the ordinary at first glance, he gives all the more emphasis to his slogan "Dare to be great." Sunwolf gives the inspiration to find our inner magic and power as trial lawyers, and to simplify even the most daunting-seeming task, to make the more difficult parts of the task flow more simply from the simplified approach to the battle. Sunwolf is gentle and loving, not needing to bare any fangs, just as a great baseball pitcher need not bare any fangs, but just needs to deliver great pitching. Gerry Spence is another of my influential trial teachers. Gerry at first comes across as a natural-born trial lawyer. However, he has often revealed his own substantial challenges to becoming a better person and trial lawyer (to become a better lawyer one first must become a better person), and discusses this at length in his autobiography *The Making of a Country Lawyer*, from around 1995, and in many other places. He may have learned more quickly some of the approaches to becoming a great trial lawyer, but still he had to learn. When Gerry teaches how to become a better trial lawyer, at least at the multi-week Trial Lawyers College, which I attended in 1995, Gerry assumes the attendees already know the law and trial technique, and first focuses heavily on enabling the attendees to find out who they really are and what they really want to do with their lives, which means shedding putting money and career as the first priority, shedding keeping up with the Joneses and often leaving the attendee with a pile of emotions that have remain suppressed for too many years. The next step at the Trial Lawyers College is for the attendees to learn how to empower themselves to do justice, so that they can do justice for their clients, even if that means taking tremendous financial and personal risks in doing so, whether that be as small as becoming one's own boss and leading to such bigger steps as refusing certain potential clients, refusing certain bar association appointments and refusing to keep one's mouth shut against injustice and unfairness when doing otherwise clashes with serving justice and with the person's life goals (including such goals as not being an absentee parent or absentee spouse). Next, the Trial Lawyers College moves into integrating the attendees' enhanced self-discovery and empowerment to more fearlessly stand up for their clients in the courtroom and during the stages leading up to the courtroom, even when naysayers claim the lawyer has lost his or her marbles to try a case radically different than anyone in the community has seen before, and even when some actual or potential clients feel compelled to switch to a new lawyer upon proclaiming that the TLC attendee is some kind of cult weirdo, and that the client wants a more "traditional" lawyer. (Some of the focus of the Trial Lawyers College prepares the lawyer for possible approaches to convincing the client to stay with the lawyer, including having a heart-to-heart talk where the lawyer explains how well it has worked for the lawyer to focus on what looks to be the winning approach for the client, rather than just doing things the way all other lawyers in the community do it, lest the wheel never be invented.) Whereas many people try to hide their warts as they seek success, the Trial Lawyers College focuses on coming face-to-face with and understanding our biggest fears and pain, to embrace the pain before sending it on its way, and to be all the more empowered in the process. As Gerry's late close friend -- and my late friend, too -- John Johnson said, it is far more preferable to have a bucket of fresh cow dung than a bucket of beautiful fake flowers, for at least the cow dung bucket holds something real. Juries will relate better to a lawyer in a thrift-store-purchased suit (with Tony Serra being an ultimate example of that) doing his or her best to cross examine an opponent, than a lawyer in a brand new Armani suit with gold cufflinks looking superficially smooth but leaving out any personal reference point to the lawyer's past trials and tribulations. In *The Making of a Country Lawyer*, Gerry Spence acknowledges how he bumbled along in one of his first jury trials, struggling with simple evidentiary issues. Even when he was winning in a later trial, a spectator (a law student or newer lawyer) expressed surprise that instead of Gerry's opening or closing

having the fire of the greatest orator, he started by talking about how he feared making any stumbles that might let his client down. Of course, by sharing such fears with the jury, we look more human, more honest, and more reliable, rather than someone sent over from Hollywood casting, and we release a weight from our shoulders, so that we may proceed to the heart of the battle. Ultimately, a strong trial lawyer will be able to shed and reduce more and more fears, because doing so is empowering, as demonstrated by the following tale I frequently have retold: To be fearless, I take inspiration from t'ai chi master Cheng Man Ching, who spoke of overcoming our fears in terms of imagining that we are practicing t'ai chi while balanced atop a narrow pointed cliff. To not eliminate one's fears while atop the cliff is to guarantee certain death. Eliminating fear also calls for keeping and tempering the fearlessness of a child filled with wonder, and living in the moment, as wonderfully detailed in the following story of the man and the two tigers: A man is chased in the wilderness by two tigers, only to be forced off a cliff, hanging for life from a vine. One tiger waits above and the other waits below for a human meal. Two field mice gnaw away at the vine. The man sees a wild strawberry growing from the side of a cliff, reaches for it, tastes it, and -- with his life hanging in the balance -- thinks of how delicious the strawberry tastes. When one lives in the moment, one fears little if at all. Consequently, becoming a great trial lawyer is a never-ending process, just as is the process of becoming a great t'ai chi practitioner. Similarly, the most awkward-feeling, unsuccessful-feeling person can learn how to reach new and more fearless and self-empowered heights. Trial lawyers have a challenge to help people do that, including with their clients, opponents, judges juries and, most importantly, themselves. Jon Katz. ADDENDUM: Were videos of Steve Rensch and Sunwolf available online, I would have posted them in this blog entry. They are not, but I found the above video of Gerry Spence -- the only one I have found online in a real or mock courtroom setting (his voir dire DVD can be ordered here) -- in this instance defending Lee Harvey Oswald against Vincent Bugliosi, who prosecuted Charles Manson, and direct examining apparently the actual person charged with removing John Kennedy's brain during his autopsy. Gerry grew up without opulence, knew a life of being with ordinary people, and still knows how to relate to all people -- regardless of privilege or lack thereof -- to this day without letting his later-earned financial riches cloud that. Watch how he notices the witness's nervousness and reassures him about it. Clearly, witnesses are going to be more open to questioning from lawyers speaking to them with respect and empathy rather than to questioning from lawyers belittling and growling at them (although a tough cross-examination witness sometimes leaves the lawyer little choice than to come down firmly on the witness in order to help the client). As to the witness's testimony in this YouTube video, this video presents the first time I ever have started wondering much more than in passing about whether Lee Harvey Oswald acted alone in killing John F. Kennedy. Why did this witness find no brain to remove in Kennedy's skull? Why does this witness say the military strongly limited what he was permitted to disclose about the autopsy when he still was working with the government? Have any of you looked into this witness's assertions and its implications about whether Oswald did not act alone in killing Kennedy, or whether Oswald even killed Kennedy? ADENDUM II: Previously, I assumed that John F. Kennedy was assassinated by Lee Harvey Oswald, and that he acted alone. When I started hearing about conspiracy theorists who proclaim that Oswald did not act alone, images came to mind of people with a lot of time on their hands and with bad haircuts crisscrossing the nation for pleasure to attend assassination conspiracy conventions and getting on listservs with such handles as DalTex and debating the most minuscule aspects of the grassy knoll. I did not think much about the whole conspiracy discussion, figuring that Kennedy and Oswald are already dead. I understand that larger questions have been raised by conspiracy theorists about whether some people in government arranged Kennedy's assassination. Certainly, as a criminal defense lawyer, I do not think -- without more information in my hands -- that I should conclude at this point that Oswald shot Kennedy, nor that he acted alone. This does not mean that I agree with any conspiracy theorists, but that I have not reached a conclusion yet as to Oswald's role in the assassination. In any event, here are two links that further address the missing brain testimony by Paul O'Connor -- who apparently died in 2006 -- that he addresses in the above-displayed YouTube video: - A 1981 Time magazine article on a two-casket theory, that includes discussion of Paul O'Connor's claims that Kennedy's corpse was missing his brain when Mr. O'Connor examined Kennedy's skull at Bethesda Naval Hospital. - Google book excerpts from The Radical Right and the Murder of John F. Kennedy, which includes a discussion of Paul O'Connor's missing brain assertion.

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