

## Whole Brained Law

My wife, Cheryl, is fairly direct. “You need to read this,” she commanded, as she handed me an orange book by Daniel H. Pink. The cover graphic was a UPC bar code label juxtaposed against a piano keyboard. ***A Whole New Mind: Moving from the Information Age to the Conceptual Age***, read the title.

“My high school kept saying they’re better because they train whole-brained students and I wanted to see what that was all about,” Cheryl explained. “This is the text they mentioned. I think you’ll get more out of it than me.”

I looked at the cover again. A pull-quote from *Wired* magazine promised the volume would explain “Why right-brainers will rule the future.” Being a right brained individual trapped in a left brain profession I thought, “What the heck?”

Pink’s introduction hooked me:

The last few decades have belonged to a certain kind of person with a certain kind of mind – computer programmers who could crank code, lawyers who could craft contracts, MBAs who could crunch numbers. But the keys to the kingdom are changing hands. . . .

This book describes a seismic – though as yet undetected – shift now underway in much of the advanced world. We are moving from an economy and a society built on the logical, linear, computer-like capabilities of the Information Age to an economy and a society built on the inventive, empathic, big-picture capabilities of what’s rising in its place, the Conceptual Age.

I thought, “Wow! He’s saying people who think like plaintiff lawyers are coming into their own?”

I thumbed through the volume and, sure enough, that’s pretty much what Pink is positing, though I’m sure he doesn’t think about it in those terms. Even so, Pink’s recommended reading list includes many of the primary texts that cutting edge jury trial experts are making required reading for their adherents. Books like Robert McKee’s *Story: Substance, Structure, Style, and the Principles of Screenwriting*, George Lakoff and Mark Johnson’s *Metaphors We Live By* and Paul Elkman’s works on reading facial expression.



In case you’re not familiar with the notion of “right-brained,” “left-brained” and “whole-brained,” it boils down to this. Left-brained thinkers, the theory goes, tend to be logical and linear. Right-brained thinkers are more creative and artful. Whole-brained thinkers combine both logical/linear-creative/artful approaches. A stereotypical left-brained professional is the engineer laboring in a cube-

farm. The artist in his/her loft is the stereo-typical right-brainer. Columnists for *Advocate* fall into the whole-brained category.

Anyhow, a couple of days later, an email hit my computer from *Advocate* publisher, Richard Neubauer. The subject line was "idea for column or article" and it included a short story from the *Daily Journal*.

The page one article by Mindy Farabee was titled "March Madness' Rings in New ADR Program" and darned if the article doesn't illustrate how Pink's theories about success in this new conceptual age are proving themselves out right in downtown Los Angeles.

The *Daily Journal* piece talked about a push at the Los Angeles Central courthouse to reintroduce the Voluntary Settlement Conference Program, which is specifically designed to handle p.i. cases. Apparently, personal injury doesn't fit well in the *traditional* (read "left-brained") court-ordered mediation process. As incoming Southern California Mediation Association incoming president Phyllis Pollack was quoted, "The general feeling among mediators is that defendants were not appearing at mediations in good faith. In many cases, insurance adjusters attended the mediation with little or no money to offer in settlement. Many mediators got the impression that defendants were appearing at mediation simply because the court ordered them to be there, with no real desire to resolve the matter."

Of course, what Ms. Pollack is describing is nothing new. On the plaintiff side, we all understand that unless a carrier has decided a case is ripe for settlement, nothing is getting accomplished by mediation.

So, it seems that the Central District ADR people figured out that the standard routine wasn't working to settle cases, so they decided to be disruptive, innovate and shake things up a little to help clear the crowded dockets.

The result was "March Mediation Madness," a push to process 252 p.i. cases at more than a dozen L.A. County courthouses, all in the month of March. Rather than follow the standard single mediator approach, the program paired plaintiff and defense lawyers as co-mediators while also changing the standard rules on confidentiality.

Now, if I'm recalling correctly, the format of pairing a plaintiff lawyer and a defense lawyer as mediators in a personal injury case isn't new – I volunteered for those programs myself back in the old CRASH settlement program days.

What is new – and encouraging – is that the program represents a whole-brained approach to settling cases by adapting a mediation format to fit the problem at hand, instead of trying to force uniformity just because it's easier to use an existing mediation system. Dare I characterize the approach as *practical*?

I called the Honorable Rex Heeseman, chair of the court's ADR committee, to find out how the month-long push worked out, but his clerk said the judge was on vacation. Still, the *Daily Journal* quoted Judge Heeseman as saying that initial reaction was positive.

Which delighted me, because I see it as further proof that creative, whole-brained approaches, can succeed in our left-brained profession.

As I mentioned, Pink's book has a piano keyboard on the cover, so I guess it's appropriate that I bought Cheryl a baby grand for her birthday. Being whole-brained doesn't seem to have hurt my own practice at all.

Here's to being a well-rounded, creative and *successful* lawyer in our new Conceptual age.

**Additional Reading:**

[Finding Your Passion](#), Finding passion is an art we've all heard something about, but most of us won't ever truly attempt.

[Checklists, Reading Lists and Connecting the Dots](#)

Connect the dots from planning to success.

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