

Psychodrama and trial lawyering

Stepping into a different set of shoes helps trial lawyers gain insight into their cases. Using psychodrama to understand the players is a way to bring cases into focus.

James D. Leach, John Nolte, and Kätlin Larimer

A lawyer stands before a jury. Beside her sits a young African American man accused of killing a police officer. The lawyer's gut is tight because she knows the young man's life depends on how well she can reach these jurors. More than anything, the lawyer is afraid that she will not do her best, that she will be outsmarted by the prosecutor or intimidated by the judge. She is afraid that someday she will be witness to the state's execution of her client.

A mother sits in her lawyer's office. Her child was profoundly injured at birth. In a few days she will tell a jury about what happened at the hospital, about the child's injuries, and about what it is like to live with a severely disabled child who requires constant attention. She is enraged at the doc-

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tor yet fearful of the legal process. Today, her lawyer will prepare her to testify.

A lawyer returns from court. He is on the losing end of an important pre-trial decision from a judge who has ruled against him many times before. He tells his partner, "That judge hates me, and I hate him. He never listens to me. He's never fair to my clients." Even as the lawyer expresses his anger, he hears his softer inner voice ask, "Why can't I reach him? Why doesn't he hear me? What is really going on here?"

Law schools teach that trials are based on formal rules that are to be applied rationally and logically, independent of the people involved. This is the mythology of the law, symbolized by a blindfolded woman holding the scales of justice. She is impartial because she decides the outcome of cases without seeing the people who stand before her.

In truth, a trial is a human endeavor that is never separate from the people involved, from clients and lawyers to witnesses, judges, and jurors. Every lawsuit is a passion play in which the final question is "What is just?"

Psychodrama is an effective tool to help us and our clients be more successful in the courtroom. Originated by J. L. Moreno, an Austrian physician who immigrated to the United States and founded the Beacon Hill Institute in 1936, psychodrama has been used in education, business, and the arts and as a form of therapy. It is a uniquely powerful method of storytelling, and successful trial lawyers must first be good storytellers.

Psychodrama uses action, not just words. Instead of simply talking about an event, it is re-created. This re-creation refreshes the actor's memory of the original event and recalls the emotions it brought forth. The result is a story that tells the actor's experience more powerfully than a mere recitation of the facts.

Role reversal is the most commonly used and most powerful technique in psychodrama. One person sees a situation

Psychodrama helps attorneys imagine themselves in a variety of courtroom roles, from the client to the witnesses, other attorneys, judge, and jury.

through the eyes of another. The trial lawyer can use role reversal to see the courtroom through the eyes of a prospective juror, the client, a witness, an opposing attorney, or the judge.

The lawyer can assume the role of each of these people, think the thoughts they may think, and feel the feelings they may feel. The lawyer becomes a more sensitive, effective communicator as he or she uncovers the human realities of the case.

We have been taught to behave according to convention, but the problem with convention is that every trial is different, presenting new challenges to the players. Prepackaged behavior is neither interesting nor persuasive.

Creativity and spontaneity are powerful weapons in the courtroom. Psychodrama teaches us how to use them to our client's advantage. It teaches us to create solutions instead of relying on canned techniques.

Most important, psychodrama teaches us how to find and tell the truth, the truth that is deeper than we are ordinarily comfortable with and deeper than we usually hear. Once we have found the deep truth, psychodrama helps us tell it in a way that others will hear and respond to.

How does psychodrama help us find and tell the truth?

Lawyer's life and self

Psychodrama offers a means for understanding ourselves, our life experiences, and our reactions to real-life situations. Many of us have difficulty reading our own emotions. We may know we are agitated but are unable to identify precisely what we are feeling. Sometimes we don't even recognize that we are reacting emotionally.

Some of us show anger; others have stuffed anger deep inside. Some are intimidated by power; others seek it at a high cost. Some are depressed; some feel beaten down by our adversaries and the constraints of our lives.

There is always a reason for how we feel. We may understand the reason intellectually, but this isn't enough to let us change. Psychodrama allows us to act out our past, to understand more deeply what happened to us, and to change how we function in the present. Once we know ourselves, we

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have a chance to know others.

An open, truthful presentation of self in a courtroom is an extremely challenging endeavor. Most legal culture and almost all law school education teaches us to act in accordance with predefined norms and rules and to block rather than express our fears, hopes, and anxieties. When we behave conventionally and without regard for our own feelings, we invite jurors to perceive that "something's missing" and to conclude that we are not telling the truth.

When we experience and express our deepest feelings and communicate them to jurors, we gain great power—the power of emotional connection, credibility, and truth. Many lawyers who explore their lives through psychodrama find this helps them in their work and personal lives.

Lawyer's relationship with a client

In every case, we must deal with our client. We may dislike the client or dislike things he or she has done. Psychodrama can help us understand and appreciate the client—warts and all.

One way to understand and appreciate a client is to participate in role reversals.

We are used to playing roles. We express ourselves through roles every minute—perhaps as lawyer, spouse, parent, or child. As Shakespeare wrote, "All the world's a stage. . . . And one man in his time plays many parts."

Most of us, however, have never stepped into the client role. The insights can be startling. Under a director—a psychodramatist or a lawyer with psychodrama training—we begin to understand what it is like to be on trial for one's life or to live with a profoundly impaired child. Once we have seen the world through the client's eyes, it is nearly impossible for the lawyer to dislike the client. The lawyer understands the client's truth and is in a powerful position to convey it to the jury.

Another use of psychodrama is for the client to enact the central story of the case. In an injury case, this may be how the in-

jury and the events leading up to it occurred. In a malpractice case, it may be how the physician showed a lack of care and how the client's life has been changed. The client enacts the story as if it were occurring here and now.

During the enactment, the client is directed to reverse roles at appropriate times with other players in the story. Additional psychodramatic methods—such as scene setting (describing in detail a real scene so it comes alive in the present), using soliloquy (representing the client's inner voice), bringing in auxiliaries (adding other characters), and using a double (having someone else play the client briefly to help the client understand his or her feelings)—can be used by an experienced director to help the client understand and tell the story more effectively.

This reenactment gives the client and lawyer a deeper understanding of what happened and what the events really mean to the client. The client benefits emotionally, and the lawyer comes to understand the client's humanity. Their relationship is strengthened in a way that all parties—opposing counsel, judge, and jurors—will intuitively perceive and respond to even if they never consciously understand it.

Lawyer's relationship with jurors

Voir dire frightens most lawyers more than any other part of a trial. We have been taught to mask our fears and to speak to the jury in a stylized manner.

Jury selection offers us the opportunity to engage the person who sits as a juror and vice versa. To do this, we must get beyond perfunctory interaction and establish a genuine relationship. This is hard to accomplish in a courtroom, where we are anxious about our performance and feel the pressures around us. But it is essential to making the most of the opportunities jury selection provides.

Lawyers who understand this need and can speak emotional truth during jury selection will reach jurors on a level of truth-

fulness jurors have not often experienced. Lawyers operating this way tell jurors about their fears instead of trying to hide them. By doing so, these lawyers show jurors their humanity and trustworthiness—and the trustworthiness of the case.

For example, in a soft tissue injury case in which the plaintiff is obese, the lawyer divulges his own prejudices about the obese, his own fears about soft tissue injury claims, and his difficulty translating pain into money damages. The lawyer's honest self-disclosure allows the jurors to be honest about their own prejudices. From there, the discussion moves to what to do about these prejudices in the case. This discussion takes place in the presence of the lawyer, who leads the discussion. Otherwise, these subjects will surely be considered in each juror's mind during the trial or in the jury room.

Psychodrama trains lawyers to encounter jurors honestly, openly, and genuinely. A pre-trial psychodramatic enactment of voir dire allows us to understand who the jurors are, how they can be persuaded, and what behaviors and patterns of communication are unhelpful or harmful to our credibility and persuasiveness.

A psychodramatic exercise to prepare the lawyer for jury selection may involve people playing jurors, a judge, and opposing counsel. Under the guidance of a director, the lawyer is prompted to voice his or her fears. The lawyer begins the exercise in his or her own role, but soon is directed to reverse roles with a juror.

The "juror," now in the role of the lawyer, mirrors the lawyer, taking on his or her manner and repeating his or her questions. The lawyer who plays a juror may understand that traditional voir dire is perceived by jurors as manipulative and meaningless. In the juror role, the lawyer learns that a juror will not disclose much if the lawyer does not self-disclose, if the lawyer does not really listen to the juror, or if the lawyer reacts to juror honesty by pulling back. In the juror role, the lawyer learns that only a lawyer who is emotionally open will elicit openness from a juror.

In the exercise in a criminal case, a juror may think, "That lawyer's a phony, that defendant is guilty." The lawyer, prompted by

the director to speak his or her inner feelings, says, "I've never been so afraid. I'm afraid the jurors fear my client because he is African American. I'm afraid the jurors will not believe that police officers could lie. I'm afraid I'm inadequate."

Through this process, we gain an understanding of what's really happening in the courtroom, beneath all the words. We learn how to affect the jurors, how to avoid behavior that harms the lawyer-juror relationship, and how to improve our credibility. The lawyer's fears, which he or she now grasps, may be the most solid foundation on which to build trust with jurors during voir dire. Jurors, like all humans, know and respond to emotional honesty when they hear it. The lawyer who models emotional honesty will find jurors give it in return.

Lawyer's relationship with witnesses

Each trial witness—for the plaintiff *and* the defense—has a human story.

For witnesses on the plaintiff's side of the case, the lawyer's task is to develop their stories in the most believable and powerful way. A truthful story can be believed or disbelieved, powerful or powerless, or meaningful or meaningless depending on how it is told. Storytelling is a joint endeavor of lawyer and witness.

In preparing for trial, the psychodramatic director helps the witness remember by having him or her reenact the scene. The witness lives the scene—describing the sights, sounds, and smells—as if it were occurring here and now. The witness is asked to reverse roles with other people in the scene and to show what they said, to speak the feelings of the other people as well as his or her own.

In a separate exercise, the lawyer may become the witness and see the world through his or her eyes. The lawyer's understanding of and empathy with the witness grows enormously. When the witness testifies in court, the lawyer directs the witness in reliving the scene. The jury knows it is seeing the truth.

For witnesses against the plaintiff, our task—through cross-examination—is to produce a counternarrative telling jurors a different story than they heard on direct examination. Prior to trial, the lawyer uses

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Psychodrama teaches lawyers to stop thinking like lawyers and to start thinking like other human beings.

psychodrama to reverse roles with the witness to be cross-examined. The lawyer now may learn the human stories that the adverse witness is not going to tell on direct.

For example, in preparing to cross-examine a physician who does a large number of independent medical examinations (IMEs), the director asks the lawyer to take on the IME doctor's role. The lawyer may learn that a true story the doctor is not telling—and that the lawyer on cross can tell—goes something like this:

"I became a doctor to relieve human suffering. I remember the first time I helped a sick person. It was the greatest feeling in the world. When I was approached to do a defense medical evaluation, the feeling was different. I was uncomfortable because I wasn't being asked to help the patient.

"Gradually I got used to it. Now I have many financial obligations. I make a lot of money by doing these evaluations and by testifying for defendants. Practicing medicine is far more difficult now than it used to be because of all the restrictions managed care puts on me. Doing an IME and testifying is so much easier. I never have to worry about treating a person who doesn't get well. I realize that the defense attorney evaluates whether my testimony helps the defense and that there are other doctors waiting to take this work if the defense attorney doesn't choose me in the future."

Alternatively, in preparing to cross-examine a former confederate of a criminal defendant who testifies against him in exchange for a greatly reduced sentence, the lawyer is directed to take the role of the witness. The lawyer may learn that a true story the witness is not telling—which the lawyer on cross-examination can tell—is the following:

"I was facing long years in prison. I was afraid of being separated from my children and of them growing up without me. I am rarely allowed even to see them in jail, and when they come, it is indescribably painful to have them see me locked up.

"In prison, I would be hundreds of miles away from them, and I'd see them even less. Being in jail is being an animal in a cage. My cell is only 12 feet by 12 feet. I have no privacy, even for the most basic of human needs. I hate it."

The jurors can see the true motivation of the witness and understand that the witness is not objective or unbiased. The lawyer's humanity and credibility are strengthened in the eyes of the jurors, and the witness is discredited.

Storytelling in opening and closing

Lawyers are taught that trials are about facts, so opening statements and closing arguments are often presented as a recitation of what happened in the case. But facts are only as important as the story they tell. The story interrelates the facts and weaves them into a narrative that communicates the life experience of the people involved.

A lawyer who has entered the client's world through a psychodramatic reenactment, through role reversal with the client, or through a brief scene setting often finds that his or her storytelling improves remarkably, because the lawyer has learned the emotional truth of the case and discovered how to tell it.

For example, a lawyer preparing for trial is struggling with how to explain liability in a securities fraud case to the jury. She knows all the facts, but the case seems too complicated for jurors to grasp. The lawyer is directed to psychodramatically reenact the most important scene. By participating in the reenactment, the lawyer learns that the case boils down to a simple swindle. The lawyer now knows the story she will tell the jury and is able to do it simply and persuasively. All the other facts fall into place around the story of the swindle.

Another lawyer is having difficulty telling how his client's life changed following a closed head injury. The client looks fine and has continued to work, but her emotional life has been destroyed. The

lawyer struggles to tell the client's story to a mock jury. A psychodramatist or a lawyer with psychodrama training takes the lawyer out of his usual role and puts him, figuratively, into the client's home.

Through psychodrama, the lawyer sees the client at home and the people in the client's life whose relationships have been dramatically changed by the injury. The lawyer plays the roles of the client, the client's husband, and the client's child. He even plays the role of a family photograph taken before the injury and sees the home through the "eyes" of the photograph.

The entire exercise takes only a few minutes, yet when the lawyer is directed to leave the client's home and to present the story to a mock jury, he now tells it brilliantly. The jurors feel they are in the client's home and feel the pain and hopelessness the client and her family feel. The scene is overwhelmingly real to the jurors.

Lawyer's relationship with the judge

The judge is an authority figure who has the power to impede the lawyer's case, but when we allow the judge's authority to overwhelm our own initiative and creativity, we make our own lives miserable and become less effective. Sometimes we forget that authority figures are people, too. We often allow judges to have more power over us than they really have.

A lawyer having difficulty with a judge or having difficulty finding his own authority in the courtroom often benefits from enacting the situation psychodramatically. This lawyer may realize that he has trouble being assertive in the face of any authority figure or that there is a particular judge before whom he feels especially powerless. Psychodrama allows the lawyer to understand his responses in light of his prior life experiences and to change his behavior. Role reversal with the judge allows him to take on the power he experiences the judge as having over him.

Here, the director sets the scene. The

lawyer feels what it is like to be locked in struggle with the judge. The lawyer is prompted to speak his inner voice, which may say, "I hate you." The lawyer is asked who the judge reminds him of or when he has felt this way before. The lawyer may be asked to enact that earlier scene. The answers to these questions may involve a lawyer's family of origin, since that's where we first experience authority.

Then, the lawyer becomes the judge. The lawyer feels what it is like to be the judge as the judge deals with the lawyer. The lawyer, playing the judge, experiences the judge's feelings and fears. Of whom does the lawyer remind the judge? How has the judge dealt with the situation in the past? What different responses by the lawyer may be more effective?

The lawyer who is willing to enact these issues using psychodrama can understand how the judge thinks and feels, can become better able to deal with the judge, and can learn to do what needs to be done to deal effectively with the judge. The lawyer is likely to learn that most judges, like jurors—no matter how inhuman they appear on the outside—will respond to emotional honesty and openness.

Trial lawyers perform many tasks in addition to jury trials, including counseling clients, negotiating, and communicating with other lawyers. In all these tasks, psychodrama contributes to a new understanding and effectiveness for the lawyer.

Lawyers preparing for negotiation can act out the process, using psychodrama to learn what the world looks like through the eyes of their opponents. The lawyer having a difficult time with another lawyer can act out that relationship and understand opposing counsel's fears, hopes, and needs.

The legal system is composed of people, and people—regardless of their official roles—respond to those who understand and respect them.

Qualifications to use psychodrama

An article by Amy Singer, *Connecting with Severely Injured Clients* (TRIAL, June 1998, at 48), asserts that "a trained psychologist licensed to practice psychodrama is necessary to organize and direct psychodrama sessions with clients. Attor-

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