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**PROGRAM MATERIALS**  
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**Litigation Series: Session 2 - Lights,  
Verdict, Action: Engaging the Jury  
through Dramatic Strategy**

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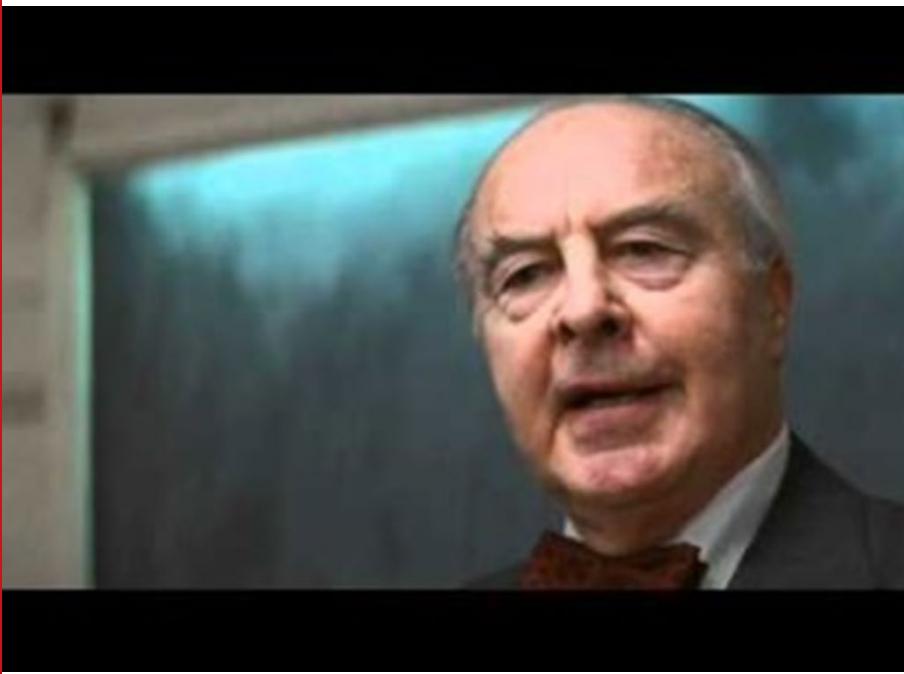
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# Lights, Verdict, Action: Engaging the Jury through Dramatic Strategy

Michael J. DeBlis III, Esq.

# INTRODUCTION



JOHN HOUSEMAN AS THE INIMITABLE PROFESSOR KINGSFIELD IN THE TIMELESS CLASSIC, "THE PAPER CHASE."

Most of us would agree that a lawyer's education is rooted firmly in the law. But the practice of law goes well beyond legal expertise and the right wardrobe. It's all about good communication. Lawyers need to be able to talk to and understand each other. In court, a misunderstanding has a lot of impact.



I love writing on this topic because it allows me to combine two of the things that I am most deeply passionate about: the law and theater.

Traditionally, presentations around litigation and the courtroom start and end at “storytelling,” and go no further.

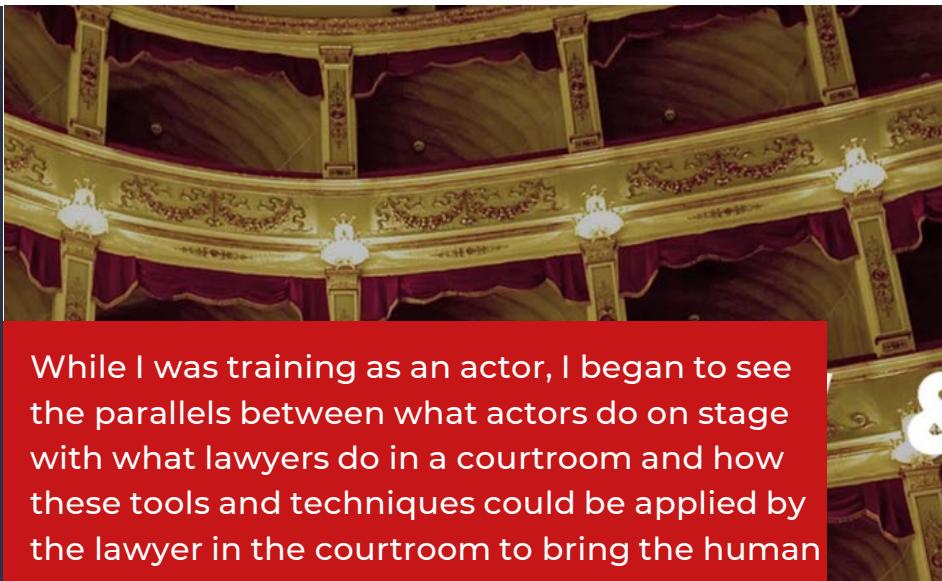
Here, I will venture to go deeper by pulling back the curtain on the fundamental aspects of training that every actor in a professional acting conservatory must undergo before they are ever handed their first script and how this can be helpful to trial lawyers when trying a case.



These can be summarized very simply as “Getting back to the body,” and include a thorough examination of voice, body, and movement – those aspects of a performer’s “instrument” that must be as fine-tuned as a cello so that your words carry the same intention and meaning when they pass through your lips as that which you intended when you wrote them.

This is what they never taught you in law school and which many lawyers have never been exposed to, but which is vital when it comes to influencing and persuading a group of people no matter how large or small. At first blush, the similarities between the theater and the courtroom might seem as disparate as the difference between night and day. But when you look beneath the surface, the connections between the two are strikingly similar.

# MIXING LAW & ART



While I was training as an actor, I began to see the parallels between what actors do on stage with what lawyers do in a courtroom and how these tools and techniques could be applied by the lawyer in the courtroom to bring the human element to the jury.

One of the guiding principles in theater is that “art expresses human experience.” As Edward Albee, recipient of the first-ever Harold Clurman Lifetime Achievement Award said, “A play is fiction – and fiction is fact distilled to truth.” The same is true for trials. After all, the very essence of a trial is a *story* – the story of a human experience.

The goal of the attorney is to draw the jury into a re-constructed reality of past events, such that they “see” what happened, even though they were not present to witness the original event.

The attorney is the producer of that event as well as the writer, director, and the actor in that event.

A play is also a live event with story at its core. The goal of the actor is to transform personal experience into a universal and recognizable form of expression that has the ability to change something in the spectator.

Actors must guide the audience on a journey bringing with them their minds and hearts. Through that journey, the actor exposes the human condition. They live out more life in three hours on a stage than most people experience in a lifetime. This is what makes actors the ultimate storytellers, or should I say, “story-*livers*.” The same is true for lawyers in a courtroom.

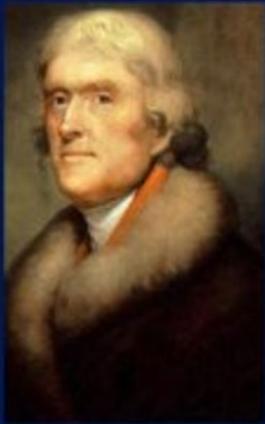
Hollywood’s obsession with courtroom dramas is as old as time. One need look no further than some of the most popular films of the twentieth century.

Three that immediately come to mind are “To Kill a Mockingbird,” “The Verdict,” and “A Few Good Men.” What would Hollywood do without lawyers?

“The most sacred of the duties of a government is to do equal and impartial justice to all citizens”

~  
Thomas Jefferson

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Lawyers, like actors, serve something bigger than they are. Like the stage, the courtroom is a sacred institution where the power of persuasion and positive communication impacts the lives of ordinary citizens every day.

This presentation reveals how the creative world of acting overlaps with the courtroom and how the connections between these two disciplines can be exploited for the good of our clients.

This has become my life's work. It has ignited something deep inside me. It exhilarates me in ways that I cannot even describe. Come join me on this wild ride.

# WHAT CAN ACTING TEACH ME ABOUT STORYTELLING IN THE COURTROOM?

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You may not know this, but there is an actor inside of you. He or she shows up multiple times every day. You play roles. You assume different personas. You “will” yourself into different states of being in order to accomplish your goals.

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Acting is simply the ability to call on different aspects of your personality, different levels of energy, different emotional states at a specific time and place for a specific purpose. Here, I think that it is important to state upfront what acting isn’t. When I speak of acting, I’m not referring to it in an artificial or contrived sense. The ability to come to life in imaginary circumstances *as if* they are real is the very essence of acting.

Acting is unlike any other discipline. When master actors act, their craft becomes invisible. This is why good acting — real acting — is impossible to spot. It is utterly seamless, bearing an uncanny resemblance to real life.

As inherently contradictory as this might seem, when it comes right down to it, actors go to conservatory to learn how not to act. It is a process of subtraction — like rubbing the tarnish off an old pewter cup.

The work serves to reveal the individuality of the actor little by little. As my instructor so eloquently says, “It’s like watching my students’ spirits being born.”

The idea behind subtraction is that instead of adding layers on to our personality, actors strip down the fronts, veneers, and social masks that we hide behind in order to get to our truth.

Second, the signature aspect of live theater is that every single performance is unique and exists only for that moment. It lingers in one’s memory, but it can never be repeated.

The same is true of the courtroom — it’s there one minute and gone the next. The painful realization of this is that just as there are no “do-overs” on stage, there are no “do-overs” in the courtroom.

Everything is happening in real time, requiring lawyers to be just as present in the courtroom as actors are on stage.

Third, at the heart of every communication is a need for three elements: knowing your audience, knowing your subject, and knowing yourself.

Knowing your jury means knowing how to speak to them in a way that conforms to their sense of fairness in an individual case.

The idea here is to ease the legalese and use “power language” that awakens the five senses: sight, hearing, touch, taste, and smell. After all, any time a juror has to “translate something” into plain English means that he won’t hear your next thought.

When it comes to knowing yourself, self-awareness is the first step to sustainable success. Yet, in today’s egocentric world where the next celebrity is but an Instagram post away (thanks in part to social media), it is as rare to find someone who understands themselves as it is to find gold in your backyard.

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Finally, actors have to make real what is conceived and written in a script. Lawyers take what they know to be the truth and convey that to a jury convincingly. If they can't be convincing with the truth, then the case might as well be over before it ever began. While "Acting for Lawyers" might sound like a theater genre, in reality it is designed to reinforce the use of confident and effective communication in the courtroom, something that is severely lacking in courtrooms around the country today.

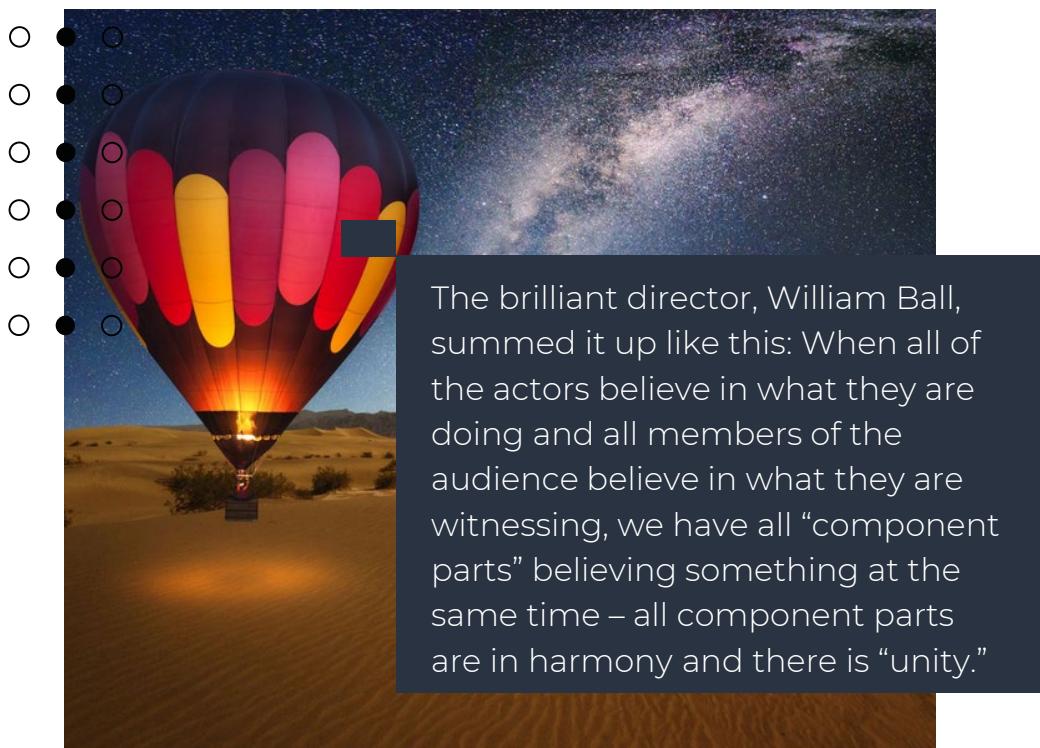
# TOPICS

- The Last Seven Minutes
- Two Different Views of the Courtroom
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- AI and the American Jury System
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- Authenticity: Being True to You
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# “THE LAST SEVEN MINUTES”

Pretend that you’re watching a performance from an actor that really engrossed you. It captivated you. It pulled you in as you watched the character going through the story. What was going on with you?

Great, gritty performances take the audience on a journey.



The brilliant director, William Ball, summed it up like this: When all of the actors believe in what they are doing and all members of the audience believe in what they are witnessing, we have all “component parts” believing something at the same time – all component parts are in harmony and there is “unity.”

Let's draw our attention to the last seven minutes before a three-act play comes to an end. Seven minutes is an arbitrary length of time, but we'll use it to represent an experience that frequently occurs a few minutes before the final curtain.

But let's work up to this point from the beginning.



The curtain rises for the first ten minutes. The audience is curious, distracted, detached. And even skeptical. They're thinking, "You can't draw me in. I know the scenery is fake. I know the language is artificial. I know I'm holding a program. I know I may have to fight for control of the arm rest. I know I just had dinner. I know my objective reactions for what I see. I know it's a story, a fabrication. And I know I'm separated from the action. I don't believe it."

But gradually, curiosity and then belief draw the spectator away from disbelief.

And during the first act, moment by moment, the spectator begins to believe what the actor is doing. He's still aware of himself, aware of his comfort, aware of his recent past, aware of critical evaluation of the performance.

But once in a while, the spectator is drawn into the belief that the actors really mean what they are saying.

In the second act, belief draws the spectator in further.

His curiosity begins to take over. His doubt slowly gives way and he's drawn further into belief. Now and then, he finds himself involved.



For two or three minutes at a time, the spectator finds himself captivated by the actors and by what they are saying and doing. He even believes them to be who they say they are.

Then, towards the end of the second act, the spectator relinquishes more control. Without realizing it, he finds himself believing a prolonged passage just before the fall of the second act curtain. During the intermission, the spectator is eager to learn how the third act will be resolved. He returns to his seat. His belief in the action is almost continuous. He believes the actors to be who they say they are and he believes they mean what they're saying. He believes they are in the trouble they say they are in and believes they feel true emotional distress.

Relentlessly, the spectator's belief draws him further under the "spell." And without any noticeable transition, he believes himself to be the character that he is watching. He has relinquished critical judgment and abandoned "self." He has become "lost" in the play and his belief systems have conquered him completely.



- He believes himself to be in the same danger that the actor is in.
- He believes that he and the actor are one.
- He believes that he needs what the actor needs. He hopes for what the actor hopes for.
- There is complete identification between the spectator and the actor.
- Look no further than “Rocky.”



Now the spectator is drawn into a few moments of what we might call, “complete absorption” – a period of partially unconscious experience. That’s an important characteristic of what we have referred to as the last seven minutes.

In fact, for one spectator, it may be only 30 seconds or a minute. And for another, the period of deep absorption might be as long as 20 to 30 minutes. For purposes of this discussion, we'll assume that the experience lasts an average of seven minutes.

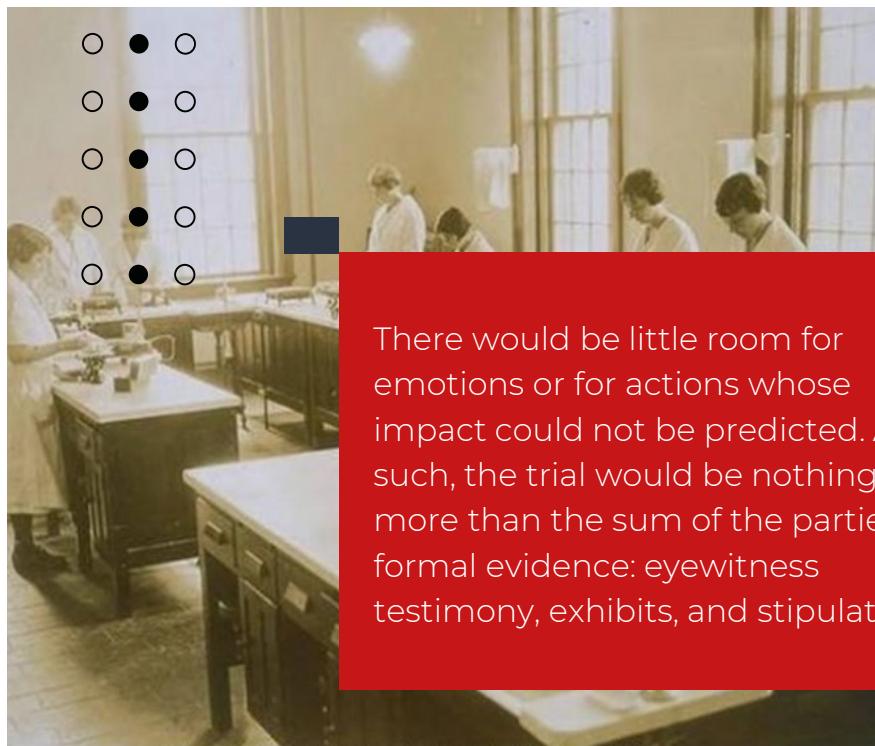
A good way of remembering this is to think of the last seven minutes of your treadmill run. How can we replicate the last seven minutes for our jury so that they can have the same experience as a theatergoer? Through story.



# TWO DIFFERENT VIEWS OF THE COURTROOM

The traditional view of the courtroom was that of a controlled laboratory in which the science of the law was performed. Under that model, attorneys would present evidence, the judge would supervise for quality control, and the jurors would give the results of the experiment.

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There would be little room for emotions or for actions whose impact could not be predicted. As such, the trial would be nothing more than the sum of the parties' formal evidence: eyewitness testimony, exhibits, and stipulations.

As any experienced trial lawyer knows, this sanitized view of the courtroom is a figment of the imagination.

In reality, a trial is a clash of ideas. They often take on a life of their own, and the outcome of the case is affected by factors that are not technically evidence – such as the quality of the lawyers' presentations, the appearance and reaction of the defendant in the courtroom, and even the presence of the victim's friends and family.



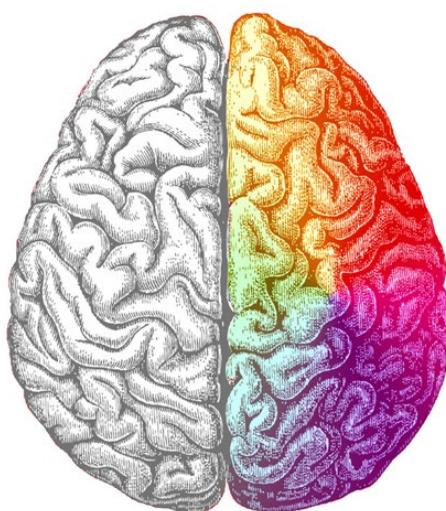


Under this modern view, the courtroom is viewed as a theater in which the parties act out a human drama and the jury provides the conclusion.

# INSIDE THE MIND OF THE JURY

THE BRAIN

**left**



**right**



## Left brain

- Intellect
- Abstractions
- Precision
- Linear thinking (logic)
- Intellectual expression
- Examples:
- Making a grocery list
- Problem solving
- Legal Analysis:  
Applying facts to law

## Right brain

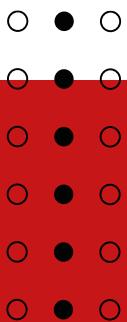
- Emotion
- Creativity
- Ingenuity
- Examples
- Painting
- Singing
- Storytelling
- Dancing

In banking, compliance officers are taught to “know their customer.”

In the courtroom, trial lawyers must “know their jurors.”



# AI & THE AMERICAN JURY SYSTEM



With all of the emphasis today on artificial intelligence, computer-generated imagery (CGI), animation, motion capture (recording actions of human actors and using that information to animate digital character models in 3D computer animation), green screens, and video games, it is easy for us to see ourselves as dull and uninteresting.

Despite all of these technological advancements, human beings have not lost their appetite for a good story that revolves around a human struggle. Look no further than the hit series “Breaking Bad” and “Better Call Saul.” And then, of course, there is the 2019 blockbuster movie, “Joker” that smashed box office records. These were all stories about human beings that were placed in impossibly “high-stakes” situations and how they handled them. As humans, we can relate to this as we have our own obstacles and emotional Mount Everests to overcome.

In fact, seeing how someone in an even worse situation than us deals with their own crisis can be cathartic in many ways. Thus, the expression: “Things could be a lot worse.”

Similarly, live theater is thriving with “The Lion King,” “Wicked,” and “Hamilton” leading the list of best Broadway Musicals for 2024. Why? We go to the theater not to witness a paradigm of perfection in the form of a robot solving complex mathematical equations in nanoseconds, but instead to witness something near and dear to our hearts – our own humanity reflected back to us in the form of a struggle or obstacle that the protagonist must overcome in order to achieve their “super-objective.”

Human beings are infinitely more interesting and creative than any technology that the world will ever see in this century or beyond. But we cannot just pay lip service to this mantra. Instead, we must truly believe it in order to become the best version of ourselves we can be.

Over the years, I’ve listened to many people’s stories – from those of my clients to those of my colleagues in the legal profession to those of my family and to those of my fellow actors – and hands-down these stories were more relatable and more memorable than any movie or book that I had ever seen or read.

I think this is so because they tackled issues that cut right to the heart of the average person who isn't laundering money ("Ozark") or cooking meth ("Breaking Bad") but instead, looking to make an honest and decent living for himself and his family in a world that can be a cruel and hard place.

The clash between the two is marked by the adversity that pops up along the way such as broken relationships, conflict and internal strife within a family, addiction, living up to the expectations of others, coping with stress and anxiety, death of a loved one, fear of not being good enough, fear of not being able to provide for one's own family, fear of not being the best parent that you can be to your kids, coming face to face with your own mortality, fear of dying before your kids are fully grown and self-sufficient.

This is why I find Rocky's speech to his son to be one of the most moving scenes in cinematic history. It's about perseverance in the face of struggle.



During the climax of the scene, Rocky tells his teenage son, "Life isn't about how hard you can hit. It's about how hard you can get hit and keep moving forward. That's how winning is done."

This reality is both harsh and universal. Life doesn't stop just because we're hurting, overwhelmed, or falling apart. It keeps going—relentless and unforgiving—pushing us to keep up. There's rarely a chance to catch our breath, to heal, or to quietly put ourselves back together. The world keeps turning, whether we're ready for it or not.

What makes it even more difficult is that no one truly gets us ready for it. As kids, we grow up surrounded by stories with happy endings, full of redemption and victory, where everyone lives happily ever after. But as we become adults, those comforting tales start to fade. Instead, we face a tough reality: most of the time, getting by isn't glamorous or uplifting. It means putting on a brave face even when you're struggling inside. It's showing up when you'd rather hide away. It's taking one hard step after another, even when your heart just wants to give up.

And still, we keep going. That's the amazing thing about being human—we persevere. Somewhere deep within our pain, we discover a strength we never knew we had. We learn how to care for ourselves, to be the comfort we need, and to quietly offer ourselves hope when no one else does. In time, we realize that true resilience isn't flashy or dramatic; it's the quiet determination to not let life's burdens weigh us down completely.

Sure things can get messy. Yes, it can be exhausting. And sometimes, just taking the next step feels almost impossible. But even on those days, we keep moving forward. Every small step is proof of our resilience, showing us that even in the toughest times, we're still trying, still refusing to quit.



That determination—that courage—is the quiet miracle of what Ernest Hemingway calls, "survival." And in my mind, it's something that no AI generated system, no matter how well advanced, can ever understand or replicate. It's why our uniquely human spark remains irreplaceable.

As the great Russian acting instructor Constantin Stanislavski said to his students, "The person you are is a thousand times more interesting than the best actor you could ever hope to be."

Therefore, we are so lucky that the courtroom has withstood the test of time and that AI has not replaced real attorneys standing up before a jury in the flesh to deliver their opening statements and closing arguments and to cross-examine witnesses. The awesome power that is wielded by the trial attorney in this setting is something that I will never take for granted.

It is for this reason that despite all of the technological advancements we have today, I have a newfound respect for the fundamental right to a jury trial that the framers of the Constitution enshrined in the Sixth Amendment.

# HOW JURORS DECIDE CASES

Let's debunk a widely-held myth about how jurors make decisions.

As shocking as this might sound, no matter how many times a judge instructs a jury to view the evidence objectively and dispassionately, jurors do "not accumulate facts, one after another, in order to arrive at a conclusion."



Nor do they deconstruct the jury instructions like a scribe deciphering the "Dead Sea Scrolls." They do not probe the jury instructions with a fine tooth comb applying facts to the law in order to reach a result in the same way that a mathematician substitutes numbers for unknown variables in order to solve a quadratic equation.

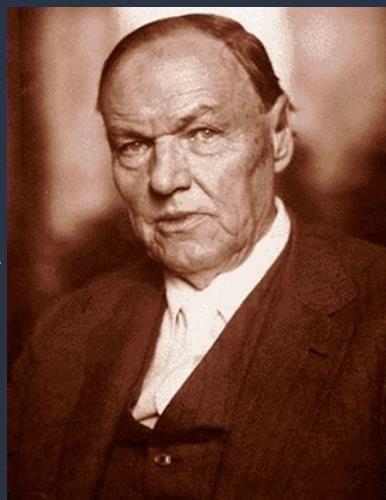
In sum, they don't use the precise linear thought of a rationale brain to arrive at a verdict, (i.e., "Did the government satisfy all of the elements of the offense beyond a reasonable doubt?"

Instead, "they care about right and wrong." Studies show that the number one fear that juries have is convicting an innocent person.

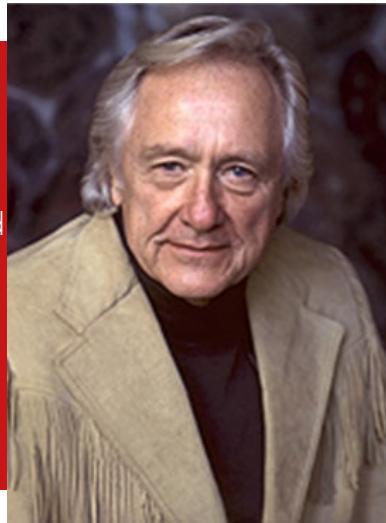
- This cuts right to the heart of how perfectly imperfect we are as humans.
- Blaise Pascal said it best, "The heart has its reasons of which reason knows nothing."



And Clarence Darrow extended this principle to the courtroom, "Jurymen seldom convict a person they like, or acquit one that they dislike. The main work of a trial lawyer is to make a jury like his client, or, at least, to feel sympathy for him; facts regarding the crime are relatively unimportant."



As the great Gerry Spence once said, “Jurors make decisions with their hearts and then rationalize their way to a legal decision that is consistent with their feelings about the case.”



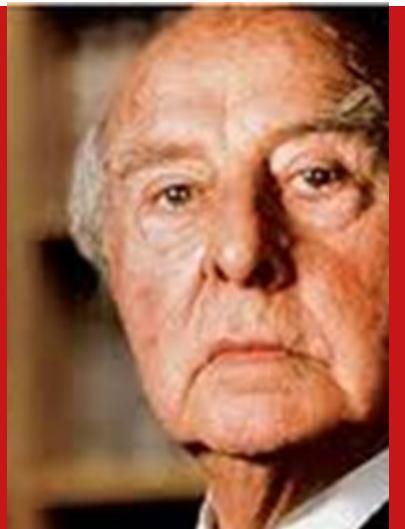
This is consistent with the research: That people make 90% of their decisions based on emotions. Famous quote: “... [P]eople will forget what you said, people will forget what you did, but people will never forget how you made them feel.” – Maya Angelou



**Time  
Out!**

I don't know about you, but this flies in the face of what my law professors taught me in law school. My entire law school training was designed to sharpen the left side of my brain — that side of my brain responsible for logic, analysis, and reasoning.

Who can forget the famous line from the movie, "The Paper Chase?" In the opening scene, Professor Kingsfield, played by John Houseman told the class, "You teach yourselves the law, but I train your minds. You come here with a skull full of mush; you leave thinking like a lawyer."



Training lawyers to be objective non-feeling beings who apply facts to the law to reach a result has become and I dare say, remains a fundamental tenet of legal education.

Our law school education has robbed us of the very qualities required to be good communicators: the ability to listen and the ability to feel.

We've been taught to hold back, smother, suppress, and destroy our feelings. In a word, we've been "socialized." Having been stripped of these attributes, we wallow in litigation anonymity like a bandaged mummy roaming aimlessly through a graveyard, completely numb to sensations and unable to persuade. We become wallflowers.

# VIRGINIA SCOTT



As my instructor once said, “The way we walk around in real life doesn’t reveal the slightest bit of what we’re feeling on the inside.”

# JUSTICE IS AN EMOTION

All of this “feeling” and “emotional” gobbledegook might seem schmaltzy. But the feelings of defeat or of winning are not intellectual processes.

Ask anyone who has been to court as a litigant and lost, from the mother whose children have been taken away from her to the man who has been convicted of a crime and sentenced to prison.



As Gerry Spence said, “A judge says, ‘There is no room for emotion in this courtroom.’ He might have well as said, ‘there is no room for justice in a court of justice.’”

Maybe, as Martin Luther King said, “the arc of justice is long, but it does bend toward justice.”

# HOW JURORS DECIDE CASES

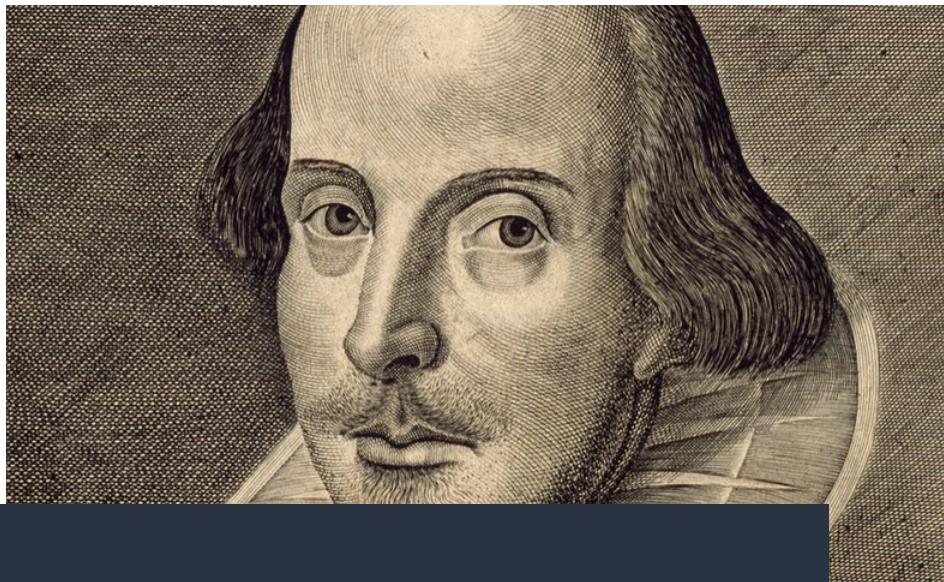
## JURORS

Whenever I feel defeated or overwhelmed by a challenging case or a difficult client, I'm inspired by the famous quote of Pablo Picasso, "Art washes away from the soul the dust of everyday life."

When life beats down on us, it does so with enough vengeance to "crush the soul." But as the legendary acting instructor, Stella Adler reminded her students, "Art reminds you that you have one."



# AUTHENTICITY: BEING TRUE TO YOU



“To thine own self be  
true.”

The immortal bard was way ahead of his time. As actors, if we cannot find our inner truth it will be impossible to find the character inside of us.

In order to find our inner truth, we have to flush all of that pretense down the toilet. It's like peeling back the layers of an onion to get to its root. It is here where lies something more precious than the richest Aegean treasure: your authenticity.



Even if you are not an actor, finding your true self-expression is a profound experience that impacts every facet of your life and that leads to a burst in creativity, leadership, communication, and self-confidence.

We've all witnessed lawyers who can hold a jury spell-bound hanging on every word that they say.

We strive to be like them, even going so far as to imitate them. In doing so, we may even abandon our own traits in order to take on the gestures, body language, mannerisms — even tone of voice — of our idols.

Imitating your idols is not a mortal sin. After all, nobody is born with a style or voice. We don't come out of the womb knowing who we are. In the beginning, we learn by pretending to be our idols.

At some point, however, we must advance past imitation to emulation. This is *not* a distinction without a difference.

Imitation is about *copying* . Emulation is when imitation goes one step further, breaking through into your *own* thing.



The biggest tragedy in my mind is when a person gets stuck in the imitation rut, unable to jump the chasm between imitation and emulation.

What is the harm in this? When you walk around like F. Lee Bailey, Johnnie Cochran, or Edward Bennett Williams you become nothing more than a carbon copy of them — an impostor of sorts.



The great Gerry Spence said it best, “Our uniqueness is the greatest gift of our creation ... It’s what makes us valuable beyond all comprehension.” I could not agree more.

As idealistic as this might sound, there will never be another “you” that walks this Earth. Yet by disguising your true self from the world, you are depriving the world of the richest, most colorful, and most exciting parts of yourself — those parts that set you apart from the other eight billion people and that gives you your unique, personal identity.



And yet to be yourself is a constant and never-ending struggle. To me, it means walking your own path and letting go of the path others have chosen for you. No one captures that struggle better than the great E.E. Cummings in this beautiful quote.

To be nobody but yourself in a world which is doing its best, night and day, to make you everybody else means to fight the hardest battle which any human being can fight; and never stop fighting.

—E.E. Cummings

Judy Dench says, “Don’t prioritise your looks my friend, as they won’t last the journey. Your sense of humor though, will only get better with age. Your intuition will grow and expand like a majestic cloak of wisdom. Your ability to choose your battles, will be fine-tuned to perfection. Your capacity for stillness, for living in the moment, will blossom. Your desire to live each and every moment will transcend all other wants.



Your instinct for knowing what (and who) is worth your time, will grow and flourish like ivy on a castle wall.

Don't prioritise your looks my friend, they will change forevermore, that pursuit is one of much sadness and disappointment.

Prioritise the uniqueness that make you you, and the invisible magnet that draws in other like-minded souls to dance in your orbit.

These are the things that will only get better."

How do we get out from behind the veil and reveal our inner truth? This is a deep question that requires some soul-searching. If we're being honest with ourselves, I think that we'd have to admit that in life we often act in a way that is less than truthful.



We actually pretend to be one way, hiding that we are another. To add insult to injury, we are so used to doing it that we even fool ourselves. Part of this has to do with survival. For example, could you ever imagine approaching your adversary in court and saying, “You are impossible to deal with. Getting a fair plea offer from you is like trying to get blood out of a stone!”



Doing so would be a death wish.

My point is that even though it helps to be grounded in truthful behavior in your daily life, there are times in our day-to-day life when we have no other choice but to lie in order to keep the peace and avoid conflict.

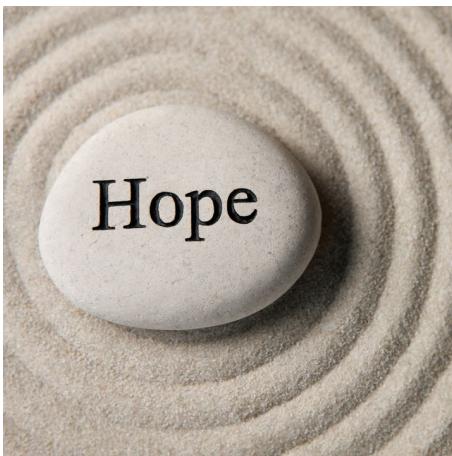
Indeed, there are real consequences to speaking the truth.

•A wonderful flaw about human beings is that we're incapable of becoming carbon copies of each other. Our failure to copy our idols is how we discover our own talent. Conan O'Brien has talked about how comedians try to emulate their idols, fall short, and end up doing their own thing. In O'Brien's words, "It is our failure to become our perceived ideal that ultimately defines us and makes us unique."



There is wisdom in this. It gives me the freedom to go ahead and copy my idols without the least bit of shame, subject to one caveat. I examine where I fall short and ask myself the question, "What's in there that makes me different?" That's what I amplify and transform into my own work. These days the most common piece of advice you hear seasoned trial lawyers giving new lawyers is, "Just be yourself." I don't mean to single out trial lawyers. Even the great Oscar Wilde once said, "Be yourself. Everyone else is already taken." Of course, this leads the new lawyer to ask the next, inevitable question: "Who am I?"

The way I see it is that our experiences are a big part of who we are. Every experience you've ever had is living inside of you and has shaped you into the person who you are today. Your hope, fear, anger, regret, joy, sadness, shame, is there to be triggered. Sadly, we learn to hide parts of ourselves that we are ashamed of. And we are not just hiding bushels of parts, but bundles.



There is a great story that I turn to whenever I need inspiration. When Jack Nicholson discovered his quirky and eccentric side, he was mortified. Ironically, that rich inner life that he was so ashamed of became his signature trademark. For each person, it's different. When it comes to Diane Keaton, her painful shyness is both captivating and spell-binding.



Jack Nicholson's story teaches us two things. First, the best and most human parts of you are those that you have inhabited and hidden from the world.

And second, we have “blind spots” when it comes to how the world sees us. These are not necessarily shortcomings (as in Nicholson’s case, they were artistic gold), and the key is not to “fix” them or to become self-conscious about them. Instead, it helps to see yourself from a *new* perspective so that the blind spots are no longer blind.

As the character Lorenzo famously said in “A Bronx Tale,” “The saddest thing in life is wasted talent.” If the full extent of our talent was represented by all eighty-eight keys on a piano, the harsh reality is that most of us would be playing only four keys.



Here are some tips for unlocking your full potential and discovering your hidden talents not just as a lawyer, but as a human being. This is a little like the “chicken and the egg.” After all, “how can you see the painting when you live inside the frame?” I love this analogy. We get clues throughout our life from the people around us, including our friends, our family, our peers, our bosses.



Here are some tips for unlocking your full potential and discovering your hidden talents not just as a lawyer, but as a human being. And in this digital age, we've grown accustomed to seeing our own images on video and photos on social media. Nonetheless, most people find a disconnect between the version of themselves that they are trying to put out into the world and the version that others are actually perceiving. Very simply, it's not always the same.

In other words, we're not always received the authenticity way we intended. Sometimes that means we might offend someone, but mostly it means that we feel misunderstood especially in high-stakes situations like personal encounters or with colleagues at work. Conversely, when you feel confident that these two perceptions have overlapped – that you and the jury are both in agreement with the internal perception who you are – there is no better feeling in the world. And that is what we might refer to as, "authenticity."

The trouble with the authenticity is that you can't be authentic alone. I can't wake up in the morning, look at myself in the mirror, and say, "I'm feeling authentic today." By the very definition of the word, I need the agreement of another person that I am, in fact, being authentic. As actors, we are intensely curious about this. We look at both sides of this equation: that we have of ourselves and the way the world perceives us. In this way, we gather a ton of data.

We start with the internal perception that we have of ourselves and document it through descriptive words and phrases of how we view ourselves. Then our classmates document on paper anonymously how they perceive us based on a first impression and then on a second impression.

It is important to note that both of these sets of data are only concerned with what we call our public persona. We don't poke and prod into things that are personal and that we keep close to the vest.



When you're looking at these two sets of data and you see what parts overlap, that gives you concrete proof that you did know how you were received. "That is what I thought about myself and now I have the actual proof to back it up."

When there's a gap in how you perceive yourself and how the rest of the world perceives you, that's the interesting part. We, as actors, get curious about investigating these "blind spots" and why there is a gap to begin with. In reconciling these two different sets of data, you just might develop a super-power that you never before knew you had.

Having that self-awareness is a game-changer. Why? First, you'll have a completely customized vocabulary for describing yourself which seems simple but is incredibly useful. Second, it will help you play to your strengths which, in turn, will help you accelerate into your gifts. Third, you will no longer need to double down and exaggerate those things about yourself that are already second-nature and that scream out like a neon sign when you walk into a room. The latter is the reason why many casting directors will tell actors, "Relax and do less. Just be yourself."

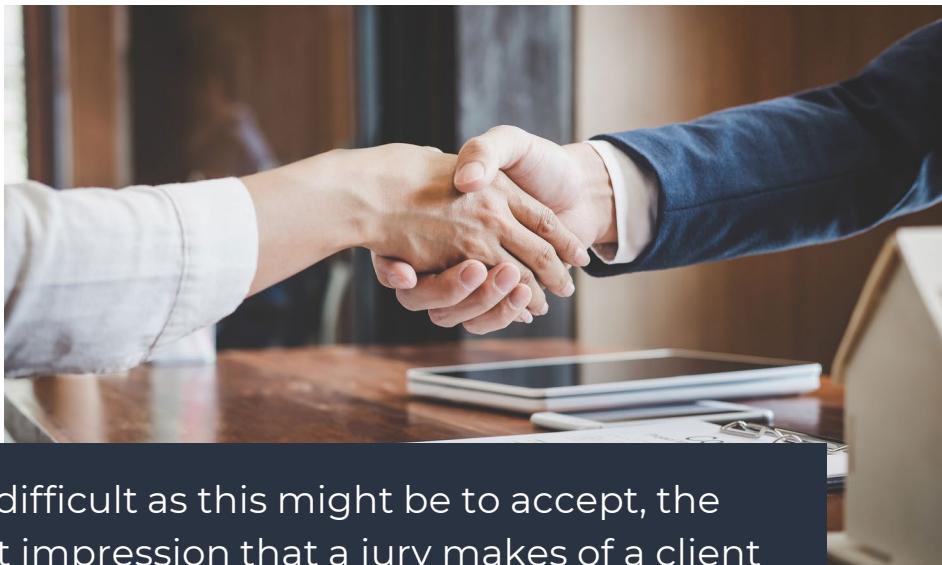
In summary, here are some things that you can do. Take the time to step outside of yourself and examine the person that you play in real life.

What makes you different and sets you apart from others? Go on the hunt! Listen to feedback and take it in. Ask your closest friends: “How would you describe me in three words?” Dig into yourself to ask, “Is there anything secret that I’m afraid to reveal?”

In the end, merely imitating your idols does nothing to endear yourself to them. Instead, transforming their work into something of your own is how you impress them. Adding something to the world that only you can add. This is the key to overcoming the obstacles that threaten to hold your talents hostage.



# EMPATHY FOR YOUR CLIENT



As difficult as this might be to accept, the first impression that a jury makes of a client charged with a criminal offense is that of a “villain.” This is because the first thing that they hear about the case is what’s contained in the indictment and that would sully anyone’s reputation. After all, “the power to indict is the power to destroy.”



Who can forget the comment, “Which office do I go to get my reputation back?” It was a damning question, put to the media in 1987 by Raymond Donovan, the former Secretary of Labor who was indicted on corruption charges for his work with a construction company accused of having mob ties. The media had a field day with Donovan. After all, it wasn’t every day you could paint a Reagan cabinet member as a mafia stooge.

Trouble was, the charges against Donovan didn’t hold up. Not only that, Donovan’s attorneys actually never put up a defense. They rested their case without calling a single witness, saying the prosecution failed to prove Donovan did anything wrong. The jury agreed, and Donovan walked out a free man.

Donovan was free, but tainted. Hence his now-famous comment.

After trying some serious cases, I got to thinking a lot about this “villain” label. It impacts me not just as a criminal defense attorney, but also as an actor.



As an actor, I've played my share of Shakespearean villains. I've always been fascinated by anti-social behavior – behavior in which people cause harm to one another, to wit what villains do. I guess there is a bit of a rebel inside me. Some of the questions that arose in my exploration of villains was, “Why do we harm one another? Why do we love one another when it can be torturous?”

As ashamed as I am to admit this, when I first tackled villains, I painted them with a broad stroke.

By broad stroke, I mean as scheming, plotting, and conniving Machiavellian types not unlike the Sesame Street character, “Count von Count,” complete with his iconic, “Ah-Ah-Ah!” staccato laugh.

But I've learned over the years that a villain is anything but that. They are far from being one-dimensional and static. Indeed, villains are dynamic human beings with backstories just like everyone else. It's only when we dig into these backstories that we discover the hidden story that explains why this person behaves the way they do today.



At their very core, villains are broken. In playing them, I learned to connect with this brokenness: both their physical and psychological brokenness. Shakespeare was occupied with deep and profound ideas about human nature. In playing these characters, the actor must engage as deeply as he can with those same questions or he won't be able to lift them out of the text. In all of the instances where I've played bad people who have done bad things, I've had to find that in myself. It's empathy on a level unlike any other.

I had to find a Richard III in myself. My way in was that I knew that there was a part of me that was ambitious, like Richard himself.

Similarly, there was a part of me that was self-righteous, like Brutus in "Julius Caesar." I have all of these things burning inside me like a raging inferno based on the simple fact that I am human.

But unless I could look at them, I believed that I was in great danger of projecting them onto other people (perhaps unknowingly) and behaving in ways that I would be ashamed of. There is something about being able to be the advocate for that man – being able to

stand in his shoes, being able to look through his eyes – that appeals to me. And although the audience would then see a man who did terrible things, they might also see why that man did terrible things. Not to excuse those terrible things but to understand why he behaved that way. Humanizing the villain only heightens the tragedy or the drama. Looking at the nuances of a person's life, looking at the causes of what we might call "evil" is important because we're living in a time when intolerance, impatience, and hostility have replaced tolerance, kindness, and civility.

I think this has a lot to do with popular culture's love affair with the anti-hero who reigns supreme in modern-day television – the person who does things that are morally wrong but who we nevertheless root for. That's Tony Soprano, Walter White ("Breaking Bad"), and Marty Byrde ("Ozark").



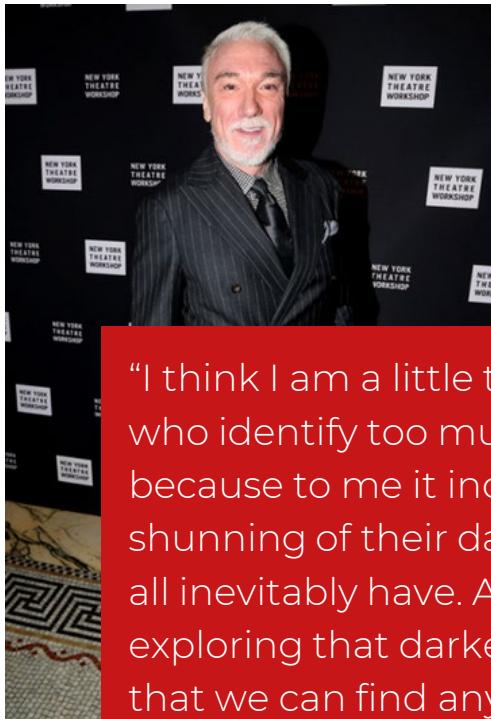
It's ironic how, on the one hand, there is this character on television who helps us to understand how otherwise good people might do bad things and then on the other hand, in our public life, we copy it to a "T" when we classify people as being "good" or "bad" based on nothing more than their political beliefs. When we see a villain nowadays, even in Marvel comics, the fan base expects them to be complicated. Look no further than Joaquin Phoenix's portrayal of "Joker." They expect them to have a motivation. They expect them to have a backstory. It's not enough for someone simply to be bad.

And that gives us  
hope when we are  
defending a person  
accused of  
committing a heinous  
offense.



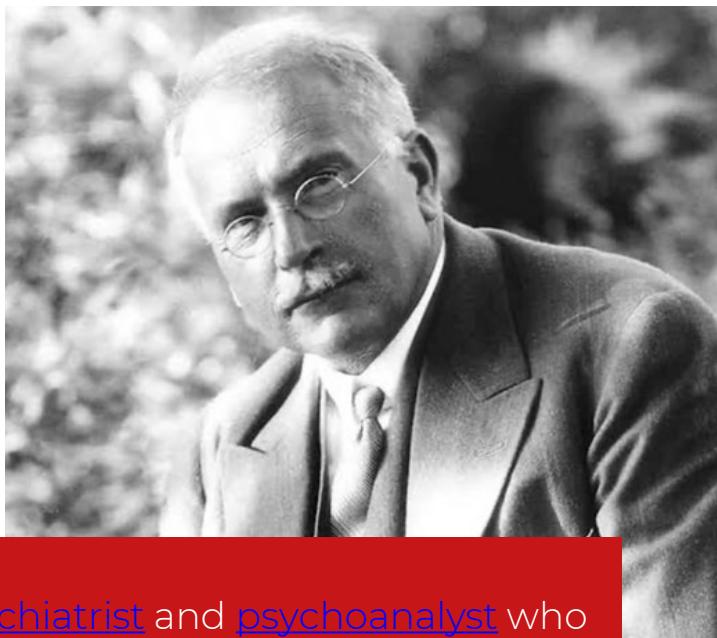
# BEAUTIFUL

## QUOTE



“I think I am a little terrified of people who identify too much with the hero, because to me it indicates a kind of shunning of their darker side, which we all inevitably have. And it is only in exploring that darker side of ourselves that we can find any light. We have to know the monster within us very thoroughly, and then we can go out and we can do good things. But if we think that monster doesn’t exist I think we’re in deep trouble.” – Patrick Page

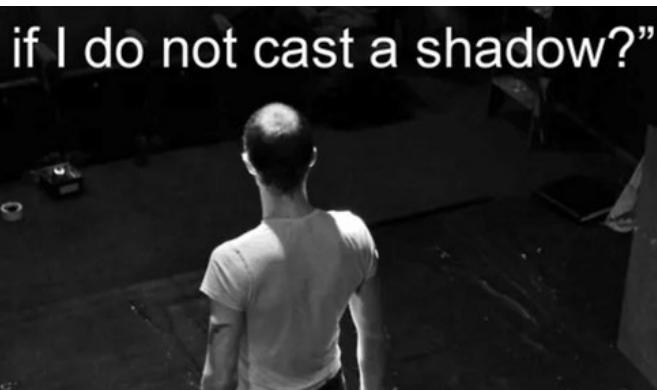
# CARL JUNG:



Swiss [psychiatrist](#) and [psychoanalyst](#) who founded [analytical psychology](#). He was a prolific author, illustrator, and correspondent.

“A man who is unconscious of himself acts in a blind, instinctive way and is in addition fooled by all the illusions that arise when he sees everything that he is not conscious of in himself coming to meet him from outside as projections upon his neighbour.”

# CARL JUNG AND THE SHADOW SELF



"One does not become enlightened by imagining figures of light, but by making the darkness conscious. The latter procedure, however, is disagreeable and therefore not popular."

A key part of this transformation process is for an individual to confront their shadow, a term originated by Jung in relation to analytical psychology. The darkness, the greed, the envy, the aggression, the lust, all of that. And we say, "Not me."

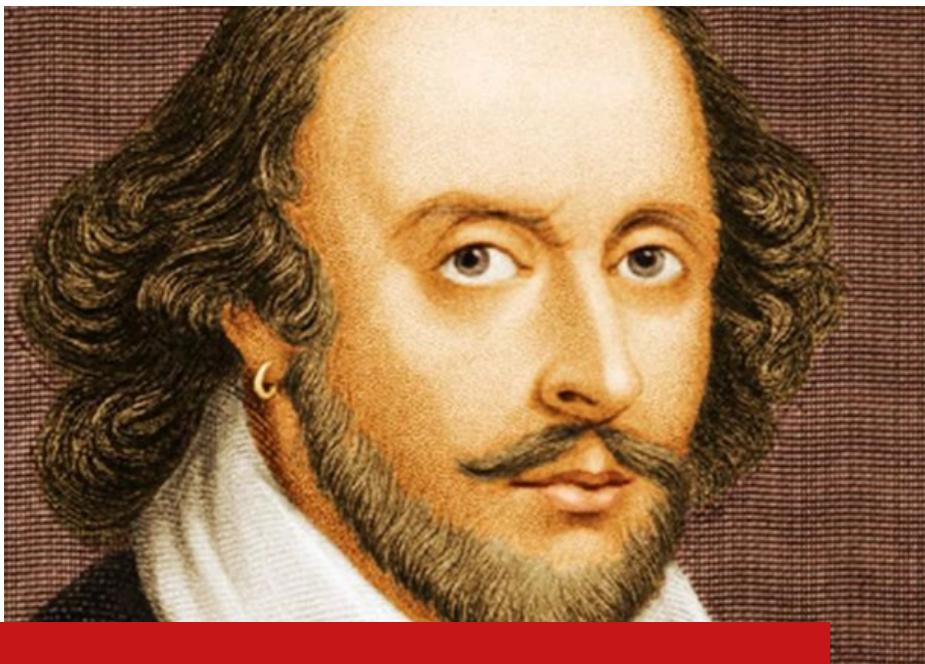
also  
Jung

I deeply admire the person who says, “I’m a cranky old sinner, but I try to do my best,” or “I’m a convicted felon who has been locked up in prison for a long time, but I won’t let that stop me from my dream of finishing college, getting a stable job, and starting a family.” They all know they have a past. They’re not saying, “I’ve got it solved.”

When I meet someone who identifies themselves as virtuous, that’s when I get most frightened.



# SHAKESPEARE – THE GOOD SAMARITAN



What I love about Shakespeare is that he refuses to write people off. When others get judgmental, he gets curious. He wonders very deeply, “Why might that person behave that way? Under what circumstances might he behave in that way?”

# CARL JUNG:



But that can be a dangerous proposition: "It is a frightening thought that man also has a shadow side to him, consisting not just of little weaknesses- and foibles, but of a positively demonic dynamism. The individual seldom knows anything of this; to him, as an individual, it is incredible that he should ever in any circumstances go beyond himself. But let these harmless creatures form a mass, and there emerges a raging monster; and each individual is only one tiny cell in the monster's body, so that for better or worse he must accompany it on its bloody rampages and even assist it to the utmost. Having a dark suspicion of these grim possibilities, man turns a blind eye to the shadow-side of human nature."

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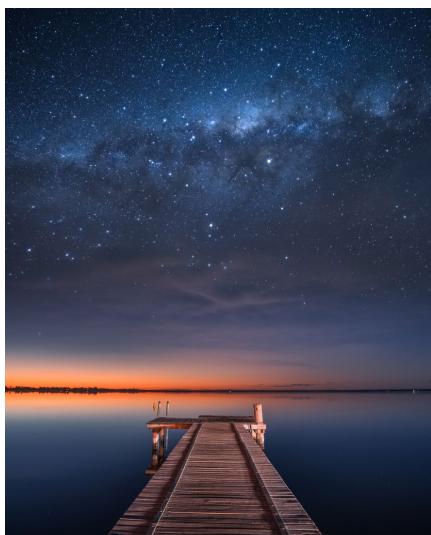
# WALK A MILE IN 'HIS' SHOES



In “To Kill a Mockingbird,” the great Atticus Finch played by Gregory Peck said, “You never really understand a person until you consider things from his point of view ... until you climb into his skin and walk around in it.” I’ve thought long and hard about this quote. Ironically enough, I didn’t set out in life to dedicate myself to walking around in someone else’s skin and seeing the world from their point of view. I arrived at this destination when I began training as an actor.

The acting profession is a humanizing profession. I'm forced by the very nature of my job to step into someone else's shoes, to wander around in someone else's ideas, to think differently — to touch, taste, feel, hear, and see through the eyes of another.

This may sound hopelessly naive and idealistic to some people, but it is the sacrifice that I and every other artist make in order to express outwardly what we cannot keep inside one minute longer.



This theme is actually analogous to an aspect of many a hero's journey, where the hero develops the skills and empathy to become a fully integrated hero by living as and experiencing subjectively the world of the other. For example, Henry V got drunk with Falstaff, Harry Potter lived with the worst kind of "Muggles" under the stairs. You get the idea. Becoming someone or something else is no small feat. You will always be tethered to your own reality and your own subjective experience of life. We all have our maps of the world - our shorthand understanding of how things are. A cartographer cannot detail every stone and grain of sand, or the finest details of the shore of a lake. Instead, it is a useful approximation. Many of our own maps, and therefore the character's, are not useful or are out of date.

It is in our attempts to understand our client's motivation, his history and his experience, his relationship to the world and the people around him, that we become conduits of new perspectives and embodied wisdom. However ultimately impossible, it is the closest thing that humans can do to live the experience of another person – to live in another person's "map" of the world.



In this way, it is a human first approach. In looking at the skills involved to do so, it could be mistaken for a secular version of a spiritual training process.

- Speaking the words of another - Linguistic otherness
- Moving in the physicality of another - Kinesthetic and proprioceptive otherness
- Reacting through the lens/map of another - Psycho-physical otherness
- Perceiving the world through the senses of another - Perceptual otherness

But to what purpose?  
Laurence Olivier who, reflecting the desire of every actor to disappear into the flow of a part, said after such a performance, “I wish I knew what I did”, meaning that he was in such a state of flow that he was unaware of conscious choices. This makes acting a kind of self-hypnosis into another’s reality.



While the Atticus Finch quote might seem straightforward, it is often misunderstood. Sure, it refers to empathy. But what is empathy? I find it easier to define empathy by differentiating it with another word that it gets confused with: compassion.

Compassion is the ability to say, "I feel for you." Empathy is the ability to say, "I feel with you."



There is no writer who captures the essence of empathy better than Ernest Hemingway: "In our darkest moments, we don't need solutions or advice. What we yearn for is simply human connection—a quiet presence, a gentle touch. These small gestures are the anchors that hold us steady when life feels like too much. Please don't try to fix me. Don't take on my pain or push away my shadows. Just sit beside me as I work through my own inner storms. Be the steady hand I can reach for as I find my way."

“My pain is mine to carry, my battles mine to face. But your presence reminds me I’m not alone in this vast, sometimes frightening world. It’s a quiet reminder that I am worthy of love, even when I feel broken. So, in those dark hours when I lose my way, will you just be here? Not as a rescuer, but as a companion. Hold my hand until the dawn arrives, helping me remember my strength.” Compassion allows you to remain separate from the other person. It can devolve into pity.

Empathy forces you to feel connected with the other person and to recognize that we are all human and that great struggles are a part of the human experience.

In her runaway bestseller, “We Need to Talk: How to Have Conversations that Matter,” public radio journalist Celeste Headlee identifies the benefits associated with feeling empathy: “The ability to feel empathy is associated with less prejudice, less bullying, and more charitable acts. Empathy is also the basis for our morality. The Golden Rule is ‘Do unto others as you would have them do unto you,’ but you must have empathy to equate another person’s needs to your own.”

Headlee’s thought-provoking reflections on empathy demand a deep and thorough understanding of one’s own emotions, strengths, weaknesses, needs, and drives as well as their effects on others.



To stand inside someone else's shoes requires knowledge of yourself. Piggybacking on the theme from the Atticus Finch quote, before you can slip into another person's shoes, you need to know how big your own feet are. In other words, before you can begin to understand another person, you must first understand yourself. This is where the creative world of acting overlaps with the courtroom and I dare say, may make its most significant contribution. Aristotle said that the secret to moving the passions in others is to be moved oneself.

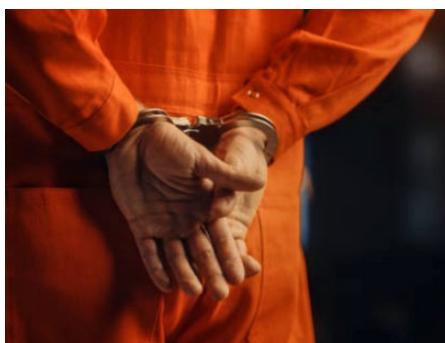


Aristotle captured the core principle of acting — the ability of the actor to use his or her imagination, senses and emotions to conceive of characters with unique and original behavior, creating performances grounded in the human truth of the moment.

Acting provides the unique opportunity to experience the world from another person's point of view. To express yourself as they do. To channel your emotions through this other person and to find as much of them in yourself as you can. When an actor "plays" a character, fictional or non-fictional, he is slipping into their skin and experiencing relationships to people, places, things, and events from their point of view.

Once we are in touch with our own feelings, we become better equipped to express the feelings of another person, particularly our clients. In essence, we become sensitized responders who are capable of feeling empathy for other people.

Gerry Spence dubbed it, “crawling into the hide of the other.” He uses this phrase as a metaphor for “tapping into another person’s experience in order to see things the way he saw them and feel them as he felt them.”



To me, this means putting ourselves in our clients’ shoes and entering the matrix — the very strange and unfamiliar world that our client inhabits.

Once we slip into our client’s skin, we can see, hear, and feel the world from his point of view.

Doing so fosters a deeper understanding of what formed this once bright-eyed and bushy-tailed child into the man that he is today and why he now stands before a criminal judge dressed in an orange jumpsuit and restrained in handcuffs and shackles.



Understanding who your client is and his history is the master-key for unlocking the twisting maze that is your client's story. Where has he come from? What has he done? What has he endured?

Slowly we begin to care and as we do, we acquire the power to cause others to care. As challenging as this might be, it is not the hardest part. The hardest part is shouting out to the world — from this dark and frightening place — what you see.



A disclaimer is in order here. The hide of a defendant in a criminal case is not a warm and cozy chalet located on the foot of the Swiss Alps. As Gerry Spence so eloquently states, “There is wretchedness there, not to mention pain and sorrow. There are always the scars of injustice and the evil mangling of the mind of the once innocent.”





As disturbing as it might be, when I think of shouting out to a jury the wretchedness that I see in the dark underbelly of my client, the first image that comes to mind is the mangled body of Hayden Christensen's character, Anakin Skywalker, being engulfed by lava and bursting into flames on the edge of an embankment on Mustafar.

This ghastly scene teaches a valuable lesson. Hayden's heart-wrenching cries and agonizing pain can be understood as his argument. By arguing out of his own sorrow, the audience was instantly able to relate to Anakin for the simple reason that we have all experienced sorrow before.



In this, I find the inspiration to never allow a client that I am representing to be judged on the bare fact of committing the crime itself (i.e., that he has “killed” or “raped”). The danger this poses is that a person who commits a heinous crime attracts little, if any, sympathy.

It is far too easy to judge, to criticize, and to condemn a person on the bare fact that he committed a crime because it relieves the jury of the responsibility of understanding “why.” As they say, “Ignorance is bliss.”



To me, there is no such thing as a set of “bare facts” that tell the whole story.

As my grandfather once said, there are always three sides to a story: “Yours, mine, and the truth.” This could not be any more true than in a trial.

There is always another side to the state’s story. And that side is often times ignored or relegated to a lower position. To use a metaphor, it is that part of the iceberg that remains hidden underneath the water, despite dwarfing the apex one hundred times over.

In many ways, this hidden appendage is as secret and as dangerous as the “Forbidden Forest.”

Regrettably, this is the world that our clients inhabit.

As lawyers, if we ignore this hidden world and concern ourselves with nothing more than the bare facts, then the trial becomes nothing more than a long guilty plea. But mitigating facts always lie beneath the surface waiting to be discovered. The challenge is in finding them. Of course, this is easier said than done.



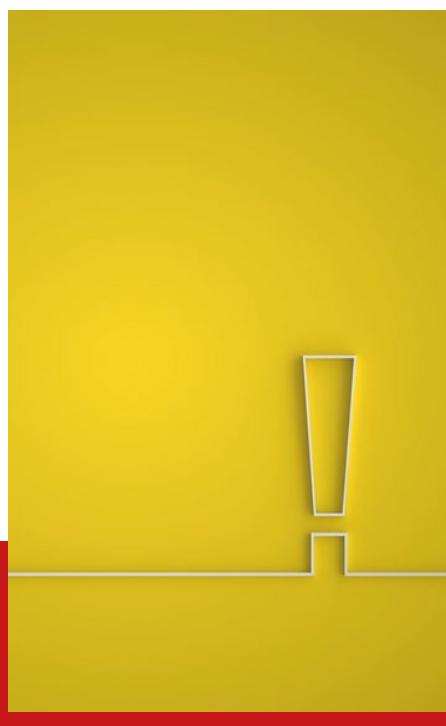
For those willing to take this risk, there is no greater reward. By the time the jury begins their deliberations, they will have no choice but to see your client as a son, a father, a brother, an uncle, a nephew endowed with the same rights to life, liberty, and the pursuit of happiness as every other human being on this planet, not to mention all of the hopes, dreams, and ambitions that burn like a fire in the human soul.



I can think of no better way of humanizing your client and banishing from the minds of the jury the crude notion that he is somehow inferior based on nothing more than the fact that he stands accused of committing a crime (for which he is presumed innocent) and has been branded with the Scarlett Letters, “D-e-f-e-n-d-a-n-t.”



- As schmaltzy as this might sound, caring is at the core of every case.
- The first thing to ask yourself is, “Do I really care?”
- We have to find the humanity in our client before we can ask the jurors to see it. If you don’t care, how can you ask a jury to care?



# CARING

—

As schmaltzy as this might sound, caring is at the core of every case. The first thing to ask yourself is, “Do I really care?” We have to find the humanity in our client before we can ask the jurors to see it. If you don’t care, how can you ask a jury to care?



As Gerry Spence puts it, it's like saying to the jury, "I want you to do what I can't do myself." Apathy has no place in the courtroom.

Caring is the first step in transforming the client from a defendant to a person.



Gerry Spence asks a provocative question: "How does one care for someone who has committed a heinous act?"

- "How can you care for someone who is accused of raping a little girl and killing her?"
- "How can you care for a serial killer?"
- We've all been ambushed by this question at some point in our careers.

Fifteen years of being a defense attorney has helped me to reflect on this question.

Too often the person that is before the jury is the first victim.

Of course, a crime has been committed and there is a victim of that crime. But what about the first victim – the defendant, the person for whom you're defending? Was he the victim of a mother who didn't care or a father who abandoned him? Was he raped and/or abused as a child? A twist of fate could have changed his circumstances dramatically. For example, had he been raised by a loving and nurturing family, would he have dropped out of school, pledged his allegiance to a gang, and turned to a life of crime? Or, would he have gone to college and become a successful businessman, doctor, or lawyer?

Are we condemning this person for what he did or because of the cards that he has been dealt with in life? Gerry Spence uses a powerful metaphor:

- You can take a little sweet wiggly tailed Spaniard pup and put the pup in a cage with bars and never pet the pup, and never love the pup.
- This little pup who loves you and wiggles its tail and wants to be petted and accepted, you can stick it with sticks and refuse to feed it when it is hungry. You can put it in with other vicious dogs.

And one day you can stick  
your finger in that cage and  
the pup will bite you – that  
sweet, gentle, innocent  
puppy.

Should we kill the pup? He's  
only entitled to one dog bite  
and he has bitten twice.



# KEYS FOR CARING

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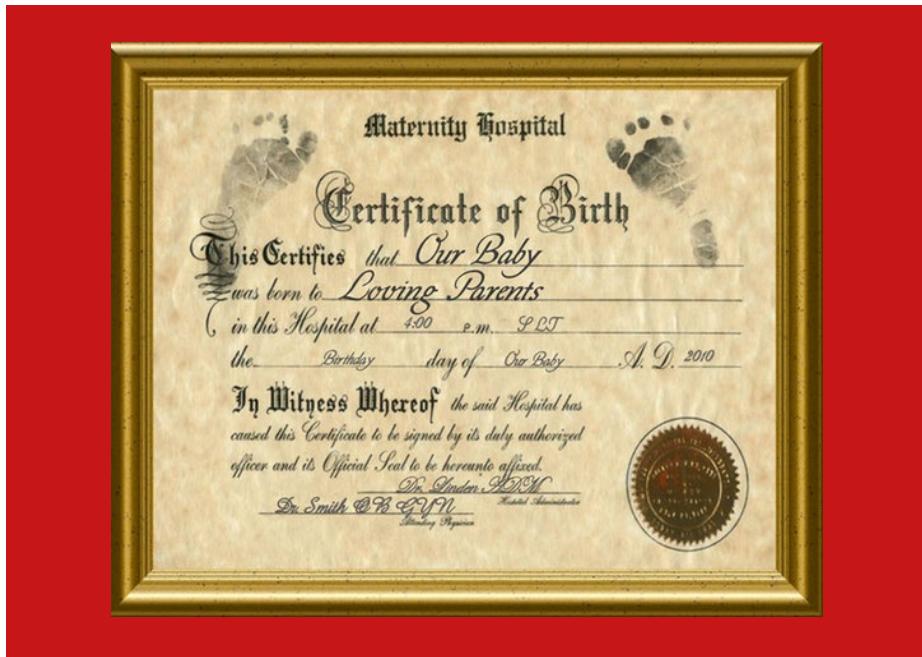


Understand who your client is and know his history. Where has he come from? What has he done? What has he endured? What formed this “little puppy” into the person he is today?



—

Caring can be accomplished without so much as uttering a word. We can demonstrate that we care for John by how we interact with him in the courtroom, by where we stand in relation to him, by touching him, or by making eye contact with him at various points during the trial.



## Tips

- # 1: Avoid referring to Johnny as “my client” or “the defendant” – you’ll play right into your adversary’s hands. Not only are these labels un-endearing, but they are cold and dehumanizing. From the moment your client entered this world, he was given a name – the one that is written on his birth certificate. Use that name.

# WHAT'S IN A NAME?

This has a lot to do with self-validation. Have you ever had somebody forget your name that should have remembered it, or mispronounce your name, or call you by a completely different name altogether? It makes you feel small or insignificant. On the flip side of this is if someone knows your name or remembers your name that you didn't expect to. Wow. That feels great!

## Humanizing “Johnny”

Most of our lives are spent in search of this or some other form of validation. Look no further than social media.

Circling back to the courtroom, it's easier for the jury to convict a “client” or a “defendant” than it is to convict “Johnny.” The jury will hear Johnny referred to as the “defendant” continuously throughout the trial by the judge and the prosecutor.

As a colleague once said, if the jury has a question during deliberations, such as a request for a “read back” of testimony, you can gauge how well you have humanized Johnny by how they refer to him in their note to the judge:

“We’d like a read back of the defendant’s testimony from direct examination” versus, “We’d like a read back of John’s testimony from direct examination.”

## Show those hands

### Tip # 2:

Show those hands! Studies show that when a person is sitting down with his hands lying in his lap underneath the table, people think that he has something to hide. As a result, they don’t trust him.

### Tip # 3: The Huddle

As Celine Dion once said, “I’ve always been a dreamer. But this is an encounter with real life.” I feel that especially when I’m sitting right next to the person whose very freedom has been entrusted to you.

# HUMANIZING “JOHNNY”

Don't be afraid to get close! As subtle as it might be, the jury is acutely aware of everything going on in the courtroom – especially how you interact with your client.

The jury can immediately detect whether you are comfortable or uncomfortable around Johnny. If there is a gap as large as the Grand Canyon between your chair and Johnny's chair, the jury will sense that you're cautious around him or worse yet, that you are afraid of him.

There minds will turn to what's going on underneath the surface: Is John a ticking time bomb? Is John going to snap? Does John have a hair-trigger temper? If you're not comfortable around John, how can you expect the jury to feel comfortable with acquitting him?

## **Tip # 4:**

Find the emotional essence of the case by making the case *personal* to you. Learn to work from private places and from circumstances that are emotionally loaded. Begin by asking yourself the question, “What is a genuinely stimulating circumstance that has deep meaning to me?”

Here's how this applies in the courtroom. I like to ask, "What if?" questions. Ask yourself the question, "What is that element which belongs only to me and to no one else, which is stimulating for me and for no one else?"

For example, you might ask yourself the question, "What if instead of defending Johnny on charges of aggravated assault I am now defending my own brother against the same charges?"

By substituting someone from my life who I care deeply about, the stakes instantly become higher and the case takes on an entirely new meaning.

## Tip # 5:

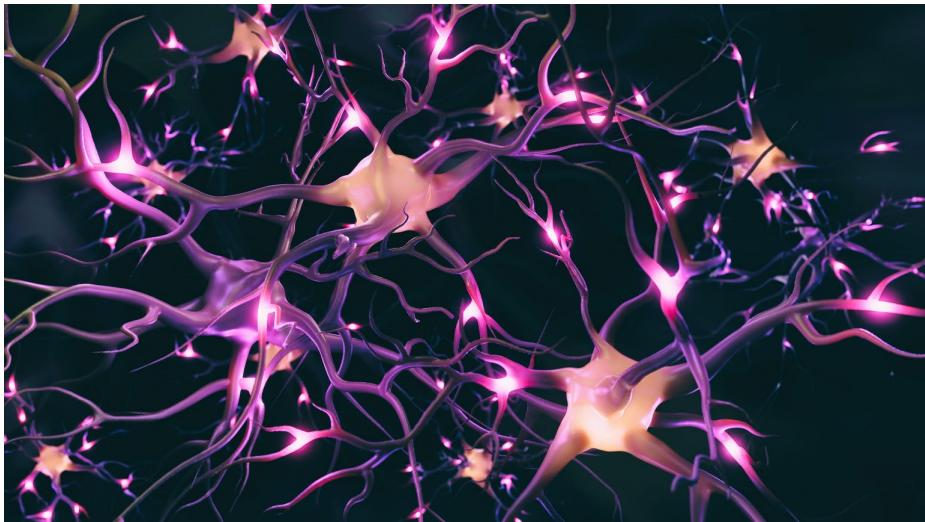
Stay present! Don't allow your mind to wander. Place a demand on yourself to put your full attention on the witness. The jury is always watching. Their tentacles or credibility detectors are always out feeling and probing, sending signals to the brain. And the body picks up these cues instantaneously.



They can smell B.S. from a mile away. When something doesn't seem right, they instantly detect the contradiction without so much as the blink of an eye. They hear and see subtle differences. They hear the difference in the sound of words. They pick up on a nervous twitch. Even the smallest inconsistencies between the chosen words, the sound words, and the physical words are magnified with the absolute clarity of a stethoscope placed against the chest to listen to the rhythm of a heartbeat. And this happens instantaneously and involuntarily, just like breathing itself.

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# MIRROR NEURONS IN HYPO DRIVE



As human beings, we're constantly trying to assess the tone and get the "temperature" of a room. In other words, to evaluate others. It's a survival mechanism. You do it with your friends and your partner. Our mirror neurons are always looking for cues and firing away.

Similarly, the audiences' brains are looking for cues. If you want the audience to say, "What's going on?" you must be specific.

# TIP # 6

In an effort to break the fourth wall and to connect on a deeper and more personal level with the jury, I am a huge proponent of the “handshake exercise,” as introduced to me when I was a student at the National Criminal Defense College. A great leader makes everyone feel seen and that is the objective behind this exercise. Twelve mock jurors are seated in the jury box. The attorney begins his opening and/or closing. While doing so, he/she must reach out and shake the hand of each juror sitting in the front row. The idea is not to rush to shake the hand of every juror in the first sixty seconds or in “record-breaking” time, but instead to take your time and to stagger these handshakes over the course of the entire speech just like a politician greeting his or her supporters after a campaign speech.



In doing so, make a conscious effort to look each juror in the eye when you are shaking their hand (and as a general practice, even when you're not) and make them feel as though they are the most important person in the courtroom. I realize that this can be a little unsettling due to the intimacy that comes from making eye contact with another person, not the least of whom is a total stranger, and really noticing them. I suspect that this is why it is so hard to walk past a homeless person on the streets of New York who is begging for money and not give them anything than to walk by them while looking straight ahead and ignoring them completely.

Compounding the awkwardness of staring a total stranger in the eyes is the times that we are living in today. We are so absorbed in our digital devices and in our own world that any interruption from an external source, such as a live person, is viewed as inconsiderate and/or rude.

Fortunately, there are a number of exercises designed to ease you into making eye contact and this one is no exception.

The purpose behind this exercise is to never leave anyone out. And for good reason. If you're a criminal defense attorney, you never know who that one "holdout" might be.

This exercise is not just helpful in the courtroom, but as you can probably tell, in all aspects of your life from encounters with family, loved ones, and friends to meeting new clients for the first time.

Building on this exercise, I want to introduce you to another exercise that is geared specifically for actors training in physical theater, but which can be enormously useful for attorneys.

It's called, "See and be seen." Actors take turns standing in front of the class and taking everyone in while the class takes them in. The actor need only stand there and be present. There is no need to "perform" or put on a figurative mask. If you are in a lousy mood, you'd just stand there in your lousy mood and let the class take you in while you took them in.

The key is that you must "see" and take in everybody. This means that you can't just stare into space.

Instead, you must make eye contact with each person and take a moment to really see them. It sounds simple, but actors sometimes get used to hiding behind a character. When you're up there in front of everyone, it's just you as you. You have nowhere to hide. A couple of people cried. Not because of anxiety or anything like that, but just because they let themselves be vulnerable. As previously mentioned, there is also an intimacy that comes with making eye contact with someone and really noticing each other. It's a surprisingly existential experience.

So, you might ask, “What’s the point?” These exercises push you out of your comfort zone by forcing you to be more present and connected with a jury. As a trial lawyer, vulnerability is one of your greatest assets. But it’s also one of the hardest to access. We put up walls and hide behind masks. This work starts to break down those walls and shows us what it really means to “see and be seen.”



# TIP #

7  
Know the first few lines and the last few lines of your opening statement and closing argument COLD.

I've learned through experience that when I didn't know the last few lines of my closing argument cold, that I would continue to meander around and about well after my closing argument should have come to an end. And this was not lost on the jury.



# OVERCOMING CONSCIOUSNESS OF SELF



Give the beginner actor a script, put him on stage under the glow of bright lights, and something all too familiar happens. Instantly, the actor's attention turns inward and he begins to hear that dreaded voice inside his head. We all know it. It's the voice of the inner critic.

As an actor, I've learned that there is one place that you never want your attention to be: On yourself. An actor who makes himself the focus of his attention might just as well have one foot in the grave and the other on a banana peel.

When an actor's attention turns inward, he becomes pre-occupied with how others are perceiving him rather than focusing on the task at hand. He begins to doubt himself and what he is doing up on stage. He fears that he isn't interesting enough. And to make up for this perceived shortcoming, he overcompensates by resorting to



From the audience's perspective, the actor's performance is seen as exaggerated and embellished. In other words, he's seen as an imposter or a total fake. I want to explore this warped idea that every performing artist has of not being enough. We can certainly be our own worst critic when it comes to doubting and second-guessing ourselves. We're afraid that we're dull and uninteresting and that we have nothing special to contribute. This theme gets repeated over and over again with actors. We fear that we are not enough and need constant reassurance that we deserve to be on stage.

Even when we are ready to take the bold step of taking our rightful place on the stage, another psychological barrier rears its ugly head: the fear of what to do with that newfound attention once we've earned it.

We underestimate ourselves. It may stem from an incident earlier in your life that undermined your confidence because you had to put yourself out there and in doing so failed.

Was it a harsh comment from a teacher? Humiliation in front of friends? It shattered your confidence at a time when you were most impressionable. Worse yet, although you might not realize it, it may still be holding you back today from pursuing your dreams. Consciousness of self is as toxic to the actor as venom is to the cobra. When we are in our heads, we become judgmental, critical, and doubtful.



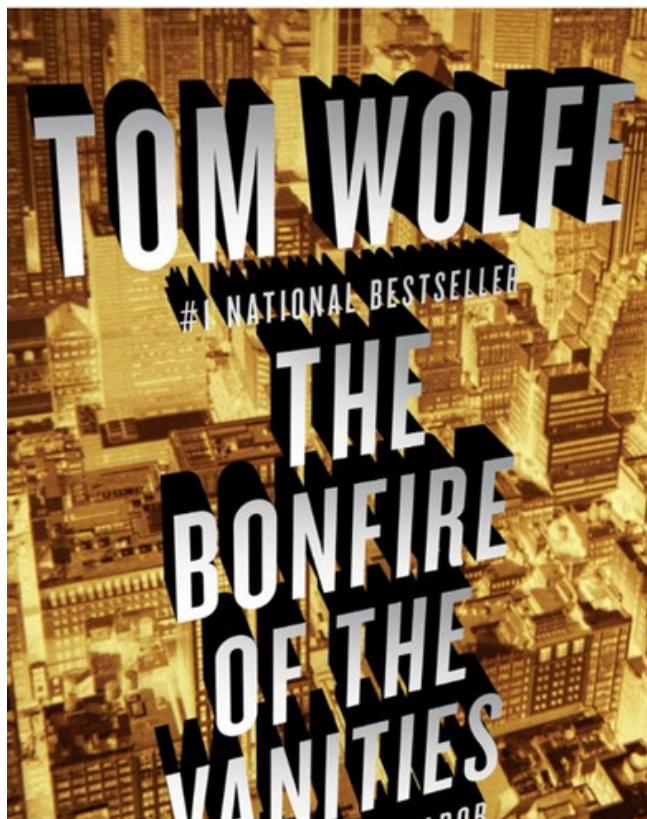


It's as if we've become spectators watching ourselves from the sidelines with intense scrutiny and judging our every move. Shaming ourselves into becoming better people is a terrible strategy for self improvement. In fact, studies show that the same areas of our brain become stimulated when we experience rejection as when we experience physical pain. That's why even small rejections hurt more than we think they should, because they elicit literal (albeit emotional) pain.

Psychologists find that the greatest damage caused by rejection is actually self-inflicted. For example, our natural response to being dumped by a dating partner or getting cut from a team is first to lick our wounds and to wallow in our self-pity. Then we turn to self-loathing where we become intensely self-critical beating ourselves up mercilessly with cruel, harsh, and unkind words; lamenting our short-comings; and wallowing in our self-pity.

In short, we become our own worst enemy. The tragedy in this is that just when our self-esteem is at its lowest point and needs the most nurturing, we kick it into the gutter. Doing so is emotionally unhealthy and self-destructive, yet every one of us has done it at some point in our lives.





Tom Wolfe captured the essence of how debilitating consciousness of self could be when it manifested itself as intensely as it did with the protagonist, Sherman McCoy: "My entire central nervous system was wired. What I had presumed to be my private inviolate self had become a veritable amusement park to which everybody, and I mean everybody, came scampering and screaming. I could no more keep them from entering my own hide than I could keep the air out of my lungs." Tom Wolfe, "Bonfire of the Vanities"



For actors, it's blatantly obvious when they are in their heads. The audience's energy dissipates and is replaced by a musty stagnancy that sucks the life out of the theater in the same way that a Dementor's kiss sucks the soul out of its victim.

There is a paradox in all of this. If that voice whispering in our heads was a real person, it wouldn't take long before we grabbed him by the scruff of the neck and began shaking him uncontrollably until his voice was silenced. Yet we unleash its holy wrath on ourselves with as much fury as the "face that launched a thousand ships" without so much as giving it a second thought.

Whenever I find myself up in my head, I gently turn my mind to a powerful quote from my acting instructor, James Brill, that has stayed with me to this day: "The critic and the creator cannot exist at the same time. The critic's voice is too loud."



# THE ACTING OBJECT

Thankfully, there is a way out of this. It's called the "acting object."

A famous Russian acting instructor by the name of Konstantin Stanislavski recognized how debilitating consciousness of self was for an actor because it prevented them from letting go and losing themselves in an artistic way so as to fully inhabit the mind, mannerisms, and reality of a fictional character.

Stanislavski pioneered the concept that everything good in acting comes out of involvement.

He called it, "the acting object."

An acting object is not necessarily a concrete item. In fact, it oftentimes is a human being, such as a "scene partner." The idea is that the more involved you get with your acting object, the less opportunity you have to *observe* yourself.

Very simply, an acting object distracts you during a time when it would be natural to be nervous. And this is why it is invaluable for trial lawyers and public speakers alike.

Picture this. It's your first day of law school and you're in contracts class. You're sitting in a lecture hall with one hundred other students, all of whom are total strangers. The professor is a strict, no nonsense, "old school" professor who uses the Socratic Method.

Your seat isn't even warm before he pulls out the seating chart and calls on his first "victim." Despite sitting in the last row, the lucky person just so happens to be you.

But instead of asking you to recite the facts to *Lucy v. Zehmer*, your professor asks you to walk to the front of the room, turn around, and face the other students for one minute. Oh yeah, you are not allowed to speak. You must remain silent with your feet firmly planted on the floor and stare out at the piercing eyes of your fellow students.



What response is this likely to evoke?

Within seconds, your heart starts pounding, your palms get sweaty, your lip twitches, your hands get fidgety, you feel a lump inside your throat the size of a crater, and you begin to shift your weight from one leg to another. The seconds feel like minutes.

How many pairs of eyes are fixed on you?

Because there are 100 students, you might have answered, “100 pairs.” But there are actually “101 pairs.” As piercing as the stares of your 100 classmates in the lecture hall might be, the 101st pair is the most paralyzing. To whom does the 101st pair belong? YOU! Yes, you were watching yourself just like every other student in the lecture hall.



Let's tweak this uncomfortable scenario slightly. Once again, it's your "lucky day." The professor calls on you and gives you the very same instructions that he gave you the first time: walk to the front of the room and face the other students for one minute.

Except now, he gives you a tennis racket and a tennis ball, tells you to hold the tennis racket in one hand and bounce the ball up and down on the racket while counting up to ten. You begin.

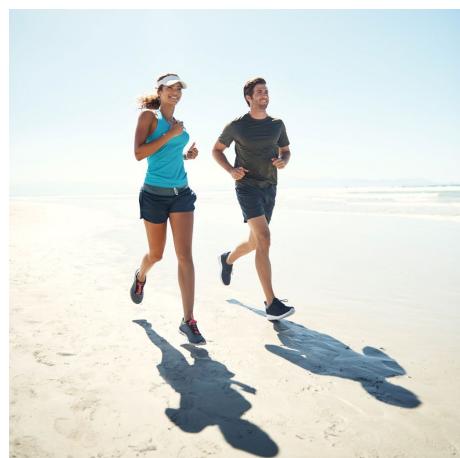
Which version of you is likely to be more self-conscious? The one who had nothing to do or the one who had something to do? If you answered, "the one who had the activity," you'd be correct.

Standing there without anything to do is dangerous because your attention turns inward on yourself and how you are being perceived by your fellow classmates – i.e., "What must they be thinking of me?" – which sows the seeds of doubt and insecurity.



But when given an activity that requires focus and concentration, you can't be involved in doing the activity and watching yourself do it at the same time. You only have the time and energy to do it. The more difficult the activity, the better. Indeed, when something is difficult it demands your full and undivided attention, thus forcing your attention onto an object outside of yourself. And when this happens, the actor cannot help but react truthfully, from the core of his self and his experience.

In acting, the "independent physical activity" teaches students to place their entire concentration on accomplishing some concrete, specific, and truthful goal. Of course, the activity must be difficult and not something mundane that can be accomplished while your brain is on autopilot. In this way, it is both a conspiracy and a self-contained drama all in one.



For example, when hanging a picture frame, all of your attention is on the task at hand (i.e., selecting the right nail and drill bit, drilling the nail into the wall at an appropriate angle, and mounting the picture on the wall so it doesn't appear crooked or off-centered) that there is not enough of you "left over" to watch yourself doing it.

You may talk to yourself while trying to center the frame onto the wall, cock your head at different angles to ensure that the frame is centered, and/or let out a few four-letter expletives when it comes crashing down.

Crafting a difficult physical activity is not a hack or a quick-hit tactic designed exclusively for actors. Every performing artist, including storytellers, can benefit. As you can see, when an activity is specific and truly difficult, it creates a specific kind of life. Indeed, when you are fully committed to performing the task at hand, your involvement becomes analogous to a bonfire that gives off smoke, making you ever so interesting to watch!



Now for some practical tips. What are some acting objects in the courtroom that are sure to soak up your attention? Here's a hint: they typically depend on what stage of the trial you are in.

The following are a few that I routinely use.

If I'm making a legal argument, all of my attention is on the judge, with the occasional glance downwards to look at my notes.

If I'm cross-examining a witness, my attention is on that witness, but not to the utter exclusion of the jury. I'm always checking in with them to see how they are responding.

If I'm making an opening or a closing, all of my attention is on the jury.





Your true self will  
shine through when  
you lose  
consciousness of self.  
Nothing can be more  
liberating.

# THE POWER OF CONCENTRATION

I've had a lifelong fascination with how high-performing professionals prepare for important events, from the hockey player in the waning moments of sudden-death overtime of Game Seven of the Stanley Cup Finals to the Broadway actor in the moments before the curtain rises.



The last few minutes before a major challenge can be terrifying. My heart begins to race just thinking about it. I don't know about you, but I often times feel the weakest right before I'm expected to be the strongest, particularly in a trial when the very liberty of my client is at stake. I'm awed by how these professionals will ultimately be judged on their ability to deliver a single solid performance under extreme pressure. How do they stay calm? What do they rely on to boost their confidence? What mental tricks optimize their performance? Sure.

Practice is critical. There is no more staunch an advocate of the 10,000 hours philosophy than yours truly. Without minimizing the importance of practice, the reality of the situation is that there are only so many hours in the day and the amount of rehearsal time is finite. The audience is seated and the curtain rises. Whether the performance takes place on stage, in a courtroom, or in the boardroom, we have mere moments to gather our thoughts and prepare our minds. There's no room for more practice.

How can we best spend the crucial moments before we stand up to deliver our opening? How do we put our mind in an optimal state before we perform? The answer lies in one word: concentration. For as trite a phrase as it might be, it is a game-changer. Through concentration, we can examine new ways to deal with adrenaline rushes, increase focus, boost confidence, and optimize our emotions before we stand up in front of the jury.

Concentration is the muscle that allows you to focus. It's the essential building block or DNA of good acting. It is for this reason that actors must be the master of their concentration. As masters of our concentration, we have the ability to gather it up and put it where we want to at will — regardless of the time, the place, or the circumstances.



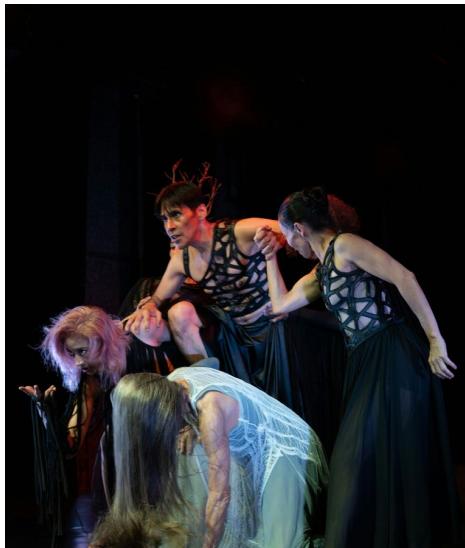
Inherent in this concept is an immutable law that there are only two places where we can put our attention: (1) on ourselves or (2) on something outside of ourselves.

In other words, we can “see” or we can “be seen.”



I can recall many times during my acting training when all of my attention was on myself. In time I learned through the “repetition exercises” how to keep all of my attention on the other person until it became a habit. And it’s a habit that I never want to break.

The ability to focus your attention at will is just as important for lawyers as it is for actors.



There are few things that we can control when we walk into court each day. I've experienced the entire gamut, from an adversary who made a motion in limine to curtail the subject matter of an important defense witness on an issue that was vital to the defense a day before she was scheduled to testify, to an incarcerated client who had refused to change out of his "jump suit" and into his dress clothes on the morning before I was scheduled to open, to realizing that I had a coffee stain the size of Lake Erie emblazoned on the front of my tie just minutes before standing up to deliver my closing argument.



There is a wonderful quote that when applied to a busy day in court, explains why concentration is so vitally important for the trial attorney: “I don’t have a train of thought. I have seven trains on four tracks that narrowly avoid each other when the paths cross and all of the conductors are screaming.”



If it wasn't for my training as an actor, I might have had a meltdown. As unstable and unpredictable an environment that the courtroom is, there is one thing that we still have control over: our concentration.

This is why concentration is so important to me.

But nearly three years of lockdown during COVID where our phones became our only connection to the outside world have caused most peoples' attention, including my own, to become flabby.



An actor must be able to gather his attention and put it where he wants to put it – on set, off set – any place, any time.

The ability to focus your attention at will is critical for every performing artist.

Concentration is the muscle that allows you to focus. It's the first necessary essential thing.

As the famous acting instructor Sanford Meisner once said, “To take the heat off yourself – to transfer the point of concentration *outside* of yourself – is a big battle won.”

The type of concentration that I’m referring to is a focused alertness with a *specific intention* , without the tension.

Here are two examples.

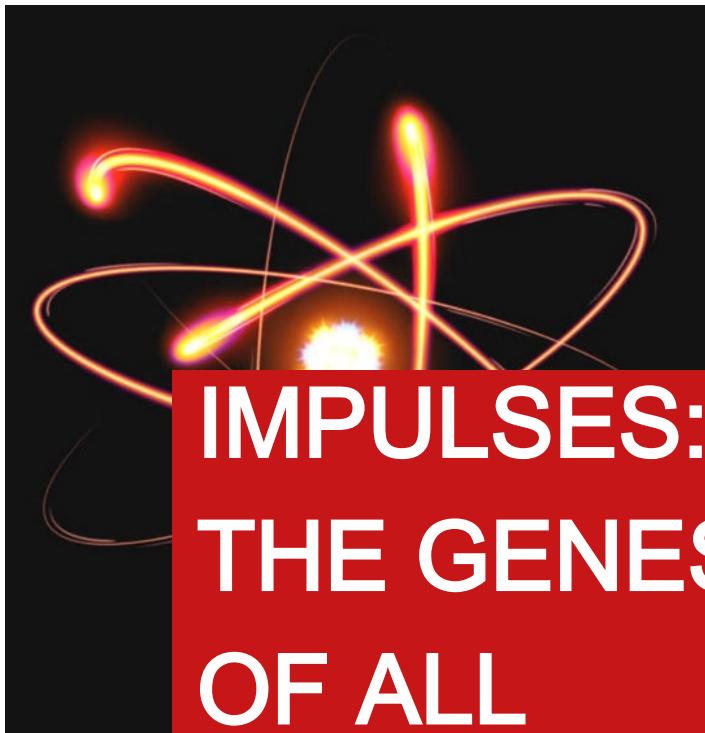
First, an Olympic runner lining up at the starting line right before the gun goes off.

Second, a paramedic or first responder in a moment of crisis without all of the chaos. They take control of the situation immediately. This is the kind of focus that both acting, and litigation, demands.

Even for the most seasoned performers, it's impossible for them to stay one hundred focused and not to get distracted and to lose their concentration.

The difference, however, lies in their ability to get their concentration back quickly before their mind trails off and takes them out of the moment. And that is a skill that requires practice.





# IMPULSES: THE GENESIS OF ALL CREATIVITY

The genesis of all creativity is the impulse. This is a bold statement and one that I suspect may even be challenged by cynics.

An impulse is an urge to do something. We've been experiencing impulses our entire lives. For example, when you reach into the microwave with your bare hands to remove a hot plate what happens? You yell, "Ouch!" Or, when you feel an itch on your upper lip, what do you have an urge to do? Scratch it!

What do these two examples have in common? You don't have to stop and think about it. It's an instinctive reaction. In other words, you can't think an impulse. It's natural and organic. Developing a connection to your impulses is one of life's greatest gifts. Very simply, impulses are more honest than thoughts. Thoughts are filtered through the brain where they are edited and censored until the true meaning is wrung out of them.

In his runaway bestseller, "Zen In The Art of Writing," Ray Bradbury wrote, "in hesitation is thought. In delay comes the effort for a style, instead of leaping upon truth which is the only style worth deadfalling or tiger-trapping." Acting instructors have long recognized the power of the impulse. Actors are taught to follow their impulses and allow them to dictate the changes in their behavior. In "The Actor's Art And Craft," the great acting instructor William Esper explained why:



"A connection with his impulses is one of the most important things an actor can develop, because who you really are is revealed by your spontaneous impulses. Not the 'you' that you'd like to be or the 'you' you think another person wants you to be. I'm talking about your true self. To be your true self, you have to act before you think."

This sounds counter-intuitive because it goes against everything we've been taught in life. From the time we were tots, we were taught, "Look before you leap." "Think before you speak." "Look both ways before crossing."

But Mr. Esper teaches his students to do the exact opposite and there is a method behind his madness: "But I say: Speak before you think! Leap before you look! This is the only way you'll ever come to life as a human being."



A good play is like a ping pong match of impulses with the ball always swooshing through the air. As Mr. Esper explains:

“... [T]he ball moves fast and never stops. It bounces to me and I don’t wait — I hit it back to you. Then you hit it back and here it is with me again. From me to you, from you to me. If you pause to think, you’re done for.”

When in a play, good actors don’t wait for a “cue” before responding. The impulse to do what they’re doing comes before their scene partner finishes their line. Of course, the actor must wait for his cue, but the impulse comes whenever it’s felt.

Here is an example of what Sanford Meisner meant by the instinctive/impulsive response.

Suppose you ask me, “Mike, who is your favorite Beatle: John Lennon, Paul McCartney, George Harrison, or Ringo Starr?” If my eyes light up immediately and I start nodding my head up and down upon hearing the name, “Paul McCartney,” you’ll immediately know who my favorite Beatle is without having to wait for my verbal response. This illustrates that impulses happen all over the place, not just at the end of a line.

As an actor, I’m always struck by how easy it is to stray from my own rawness; to deny a true impulse even though it frees me to get out of my head. For me, this inhibition comes down to one sweeping statement: “the lubricant of life is manners.”

The tendency nowadays is to follow your instincts only when they are socially acceptable. As a result, we curb our impulses for fear that we will be branded as “uncivilized.”



To honor an impulse is to take the “polite routine” out of your work. Polite is a way of protecting yourself and winning the approval of others. But there are no casual moments in drama. Writers don’t write polite. They write about the human condition which is fraught with strife, conflict, discord, struggle, and dissension. In the same way, these are the very same themes that underly a trial.



This does not mean that actors go out of their way to be rude or disrespectful. Far from it. At the same time, we’re all primal. And we can’t deny it. When you walk outside and see someone keying your car, nothing is intellectual about your reaction. Just as important as it is to know what it means to *honor* a true impulse, we should know what it means to *suppress* one. Suppose your colleague gives a presentation that you attend. Your real reaction is that it was terrible. Yet, afterwards you go up to him with a smile on your face and through gritted teeth say, “That was great!” Your jaw tenses to keep the real, instinctive remark from coming out.

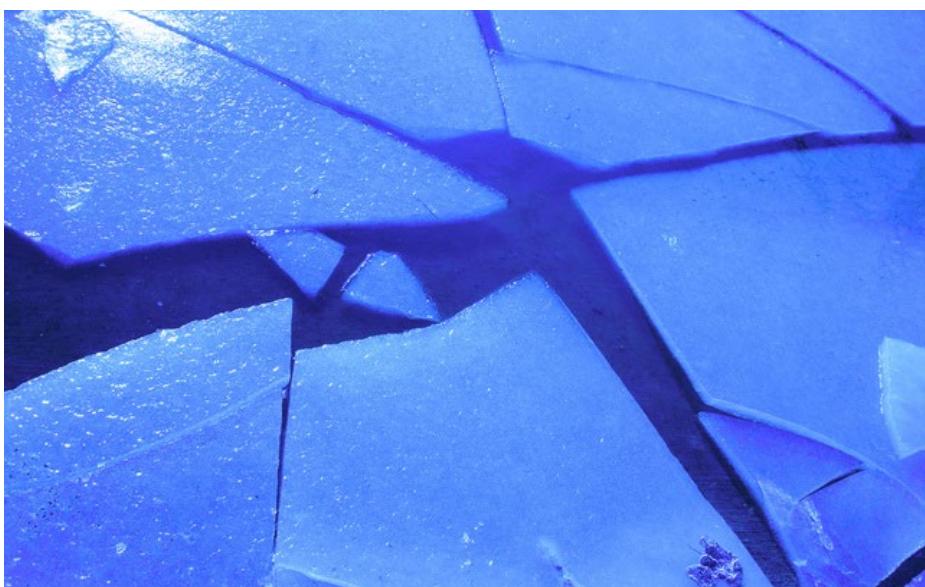
This type of control is antithetical to the spontaneous, deeply instinctive behavior that Meisner's technique is meant to stimulate. After all, the purpose of the Meisner technique is to rid actors of the baggage that weighs them down and blocks their instincts.



The value of unexpected and unplanned behavior cannot be overstated. The ability to not anticipate what's going to happen next and to genuinely be surprised by the unexpected is the source of all creativity. It is far richer than planned behavior. For this reason, spontaneity is the cornerstone of good acting. In a fascinating interview with Marc Maron, Jerry Lewis talks about the many things that happened "spontaneously" when he was working with Dean Martin. He said that, "Most of the great stuff was unprepared and we had so much fun getting it to work."

Think that removing thought from the equation is too radical an idea when it comes to the courtroom? It is more native than you think. Consider this. Professional speakers make a point of memorizing the first three to five minutes of their speech cold. The speaker then pivots out of that moment into the body and/or content of the speech.

There are two reasons. First, if the speaker can get through the first three minutes with positive feedback and feeling like he has done a good job, he has “broken the ice” so to speak. It’s like the first time you tell a joke and people laugh. The temperature seems to change in the room slightly. Everybody relaxes. You feel like they are on your side.



Second, “the best-laid plans of mice and men often go awry.” In the public speaking domain, “awry” is synonymous with backstage jitters, obnoxious members of the audiences that heckle the speaker by erupting into a chorus of “boos,” PowerPoint slides that freeze, and microphones that mysteriously go dead.



When something goes wrong, it usually happens during the first five minutes of the speech not unlike the vast majority of plane crashes attributable to mechanical failure during takeoff. The psychology behind this is that by memorizing the first three minutes, the speaker does not have to use his brain and can stay on autopilot. Transitioning from the stage to the courtroom is a real life example of how an unexpected reaction that I had to a witness’s response had the truth written all over it.



# COURTROOM EXAMPLE - SPONTANEITY

While cross-examining an expert witness, the expert said, "I offer my opinion – within a reasonable degree of medical certainty – that the patient's subcutaneous emphysema resulted from and had progressively worsened as a result of endotracheal intubation and bronchoscopy."

The words were so foreign and came off the expert's tongue with such ease that it stunned me. In that moment, I looked like a deer in headlights, so lost that the expression on my face resembled that of the fictional character, Kramer from "Seinfeld." The jury erupted into gales of laughter. But they weren't laughing at me — they were laughing with me. They were just as confused as I was and were able to empathize with me because I was expressing something that they couldn't: the frustration of being completely and utterly lost. They were living vicariously through me!



This experience taught me what it means to trust my impulses and to accept myself for who I am in the moment. It's easier said than done. Trusting your instincts takes time, patience, and experience.

A practical tip is that the better you get at eliminating thought from your work, the more instinctive you become.

It also taught me not to be afraid of "accidents." They can be like finding pure gold.

In acting, the expression we use is, "Spontaneity is to acting what salt is to soup. Without it, it's bland." Truer words have never before been spoken.





## LEVITY & HUMOR

Finally, every once in a while, levity can go a long way in the courtroom especially when tensions are so high that you can cut them with a knife. Indeed, it's a great ice-breaker.

As the great Judi Dench once said, “Find the humor in the text. Even at its darkest point, there is always humor to be found.”

And while we are on this subject of humor, I want to share with you some powerful quotes from the great casting director Michael Shurtleff on why humor is so important, especially in heavy situations.

“Humor is not jokes. It is that attitude toward being alive without which you would long ago have jumped off the Fifty-ninth Street Bridge. Humor is not being funny.”



“It is the coin of exchange between human beings that makes it possible for us to get through the day. Humor exists even in the humorless. I have trouble believing in the seriousness of a scene in which there is no humor; it is unlike life. And yet actors will say to me, “How can I find humor in this scene? It is very serious!” For the exact same reason one would be driven to find humor in the same situation in life: because it is deadly serious and human beings cannot bear all that heavy weight, they alleviate the burden by humor.”

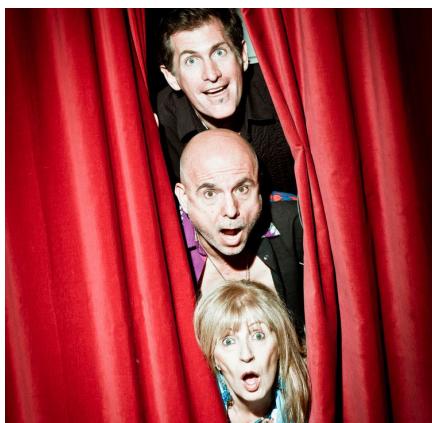
# BREAKING DOWN THE FOURTH WALL & THE POWER OF DISCOVERIES

“The fourth wall” is an expression that has evolved from the world of theater. In most modern theater design, a room will consist of three physical walls, as well as an imaginary fourth that serves to separate the world of the characters from that of the audience.

Speaking directly to, otherwise acknowledging or doing something to the audience through this imaginary wall is known as “breaking the fourth wall.” Shakespeare used this whenever a character was on stage by himself or herself and speaking a soliloquy. In Shakespeare’s comedies, there is a reoccurring theme of narrating a play within a play, creating a multi-layered production that engages the audience.

One of the main ways that this distinction between reality and fantasy can be heightened is for a character to “break the fourth wall” and directly address not only the stage audience, but the real audience as well.

This not only grabs the audience’s attention and makes them feel as if they themselves are part of the play, but it also blurs the lines between the actors in the play and the actors in real life.



In Shakespeare’s plays, there was an unwritten rule that whenever a character “broke the fourth wall” and addressed the audience directly, he or she was speaking their truth. He was not trying to dupe the audience or trick them.

What can “breaking the fourth wall” teach us about connecting with the jury?

As I was sitting in acting class one afternoon, a thought occurred to me. What if we were to view the jury as *participants* in the trial as opposed to mere *spectators* sitting high up in the raptors like fans at a sporting event looking on at a distance?

In other words, what if we drew the jury into sharing the re-constructed reality of past events, so that they could “see” what happened and feel as if they themselves were part of it, even though they were not actually present to witness the original event?

The inspiration for this unconventional way of looking at the jury comes from the world of acting.

Let me explain.

The theater is full of hope, full of artistic illusions, full of imagination, and people.

We can encourage the audience to use their imaginations and they can become a creative presence there along with us.

But it is far better when everyone is *active* and *alive* in the imaginary world.

Why? Because the exchange between the actors and the audience is *shared* ; not just a one-sided assault from the stage.



By making the jury part of this re-constructed reality, the trial will come alive to them in ways that you may never have never dreamed possible.

For starters, they will become more engaged and filter the events through that reality. If successful, the jury will feel like they have “seen” the events in question unfold right before their eyes, even though those events were re-constructed through testimony, not actually present in the courtroom.

How can we draw the jury into a reconstructed reality of past events?

By allowing them to make “discoveries.” Discoveries are far more powerful than any amount of coaxing or cajoling.

A persuasive argument may make the jurors say “okay” or “you win,” but a discovery makes them say, “Of course,” or better yet, “I knew it.”

Example: Purse snatching in the underpass.

When an actor makes a discovery on stage or on set, it is usually accompanied by an incoming breath. Why? Because there is an element of suspense, surprise, and inspiration behind a discovery, such as when you walk through the door of your dark home on the night of your birthday, turn the light switch on, and twenty people hiding behind a countertop in the kitchen jump out and yell, “Surprise!”

There can be no better person to learn about discoveries from than the late, great stand-up comedian, John Pinette.

One of his famous lines was, “So I went to this Chinese all you can eat buffet and while the owner he got pissed. I mean he was rude though. He’d come out every hour.”



Picture a trial about a traffic accident at an intersection. The plaintiff testifies that the defendant ran a red light and hit him in the crosswalk. The cross-examining defense attorney can adopt one of two tactics. First, she can try and get the plaintiff to admit that the light was green and that he should have waited until the light turned red before crossing intersection.

This tactic will quickly turn argumentative with the defense attorney insisting, “The light was green, correct?” and the plaintiff flatly denying it with a chorus of, “No. It was red.”

On the other hand, if the cross-examining defense attorney points out that the plaintiff previously brought four similar lawsuits, she is essentially applying the principle of discovery.

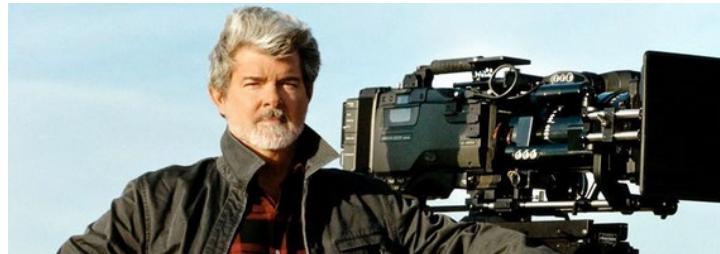
In that case, the discovery is as clear as day: “Yes, of course you claim that the light was red, and that is to be expected, because you always say that when you want money.”

Applying the principle of *discovery* packs a one-two punch: it allows the jury to resolve the inconsistent statement while remaining true to the story, effectively turning the plaintiff into an unwitting ally.





It would be disingenuous of me to introduce this idea of “discovery” without adding a caveat. Allowing the jury to enter the re-constructed reality and to make discoveries on their own may be unsettling at first. And for good reason: lawyers like to be in control. I realize that handing over the reigns to a jury during a trial can be down-right frightening. The idea of handing over the reigns to a jury during the course of trial is like riding the tallest and fastest roller coaster in the world – backwards! While I am as risk-averse as any litigator, I often find comfort in viewing this from the perspective that you’re allowing the jury to form their own conclusions but you’re also gently steering them in a way where they’re going to reach your desired conclusion. This may help to restore your role as “captain of the ship.”



# THE DIRECTOR'S EYE

“All the world's a stage, and all the men and women merely players. They have their exists and their entrances and one man in his time plays many parts.” As You Like It, Act II, ii, 139. The trial lawyer is endowed with a special gift. Unlike an actor whose job is specifically to act, the trial lawyer gets to wear all three hats — that of the writer, the director, and the storyteller.

This is extremely empowering in that it gives the attorney a degree of agency and control that is seldom seen in theater or cinema, unless of course you are someone like Kenneth Branagh who both directs and acts in his own movies.

Not only does the courtroom function as a stage, but it also functions as a television set. In this way, the courtroom is a hybrid of sorts. Think about it. When delivering your opening and closing, you are so close to the jury that they could reach out and touch you. In recognizing this, we are forced to recognize some truths when it comes to “on-camera” work and by extension, the courtroom. First, less is more. Indeed, the smallest thing gets magnified one hundred times over on camera. For this reason, we as actors are always taught to “trim the fat” and to be simple when working on camera.

This could not be any more true than in the infamous “close-up” shot where the actor’s face takes up the entire screen. Indeed, those same twitches or ticks, which go unnoticed by an audience in a theater due to their distance from the stage are on full display in an on camera close-up shot. Because of how exposed one might feel by such a shot, most actors find closeup shots to be the hardest ones to do.

It is for this reason that many view the camera as a “lie detector that pierces the husk of the actor.”

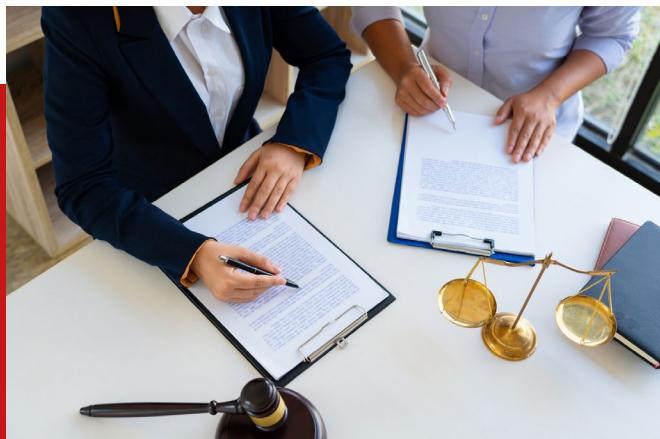
Since twitches and ticks reveal a story unto themselves and often undermine rather than bolster a speaker's performance and since many of us are blind to our own, it is helpful to become aware of those that surface within us. Only then can we correct them. Often times, this will require an "outside eye" in the form of a colleague or a friend.

Second, another big difference between the stage and the camera is that with cinema, the director decides what an audience gets to see by virtue of where he places the camera. For example, in the shower scene from "Psycho," the director chose to focus the camera on the woman in the shower instead of the assailant as he crept in.



In the theater, the audience is free to shift their gaze from one character to another. Thus, when a director wants the audience's eyes to be on a specific character during a heightened scene, the actor playing that character must be able to "steal" focus away from the other performers at will.

The attorney standing before a jury does not have that same problem. Unlike an actor on stage in a theater, the attorney stands but a few feet away from the jury when delivering his opening and closing and does not have to "steal" focus away from anyone else. He is in a perpetual "close-up" shot from beginning to end by virtue of his close proximity to the jury. This is why I preach so much about the body being the frontline of expression.



Third, the similarities between the camera and the courtroom do not end there. Even though the attorney does not literally carry a camera, the lens of a camera is a great metaphor for so much of what we do in storytelling.

For example, if we're representing a client charged with assaulting a victim in a barbershop and the defense is "self-defense," we would need to paint the scene of the barbershop where the incident occurred with as much clarity as possible. Of course, words and not paint would be our tools.

Just as a camera lens focuses in for a close-up shot and out for a wide shot, we could describe the layout of the barbershop in similar terms, focusing in and becoming specific for those aspects of the layout that were material to the defense (i.e., the position of the barber chair vis-à-vis the door that the victim walked through) while focusing out and becoming general for those that weren't. This will help us strike a good balance between the right amount of detail and moving the story forward so as not to lull the jury to sleep.

Another great lesson that we can learn from the camera lens is how different places engender different moods and how those moods can provide the perfect backdrop for advancing your story's theme. For example, consider the bathroom scene from "Joker." It was no accident that the director staged this epoch scene in a disgusting, filthy public restroom. Indeed, nothing is random in films like this. Nor was it an accident that the filter changed to a distinct green. The director chose a distinct green filter to represent decay, snot, nausea, excretion, and vomit.

Here's an example of a filter from the barbershop case. Because of how vicious and unprovoked the victim's attack on my client was and because he was in as vulnerable state as any since his back was turned to the victim when he sucker-punched him, I began to get a sense of an eerie-foreboding in the moments leading up to the attack.



During my meetings with my client, I learned that the barbershop itself was old and dilapidated. So I questioned him about the specifics. There was an old-fashioned television set with an antenna that sat on top of a refrigerator in the back. It had ten stations and was turned on to the news but the picture faded in and out. The lighting was so dim that it was hard to read the week-old newspaper that sat on top of a rotted end-table. There were cracks all over the ceiling. The floor was filthy dirty and every once in a while a critter would scurry across the floor from one corner to another. The smell inside the barbershop was like a stale and musty cigar mixed with a smoked blunt.

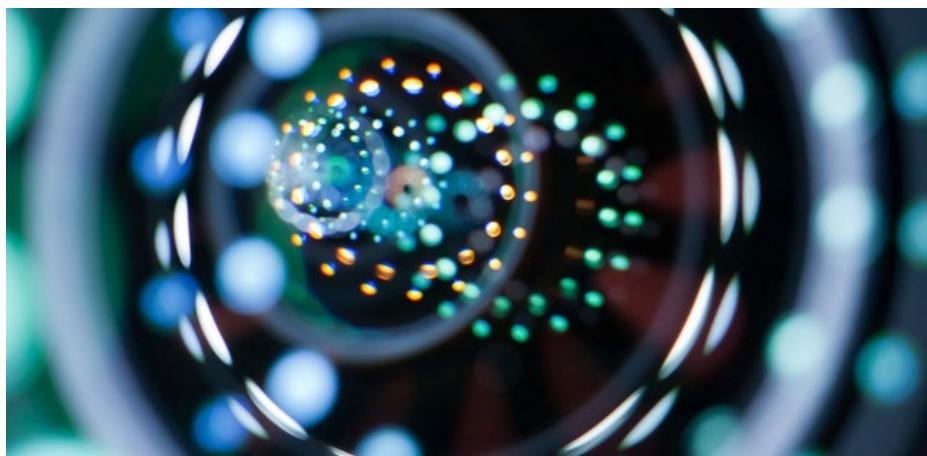


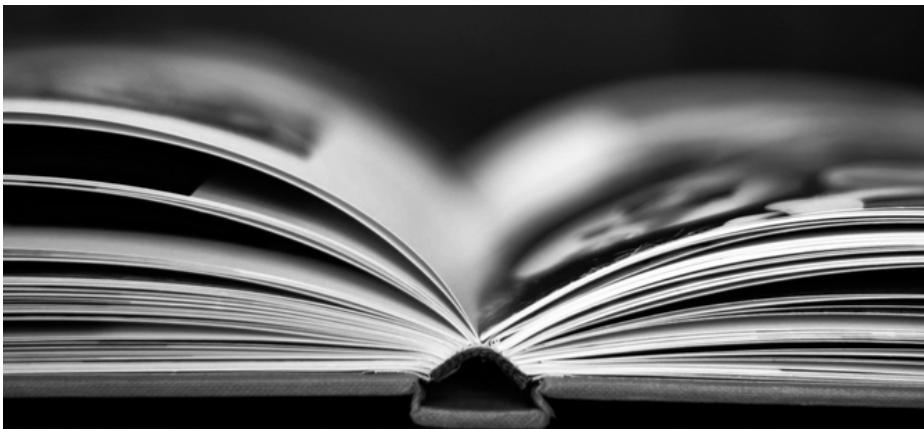
I realized that the description of the barbershop was not unlike the bathroom scene in “Joker,” complete with the green filter. Like “Joker,” I decided to use a green filter.

To create that illusion, I relied on a detailed description of the barbershop to create an image in the minds of the jury of a wretched and decayed barbershop that probably would not have passed a safety inspection.

Moving from the camera lens, I view each witness who comes into court like a different scene in a play.

In theater, each scene has a specific purpose. It is a small piece of the big puzzle. And while its purpose may not initially be apparent, by the end of the play it will be. By specific purpose, there is a reason why the writer wrote it. It’s not just thrown in there randomly to give two starving actors a job and to fill up space.





In one short sentence, what does the writer want the audience to learn when the lights come up in the theater?

Examples might be, “Don’t judge a book by its cover,” or “Love conquers all.”

Here’s an example from the wizarding world of Harry Potter.

There was a zoo in Surrey, where the Dursleys took their son, Dudley on his eleventh birthday and, against their will, Harry.

While at the zoo, they bought ice cream, saw a gorilla, ate at the zoo restaurant, and visited the reptile house.

At first, Dudley found the place boring because none of the reptiles were moving around much.

But when no one was watching, Harry discovered that he was able to *speak* to snakes when he realized a boa constrictor understood what he was saying.

Harry accidentally caused the glass of the snake's tank to vanish, enabling it to escape.



If you're unfamiliar with "Harry Potter," as a way of background information "Parseltongue" is the language of serpents and those who can converse with them. It is a very uncommon skill, and is typically hereditary. Harry was not consciously aware of his ability to speak Parseltongue (as an aside, I don't know how many people would) until this encounter with the snake at the zoo.

With all of the drama surrounding this scene, it is easy to overlook that fact that the purpose of the scene was to establish that Harry could speak “Parseltongue,” a language that is relegated to those who have descended from Salazar Slytherin, the founder of “Slytherin House” at Hogwarts.

Finding the purpose of the scene is critical for actors because it’s their job to fulfill that purpose.

An actor can get lost if all they do is look at the trees. They must be able to see the forest for the trees and ask, “Where is the path?” The purpose of the scene becomes the path that leads the actor out of the forest.



Turning to the courtroom, by understanding why a particular witness has been called to testify, you can understand what piece of the story he is coming in to tell. Thus, in preparing for cross-examination, step one is always to reduce to one sentence what piece of the story this witness will be telling. Then and only then do I turn to brainstorming my cross-examination. In doing so, because I remain jury-centered, I ask myself the question, “What feeling do I want the jury to be left with after I’ve finished cross-examining the witness?”

For example, if I’m cross-examining the snitch, by the time I get done cross-examining him, I’d want the jury to feel like they need to take a cold shower. This is very different from saying, “By the time I get done cross-examining the snitch, I want the jury to feel like I have discredited him.” First, “discredited” is not a feeling. A cold shower is. Second, a cold shower is more visceral. This will inspire me to marshal up all of the impeachable facts that I have and to unleash them with zest and gusto. Finally, this simple statement acts as a credo to keep me on track and not to lose sight of my goal.

Collateral, non-material questions will get filtered out of my cross so that they don't dilute and detract from the critical points that I need to make. In this way, I become laser-focused and efficient.



# THE MOMENT BEFORE

A question that actors ask that we can ask ourselves when preparing to question a witness is, “What happened the moment before the scene (i.e., event) began?” If the actor doesn’t do their homework, they might walk into the next scene woefully unprepared.

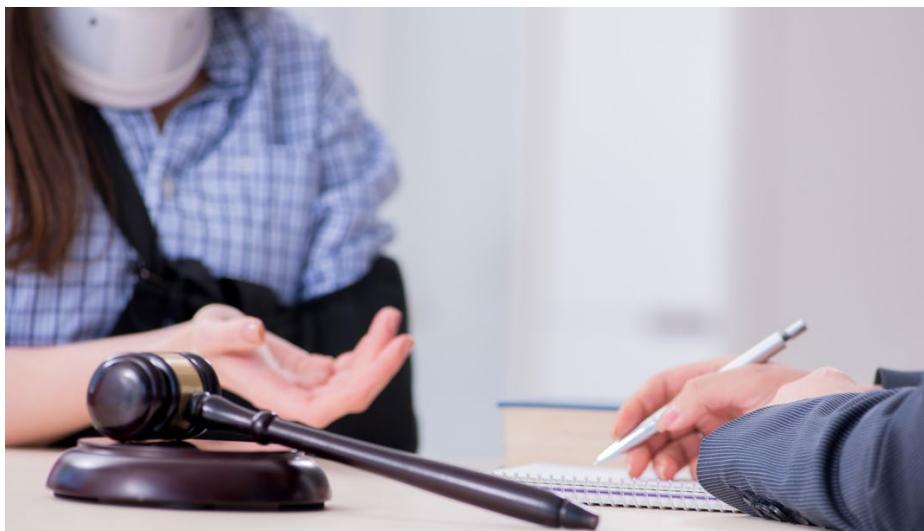
For example, if the character’s best friend overdosed in the prior scene and the actor came in whistling dixie in the very next scene, the audience would instantly feel the contradiction and doubt the truth of what is being played out right in front of their eyes.

Questions to ask are, “What happened the moment *before* this person’s world clashed with my client’s?” What was he doing? Where was he going? What was he feeling?

What events conspired to bring these two people together in an encounter that would later give rise to one person being injured and the other arrested and charged with a criminal offense?

For example, you might ask the question, “What happened the moment before my client, John stabbed Ed with the knife?” This sounds basic, but if Ed hit John over the head with a 2x4 the moment before, then you have a clear picture of what feeling you want the jury to be left with after cross-examining Ed: that he is dangerous.

Suppose that you are representing an injured plaintiff in an automobile accident who was T-boned at an intersection by another car who your client maintains ran the red light. A dispute arises over who had the red light with the defense bringing in an eyewitness who claims that your client, and not the defendant, ran the red and caused the accident.



Most of us would explore the possibility of bias, the time of day, weather conditions (i.e., visibility), and physical infirmities such as poor vision, whether the witness had prescription glasses, and if so, whether he was wearing them on the day of the event. Of course, these are essential.

But how many of us would inquire into what he or she had been doing the “moment” before? For example, had the witness just walked out of a bar or restaurant where he had a few alcoholic beverages? Had he just been discharged from the hospital after sustaining a concussion? Where was his attention? Was he in the company of his two minor children and his dog who he was rounding up to cross the busy intersection?





By becoming laser-focused on your objective, you will know what information you need from this witness and what type of questions will enable you to draw it out. You'll come face to face with the cast of characters. Who are the heroes and who are the villains? Who are the good guys and who are the bad guys? You need the jury to understand the problem from your client's perspective – what other choice did he have than to defend himself? What does it feel like to be misidentified as a killer or a rapist?



This will make it easier to identify what feelings you want the jury to be left with after hearing from each witness.

This is also an antidote to falling into the trap of “asking the one question too many” or having the witness give damaging testimony “on your watch” while you look on helplessly. Because you’re the one asking the question, the jury will be left with the impression that you’re tacitly endorsing the answer. Your stock in the jury’s eyes will fall faster than the Dow Jones Industrial Average on news of a global economic slowdown.

# EXTEMPOREANOUS METHOD



- This comes from the creative genius of Stephen C. Rench, Esq., faculty member of NCDC.
- The extemporaneous method is very effective.
- It comes from the heart and is natural and real.
- It requires deep preparation but leaves the speech to be made at the moment of delivery.

## Characteristics:

- The focus is the jury and the source of the message is the attorney, not the notepad.
- The notepad is merely an aid. The lawyer is not a conduit for what is on the notepad.
- The attorney's immersion with the subject matter allows for flexibility and spontaneity so that he can adapt on the fly.



The attorney is emotionally available and allows himself to be affected by the jurors. He pauses, allowing the jury to respond through facial expressions and body language. It's as though the lawyer is having a conversation with the jury even though the jury is not speaking back.

When there is genuine contact between the attorney and the jurors, the relationship between the two lives. The extemporaneous method is natural and conversational and heightens the credibility of the attorney.

The extemporaneous method requires an effective organizing and note system.

Related thoughts should be organized into points. Each point and its supporting material should be put into a chapter.

The chapter should be given a name, like a tag line, which expresses the point or subject-matter. This name will help jog your memory.

The purpose of the “jog note” is to remind yourself of the point or subject to be covered. The material supporting the point should then come from you – as a result of your immersion with the material.

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# HEARING VERSUS LISTENING

As subtle as it might be, there is a big difference between listening to someone and really hearing them.

# A FAVORITE QUOTE



Walk so silently that the bottoms  
of your feet become ears.

Pauline Oliveros

# ALAN RICKMAN ON LISTENING



# HEARING VERSUS LISTENING

ost people do not listen with the intent to understand; they listen with the intent to reply.

Stephen R. Covey



In life, we listen but we don't always hear. As Stephen Covey said, "The biggest communication problem is that we don't listen to understand. We listen to reply." We try hard to multi-task between twitter and texting, but invariably that means we're not always listening to someone who's speaking to us. As brash as this might sound, we are merely waiting for the other person to stop talking so that we can speak the thought that we were thinking a minute earlier.

How can we expect to react or absorb what another person is saying if we are in our head, preoccupied with what we have to say, or off in a world of our own?

In my experience, there is nothing more important than learning to “listen” and “work off” of another person, especially a witness during direct and cross-examination. I learned a painful lesson about the importance of listening to every word uttered by a witness in one of my first trials.



I missed a bombshell that came straight from the mouth of the arresting officer on cross-examination where he referred to my client as “one of those people.”

Nothing could have revealed a deeper racial bias. Sadly, it fell on deaf ears because I was not listening. Instead, I was merely waiting for the officer to stop talking so that I could ask my next question.

In theater, the type of listening that we do in real life is referred to as “casual listening” or “sloppy listening.” It is not acceptable. Instead, actors are taught to listen with all of themselves.

As any actor will attest, the tone and pitch of a person's voice, not to mention their behavior conveys more information about a person's true feelings than the actual words they speak. For example, a gesture, a tic, a shift in posture, the shrug or slump of a shoulder, the rolling of the eyes, the furrow of a brow, are all a means of communicating. A theme that gets repeated over and over again in acting is that when you are really listening to someone, you begin to *experience* the other person. A famous quote by Jiddu Krishnamurti embodies this theme: "When you are listening to somebody, completely, attentively, then you are listening not only to the words, but also to the feeling of what is being conveyed, to the whole of it, not part of it." To this day, I can still hear the words of my acting instructor echoing through my head, "The more you look, the more you'll see. The more you listen, the more you'll hear." When you are really listening to someone, you pick up nuances in the tone of that person's voice. You learn to respond to voice inflection, volume, physical mannerisms, rhythm and musicality of speak, and the specifics of behavioral responses. We listen with all of our senses, not just one. It's a wonderful feeling to be in the company of another person without trying to be funny, or smart, or struggling to impress or seek approval. The experience of being here and now without fear or concern for approval is incredibly liberating. It is as important as it gets for human beings, who by nature are social animals.

How is heightened listening helpful in the courtroom?

First, you won't miss important things that a witness says.

In other words, you'll become more sensitized and aware of the feelings of the jurors as communicated nonverbally by them.

Many lawyers have trouble accepting the fact that the jury is speaking back to them during the trial.

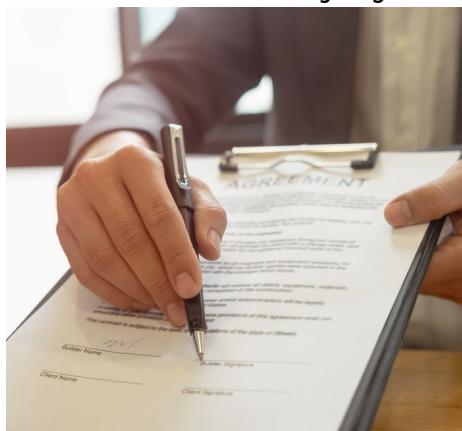
The argument that is commonly made is that the jurors have "poker faces" or that they are "deadpan."

First of all, there is no such thing as *nothing* .

There is always something.

In fact, silence is considered the most expressive form of communication.

Second, you can't passively be hoping to get something from the jury. It's a two-way street. You are just as important a part of the equation as the jurors are. The nonverbal communication you radiate is essential. The attorney who is emotionally available and allows himself to be affected by the jury builds a bridge of contact with the jury.



For example, the attorney might pause, allowing the jury to react through facial expressions and body language. A smile from one of the jurors might cause you to smile back or to well up with pride. It's as if the lawyer is having a conversation with the jury even though the jury is not speaking back verbally. When there is genuine contact between the attorney and the jurors, the relationship between the two lives. It's easy to say that we're going to be better listeners, but talk is cheap. How do we do it?

First, you must throw away what you once thought to be true about having a good conversation. Advice like "always maintain eye contact" and "nod to let the other person know you're listening" are at their best, just the tip of the iceberg and at their worst, nothing more than a thinly-veiled attempt at pretending you are paying attention. Always remember that "the eyes are the window to the soul."



While eye contact is crucial, if one tries too hard to maintain continuous and unbroken eye contact through “strong focus” at the expense of softening that focus, not only will the other person feel uneasy at being stared at but it will dampen the receptivity of the other senses. In other words, it takes away from the active listening that is required to pick up more subtler forms of physical and verbal expression; and then responding accordingly. In fact, I instantly begin holding my breath and tensing up when I start focusing on something with sheer intensity.

In this way, strong focus may have the opposite effect to what was intended. Second, we have to quiet some of the inner chatter going on inside of our heads. This is easier said than done, thanks in part to evolution. While we can only speak about 150 words per minute, the inner dialogue going on in our brain operates at nearly three times that rate.

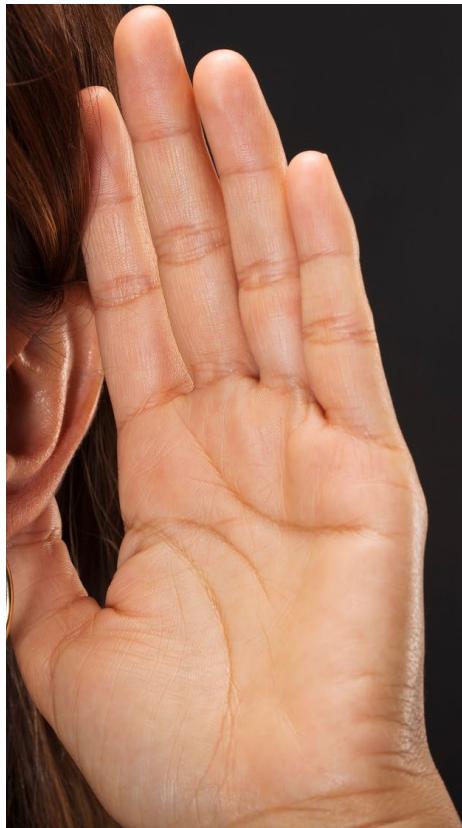


Third, in order to listen to someone in an engaged way, you must understand not just what the words mean on the surface but also their underlying meaning. Sometimes there might be an inherent contradiction between the two since we don't always say what we mean and mean what we say.

Fourth, be careful about carrying assumptions about the other person into a conversation.

Familiarity with the other person isn't a safeguard against the inaccuracy of these assumptions.

Finally, listening is a skill just like writing or playing baseball. The more you practice, the better you get. That's good news because it means that you can learn to listen and be with the person who's talking to you when they're talking to you.



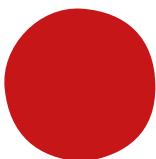
Being there when a person is talking to you is a vital skill for a lawyer to possess both in and out of the courtroom.

In this age of digital overwhelm, multi-tasking, and political unrest, it's nice to think that we can become more connected to each other by really hearing what they say.

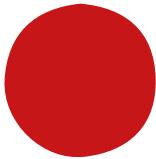
As simple as this might sound, the first act of being a good listener is to put the phone away.



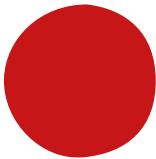
# **TYPES OF LISTENING**



**Content  
listening**



**Bias  
listening**

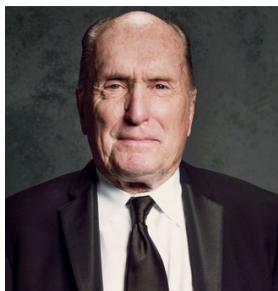


**Empathetic  
listening**

# CONVERSATIONAL REALITY

I've spoken about the importance of creating "conversational reality" with the jury during your opening statements and closing arguments and contrasted it with the conventional way of giving a speech where the speaker makes a one-sided assault from the stage.

What is conversational reality and why must we strive for it?



Robert Duvall, a student of Sanford Meisner, described it like this, "Acting comes down to talking and listening." After all, contact with another person is the source of life. The point is to really listen, really hear, and truthfully respond.

When two people do this, according to Mr. Duvall, they create real contact. Not intellectual contact but emotional contact. This is what is meant by "conversational reality" in theater.

A good conversation follows the pattern of a heart monitor with peaks and valleys. Over the course of several minutes, two people might laugh, scream at each other, trade jibes, shock each other, giggle, grow bored, get excited, and then finally end up embracing.



As discussed in the section entitled, “Hearing versus Listening,” the attorney and the jury are always in conversation with one another and when the attorney is open and receptive to the jury, the relationship between the two is alive, mirroring that of an electric current.

In this way, what’s going on in one juror will somehow show up in the attorney and vice versa, just as in a conversation between two people at a café.



# A LAWYER PREPARES

How do you prepare?



# PREPARATION Essentials FOR TRYING A CRIMINAL/CIVIL CASE



Neither opening statement nor closing argument can be done off-the-cuff. Doing so is like driving a car off of a cliff. Each requires detailed and careful preparation.

- When it comes to openings and closings, there are two foundational elements.
- First, they should follow the fundamental principles of speech and drama.
- And second, the preparation and delivery of both must be jury-centered.
- While I do not go so far as calling them a *performance*, they *do* require detailed and careful preparation.
- When I hear the word, “performance,” I instantly “tense” up, begin thinking about the result, and then jump on the Ferris wheel of perfection where self-sabotage is only a heart-beat away. In this place, I cannot create.



- It is for this reason that good acting instructors and directors never call a “scene” a “performance” until after it is over. Instead, they call it a “pass.” They’ll say, “Let’s have Group A do a pass on their scene.”
- It may flop and be a total disaster, or it might be a masterpiece. But we won’t know until after it’s over.
- In this way, I find it so much easier to let go of all of the psychological baggage and let it rip.
- The following are the steps that I follow when preparing a case for trial along with a few tips that you can immediately put to use when it comes time to prepare your next case for trial. I begin with a wide lens view and then get narrow so that I can see the forest for the trees.

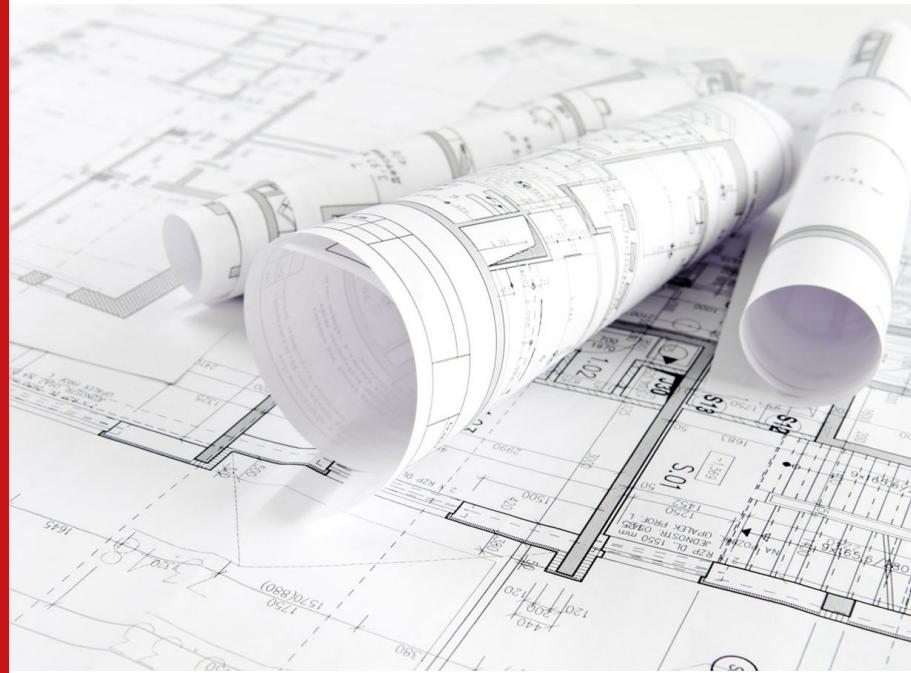


# STEP 1: BEGIN BY BRAINSTORMING

- Creative thinking or brainstorming produces the ideas for opening statement and closing argument.
- Brainstorming is a spiraling process. It begins before the trial starts and continues throughout the trial to take advantage of new developments.



# BRAINSTORMING



This blueprint should be viewed through the lens of a criminal defense attorney. I always start backwards by asking myself the question, “What facts must I establish during the course of the trial – through oral testimony and through the introduction of physical evidence and/or exhibits – in order to make the kinds of arguments that I need to make at closing to support my client’s innocence?” Or, more specifically, “What facts do I need to establish during the course of the trial in order to advance my defense and get an acquittal?”

Brainstorming requires “free association,” which can be torturous for those who are perfectionists and prefer structure. It's like being afraid of heights but finding the courage to bungie jump off of the steepest cliff.

As lawyers, we can get stuck in a linear, predictable, and abstract way of thinking. But creative expression relies heavily on stream of consciousness and the imagination where anything and everything is possible from flying elephants to intergalactic empires to dancing trees and talking rabbits.

In other words, it is necessary to soften the brain and to hand over the reigns to the subconscious. This is innate in us as human beings (think back to when you were a child), but like any muscle, may have atrophied over the years and needs exercise to restore its shape. Indeed, as we grow up and become socialized, this aspect of our personality gets relegated to a lower status.



You'll see flashes of it re-appear such as when you're playing "hide and go seek" with your four year-old toddler, streaming an action-packed thriller on Netflix, or cuddling up with your dog on the sofa. The idea is to "let go" and give yourself permission to think outside of the box without judging something as bad or good or outright censoring it. There is no such thing as a "bad idea." Nor does it need to make sense or sound clever. In fact, sounding clever tends to be a turn-off to the jury.





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As my instructor once told me,  
“Creativity needs space.”

Here are some exercises to spark  
free association.

Games are a great way to spur  
creativity. There is one exercise in  
particular that never fails to put  
me in a creative state. For this,  
you will need a partner.

Partner A is the person who is working. Partner B is the person who is giving the prompts.

Partner B may start out be saying to Partner A, “You wake up on a deserted beach in the Pacific with a chest lying beside you. You open up the chest. What do you see?”

Without taking any time to think, Partner A must “spit out” the first thing that enters his mind as ridiculous and nonsensical as it might sound. Maybe Partner A responds, “I see a snowman with a cigar in his mouth wearing a straw hat and a lavender short-sleaved shirt eating portobella mushrooms with whip cream and chocolate syrup on top.”



Partner B then gives another prompt. “You’re in the shower and you hear something. What is it?”

Partner A might respond, “A salsa dancer singing ‘Jingle Bells.’”

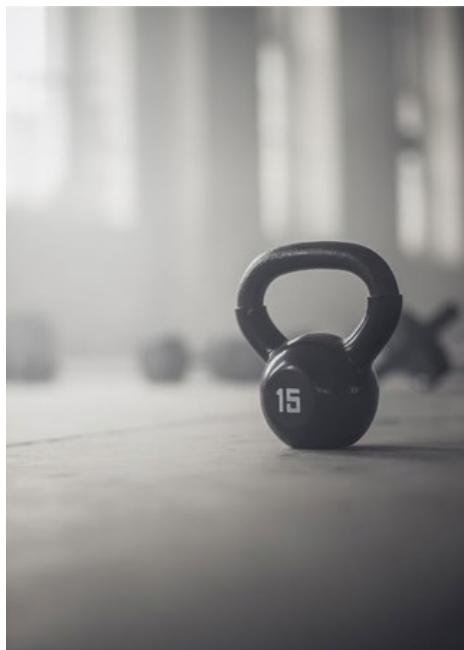
Partner B then gives another prompt. “You’re driving your car on the expressway on a rainy day in June. Where are you going?” Partner A might respond, “The dentist.”

Partner B then gives another prompt. “You’re standing in the middle of a dark and forbidden forest wearing galoshes. What are you there to do?” Partner A might respond, “To unclog the toilet in Hagrid’s cabin.”



You get the idea. You want to move fast and swiftly – faster than your inner critic but slower than the speed of panic – in order to bypass the censoring part of your brain that keeps us from saying what we're really thinking. The idea is NOT to replace the first thought that enters your head, as crude as it might be, with a more polite and socially-acceptable one. While censoring is an essential survival skill for us to possess (especially on the subway), it is death to creativity since the supplanted thought is usually the richest one while the substitutes are dull, boring, and uninteresting.

As you will come to find out, the more you do this exercise, the freer you will become and the richer and more varied the images that appear in your mind will be. At the same time, you will build up the courage to think vastly and more expansive than you do in everyday life. Be unapologetic and don't be afraid to take up "space."



This does not mean that every thought that comes out of the deepest recesses of your mind is going to be brilliant, much less that it will be a “keeper.” Like minnows swimming upstream, only a few ideas will survive. But the only way to realize these ideas is by allowing your imagination to run wild and not to self-edit or censor yourself.



# TO TYPE OR NOT TO TYPE?

This is Step 2.

I have a love-hate relationship when it comes to using my laptop to type up my opening statement and/or closing argument, let alone my notes. It is both a blessing and a curse.

For me, word processors of any variety — whether they be desktops, laptops, or tablets — have major shortcomings. Let me explain.



Cartoonist, Lynda Barry said, “In the digital age, don’t forget to use your digits!” While I love my laptop, I can’t help but think that it has robbed me of the feeling that I’m actually making something. Instead, I feel like I’m stuck in the body of a robot making “tap, tap, tap” and “click, click, click” sounds all day long. The artist Stanley Donwood says that computers are dangerous because they put a sheet of glass between you and whatever you’re doing. “You never really get to touch anything that you’re doing unless you print it out,” Donwood says.

Just watch someone at their computer. They’re stiff and rigid. You don’t need a scientific study to prove that sitting in front of a computer all day is suffocating you and your work. We need to move, to feel like we’re making something with our bodies, not just our heads. I’ve learned through the frustrating process of trial and error that work that comes purely from the head isn’t good. Watch Andrea Bocelli sing, “The Prayer.” Watch Martin Luther King deliver the infamous, “I have a dream” speech. Both performers bring their bodies into their work.

It's not only important but it is essential to bring our bodies into our work. Our bodies tell our brains more than what our brains tell our bodies. The body never lies. It always knows the truth of the moment because it does not rationalize.

The profound words of Edward Tufte resonate deeply with me, "I have stared long enough at the glowing flat rectangles of computer screens. Let us give more time for doing things in the real world ... plant a plant, walk the dogs, read a real book, go to the opera." Truer words have never before been spoken.

At the same time, typing appeals to the perfectionist part of my personality that likes order and organization and wants to feel like I have something tangible to show for all of my time and effort. It probably gets back to something as simple as nursery school when I made a painting that I was proud to bring home and show to my parents and which they praised me for.



The shortcomings of typing up your opening and closing can be summarized as follows:



(1) If you're anything like me, typing up your opening/closing on your laptop may lull you into a false sense of belief that once you've typed your last word, you're now done and you never have to return to it again. I hate to be the bearer of bad news, but once you've typed the last word, your work has just begun.

Why? Unlike a brief, an opening is a speech. As with any speech, the delivery is as important, if not more, than the content itself. This explains why many attorneys get frustrated that the opening and/or closing that they did in court did not come out the way they rehearsed it. There are a myriad of reasons for this from not enough rehearsing to self-consciousness of self that has an uncanny way of rearing its ugly head whenever we stand up to give a speech in front of other people.



This explains why we can go to the theater to see a famous play written by one of the world's greatest playwrights and leave with an empty feeling that the performance fell woefully short of our expectations. But how could that be when the playwright was Charles Dickens or Luisa May Alcott? While we might not be able to put our finger on exactly what went wrong, we know that it had something to do with the acting.

In the same way, if we type to the utter exclusion of rehearse our speech, then inevitably something will be lost when we stand up in front of the jury to speak these words. We risk losing the human connection that is essential to establishing trust and transparency with the jury and which only comes from a thorough rehearsal process. Of course, we don't want to squander what is perhaps the most precious moments of the trial – when we get to address the jury directly.



Therefore, we must dedicate the time necessary to rehearse out loud our opening and closing after it has been written.

I encourage lawyers to always read their opening statements and closing arguments out loud and never in their head. The primary reason brings something conceptual into action, “Why waste time reading your speech silently when you know you will have to put the text into action and speak it out loud in the courtroom?”



(2) The spoken word is radically different than the written word. To borrow a famous quote by Mark Twain, “It’s like the difference between the lightning bug and the lightning.”

(3) When I’m sitting in front of a laptop and ideas come racing into my head, I feel compelled to type out every one in a way that perfectly captures the essence behind it so that the end-product is a work of art. This turns the creative process into an exhausting, grueling, and mind-numbing experience that unconsciously sabotages other thoughts in order to avoid having to repeat the arduous process.

# MEMORIZE IT

You've finished writing your opening statement and/or closing argument. Great! The first step is to memorize it. By that, I mean that you could recite them cold if awakened out of a sound sleep.

Why memorize it? When you know your written speech inside out and backwards, it will be easier to stay present with the jury.

New ideas may be sparked in the moment inspiring you to express a thought more clearly than the way in which you had originally written it out and memorized it. After all, a trial is a clash of ideas, requiring flexibility in order to adapt and change on the fly.



Objections lodged by your adversary will not steer you off course because you will always have that far-off light in the distance guiding you gently back to shore.



While I am a staunch advocate of memorizing both your opening and closing, there is a danger every trial lawyer must avoid: the more we handle our own words, the more we risk over-handling them. When we memorize something—especially something as high-stakes as a closing argument—we often “cook” it. We rehearse it, refine it, polish it, tighten it, and in the process, we unintentionally squeeze out the very thing that makes it persuasive: its organic flow, its lived-in rhythm, its sense of discovery.

A closing that is too cooked becomes like an over-reduced sauce: dense, sticky, and unnatural. It may be technically correct, it may hit every planned beat, but it no longer breathes. And jurors can feel that. They don’t experience it as mastery; they experience it as performance. They sense the script. They sense the lack of spontaneity. What was once alive now sounds like something recited rather than something meant. This is the paradox of preparation in advocacy: you want the lines in your bones, but you don’t want them cooked.

You want to know your material so thoroughly that you can speak it without grasping for it, but not so rigidly that you're locked into it. The best trial lawyers prepare like actors in the most ancient sense—not to deliver a script, but to embody a truth. They train, they practice, they internalize, but they stop before the moment when their words become fossilized. Because the power of a closing argument doesn't come from perfect recall; it comes from authentic connection. The jury wants to feel that you are talking to them, not at them.

They want to believe the thoughts are unfolding in real time, shaped by everything they've just witnessed over the last several days. If your delivery is too cooked, it loses that present-tense electricity—the feeling that what you're saying is alive and happening right now. So commit the architecture, the images, the emotional beats to memory. Let those live in your body. But leave the language itself breathing room. Leave space for the moment. Leave space for the jury. That's where persuasion lives—in the interplay between preparation and presence.

# WHY CAN'T I JUST READ MY STATEMENT?

The danger posed by reading your statement directly from a notepad is that notepads, or worse yet electronic devices, are distracting to the jury because they continuously beckon for the attorney's eyes. The attorney who so obliges risks making the notepad the focus of the speech instead of the jury by looking down instead of into the eyes of the jury, thus breaking eye contact during the most critical stage of the trial and losing the human connection that is so vital for building rapport with the jury. In this way, these objects create a "barrier" or "wedge" between you and the jury. In the overall scheme of things, you risk squandering one of the few opportunities that you have during a trial to "break the fourth wall" and to address the jury directly. As many an actor knows, breaking the fourth wall engages the audience in a way unlike any other. It allows the actor to speak "heart to heart" with the audience and to reveal their innermost thoughts, feelings, and desires in the same way that you might confide a deep secret in a trusted friend.

Shakespeare used this device so brilliantly that even his darkest and most vile villains were able to score points with the audience, no matter how much blood they shed or havoc they wreaked.

The jury, not the notes, should always be the focus of your speech. I've seen many a lawyer rely on their notes to such an extent that they became tethered to them, clasping onto them like a mountain climber clasping onto the edge of a cliff as his feet were dangling in mid-air.

This resulted in a rigid and inflexible delivery that was stagnant and could not keep up with the changing circumstances of a trial. The lawyer and not his notes is the source of the subject matter. For this reason, you must immerse yourself in the subject matter so that you are the source. Finally, there is a psychological element that comes into play. The reason why we would rather read it from a notepad is that we are afraid that we are going to leave something out and that by the time we realize it, we will already have sat down and it will be too late.

# CAN I JUST HALF - MEMORIZE IT?



Half-memorized speeches aren't any better. They result in an interrupted delivery and are not "in the moment." Worse yet, the energy put into struggling to recall lines makes it disjointed and prevents the attorney from being present and connecting with the jury.

# PROPERLY USED, NOTES ARE OKAY

This does not mean that you cannot use notes. There is no harm in using them so long as they are used properly. By that, I mean as an aid to jog your memory so that you do not forget anything important.

For example, I often create a checklist of items that I need to cover during my opening statement to keep me on track.

Another thing to be careful about is overloading your notes with too much detail. I've fallen into this trap many times myself.

My theory for why this happens is that the lawyer considers his or her preparation proportionate with the amount and detail of the notes.

Therefore, it is not unusual for the lawyer to have enough notes to fill up a ream of paper.



# SPEAKING MEMORIZED TEXT

The second step is to get to work on delivering it.

The latter takes a lot of work and is not for the faint of heart. But if you want to make an unforgettable impression on the jury, there are no shortcuts.

I used to think that once I had memorized my opening statement and closing argument, I was all done working on them and could turn my attention to another aspect of trial preparation.

Nothing could be farther from the truth.



Memorization of text is but the first of many steps required to bring your speech to life in a way that inspires the jury and leaves them thinking that the only just result is one in your favor. You can have the best-written speech, but if you deliver it in a bland, stale, or monotone way, it will fall flat on its face.



Fear not. Plays don't exist on a page either. In a literal sense, they exist on the page in the same way that Beethoven's "Fifth Symphony" exists on the page – as squiggles and blobs of ink.

But if you were to look at Beethoven's "Fifth Symphony" on the page, you would have very little idea of the effect that it can have on the soul.

That's the same with a play. Imagine if theatergoers were to arrive at the theater only to be given a copy of the script and told, "happy reading." They would storm out and demand a full-refund.

People go to the theater to have an experience – to see the drama lived out by the actors moment to unexpected moment on stage. That could never be matched by quietly reading a book to oneself.

That would be like a trial attorney handing out copies of his opening statement to each juror and then sitting down while the jury reads it to themselves. No matter how fertile the imaginations of the jury might be, reading the opening statement to themselves could not come close to what a jury would feel when it is delivered by the attorney himself.

And good performances never fail to deliver. Indeed, a great play can move you to tears, make you reflect on something deeply personal in your life, and inspire you to take action to patch up a broken relationship, to seek out forgiveness from a family member or friend, or to have the grace and humility to get help for something self-destructive that had been eating away at you for years.





It's the same as the most famous speeches that have been spoken since the dawn of time, from Abe Lincoln's "Gettysburg Address" to Martin Luther King's "I have a dream" speech. Reading a great Shakespeare play or one of the greatest speeches ever delivered is a bit like looking at the blueprint of Notre Dame Cathedral.

An architect might be able to understand it in some ways, but it in no way offers you the experience of viewing or entering the cathedral, which is realized only when the speech is spoken. And when that happens, an element of poetry arises in the speech that both captivates and astonishes.

For example, Hamlet is as much an epic poem as "Paradise Lost" is an epic poem.

This part of the presentation answers the age-old question, "How do we breathe life into the hollow and barren words on a page to arouse interest and curiosity and ultimately, to win the minds and hearts of the jury?"

In other words, how do we lift these blobs of ink off of the page and make them spring to life?

Virtually every performance coach will agree that memorized text should be spoken in a way that makes the listener feel that the thoughts are coming to the speaker in the moment and that he is speaking them for the first time, as if they are freshly-minted.

And this is true just as much for the courtroom as it is for the stage. After all, this is how we speak in real life. Thus, we aim for spontaneity as opposed to a monotone or pre-

planned delivery that wrings the meaning out of the words and that makes them sound as if they are being recited verbatimly from off of a page.

If you stop and think about it, in real life, we don't always finish our thoughts. We may start a thought, get distracted, or a new thought may come crashing in like a wave crashing onto the shore causing a swift change in course.

These shifts are usually preceded by a breath that the speaker takes as they search for and discover the rest of their thought. In this way, the thought becomes a discovery and not a mechanical recitation

that looks and feels something like the listing of groceries from off of a grocery list. This is a powerful tool of engagement as it captures the listener's attention. But re-creating it so that it looks and feels organic to an audience is no easy feat.

As my instructor once said, "Mike, don't wring the meaning out of the words!" We all know this from having gone to the theater to see a popular classical play of the likes of Dickens, Shaw, Williams, or Beckett and leaving feeling completely empty and upset by the play falling short of our expectations. I've seen my share of

inferior productions of "Hamlet," "Othello," and "Macbeth" to know the feeling. To ease your way into it, I will share with you the advice that one of my dear instructors shared with me, "What happens if you take that breath to discover the rest of your thought?" From that day forward, what later came known to me as the "breath of discovery" would be accompanied by an ease and a delight that made it both natural and organic.



# HIDDEN TRAPS

As we illuminate some powerful tools of human expression and communication, let's take a moment to explore what I call the "hidden traps" that arise when speaking memorized text – for which there are many. The earliest acting instructors observed a phenomenon that would happen whenever their students were instructed to memorize a monologue. Despite being warned not to memorize it in "one set way," almost invariably every student would do just that. The danger this posed is that the actor got locked into speaking their monologue in a "set way" such that it became virtually impossible to break the pattern and to deliver it any differently, even when the instructor was "side-coaching" the student. In other words, getting locked into speaking text one way makes you a "johnny one-note" and removes the possibility of discovering other ways that might be richer than the original way. Through research, we now know that it is very difficult for the brain to break a pattern that emerges during the memorization stage and to develop new neuro-pathways. Subconsciously, we hold onto the exact rhythm, pace, tone, voice inflection, etc. that we relied upon when memorizing it.

For actors and public speakers alike, this is dangerous. Why? First, unlike written words, the spoken word is fresh, dynamic, and alive. It's like a heart-rate monitor which ebbs and flows and has hills and valleys. There are hard stops; long pauses; quick transitions; rapid, unbroken chains of thoughts that come out as stream of consciousness; laughter; excitement; sadness; giddiness; longing; hesitation; uncertainty; gloating; silence; shamefulness; regret; flirtation etc. The list goes on.

As actors, we want to mirror real life and the closer that we can get

to that ideal, the more apt an audience will be to suspend their disbelief and to be drawn into the story. The same is true for lawyers. Through storytelling, lawyers need to draw the jury into a reconstructed reality of past events so that they can see, hear, and feel what it was like for the client to suffer a paralyzing injury or for the defendant to be ambushed from behind by the victim in a self-defense case and to be an inch away from losing his life.



Of course, the big difference between acting and litigating is that the actor must memorize the words of someone other than himself (i.e., the playwright), while the lawyer must memorize his own words since he, himself, is the one who wrote them.

In order to undue this psychological bias towards reciting text the way it was originally memorized, we need to trick the mind.

How do we do this? By reimagining the way in which we memorize text in the first place so that we don't get locked into one way of doing it. What follows is a more expansive investigation into discovering the hidden "treasures" that lie within your speech. This is what I have learned from many different instructors that I have worked with over the years and that I continue to rely upon regardless of whether I am in the "rehearsal stage" of a new play or I am preparing for a trial. These concrete tools are designed specifically to enhance the delivery of your opening statement and closing argument so that they pack a powerful punch. I've also included a number of exercises.

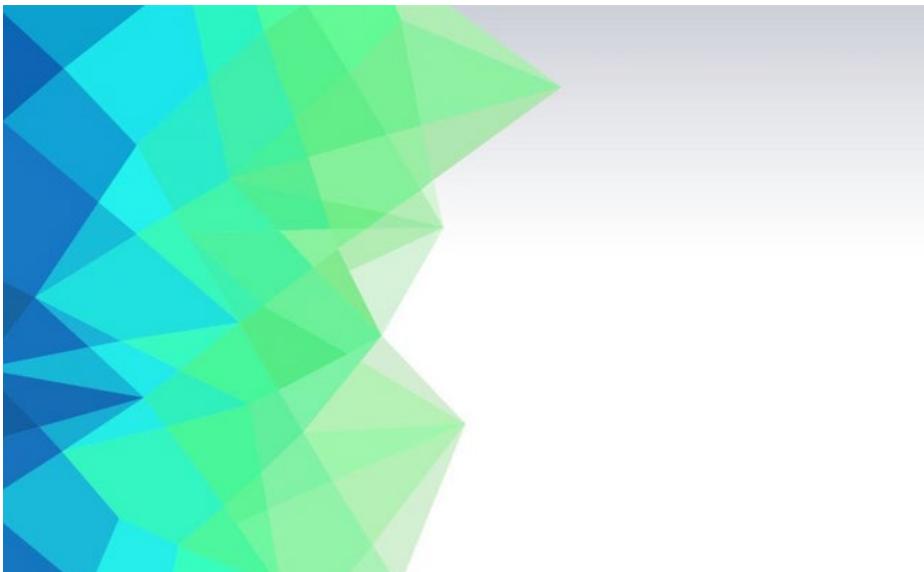
# WRITTEN WORD VERSUS SPOKEN WORD

To borrow an analogy used by Gerry Spence, the written word is like a stuffed bear. The spoken word is like a real bear standing on its hind legs and foaming at its mouth. It's alive!



For starters, punctuation, although present in all written texts, has nothing to do with spoken language whatsoever. It's a literary device created by writers in an attempt to communicate ideas on a page to the reader. The correct placement of commas can really help readers; it's a great device for the mind. Similarly, the words that are in parentheses in the text of a play (i.e., stage directions) are intended for the reader, not the actor. Words like "softly," "angrily," or "with effort" dictate a kind of life which can only be there spontaneously. If you memorize your opening with punctuation, the jury will hear all of the periods, commas, and semi-colons and it will sound unnatural.



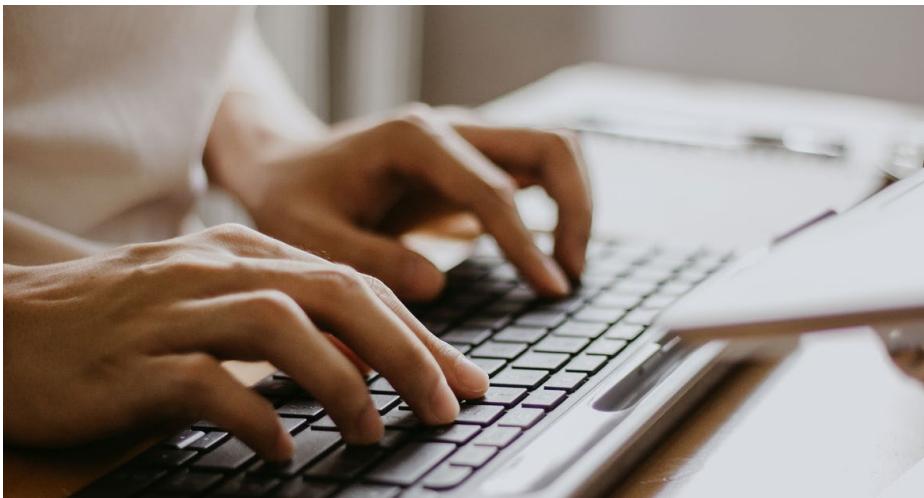


# REMOVE ALL PUNCTUATION

This is why when actors are given a script, they re-write it from beginning to end in their own hand crossing out all stage directions and punctuation. Each line looks like a big run-on sentence but there is a method behind the madness.

Nobody, not even the playwright, can determine how a life is going to live itself out sensitively, instinctively, on the stage.

It is for this reason that I recommend removing all punctuation from your opening and/or closing.



## WRITE IT OUT

In no way am I suggesting that the keyboard has no place in the brainstorming process. What I am saying is that if you do decide to use it, be mindful that it is only a tool.

During brainstorming, you may also consider writing your thoughts down the old-fashioned way on a legal pad with a pen. I prefer this to typing. Why write and not type? When you type, you merely tap or dab your fingers over the keys of the keyboard. But when you write, not only do you dab, but you also *glide*. The combination of dabbing and gliding creates a “one-two” punch that makes it sink deeper into your subconscious mind so that it can be more easily recalled than dabbing alone.



# DON'T RUSH

## Step 3:

Don't rush. Take your time. Things take the time they take. In acting, rushing is the enemy of the moment. Clarity is the single-most important thing that you owe the jury; otherwise you'll lose them.

As one of my colleagues once said, "The trial can't start without you."



# REHEARSE

## Step 4:

Rehearse using non-lawyers as your audience. But also rehearse in private by yourself. Speaking your speech out loud to no one but yourself might feel awkward at first, but it allows you to hear how these thoughts carried by your breath vibrate in open space, it gets you comfortable hearing your own voice, and it is the quickest way to memorize your text. It also offers real-time feedback that can help you to express thoughts and ideas more succinctly and easily.



For example, the idea might have been expressed brilliantly in writing and indeed, been suitable for a brief. But when spoken, it might have been too complicated or convoluted for the jury to understand. This goes again to the difference between the written word and the spoken word.

- Rehearse your opening.
- Rehearse your direct examination.
- Rehearse your cross-examination.
- Rehearse your closing.



There are three primary reasons:

- We don't hand out written copies of our opening statement to the jury and sit down so that the jurors can read it to themselves. Nor do we lip sync it while an AI voiceover bot does the actual speaking. We speak it to the jury ourselves. Thus, a speech is only as good as the speaker's delivery of it.
- In much the same was as the audible exhale, the brainstorming process requires an audible "purguing" of ideas.
- Very simply, you need to get something out so that you can have a "conversation" with it. This will create an optimal environment for ideas to flourish. I start out from as basic a place as asking myself the question, "Why is John innocent?" and answering it with, "He's innocent because ..."
- The more you hear the sound of your voice, the more comfortable you will become hearing it echo off of the walls, the ceiling, and the floor of the courtroom.
- Working by yourself can be exhausting for the simple reason that it is one-sided – you are the source of everything. Indeed, you are the only one who is generating and putting out ideas into the space the entire time.

- You need input to keep your output fresh. Another person does just that by becoming your outside eye.

Through practice, you will be able to deliver your opening statement and closing argument

*convincingly* with power, clarity, and conviction.

A plaguing question for the trial lawyer is: “How will my opening sound spontaneous if I’ve rehearsed it countless times?”



Actors have a similar problem: As the actor, they know what's coming next because they've memorized the script and rehearsed the scene hundreds if not thousands of times. But as the character, they can't have the foggiest idea.

So how does the actor behave? He behaves as if it's happening for the *first* time. Once you're in touch with those feelings and that ability to be impulsive, you're in the moment and you're creating the illusion of reality. So the audience is wrapped up in what they're seeing because you, as the actor, are seeing it for the first time as if it's the first time.

And when you sprinkle underneath that a sense of humanity, you have a solid foundation in what real actors do when they are working at their best. The idea of more rehearsal giving rise to more spontaneity sounds counter-intuitive. Wouldn't more rehearsal give way to a mechanical delivery that is devoid of life due to the sheer number of times it has been spoken? While I cannot explain exactly why and how it happens, I can speak from firsthand experience that something magical happens when one immerses himself with the *spoken* word.

For me, the more I rehearse, the less effort I need to recall the words and the more accessible they become to me. No longer do I need to struggle to recall lines that were only half-memorized. It is as if the words are at my fingertips and that I can reach out and touch them. Indeed, they become uniquely my own and spring out of me as organically as if I am speaking them for the first time – every time. Simply put, it becomes more natural and conversational. And isn't that what we are striving for when we speak to the jury?

You may think that the same play with the same cast is performed the same way every night of the week but nothing could be farther from the truth! An actor might blush in a scene on Tuesday night causing his scene partner to respond more playfully and with more glee than he did the night before. This subtle behavior could change the atmosphere of the scene even though the lines have never changed.

In the same way, when you know your written speech inside out and backwards, it will be easier to stay present with the jury.





# HOW TO MEMORIZE

Here are some tips to avoid getting locked into one way of delivering your speech.

First, employ movement. For example, memorizing your text while bouncing a tennis ball, doing the dishes, or standing on your head (which I commonly do, but do not endorse others to do for obvious reasons), will allow the text to spring out of you in a multitude of different ways. Avoid memorizing your opening/closing in a pre-set fashion that attaches a specific feeling and/or emotion to each line.

Why? Murphy's law says that you will get locked into delivering your speech in the live performance the same way that you rehearsed it. We all memorize by using an emotion to give the words some sort of significance so that we can remember them. For example, consider the "ABC" song. To this day, I cannot speak the alphabet, I can only sing it in the same harmonic melody as the one in which I learned it. For this reason, I recommend memorizing your opening and closing in a neutral way, devoid of any emotion.

For example, growing up I went to Catholic school and can remember memorizing the "Our Father" prayer in a neutral way without adding on a thing. Although this wasn't the goal, it nonetheless opened me up to any shifts and changes that I experienced during the mass while reciting the prayer with the rest of the congregation just like a performing artist is open to any shifts and changes that come to him from his scene partner during a play.



# WORKING OFF = ORGANIC, SPONTANEOUS BEHAVIOR

What does it mean to “work off of your scene partner?”

Let me give you an example.

Have you ever been to a play where the “speaking actor” was so alone with himself that he was completely oblivious to what was going on around him? Perhaps even his scene partner could have had a seizure and he wouldn’t have so much as blinked an eye.

Had the actor been listening, he would have responded — through tone, voice inflection and behavior — to the pinch that pricked him in that moment. Such actors might just as well be on autopilot because they are destined to deliver their lines the same way night in and night out. They have fallen into the habit of doing “line readings,” which is the very antithesis of spontaneous behavior.

Not working off of your scene partner is a common pitfall that even the most experienced actors fall into.

Example: Your line is, “I hate you.” You memorized this line by putting special emphasis on the word, “hate” and hitting it hard so that the word is full of scorn. In the moments before your line, your scene partner’s behavior turns flirtatious, with hints of seduction. She is as transparent as glass. When it’s your turn to speak, you assault her with the line the way you rehearsed it irrespective of her flirtatious behavior. The audience will instantly observe the contradiction. Your tone and voice inflection was incongruent to your

scene partner’s behavior in that moment. The idea behind this is to listen to what your partner means, not just to what they say. Indeed, subtext can have a deeper ring of truth to it than surface-text.



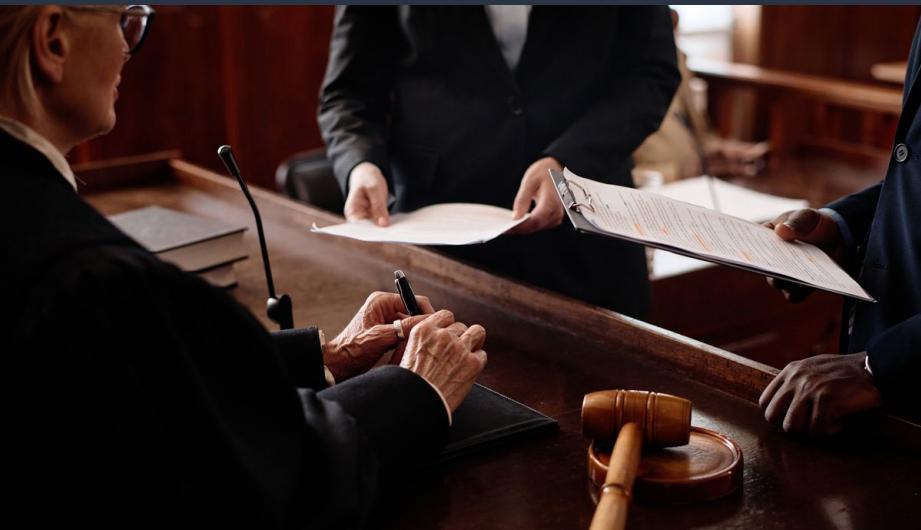
# THE JURY IS ALWAYS SPEAKING BACK



As humans, we're always being affected by other people. The same is true when we're in front of a jury. Even though they can't speak back to us verbally, their body language is always communicating something to us just as our body language is communicating something to them. For example, you might pause, allowing the jury to respond through facial expressions and body language. Perhaps a smile from one of the jurors might cause you to smile back or to nod. Allow yourself to experience that! When you're alive in what you receive, you're alive in how you respond.

# BUILD A BRIDGE OF CONTACT WITH THE JURY

The attorney who is emotionally available and allows himself to be affected by the jury builds a bridge of contact with them. And when there is genuine contact between the attorney and the jurors, the relationship between the two lives. In order to become more spontaneous in front of the jury, shut off that part of your brain that is anticipating your next move. Learn to let go and to live moment to unanticipated moment! There is nothing more refreshing.



# SIMPLICITY IS ESSENTIAL

Step 5: Simplicity is essential!

Simplicity is essential. The more complicated something is, the harder it will be for the jury to wrap their heads around it.

As the great Judi Dench once said, “Economy – don’t make your acting too complex, else you will garble the thoughts. Simplicity – don’t be all over the place. Focus your emotional intention and action.”



Taking complicated concepts and distilling them into smaller pieces that are more easily digestible for a jury is the hallmark of a skillful trial lawyer. The way this is accomplished – i.e., through metaphor, storytelling, rhetoric – is where the attorney’s creativity shines through.



# IMPORTANCE OF REHEARSING

## Step 6:

Why do we hate to rehearse?

- There's a certain element about rehearsing that makes you aware of yourself. But the moment you stand up in front of the jury and focus your attention on them, your self-consciousness will erode.

## Step 7:

Inspiration for rehearsing

- I'm always amazed at how some lawyers seem to be more willing to take the risk of trying something out for the first time at trial rather than taking the time to try it out during a rehearsal in front of colleagues or friends.
- Rehearsing allows you to try out new things in the safety and comfort of your own home.
- It is low stakes. Sure, you might suffer a bruised ego. But no one is going to jail if it bombs or if you fall flat on your face.

This gives you creative license to put yourself in uncomfortable and awkward situations. The more bold you are in taking risks during rehearsal, the more prepared you will be to deal with the unexpected things that inevitably come up during the course of a trial. Step outside of your comfort zone no matter how uncomfortable it might be. Increase your tolerance for things that are uncomfortable. For inspiration, I turn to the world of acting. Public solitude is a critical part of an actor's toolbox. Actors are asked the provocative question, "Can you be as private

in public as you are in private?" For example, when I'm alone in my bedroom standing in front of the mirror combing my hair, the relaxation and completeness with which I do it is poetic. Can this relaxation and completeness be mimicked in front of a jury? This is what I personally strive for.



# SEEK PERMISSION BEFORE STRIKING



## Step 8:

- Get permission before going for the kill.
- When you've got the witness "on the ropes" and you are chomping at the bit to unleash the final blow, wait until the jury gives you permission. If you strike too soon, the jurors will identify more with the witness than with you.

Until they share your sense of outrage at the witness's deception, an overt attack can cause the jury to come to the witness's rescue and to instinctively protect him like a Mother Bear protecting her cub.



The great Deryl Dantzler, former dean of the National Criminal Defense College takes us on a ride back in time to Roman civilization to emphasize this point: *"If you can visualize the courtroom as the Roman Coliseum*

and the jury as Caesar, withhold the fatal thrust until you perceive the down-turned thumb. Then have at it. It's one of those little moments that makes life worth living."



# WHIMPER NOT BANG

## Step 9:

- Not with a bang but with a whimper.
- Never forget that your goal is to persuade the jury, not the witness. One of the biggest traps attorneys fall into is trying to convince the witness that he is wrong. These attorneys are looking to capture a “Perry Mason” moment that influences the outcome of the trial in one fell swoop.
- These moments are few and far between. Instead, focus on putting dents in the witness’s armor, one at a time. At the conclusion of your cross-examination, you might be surprised to find that the aggregate number of dents did just as much damage to the witness’s reputation as the unexpected bombshell that goes off during a “Perry Mason” moment.
- As Pozner and Dodd so eloquently state, “the credibility of witnesses and cases bleed to death from a thousand little pin-pricks.”

# ALWAYS BE TRUTHFUL



## Step 10:

- Always be truthful
- The great acting instructor William Esper once said, “Truth is the blood of art. Without truth a piece of art fails to touch the human spirit.”

When you are truthful, the jury will look to you for resolving “close calls.” This is why it is critical to concede weaknesses in your case at the very outset no matter how damaging they might be. As the great Gerry Spence says, “A concession coming from your mouth is not nearly as damaging as an exposure coming from your opponent’s.”

Your candor and openness will earn you a sacred trust — the trust of the jury.



# PHYSICAL

## OBJECTS

Step 11: The way we interact with objects reveals how we feel about them. For example, if I remove my eyeglasses from my head, take out a handkerchief and very delicately and meticulously begin cleaning the lenses, an onlooker will know right away how important my eyeglasses are to me and how meticulous I am about keeping them clean. The difference between how I engage with my smart phone when I am typing a text message to a friend to find out what time he wants to meet up for rehearsal will be radically different than how I engage with my smart phone after I have received an urgent text from a family member that there has been a family emergency.

*Your relationship to something*

—a prop, a costume element,  
furniture, scenery, special  
effects, music, an event,  
a scene partner, a loved one—  
is more important than  
*the literality of the thing*—  
its actual physical presence.

# PHYSICAL OBJECTS

The same applies to the physical objects in a trial including transcripts, evidence, eyeglasses, furniture, pads, and pens. Be sure to convey meaning to them and use them effectively. The way I handle a transcript that I am going to use to impeach a hostile witness will be as delicate and reverential as a priest holding up a host and saying, “Body of Christ” to a parishioner at communion. Conversely, it will be radically different than how I handle a typed-written statement from a snitch who claims that my client confessed to committing the crime when the two were cellmates in the jail. Imbuing objects with meaning is what we refer to in acting as “personalization.”

# 10,000 HOURS



Step 12: Outwork your adversary. You've probably heard of the 10,000 hour rule, which was popularized by Malcolm Gladwell's blockbuster book, "[Outliers](#)." In Gladwell's words, it takes 10,000 hours of intensive practice to achieve mastery of complex skills and materials, like playing the violin or getting as good as Bill Gates at computer programming. As my mentor once said, for every hour in-court, you should spend at least three hours out-of-court preparing. Indeed, we must "burn the midnight oil."



# LEARN TO SWITCH TACTICS LIKE A NINJA WARRIOR

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## Step 13:

Learn to let go and switch tactics when something isn't working. Ironically, we do this every day without even thinking about it. We switch tactics faster than a hot knife through butter in order to get what we want from another person, without explicitly saying what we actually want. In other words, we cover up our "true" want.



For example, suppose that I try to open my iPhone and I put in my password and it doesn't open. Well, this is now my "mark," my scene partner or the object of my attention in the scene. It's just me and my iPhone, but I'm trying to affect a change in the iPhone. I'm trying to make it from an iPhone that is "off" into an iPhone that is "on." But I've come up against the proverbial "monkey wrench," to wit, an obstacle. There are many obstacles during a trial, none more frustrating than the adverse witness who will not concede even the most obvious fact.

Back to the iPhone. It won't change, right? So I put in the code a second time. It won't change. So what do I do? If I were just to keep putting in the same code, I'd be a moron. And so I don't do that, do I? What do I do? Maybe I try to restart the iPhone. And what have I done? I've changed my maneuver. That's the next thing, the "maneuver." The maneuver is what's often called the "actions," what you do to get what you want. David Mammon calls this, "Tactics," the actions you perform in order to get what you want from your mark.

Have you ever gone to the theater and sat there watching the actors on the stage observing how perfectly natural their behavior seems to be? There's nothing over the top about their acting. There's nothing unnatural about their acting. But you find your mind just drifting away.



In the same way, when you're watching a lawyer cross-examine a hostile witness during a trial who refuses to concede an obvious fact causing the attorney to repeat the same question over and over again with escalating impatience and hostility, you may also find your mind drifting away.

In both cases, you can be sure that what has happened is that the actor and the lawyer haven't scored their scripts very well and they're not changing their maneuvers. They're playing the same maneuver over and over. They're putting the same code into the iPhone over and over and over again.

This notion of “scoring” your opening and closing like a composer scores their music or an actor scores their script is vital. What happens to the audience or to the jury if this isn’t done? Because they’re smart, their brains begin to drift off somewhere else to where they can have some more interesting content. Perhaps to their fantasy life, perhaps thinking about what they might

have for dinner, perhaps thinking about who they’d like to date. Regardless of what they’re daydreaming about, it will nonetheless do something more interesting than watching somebody put the same code into the iPhone over and over and over again. One way of avoiding this “trap” is to become tactile enough to switch tactics like a ninja warrior.



# SWITCHING TACTICS



After all, in real life, people don't keep playing the same maneuver over and over and over again. And if they do, we have a timeless expression for it: "The definition of insanity is doing the same thing over and over again and expecting a different result." Look no further than your own family. When was the last time that you got a call from your mother asking you if you could stop by to fix the leaky faucet in the bathroom? Or, if it wasn't to fix something, maybe it was to help move a dresser in the bedroom or to assemble a desk that had arrived in a thousand different pieces that she didn't need from Amazon.

If those cries falls on “deaf ears,” maybe your mom calls you to say that she prepared your favorite meal and would like you to come over for dinner tonight.

If that doesn’t work, maybe your mom tells you that she is under the weather since recovering from a bad cold and could use some help with grocery shopping. Or maybe she says that your younger brother is coming to visit and that he really would love to see you, even though you just saw him two days ago. And, of course, there is the outright “guilt trip” where your mom reminds you of how

long it has been since she last time she saw you and how your younger sister stops by twice a week to visit. These are different tactics designed to achieve a specific “objective” or want. In the case of your mom, it is to get you to come over, to visit, and to spend time with her. When one doesn’t work, we shift seamlessly – or should I say *shamelessly* – to another in order to achieve our want. In this way, we are very strategic and efficient.



Another fantastic example are toddlers. They are experts at manipulating their parents and play tactics like scammers steal credit cards. For example, picture the toddler who wants ice cream right before bed. He may start out asking his mother politely, "May I please have some ice cream?" When mom refuses, his tactic may change to pleading, "Mommy, I'm so hungry. I want ice cream." Then he might change to shaming, "You promised me that if I ate my dinner you would let me have some ice cream. I ate everything but you haven't given me any ice cream."

If that doesn't work, maybe he plays the victim: "You gave Josh some ice cream and he didn't even finish his dinner. You must love him more than me." If all else fails, then a complete meltdown is but a heartbeat away. If you are a criminal defense attorney representing a particularly difficult client who has a favorable plea offer and who risks doing a lot of time in prison if convicted at trial (where the evidence is overwhelmingly strong), you will probably switch through a number of different tactics in the course of the representation in order to get him to see the "big picture" and to

thoroughly understand what's at stake.

As seamlessly as this occurs in real life, I'm always struck by how big of a struggle it is to shift tactics when I am on stage or in the courtroom, particularly when cross-examining a hostile witness. I usually get stuck playing the same tactic over and over again naively thinking that the "third time's the charm." It's just plain stubbornness.



In the same way, I find it very hard to let go of an idea that has taken me a long time to come up with but that no longer serves my argument. I would rather spend three hours thrashing the idea about like a dog with a "squeaky-toy" in its mouth than let go of it and come up with a brand new one. It's like trying to fit the proverbial square peg into the round hole. Through training, I've learned to be more aware of this by checking in with the audience, seeing their reactions, and then asking myself the question, "Is it working?" If not, I change it. For this reason, this question is as important as the

question, “How is this evidence relevant to the case?”

Implicit in this is the importance of being a sensitized responder and having the humility to change course when something isn’t working.



The best actors are those that can take directions from the director, assimilate them, and then apply them to the text resulting in multiple variations of the same “cold” read one right after the other. It’s like patting your head and rubbing your stomach at the same time.

When it comes to cross-examining an adverse witness, I like to start backwards asking myself, “What impression do I want the jury to be left with after I finish cross-examining him or her?” This approach acknowledges that the jurors are the most important people in the room.

This helps me to get specific in choosing what tactics are most useful in getting the desired result.

Here are some examples. The snitch à You want the jury to be left with the impression that he had too much to lose by not becoming a cooperating witness. Therefore, he cannot be believed. The experienced and reputable detective à Attempting to make him out to be a “liar” can be a large and insurmountable feat. Perhaps there were things not done that would otherwise constitute “best practices” by raising the investigation to one that was

thorough, accurate, and complete such that it compromised the overall integrity of the investigation? Why would such an experienced detective take shortcuts and make a sudden rush to judgment?

Perhaps the suspect had been responsible for a string of bank robberies over a short period of time, that he was still at-large running roughshod over the neighborhood, and that local residents were scared to leave their homes, much less send their kids to school. Of course, the detective would have been under intense pressure to arrest a suspect so as to calm the swelling fears and concerns of the

public.

A sympathetic, elderly woman who was the victim of a “purse snatching” à You don’t want to treat her as an enemy combatant who must be destroyed. That strategy is sure to backfire since the jury is already feeling sorry for her from the moment she walks into the courtroom. She reminds them of “grandma.” If the facts show that she was unable to give a detailed description of the actor due to the neighborhood being dark and the sidewalk being dimly lit, a better strategy would be to concede the fact that she is a victim (because she was) and

instead establish that she made an innocent mistake by picking “John” out of the photographic array since the last thing the officers told her before leaving the police station was that she would hear back from them when there was a “break in the case.” Was this it? Supporting facts would be that she wanted to help law enforcement catch the person who did this so that it would not happen to someone else; that after she was interviewed by Detective Smith at police headquarters, she was told that the detective would reach out for her if there were any new developments in the case; and that just

two days later, she received a call from Detective Smith requesting that she come down to the station to view a photographic array of potential suspects. On the heels of hearing this, she may even concede that this was the long-awaited “break” in the case that she had been patiently waiting for.



# The Sole Remedy

## Step 14:

In a personal injury case, it is incumbent upon the plaintiff's attorney to make the jury feel comfortable with the idea of awarding damages for injuries and for pain and suffering since it is impossible to restore the plaintiff to the state they were in just before the accident.



# Tips for Connecting with the Jury

- Be natural and conversational.
- Speak from the heart.
- Make the jury your entire focus.
- Get up there with the intention of making contact. It's a two-way street. Metaphorically speaking, you're building a bridge of contact with the jury by really listening and really seeing. When there is genuine contact that comes from really listening and really seeing, whatever is going on in Person A shows up somehow in Person B. In other words, something about Person A is going to change Person B.

I liken the jury to an electric current that you, as the attorney are wired to. You and the jury are constantly affecting each other. It's as if you're tied together at the hip. Memorize your opening and closing in a neutral yet relaxed way, just like you memorized your "ABCs" when you were in elementary school. In other words, without any meaning.

This will allow you to be open to any influence that comes to you. Remember: Neutral and relaxed — not firm and tense. This requires an enormous amount of restraint because we all memorize by using an emotion to give the words some sort of significance so that we can remember them. Your opening and closing must be memorized so well that you could recite them cold if awakened out of a sound sleep.



# CHALLENGING QUESTION

How can we, as lawyers draw ourselves out of our left brains enough to connect emotionally with our hearts, while staying alert and vigilant enough to return to that left hemisphere of the brain on a dime in order to respond swiftly and instantaneously to objections, evidentiary problems, and case strategy points?

For me, it's like being in acting class in New York at night where I must be sensitive, vulnerable, and generous and then afterwards, having to switch gears and transition back into "survival mode" by returning outside to meet the rough and chaotic city streets in order to make it home safely, without getting mugged, pick-pocketed, or jumped along the way.

Artist, Paco Tolson explains it beautifully like this, “The business of theatre demands you have a completely fortified heart to withstand all the rejection, but the craft of theatre demands your heart be wide open so to create vulnerability and truth. And the effort of sustaining both states is...a lot”



The duality that exists between the two can be described as the “open heart” versus the impenetrable coat of armor. In the same way, when you stand before the jury, you’re doing so with an open heart. But at a moment’s notice, you may have to put that coat of armor back on and go to battle in order to respond to objections, evidentiary problems, and yes, even personal attacks lodged by your adversary.





# MOVEMENT IN THE COURTROOM

Actors never “wander” around the stage. Every move is done with purposeful intention to emphasize, draw attention to, or offer “subtext” to the script or content.

There is something about “stillness” that is incredibly powerful.

When an actor moves from place to place on stage, it’s called a cross.



Crosses are precise, clear movements from one place to another.

Each movement should be done with purpose, at a specific point in your presentation.

Wandering, pacing or even unconscious weight shifting is distracting and takes your attention away from where it should be: the jury. It weakens the impact of your speech.

By moving to a specific point in the courtroom, you can *punctuate* a point.

Tip: If you want to make a strong point, taking three steps forward will alert the jury you are about to say something important.

## Think Like a Director

Just as a director looks at the stage to see the areas of strongest impact for the audience and sets the stage for the scene, so should you when it comes to the courtroom.

You should always think about the courtroom from the juror's point of view, keeping it balanced and visually interesting.

Look at general areas of the courtroom as points to reach your jury (all of your jury) on as many levels as you can. For example, you may move closer to the jury box to get closer to one or two of them, or keep your distance in order to take in all of them.

Look carefully at the placement of furniture (lecterns, tables, projection screens) in relation to YOU and where you are in the jury's view.

Make sure you are not "upstaged" by an unnecessary piece of large furniture, which unconsciously draws the jury's attention away from you.

The following theatrical techniques will help you stage your opening and closing in a way that uses movement to enhance content.

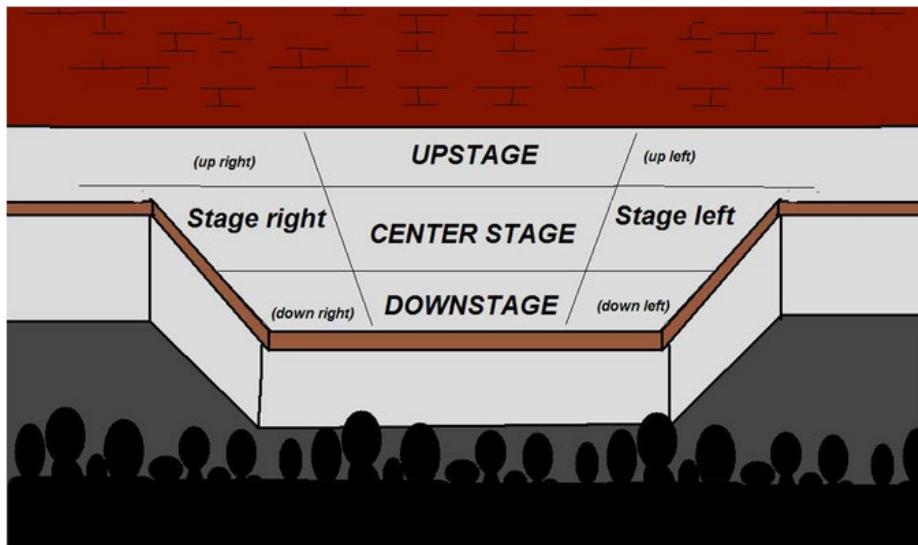
## Upstage and Downstage

Directors block the movements of actors to emphasize dramatic meaning and to maintain clear sightlines. The downstage area, closest to the audience, is a strong position and is the best place to present the most important content of your speech. However, you don't want to live there. In fact, if you meander too close to the jury in this area, you will be entering the dreaded, "zone of the pathetic."



Upstage, away from the audience, is less powerful but can be used effectively for reflective pauses. But be careful. If you meander too far away from the jury in this area, you will be entering the dreaded, “zone of the tragic,” where intense scenes are played out, with extraordinary consequences, such as a battle between the hero and his arch nemesis.

Moving from upstage to downstage in order to make an important point is highly effective.



# Stage Right and Stage Left

In American and British theater, Stage Right and Stage Left refer to the actor's – or speaker's – point of view.



The position Downstage Right is perceived by western audiences as having intimacy and importance (probably because we read from left to right).

In theater, love scenes, monologues and narration are usually performed Down Right. Public speakers use this position for their most important content, or for stories that have a strong emotional effect.

## *Downstage Left*

traditionally has a conspiratorial feel to it, a place for plots and discussions in the theater.

Humor in a speech is often very effective when delivered from this position.

## Tips

Follow your instincts. Be led by those jurors who seem to beckon for your attention. You'll see it; you'll feel it.

But NEVER leave anyone out.

# NONVERBAL COMMUNICATION



Nonverbal communication in the courtroom is deafening. If you're arguing that John is "innocent" during your closing argument, but your hand reaches to your head and begins to scratch the back of your head, the jury will instantly read this contradiction as "uncertainty."

This is what we call a "shadow move" and we all have them.

In other words, when there is a contradiction between the verbal and the nonverbal, the nonverbal will always prevail. The danger this poses is that it causes the jury to question the lawyer's credibility, the most important thing that a lawyer possesses.

The jury can see your whole body in the courtroom, so you might as well be aware of what it's doing and use it to say everything that you mean it to say.

A rule to live by is that one cannot expect to persuade others of that which one does not believe himself.

Rule of thumb: When the lawyer's body and words are out of alignment, the jury will instantly view the lawyer as an "impostor" — someone who cannot be trusted. Tip: As simple as this might sound, one of the biggest reasons why a lawyer's nonverbal language and gestures are out of sync is because the lawyer, himself, has not convinced himself of his client's innocence. When defending a person accused of a crime, if you haven't convinced yourself — lock, stock, and barrel — of your client's innocence, your nonverbal communication will reveal the uncertainty!



## ECONOMY OF MOVEMENT

Because we are in a perpetual “close-up” shot with the jury due to our close proximity to them where less is always more, I want to introduce a concept called, “economy of movement.” There are two questions that must be asked. •First, must you be doing anything or is your movement distracting from the truth and meaning of your words? The movement doesn’t necessarily have to be a big gesture like flailing your arms about in order to be distracting. It could be as subtle as balling your hand up in a fist.

• In Hamlet's famous speech to the players, he implores them to act naturally without exceeding the bounds of natural behavior. He tells them to suit the "action" to the word and the word to the "action." Therefore, a fundamental question that lies at the heart of "economy of movement" is whether this movement or gesture is 100% needed? • If you can't take your eyes off of an actor, if you've been moved to tears by an actor, or if you've been pulled to the edge of your seat, chances are that the actor's actions fit their words and their words fit their actions.

On the other hand, if your mind begins to drift and you reach for your smart phone or the urge to let out a deep yawn sets in, one of the reasons might be that the actor is "indicating" or "gesticulating" in a way that distracts from what they are really feeling on the inside. That rich, inner life is far more interesting for an audience to watch, but far more revealing – and I dare say, vulnerable – for the actor to show.



For this reason, the actor might consciously (or unconsciously) begin an extraneous movement as a distraction to hide from the audience the true feelings that are welling up inside him. The second part of economy of movement has to do with holding onto patterns that no longer serve us in healing or surviving and is based on Somatic and embodied practices. Our bodies are incredible at adapting. When we consider everything they do for us every moment of every day, we must acknowledge the absolute mastery of our ecosystem.

A complex, interdependent system of autonomic and willful actions keeps us moving, breathing, relating, creating, and healing. But sometimes, we hold onto patterns that no longer serve us in healing or surviving. That shoulder you injured years ago? It still carries the story of overcompensation. That tight lower back? It could be silently supporting unprocessed stress. Our belief about relaxing? It's keeping us from recovery.



Practically speaking, once you've decided that a certain movement is really needed, the question to then ask yourself is, "Which muscles do I actually need to make that movement?"

For example, in order to raise your arm, you don't need to tense your leg or your neck. Your neck muscles don't move your arm. This is an example of what Moshe Feldenkrais called, "parasitic movement."



The Feldenkrais Method is a gentle, slow, and meditative learning process. The accent is on your first-hand experience, similar to the organic process you experienced when you were a baby, learning to roll over or make your first steps.

If you want to turn your head, do you need to tense your shoulders? No.

This training takes time. If you have a habit from years and years of raising your shoulder every time you turn your head, that habit isn't going to disappear overnight.



Hint: Pay attention to the gestures and movements that you use in everyday life when you're in conversations with other people. This will help you to identify which movements are natural and organic to you versus those which are merely "window-dressing," to wit a mask that covers up the "juicy" stuff that is stirring around on the inside and that the audience has paid good money to see.



# IMPROV(ED)

## LEGAL SKILLS



## IMPROV(ED) LEGAL SKILLS

Picture this. A group of twenty lawyers standing in a circle and singing, “Big Booty, Big Booty, Big Booty, Oh Yeah!”

Now imagine the group patting their thighs while beat-boxing to the rhythm of, “Ch – oo – mba, ch – oo – mba.” While this ritual is going on, one brave sole chants the words, “Bunny, Bunny, Bunny, Bunny” while pointing to his eyes with his right and left index fingers.

How about one lawyer standing in the middle of a circle – i.e., in the “hot spot” – belting out the notes to Aretha Franklin’s hit single, “I Will Survive,” while the rest of the group sings along?



Why on earth would a group of lawyers engage in such childish behavior? The answer might surprise you. They did it to catapult their legal skills to the stratosphere; to recognize and rethink old habits; to break

through self-imposed barriers; and to achieve an unprecedented level of success. Lawyers can learn a lot from improvisation – much more than just thinking fast on their feet, being in the moment, and being spontaneous.

There are certain aspects of improvisation that are strikingly similar to trying a case. In both disciplines, the key concept is the creation of a “new, temporary reality.”



In addition to spontaneity, improvisation helps you to field the curve balls that the “reality” of the courtroom throws at you moment to unanticipated moment.

## Improv:

- Enhances “active” listening; Improves communication and creative problem-solving skills;
- Helps lawyers to quickly adapt and adjust to as unpredictable and unstable an environment as the courtroom (query, “How many times have you walked into court and things went exactly the way you had planned?”);
- Helps to overcome fear and stumbling blocks;
- Helps to “get out of your head”;
- Increases authenticity by making the lawyer more comfortable in “[his] own skin”;
- Nurtures innovation;
- Reduces negativity; and
- Increases cooperation.
- When it comes to playing improv games, the general rule of thumb is to have fun! What is the speed of fun? For me, the speed of fun is louder than my inner critic but softer than the speed of panic.

# SOME PHILOSOPHICAL JAZZ ABOUT “PLAY”

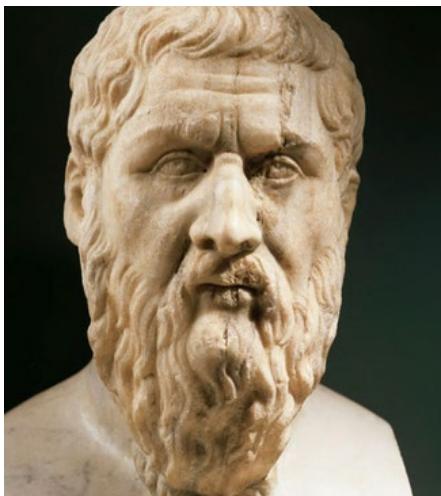
Play is the cornerstone of improvisation. Beyond just being “whimsical,” playfulness is an attitude towards life that allows room for and celebrates failure, risk taking, and the general messiness (and courage) of humanity.

In a communal state of play, we reveal parts of ourselves and our fellows we wouldn’t have discovered otherwise, and we become more available to express ourselves and receive others’ expression.



As Plato said, “You can learn more about a person in an hour of play than in a year of conversation.”

The way you play reflects the way you connect with others, learn new things, and problem solve, so improv is an opportunity to actively research yourself and your attitudes to life, all while having a darn good time and being in exhilarating community!



In an improv class, you’ll go on a hunt for your fun, exploring when you’ve reached the peak of it, and experiencing the feeling of “collective effervescence,” an experience of well-being and harmony when engaging in an activity with a shared purpose.

In this case, play in the form of collective exercises, frivolous activities, cooperative games, singing simple songs with great gusto (maybe), on-your-feet group problem solving, and much running (and perhaps rolling) around. You might liken an improv workshop to something you’d see in a corporate team-building event, but that is not the intention.

While you won't be performing, you will be actively exploring the feeling of physical pleasure, wild abandon, playfulness, and collective effervescence as its own end.

An improv workshop follows a loose structure of four categories of play/game:

- Collective Play (playing together with the sole intention of having/exploring what's fun),
- Collective Competition (playing together with the intention of winning),
- Pair Play (exploring what's fun as we play in pairs), and
- Individual Play (exploring what's fun as you play on your own).



Once we reach the peak of our fun as a collective, we move to a fresh, new game, keeping the workshop vital, uncomplicated, and responsive. It's a fast-paced, high energy, game-packed play session intended to invite vulnerability and connection through a heightened state of presence.

We will feel what it's like to share and sustain joy as a collective. We'll revisit how fun it was to goof around with our friends at recess. We'll shake up our adult egos and stories about play and research what is truly fun in our bodies, and when we've reached the peak of our fun.

All you need to bring is an open mind, a playful spirit, and clothes that you can be active in!





# STATUS IN THE COURTROOM & EMPOWERING THE JURY

The reason I'm a staunch advocate for "empowering the jury" is due to what I call the "status dynamic" of the courtroom. It is not unlike that of a company cocktail party.

From the moment a jury arrives in the courtroom, they become cognizant of this dynamic. They realize that the judge has the "highest status" while Johnny, the defendant, has the lowest status. The lawyers are usually somewhere in the middle. This is why humanizing Johnny is so important.

But the perception that the jury has of themselves is what often-times gets overlooked. Despite the fact that they are the most important people in the courtroom insomuch as they are the judges of the facts and will determine the outcome of the case, most jurors see themselves as being at the bottom of the food chain vis-à-vis everyone else in the courtroom.



In order to change that, we must empower them and bolster them by reminding them how important they are. Thanking them is not enough and may even be misinterpreted as pandering. Empowering, on the other hand, has the added benefit of generating goodwill, especially when your adversary doesn't do it.





## EMPOWERING THE JURY

Even though I emphasize discoveries, there will always be times when you want to tell the jury exactly what you want them to do both in opening and in closing:

- Opening: Opening statement should end with a final appeal that tells the jury what you want or asks for vindication of the defendant's actions.
- Closing: "When the foreman comes in and hands your verdict to the clerk, I want that verdict to be so that Michael can step right up and walk out of here with his family that he loves so much."



Here are some examples that I've used in the past.

"No doubt there aren't too many people who would have done what John did. Depending on your point of view, John's willingness to sacrifice himself to protect Jennifer from going to jail was either the most beautiful and exquisite expression of his love for her or incredibly stupid."

"While you might not have done what John did or did it the way he did, that doesn't make him a criminal.

If John is guilty of anything, he's guilty of being a human being and of carrying a lot.

He might even be guilty of loving Jennifer too much.

He might even be guilty of using poor judgment. But that doesn't make him guilty of committing any of these crimes."

• "If Michael is guilty of anything, he's guilty of using poor judgment and of caring so much for Beth, but that doesn't make him guilty of any one of the crimes. It only makes him a criminal if he violates the law and he's violated none."

• "Michael is the one who stands in judgment before you. Michael's fate – the fate of a fellow human being – lies in your hands. You may not have thought the way Michael thought, believed what he believed, or did what he

did, but that doesn't make him guilty. We're all guilty of using poor judgment."

"Michael sits before you an innocent man whose false statement has convinced everyone that he committed these crimes. Someone has to say 'no' to this. Guess who that is? I can't do it. The only thing I can do is ask *you* to do it. Only *you* have that power."



# BEING IN THE MOMENT

“Men are not prisoners of fate, but only prisoners of their own minds.” Franklin

D. Roosevelt



Studies show that we spend up to 60% of our day in our heads thinking. Our thoughts usually dwell on memories of past events or worries about the future. Regardless of whether you're reliving the argument that you had with your "significant other" the night before and feeling regret or obsessing about the news you just got that your mother-in-law is in town and will be spending the weekend, your mind is not present.



I'll be candid. If you were to take a small video camera and insert it between my ears, it would play like the trailer of a "James Bond" movie. To say that my mind is "busy" would be a complete understatement. The problem with all this thinking is that it creates unnecessary anxiety and stress, takes away your strength from solving the problems that exist today, and is mentally exhausting. Practically speaking, it is wasted energy. The past is gone and never will come back. The future is elusive and is beyond anyone's grasp. The future is a blank canvas.

Most of us interpret life based on events we have experienced in the past. It may not be readily apparent, but in the back of your mind, you are constantly comparing, judging, and evaluating everything that comes through your senses with something that took place seconds, days or even years ago.



While memories help us to maintain a sense of continuity in life, they can also hold us captive when we use them to build walls around us, imprisoning our mind and seeing life only through a small tinted window.

As a result, we no longer experience life as it is. Instead, we perceive reality through memories from the past and worries about the future. This creates a distorted version of reality. Since everyone's life experience is different, so too is the reality perceived by each individual. This is why two people who went through the same ordeal can have vastly different interpretations and responses.

We end up living in a cell that determines how we feel and how we will react to a given event.

If something fits into our way of seeing things, we feel satisfied and happy, and desire more of it. If it does not, we become angry, anxious, depressed, or stressed.



How can we use memories and thoughts intelligently without being trapped by them?



The answer is shockingly simple. Be present in this moment. Not a half-hearted presence like slumping on the couch and channel-surfing, but a complete mind, body, and spirit presence. Why the emphasis on this moment? Because now is where reality is. The present moment is the only thing you have got now.

The past is gone and never will come back. The future is elusive and is beyond anyone's grasp. It's a blank canvas.

All your self-defeating stories about the past, or worries for the future are taking place here and now in this moment.

Why live in the past or future when you can live now and enjoy the spontaneity and surprise that each moment offers?

When you surrender completely to now and put all your attention on every moment, *your full awareness connects you to the flow of life* . This is when living becomes effortless.

You will begin to respond to each moment instinctively without worry or anxiety, because at this moment there aren't 200 things you need to do – there is only one thing to do, now.

With that background, we can now discuss what it means to "Be in the moment." It is a drama term indicating that your argument is happening right now. It lives now and will never be done the same way again.

Knowing what it isn't can help shed light on what it is. One cannot be in the moment if one is thinking about how one prepared last night or trying to remember what one memorized.

Here's the thing about oratorical skills and presentation in any sphere of life. Whether you're playing golf, delivering a keynote address to a large audience, or acting on stage, there is no past and there is no future. You're living in the present. And the present dictates terms to you that you may *not* have expected and that you just have to be ready to adapt to on the fly. Pre-determining what you are going to do before it happens is the very antithesis of living in the moment. For actors, being in the moment is vital to creating the illusion of reality. Audiences demand utter

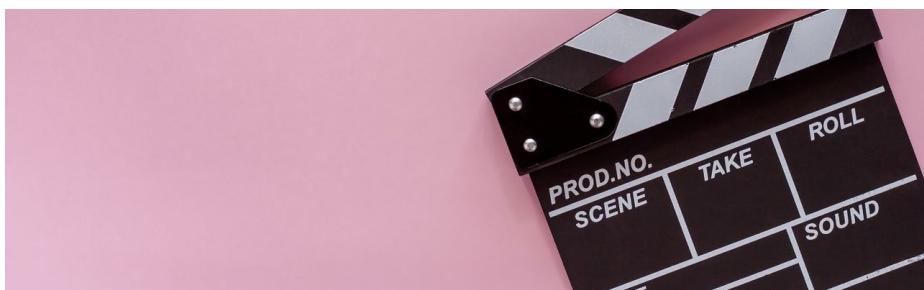
spontaneity.

Think about it. The "real" Romeo and Juliet had no script. They uttered what were later to become some of the most famous lines of English poetry spontaneously and impulsively.

Acting is about getting the audience to believe that it's happening for the *first* time. To do this, actors must make it appear as though they don't know what's coming next.



- This is easier said than done. As the actor, you know what's coming next because you've memorized the script and rehearsed the scene hundreds if not thousands of times. But as the character, you don't have the foggiest idea.
- So how does the actor behave? He behaves as if it's happening for the *first* time. In this way, the words trip off of the tongue without sounding rehearsed.
- And once you're in touch with those feelings and that ability to be impulsive, you're in the moment and you're creating the illusion of reality.
- So the audience is wrapped up in what they're seeing because you, as the actor, are seeing it for the first time *as if* it's the first time.
- And when you sprinkle underneath that a sense of humanity, you have a solid foundation in what real actors do when they are working at their best.





As my acting instructor once said, “when your response to something truly surprises you, then it will also surprise others.”

The famous glove scene in, “On The Waterfront” was improvised by Marlon Brando himself. It looks real because he was living the moments out right before our eyes – there

was no planning or fixing.

I learn so much when I watch Brando. His ability to stay in the moment and deal with what is happening “right here, right now” is a reminder that I must take that path in everything I do. To me, there is nothing more exhilarating than being in the moment and living unencumbered by thought.



Returning to the courtroom, here are a few practical tips that you can immediately put to use to be in the moment:

- When you are rehearsing your opening statement, plan for objections. This way, when they happen, they will not throw you off or put you into a tailspin. Instead, you can allow them to pass by like cars on a freeway without creating a mini-drama out of them.
- Instead of getting flustered and irritated, you'll be unflappable.





## DEALING WITH THE “OBJECTION -HAPPY” ADVERSARY

A common question that I am asked is what to do about the adversary who adopts a scorch and burn strategy of objecting continuously throughout my opening statement and/or closing argument to the extent that it disrupts my flow and interferes with my train of thought?

I've had many adversaries who engaged in trench warfare of this kind. Here is how I deal with it.

- First, be honest with yourself and ask, "Is what I said objectionable?" If so, be proactive and refrain from saying it altogether or state it in a way that it will not trigger an objection.
- Of course, there will always be adversaries who object for no other reason than to "throw you off," while couching the objection in terms that make it appear that *you* have run afoul of the rules of evidence.

Never underestimate the jury. They are smarter than you think. If you are telling a compelling story and an avalanche of objections begins to erupt from your adversary's mouth like lava erupting from a volcano, the jury will become annoyed at your adversary for not letting you speak. They'll ask: "Why won't he let him talk?"



In other words, this strategy might backfire by coming back to bite your adversary in the butt because the jury will view it as “unfair.” At the very least, your adversary will do nothing to endear himself to the jury. Instead, the jury may even turn against him entirely. Taking a page right out of “the best defense is a good offense” playbook, when responding to the adversary’s objection in open court, I will couch my rebuttal in such terms that I am fighting for them to hear the *truth* . In this way, you become the self-proclaimed, “knight in

shining armor” scoring precious points with the jury along the way.



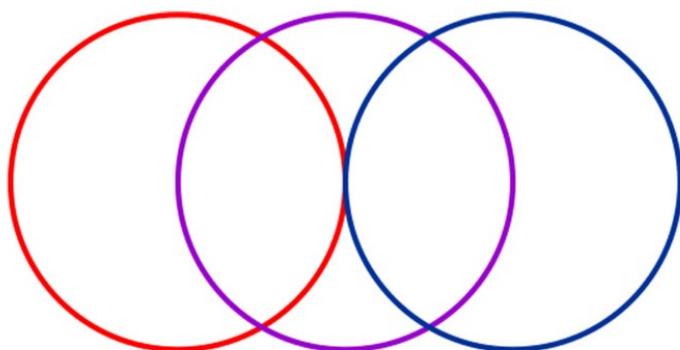
Thus, it furthers our goal of being jury-centered.

Some examples include:

- “The jury has a right to know xyz ...”
- “The jury is entitled to hear xyz ...”
- “The jury should not be prevented from ...”



# THE SECOND CIRCLE



# CIRCLES OF CONCENTRATION

- I use “circles of concentration,” as developed by Patsy Rodenburg to help lawyers focus and energize their voices. The various circles the exercises below take you through are tools, placing you in the here and now.
- They serve as tools primarily when you lack clarity regarding the focus of your speech. While there are three main areas of concentration, the variations are limitless and not at all fixed.
- As speakers, we find ourselves within one of these circles at every moment of our lives, often transitioning swiftly between them. Each of the three can be encapsulated in a single sentence or even a single word. Through experimentation with this method, you will come to understand that language is typically linked to the focus of our current situation.

These circles of concentration correspond to Stanislavski’s “Circles of Attention” as found in his book, “The Actor Prepares.”

# FIRST CIRCLE OF CONCENTRATION



The following outlines the circles of concentration:

- The First Circle involves self-dialogue. This form of imagination is deeply personal. Personally, I recognize that I am in the First Circle when I cannot find items such as my phone, glasses, or keys. In a calm and reflective manner, I might ponder, “Where are my keys?” or “Where did I leave my glasses?”

This is what Stanislavski referred to as the “small circle of attention.” Imagine yourself with a light above your head that only extends a half-inch from your body. Be aware of anything within that circle of light, but only within that circle of light. If your attention wanders out of the small circle of attention, nudge it back in.

# SECOND CIRCLE OF CONCENTRATION



The Second Circle pertains to direct communication with a single individual. Although you may quickly engage with multiple people, your focus remains on one person at any given moment.

This is what Stanislavski referred to as the “medium circle of attention.” In this circle, the light above your head expands to two to three feet around you. Notice how it is more difficult to pay attention as the circle of attention expands. There is more information to process!

# THIRD CIRCLE OF CONCENTRATION



The Third Circle engages a wide audience or the cosmos. The act of imaginative expression is broadly disseminated. This is what Stanislavski referred to as the “large circle of attention. The light has expanded to the entire room and everything in the space.

# CIRCLES OF CONCENTRATION



Fundamentally, these circles relate to our focus during speaking or listening. Our attention can gradually or swiftly transition between these areas from one moment to the next, often without our conscious realization. However, actors who recognize these fluctuations in concentration can leverage them to craft impactful and insightful moments in their performances.

# FLUIDITY IN THE CIRCLES OF CONCENTRATION



In life, we are fluid in all these circles. Indeed, we focus and pay attention differently in response to the needs of the moment. For example, you will often notice that your manner of speaking transitions swiftly among these three circles. There is rarely a consistent tone throughout. A speech is no different.

# USING CIRCLES OF CONCENTRATION



An individual may become “entrenched” in one circle, resulting in a demeanor that is intense and theatrical. It is possible that your personality leans more towards one circle than the others. The way you engage with the world is indicative of the circle you inhabit while speaking. By examining these circles, you can gauge the level of intimacy in your relationships. For instance, a couple that previously communicated in the Second circle may now only interact within the First or Third circles.

# “THE VERDICT” WHAT CIRCLES DO YOU SEE?



Certain characters may utilize Second language in specific contexts while being unable to do so in others. For instance, Nora in A Doll's House exhibits a playful demeanor with Torvald using Second language, yet she does not adopt a serious tone until she transitions into a blend of First and Second language towards the conclusion of the play. A lackluster performance can be characterized by an actor who remains entirely within a single linguistic sphere. Such an approach lacks psychological depth and fails to engage the audience, as it is restrictive to operate

within a singular framework. Here are several methods for incorporating the circles of concentration into your work:

Soliloquy can be delivered in the First or Third circle, or even a combination of both.

For instance, I have encountered the famous line, 'To be or not to be' directed towards Ophelia in the Second circle.

Prayer can utilize any circle, but the choice you make reveals your connection with God and those in your community. This may indicate whether your relationship with the Creator is personal or communal.

In numerous medieval mystery plays, characters exhibit a profound connection with God and often pray in the Second circle. When you listen to a priest pray, he is likely using the Second circle, as the Third circle tends to be overly formal and less engaging.

Certain professions are characterized by a distinct mode of communication. In the service sector, roles such as receptionists and flight attendants are expected to exhibit friendliness, which necessitates the use of second circle.

However, maintaining this level of engagement consistently

throughout their daily interactions can be challenging. As a result, their communication may come across as patronizing; although they are attempting to use second circle, they often revert to third circle. Phrases like, "Have a nice day!" may lack genuine sentiment. After all, sustaining second circle throughout the entire day could lead to significant strain. Shifting circles can serve as an effective comedic device. Imagine moving from Third to Second and then to First. Picture yourself at a dinner table with a group where no one is paying attention. You begin conversing with the individual beside

you, but they too are disengaged, leading you to speak to yourself. Conversely, this approach can be highly invigorating. You might start with an idea and express it to yourself, then share it with the person next to you in Second, before ultimately presenting it to the entire group in Third. You may find that a character is capable of communicating solely in Second when addressing objects. This theme is examined in various plays. Engaging in conversation with a toy or a ventriloquist's dummy exemplifies this. While less theatrical, it is equally insightful to observe

individuals who struggle with Second to the extent that they can only establish that personal connection while occupied with tasks. Activities such as making tea, ironing, or washing, or even walking to a window to gaze outside while speaking to someone in Second, illustrate this phenomenon. Before any verbal communication occurs, we are already aware that others are focused on us in the Second circle. This unsettling awareness arises when a homeless individual on the street attempts to engage us using First circle language, which is directed at us in the Second circle, and we are anticipated to

comprehend it. Circles can serve as instruments of influence: the high-status individual who chooses not to communicate with us in the Second circle. We have an underlying suspicion that much of what transpires is happening beyond our immediate perception. Establishing Second-circle contact with individuals can create a more personal connection. Typically, interactions with a police officer occur in Third-person. However, if you manage to engage in Second-circle communication, such as during a traffic stop for speeding, you may have a chance to avoid a ticket.

Conversely, approaching the situation with aggression in Second-circle could lead to a confrontation. Observe any dispute in a bar escalate into a physical altercation, and you will witness a critical moment when Third or even First abuse is directed at Second. This marks the onset of significant issues. Many of us have experienced situations at social gatherings where the individual we are conversing with shows little interest in our presence, instead engaging with us in Third while searching the room for more captivating companions. If we find ourselves engaged in a Second circle

conversation at such an event, interruptions are likely to be absent. If we find ourselves in such a situation, it is likely due to the presence of an extremely insensitive individual. Upon arriving at the party, we seek out a group of Third-circle communicators to help us acclimate. The English are particularly skilled at avoiding direct communication by not transitioning into Second. Their tendency to be polite and casual in either First or Third creates confusion, as the language appears courteous and somewhat familiar, yet the interaction remains distant and unwelcoming.

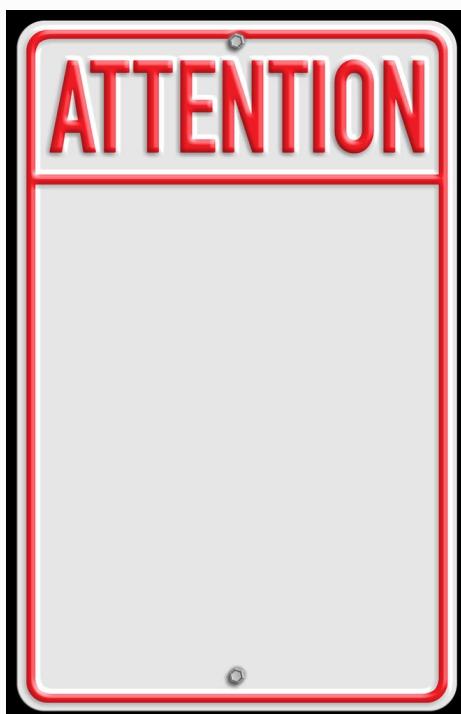
Telephones often expose underlying dynamics in communication. Some individuals find it easier to establish Second-circle connections over the phone, as they are not confronted with the physical presence of the other person.

Conversely, others struggle to achieve that level of connection and instead communicate in a Third-circle manner during phone conversations.



As we become increasingly isolated, both individually and collectively, we may find ourselves retreating into a shell-like state characterized by a First perspective. While this First perspective can possess a certain internal energy, it often proves difficult to break free from it. Additionally, our listening tends to occur in cycles. Experiencing genuine attention in Second is truly remarkable. Many of us likely recall moments from our childhood when an adult truly engaged with us in this manner.

In those instances, the listener's full attention is directed towards us, contrasting sharply with the more general or distracted listening associated with Third or First. It can be disheartening to realize that we have shared our innermost feelings with someone who is only listening from First or Third.



When artists discuss the concept of truly perceiving an object, I believe they are referring to a Second-circle perspective. Each circle can evoke a wide range of emotions. A Second-circle observation and expression can encompass anything from tenderness to aggression, intrusion, or love.



Many individuals are only able to express their emotions in the First circle. For instance, we may feel intense anger towards someone—perhaps for making us wait—and engage in a passionate First-circle argument against them. However, when that person finally arrives, we often switch to a pleasant Second-circle interaction, concealing our anger. Conversely, some people find it easy to express their feelings openly in the Third circle, yet they may find the deep exploration of these emotions in the First or Second circles to be too painful.



Examining a text can reveal shifts in perspective through its language. First-circle language is easily identifiable, as it is used when speaking to oneself, eliminating the need for external communication about known details. There is no requirement to clarify or articulate what is already understood.

Conversely, being overwhelmed by a Second-circle speaker who provides intricate descriptions of the optimal path through Central Park can be quite discouraging. However, if individuals refrain from using Second-circle language, their communication tends to lack directness.

Armed with this information, consider rehearsing your opening while being acutely aware of the transitions between different circles. Typically, a more pronounced shift will result in a more impactful and compelling delivery. Conversely, a gradual transition may convey hesitation or a slower cognitive process. Experimenting with contradictions can be intriguing; this involves using a perspective that does not align with the content of your speech.



Alternate among all three perspectives—within a speech, a thought, or even a single word. Attempt to maintain Second for an extended duration; doing so without reverting to First or Third will likely leave you feeling fatigued. Prolonged engagement in First can quickly lead to feelings of isolation and disconnection.



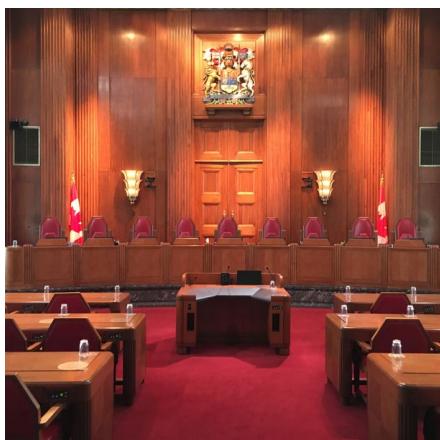
Engaging in similar practices in Third will instill a sense of confidence, bordering on self-assuredness. While you may not reach a definitive conclusion right away, through experimentation, you will uncover additional possibilities and identify areas where a speech may lack clarity. Throughout this process, having a diverse range of focuses will enhance the variety, tone, and tempo of your voice.



# “CLOSEUPS” IN THE COURTROOM

This is a good place to state an important, but little-known fact. On-camera “closeups” require unabashed truth and honesty. In the words of a famous acting instructor, “the camera is a lie detector that pierces the husk of the actor.” The slightest bit of tension, whether it be the biting of a lip, a stiff or tense jaw, shoulder tension, or the twitching of an eye, is instantly enhanced to full resolution. It is for this reason that actors doing dramatic “closeup” scenes on set embrace the idea of “intention” over “tension.” You know the scenes that I’m talking about. There is what I would describe an “intensity” of thought that is quite powerful. And what makes them so is the actor’s ability to let go of tension and do less while trusting that subtlety is enough. If a big gesture on stage is the “Big Gulp” version, then I’d call a dramatic close-up shot with a subtle smirk on the actor’s face the “Espresso” version.

It is a vulnerable place to be when working on-set. This act of forbearing from “overacting” and doing more than is necessary is counter-intuitive. The reason why I mention it here is because while you’re not on camera when you’re in court, you’re still doing a “closeup shot” every time you stand up to cross-examine a witness or address the jury due to your close proximity to them.



And we haven’t even talked about the Zoom room where our faces are spot-lighted such that they take up the entire screen when it is our turn to speak and especially when we are making our argument. To say that a frown, furrow of an eyebrow, or rolling of the eyes is magnified one hundred times over on Zoom would be a complete understatement. We found this out quickly during the pandemic when we were forced to transition exclusively to virtual court appearances and virtual meetings.



# IMPORTANCE OF HAVING A TECHNIQUE

Ask any Broadway actor who performs eight shows a week how they can consistently turn out one Tony-award winning performance after another and you'll get the same answer: "Technique and lots of practice."

The ability to perform at a peak level night in and night out is a trait that great actors and great lawyers possess, and one that I deeply admire. To me, having a technique provides me with the artistic freedom to stand in front of the jury and build something that bears my unique imprint just like an artist stands in front of a blank canvass and creates an original painting. Having a technique is as important for lawyers as it is for actors. For example, have you ever wondered why in one trial you had more Oscar moments than you could count while in another trial you were as "green" as your first mock trial competition? The random and arbitrary nature of this phenomenon was summed up in one sentence by a popular actor from the twentieth century, "... it seems to me that usually when I have acted well, it has been by accident."

Today, thankfully, that has changed.



## LEARNING BY DOING & NEXT STEPS



Books about harnessing the power of persuasion and positive communication in the courtroom can be incredibly motivational and inspirational. But they cannot take the place of studying and practicing with a qualified instructor.

Very simply, acting is not a spectator sport. If you get anything out of reading this book, I hope that it is this, “Reading about acting isn’t the same as experiencing it.” Preparation and learning by doing are critical elements of honing the craft. Honing the craft means that you’ve conditioned yourself to the point where you can’t help but do certain things in a certain way anymore. After all, craft is habit.

When master actors act, their craft becomes invisible. This is why good acting — real acting — is impossible to spot. It is utterly seamless, bearing an uncanny resemblance to real life. Martin Sheen and the late Patricia Neal were among the best. They make it look like anyone can do it. The best acting instructors cultivate a learning environment where the line between reality and fiction is so thin that it is virtually indiscernible. Indeed, if you were a fly on the wall in the classroom, you wouldn't know where reality ends and acting begins.



Nearly a decades-worth of training has taught me that mastery of the actor's craft can be won only through a frustrating process of trial and error. Fall on your face, get up, and try again. When I was in Seaside Heights last summer on the boardwalk, I saw a T-Shirt with a slogan that captures the essence of how demanding and rigorous acting can be: "I've been kicked, beaten down, trampled

over, dragged through the mud and I keep coming back for more."

If you are anything like me, you may desire an interactive element where you can get up on your own two-feet and try it out for yourself in order to see how it works just like test-driving a new car at an auto-dealership. Through repetition, these tools will become second-nature. At the same time, it builds a level of confidence that is needed to apply these tools practically in the courtroom during a real trial, motion, or hearing.

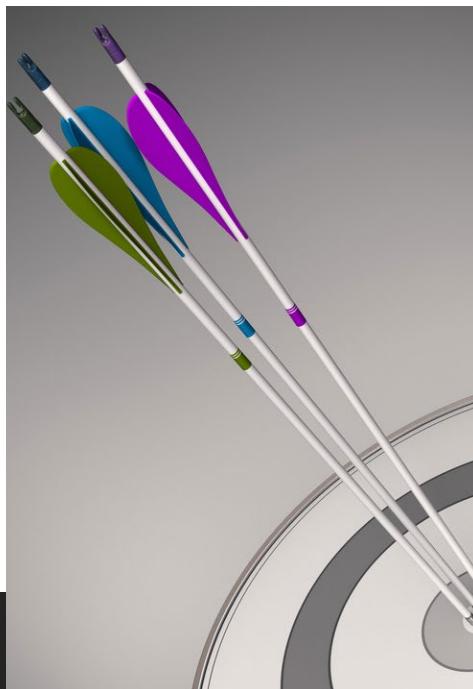
In other words, "learning by doing" in a group setting is a vital element of the learning process but one that can be easily overlooked and/or ignored especially today when virtually all continuing legal education is delivered by a presenter from a lectern narrating a powerpoint slide deck to an audience that is multi-tasking and only half-listening.



This inspired me to collaborate with instructors who I had personally trained with over the years in the areas of voice, body, and movement to adapt the curriculum that every first-year acting student in professional conservatory must complete for trial lawyers and the demanding nature of the courtroom.



For example, I've found that the demands placed on my speaking voice during a trial far surpass that of any performance I've been in, including one as rigorous as two shows a day for six-days a week. Yet unlike actors, lawyers don't get any formal voice training in law school.



In the voice workshops, participants will focus on physical and breath awareness, feeling and freeing sound vibrations through the lips, skull and body, and releasing tensions in the jaw and tongue area, while toning the soft palate to explore the higher resonators for bigger emotions in order to rediscover the 3-4 octave vocal range we were born with.

By developing a more intimate and intelligent relationship with one's mind, body, and voice participants will gain confidence and competence to brainstorm in the moment, to command the space in the courtroom, and to speak passionately and

with authority to influence others. After all, it is not what we say, but how we say it that allows us to get others to feel how we want them to feel, in order to get what we want for our clients. How to control nerves and stage fright so that the actor can be at their best is a vital part of actor-training. Lawyers trade in "reality" where the stakes could not be any higher and not in "imaginary circumstances" like actors.

Indeed, if the client is found guilty at trial, they are going to jail or prison and there are no "do-overs" or second-chances unless, of course, the defendant prevails on appeal.

In the Alexander workshop, participants will learn how to deal with the nerves that get in the way often-times at the worst possible time so that they can be more grounded, centered, and poised in the courtroom.

The improvisation workshop will help participants develop quick thinking, adaptability, and authentic communication in high-pressure situations. Through interactive exercises, participants will learn to embrace spontaneity, connect with their audience, and add humor and humanity to their practice.

These are some of the themes that will be explored in this one-of-a-kind “practical skills” series and this is why I am bringing in some of the industry’s most respected and sought-after instructors to teach it. They have helped me to achieve personal milestones as both an actor and a trial lawyer. Celesq, one of the leading CLE providers in the industry who I’ve been lecturing for has thrown their support behind this project and has partnered up with me to launch, “Theater of the Courtroom.” I’m proud to announce that after months of planning, we recently launched the site and will be rolling out four Zoom-based workshops in April and in May.

Since many attorneys will be new to this work, some background information about how the classes will be conducted may be useful.

Unlike traditional CLE classes, these classes will be completely interactive with the instructors leading participants through group exercises designed to unlock habitual tensions that get in the way of public speaking and to free the natural voice.



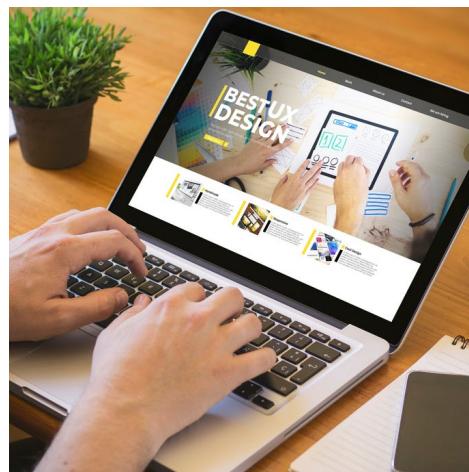
Thus, “learning by doing,” including getting up on your feet and trying it out for yourself is a hallmark of this work. This builds the confidence that is needed for attorneys to apply these principles in the courtroom during a real trial, motion, or hearing. Participants should come “dressed to sweat” in sweatpants or loose apparel.

I would love my fellow attorneys to have the opportunity to experience “first-hand” what I was so fortunate to experience myself early in my career -- a transformative journey to unlock their true potential, revitalize their practice, and reignite their passion for storytelling.

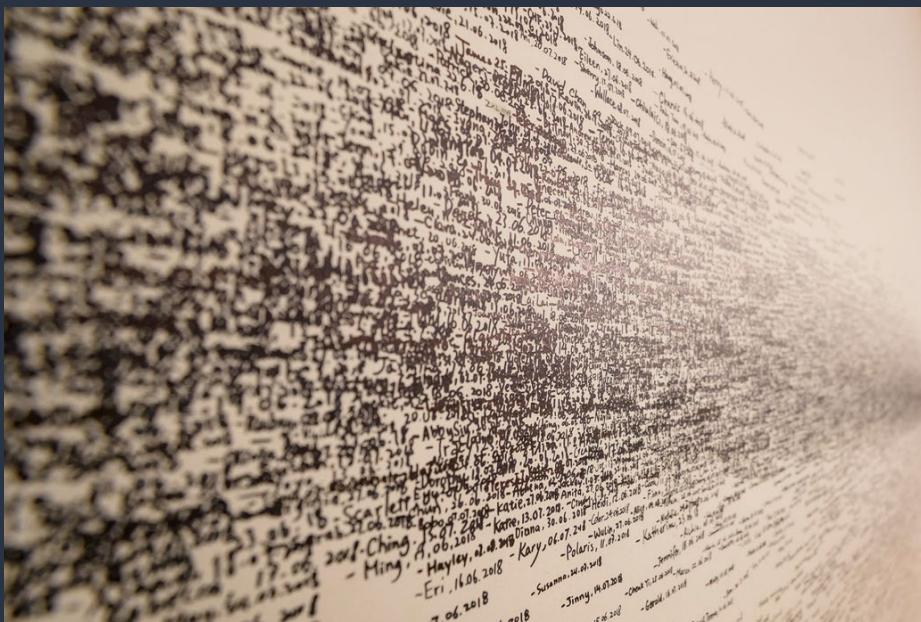
I believe in this work and have come to realize how deeply transformative it can be for anybody, but above all, for attorneys since the personal growth experienced by the attorney opens them up to being more empathetic to the plight of their clients so that the telling of the client's story comes from the heart and leaves an unforgettable impression on the jury.



This work will challenge you in ways that you have never been challenged before. But it is a complete game-changer and will enhance your performance skills in the courtroom exponentially. I am living proof of that. You will never view the courtroom the same ever again. Please feel free to check out the website at [TheateroftheCourtroom.com](http://TheateroftheCourtroom.com).



# PARTING WORDS



A decade ago, I had the unique opportunity of training under the late Donald Fiedler, a legendary criminal defense attorney in his own right who was also an actor. He shared with me a story that has inspired me throughout my career. It came from a play written by Gerald Uelman, entitled, "Bryan." The play explores the life of William Jennings Bryan, Clarence Darrow's adversary in the Scopes Monkey Trial. In the play, there is a scene when William discovers the magic he has over audiences. William told his beloved wife his secret:

“ ... Mary, last night I found I have power over an audience. I can move them as I please. It was an incredible feeling. The whole room was focused on me, waiting for my next word. I spoke from my heart, and realized my audience was listening with their hearts. Knowing what is in a person’s heart gives you enormous power. It is a power that can move people and inspire them.”

Just as William recognized the power that he had over his audience when he spoke from his heart, a trial lawyer who is not afraid to be emotionally vulnerable possesses that very same power over a jury.

Don’t be afraid to reconnect with everything within you that’s unique and special. This will help you to identify those traits that naturally captivate others.

Knowing who you are when you are at your best provides an aspirational vision of what you can live into in your work and in your life. Dare to be great!



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