

Discovering the Client's Story
What I learned from the Spence College
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I. DISCLAIMER

Quite a few lawyers from Washington State have been exposed to the teachings of Gerry Spence. Many lawyers describe their experience at the Trial Lawyers College as a life-changing experience. I know it was for me.

I will never try cases again in the way that I did before attending the Trial Lawyers College. However, there is a caveat. Reading about the Gerry Spence methods is a little like learning to fly an airplane by reading a flight manual. Doing is better than reading.

Furthermore, I am not authorized to speak on behalf of the Trial Lawyer's College. My comments do not reflect the opinions or views of the Trial Lawyer's College and any statements I might make are not to be attributed to the Trial Lawyer's College.

Because the Gerry Spence training has been so meaningful to me, I have incorporated it into my trial practice. I hope the information is helpful to you.

II. INTRODUCTION

Trial lawyers complain about juries. I frequently hear comments that "juries don't get it." Juries are "conservative." Juries are "biased, unfair, and won't give plaintiff a fair shake." Nowadays, I rarely hear trial lawyers talk about juries being fair or just.

Rather than complain about this jury "problem," perhaps lawyers should accept that they are partly to blame. Much of what lawyers present at trial is boring. Much of what we present is analytical, does not meet the jury's needs, and does not make a connection with the jury. There may be a better way to present your case.

III. HOW TO TELL THE CLIENT'S STORY

On the surface, lawyers think they know how to present a case. You uncover the facts and present them to a jury in a way that will be appealing.

However, don't we all wish for a case that is just a little better. We hope the facts are "ABC," and we are disappointed when we learn later the facts are "XYZ." Some of us, intentionally or not, take actions to "lean" the facts one way or the other. Some seminar topics address how much of this "leaning" or "wood shedding" is permissible or ethical.

But Gerry Spence teaches a better way. What a powerful thing it is to tell the truth. To tell the client's story, not what we lawyers would like the story to be. What a powerful thing it is to tell the client's story with some passion, and in a way that connects with the jury.

The problem is that most attorneys don't know the client's story. I spent some 25 years trying cases, thinking I knew my client's stories. Only after taking a substantial amount of Gerry Spence's training did I come to understand that I tried cases for years without understanding the client's story.

I would know the facts of a client's case. However, facts alone are boring, of interest to lawyers, maybe. But facts alone lack meaning. They lack context. Without context, why should a jury care? And that is one of the problems for the juries. If the jury doesn't care about what happened to your client, then how can the jury do justice?

When you set out to tell the client's story, remember that there are many competing stories. There are stories in the juror's heads. There is a story in the judge's head. There is a story told by the defense attorney. There is the defendant's story, witness stories, and stories the experts may tell.

Now, analytical thinking has its place. But connecting your client with the jury isn't analytical. For the jury to make a connection with your client, and with you, the jury has to have a reason to care. That reason to care is emotional, not analytical.

Imagine being single. You meet a person that you are interested in. Trying to make a connection with that person analytically isn't going to work. The man could come up to the woman and say "I am taller than 90% of the men in the room." This may be factually true. He might say, "I am stronger than most." He might say, "I am smarter than the other men in this room." Again, these statements might be analytically true, but they won't help the man make a connection with the woman of his interest. The man might continue, "I can run fast. I don't eat much. And I will protect you better than the other men in this room." Again, these statements may be true, they are analytical, and the woman is going to walk over to somebody else in the room, rather than the man making all the factually true statements.

A connection between people happens on a different level. It can be emotional, physical, psychological, and perhaps spiritual. The feelings occur first, and analysis comes second. And even then the analysis is influenced by feelings.

So how do we learn the client's story? How do we help that client make a meaningful connection with the jury, so that the jury can do justice? The answer is psychodrama.

IV. PSYCHODRAMA

To tell the client's story, we have to know the story. Not just the facts, but how the client experienced those facts. Imagine that your client has had a catastrophic injury. You can't experience what the client went through – or can you?

Psychodrama can allow you to access the experiences of others. Psychodrama allows you to better understand what the defendant did wrong, the defendant's motivations, and to better understand how your client experienced the wrongful conduct of the defendant.

Psychodrama allows you to access the experience of others besides your client. You can better understand the defense attorney, the judge, the witnesses for both sides, and the experts.

There is a caveat. Psychodrama takes experience. It is important to watch others do psychodrama before doing it yourself. One of the best ways to obtain some initial psychodrama training is through the Gerry Spence Trial Lawyers College Regional Seminars. When first using psychodrama, it is probably best to hire a psychodramatist on your case. This can add some expense, but it brings enormous returns.

There are a number of psychodramatic techniques. They include re-creation, role reversal, soliloquy, doubling, mirroring, and other techniques. For lawyers who want more detail on the psychodramatic technique, and how it can be used by trial lawyers, you might want to refer to "Psychodrama and the Training of Trial Lawyers: Finding the Story" by Dana K. Cole, 21 N. Ill. U.L. REV 1 (2001).

My goal in this seminar is to expose you to two psychodramatic techniques, re-creation, and role reversal.

V. RE-CREATION

Most lawyers ask their clients to tell them what happened. This has been a time-honored way of learning facts so that the lawyer can handle the case. This method of acquiring facts, at its most extreme, was used by Jack Webb in the 1960 series "Dragnet." His stock line, delivered in a monotone voice, was, "Just the facts, ma'm."

We lawyers do much the same. We ask questions of our clients. We keep asking questions until we think we know all the relevant facts. And then we handle the case.

Psychodramatic re-creation is quite different. Instead of asking the client to tell the lawyer what happened, the client is asked to show the lawyer what happened. There is a big difference.

When clients tell you about their case, they will often say something like “Well, I was at the corner of University Street and NE 45th Street.” I was northbound when a car came through from my left and struck me. Note the past tense. The client is telling you what happened. You gain information, but you learn little about how the client experienced what happened.

Now, imagine a different way. Have the client describe the scene where the event took place. Use chairs and boxes to represent the things present at the scene. Have the client describe what they can see, hear, smell, and perhaps even taste when they are at the scene. Have the client use all the senses.

In a psychodramatic re-creation, a lawyer might interrupt the client, and force the client to use the present tense. You gently force the client to go back to the time and place where the significant event in their life happened. You ask the client to use sentences like this:

I am at the corner of University Street and NE 45th Street.

I see the angry man running towards me.

I am so scared I can't breathe.

I run to the far corner of the intersection, tripping over the curb, and almost falling.

The man tackles me and I see him pull a knife.

The knife is bright silver under the street light.

Now, instead of telling you what happened, the client is showing you what happened. The quality of the information that you receive is vastly different. You can experience the passion and the emotion involved in the event. You will see, experience, and feel the impact that the event had on the client.

The first time I saw psychodrama, done by a trained psychodramatist, I could not believe what I was seeing. The client's story came alive. The understanding of the lawyers in the room increased. The lawyers' feelings about the case changed. The lawyers become able to argue the case powerfully and accurately.

VI. ROLE REVERSAL

In its simplest form, a role reversal means that one person changes places with another. The goal is to feel how the other person would feel. You want to take on the person's beliefs, feelings, passions, life experiences, and so on. Your goal in role reversal is to experience what another person has experienced, and to better understand both the person and the experience. When you reverse roles with someone, you want to try to see things from the other person's point of view. You want to become that person. I know it sounds a bit hokey, but you adopt the other person's body mannerisms, their style of voice, any other mannerism or characteristic of the person that you can adopt.

It is also important to physically change places with that person. The way this is commonly done in psychodrama is to have two chairs. You put your client in one chair and you sit in another chair. When you reverse roles with a client, you get up and physically trade places. You then become the client. When you come out of role, you can change back to your chair.

When you adopt the role of a client, you speak as if you were the client. You talk out loud about your feelings, and what you are experiencing. The client can listen to what you say and tell you those areas where you are right, and those areas where you are wrong. As you continue multiple role reversals with your client, you will learn more and more about that client, and about the client's story. You will become closer to your client as you better understand their life and what is happening to them. You may well have a different feeling about that client, a feeling that will come through in your advocacy, and make you more powerful.

But role reversal is not limited to your client. You can role reverse with anybody in the case, whether they are present in the room or not. Suppose you want to better understand the motivations of a defense medical examiner who has examined your client and will testify that he or she is not really hurt. In your office you can put one chair facing another. The empty chair is for the defense medical examiner. When you are sitting in your chair as the attorney and looking at the defense medical examiner, you may have certain feelings. You may intensely dislike the person, and feel that they are motivated by greed. You may have other feelings.

Then, change chairs and reverse roles with the defense medical examiner. Think about who this person is. Think about his family. Think about his medical practice and his life experiences. Think about the path the life of the defense medical examiner has taken, through medical school and into medical practice to save lives and help people get better. But then try to experience what brought this person to the point where they now testify routinely that people are not injured.

During the role reversal with the defense medical examiner, it may help to have other people present in the room to listen to you talk as the defense medical examiner might talk.

Encourage those people to say what sounds right, and what does not. Encourage the other people to take your place in the defense medical examiner's chair and to reverse roles. Although this process sounds hokey on paper, the information you can gain is substantial.

There is almost no limit to the benefit you can gain by role reversing with many people in a case. You can role reverse with the defense attorney and the defendant. You can role reverse with the witnesses. You can role reverse with the jury. You can role reverse with the difficult judge who seems intent on destroying your case. Role reversing with the judge might just allow you to better understand that judge, his or her motivations, and how you might better relate to that judge.

VII. CONCLUSION

Psychodrama is not for everyone. When I was first exposed to psychodrama, I thought it was ridiculous. None of this "touchy feely" stuff for me. I was trained as a lawyer: to look for facts, and legal theories, and to think analytically. All I can say is that I am glad I kept an open mind. Psychodrama has benefited my cases, and has benefited me personally.

Now, there may be some defense attorneys who believe you are doing something improper with psychodrama. The term "psychodrama" even sounds kind of strange, like something you shouldn't do with a client. And, heaven forbid, if you hire a psychodramatist to work with your client, that involvement might even be discoverable by the defense.

But you can be reassured. You are doing nothing wrong. If you have the right to ask a client to tell you what happened, you have the right to ask a client to show you what happened. In psychodrama you are never suggesting that the client say something that isn't true. You are never suggesting that the client change their story. In fact, you are doing the exact opposite.

You are working hard as a lawyer to understand what really happened. This is not only a proper thing to do, it is a way to achieve true justice.

When you fully understand the client's story, you have power. The power to tell a client's story honestly will appeal to a jury. It isn't boring because it is real. Understanding the client's story can allow you to re-create it. You won't need as many notes. You can be spontaneous.

And, for me, there is a different feeling trying the case when I have role reversed with the client. It is hard to convey the difference. Perhaps this quote from Mark Twain comes close:

“All of us contain music & truth, but most of us can't get it out.”

When I am truly telling a client's story to a jury, I feel like music and truth are coming out.

Bob Dawson
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