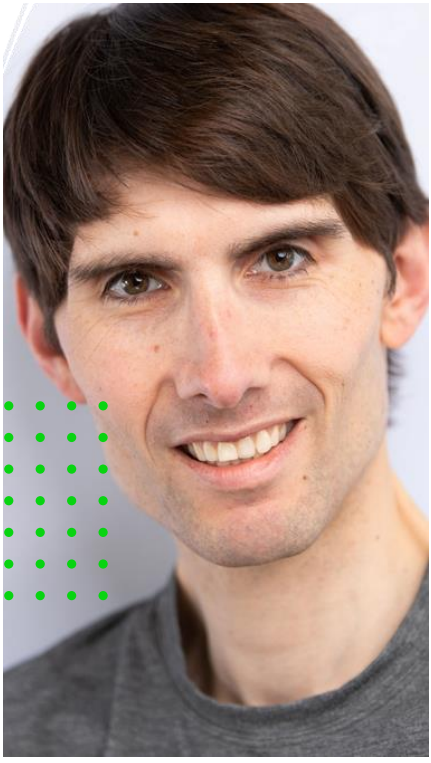


FROM JURY TO JUDGMENT

A Modern Guide to Storytelling Strategies for Courtroom Success.

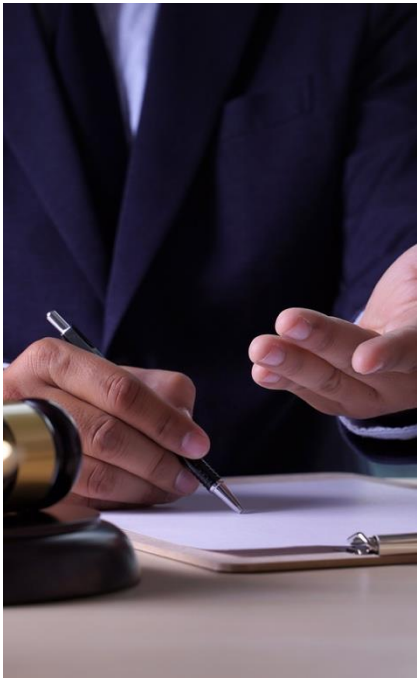
Michael DeBlis III, Esq.



- Trial Lawyer
- Actor
- Author
- NCDC Graduate
- Marathon runner



Introduction



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.

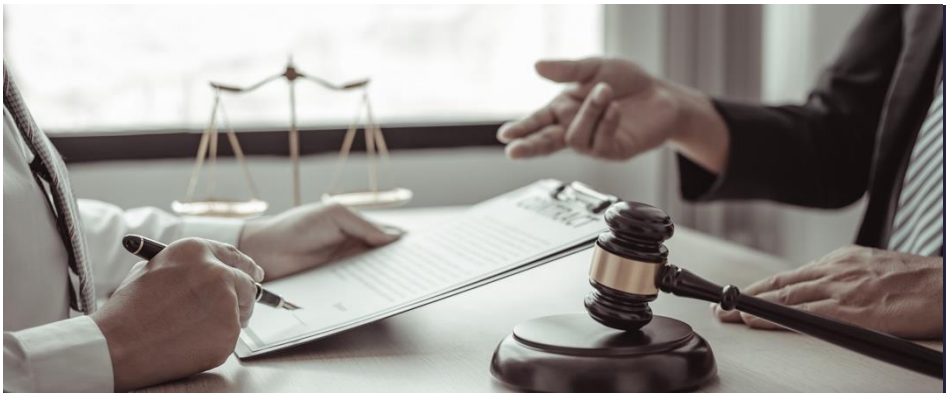


Here, I will venture to go deeper by pulling back the curtain on the fundamental aspects of training that every actor in a professional acting conservatory must undergo before they are ever handed their first script and how this can be helpful to trial lawyers when trying a case.

These can be summarized very simply as "Getting back to the body," and include a thorough examination of the self in all its dimensions as it relates to the craft of litigation – mind, body, voice, emotion, and impulse – those aspects of an attorney'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.

What results is a new-found freedom and capacity to locate your public authenticity, profoundly be yourself, and share that on a moment-to-moment basis with the jury. 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.

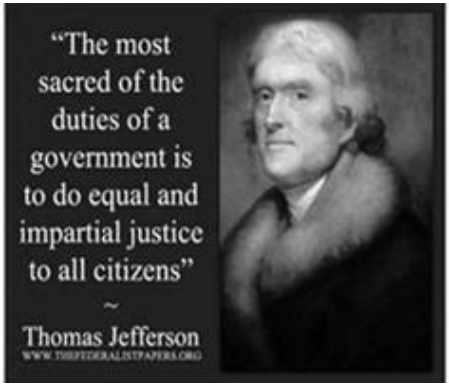
Actors must guide the audience on a journey bringing with them their minds and hearts. Through that journey, the actor exposes the human condition. They live out more life in three hours on a stage than most people experience in a lifetime. This is what makes actors the ultimate storytellers, or should 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.

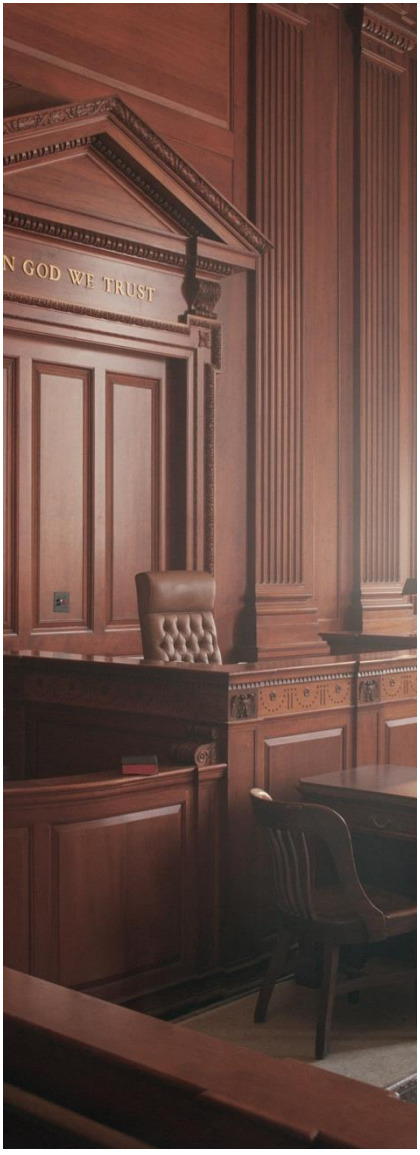
Three that immediately come to mind are

- "To Kill a Mockingbird"
- "The Verdict"
- "A Few Good Men"



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.

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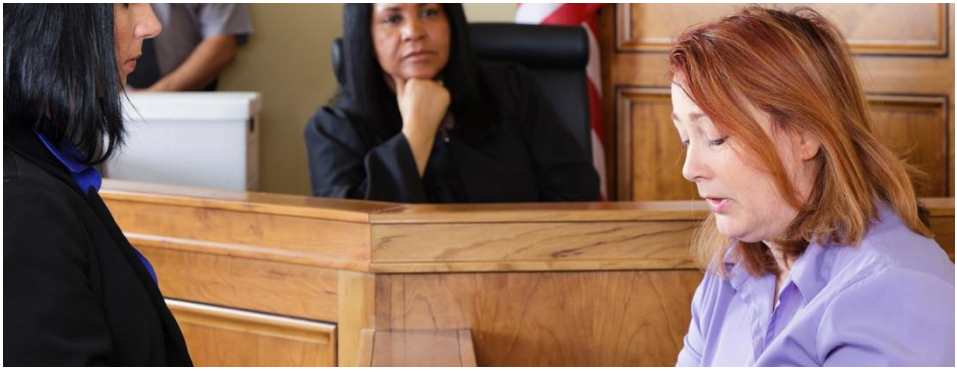
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My Story

I'd like to start by telling you a story. Before I begin, I need to thank a special person who I look up to and admire for giving me the courage to tell this story. Our stories are very similar. Had Mr. Spence never shared his story in his runaway national bestseller, "How To Argue And Win Every Time," I don't believe that I would have had the courage to tell mine.



It goes back some years to when I was a bright-eyed, bushy-tailed public defender who was determined to make a difference in the world by standing up for those who had no voice.

I wanted to be like my dad, who was also a criminal defense attorney and who had a reputation as a zealous advocate for the disenfranchised.

I was about to make my closing argument. The next decade of my client's life depended on how convincingly I could make it. The judge had called a short recess.

I was pacing up and down the hallway with a huge knot in my stomach.

I watched the jury walk in and heard the judge utter those frightful words that still haunt me to this day: "Ladies and gentlemen. You will now hear closing arguments. Mr. DeBlis, you can begin." The fear shot through my body like a bolt of lightening. My heart was racing and I had a lump in my throat the size of a crater.

My voice cracked before I could get out the salutation, "Ladies and gentleman". The next thing I knew I was standing there frozen like a dear in headlights. Several seconds went by in silence. The seconds felt like minutes. All the while, I could feel my palms sweating and my hands shaking like a leaf.

The silence in the courtroom was deafening. I felt the gazes of the jury, the judge, the prosecutor and my colleagues boring right through me.



Embrace Raw Fear

In that moment, I wished that the ground would have opened up and that I could have been swallowed up into a dark abyss never to be seen or heard from again. The thought of enduring yet another second of this was agonizing.

But the worse had yet to come. Out of the corner of my eye, I could see my client's face – and it was frozen in horror.

As hard as it was to come to terms with my own shame, I now had a much larger problem to deal with: the feeling that I had let my client down. I tried to regain my composure, but the only sounds that I could utter were unintelligible "uum's" and "ahh's."

But then something strange happened. Out of nowhere, I blurted out, "I wish that I wasn't so afraid." This mortifies me to this day.

The expression on the faces of the jurors was one of pure astonishment. While they could see and feel the physical manifestations of my fear, the last thing they expected me to do was to confess it. They watched. They waited.



I continued: “Let me tell you what my fear is. I care a lot for Johnnie. My fear is that I won’t be able to make the kind of argument that Johnnie deserves in order to convince you that he is not guilty.”
My fear slowly began to recede and the argument took on a life of its own.

I no longer had to struggle in order to find the words to express the feelings that were welling up inside of me. Instead, they came gushing out of me like a spring.

When I finished, I sat down, utterly exhausted. Although my heart was still racing, surprisingly I was no longer in a state of panic. Don’t get me wrong. The argument was far from perfect. However, it was an argument that was as real and honest as I could be in that moment.

The lessons that I learned from this experience were priceless.

First, I learned that I had experienced the proverbial “freeze” response that often accompanies a state of panic.

The fear associated with public speaking is no joke. Studies show that the brain fears public humiliation more than it does death. This means, according to Jerry Seinfeld, that “Most people would rather be in the casket than doing the eulogy.”

While training with my beloved voice instructor, I was surprised to learn that humans aren't the only mammals that enter a "frozen" state when they sense a potential threat. Lion cubs, like many other animals, have a strong survival instinct to avoid predators. When they sense a potential threat, they may instinctively freeze and become immobile to avoid detection.

This freezing behavior is what biologists describe as a form of "tonic immobility," where the animal becomes motionless, flaccid, and may even close its eyes. What happens next is incredibly remarkable in how closely it resembles a human being's innate sense to self-soothe, "decompress," or rest after the threat has subsided.

After the threat has passed or the animal has escaped, the cub may shake its body to help it disorient itself, remove any lingering scent from the animal, or potentially reset its muscular tension after being in a frozen state.
In essence, the shaking behavior is a response to the stress and potential danger of being still for a period, and it's part of their natural survival mechanism to avoid being caught by predators.



No other author has been able to capture the rawness of what I was feeling on the inside that day than Tom Wolfe, author of the “Bonfire of the Vanities.”

In it, the protagonist, Sherman McCoy reveals what it felt like after being arrested and forced into a perp walk in front of huge crowds who were mocking and jeering him. “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.”

In a real sense, it felt as though I had stood before an audience of fourteen absolute strangers, tore open my chest, and allowed them to see my pounding heart.

Second, it taught me the power of emotional vulnerability and how the confession of fear is perhaps the most exquisite expression of vulnerability.

Some might say that by confessing my fear instead of suppressing it, I had acted cowardly. No doubt these are the same folks who equate emotional vulnerability with weakness. As for me, I saw this as an act of bravery in that I had confronted my fear head on and stared it down until it had retreated like a whimpering hyena with its tail between its legs.

Third, in the human narrative, fear is a part of being human. It is as primal as a heartbeat. Even the most experienced actors have to grapple with it.



For example, in an interview for the PBS special Behind the Britcom: From Script to Screen back in 2010, Dame Judi Dench admitted that what terrified her the most was the time right before going onstage to record every episode of, As Time Goes By. Coming from someone who is considered one of Britain's greatest actors, that is quite humbling.

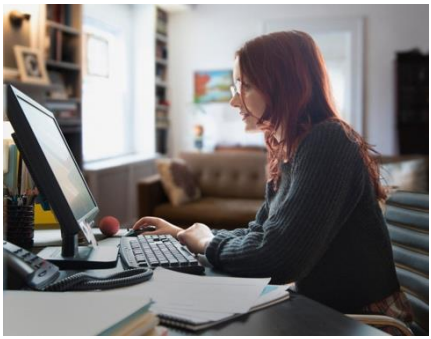
> Fear (or nerves) get a bad rap when they show up uninvited at inconvenient times. As soon as they show up, most people go out of their way to suppress them or hide them to avoid the discomfort that accompanies them — namely, shame, guilt, and embarrassment.

This is is where the trouble starts. Fighting your nerves is like fighting a losing battle. The more you fight them, the worse they get.

According to psychologists, the number one reason why we get nervous is because we are afraid of what other people will think of us when they see us nervous. We want others to see us as relaxed.

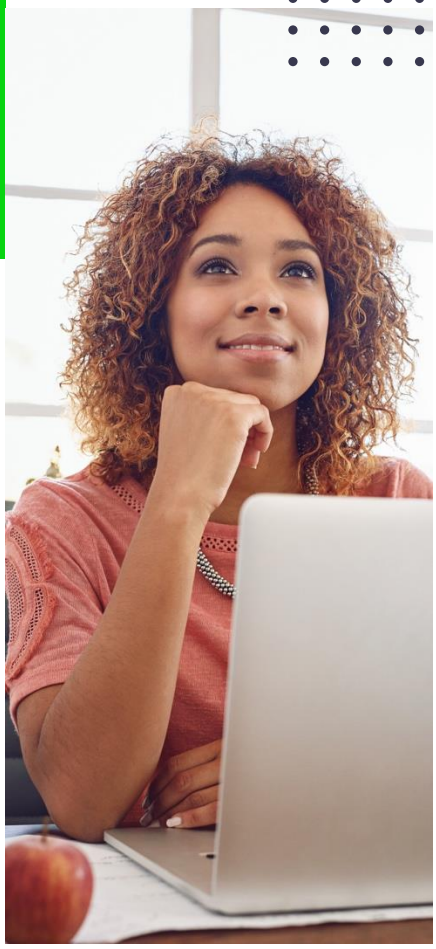
Fourth, since beginning my training as an actor, my brain has been rewired to view nerves in a different light. I view them as energy – albeit energy going in the wrong direction. And if according to the law of conservation of energy, energy is fluid and always changing as it moves and interacts with its surroundings, then surely nerves can be redirected into something more productive when we first accept and honor the fact that there is no shame in experiencing them.

Our body is only doing what it knows how to do best: to protect us from a perceived threat. After all, survival is innate in us as human beings. It's because of that that we've made it this far in life.



And to look at it from another perspective, the fact that you are nervous shows how much you care about your client and how determined you are to do the best job you can for him. Indeed, there is an element of pride attached to this. It's when the lawyer isn't nervous before a big opening that one begins to wonder.

The challenge is thus, "How can I channel my nerves in a way that makes them helpful instead of debilitating?"



Fifth, experience has taught me that the only way to get to where you want to go is to first make peace with where you are. For me, this means taking a gigantic leap of faith and surrendering to my nerves instead of trying to hide or suppress them. This is easier said than done.

For example, why not make friends with your fear by acknowledging its presence? In other words, work from where you are and not from where you wish you were.

If I am feeling nervous or uneasy, I allow myself to feel nervous or uneasy and to be aware of the sensations that are bubbling up inside me. Is my heart beating rapidly? Do I feel tightness in my chest, tingling in my fingertips, clenched fists, or a lump the size of a crater in the back of my throat?

Once I've become aware of these sensations, I express them openly and freely with my voice. For example, "I feel tightness in my chest." "I feel tingling in my fingertips."

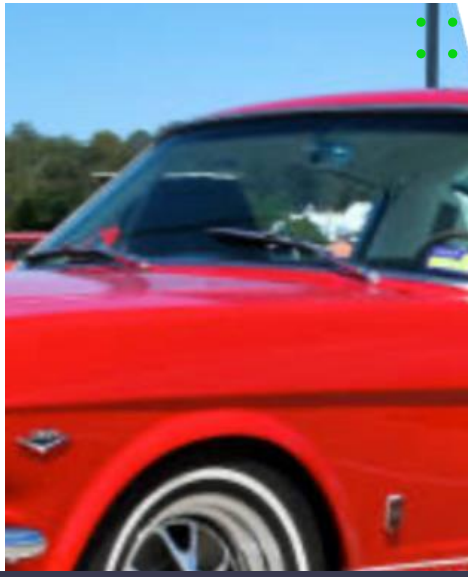
Resist the temptation to judge this energy. Instead, know that it is your truth right now. And whatever it might feel like is okay.



It all comes back to the simplicity of the breath and taking in your environment. This is the essence of what it means to be present, let alone alive. Always remember to breathe, to observe what's in front of you, and to acknowledge what's happening inside of your body.

Breathe into the areas of your body where you feel the most tension no matter how ridiculous or absurd it might sound. For example, if you feel tension in your temples, then breathe into your temples.

In this way, it shifts from a conquest of "I must defeat my fear" to a humble acceptance. That usually gets the attention of my fear and allows me to gently reassure it that everything will be okay and that it can take a rest. Shortly thereafter, the fear erodes and I begin to feel my argument rev up like a bright red antique Ford Mustang.



For this reason, I am a big proponent of "check-ins" before actors put up work. By acknowledging those things that are on your mind and putting them out into the room, they are less likely to become a distraction to you later on when you are working because you have given them a voice.

Another interesting thing that happens during a check-in is that as others share what's on their mind, almost invariably your attention gets drawn off of yourself and onto them. By hearing others' experiences, you become less fixated on your own "fear" and may even start thinking, "Boy, my problems aren't as bad as I thought they were."

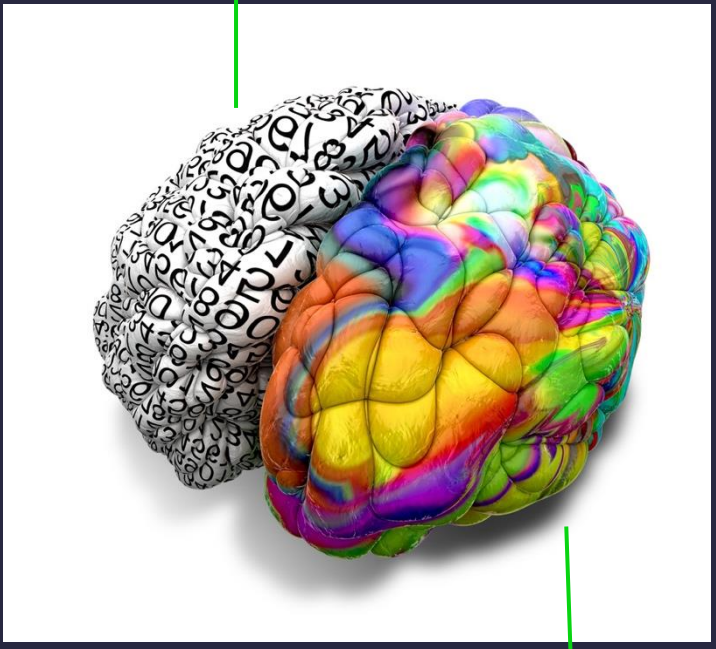
Sixth, I am deeply inspired by the quote, "Every fear hides a wish," popularized by playwright David Mamet, suggesting that deep-seated fears often mask an underlying, often unacknowledged, desire or longing for what we fear, revealing a hidden wish for that very thing or for resolution. For example, a fear of failure might hide a wish to succeed, or a fear of intimacy could conceal a wish for deep connection. In my case, my fear of public speaking was hiding a desire to be heard.

Finally, it taught me about the power of storytelling in the courtroom to win over the jury.



LEFT BRAIN/RIGHT BRAIN

Left



Right



Left brain

- Intellect
- Abstractions
- Precision
- Linear thinking (logic)
- Intellectual expression

Examples:
» Making a grocery list
» Listing elements of a tort
» Legal Analysis: Applying facts to law

Right brain

- Emotion
- Creativity
- Ingenuity

Examples
» Painting
» Singing
» Storytelling
» Dancing

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.

The Case for Storytelling



As a trial lawyer, what do you really need? What does every trial lawyer need more of in order to win their case? For me, it comes down to two things.

The first was beautifully captured by the fictional character, Mickey Haller in the Netflix series, "The Lincoln Lawyer": "Before you can win, you gotta act like you can win, which means you gotta believe you can win."
And the second is attention — the jury's attention.

I don't mean that in the narcissistic "everyone look at me" sense. When I say every trial lawyer wants more attention, what I mean is that before you can build a rapport with the jury and earn their trust, you have to fight a war — the war for the jury's attention. "Attention" and "connection" are the key elements needed to win the minds and hearts of the jury.

Like it or not, we are in the midst of an attention war. We need to confront the reality that the jury's attention can no longer be taken for granted. We have to change our way of thinking to focus on gaining attention before we can leave lasting impressions.

The jury's attention must be the currency that every trial lawyer trades in.

We live in a digital age where we are bombarded with information. Walk one block in New York City and your senses will be overloaded by billboards, large neon flashing signs, and window displays that dazzle. All of this is competing for our attention at the same time.

Time has become our most precious commodity. In this fast-paced world where people value time over everything, it's no surprise why convenience and lack of friction win. We're always trying to squeeze more into less. Uber knew this ten years ago when they rolled out a ridesharing company that hired independent contractors as drivers. Only Uber doesn't sell us transportation. It sells us time.



The average person has to be able to separate the wheat from the chaff in order to avoid going into information overload. This explains why attention spans are eight seconds long, one second shorter than a goldfish. A recent study found that the average person checks their smart phone up to 150 times per day.

Even though the jury might not have their smart phones in the courtroom, they will surely substitute daydreaming or "zoning out" for looking at social media.

This is where a striking comparison can be made between Shakespeare and the courtroom.



I'm a firm believer that audiences will not listen to Shakespeare unless the actor makes them. When actors stomp around the stage shouting out lines incomprehensibly and wearing dodgy costumes, the audience cannot follow along and inevitably loses interest and becomes bored.

In the same way, juries, despite having taken an oath and being a captive audience, may not be so apt to give lawyers their full attention unless the lawyer makes them.

As shocking as this might sound, information overload is a by-product of the twenty-first century and is growing at an unprecedented rate. Therefore, it is better to accept this as mainstream and adapt to it rather than indulge ourselves in the fantasy that it is nothing more than a fad that will pass quickly.

Now put yourself in the shoes of the jury. They have been herded like cattle into an unfamiliar and intimidating place called the "courtroom," a Roman coliseum of sorts, stripped of their smart phones and any other connection to the outside world, and squeezed into a small rectangular box where they are forced to sit elbow to elbow with perfect strangers. Not such a warm and cozy feeling to say the least. Think subway car in NYC at rush hour!



Before going any further, I want to clear up a misconception. One interpretation of "story" suggests something that is made up, untrue, or designed to fool those listening to it.

As used here, "story" suggests oral delivery that is compelling, that holds the audience spell-bound, that will be remembered, and that will shape the jury's impression of the evidence they are about to hear.

For me, the power of storytelling came when I was backpacking around Europe and the Middle East. I ended up in Marrakesh in medina, a densely packed, walled medieval city dating to the Berber Empire, with maze-like alleys where thriving souks (marketplaces) sold traditional textiles, pottery and jewelry. It had a mythological feel to it. At nighttime, it was full of snake charmers.

As I was walking around, I saw an old man leaning on a cane with a beard telling a story. A huge crowd had formed around him. He was speaking in Arabic and although I didn't understand a word, I was completely mesmerized.



Before long I said to myself, "This is what I want to do. I want to be like him. I want to tell stories because that shriveled-up old man on a cane has transformed himself into a twenty-foot beast that is holding everyone spellbound, hanging on every word he says. He is larger than life."

Of course, this invited more questions than answers, none more apparent than, “How did he do it?” My journey into acting and storytelling, not to mention the countless cases that I have tried, have given me some profound insight into this. At the same time, I am not presumptuous enough to believe that I have mastered this craft. In fact, I feel like I have barely scratched the surface.



- As with anything else in life, the more you learn, the more you learn how much you don’t know. I prefer to be like a sponge, absorbing everything I can.
- Jazz great Winton Marsalis said it best, “Humility engenders learning because it beats back the arrogance that puts blinders on. It leaves you open for truths to reveal themselves.”

Beginning in the simplest place, story is the most powerful tool of persuasion. As humans, we trust people who can tell a good story.



Since the dawn of time, storytelling has been the principal means by which our ancestors have taught one another. Look no further than the story of great hunts and epoch battles told in darkness around campfires by Indian chiefs that were passed down from generation to generation and became the history of the tribe.

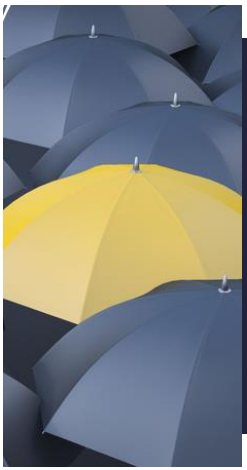
Why? We go to the theater not to witness a paradigm of perfection in the form of a robot solving complex mathematical equations in nanoseconds, but instead to witness something near and dear to our hearts – our own humanity reflected back to us in the form of a struggle or obstacle that the protagonist 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.

Rule Number 1: Be a Storyteller first!

Kramer: The Van Buren Boys





If we examine stories from all cultures, we'll find that the most memorable ones all have one thing in common — they embody one or more of the six emotions: love, hate, joy, sadness, power, and fear. These universal truths are the very essence of what it means to be human.

Storytelling contains the essential ingredients for arousing empathy. It permits the speaker to speak easily, openly, and powerfully from the heart. Social research proves that audiences are moved by a story because it touches them in those soft, unprotected places where their decisions are always made. An attorney who projects a true belief in the righteousness of the cause shows how deeply he cares about his client. And this is not lost on the jury.



On a primitive level, storytelling changes your audience's brains. Recently, scientists discovered that listening to stories releases two chemicals that help control the brain's reward and pleasure centers

1)

dopamine (which aids in information processing) and

2)

oxytocin (which builds trust).

This is further proof that art gets there before science!

The other thing I want to say here might be a little controversial.

As difficult as this might be to accept, the first impression that a jury often 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.

Absent a story, jurors are apt to view our clients based on nothing more than the crime itself – i.e., on the "bare fact" that he has killed or raped.



The danger that this poses is obvious. One who commits a heinous crime is hard to care about. Stated simply, it is too easy to point and to accuse and to hate on the bare facts because it relieves the jury of the responsibility of understanding.



After trying some serious cases, I got to thinking a lot about this 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?

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.



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, but their backstories are often filled with more tragedy than the average person's. 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.

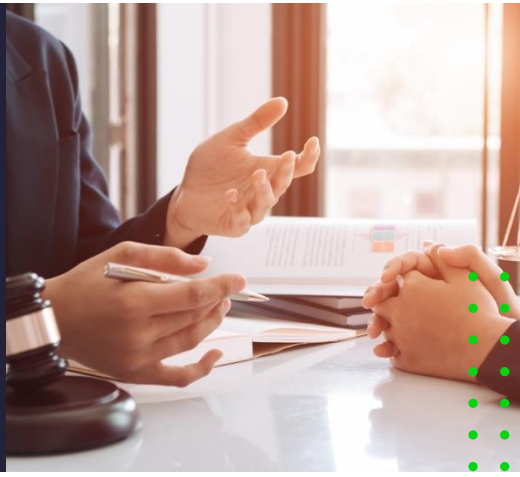
At their core, villains are broken. And so too are many of our clients. Just as humanizing the villain only heightens the tragedy or the drama (look no further than Joaquin Phoenix's portrayal of "Joker"), humanizing our client arouses empathy on the part of the jury.



There is always another side to the state's story.

The other side is the world we do not see: a world that is personal, perhaps one that is as secret as the "Forbidden Forest." The latter is the world that our clients inhabit. It is that part of the iceberg that remains hidden underneath the water, despite dwarfing the apex one hundred times over.

Just as today's fan base of Marvel comics have come to expect the villain to be "complicated" and just as they have an insatiable desire to learn more about them, so too does a jury want to learn more about our clients.



And we should deliver by giving them a glimpse into that "other" world in which our client lives. "Growing up on the streets of Newark, when John heard a loud pop, he knew that it was more than likely a gun being fired than a muffler backfiring."



PROFOUND 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

In my opinion, storytelling in the courtroom is no longer an option for lawyers. If we don't use it, then the jury will.

Think about it. No sooner is the jury sworn in then they are bombarded by a torrent of evidence that comes in bit by bit through oral testimony and physical exhibits — often out of order — and disrupted by continuous objections, sidebars, and removal of the jury from the courtroom so that technical legal arguments can be made and ruled upon without unduly prejudicing the jury against one side or another.

To make matters worse, the opposing side is advancing a completely different version of the story. The jury is left with the unenviable task of sorting through this mess and somehow making sense out of it all.

And how do they do this while preserving their sanity? They begin to imagine a story almost immediately, interpreting facts to fit into a familiar framework. In other words, a jury instinctively begins imagining a story out of necessity. When this happens, it will be difficult for the jury to see these same facts through a competing account of what happened.

As trial lawyers, we must seize upon this narrative instinct that jurors have by telling them a story from the very start. This requires us to understand the jury as human beings and not as robots.

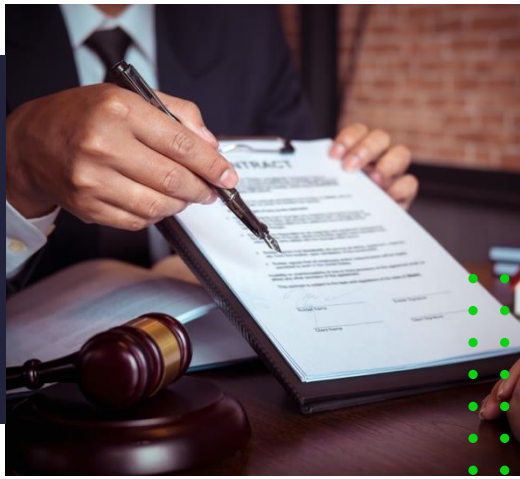
Let's begin with a simple truth: jurors are not blank canvasses upon which we can paint. Nor are they sticks of clay that can be molded into whatever shape we desire.

Jurors arrive at the courtroom with their own experiences, "handed down frames of reference," and biases. No matter how many times the judge instructs them to view the evidence objectively and dispassionately, jurors routinely measure the validity of what they hear against their belief systems, attitudes, life experiences, backgrounds, values, education, and training. A story is not believed unless it is complete, internally consistent, and conforms to the jurors' notions of common sense.

What does this mean for the lawyer? First, we must not overlook the importance of being understood when it comes to delivering our message to the jury. By "understood," I'm not just referring to the content of the message itself but also to its audibility. Indeed, if the jurors have to strain in order to listen, surely something will be missed.

I like to use the metaphor of an adult preparing to cross a busy intersection with a four year-old toddler. If the adult walks too fast through the cross-walk, the child might fall, stumble, or be dragged. In the same way, if the lawyer speaks too fast or doesn't organize his thoughts well enough, then the jury will be stumbling along behind him trying to catch up.

It won't take long before they become lost. It is for this reason, that I encourage attorneys to be less stingy about using the pause.



The beauty of the pause is that it not only allows the lawyer to catch a breath and to gather his thoughts, but it also gives the jury some time to catch up themselves. Remember that the jury hasn't been living with the case as long as you have. They don't know it inside out and backwards like you do.

They will always be trailing behind you, but how far will always be dependent upon you.

Second, we must be able to address disparate jurors and tell a story that will impart a single perspective to the entire jury, a narrative framework for them to view the evidence.

The possibilities are endless. If your story rings true to the jurors and influences their frames of reference, they will interpret the evidence to fit your case.

When this happens, it will be difficult for the jury to see these same facts through a competing account of what happened. Witnesses will be viewed in the context of how they provide validation of your story. And witnesses who contradict your story will be viewed with a healthy dose of skepticism.

As trial lawyers, we must change our way of thinking by learning to accept what we once rejected and to take up what we once set aside — the human drama: how the experience was lived and felt by the people involved.

The attorney who can leave the jury thinking, "I may not have done what Bill did, but I can understand why he did it" is a mere heartbeat away from victory.

Example from Childhood Story

Once upon a time, in a city called New Orleans, there was a boy who lived and breathed and dreamt music. He loved the sound of the trumpet, but he could not afford a trumpet. This is the story of Luis Armstrong, a poor boy who could not afford a trumpet, who became the greatest trumpeter of all time.



For those who don't think they are good storytellers, consider this ...

- How many times when you were telling your friends the "story" of how you met your significant other did they cut you off and walk away?

- How many times when you were reliving the events of the "big game" from the night before did your friends' heads begin bobbing and weaving and their eyes glaze over?

Here's something to ponder. When talking to your friends about the "big game" and seeing them "lean in" a little more, were you using phrases such as, "There's simply no way to describe it. You had to be there to see it ...?"

No! Just like Shakespeare, you said, "You know what? I'll take you there!"

How? Through imagery, through metaphor, through simile, through consonants, through assonance, through alliteration, through onomatopoeia, through personification.

It's as if you're saying, "I'll actually create those pictures in your mind because I know your mind has that capability."

As humans, we are visually-oriented beings with thoughts entering and exiting our mind every second as images much like the trailer to an action movie.



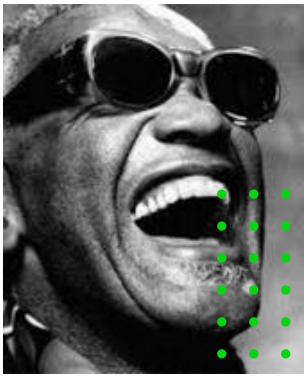
It is for this reason that when it comes to storytelling in the courtroom, I love the quote, “Make the jury hear things that they can’t unsee.”

This emphasizes the indelible impression that a jury is left with when the attorney makes use of imagery in storytelling.



The Emergence of You





I approach storytelling from the perspective that it is an art. Indeed, all storytellers are artists and in some way, reveal themselves in their work. I like to refer to this as "the emergence of you." For example,

- Ray Charles is present in his music.
- Picasso is present in his paintings.
- Ernest Hemingway is present in his writings.

To understand this concept, I turn to the world of acting. It's a fallacy to think that an actor becomes the character. After all, the actor is the character. An actor brings all parts of himself to the role.

As Marlon Brando once said, "You bring part of yourself to every character. But some parts are closer to us than others." This is what the famous director, Elia Kazan meant by finding the character inside of yourself.

Stored within each of us is the history of everything we have ever said, done, thought and felt and every emotional connection we have ever made with those we have known. Our hope, fear, anger, regret, joy, sadness, shame, is there to be triggered. And to unleash that reservoir of experience is to unleash a force of nature.

Marlon Brando epitomized what it means for an actor to bring his past history to his work. He had a life-long tug-of-war with authority figures. It dated back to his feelings towards his father which were fueled with anger and ambivalence. This inner struggle surfaced in virtually every role that he played.

Similarly, his feelings of vulnerability dated back to his childhood affection for his nanny who he loved dearly. That vulnerability also surfaced in his many roles.

The emergence of you does not happen overnight. It is a gradual process which takes time and patience. Every so often, you get a rare glimpse of a side of you that you didn't know was there. And when you do, you surprise yourself.

When I auditioned for my first role, I had to memorize a lengthy monologue.

While reciting it, I forgot one of the lines and turned beet-red with frustration while letting out a few grunts in exasperation. In that moment, the line came to me and just like I had been decorated with a gold medal at the Olympics, reacted with child-like excitement and astonishment.

Afterwards, I was expecting the casting director to berate me for forgetting the line. To my surprise, she said, "Do you know what the best part of that monologue was?" I said, "What?" She said, "When you forgot your line and you had to struggle to recall the words and erupted into laughter when it spilled out. There was something distinctly human in that moment when you blushed, got tongue-tied, and then celebrated in triumph; as if a long-hidden part of you had finally been revealed. That was when we got to see the real you emerge."

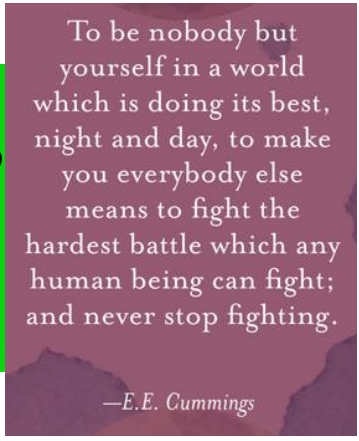


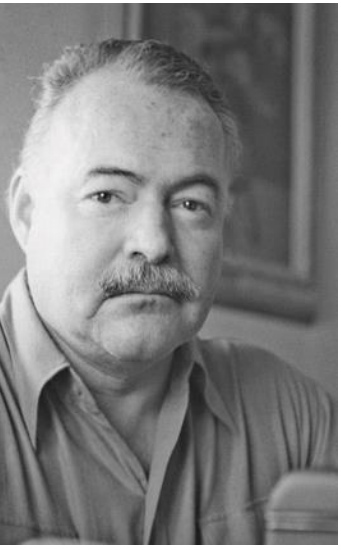


From this, I learned an invaluable lesson. Give yourself permission to let go and be free and to lose the inhibitions that bind you. When you do, a much richer version of you emerges.

For me, this meant finding the child inside of me at play and alive in every moment, just like actors Robert Loggia and Tom Hanks in the iconic piano scene in "Big" playing the piano-duet classic, "Heart and Soul" on a giant-sized keyboard with ivories that lit up. Watching them let their hair down and be in a state of play was utterly invigorating.

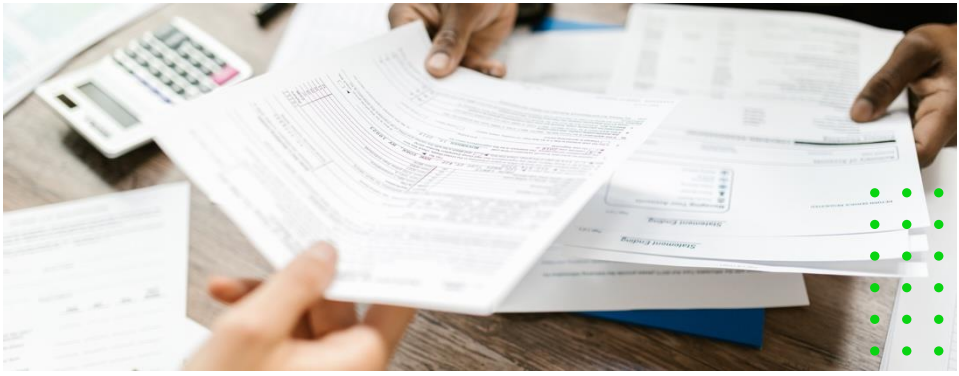
To me, no one captures the struggle to be yourself better than the great E.E. Cummings in this beautiful quote.





As the great Ernest Hemingway once said, "the truth has a certain ring to it." Acting is about finding that truth. And advocacy is no different. Great lawyers are not afraid to be who they are, whatever that is. And when a lawyer brings the essence of who he is to the courtroom, the jury thinks, "Wow! That lawyer is real!"

How to Find the Artist Inside of You



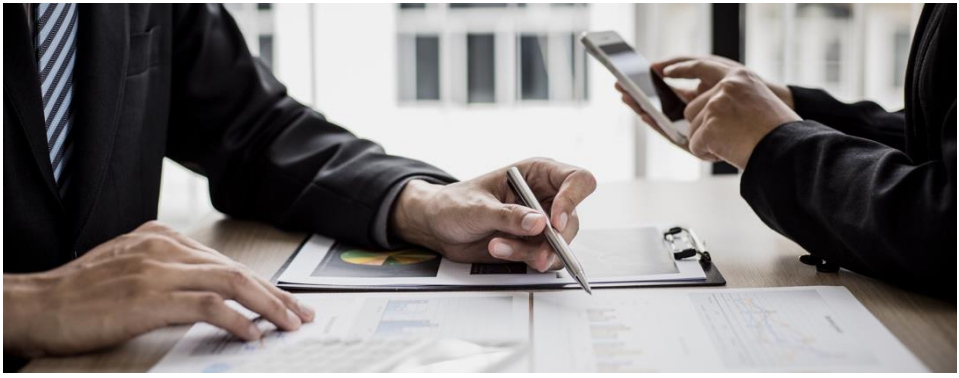
Good stories are not remembered for the tales they tell of struggling characters who discover unknown or hidden talents during an epoch journey and use them to triumph over adversity.

Good stories are remembered for how they are told. I've walked out of enough second-hand performances of Tennessee Williams' plays feeling empty to know the difference. This is why I am obsessed with helping my fellow trial lawyers find their inner truth so that they can bring all of who they are to their work.

How do you find what is unique and different about you – that which separates you from every other person in the world? This question is as deeply profound as, "What is the meaning of life?" After all, the only thing you have to offer this world is you — your individual stories, your individual perception, and your individual humanity.

While imitation may be the sincerest form of flattery, I think that we can all agree that it is the very antithesis of being original. For example, if you want to be a singer, there's no point trying to sing like Elvis Presley. His songs already exist and are well-preserved in the Rock & Roll Hall of Fame. Why listen to a second-rate imitation?

There is a story about discovering what's unique about yourself that goes back as far as to the nineteenth century. A young French man in his twenties was studying in Rouen, France under the tutelage of the great French poet, Gustave Flaubert, author of the timeless masterpiece, "Madame Bovary."



The young man asked Mr. Flaubert how he could unlock his unique personality. Flaubert thought about it for a moment and replied:

> "Go out to your garden and find a rock. Take the rock inside your house and set it on your desk. Every day, before you begin to write, pick up that rock and look at it for a minute or two. Do you know what will happen? One day you will see something in that rock which no other human being on this earth has ever seen before. And that will be your originality."

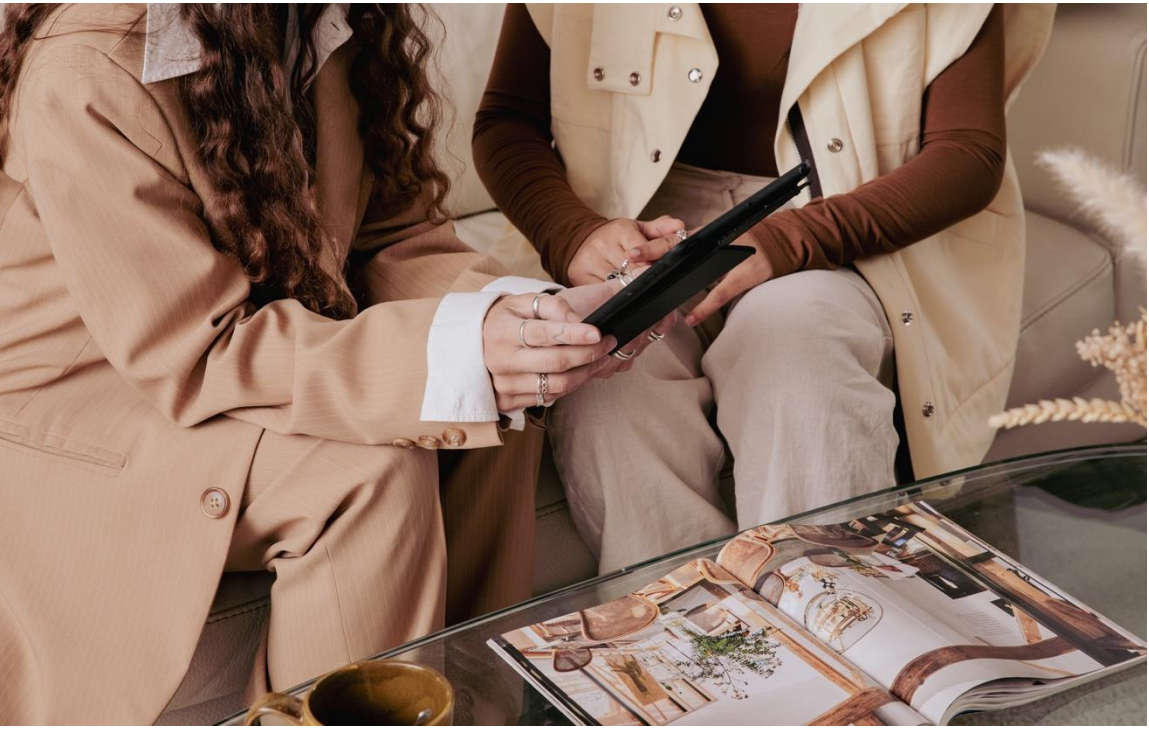
And from Flaubert, the young man learned the importance of individuality, of originality, of that personal note that should be yours and yours alone. Flaubert was kind and encouraging but he was a taskmaster. At Flaubert's direction, the man gave up verse for prose, and for seven years wrote incessantly and published nothing.

The stories and tales and verses and dramas of those seven years of apprenticeship were intensely scrutinized by Flaubert, and then they were destroyed unprinted.



This man was Guy de Maupassant, whose short stories are only second to Shakespeare in their inspiration of movie adaptations ranging from Stagecoach, Citizen Kane, Oyuki the Virgin, and Masculine Feminine.

Through acting, I've learned that if you want to find the truth in your work, you must first find it in yourself. Your ability to see yourself realistically plays a large part in your personal and professional growth. By assessing your abilities realistically and preventing your ego from running amok, you open the door to grow and learn.



Unleash the Beast: Openly Revealing Your Feelings

- “When you bait the hook with your heart, the fish always bite.” — John Burroughs
- “I wish I had the courage to express my feelings” is number three on the list of the “Top Five Regrets of the Dying” by Bronnie Ware.



Opening Revealing Your Feelings

Why is this an important topic for lawyers?
The impact that vulnerability has on a jury cannot be overstated.

As the legendary trial lawyer, Gerry Spence, once said:
"The most powerful person in the courtroom is the vulnerable person, the lawyer who is aware of his feelings and can share them honestly with the jurors."



Why do we suppress our feelings? According to Ms. Ware,
"Many people suppress their feelings in order to keep peace with others. As a result, they settle for a mediocre existence and never become who they are truly capable of becoming. Many develop illnesses relating to the bitterness and resentment they carry as a result."

Feelings versus Emotions

People often use *emotions* and *feelings* interchangeably, but they're not exactly the same thing. Here's the distinction most psychologists make:

1. Emotions

- Automatic, fast, biological responses to stimuli. Think "energy in motion."
- Trigger changes in the body (heart rate, breathing, hormones, facial expressions).
- Universal and rooted in evolution (e.g., fear, anger, joy, sadness, surprise, disgust).
- Happen before we consciously process what's going on.
- Example: You hear a loud bang, and your body instantly jumps into a fear response.
- In short, emotions are a raw, biological reaction.

2. Feelings

- The conscious experience of emotions — how you *interpret* and *label* them.
- Shaped by your thoughts, memories, personality, and cultural background.
- More subjective and nuanced (e.g., instead of just "fear," you might feel "uneasy," "anxious," or "paranoid").
- Arise after the brain processes the emotion.
- Example: After the bang, you think, "I feel anxious because it might have been a gunshot."
- A personal, conscious interpretation of that reaction.

Emotions from a Psychological Perspective

Let's discuss emotions from a psychological perspective. Emotions are the signposts to our needs. Very simply, we do not get angry when we're getting what we want.

For example, let's say that you are at a restaurant and the waiter brings out this exotic dish that you ordered. You wouldn't get angry because he had given it to you.

But you would get angry if he had dropped it in your lap, or if it hadn't been cooked properly. In other words, you would get angry, frustrated, or disappointed if it wasn't meeting your expectations.

While emotions are in one way a reflection of something deeper, they're not the depth of what you are really experiencing. Instead, they are the means to the thing that you're experiencing. In this way, we can learn to use our emotions to better understand ourselves and our needs. That is what reveals a specific human being and not a one-dimensional paper cutout.

After all, we all experience emotions. And we all know people in our lives that lean towards being melodramatic. They can become as emotional as they like, but it is utterly meaningless.

Let's face it. Emotion presents a myriad of challenges. First, we live in a culture that dictates rules and customs when it comes to emotion. These are called, "display rules." Fathers tell their sons, "Big boys don't cry." We've been socialized into believing that crying is the equivalent of weakness. When tears are shed, manhood is lost.



For example, when we were young and stubbed our toe on the sidewalk while walking around in flip-flops, we'd yell, scream, cry and let out a few choice words. Fast forward just a few years and that same experience results in a stoic expression characterized by slight wincing and grimacing, but otherwise no other outward expression of the excruciating pain. In doing so, you've suppressed this primary impulse.

Mothers tell their daughters to, "Smile and be polite." Girls are taught to be "well-mannered" and to conform to the old-fashioned rules of etiquette that were symbolic of the times in which the four March sisters grew up in nineteenth century New England in "Little Women." To say that society shuns the outward expression of emotion is a gross understatement.



Second, emotional vulnerability is inherently risky. It requires dropping your guard, stepping outside of your comfort zone, and increasing your tolerance for things that are uncomfortable. I like to call this, "Getting comfortable being uncomfortable." In theater, it is called "public solitude" or the ability to be as private in public as you are in private.

It takes enormous bravery to overcome the shame, embarrassment, and discomfort that often accompany the peeling away of that iron-clad armor that we erect to protect our fragile egos. It is far safer to be nestled up inside there and for good reason: it is a necessary element of survival in this "dog eat dog" world.

Third, because we are so far removed from our emotions in twenty-first century culture, when we need to get back in touch with them by being more sensitive to the needs of others, by being more understanding, or by being more comforting, they may not be as easily accessible to us as they once were.

One may even resort to "playing the emotion" in order to achieve an emotional result.



The danger in this is that it inevitably leads to pushing, emoting, and faking emotion, all of which are the product of not trusting your truthful response. There is nothing worse than watching an actor try to squeeze a tear out in casualty or to see somebody fake laughing. Regrettably, this has happened to me more times than I care to admit.

From experience, however, I've learned that emotions don't work that way. Why? Because our brains don't work like that. As previously discussed, your right brain is the creative side – the emotional side. Your left brain is your logical side. On that side, we give commands in both the verbal and written form and it understands. The right brain, however, doesn't.

How does the right brain work? Through images and through the senses. So if you've arrived at a point in your closing argument where you are commanding your brain to "Get really angry" or "Get really emotional," don't be surprised if it doesn't happen on cue. Why? Because we don't experience life like that.

Instead, we experience life through the five senses. And that is what appeals to the right brain. Therefore, in order to recreate these emotional elements, we must re-engage with the five senses.

For these reasons, a cardinal rule of acting is never to force or push an emotion to the surface. They must be gently caressed, not bludgeoned, so that they arrive organically.

Emotion means different things to different people. All too often, the word "emotion" conjures up a disturbing image of an actor straight out of an episode of "Law & Order" curled up in

the fetal position on the bathroom floor with syringes and needles strewn about trembling and weeping uncontrollably.

The degree to which any two people experience the same emotion varies significantly due to the fact that no two of us are alike. To me, emotions are like shades of a color with varying intensities. Just as the color red can be "crimson," "cherry," "rose," "ruby," "apple," "scarlet," or "merlot," sadness doesn't necessarily result in tears. Sadness can be manifested in a multitude of ways from feelings of emptiness and hopelessness to feelings of worthlessness, guilt, and grief.

For this reason, when I speak of emotional vulnerability, I'm not suggesting that "bigger is better." In fact, that is the exact opposite of what I am referring to.

Needless gesturing and over-the-top shouting does not make what you are doing more meaningful. Instead, it is distracting and it obscures the truth of the moment.

Contrary to popular belief, you can do as little as you like so long as you are emotionally full. I guess you could say that I come from the school of "less is more." The great actress Claire Foy epitomizes this. She could say as much with a raised eyebrow as a page of dialogue. A good lawyer, like a good actor, must learn how to work simply and truthfully.



A sweeping example of “less is more” comes from an unlikely source, the Weather Channel. A broadcaster was talking about the Tornado that hit his family’s home. His grandmother was killed. He found his dog, Riley’s lifeless body hanging off the branch of an oak tree. He climbed up the tree to pull Riley down.

The broadcaster’s words have stayed with me to this day:

> “You know, my grandmother she didn’t make it. She was hit by some debris and didn’t make it. I found my dog, Riley up in the tree. I pulled him down and buried him under the tree. He wasn’t but a puppy.”

> “I found my guitar. My guitar was in perfect shape. Not a string broken. I tell you I’d give up that guitar if I could have my grandmother and my dog back.”



Throughout this, he did not shed a tear. He kept a stiff upper lip despite being choked up and carrying the weight of this trauma on his shoulders. As a reporter, he valued his dignity. This was part of his narrative. He didn’t want to cry.

This story captured the human narrative in all its complexity with such eloquence. Human nature is such that most people will go out of their way not to cry in order to preserve every ounce of their dignity. This is what makes a person who is choked up and fighting back tears incredibly heart wrenching and compelling to watch.

The trap that most actors auditioning for the part of the weatherman might fall into is going straight to the emotion without thinking through the part clearly. Weeping, wailing, and groaning, these actors might utter:

"Heavens to Betsy. I've got to tell you. My grannie, my grannie … she's gone, gone, gone!" The actor might just as well have said, "Look audience, see how sad I am." In doing so, the actor would be playing out a general idea of what he thinks the circumstances call for ending up with no variation.

But human nature is more complicated than that. In the human narrative, we have a million changes that are impossible to track and trace. For example, if a close family member dies and you're at their wake, you probably won't spend the entire time weeping and sobbing uncontrollably by the casket.

A smile might come to your face when you hear someone tell a funny story about this person.

And in another moment, you may feel comforted by the tender embrace of an aunt who walks up to you, grabs your hand, and squeezes it.





Herein lies an important lesson. When it comes right down to it, there is a certain ebb and flow when it comes to emotion. Emotion is never linear. It resembles that of a heart monitor.

Thinking through the role clearly allows an actor to be appropriately emotional at the right time. And this can be incredibly important to us when we are telling our client's story to the jury.

In the weatherman example, thinking clearly through the role means slowing down and examining each aspect of the story in minute detail.

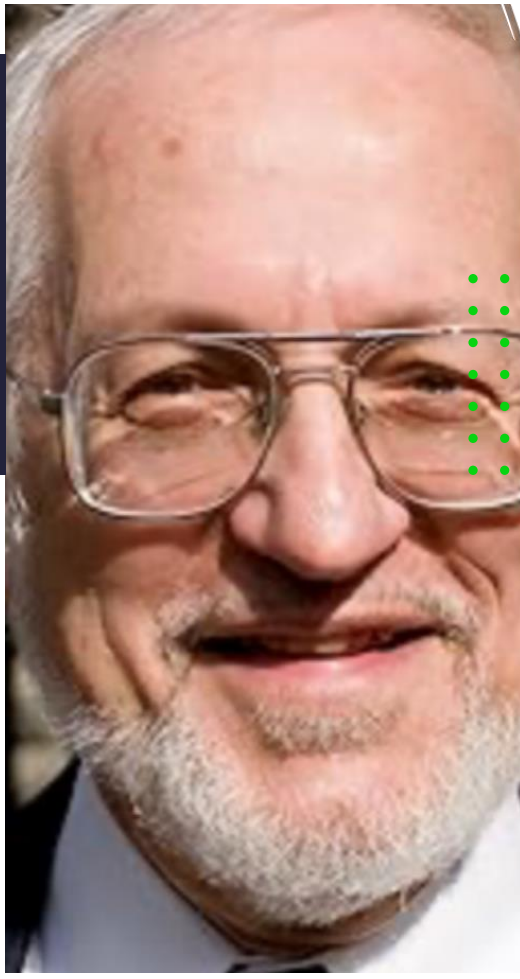
If you're playing the role of the weatherman, you might begin by talking about grandma and how much she means to you. Then move on to Riley and how he is your faithful companion. Then talk about the guitar.

Along the way, you'd discuss your feelings for each person/animal and your unceasing love for grandma and for Riley. And then you would reveal the tragedy that happened as if it was unfolding in real time using words that paint vivid images in the minds of the audience. The resulting monologue would contain the appropriate emotional appeal.



For me, I view this as a positive story of redemption. As a viewer of the weather channel, I felt heartened; as if the weatherman had yelled into the string bed of a baby grand piano and the music was echoing back. His voice triggered certain vibrations of certain strings. His narrative created sympathetic vibrations in me.

At the same time, I want to be clear that less is more is not an invitation to succumb to the stagnant force of general apathy. Apathy, or lack of emotion, is essentially the feeling of not feeling.



Daniel Migliore describes it in terms that are sure to resonate with lawyers, "Apathy is the absence of outrage against injustice. It is the erosion of ability to commit oneself to important causes, to care deeply about other people, and to take risks in the struggle against every form of human bondage."

Apathy has no place in the courtroom. It's like saying to the jury, "I want you to do what I can't do myself — care for John."

If you cannot connect to your own feelings of rejection, anger, betrayal, isolation, and abandonment, then how can you get the jury to feel how trapped, helpless, and afraid a battered-woman defendant felt in the moments leading up to pulling the trigger on the man that had imprisoned her and treated her like a caged animal for the last decade of her life? How her constant cries fell on deaf ears and made her sink into despair and hopelessness until she reached her tipping point, or the point of no return.

Notwithstanding all of this, there will inevitably be times when we feel emotionally empty. After all, we are only human.



The great acting instructor, Sanford Meisner had some sage advice to offer his students on this topic. If the emotion is not there, Mr. Meisner told his students to do what they were doing simply and truthfully. The rationale behind this is that when you are truthful, you don't have to make more out of something than it is. The truth transcends all of the emoting in the world.



But when the emotion comes, Meisner told his students to ride it like a wave.

I can think of no better example of this than Lee J. Cobb who played Juror # 3 in "Twelve Angry Men." He is filled with rage and it oozes from every pore. His anger is real. It is connected to an element of truth.

Whenever I feel empty and devoid of feeling, I take comfort in the fact that everyone, myself included, was born with a complete set of feelings. Instinctively, we knew how to cry when we were hurt, to shout when we were angry, to run when we were afraid, and to jump with joy when we were excited. The challenge is to rediscover these feelings and to be brave enough to express them openly and freely.

Here are two basic ways of injecting emotion into your storytelling in the courtroom:

Internal monologue. This form removes the "showing" of the emotion by speaking the thoughts that were occupying your client's mind at a relevant point in the story. A person's private thoughts are as intimate as it gets. For example, "'Why did I wear this tired old suit,' he asked himself. I can't believe that I had the gall to wear it." The jury instantly knows that John was worried about his appearance.

This next one is the most powerful one and not surprisingly, the hardest one to execute. It is the ability to describe where the client felt the emotion in their body. We always have a physical response to our emotions. The reason why this is so powerful is because if you describe physically what was happening to the client, then the motor neurons inside the minds of the jury will make them feel the same emotion too.

For example, if you said, "I walked into the meeting and my stomach was tied up in knots," the audience, even if just for a fleeting second, will feel the sensation of their stomachs shriveling up into a tight knot. And that will put them right inside the story.

For more examples, see the section entitled, "We have Five Senses, Not One."



Your Own Story



Building on these concepts, I'm a firm believer that before you can tell another person's story, including that of your client's, you need to be able to tell your own.

Indeed, in this fast-paced digital world, we need to slow things down and re-connect to our own humanity before we can truly empathize with the plight of our clients and make their stories come to life before a jury. Actor training can do just that.

As my instructor says, "Unless the performing artist can engage the narrative of his own instrument and his own drama, how can he tell another person's story?"



Director Giovanni Fusetti expresses it like this: "The storyteller, as poet, player, as a creator, is a shapeshifter, as well as a stateshifter, journeying in the footsteps of ancestral shamans and working every day to refine and develop her perception of reality, and to train his expressive skills. For this purpose, multiple pedagogical tools are creatively integrated within a unique 'alchemical pot.'"

"In the journey of the discovery of the world, the artist encounters herself in a new state of self-awareness and transforms his inner world into a conscious instrument for poetry. She needs to face her own powers and her own wounds, often merged in a mysterious alchemy of awareness."



"The pedagogic purpose is not only to train theater artists, but to accompany them towards a wider state of consciousness, and further levels of awareness, in order to work consciously with personal powers: emotions, life experiences, visions, dreams, wounds and desires. In the journey through theater genres the storyteller discovers how each genre appeals to different dynamics of the individual and of society, and therefore has unique and peculiar powers and potentials."



American theater director, Joseph Chaikin made a similar observation about performing artists: "An actor's tool is himself, but this use of himself is informed by all the things which inform his mind and body – his observations, his struggles, his nightmares, his prison, his patterns- himself as a citizen of his times and his society."

So if you have a story to tell, tell it. Tell it with all the truth you can muster. Don't search for the right words. Follow your characters. Find your voice and do it because those characters in your head need to be liberated from the boundaries of your mind. You have the key. Open the door and let them out!

What storytelling isn’t

Storytelling is not a one-sided assault on the audience or jury. It is a shared experience. By shared experience, I mean a conversation between the lawyer and the jury. The lawyer is constantly checking in with the jury and reacts to their non-verbal communication (i.e., nod of the head, icy stare, piercing eyes, soft gaze) just as if he was in a conversation with a friend. In this way, he is a sensitized responder.



Tips for Building Credibility with the Jury



- Be interesting, not clever;
- Never lie;
- Don't hide;
- Always be transparent.

In acting, we practice radical honesty with ourselves. The idea being that the more honest that we can be with ourselves, the more honest that we can be with others, from our scene partner to the audience. This could not be any more true than in the courtroom when we are standing before the jury. It is for this reason that I find this practice to be essential for trial attorneys.

- Integrity is why many lawyers will concede at the outset whatever is true even if it is detrimental to their case
- Why? As Gerry Spence says, "A concession coming from your mouth is not nearly as damaging as an exposure coming from your opponent's."

Lesson Learned from “8 Mile”



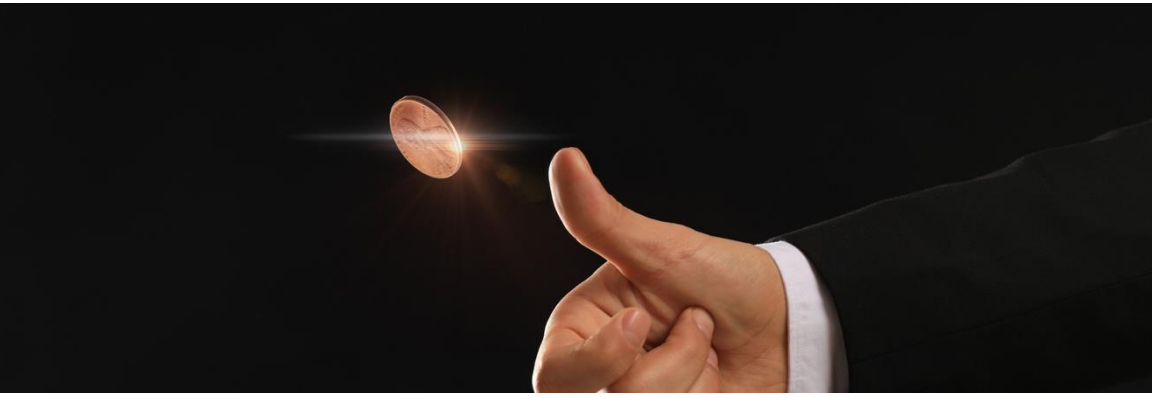
Of all the movies about white freestyle rappers who overcame enormous adversity in order to win a rap battle, one of the most epoch is 2002’s “Eight Mile,” a pseudo-biography of Eminem’s youth growing up on the streets of Detroit.

Eminem, playing the protagonist (“B-Rabbit”), valiantly defeated Papa Doc by a show of hands in the film’s final rap battle sequence. This final rap battle in “Eight Mile” is the climatic point of the film.

In fact, it received such widespread acclaim as to be compared by American film critic and journalist, Peter Travers to the fight between Rocky Balboa and Apollo Creed in “Rocky.”



Papa Doc won the coin toss and allowed B-Rabbit to go first. Aware that Doc had a lot of potential material about him, B-Rabbit adopted the "stealing thunder" technique, revealing the negative facts/information about himself before it was ever mentioned by his opponent. While B-Rabbit embraced his own past, he outed Doc's as well, revealing that not everything is how it seems.



This "Stealing thunder" technique can also be applied in the courtroom. Acknowledging the weak points in your case from the very outset and dealing with them "head on" during closing argument has the effect of neutralizing them or turning them into a positive theme that provides a solid underpinning for the theory of your case. Not only does it disarm your adversary, but it simultaneously forces him into a defensive position of having to rebut what might otherwise be a logical explanation for those shortcomings, thereby forcing him onto your turf.

Eye-popping Statistic

Studies show that the verdict in a trial is the same as the tentative conclusion held at the end of opening statement 75% of the time!







Principals of Primacy

Psychologists suggest two reasons:

- Opening statement comes at the beginning of the case taking advantage of the psychological principal of primacy.



- A tentative conclusion is reached by the juror after the opening statement and evidence presented afterwards is judged in light of its proving or disproving the tentative conclusion. The opening statement predisposes or taints the juror to one side or the other.

Primacy

Actors have known this since the emergence of the Greek theater in ancient Athens back in the 6th Century BCE -- nearly 2,600 years ago. It is for this reason that Judi Dench, one of the greatest classical actors of all-time says, “Start your scene with energy and purpose! Before entering, know what you want, how to potentially get it, and what to do when you get it.”



Opening Statement – Not off the “Cuff”

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.



Notwithstanding the sheer force of opening statements, it is the most neglected phase of the trial and often consists of legalistic phrases like “the evidence will show” followed by a fact.

But this is precisely where the principles of storytelling must dominate.





Principles of Opening Statement

Opening statement must set the stage for the rest of the trial and be carefully coordinated with the closing argument.

Purpose of Opening

Twofold

1)

To “strike oil” – to hit the emotional core of your case and transform it into a powerful story that will motivate your jurors to action.



2)

To give the jury a preview that will allow them to understand the significance of the evidence and to put it into perspective as it is admitted. The statement should be of the facts and reasonable inferences taken from the facts.



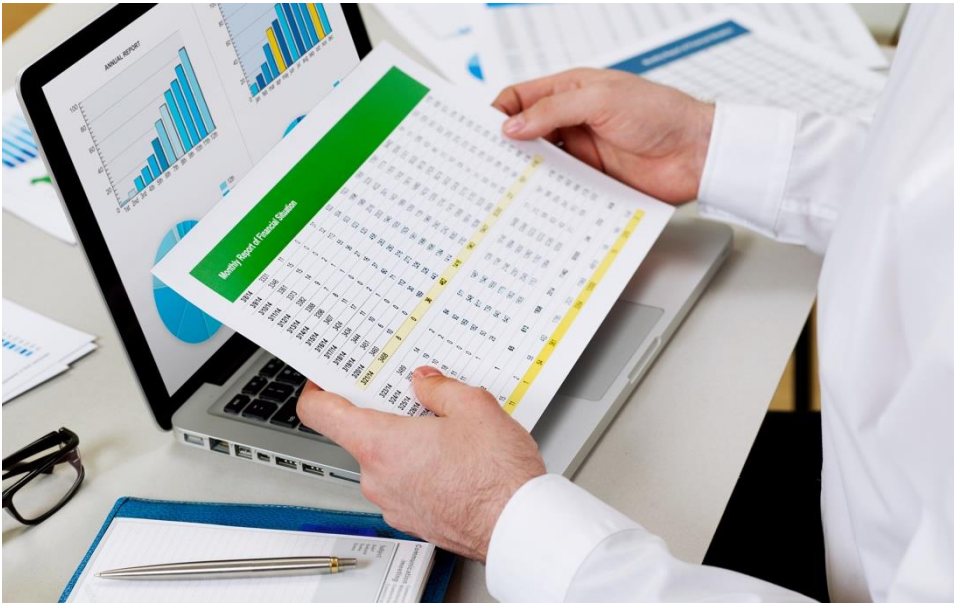
The Law of Opening



Any evidence, the admissibility of which is questionable, should not be included in opening unless it has been cleared with the court prior to opening.

Opening statement must not be argumentative.

This is the most often sustained objection to opening statements.



Opening Statement – Be true to You!

In “Dead Poets Society,” the great Robin Williams who played John Keaton said, “Boys, you must strive to find your own voice. Because the longer you wait to begin, the less likely you are to find it at all.”



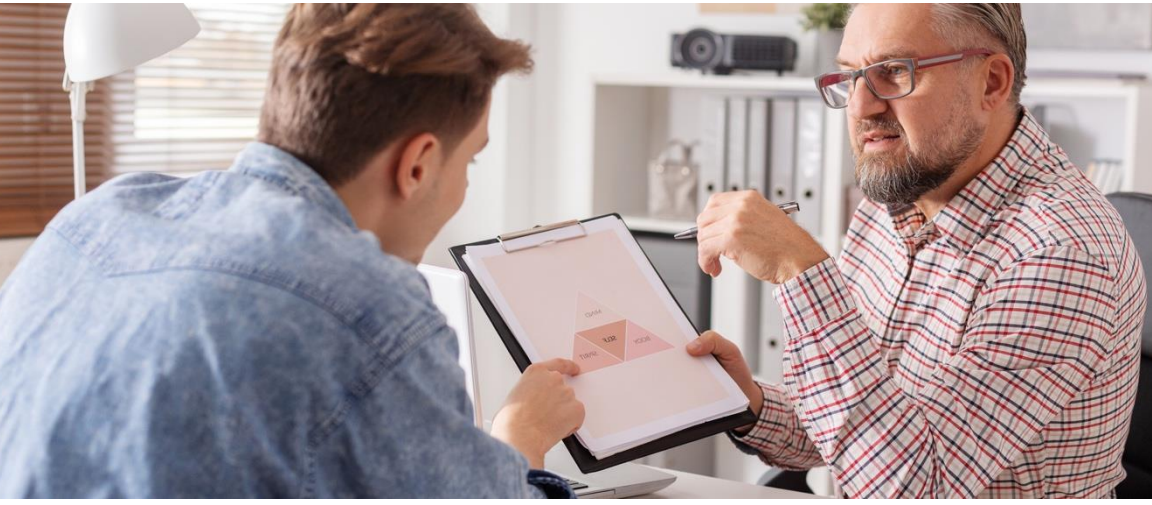


The techniques presented here are designed to help you find your voice for opening statements. These are the techniques used by great wordsmiths — the poets, songwriters, storytellers, and orators whose voices and words resonate with truth.

There is no right way of making an opening statement. There are as many different styles of making opening statements as there are lawyers who make them. It's about finding what works for you.



Duke Ellington, my favorite jazz musician said, "It don't mean a thing if it ain't got that swing." The "swing" Duke Ellington talks about is embracing yourself and bringing all that makes you "you" to your work.



Opening Statement – Guiding Principles

Regardless of your style, great opening statements have certain things in common.



Storytelling as the Optimal “Device” for Opening

Opening statements tell a story. Story is the device for organizing, understanding, and retaining the facts and position set forth in the opening statement.

- Regardless of your style, your story must be clear, well-organized, and engage as many of the five senses as possible.
- You want the jury humming your tune from the very beginning.



Reducing Trial To Its Bare Bones

A trial is a contest over which of two (or more) different versions of a litigated event is true.



Shifting Sands – How I View “My” Jury

We need to change the way we think about the jury. I used to view them as one big mass of judgment, like an enraged mob of angry villages armed with torches and pitchforks ready to pounce as soon as I stood up to deliver my opening. But they aren’t. Even if you’re representing Genghis Khan, the jury doesn’t want to see you fail. While they might not be as kindred as a dear friend, they may still be rooting for you, even when you least expect it.

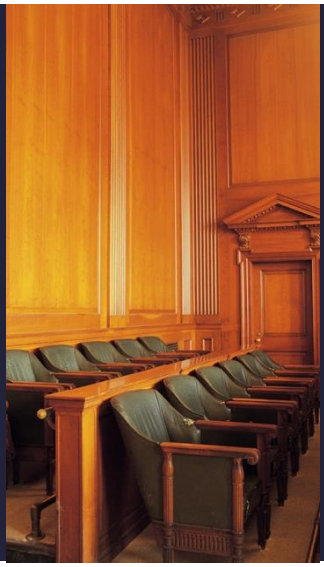
Think about it. How many times have you walked into a live theater and said to yourself, “I hope this actor falls flat on his face?” You paid good money and you want to be entertained so that you can forget about life for a while. So too does a jury. Over time, I realized that my perception of the jury had been tainted by the fact that I was projecting my own insecurities onto them. It was self-sabotage.



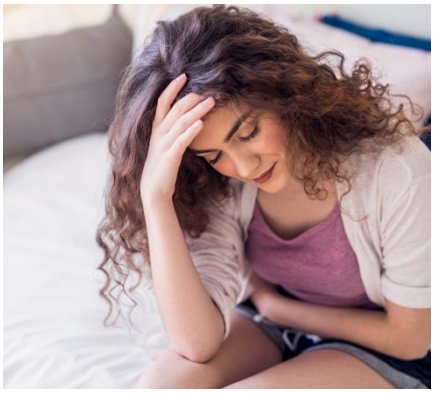
I now view them as individuals and strive to treat each juror as though they are the "chosen one," like Anakin from "Star Wars." By chosen one, I mean the only holdout within a boundless sea of guilty votes. In that way, it allows me to notice them and to make eye contact with them during the trial without being ashamed.



It's also helpful to refer to the jury as "*my jury*" instead of "*the jury*." This helps to personalize them and serves as a constant reminder for how important they are.



What makes a great story?



This question can be misleading. To me, it's not so much about the story as much as it is about how it is told. Even the best stories have suffered a fateful demise when the person telling them is apathetic and indifferent.

Assuming the person telling the story is thoroughly invested in the cause and is a staunch advocate of his client's rights, we can turn to what qualities make a story great.

Qualities of a great story

- A great story has real-life problems to which the jury can relate. The jury needs to understand the "problem" from your client's perspective.
- A great story requires a morally correct resolution. Why is it right to send Johnny home to his family? Your story needs to answer that question.

Theory & Theme

Theory and theme are vital components of opening statement.



Theory

1. Theory

- Your theory of the case is your version of what happened and why you should win.
- It must be logical, fit the legal requirements of the claims or defenses, but not be expressed in legalese. Remember: “Ease the legalese!”
- When your client is hit from behind in a bar fight and ends up stabbing a person, self-defense is the legal defense. The theory must express the dilemma from your client’s perspective and in language that is both rich and compelling.

Example: After John was hit from behind, thrown to the floor, and lying in a pool of blood, the kicks from the five guys that he did not know seemed like they would never end. Gasping for air and with blood oozing out of his nose, John remembered that he still had the pocket knife that he used at work lying in his pocket. This was his only hope.



This is a real life problem to which the jury can relate. They'll be asking themselves, "What else could John do but defend himself?"

This theory explains the critical element to your case – why John was afraid, and why a knife in his pocket does not make him a criminal.

Theme

2. **Theme**

- The theme provides the emotional appeal – i.e., why it is morally right that you should win.
- The theme is a concise statement that serves as an anchor to help distill and summarize what the case is about.
- Good themes are based on universal truths about the human condition.
- In searching for a theme, don't overlook the "big three": revenge, power, and love. These universal themes are as relevant today as they were back in Shakespeare's day.

- The theme should be repeated not just in opening, but throughout the trial.
- Every time the theme is used, it should remind the jurors of the theory.



Shakespeare knew a thing or two about themes. Like a good composer, he would introduce his themes in the first act of the play. Consider Beethoven's Fifth symphony. It begins with a distinctive four-note "short-short-short-long" motif, often characterized as "fate knocking at the door." The famous opening "da-da-da-dum" rhythm in Beethoven's Fifth Symphony is one of the most recognizable motifs in classical music



You then know for the duration of the symphony that you're going to hear variations on those notes and that rhythm. That's what the symphony does. In the same way, Shakespeare introduces his themes in the first act of his play in King Lear, words like "fool," "nature," "heart," "love," and then plays on those themes all the way through to the end of the play.

Adapting this for the courtroom, I find it helpful to begin my opening statement with a strong theme statement. A strong opening line grabs the jury's attention, stimulates their imagination, and draws them to the edge of their seats craving to hear more.

An opening line can plunge the jury into dramatic action ("He flung open the door and she ran.") or an impressive statement they'll want you to elaborate on or a mysterious statement that will make them curious as to why you've come to this conclusion or a striking introduction to a key player in the plot and their "deal."



I like to begin with, "This is a case about ..." and add a short description of the overall theme.



An example of a theme statement in a breach of contract case might be, "This is a case about a broken promise and all the trouble that breaking that promise caused."

How do you find the theme?

Good sources of themes are the great works of literature, songs, folklore, and popular sayings.



Here's a story within a story that serves as inspiration for finding the theme.



Let me take you back to 1997, the year that Dustin Hoffman won the "Lifetime Achievement Award" at the Golden Globes Award Ceremony.

After thanking everyone who helped him during his career, he told a story that has a great deal of relevance to this topic.



The story went something like this:

"When I was doing a promotional tour for 'The Graduate,' I found myself flipping the dials in my hotel room one night. I came upon an interview of the great Russian-American composer, Igor Stravinsky. It caught my eye and after listening to it for a few minutes, I became spell-bounded. The interviewer asked Stravinsky:

- 'Sir, what is the best moment for you as a composer? Is it when you have finished a newly completed work?
- Stravinsky pondered the question and answered: " No-no-no, it's not then."
- 'Then, is it when your agent informs you that the piece will be performed at one of the concert halls of the world?'
- 'No, no, no it is not then either.'
- 'Then is it on opening night at Carnegie Hall or The Kennedy Center, when the last note has been played and the audience erupts into a standing ovation, is that the best moment?'
- 'No-no-no. Not then either.'
- 'Well, sir,' the interviewer asked: 'What IS the greatest moment for you?'

- ‘Vell, I vill tell you. Ven I’m working on my piano in a composition, looking for the melodic phrase that vill carry the movement forward. I vill be sitting at the piano, going: bee-bum; bee-bum; bee-bum.’
- ‘This goes on for hours, days, sometimes even veeks: bee-bum; bee-bum; bee-bum. Then miraculously, it happens: I find the note! That, for me is the moment.’

Hoffman: “My fellow actors, for me ‘the moment’ is not when I get cast in a major role in a blockbuster movie. The moment is not when I stand before you accepting a lifetime achievement award or even an Oscar. But when I am doing my ‘bee-bums’ to find the inner sole of the person I am portraying. Whether it be Benjamin in ‘The Graduate’ or Ratzo Rizzo in ‘Midnight Cowboy’ or ‘Papillion’, when I come upon the ‘Bee-Bum’ that makes that character work, that for me, ‘is the moment.’”



The “Bee-Bums” in our profession are found when we discover the theme of our case.

Once identifying the theme, how do we frame it?

- Try to come up with a newspaper headline in ten words or less.
- I like to use trilogies. Example from a battered woman's case: "Battered, beaten, and abused."
- Studies show that people remember things best in threes. The brain loves patterns!



Organization for Opening



- Great opening stories are well organized.
- This is not as easy as it sounds.
- We know our cases inside out and backwards. And therein lies the problem. We assume that the jurors know it just as well.
- They don't!

Good organization involves dividing the opening into chapters, like a book.



But be careful ...

Avoid witness-based chapters, which describe what a witness will say.

- Example: "Mr. Smith will testify that the light was green."
- This is the least effective way of telling a story.
- Event-based chapters are better because they describe an event that is critical to the case.
- During event-based chapters, you can introduce characters critical to the case and describe their role.

You are not restricted to telling the story in chronological order.

- Instead, you might want to begin your story at a pivotal moment.
- Identify the strongest fact of your case and start the story in a place that highlights that fact.

Why is this a good practice? There is a concept in storytelling called "primacy and recency."



Primacy

The first item in a list is initially distinguished from previous activities as important and may be transferred to long-term memory by the time of recall.

Recency

Items at the end of the list are still in short-term memory at the time of recall.



Takeaway

The first and last parts of a presentation are most memorable and is what sticks with the audience.

- Example: If your client made a spontaneous statement of innocence that is genuine (and not self-serving), your story might begin at the time of his arrest.
- Example: If your client's fingerprints were no where to be found on the gun, your story might begin in the crime lab.

Cast of Characters



Great openings introduce the jury to the cast of characters. Consider building a character – either good or bad – the way it is done in drama. Who are the heroes and who are the villains? Who are the good guys and who are the bad guys?

You might describe an entire event and the actions of a person during that event in exquisite detail without so much as uttering their name.

Example: "And who was the agent that ran the investigation we just spoke of – the agent who never bothered to look at the records and simply relied on a disgruntled employee instead. That was Agent Jones – you'll meet him during this trial."

Essentially, you're bestowing a label on a person according to what role they played in the event and what their motivations were: "the detective who took no fingerprints," "the good Samaritan who only saw the attacker from behind," "the defendant who was the 'perfect patsy' to be blamed for this heist," "the elderly victim who wanted more than anything to help the police catch the mugger and who knew that the police must have solved the crime when they called her up and told her to come down to the police station to view a line-up," or "the detective who takes no responsibility."

But it doesn't end there. You must have a strong point of view for each witness who testifies in the trial and allow that point of view and the feelings engendered by it color the way you refer to him and address him during your opening and closing. In order to do so, your theory and themes must be clear and you must know what lens you want the jury to view that witness through before they begin their deliberations.

For example, do you want the prosecutor's star witness to be perceived by the jury as a "bad guy?" How about the "snitch?" And what about the eyewitness? With respect to the latter, would your chosen label depend on whether that witness's testimony was favorable or damaging to your client's case? Yes!



The Courage to have Strong Opinions

I've spoken a lot about the importance of having strong opinions when it comes to storytelling. It's one thing to understand that and another thing to do it. Why? Voicing strong opinions requires courage. To say that it is unpopular to voice strong opinions today is a complete understatement. Indeed, you are bound to offend someone and to open yourself up to criticism and harsh ridicule. Rejection, ostracization, and banishment are then but a heartbeat away.

And as social creatures, these three are a direct threat to our primal need for belonging and for being part of the "tribe." After all, we are programmed for survival and "no man is an island." Thus, there is a heavy cost for voicing strong opinions.

For this reason, many find it easier to keep their thoughts, beliefs, and opinions private and "close to the vest" so that they can blend in rather than stand out like Waldo with his iconic red-and-white-striped shirt in a "Where's Waldo" puzzle. In this way, we stand a greater chance of being liked, accepted, and "fitting in with the crowd."

At the same time, litigation by its very nature is adversarial. And every time we take on a new client, we take a solemn oath to represent them zealously. Thus, there is an inherent conflict. This has been one of the biggest struggles I've experienced as an attorney.



I grew up quiet, shy, reserved, and wanting to be liked by everyone I came into contact with. I thoroughly despised conflict and would go out of my way to appease others by putting their needs before my own. I embraced negotiation and resolution over competition and winning. To say that I was a "people pleaser" would be a complete understatement.

And not surprisingly, my relatives reenforced these traits by heaping praise on me and commending me for being warm, kind, and generous – a "perfect gentleman." Don't get me wrong. These are admirable traits. I would never want to be hostile, mean, and inconsiderate. That goes against every fiber of my being.

Back then, I just wanted to have a little more fire in my belly for verbal wrangling so that I could break out of my shell and stand up for myself when others attempted to take advantage of me.

What helped me change? A number of things. I had a competitive streak as a kid when came to my involvement in youth sports. I grew up playing ice hockey and every season I had to compete against fifty or sixty other players to earn one of the coveted spots on the 17-man "AAA" roster.

My dad was also an attorney and one of the best trial lawyers I've ever known. He tried hundreds of cases and fought relentlessly for his clients. He taught me that, as a criminal defense attorney, you are the only thing standing between your client and a cold, dank jail cell. He would remind me that,

"To whom much is given much is expected." Nothing like a little Catholic guilt to light a fire under my tush. All kidding aside, he cared deeply about his clients and never judged them no matter how impossible they seemed and how unrealistic their expectations were. And they loved him more than anything else. I wanted to be like him.

Attending the National Criminal Defense College in Macon, GA for two weeks in my second year as a public defender was an epoch experience. One where I began to feel like I was part of something bigger, not just a "cog" in the wheel of the criminal justice system turning out plea after plea to help the judge meet his "numbers." But I was a trial attorney who could radically impact the life of a human being who had been ensnared in the coils of the criminal justice system by standing up for him and stopping the proverbial cement truck from steamrolling over him.



The responsibility that accompanies that is nothing short of astonishing.

The next thing that impacted me in a profound way was my first trial, which turned into a "dog fight." I quickly realized how the scales of "justice" were skewed in favor of the prosecution. It was trial by fire. I couldn't help but feel the unfairness and that stirred up my inner passions. I became less self-conscious and less concerned about what others thought of me. It felt like everything else had melted away and that my only focus was fighting for my client.

To let go of managing and censoring my thoughts, something that I had to do every other day I was in court, and to live moment-to-moment was nothing short of invigorating.



For the first time in my life, I felt not only that I was applying what I had learned in law school but that I was using my God-given talents to stand up for something that was bigger than me – my client's cause. And that was what had driven me to the legal profession in the first place.

Last but not least was an incredible quote that my dad shared with me on the day I graduated from law school.

To be an effective criminal defense council, an attorney must be prepared to be demanding, outrageous, irreverent, blasphemous, a rogue, a renegade, and a hated, isolated and lonely person... few love a spokesman for the despised and the damned.

–Clarence Darrow

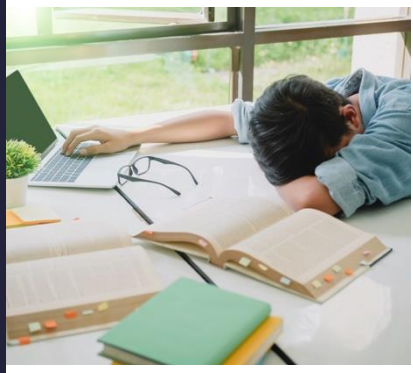


Super-objective & Tactics

While we're on the topic of Al Pacino's speech and the idea of intention, I would like to share with you something that actors are taught when they are working on a monologue.

Before going there, we need to understand the motivation behind communication. Of course, we are social creatures. However, psychologists believe that speech has evolved to help us satisfy our core needs. In a primitive sense, we speak to get something from the other person.

Our needs are not just limited to material items. They include universal truths that are part of the human condition: *love, hate, joy, sadness, power, and fear.*



When we were infants, we cried because we were hungry and needed food, or because we were tired and needed sleep, or because we were in pain from "teething" and needed comfort.

As adults, we haven't changed much. When we open up our credit card statement and see a bogus charge, we call the credit card company to get them to remove it. When you wake up with a severe toothache and swelling to your face and jaw, you call your dentist for emergency dental care to alleviate the pain. When your client flatly rejects the prosecutor's plea offer but would be willing to accept a counter-offer for XYZ, you argue strenuously to try to convince the prosecutor to accept it.

Open up any email and after the ubiquitous salutation, there is usually an "ask" attached that is framed something like, "If it's not too much trouble …" or "When you get a chance …"

As crude as this might sound, this is how we are wired as human beings.

Conversely, this explains why people don't stop talking – they haven't gotten what they wanted yet. Shakespeare knew this. His monologues were always written with human nature in mind. He understood the inspiration behind speech and wrote his monologues to mirror human behavior. Many are quite long. At first blush, you might blame it on the character being self-indulgent and just wanting to hear the sound of his own voice. But when you look more closely, you can see that the character is in a struggle to get something from the other person that the other person is refusing to give.

Recognizing this, the character with the need swiftly changes his tactics after each “failed” attempt with the hope that the new tactic will overcome the other person’s resistance, just as we do in real life. Indeed, instead of recycling and reusing a failed tactic, we switch to a new one.

This is a complete game-changer for actors because it teaches them to go through their scripts like a text detective and to find the character’s super-objective. Doing so allows them to be strategic about which tactics to use and when, such that no two ideas have the same one.





In this way, it mirrors real life by adding richness, texture, variation, and meaning to words that would not otherwise exist if the actor adopted a “one-sized fit all” strategy and used the same tactic over and over again. This would be like beating a dead horse. Moreover, different tactics will inevitably influence the sound of the voice, not to mention physical gestures.

Let's talk more about tactics. A "tactic" is how your character achieves their objective. Pinpointing your objective is the most important part of choosing a tactic. Once you know what your character wants, you can play around with how they pursue it.



A character's need or "super-objective" is their main goal throughout the entire play; their need to obtain it defines their arc. While individual objectives can change from scene to scene, the super-objective remains fixed and guides your every decision. It's a helpful North Star for whenever you need to better understand your character.



For every scene, start out by asking yourself: What does my character want? More importantly, what do they want from those around them?

Then use the objective to chart the tactics. Again, the simplest way to start is by using actionable verbs. Your tactics must be something you can physically do and express to the audience. For example: "I want to impress (actable verb) my boss (another character) so this person will give me a raise (feel or do something), and I am willing to boast and compliment and grandstand (list tactics here) to see that happen now!"

Once you know your objective and tactics, think about what that means for you, both physically and emotionally, as you play out the scene. Your tactics can affect everything from your movements to expressions and posture.



If your goal is to "intimidate," maybe you'll hold eye contact with your scene partner or invade their personal space (with permission, of course). If your objective is to "pacify," you might speak softer or hold your hands in a defensive posture. If you chose to "lie" as a tactic, you would study the body language and facial expressions of people caught in a falsehood.

When using tactics, here are a couple of key points to keep in mind:

Avoid witness-based chapters, which describe what a witness will say.

- First, objectives are not static and can change. A character's goal doesn't always stay consistent from beginning to end. Make sure you can identify beats, or the subtle changes—either external or internal—that occur within a scene. A new beat can alter a character's objective, which calls for new tactics.
- Second, experiment with several options.
- Third, let it go in the moment. As is true for any acting technique, tactics won't work if it's all you're thinking about while performing. The goal is to build a strong foundation through preparation, and then be totally present in the moment. All of these devices (actioning, tactics, etc.) in acting training are meant to be pre-planted before the actor starts acting. Thinking of tactics can definitely be useful if you're specific about it, but only as long as the actor is willing to let it go before they start acting. Otherwise, the work starts to have the scent of training, which is never good. Meryl Streep describes it as "balling up your training and throwing it out the window before you start working."

Here are a few tactics. You might take a line like, “I like milk” and run it through each of these tactics. You’ll see that this is not as easy as it looks:



- To cajole
- To bully
- To seduce
- To soothe
- To incite
- To intimidate
- To mock
- To impress
- To provoke laughter
- To hurt

When an actor uses tactics in this way, it “lands” on an audience in both a palpable and visceral way. They can feel it in their hearts, minds, and bodies. And Pacino is the epitome of this.



Perspective & Points of View

One of the wonderful things about telling a story is that it can be told from any one of a number of perspectives or points of view. For our purposes, we want to tell it from the most *advantageous* perspective.

For each chapter or event, determine whose perspective is most consistent with your defense.

Is it your client's? The victim? The witness? The detective?

If your client has an alibi, the perspective of your client at the time of the crime may be compelling. In that case, you might describe the topics covered on the evening news while John was at home in his living room reclining on his easy chair and watching television at the time of the crime.



Example: At 10 PM on Thursday night, Robert was in his apartment. He had just turned on the 10:00 news. He learned that there was another delay in starting construction on the casino, that the interest rate had gone up, and that New Orleans had more people below the poverty line. While Robert was eating Doritos and watching the news, a thug robbed Janet across town. He came up from behind her as she was walking to a bus stop. He put a gun to the back of her head. He demanded her purse. And he ran. Janet turned and caught a glimpse of the robber as he ran away. A few days later, she would mistakenly pick Robert as the robber, and she will repeat that mistake in court today.

Example, except it is now told through the point of view of the victim: Janet is an honorable person. She would not intentionally pick out an innocent man and accuse him of being the assailant. But like most of us, she is not incapable of making a mistake. And five days after she was robbed at gunpoint, she mistakenly picked out a photograph of Robert as the robber.



Two Basic Modes

Once you decide whose perspective to tell the story from, how is that perspective best portrayed?

Should you use the third person narrator or the first person participant to tell the story?



Here it is important to understand the textual modes in which a story is composed. This will help you craft vivid, emotional and cinematic scenes into your opening.

Stories are told in two basic modes:

1) Narrative summary **2)** Scenes

Narrative summary is an overview. It's an expository way of moving the audience along in the story. It's very much "telling." Most Nineteenth Century novels begin with narrative summary. For example, "It was the best of times, it was the worst of times." It's more conceptual than cinematic.

Narrative Summary

In narrative summary, the audience doesn't feel like they're firmly rooted in one setting. They don't see and hear specific actions and utterances unfolding in real time. Instead, they're being asked to consider life in a more general way from a distance.

For example, "I've always been a runner. I saw myself as being a runner even before I knew what it meant." This is a summary statement. Compare it to this: "I'm running as fast as I can. It's so foggy out, I can't see my fists pumping in front of me. But I keep saying to myself out loud, 'It's okay Bill. You're a runner. You always have been.'"



Scene Mode

That second statement is told in scene mode, not summary. When narration goes into scene mode, sights, sounds, smells, tastes, textures, spoken utterances, physical action, physical sensations within the body, thoughts running through the head, and other details are unfolding step-by-step, in real time. It's more visceral.

Scene mode instantly arouses curiosity and interest on the part of the audience. For example, who could resist hearing the thoughts that were running through the minds of two people seconds before they met up on a blind date? It might go something like this:

- **Bill:** When will Diane get here? He wants to be in the right position when she comes up that escalator. He switches legs, puts his sunglasses on, tries another pose. Reverts back to the first one again. He looks up. "Ooh, she's cute," he thinks. "And so put together too."
- **Diane:** She wipes sweat off her brow. It's an especially cold November day, and her jacket is the kind that traps heat the second you step onto the Tube – too wrapped up in nerves to take it off, she's been roasting the entire 40-minute ride. "I'm sweating," she panics. "He's going to think I'm a mess."

Two Basic Modes

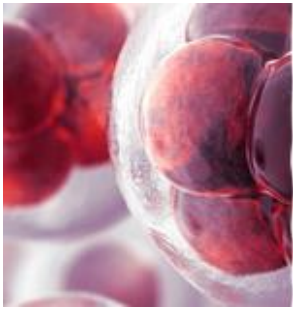
Both scene and summary are necessary. There are stretches of a story where important things happened, but they're not so important that they need to be shown in exquisite detail, so a broad overview of these events can be covered in summary.



But the major, essential events in a story always provoke more interest and sound far more interesting when the storyteller delves into meticulous, moment-by-moment detail because it allows the audience to hear actual dialogue spoken or see complete actions taken or hear whole thoughts running through the person's mind. No better series captures the power of internal dialogue than the Netflix series, "You." One feels like a "fly on the wall" eavesdropping on the twisted and subversive thoughts of a psychopath. It is both luring and seductive.

It is possible to tell an entire story in scene mode or an entire story in summary mode. But most stories we love have a mix that adds up to a little more scene than summary.

Specificity – The Secret Sauce



In art, the prized response is always the *subjective* response. This is what separates art from natural science and the law. Artists are less concerned with facts than they are with their own interpretation of those facts. In other words, what those facts mean to them.

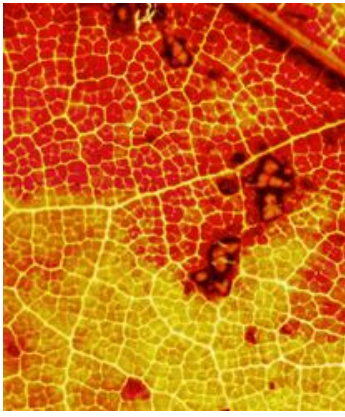
The following example from William Esper's book, "The Actor's Art and Craft" demonstrates how artists look at objects with specificity and wonder:

"Ultimately, a painter doesn't paint the bowl of apples on the table in front of him. He paints what the apples mean to him, how the apples impress him, how he feels about them. Maybe the apples' deep, rich red color excites him. Maybe the fruit's gorgeous natural curves provide inspiration. Therefore, that's what he paints."

In the same way that an artist paints what he finds most striking about an object and what gives him the most pleasure, performing artists must create every moment of their performance out of what it means to them; how they really feel about it. Approaching it generally and vaguely will result in a lackluster performance.

I can remember the time when my grandfather took out an old worn and tattered piano-scales book and opened it up to reveal a green leaf lying between two pages. He told me that he had found that leaf on the ground the day that he had met my grandmother nearly fifty-five years ago. He had placed it inside the book to preserve both it and the memory that it conjured up. The leaf was in pristine condition as if it had been found a day earlier. The shapes and the lines were as distinct as a fingerprint.

A few months ago, when I went out for a walk in the park, I saw a leaf on the path. I picked it up with intense curiosity and began tracing it delicately with my finger while identifying details such as weight, texture, coarseness, smoothness, and colors. Instantly, I began to get images of my grandfather.



Specificity adds credibility to a story. You want them thinking, "This story must be real or else this guy has one hell of an imagination!" When you tell a story, you're making a movie inside the audience's head. And you are the movie screen of their mind.

To do this, you must tell the story as if you are inside of it.

For example, I visualize the scene in my mind's eye to such an extent that I can reach out and touch it. I then describe what I see in exquisite detail so that the jury can see it in theirs. I want it to be as vivid as if the jury is watching the action unfold in real time right in front of their eyes.



To avoid wandering off the beaten path, I keep asking myself the following questions, "What did it look like?" and "How did I feel?"

As difficult as it might be, resist the temptation to comment on the individual moments by telling the audience your opinion or your point of view about what's happening. Telling short stories to others where you include how you felt will help you hone this skill and develop this craft.

In many ways, the attorney is like a painter painting something from the deepest depths of his imagination with the only difference being that his tools are not a canvas, palette, paints, and brushes. Instead, they are his words.



And in the same way that an artist breaks the whiteness of the canvas with a stroke of the brush not worrying so much if it is what he's really after but instead discovering the masterpiece in the act of painting itself, so too does the attorney trust his own words to paint what he sees in his mind's eye so that the jury can see it in theirs.

And just like a painter has a pallet of contrasting colors to choose from, an orator has a pallet of words, expressions, and rhetorical devices to choose from.



Some storytellers fear putting too many details into their stories and go to great lengths to reduce their stories to its bare bones. But not including enough of the "right" details is like soup without salt.

To me, there is a stark difference between specific details and specific details that matter.

For example, "The bright pink tulip in the window" is an elegant piece of set-dressing to bring the visual of the room to life, but if it has been established in the beginning of the story that, "the more stressed mom would get, the more likely she was to put colorful flowers around the house," then "the bright pink tulip in the window" has an extra layer of meaning. It's a sign that mom is stressed. It shows emotion.



So when you're adding detail to a story, ask if it's significant. This is critical because, as storytellers, we must be advancing the story and moving it forward. Too much detail will slow it down and make it stagnant. You'll then lose the jury.



Raising the Stakes

The single most common problem with stories that bomb are *low* stakes. The storyteller fails to show the audience how deeply they cared about what was going on and why they cared so much. When you find yourself going "Whoa…!" during a story, or when you find yourself leaning forward in your seat anxiously awaiting what happens next, or when you feel tears rolling down your cheek, it is most likely because there were high stakes.

Raising the stakes means making what is to be gained or lost an even bigger deal. To be clear, the stakes don't have to be a matter of life and death in order to captivate an audience.

I've been mesmerized by just as many stories that dealt with the banality of everyday life as I have been with stories about toddlers falling into alligator pits at the zoo and surviving. This teaches an important lesson. Audience engagement is not so much a function of plot as it is how the story is told. If it doesn't mean anything to you, it won't mean anything to the audience.

Jurors sense high stakes when the attorney is deeply and emotionally invested in what is unfolding. When your story is alive with emotion, tension rises and tension is what builds suspense. It is the magical ingredient that when sprinkled over a jury, causes their brains to fill with dopamine and oxytocin.

When it comes to emotional investment, we must show it to the jury as frequent and often as possible.

You can show how much emotional investment you have in a story by describing what was running through your client's mind.

You can also show emotional investment in physical reactions. "His fists clenched. Her eyes narrowed. Her throat swelled up. Her palms were sweating."



Emotional investment can also be shown in the small choices you make.

For example, "That morning, John poured a cup of coffee… then threw it down the drain. He didn't want anything making him even the slightest bit shaky before meeting with Detective Smith. As he drove out of his driveway, John made a point of checking the time on the dashboard. Just in case if Detective Smith tried anything shady, he'd be able to say where he was and when."



Here is the thing about stakes in a trial. They are already "high." In a word, "high stakes" are built-in to litigation. Whether it be the criminal defendant who is accused of committing a heinous crime and who could potentially spend the next twenty years of his life locked up in prison if convicted or the thirty year-old plaintiff, mother of two toddlers, who was t-boned by a tractor-trailer in a busy intersection and will never walk again, the stakes are high and the drama that is about to unfold in the courtroom is heart-poundingly real.

Avoid Spoilers

A big mistake to avoid is throwing in spoilers. It's like the wretched Grinch that stole Christmas.



If you tell the audience the big thing that is going to happen before the end of the story, then you've let the cat out of the bag. They no longer care because they already know what's going to happen.

It's like pouring water on a fire – it breaks the tension.

For example, assume that you're watching "Game of Thrones" and that your friend walks in during the middle and blurts out the ending. Not only would you want to sucker punch him, but whatever interest you once had in the outcome is now lost.

You no longer care about watching the rest of it because you know that the protagonist is going to die or the enemy is going to win the battle



The same is true with storytelling. If you say, “Of course, at this point, I did not realize that they had given the job to my friend Jack,” then the audience stops caring about the job interview you’re in because they know that you’re not going to get the job anyway.



As tempting as it might be, hold off. Resist the temptation to throw in any spoiler alerts until you reach the point in the story where you personally discovered that fact.



Exploiting Information Gaps



As humans, we hate information gaps. This explains why scintillating headlines in tabloid magazines jump out at us like flashing, neon signs. It's the reason why when David Letterman was counting down his "Top Ten List" and we knew that we desperately needed sleep in order to be awake and alert for court the next morning, that we nevertheless continued watching it in order to find out "who" or "what" ranked first.

Exploiting information gaps is a tried and tested principle of storytelling that can be replicated. Consider the following example: "I sat in my car outside of my friend's house." This statement is very plain and drab and does nothing more than recite innocuous facts. As a result, it doesn't arouse any emotion in the listener.

By comparison, you could say, "I sat in my car outside of my friend's house chewing my nails down to the cuticle." This sentence builds tension and suspense due to the information gap that it has created.

Very simply, the audience doesn't know why you're nervous and they're eager to find out. As a result, they lean in more to listen.



Stealing a page out of Hollywood, I like to begin my stories at a pivotal moment. Beginning a story with an action sequence creates an information gap that builds tension and suspense. It plunges the audience into the fictional world of the story hook, line, and sinker.

With attention spans at their all-time lowest, a well-crafted beginning to your story may mean the difference between whether an audience deems your story worthy of listening to or whether they decide to tune it out and start daydreaming. For this reason, it is vital.

Who can forget the opening of the movie "Casino" when Robert DeNiro playing Sam "Ace" Rothstein climbed into the driver's seat of his car, turned the car on, and it exploded into flames? The tension was so thick that you could cut it with a knife.



Information gaps can also be found in some of the most revered fairytales: *"Her name was Sleeping Beauty. A wicked witch cast a spell over her. She would sleep forever unless someone special kissed her on her sleeping lips. Prince Charming was this special person."*



The courtroom is no exception. The following is a real-life example from the creative genius of Song Richards. It is from Song's opening statement in a criminal case where she represented the defendant, Tom Johnson. John Ivan Smith was the government's chief witness:

"No one will walk into this courtroom and tell you Tom Johnson is a bank robber — no one except the man with the symbols on his leg, John Ivan Smith."

Having a well-crafted beginning to your story does not mean overloading it with so much detail that the audience knows everything that ever happened in the character's life leading up to that point. This would put the audience to sleep.

“A Monster Calls” By Siobhan Dowd & Patrick Ness

Subconsciously, when we’re listening to a story, we ask ourselves the following questions:



- Who?
- What?
- Where?
- When?
- Why?
- How?



What?

"The *monster* showed up just after midnight. As they do."

Who?

"*Conor* was awake when it came."

Why?

"He'd had a *nightmare*. Well, not 'A' nightmare. The nightmare."

How?

How many times has he had this nightmare?
"The one he'd been having a lot lately."

You as the Delivery Agent

What tools should you rely upon to tell your client's story with maximum impact? Starting in the simplest place, we must rely on that which has been there since the day we were born:

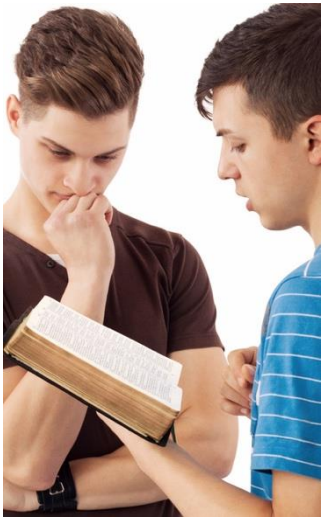


- Our voice,
- Our body

At the core of this approach is a belief that the body is a site of truth and that we must explore, develop, and utilize its potential to the fullest. To that end, training must begin with presence, precision, and deep listening.

In an age overflowing with chaos, noise, and an endless stream of fleeting information, it can feel almost revolutionary to value sustained attention and embrace slower, deliberate processes of growth. Yet, if we pause for a moment to reflect, we often find that the deepest and most meaningful relationships we've built are distinctly analogue—cultivated over time through shared experiences and moments that transcend surface-level exchanges. These connections speak to something profoundly human.

This is where live drama (including the courtroom) becomes so much more than performance. It becomes a space where stories unfold that are impossible to anticipate, that provoke thought and emotion, and that shine a mirror back on shared truths—truths that are sometimes uncomfortable and complex, or alternatively familiar and reassuring.



But it doesn't stop there—it extends a hand, weaving threads of narrative that remind us of one universal truth: that as humans, we share infinitely more in common than what separates us.



The Language of Opening Statement

"A picture is worth a thousand words."



- Use Standard English
- Use Powerful Imagery
- Stick with the action – avoid abstractions
- Emphasis and Impact Devices
- The Power of Silence
- We have five senses, not one
- I cannot emphasize enough that these are tools, not rules.

The language used in opening statement is different from the abstract and general language used in everyday life.



1) Use standard English: vivid, plain, simple language. Ease the legalese.

- Use concrete, not abstract language.
- Use specific, not general language.

For example, instead of "vehicle," use car, van, or truck.

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2) Use power language.

- We want our words to sound like we're telling the jury a story.
- Remove qualifiers like "I think," "I believe," and "I will attempt to show ..."
- Use the active voice.
- Use language that has appropriate emotional content and appeal.
- Rely on nouns and verbs. Nouns are nothing more than words used to identify a class of people, places, or things.
- What's ironic about nouns and verbs is that these are also the "operative words" in Shakespeare's plays.
- Operative words are the essential words in a thought, without which the thought would not make sense. They are a single word that contains within it an idea, an action, or a significant thing.

Power Language

In order of importance, first is action verbs, second is significant nouns, and third is **colorful** adjectives.



Action verbs receive the most stress, nouns a little less stress, and colorful adjectives a little less stress than nouns.

When it comes to verbs, stick to action verbs and leave out “to be” and “to do.” “Make” and “break” are usually keepers. Verbs are active beings — they can reach forward and back. It’s as if they have two arms.



Consider the prologue from Romeo and Juliet:

“Two households, both alike in dignity (In fair Verona, where we lay our scene).”

The verb, “lay” is an action verb. It's as if “lay” is reaching back to what was just said and reaching forward to “scene” at the same time. Lay is the nucleus of all this — the action of both lines.

I highlight the words that fit into each category with a different color specific to that category.

Here is how this might look in practice: “**Deny** ~~thy~~ father.” “**Doubtful** ~~it~~ **stood**.” This practice is helpful because it restricts actors from emphasizing every single word as many new to Shakespeare have a habit of doing. If every word is emphasized, then nothing will be emphasized and the entire meaning will be lost on the audience or jury.



Words Not to Stress

Don't stress pronouns. They'll point the jury in the wrong direction for meaning unless you're comparing two or more ideas.

Don’t stress prepositions unless they are part of a two-word verb like, “sit down.”

Don't stress the word, “not.” Other negations not to stress are, “did not, could not, and would not.” We hear negation so easily that these words have evolved into, “didn’t, couldn't, and wouldn’t.”



Be picky when choosing which adjectives to stress. Otherwise, you'll be so descriptive and flowery that people will miss the point. I lean into colorful adjectives only. A famous French author by the name of Gustave Flaubert spent over six pages describing a living room in “Madame Bovary” much to the chagrin of his readers. We hear descriptions so easily that they don't have to be stressed.



Disclaimer

Of course, there are always exceptions and these are rules to be broken. But you must know the rules first before you can break them with the creative genius of a poet.



The Language of Opening Statement

3)

Vary up the length of your sentences, but tend strongly towards short sentences. Written sentences are normally longer, clunky, and more complex than sentences delivered orally.

Use Powerful Imagery

Images are our first language. When you go to sleep tonight, images will arise. Because you've been alive for however long you've been alive, language will also be there, but your dreams are mostly imagistic. And certainly before you learned language, your language was almost entirely imagistic.

Our primary language is imagistic.



The setting: We may have to take the jury to the streets of an inner city such as Newark or Camden without ever leaving the courtroom in order to draw them into the re-constructed reality of a new and unfamiliar world.

The words we use can help the jury picture the streets of Newark.



Action verbs paint vivid pictures in our minds and avoid dull and empty abstractions.

Paint vivid word pictures by visualizing the scene in your mind's eye and then describing it in exquisite detail so that the jury can see it in theirs.



The idea is to deliver the image into the minds of the jurors like it has material weight. It's as if you're saying to them, "Let me *show* you what I'm thinking."

There is great power that comes from being able to see an event in detail.

The famous author Ray Bradbury recommends reading poetry, essays, novels, and comic books. Anything that will touch us viscerally. The more you read, the more you can draw from.

Use of word pictures must be learned. Lawyers intuitively speak in abstract and general terms.



This was not lost on Aristotle, who said: "When a speaker describes an event so vividly, in such detail, that it seems as though the event is happening right in front of them."

Stick with the action – avoid abstractions!

Active or passive words tell very different stories.
"John fired the gun" tells a radically different story than "the gun went off in John's hands."
Decide which story you want to tell, and then use the appropriate active or passive tense.

Abstraction: My client suffered a broken leg.



Criticism: This tells us nothing. Tell them what it felt like to have a broken leg with the bone sticking through the flesh. Tell them how excruciating the pain was. How John could not make it through the night without being heavily sedated. How he clenched his teeth so much that he grinded two teeth down down to the gums. Tell them how John was confined to a bed for two weeks with a solid cast extending up from his ankle to his genitals. How he couldn't walk for two weeks and how he had to use a bed pan to urinate and to defecate. Make the jury see it. Make the jury feel it. Make them understand. Make them care!

How long is too long for an opening?

There is no precise time-limit for an opening or closing. However, I find the following quote by the fictional character Mickey Hollar from "The Lincoln Lawyer" to be spot-on: "Opening statements are special. It's your time to bond with the jury, but go on too long and you'll lose them."



In the performance industry, shorter is better than longer as it is far better to leave the audience wanting more than to leave them watching the clock. Never forget that the Gettysburg Address was less than two minutes long and contained 272 words!

Emphasis & Impact Devices

There must be emphasis to the extent that your points will dominate the conversation during deliberations.

Cases are lost because the jury does not know how important something is and does not remember the point.

As lawyers, we are very good at emphasizing the written word in our briefs through a variety of literary and stylistic devices such as italics, **bold-faced font,** and <u>underlining</u>.



However, we sometimes struggle to do with the spoken word what we do with the written word.

We must emphasize important points orally in the same way that we emphasize written words.

The challenge is, “How do we do orally what we do with the stroke of the pen (or the tapping of the keyboard)?”

From day one of my acting training, I learned that an actor is like a composer: that what you read in the script is only the merest indication of what you have to do when you really act the part. After all, anybody can read lines.

Emphasis may be gained in a number of ways from outright telling the jury how important something is to harnessing the power of our voice. After all, you are your voice. And your voice is you.

Here, tone, voice inflection, pace, and silence are our tools. We'll discuss these in more detail.

The starting point is to have a strong point of view, but that is only the tip of the iceberg. The following acting example helps to explain what I mean by strong point of view.



Often times, actors are given material which is foreign to them, and they have to learn how to make it their own by making it personal to them. This is how they prepare for a role. The Playwright provides the script. And the actor's job is to fill the role with life. To do this, actors must always have a point of view: they must know what someone else's words (i.e., the playwright's) means to them. This is easier said than done.

By way of an example, if my scene partner says to me, "I'm going to buy you a red tie from Brooks Brothers" and my response is, "Not red!" I have to know how I feel about the color, red. If I go from looking delighted when hearing the first part of the line to grimacing on hearing the word, "red" and my line bursts forth, "Not red!" it becomes blatantly obvious how much I despise that color.

Even though the material already exists, the life the actor brings to it is always his own. It's unique for each person who does it because it's made out of the human being who does the work.

The difference in litigation is that the lawyer gets to write his opening and closing — they are the lawyer's words and nobody else's! This allows the attorney to be free and unencumbered because the life that he brings to the opening and closing is his own.

For example, "What are you passionate about? What do you hate?" These things engender strong feelings and can be found when you are in an impulsive and irrational state. Thus, if it can only be expressed when you are in a calm state of being, then it's probably not a passion.





Today we have a tendency to define ourselves in opposition to stuff. For this reason, I would encourage you to step outside of your comfort zone and to express your passion for the things you love. Be demonstrative and generous in your praise of those things that you admire. In other words, be pro-stuff, not just anti-stuff. Here are some things that I am passionate about and one thing that causes me great angst.

- **“I loved Lord of the Rings! I could watch it six more times.”**
- **“Ben and Jerry’s ‘Heath Bar Crunch’ is my favorite ice cream.”**
- **“I hate when my dog starts barking in the middle of the night.”**

The Voice

Now, if you're anything like me, your voice might need some work. One thing that I've learned over the years about my voice is that I tend to be slow and sustained, taking my time to emphasize certain words and to be precise, methodical, and accurate. I reason and I use logic.



This translated into a voice that was monotone and devoid of emotion. I was told that I could wring meaning out of words easier than poets could infuse feeling into theirs.

This evolved as a result of my need to be clear and precise when explaining things to my clients. Clarity of thought was critical.

However, this was a "turn off" to the jury. And the last thing I wanted was to put my jury to sleep, especially when there are important things that I want them to hear.

It also prevented me from playing some of the characters that I've always dreamed of playing from the world of Shakespeare.

I shook things up so that I would not be boxed in to one way of speaking and expressing myself.

In drama school, we receive tons of voice and speech training. There are some principles that I am going to introduce you to that will help you to expand your vocal range.

The more expansive your vocal pallet, the more interesting and persuasive you will be.



Before going any further, I'd like to share with you my thoughts about the voice.

The sound of your voice is a complex and multifaceted expression of your inner self. It can convey a wealth of information about your personality, emotions, and intentions. From the tone and pitch to the pace and rhythm, every aspect of your vocalizations can reveal something about who you are and your feelings.

For example, a calm and even tone might suggest that you're feeling relaxed and confident, while a 'lifted' or uneven tone could indicate uncertainty or looking for approval. The pitch of your voice can also be telling, with higher pitches often associated with excitement or enthusiasm and lower pitches conveying seriousness or authority.

In addition to these more obvious aspects of your voice, there are countless subtleties and nuances that can reveal even more about your character and personality. For instance, the way you pause between words or phrases, or the specific inflection you use on certain syllables can all contribute to a unique vocal fingerprint that is entirely your own.

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Overall, your voice is a powerful tool that can be used to express yourself in a variety of contexts, from casual conversation to public speaking and beyond. By paying attention to the various elements of your vocalizations, you can gain a deeper understanding of yourself and the messages you're conveying to others.

Step one in the process is to have a self-awareness of what your habitual patterns and natural tendencies are. Before you can effectuate change, you need to know what you're already doing well. Only then will you know what needs work. Of course, what comes easy to you should remain untouched. Instead, focus on those areas that are underdeveloped and that need work.



For example, I learned that quickening the tempo of my speech resulted in more urgency in my delivery. And that urgency instantly raised the stakes and infused my arguments with more passion, which had always been there but had never been expressed in that way.

Voice Training

I cannot overstate the importance of voice training. Your Voice is your thoughts and feelings moving from inside your body to outside your body on vibrations. Your voice is the conduit for your talent. Your voice is you.

Vocal blocks can be caused by habitual muscular tension, or by communication or emotional response habits. We all have them. They keep us safe as we navigate through our lives. But they can also keep our talent locked up inside our bodies.

Our bodies and minds need to know that we can go far vocally and be completely spontaneous – and that we are safe. Vocal freedom also allows for the sweet subtlety of nuance to shine through. Our vocal blocks will be there for us when we need them. And vocal freedom can be there for us when we allow it.

With a free voice, lawyers become more instinctive, believable, and transformative. And this could not be any more true than in the courtroom where your credibility is the most important thing. With every syllable uttered releasing more of who we are and our deep connection to our client and their cause – we have more room in our bodies in the next moment for real, full-body cellular listening – for being fully present.

As a performer who is used to doing ten shows a week, I can honestly say that the demands placed on my voice during a trial far exceed those I've had to grapple with as a performer. During trial, it's not unusual for a lawyer to be up up their feet for five or six hours a day, five days a week, cross-examining witnesses and arguing evidential issues. Your voice needs to be ready to take on the demanding nature of the courtroom. Otherwise, it will not be there when you need it the most.

For this reason, voice training is paramount in order to keep you voice full and vibrant.

The biggest travesty in all this is that few, if any, lawyers have ever taken a voice class.

Yet, for actors, voice work is so vital that even the best actors continue to work on their voices consistently throughout their careers.

The benefits of a free voice are voluminous. Not only does it mean an easier time being clear, confident, and spontaneous in meetings and in speaking to the jury, but it leans our bodies toward well-being, our minds toward clarity, our souls toward creativity, and our voices toward sincerity.

The Imagination

Step two is reigniting your imagination. I cannot emphasize enough the power of the imagination. It is limitless. No matter what occupation you're in, from advertising to practicing law, your imagination is your strongest ally. It is our birthright as human beings. As Emily Dickinson once said, "I dwell in possibility." What a beautiful way to capture the essence of the imagination!



How do we develop our imaginations? You can do this though daydreaming, reading a good book, a poem, or meditating. I love daydreaming. It allows me to tap into sub-conscious images and bring them up into consciousness just as if I had awoken from a dream that was still fresh in my mind. This allows you to tap into that wealth of the mind without walls, without boundaries, to fertilize your creative work.

I always go with the first image that pops into my head. That catapults my imagination into far deeper and richer places than if I were to try and control the direction of it. The idea is to let images flood into your mind without censoring anything, like a trailer to a “James Bond" film. For me, when I’m in this state, images of my childhood begin to emerge.

If you would prefer to read a book or a poem, take a few lines and read them out loud. What thoughts and images come into your mind? Let the words come out however they want to. Surprise yourself. Were there specific images that stirred something up inside you?



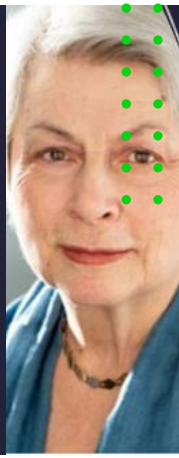
One thing that I’ve become acutely aware of is that if I am stressed out or carrying a lot of tension in my body, not only do I stop breathing, but I also stop listening and my imagination gets blocked. So taking a few deep breaths before you get started in order to ground yourself is a good practice. As my instructor once said, “Creativity needs space.”

Kristin Linklater & the Breath

I think it is helpful to focus on your breath. When we come into this world, the first thing we do is breathe, so it should come as no surprise that the breath is a vital component of our speaking voice.

But it is more than just that. The breath bridges the gap between the conscious and the sub-conscious. I realize this is a lofty claim and one that I cannot even begin to give words to. So I will rely on one of the world's most esteemed voice instructors to explain how breath is the fuel for vocal expression.

Kristin Linklater, who was one of the greatest voice instructors of this century, put it like this: "There's a desire to speak—an impulse. It runs down the spinal column and through the central nervous system galvanizing simultaneously the breathing mechanism and the laryngeal mechanism into an activity that creates a vibration which is immediately amplified by surrounding resonating surfaces into voice. At the same time the impulse activates movements of lips and tongue that deliver words."



"Let go of the result. Commit yourself to the feeling of what you want to say. Feed in the desire to communicate that feeling. Release the desire into your breath and the vibration of your voice. See what happens.' This is a commitment to causal thought. Voice and speech are the result of that causal impulse. Communication is a by-product of desire and freedom."

Conflicting Impulses

Kristin Linklater's exquisite description of the mechanics of vocal expression represents an "optimum" use of the body as it was designed to function. This optimum is embodied by a child, the very poster-child of diaphragmatic breathing, whose diaphragm drops down creating a vacuum and whose lungs expand every time they take in an incoming breath.

Because the gut and brain are in constant communication through the vagus nerve, it is often said that feelings live in the gut.

Therefore, it should come as no surprise how readily accessible feelings are to children and how with every breath, those feelings are so freely expressed. As we grow older and learn that it is not safe to feel, things begin to change. What ensues is a fierce clash at the first stage that stymies the instrument from working in the way that it was designed to work. This is what I call the "standoff" of two competing impulses: the first that says, "I have to say something!" and the second which says, "Don't say that!"

The former is the primary impulse while the latter is the secondary impulse. Physiologically, the diaphragm and gut begin to squeeze, the throat tightens., the tongue pulls back, and the jaw tightens. In other words, everything squeezes to stop you from saying what you really wanted to say.

Conflicting Impulses

To compensate, our breath shortens and we begin to breathe shallowly from the chest. The problem, of course, is that our traps and lats are not designed to breathe up to 25,000 times a day – only the diaphragm is.

This secondary impulse is a survival mechanism. Why? Because some people are still killed for freely expressing themselves. While this is the most extreme consequence, some of the less extreme consequences are just as chilling: embarrassment, rejection, abandonment, vilification, condemnation.

Since suppression of the primary impulse is antithetical to freeing your authentic voice, Kristin Linklater developed a series of exercises to help undo the blocks that get in the way. Thankfully, even just some small shifts can go a long way to honoring the primary impulse.

First, your voice is you. For example, anytime your voice shifts so do you. Anytime you go through something big, your voice shifts. Shifting your point of view also affects your voice. And don't forget about the breath. As your breath changes (i.e., gets deeper or shallower, changes pace by growing more rapid or slow), different feelings begin to emerge on the inside.

Becoming Resensitized to Words

In acting, we work in a kinesthetic way to become more sensitized to words. As my instructor aptly put it, we are crossing over into the world of Synesthesia. Synesthesia is a perceptual phenomenon in which stimulation of one sensory or cognitive pathway leads to involuntary experiences in a second sensory or cognitive pathway.

Chromesthesia is a type of *synesthesia* — a condition where a person's senses are connected in unusual ways.
In chromesthesia, sounds automatically make a person see colors in their mind (or sometimes almost "out in space").
The colors aren't imagined on purpose; they just *appear* whenever the person hears a sound.

Here's how it might feel in everyday life:

🎵 **Music:** When a person hears a trumpet, they might see bright yellow flashes. A cello might bring deep blue waves. A fast pop song could make them see bursts of pink or orange that pulse with the beat.
🚗 **Everyday sounds:** A car horn might appear as a sudden burst of red light. The sound of footsteps might leave a trail of soft gray shapes.
🗣️ **Voices:** Some people even see colors linked to voices — for example, their friend's voice might always sound "green," while another person's voice feels "purple."

Each person with chromesthesia experiences it differently. The colors, shapes, or movements they see are unique to them, but they're consistent — meaning the same sound always triggers the same color pattern.

Many famous people have or had synesthesia, including artists and musicians like Beyoncé, Billy Joel, Duke Ellington, Pharrell Williams, and Billie Eilish. For example, Beyoncé experiences sound-to-color synesthesia (chromesthesia). Billy Joel has multiple forms of synesthesia, including associating colors with vowels and rhythms, which helps him in songwriting.

As a composer, Duke Ellington experienced certain notes as having different colors or textures depending on the musician playing them. Pharrell Williams uses sound-to-color synesthesia to identify when he is in key with a song.

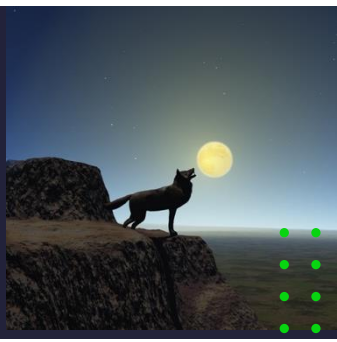
Another prominent figure was Vincent van Gogh whose chromesthesia, art historians believed, influenced his distinct style.



Becoming Resensitized to Words

There is a beautiful exercise that we do in acting to infuse life back into our words. It is an antidote to our modern-day habit of wringing the meaning out of words. The objective behind the exercise is to resensitize ourselves to words.

We are told to close our eyes. When a bell rings, we open them. A physical object or a picture is displayed. It might be a fruit, like an orange or a pineapple, or a picture like the sun setting over the beach, a tiger in the wilderness, or a wolf howling at the moon.



Upon opening our eyes, we are told to take in that image, to allow it to spark images in our subconscious and to embrace those images, to feed in an impulse to speak, and then to speak its name colored with whatever emotion(s) that it triggered inside of you – without censoring a thing. For example, upon seeing an image of a wolf, one might say, “W-o-o-o-o-o-lf” in a seductive voice.

We then close our eyes again and wait until prompted to reopen them again for the next object or image.

In the second exercise, we lie with our backs on the floor and our eyes closed. The instructor gives us a word and tells us to speak it out loud. For example, "Dusk."

After speaking the word out loud a few times, the student listens intently while the instructor speaks a few words. The student allows the words to take root inside their imagination and to catapult them to the farthest reaches of the universe. The answer comes as a response to that call but is limited to the original word, "Dusk," infused, of course, with all of the imagery and sensation that it brought up inside of them.

Here is how that might look in practice.

Instructor: "You are standing on the edge of a cliff looking down."
Student: "Dusk."
Instructor: "You are in a hot shower."
Student: "Dusk."
Instructor: "You stumble upon an abandoned cabin in the woods."
Student: "Dusk."
Instructor: "A wide-eyed puppy jumps into your arms and licks you."
Student: "Dusk."
Instructor: "It's pouring rain outside."
Student: "Dusk."



We do this three more times with three different words (i.e., “Forest,” “Spring,” “Bird”)

Afterwards, we’ll repeat all four words. Then we will share where our imagination took us during the exercise using the pronoun “I” and staying in the present tense using action verbs and colorful adjectives. Afterwards, we will speak all four words one right after the other allowing whatever remnants that had been left behind from the story to echo through.

Breath in Action

I am fascinated by the different qualities that seem to live in our four-part breath phrase. No air … inhale … full of air … exhale … repeat. Before we speak, we take in an incoming breath and as we exhale, our spoken words are released. This happens naturally and organically, so much so that our bodies know just the right amount of breath to take in in order to carry the thought through to completion without running out of breath. In this way, our bodies are like fine-tuned instruments that we play throughout the day.

I use the hand-stretch as a metaphor for the four-part breath phrase that we all experience throughout our lives. With one hand, create a stretch starting from a relaxed fist. Feel the hand stretch to its maximum. Hold it, release, and hold the closed fist. Then resume the stretch again.

Here's how the hand stretch relates to the four-part breath phrase:

- Starting with no air, waiting for inspiration (relaxed fist)
- Inhale (stretch hand)
- Hold full of air (hold open stretched hand)
- Exhale (released back to relaxed fist).

So many breath traditions point to the importance of the very active exhale. The exhale, of course, powers the voice into text.

For me, the exhale is a release. But a release of what? One of the most important parts of the breath phrase, for me, is the hold full of air, when the speaker is full of energy but not releasing it, either consciously or subconsciously.

I experience this whenever I extend the release by holding it back, full of air, full of an image, full of a desire to give it but then I hold it over time. The effect is one of creating tension and waking up an audience. It may also cause my scene partner to look at me and wonder what I am thinking. In this way, the breath phrase looks something like, "Pause … Ingest … Hold … Release."

Things may go awry, however, if we are carrying excess tension or if we are nervous and/or anxious.

For example, after taking in an incoming breath, we might hold our breath "at the top" instead of exhaling – all while still trying to speak – causing the voice to be strained.

Or, despite having taken in a generous breath, we might begin exhaling before any words tumble out of our mouths leaving us half "empty" and with insufficient breath support to sustain the full thought. This often results in a "breathy" or "airy" tone.

I believe that our job as lawyers is to make the jury feel the energy shifts of the story. And breath phrasing is one way to do this.

Does your character think in the hold at the bottom of the breath, when there is no air and the audience is waiting for inspiration?

Do they take in the inhale fast because the stimulus for the thought is shocking, or is it a slow building inhale as the realization literally builds up inside them like a pressure cooker?

Here is a Meryl Streep clip from “Julie and Julia.” I find her breath work to be inspirational – free, perfectly crafted, committed, and performed with joy.



And you can hear her breathing. She literally uses breath as a vocal tactic.

What is your typical four-part breath phrase? A friend of mine is very shy and he spends a lot of time in hold. I will ask him a question and I hear him do a very active inhale, then a long hold as he seems to edit before he lets the energy go into speech.

Others have almost no hold. When stimulated, these individuals will take a short breath inhale with no hold and react almost instantaneously with the exhale needed to express themselves.

Here are some incredible quotes from “The Actor Speaks” by the remarkable Patsy Rodenburg:

P. 55: “As I've already said, the equation of taking what you need is: amount of breath equals length of thought and size of emotion and space.”

P. 59: “I'm convinced that all great writers, consciously or unconsciously, hear the breathing patterns of their characters when they write. Each human being has a different breath rhythm. As life transforms us we change our breath rhythms. All these things and more are hidden in a text to be revealed by the actor to an audience’s ears. If you don't change the rhythm of your breath to suit each individual text then you will never begin to characterize fully as an actor must and should. When you change the rhythm of your breath to match the text, you have not only begun to characterize by means of the structure of the text but have permitted yourself to be changed by the text, beginning to breathe it the way the writer intended.”



Play with this idea of the four-part breath phrase allowing each part of it to give you new ways to craft your opening and your closing.

Effective Voice Principles for the Courtroom

Imagine how dull life would be if we all sounded the same. Voices are dramatically different from one another.

Our voices are extraordinary. They have the capability to speak in so many different ways. To be loud or quiet. To be harsh or gentle. To be warm or cool. To be demanding or compliant. To be comforting or vengeful.

- Sadly, few of us use our voices to its full potential.
- By practicing and creating more vocal variety, you'll become more vibrant and exciting.
- Some of the best practice I've had in this area has reading bedtime stories to my two-year old nephew.

What are the vocal tools at your disposal?

First is pitch. Pitch is an integral part of every human voice. It's the depth or height of a voice and it ranges from base to soprano. What designates the natural pitch of your voice is the rate at which your vocal folds vibrate. The higher the number of vibrations per second, the higher the pitch of the voice. Conversely, as the vibration rate slows, then the voice becomes deeper.

By working on and with your voice, by stretching your voice, by careful vocal exercises, you can develop a greater vocal range and extend the pitch that you're comfortable working with.

There are three pitches:

- High
- Middle
- Low

Every voice has its own pitch, which is governed by the length and thickness of your individual vocal folds.

Changing pitch while keeping within your voice's natural range creates mood, ambiance, drama, and emotion.

There are four main reasons to change pitch.

First, changes of emotion. **Second**, for characterization. **Third**, for a change of subject matter or a change in time or space. For example, when moving to a new day or into a different geographical space. **Fourth**, when quoting another person in the story, such as a witness.

Next is pace. What exactly does that mean? It's obviously about how quickly you speak. But is pace the same thing as rate? There is a subtle difference. Pace is a combination of technical vocal devices and vocal tricks that a storyteller uses to keep the audience on the edge of their seats. This is accomplished by giving the jury a series of subtle mental nudges without them ever realizing that this is being done to them.

Changes of pace and the use of pause are just two of these vocal tricks that help the listener to follow the story and to know what's most important.

Combining pace and pause gives the listener a clue to what words and phrases are the most significant. By subtle use of stress, inflection, or pause, the goal is to make this significant word or phrase stand out slightly so that almost, subliminally it sticks within the consciousness of the jury. Subtlety is the key.



You want the connection to be made in the listener's subconscious mind. You're not trying to make it so obvious that it hits them over the head so that they feel they're being patronized. As the great Judi Dench has often said, "Audience members don't like when you patronize them. Allow them to find their own unique meaning." In other words, leave something to the audience's imagination.

What you're doing with your voice is pointing the audience/jury in the right direction like a lighthouse bringing a ship safely back to harbor. If you get the emphasis wrong, you can lead the listener down the primrose path and even give away more than you intended.



Next is the pause. There are many different types of pauses. A stressed pause is a technique where the last word just before a tiny pause is ever so slightly stressed. So you dwell gently on the syllable or even on a single letter before giving the tiniest of pauses before significant words so as to highlight it as it were. The pause is always your friend. Never be afraid to pause as long as it is meaningful.

A grammatical pause is used to make sense of a phrase. Where you put the pauses can totally change the meaning of a sentence. "A panda eats shoots and leaves." Put the pause in the wrong place and this becomes, "A panda eats, shoots, and leaves."

Or my favorite, "What's that in the road, a head?" or "What's that in the road ahead?"



Pausing is also used for dramatic or emotional affect. When a pause is used for that purpose, it's used to make a word stand out, to build up to a climax. Or to highlight the strangeness of an event.

If you play with pauses and add pace to certain sections, it brings a dynamic energy and a kind of range to your presentation that makes it powerful.



“Best practices” for using the pause

“Own” the pause. Why? Because you are speaking “heightened text,” which contains big ideas and thus, carries a lot of energy. As such, you don’t want to drop the energy and put it down all of the time. When you think about it, the pause is a great, big gaping hole that if overused will undermine your speech in two main ways:

(1) You will be too slow to connect one idea to the next and

(2) You will appear self-indulgent.

Imagine a singer taking big breaths in the middle of a line. For example, consider “Mary had a little lamb.”

It becomes obvious in singing because it’s about the energy that is being carried through a phrase. When the energy is carried through a phrase, we understand it better. Why? Because jurors, like any audience, must hold onto an idea until they’re done processing it. If a thought is left “hanging” in mid-air for too long before connecting to the next thought, the jury will lose it and not be able to connect it to the subsequent thought. And when that happens, they will miss the point. For this reason, the jury wants to be given the whole idea and not just half of it. This is more common today than ever due to technology and shorter attention spans.

Check to see if you're being indulgent in your pauses when you don't need to be. As the great Judi Dench has said, "Actors must earn the pause. Too often, actors will pause their speech for thought/emotion, putting 'air' into the words that is not necessarily needed. Speech in Shakespeare's plays comes at the speed of thought, so there's often no need to pause unless you earn it."

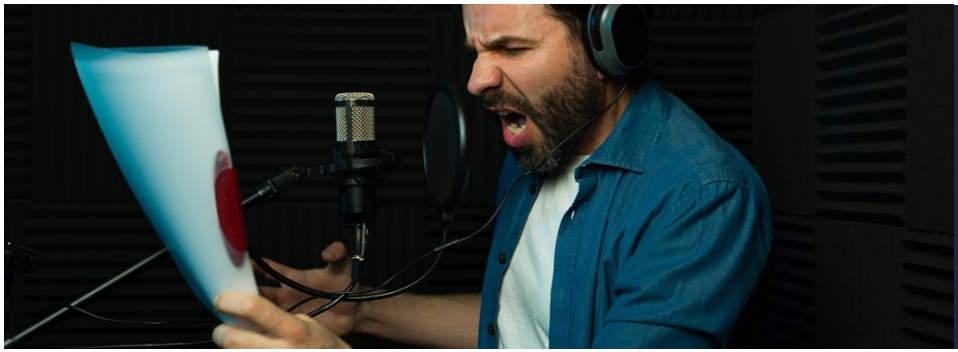
Here are some alternatives. Think about breathing – rather than pausing – into a new idea.

I am strategic about when and where I use the pause. Personally, I ask myself the question, "If I could keep only one pause, where would I put it?" Decisions and discoveries are usually ripe for pauses. These are great and valid. But they're not as often as you think.

Next, I always examine the "connecting thought," that which propels me from one idea to the next and ask, "Do I want to shift from the first thought to the next thought seamlessly or do I want to use the pause?" In this way, I force myself to identify all of the transitions in my speech.

And if I do decide to use the pause, then I commit to it fully and make it worth it!





The Sounding Body: Voice as Movement

Another way of expanding your vocal pallet is through movement. Everything in life is movement. This is not just a slogan for somatic practices. Even something as small as the flutter of an eye or an incoming breath involves movement.

This could not be any more true than in theater or film. When someone acts in theater or film, because it's a visual medium, they are being seen and heard by an audience. As such, their physicality reveals so much, especially when they are in extreme states.

But even when someone is still, that stillness communicates something to an audience. In fact, stillness might even communicate something more significant than a large physical gesture

The Power of Silence

Why silence?



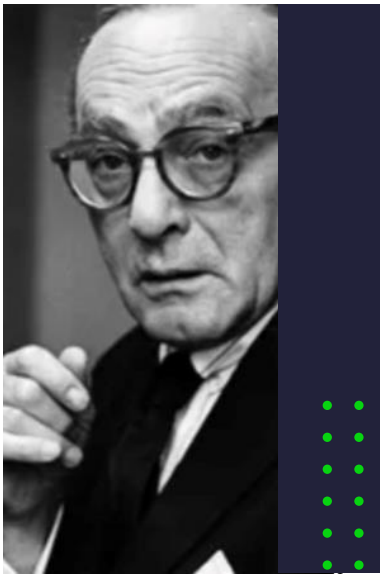
- For starters, there is no such thing as nothing – there is always *something, even if it's as subtle as the sound of breath going in and out*.
- Silence has a myriad of meanings. In theater, silence is an absence of words, but never an absence of meaning.

A word can be emphasized and a thought underlined by silence.

Silence has a certain energy to it like no other energy source. It has the power to get people to think and to act. It can help slow the mind down.

There is also a certain intimacy that surrounds silence. Indeed, it's the type of intimacy that is shared between two people who have a very deep and meaningful relationship. That might explain why no words need to be said.

Meisner on Silence



“Silence has a myriad of meanings. In the theater silence is an absence of words, but never an absence of meaning.”

Meisner: “A moment of silence is something, too. Let me prove it to you. Ask me whether I think you have talent.”
Student: “Mr. Meisner, do you think I have talent?”

Meisner’s head cocks away from the student and he maintains complete silence. The class begins to laugh.
Meisner: “That was silent, wasn’t it? My silence was very expressive.”



The Power of Silence

The trouble with silence is that it can make people feel uncomfortable and alone, that's why the world is filled with TV's that have been left on when nobody is watching, for background noise.

Because of how uncomfortable silence can be, many people feel the need to fill the void of silence with needless chatter.

The rapid, close, unbroken delivery of words cause ideas to become blurred and to recede into common noise.



Silence should be used sparingly since overusing it runs the risk of the lawyer appearing too self-indulgent.

Tips: Emphasis & Impact Devices

 # 1: There is music in speech. By adjusting the pitch and vocal inflection of certain syllables in important words, shortening your sentences, slowing down the pace, pausing to allow for important points to "sink in," you will draw the listener in.

 # 2: Don't overlook the mannerisms and phrases that you use to convince people in everyday life. These will bring you closer to the goal of being real and natural in front of the jury.

"To become more successful, you do not have to change who you are – you have to become more of who you are." Sally Hogshead



Here's a short story from my personal life to underscore this. I was asked to give a cold read and the script contained the line, "Oh, I forgot." I gave a straightforward but uninteresting reading of these words.

But when I thought about it, I realized that that was not how I would personally react to forgetting something, especially if it was important. I then put my trust in my body since it never lies. Instantly my fists went to my temples in a moment of painful recollection.

A long *pause* followed during which I realized that it was too late now and that I must make the best of it.

Finally, with a shrug of my shoulders, I casually said, "I forgot."

 # 3: Voice work is an often overlooked but invaluable tool for the trial lawyer. Simply put, it will help you free your breath, develop resonance, loosen jaw and tongue tensions and wake up your full vocal range. When this happens, your voice will drop into your body.



Tip: Relaxation and release is essential to opening, freeing, and ultimately strengthening your voice.

We Have Five Senses, Not One

Don’t forget to actively engage the five senses!

The easiest way to get vivid, cinematic, and sensual details into your story is to think in terms of the five senses:

If your story can enter the listener through the senses, the listener can experience the story in real time and as if it were happening to them.



The senses also trigger associations with memories and events from our past that are near and dear to us.

Unlocking Your Client’s Story Through the Five Senses



Ernest Hemingway on Listening



“When people talk, listen completely. Don’t be thinking what you’re going to say. Most people never listen. It’s a rare and profound gift to be fully present with someone, and yet, it’s something so few of us truly offer. Most people only half-listen, their minds already formulating their next words, distracted by their own thoughts, or zoning out entirely.”

“Imagine how powerful it would be if we listened more deeply—if we made a commitment to being fully engaged, to hearing and understanding not just the words, but the emotions and intentions behind them.“

“Listening isn’t just about waiting for your turn to speak; it’s about absorbing what someone else is sharing and making them feel heard, valued, and understood. It’s about connecting on a level deeper than surface conversations, because when you truly listen, you open a door to empathy and genuine connection. And isn’t that what we’re all really longing for?”

Sound

Remembering sounds can help to access the emotions they trigger inside you.

- Does the ringing of a classroom bell bring back feelings of being out of place and alienated, as you felt in middle school?
- Does the sound of an ambulance siren scare you, causing you to remember the day that your grandmother died?
- Does the sound of a brook running make you feel peaceful?



Example: "He heard a loud 'pop' like a muffler backfiring and took cover on the ground. In John's neighborhood, you could never be too sure. More often than not, a loud pop meant that someone was firing shots. "

Smell

A smell can help open up the personal emotions you need to feel. When I smell a familiar smell, I am immediately transported back to an event, time, or location that is personal to me.

- The smell of an apple pie in the oven takes me back to “Sunday night dinner” at my Grandmother’s house when I was 8 years-old.
- The stench of garbage might make you feel nauseous.
- The fragrance of lilacs or roses could make you feel the first stirrings of romance.



Touch

- Does sand trickling through your fingers transport you to a beach?
- Does the touch of fur make you feel romantic?
- Does a cool breeze blowing through your hair remind you of the day when your husband proposed to you?



The five senses are one big super-sense: touch. We've already covered physical touch. But how is touch triggered in the context of the other four senses?

- When we taste something, it touches our taste buds.
- When we smell something, the molecules penetrate our nose.
- When we look at something, the color or the light touches the back of our cornea and that's how we see it.

In what might be surprising and even a little bit creepy, sound waves are touching us all the time. Even now, as I speak to you, I'm touching you with the sound of my voice.

I send out sound waves (physical, tangible things) that travel through my mic, into the computer, out of your speakers and hit your ear drums causing inner vibrations. The vibrations that I'm sending here are quite literally touching you there.

I'm fascinated with this idea of how our words and sounds are always touching people. Indeed, the sounds of people's voices by themselves trigger certain sensations inside us. Look no further than some of your favorite narrators on Audible. Recognizing the sheer power of the voice, we should exploit it for the good of our clients when we're speaking to the jury.

I'm also fascinated with the power of touch through sight when we're speaking to the jury.



I can think of times in my life when another person "shot daggers" at me from across the room. It felt as if she had touched me when she looked at me. Indeed, it felt as if the person had "stripped me naked with their eyes."

Example: "The officer's grip on John's arm was so tights that mark it left was still there more than two hours later."

Does the taste of a bitter pill, rancid milk, or liver make you want to throw up?

Perhaps the taste of vanilla icing makes you feel loved and special, as you did when your mother would make a birthday cake just for you, with her special vanilla icing.

Or, maybe the sensation of a dark piece of chocolate melting in your mouth creates primal, sensual feelings.



Example: “As he lay on the ground, he could taste the blood that was dripping out of his nose and onto his lips.”



Ernest Hemingway on Observing

“Beyond listening, there is also the art of observing, of truly noticing the world around you. When you walk into a room, take a moment to soak in everything. Notice the details—the way the sunlight filters through the windows, the color of the walls, the expressions on people’s faces, the way someone is nervously tapping their foot or laughing with their eyes more than their mouth. Most of us rush through spaces, our minds preoccupied and our eyes barely registering what’s in front of us. But there’s magic in paying attention, in being mindful of the small details that make every moment unique.”

“Think of the room not just as a physical space, but as an experience. Every room has a mood, a feeling, an energy. It could be the coziness of a room filled with laughter, the tension of a space where a difficult conversation just took place, or the warmth of a place that holds beautiful memories. “



“The more we tune in to these subtle feelings, the more deeply we can understand our surroundings and the people in them. What gave you that feeling? Was it the way someone’s eyes lit up when they smiled? The scent of freshly brewed coffee that brought a sense of comfort? Or perhaps the distant echo of a song that stirred up a forgotten memory?”



Ernest Hemingway on Observing & Emotional Awareness

“Being observant and emotionally aware in this way takes practice, but it also transforms the way you move through life. You become more sensitive, more attuned, more aware. You start to notice the way a friend’s voice softens when they’re talking about something they love, or the slight shift in someone’s tone when they’re hiding something. You begin to see and feel things that others miss entirely, and that awareness can lead to a richer, more connected experience of the world.”

“It’s a beautiful thing to be a person who listens with their heart, who observes deeply, and who feels fully. It means you’re not just drifting through life; you’re living it intentionally. You’re soaking in the fullness of each moment, aware of the beauty and complexity around you. It means you understand people better, because you’ve made the effort to see and hear them, to pick up on the nuances of their being. It means you can be the kind of person whose presence feels calming, because people know you’re truly there with them, not just waiting for your turn to talk or half-heartedly engaging.”

Sight

A Hawaiian sunset, an abandoned house, a dead carcass on the highway, an intimate candlelit room or a flag-draped coffin.



What visuals create a response in you?

Does sand trickling through your fingers transport you to a beach?

Examples

- “His palms were shaking and soaked in sweat.”
- “The room looked like it hadn’t been cleaned in months.”
- “He could tell that she was holding back tears.”



Ernest Hemingway's Closing Remarks

"So, when you're in conversation, let go of the urge to plan your next statement. Take a breath, relax your mind, and give the person speaking your undivided attention. Let yourself be present, fully. When you walk into a room, slow down and really see it. Observe the details, feel the energy, notice the small things that make that moment unique. You'll find that life becomes richer, fuller, and more meaningful when you learn to listen and observe completely. It's not just about hearing words or seeing objects—it's about feeling the fullness of everything around you. It's about experiencing life, deeply and completely."



How I Brainstorm a Case



I brainstorm my cases using the steps below. This is merely one way of brainstorming a case. There are as many different ways to brainstorm a case as there are lawyers who try them.

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?"



Preparation Essentials for Trying a Criminal/ Civil Case

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 thinking 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 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 to be exercised 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.

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 hot 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."



How I Brainstorm a Case

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 actually 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.

Step 1: List the date and time of the incident.
Step 2: Make a list of witnesses — distinguishing whether they are States' witness or defense witnesses. Further break them down according to whether they are lay witnesses are members of law enforcement.
Step 3: Make a list of the names of any witness or victim who gave a statement. Indicate how the statement was made, when it was made, and how long it lasted.

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a. Was the statement made to a police officer at the scene? If so, does it appear as a summary in the narrative of the officer's report?
b. Was the statement made to a detective at the police station?

c. If the suspect was the one being questioned, was he read his Miranda warnings before being questioned at the scene or at the police station?
d. If taken at the police station, was the statement video recorded or was it transcribed by a stenographer?
e. On what date and at what time was the statement made? How much time elapsed between the incident and the taking of the statement?
f. How long did the questioning last? If it was typed up by a stenographer in real time at the police station, how long did it last? Twenty minutes? One hour? What was the start time? What was the end time? How many pages does the transcript consist of?
g. Was an interpreter needed? If so, was one obtained?

Step 4: Create a three-column chart called "Bad facts." Label the far left column, "Bad facts." In that column, list all of the bad facts, no matter how obvious they might be. Do not worry about what is admissible and what is not admissible when making the chart. Just try to list everything you can think of. Label the middle column, "Source of bad fact." Cite the source for each bad fact. For example, if it was a police officer's report, write the name of the police officer and the page on which it can be found. If it was testimony given at a grand jury hearing, reference "GJ Transcript" and the page on which it can be found.

The “Bad facts” can be a work in progress through the case. Sample “Bad facts” include:
(1) Defendant has criminal record;
(2) Defendant fled the scene;
(3) Defendant admitted crime to witness;
(**4)** Defendant assaulted victim in the past;
(5) Defendant was arrested in clothing that matches the description provided by an eye witness;
(6) No coercion on behalf of police during defendant’s interrogation.

Step 5: Create a three-column chart called “Good facts.” Label the far left column, “Good facts.” In that column, list all of the good facts. If few exist, don’t be afraid to reach. For example, “John did not make an incriminating statement.” Name the middle column, “Source of good fact.” Cite the source for each good fact. Do not worry about what is admissible and what is not admissible when making the chart. Just try to list everything you can think of.

The “Good facts” can be a work in progress throughout the case. Sample “Good facts” include:
(1) No fingerprints on gun; (2) Defendant consented to a DNA test; (3) No DNA found; (4) Law enforcement did not record the defendant’s statement; (5) Defendant had no motive; (6) It was dark out.

Step 6: State your defense, as shallow as it might be. For example, "Mistaken identification."

Step 7: Return to your "Bad facts" chart. Label the far right column, "Neutralizing bad facts." For each bad fact, present the State's argument — i.e., how you expect the prosecutor to use that damaging fact in closing argument to "smoke" your client (i.e., in support of guilt). Directly underneath it, provide a rebuttal. Are there any pre-trial motions you should file? Is there any supplemental voir dire you would like to submit to the court? Your goal is that by the time you do your summation, you either have a good explanation for every bad fact or you have suppressed it or kept it out of evidence.

Step 8: Return to your "Good facts" chart. Label the far right column, "Defense's argument." For each good fact, write out your argument — i.e., how that fact supports a vital point that you want to make during your closing argument in support of John's innocence. Are there any pre-trial motions you should file? Is there any supplemental voir dire you would like to submit to the court? Your goal is to ensure that every good fact has been presented during the course of trial so that you have a legal basis for making the kind of arguments that are consistent with innocence at closing.

Step 9: Look at the good facts and bad facts and determine if there are any pre-trial motions you should file. List of potential pre-trial motions:

- Dismiss the indictment or dismiss counts of the indictment;
- Suppress physical evidence;
- Suppress statements;
- Suppress identification;
- Prevent the State from introducing 404(b) evidence;
- Sands/Brunson hearing
- Prevent irrelevant or unduly prejudicial evidence (N.J.R.E. 403)
- Admissibility of expert testimony or scientific evidence;
- Prevent hearsay;
- Admissibility of evidence of third-party guilt;
- Identity of confidential informant;
- Disclosure of police surveillance post;
- Admissibility of victim's prior sexual conduct (Rape Shield Exception);
- A *Driver* hearing (admissibility of tape recordings);
- Prevent Fresh Complaint Evidence;
- Prevent Tender Years Hearsay Evidence (*N.J.R.E.* 803(c)(27));
- Prevent "excited utterance";
- A *Michaels* hearing (coaching child sexual abuse witnesses);
- Severance of co-defendants (*Bruton*);
- Severance of counts of the indictment;
- Prevent the State from relying on lab reports;
- Redact inadmissible portions of a tape recording of the defendant's statement.

Step 10: Examine the good facts and the bad facts and determine if there is any supplemental voir dire that you would like to submit to the court. If so, submit supplemental voir dire questions regarding these areas in a supplemental voir dire brief. Also, for voir dire, I recommend constructing a chart with the seating positions of each of the jurors. The court will usually provide one. Write the juror's name and the information about that juror inside the rectangle that corresponds to that juror on the chart.

Insert a "mark" for how you feel about that juror. For example, you might draw an upward arrow for jurors you like, a downward arrow for jurors you don't like, and a straight line or no mark at all for jurors you feel neutral about. Have a small pad of sticky paper available so you can create a clean space in your chart over any jurors that were struck. An alternative is to write all of the information on a pad but that can get confusing. Be sure to keep track of how many peremptory challenges you have used and how many the prosecutor has used.

Step 11: What are the underlying dominant emotions that you expect the jury to feel after hearing the prosecutor's opening statement? For example, sympathy for the victim. Disgust for your client.

Step 12: What are some things that law enforcement should have done but didn't? Did they neglect to take fingerprints? Did they fail to take a statement from a key witness? Did they forget to cordon off the crime scene with yellow tape to protect it from contamination and to prevent nosy people from traipsing through?

Step 13: What questions is the jury likely to ask after hearing the State's case? For example, "If Bill is truly innocent, why would he have confessed to a crime that he didn't commit?" This question will need to be answered directly during closing argument.

Step 14: Write out the theory of your defense in a short sentence or two. Example when the pivotal question is, "Why would an innocent man confess to committing a crime that he didn't do?" "John took responsibility for a bank robbery that he didn't commit in order to protect the love of his life from going to prison. If he is guilty of anything, he is guilty of loving Vanessa too much and of using poor judgment."

Step 15: Come up with some themes: For a false confession case, "He was as desperate as a bear who chewed off his paw after getting caught in a hunter's trap." Trilogies are great. For a battered women's case: "Battered, beaten, and abused."

Step 16: Tie it together and start writing out your closing argument.

- Why would an innocent man admit to committing a crime that he didn't do?
- Why would a bear chew off his paw when he is in a helpless situation?

1. A mother bear and her cub were out foraging for berries. Mother bear's paw became ensnared in a hunter's trap.
2. The cub didn't realize that his mother was in trouble and full of curiosity, drifted away from his mother.
3. A hungry lion, perched on top of a cliff, sees the wandering cub.
4. Seizing the opportunity to catch the cub off guard and in a vulnerable state, the lion takes off like the speed of light from his perch.
5. The mother bear sees the lion out of the corner of her eye racing towards her cub.
6. She knew all too well what was going to happen. And she knew what she had to do. With not even a minute to spare, the mother bear chewed off her trapped paw.
7. Limping, the bear rushed to her cub as fast as she could. And it wasn't a minute too soon. The lion had already closed in and was eying his prey. Summoning up all of er strength, the mother bear stood between her cub and the lion, stood up on her hind legs and raised her paws up in the air, showing her menacing claws.
8. The lion stopped dead in his tracks, turned around, and retreated like a hyena with its tail between its legs back into the forest.

- Just like the mother bear sacrificed her paw to save her cub from the carnivorous lion, John sacrificed his liberty to protect the love of his life from going to prison.
- As John testified, the detectives told him that Jessica had been arrested and charged with being in possession of heroin.
- On the way to the police station, when John was alone in the car with Detective Jacobs, Detective Jacobs made John a promise. If John confessed to robbing the bank, then Detective Jacobs would talk to the prosecutor and see to it that Jessica did not go to jail.
- Detective Jacobs exploited a vulnerability of John — his unconditional love for Jessica. He knew that John was in a relationship with Jessica. And he dangled Jennifer's fate in front of him like a hunter dangling a piece of raw meet in front of a lion.
- Why did John admit to committing a crime that he didn't do? To protect the love of his life from going to jail. He couldn't bear the thought of seeing someone as naïve and innocent as her rotting away in a cold, dank jail cell where her safety would be at risk every day. You may not have believed what John believed or done what he did. But it doesn't make him a criminal for exercising poor judgment. It only makes him a criminal if he violates the law – and none did he violate.

Love & the Sacrifices that Mothers Make – A Powerful Theme

South African photographer, Mark Dumbleton captured this powerful image of a lioness after a violent fight with a predator. She lost one of her teeth in the struggle but managed to protect her cub, ensuring his survival. In the photograph, her face is stained with blood as she embraces her little one. The cub, named Ali, appears unaware of his mother's pain and sacrifice—but one day, when he grows and takes on the responsibility of protecting the pride, he will understand the depth of her devotion. This captivating image is a reminder of the sacrifices mothers make, no matter the species.



Storytime



The greatest lessons I've learned when it comes to storytelling come from reading "Dr. Seuss" books to my four year-old nephew and carefully observing his reactions when he is fully engaged and "clocking" what I'm doing that has captured his attention. That is gold. The great thing about children is that they are unfiltered and uncensored and are not afraid to speak their minds.

For example, if you start out with a character voice for a specific character, you better not drop it later as they will always hold you accountable. Kids have an uncanny way of keeping us honest. Sure, many factors need to be accounted for. But if you listen carefully, you may be surprised to find out that something that you would have sloughed off as "ordinary and trite" or that you were never even aware of has suddenly captured his attention and hooked him into the story. Tuck that away. It is your superpower. Generally speaking, these are the things the come more natural to you than they do to others.

Before reading a bedtime story to my nephew, I make a promise to myself to use whatever means necessary to tell the story as clearly and as simply as possible just as it is written on the page so that he can follow along and be launched into this fictional world of fantasy where the monotony of everyday life melts away.

If I find myself having to stop to explain in my own words what's going on, I know that something isn't working and that I need to make a change.



Now simply substitute the jury for the child and you can see how valuable a lesson this is when it comes to telling your client's story to the jury.



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, neither acting or litigating is 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 timeso 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 interactivewith 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.

A Peak into Voice Class with Tamala



The world-renowned Linklater method is taught at conservatories, MFA programs, and drama schools around the world and is utilized by many of the world's most famous actors for good reason – it works.

I've been a student of the work for seven years. I'm bringing in Tamala Bakkensen, a Linklater-designated instructor, to introduce lawyers to the Linklater progression.

This class will explore the direct connection between a freer voice and zealous advocacy in the courtroom.

Tamala will teach specific, repeatable exercises to help you gently release vocal blocks and challenges so that your voice, in all of its fullness and richness, can communicate the depth of the cause that you are seeking justice for. Let go of physical habits that may be expressing something about you that is no longer true. Learn how to identify and release any new vocal blocks that may come your way.

Some of the other topics that will be explored are:

- Tools and exercises to open up the body and expand emotional range.
- Moving past personal limitations and restrictions that hinder your full potential.
- Conveying subtle emotional nuances for delicate and intimate connections with the jury as well as powerful expressions for emphasizing important points so that the jury understands their significance and so that your points will dominate during the jury's deliberations.



Disengaging



Trying an emotional case is like an actor who lands a demanding role that requires personal introspective work to mine the mind of a complicated character.

Actors recognize how important it is to disengage themselves from their own work.

With all of the stress and the heightened level of concentration that is demanded of litigation, it's a good idea to heed this advice and take some personal time away from the courtroom to recharge your batteries. This will help to stave off burnout.

"In life we have a lot of facades – and we need them because we can't be as vulnerable, and penetrable, and open in life as we must be onstage or in front of a camera. In art you have to be responsive. Things have to get in so that [feelings] can get out, and you can't live the way you do your art or you'd be wounded every second."

Deborah Moller Kareman

"I can't do a really intense role and then snap out of it. Mine is a slower progression out of a character, but I'm learning a lot of physical things that help me shake it off. I've learned to develop a ritual, whether a vocal exercise or yoga, to bring me back to my center. I think having an outside supporting system is crucial for this work."
Naomi Lorrain, Student in MFA Graduate Acting Program at NYU



Bonus

I want to share with you a great open-ended question that I have used during jury-selection to get the jurors talking: "If you could have dinner with any person, living or dead (family member, friend, or a celebrity) who would that be and why?"

This never fails to get the jurors talking.





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Thank You