Preparing Yourself

Lawyers who know the law backwards and forwards and have memorized the evidence but have not looked inside themselves to determine where their passion or their energy comes from in their case have a slim chance of winning it. Preparing *yourself* means putting all the law, all the evidence, all the other stuff to the side for a while and simply feeling your case.
How do you do that? Sit quietly, with no distractions, and just let your mind wander through your feelings about the ?whole? case?your client, the jury pool, the judge, the prosecutor, the witnesses, and your fears. You want, and need, to get out of your head in this process and into your heart. Recognize the feelings you get as you proceed. As this process continues you will be shocked at the number of things you feel that you were not seeing and not feeling when you were stuck in your head with the cerebral task of ?knowing? the law and evidence and all the other ?lawyer? stuff.

I am convinced that most juries and even most judges would tell you that they ruled based on what they ?thought? (their head), but that they really and truly did so based on what they ?felt? (their heart). Part of what a jury wants and needs to feel?and I would argue one of the biggest parts?is that the lawyer is being real and honest at all times. In my opinion, being real and being honest are decisions of the heart, not the head.

Gerry Spence once told me that the opposition he fears most in trial is the new lawyer, stumbling over himself or herself, stuttering and making the wrong objections, and at all times trying so very hard and being so very honest, making these mistakes with passion. It scares him because people can understand a person like that, people can feel connected to a person like that. We may call them jurors, but they are people with all the baggage and feelings that everybody else has.

I am not saying that you need to stutter or mess up the law for a jury to believe or ?feel? for you. I am saying that if you do stutter and mess up, and it is real, and it comes from a place of passion, then it is not a bad thing to ?let them see you sweat.? It makes you human, and juries understand humans much easier than they understand the cerebral lawyers we were all taught to be in law school.

Psychodramatist Katrena Hart (M.S., LPC, CP, PAT, CBT, Certified Psychodramatist, Allen, Texas) is one person qualified to talk to you about psychodrama and its purposes, but I have been involved with psychodrama on a personal level on several occasions and it was a major component in the training I received at the Trial Lawyer?s College with Gerry Spence in Wyoming. Based on that first-hand knowledge, I can relate to you a little bit about how this process can assist in the world of lawyers.

How does Psychodrama prepare ME for my case?

You are a month out from picking a jury in a case that has caused you to lose sleep. You have researched every possible issue, you have interviewed every witness who would talk to you, you have filed all your motions, and you remain baffled as to what you are going to do at trial. My understanding of psychodrama is that it is a process that cuts through all the head games and goes straight for the heart. Knowing all the law and the evidence and all of that without knowing what is going on?really going on?inside of you with regards to your case will leave you baffled and unsure. Psychodrama, in its classic form, requires multiple participants, and is to be lead by a qualified professional. But, some of the same tools used in psychodrama can be used by you on you.

One process I was taught while participating in psychodrama is as follows:

- Three to four chairs are placed in a row, one in front of the other.
- The person participating in the psychodrama sits in the first chair.
- The person is asked what is it that concerns them (what do they want to work on).
- The person then answers.
- The person is then asked to stand up and sit in the sec-ond chair directly behind the chair they had just been sitting in and is asked to tell the person who was in the first chair (you) what really concerns you and how it makes you feel.
- This process continues until you know that you are dealing with the true concerns or issues, and when you know that is when you finally recognize what was going on in your heart, rather than your head.
It is a process of being honest with yourself. We spend so much time, especially as lawyers, in our head, in our intellect. The process described above is the slow withdrawal from the head and journey to the heart. Gerry Spence describes psychodrama as “an archeological dig of the soul.” I see it as a journey to the heart.

**An example of how this might work**

You are preparing for voir dire and you are going through the ?lawyer? questions that are so easy for you to deal with.

**Probable Cause/Burden of Proof/**
**Two Sides to Every Story/Presumption of Innocence**

You get it all ready and you still have this horrible feeling that you are not going to learn one single thing that will really tell you who your jury is. If you have not taken the time to crawl into your heart and determine what you feel about your case then you will never have a connection with the jury in voir dire because you may be legally prepared to try the case, but you are not ready. That is where you can set up some chairs as described above and sit in the first one and ask yourself what it is about your case that concerns you the most. I can promise you the first thing that comes to mind will not be the 100 percent reality of what has got you so concerned; it is generally an intellectualized concept, not of the heart. Before starting this process make a promise to yourself that you will be completely honest and open to this process.

An example I remember of this process being done by an attorney went something like this:

1st Chair: I am concerned that my client won’t get a fair trial no matter what I say.

2nd Chair: DWI cases are so hard to win because of all the news about DWI deaths and all of that.

3rd Chair: I don’t think I know the right question to ask the jury to find out if they agree with my fear.

That is obviously an oversimplification of what occurred but I can tell you the result that came out of that process for the lawyer. He decided that he should just be honest with the jury and the question that was formulated out of the process above was:

"I stand before you scared to death. I don’t know, with all the stuff we are bombarded with regarding DWI, if I know how to get a fair jury for my client. I don’t know if I know the right question to ask to find out. Is there anybody here that can help me figure out what I am supposed to do, what I should ask you?? Immediately a juror raised her hand and said: "I thought we were supposed to presume your client innocent. The State has to prove it to us. What we have heard about DWI has nothing to do with your guy.? The attorney then asked another juror what they thought about that, and so on and so on.

In ten minutes the jury panel themselves had solved the lawyer’s problem simply because the lawyer was honest and real about his fear. It was as if the lawyer admitting his fear had put the whole panel at ease. Remember, prospective jurors are in a place that most have never been before, a place that can be intimidating, and there is nothing like showing them that you have the same feelings as they do to take some of the staleness out of the room. (He also won the case.)

Some lawyers, and maybe some reading this, believe that we should never admit fear or that we don’t know how to get to where we need to be. I disagree if that is how you feel. Facts covered in intellect are not near as powerful as facts covered in passion and truth?whatever the truth may be, including that you are scared. Admitting fear and asking for help immediately makes you real to the jury. Juries respond to ?real? much better than they respond to ?lawyers,? and juries respond wonderfully to lawyers who are being real, from the heart.

**Preparing Your Client**

I am going to break this section up into two parts. The first part will deal with preparing your client when...
you know your client is going to testify, and the second part will be in the case where your client will not testify.

**Client is going to testify**

I will use a case I had some time ago as an example. I am going to change the fact scenario a little bit so as to avoid any chance of recognition about which case and client I might be talking. (This was a case in another county, but it is still better to be safe with confidences.)

The charge was murder. My client was obviously not a cold-blooded killer; I could tell that the first time we met. The facts were going to be of the sort that the jury would probably believe it was murder if my client did not testify because he was the only one capable of explaining that it wasn’t murder. My client grew up hard and grew up fair. He worked hard for a living, raised good children, and never had asked for a handout from anybody. I would consider his outlook on life as kind of ?old school?: Be fair to others, keep your nose clean, work hard, and don’t show much emotion.

That last part?the ?don’t show much emotion? part?is the part that was proving dangerous for him as we progressed towards trial. I needed him to be able to ?connect? with the jury. I needed the jury to ?feel? him, and I needed him to roll back that ?old school? protection and allow himself to feel. We did multiple mock direct and cross-examinations. I simply could not get him to allow his emotions about the event to show. In truth, he looked like a cold man when he testified.

At that point I made a decision to employ a psychodramatist to maybe help me crack through my client and get to his heart. Using much of what Katrena Hart teaches, we got to the soft spot in less than two hours. He cried, he cried like a child, and you could tell that emotions that needed to be felt and dealt with came rushing out. The entire process lasted about three hours. He was exhausted, I was exhausted, and we were ready. We were ready because my client had learned that his feelings and showing them were a release, a release he had probably not allowed himself since he was a child.

He processed for about a week what we had done, and we conducted another mock direct and cross-examination. And this ?old school? man, this man who had been so closed off, connected with everybody involved and I knew that we would be fine. We were.

Psychodrama is a valuable tool to help when you have a client who you know is covering up his emotions and needs to let them out. It will allow his testimony to speak to the heart of the jury because it is coming from his or her heart, and as I stated above, I firmly believe that juries makes decisions based on what they feel in their heart, not what they think in their head.

**Client is not going to testify**

This is the more complicated use of the psychodrama method with your client. Every one of us has had a client (or a hundred clients) who, when looking at the evidence and facts, is not going to win a jury trial short of a miracle. There are times that we simply must try the case that should not have been tried because it is what our client wants. There are also occasions when you look at your clients and you know that they are so caught up in their own situations that they have blinders on with regards to the reality of their case and what will likely happen at a trial. This is when it is helpful to get your client to ?crawl into the skin? of the jury and maybe even the prosecutor. There are clients that this will not ever help, and for those clients a jury trial will be conducted and the outcome will likely be as predicted. There are also clients who, if they allow themselves to see what others will see, benefit greatly from this exercise and may come away from the process with a different outlook on their situation. This is not an effort to ?talk your client into a plea? but rather to assist your client in seeing things as they really are. An example of how this might be done is as follows:
• Client has been to prison twice before for assault offenses.
• Client is now charged with aggravated assault.
• Two eyewitnesses saw client commit the crime.
• Forensic evidence is insurmountable.
• Client made statements that hurt him.
• Client is angry.
• Client has been getting ?jailhouse? advice.
• Client does not trust you.

As with any issue in your cases, you have been honest with the client regarding the case and the state of the evidence. The prosecutor has offered 20 years in prison, 5 years less than the minimum the jury could give him if he is found guilty. Your client, in his or her anger, has told you countless times that he or she will not ?accept? anything, that a jury will just have to ?give? it to him or her. If possible, after having spent sufficient time with the client and always being honest, ask the client to be quiet for just a second. Ask the client to close his or her eyes. Ask the client to picture the courtroom. To picture 12 people sitting in the jury seats. To picture the prosecutor explaining each piece of evidence. To picture the jurors and how the evidence must make them feel. To picture the argument the prosecutor will make about how much time the client should spend in prison. To ?feel? what a jury will probably feel after hearing the evidence and learning of prior trips to prison.

Have you ?told your client to accept the plea bargain?? No. You have done what you are required to do as an attorney?offer honest and frank advice to your client based on the evidence and your experience. Is it always going to work? No. Are there clients who are so angry and distrustful that they will never be able to be anywhere other than in their own head? Yes. Can it open the eyes of some clients to the reality of their situation? Yes. If the client won?t participate and allow the reality to penetrate, will you have to try the case? Yes. Will you sleep better knowing that you did everything you could to allow your client to see his or her situation for what it really is? I hope so.

Preparing Your Case

Obviously, much of what has already been covered is ?preparing your case,? but this portion of the story is a general discussion of how this process can assist in the nooks and crannies of your preparation.

What kind of case is it?

Use the ?crawling into the skin? concept when starting your case. Get out of your head at some point and free associate with yourself about the charge, what the charge makes you feel, how you are going to handle those feelings, and what scares you about the case. Knowing the parts of your case that scare you at the onset is incredibly helpful in pointing your investigation in the right direction and forces you to begin the process of facing the fears and being honest with yourself. Crawl into the skin of the jury months before you would ever have a trial. What do they need to hear to rule with you? Can that be found in your investigation? What about your case is likely to upset them, and how can you be honest with them about your feelings? Doing all of this on the front side of the case gives you an incredible head start should it go to trial.

Who is the prosecutor (?know thy enemy?)?

I know, this will be an unpleasant journey... but crawling into the skin of the prosecutor can be unbelievably enlightening as to what you need to do to get the proper plea bargain or prepare for trial. Try to look at the case as the prosecutor looks at it. Not in your head, but really crawl into his or her skin and feel it in your heart. If you let the process work it is almost like cheating. You can almost try the case as a prosecutor, making your voir dire for conviction, making your opening statement, putting on your evidence and cross-examining the defendant?s witnesses, and then making your closing argument. This process can literally
give you the State’s case before you ever walk into court.

The key to the process and its success is to put your heart into the endeavor, not just your head. You have to let yourself get riled up against your case like a prosecutor would, feel the righteous indignation, the need to convict, the need to imprison. This really does work, and when you crawl back out of their skin and into yours, you will have insights into what you need to do that you would never have had otherwise. Again, it only works if you let yourself really feel it. ?Know thy enemy,? and the prosecutor is most certainly the enemy?and most certainly wants to put your client in prison or jail.

Who is the judge (all hail Caesar)?

You have probably been in front of the judge before, probably tried a case before him or her before. Even if you have not, you can ask those who have about the judge and the manner in which he or she tries cases. Do the same exercise you did for the prosecutor: ?Crawl into the robe.? You know what your objections will be, you know what your evidence is, and if you crawl into the robe of the judge, you will allow yourself much more insight into how you get what you want during the trial.

Who are you (whoever it is, it is enough)?

The most important skin you must crawl into is your own. I firmly believe that each person, whether eloquent or not, whether a weathered trial attorney or not, can make any winning argument at any time. I believe that as long as you have taken the time to know yourself?not who you wish you were but who you are?you are enough, always. Sounds simple but you can watch any number of trials in any court in this state, or country for that matter, and you will see attorneys being somebody else. A jury, if nothing else, is a collective set of receptors that accept what is real and reject that which is not. Being real, regardless of all the stops and starts, the fumbling, the miscues, and other things common to humanity, is the most powerful tool at any trial lawyer’s disposal. I believe that to be 100 percent true. From the ?real? comes passion, and you can feel it; you can feel it in you and so can the jury. Real speaks to the heart, which, in my opinion, is where all verdicts are born.

Who is your client?

This has been addressed to some degree earlier but warrants a little more attention. Get all the information you can about your clients?from them, from their families, from any source you can tap. Then do the exercises described above. Get quiet with yourself and crawl into their skin. Feel how they feel with the State against them, feel how they must see you, feel how jail and their lives have left them. This gives you great insight into your clients that can be helpful in all aspects of the case.

The Bottom Line

Psychodrama. Two words you usually would not want to see linked together. I hope I have adequately explained that it is not magic but can have magical benefits. It is really an exercise in taking a trip from your head to your heart.

Note: This concept of using this psychodrama in the practice of criminal defense work is not something I came up with. I was introduced to this valuable tool while attending the Trial Lawyer’s College at the ranch of Gerry Spence, the legendary attorney, in Wyoming.
Testimonials

I was trying an assault of a family member by imposing the breath case last week in the 182nd in Harris County and I wasn’t very happy with the way the trial started going once we put on our defense witnesses. I began losing faith before closing arguments, but then realized what a great mistake I would make if I let that take over me. At that point, I began thinking about my client and everything that he went through. I put myself in his place and thought about how much damage his former wife had done to him, and how his future could be completely jeopardized with a felony conviction that he did not deserve.

I was supposed to only spend 5 minutes on my part of the closing, because my co-counsel was going to take the big portion of the closing, and I ended up talking for over 15 minutes. For the first time, I felt that I was actually having a dialogue with the jury. I really felt that I left my heart with the jury, and that when I sat down their thoughts and verdict would be in our favor.

The jury came back in less than 2 minutes with a “not guilty” and later they told me I was their favorite attorney.

—Leira M. Gracia

We’re having great success using the Psychodrama method here at the Dallas County Public Defender’s Office. We have worked up over 10 cases this year and have had great results. We even held a full day of in-house training, working up cases using the method. It is amazing to see lawyers take on the role of their client, a police officer, a police in car video, girlfriends, boyfriends, or the voices in a client’s head to help them better understand their clients’ story. This leads to a huge payout in trial.

I am in the process of acquiring my hours to become a certified psychodramatist. I hope to complete everything by October 2013. I need to direct 50 psychodramas during the next year. If you have any interest in starting up your own group, want tips on how to do their own training day, or need help working up a case, feel free to contact me.

—Sean O’Connell

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