



California Lawyers Association

presents

What Lawyers Can Learn from Actors

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Conference Reference Materials

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STORYTELLING

Lawyers are storytellers. Whether they're telling a story to a judge, a jury, a client, opposing counsel or a public audience – they are persuading.

Actors are storytellers. Whether we're telling it with language or telling it physically or telling it in song or puppetry or dance – it's all about conveying a story to an audience.

In both the theater and the courtroom, the creation of a live event through storytelling is the key to success. There must be a story for the audience in the theater and the jurors in the courtroom to follow. In the theater, if the story is not clear there is another chance to do it again the next night. In Court the consequences are more profound. Someone's life, liberty and property are at stake. Someone's idea or livelihood can be lost. Storytelling is the element that can separate victory from failure.

It is a mistake for lawyers to think that Storytelling only belongs in one setting, The Courtroom. There is no single setting in which Storytelling is not essential. Without a Story, a client is lost; opposing counsel has no reason to rethink their stance; a Board remains unmoved; and even a telephone conversation can be a confusing waste of time.

What is it about story that is so profound? Hear these phrases in your mind:

*Think when we talk of horses, that you see them printing their proud hoofs
into the receiving earth*

*A young woman is kidnapped and raped in Phoenix, AZ. Eleven days later 2
police officers find an abandoned car.*

Once upon a time ...

Can you feel what those phrases do? Can you feel the excitement, the anticipation? These phrases tell us, *Ahhhh. There's a story.* The first phrase is from the theater, the second from the courtroom and the third is as old as time itself.

We hear these words and we know it's time to listen – and learn. Story is one of the oldest human constructs.

Human beings tell stories. It's what sets us apart from animals. Evolutionary anthropologists tell us that Story is encoded in our genes. Storytelling is a survival skill. It's how we pass down information about our history and our culture. It's how we contextualize information and how we educate each other.

Storytelling has taken on many forms throughout human history. Shamans and medicine men passed down their wisdom. Fairy tales began as small seeds of truth, cautionary tales about wicked stepmothers or dangers in the woods. Homer's stories were songs passed on through aural tradition and were very cleverly manipulated, expanded, and contracted based on the audience. Troubadours in Western Europe traveled from town to town, singing songs, and adding information to their songs from each town they visited. Now technology has allowed us to consume stories all day, every day.

Humans started as families, then became clans, and eventually evolved into gatherings of tribes. We would gather around the fire in the middle of the night, flames crackling and popping, huge expanse of sky and stars above. One person would stand up and tell a story – it might be how the tribe began, what the stars mean, or a story about how the sun comes back each day. If a group of hunters returned from a hunt that day to bring back sustenance for the group, the hunters would tell the story of the hunt. They would share the adventure – the new things they saw, the close calls, the familiar places. Listeners would thrill to the story and share in the fear, the joy, the excitement, the exhilaration of a victorious hunt that brought food back.

Or maybe the hunt was unsuccessful or one of them is injured or missing. They still light the fire, eating what they can in the absence of meat because they're hungry and cold. The fire still crackles, sparks shooting up into the huge expanse of sky and stars. They listen to the story of the hunt that yielded nothing. The listeners share in the sorrow and the fear and the loss and grief. They share in the pain and suffering, but they still want to hear the story. It unites the group and they will learn valuable lessons through these stories – how not to get hurt, what areas to avoid, how to have a successful hunt. It educates, but also solidifies their history. The group is made a cohesive whole in the sharing of that story.

As language developed, storytelling evolved. It was called the great leap forward – there was a tremendous evolution of language and written language. When that evolution happened, songs and stories could be told and written down. Not just drawn on walls or passed down via word of mouth. It became very important to memorialize these stories. So important in fact, that religion and storytelling were one thing. And they still are, aren't they? When we go to church or temple or the mosque and we enact these rituals as a group, we are coming into a room or a gathering place as individual people who share some common bond of ethnicity or

language or belief. We enact a ritual and tell a story, reciting prayers and incantations. That process of gathering, reciting, reimagining, and retelling binds us together as a group and teaches us lessons about life. The group is made a cohesive whole in the sharing of that story.

We see it today with our children who want to hear the same stories over and over. “Tell me about the time I was born.” “Tell me about the family history.” “Tell me about when grandma came over.” Children love repetitive storytelling and we’ve learned that it’s an important developmental process for human children, to repeat that story and hear it over and over.

In today’s culture, Storytelling is all around us every day. We consume it in books, on television, and on the internet. We, as a species are learning how truth can be blurred, spun and twisted through the power of Story.

We are a species for whom storytelling is *everything*.

What does that mean to the theater artist? And what does that mean to the lawyer?

Our job as actors and your job as a lawyer is to unite your audience and move them forward persuasively through a Story.

If you’re thinking, *Well that sounds simple enough*, you’re right and you’re wrong. It’s an easy directive – just tell them a story! But it’s not a simple task.

In the theater, we ask “What is it about?” in the hope that the story will catch us on a first hearing and excite us to dress up and go out and audition for a new play. One of the worst things you can say to a film writer is, “Where is the Story?” They will know that the project is doomed. In the world of fantasy, we know that without a Story there is no way to engage the audience, take them to a conclusion, and leave them with something that will last in their lives. Television writers work frighteningly long hours to come up with universal storylines that can be told in 22 or 43 minutes.

In our practice as Trial Consultants when we ask, “What is the case about?” one of the things we fear most is, “This is a complicated case” or “Liability” or “A million dollars”. Why? Because we know then that the lawyer is not thinking of the Story. And there is too much consequence to the question, “Where’s the Story?” in this part of our lives. It is not a matter of audiences not coming to the theater, the film project being axed or the television series being cancelled. It is a matter of Justice.

As we said, this goes beyond the courtroom. When we work with attorneys for public speaking, one-on-one meetings, Board Room presentations, Client Meetings, invariably what is missing is STORY.

A list of facts, data or information is not a Story and does not create a compelling need for someone to listen or to take action.

The attorney who understands this truth, like the best screenwriter or playwright, has the edge. They will weave the story as best they can, in order to convince and motivate their listeners to action.

The great storyteller, the great advocate, the great lawyer, finds a way to marry a narrative woven from the facts, evidence, data, and information into a Story and weave a theme throughout it. It's the first – and most important job every lawyer has. Find the story.

This task is divided into two parts:

1. Crafting the story
2. Delivering the story

In the world of the theater artist it is the job of the playwright to craft the Story. It is the job of the actor to deliver the Story.

In the world of the Law, the attorney is both Story Crafter and Story Teller.

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BEING YOURSELF: Acting Like a Human Being

Attorneys and actors have a lot in common. Now, we know that some lawyers might not want to hear that, but it's true.

We're often asked, rather accusatorially, whether we teach lawyers how to act. The simple answer is no – because lawyers are already acting! They are acting like lawyers, or, rather, their limited idea of what a lawyer should be.

Ultimately, a lawyer is a performer in all settings. When you have to interact with other people, you can learn a lot from the skills of the actor. Especially the skills of BEING YOURSELF.

Our job is to help strip away the artifice and allow attorneys to be themselves as they tell their stories in any setting. They need to be vulnerable and real human beings. As Oscar Wilde said, “Be yourself, everyone else is taken”. That's the best advice. It's simple, but can be some of the most difficult advice to follow .

Attorneys are required and trained to work from their intellect. The law is complicated and based on facts, so attorneys are adept at analyzing, reasoning and creating a written form. They focus on the line of intellectual argument and what reasoning they need to use.

But intellect alone isn't always enough when speaking with other people. The way you say something can be as important as what you say.

LAWYER MAN/LAWYER WOMAN Getting Into Character

As actors, our goal is to take the skills we know, combine them, with all of the experiences and emotions we have inside of us, and find a way to bring all of that onto the screen or the stage. We need to get into our character.

You need to do the same in the courtroom. Attorneys hiding behind **LAWYERMAN** and **LAWYERWOMAN** only bring their persona into the courtroom. What so many of them are missing is bringing their experiences and emotions into the courtroom. So you need to work on getting into your *own* character – your real, authentic self.

In the acting world, there are two different ways to get into character. You can work from the outside in or work from the inside out.

Working from the Outside In

When you work from the outside in you're building a character from the outside. You try to identify how you think the character would appear to an outside observer. How does he walk? What clothes does he wear? What makes him happy? What makes him angry? Does he smile a lot? This is a very technical approach. You try to acquire the characteristics of the character.

Working from the Inside Out

We all have different characters that exist inside us. These characters are based on our life experiences and our personalities. If you're married and have kids, if you're grieving a loss, if you're happy about a promotion – all of these things make you a full human being, encompassing your full emotional and intellectual self. It's who you are as a person and you access all of these different parts of yourself when you deal with different people in your life. You're different when you talk to your grandchildren, your spouse, or that bumbling customer service representative. Those are all different characters that live inside of you and they all have a place in the courtroom.

What we know as actors is that a multitude of characters already exist within us. Similarly, all attorneys have all different kinds of aspects of

their personality already within them. You're different when you're with your grandchild than you are when you're with your wife, your parents, your children, when you're trying to express command and control in a potentially difficult situation. Different aspects of your personality come out if you're checking in late to a hotel and you're exhausted and you've been traveling all day and the service in the hotel is terrible. All of these situations elicit a different aspect of your personality.

All of this is your full self. When we talk about being human or being authentic, or, as actors we say having organic behavior, we're talking about behavior that is congruent. That means that you're not shaking your head no when you're saying yes, or you're not smiling when saying, "I hate this." As actors we strive for an organic expression of self, physically, vocally, and through gesture. In any setting, you're striving for a true expression of self – an authentic, congruent, organic, expression of self.

You might think it's inappropriate to bring all of these characters into any setting– but it's not. It's exactly these different slices of ourselves that will allow us to reach and effect people as full human beings. It might not come naturally, but just like anything else, practice makes perfect.

You need to connect with others. You need them to believe that you are connected to the ideas you are advocating on more than a purely intellectual basis

What we find is that when you focus on the effect you're having on another person, your behavior tends to be organic and congruent. So what we're looking for is to unleash and excite the full range of expression – intellectually and vocally – from your heart and from your gut, with the goal of inciting an emotion in your audience. That doesn't mean that you need to be emotional, it just means that you need to care and that you need to make your intellectual, vocal, heartfelt, and gut response congruent to the case, to each witness, and to the story that you're telling.

Actors learn that we have to access the aspects of ourselves that are appropriate to the character. If a script tells you through the language and the way the character treats others and the way others treat that character, that your character isn't very affectionate, then the aspect of yourself that may be very affectionate is not going to be appropriate. That doesn't mean the impulse isn't there, it just means the aspect of yourself that expresses it is repressed. It's not that you don't have all of it, it's just that you're not leading with that. You're not allowing that to express itself. Actors learn to ignite, turn on, or lead with certain aspects of their personality and to turn off or suppress or repress or push to the back other aspects of their personality. But – never forget that all aspects of human personality exists within each of us.

Some of us are, of course, limited by certain things and are more comfortable with other things. As actors we learn that the things we feel comfortable with in life will be easy for us on stage and those things which are difficult in life will be more difficult to express on stage. Crying does not come easily to me, although it has become slightly easier as I get older and become a father and grandfather. I have a more active ability to access my crying, my tears, my sadness.

It's the same when you're an attorney. There are certain cases that may be easier for you to deal with and certain that are more difficult. Katherine spends a lot of her life helping to prepare witnesses for depositions, trial, hearings, and arbitrations. One of the reasons attorneys bring her in is because there are many attorneys who aren't comfortable with a lot of emotion being expressed and they have a witness or client who is too frightened or puts the emotion away because they don't want to deal with it. Particularly in plaintiff personal injury cases where there's a death or a disfigurement or some very big and profound life event, very often the witnesses or clients can have a big emotional response. Katherine is brought in because the attorney doesn't feel comfortable dealing with a big expression of big emotion or the attorney doesn't know how to elicit emotion from their clients. So you need to know enough about yourself to know what will be easy for you and what will be difficult.

Be Yourself

Be yourself is something we hear a lot. Going on a first date? Be yourself! Job interview? Be yourself! There's just one problem. No one tells you how to do this! We all have a number of different characters inside us. You have to figure out who you need to be in the courtroom. *That* character needs to be authentic, trustworthy, and passionate. So you have to practice being yourself in court. Here is a simple exercise that helps you do that.

Make a Good First Impression

You only have one chance to make a first impression, so you want to be as human as possible in the eyes of the jury. If you feel like you have trouble connecting with the jury, you can do some outside in work by working on smiling (yes, smiling!), making eye contact, and learning to relax.

Smile

There is research that suggests that people who smile are thought to be smarter than people who don't. Isn't that remarkable? That the human being who smiles is perceived as being smarter. We would expect someone who smiles to be perceived as more approachable, less off-putting, more inviting, certainly. But smarter? Attorneys always want people to think they're smart!

Even if it's a phony smile, it will help the jury relate to you. It's not easy though, especially if you have a tough case. But if you're too stiff and too serious, you won't be relatable at all. In real life, it is impossible to tell the darkest story of your life without finding the light spots in it. Go ahead – tell the story of the worst thing that ever happened to you. How quickly do you tell a little joke? Or smile? Or find some way to lighten things up?

If you want to practice lightening up in the courtroom, turn on the video camera. Deliver your case opening as your most somber self. Then, deliver it as if you are a stand-up comic and this is a stand-up comedy routine. Finally, deliver it as just yourself. Compare the three videos and work on allowing the lighter parts to shine through.

Relax

Emotion is a by-product of action: persuading, encouraging, explaining, etc. In any setting interacting with people can be anything but a relaxing experience. An actor in a two-hour performance spends as much energy and creates as much adrenaline as someone in a minor car crash. So the actor presenting can experience fear and stage fright. That's not a quality issue. You might think, well, "If only I was more prepared." Well, no one is more prepared than lawyers. Or "If only you were better at what you're doing, if you'd gone to a better school, if you'd stayed up later." There's no moral component to stage fright, it's a physiological response to the act of presenting, of standing up in front of others.

Tension is everywhere and it can creep in when you're not expecting it. Some attorneys have a fear of public speaking and there's no doubt a courtroom setting can be a high-stress situation. But when you get tense, you breathe less. When you breathe less, that puts strain on your voice. So you might stumble over your words, cough, or even lose your voice. But if you're too tense, not only will you appear stiff and unlikable, it can also have a negative impact on your physical presence.

When you watch an experienced lawyer – or anyone who is incredibly experienced at whatever it is that they do – you see relaxation. Relaxation comes from experience. It's easy to tell someone to relax, but you have to put it into practice

What we're trying to accomplish with our work is to break the barrier, to make the barrier between the personal and professional more porous. So that there's very little distinction between who you are when you go out with the people you love most and you're feeling relaxed and happy and at ease – how do you find that ease and comfort and relaxation in your professional life?

First you have to identify the physical manifestations of ease and relaxation and comfort – your shoulders should be relaxed, elbows out from your sides, face softened, eyes alive and twinkling, smiling, making eye contact, maybe leaning forward a little. These are the

physical manifestations of someone who is relaxed and at ease. That's what you want to find when you go into your professional mode. **LAWYERMAN** and **LAWYERWOMAN** tend to be more rigid, their breath is restricted, their physical gestures are more contained... people who don't feel comfortable enough or don't feel expansive enough.

What we're trying to breakdown is the preconceived ideas that certain gestures and certain behavior is inappropriate for the courtroom or in a professional setting. Now here's the caveat, of course. You're not in your backyard having a BBQ. But when you look at the great trial lawyers you've seen, when you look at the great storytellers, the great actors, what you find that is the common thread among them, that weaves through them all is a relaxation, a kind of twinkle, a kind of softening the face.

You can improve these things by doing outside in work on the physical aspects. Learn to do breathing exercises and practice speaking slowly and calming, taking deep breaths. To truly relax, however, you have to access your heart, brain, voice, and body and connect them all in the courtroom. When you connect your heart to your intellect you'll feel calm and confident.

Make Eye Contact

Have you ever heard the expression, "The eyes are the windows of the soul?" Or has your partner ever said, "You never look at me anymore?" Making eye contact establishes trust and makes a connection with your audience.

Trial and motion practice and presentation is not about broadcast. Trial is not a spectator sport. The jury is not observers. They're the other actors in the scene with you. In looking at a classical breakdown of the different roles that people play, we know who the antagonist is in the story, it's the other side. And then when we ask the lawyer who is the protagonist, they say, themselves. NO. The jury, the judge, the trier of fact is the protagonist. They are your fellow actor, they just don't know they have a part in the play yet. What you need to learn when you're doing this work is to receive as much as you send. You learn not to

broadcast. You learn to have an effect on your listener, on the jury or judge by smiling or nodding, making actual eye contact, and begin a relationship with them. And let their response have an effect on you. If they smile, does it make you smile? Or do they seem somber, not smiling? Then you should change the way you present yourself to them, as you would in real life. Allow your human radar to be open and receptive so that as you would in a real-life situation, you're making contact and offering something to your listener and allowing their response to affect you. It's that effect, back and forth, that make a human interaction in a live event.

Now it's true that you can't always necessarily read how people are reacting. You don't always know what people are doing. Some people are simply taught to smile and nod their heads politely when someone is talking to them because that's how they were brought up. Some people might feel very overwhelmed by the seriousness of the trial environment of the courtroom and they may not smile. they may feel compelled to simply look at you with a very sort of blank expression. To the extent that you can, however, you at least have to try to read what's going on, to allow them to affect you and to try to make an effect on the juror. You're trying to move them to action, get them to smile, nod their head, to let their eyes twinkle a little bit, let their eyes soften.

An actor understands how to breathe, how to stand in what we call a neutral stance, how to create relationships with the other actors through eye contact, through gesture, through physical relationship. The actor also knows how to share the telling of the story and hand over responsibility to the other actors on the stage. Following these steps turns you into a master of the courtroom stage.