

Trial lawyers: Actors or boxers?

How you approach the trial, as art or sport, may well affect the outcome.

By J. Gary Gwilliam

For most of my career I considered a jury trial to be akin to a fight. A boxing match. One on one. Head to head. Mano a mano. I could score a knockout or get a decision, or I could go down for the count. Somebody was going to win and somebody was going to lose. Trials were for us tough guys. (There were few women trial lawyers in those days.)


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However, as time went on, I began to change my mind about trials. I began to see them in a different way. I perceived them as ways of communication as opposed to a violent conflict. Perhaps my change of attitude was due to experience. It certainly coincided with my quitting drinking and beginning to explore my own spirituality. In any event, I began to think of trial as art; as a creative expression.

The trial as a stage play

A trial may be best envisioned as a stage play. The trial lawyer is the producer who puts up the money (case costs) and decides which play (case) will go on stage (to trial). He is also the director who decides how the play is to be presented. While the director's cast of characters consists of actors, the lawyer's case of characters consists of parties and witnesses. Instead of actors speaking their lines from a script, the witnesses give their testimony based on the truth. The way actors speak their lines is an important part of the production, just as the manner in which the witnesses testify is an important part of the trial. By speaking their lines, the actors tell a story, just like the witnesses tell a story through their testimony. The director (the lawyer) decides which themes to emphasize and the order in which actors (witnesses) will be on the stage (the stand). Like the director who stars in his own movie, the lawyer is also an actor who is on stage during the entire trial.

Reaching the audience

The lawyer's goal is to present the client's case as a cohesive story that will grip the audience's attention. The "audience" is small, consisting of only 12 people: the members of the jury. However, there is a difference. Unlike the theater, where only one play is on stage at a time, the lawyer's "play" competes with another play taking place at the same time and on the same stage. The other play is being staged by another director, the defense attorney, who has a different theme and another set of actors, the defense witnesses. The audience must decide which play they like the best. Their "reviews" of the lawyers' work are in the form of a jury verdict that tells who won and who lost.

And what about the judge? Well, think of the popular TV program, "American Idol." It's no stretch to think of it as theatre. The audience ultimately chooses the winner, but the judges themselves handle the tryouts (pretrial motions) that determine if contestants even make it to the show (the trial), and their very vocal opinions during the show (bench rulings) can influence the audience. The same can be said of the civil court judge.

Preparing for battle, or stage?

Many fine trial lawyers still envision trial as battle. I am guilty of talking about "still having a few rounds left in me" at this late stage of my career. If you are going into battle you have to be ready: Energized, fired up, ready to throw a few punches and take a few hits. What is wrong with that? Isn't that a good way to prepare for trial? Or is it stressful and perhaps counterproductive?

This dichotomy of trial, art or sport, can be resolved by deciding the best and most effective way to try a case. We are in a conflicted profession full of stress and conflict. This wears us down. It takes away our energy. It compromises our immune systems. And trial is the worst conflict of all. If you visualize yourself as bruised and battled after each round, then trials become exhausting. You lose your energy. You don't perform at your peak.

On the other hand, if you are more relaxed and at ease, your energy will stay strong. You also have less fear and that is very important to effective trial practice. Actors don't need to fear being bruised as boxers do. By changing your thinking from "trial as sport" to "trial as art" you are more efficient, less fearful and ultimately more successful. It's also a lot more fun!

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