



All the world's a stage

And all the men and women merely lawyers

By **JEFFREY WALKER**

Drawing an analogy between theater and trial work is not groundbreaking. When other lawyers find out that I had a life in the theater before I turned to the law, they comment on how well a career in acting must have prepared me to try cases. It did. But it was not just the acting that carried over. It came from my understanding of how a production comes together from script to curtain call. I was a theater maker in my former life, sometimes an actor, often a technician, and most importantly to my career as a trial lawyer, a producer.

Many of the articles, books, and courses that bring theater skills to law practices focus on teaching acting concepts to incorporate into a lawyer's courtroom presentation. These skills, no doubt, are valuable tools in a lawyer's arsenal, just as skillful actors are an essential element of a theatrical production. But an actor outside of the context of a fully staged production is best exemplified by an old theater joke:

Q. What do you call an actor without a technician?

A. A naked person in the dark, emoting.

As a trial lawyer, you are not only an actor. You have to tell a story through the words of other people by having dozens of individuals communicate discrete but complementary parts of the whole, contextualized by inanimate objects. This is what a producer does. For both a producer and trial lawyer, even seemingly minor decisions will have rippling effects on the production, both on-stage and off.

The show must go wrong

As a young stagehand with a strong back, I was once tasked with the job of pushing the entire stage. A production of

Corpse at the Cape Playhouse on Cape Cod was staged on a "revolve" (a giant turntable), so that one set was facing the audience and the second set was facing backstage. On my cue, my job was to push the two tons of scenery 180 degrees around in about 20 seconds. On one show, the stagehand in charge of sweeping the wings missed a two-inch screw which was kicked under the revolve. When I went to push the stage, it turned only a few feet before one of the wheels underneath jammed on the loose screw.

Panicking and unsure of what to do, I began to push the stage in the opposite direction. I managed to get it nearly all the way around when the sides of the revolve jammed into the sides of the stage. Even as every person backstage joined me to push the set free, it would not move. None of the set lined up, actors were leaping over gaps between stairways and platforms, a wardrobe supervisor had to hide behind a closed door that had no exit, and the stage manager could not see the stage in front of her. Eventually, the curtain was brought down and it took 12 people 25 minutes to get the set unjammed. All for want of a proper sweeping.

Shows often go sideways. One of the thrills of live performance is the need to deal with disasters as they arise without breaking the stride of the show. Usually, the audience never knows of the missed cues and broken props, but the day that the set jammed before a live audience of hundreds of well-paying theatergoers taught me that neglecting even the seemingly menial task of properly sweeping the floor can cause a disaster that will bring the show to a sudden halt.

In your legal practice you are unlikely to have an issue with screws under the deck. Nevertheless, the lesson about minding the details of the mechanics of your presentation is applicable: But

for having a long enough extension cord, you may be unable to use a projector at trial. If you neglect to change the batteries in the laser pointer, your witness may have no means of interacting with the exhibits from the witness stand. A corrupted flash drive without a backup can leave you without evidence to present. And yet, your trial, like the show, must go on. Addressing these issues before they arise are minor considerations requiring minimal investments in your trial kit. If you are fully prepared with the details, the jury will never know, but if neglected, they can sneak up to sabotage your presentation.

The magic triangle of production

When turning an idea into a performance, theater makers refer to the magic triangle: "good, fast, or cheap, you only get to pick two."

I once worked a *Nutcracker Suite* in which the producer asked to remove all references to Christmas. Other than this aesthetic omission, the producer wanted to perform the same *Nutcracker* that the company had been performing for the past decade. For the most part, removal of Christmas references was easily achievable, but this seemingly minor idea started the production machine rolling.

If you are not familiar with story of the *Nutcracker*, it is about a young girl named Clara who, following a raucous Christmas party, finds herself shrinking down to the size of a rat. The shrinking of Clara is traditionally portrayed by having a Christmas tree that has been in the background throughout the show begin to grow to enormous proportions. Of course, removing references to Christmas meant that the tree could not be the centerpiece of this moment.

The task of portraying the shrinking of Clara fell first on the creative team. The set designer, lighting designer, and



choreographer exchanged concepts and ideas with the producer until it was finally settled that the transformation would be symbolized by a china cabinet that turned into a castle from which the rat-soldiers would emerge. Once settled, the set designer drew up plans. Those plans were given to the technical director to turn into working drawings. The drawings were, in turn, given to the wood and paint shop to build. Once the set was built, the electricians added dazzling lights to the castle battlements. The stage crew then put the set together on the stage. Meanwhile, the choreographer was adapting the dance to fit the new set and the dancers were learning their new steps.

This particular set piece utilized the “good” and “cheap” legs of the triangle. Within the magic triangle, good was necessary because this set piece was a major part of the show. Cheap was also required because we were working with a tight budget. As a first budget-saving measure, I was the set designer, technical director, wood shop, and stage crew. But I lacked the painting skills to deliver a good product. There was no work-around; I needed to bring in a painter. I could not simply hire a scenic painter as though I had a Broadway budget. I had to rely on volunteers with sufficient skills who came in as their schedules allowed. Building this set piece took six weeks.

A trial lawyer has a similar magic triangle. Even the seemingly simple decision to have a blown-up picture on an easel during your closing argument rather than projecting it starts the machine turning. The lawyer as a director feels that the exhibit will simply happen upon request. The lawyer as a producer must consider how that change will fit into every aspect of the production from impact on the jury to cost to allocation of personnel.

In the example of the blow-up, first you must determine what size exhibit you would like to have. Then you have to find the exhibit in its digital format and ensure that it is high resolution enough to

withstand enlargement. The work order has to be sent to the print shop. But the exhibit is of no use until somebody brings it to the courthouse. Meanwhile, the lawyer has to determine when the exhibit will be shown to the jury, how it will be used in argument, and when it will be taken out of view. If getting a blow-up in front of a jury seems like no big deal to you, your support staff deserve a raise.

With this decision, you can choose good and cheap by spending time shopping around for the right print shop at the right price. This will take time. You can choose good and fast by hiring the services of a specialty print shop who accept an email, scale it, mount it, and deliver it to the courtroom within hours. Or you can choose fast and cheap, but you run the risk of paying for an exhibit that is so blurry that it is of no use to the jury, or having a subpar copy shop lose your order. There is no option for all three.

It's all theater, except when it's not

The similarities between theater and trial work are not perfect. The theatrical producer has some advantages over the trial lawyer. On stage, a producer is working within a highly controlled environment where the events occurring were carefully planned out months ahead of time and worked into the performer's muscle memory. Moreover, a producer has actors trained in and passionate about public speaking and performance. Off stage, the producer has an army of specialists ranging from a designer who specializes in what the actors' hair will look like, to the riggers who can make anything appear to fly.

A lawyer, on the other hand, must be more self-reliant. The lawyer not only has the overall presentation in mind, but also must be the one executing much of that presentation. The lawyer must be an actor during opening and closing, an improv partner when questioning a witness, a director when preparing the witness, a designer when determining the presentation of evidence, a stage manager when

wrangling witnesses, a technician when setting up equipment, and, of course, a zealous advocate with a working knowledge of substantive and procedural law. All this must be done while working against opposing counsel who are actively seeking to undermine the presentation. The witnesses, who are also actors in this analogy, are not trained presenters. They are often nervous about public speaking and nervous about being under oath. And a witness, unlike an actor, must face cross-examination.

Then again, a theatrical production is expected to be perfect and polished. Straying from the carefully laid plan to any degree can significantly impact the entire show. For instance, if an actor forgets a line, it may cause narrative dissonance, it may disrupt the other actors, and if a cue is called on that line, can throw off the technical production. Moreover, the theatrical production is expected to happen in the exact same manner eight times per week. And when performed, a play is, hopefully, presented to hundreds of people who have paid hard-earned money with the expectation that they will be moved emotionally.

The trial presentation is much more forgiving to minor mistakes. If a witness forgets to give a particular detail in testimony, the lawyer can ask another question. The lawyer is giving a presentation to only 14 people who are there by court summons and have no expectations regarding the quality of the production. Because the audience is not expecting a highly polished show, minor technical difficulties will be overlooked. But a presentation that is clean and professional will engage your jury in the merits of your story, rather than having them focus on the slapdashery of your presentation.

Despite these differences, a trial lawyer can learn from the theater because the latter profession has been refining presentations for the past two millennia, whereas most lawyers have developed their style over years of personal development through trial and error. It takes a lifetime



of dedication to the stage to reach a point where performance becomes second nature, and there are simply too many lessons to describe in this article. But, from the perspective of the trial lawyer as a producer (that is, the big-picture perspective) a cohesive lesson is offered here: Even seemingly minor decisions can have a significant impact on the overall presentation, so it is important to ensure

the proper allocation of time, money, and people to incorporate those decisions smoothly. Otherwise, the overlooked details may come to haunt you.

Break a leg! And if it is somebody else's fault, call me.

Jeffrey Walker spent a decade creating new theater in Boston and New York City where he worked in all aspects of the industry. He has

since gone back to school and got his J.D. at the University of San Francisco. Now he works as a trial attorney at Walker, Hamilton & Koenig in San Francisco, a firm that specializes in catastrophic personal injury cases with a high likelihood of going to jury.



Walker