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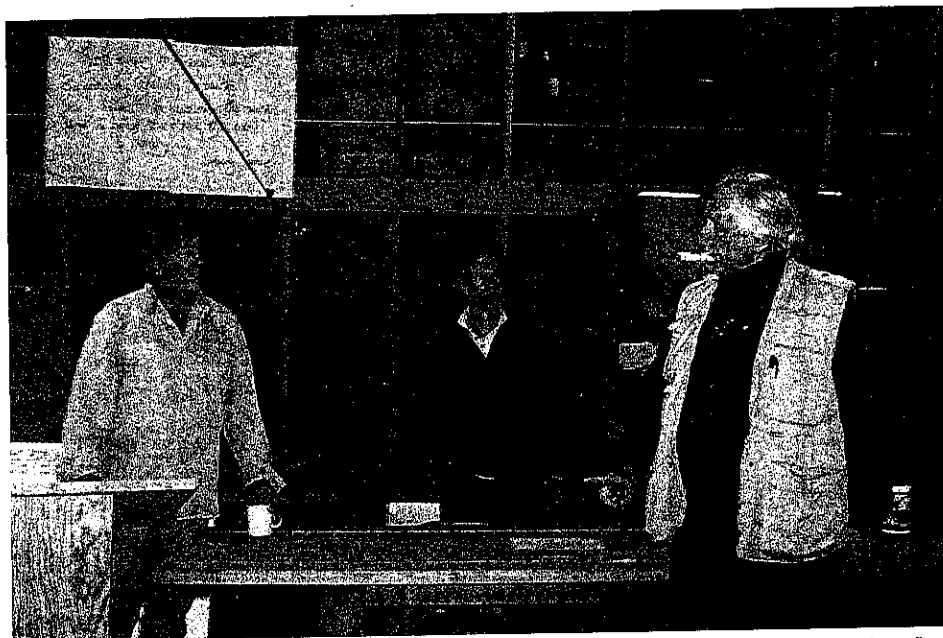
AUTHENTICITY IN THE COURTROOM: The Process of Becoming "De-lawyered"



by
Jim
Jenkins

It wasn't until after at least a decade of my trial lawyer career did I begin to recognize that the most effective trial lawyers I have seen didn't act like lawyers at all in the courtroom, especially in front of juries. Many of the truly accomplished trial lawyers seem to be the same people in court that they are outside of court. They are humble, believe in their cases and clients, and personally relate to people from all walks of life. They also seemed to have a deep understanding of human nature.

During at least the first decade after becoming a lawyer, I had come to the extremely self-limiting belief I might never develop the skills necessary to become a successful trial lawyer. I wasn't sure if I could ever become the type of lawyer I thought I had to be to most effectively represent my clients. I didn't, and still don't, possess especially good oratory skills. I am nervous speaking in front of groups, especially juries or, for that matter, judges. I always knew the paramount importance of preparation, however, and I won a fair amount of trials through sheer hard work. I also lost some trials that, if I had known and applied the methods I touch upon below, I wonder if the outcome may have been different. Many trial lawyers are "what if?" types of people—I count myself



Gerry Spence, lawyer Geoffrey Fieger, and Spence's co-counsel David Niven, in the "big barn" at Spence's ranch discussing Fieger's next-to-impossible federal acquittal in 2008 on all counts of an indictment relating to illegal contributions to the John Edwards campaign. At age 79, Spence told the jury in closing argument his defense of Fieger would be the last trial of his career.

among this category.

Earlier in my legal training and career, I attended the National Criminal Defense College (NCDC), a two-week interactive trial skills program in Macon, Georgia. I found all of NCDC's programs, including the shorter, four-day seminars, to be very worthwhile. NCDC's staff is comprised of extremely skilled trial attorneys and teachers from all over the country.

However, in an effort to become the best trial lawyer I could be, and in light of my own beliefs about my limitations mentioned above, in the Summer of 2003, I was given the opportunity to attend a program designed to help trial lawyers discover who they really were as people, not lawyers. I was one of 48 students selected for the program and

I had to apply twice to gain admission. The participants signed acknowledgments on their applications that the program involved the use of psychodramatic methods.¹ It was further explained that part of the program was geared toward self-development as people and trial lawyers.

The fundamental theme of this program is that by understanding yourself better, you can understand and connect more authentically with other people, including jurors. Basically, this intense, three-week program seemed to be designed to "de-lawyer" trial lawyers. It was at this program, located down a dirt road in Wind River Valley, in one of the most isolated areas of the country, 20 miles northeast of Dubois, Wyoming, in two big barns that were moved and

joined together as one, where trial lawyer Gerry Spence, psychodramatists, and Spence's staff went about the process of "de-lawyering" me. I was a student at Spence's non-profit "Trial Lawyers College," which only admits criminal defense lawyers and plaintiff's lawyers.

A basic premise taught at the College is we must find, and be, our *authentic selves* with people who become jurors, as well as others involved in the litigation process (and people in general), if we want them to believe us. If we are authentic, jurors may trust us; in turn, we can, in most cases, trust them.

In trial or deposition, one goal is to genuinely connect with jurors or witnesses so that they may lay aside their stereotypes of lawyers that have been droned into their belief systems for years. We must consciously make an effort to learn to understand what it may be like to be them, or, put in psychodramatic terms, "reverse roles" with them. To obtain the trust of jurors or witnesses, we must tell them the truth about our cases, flaws and all, and we must truly believe in the story of our cases wholeheartedly. Of course, there are cases that we, as criminal defense lawyers, take where we have difficulty attaining that level of true belief due to circumstances presented by difficult case facts, for example. This is especially so for the courageous justice seekers at the Public Defender's Offices. Even so, these methods, which are designed to find the truth of our cases, will help us in trial and assist us in being the best trial lawyers we can be in any given case.

What I learned was that in order to communicate and connect with others most effectively, how nervous, tall, short, rotund, skinny, how squeaky our voice sounds, or how poorly it projects, or whether we are a man or woman, doesn't matter to people evaluating our cases. What is most important is that a trial lawyer is merely his or her real self.

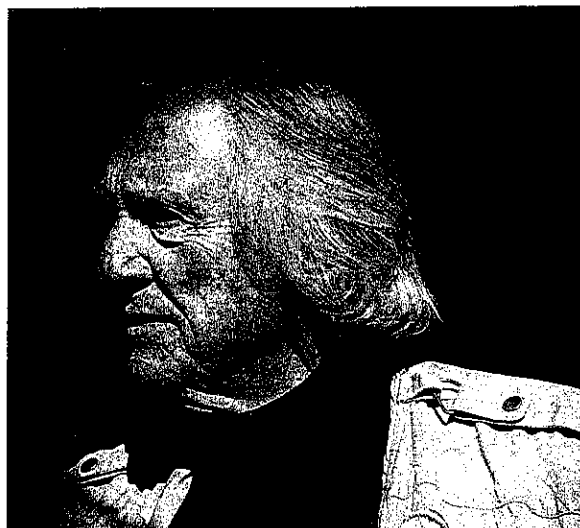
Posturing, trying to be something you are not, or exuding a lack of genuineness is easily detected by other human beings. These traits are especially detectable by jurors, many of whom have a tainted perception about trial lawyers.

Given the format of trials and the legal training provided to us in law school, there is little wonder why some of us may not appreciate the importance of authenticity. Most of us were taught to leave emotion out of legal arguments and to argue any side of an issue. This philosophy is, for the most part, inapposite to connecting with others and developing good storytelling skills necessary for effective communications.

Most of the students at the College discovered we had formed thick walls around us that kept us from knowing who we were as human beings. I personally discovered I had erected a wall, or perhaps a curtain, around me that caused me to hide behind my "lawyer role," keeping me from disclosing who I really was as a person, even if I knew. I had always been fearful the "curtain would fall" and behind it there I would be—a mere imposter.

Because of the safety of the environment created at the College by the psychodramatists, the participants began sharing very personal experiences from our pasts that still haunted us. Stories of the deaths of loved ones (including our own children), rapes and painful rejections were shared; needless to say confidentiality was required. What we discovered during this intense process is that almost all human beings have similar fears and have experienced

very similar traumatic experiences. Rejection, abandonment, issues with our parents, and the need to be accepted were common issues. After a couple of days of this intense "personal work," the last thing that came to our minds was that we were a bunch of lawyers. We very quickly came to appreciate one another's genuineness, vulnerabilities, and intense bonds between people, not lawyers, were formed.



Gerry Spence teaches that to obtain the trust of jurors or witnesses, we must tell them the truth about our cases, flaws and all, and we must truly believe in the story of our cases wholeheartedly.

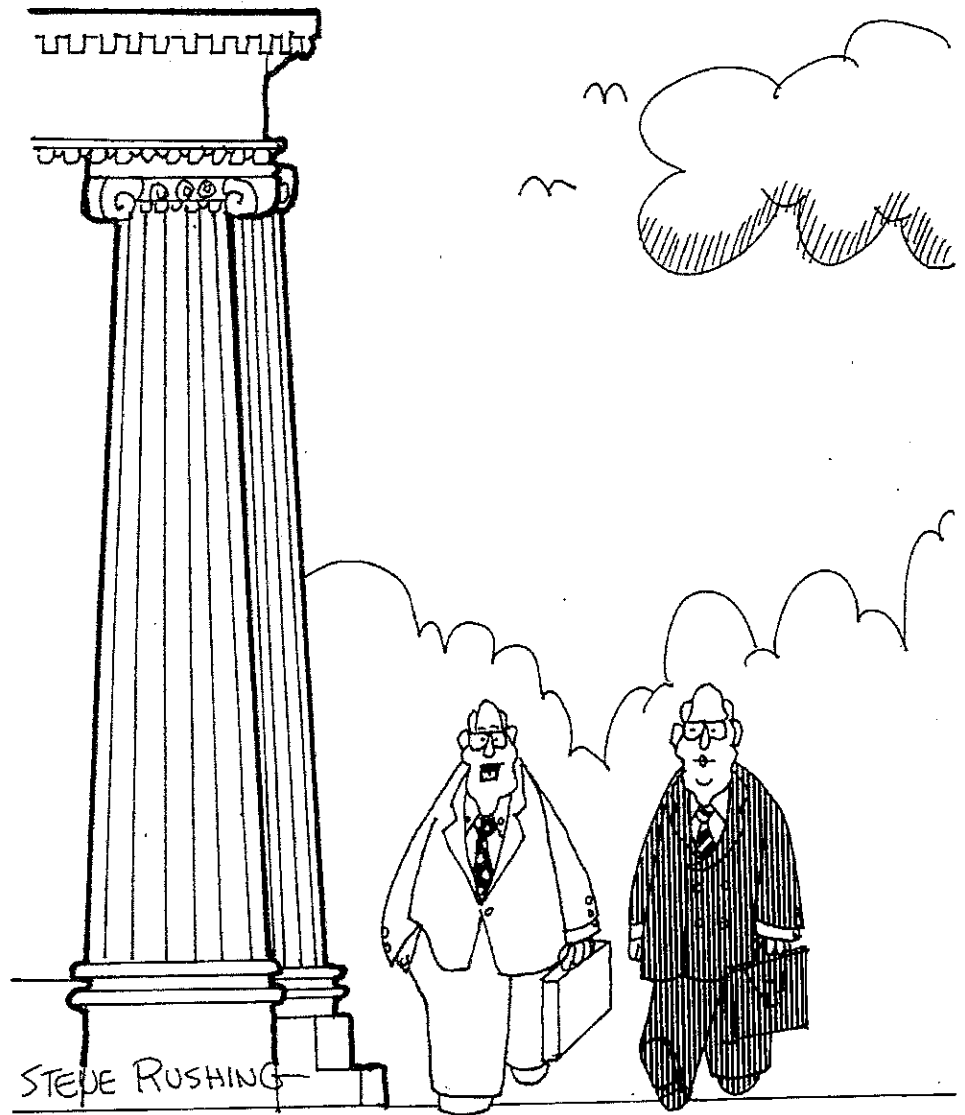
We left the program feeling entirely different about ourselves, other people, the world around us—and ultimately how we practiced law. The process humanized us and made many of us *feel* again. As a result, we better understood

For information on how these methods were applied in an actual case of Jim's, see "Defending a Lawyer in Federal Court," published in the Fall 2005 issue of *The Defender*.

how a witness, defendant, plaintiff, prosecutor, judge or a juror might feel or perceive events. We learned to “reverse roles” with others, especially our clients, and we tried to feel what they were experiencing when seminal events of their cases and lives occurred.

If we are mindful of what those with whom we are interacting are experiencing, be it judges, jurors, witnesses, clients, opposing counsel, etc. and, if, within the mandate of our code of professional responsibility, we are honest with them about our concerns in our cases, these people will see we are being authentic with them. This will lead others to trust us. The object is that if we learn to practice these methods and incorporate them into who we are as people, a “relationship” will form with jurors where they will trust and believe us. However, this can only happen if we maintain our credibility throughout the entire trial.

The methods briefly outlined above may not appeal to everyone; many lawyers are extraordinarily successful without using anything close to them. However, my experience has been that, without my exposure to the methods taught at the College, as well as “doing the work,” some of my clients would not be free today. Please make no mistake, absolutely nothing taught at the College, or via the other four-day seminars sponsored by the College around the country, is based upon trickery or manipulation. These “methods” cannot be learned by reading a book or hearing someone talk about them. The adage “knowledge without action is worthless” applies. These are “action methods” that must repeatedly be applied and incor-



“What is a politically correct euphemism for ‘guilty as sin?’”

porated into who we are as people and lawyers in order to be helpful to us. My personal view is that the skills taught at the Trial Lawyers College are added “arrows” we can add to our quivers to make us the best trial lawyers, and

people, we can be. ■

¹ For a thorough discussion of the application of psychodramatic methods to trial skills, see Dana K. Cole, *Psychodrama and the Training of Trial Lawyers: Finding the Story*, 21 Northern Illinois University Law Review 1 (2001).

Jim Jenkins graduated from FSU Law School with honors in 1985. He has been an Assistant State Attorney, Assistant State Public Defender and Assistant Federal Defender. He practices in State and Federal Criminal Courts. He is “AV” rated by Martindale Hubbell and has had more than 600 hours of postgraduate training since graduating from the Trial Lawyers College in 2003. For more information on the College, please visit www.triallawyerscollege.com or give jim a call.