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6Audience persuasion plays into jury trialsJeffrey J. KrollBy Jeffrey J. Kroll

I recently attended my 8-year-old son's play, "The Princess and the Pea." Don't worry, he played the King. Not only did my son perform well, providing me with one of those "proud parent" moments, he also got me thinking about how audience persuasion plays (pun intended) into jury trials. With a jury trial approaching, I was a bit distracted.

Every day, Chicago news media provides updates on the real-life courtroom dramas involving former governor, Rod R. Blagojevich. The Chicago Tribune, Sun-Times, Chicago Public Radio and a number of other news outlets have blogs dedicated to reporting up-to-the-minute news from the Blagojevich trial. The ex-governor's lawyer, [Samuel E. Adam](#), has gained "star" status in the public eye. No doubt, his excellent trial skills warrant the attention.

I have embraced the theatrical aspects of jury trials. "[S]uccessful trial advocacy seems to stem from the ability to convert legal discourse into a story form." Phil Meyer, "Why a Jury Trial is More like a Movie than a Novel," 28 J.L Soc'y 133 (March 2001).

Leading Hollywood directors know how to tell a riveting story. In the legal world, we lawyers are the directors (think *auteurs* like David Lynch, Quentin Tarantino, and Spike Lee, who have a distinct and recognizable artistic style), the witnesses are the actors (they have to dress and play the part), and the demonstrative evidence and other exhibits are the props. The great filmmakers develop ideas and themes that flow through their movies, relating the filmmaker's viewpoint to the audience. (Consider Spike Lee's recurring use of baseball motifs or David Lynch's use of uncomfortable and confusing dreamlike scenes.)

Now, fast-forward to an upcoming jury trial. With two "directors," some untrained "actors" and a plethora of exhibits, which attorney will convince the jury that his or her story is the more plausible one? Here are a few lessons that I learned at a soon-to-be third-grader's summer play:

No notes. At the behest of my son's teacher, all the "actors" memorized their lines. During the play, as you can imagine, more than a few kids forgot a line or two. Cue their teacher, stage left, feeding lines to the forgetful wannabe thespians.

At trial, reading notes is absolutely inexcusable during direct and cross-examination. Lawyers should prepare outlines with bullet points detailing examination subject areas. For example, heading such as "background information," "prior medical history," "post-incident actions," are effective cues to direct you to different areas of examination.

I travel the country speaking about the importance of "telling the story" that is your client's case. If you approach opening and closing statements, even direct and cross-examination, as various ways to tell the story of the case, you will not get tripped up with reciting facts or making dull, routine arguments. All roads lead to closing argument; therefore, every phase of a trial, including *voir dire*, should be conducted in pursuit of a dynamic closing argument. It is hard to persuade when reading notes.

No crying. I don't know her name, but one little, blonde-haired, blue-eyed girl buckled under the pressure. She was a puddle. Major costume malfunction (her hat fell off) was followed by a forgotten line.

We have all been there: the judge does not grant your motion; a witness goes awry; a digital exhibit won't work. Worse yet, sometimes attorneys fall victim to stage fright. As in baseball, there is no crying in the practice of law — at least not in the courtroom before an empanelled jury. It is a good idea to practice and maintain a good poker face.

To that end, have your "dress rehearsal" prior to trial. Acquaint witnesses with the exhibits you plan to use. Take nervous clients to the courtroom ahead of time. Explain to them where they will sit and instruct them to speak to the jury and make eye contact with the jurors. You must also make sure their attire is appropriate, and direct them not to fiddle with papers, pens or their hair. All eyes are on the actors.

Steal the show. Was my son the star of the show? In my eyes, yes. He had two funny lines and the audience seemed to be waiting with bated breath for his next soliloquy (at least my wife and I were enthralled).

The lesson: Be the attorney who captivates the jurors' attention. They must look to you for the answers. You must be their only guide.

Develop a theme and a style for your trial. Like Tarantino's pop culture-infused use of the fractured narrative, find your unique style as a trial lawyer (without the "Tarantinoesque" violence, of course). Structure your client's story using analogies. Appeal to jurors' intuitive and instinctual human nature. Build a connection among you, your client and the jury. Empower the jury to view the case from your perspective, not your opponent's. If you influence the dialogue in the jury room, you are well on your way to a successful verdict.

Have fun. I am constantly trying new methods to present information to juries. There is nothing wrong with giving the jury what they expect — a little drama — based on television characters like Jack McCoy of "Law & Order."

Without getting into either the negative or positive aspects of the "CSI effect" or jurors' distorted sense of the trial process, jurors do base their knowledge of trial lawyers on what they have seen in television and movies, whether that be Atticus Finch from "To Kill a Mockingbird" or John Milton from "The Devil's Advocate."

With this month marking the 50-year anniversary of Harper Lee's legendary novel, the days of the patient and somewhat serene Atticus Finch seem to have no place in today's courtrooms. Now, the cast of characters in television legal dramas solve a case (sometimes two or three) in 48 minutes. This referential reality is something that we have to deal with when trying cases. Jurors want and expect their information quickly and expect to be entertained.

"Suspension of disbelief," or the audience's ability to accept what is being presented as a "possible reality" has its place in a jury trial as well. The jury will see merely a portion of the truth — objections and motions *in limine* ensure that only that which is deemed admissible becomes "fact." See, Amnon Reichman, "The Production of Law (and Cinema)," 17 S. Cal. Interdis. L.J. 457, 481-2 (Spring 2008).

Lawyers must choose how to most effectively present past events. Then, jurors will interpret the

lawyer's presentation to create a "reality" that conforms to their paradigmatic understanding of the world. A skilled lawyer has the ability to create a courtroom reality that the jury can easily grasp and, hopefully, believe and accept.

After the play, I congratulated my son on a great job. He mentioned how much he enjoyed his role as King and how glad he was that he did not have to kiss the sleepy princess. We as trial lawyers should always aim to become the king or queen of the courtroom. Hopefully, with these tips you will sleep well before your next trial. No one likes a tired princess.

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