



Trial in Action: The Persuasive Power of Psychodrama

How to tell the story behind your client's actions

Reviewed by Donna Bader

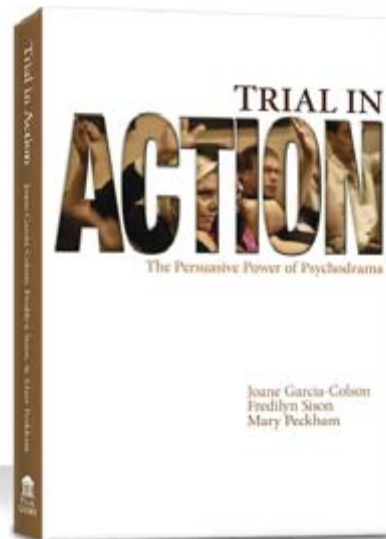
BY JOANE GARCIA-COLSON,
FREDILYN SISON AND
MARY PECKHAM

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356 Pages, \$85)

Knowing a client's story and understanding the motivation behind his or her actions is not essential for trial work. Or so some attorneys seem to think. But knowing and telling the story of your client's motivation puts a human face on that story at trial, and can make all the difference between an ordinary and an extraordinary attorney.

As an appellate attorney, I need go no further than inquire as to whether prejudicial judicial error was committed below. The question for me is simple: Did the trial judge make a mistake? The writer in me, however, seeks to find the motivation for a person's actions or inaction. That motivation is crucial for writing characters or creating conflict in stories. When I create stories, I invent a back story for each character so he or she has a unique voice. Perhaps it is this background that helps me understand the goals of psychodrama for trial lawyers.

Trial in Action: The Persuasive Power of Psychodrama is not a book that belongs on your bookshelf where it can be ignored. It is not meant to collect dust while the trial lawyer tries his or her cases in the "ordinary" way. It is a book that should be read immediately and often because the better you know and understand the principles, the more effective you will be as you try your next case. As



an added bonus, the more you will enjoy trying cases.

The premise of Trial in Action is that trial lawyers need to be skilled at storytelling, voice and diction, psychology and group dynamics. They also need to be empathetic. Essentially, lawyers need to overcome the jurors' bias against them by building trust. Psychodrama, "the science that explores the truth through dramatic methods," can be applied to show jurors that the attorney is humane and open, and really no different than they are. These skills used in psychodrama, such as role play and role reversal, are part of the lawyer's journey of personal exploration, which in turn allows the attorney to be more real and genuine about the client's case.

Learning about psychodrama

This method of psychodrama has been rewarding on many levels for attorneys and it is now accessible to trial lawyers in Trial in Action. The authors do caution that attending a workshop and personally experiencing psychodrama should be done rather than solely relying on a book. This book comes in a close second and provides food for thought for attorneys who may have relied on persuading juries in the past by appearing superior and, well, different. In the end, this approach may further alienate the attorney from the jury.

The authors, Joane Garcia-Colson, Fredilyn Sison, and Mary Peckham describe psychodrama as "a powerful method that not only brings out the humanity of people, but also the universal stories and truths that connect us all." Wow! They have spent ten to fifteen years in exploring these methods. Each is a Certified Practitioner of Psychodrama (CP), having passed both a written and a practical examination given by the American Board of Examiners in Psychodrama. Author Joane Garcia-Colson, a certified psychodramatist and trial lawyer, spent ten years as an instructor and the Executive Director of the (Gerry Spence) Trial Lawyers College. Co-author Fredilyn Sison, a former public defender and author, also spent almost ten years on the staff of the Trial Lawyers College. Co-author Mary Peckham, also a lawyer and formerly on the faculty of the Trial Lawyers College, is one of the founding members of Kurtz and Peckham.



Together these women formed 3 Sisters, LLP, and have dedicated themselves to trial consulting with a particular emphasis on psychodrama. They call themselves “skilled psychodramatists (who also happen to be trial lawyers).”

Personal soul-searching

The authors encourage lawyers to look at themselves and engage in personal soul-searching. They caution, “If you do not look at yourself and your own story or feelings about the issues in a case, when those issues come up at trial you will not be able to respond in the moment, honestly, and openly.” Instead, the lawyers often hide behind their lawyer’s mask, which is often alienating to jurors. Through psychodrama, lawyers can learn to understand their life stories, which continue to play out in their minds as issues arise. Rather than reacting at trial to triggers that tap into their life stories, attorneys can then respond more honestly and openly.

Lawyers quite naturally resort to their intellect to deal with cases, but the authors are encouraging trial attorneys to do exactly the opposite. The attorney must learn to live in the present, and not be guided by old scripts, so they can get out of the way and allow the client’s story to come through with the trial lawyer as the guide.

Psychodrama is a group encounter that allows the participants to act out a story, rather than using the intellect to tell that story. Just as in a play, the method requires a stage, protagonist (usually the client), an audience, auxiliaries, and finally, a director who facilitates the session by examining an aspect of the protagonist’s life. The authors describe it as improvisational theater. By playing out a part of the protagonist’s life, the participants are able to become immersed in feelings that arose at the time of the incident. The goal of psychodrama is emotional truth and insight. For trial lawyers, the courtroom becomes the stage, where the client is the protagonist, the jury becomes the audience, the

witnesses are the auxiliaries, and the attorney is the director.

Show and tell

The authors trace the history of psychodrama, which was created in the early 1900s by Jacob Levy Moreno (1889-1974), an Austrian psychiatrist and psychosociologist, who employed it as a means of using action and role playing to study behavior. Moreno rejected Freud’s theories, believing that therapeutic healing could be accomplished through group interaction. Think of it as “show and tell on a personal level.” Moreno also believed the key to creativity was spontaneity.

Psychodrama was first used by trial lawyers by John Ackerman, a trial lawyer from Houston, Texas, who became the dean of the National Criminal Defense College (NCDC). It was then used by the National Institute of Trial Advocacy (NITA) in a more active approach. Ackerman worked with John Johnson, a psychiatric social worker, and together they approached trial lawyer Gerry Spence about using psychodrama for trial lawyers.

One could certainly imagine that Spence would find such methods attractive as he has often expressed negative opinions about traditional law school training. The first psychodrama workshop was held in 1978 in Jackson Hole, Wyoming. It then became an integral part of the Trial Lawyer’s College, held every year at Spence’s ranch in Dubois, Wyoming.

The importance of “story”

The authors place a great deal of emphasis on story and with good reason. They encourage lawyers to abandon an agenda that focuses solely on proving the elements of a cause of action. Instead, lawyers should focus on the facts, point of view and perspectives of all parties and witnesses to explore the story as a whole. Only then is the lawyer ready to tell the story to the jury. For instance, the lawyer can present an automobile accident case to the jury, proving each element, but

what is missing is how the accident impacted your client and how it happened. By telling the story about the event, the jury can feel and relate to the plaintiff’s injuries.

Trial in Action provides an overview of psychodrama and describes how it has been used by trial lawyers in the past. The authors write in a style that is easy to understand. It covers specific tools and techniques in detail, providing examples and exercises to help the reader. It also describes how to conduct a mock jury trial using these new techniques. The mock jurors are more actively involved than with traditional methods, telling the attorney their perspective, information they want to see filled in, and what they are thinking. In essence, the lawyer finds out what the jury cares about. The authors show how a trial attorney can apply these tools to each part of the trial from start to finish.

I have observed psychodrama and believe that it can be a real advantage for a trial attorney who understands how to use it. The information in this book can be enhanced by attending psychodrama workshops, but some of the principles can be easily understood and implemented without formal training. There is no reason attorneys could not band together to conduct informal mock jury trial or psychodrama sessions to go over important cases. Not only would it help the attorney understand the “story,” but it would bring a sense of humanity, empathy, and yes, even fun, to trial work. This book is a great start in that direction.



Bader

Donna Bader is a Certified Appellate Specialist and is the author of California Motions to Terminate Civil Cases Before Trial, published by Thomson/West. Ms. Bader is also the former editor-in-chief of both Plaintiff and Advocate magazines, a photographer and a playwright. See www.donnabader.com. She blogs at www.anappealthereason.com.