

The University of Akron

From the Selected Works of Dana Cole

Summer 2002

Psychodrama at Harvard

Dana K. Cole, *University of Akron School of Law*



Available at: https://works.bepress.com/dana_cole/6/



Psychodrama AT HARVARD

D A N A K . C O L E T L C ' 9 5

The message light on my office telephone at the University of Akron was on when I returned from teaching my evidence class. “This is Professor Peter Murray at Harvard Law School”, the voice said. “I read your law review article on psychodrama and training trial lawyers. I’m calling to see if you would be interested in coming to Harvard for a week in January to help teach a trial advocacy course.” I played the message a second time—this time listening more closely to the voice to see if it was a joke by one of my friends. Ken Turek (TLC ‘98) came to mind. It didn’t sound like Turek, or Joey Low (TLC ‘98) or Don Malarcik (TLC ‘01). I found the most recent version of the Association of American Law Schools Directory of Law Teachers on my crowded and disorganized bookshelf. If a Professor Murray teaches at Harvard, he’d be listed in this directory. There he was - “MURRAY, PETER L., Harvard.” If it was Turek (or one of the other suspects), he actually went to the trouble of finding the name and telephone number of a Harvard law professor. I called the number and Professor Murray answered.

Professor Murray explained that 144 second and third-year law students were enrolled in a three-week trial advocacy course scheduled for January. He wanted me to come up for the first week. The idea of me teaching at Harvard was intimidating, but of course I agreed to go. “There’s one more thing”, Professor Murray continued. “I’d like to end the week with an evening program. I’d like you to give a lecture and demonstration for the students and faculty on how to use psychodrama in training lawyers.” I almost wished it had been Turek that called.

Harvard Law School was in many ways what I had envisioned—old but meticulously maintained buildings, an almost palpable sense of history and an atmosphere of privilege. The students were bright, serious and well prepared. Some had recognizable last names like Daschle. They caught on quickly and asked insightful questions. Noticeably absent, however, was the arrogance I had expected.

ent relief. A few minutes after 7:00 p.m., Professor Murray, a large and imposing figure, stood in the front of the room and the crowd grew quickly quiet—his presence calling them to order without the need for words. In his generous introduction of me, Professor Murray emphasized my association with Gerry Spence and the Trial Lawyer’s College—no doubt in an attempt to give me some credibility. He then turned the program over to me.

I began slowly—first thanking Professor Murray for the opportunity and the hospitality. I then spoke about the role of trial lawyers as storytellers. “The trial of a case is the telling of a story,” I said. “But trial lawyers are notoriously boring storytellers. The problem with our storytelling is simply this—we can only tell what we know and we don’t know the real story. Of course we know *what happened*—the facts—and in some cases *why it happened*—the underlying facts—but we leave out the most important and persuasive aspect

the extent that our presentations in trial fail to reveal the inner feelings of the characters involved, we ignore the most engaging and convincing material.” I then described psychodrama as a discovery tool that allows us to experience the facts as our client and the other witnesses experienced them—to discover the inner feelings that generated the action.

After a brief lecture, I called on a second-year law student, Jacob Elberg (Jake), to demonstrate the method. I asked Jake to give ten minutes of an opening statement using one of the cases the class had been using all week. The case involved a police officer named Albert Bussoni who was charged with murdering a homeless man. Prosecution witnesses stated that Officer Bussoni pushed the man across a vacant lot and over a 10-foot embankment into the Atlantic Ocean where he drowned. The accused officer insisted that he did not push the man across the lot but rather pursued him in an attempt to take him

When the action is generated by true feelings, the action is logical, coherent and real. When the action is not generated by true feelings, the action is artificial.

The week consisted primarily of traditional skills training. The program on the use of psychodrama was reserved for Friday evening, January 11th at 7:00 p.m. Friday came quickly.

The students and faculty began to congregate in the newly renovated Ames Courtroom on the second floor of Austin Hall. Austin Hall is an impressive Romanesque Revival building with graceful gothic archways. The Ames Courtroom is a large, newly renovated auditorium with a ribbed and vaulted ceiling and plush padded chairs. The carpeted floor slopes—gradually rising as you move from front to back. In the front of the room is a massive wooden judge’s bench adorned on one side with an American flag and complete with a burgundy high-back leather chair and witness stand. It was as if a federal courtroom had been constructed in a concert hall.

The gathering crowd was loud and relaxed. Students and faculty had just completed an intense week and the prospect of a weekend off was an appar-

of the story—*how the facts were experienced* by the people involved.” I told them about Joshua Karton and the many lessons he has brought us from the theater. “In the theater, credibility originates with the inner feelings the actor is experiencing and not the action itself,” I explained. “Actors and directors have long understood the critical importance of ‘motivation’. Motivation is referred to by different terms—inner motive forces, the objective, and so forth—but the idea is the same. All action in the theater must have an inner justification. The motivation to act lies in the wishes, needs and desires of the human being. When the action is generated by true feelings, the action is logical, coherent and real. When the action is not generated by true feelings, the action is artificial. The inner feelings are the guiding force that generates the action. The inner feelings are the reason for the action and are, therefore, more important than the action itself. The inner forces are what make the action believable.” I then tied this lesson from the theater to the courtroom. “To

into protective custody. According to Officer Bussoni, the man was not pushed—he jumped. Jake represented the accused.

My plan was for Jake to give an initial performance that was solid but unremarkable. I would then direct him in a reenactment of the critical scene with Jake in various roles—including and especially the role of his client. He would then deliver a much-improved second performance validating the method. The problem was that Jake’s initial performance was too good. I had made the mistake of picking a naturally talented and highly motivated student and forewarning him the day before that I would call on him. As I watched Jake mesmerize his classmates, I knew I was in trouble. For the first time the thought occurred to me that I could actually make his performance worse. I thought of John Nolte and somehow blamed him for getting me into this mess. I thought about Katlin Larimer, Don Clarkson and Kathy St. Clair and wished one of them was there to save me. I took comfort in the fact that

none of these people at Harvard really knew me. I could just leave town after this embarrassing fiasco and never return. At the conclusion of Jake's initial performance his fellow students gave him a well-deserved and spontaneous ovation. I had no choice but to try to improve a superb performance.

Fortunately, Jake fully committed to the role reversal during the reenactment. Jake, in the role of his client, spoke of his career as a police officer—the fulfillment of a childhood dream. He knew that the dangers inherent in his occupation worried his wife, but he also knew how proud she was of him and that made him proud of himself. Her daily goodbyes were deliberate. She trusted she would see him at the end of the day, but she never took it for granted. After the soliloquy, Jake was ready to move to the critical scene. Other students selected by Jake were recruited as auxiliaries to play the other necessary characters. Jake remained primarily in the role of his client.

During the reenactment, Jake, as Officer Bussoni, revealed that he had been investigating a reported theft from a car. His investigation led him to an ocean-side restaurant parking lot where he discovered a drunk and belligerent man. As Officer Bussoni approached, the man kept walking away. Each time Officer Bussoni caught up with the man, the man would intentionally fall to the ground. Officer Bussoni would help the man to his feet and the scene would be repeated—the two moving closer to an embankment and the Atlantic Ocean with each episode. Officer Bussoni decided to take the man into protective custody. The man eluded his grasp moving again in the direction of the ocean. Officer Bussoni did not know that this man had attempted suicide several times and that he had threatened to commit suicide by drowning himself. Jake showed us how Officer Bussoni pursued the man—the action frozen periodically to allow Jake to express his growing frustration with the man's unpredictable and bizarre behavior. As the scene unfolded, Officer Bussoni realized that the homeless man was deliberately heading for the water. Frustration shifted to fear as Officer Bussoni lunged for the man at the edge of the embankment—but it was too late. Jake expressed the panic and then guilt associated with Officer Bussoni's

desperate but unsuccessful rescue attempts. Forgetting for the moment that he was a student lawyer in a classroom at Harvard, Jake gave voice to his angst by screaming at the suicidal man, "What the FUCK are you doing?" The laughter of the students and faculty broke the illusion and Jake sheepishly apologized for the indelicate outburst. I knew he had been where his client had been.

Jake then delivered his opening statement again. The second performance was masterful and represented a marked improve-



Jake Elberg and Dana Cole

ment over the first. He not only *told* us what happened, he *showed* us. His physical movements and gestures now joined his language. He seamlessly slipped in and out of first person, lending himself to various characters at critical moments and effectively conveying not only the facts, but also how the facts were experienced. Jake revealed the range of emotions that his client felt as the events quickly progressed. Most of all, he conveyed a respect, compassion and affection for his client that was absent in the first performance. Jake later described the experience in an essay. He wrote in part:

"When I first read the facts of the case, I came up with an opening statement that fit with all of the facts and the evidence—but it wasn't real to me. It was possible, and even believable, but it never felt like the truth. My upbringing, experiences and temperament have virtually no connection to Officer Bussoni. There was little about him that I could relate to, and I could never imagine reacting to the situation the way I had planned to argue to the

jury that he had reacted.

When Professor Cole described the exercise, the idea of becoming Officer Bussoni did not at first appeal to me. It wasn't easy initially to let myself go, but with Professor Cole's help I was able to get into the role in a few minutes, and immediately I saw the defendant and the incident in an entirely new light. One minute I was standing in an auditorium with more than 150 faculty members and students, and the next I was Officer Bussoni, struggling with a drunken homeless person in an almost empty parking lot. I let my surroundings disappear and immersed myself in the role. I found myself not just relating to Officer Bussoni's experiences, but feeling what he felt and seeing what he saw.

As I began the opening for the second time, my relationship to the defendant and the case had changed. As I spoke to the jury again, I felt like I was describing a scene I had been a part of—like I was telling my own story. The emotions I had felt when doing the exercise came back to me, and I was able to make the jury feel what I felt—what it was like for Officer Bussoni on that day. What I was describing for them was not a theory or a possibility, but a reality. I was describing what actually happened."

Jake's classmates responded to his second performance with thunderous and sustained applause. One faculty member wrote to me about the experience: "I felt the magic generated that Friday night in Cambridge—the magic in the method, and the magic that risk taking often creates. You picked a student whose first opening was so good that none of us could imagine how he would kick it up a notch!" Another faculty member said, "Jake became a local legend tonight."

I have heard from Jake from time to time since January. He continues to prepare for a career representing people. Look for him at the Trial Lawyer's College in just a few years.

Professor Murray invited me to return to Harvard again next January. Of course I accepted his invitation. I'm already nervous.