

# Finding our trial style

by Karen K. Koehler

The first time I saw Gerry Spence, I was enthralled. What an incomparable storyteller. The folksy buckskin jacket. The deep melodious voice. When I watched Johnny Cochrane dazzle O.J.'s jurors, I was mesmerized with the rhythm and eloquence of his speech. In the state of Washington, we have Paul Luvera – I've seen him read poetry during closing argument. When I was a young attorney, I compared myself to them and fell terribly short. Me of the high pitched voice and feminine features.

What I learned during CLEs was not that much more encouraging. I remember one presenter who sounded like a combination theater actor/preacher. He raised his voice until it resonated concert-like through the room, then brought it to a whisper that we all strained to and did hear. It was at that moment that I began to rebel. I had no choice because to emulate was to fail.

The starting point of finding my trial style was one of considerable insecurity. I pulled my hair tightly back and tried to look as blandly professional as possible. I wanted the jury to see me not as a female lawyer, but as a lawyer period. To my dismay, I was the one the jurors always asked the judge to make talk louder. I spoke too rapidly and swallowed the ends of my sentences. I would go after an expert, then after trial be told by jurors that they didn't like how aggressive I was. I would try a softer approach, then be told that I wasn't forceful enough. I began to feel that I would never be accorded the same "respect" that my skilled male counterparts seemed to effortlessly garner. I could feel the juror's heightened scrutiny of me. In retrospect, it was my openness to humiliation that helped define my trial lawyer persona.

Here are some of the "rules" I was taught by various mentors over time, most of which I have now broken:

- Outline and/or script in detail the testimony of each witness;
- Always wear a matching conservative suit jacket and skirt;
- Don't show any weakness or vulnerability;
- Stand at the far end of the jury box to en-

courage voice projection and so the jury will focus on the witness not you;

- Look seriously professional and masterful;
- Don't be aggressive or you will be labeled a \_\_\_\_\_;
- Mute your personality so it is modest/moderate;
- Focus on being highly articulate and intelligent in your questioning and presentation – act like the prototype consummate humorless lawyer; and
- Take notes of everything said if you are not actually speaking.

The beauty and challenge of being a trial lawyer is that we are never done with the process of perfecting our craft. Being a female trial lawyer adds a whole other dimension to the journey. As a seasoned lawyer, I have so much more work to do. Yet, now when I enter a court room, I do not feel the fear that used to make me tremble to the point that my stomach would be upset for at least the first hour each day.

Much of the confidence stems from going through the fire of trial many times. The good results give me the faith and knowledge that I can. The bad results reaffirm my strength as I pick myself up off the floor and leap back into the next battle. Aside from the technical aspects of trial, the top three lessons I've learned are to: 1) be who I am; 2) trust my instincts; 3) do my best and move on.

### On Being Who We Are

Let's look at this in the context of Gerry. Unless you can imagine yourself in cowboy boots, and even if you can – channeling Gerry is not going to work well in front of a jury.

For female attorneys, being "who we are" can be scary: even in 2008, we are still viewed through a hyper-critical lens. Watching the focus on Hillary Clinton has been achingly familiar with what we experience in front of a jury: she's not emotional enough – she's too emotional; she's not tough enough – she's too tough; she's too strident in her speech – she is too conciliatory; OMG – her eyes welled up!

At some point, we need to stop worrying to the point of petrification about what people may think, and just "be." In trial this past Jan-

uary, I was in the middle of direct examination of the plaintiff, when this stoic man who did not even cry during a catastrophic crush injury, broke down on the witness stand. It was my job to bring him to that point and when he crossed over, I went with him. As he spoke I turned my back to the jury so they could not see my own involuntary tears. I licked them away so they would not see me reach for a Kleenex. But they knew and it was okay.

Oprah is a hero of mine – perhaps one of the greatest communicators in media history. She has broken all stereotypes and paved the way for us to break out of ours. She wears makeup, has different hair styles, has a fabulous wardrobe, and everyone knows about her weight issues. Instead of speaking from behind a desk, she sits next to her guests. She smiles, gesticulates, and yes – cries every once in a while at just the right moment. She is passionately vested in presenting stories she cares about. And her audience loves her.

If we attempt to fashion ourselves into "mock-Gerrys," we will stifle our ability to connect in an authentic way with those we need to bond virtually instantly with. It is okay for us to break out of the stereotypical male trial lawyer mold. In fact, we need to.

### Trusting Our Instincts

I was taught to chart, document, analyze, configure, calculate and anticipate the goings on in a jury trial. I summarized, refined, outlined, and prepared each case almost to death. In court, my focus was on doing everything right. As attorney Janice Kim would say, I needed a "lawbotomy," and fast.

I learned to trust my instincts in a most humbling and personal way. The end result was an extremely difficult and sad divorce. Personal life tragedies can also lead to wonderful new growth, and in my case I learned how accurate my instincts were once I agreed to let them roam free. When our heads are filled with data and we are caught up in the frantic pace of what we do, our instincts are stifled. Yet they are precious tools in court.

Our minds process so much more than what we consciously appear to see or hear. A subtle gesture, leaning forward, a frown, eye move-

ment, all the intangibles of "being in the moment" mean something. I will now strike a juror whose statistics are otherwise perfectly fine, just because I don't like the way they look at me. I've walked into courtrooms to watch other lawyers and "felt" the aura of the jury. I remember walking into one where I felt almost open hostility - I only stayed an hour or so and later learned it was a defense verdict. In my own cases, I am insecure enough not to ever think a jury loves my client. Yet, I can usually feel when they are "with us" or not. One time I had a case with a difficult client and a jury that I could tell wasn't leaning our way. Juror number eight kept making noises during trial and giving me the evil eye. During closing I told the jury the number I felt plaintiff should receive and that juror made a loud noise. Looking right at her I said: "You can harrumph and disagree with me, but the number I've given is fair and the plaintiff deserves to be treated with respect." It was a gamble for me to challenge a juror like that, but something about the whole situation told me I could do it. Later, when talking to the jurors they told me they couldn't stand her – she'd been totally disruptive back in the jury room and they were happy that I took her to task for being so rude.

### Doing Our Best and Moving On

The problem with being vested in our client's cases, is that we often accept too much responsibility for any setback and obsess about "I coulda shoulda wished I woulda" to the point where we cause mental injury to ourselves.

Being a female plaintiff's trial lawyer is one of the most difficult and stressful jobs in the legal field. We are championing the causes of underdogs and doing truly heroic work. Sometimes we will win. Sometimes we will not. We must be kind to ourselves so that we can survive to fight that next battle. We need each other's support, encouragement, and role modeling. No offense to Gerry and Johnny, but Roxanne and Kathleen are pretty remarkable too.

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