



OHIO
ASSOCIATION for
JUSTICE
TRIAL LAWYERS HELPING PEOPLE

2018 Annual Convention

May 2nd – 4th, 2018

Medical Malpractice Session



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**Social Media in the Courtroom: the Effects on Jury
Selection and Jury Verdicts**

Stephen Crandall, Esq



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Using Psychodrama to Disarm the Defense Expert

Curtis Fifner, Esq.

Using Psychodrama to Disarm the Defense Expert and Tell Your Client's Story

1. Psychodrama in General
 - a. What is Psychodrama?
 - i. The science which explores the truth by dramatic methods
 - ii. Showing the story and putting it into action rather than telling it
 - b. The most important skill- listening
2. Reenactment and Discovering the Story
 - a. Create and show the powerful emotional story your client has to tell
 - i. Always helps the client remember important details they might otherwise forget
 - b. What is your role?
 - c. Necessary parts
 - i. Protagonist
 - ii. Casting with auxiliaries
 - iii. Action portion- always in present tense
 1. Scene setting – all five senses
 2. Role reversal
 3. Doubling
 4. Soliloquy
 5. Chair back
 6. Surplus reality
 - iv. Post-action sharing
 - d. Don't forget to clear the scene before moving on
3. What does this have to do with cross-examination?
 - a. How am I going to tell my client's story through this witness?
 - b. What is the universal truth of this case?
 - c. Can you give the witness an out to be truthful?
 - d. Tell your story one fact/statement at a time
 - e. Demonstrate the trust, show the betrayal
 - f. If you're arguing, you're losing
4. Storytelling Cross-Examination
 - a. Testing your theory of the case against the testimony given by the witness
 - b. Let the jury kill the witness for you

5. Disarming the Defense Expert

- a. Goal- get this witness out of the mindset of “I’m here to defend this doctor and lower the standard of care to justify anything”
- b. What type of doctor do your jurors want to treat with compared to
- c. Start with this doctor’s story
 - i. For how long did you want to become a doctor?
 - ii. Why did you go to medical school?
 - iii. What inspired you to go into this field?
 - iv. Why do you train residents?
- d. Question the doctor from that emotional space- how is the person on the witness stand different from the idealistic person who wanted to become a doctor and/or devotes the majority of his/her time helping people or teaching future doctors how to practice correctly
 - i. Where do you talk to your residents at your hospital?
 1. Have them set the scene.
 2. Put us right there
 3. Are your residents just there to collect a paycheck, or do they want to help people
 4. Do they want to become great doctors?
 5. Do they look to you to train them to do that?
 - ii. Take on the role of the eager resident who actually wants to help patients- will the opinion change?
- e. What is the strongest part of your case that you can tell through this witness, in a non-angry manner?
 - i. More importantly, how does this move my client’s story forward?
 - ii. Does it show the betrayal of the medical community?
 - iii. Does it show how this conduct can hurt others?
 - iv. Does it show their bias against the very people they took an oath to treat and protect?
- f. Getting the defense medical examiner
 - i. When you started out as a doctor, you were helping and healing patients, weren’t you?
 - ii. Because you loved being a doctor and healing people who are injured and in pain?
 - iii. That’s the rewarding part about being a doctor, isn’t it?
 - iv. That’s what Dr. Smith is doing with my client, right?
 - v. Dr. Smith has a responsibility to use his best judgment and expertise in treating my client, right?
 - vi. That is his duty under the patient-physician relationship, isn’t it?
 - vii. There is no physician-patient relationship here, is there?
 - viii. In fact, it’s unethical for a treating physician to perform this type of evaluation, isn’t it?
 - ix. What you’re doing here isn’t helping my client, is it?
 - x. Or healing my client?
 - xi. Which is the exact opposite of why you became a doctor, isn’t it?
 - xii. Because somewhere along the way, you were approached by an attorney to do this type of work, right?

- xiii. As you have continued to do this work, more and more lawyers seek out your opinions, don't they?
- xiv. You enjoy doing this work?
- xv. Do you find it rewarding?
- xvi. You are paid well for this work?
- xvii. At the rate you're charging here, you'd make (X millions) if you did this 40 hours a week, 48 weeks per year?
- xviii. You're paid regardless of whether your opinion is correct?
- xix. There are no ramifications for you if your opinion is ultimately wrong?
- xx. If you were performing surgery on my client and you did something wrong, my client would be able to hold you accountable for your error
- xxi. But here, my client has no recourse against you if your opinion is wrong
- xxii. My client wouldn't get money to pay the doctors who have a duty to treat and heal him, would he?
- xxiii. Or pay for time he has been unable to work?
- xxiv. But you get to be rewarded every time you do this work and testify against an injured person, don't you?



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**How to be a Whiz at Urology Malpractice and The
Ins and Outs of the National Vaccine Injury
Compensation Program**

Stephen O'Keefe, Esq.