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The Story of a Life:

Uncovering Deep Levels of Sentence Mitigation Using Psychodramatic Action Techniques

Nothing in sentencing advocacy makes sense except in the light of empathy. Defined as the ability to feel, understand, and share the emotional state of another person,¹ empathy involves stepping into someone else's shoes and thereby experiencing a deep emotional connection with that person. For a decisionmaker to have empathy for clients, the decisionmaker must fully understand them, how they arrived at this moment in time, and resonate with how they feel about their circumstances.

But this is no easy feat. The sometimes hard truth for lawyers is that they cannot create and communicate a sentencing narrative that evokes empathy unless they, too, have immersed themselves in their client's story. This is where true connection occurs, and fantastic sentencing results follow. And it is not easy to peel back those layers and uncover the deeper truths that put the criminal offense in the proper context. It requires an investment of time, trust, and compassion. The main difficulty is that, especially for clients with complex trauma histories or mental and emotional health challenges, the barriers to understanding their life story are so extensive and significant that they can appear insurmountable.² The barriers

may even seem impassable for the lawyer and the client, who may have developed psychological defenses to protect himself from articulating or repeating those traumas.³

Therefore, creative lawyers must think outside the box and contemplate using tools that, until now, may have been unfamiliar. One such tool is "psychodrama." The name can be off-putting, but the results are undeniable. That is the reason psychodrama has been embraced by trial lawyers⁴ for nearly 50 years⁵ to produce results that no one thought possible.

I. What Is Psychodrama?

Psychodrama, created by Dr. Jacob Levy Moreno, employs dramatic and role-playing techniques to explore emotional and psychological issues.⁶ It is a "deep action method where individuals enact scenes from their lives, dreams, or fantasies to express unexpressed feelings, gain new insights and understandings, and practice new, more satisfying behaviors."⁷ Rather than discussing an event, psychodrama reenacts it. A protagonist, aided by a trained psychodramatist or "director," dramatizes these scenes spontaneously on a "stage" within a group setting.⁸ In sessions, participants act out real-life or fictional scenarios, guided by a director, to gain insights into their thoughts and behaviors.

To clarify the method's purpose, it could also be termed "drama therapy" or "action therapy." This description more accurately reflects its active, experiential nature and broad applicability, avoiding potential misconceptions associated with "psychodrama."

Psychodrama is not only therapeutic but also versatile in professional contexts like business, police training, and legal practices.⁹ In business settings, it is used to boost

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communication, team dynamics, and leadership skills. Police training employs psychodrama to simulate real-life scenarios, enhance decisionmaking under pressure, and improve teamwork.¹⁰

II. Psychodrama in the Legal Arena

According to Dr. John Nolte, it was Gerry Spence who is largely credited with bringing psychodrama to the legal arena, introducing his Trial Lawyer College students to the technique to foster personal growth and development.¹¹

Many decades later, lawyers still creatively use psychodrama's key techniques like role reversal, doubling, concretization, and reenactment in trial preparation and presentation.¹² Although the use of these methods in civil and criminal trials is well-established, they have seldom been applied in the sentencing phase of noncapital cases — until now.

Although journeying through a client's trauma experiences using psychodrama necessitates a certified professional trained in this method,¹³ the two near-psychodramatic techniques described in this article can be employed by defense lawyers with little or no psychodrama training. These techniques include the "social atom" and psychodramatic letter writing.

III. Psychodrama Is a Perfect Fit for Sentencing

A. A Powerful Tool to Break Through a Client's Resistance

Drafting a compelling sentencing mitigation narrative becomes challenging or even unfeasible when clients are hesitant to share meaningful information about their life experiences. Additionally, during allocution, clients might be equally unwilling or unable to express themselves and speak from a place of vulnerability or contrition. Without adequate preparation, the client may convey a cold detachment and communicate little insight into the harm caused by his conduct. Even worse, the client may fail to demonstrate acceptance of responsibility or true remorse for what he has done. The lawyer's job is to break down any barriers that may exist and thereby help clients find their authentic voice.

B. Understanding How Psychological Defenses Create Barriers to Empathy

When engaging with a person who is resistant to sharing his life experiences and traumas, it is essential for the lawyer

to understand the psychological defenses that may be at play that become barriers to the key sentencing objective. Defense mechanisms are the "automatic psychological processes that mediate the individual's reaction to emotional conflicts and internal or external stressors."¹⁴ They are protective strategies employed by the mind to ward off anxiety, emotional distress, and uncomfortable thoughts. These mechanisms operate at an unconscious level and are devised to decrease conflict within themselves.¹⁵ Because these mechanisms are most often "beneath the surface," it is challenging for individuals to voluntarily control or recognize them.

Some common defense mechanisms include avoidance and denial, where people refuse to acknowledge the existence of their trauma or downplay its significance, and repression, where traumatic memories are pushed into the unconscious mind, rationalization and even humor.¹⁶ According to psychoanalytic theory, defense mechanisms are, in short, unconscious strategies aimed to decrease or eliminate anxiety due to potentially harmful or unacceptable stimuli.¹⁷ These defense mechanisms exist to shield individuals from overwhelming emotional pain and protect their sense of self.

In addition to defense mechanisms, feelings of shame and pride often play a significant role in preventing individuals from self-disclosure. Shame, as described by Brené Brown in her research, is a deep-seated belief that one is fundamentally flawed or unworthy of love and belonging. When people experience shame regarding their life experiences or traumas, they may be reluctant to share these experiences because they fear judgment, rejection, or further intensification of their shame. This shame can be particularly strong when people feel responsible for traumatic events, such as in cases of abuse or addiction.¹⁸

Understanding the complex interplay between defense mechanisms, shame, pride, and emotional barriers is crucial for defense attorneys to create a space where clients feel safe, accepted, and supported in revealing their life experiences and traumas. Action interviewing, defined as a method that utilizes role play and dramatization to delve deeply into a client's personal history, aids in the exploration and reinterpretation of the client's experiences.¹⁹ It is only through skillful action interviewing that individuals can begin to move toward a more open and authentic self-expression.²⁰

C. Breaking Down Resistance by Increasing Spontaneity

Psychodrama's capacity to break through these defenses is closely tied to its ability to increase spontaneity. Indeed, spontaneity is the cornerstone of psychodrama.²¹ In his *Canon of Creativity*, Moreno outlined a mutual association between spontaneity and creativity so that the first arouses the second and the second is receptive to the first. "In order to become effective, creativity (the sleeping beauty) needs a catalyzer — spontaneity."²²

"Warming up" is recognized as the initial stage in every psychodramatic session, representing the process of increasingly becoming spontaneous. According to Moreno's theory, this phase is essential for preparing to act.²³ Various methods exist for facilitating spontaneity, such as engaging in physical activity, encouraging genuine interactions, or transforming abstract scenarios into tangible experiences.²⁴ Crucial to all these methods is the creation of a secure and supportive environment.

By "warming up" to their spontaneity and, therefore, creativity, in psychodrama, participants often enter a lightly hypnotic state, characterized by heightened focus and engagement in the therapeutic process. This psychodramatic trance state can also be somewhat dreamlike in its capacity to touch deep states of mind.²⁵ This trance state facilitates a more profound exploration of thoughts and emotions, allowing individuals to access deeper layers of their psyche.

The vulnerability experienced in this trance state is a key factor in dismantling resistance, as it enables individuals to connect with and express suppressed emotions and confront underlying issues.²⁶ However, this vulnerability also underscores the importance of skilled facilitation and proper training. Psychodramatists, especially those who are certified and have experience working with trauma-informed approaches, are skilled in navigating these delicate states, ensuring that participants feel supported and secure throughout the process.²⁷ Lawyers, whether using psychodrama techniques or simply attempting to delve into trauma history through traditional discourse, must be mindful of this vulnerability. When working with highly traumatized individuals typically, counsel must consult with certified professionals to prioritize the well-being of those undergoing psychodramatic treatment.

nity to learn and examine past or present involvement in education, employment, recovery, or faith practices.

Figure 1 illustrates not only the client's relationship to certain individuals, represented by initials, but also to *things* that influence his life. This social atom, for example, would provide the attorney with significant inroads to explore the role that music or alcohol or other substances played in the client's life. It becomes an incredible tool for a lawyer to engage the client, actively listen, and peel back the layers of what has brought the client to this moment.

It also becomes a powerful tool to identify others who may have important information to share that the client failed to recall or was unable or unwilling to disclose. Parents, children, former teachers, supervisors, and significant others may help provide additional "puzzle pieces" from which the mosaic of a client's story can be produced. Indeed, many of these people are good candidates to provide written, recorded, or live statements to the court as sentence mitigation. The social atom may clue the lawyer into the need to retain additional experts in the case, such as forensic psychologists and addiction specialists. Lastly, the insights gained from the social atom exercise will almost certainly provide the grist that inspires the ultimate theme of counsel's sentencing narrative.

The concept of the social atom is highly versatile, applicable to a diverse range of explorations. The social atom in Figure 1 was utilized to discover the location of the client's "emotional center," meaning the relationship that evoked the most significant emotional response. This center was identified through a combination of verbal and nonverbal cues, such as changes in the manner of speech, including variations in speed, expressions, crying, shaking, feeling cold, or falling silent.

The exploration of the client's social atom can be utilized to examine family dynamics, both from the past and the present, relationships with friends and colleagues, envisioned future scenarios, pivotal moments in one's history, workplace, or school connections, and even dreams. Alternate social atoms can also serve to compare and contrast the impact of trauma or to delineate the distinctions between the sober verses the using world of the addict or addicted family.³⁹ Having the client talk through and evaluate these alternate social atoms will provoke increased awareness of the client's

struggles, hopes and dreams, and help counsel to picture the content of the client's unvarnished life.

Because the social atom exercise requires the client to reveal significant people, events, or struggles in the perpetual orbit of his life, creative lawyers can immediately begin to see the breadth of its potential application. In this context, the objective of the social atom is to afford the client and lawyer the opportunity to see a visual representation of the client's social network and how this network, or in some cases, lack of network, led him to the situation that brought him before the court.

B. Psychodramatic Letter Writing

Also considered a near-psychodrama technique, psychodramatic letter writing provides opportunities for role reversal but, like the social atom, typically poses a low risk of retraumatization compared to more immersive psychodramatic interventions. The written medium allows for a degree of emotional distance, giving clients more control over the intensity of their self-disclosure. This approach maintains the therapeutic benefits of psychodrama, such as breaking through resistance and promoting insight, while offering a measured and controlled environment to explore sensitive issues.

Psychodramatic letter writing usually involves one of two methods. The first involves assuming the role of oneself at any stage in one's life, thereby allowing the exploration of different phases of personal development. The second method entails adopting the perspective of someone else from any period in one's life journey and then recording the experiences from that person's viewpoint.⁴⁰ To use this method, clients can be instructed to compose letters to or from influential individuals in their lives, living or deceased, or even to themselves, facilitating an exploration of unspoken emotions and unresolved issues. The defense attorney may have identified good candidates for psychodramatic letters when the attorney processed the client's social atom with him.

The technique involves a form of role reversal, a hallmark of psychodrama. Before beginning to write, the client will reverse roles with the other person, and write in the voice of that person, in first person present tense. Clients may read the letters aloud or have the lawyer read them back, allowing for a further shift in perspective. This element of role reversal facilitates and encourages

clients to gain insight into their own emotions and experiences, fostering a deeper understanding. For these reasons, psychodramatic letter writing can be particularly useful when preparing a client for sentencing allocution.

This near-psychodramatic technique can be suggested when a client is having difficulty expressing deeper emotions or even recognizing his own complicity in the activities that are the subject of the criminal charges. An example of this involved a client who had been convicted of conspiracy to commit prescription fraud and was otherwise unwilling to accept meaningful responsibility for his actions. Although he pled guilty, he spent much time during sentencing preparation minimizing his role, his knowledge or understanding of what others in the conspiracy were doing, and blaming others for his predicament. Obviously, none of this would be even remotely helpful for sentencing. The situation clearly called for a unique approach.

Through the course of many conversations with the client, which included a processing of the client's social atom, counsel began to understand that a key player in the drama of the client's life was his mother. Sadly, this client lost his mother at age five, but he fondly remembers her and their relationship. Although she had been gone for decades, her presence was always near. Her voice mattered. Thus, counsel made a decidedly unusual request: that the client reverse roles with his deceased mother and write a letter to himself, through her eyes and in her voice. The letter was several pages long, revealing useful insights and heartfelt expressions of remorse and acceptance of responsibility that did not exist before:

I wish I could have helped my son see the situation more clearly. This is what I would have told him:

My son, I know he seems nice and trustworthy but there is something about him I really don't like. Please be careful, you haven't known him that long period there is something I'm telling you. No one offers something for free. At least be careful. Don't fall for people's excess smiles. You know this. This is a big commitment, and he is acting like it is nothing at all. He is talking way too fast. Please remember how important your word is.

Your signature, your name, and what you are rendered I know you're going to be cautious. I know you can still hear me if you listen close enough. You have to trust your instincts sometimes over your heart. I know something doesn't feel right to you, I can see it. But you're choosing to ignore it. You're choosing to help a friend and ignore your gut feeling. You always choose to help your friends.

So you are agreeing to do the construction for him but why can't that be separate from the business? What's with these gifts? I'm really worried now. I can see how fond you are of him. I can see how much trust he's confiding in you. I can see how important to him he makes you feel. I can see how important he has become to you. So now I am afraid.

Counsel initially viewed this exercise as a means to an end — simply to allow the client to find and more sincerely allocate in his own words to the judge.

However, the letter was so powerful and effective in breaking through his resistance that the team agreed to submit the letter as an attachment to the sentencing memorandum, including a brief explanation of the exercise to ensure clarity and avoid misleading the court. While there is rarely certainty as to which factor tips the scales, the results in this case involving a nearly seven-figure fraud were astounding — the client received only one year of straight probation.

V. Bringing It All Together — Using the Information Gleaned to Fashion a Sentencing Narrative

Psychodrama has been recognized as a potent tool in the trial lawyer's arsenal, and in this capacity, it has been widely utilized. Because it offers an unparalleled ability to navigate past barriers and access the core of a client's story, psychodrama also excels in providing the means of evoking the disparate puzzle pieces of an individual's emotional and thought life so necessary for effective sentencing mitigation.

However, the challenge lies in not just uncovering these elements but in crafting them into a narrative that holds

power and persuasion across various stages of the legal process. From plea negotiations to sentencing and beyond, including postconviction efforts like clemency or pardon petitions, the goal is to utilize these insights to achieve outcomes that might otherwise seem out of reach. This task demands more than just understanding psychodramatic techniques; it requires creative and consistent engagement with clients to discover the most effective strategies for each case. Of course, the goal of any good mitigation workup is to reveal the pieces of the puzzle that tell the big-picture story of a life. The goal of that narrative is not to excuse behavior but to put the client and his conduct in the proper context.⁴¹

VI. Conclusion

Criminal defense attorneys are encouraged to embrace psychodramatic techniques to dramatically improve client outcomes. By employing these methods in crafting sentencing narratives, attorneys can achieve presentations that are not only transparent and compelling but also exceptionally persuasive. Such innovative approaches can yield significantly better sentencing results, often beyond what might have been pre-

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viously imaginable. Beyond the courtroom, psychodrama provides clients with the necessary strength and resilience to face their legal challenges and the subsequent impacts on their lives. By incorporating these techniques, attorneys do more than prepare clients for the sentencing day; they help build a foundation for their future, promoting a proactive approach to rehabilitation and redemption. This preparation extends beyond the critical moment of sentencing, equipping clients for everything that follows.

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Notes

1. Karen Franklin et al., *Zero Degrees of Empathy: A New Theory of Human Cruelty and Kindness*, 10 J. BIOETHICAL INQUIRY 411-413 (2013), <https://doi.org/10.1007/s11673-013-9452-9>.

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9. John Nolte, *Psychodrama and Creativity in Education*, in SUZANNE BURGOWNE (ED.), CREATIVITY IN THEATRE (Volume 2, 2018).

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11. THE WARRIOR MAGAZINE (Spring 2011).

12. Ana Cruz et al., *The Core Techniques of Morenian Psychodrama: A Systematic Review of Literature*, 9 FRONTIERS IN PSYCHOL. (2018), <https://doi.org/10.3389/fpsyg.2018.01263>.

13. Psychodrama certification involves a minimum of 780 hours of training, 80 supervised psychodrama sessions, a written board exam, and a supervised practicum. This is to ensure that certified psychodramatists are equipped to navigate the complexities of this therapeutic approach. Engaging in deep psychodrama work without proper training and expertise can pose risks for individuals, especially when dealing with sensitive issues or trauma.

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30. D. Yaniv, *Trust the Process*, *supra* note 21.

31. E. Leveton, *The Use of Doubling to Counter Resistance in Family and Individual Treatment*, 18 ARTS IN PSYCHOTHERAPY 241-249 (1991), [https://doi.org/10.1016/0197-4556\(91\)90118-T](https://doi.org/10.1016/0197-4556(91)90118-T).

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33. Trauma narratives can often be the lifeblood of "revelation" stories we seek to tell at sentencing. These reveal deeper truths about the case and client that put the crime in proper context.

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41. See Doug Passon, *The '3Rs' of Sentencing Storytelling*, THE CHAMPION, April 2021, at 16. ■

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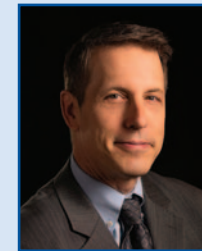
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