

The Litigator

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“Preparing Your Client for Trial: Lessons Learned from The King’s Speech”
By Michael W. Mitchell

Preparing Your Client for Trial

Lessons Learned from The King's Speech

By Michael W. Mitchell

Go see *The King's Speech*. Find it and watch it. Don't start another trial until you've seen it. There are wonderful lessons in this movie for how to prepare your client for trial.

The *King's Speech* is the story of Prince Albert who, upon becoming King of England, had to overcome a serious stuttering problem. Prince Albert ascends to the throne just before World War II, at a time when words of inspiration from the King were at a premium. Through the persistent efforts of his wife, Elizabeth (the late mother of the current Queen Elizabeth II), "Bertie" seeks treatment from a speech therapist, Lionel Logue. Lionel and Bertie develop a close and lasting relationship, although it has a rocky start. Bertie had already sought treatment from the top specialists in England, to no avail. Logue was not a doctor, and used methods considered unorthodox at the time, but he got results.

Here are just a few lessons from *The King's Speech* that can help you prepare a client for trial.

The client is king.

But you must make the rules when you go to trial.

Queen Elizabeth: Dr. McLeod warned me your antipodean methods were unorthodox and controversial. I warned her they were not my favorite words.

Lionel Logue: I succeed.

Queen Elizabeth: So she says.

Lionel Logue: I can cure your husband. But for my methods to work, there must be trust and total equality in the safety of my consultation room. No exceptions.

Queen Elizabeth: Well, then in that case . . . when can you start?

The client has come to you for help. You have experience and knowledge that the client does not have. You are in a position of trust. Regardless of whether you are equals outside the courtroom, you must have "dominion" over the case in the courtroom. That is not to say the client's perspective and opinions are unimportant, but there must be an understanding that you are the expert on the trial process. And you need to offer clear rules that, in your judgment, will allow the client to be a successful participant in the presentation of the case to the judge and jury. Enforce those rules; the client can't succeed as a witness if your advice is not followed. It would be better for the client to find another lawyer than to start a long journey of trial preparation that you know from experience will end in failure and recriminations.

Establish a relationship.

King George VI: Are you going to start treating me Dr. Logue?

Lionel Logue: Only if you're interested in being treated. Please,

call me Lionel.

King George VI: I prefer Doctor.

Lionel Logue: I prefer Lionel. What'll I call you?

King George VI: Your Royal Highness, then Sir after that.

Lionel Logue: A bit formal for here. What about your name?

King George VI: Prince Albert Frederick Arthur George?

Lionel Logue: How about Bertie?

King George VI: Only my family uses that.

Lionel Logue: Perfect. In here, it's better if we're equals.

It is not merely useful, but absolutely essential, for you to establish a relationship with your client. The client needs to know that you have made a commitment to their well-being beyond just this trial. You must demonstrate care about the client's emotional state, and the difficulties the client faces in balancing responsibilities for trial with responsibilities at home and at work. Failure to establish a bond with your client can be an obstacle to a successful trial, and can be a constant burden during trial preparation. Don't let that happen.

Your relationship will help you "counsel" the client.

King George VI: Listen to me. Listen to me!

Lionel Logue: Listen to you? By what right?

King George VI: By divine right if you must, I am your king.

Lionel Logue: No you're not, you told me so yourself. You didn't want it. Why should I waste my time listening?

King George VI: Because I have a right to be heard. I have a voice!

Lionel Logue: Yes, you do . . . You have such perseverance Bertie, you're the bravest man I know.

Serving as legal counsel is more than providing legal advice. You may need to help the client overcome fears and emotions that prevent them from connecting with the jury. You will serve as the primary inspiration for their confidence in the courtroom and on the witness stand. This may require you to engage in some "tough love," but the goal is for the client eventually to understand that a well-prepared witness need not fear the courtroom.

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Your client may not perceive the benefits of the hard work of trial preparation. Don't let your client or yourself get discouraged. Stay on course. Weather the storms together. There will be more ahead. This is when the bond with your client is most valuable, for both of you.

Prepare, prepare, prepare.

King George VI: . . . Perhaps, upon occasion, I shall request some assistance in coping with a minor event. Would that be agreeable?

Lionel Logue: Of course.

Queen Elizabeth: That will be the full extent of your services.

King George VI: Shall I see you next week?

Lionel Logue: I shall see you every day.

A smart, well-respected person does not necessarily make a good witness. They are unlikely to be aware of how unprepared they are for testifying at trial. Doctors, for example, are well-respected members of society, and yet they can make poor witnesses because they do not understand the process and they underestimate the time needed to become fully prepared.

Inexperience and fear of public speaking can incapacitate even the smartest person, and raise suspicions even as to those with the highest moral character. Careful preparation is the client's best protection against becoming a liability at trial.

Give the client a copy of the documents to study before trial preparation can even begin. Map out the role your client will have at trial. Work with your client until they know the material you must cover through their testimony, how you wish to cover it, and the likely lines of attack on cross-examination. The goal is for the client's testimony to be compelling on the information they must cover with the jury. It is also your goal to address every potential cross-examination question during trial preparation. Identify the "mine fields" that the client must navigate. Identify "safe harbor" answers in the event there is a line of questioning that you did not anticipate, or in the event the client simply forgets information on a particular issue.

A sense of humor is a powerful tool.

Lionel Logue: How do you feel?

King George VI: Full of hot air.

Lionel Logue: Isn't that what public speaking is all about?

* * *

Lionel Logue: [as Bertie lights a cigarette in Lionel's office] Please don't do that.

King George VI: I'm sorry?

Lionel Logue: I believe sucking smoke into your lungs will kill

you.

King George VI: My physicians say it relaxes the throat.

Lionel Logue: They're idiots.

King George VI: They've all been knighted.

Lionel Logue: Makes it official then.

A trial is a serious undertaking. There are times when the seriousness of it can undermine the trial team's morale. And the client is an important member of the trial team. But humor, especially self-deprecating humor, can be a helpful tool in building morale and bonding with your client. When used appropriately, lighter moments during trial preparation can alleviate stress and can reassure the client that you maintain a positive attitude about the case. Humor also serves as a tool in taking the edge off constructive criticism.

A trial is an exercise in the "art" of persuasion.

King George V [speaking to his son, Bertie]: In the past all a King had to do was look respectable in uniform and not fall off his horse. Now we must invade people's homes and ingratiate ourselves with them. This family is reduced to those lowest, basest of all creatures — we've become actors!

Witnesses aren't actors, but they do need to develop a sense of how to connect with the jury. Connecting with the jury is not a burden; it is an act of giving. A failure to connect with the jury is a missed opportunity to give the jurors confidence in what they are doing, and what they are about to undertake when they begin their deliberations. Your job is to help the client make the connection.

You should caution clients that the jury will not have the time or ability to fully appreciate their well-deserved reputations. A client's impressive credentials in fact may raise the jury's expectations about how the client should conduct himself or herself (i.e., competency and fairness). But clients with big resumes can enhance their credibility if they testify with humility—showing respect for the jury's position of authority. Humility (not to be confused with timidity) is generally considered a mark of integrity.

There are many building blocks that go into helping the jury acquire an attachment to your side of the case (e.g., fair treatment of the witnesses, reasonableness in dealings with others in the courtroom, respect for the judge and jury, organization and preparedness in court), but the most important element is the client's performance as a witness on the witness stand. If they believe (and believe in) your client, the case is much more likely to end in success.

It's always personal.

Lionel Logue: It's true, I'm not a doctor, and yes I acted a bit, recited in pubs and taught elocution in schools. When the Great

War came, our boys were pouring back from the front, shell-shocked and unable to speak, and somebody said: "Lionel, you're very good at all this speech stuff. Do you think you could possibly help these poor buggers?" I did muscle therapy, exercise, relaxation, but I knew I had to go deeper. Those poor young blokes had cried out in fear, and no one was listening to them. My job was to give them faith in their voice and let them know that a friend was listening. That must ring a few bells with you, Bertie.

The majesty of a trial is the people who make it so. The client is not an actor and the jury is not merely an audience. The jury is a union of twelve people sharing the uncommon experience of sitting in judgment of your client. Understanding that dynamic is to understand how the judicial system functions. It is where individual cases—sometimes involving great principles and setting great precedents—are decided up close and personal. So never forget: it's always personal for the jury, and for your client.

Happy endings.

Lionel Logue: Your first wartime speech. Congratulations.

King George VI: Expect I shall have to do a great deal more. Thank you, Logue.

[The King stands and takes Lionel's hand.]

King George VI: Thank you. My friend.

Lionel Logue: Thank you ... Your Majesty.

Trials are life-changing experiences, and not just for clients. Each trial is a search for the truth about the case, and a chance to explore the truths about ourselves. Are we exercising good judgment? Are we making wise decisions? Do we act with integrity when we are under stress, and do we encourage others to do the same?

The happiest endings are those in which the jury reaches a verdict in our client's favor. But winning is not the only definition of a happy ending. Each trial is an opportunity to leave a lasting impression on someone who came to us for help. And we can be grateful indeed for a profession that gives us such opportunities. ●

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The Law is a Jealous Love: Loving the Law Without Neglecting Your Spouse, Children, Friends or Yourself

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The Law is indeed a jealous love. The demands on lawyers are ever increasing. Clients and colleagues expect lawyers to be available 24/7. In the current economy, lawyers are expected to do more work in less time and for less money. But we are not just lawyers. We are spouses, parents and friends. Now, more than ever, balancing demands of lawyers' professional lives with the necessities of their personal lives is critical. This program provides lawyers with useful guidance on how to find that elusive work-life balance, enabling them to better serve their clients and themselves. Also, it delves into the dangers that may be lurking for those who fail to find and maintain balance in their lives.

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