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# Psychodramatic Techniques Tested in Combat



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The Battle for Fallujah represents the fiercest fighting by the United States Marine Corps since the Battle for Hue City in Vietnam and Iwo Jima in WWII. During this storied battle, the Marines fought so close to the enemy that many kills were by hand and by knife. The enemy took positions in concrete houses, which served as excellent bunkers and ably protected these jihadists. From these concrete houses, the jihadists enjoyed a superior line of vision of the approaching Marines. Access to the jihadists' positions was often limited to a single roadway of approach, and the elevated firing positions and the single roadways channeled the Marines into a single concentrated kill zone. Even when the Marines could eventually overcome the jihadists' superior positions—while sustaining heavy casualties—the jihadists accessed fallback positions by tunneling through adjoining walls between homes. Even the jihadists' exits were booby-trapped, to kill aggressive Marines who pursued them.

My client, Corporal Marshal Magincalda ("Magic" as he was known to his Marines), fought in the fiercest and deadliest days of the Battle for Fallujah, as a member of the storied 3/5 Dark Horse Marines. The 3/5 Dark Marines fought through Iwo Jima, Tarawa, Guadalcanal and other godforsaken places during World War II. It is this storied Unit that command sends into the meat grinders, because this unit trains its men harder than any other unit in the world—training to do nothing but kill everything and anything, no matter what. Training to kill without prejudice or passion, and to wipe the earth clean of all things that would not yield.

The prosecution accused Magic and seven of his squadmates of murdering an innocent goatherder while they patrolled behind enemy lines. The killing took place in Hamdania, an area just outside of Haditha. Hamdania and Haditha were well-

known refuges for zealot jihadists who used guerilla tactics to destabilize Iraq. According to the prosecution, the "Pendleton 8" (as Magic and his co-defendants were called) had broken into the goatherder's house in the middle of the night, dragged him to an old I.E.D. (improvised explosive device) hole from a previous detonation, zip-tied his hands and feet, and then shot the goatherder while he laid helpless in the hole. The Marines planted a shovel and an AK-47 next to his body, supposedly to create the impression that the goatherder was apprehended and shot while burying an I.E.D. Under the then-operative rules of engagement, Marines could shoot and kill any jihadist whom they caught in the act of planting an I.E.D.

Military police arrested Magic and the other six Marines and one sailor (who was their corpsman). They remained jailed while they stood trial for murder, facing the end of their free lives or even the end of their lives, period (as the prosecution presented the charges as death-eligible). They faced Courts-martial back in the States, upon Marine Corps Base Camp Pendleton.

As I do in all of my cases I discover the story using the very same TLC techniques we teach at the college. Usually, I direct the scenes myself and once I see the scene with all of the actors I begin to simply reverse myself into the scenes so that I can feel whatever the particular witness was feeling at the time. This allows me to discover the emotional truth of the event. Once I have this I am able to deliver the story that has the best emotional connection with the jury. But as I began my usual scene-setting exercises with Magic, however, I quickly realized that those usual scene-setting exercises would not get us where we needed to go: Magic's story was so complex, and so emotionally-loaded, that I could not learn it if I occupied the role of a director.

If I didn't direct, who could? These Marines are a tight group, and rarely let outsiders in. They have all lost very dear friends to

the enemy, firsthand and close-up. They have learned by necessity their own method of living with that unique kind of grief. They do not trust outsiders mostly because they are afraid of being judged. The pain from their loss and their own guilt is just too much to trust with strangers. It would be very difficult to bring someone else—especially any civilian who had not experienced the intense, continuing trauma that they lived day in and day out—into our group. My client did not even trust his own military lawyers. How would I persuade him to trust a civilian psychologist?

I called the one person who I knew would have the ability to get these battle hardened Marines to open up. Don Clarkson as all know who have worked with him, has the gift of softness, calmness and wisdom that he exudes with virtually no words. He agreed to help me work this case up for nothing more than a plane ticket, a warm bed and some not-so-good food. Don flew out from Washington D.C., to meet three very stiff military Marine Corps officers and Magic—who was very suspicious of everyone he did not know.

I had mandated that no uniforms would be worn for this exercise, which made the group uncomfortable from the outset. Every member of the group arrived in a state of being emotion-

ally closed off, scared but not self-aware of his fear, and very suspicious of what he was here for and what this crazy guy Joseph Low was going to make them do. On top of the civilian-military tension, there was the added tension of the fact that this group included both a Marine Corps colonel and an enlisted corporal—two ranks that are never allowed to even sit in the same room as the fleet. How could I expect the Colonel to discuss “feelings” in front of the corporal, and other officers to whom the Colonel needs to maintain his military impression?

Don placed these stiff, tense, suspicious warriors in a circle together with himself, Magic and me. He asked each man to share what he wanted to get out of this exercise. The answers were predictably perfunctory. Then Don asked a question that he often asks at TLC events: *what would most get in the way of other people finding out what you are really like?* This simple question, coupled with Don’s willingness to share of himself, penetrated the Marines’ tough veneers with surgical effectiveness.

After Don put the Marines “at ease,” he directed us in reenacting Magic’s growing-up years. From a technical standpoint, this was important because the death penalty allegations required us to prepare a mitigation case, which would include exploring and presenting stories of Magic’s life before the night of the



*The author, after training with the Marines, traveled to Iraq to the scene of the killing.*

killing. But there were other, more immediate purposes to our journey back to Magic's childhood: transforming the group that was working together that day; strengthening the connection between me and Magic; and helping me to find the story to present to jurors who were connected to Magic by their Marine experience, and maybe by their lives before they joined the Marines.

Most kids who join the Marines do so because of the sense of "family" that the Marines sell them. These kids come mostly from broken homes. Missing a feeling of connection and protection that family should provide, these kids are told that the Corps is a brotherhood—that the Corps is a family where they will be welcomed, and that will protect them, will even die for them. The Marine recruiter's pitch is very attractive to lonely and lost young men. Magic was no different. He ran away from home for the first time when his father divorced his mother. His father's new girlfriend then ran Magic off so that her daughter could have his bedroom. Magic lived in his old beat-up car, sometimes crashing with his friends for a week or two. Eventually, after Magic managed to earn a G.E.D., the Marines accepted him. They put him through Boot Camp, trained him for combat, and gave him a powerful sense of belonging to a unit and to a legacy. That feeling of living legacy made it possible for Magic to fight in the Battle of Fallujah and survive it, broken but still standing.

This story is the story of many Marines besides Magic. It would be the story of Marines sitting on Magic's jury. Don's reenactment of these youthful feelings of rejection, fear, and longing for acceptance would be as familiar to jurors as they were to me.

Don reenacted several of the more violent battle scenes where Magic had lost his best friend. A sniper had pinned down the Marines from his secure position in a second-story balcony. Magic's friend took the sniper's fire in a front courtyard surrounded by an eight foot concrete wall with only one entrance. Every time Magic and the Marines rushed in to try to reach their wounded friend, snipers assaulted them with a barrage of bullets from several buildings. Every time the Marines retreated, the sniper shot Magic's buddy in the knee or elbow. Magic heard his friend's agonized screams and saw his friend suffering just a few steps away, but could not reach him.

Finally, as Magic lay in cover just feet from his dying friend, a Marine Corps bulldozer roared into the courtyard and pushed the wall over. The bulldozer pushed forward and demolished the entire house, killing the jihadists inside. Trapped and immobile in the path of the bulldozer, Magic's dearest friend was chewed up so badly by the bulldozer's metal treads that he could only be identified by his dental records—and Magic watched from feet away. This horrific experience brought new meaning to the term "helpless." His friend's outstretched hand could not close the



*The author and his Arabic interpreter just before going on patrol.*

short distance to Magic, who stayed in cover, completely powerless to save the life of his friend just feet away.

“Helpless” and “powerless” are words not in the vocabulary of a Marine Corps infantryman. This very scenario would later be used by Magic’s troops to induce him to participate in something he normally would never agree to. Don’s exquisitely careful direction of this unspeakably awful scene showed me why the scene of his friend’s death was a tremendously important part of the story of the killing. The reenactment of scenes of Magic’s case would not have worked without first exploring these critical prefatory scenes.

The participants in Don’s direction included me and Magic, and a team of military lawyers who were assigned to work this case with me. This included a high-ranking Colonel, who had served for over 18 years, was assigned to our team. He had received a bronze star for valor during the Gulf War (which I call Bush War I). The Colonel served as a prosecutor for the Marines for many years, and only recently began serving as the managing defense lawyer to an overseas post. This Colonel had said on many occasions that if the allegations against Magic were true, then he should be imprisoned for many years; the other military lawyers assigned to my team felt the exact same way. But the experience of the psychodrama completely transformed each of these lawyers—all that they had witnessed, experienced and felt

as a result of Don’s directing. (Keep in mind, these are all people who do not naturally answer questions such as “how does that make you feel?”)

I needed Don to direct, because the Marines did not know how to direct (nor were they inclined to learn), and because I wanted to totally immerse myself in the roles so that I could just explore the emotional content freely. Those reenactments were part of what led me to realize that I needed to go to the actual scene, and reenact the killing where it actually happened—which meant that I had to travel to, and work in, a combat zone. The Haditha at this time was still enemy territory, or as the Marines will say, “outside the wire” (meaning, outside of the protected bases that are guarded and surrounded by barbed wire). I had a team whose members were emotionally committed to find a way to win the case. Over the prosecution’s resistance, we fought for and won the right to go to the scene where this happened. No one was especially happy about traveling to this deadly location, but I asked myself: “if I lose this case but I did not go to the scene to do the reenactment, how would that make me feel?” (Especially since this is what I have done in every other case.)

I knew I had to go. I trained for several weeks with the Marines, then traveled to Iraq. There, I embedded with a Marine Corps unit which eventually took me and my team to the scene of the killing.



*Inside the jeep after the jihadists discover our position. We are looking at Hamdaniya on our way home.*

The story of the adventure of entering a combat zone just to do a reenactment is almost as eventful as what it took to get out, and I will save that story for another time. What I found once I actually got to Hamdania proved to be priceless to our defense—as captivating as finding the space shuttle buried under the Egyptian pyramids. We walked out across these dirt fields headed towards this small village of about 12 huts. There was no cover. The Marines and Army soldiers were on edge—what you would expect, because they were fired upon every time they merely drove by the village. As we approached each earthen house, I would hear a chorus of feral dogs trumpet out their howls to alert those nearby that there were strangers approaching. (This fact would prove to be one of the most important facts of the case.)

By the end of the trip I had gathered evidence that the alleged victim was not a goatherder at all—he was, rather, a demolitions expert who had fought in the war between Iraq and Iran. We learned that behind the “goatherder’s” house was the largest cache of explosives ever found. We learned that the “goatherder’s” alias translated to “the holy sniper.” We placed these facts into context with the reality that Hamdania was the launching spot for the largest number of I.E.D. attacks in all of Iraq. This small village was home to the largest organizer, supplier and financier of these deadly Jihadist missions, a man by the name of Gowad (which translates to “pimp”).

During our tour of Hamdania, we learned that the Marines had taken Naval Criminal Investigation Service agents to the village to interview the “goatherder’s” family. The NCIS agents wanted to dig up the “goatherder,” and asked his brothers to take them to his grave. The “goatherder’s” brothers agreed, but on certain conditions: that the NCIS agents wait four hours, and then follow the brothers in their own vehicle from a considerable distance (rather than riding with the NCIS agents in an armored vehicle). The NCIS agents agreed to the brothers’ terms, and in so doing agreed to a trap: the NCIS agents drove directly into an IED.

By the time of trial, nearly all of the remaining “Pendleton 8” entered into snitch deals to testify against Magic at trial.<sup>1</sup> The prosecution offered Magic a sentence of 15 years in exchange for testifying against the squad leader (who was going to trial). Magic refused. The military lawyers on our team urged Magic to take the deal, and told me that it was malpractice to refuse the deal and go to trial. What if they were right and I was wrong? My gut said that I had to win this case for Magic. My head screamed that I should be afraid and that my gut was going to get him convicted.

I still needed help from my closest friends to check me and my sanity (or lack of it). I asked Jim Nugent, for whom I have a tremendous amount of respect, to direct me in a psychodrama. He graciously agreed along with other trusted friends (Maren Chaloupka, Lonnie Stanga and Paul Dumas) to direct me into facing my fear about this trial. If my gut was wrong, this Marine will die in prison; if I were right, he could still be convicted and still go to prison. Is the best result just a shot at getting out

before he dies? As often happens in psychodrama, what it begins with and what it is about at the end are very different—and while this drama began with my concerns about Magic’s fate in prison, it ended by exploring my own my fear of abandonment. At the end of the psychodrama, I could more clearly see what my gut had reassured me of all along. If I was just willing to believe, we could win. I owe Jim, Maren, Paul and Lonnie everything for working to release me from this paralyzing fear on that dark, late night in the Milk Barn.

I returned to California and told Magic of my drama. I told him what I felt, but let him know that the choice to go to trial was his alone. I could not make that choice for him. As tears streamed down my face, Magic told me to stand up. He embraced me there in that concrete tomb and told me to have no fear. Magic told me that he loved me and that he trusted me with his life—because when I had traveled to Iraq, that showed him that I was willing to trust him with my life.

Magic told me that he was ready to accept whatever the jury decided—but that he would not under any circumstances help the government prosecute his fellow Marines. Magic, too, believed that he was doing the right thing, and he was prepared to live with the consequences of his decision. He told me that I was free.

Magic’s statement of absolute trust changed everything for me, for us and for the case. He ordered me to fire all of the military lawyers. I agreed to all but one. I told him that I needed the Colonel. He was a good man and his voice was that of the opposition, which helped me to prepare. I told Magic that I needed the Colonel to constantly tell me what he would do if he was the prosecutor. Fortunately for us, the Colonel was smarter than all of the fired lawyers put together.

After our declaration of war, the government bolstered its team against us. The prosecution added a former Marine Corps Judge as well as a civilian criminal defense lawyer from Chicago who claimed that he had seen me litigate and could take me on. The former judge had had presided over a rape case for which I had obtained a dismissal several years earlier.

At the outset of the case, the prosecution offered Magic life in prison. On the day of trial, the prosecution offered Magic 15 years. After voir dire, the prosecution bid itself down to an offer of eight years. After opening statements, the prosecution began to suggest the possibility of six years. The results were beyond what I could have been willing to believe possible at the start: Not Guilty on murder and the lesser included charges. One juror later shared that the story about how the dogs would alert that strangers were present concretized for them that the man had to know that people were burying all of those munitions behind his house and it had to be with his permission. At that point, they no longer believed the prosecution’s story. The judge freed Magic immediately after the jury read its verdict. I walked Magic out of the jail where he had suffered for 14 months.

About a year before the trial, I had hired a private P.T.S.D. expert to treat Magic for the symptoms of post-traumatic stress disorder that tortured him. This expert was a retired Colonel

from the military who specialized in combat P.T.S.D. She shared with me that after more than one of her visits with Magic in the jail, she would just sit in her car in the parking lot and sob. Magic had the worst case of P.T.S.D. that she had ever seen. What Magic had endured, and what he was enduring, absolutely broke the heart of this seasoned professional. The expert told me that Magic was one of the most gentle but loyal kids she had ever seen: even now, in the face of absolute fear, Magic still could only think of taking care of his men. This became our theme.

Out of the seven Marines and one Navy corpsman charged in this case, only Magic was allowed to serve his contract in the Marine Corps and receive an honorable discharge. The Squad leader of the Pendleton 8 is midway through a 15 year sentence; all of the others have been released from prison due to Magic's verdict, but they all received poor discharges.

Magic for his part has enrolled in college, where he faces daily his fear that he could never be a good student. He sits in the front row of every class (just like I did). He has a 3.3 G.P.A. and will be attending the top rated U.C.S.D. College in San Diego. Magic spends every holiday with us, and my mother has a Christmas stocking with his name on it at their horse ranch where he is put to work before eating just like the rest of us. We are lucky to have him in our lives. He will never know how much he has taught me about how to face my fear.

In his time in Iraq, Magic earned two Purple Hearts. The Marines awarded him only one, before his arrest. The Marines deliberately withheld Magic's second Purple Heart when the prosecution began, because they did not want the jury to know of his valor and courage. We proved Magic deserved this award during the actual trial—by a reenactment in the court room—and the Marine Corps finally relented and awarded him his second Purple Heart after the jury acquitted him. What a humbling surprise and an honor it was when Magic asked me to pin the award on him at the ceremony, and then later gave that meaningful award to me. This was the proudest single moment in my life: that a man of that uncommon courage would, once again, put a man he regarded as his brother before himself. ☺

#### ENDNOTES

- 1 All three of the "Pendleton 8" who went to trial were represented by TLC lawyers. I represented Magic. Sgt. Larry Hutchins, the unit leader, was represented by Rich Brannon (TLC '99): originally facing the death penalty, he was convicted of a lesser offense and sentenced to a maximum of 15 years. Haytham Faraj (TLC 2009) represented Cpl. Trent Thomas, who was charged with first-degree murder; convicted of a lesser offense, Cpl. Thomas received a sentence of a bad conduct discharge and a reduction in pay, with no prison time.

*Joseph lives with his wife Monica in Los Angeles, California*



*Joseph Low (middle row, second from left) and the Marine Corps unit he was embedded with out on patrol in Hamdania Iraq. January, 2007.*