

LAWYERS WEEKLY USA

THE NATIONAL NEWSPAPER FOR SMALL LAW FIRMS

JULY 18, 2005



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In Practice

All The World's A Stage

Professional Actors Portray Witnesses In Real Trials

By Nora Lockwood Tooher

For his role as an unsavory accountant, actor Greg Durkin donned a tan sports coat and brown golf shirt.

"He was a little on the sleazy side," Durkin explained of the costuming decision for his character.

Durkin, a veteran actor in Sarasota, Fla., usually performs in independent films, commercials and on radio. But his performance last year took place in an unusual venue – a federal courtroom in Fort Lauderdale.

During a federal racketeering trial, Durkin spent a full day on the witness stand reading the deposition of a witness who was not avail-

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able for the trial.

The performance, he said, was "a little tricky."

"It was Q-and-A, so when I got on the stand, the attorneys read their questions and I read the answers," he said. "It was cool."

Durkin also took the stand in a different Florida trial last year – a civil suit involving an accident at a building complex.

"In that one I portrayed a contractor; he was a witness," Durkin recalled, noting that, again, he was called in because the actual witness could not be present at trial.

Durkin and other actors around the country are enlivening often tedious courtroom proceedings by filling in for absentee witnesses.

The use of actors in real trials is fairly rare, but a number of attorneys use them to play people who were deposed but aren't available for trial. Some even hire actors to fill in for witnesses attorneys fear won't come across well to a jury – because of speech or language problems.

"We can take away any negative persona – somebody who doesn't appear very well, or mumbles," said Ian Harris, founder of Law Actors, a Chicago company that provides trial lawyers with professional actors who perform in the courtroom or at mock trials. "What the actor is able to do is read dialogue of other people in the most conversational way, and be able to get the testimony across so the jury can get it," he said.

Some legal experts criticize the use of actors in the courtroom.

"If I were the judge I wouldn't allow it," said Jack Harlan Friedenthal, a law professor and specialist in legal ethics at George Washington University.

"You could put a spin on it by what voice you use, what inflection you use," he continued.

"Therefore, it is adding to the testimony by virtue of the loudness of the voice, emphasis on particular words. And I would not allow it."

"The very notion that you've hired an actor to make it interesting puts me right off my gourd," Friedenthal said.

Rapt Audiences

But Arthur J. Howe, a partner in Schopf & Weiss in Chicago, has used actors for more than a decade without an objection from an opposing attorney or judge.

Howe said he uses actors for non-controversial testimony – such as an emergency room physician who is not available to testify – simply to make the deposition more interesting for jurors.

"Usually these witnesses don't have a stake in the case," Harris explained. "The judges like this because they realize they are boring cases anyway. It's going to keep [the jurors] awake, and for them

it's a little entertaining. In these days, jurors expect there to be some kind of entertainment value, which there isn't in most cases, so the actors are able to bring a little something to it."

Harris founded Law Actors 12 years ago after a friend asked him to read a deposition in court. Since then, he has built up a roster of close to 100 actors, whom he casts as physicians, scientists, police officers, engineers and even lawyers.

Law Actors charges \$125 an hour, with a four-hour minimum for a performance. Harris has worked with more than

50 law firms and jury consultants in Illinois, New York, Texas, Florida and California.

"You can make it seem as if the witness is there in person as opposed to some associate or paralegal who is reading in an often leaden form the transcript of the witness, which will instantly lose the attention of not just the jurors, but probably the judge and lawyers as well," Howe explained.

The judge informs jurors that a surrogate will be reading the testimony, but usually doesn't tell jurors the person is a professional actor.

"We're not replacing witnesses," Durgin said. "It's got to be under the jurisdiction of the judge."

"Not only do the judges permit it, but we've had a lot of judges in the Northern District of Illinois encourage it," Howe said. "They want the trial to come alive for the jury."

Harris offers a case in point.

"The second job we did we had an actor named Dan Flannery who looked like Marcus Welby," Harris recalled. "He got up on the stand and they

swore him in and he started, then the defense attorney jumped up and objected. He said [the actor is] going to be dramatic and try to sway the jury."

"The judge turned to Dan and said, 'Have you ever won an Academy Award?' And Dan said, 'No.' And the judge said, 'I think we can proceed.'"

Even a videotaped deposition of an absentee witness's testimony

When a witness can't appear for trial, lawyers usually show jurors a videotaped deposition or have a paralegal or secretary read the deposition.

The problem, Harris said, is that, "It's not very interesting to listen to."

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He also hires actors for mock trials – to play lawyers, witnesses or expert witnesses.

Either memorizing a script or using an ear prompter, actors read opening and closing arguments, question witnesses and give testimony. The mock trial is then videotaped and shown to focus groups for their reactions.

"I've seen actors portray lawyers who are better than lawyers," Howe said.

Howe's firm hired actors from Law Actors to play attorneys and witnesses in a mock trial prior to winning a \$32 million verdict in December 2003 in the first and only case tried under the Antidumping Act of 1916 (*Goss International Corp. v. Tokyo Kikai Seisakusho, Ltd.*, No. C00-35-L-RR (N.D. Iowa).)

The use of the actors didn't have a significant role in the outcome of the case, but the mock trial helped Howe and his colleagues – who represented Goss International, a U.S. printing press manufacturer – hone their argument based on the Antidumping Act.

Daniel Wolfe, a senior trial consultant with Trial-Graphix, a Miami-based trial consulting firm, said he sometimes hires an actor to present both sides of a case to mock jurors, instead of using attorneys.

"Lawyers' styles of presenting will influence the way in which jurors view a case. We try to eliminate the presenter-bias," he said.

That way, jurors can speak freely to the lawyers who are actually trying the case afterwards, without holding back because they think the presenting lawyer has a stake in the case. The trial lawyers can use the input from the mock jury to hone their arguments during the actual trial.

In addition, he said, actors "have a way of presenting it to keep people engaged in terms of voice inflection and the way they move around the room."

"Lots of lawyers don't have those skill sets," Wolfe said.

What's My Motivation?

Actors such as Durkin try to create a realistic portrayal of the actual witness.

For his role as a sleazy accountant, Durkin watched a videotaped deposition the witness had made for another trial.

"I tried to evoke his character without mimicry," Durkin explained. "Otherwise, you're trying to persuade, and we don't want that. As an actor, we want to make eye contact with the juries and draw them into the testimony. We don't want to sway them."

Like Durkin, actors usually dress the part of the witness they portray.

Harris recalled a trial several years ago in which a gang member was accused of murder. His girlfriend was a key witness, but was under police protection and the prosecution didn't want her to appear in the courtroom.

The attorney hired an actress to appear in court.

The girlfriend was a prostitute, so the actress, "came dressed kind of the way [the prostitute] would on the street," Harris said.

Harris did recall, however, one instance in which the attorney representing the other side objected to an actor's attire.

The actor was portraying a truck driver who had caused an accident. Harris's client – who represented the injured plaintiff – instructed the actor portraying the truck driver to dress "like he would on the job – kind of dingy," Harris said.

"The opposing attorney said it was prejudicial and the judge agreed," Harris said. "The law firm tried to make him look like he was a down-and-out guy instead of having him dressed up in a suit."

Harris agreed it was a mistake and said that his clients should not have told the actor to dress down for court.

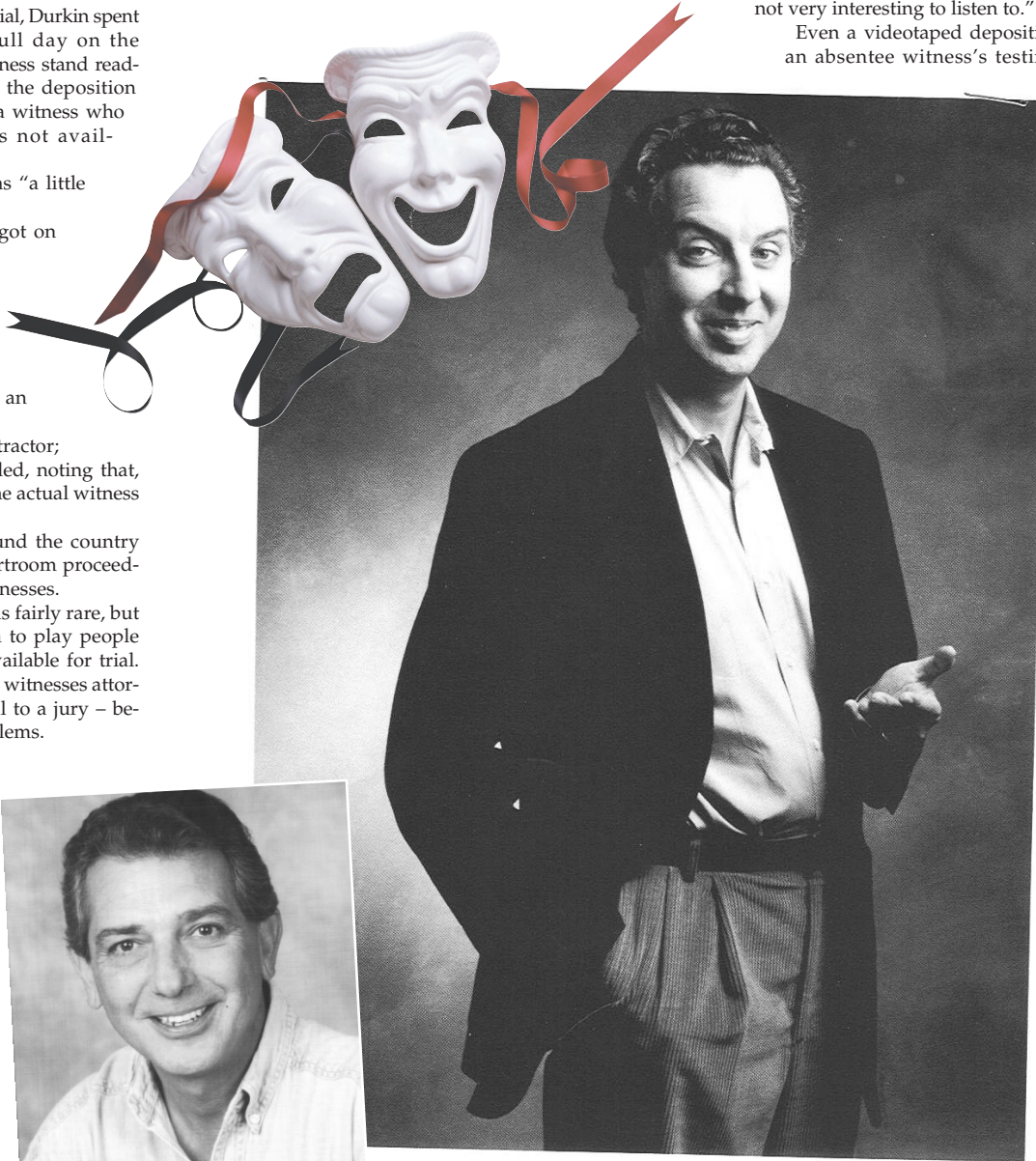
"It was a bad call on their part," he said.

Harris said it was the only instance of overzealous costuming he could recall.

And in general, Paul R. Tremblay, a professor at Boston College Law School and legal ethicist, doesn't see any ethical problems using actors in trials.

"It probably makes it more effective," Tremblay added. "Trials can be really boring." **LWUSA**

Questions or comments can be directed to the writer at: nora.tooher@lawyersweekly.com



Actors Greg Durkin (left) and Ian Harris (above) have been hired by lawyers to "play to role" of an absent witness and read their deposition on the stand.

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