

INNER PREPARATION FOR TRIAL

John C. Bell, Jr.
BELL & JAMES
619 Greene Street
Post Office Box 1547
Augusta, Georgia 30903
(706) 722-2014 - Telephone
(706) 722-7552 - Facsimile

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This topic deals with the preparation of the messenger, as opposed to the message. Most of what we hear in seminars deals with preparation of the message: finding information through discovery, preparing witnesses, the examination of witnesses, what to tell a jury in opening statement or in closing argument. Rarely do seminar topics deal with preparation of the messenger. The reality is that a good trial lawyer is much like a good athlete or a successful salesman. Why is it that some professional golfers time after time come from behind to win while others with a secure lead miss the four foot putt? Why is it that some life insurance salesmen, year after year, sell ten times, or even a hundred times more life insurance than the average? Why do some lawyers win so often and so often win so big? Could it be that the messenger, as well as the message, must be prepared if one is to win? The source material for this topic lies generally outside of legal literature. The books of Dale Carnegie and Norman Vincent Peal are classics. The more recent books of Dr. Robert Schuler, along with the numerous motivational texts and books about super successful selling, all contain guidelines helpful for a lawyer intent upon preparing the inner self for a successful trial.

Some swear by military history. I know lawyers who study the calvary attacks of confederate General Nathan Bedford Forrest. Others swear by Sun Tzu's ancient work, "The Art

of War.” His lessons include the following:

I. FIVE WEAKNESSES IN LEADERS (TRIAL LAWYERS)

The overly reckless can be destroyed.

The overly caution can be captured.

The quickly angered can be ridiculed.

The very fastidious can be humiliated.

II. THE ULTIMATE RESTRAINT

Do not move unless it is advantageous.

Do not execute unless it is effective.

Do not challenge unless it is critical.

If engagement brings advantage, move.

If not, stop.

III. THE POWER DEFENSE

Those who are skilled in conflict put themselves beyond defeat.

And awaited their opponent’s reach for triumph.

IV. THE RULE OF NUMBERS

When ten times greater, surround them

When five time greater, attack them

When two times greater,

scatter them.

Your writer finds inspiration from the movie Chariots of Fire. Watching it once or twice precedes every major trial. Let me not describe it. Get it from a video store and watch it.

Successful athletes and coaches are a wonderful source of guidance. Study Vince Lomdardy.

Listen to Lou Holtz. Remember that Reggie Jackson would visualize before each game the pitches that would come his way and how he would hit them. In his words, "I have a videotape in my mind and I simply replay it during the game."

The world of music is likewise a world of inspiration. What motivates you? Beethoven? Puchini? Jesse Norman? Willie Nelson? The Gatlin Brothers? Gospel hymns? Choose what works for you and use it! Have the tapes in your car. Have the tunes that move you resonating through your mind as you climb the stairs of the court house.

There is a more practical, a more mundane yet still important side of inner preparation. It is hard to do well if you do not feel well. Many of us exercise regularly, though regular exercise is often the first victim as trial approaches. Nonetheless, exercise to stimulate the body and cleanse the mind may be more important during the stress of pretrial and trial than at any other time. Remind yourself repeatedly: if the President of the United States can find time to go run almost every morning, you can too! Too much food likewise will be counterproductive to a clear and focused mind. Hold the alcohol for the victory celebration.

Do clothes make the man? For sure, the wrong clothes unmake the man. Have you put on ten pounds? Are all of your suits fitting a little tight? Make sure you have clothes that fit well and feel comfortable for trial. Even if no one else notices, you will notice and feel at least a little insecure if the attire isn't right. There is no such thing as too many clean shirts on the morning of trial. If your trial is out of town, be sure to have back-up clothes. Two hours before trial is too late to find out about missing buttons. Haircuts, shoe shines and such can each give an edge of confidence.

Proverbs teaches us, "in all thy getting, get understanding." The trial lawyer's motto should be: in all thy preparing, put aside time for quiet thought, for in such quiet times may come

understanding. My friend Jim Butler of Columbus, Georgia has had phenomenal success in the courtroom. His jury verdicts total close to one half billion dollars. Jim Butler is remembered by his friends for telling them, "if your door's not shut, if your telephone calls are not being held, and if your feet are not on your desk, then you're not working." You cannot be mentally prepared for trial if you have not taken the time to think, perhaps even to meditate. Most of us require an escape from the office to do this, a lake house, a hotel room, your study at home, wherever you can go for uninterrupted, peaceful time. This time can be spent in traditional preparation - reviewing files, outlining topics for examination, preparing opening statements, summations, and cross examinations. But such time must also be used for quiet time - time to think. Use such time to think about your goals for your case and your clients. Think about why your cause is important. Think about each long-term ramification of a loss. Think about what good - long term good - can come from a clear victory. Close your eyes and visualize that verdict, hear the jury foreman read it. Then think back through the course of the trial, through each step - the voir dire, the opening statements, the examinations, the cross examinations. Think about questions the judge is likely to ask and arguments likely to come from opposing counsel. Close your eyes and see yourself responding. Visualize the trial in as much detail as you can. See yourself in the courtroom. If the courtroom for the coming trial is one where you have not previously appeared, you should have visited it before final preparations so that your visualization of your trial performance will be in that courtroom, not just a generic courtroom. Visualize your confidence, visualize your control, visualize your victory. Remember the warning of Proverbs: "Where there is no vision, the people perish."

Lawyers without vision perish.

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