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## Cures For The Common Closing

There is no higher or greater manifestation of a trial lawyer's practice than delivering an exceptionally compelling and persuasive closing argument. In fact, I suspect more than a handful of trial lawyers chose their career paths after watching Atticus Finch's dramatic, inspiring, and masterful closing argument in the movie "To Kill a Mockingbird." Despite this motivation, when given an actual chance to deliver a powerful closing, many lawyers pull back and make what can only be described as a "humdrum" recital of the facts, almost a CliffsNotes version of the trial, with no emotion, little flair and certainly nothing that Atticus Finch would recognize as argument.

In today's litigation world—where so few cases make it to trial, let alone all the way to closing without settling—it is understandable, though not necessarily excusable, why attorneys default to conservative, lawyerly ways of preparing and presenting closing arguments. But what often results from this approach is what I call "the common closing"—a closing that fails to be persuasive, riveting or powerful. Sound familiar? Having witnessed dozens of closing arguments each year and having worked with trial attorneys from all across the country, I have discovered the following "cures" for this common courtroom malady.

### *Cure #1: Do Not Abhor a Vacuum*

It was the Greek physicist-philosopher Parmenides who first suggested in 485 B.C. that "nature abhors



a vacuum." Scientists and philosophers have been arguing about that idea for more than 2,000 years, but I can confidently declare that this rule does not apply to closing arguments. Because the jury will have been inundated with information since opening statement, your best bet is to use your closing argument to refocus them—by distilling themes and organizing your case into a succinct presentation.

Truly, you have very little to gain and a lot to lose by stuffing a closing argument with as many words, slides, testimony and documents as possible. Instead, use the limits of space and time—usually imposed by the court—to your advantage; recognize its power. The absence of a graphic or a document can sometimes be just as compelling as its presence. As the zen saying goes: It is the space between the bars that holds the tiger.

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### *Cure #2: Avoid PowerPoint Torture*

We, including the jury, have all been there, seen that: slide after slide after mind-numbing, text heavy PowerPoint slides that, more than anything else, serve as a crutch for a presenter who is not willing to veer off script or use PowerPoint as it was intended—to display brief focusing points.

Believe me, the fastest way to lose jurors' attention is to subject them to this form of torture. I am not issuing a blanket condemnation of using text slides as part of your presentation. Text slides can very effectively highlight key points—so long as the slides are crisp, concise and well-placed. That is, they should be a recap of the chapters from your case in chief, not a recitation of the entire novel. They should be the summary of your case, not its index. Varying your media can also keep jurors engaged. A flip chart and a marker, for instance, may be more effective for certain types of demonstratives than a slide or even a 3D animation. The important thing is to avoid letting the media drive the message. Instead, figure out what you want to say and then pick the appropriate technology, not the reverse.

### *Cure #3: Apply the “Greatest Hits” Rule*

Whether we are talking about documents, witness testimony or demonstratives, this is without a doubt one of the more challenging cures. As a musician, I think of the jury as an audience at a concert. They want the crowd pleasers. You need to apply what we call the “Greatest Hits” rule and separate the good from the great in order to create your set list. Would Paul McCartney finish a concert without playing “Hey Jude” or “Let It Be”? Sure, you may be particularly proud of certain obscure or exploratory songs in your oeuvre of which you, as the artist, are particularly proud. But these are the concept albums, b-sides and remixed imports that, while near and dear to your heart, will leave the audience less than enthused.

The same holds true for closing arguments. Though you may be especially fond of that exquisite piece of testimony because of the tactical skill by which you coaxed a devastating admission—and you should be!—make sure jurors will find it equally enthralling before using it in your closing.

### *Cure #4: Tell Your Story*

Whenever possible, use the power of stories to illustrate and frame your argument and help the jury engage with your themes. Why? As humans we are born storytellers and relate to stories at a basic, fundamental and personal level. Even as adults, we are somewhat disarmed by the words “once upon a time ...” or momentarily freed from distraction when we hear “let me tell you a story...”

Storytelling methods such as analogies, anecdotes, parables, fables, metaphors and idioms can all impart wisdom or make a point, and can do so far more effectively than reciting the facts. If told well, a story can even bridge cultural gaps, clarify meaning, illustrate memorable points, persuade and inspire people to act. I would be hard pressed to come up with a more appropriate prescription for a successful closing argument.

### *Cure #5: It Is a Marathon, AND a Sprint*

The best tip I can give you is to start preparing for closing as soon as you are done with opening. Theoretically, this is the simplest cure of all. Yet, practically speaking, it is often most difficult to implement, as such planning often falls by the wayside once a trial team finds itself squaring off with the seven-headed hydra that is being in trial. Many trial lawyers like to pick their closing materials from a vast evidentiary universe of potentials. For our purposes, this universe would consist of testimony, exhibits and demonstratives.

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Creating that universe of material, however, should happen at a measured pace throughout the course of trial. This gives you the confidence that the universe is complete, while giving you the time to move the pieces of your mosaic around based on emerging themes in trial.

The opposite approach, to make a mad dash for the finish line, will not allow you that same luxury, and often results in an unstructured and disjointed presentation. But how can you plan for closing when you are in the thick of trial? We have found the best way is to assign one or two members of the trial team to review the record on a daily basis for purposes of gathering all the relevant testimony and noting other concepts and themes that may shape your closing.

This content should be shared concurrently with your graphics consultant and trial presentation team, who, after all, will be in charge of developing your closing. Planning your overall trial as if it is a marathon will allow you the reserves to make a sprint for all you are worth at the end. In conclusion, scientists may not have found a cure for the common cold, but cures for the common closing do exist. Using them hopefully will make your next closing less humdrum and more Atticus Finch.

After all, the jury not only expects a cohesive and concise summing up at the end of trial—in these days of over-abundant information flow, they need it. And who knows? There may be one or two people in the gallery whose future careers depend on it.

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