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The way of the Jedi lawyer

Take a lesson from the Jedi as the Zen warrior: Embrace the fear


Cooper

By Miles B. Cooper

The defense lawyer, calm and friendly through the trial, got to the podium after we finished closing. His turn. He set his notes down. I noticed his hands clench the podium sides, knuckles whitening. He began angry, wandered away from the podium, and ignored his notes. For the next 15 minutes, he spoke with furious anger. We dared say his client, a company, was a petri dish for negligence.[1] His single-minded focus on his anger distracted him from the increasingly urgent and ever-growing stack of notes his co-counsel slid his way.

It had not been our intent to anger him or throw him off course. But that was where he found himself. He had let his anger guide him and drive him, taking him off his path. He was not a Jedi lawyer.

You read that right, Jedi as in Star Wars. I mean the original – forget Jar Jar, midichlorians and the damage they did to the franchise. We're taking it back. Way back. Jedi as the Zen warrior. As in Lucas's inspiration. Grab some Joseph Campbell and strap in (and along the way, ask yourself – do Campbell's The Hero with a Thousand Faces or Jungian archetypes deserve a place in story telling at trial?)

The Jedi embrace and use change, fight smarter rather than harder, and know their fears. Sound familiar, plaintiff's lawyer?

Embrace and use change

Trial, lawsuits, life. Nothing goes as expected. You can exhaust yourself fighting change. Or you can accept and adopt it. In one trial, during a powerful moment in our client's direct exam, the fire alarm went off. Everyone went down the fire stairs and waited. When we resumed, the moment was shattered. But the jurors had the opportunity to watch our client's face as he – with his amputated foot – was the last to make it out of the building. That became the discussion in closing rather than the interrupted moment. Equally if not more powerful. But reached by a different path.

Fight smarter, not harder

If you think you can take on a large defense firm or a multi-defendant case and match the hour-for-hour time they will put in, either you've succeeded in cloning yourself, have the luxury of a very, very low caseload, or are mistaken. They send a 40-page meet and confer letter? You could refute each sentence point by point or get angry. Or instead, call them to find out what they really want. Or perhaps ponder it. Many meet and confers can be solved by a Gordian knot solution – a one paragraph letter – if you reflect rather than react. Remember, they run the same general cases and defenses all the time. Decision-making is constrained by committees, adjusters and corporate counsel. You are nimble. Use that to your advantage.

Know your fear and face it

Everyone has a frightening moment in a case (or life for that matter.) For me, my trial fears manifest most in the seconds that immediately precede and follow the phrase, "Counsel, would you like to question the jury panel?" My heart rate increases, thumping up into my throat, and my hands get a light prickle of sweat. Happens every time. So I examined it, and after some discussion and enlightenment from other trial lawyers, I tried a different approach. I embraced the fear. Doesn't stop it, but now the fear is part of the process. When I get up and my heart is pounding, I tell the jurors.

"Every time in a trial, at this point, I find my heart racing. It is the part of the trial I most fear. And I tell you this because I know some of you feel exactly the same way – talking about your life experiences in front of 75 strangers can be frightening. If there's something you prefer to talk about in private, let us know. Because we want you to feel as comfortable as possible sharing your experiences in what can appear at first to be an uncomfortable process."

By the end of this, my heart has slowed. I've embraced my fear and we're off to an interesting dialogue with potential jurors.

A practice, not perfection

Remember that the way of the Jedi lawyer, like law itself, is a practice, not perfection. I raise this because if you pursue this path you will find times when you still get thrown off. I do. And I hope that you, dear reader, don't throw this column in my face the next time I have a meltdown.

Our opponent

After the verdict, we spoke with the jury – defense counsel did not stick around. Another mistake. Win, lose or draw, the jury provides you with the best possible feedback on how to improve and keep (or overturn) the verdict. We asked about defense

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counsel's closing. Our thought was perhaps someone might have mistaken his anger for passion. The response? To a person, not positive. He had let his emotions occlude his argument. And while his failure to practice Jedi law in that moment may not have been the factor that lost the case, it derailed a critical point in closing. That helped neither his position nor his client.

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[1] Every good lawyer borrows. This theme was not original – I have my former boss to thank for it.

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