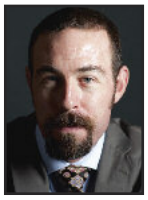


Very superstitious

Good or bad, our superstitions and "spidey-senses" give us confidence


Cooper

By Miles B. Cooper

In the cold early morning, with pockets of mist clinging to the ground, a fox ran across the street on our way to trial call. It got to the other side, glanced back toward us, and took off into the brush. We were assigned out for trial, went to the department and discussed motions in limine and the mechanics of the case. During a break, I called my partner, whose Native American animal medicine interest has bled into our practice a touch. "Fox medicine," she said, "adaptable, cunning, observant, decisive. Fox has the ability to observe undetected without making folks feel self-conscious. Knowing you and given the way it appeared, it is probably a totem for you." And it sounded pretty good for someone trying a case.

On our drive back from the first day of trial, I noticed something up ahead, off to the side of the road. Furry. Not moving. Yep, you guessed it. An unlucky (and very dead) fox. My first thought: a dead totem cannot be a good sign.

A penny for your thoughts

Very few lawyers start out superstitious. But the trial arts require skill, hard work and a little bit of that extra something. That extra something can come in a variety of ways. Athletes, actors, gamblers, trial lawyers – people who need that extra something – sometimes start developing habits. The habits come from a good experience. A poker player says, "I won the game when I wore my wrap-around sunglasses." Never shaving during a baseball season. For us it was a heads-up penny. My partner found a heads-up penny every trial.

I was not superstitious. But somehow I quickly became a penny hunter (hint: look on the ground near the courthouse X-ray machine). It reached a point where I started to panic slightly if it got to closing argument and we had not found one.

Confidence boosts and distractions

Pennies. Foxes. They're actual and analogous. We have trial moments where an outside event takes us off course. A juror, your likely foreperson, starts madly writing when your opponent is cross-examining your expert. Your inner C3PO speaks up, saying, "We're doomed." This may indeed be the case. Or the juror may have remembered the four things he needed to pick up at the grocery store on the way home. This latter explanation happened – it was a juror seated next to me when I was a juror.

After many trials, I've won cases where I've found heads-up pennies, and lost a few (fortunately very few) cases where I've found heads-up pennies. The lesson? Our superstitions and "spidey-senses" give us confidence. Embrace that when it happens. A juror smiles at your client. The juror may like your client or may have a twitch in her lip. Take it as a sign the juror may like your case. But don't attach too much weight to it.

There is a flipside to that coin. Don't let your worries or superstitions cripple you. Mid-trial in a case, the jury took a group photo dressed in black robes (it was a long case). They handed a copy to the defense lawyer, the judge, and us. My partner felt it was a terrible sign – they weren't taking the case seriously and they liked the defense lawyer more. It turned out they did like the defense lawyer (not more, though). But the verdict was strongly in our favor.

The courtroom is about your client, you and the ability to communicate with the jury. Good mojo is nice. Winning is about the evidence and your confidence – confidence that is not taken off-course by your worries and superstitions.

Ignoring the signs

Maintaining your confidence and not reading too much into the tea leaves of juror behavior is important. But you cannot let blind confidence overcome your sense of what is going on in the courtroom. Trial is war, but every step of a case is a negotiation. If you can tell things are going tremendously well for you – or tremendously poorly – you can always take the opportunity to re-engage the other side.

Lightening the load

There is a zippered pocket in the top of my trial briefcase. I used to put the pennies we found during trial in there. Over the years, it became quite full. Then, I lost a case where I had found a heads-up penny. I decided it was time to unburden myself and emptied the pouch. It was not that I felt the pennies were now unlucky – far from it. It was simply time to lighten things up. I guess you could say at that moment I downgraded from very superstitious to simply *stitious.* (Yes, I know it is not a word. But how can one get to be superstitious without being a little *stitious* first?)

Dead fox notwithstanding, we won our trial.

Copyright © 2013 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



Miles B. Cooper is a partner at Rouda Feder Tietjen & McGuinn. He represents people with catastrophic injury and death claims. In addition to preparing his own cases, he associates in as trial counsel and consults on trial matters. He has served as lead counsel, co-counsel, second seat and schlepper over his career and is a member of the American Board of Trial Advocates. Cooper's focus beyond litigation includes trial presentation technology. When not working on injury or death cases, he volunteers with the Volunteer Legal Services' pro bono programs.

Copyright © 2013 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**