



The Watcher

Lawyers learn and improve by watching trials



Cooper

BY MILES B. COOPER

The lawyer scooted into one of the rows in the courtroom gallery. Squeezing between people, it felt like a trial lawyer reunion. Eight-figure hitters, front page newsmakers – a veritable Who’s Who of the plaintiff bar. The word had gotten out – some of the best trial lawyers in the business were closing. An opportunity to watch masters versus masters. And what were the trial greats doing there? Watching. And learning. Looking for a twist, a story, a way to improve the argument in the next case. The best trial lawyers, big egos or not, know they can always learn something new.

Style guide

Law schools teach many things. Trial style is not one of them. One of the great things my mentor suggested was to watch different lawyers to see what might work for me. Some young lawyers believe they must imitate the greats they watch. The truth? Jurors can tell when lawyers are comfortable in their own skin. One of the great training grounds for trial lawyers, the (Gerry Spence) Trial Lawyer’s College, spends a lot of time breaking people down. Their philosophy: one cannot know others – clients – and tell their stories without knowing one’s self first.

That requires a maturity I did not have in my early years. But by watching a variety of lawyers, I learned many different styles are effective. Getting louder doesn’t work for me. Getting quieter and more deliberate does (thanks are due to my mom and the nuns who taught her for this technique).

To err is human

Being comfortable in one’s skin includes the willingness to make mistakes. Trials are filled with don’ts. Don’t mention this piece of evidence. Don’t mention insurance. Don’t approach the witness without permission. Don’t argue the Golden Rule. Layer on the worries about don’ts that come from years of watching courtroom movies and television shows where everyone delivers perfect lines. A young trial lawyer can get paralyzed. This maelstrom of don’ts swirls around the young lawyer’s mind, obscuring the do. What’s the do? Tell the story, with passion and emotion, while giving the jury the evidence to vote for your truth.

Why does watching the greats help? Because one realizes that they, too, are human. They make mistakes. They draw

objections. They shuffle for a piece of evidence. Their technology fails at the most inopportune time. Yet they keep going, and they win. And when they don’t win, they pick themselves up to go out and win the next one.

Pivot

The issues lawyers face in trial frequently require pivoting. Pivoting is being open to outcome. Can’t get that projector to fire up? Time to use your best storytelling voice. Trial lawyers, while control freaks, also learn to be open to outcome. There’s a minimum of nineteen personalities in a jury trial, between the judge, court reporter, clerk, jurors, lawyers, and parties. That’s nineteen ways a trial can go off the rails. The lawyer who embraces the unforeseen and uses it to advantage – sometimes known as judo law – will typically do better than the rigid lawyer who cannot go off script.

The mundane

Watching trials – and not just jury selection, openings and closings – demonstrates just how dull trial can be. We stress about every sentence of a witness exam. But large segments of trial are filled with pieces of paper getting tagged, stapled, and written on by a clerk while the room is filled with a John Cage composition of breaths, coughs, and creaking seats. This is not a license to bore. One should do the best one can to keep the jury’s attention. But not everything happens at TV pace. One needs to experience a few minutes of that uncomfortable silence to recognize this.

Don’t just sit there, do something!

A law professor I had used to say you can learn a great deal about tennis by watching it, but nothing compares to playing it. Try cases. Take a low-speed impact case – the kind insurance companies make you try – and recognize it won’t generate revenue. It will sharpen skills. Volunteer for the misdemeanor docket if the regional DA’s office or PD’s office will allow it. Sign up for an intensive advocacy program or the Trial Lawyer’s College. Get up and speak – anywhere. With 98 percent of civil matters settling without trial, we have to work hard to keep trial skills honed. And even if one does not have the driving desire to be the next Trial Lawyer of the Year, there’s a duty to one’s client to be able to back up that lawsuit you filed with the ability to competently put on the show in front of a jury.



Outro

Back to our courtroom and its filled gallery. A great opportunity to watch and learn. But on any given day, if one goes into a courthouse, there will be something worth watching. Stop by if you haven't been in a while – you will not be sorry.

Miles B. Cooper is a partner at Emison Hullverson LLP. He represents people with personal injury and wrongful death cases. In addition to litigating 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 interests beyond litigation include trial presentation technologies and bicycling (although not at the same time).