

JANUARY 2020

The lion in winter

Law is a lifelong practice with distinct stages, each joyous for different reasons


Cooper

By Miles B. Cooper

The aged lion of the bar sat next to the lawyer at the banquet table. Deep creases surrounded the piercing eyes. Lined with over eight decades, courtroom battles balanced against family and outdoor activities, the lion remained sharp. "Moving a little slower," the lion chuckled, "but I still swim and run every morning. And I'm still learning new things…" The lawyer took the lion in. An additional forty years' practice on the lawyer…

Different states of grace – youth and unconscious incompetence

As we enter another year of practice, take a moment to center yourself and examine where you are on that practice arc, somewhere between beginning and end for most. Young practice is an exciting time. Some practitioners call first years baby lawyers. I still remember my first court appearance, an initial case management conference, before CourtCall's perfusion. I walked up to the bailiff, tried to check in, and reddened when the bailiff dismissively pointed me to the clerk. I learned over time – courtrooms differ. There's no reason for embarrassment when the staff tells you you're doing it wrong. It's part of the locals' game. The confidence not to care comes with time. Yet my heart quickens still when my line gets called, confidence notwithstanding.

Baby lawyer practice requires the willingness to ask questions and not caring about sounding silly. You can't learn without seeing it done or asking how to do it. Those overseeing young lawyers must exercise restraint. Encourage questions, don't be dismissive, and don't assume. An example: We've all seen correspondence sent to experts by someone unaware that everything sent to an expert is discoverable. Eager young lawyers need mentoring, and monitoring.

Adolescence and young adulthood – conscious incompetence and conscious competence

After the first year, young lawyers develop a better sense of their limits. They can be trusted to bring the right questions to a mentor, but they cannot be left to litigate unattended. This can be uncomfortable, particularly for those yearning to prove themselves. And that's where mistakes get made. Learning and teaching how to communicate authority is important. So is being direct. "I don't have the authority to agree to that. Let me check with my partner."

Even with proper training and understanding, mistakes can be made. The maturity to be able to say, "I'm sorry, but I overstepped my authority yesterday when I agreed to that. I apologize and recognize that may create problems for you – I'm prepared to write an email so that my mistake does not become an issue for you with your client."

This is a time not to stifle creativity, but to whisper creative concepts to a partner before they are shouted out for all present to hear. A good partner will give credit for the concept, and the whisper will give an opportunity to course-correct if the concept may not be quite right.

The Jedi – unconscious competence

At a certain point, we reach unconscious competence. A joyous state, but not without dangers. Unconscious competence is not omniscience, nor can our knowledge base remain static. Remember our lion from the introduction – over eighty years old and still learning. The danger comes from believing one knows it all. The Jedi lawyer is constantly learning, training, and honing. Done properly, unconscious competence can be decades of challenge and reward. Done improperly, one's practice will become turgid and dull. We've all come across the lawyer – usually in the insurance defense world – eyes dulled, pallor gray, handling the same cases the same way. And we have a choice if we feel ourselves slipping into cookie-cutter practice: sink into that mire or escape it.

The lion in winter

There comes a point where we begin to slow down. We may still be Jedi, but no longer lead from the front. At that point, decisions need to be made. Retire? For some, but many need practice's engagement to stay vital. Slow down? Perhaps. And then there are the few who, like sharks, must remain in constant motion to live. There's no wrong answer in winter, as long as there's intentionality. Figuring this out before the last stage increases the chances that one will end on a high note instead of being chained to one's desk for financial or ego-driven reasons.

Outro

Back to our lawyer and the lion. As the evening went on, the lawyer noticed the lion's and his spouse's hands. The couple's hands unconsciously found each other, the fingers interlocking, the spouse's thumb caressing the back of the lion's hand. Married fifty years. In practice, family, and legal politics, the spouse played an integral part in the lion's success. The lawyer looked to the other side. There, the lawyer's spouse, also a Jedi lawyer, was engaged in conversation with a table-mate. The lawyer wondered how many decades together lay ahead, and thought warmly, "Many."

[**Editor's Note:** If the column's title seems familiar, it is borrowed from James Goldman's 1966 stage play and 1968 movie of the same name.]

Miles B. Cooper is a partner at Emison Cooper & Cooper 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, where at the recent holiday gala he sat next to Ronald and Sue Rouda. Cooper's interests beyond litigation include trial presentation technologies and bicycling (although not at the same time).*

Copyright © 2020 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**