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You gotta have faith

Developing absolute faith in winning the trial



Cooper

By Miles B. Cooper

The lawyer, preparing for trial, thought back to a recent conversation with a couple of former public defenders turned hitter civil lawyers. "If you don't have absolute faith in my case, stay the f#%k away from me," was what they learned and lived during trial preparation through the defender's office. The lawyer thought about that faith – how one develops it while effectively neutralizing bad facts and encountering the inevitable nattering nabobs of negativism. Challenging stuff.

Winning mindset

Humans are incredibly perceptive. In our relatively quick transition from caves to courtrooms we remain wired to perceive threats. Despite our best efforts, we emit our beliefs through microexpressions, gestures, demeanor, and word choice. Puffing up, referencing all one's past wins, and talking about the imminent ass-kicking the other side is about to receive doesn't help. It's akin to wearing a sandwich board saying, "I am afraid."

So, develop the unshakeable belief in the win. This starts by putting in the work at the beginning and through the case workup. Folks know the phrase, "How I do one thing is how I do everything." Building the case with excellence builds faith in the case. And yet… there are reasons cases go to trial. It usually isn't because the other side is pig-headed (although that can be a concurring cause, see CACI 431, Causation: Multiple Causes). The cases that try usually aren't one's best cases. They are the jump balls, the ones that could go either way. Here chance favors the prepared.

Zealots

One needs to believe with religious fervor in the win, while methodically cataloging (and determining how to overcome) every reason the defense thinks one will lose. With each bad, fact determine if it can be turned to one's advantage, kept out of trial on an evidentiary basis, or embraced to help build one's own credibility. It's easy to bat down facts one disagrees with. But getting genuinely curious about why the defense thinks the facts matter can help one build the necessary arguments to overcome these facts.

One tool that can be helpful in overcoming nagging doubts is running through a fear-setting exercise. Various folks have their spin on how to do this. Tim Ferriss has an easy module to follow (see: https://tim.blog/2017/05/15/fear-setting/). The exercise helps one confront one's fears and work through them.

Ground control to Major Tom

Sometimes that's not enough. Time for a vision quest. There are long ways and short ways to do this. The long way is to take the case file and get off grid – preferably somewhere one cannot be reached easily that's in nature. Some examples? The West Point Inn on the side of Mount Tamalpais. Somewhere in West Marin. A cabin in the Eastern Sierra. Not quite full Unabomber, but close. Wallow in the case like a pig wallows in mud – everything is the case. At some point in this process go for a walk. It's time to ask the question: Do I believe? The shorter version is to clear one's mind and take that same walk, again in nature (even if that's simply the biggest nearby park available.) "Do I believe? Down to my bones?" The answer, after the work, will be yes.

In rare circumstances, one can search one's soul and find that the answer is no. That's a problem. Consult with one of the many trial greats who are willing to step into a case to see if someone can take over. Re-evaluate settlement options, if good ones exist. It is wise to do this vision quest well before the trial date to allow for time to pivot. The last thing one should do is head into trial sweating out doubt. If one cannot co-counsel or settle, one has no choice but to build that belief from scratch. Watch *300* and *The Verdict*, blast walk on music and accept the honor. Of the tens of thousands of lawyers, your client chose you. Your knowledge, skill, and talent brought you to where you are now – a trial lawyer. Step into that arena, get bloodied, and win the damn case.

Team player

These days most trials are more than a lone gunslinger carrying a banker's box into a courtroom. They require a team. Anyone presenting before the jury requires the same winning conviction. If it's not there, the team member also needs a vision quest. And here, it's the trial lawyer's obligation to shot call. "If there is any doubt, there is no doubt," is an oft-cited quote from Robert DeNiro's character in *Ronin*. A doubting team member should be substituted off the team. Recognize that there remains a place for theory-testing, pushing back, and preparing to counter defense arguments. There's a difference between being a yes person and a doubter, however.

Outro

Back to our lawyer, who continued to prepare for trial. As someone who is a lifelong learner, the lawyer reflected on what the former public defenders said. It was just the right message at the right time. The lawyer did believe, and it was time to help that jury make the right decision in the case.

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