



Department Zero Dark Thirty

U.S. Special Ops teams take on numerically superior opponents with planning, speed and decisiveness



BY MILES B. COOPER

To those who have served, are serving, or will serve – and their families – we are indebted to you for our freedom and our rights (including the Seventh Amendment).

Cooper

“Next, we’re going to learn about the spine.” The lawyer was giving his opening. The projector made a loud pop. Instead of a spine, darkness. Blown bulb. Anyone who has experienced this learns that a projector bulb is not the kind of thing you grab at Walgreens during the break. The jurors wore bemused expressions, wondering what he was going to do.

A backup plan for a backup plan

Being in trial, particularly one out of county, means being self-sufficient. Help from the office takes time to arrive. In the interim, the trial does not stop. Take a tip from special operations forces who know what it is like to experience drastic changes in circumstances, and thus have back-up plans and the ability to improvise.

In trial, technology is the best way to get lots of information to jurors in ways they can remember. But technology, particularly equipment you don’t use regularly, has a way of failing at inopportune moments. So consider the environment and the appropriate backup. A second projector? Second laptop? Elmo with slides printed out? Boards for key concepts? Old-school ability to keep the jury captivated with the spoken word? Perhaps all of them, depending on the case. There’s a lot of law in the courtroom but the one that will always make an appearance during your case is Murphy’s. Preparing with that in mind will make your transition smoother when the inevitable occurs.

Technology is just one example. Backups apply equally to other areas. Say the judge doesn’t allow you to stop at 4:55 p.m. after jury selection, opening and four witnesses. “Court time is valuable. If you don’t have another witness, you rest.” Nice to be ready to go with that depo excerpt.

Get combat training

You get ready for trial by getting out to trial. If you don’t get out a couple times a year, your skills atrophy. Nothing wrong with that – it is hard to get trials. But recognize the atrophy. If it has been a couple years, build in more time for you and your team. You’re going to make a few mistakes. You might also

consider volunteering for a last-minute pro se or unlawful detainer case the next time you get an unexpected settlement. Even small cases keep your skills sharp.

A place for everything and everything in its place

There’s a pattern after a verdict. It comes in. You celebrate (or weep). You’re exhausted. You drag a messy bunch of boxes back to the office. At that time, you know what everything is and where it should go. Instead though, you take a couple days off. Or plow into the inbox and work on the cases you’ve been unable to focus on. The material from the last trial sits until suddenly you need some of it.

If you take the time to put things where they belong when you first come back, it will take far less time and it will get you ready for the next one. There’s a lot of stress and last-minute “We need to get this out” in our job. The success rate is improved when everything is where it is supposed to be: restocked, repacked, reloaded.

Know how to do everyone else’s job

Every special-forces operator has a specialty but also knows how to do the jobs of everyone else on the team. If the communications guy gets killed, another man can take over.

There’s less risk in our job. But the ability to do everything is equally important. Want to add a document to your closing presentation at 2 a.m.? Better know how to use the scanner and be familiar with Adobe Acrobat. Unless your budget includes 24-hour support, there will be a time when you need to do it yourself.

Decisions, decisions

Even if you are a solo, you’ll get input from your client, and frequently colleagues and friends. Encourage everyone – the client, paralegal, secretary, file clerk, intern, associate, partner – to voice their opinions. Their experience and knowledge is why they are there. Their different perspectives can make the case better. But also make the chain of command clear, including when decisions need to be made quickly and without further discussion.

Back to the back

We return to the opening statement, where a lawyer was without a projector. He reached under counsel table and pulled



out a scale model of a spine – something that was going to be used with a doctor later in the trial. This forced him to be closer to the jury box. He got permission to pass it around the jury, who touched, poked and prodded. Quick thinking that resulted in an even better presentation.

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tion 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. Prior to the law, Cooper tried, and failed, to make the SEALs. Damn those strict eyesight regs.

