



Whippersnappers

Inexperienced opposing counsel requires special consideration



Cooper

BY MILES B. COOPER

The veteran defense lawyer got up and began his closing argument. “Ladies and gentlemen of the jury, I want to thank you for your time and attention in this lengthy case. I want to thank his honor, the court staff, the court reporter and my opposing counsel, Ms. McGuinn, for their hard work. The one person I do not want to thank? That other opposing lawyer,

Mr. Cooper. I don’t want to thank him because I hate him. I despise him. Why do I despise him, you ask?”

For that young Mr. Cooper, sitting next to Ms. McGuinn in that courtroom over a decade ago, the defense lawyer’s voice faded as Mr. Cooper’s heart raced. His ears throbbed with the whoosh of arterial blood, and his face turned crimson. The jurors leaned in, stunned, anxious to hear where this was going to go...

Young at heart

Let’s leave young Cooper for a little while and ponder life as a young lawyer. For a few, that may be as simple as looking in the mirror. For others, it may take some effort to remember that far back. But everyone was young once. Some young lawyers – like me – are fortunate to get outstanding mentoring. Others fend for themselves. Either way, engaging opposing counsel as a young lawyer can be intimidating. Litigation is competitive – one wants to win the case for one’s client. Taking the opposition’s word can be frightening.

When opposing counsel is young, recognize that their actions may be dictated by inexperience rather than malice. Working through this can take some effort and some thick skin, however.

Try to reach out. “I received your 16-page meet-and-confer letter noting that I did not use the phrase ‘diligent search and reasonable inquiry’ in my responses. I can change that. But tell me: is there anything beyond that I can provide to you to make reporting to your insurance carrier easier?”

It can take repeated efforts to break through. One way to fail – be condescending.

“I remember back when I was a young associate. Let me tell you little buddy about all the things you are doing wrong...” It can be difficult to resist unloading when someone is making the job difficult. But resist. Because breaking through can have tremendous results, both in the short and long term.

Adjusters and some firms tend to treat young lawyers terribly. Making that lawyer’s job easier usually results in that lawyer being somewhat of an advocate for your client. In the long term, it is a moral imperative. The difference between a jaded jerk and a civil opponent can start with a few bad early experiences that

snowball. True, there are some folks out there that are just wired wrong, but give them the benefit of the doubt first.

Inconceivable

Never underestimate an opponent – young or otherwise. An inexperienced lawyer may work harder to make up for the lack of experience. That young lawyer may also exhibit some sparks of creativity that have not been dulled by years of doing the same types of cases over and over. The unexpected can sometimes work to their advantage. Why do almost all defense lawyers follow a chronological outline for plaintiffs’ depositions? (Because it is easier to avoid forgetting something and one can reuse the same outline.) A young lawyer who does it differently can catch the plaintiff’s lawyer – and the plaintiff who was prepared one way – off-guard.

The Golden Rule (no, not the trial one)

What is true for young lawyers is true for all others. And as the American Board of Trial Advocates’ nationwide program has been teaching for years – civility matters. If the concept is hard to swallow (although it shouldn’t be), consider it on a transactional basis. Payment into the favor bank. A time will come when one needs to make a withdrawal. Crises happen. Computers crash with deadlines looming. Illnesses occur. Those lacking civility may find their favor bank accounts empty. Treat the opposition as you would want to be treated when facing the same situation – even when you know they may not have done the same for you.

Outro

The young Mr. Cooper (this was a loooong time ago) refocused on the defense lawyer’s closing argument. “I hate Mr. Cooper because he’s all the things I want to be. Smart. Hard-working. Young, with a long career ahead of him.”

Mr. Kern, I’m well into that career now. You still keep your opponents on their toes. I continue to learn from the lawyers I engage with – experienced and new, young and old. The moment I think I’ve learned everything there is to know is the moment that young whippersnapper – who I’ll probably hate too – puts a bullet between my eyes.

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. He thanks Larry Kern and all the other talented lawyers he’s crossed paths with for the lessons he’s learned over the years. Cooper’s interests beyond litigation include trial presentation technologies and bicycling (although not at the same time).