

PRESIDENT'S COLUMN

The Benefit of Losses

by Wayne Alan Hughes

Wayne Alan Hughes is CASD's President for 2009. He practiced criminal and domestic law before joining with his "significant other," Tracee Lorens, to practice in various areas of complex civil litigation. Their first trial, as co-counsel, served as a chapter in Judge Ehrenfreud's book, You Be the Jury. Currently he practices in the areas of mass torts and class actions for which he received two Outstanding Trial Lawyer Awards. He is blessed with three children: Alexander Zaharopoulos Hughes, MBA Oxford, Vice President at Wells Fargo; Cassandra Zaharopoulos Hughes who just completed Vet. school; and Alexandra Rose Lorens, first year college student and dynamic carbon copy of Tracee. You can reach Wayne by email at: waynecloud@aol.com.

We begin life with loss. We are cast from the womb without an apartment, a charge plate, a job or a car. We are sucking, sobbing, clinging, helpless babies.

–Judith Viorst, *Necessary Losses* (1986)

You must lose a fly to catch a trout.

–George Herbert, *Jacula Prudentum* (1651)

As a profession, lawyers are frequently accused of being obsessed with winning [with the implication of "at any cost"]. Litigators are frequently reminded that it is the client's case, not the attorney's personal case. Most trial attorneys have an easier time being a gracious victor than handling defeat with dignity.

Over three decades ago, there was in this town by the bay a conversation on winning between two attorneys representing opposing parties. One was a seasoned attorney with a well-established reputation. The other was a young attorney who had an over-abundance of confidence and a tendency to speak his mind. Some might have described the young attorney as arrogant. The young attorney would probably have described the seasoned attorney as . . . well maybe we'll skip over that one.

Seasoned attorney: "You know I have won 100 % of my cases. I will win this one too."

Young attorney: "If that is the case, you are either not telling the truth or you are defining victory too generously."

In trials, victory is a matter of definition, not absolutes. Too frequently victory is defined as the number of digits in a court's decision rather than the result in the balance scales held by the client – as determined by the human equation.

In one particular trial, the plaintiffs were a very loving, educated couple from Mexico involved in a freeway accident near the airport. The wife, an accountant, suffered significant closed head injuries which left her unable to organize simple tasks or handle the math which was essential to her

profession. The husband was the driver of the car in which she was injured. The man very much loved his wife. It was the kind of love that others look at with envy.

The case was bifurcated and the jury determined that there was no contributory negligence on the part of the husband. Before damages went to the jury, the case settled for a significant amount against defendants who had refused to make any offer prior to trial.

The two attorneys arranged to meet in Tijuana for dinner with their clients to answer questions and deliver checks. Both the man and his wife were so much happier than the attorneys had ever seen them during the difficult months before and through trial. One attorney thought to himself: "*Well maybe money can help cure more than I thought.*"

Later the clients told the attorneys why they were so happy. The husband was happy because the jury had found that he was not negligent and cleared him of causing the injury to his wife. The woman was happy because, through the expert testimony, her family now understood why she had changed from an independent business woman to someone who couldn't even organize her closet. "Now they know that I didn't just become lazy." It was in this way that the couple defined victory.

Attorneys shouldn't lose sight of how the clients define victory. It might be good, now and then, to ask the client: "What is most important to you? What do you want to get from this case?" The answers to these questions are not always as simple as money.

We all know how much enjoyment comes from victory . . . that good feeling of prevailing and winning the good fight. So what is THE BENEFIT OF LOSING?

Compare how you feel when you win to what you go through with a loss.

Wins are generally followed by celebration, telling and re-telling good war stories, maybe accompanied by champagne and even caviar. Losses are followed by dark moods and analysis. Did I expect too much? Was I not realistic? What could I have done better or more effectively? Should I have challenged the judge? I should have paid more attention to my negative feelings about Juror #12, et cetera. After one has savored the dark mood and exhaustive analysis, one generally starts making resolutions about how and what to do better next time.

Many believe that defeat can be a teacher of great and important lessons.

In fact, children are often told that successful people fail more often than unsuccessful people? The path to victory is generally a maze of frustration and battles lost. Successful people don't quit the race merely because they stumble over a hurdle. Successful people learn from failure and use those lessons to achieve greater results. The path to one win is frequently strewn with many losses.

Winning is fun. However, less is learned from victory than can be learned from defeat. Our losses challenge us to either give up or seek more effective strategies. Losses test what we are as people. It is what people do with a loss that determines where they will go in life. Do we give up too easily or find a more effective way to proceed? Losses teach us humility, compassion and patience for others.

CASD suffered a loss last year of Alexys Kalafer. She was one of life's fun people, full of energy. She didn't always win, but she always got up and continued to march forward.

This is a good place to remind our list serve community of the losers' party. Alexys lost a case and had reached out on list serve -- probably in order to see if anyone else had ever lost a case. Well, there were quite a few of us who knew the feeling. Our members did what they so frequently do well -- people reached out on list serve with sympathy, affection and compassion. Alexys suggested that we all get together and have a party to celebrate our losses and remind ourselves of our affection for one another. It was a celebration of the human ability to pick ourselves up and go forward to face the next day and the next set of challenges. It was a great party. Out of the negative came the positive.

The next time you suffer a loss, consider what is to be gained.

Thank You

Since our last issue there have been two great and effective seminars. Robert Jackson brought our community "The Trial Masters" seminar. There is no better way to learn great trial skills than to listen to those with successful trial experience share their insights. I know Robert had his share of trials in putting on the seminar. He lined up a great panel only to have at least four of his speakers withdraw for unexpected reasons. Robert went back to calling in favors and lined up an equally talented set of replacements. It is easy to miss that kind of dedication from people like Robert who volunteer their time while managing a very full trial schedule.

The Trial Masters seminar was followed by the John Rice and Don de Camara annual edition of "Liens". More than 150 people attended and learned from these masters a new generation of strategies and law to save our clients money. Their art is a generous gift. It is a pleasure to see how many attorneys will turn out for a seminar designed to save the clients' money with generally no benefit to the attorney. John and Don are like the energizer bunnies in that they just keep on giving and giving. In addition to these invaluable seminars, they are continually answering questions and offering advice on list serve.

Remember to go up and thank Robert, John and Don for their very generous contributions to CASD when you see them. Thanks.