

Living With Losing

I write this column four days after receiving a disappointing defense verdict in Indio. When I anticipated being President this year, one thing I thought about was my columns. I looked forward to sharing the ups, downs and realities of trying lots of cases before juries. I wanted to be open and honest and hope that some of you might connect or draw some comfort, inspiration or ideas from what I shared here. Feeling the sting of a loss is something some of us can identify with. I hope that sharing my feelings about my latest disappointment helps some of you. I hope it helps me. Because I feel really sad about losing the other day. And I'm not sure how I feel about me.

I haven't lost many trials. Maybe I am still growing in that way and so the sting hurts more now. Maybe not. Maybe it hurts bad every time. This case involved a lady that slipped and fell in a grocery store entrance on a rainy day. We had the security video. It showed lots of other people walking through without incident, but it showed her slipping. The store employees admitted that on other rainy days they put out a mat. The video also showed employees mopping and pushing a squeegee afterward. We thought that showed that there was lots of water.

A couple good friends had the case and started talking to me about it. I told them that I thought that the big problem issues in the case were that it was a "slip and fall" and that their client was a heavy woman. We all agreed that many jurors have issues with slip and fall claims and many of us have strong biases regarding overweight people. One of my other cases settled, I was looking for a trial, and my friends invited me to join their team with trial approaching. I was excited to jump into things.

I put a lot of miles on my car in the next couple weeks before trial. Our client lives in Murietta with her two adult children. For a variety of reasons, they were very slow to "open up." There really were no other "before and after" witnesses and so we had to learn their story so we could tell it. And then, our case was transferred from Riverside to Indio for trial. It seemed that I was in a constantly repeating loop of San Diego, Indio and Murietta. We were even driving from Indio to Murietta at night after trial once jury selection started. The "check engine" light came on, the "check brake" light and just about every other light. We just kept driving.

Jury selection took a whole week. The panel seemed hardened, but receptive. We talked about slip and falls and how we feel about fat people and the simple things that make us human and give us joy. We had some folks we felt we had to challenge, but thought we could work with the jurors left. We were staying out there. I missed my son's birthday but got to spend Easter morning at home before driving back over the mountain. It seemed like the case went in great. The opening felt great. It seemed like we "won" every day and every witness. The work we put into our clients paid off. They did an amazing job. We largely avoided the mines and presented what we thought was a very compelling case. When it came time to close, I felt great. I asked for 16 to 20 million and thought we were going to do well.

After the trial, we sat around at dinner and talked. We all believed we were going to win the case. We took turns identifying jurors that were "with us." We marveled at how well our clients had done and how well the case had come in. We all went home that night with an amazing feeling. The jury began deliberating the next morning at 10. They asked to review the video after lunch at 1:30.

by John H. Gomez

A graduate of Yale Law School and Gerry Spence's Trial Lawyer's College, John H. Gomez is CASD's President for 2012. John believes passionately in improving our world though both the law and community service. John's community passions are the Latino community, kids at risk, drunk driving prevention, foster children and legal services for the indigent. CASD has twice named John "Trial Lawyer of the Year" and has awarded him six "Outstanding Trial Lawyer" awards. His Gomez Law Firm is an eight-attorney consumer law firm dedicated exclusively to community service, catastrophic personal injury and mass tort litigation. Most importantly, John is the devoted husband of Lisa and the proud father of son "JD" and twins Michael and Analise.



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They had a verdict at 2:30. Driving back to court was like walking to the gallows if you are the guy about to get beheaded. I asked for the jury to be polled. The vote was 11-1. Afterward, we drove back to the hotel and called our client to break the news. Tough, tough conversation.

I have been struggling with things ever since. I think I'm still in shock. I feel like I generally read juries pretty well and can feel when I have a good connection with them. To have this jury come back that fast and that overwhelmingly shakes me. I never ever could have imagined that happening. I wonder if I have lost my instincts and intuition. My confidence is shaken. I wonder if they disliked me for some reason. I am a Christian. I pray every day. I wonder if God is punishing me in some way for not always doing the things He expects of me. I fear that I have lost the skills that helped me win so many times

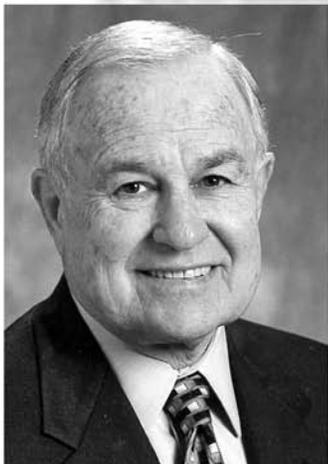
before. I try to learn from it. But I just can't think of what else we possibly could have done differently. That is kind of scary in itself.

A young lawyer from my office was part of our trial team. We have worked before many times. We have never before lost. This time, she helped me work with the clients and became close to them. I could see how bad she was hurting on our drive home. I told her how I tried my first civil case to verdict with my mentor in Indianapolis. I spent the whole summer there. Our client was quadriplegic. After a week's deliberations, the jury returned a defense verdict. I wandered the streets that night in a crying stupor. I slept outside somewhere.

I was glad to tell her that story. I told her we are like trauma surgeons. We do lots of good but every once in a while, we lose one. "It's okay to grieve and be sad but we need to be strong for the rest of our flock. It was

a rainy day slip and fall of a heavy lady in Indio," I told her. "When the video shows nobody else slipping but the heavy lady, that's pretty tough," I went on. "Sometimes, the facts are what the facts are. Nobody could have represented her better." I guess I sort of believe all that. It was good for me to hear myself saying those words. I still am shaken to my core. I remain confused with my heart broken and confidence shaken. I am spending lots of time with family, being easy on myself and resting up to jump back into things. I'm still not exactly sure why it happened, but I never ever want to lose again. **TBN**

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