

**What You Can Do to Improve the Public Image
of Trial Lawyers**

by L. Tracee Lorens

Tracee Lorens is CASD's President for 2003. Ms. Lorens attended San Diego State University and Western State College of Law (now Thomas Jefferson) obtaining her J.D., B.S.L. in 1990 and was admitted to the California State Bar that same year. She has been a member of Consumer Attorneys of San Diego for nine years and was either a Director or Officer of CASD for the past seven years. She practices primarily in the area of employment law, focusing currently on wage and hour class actions, as well as complex personal injury and insurance bad faith claims. Ms. Lorens is the mother of a beautiful 12-year-old daughter, Alexandra Rose Lorens, and the "significant other" and partner of Wayne A. Hughes. She may be reached by e-mail at CASDPres@aol.com or by calling 619-239-1233.

Have you heard the one about the lawyer, the doctor... Have you heard, "If it was not for abusive lawsuits doctors would not be giving up their practices." "If it was not for abusive lawsuits.. ." "Only a trial lawyer would do something like that..."

When Wayne is watching television at home and something like one of the above statements comes on television, he immediately hits the remote and changes the channel. Lately it seems that we have been changing channels a lot at home.

It is frustrating. What are we going to do to battle against the onslaught? How are we going to ensure that jurors are not totally biased against our clients? Can we swing the pendulum back the other direction?

It is a fact of life that insurance and pharmaceutical companies and corporations own the media, not trial lawyers. Those big businesses buy the commercial air time and they will always be able to convince the media to run their "hit pieces" when they feel the need to influence the public and our jury pools. We do not have enough money to simultaneously afford trying to get effective consumer advocates elected to the legislature and to the executive branches of

government and at the same time conduct a massive professional public relations media defense like the insurance and pharmaceutical companies can.

Most of the time it seems like an unfair battle to me. However, I have some concrete suggestions as to what we can do as a group.

First, we need to take every opportunity that is given to us to lobby the people we meet daily in our offices and out in the larger community. Talk to people. Without being argumentative, explore with them what it is they do not like about the legal profession. If someone tells you that there are too many frivolous lawsuits ask them what they mean. If they give you as an example the McDonald's case, explain to them what McDonald's was doing, that the jury found to be wrong.

McDonald's knew that their coffee was super heated and that patrons were getting burned. McDonald's ignored the burns because they knew that if they brewed their coffee super hot they would be able to make the coffee bean stretch further. The jury thought that the public safety of the customer was more important. The jury decided to punish McDonald's by charging them *one day's* profits from McDonald's sale of coffee.

The jury's verdict of \$2.1 million never even got close to being paid because the judge cut it to a fraction of the original award and McDonald's filed an appeal. Eventually the plaintiff (a 78-year-old woman) recovered \$400,000. Yet the corporate/insurance conglomerates raise this case as an example of abuse of the legal system. They of course never discussed the amount that the plaintiff actually recovered or the true facts of that case. They never discussed the third degree burns (burns which cause your skin to melt off and penetrate down through the layers of muscle) that the plaintiff had suffered or the approximate 700 other burn cases (including children) that had been reported to McDonald's before this case.

They tried to make it sound like the plaintiff was burned because she was driving her car and drinking coffee at the same time. They never told the public that the plaintiff had four surgeries and medical specials of approximately \$200,000.00 to repair the damage done by the burns. They also never told the public that they had offered the plaintiff nothing prior to the jury verdict, not even payment toward her medical bills. Yet, at trial, McDonald's testified that they kept their coffee 40% hotter than the manufacturer's recommendation because they were able to extract more from the coffee beans and because the aroma caused customers to buy more food.

I think it is important to note that McDonald's refused to reduce the temperature of its extremely hot coffee (even after 700 complaints of burns) until they were hit with the \$2.1 million verdict. However, once that verdict was rendered they reduced the temperature of the coffee to the manufacturer's recommended levels. This is a very important thing lawsuits accomplish – they protect public safety.

Another example of the types of things we have frequent opportunities to discuss with our friends and social acquaintances are attorneys' fees and costs in contingency fee cases. Take the time if you find a willing ear to explain how expensive it is to litigate, how insurance companies drive up the cost of litigation because they know that we cannot tell the jury what it actually costs to litigate a case. We know that jurors go into the room and speculate about whether their decision will cause doctors to have to give up practicing medicine and other irrelevant facts.

Let's hope that by educating the public we might be able to get jurors to go into the jury room and think about how corporate America makes it so expensive that many plaintiffs never even see their day in court. Never miss an opportunity to tell people what a good legal system we have with our jury system and that the right to a trial by your peers should not be

circumvented by the “big guys” ability to spend you into the ground before you ever see your day in court.

The question then becomes, is one-on-one persuasion effective? I believe that we have a chance to more effectively communicate with people when we are looking them in the eye. Everyday, if you look for it, you are going to have an opportunity to educate a member of the public. It may be your client, it may be a sales clerk in a store, it may be someone you overhear making a comment. I urge you to take that opportunity.

Some of us may feel that taking these little steps is not significant. Let me do a little math for you. We at CASD are a seven hundred member law firm. If each of us and our spouse or significant other took the opportunity to educate at least one person a day on how the justice system can work for our clients and consumers, our organization would reach over 600,000 people a year.

Frankly I do not think we are doing our part in spreading the word. Too many of us have been lulled into apologetic silence by the onslaught of negative publicity. I remember when Gerry Spence spoke to our organization during the time that the insurance companies were attempting to put caps on our fees and pass no-fault legislation in the State of California. He took someone out of the audience and had them lay on the floor and then he put his foot on that person’s throat. He said, “Look this is what the insurance companies are doing. What I do not understand is why you lawyers are just laying there on the floor taking it.”

We have much to be proud of as attorneys. We are the equalizers. People come to us who cannot afford on their own to seek justice. We take the risk for them and finance their day in court. We need to remind our potential jury pool out there that if they allow the government to take away these rights, it is the public who will be left unprotected against big corporations,

insurance companies and big government. Let's not be fooled, the "big guys" will always be able to afford to pay their attorneys and issues of caps on contingency fees will never affect them.

Wayne and I have been doing mostly class actions for some time. We have regularly tried to take the opportunity to explain to people why class actions are a tool to get justice for large numbers of people in situations when no single person would have the resources, inclination, or ability to exact justice on his or her own.

In many of our class actions, we utilize Business and Professions Code §17200 (Unfair Business Practices Act) to obtain relief for large numbers of victims. Recently Bus. & Prof. Code §17200 has been abused by certain law firms in California. CASD, CAOC, the Attorney General's office, and the State Bar, are attempting to stop the abuse. Unfortunately, the public only sees this small group of attorneys (who I believe do not represent the rest of us) filing hundreds of lawsuits under §17200 against small businesses mostly based on minor violations. These attorneys file the lawsuits, inform the small business owners that they are being sued, and then encourage them to settle quickly. In my humble opinion, their conduct is despicable.

Recently Wayne and I accepted the defense of one of these cases. We agreed to represent the defendant at cost which meant cutting our attorneys' fees (by the end of the day) by nearly \$50,000.00. We did this because we believe that it is very important for attorneys to police themselves and to be constantly vigilant and protective of their public image. After finalizing that case, several other plaintiffs' firms have contacted us to find out how they can do the same thing for some other small business owners. Sometimes it seems that we cannot make a difference. But the reality is that we can!

Another place where we can help make changes is by opening up our wallets for

candidates and organizations which are advocating for us. Many of the members and leaders of this organization are the very same people who outside the organization raise money for these causes. Frankly, I want you to know that it is no fun calling someone and asking them for money. This column is not written as a preamble for me to call you and ask you to contribute money to something. It is, however, written to urge you, when you do receive calls for a cause which benefits *your* profession, *your* business and *your* goals, to open up your wallet and give what you can afford.

A famous California political legend, by the name of Jess Unruh, once said that “money is the breast milk of politics”. Call up a television station and find out what an ad campaign costs. It is a shock. The cost of getting the word out there through the media is expensive.

Do not expect others to battle with the media and public opinion on your behalf, if you are not willing to be a soldier in that war. Give what you can. You can certainly give someone your time. You can certainly take a few minutes to educate people around you.

I am proud of what we do for a living. You should be too and you should not be shy about standing up for our rights to represent consumers and everyday regular citizens in what I believe to be the best legal system in the world. **We need to continue to work on our public image every chance that we get.**

Recently I read an article (in the Union-Tribune of all places) which was about big tobacco companies suing the State of California for our anti-smoking advertising campaign. They alleged that the State’s anti-smoking television ads unfairly “vilify” the tobacco industry. They complained that the anti-smoking ad campaign is infiltrating every segment of the media in California and is (wait until you hear this one) influencing potential jurors who may be asked to rule on tobacco-related lawsuits. I find it comical that they complain about such public

education when for years they have used the media to mislead the public.

We cannot always afford the type of public education ad campaign which this State has been able to pursue in an attempt to prevent our children from becoming smokers. However, I strongly believe that we can make a difference on a grass roots level by merely taking the time to talk to our friends, relatives, fellow church members, and casual acquaintances. **Let's all participate and we will make a difference.**