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## Post-victory ennui

Greg Brown / Special to NLJ.com

February 02, 2009

My firm recently wrapped up a case we'd been litigating for over a year. At the close of discovery and with trial not far away, we were in trial preparation mode. We were outlining examinations, planning exhibits and evidentiary motions, sketching out openings and arguments. Each week was planned in advance, with team members flying all over the country to close the loop on various investigative and discovery issues, preparing witnesses to testify, and concluding depositions that had been previously continued. We were going to win at trial, and it was going to be great.

Then opposing counsel called to say that he had received a copy of the judge's ruling on a series of dispositive motions filed nearly a year ago. We won virtually the entire case. The remaining issues could be cleared up with a final, simple motion.

The client is ecstatic that we avoided the expense and uncertainty of trial. We won. So why have I been in a funk for the last two weeks?

I know I am not alone in my reaction. In my first year of practice and fresh from a clerkship, I wandered into a senior partner's office to say hello. This partner had been working for months defending a manufacturer of jet engines in a large civil suit. Given my infatuation with aviation, I had been bugging him for work on the case. I found him moving rather slowly about his office, pulling binders from shelves and putting them in boxes already loaded with folders, notebooks, and other paper. A stack of foam-board exhibits was leaning against the door.

I asked him what he was doing, and suggested that if he was packing for trial he should be taking me with him. Instead of laughing at my ongoing "joke," his shoulders slumped as he looked at me with a slightly pained expression and said, "The [jet] case just settled." My initial inclination was to congratulate him, but his expression made me hesitate. He continued, "I always get depressed when a case settles."

Since our recent win, I have had a lot of time to ponder this issue. It has been several years since my first day of law school, but I still remember one piece of advice given that day by a professor. She stressed that the most essential habit for success in law is to be "earnest." Although I puzzled over her advice at the time, I have often thought of it through my career. I eventually concluded that to be earnest in the practice of law is to be without pretense, to be serious and focused. Translating that principle into a career as a litigator, it means that every case is prepared to be tried and won even though everybody knows that most cases never get to trial.

Imagine a Broadway production. The actors work hard for months. They memorize lines and rehearse roles. They become the characters. The orchestra rehearses, the set is built, playbills are printed, costumes are made. Everyone is "abuzz," as I think they say in theater, with excitement. At the dress rehearsal, shortly before opening night, the director draws performers' attention for an announcement: "The critics have proclaimed this show to be a success. We therefore do not need to open the show. Congratulations, you should all feel very proud. You can go home, and you no longer have to be here every night for the next two months."

All that work, those weeks blocked out in your calendar, the anticipation, the mental preparation – a success?

Yet that is the process we go through if we are earnestly preparing for trial. The whole "show" must be prepared: themes, witnesses, sequences, cross-examinations, foundations, stipulations, objections, motions, arguments. Like directors, we are preparing a story to be told through live people. Like actors, we are anticipating playing a role ourselves. So what do we do when we win before trial and the "show" does not go on?

A coworker suggested that to be successful as associates in large firms, we have to be people who thrive under pressure, who need intensity to shine. If that is true, then it makes sense that we would feel aimless and bored when the pressure and anticipation of winning is suddenly removed through settlement or a dispositive motion.

Naturally, I am glad the client is happy. It was a case earnestly won. But as I prepare to pack up the boxes in my office, I cannot help but wish that we had felt the curtain go up as the court officer called, "All rise...."

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