

For Lawyers and Politicians Alike, Regret Can Be a Valuable Thing

By Dan Lawton

"No regrets." Is there any term more ubiquitous in the self-obsessed musings of the powerful about to retire from the field? President Bush's recent musings are an apt example. Six years ago, Bush launched an invasion on pretenses all now agree were false. The cost in lives, treasure and American credibility has been huge. But Bush has no regrets. He allows only that the war's many deaths weigh on his "conscience" (whatever that means). What few mistakes he is willing to acknowledge, he pins on others (intelligence officials, his predecessors), absolving himself from any fault.

Dick Cheney, too, has no regrets for the war, ruining Valerie Plame's career, or the other harms he directed while in office. Cheney's regretlessness extends even to boorish personal behavior in the well of the Senate. There Cheney

cursed a senator using language no decent parent would tolerate from a child. Only recently Cheney laughed off the episode in an interview. The unrepentant egotism and classlessness shown in this episode epitomize much about the Bush-Cheney tenure.

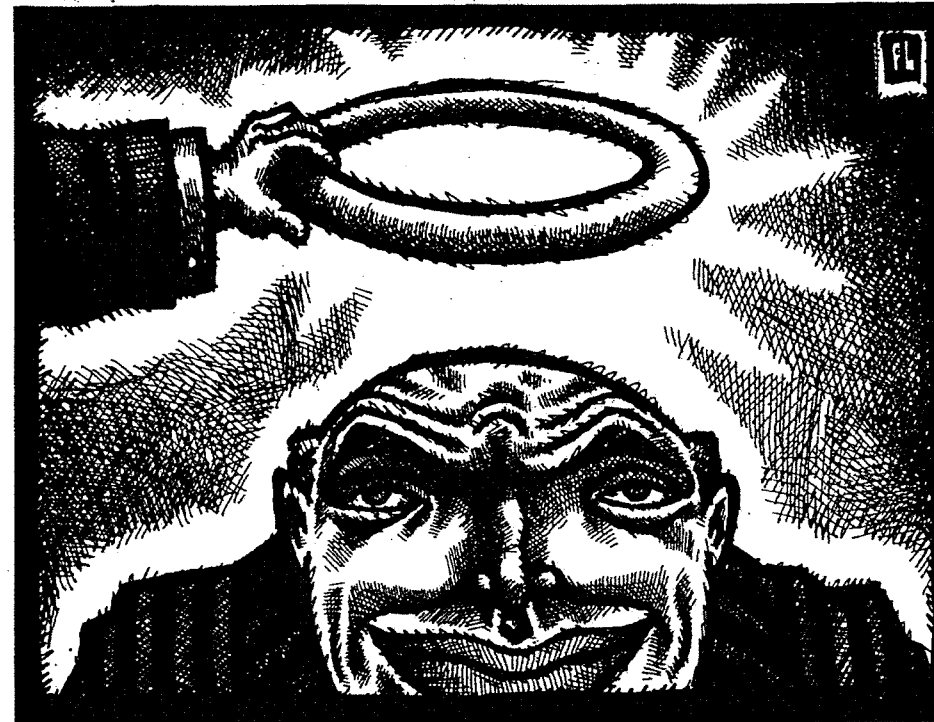
Let me add this. "No regrets" is a universal, nonpartisan slogan in Western society, and has been for a long time. It crosses all political boundaries. Violent criminals as well as departing presidents disclaim regrets for the most malevolent acts. Karl Armstrong invented a fertilizer bomb in 1970 and used it to destroy 21 buildings on the University of Wisconsin campus. Weather Underground member William Ayers tried to plant a bomb in the U.S. Capitol. Nazi war criminal Adolf Eichmann (and several of his co-defendants at Nuremberg) planned and executed the Holocaust. These and other men had one thing in common. When asked

afterward if they regretted their actions, each said no. None had any regrets about anything.

Why should any of this matter to lawyers? Because we lawyers are poster children for such defiant unrepentance. We sing a chorus of no regrets. Settlements and trials result in millions of dollars changing hands every week in this state alone, as one can read about weekly in this newspaper. But how often does one read of a settlement or trial that includes an apology or expression of regret by one side or the other? Never, of course. (The rare "apology" that does accompany the publicly announced settlement, when read closely, is usually no apology at all. Instead it is a lawyer-drafted, nebulous vanilla statement so watered down and bowdlerized as to be meaningless.) Nor can I remember the last time any lawyer (myself included) told an adversary he was sorry for needlessly hurtful words or acts that had nothing to do with advancing his client's case.

Every honest lawyer must admit to something else: some regrets, about something, in his or her career. Indeed, I doubt any honest lawyer could deny regretting an action or inaction taken during the last year alone. The reasons for this reality are visible enough. We work daily in a pressure cooker, in which the stressors escalate each year. Sometimes we make mistakes. The pressure to win (especially when a client's financial survival depends on our work) and the bad behavior of others can bring out the worst in the best of us. (Some defense lawyers' behavior in the Qualcomm v. Broadcom fiasco, and Terry Christensen's criminal conviction for conspiring to wiretap opposing litigants, are examples.) Among these are things we say and write which, calmly viewed afterward, are snotty and belligerent — and needlessly so. All agree this sort of behavior is only increasing despite the proliferation of civility codes. (Ironically, the civility code promulgated most recently by the San Diego County Bar, among its scores of "guidelines," says nothing about expressing regrets or making amends for one's misdeeds. So complying with the guidelines means never having to say you're sorry.)

The truth is regrettable behavior is a staple of what we do. Who is the lawyer who can keep all her promises; satisfy all courts, clients, adversaries and loved ones; perform community service; and never make a mistake? Where is



the defense lawyer who has never unfairly demonized the plaintiff, or the plaintiffs' lawyer who never unjustly assassinated the character of the defendant? What lawyer can say that every legal bill she ever sent to her clients was reasonable both in number of hours spent and in gross amount demanded given the eventual outcome? Who among us has never sent a snotty e-mail or letter to an adversary? Most to the point: What honest lawyer has never, at least silently (perhaps while in bed at night) regretted such things?

The answer to this last question is: "None."

What the world needs now is regret, sweet regret. I don't mean the sort of phony "regrets" of the "situation" that admit of no personal fault. Nor do I mean the gutless blamings of other people (as Bush's "regrets") that only masquerade as acceptance of responsibility. Nor do I mean self-flagellation for its own sake. I mean humility — swallowing pride and admitting I did something wrong (or failed to do something right), and learning from it.

We have good examples of regrets to look to. It was Bush's father's famous aide, the late Lee Atwater, who realized only years after the hurt he caused in his scorched-earth political campaigns.

As Atwater was dying of cancer, he apologized — specifically and personally — to many of the people he had hurt. He worked in arenas not so different than the ones we work in every day — intensely competitive, pressure-packed workplaces in which great zeal to win and the bad behavior of adversaries were constants. In the end he humbled himself and acted like a gentleman. We can and should do likewise — to that adversary, party, loved one, or other whom we have needlessly hurt in deed or words. Doing so in 2009 will be too late for some of those we have hurt. But (as in Atwater's case) better late than never.

Regrets are good for us as well as those we hurt. Regrets reflect humility. They embody an acknowledgment we can do better. Regrets manifest fearless examination of our behavior, a desire to take our game up a notch. The arrogant egotist who never feels that twinge of regret as he goes to sleep at night never feels this humility, never acknowledges a mistake, never does critical self-examination. And so he never changes. He sleeps deeply and well every night. The most extreme non-regretters create irrevocable disasters as they steer the ship toward the rocks, oblivious to any long-term consequences (except to their own interests). Our current president is one of these.

But so are some of us.

How about doing the right thing? As children, my brothers and I involuntarily learned a prayer called the Act of Contrition. It went like this: "O my God, I am heartily sorry for having offended Thee, and I detest all my sins, ... I firmly resolve ... to confess my sins, to do penance, and to amend my life. Amen."

Prayers aren't for everyone. But is there a better statement of regret than the Act of Contrition? Being heartily sorry. Acknowledging offense given. Detesting one's mistake. Resolving to do penance and amend one's life.

What to do next time I do something wrong? Swallow my pride, schedule a personal appointment with the other person, make an honest act of contrition to him then go do my penance. Now that's a New Year's resolution.

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