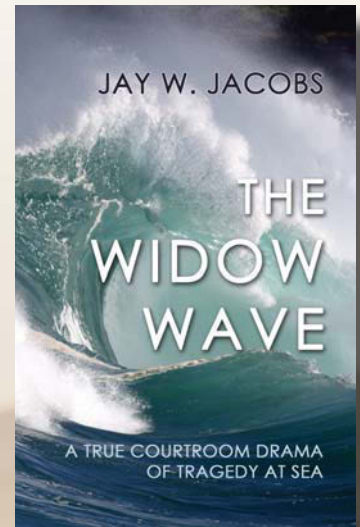


# Examining a Tragedy at Sea

By Randi R. Geffner



**M**ANY ATTORNEYS CAN RELATE TO THE experience of being asked at a social gathering to tell the story of their most interesting case—and the immediate blank feeling of having to dig deep to come up with something in response that will sound exciting or noteworthy. Not that what we do isn't interesting, it just isn't often the stuff of drama or suspense, despite what Hollywood might lead non-attorneys to believe. Unfortunately most of us will never experience a dramatic "You can't handle the truth!" moment on cross-examination.

If asked to share war stories at a party, Northern California attorney Jay W. Jacobs will never be unsure about his most interesting case. In 1986 Jacobs was a young trial attorney assigned to defend the worst recreational fishing boat accident in San Francisco maritime history. Jacobs' experiences throughout the investigation and trial are related in his compelling book, *The Widow Wave: A True Courtroom Drama of Tragedy at Sea*.

Although the case is indisputably tragic, Jacobs' narrative draws the reader in as he is equally adept at relating the emotion, legal strategy and technical maritime

details that were all so critical to the defense of this once-in-a-career litigation. This is a story that draws the reader in, and once told, can never be forgotten.

Five lives were lost on March 9, 1984 when the 34-foot fishing boat, *Aloha*, disappeared at sea off the coast of San Francisco—the captain, Francis Dowd, his 19-year-old son, Gerald, who was home from college for spring break, Dowd's brother-in-law, John Kennedy, a co-worker of Dowd's, Werner Buntmann, and a friend and business colleague, H. Tho Ang, who was visiting from Manila.

On the morning that went so horribly wrong, Dowd was taking his friends out on a salmon fishing trip to the Duxbury Reef area, a day trip he had taken successfully many times before, and, in fact, a fishing spot that Jacobs had visited several times as well. There were no eyewitnesses to the disappearance of *Aloha*, nor were she or any of her passengers ever recovered, save the body of Dowd, which was recovered weeks after the loss. Fear and speculation ran rampant in the Bay Area fishing communities as answers were sought to explain the devastating and seemingly inexplicable loss of life.



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Jacobs was tasked with explaining the inexplicable to a jury when the widow of Ang filed a negligence action against Dowd's estate just one day prior to the expiration of the statute of limitations. Ang sought substantial damages for the wrongful death of her husband and the father of her children. The emotional wreckage experienced by the Ang family was very familiar to the defendant, Janet Dowd, who lost her husband, her teenage son and her brother-in-law in the disappearance of *Aloha*.

As crushed as Janet Dowd was by the loss of her loved ones, she was adamant that her husband would never have acted recklessly or negligently, and would not even consider a settlement as to do so might leave the impression that her husband had somehow contributed to the tragic deaths at sea. Janet told Jacobs on their first meeting that her husband "... was not a perfect man, but he was never careless and never negligent, ever." Despite what his experience as a defense attorney was telling him about the risks of defending such an emotional case, Jacobs had no choice but to prepare to litigate the case through trial.

Jacobs' rendition of his investigation, preparation and trial of the *Aloha* case takes the reader on a fascinating, heartbreaking and enlightening journey. He uses skill, experience, humor and some luck in weaving his way through the contentious litigation, in which he was opposed by one of the most prominent firms in the Bay Area, leaving Jacobs outnumbered and facing an opponent with substantially more experience with litigation of this magnitude. The story told by Jacobs is accessible and fascinating, whether or not the reader has a legal or maritime background.

From a legal standpoint, Jacobs is generous with his sharing of legal theories and strategy, and is not averse to admitting when mistakes were made or favorable results were as likely the result of luck as of exemplary legal performance. Particularly interesting were Jacobs' stories regarding the complex process of jury selection, which any trial attorney will attest is equal parts preparation, intuition and the luck of the draw.

Jacobs also weaves the captivating tales of uncooperative witnesses, many of whom were lifelong sailors and fishermen who were unwilling to break a code of silence, were inherently suspicious of attorneys and the legal process, or, in one instance, were illegally living aboard a fishing boat in the marina and were fearful of being evicted from their floating home based on the testimony that was critical to Jacobs' defense of the case.

From a maritime standpoint, Jacobs takes the reader through the intricacies of competing theories as to the demise of *Aloha*. As a onetime sailor and officer in the merchant marine, Jacobs is conversant in the language of the sea and shares his expertise with the reader. Theories as to the cause of the accident ranged from negligence by

Dowd to the *Aloha* being struck by a large cargo ship, a rogue wave, or a large piece of debris, to Jacobs' theory as presented by his expert witnesses that a rare occurrence known as a coincident wave (which occurs when nearly identical waves wrap around an islet or shallow bar and meet, creating a destructive wave which can be twice the height and quadruple the force of an ordinary wave) was the cause of the demise of the boat and the five lives aboard. Although the technical details abound, even the least seaworthy reader can follow along and is left with an understanding of how the environmental factors could have combined to contribute to the destruction of *Aloha*.

Jacobs, who had never tried a case of this magnitude, was concerned not only that his career might be destroyed by this high profile case, but worse, that a plaintiff's verdict would add to the immeasurable devastation experienced by Janet Dowd and her family. Jacobs has been quoted as reflecting that he had never had a case with greater legal or factual complexities, or a client who was more emotionally invested in the outcome of the trial. The pressure was astronomical, and Jacobs is expert at taking the reader along for the terrifying, mystifying and emotional ride.

*The Widow Wave* provides a gripping chronicle from beginning to end. No spoilers here, but suffice it to say that Jacobs without a doubt wins as a storyteller, regardless of the outcome of the trial. 