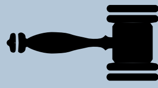
A Century of Service

MULTNOMAH BAR ASSOCIATION
100TH ANNIVERSARY
1906 - 2006

Thomas E. Cooney Sr. – 50 Years at the Bar

By Carol Hawkins, MBA Executive Assistant.

Thomas E. Cooney Sr.

Thomas E. Cooney (Sr.) graduated from Willamette University College of Law in 1956. At that time, there was only one woman in his class. Tom notes that she was, "at or near the top of the class all three years."

Just before taking the bar, Tom, a long time altar-boy at his local parish, went to stay with his folks who lived right across from the Holy Family Parish in the old Berkley neighborhood of SE Portland. The night before his exam, he went to confession. While situated behind the screen, he described to the priest everything he had done wrong since birth. He told Fr. Mike Fleming that he had a special intention and needed to pray to a saint for the bar exam. Tom was advised to pray to the Holy Ghost, who is in charge of the intellect. As he left the confessional, Fr. Mike loudly advised him to also pray to St. Jude, the patron saint of lost causes.

After passing the bar, he began his law career at the firm of Maguire Shields Morrison and Bailey. His former boss, Bill Morrison, was a great, colorful trial lawyer and person. Tom was given three rules to abide by while at Maguire Shields et al.: 1. Never steal money from your client; 2. Don't fool around with your secretary; 3. Don't drink if you're Irish. In all his years of practice Tom heeded the rules and Tom never stole money from a client.

When he was asked about other memorable and respected lawyers, Tom recalled that he was asked to appear in a case before a certain judge – and was unknowingly imitating Walter Cosgrave, whom he greatly admired. The judge called Morrison and asked him to tell Tom to quit imitating Mr. Cosgrave – Mr. Morrison told Tom he was not Mr. Cosgrave and that Tom should just be the big, tall, stupid Irishman that he was.

Another great lawyer in Tom's firm was Roy Shields, the Governor's lawyer and a perfect gentleman and scholar who loved the practice of law. He told Tom to never allow a senior lawyer to tell you to do something you felt was wrong.

Maguire had been a judge in the Nuremberg trials, and Tom's early research dealt with people from all over the world. Maguire's reputation as an "exciting" driver was confirmed by firm associates who were assigned to ride with him to the train station so they could drive his car back to the firm if they lived through the trip to the station.

Judge Charles Redding was presiding judge for Multnomah County and Tom's first court appearance was before him. At that time, money was tight at home, so Tom had made a tuna sandwich and put it in his pocket for lunch. He unexpectedly was told to argue a motion and advised to wave his arms if he started to lose. Sensing a potential loss, he prepared to wave his arms, jamming his hand into his pocket and into the tuna sandwich. At this point, the judge asked if he was stricken; Tom replied that he was - his hand was in his tuna fish sandwich.

Tom notes that the practice of law has become much more complex and specialized in recent years. He also sees a real change in the way lawyers treat one another. He feels that there was more collegiality when the bar was smaller. Camaraderie has been lost. Tom believes that recently there has been a return to focus on professionalism.

Tom commented that there was just one woman in his law school class, today there are many more women in the bar, and they have developed into great lawyers – women legal stars are ascending. He learned when teaching a law and medicine class at Lewis & Clark in 1978-79 that one should not mention "guys and gals" if one was to be politically correct. He also learned not to flunk a doctor if you wanted to teach that class again.

Tom was picking a jury after attending a seminar which stressed the importance of being sensitive to jurors' body language. He watched his opposing counsel question an obese woman and thought when his turn came, he would be more sensitive to this potential juror and began by congratulating her and asking when her baby was due? To which she replied that she was not pregnant, just fat. This woman became the jury forewoman and the jury ultimately decided the case in his client's favor, mostly out of pity for him, she later told him.

Tom Cooney promotes displaying the Professionalism Statement

Tom argued a case regarding a medical device and informed consent which went all the way to the Oregon Supreme Court. When he got there, he explained the factual medical issues at length because he felt that it was the underpinning for the legal issue. Justice Gillette became increasingly annoyed and wanted him to get to the legal issue, saying he was presenting a jury argument. Finally, Justice Linde interjected, "Oh Mick leave him alone. We all know it's a jury argument, but that's what the poor man does best."

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John D. Ryan, A 56-Year Veteran of Law

By Judy A. C. Edwards, MBA Executive Director.

Growing up in Portland and attending Grant High School has led to many opportunities and accomplishments for John Ryan. He readily pays tribute for his ability to attend Fordham College in the Bronx to his high school principal and teacher who helped him get a scholarship. After college, the war pulled him to another calling, where he served in a school for illiterate and non-English speaking soldiers in Texas. During his service years, he served in the First AAF

John Ryan (left) receiving the Professionalism Award in 1997

Motion Picture Unit in Culver City, along with Ronald Reagan. He went overseas to the 8th Air Force in a Motion Picture Unit and served on detached service with the 9th Tactical Air Force supporting Patton's 3rd Army in Germany as a motion picture script writer. Towards the end of the war, he was recruited by another script writer, originally from RKO who he had met earlier, to work with the Office of War Information in Paris and was sent to the south of France to represent the Office where he worked with the French Ministry D'Informacion.

After the war, he returned to Portland and started at Traveler's, where he worked as an insurance adjuster while attending Northwestern College of Law's night school on the G.I. Bill. He worked with lawyers during his time at Traveler's defending cases. After graduating in 1950, he went into a general law practice partnership with his brother Tommy and Anthony Pelay.

For most of his career, he has been a plaintiff's lawyer, but he adds, "We took all kinds of general practice cases, just about everything, including some criminal defense, probate and personal injury." Because of his contacts with the Brotherhood of Railroad Trainmen Unions and International Woodworkers of America (plywood mills and loggers), he was able to get cases in the personal injury field.

When asked about the important lessons he learned in 56 years of practice, he named several.

- **Learn how to get clients.** He was aware of the need, but "how to do something about it was the question. Firms were small then, not like today." The way to get clients is a problem for every lawyer, he says. His father was a lawyer, but he was killed in an accident when John was just 12. Because his father was active in lodges and had been a DA, he had received newspaper attention. Finding the right way to get clients and not go over the line was as important in his early years as it is today. Then, it was more clearly defined however.
- **Get along with the people you work with.** The rapport with people you work with, and associating with people similar to your own moral and professional attitudes and knowing how to work with colleagues is important. "Know if you are a lone wolf or if you can work well with others. Ask yourself if you and those you will work with have similar political and professional understanding. It is important to do what's right."
- **Learn from others, don't become ingrown and learn by doing.** When he first started practicing, his only tutor was his brother who had just a few more years of experience. They "didn't have CLEs in those day, but the National Association of Compensation and Claimants Attorneys, the predecessor of the American Trial lawyers Association which was founded in Portland, met once a month and different lawyers would talk and describe how they did this and that." They spent time on the practical use of law of evidence and jury techniques. He believes it is important to talk to other colleagues and to try your own techniques. He praised Irving Younger who started a series of CLEs in the law of evidence, using Q&A in a different way than had been done previously.

I asked him what he thought about the current world of political correctness and he responded with a startling statement. "It is the greatest strangle on the First Amendment ever created. It's an effort to enforce conformity which is a great danger intellectually. It harbors the tendency of coercion in thinking. It is better to practice

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A Century of Service Historic Pullout: The Changing Practice of Law

This MBA historic pullout focuses on the changing practice of law. You will find profiles about long-time practicing attorneys and their perspectives on how law practice has changed over the years, a retrospective look at technology's effect on the way law is practiced and articles on advertising and fees and how mores and formal rules on the topics have changed over the years.

Thank you to all who contributed to this issue.

Readers are encouraged to share their thoughts on any part of this pullout and we welcome your suggestions for topics in future issues. If you would like to write a story or article for the pullout, please contact Judy Edwards, MBA Executive Director at judy@mbabar.org.

100 Years

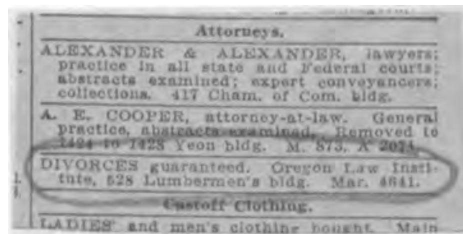
The History of Legal Advertising

By Jennifer J. Roof, Miller Nash.

Legal advertising, like all advertising, is designed to increase business. Although protected by the First Amendment, legal advertising is nevertheless subject to ethical constraints. It therefore is subject to more scrutiny and regulation than other forms of commercial advertising.

Regulation of legal advertising reflects the tension between the upside of advertising (protecting a lawyer's free-speech rights, assisting the public in obtaining competent counsel and making the public more aware of the availability of legal services) and the possible downside (adverse effect on the legal profession's reputation due to tasteless ads, possibility of misleading advertising and difficulty of enforcing rules regarding legal advertising). The legal profession has traditionally held its members to a high standard of dignified, ethical and professional conduct. Oregon's regulation of legal advertising has reflected that high standard.

Regulations governing legal advertising date back to 1908. Back then, legal advertising was generally banned based in the belief that advertising would erode professionalism and damage the dignified public image of the legal profession. The first formal code of professional conduct of the ABA included per se prohibitions on lawyer advertising and solicitation.



Attorneys.

ALEXANDER & ALEXANDER, lawyers; practice in all state and Federal courts; abstracts examined; expert conveyancers; collections. 417 Cham. of Com. bldg.

A. E. COOPER, attorney-at-law. General practice, abstracts examined. Removed to 1424 to 1428 Yeon bldg. M. 873, A 2034.

DIVORCES guaranteed. Oregon Law Institute, 528 Lumbermen's bldg. Mar. 4641.

Castoff Clothing.

LADIES' and men's clothing bought. Main

Ad from The Oregonian, *July 24, 1912*

Divorces A specialty. Reliable lawyer. Central Law Bureau, 516 Rothchild bldg., 287½ Washington st.

Divorces Guaranteed no publicity. Reliable lawyers. Oregon Law Institute, 528 Lumbermeus bldg.

Ad from Daily News, *September 24, 1912*

In 1935, the OSB adopted the Rules of Professional Conduct, which banned advertising and soliciting of business by lawyers. Under the rules, lawyers could use business cards, but couldn't publish ads in newspapers or other media. Similarly, the rules allowed lawyers to include only their name, address, telephone number and designation as an attorney-at-law in the phone book, in a nondistinctive type, style and form. Lawyers were also allowed a "dignified" one-time announcement via newspaper or mail of a new or relocated office, formation of a partnership, or new association. Finally, the rules permitted a lawyer to circulate to other lawyers a brief, "dignified" notice that "he" provided a specialized legal service.

Oregon adopted its Code of Professional Responsibility in 1970. The 1970 version of the Disciplinary Rules (DRs) continued to prohibit lawyer advertising with certain narrow exceptions. And those exceptions were held to a "dignified" standard.

Beginning in 1976, however, the US Supreme Court weighed in and held that the First Amendment protects commercial speech that is truthful and not misleading. In *Bates v. State Bar of Arizona*, 433 US 350, 97 S Ct 2691, 53 L Ed 2d 810 (1977), the Court concluded that First Amendment protections for commercial speech guaranteed an attorney's right to provide information regarding his or her services to the public in a newspaper advertisement. The Supreme Court did not, however, hold that legal ads were free from all regulation: "Advertising that is false, deceptive, or misleading of course is subject to restraint." In several cases after *Bates*, the Supreme Court made it clear that although the states may regulate legal advertising as commercial speech, such regulation is subject to the First Amendment and must be no more extensive than reasonably necessary to further substantial state interests.

In 1979, Oregon amended its DRs to comply with *Bates* and related cases. The focus of Oregon's rules shifted from a "dignified" standard to preventing false or misleading advertising. The 1979 version of the DRs gave lawyers reasonable latitude to advertise, provided that the advertising was not false, fraudulent, deceptive or misleading.

The 1979 DR amendments for the first time allowed radio and television advertising, as long as the ad was prerecorded, the ad was approved by the lawyer, and the lawyer kept a recording of the transmission. Although the OSB's Special Committee on Lawyer Advertising was concerned about radio and TV advertising, the committee concluded that in light of *Bates*, there was no basis for distinguishing between newspaper and electronic media.

Through the years, Oregon refined and amended its rules regarding lawyer advertising. The DRs have generally prohibited communications that are false or misleading, are likely to create an unjustified expectation about results, or implied that the lawyer could improperly influence a court. The DRs also generally required that ads be identified as such and required a lawyer to retain a copy or recording of each advertisement for one year following its dissemination.

In 1993, Oregon completely overhauled the rules relating to legal advertising. Several types of prohibited communications were added to DR 2-101(A). In all, DR 2-101(A) listed 12 categories of prohibited communications. DR 2-101(A) continued, however, to prohibit material misrepresentations, communications likely to create false or misleading expectations about results, implications that the lawyer could improperly influence a court, and comparisons to other lawyers' services (except at a client's request).

The 1993 DR amendments also limited the use of endorsements and testimonials, dramatizations and re-creations of events and portrayals of lawyers and clients by actors. The time for a lawyer's retaining an advertisement was increased to two years. The amendments also limited a lawyer's initiation of a communication with a person for the purpose of obtaining professional employment.

In contrast to Oregon's rules, the ABA has taken a more permissive approach to lawyer advertising. ABA Model Rule 7.1 simply prohibits lawyers from making false or misleading communications about the lawyer or the lawyer's services. Subject to that rule (and Rule 7.3 regarding direct contact with prospective clients), the ABA Model Rules permit lawyer advertisement through written, recorded or electronic communication, including public media, as long as the communication includes the name and office address of at least one lawyer or law firm responsible for its content. ABA Model Rule 7.2.

In August 2001, the OSB Board of Governors appointed the Special Legal Ethics Committee on Disciplinary Rules to determine whether to replace the Oregon DRs with a new set of rules based on the updated ABA Model Rules of Professional Conduct. Effective January 2005, Oregon adopted the new Oregon Rules of Professional Conduct (ORPCs). The ORPCs are patterned after the ABA Model Rules but retain many provisions of the prior Oregon DRs. Aside from being renumbered, Oregon's rules regarding lawyer advertising largely survived Oregon's adoption of the ORPCs (although lawyers and law firms are no longer required to keep copies or recordings of their ads). The rules previously set forth in DR 2-101 through DR 2-104 were generally retained, although refined and restructured, in ORPC 7.1 though 7.5.

Oregon's adherence to its more stringent regulation of lawyer advertising reflects its commitment to professionalism. The ORPCs strike a balance between the dissemination of truthful, nonmisleading information to consumers and the avoidance of undignified advertising that might reduce public esteem for the legal profession. By rejecting the lenient ABA rules on lawyer advertising, Oregon continues to raise the bar to a higher standard of dignified, ethical and professional conduct.

Evaluation of Fee Schedules

By Emily Nazarov.

Is it true what people say: has law ceased to be a profession and become a business? One reason for this oft-repeated criticism may be that since 1975, the legal profession has been subject to scrutiny under federal antitrust laws. The landmark case clarifying that the learned professions are "trades" subject to the Sherman Act is *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975). There, the Court held that a minimum fee schedule for lawyers constituted an illegal price fixing agreement in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

Before *Goldfarb*, many bar associations, including the MBA, had minimum fee schedules. In the early 1900s it was considered unethical in most professions to compete for work on the basis of a price bid. To reduce the role of price competition, many professions set minimum fee schedules. The MBA was no different. In February 1906, at the inaugural meeting, one member suggested that the MBA look into the regulation of fees. Two months later, in April 1906, the MBA adopted a minimum fee schedule. Minutes from the April meeting include excerpts from that fee schedule:

CONSULTATION:	
Oral Advice	$2.50
DRAWING INSTRUMENTS:	
Deed, Mortgage, Bill of Sale, Bond for Deed or Power of Attorney	$2.50
ORGANIZING CORPORATIONS:	
Where capital stock does not exceed $5,000	$25.00
Where capital stock exceeds $5,000	$50.00
COUNTY COURT:	
Civil Cases	$20.00
Criminal Cases	$25.00
CIRCUIT COURT:	
Civil cases involving not more than $500	$25.00
Civil cases involving more than $500	$50.00
Misdemeanor	$25.00
Felony	$50.00
Murder	$250.00
BANKRUPTCY:	
Where assets do not exceed $100 in value	$25.00
Where assets do exceed $100 in value	$50.00

The MBA's involvement in setting minimum fees continued as late as 1935 and 1937, with a committee devoted to the minimum fee schedule.

In the early 1970s, minimum fee schedules came under attack. Here in Oregon, the government sought to enjoin the OSB, which had developed its own fee schedule, from continuing to publish, distribute or suggest a schedule of minimum attorneys' fees. *United States v. Oregon State Bar*, 385 F. Supp. 507, 508 (D. Or. 1974). The Government alleged that the OSB had engaged in an illegal conspiracy to fix prices. Id. The OSB moved for summary judgment, arguing that (1) the "state action" doctrine exempted its activities from Sherman Act scrutiny, and (2) its activities fell within the "learned profession" exemption to the Sherman Act "trade or commerce" requirement. Id. The court disagreed and held that neither defense applied to the OSB's fee schedule activities.

Then, in 1975, the US Supreme Court issued its unanimous opinion in Goldfarb. The Goldfarbs wanted to buy a house in Fairfax County, and were required by their mortgagee to get title insurance. Only a member of the Virginia State Bar could render the title opinion necessary for title insurance. The first lawyer the Goldfarbs contacted quoted them a fee that was the precise rate specified in a minimum fee schedule published by the Fairfax County Bar Association. The Goldfarbs then contacted 36 other lawyers by mail. Of the 19 that replied, none would perform the title examination for less than the prescribed fee.

The Fairfax County Bar Association's minimum fee schedule was purely voluntary, as the bar had no formal power to enforce the schedule. The Virginia State Bar, however, did have the power to enforce. The Court found that while the state bar had never taken formal disciplinary action to compel adherence to any fee schedule, it had issued two ethical opinions indicating that fee schedules cannot be ignored. One opinion stated that "evidence that an attorney habitually charges less than the suggested minimum fee schedule adopted by his local bar Association, raises a presumption that such lawyer is guilty of misconduct…."

The Court found that the Fairfax County Bar Association's minimum fee schedule had the practical effect of fixing prices for legal services in Fairfax County and held that the minimum fee schedule constituted illegal price fixing. The Court also held that the defendants were not entitled to protection under the "learned profession" doctrine or the "state action" doctrine.

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TECHNOLOGY AND THE CHANGING PRACTICE OF LAW

By Bill Love, Schwabe Williamson & Wyatt

If the production of this article seems a little unique -- that is because it is. It is produced the old fashioned way -- on a vintage manual typewriter. In this case, the machine is a late 30's Royal portable -- the kind with a half red/half black ribbon. It got me through high school, college, law school, three years of Navy duty during and after World War II, and a lot of football press-box assignments at such places as Hayward Field in Eugene and the Rose Bowl in Pasadena.

And it was my faithful companion when I started the practice of law in Portland in 1956. In late years, other real typewriters took over, the latest being IBM Correcting Selectric III which currently keeps me going.

The development of new equipment and systems has definitely and drastically changed the legal practice during the past 50 years. Electronics -- particularly the computer and its offshoots -- have taken over. For me, I was fortunate (I think) that I was too far down the road to effectively teach an old dog new tricks. Thus I have avoided mastering most of this electronic world. Schwabe, Williamson & Wyatt has basically tolerated my phasing out my years of legal practice the "old fashioned way."

In the 1950's, most attorneys prepared their materials either by long hand on legal pads, or by early-stage dictating machines on taped cassettes (and not the small, simple handheld ones either). A few still did shorthand to a legal secretary, but many of the then-new secretaries couldn't cope with shorthand. And besides, shorthand dictation was not deemed to be efficient even in that day and age. Because of my poor handwriting, I generally used the typewriter for drafting documents and letters.

In 1956, secretaries used "carbonated paper" -- assuming that one didn't need more than 3 or 4 final copies. On occasion, we cut stencils used on a mimeograph machine for copies. Usually, however, if one needed multiple final copies of a document, they were sent out to a printing company with fast turn around time.

One big difference in attorney habits in those days -- one didn't willy-nilly make corrections or re-edit the text unless really necessary. Doing so basically meant re-typing one or more pages, or, if the changes were not too onerous, mastering the eraser technique (and many secretaries were really good at that). There was less fine-tuning and rewriting of documents back then; maybe we did a better job in the original drafting because we knew that changes later on would not be easy.

I particularly well remember in the early 1960's when my then-law firm (Cake, Jaureguy & Hardy, now McEwen Gisvold) acquired its first "memory typewriter." It was a big machine which could store basic provisions for contracts, wills, probate, pleading and the like. It utilized a special operator (not a secretary) and was a noisy buzzard (we had a relatively sound-proof room built for those machines so that the rest of the office didn't go crazy when they were operating).

In connection with a transaction closing not too many years ago, where most of the parties were tied in by telephone and visual conferencing, someone asked me how we ever got the job done in the old days before the current equipment, systems and procedures were available. I indicated we got it done because expectations (especially timing) were not so demanding, and more of the people were engaged around a common table or in a big "war room" resolving last minute items eye to eye. Whatever, we did get the job done.

Today, there are the silent computers and keyboards, laptops, desk printers at one's finger tips, copy machines right around the corner, Blackberries, cell phones -- you name it. All of which speeds up production and hopefully produces a better and more timely product.

One area where I think the old fashioned way still works for me is internal communications within the office. I deliver "Love notes" as they are called instead of email messages to my colleagues. Rather than producing another bullet for the computer screen, I drop off the notes typed on my typewriter on the recipients' chairs bright and early in the morning. They have to at least see and move the notes before they sit down (admittedly that doesn't guarantee that they read them). My personal experience is that it produces better results generally than an email message does.

Two closing notes:

1. Notwithstanding my comments above, active practicing attorneys today must master the electronic world around them and use today's "tools" to the maximum. Otherwise the attorney is not being the best he/she can be: for personal satisfaction and development; to optimize the overall office effort; and most importantly, to serve their clients.

2. 50 years from now, the current equipment/systems/procedures will probably be as obsolete as the typewriter is today.

William E. Love

Bill Love joined the OSB in 1952, served 13 years as chairman and chief executive officer for a four-state, billion-dollar savings and loan association, 13 years as a lawyer in private practice and the last 23 years with Schwabe, Williamson & Wyatt. He is a former commissioner for the Port of Portland, the Oregon Racing Commission and the Federal Home Loan Bank of Seattle. He currently serves on the boards of the Portland Rose Festival Association and the Boy Scouts of America Cascade-Pacific Council.

Tom Cooney

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Tom notes that receiving the MBA professionalism award was possibly the highest point of his legal career, because it represented peer recognition.

Today, the MBA is much more sophisticated, organized, and more meaningful to lawyers than in the early years. Tom said that R.P. Jones, James O'Hanlon, he and others had helped found OADC. He mused that young lawyers in his day were encouraged to belong to the MBA – and firms were much smaller, and the bar culture was supportive of MBA membership. It was expected that you belong to the MBA. This is not the same now.

I asked him about pro bono work, then versus now, and he talked about there being a senior requirement in law school to do pro bono work, and also lawyers understood they were expected to defend indigent clients their first two years of practice. There was no metro public defender, etc. They were paid $150 from the state to defend a murder case. Judge Redding appointed Tom to defend a murder case, which resulted in his client being committed to the Roseburg Mental Hospital, where he then escaped. Some 25-30 years later, he turned up in California, and his court-appointed lawyer called on Tom to testify about how he, as a young and inexperienced lawyer, had inadequately defended his client. Tom felt Judge Irving Steinbach enjoyed his testimony.

Tom Cooney Jr.

Paul Cooney

As to the bar, then versus now, firms merge, break up, and merge again. That hasn't really changed. What has changed is that there are more lateral moves – partners tend to move. Tom noted that it's much more difficult for younger lawyers to get courtroom experience now. When he first started, he recalls he had three jury trials in one week.

Tom's sons, Thomas M. Cooney, and Paul A. Cooney, are in practice with him. Tom's practice emphasizes professional liability litigation and health law.

Redefining the Message and the Messenger: The Development and Use of Courtroom Technology

By Thomas R. Johnson Jr., Perkins Coie.

During much of the last century, while the types and complexity of evidence available to trial lawyers increased, the sport of presenting cases to juries changed relatively little. From the 1980s on, however, the tools available to trial lawyers in presenting their cases to juries evolved dramatically. Even the most forward-thinking of legal minds could not have foreseen the tremendous breadth and variety of technology now available to courtroom lawyers. These technological tools present lawyers with both opportunities and potential pitfalls. In the struggle to keep pace with the expectations of a modern juror, the use of courtroom technology has become a choice for some, but certainly not all.

"...types of evidence...grew tremendously..."

The types of evidence available to litigators grew tremendously during the 20th century. In the 19th century, legal evidence consisted of words - spoken testimony, written depositions, contracts, deeds and letters. And during this period, the bulk of visual evidence mainly consisted of public documents, such as county maps, surveys or drawings on patent applications. The proliferation of "demonstrative evidence" in the 20th century created opportunities for lawyers to persuade juries with a variety of images. The use of photographs gained traction in the early part of the century and anatomical models and X-rays took hold as scientific evidence, in the form of expert testimony, gained wide acceptance.

While the evidence available to litigators grew, the basic form of jury presentation did not. Throughout most of the century, lawyers created their own demonstrative exhibits by hand; drafting their own charts, diagrams, and maps. Without email and the prolific communication media of today, contracts, letters and public reports were the standard form of documentary evidence at trial. A telephone call to the public archives confirmed this writer's suspicion that lawyers introduced fewer and more rudimentary, exhibits than those used today. Not only were cases smaller, but the now seldom used Best Evidence Rule required lawyers to rely on originals of documents rather than the photocopies and electronic versions introduced in evidence today.

"...life of the trial lawyer forever changed."

With the birth of the Information Age in the 1970s and early 80s, the life of the trial lawyer forever changed. As the microprocessor chip shrunk to Lilliputian proportions, allowing lawyers affordably to use them in the office, lawyers capitalized both inside and outside the courtroom. Outside the presence of the jury, computers allowed lawyers to research caselaw quickly and to write, revise and print briefs with ease. In front of the jury, early technology allowed lawyers to create graphics and images which brought cases to life (and possibly kept more jurors awake).

The last decade has seen an explosion in the use of courtroom technology. Not only do trial lawyers often use computer-generated graphics during opening statements and closing arguments, but it is now common in larger matters for parties to hire vendors for assistance at trial running the necessary software. Systems like Sanction and Trial Director provide lawyers with instantaneous access to any number of exhibits, portions of deposition testimony and clips of videotaped depositions. In complex matters, with dozens of depositions and potentially millions of documents produced amongst the parties, these capabilities provide trial lawyers with tremendous flexibility.

Not every lawyer, however, believes that modern jury presentation enhances the prospect of courtroom victory. Some lawyers believe that dependence on high-tech software may impede the integrity of communication between the lawyer and juror. "In my opinion," says attorney Bill Barton, "technology gets in the way of the people component on cross-examination. In order to connect with the jury, I would much rather focus the jury's attention on me and my foam board. I can't connect with jurors if their heads are down, staring at a computer screen." In Barton's opinion, it's also a perception issue. "It goes back to the idea of the little guy and the big guy. How can I be the little guy if I'm using the big guy's tools?"

"...technology gets in the way of the people component..."

Ultimately, whatever your perspective as to courtroom technology, every lawyer must acknowledge that society's growing dependency on computers and the internet has somewhat altered the playing field. "In my opinion, jurors simply don't process information like they used to," says Paul Fortino of Perkins Coie. "The average juror is much more visual than they were even 20 years ago. They are accustomed to receiving information in quick sound bites, not long oration." Moreover, while digital technology provides lawyers access to more information, deciding what evidence to use (and what not to use) is more difficult. Synthesizing available information and deciding what is necessary is a prized skill. "In the end, creating a story out of millions of data points is our job," says Fortino. "That's what we are paid to do successfully."

And what will tomorrow bring? Just as lawyers in the 1950s did not fully contemplate the tools of today, we cannot predict the technology of the next 50 years. Imagine, though, handheld computers that instantaneously analyze the record for impeachment questions or warn of missed areas on direct examination while your witness is still on the stand. Although computers that improve our thinking may seem outlandish, query whether lawyers at mid-century ever thought trial briefs would be filed via cables buried in the earth.

Evaluation of Fee Schedule

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The *Goldfarb* ruling rendered all minimum fee schedules suspect under the antitrust laws, and many were abolished in light of that decision. While the MBA minutes do not indicate what fate befell its minimum fee schedule or if the schedule was still in effect in the 1970s, it is safe to assume that it was abolished shortly after *Goldfarb*.

John Ryan

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the Golden Rule…and utilize rhetoric and persuasion to solve a problem. Freedom of thought should be first."

Lawyers he admired included his brother Thomas H. Ryan because of his imaginative approach to the law and Frank Pozzi who developed very effective courtroom methods for personal injury cases. He cited General Lamar Tooze, who was in both world wars and as a WWI line infantry officer, risked his own life by going out under fire to retrieve the body of his twin brother. He appreciated Judge James Crawford's allowing him to sit in on the capital murder case, defended by his brother, that later went to the U. S. Supreme Court on the insanity law and "Donald A. Buss, a skillful trial and business attorney who taught me much." He also admired Judge Martin Hawkins, a famous athlete in the 1912 Olympics, "for his fairness, kindness to younger lawyers and desire to help you learn from your mistakes. He fit into that wonderful word called 'gentleman' with high qualities."

Frank Pozzi

What would you say to young lawyers?
Learn the law. Specialization is a fact of present practice. "I opposed specialization by rule in a famous debate with Judge Owen Panner in 1977 at an OSB annual meeting, but encouraged CLE. In the long run, I felt the plan for mandatory specialization would have built a large bureaucracy impeding our freedom in the practice and keeping younger lawyers on the bottom rung for too long a period. I pride myself on being able to say that this debate did not impair my friendship or respect for Judge Panner." He says a lawyer like himself or brother "would not have gotten the criminal case in today's world… A good grounding in the common law is important. Try to understand the reason for rules, such as evidence and the essence of the law of contracts…View yourself that you are in a profession that is a noble calling, not a trade, and in your oath, you are not supposed to do anything for Lucre, or gain from dishonesty and deceit."

What are you most proud of?
"I have a wonderful wife."

January 3, 1963 dinner honoring Judge James W. Crawford, also admired by John Ryan

We ended our conversation by his summing up, "It's been enormous fun. One of the things I would say to a young lawyer is, enjoy your practice or get out of it. Don't let it destroy you."

Changing Dress Codes

By Christine M. Meadows, Jordan Schrader and MBA Board Director.

If the clothes truly do make the man or woman, then some lawyers are lamenting the future of the legal profession. While some lawyers are thrilled by changing dress norms, other lawyers believe a lack formality is evolving with the dress. For most of the history of the bar, well dressed lawyers wore dark suits, white shirts or blouses and, when outside, always wore a hat. Up until the 1960s, well-dressed women wore gloves year round. A lawyer's dress connoted his or her status as a professional.

While the 1980s saw color creep into wardrobes (the "power tie" for men and those floppy-bow blouses for women) the uniform remained relatively the same. Some slight color appeared in men's shirts and there were some women's suits in shades other than black, gray and navy, but lawyers remained far removed from the fashion cutting edge.

In the 1990s, even more color crept into wardrobes and lawyer conferences sometimes featured sessions on "business casual" dress. But the changes continued rapidly. In the last 10 years, the tie has all but vanished. "Casual Friday" has extended into Monday through Thursday. Suits were replaced with sweaters and khakis, except on occasions when attorneys are meeting clients or going to court. The courthouse remains the one place where formality continues to hold sway.

For women lawyers, the court house dress code can be particularly challenging. As late as the mid 1990s, for women litigators the rule was "wear a skirt when appearing in court." That included hearings with judges. Young women lawyers heard horror stories of women attorneys being admonished by a judge for wearing pants. While that no longer seems to be the case, in an admittedly unscientific poll, female litigators who try cases to juries always do so in a skirt.