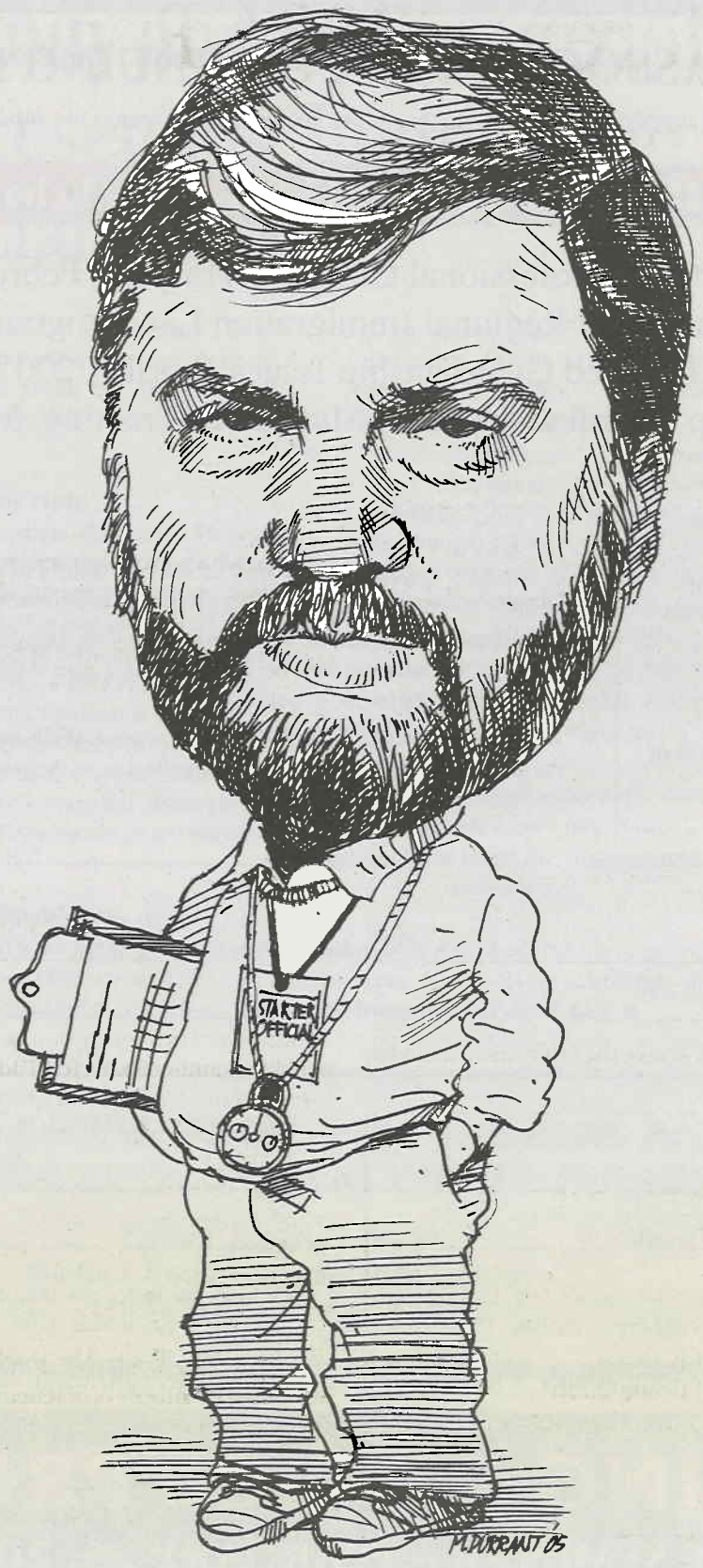
Profile

Bill Hickman



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By Charlie Wiggins

Appellate Lawyer and Track Curmudgeon

As Bill Hickman stood at Seattle-Tacoma Airport talking with his wife Darlene and friends, a tall muscular young man approached Bill and asked, "Were you a track starter at the Junior Olympics?" Wondering where this was going, Bill admitted that he had been. "I would know your voice anywhere," the fellow replied. "I competed in the Junior Olympics. When I heard your voice I didn't always understand what you were saying, but I always knew it was time to get serious and prepare to start the race."

Several generations of judges and lawyers in Washington and the Northwest have had the same experience—when they hear Bill's stentorian voice, they know it's time to get serious and start the race.

Bill Hickman has been a fixture of appellate practice and tort law in Washington ever since his admission to practice in 1967. The list of Bill's published cases reads like a casebook on modern Washington tort and insurance law. He is passionate about the law, his family, and track and field.

From the Pulp Mill to the Law Mill

Bill was born in 1942 and raised in Longview, the only child of parents who worked in the Kelso/Longview mills. He attended Seattle University, where he planned to major in physics and become a nuclear physicist. After Bill had studied physics for several years, a fellow physics major called him at three am to share an "exciting" insight into quantum mechanics. It dawned on Bill that quantum mechanics did not fire his excitement in the wee hours of the morning and he turned toward a different career goal.

Enrolling in business courses, Bill happened into a business law course taught through Socratic case study. Bill's passion for the law ignited as his interest in physics burnt out. He completed a physics major because he already had so many physics credits, but his goal had already shifted to law school.

Bill applied to Columbia Law School after he heard that east coast schools accept a few Washingtonians to round out their geographic diversity, uncertain whether he would be accepted or how he could afford Columbia. He was not only accepted but was told that they'd take care of the money somehow.

He worked during the summers in the Weyerhaeuser sulfite mill in Longview. Working in 110-degree heat, Bill came home with so much sulphur in his body that his mother could tell which silverware he had used at a meal—the silver immediately tarnished.

Bill married his high school sweetheart Darlene Naglich between his first and second years of law school. They lived in a tiny apartment in Manhattan where Darlene shared the experience of many young spouses of law students, watching TV by herself with earphones while Bill studied at his desk.

The cardiologist for whom Darlene worked told her to cherish these early days of marriage, for they would seem quite precious in retrospect. Skeptical of such advice, as all young people are, Darlene eventually came to realize the truth of the doctor's words.

Bill worked hard to prepare for moot court arguments, which Darlene occasionally attended. She was most amused by one of the judges, Professor E. Allen Farnsworth, and laughed at his humorous asides. She quickly learned that this was serious business to Bill and he did not appreciate her laughter at what he perceived to be his expense.

Returning to Washington after graduating from Columbia, Bill went to work for then Superior Court Judge Robert Utter who hired recent law graduates as bailiffs in his court. Bill then had the opportunity to learn trial practice by first-hand observation.

Reflecting back on those days, Justice Utter recalls that he tried to teach legal writing skills: "Perhaps I taught him too well, since Bill later used those skills to criticize the Court's decisions!"

An Appellate Practice

Bill found a job with the firm of Reed, McClure and Moceri where he has spent the past 37 years. His first day on the job, Roy Moceri walked into the office and dumped a box of files on his desk with a letter from the Ninth Circuit that the brief of appellant was due in three weeks. Moceri explained that he had three trials in the next three weeks and Bill was going to write this brief. The case involved a truck accident in I-5 and Moceri was appealing a plaintiff's verdict. "I don't want a damn law review article," Moceri told Bill.

This first appeal launched Bill on an appeliate career. Moceri had realized that appeals were too important to his clients to be written in "spare time" at nights and on weekends while the trial lawyer tried the next case during regular hours. He also recognized that Bill's fresh look at the case avoided the inevitable tendency of the trial lawyer to repeat the same losing arguments from the trial. An appellate lawyer can also gain experience with the appellate bench and earn their confidence and respect.

In turn, Bill realized that trial lawyers often harbor misconceptions about what actually happened at trial, leading him to Hickman's first rule of appellate practice: believe only 50% of what the trial lawyer tells you. Coming to the case afresh forces the appellate lawyer to rely scrupulously on the appellate record, which in turn builds the lawyer's credibility with the appellate judges.

Bill realized he was hooked on appellate practice when he argued his first appeal in Division I of the Court of Appeals. He remembers Judge Charles Horowitz, later a Supreme Court justice, telling opposing counsel that he would be well served reading a case that the Court had cited to him. Although Bill has primarily represented defendants in civil cases and insurance companies, he represented the plaintiff in his first tort case in the Washington Supreme Court.

In 37 years of appellate work, Bill has handled over 500 civil appeals. A search of any case law database shows that Bill's cases have shaped the law of torts and insurance in cases such as *Tank v. State Farm, Mahler v. Szucs, Kirk v. Mt. Airy, Washburn v. Beatt, Adcox v. Children's Hospital, Roller v. Stonewall Insurance, Graves v. P.J. Taggares Co., Pannell v. Food Services of America, Adamski v. Tacoma General Hospital,* and *Winterroth v. Meats, Inc.*

Any lawyer who has handled a few appeals against Bill quickly comes to recognize the "Hickman style." Bill's writing is pithy, clear and to the point. The reader of a Hickman brief learns on page one what brings the case to the court and exactly what Bill believes to be wrong (or right) with the trial court's decision.

Bill's briefs incorporate colorful metaphors, rhetorical questions and equally rhetorical answers. Bill weaves his oral argument around his theme, sometimes dramatically. In one argument before the Supreme Court, he flourished a fistful of lottery tickets, charging his opponent with gambling on the jury verdict.

For the past 29 years, Bill has edited the quarterly *Washington Insurance Law Letter*, reporting and briefly editorializing on significant decisions. The reader never need guess at Bill's opinions of the courts' opinions. Consider this recent comment on the decision of the Washington Supreme Court in *American Continental Ins. Co. v. Steen*: "There are some in the coverage community who strongly feel that this is the worst insurance coverage opinion ever published. But those of us with a *Mahler* fixation know that while this opinion may affect a few claims, *Mahler* goes on day after day, week after week, picking the pockets of Washington policyholders."

Track and Field: A Hickman Family Affair

As Bill's practice grew, so did Bill and Darlene's family. Their daughter Kristin was born in 1967 and Kari Mae in 1973. Always involved in his daughters' lives, Bill's life took a new turn when Kristin, then in the third grade, asked to join the track team. Never one to sit on the sidelines, Bill wandered onto the field at Kristin's first meet and asked how he could help. He was immediately drafted to officiate, and quickly became hooked.

When the track team moved away from their neighborhood, Bill and Darlene organized a new club that eventually became the Seattle Track Club. They found a coach and Darlene took seminars at Seattle Pacific University on how to coach track and field.

Track and field was a Hickman family affair. Darlene would handle meet registrations, Bill would start the races, and Kristin and Kari-Mae would hand out the awards. Darlene became active in coaching and judging race walk meets and they hosted several national race walk meets.

Bill and Darlene became active in the national organization USA Track and Field, Inc. Bill served on the Law and Legislation Committee and was eventually appointed to the Rules of Competition Committee, where he brought his legal skills to bear on wordsmithing the rules. Bill explains his goal:

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to make the rules clear to the race official required to make an immediate ruling while standing in the rain in the middle of the field, not uniquely, but typically, a Puget Sound experience.

In 1984, Bill and Darlene were selected as officials for the Los Angeles Olympics. Darlene was one of only 12 women in the U.S. selected as a competition official. Bill supervised the timing of the race walk events. Olympic officials are expected to spread the Olympic ideals and values in their home communities after the Olympics, and Bill and Darlene became increasingly involved in Pacific Northwest track and field events. Bill became chief starter for the University of Washington. He also officiates at Nathan Hale High School meets. Bill and Darlene officiated at the Pan American games in Indianapolis and the Goodwill games in Seattle. Bill was head starter for the National Junior Olympics in Seattle in 1998 and in Eugene in 2004.

When the doping scandals hit track and field in the late 80's, Bill was at the center of drafting rules to govern the hearings for athletes who tested positive for forbidden drugs. In 1999, Bill was appointed to the Anti-Doping Commission of the International Association of Athletics Federations (IAAF). The Commission met twice a year in Monaco to review the results of athlete suspension hearings from all over the world. Bringing his appellate experience to bear, Bill worked to introduce a clear error doctrine into the process.

Bill's daughters have long since left track and field behind. Kristin, after years of saying she didn't want to follow her father's footsteps, became a lawyer and Bill proudly introduced her to the Supreme Court before one of his many oral arguments. Kristin's children may be destined to continue the family tradition on the track. Granddaughter Katherine was the only child in her pre-school who knew how to do a crouch start for her school track and field day. Grandson William charms his grandparents as he imitates Bill's gestures to start a race.

Daughter Kari-Mae, at age five, helped Bill run the 10K section of the Seattle Police Marathon. She in now a social worker at the Seattle V.A., and is expecting her first child in a month.

The Track Curmudgeon

Why does a 37-year veteran of the courtroom continue to spend 150 hours a year on track and field, a sport in which he never participated and which his children long ago gave up? Bill explains that the reason is fairness—if he is there, he knows the race will be run well and fairly. But a softer and perhaps more heart-felt reason emerges as he describes his satisfaction at watching young people discover in themselves a talent they never knew, building a sense of self-worth and confidence.

Bill and Darlene both said that they don't do it for the star athletes, but for the kids who strive and improve over the season and learn that they can rise to a challenge.

Bill rarely reveals this sense of gratification and pride in these young athletes' growth. Instead, he displays the unblinkingly strict attitude remembered by that young man from the Junior Olympics, the persona that has earned him a moniker within USA Track and Field—"the track curmudgeon." ■

Charlie Wiggins is an appellate lawyer and former judge of Division II of the Court of Appeals. He and Bill Hickman are frequent opponents in the courtroom and share a healthy respect for each other's legal writing and argument skills.

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if not wilfull, negligence & default."[8] The court found Charles had contracted to be master of a vessel but he "had not improved his owne skill, nor exercised the ordinary care of a man takeing chardge, for preservation of ye vessel & goods," and was therefore liable for failure to employ a cable and tackle and to cast anchor that led to the damage.[9] The court rendered judgment for the plaintiff for sixty-seven pounds and court costs.[10]

Another example in 1667 gives a somewhat clearer statement of a duty to exercise care and the ramifications of failing to do so.[11] The wife of a Mr. Weekes confessed to cutting off the toes of her servant Nicholas Woodman, which likely led to his death.[12] The court found Weekes "defective in his duty to his servant, which occasioned the death...as the evidence of the Coroners Inquest Issues it, as alsoe wee find the Townes men of Kittery faulty when Complaynt to them being made they had not caused his Master to provide for him...Persons defective in their duty from whom comes dammage or charge must of right pay that dammage that cometh through their defect."[13]

As the United States grew as a world power, 20th century courts expanded the types of injuries in this country to include less tangible injuries such as intentional infliction of mental suffering (or emotional distress), invasion of the right to privacy, and denial of the right to vote to name a few.[14]

Prosser advises, "There is no necessity whatever that a tort must have a name. New and nameless torts are being recognized constantly, and the progress of the law is marked by many cases of first impression, in which the court has struck out boldly to create a new cause of action where none had been recognized before."[15]

Such a prediction of judicial activism would likely have created hysteria among wealthy business owners or other prominent figures vulnerable to suits, raising their ire to push for tort reform in 1950 as well as their descendants in spirit today. However, America's championing of individualism and striving for balance allows for, and is encouraged by, such a range of possibilities. ■

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[1] William L. Prosser, *Handbook of the Law of Torts*, St. Paul Minnesota, West Publishing Co., 1941.

[2] *Studies in the History of American Law: With Special Reference to the Seventeenth and Eighteenth Centuries*, Richard B. Norris, NY, Columbia University Press, 1930. Through the research process I read a book about the jury system written by the late judge William L. Dwyer, *In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles, and Future in American Democracy*, William L. Dwyer, St. Martin's Press, NY, 2002. Much of the thoughts recorded here were influenced by reading this book although the focus here is on the origins of torts rather than the jury system.

[3] *The Code of Hammurabi, King of Babylon*, Robert Francis Harper, (1999), 75; *See also* Dwyer at 13.

[4] Norris at 48, citing G.E. Woodbine, "The Origins of the Action of Trespass," Yale Law Journal, XXXIV, 343-344.

[5] *Id.* at 50.

[6] *Id.* at 51.

[7] *Id.*

[8] *Evance v. Charles* (1647) Hew Haven Col. Rec., I, 281.

[9] *Id.* at 203.

[10] *Id.* at 204.

[11] *Id.* at 207.

[12] *Id.*

[13] *Id.* at 207.

[14] Prosser, at 5.

[15] *Id.*