

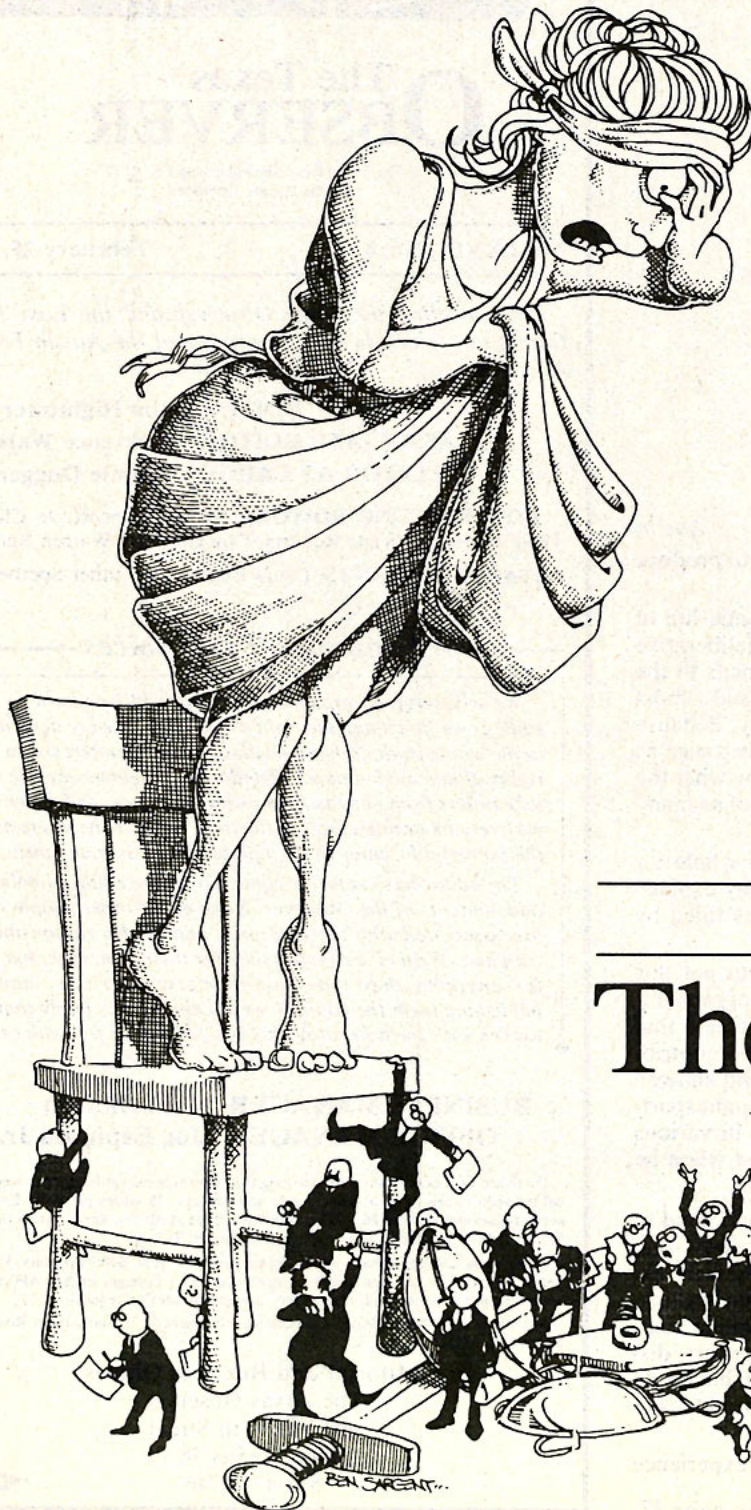
# THE TEXAS OBSERVER

A Journal of Free Voices

February 25, 1977

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- Grand juries
- Crime and punishment
- Legal insurance
- Judges
- Public interest law
- Interview with John Hill

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SPECIAL ISSUE

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## The Lawyers

# Crossing the Bar

By Mary Alice Davis

Austin

It used to be that the State Bar of Texas was as stodgy and retiring as an English nanny, quietly tending to the business of the state's 28,000 lawyers and occasionally chastising those who misbehaved.

But lately the Bar has suffered a series of embarrassing public pratfalls and nose-tweakings at the hands of its own suddenly rebellious brood.

A meddlesome reformer, Austin lawyer Joe K. Longley, has penetrated the wood-paneled sanctum of the Bar's boardroom, sending dust and headlines flying in all directions.

Longley, a new member of the board of directors, raised the mortifying possibility that the Bar might have run afoul of the state constitution in the way it financed its new six-story, \$7.3 million building ("nation's largest state bar headquarters"), which stands just west of the state Capitol.

Around Texas, many Bar members are mad as hops about the way things have been run in Austin. "Yes, there's a lot of excitement out there," admits a Bar director.

While others on the 32-man board were raising questions about Bar operations, the state supreme court justices notified the directors that they'd appreciate being filled in a little better about what was going on, and the Legislature started poking around. Some legislators even talked about making the Bar start behaving like any *other* state agency.

## State Bar obscurity ends

What sort of animal is the State Bar of Texas? The question is at the center of the current unrest. Depending on your point of view, the Bar is a state agency, a "state-agency-sort of," a lawyers' union running a closed shop, or, as Longley sees it, a "trade association in state agency clothing."

Some Bar biggies have stonewalled throughout the flap. Board chairman William B. Hilgers of Austin accused Longley of plotting "the destruction of the Bar" and of trying to "smear the leadership of the Bar with innuendo and half truths." Former Bar president Leroy Jeffers of Houston dismissed Longley as "a Ralph Nader hatchetman."



The new \$7.3 million State Bar headquarters in Austin

Others gamely tried to put the best face on things. The Bar produced a handout headlined "State Bar's Obscurity Ends," quoting Bar president Gibson Gayle Jr. of Houston: "... people are starting to take notice. They want to know what we do and why we've grown so fast." Do they ever.

Questions about the Bar had cropped up in the campaign preceding a late-December referendum on a proposed increase in dues from a \$25-to-\$65 range (rising as a lawyer's career lengthens) to \$30 to \$100.

Now in Texas, as in some thirty other states, lawyers have no choice about paying Bar dues. The 1939 law which created the Bar says that to practice law in Texas, you *must* belong (pay dues). In turn, the Bar processes grievances against lawyers and otherwise looks after the interests of the legal community, which are presumed to jibe with those of the general public.

Lawyers may not have a choice about paying dues, but they do have to approve any increases. Last fall, Joe Longley

urged his colleagues to reject the new dues schedule.

Longley, former chief of Atty. Gen. John Hill's antitrust and consumer protection division, had been elected to the Bar board on a platform of cost-cutting, no dues increase, and general reform. It was his second race for a board seat, and this time he won in an upset.

As the dues referendum drew near, he asked for and received space in the *Texas Bar Journal* to make his case. There he said of the Bar: "It is highly probable that no other state agency has indulged in such extravagance at the expense of its dues-paying licensees. . . ."

Among Longley's points:

\*Since 1973, when dues were last increased, the Bar staff had more than doubled in size (to eighty or so employees) and payroll expenditures had risen by better than 150 percent. (Longley didn't mention it, but membership increased by less than 20 percent in the same three-year period.)

\*Also since 1973, Bar general fund revenues had more than doubled, to \$2.4 million; and in fiscal 1976, the general fund wound up with a \$38,514 surplus.

The Bar's 1976 audit, published in the same *Bar Journal* issue as Longley's argument, showed that the \$38,514 was added to a \$104,555 surplus from past years. In addition to the general fund revenues, the audit listed about \$1 million in contributions for the headquarters building, about \$1.2 million in federal grants, and some other revenues, for a total of about \$4.8 million.

In a well-read appendix to his article, Longley pointed out that the Bar paid its executive director, H. C. Pittman, \$54,000 a year, provided him with a 1976 Lincoln Continental, paid for his memberships in the Tarryhouse, Citadel, and Headliners Clubs of Austin, and gave him a \$3,000 bonus last summer. Pittman's four aides were given late-model automobiles for personal use and enjoyed other expensive benefits.

The size of Pittman's salary raised eyebrows around the Capitol, where the governor is just about the only state employee making more. Pittman earns more than the Bar's titular bosses, the justices of the Texas Supreme Court.

#### Fringe benefits

In his defense, other Bar directors said that Pittman took a pay cut when they hired him away from his lobbyist job with the Texas Automobile Dealers Association, that the dealers gave him a snazzy new car every year, and that supreme court justices are underpaid.

Pittman's salary, they said, was comparable to that of directors of other large bar associations. The club memberships were not for Pittman's benefit, they said, but for the recreation of lawyers visiting Austin on Bar business.

Capitol reporters kept at Hilgers and Gayle until they were told that the Bar had paid club bills totaling more than \$20,000 in fiscal '76, including more than \$10,000 to the Headliners Club, where Pittman is chairman of the board.

The way Longley first learned of Pittman's salary is instructive. He asked for the figure just as fellow board members were about to approve the \$3,000 bonus. Nobody knew. Finally, someone rustled up Pittman and asked him. Pittman knew.

Then there was the matter of the new Bar headquarters, the glass-and-granite box officially known as the Texas Law Center, but dubbed "Pitt's Palace" by some irreverent attorneys (see architectural review, page 34).

Bar directors had assured members back in 1973 that none of their dues money would be used to finance the new

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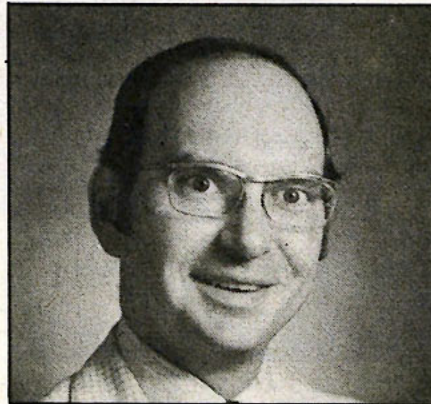
*"If it weren't for the fact that it's a closed shop," said one lawyer, I would tell them to go straight to hell and never pay another nickle of dues."*

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building. Contributions and the rental income expected from Law Center tenants would do the job.

But in the *Bar Journal*, Longley cast doubt on the 1973 promise by citing the minutes of a board meeting in which directors talked as if dues money might indeed have to be tapped.

As it turned out, contributions did not come in fast enough to bankroll construction, and the Bar had to take out a \$4 million mortgage loan from American Bank of Austin for interim financing.



Bar maverick Joe Longley

Longley went to the Capitol press with the news that the Texas constitution prohibits state agencies from mortgaging their property and that there are a number of attorney general opinions holding that the Bar is a state agency.

Furthermore, Longley noted, the directors should have known all this since Atty. Gen. Hill, in a 1974 opinion requested by the Bar, had cleared a construction loan but noted pointedly that the Bar had not proposed a mortgage.

Hill told the *Observer* that he also had informally warned bar directors they'd be on shaky ground if they took out a mortgage.

Longley also said the Bar's own rules would seem to prohibit the sort of financial arrangement which finally emerged. And he noted in passing that H. C. Pittman is a director of the American Bank of Austin.

Meanwhile, other Bar directors were plugging for the dues increase as a life or death matter. Board chairman Hilgers,

who confesses he gets "very emotional" about the Bar's current distress, wrote a pro-dues-increase pitch in which he said the legal profession was on trial. The piece ran opposite Longley's in the *Bar Journal*.

Lawyers, he said, could be entering "a world of hostility and hate, bent on our extermination as a profession." He added, "We must not perilize ourselves at this moment of greatest challenge." The Bar's administrative staff had grown, Hilgers said, because the demand for central services had grown.

#### Two-to-one against dues increase

When the dues vote came in, it seemed a lot of lawyers weren't worried about periling themselves. They trounced the dues increase two-to-one.

Some were willing to give Longley all the credit, or blame, for the defeat. President Gayle allowed that the maverick director had waged an effective campaign but said the proposal was probably doomed from the start because many lawyers feel "alienated" from the lead-



Bar president Gibson Gayle

ers of their profession.

The ones who took the trouble to write to Longley did indeed sound alienated.

"If it weren't for the fact that it's a closed shop, ordered so by the Legislature, I would tell them to go straight to hell and never pay another nickel of dues," one wrote.

A law professor thanked Longley for bringing to light "a festering situation which needs correction."

A wag out in Hereford said the local bar group there was trying to raise money for a barbecue and he had suggested mortgaging the courthouse to pay for the bash. "Do you have an opinion as to the legality of this transaction?" he asked.

A lot of letter writers just said things like "Me, too!" or "Give 'em hell!" One lawyer in Denton had a warning: "I hope your financial situation is such that you can withstand the economic pressures that will be applied. I understand how the system works."

Photos by Debbe Sharpe

A couple of lawyers wrote to say they and their local bank officers were thoroughly peeved that trust officers of the American Bank, which is also trustee of the Bar insurance plan, had been out beating the bushes for business before captive audiences at local bar association functions.

Longley is turning out to be anything but a lone ranger. He even sees some of his fellow directors coming around to his side "slowly and in their own way."

A recent directors' meeting in Austin seemed to support him on the point. Director Louis Weber Jr. presented a task force report which included a litany of in-house problems and a recommendation that the Bar get itself on a "firm course."

Another said he felt uncomfortable serving as a director of the Texas Bar Foundation (as do all Bar board members) and making attractive financial offers to the Bar, then putting on his Bar director hat and accepting them.

Someone else grouched that the foundation, like all entities of its kind, faces

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*Essentially, the Bar is a quasi-governmental agency. It licenses all Texas lawyers, collects what amounts to professional taxes from them, and spends the money it takes in—all with no oversight by the Legislature.*

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propitious time" for contracting outside help.

Longley is still a minority of one on some Bar matters. At their recent board meeting in Austin, directors got into a set-to over Longley's attacks on Pittman (discreetly waiting until this reporter left the meeting before taking up the matter). Longley called for Pittman's resignation. The board passed a motion commending the executive director, 30-1.

Over at the Capitol, more trouble is brewing. Sen. A. R. "Babe" Schwartz (D-Galveston) of the Senate jurisprudence committee has asked Atty. Gen. Hill to rule formally on the legality of the Law Center's financing.

Rep. Fred Head (D-Athens), like

chance, but it has served to point up what many see as the Bar's favored "closed shop" status.

The suit also gave Capitol-watchers another excuse to speculate on what all those lawyer-legislators might do come the big legislative confrontation between doctors and lawyers over medical malpractice insurance. The Bar has set aside a \$50,000 war chest for the fray, but that's the sort of thing Longley says shouldn't go on. Longley's all for fighting the doctors, but he doesn't think a state agency should finance the battle.

#### State Bar conglomeration

He asks if something like a "State Bar Association, Inc.," shouldn't be formed to perform some of the work now done by the Bar. A political action committee could see to the lobbying, he suggests.

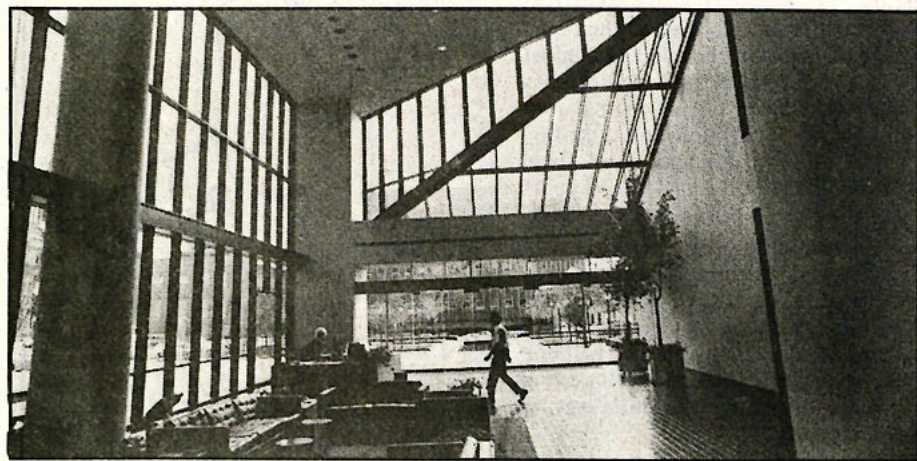
As it is now, the State Bar has become something of a conglomerate. ("It's a monstrosity," Longley says.) The Bar is into the insurance business on several fronts (see insurance story, page 8). It has lobbyists in Austin and Washington. It receives federal grants. It runs a foundation and a publishing business, and even sells styrofoam cups embossed with the Bar seal.

Two Bar projects nobody quibbles over very much are continuing education for lawyers and the grievance system. Longley comments that the education program is almost self-supporting (since the participants pay tuition) and that most of the grievance work is done by volunteers.

Hilgers argues that without an "integrated bar" (that's the term for a state bar with mandatory membership) volunteer time might dry up and dues money dwindle to the point where the Bar couldn't afford staff help on grievance cases.

The board chairman is repelled by the prospect of the Bar going hat in hand to the Legislature for operating funds. "That would destroy our main thrust—that the lawyers of the state have the best oversight of their own funds," he says.

As others see it, it's state money he's talking about, and its outlay should be monitored by the Legislature. "They're just as much state funds as are the license fees collected from cosmetologists," says Rep. William S. Heatly, (D-Cottle), chairman of a special House committee looking into the opera-



Mike Smith

Looking out from inside the bar

ticklish tax-law questions and didn't even have "a real live lawyer."

The foundation was formed in 1966 as a sponsoring and money raising vehicle for Bar-related projects. Its money comes mainly from memorial gifts and contributions made by those named as foundation fellows ("that'll be \$1,000, fellows").

#### Thirty-to-one for Pittman

But directors were told at the meeting that about a fourth of those nominated were declining the honor and that besides, nobody knew what they were supposed to do as fellows except go to parties.

And there is still the financially embarrassed Law Center. About \$5.1 million has been pledged toward the \$8 million goal, directors have been told. Meanwhile, interest on the loan continues to mount. Director Mark McLaughlin said professional fundraisers may have to be called in, but this didn't seem like "a

Schwartz a lawyer, has introduced a bill to make Bar membership voluntary. Hilgers says optional membership would destroy the Bar, but Head thinks most lawyers would still join.

Head has introduced a second bill which would force the Bar to withdraw its assets from the Austin National Bank and deposit them in the state treasury. Then the Bar, says Head, would have to come begging for funds from the Legislature just like regular folks.

Adding insult, if not much real injury to all this, was the suit filed by one Benny Goodman of Dallas and something called "the People's Bar Association" which sought to oust all lawyers from the Legislature. The reasoning behind the suit is that Bar members are part of the state's judicial branch and therefore don't have any business serving in the Legislature. About 68 percent of Senate members and 39 percent of those in the House are lawyers.

No one gives the suit much of a

tions of about a dozen agencies not subject to legislative scrutiny.

Bar directors have spent a great deal of time talking about the need for public participation in Bar decisionmaking, and Longley and some others say the Legislature, through its appropriation powers, could see to the job.

Longley also says that the transfer of Bar funds to the Texas treasury would force the Bar to meet state equal employment opportunity regulations and to observe open meetings and open records statutes.

The Bar staff is not exactly overrun with women and minorities. A PR firm hired by the Bar suggested last October

that to improve its public image, the Bar should consider naming "a qualified professional in the field of public relations who is a woman" as director of communications and publications and make "a vigorous effort to recruit members of minority races for some of the positions on the communications and publications staff."

The board itself is as all-male and all-white as an Old South men's club, which the board room—moved piece by piece from the old Bar building to the Law Center—in fact resembles.

The board has been at some pains to rebut the persistent assertion of many Bar members that it is a clique of "big-

city, big-firm" lawyers. It recently commissioned a study for publication in the *Bar Journal* to counter that argument.

"It's strictly democratic," Hilgers said of the board of directors.

He remains confident that the Bar will emerge intact from its current troubles. "All the hue and cry has caused us to take an even harder look," Hilgers said. "It won't hurt us."

No doubt the directors won't be the only ones taking a harder look. □

*Mary Alice Davis is a freelance writer and former reporter for The Corpus Christi Caller.*

## Lawyers seek insurance

# A client revolt builds

While Texas lawyers argue among themselves over management of the State Bar, the public grows increasingly wary of the legal profession. A client revolt is building.

According to the Bar, the number of complaints against lawyers received by the Bar's general counsel increased by 50 percent from 1975 to 1976. In a recent 12-month period, about 3,000 complaints against Texas lawyers were processed by the Bar. Less than 2 percent of these resulted in disciplinary action. Three lawyers were disbarred, eighteen were suspended, thirty-one were reprimanded, and five gave up their licenses under fire.

As consumers grow bolder, lawyers worry more and more about

legal malpractice suits and the rising cost of insuring themselves against damage judgments. Bar directors were told recently that annual premiums for a million-dollar policy (\$500 deductible) had risen from \$103 to \$530 in the past three years and probably would soon hit \$1,000.

The directors might set up a Bar-sponsored insurance company to help cut costs. The board's reform-minded maverick, Joe Longley, says that would be just one more instance of the Bar forgetting it is a state agency and not a private enterprise.

Malpractice insurance, probably the hottest topic within the Texas legal profession, is rivaled only by the question of permitting lawyers to advertise. Advocates of advertising say it would make legal services more readily available to consumers, and at lower costs. Foes say advertising would lead to misrepresentation and a host of other abuses (despite truth-in-advertising statutes), and would in any case be "unprofessional." The matter is expected to come before the U.S. Supreme Court this term.

Directors of the Bar are split sharply over the companion issue of legal specialization. The Bar now permits some lawyers to advertise just a tiny bit by listing their specialty fields in the Yellow Pages. To do this, a lawyer must be Bar-certified in his specialty.

Bar directors voted 16-15 to continue the specialization ad exemp-



tion on a provisional basis for another three years. The vote was viewed as a victory for opponents of specialization since the alternative was approval of the program for an indefinite period.

Opponents argue that while specialists tend to benefit from the exemption, there's no evidence that it helps the public. Some say it even hurts the consumer by working against young (and inexpensive) lawyers just getting started. An alternative favored by some lawyers is "designation," which would permit any lawyer to declare practice areas of special interest without having to be Bar-certified on the basis of tests and years of experience.

—Mary Alice Davis

