

FORUM

Lawyer's tactics 'gift from heaven' for Titchbourne side

By FRED LEESON

PORTLAND ATTORNEY Ted Runstein was arguing a pretrial motion last March on behalf of the Church of Scientology when a portly Boston Irishman with thinning red hair and a fat briefcase ambled into the courtroom and parked himself at the counsel table.

"I'm too old to fight the preliminaries," the Boston lawyer told Multnomah Circuit Judge Donald H. Londer. "I'm just measuring the ring and getting a feel for the rules. I'll be here for the main event."

Such was the introduction of Earle C. Cooley, 53, hired by the church to help defend the second fraud trial against the church brought by Julie Christofferson Titchbourne of Portland. Cooley's arrival proved to be the start of what may be remembered as one of the major trials of the century in Oregon. It ended with Cooley on the losing end of a \$39 million judgment against the church and its reclusive founder, L. Ron Hubbard.

As it turned out, Cooley couldn't wait to put on his figurative gloves and enter the fray. When Cooley jumped into a pretrial argument and Londer teased him about the main

Fred Leeson covers Multnomah County District and Circuit courts for The Oregonian.



LEESON

event not yet starting, Cooley replied, "Anything I do is the main event, your honor."

Cooley is described by some lawyers in Massachusetts as the best trial lawyer in the state. He formerly worked for the big Hale and Dorr firm that represented Richard Nixon during the Watergate proceedings.

Once the 10-week trial got under way, Cooley quickly established himself as the prominent figure in the arena. He shambled his way around the courtroom with a lumbering gait, peered at witnesses over the top of his glasses and chewed piece after of piece of hard candy to keep his gravelly voice lubricated during hours of cross-examination.

Word of Cooley's quick wit and aggressive interrogations spread quickly in local legal circles. Several trial attorneys perched in the gallery at times to watch his work.

What the locals observed was a theatrical, aggressive style more common to litigation in the East than in Portland. Cooley's cross-examination of some witnesses lasted for days. On occasion Londer warned him to stop shouting at witnesses.

Some of the former Scientologists he grilled broke down in tears as he questioned them about their personal lives or their experiences in Scientology. But Cooley was unmoved. He suggested out of the jury's presence that those witnesses had been coached to cry.

Whether Cooley's techniques were so aggressive they would offend the jury was a question that occurred to many observers, especially since testimony in the trial dealt with the church's policy of attacking those who attack the church. "That's a risk I take," Cooley said during a break. "In this business you don't have to wait long to find out if

you are right or wrong."

Garry P. McMurry, Titchbourne's lead attorney, seemed taken aback by Cooley's folksy gregariousness and slashing attacks at the outset. But after a few days, courthouse gossips reported McMurry as considering Cooley and his bluster attacks as "a gift from heaven" for Titchbourne's case.

The witnesses who fared best with Cooley's interrogations were those who answered the questions at hand and didn't try to figure where Cooley was headed. Those who wanted to make their own speeches or thought they could outwit him tended to suffer for it.

Cooley's cross-examining technique involved a bob-and-weave pattern in which he would pose a few questions on one subject, switch to several other topics and then return to the original subject to ask what he planned to be his most damaging questions. The tactic left witnesses unsure where he was headed and placed Cooley right where a cross-examiner wants to be — in control at all times.

His lengthy interrogations also were aided by the use of daily transcripts of prior testimony, an expensive luxury that most litigants cannot afford. The transcripts allowed him to focus in detail on specific words used by a witness as recently as the day before.

But in the end Cooley's laborious cross-examinations apparently gained him precious little. He made few references to that testimony in his closing arguments.

Lawyers never know for sure to what extent their conduct rather than the facts of a case affect a jury's decision. Cooley, who flew off immediately to a Hawaii vacation, no doubt was happy to put a few miles between himself and Friday's verdict.



EARLE C. COOLEY

The Oregonian/TOM TREICK



TAX
REFOR...

Middle-aged now feel pressure of parent care

By ELLEN GOODMAN

Some of this difficulty is familiar and Freu-