

“Sleeping When the Wind Blows”

In the small farming community where I was raised, an old man named Edward Brinkerhoff would occasionally be called upon to speak in church. I recall him doing so two or three times over a period of perhaps ten years. I remember what he said because he told the same story each time. Grasping the outer edges of the pulpit with both hands, as though it would run away if he didn't hold it down, he would look out over the congregation and then begin to speak. His bulldog jowls and white bottom teeth seemed to perfectly cut his sentences into short, staccato words as he told the story of a young man who applied for a job as a farmhand. When the farmer asked for his qualifications, the young man replied “I can sleep when the wind blows.”

The answer puzzled the farmer but he liked the young man and hired him. The youth worked faithfully through the summer and autumn harvests. The first fierce winter storm came late one night. The farmer, roused from his sleep by the howling wind, rushed to awaken the youth so that together they could gather the animals into the barn, tie down tarps, and prevent gale damage.

As Brinkerhoff told the story his voice would rise and his podium grip would tighten as he revealed that the young man could not be roused, and so the farmer went alone into the storm. To the farmer's amazement he found that the young man had already gathered the animals, had already tarped the haystacks, and in every particular had anticipated and prepared for the storm. The farmer now

understood what the young boy meant when he said, "I can sleep when the wind blows."

Brinkerhoff would now release his grip on the podium, thrust an accusing finger forward and ask, "can you sleep when the wind blows?" He would then be done until he was called upon to give another speech, at which time he would give the same one again, so far as I can tell without the least variation from the time before.

Thirty years later I still remember his speeches, even though I had to struggle to remember his first name. To me he was simply "Sleep-When-the-Wind-Blows-Brinkerhoff."

The story has even more application to the practice of law than it does to farming. Every time a case comes to trial the wind will blow, fiercely. In federal court, preparation of the pre-trial order, disclosure of expert witnesses, and the forced exchange of vital information forces an attorney to gather, as it were, the animals into the barn and to tarp all the hay and perishables before the storm comes.

Some years ago I tried a complex product liability case in federal court. The case involved hundreds of exhibits, a score of witnesses, complex engineering and physics principles, and medical issues ranging from a pre-existing brain disorder to near amputation of a foot. Because of the federal court requirement that exhibits be exchanged, that expert testimony be disclosed, and that witness lists be provided, attorneys on both sides had been forced to be in the wind before the full storm hit. As I drove to the courthouse on the morning of the first day of trial I could

not think of any undone last-minute emergencies, and I felt very prepared and at peace. I had rested and relaxed at home the day before trial. Whatever the outcome of the case might be, I was prepared.

A couple of weeks later I tried a very simple motor vehicle accident case in state court, involving comparatively minor injuries. There were less than half dozen exhibits and only a handful of witnesses. But I felt more anxiety going to that trial than I had in going to federal court a few weeks before, because I was heading into the storm without every animal having been gathered and without every haystack having been tarped.

The juxtaposition of those two cases and the irony that I felt comfortable enough to rest the entire day before the federal trial and uncomfortable enough that I was rushing at the last minute before the state trial, caused me to resolve that in every case, whether state or federal, I will place upon it some form of the federal template which requires that certain time limits be met well in advance of trial.

Sleep-When-the-Wind-Blows-Brinkerhoff has long since died (he was as old in my childhood as the World War I veterans who wore American Legion caps and decided each year who would go to Boy's State) but I thank him for telling the same story each time he spoke in the small town where I grew up.

The above article is a reprint from the newsletter of the Southern Oregon Federal Bar Association. Mr. Andersen currently serves as president of that organization.