Victory in Idaho!

A jury in Caldwell, Idaho has vindicated Ed Turner and his stand for the integrity of "Responsible Charge." They deliberated for 10 1/2 hours to render Ed a complete victory in the case against his first lawyer. In addition, they awarded him in excess of $290,000, which does not make him "whole," but in that particular venue this is an unusually large amount.

This happy victory was affected by a "Dream Team" of three:

- The Hero - Ed Turner
- The Ship's Captain - Jeff Strother
- The Secret Weapon - Debbie Turner

Ed Turner is a true hero of our Profession. For more than 20 years like the rest of us, he was engaged in doing his job, and was then suddenly confronted with a serious ethical challenge. Unlike the majority of us, he met this challenge head-on, and persevered through many years of hardship, just to remain true to our code of ethics and the Idaho Licensure Law. He was an active participant in his lawsuits, and deferred to his lawyer's judgement at the appropriate times.

Jeff Strother, a lawyer practicing in Boise, Idaho, took the case against Ed's first lawyer. He spent a lot of time with Ed and other Engineers to obtain a solid grasp of the issue of Responsible Charge and its importance to the Public. The jury received a clear understanding of the issues involved. The only way we can categorize his performance is "superb."

Sometimes a "secret" is something so manifest that people do not realize that it is there. Debbie is Ed's wife. She is his partner in life, and specifically in this ordeal she was a full partner. She not only shared in the monstrous work of preparing for two trials, but also in the suffering that was part of a confrontation with the local political establishment. Her hard work during the second trial was an essential part of the victory.

You Helped Too

AEA consistently and vigorously supported Ed from the moment we heard about his situation. We didn't take an exorbitant amount of time to study the matter to death, but quickly saw what had happened and what was needed. Many of you sent contributions to Ed's Legal Defense, and sent him expressions of support for his cause. For this support, the entire Profession owes you a debt of gratitude.

Vision Statement for the Management of New York City's Infrastructure

Our second meeting with representatives of the other Societies occurred on May 30, 2000. Unfortunately it was attended by different individuals from those of the first meeting. AEA's second draft proposal was presented, but no finalization was possible. It was decided that actual finalization of the proposal would be carried out through successive e-mails rather than by attempting another meeting. However, AEA will present a final version at the end of July, and solicit agreement by the others. Any Society in agreement by Labor Day will consign, and those not in agreement at that time will have to be left out.

The Joe Carson Case

Joe will soon be meeting with representatives of the Tennessee State Society of Professional Engineers (TSPE) and the NSPE National, to seek their participation in the AEA Amicus Curiae Brief in support of his Civil Suit against the Department of Energy. He will also be speaking at the upcoming NSPE National Convention.
Ed Turner was vindicated on June 23rd, 2000 by a jury of his peers. His nightmare of four years is finally over.

Ed Turner, PE was the City Engineer for Idaho Falls, Idaho for more than 20 years when he was forced to resign for refusing to sign and seal plans over which he did not have responsible charge. The Idaho Engineering Licensure Statute required that his signature and seal be on those plans. This Idaho requirement is similar to requirements in Engineering Statutes in all other states, and is necessary to ensure public health and safety.

State Engineering Statutes typically grant licensed Professional Engineers the authority to exercise professional judgment under the concept of responsible charge. They are given this authority by reason of their education, training and experience. In signing and sealing Engineering documents, the Professional Engineer assumes complete responsibility for public health and safety connected with the work described in those documents. This public liability can only be assumed if the Engineering work is done under the responsible charge of the Professional Engineer. Only licensed Professional Engineers can make those decisions.

The American Engineering Alliance (AEA), along with other Engineering Societies and members of the Engineering Community, has vigorously supported the legal battle of Ed Turner, P.E. The issue at stake here is responsible charge, the bedrock of the Engineering Profession. As Lou Comunelli, P.E., Chair of AEA has stated, "Responsible Charge is the basis of the safety net provided to the public by Engineering Licensure Laws. Without it you not only destroy the Engineering Profession but you also put the public in grave danger."

Few employers would dream of trying to force a physician to issue a prescription for a patient the doctor hadn't examined, or a lawyer to swear to a set of assertions he hadn't drafted or reviewed. City officials in Idaho Falls, Idaho had no qualms about demanding that Ed Turner, a licensed Professional Engineer, sign off on plans for new construction, even though he had no responsible authority over the details of the projects.

Turner's troubles began four years ago when the Public Works Director appointed a non-engineer as head of the Engineering Department. Turner's supervisory duties were taken away from him but the City wanted him to continue signing and sealing plans. Turner refused since he was being asked to violate the Idaho Engineering Statute which requires that a Professional Engineer sign and seal only those plans and documents which were produced under his responsible charge. The Idaho Statute defines responsible charge as having "control and direction" over the Engineering work produced.

Turner's refusal triggered the City's retaliation which resulted in an intolerable work environment. This eventually led to his resignation. Turner subsequently sued the City of Idaho Falls because the dismissal of his case was based on a mistake in legal procedure. Turner sued his former lawyer for malpractice. The case was tried in another county to ensure an impartial trial. After a two-week trial, the jury returned a verdict that not only vindicated him completely but also awarded Turner $250,000 in monetary damages.

Turner's vindication in court is not only a personal victory but also a major legal precedent in protecting the public's safety. What the jury verdict clearly emphasized is that a Professional Engineer has a duty and obligation to put the health, safety and welfare of the public above all other considerations including obeying the unlawful orders of his superiors. Hopefully, this precedent-setting verdict will lead to the restoration of the Engineer's authority to effectively safeguard the health and safety of the public not only in Idaho but the rest of the country.

Sal Galletta

A FINAL NOTE

The AEA has taken positive action in the Ed Turner Case and also in Joe Carson's battles with the Department of Energy. We take pride in AEA's role in assisting both of them. The news of Ed's recent victory was personally very sweet for me. We did everything we possibly could to help him. Although this victory was accomplished by his Dream Team, I know that our participation was a significant contribution to the outcome.

We must not only learn from our mistakes, but also analyze the reasons for our successes. For many years the defenders of our Profession have been content in using passive measures. Put quite simply, they have not worked. Subtle may be effectively employed by those already in control. When we achieve our objective of empowerment of our Profession, we also can use such tactics to maintain our status. Nevertheless, we are not in that position now. Direct action and partisan activities in behalf of our Profession's obligation to protect the Public Health, Safety and Welfare, worked in the Ed Turner Case. Others, while sympathetic to the issues involved did not go the extra mile to take positive action, and so did not effect the outcome.

Another area of passivity by Engineers, is "Politics." Yes, it is a dirty word and I promise to be contine for having mentioned it. However, our Profession is ruled by public policy in the hands of the Political Establishment. We have been content to pay our tribute to those who control our work by making passive political contributions. This has done nothing for the Profession as a whole. It is necessary for us to take an active role in the selection of candidates for public office, both within our organizations and as private individuals. In future newsletters, we will discuss this approach more fully, and provide information that may help empower us in this area.
Supporting Colleagues in Need

By Jeffrey Strother

The average citizen cares about public safety. That was the message conveyed by an Idaho jury in June at the climax of Professional Engineer Ed Turner’s legal odyssey that began in 1996 when the City of Idaho Falls demoted him from City Engineer to Design Engineer because he refused to participate in a reorganization that deprived him of responsible charge over public projects designed and financed by the City of Idaho Falls. Four years later, at the end of a nine-day trial, a jury awarded Turner approximately two years of lost salary and benefits plus costs and attorney fees totaling $290,860.00. I wish to publicly thank those who provided Turner with financial or moral support. It was much appreciated by Turner and helped to sustain him through some dark times.

Since becoming involved in Turner’s case, I have heard many reports that engineers often find themselves in positions similar to that of Turner, but choose not to resist the encroachments on their professional prerogatives because they believe that no one will understand their position or because they do not have the financial resources needed to contest the issue.

The result in Turner’s lawsuit shows that the pessimism of some engineers about the ability of laymen to understand responsible charge and related issues is unjustified. While a jury may not understand these matters at the beginning of the lawsuit, the issues can be explained in a way to which laymen will respond positively.

The concern about money is only partially refuted by Turner’s case. Turner financed his lawsuit only by borrowing extensively and by selling the fruits of 27 years of work. While the award of costs and attorney fees will not cover all of Turner’s expenses, his debts will be repaid from the proceeds of the litigation. But even if Turner is restored to the financial status he had in 1996, he will not be “whole”—he will have lost four years of his life in regaining that position.

Thus, it is reasonable to ask what can be done to reduce the burden on those who choose to follow Turner’s path. I can suggest the following possibilities:

1. National and state engineering associations can identify lawyers with experience or special expertise in the issues that are likely to arise in disputes over responsible charge. Turner and his first lawyer spent too much time, effort, and money tackling issues that did not matter and in advancing claims that were of dubious value. They both would have benefited from counsel that enabled them to focus immediately on the critical issues. Such focus might well have spared the City and Turner the majority of the trouble and expense of their litigation. Ultimately, that would have benefited the public as well.

2. Associations can reserve financial resources that can be used to help defray the cost of maintaining the integrity of the engineering profession. Obviously, this money can be spent in litigation. But it can often more fruitfully be spent in helping engineers formulate their strategy prior to litigation. The hardest issues in Turner’s case were not those of public safety or responsible charge, but those arising from his attempts to deal with the City prior to litigation. These attempts contributed to the confusion of the issues that only prolonged Turner’s travail.

These suggestions have obvious connections. National or state associations can pay for upfront legal advice to an engineer or the attorney of his choice, or they can fund the litigation itself. That should help the engineer obtain the focus that is necessary to succeed in disputes such as Turner’s.

I do not mean to suggest that engineering associations should fund every fight between an engineer and his or her employer. These associations may well wish to create a screening process to determine which engineers, or which controversies, warrant intervention. Moreover, engineering associations could reasonably insist, as a condition of that assistance, that attorneys of their choice be involved in the controversy or that any funds donated by the associations be repaid in the event of a financial recovery.

These suggestions are plainly not exhaustive. Moreover, they are not statements of what must be done; instead, they are only indications of what can be done. Whether they are implemented now is simply a question of priorities. The issue is whether helping people like Ed Turner is important enough that you are willing to do something to help. After all, just as we cannot predict whether we will be involved in an automobile accident, we cannot predict when we will find ourselves in Ed Turner’s position. If you were that unfortunate, would you want your association to help you?

Jeffrey Strother is an attorney practicing in Boise, Idaho. He has practiced law in Idaho for 24 years and has extensive experience in the litigation of construction and engineering issues from the perspective of engineers, owners, and contractors.

“Viewpoint” articles are presented to foster open discussion and may or may not reflect official NSPE views.
AFTERMATH OF THE ED TURNER CASE

The case is finally over! The settlement agreement has been made! Now What? In this issue is a letter to us from Ed congratulatory to A.E.A. It also reminds us that our struggle is far from over.

Ed has turned over the balance in the Turner Engineering Litigation Assistance Fund (TELAF) to A.E.A.. We will take over the operation of this fund, and use it to assist other Engineers who find themselves in need of monetary help in defending themselves and the Profession, and at the same time the Public Health and Welfare. Specific guidelines for use of the Fund will be published in a subsequent newsletter. You are urged to send in contributions, and may use our multipurpose Form, which has been modified to include a category for such a donation. Remember, a donation to this Fund is NOT tax deductible! Checks should be made out to A.E.A., and "TELAF" written on the face of the check.

THANK YOU

For helping us through our legal battle. Your moral and financial support has been greatly appreciated. From the beginning of this litigation, many realized this legal battle was not mine alone but was OURS together. Particular thanks to Lou Comunelli, P.E. and Sal Galletta, P.E. from American Engineering Alliance (A.E.A.).

Finally, we want to extend a special thanks to Jeffrey Strother, our lawyer who carried this litigation to its conclusion with a very positive jury verdict. Mr. Strother recognized the importance of "Responsible Charge" and how that relates to Public Safety.

We are part of one of the proudest professions in the world and because we offer to do our job so well and so quietly without fanfare, the results appear easy. This has caused non-engineers to conclude that they can do that work quicker, cheaper, etc. than the engineers themselves so that the professionals can be put aside or replaced. This unhealthy concept is beginning to appear more acceptable to elected officials and so-called managers. Because the community of professional Engineers is not organized well enough to stop this trend nationally, engineers can be taken out on at a time. This must be stopped immediately.

A national effort through the national societies such as American Engineering Alliance (A.E.A.), ASCE, NSPE, etc. must be organized to combat the takeover of professionals by non-engineers and/or non-professionals. We should start now, before this trend gains more momentum. Just as it is easier to stop a rolling vehicle before it gains speed and momentum, it will be easier to stop this trend now, before it becomes stronger and perhaps irresistible. Each Engineer, whether he or she is an engineer-in-training (E.I.T.) or professional engineer (P.E.) should take an active role in promoting the ethics of the profession and in educating the public as to the responsibilities of engineers and to the benefits of independent professionalism. For example, each of us can speak about our profession at career days in schools across the country or at weekly or monthly meetings of civic organizations that are part of every community.

Every Engineer in the united states can help to "Turn the tide" and put Engineers in "Responsible Charge" and thereby help to fulfill his or her professional obligation to "Protect the Public."

If the Professional Engineer doesn't act to protect the public-who will? And if we do not do it now, then when?

Thanks again,

Ed Turner, P.E./L.S., A.E.A. and Debra Turner

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The Engineering Voice

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