# WCLA NEWS

## President's Message

Happy Fall!

As we near the end of 2022, I look back at this year and note how far things have come for our practice. At the beginning of the year, the WCLA pivoting and adapting for the installation of this year's Board. It looked like 2022 might bring much of the same; distance among members and canceled events. The Installation Dinner was the only event we would cancel this year. We successfully held two medical seminars in person. We held the golf outing. YLS hosted happy hours. The WCLA hosted a fun-filled event (even for those of us who are not White Sox fans) at Guaranteed Rate Field. We were able to bring people together to socialize, network and build relationships. We look to expand on this in 2023.

This year also brought changes to how we do thing at the Commission. The Commission is learning to adapt their practices in a way that meets the needs of the administration, the claimants and employers and for the lawyers. Chairman Brennan worked with the bar associations, including the WCLA, to implement changes and to bring consistency to the pre-trial process. He was open to suggestions, comments and concerns. We gathered feedback from members, and we will meet with the Chairman to share your comments, suggestions and concerns. If you have anything you want us to share with the Chairman about the arbitration processes, please share with a Board member.

We look forward to seeing everyone at the upcoming events. Check the WCLA website for CLE opportunities – remember CLE is free to all active WCLA members. We encourage you to take advantage of the opportunities and attend the monthly courses. Dave Menchetti does a wonderful job for the WCLA coordinating the programs and making sure we are all up-to-date on the relevant law. You can easily attend the monthly CLE sessions from your office or wherever you happen to be. Join us for the Nomination Meeting on November 17th, the Holiday Party at Café Brauer at Lincoln Park Zoo on December 2nd and the Election Meeting on December 15th. Until then, have a happy and safe fall.

**- Michelle L. LaFayette**
**WCLA President**

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## Fall 2022

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# The Report of the National Commission on State WC Laws 50 Years Later:

## The Document That Remade the Program

*By David B. Torrey*



The year 2022 marks the 50th anniversary of the publication of The Report of the National Commission on State Workmen's Compensation Laws (National Commission Report).[1] That 1972 report was the culmination of a yearlong effort by a 15-person panel—supported by a small army of researchers and consultants—that set forth, among other things, 19 essential recommendations for a modern state workers' compensation program. The National Commission on State Workmen's Compensation Laws (Commission) did not, as sometimes represented, recommend federalization of the system.[2] To the contrary, the Commission favored state administration but called for Congress to enforce the report's essential recommendations after three years in the event that the states did not comply and adopt them.[3]

While federal action did not, in the end, unfold, the National Commission Report has remained an enduring and influential force in the community of lawyers, academics, and others involved in the understanding and assessment of workers' compensation programs. So comprehensive, thoughtful, and expert is the National Commission Report that, to this day, no analysis of the workers' compensation system can be undertaken competently without reference to this pivotal study.[4]

The latter phenomenon is due to at least two factors. First, despite the passage of a half century, the basic principles and objectives of the system have not changed.[5] Second, in the years following the National Commission Report, the chairman of the Commission, John F. Burton Jr. (an economist with a law degree), emerged as the nation's uncontested authority on workers' compensation—and an untiring proponent of the Commission's broader vision. Burton, along with the Commission's executive director, Peter S. Barth, has consistently revisited the report with retrospectives[6] and public addresses,[7] challenging system participants to reflect on whether the promise of workers' compensation is being vindicated in practice. A third factor must be added: the National Commission Report is a literary masterpiece and a pleasure to read.

The Commission's chief counsel, John Lewis, characterized the Commission and its report as marking a turning point in workers' compensation. The National Commission Report "provided a critically needed analysis, one that ought to be constantly reviewed and renewed, rather than being left as a historical document."[8] Toward that end, this article presents a 50th anniversary briefing on the Commission and its report. This article sets forth the background and substance of the National Commission Report, its aftermath, its impact, its attitude toward lawyers, and thoughts regarding this remarkable document's enduring relevance.

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## Background and Substance of the Report

Long before 1972, critics had noted unsatisfactory aspects of workers' compensation, including incomplete coverage, low benefit rates, and unsatisfactory administration.[9] Efforts at reform, however, had always been stymied by system players who wanted no change in the status quo—and certainly no federal role.[10] In the 1960s, however, a number of factors, including rising injury rates, prompted an urgency with regard to the need for review of state programs.[11] Congress, in the course of passing the Occupational Safety and Health Act (OSHA), directed, in section 27 of that 1970 law, the creation of a commission to investigate the adequacy and equity of the system. The panel was to conduct its investigation; hold hearings; be aided by researchers; deliver a report by July 31, 1972; and then disband.[12]

The Nixon administration appointed Burton, a young University of Chicago economics professor, as chairman and Barth, an economist, as executive director. In a famous slight, the renowned Arthur Larson was left out of any leadership role but instead served as a consultant.[13] Virtually all of the Commission members were Republicans.

As noted above, the Commission hired other experts to undertake and develop research that would enlighten Commission members. And, as also noted above, the Commission convened hearings throughout the country. Notably, in the end, the research staff prepared a treatise called the Compendium on Workmen's Compensation and, as well, three volumes of Supplemental Studies for the National Commission on State Workmen's Compensation Laws, which reviewed various aspects of the program.[14]

The Commission was formulated to ensure that some bold recommendation as to comprehensive federal intervention into the state system would not result.[15] And, in the end, this plan worked, with the Commission unequivocally recommending against outright federalization. Still, the Commission members, whatever their political orientation, became aghast at what they found during the hearings. According to Barth, "it was virtually impossible to avoid concluding that the state systems were in terrible disrepair."[16] While jurisdictions varied in the quality of their programs, many provided incomplete coverage. Others, meanwhile, featured deficient administration. And, most notoriously, most laws featured poverty-level benefit rates and arbitrary rules as to the duration of benefits. The Commission ultimately communicated to the president and Congress "that the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable."[17]

**Essential recommendations**. Faced with this situation, the Commission ultimately agreed, unanimously, that if the states did not comply with 19 of its "essential" recommendations (most involving enhanced coverage and benefit levels), Congress should step in some three years hence and undertake enforcement action: "We recommend that compliance of the States with these essential recommendations be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should then guarantee compliance with these recommendations."[18]

The National Commission Report first identified five objectives for a modern program. These were (and still are): (a) broad coverage of employees (chapter 2), (b) substantial protection against interruption of income (chapter 3), (c) sufficiency of medical and rehabilitation remedies (chapter 4), (d) encouragement of safety (chapter 5), and (e) effective delivery of benefits (chapter 6). It was against the backdrop of these values that state programs were evaluated.[19]

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The report then set forth 84 recommendations, 19 of which were deemed essential[20]:

R2.1. "[T]hat coverage by workmen's compensation laws be compulsory and that no waivers be permitted."

R2.2. "[T]hat employers not be exempted from workmen's compensation coverage because of the number of their employees."

R2.4. "[A] two-stage approach to the coverage of farmworkers." First, that "as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds $1,000 be required to provide workmen's compensation coverage to all of his employees. . . . As a second stage, . . . as of July 1, 1975, farmworkers be covered on the same basis as all other employees."

R2.5. "[T]hat as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security."

R2.6. "[T]hat workmen's compensation be mandatory for all government employees."

R2.7. "[T]hat there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations."

R2.11. "[T]hat an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired."

R2.13. "[T]hat all States provide full coverage for work-related diseases."

R3.7. "[T]hat, subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage."

R3.8. "[T]hat as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage."

R3.11. "[T]hat the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, . . . that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States."

R3.12. "[T]hat, subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage."

R3.15. "[T]hat as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage."

R3.17. "[T]hat total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time."

R3.21. "[T]hat, subject to the State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage."

R3.23. "[T]hat as of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage."

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> R3.25. "[T]hat death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage . . . two years' benefits be paid in a lump sum to the widow or widower. . . . [T]hat benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution."
>
> R4.2. "[That] there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment."
>
> R4.4. "[T]hat the right to medical and physical rehabilitation benefits not terminate by the mere passage of time."[21]

While these recommendations dealt mostly with benefit adequacy, Burton stressed that the other recommendations, particularly those as to effective delivery, should hardly be disregarded. Of course, adequate benefits are for naught if they are not administered in a proper manner. However, Burton stressed that the adequacy recommendations were the most critical and, also, those most receptive to the enforcement mechanism that the Commission contemplated if the states did not comply.[22] Furthermore, the Commission members felt so strongly about the need to increase benefit levels that they desired a unanimous report—and it was on the above 19 recommendations that such unanimity could be expressed.[23]

**Other recommendations.** Critically, the additional recommendations covered a broad range of topics, including advocating that experience rating be extended to as many employers as possible[24] and that employers be responsible for vocational rehabilitation.[25] In addition, the Commission recommended that the "'accident' requirement be dropped as a test for compensability."[26]

Of particular interest to lawyers were (and still are) the 22 recommendations surrounding effective delivery of benefits. Among these recommendations were that attorney fees be regulated (even overseen by a state agency attorney-reviewer), that compromise and release (C&R) settlements in effect be outlawed,[27] and that agency employees be members of the civil service.[28]

Importantly, in this realm, the vision of the Commission embraced a self-administering (or self-executing) program where "employees would be able to protect their interests without external assistance."[29] Under this vision, the role of lawyers was to be minimal. Most disputes should be handled within the agency "and should resolve . . . without the assistance of legal counsel representing employee or employer."[30] The National Commission Report declared that "a workmen's compensation program in which more than an insignificant minority of claims involve formal contest is aberrant and suggests that the State is not providing adequate protection to workers through the workmen's compensation agency."[31]

**Enforcement**. A major quandary was enforcement in the event that the states did not comply. Here, the Commission pointedly avoided the device used during the New Deal to leverage state compliance with the then new unemployment compensation laws—that is, obliging states to comply lest a tax be assessed.[32] Instead, the Commission suggested that

> federal laws would [first] require employers to purchase workers' compensation insurance or otherwise secure workers' compensation protection incorporating the 19 essential recommendations. Second, an individual worker could file his or her claim with the state workers' compensation agency, which would be authorized by federal law to make awards consistent with the federal standard even if the state had not amended its workers' compensation laws to incorporate the 19 essential recommendations.[33]

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**Equity.** An enduring theme of the National Commission Report is not just benefit adequacy but the broader issue of "equity." The concern in this regard was (and continues to be) the phenomenon of states providing significantly varying coverage and benefits.[34] Proponents of equity among the states (who hence promote federal standards) have long decried, as simply unfair, a system where such variation exists. A contemporary critic, Professor Christopher Howard, like the Commission, characterized as unacceptable the fact that workers who sustain the same injuries in different states often are entitled to vastly disparate benefits—or none at all.[35]

Another Commission-observed problem with inequity exists.[36] Besides basic unfairness, the state-based structure of workers' compensation may produce an interstate "race to the bottom," whereby states vie with one another to cut benefits and reduce costs in an effort to retain or attract businesses.[37] Burton stated that this effect of interstate inequity is worse now than in 1972.[38]

## The Aftermath of the Report

**Federal government indifference.** The Commission leaders were gratified after the 1972 publication of the National Commission Report to see that the Longshore and Harbor Workers' Compensation Act and the Federal Employees' Compensation Act were amended to consider many Commission recommendations.[39] Otherwise, however, the administration and Congress failed to embrace the Commission's findings.

The Nixon and Ford administrations received the findings coldly. The former did respond to the Commission's recommendation that a new commission be instituted at once to assist in carrying out the Commission's vision. In this regard, the Nixon administration appointed the Interdepartmental Task Force to continue the study of state programs.[40] That enterprise monitored state performance and was notable for looking more deeply into the question of occupational disease coverage and compensability,[41] but in the end the task force "was totally void of comment" when July 1, 1975, arrived and state compliance with the recommendations had still proved half-hearted.[42]

Congress, meanwhile, also failed to embrace the Commission's findings. According to commentator Donald Elisburg, "in retrospect, a serious failure on the part of the Commission when it forged its consensus, was in not taking steps to insure that the Congressional patrons of the Commission took ownership of the conclusions and recommendations."[43] In any event, upon the arrival of July 1, 1975, while significant progress had been made, many states had exhibited a failure to respond to all 19 of the essential recommendations, and Congress took no action.

During the succeeding Carter administration, an effort was undertaken to promulgate a federal program, using the unemployment compensation tax approach, but such a program was never enacted.[44] Then, in 1980, with the election of a conservative Republican administration, the political tides shifted, and the impetus for either federalization or federal standards completely fizzled.[45]

Remarkably, the Department of Labor continued, until 2004, to monitor state compliance with annual reports. These reports, which were widely published, assigned to each state a rating based on its compliance with the 19 essential recommendations.[46] However, as Congress never acted, the recommendations still stand, in the present day, as only potential federal standards.

Burton believed that the specter of federal action was important in getting states to respond, at least in part, to the essential recommendations.[47] This assertion rings true. Barth explained that the idea of a federal-level enterprise to examine state laws was controversial even in the late 1960s. Many constituent groups were concerned about federalization, or other

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federal involvement, in workers' compensation. Barth characterized this concern as reasonable; after all, the late 1950s and 1960s had seen federal activity: (1) in the realm of workplace safety (OSHA), (2) with the creation of a carve-out workers' compensation program (the Black Lung Act), (3) with the development of a federal social insurance program for the severely disabled (Social Security Disability (SSD)), and (4) with the displacement of state-federal arrangements with a federal welfare-style program for the disabled poor (Supplemental Security Income (SSI)).[48]

Although the institutional follow-up to the report was dismaying, many, if not most, states raised their benefit level rates for temporary total and permanent total disability. According to Burton, the years 1972 to 1982 "represent[ed] the greatest improvement in the benefit and coverage provisions of state workers' compensation laws since the initial . . . statutes were enacted in most jurisdictions prior to 1920."[49] Commission leaders were able to declare, as they still do, that this partial response constituted a definitive improvement in state systems.

**The cost and litigation crisis.** The response of states was described by American Bar Association leader Don DeCarlo as generating an unprecedented "era of expansion."[50] However, beneficently enhanced coverage and rates, coupled with sharply increasing medical costs (aggravated by inflation), resulted in what most observers considered a cost and litigation crisis.[51] For example, while workers' compensation costs were only about 1 percent of payroll in 1972, by the early 1980s, they were nearly 2 percent.[52]

Indeed, insurance industry spokesmen, in 1991, complained that "many of the [National Commission's] recommended changes have advanced the societal goal of fair and adequate compensation for injured workers. But these changes have also added markedly to the costs of state workers' compensation systems."[53] Another analyst remarked, "While the National Commission recommended much needed reforms, in some cases the subsequent state implementation was poorly designed and lacked adequate control. The result was that costs escalated rapidly in some states, private insurance carriers ceased to write workers' compensation and some carriers went out of business entirely."[54]

Meanwhile, with vastly increased amounts of money at stake, litigation bloomed, often (as in Pennsylvania) overwhelming dispute resolution systems. Lewis remarked that, in retrospect, the Commission erred in its prediction of only modest cost increases in the event of enactment of its recommendations and that "we should have considered that increased benefits might have increased litigation and sent workers' compensation monies to the wrong people."[55]

## Response to the Crisis, Continued Retraction, and Enduring Relevance of the Report

**Retrenchment.** The response to the cost and litigation crisis has been termed "a period of retrenchment."[56] Legislatures were responsive to business interests and enacted restrictions on benefits. As Burton pointed out, a characteristic of such changes has not been a reduction in rates; instead, the changes have acted as devices to restrict threshold access to benefits.[57] This retrenchment, a national trend, soon became documented in academic legal literature and in the claimants' bar (see below).[58] Burton stated that the "1990's commenced [a] period when an 'emphasis on affordability' has prevailed."[59]

Of course, pendulums are known to swing, but a phenomenon of the retrenchment has been that the swing away from adequacy—and, in general, the Commission's vision of a modern program—never stopped.[60] According to Burton, writing in 2007, the great "mystery," further, was why this was the case despite the fact that the cost crisis had seemingly resolved, with statistics showing (as they still do)[61] markedly

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reduced employer costs.[62]

The crisis of retrenchment has reflected not only rejection of the vision of the Commission and certain of its essential recommendations but also a refutation of the very idea that workers' compensation is a key aspect of the country's web of social insurance protections. The crisis reached its nadir with the Oklahoma legislature's decision to allow employers to opt out of the system (while preserving tort immunity) if they provided an ERISA-governed work accident plan.[63] This development, of course, violated key recommendation R2.1—that coverage by the law be compulsory and that "no waivers be permitted." (The opt-out law was later struck down as unconstitutional.[64])

The critique of the retrenchment has been informed by the recommendations and vision of the Commission of what a workers' compensation program should continue to look like. Notably, the Workers' Injury Law & Advocacy Group (WILG) used the occasion of the 40th anniversary of the National Commission Report to highlight, in 2012, the retrenchment phenomenon.[65] Attorneys John R. Boyd and Steve Embry charged that workers' compensation was a "compromise that has remained under constant attack from business and insurance lobbying efforts seeking to revoke the compromise."[66] They pointed out that the Commission, some 40 years before, determined that state laws were "rife with caps and limited duration benefit restrictions" and that states were returning to that unsatisfactory situation. WILG, notably, was a key supporter of proposed legislation called the Baca bill, which would have restored an evaluative federal commission.

These charges by WILG, and others, were detailed further in a widely publicized 2015 ProPublica/NPR investigative report entitled "The Demolition of Workers' Comp."[67] The authors, like the WILG critics, identified instances of retraction, including medical fee caps and unfair utilization review schemes.[68] Like the WILG authors, the ProPublica report authors identified the critical analysis undertaken by the Commission 45 years before and quoted Burton as saying, "[The recent changes are] unprecedented in the history of workers' compensation. . . . I think we're in a pretty vicious period right now of racing to the bottom."[69]

**Continued relevance of the National Commission Report**. The enduring relevance of the National Commission Report is found in a September 2016 U.S. Department of Labor publication, *Does the Workers' Compensation System Fulfill Its Obligations to Injured Workers?*,[70] published in the waning days of the Obama administration. This document, overwhelmingly informed by the Commission report, repeated in great detail the complaints of WILG and of the ProPublica/NPR investigative report. The Department of Labor observed that ever since the 1980s, the "Commission's legacy [has] faded," and it admonished that "[w]e are moving further from many of the National Commission's 19 essential recommendations."[71] The report identified, as examples, reduced benefits in California, Florida, and Kentucky; post-injury drug-testing policies (which likely discouraged workers from making claims); permissiveness as to compromise settlements; elimination of second-injury funds; state consideration of opt-out schemes; and rampant misclassification of workers.[72]

The Department of Labor report, acknowledging that the original Commission recommendations "do not address some of the new issues that have arisen," suggested that a federal role in oversight of workers' compensation programs be established. Among areas potentially to be explored were (1) reinstitution of federal tracking of changes in state programs (a process that had ended in 2004); (2) appointment of a new national commission; and (3) promulgation of standards, with a 1972-like admonition that if states did not comply, some sort of federal action would follow.[73]

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empower their agencies. Under the Commission's vision, agencies would employ physicians to monitor and direct medical treatment[88] and assess, administer, and facilitate vocational rehabilitation.[89] Similarly, they would critically evaluate (and usually forbid) compromise settlements.[90] And, most ambitiously, agencies would engage in outreach to both injured workers and employers to ensure (1) that both have current information about rights and responsibilities; (2) that workers receive their correct compensation; and (3) that, at all costs, disputes and litigation are avoided.[91] This vision has not been vindicated. Burton, writing in 2005, complained, "In practice, as opposed to principle, most workers' compensation agencies devote most of their resources to adjudication, and insufficient resources to the other roles."[92]

**Successes**. If these aspects of the Commission's vision never unfolded, the system nevertheless has improved, and—it is submitted—the Commission's vision has been a success. Weekly benefit levels for wage loss are no longer at poverty levels. (However, one aspect of the retrenchment, limiting duration of benefits, persists or has been renewed in several states.[93])

Meanwhile, state administrative agencies are said to be much better than they were in the early 1970s. According to Elisburg, "Perhaps the most significant achievement (perhaps consequence) of the efforts to improve the workers' compensation systems . . . since the Report is the development of a very significant infrastructure within each State government, as well as in the Federal government, to manage the workers' compensation programs."[94] Also, several states enacted the Council of State Governments model act's extraterritoriality proviso[95] (which parallels recommendation R2.11), or a similar law, to give more choices to an injured worker in terms of where to prosecute a claim.

Furthermore, the creation of the Workers Compensation Research Institute and extensive research undertaken by the National Council on Compensation Insurance have addressed a major Commission headache—lack of research and data.[96] Meanwhile, the National Academy of Social Insurance also studies, annually, coverage and costs of the program.[97] (It is true, however, that only a few jurisdictions at the state level seem to undertake much research into the program.[98]) And, with the advent of the internet, many states effectively provide, via FAQs and other web pages, extensive information to workers about their rights.

Finally, the Commission's vision of a system with less litigation has been vindicated in part by the advent of mediation.[99] (Notably, mediation typically involves lawyers, with C&R settlements—and often resignation—as the goal, and is not really the dispute-prevention device that the Commission envisioned.)

## The National Commission Report and Its Attitude toward Lawyers

The Commission and its report were not lawyer-friendly enterprises. The Commission, advocating a self-executing system where lawyers play a minimal role, was reviving the sanguine hope of a half century before. That vision of a lawyer-free program was highly idealistic at the time, and was certainly so by 1972. When the policy choice of most legislatures was made to undergird workers' compensation with private insurance, sold by profit-seeking carriers, the die was cast, for better or for worse, for a dispute-prone system.[100] If workers are to have their claims disputed by a sophisticated enterprise such as an insurance company, they will often require lawyers. Indeed, it is strange to hear the assertion that the claimant, often highly leveraged, should have to proceed alone against such an adversary.

Of course, the National Commission Report's response to this proposition was to demand that state agencies act in an aggressive, paternalistic manner. An "obligation of a workmen's compensation agency," the report admonished, "is to advise workers of their rights and obligations under the law and to assure that they receive the benefits to which they are entitled."[101]

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The aggressive critique of the retrenchment, especially the Department of Labor report, generated concerns among the employer and insurance communities that long-disfavored federal intervention could again be considered seriously. Importantly, some argued that the critique was exaggerated[74] and that the system was not being "demolished."[75] The head of the Tennessee workers' compensation agency stated, "[M]uch is right with states' workers' compensation systems. The overwhelming majority of claims are processed with[out] undue delay or controversy. Most injured workers get appropriate medical care and indemnity benefits and return to their pre-injury life."[76] In any event, the November 2016 election of another conservative Republican administration brought to a halt federal-intervention concerns.[77]

## Areas of Reflection, Disappointment, and Success

**Reflections**. The leaders of the Commission have undertaken, over the decades, an extraordinary amount of reflection and critique of their own project. As noted above, Lewis believed that the Commission miscalculated how expensive the increased-benefit changes would be and failed to foresee the litigation explosion and other aspects of a system now flush with money.[78]

Meanwhile, Barth has written extensively with regard to how the Commission could have more comprehensively treated the compensability of occupational diseases and how recovery might be achieved for disease ailments.[79] Barth has also reflected on how the Commission had no idea that medical treatment expenses would soon explode: "None of us . . . in the early 1970s had any idea that these costs would eventually be driven up to the point where they are now as large as those for indemnity benefits, at least in some states."[80] He noted that, at the time, the very concepts of complex diagnostic imaging, managed care, and psychiatric overlay were unknown.

And both Burton and Barth have expressed regret that the Commission could not reach a consensus on how permanent partial disability should be handled; the Commission could only call, "innocuous[ly]," for further examination of this contentious aspect of the program.[81]

**Disappointments.** At least two aspects of the larger Commission vision have collapsed. First, the National Commission Report reflected a conviction that workers' compensation is to be conceived of not as a legal system but primarily as a social insurance plan.[82] This advocacy was current at the time of the Commission; notably, the International Association of Industrial Accident Boards and Commissions (IAIABC) president, in 1970, stated:

> An increasingly adverse element is the legal profession. As is their wont, attorneys are inclined to look upon workmen's compensation as a specialized set of legal problems. . . . Workmen's compensation is not a legal system. The measure of success in workmen's compensation is not just how fairly and quickly litigation is disposed of, but to what degree it is avoided entirely.[83]

Toward this precise end, the Commission leaders produced not a model act but, instead, a report "that placed a heavy emphasis on the way benefits were determined and the way the system was administered."[84] Yet, 50 years later, workers' compensation has become highly legalistic, and litigation is prominent in many states. Claims, certainly those featuring some aspect of permanence, are commodified; and C&R settlements—thoroughly condemned by the Commission[85]—are the rule in virtually all states.[86]

The second area of default is the lack of evolution of an "active" workers' compensation agency.[87] The National Commission Report was extraordinary in its insistence that workers' compensation can only deliver its promise if states create, maintain, fund, and creatively

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But this admonition is idealistic and has never been borne out. One reason for this phenomenon is that agencies are often funded by the same insurance companies that are disputing injured worker claims. Another reason is that, for better or for worse, the complexity of the system in the present day is so great that even a well-funded agency would be overwhelmed by the task of effectively and efficiently disbursing competent advice.

In general, the report's compassionate vision of a lawyer-free program is dated in a system that has become an "industry," where claims are commodified and where retractive laws feature complex mechanisms to limit access. Excessive litigation is indeed a sign of dysfunction, but injured-worker lawyers are essential in this environment. In any event, it is no longer realistic to posit that "[i]t would be possible for the administrative agency to eliminate most of the need for counsel by providing assistance to employees."[102]

## Conclusion

Franklin Roosevelt, in his second inaugural address, famously inquired, "Let us ask again: Have we reached the goal of our vision of that fourth day of March 1933? Have we found our happy valley?"[103] The phenomenon of the National Commission on State Workmen's Compensation Laws is that its leaders, and those who have embraced its vision, have long advanced a similar query about the 31st day of July 1972: Has the promise of workers' compensation been vindicated, with adequacy and equity, in actual practice? It is submitted that, in this enduring, meritorious inquiry, the Commission's report proves its continuing relevance.

What, meanwhile, of reviving such an enterprise? A favorite—perhaps provocative—query is whether a new national commission should be convened, with a presumed similar charge to evaluate the system and make recommendations.[104] The idea has appeal, given the passage of a half century, a fundamentally altered environment, and the retrenchment with its jarring retractions.

Yet, such proposals are unanimously dismissed. Burton, for his part, remarked in 2013 that "a unanimous National Commission Report involving members from both parties and representing a variety of interest groups is inconceivable today."[105] (Burton, notably, opposed the Baca bill.[106]) Meanwhile, as to the long-dreaded prospect of federalization, Burton was similarly dismissive: "To use the analytical term of the Garden State: forgetaboutit."[107] Nor, surprisingly, does Burton even believe that federal standards are workable in the present day. He has recommended, instead, specialized study panels of proven experts to assess the most pressing challenges surrounding the field.[108]

Both Burton and Barth, in any event, have never retreated from asserting, correctly, that the Commission and its report exerted a positive net effect on state programs. As Barth stated, "had there been no Commission, or had the Commission not addressed flaws in the . . . programs, one can readily imagine that the systems that existed in 1972 eventually would have come under unrelenting pressure to be changed or to be replaced."[109] All who care about the system should appreciate the avoidance of that unhappy outcome, particularly the latter. The nation has benefited from the extraordinary effort that, 50 years ago, remade the program and set forth a humane vision for workers' compensation.

*David B. Torrey is a workers' compensation judge in Pittsburgh, Pennsylvania, and an adjunct professor of law at the University of Pittsburgh School of Law.* *Torrey thanks his colleague Lawrence D. McIntyre, Esq., for his proofreading assistance. This article is dedicated to Professor John F. Burton Jr. and Professor Peter S. Barth.*

*Continued on Page15*

***Notes***

*1. NAT'L COMM'N ON STATE WORKMEN'S COMP. L., THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS (1972) [hereinafter NAT'L COMM'N REPORT], http://workerscompresources.com/national-commission-report.*

*2. See id. at 26 ("[A] Federal takeover would substantially disrupt established administrative arrangements. Moreover, we have seen no evidence that Federal administrative procedures are superior to those of the States. We reject the suggestion that Federal administration be substituted for State programs at this time.").*

*3. See id. (noting that if, after review on July 1, 1975, "Federal support is needed to guarantee compliance with these essential recommendations, they should be included as mandates in Federal legislation").*

*4. See, e.g., Michael Duff, How the U.S. Supreme Court Deemed the Workers' Compensation Grand Bargain "Adequate" without Defining Adequacy, 54 TULSA L. REV. 375 (2019) (citing the Commission's finding that, in 1972, a minority of states did not pay permanent total disability for life); Emily A. Spieler, (Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900–2017, 69 RUTGERS U. L. REV. 891 (2017) (noting the genesis of the Commission and summarizing the nature of its recommendations).*

*5. In a 2017 essay, an insurance industry veteran remarked, correctly, "Although work environments and technology have changed the workplace and the challenges of workers' compensation, the basic premises of workers' compensation have not significantly changed." Ken Eichler, Editor's Note, IAIABC PERSPS. 3, 5 (Jan. 2017).*

*6. See, e.g., John F. Burton Jr., The National Commission on State Workmen's Compensation Laws: Some Reflections by the Former Chairman, 40 IAIABC J. 15 (Fall 2003), https://www.americanbar.org/content/dam/aba/events/labor_law/2013/03/workers_compensationcommitteemidwinterseminarandmeeting/reflections_burton.authcheckdam.pdf; Peter S. Barth, Some Reflections on the National Commission and Its Legacy, 4 Workers' Comp. Pol'y Rev. 21 (July/Aug. 2004), http://workerscompresources.com/wp-content/uploads/2012/11/JA04.pdf.*

*7. John F. Burton Jr., Should There Be a 21st Century National Commission on State Workers' Compensation Laws?, Paper Presented at the American Bar Association Workers' Compensation Midwinter Seminar and Conference (Mar. 16, 2013), https://www.americanbar.org/content/dam/aba/events/labor_law/2013/03/workers_compensationcommitteemidwinterseminarandmeeting/21st_burton.authcheckdam.pdf.*

*8. See The Twentieth Anniversary of the National Commission on State Workmen's Compensation Laws: A Symposium, in 1994 WORKERS' COMPENSATION YEAR BOOK, at I-180, I-194 (1994) [hereinafter Twentieth Anniversary Symposium] (observations of John H. Lewis).*

*9. The U.S. Department of Labor had, notably, long-established voluntary standards. These standards are cited repeatedly in the National Commission Report. They may be found in appendix A of the National Commission's Compendium on Workmen's Compensation.*

*10. See DAVID B. TORREY & ANDREW E. GREENBERG, PENNSYLVANIA WORKERS' COMPENSATION: LAW & PRACTICE § 1:30 (4th ed. 2021) ("Why Workers' Compensation Was Never Federalized").*

*11. See Burton, supra note 6, at 15–16.*

*12. See id. at 17.*

*13. See id. at 16 n.2. According to Burton, "Arthur [Larson] was the obvious choice to serve as Chairman of the National Commission. However, Arthur had supported Lyndon Johnson in his election campaign against Barry Goldwater, and Arthur was therefore rejected by the White House staff for membership on the National Commission."*

*14. See Barth, supra note 6, at 21 ("The Compendium is a volume that sought to describe the existing characteristics of the state laws and practices, often quantitatively, while the Supplemental Studies were a series of staff and commissioned research papers covering a wide range of topics.").*

*15. See Twentieth Anniversary Symposium, supra note 8, at I-180 (observations of John F. Burton Jr.).*

*16. Barth, supra note 6, at 22.*

*17. See NAT'L COMM'N REPORT, supra note 1, at 3 (letter of transmittal).*

*18. See id. at 26.*

*19. See id. at 43–114. See generally Emily A. Spieler, Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries, 31 HOUS. L. REV. 119 (1994) (discussing the National Commission Report and identifying five objectives).*

*20. NAT'L COMM'N REPORT, supra note 1, at 26, 126–27.*

*21. Id. at 45–48, 50, 60, 62–65, 71–72, 80.*

*22. Burton, supra note 6, at 23 n.6.*

*23. See Twentieth Anniversary Symposium, supra note 8, at I-188 (noting the Commission's lack of hard recommendations on permanent partial disability (PPD), Barth remarked, "[p]utting it bluntly, the Commission had too important a message to deliver to let differences over the proper approach to [PPD] get in its way").*

*Continued on Page16*

24. NAT'L COMM'N REPORT, supra note 1, at 98 (R5.3).
25. Id. at 82 (R4.7, R4.8, R4.9).
26. Id. at 49 (R2.12). According to the report, the term "is undesirable as it serves to bar compensation for injuries that are clearly work-related." Id.
27. Id. at 110 (R6.16, R6.17).
28. Id. at 103 (R6.4).
29. Id. at 99.
30. Id. at 106–07.
31. Id. at 107.
32. Barth, supra note 6, at 23 ("Larson[] advised privately against using this technique on grounds that it was too powerful a device to enforce compliance on the states. He noted that after the method was used in the 1935 statute that created the unemployment system, Congress never used the method again.").
33. Burton, supra note 6, at 23.
34. The report stated, among other things, that "[i]nequity results from the wide variations among the States in the proportion of their workers protected by workmen's compensation." NAT'L COMM'N REPORT, supra note 1, at 15.
35. CHRISTOPHER HOWARD, THE WELFARE STATE NOBODY KNOWS: DEBUNKING MYTHS ABOUT U.S. SOCIAL POLICY 155–57 (2007).
36. The report discussed this issue but to a certain extent discounted the same as a factor that should dissuade states from increasing benefit rates and coverage. NAT'L COMM'N REPORT, supra note 1, at 24–25.
37. See Burton, supra note 6, at 23; see also John F. Burton Jr., Keynote Address at the Centennial Celebration of the Pennsylvania Workers' Compensation Program, Hershey, Pa. (June 1, 2015), in 7 PA. BAR ASS'N WORKERS' COMP. L. SECTION NEWSL. 101, 109 (July 2015) [hereinafter Keynote Address] (referring to the "current challenge for workers' compensation" as the "race to the bottom").
38. John F. Burton Jr., The National Commission Thirty-Three Years Later: What Have We Learned? (Part 1), 42 IAIABC J. 21, 28 (Fall 2005).
39. Twentieth Anniversary Symposium, supra note 8, at I-190 (observations of Donald Elisburg).
40. Barth, supra note 6, at 23.
41. Cf. id. at 24.
42. Burton, supra note 6, at 25. The task force ultimately published, in 1977, Workers' Compensation: Is There a Better Way?: A Report on the Need for Reform of State Workers' Compensation.
43. Twentieth Anniversary Symposium, supra note 8, at I-191 (observations of Donald Elisburg).
44. Id. at I-190.
45. Burton, supra note 6, at 26.
46. The LRP Workers' Compensation Year Book (since discontinued) reproduced, annually, the Department of Labor rating charts.
47. Burton, supra note 38, at 27.
48. Barth, supra note 6, at 21.
49. Twentieth Anniversary Symposium, supra note 8, at I-180 (observations of John F. Burton Jr.).
50. DONALD T. DECARLO & MARTIN MINKOWITZ, WORKERS COMPENSATION INSURANCE AND LAW PRACTICE: THE NEXT GENERATION 9–27 (1989) (recounting, and commenting upon, the 19 essential recommendations).
51. ORIN KRAMER & RICHARD BRIFFAULT, WORKERS' COMPENSATION: STRENGTHENING THE SOCIAL COMPACT 16–17 (1991) ("The pace of [liberalizing change] accelerated markedly following the publication of the Report of the National Commission on State Workmen's Compensation Laws in 1972 and the increased attention in the 1970's and early 1980's to the problems of occupational disease. Nor has the rate of change slackened significantly since the 1970's.").
52. Id. at 3. The authors further stated that premiums "rose 108% from 1979 to 1989. But over the same period . . . claim costs skyrocketed 154%, and that wide gap is continuing to grow. Over the 1984–1989 period, claim costs rose at an annual rate of nearly 14%." Id.
53. Id. at 17.
54. Robert J. Malooly, Workers' Compensation Insurance Markets and the Role of State Funds, in WORKERS' COMPENSATION: WHERE HAVE WE COME FROM? WHERE ARE WE GOING? 41 (Richard A. Victor & Linda L. Carrubba eds., 2010).
55. Twentieth Anniversary Symposium, supra note 8, at I-193 (observations of John H. Lewis).
56. Abbie Hudgens, The Need for Conversation, IAIABC PERSPS. 14, 14 (Jan. 2017).
57. Burton, supra note 38, at 27.
58. See Martha T. McCluskey, The Illusion of Efficiency in Workers' Compensation "Reform," 50 RUTGERS L. REV. 657 (1998) (discussing the National Commission Report and noting the slowed progress of improvements in state laws); see also Dean J. Haas, Falling Down on the Job: Workers' Compensation Shifts from a No-Fault to a Worker-Fault Paradigm, 79 N.D. L. REV. 203 (2003) (summarizing the National Commission Report and comparing current North Dakota law unfavorably to the recommendations; opining, also, that "the recommendations of the National Commission remain a worthy goal").
59. Burton, supra note 38, at 27.

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60. John F. Burton Jr. & Ed Welch, Comments at the American Bar Association Workers' Compensation Section Conference in Chicago, Ill. (Mar. 27, 2008).
61. See GRIFFIN T. MURPHY ET AL., WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS 1 (2021) ("When adjusted for [an] increase in covered wages, employers' costs were $1.17 per $100 of covered wages, a decrease of $0.21 (15.0%) since 2015.").
62. John F. Burton Jr., The Mystery of Workers' Compensation Reform Solved, 44 IAIABC J. 49 (Fall 2007) (seeking to answer the question of why retractive reform had continued in many states when costs had been declining).
63. See David B. Torrey, The Opt-Out of Workers' Compensation Legislation: A Critical Briefing and the Vasquez v. Dillard's Case, 52 A.B.A. TORT, TRIAL & INS. PRAC. L.J. 39 (2017); Bob Burke, The Evolution of Workers' Compensation Law in Oklahoma: Is the Grand Bargain Still Alive?, 41 OKLA. CITY U. L. REV. 337 (2016) (noting the National Commission Report and detailing Oklahoma's response).
64. Vasquez v. Dillard's, Inc., 381 P.3d 768 (Okla. 2016).
65. For a summary, see David B. Torrey, A Symposium on the 40th Anniversary of the Report of the National Commission on State Workmen's Compensation Laws, WORKERS' FIRST WATCH 21 (Fall 2012).
66. John R. Boyd & Steve Embry, WILG Holds 40th Anniversary Symposium on the Status of Workers' Compensation in the United States, WORKERS' FIRST WATCH 21 (Fall 2012).
67. Michael Grabell & Howard Berkes, The Demolition of Workers' Comp, PROPUBLICA (Mar. 4, 2015), https://www.propublica.org/article/the-demolition-of-workers-compensation.
68. Id.
69. Id.
70. U.S. DEP'T OF LAB., DOES THE WORKERS' COMPENSATION SYSTEM FULFILL ITS OBLIGATIONS TO INJURED WORKERS? (2016), https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf.
71. Id. at 2.
72. Id. at 13–20.
73. Id. at 24–25. The most recent critique is by Professor Emily Spieler. She charged that the retrenchment constitutes "reversing course" from the Commission's vision. Spieler, supra note 4.
74. Bob Wilson, The National Conversation Requires a Great Deal of Dialogue, IAIABC PERSPS. 16, 20 (Jan. 2017) (remarking that "[t]he workers' compensation system is not perfect, but it is not broken, either").
75. Hudgens, supra note 56, at 15.
76. Id.
77. An example of this changed dynamic: At a November 29, 2016, conference attended by this author, a prominent insurance industry spokesman, noting the election, publicly hurled the federal report, with its references to a possible new national commission, into the trash, declaring to the attendees that it was dead on arrival.
78. Twentieth Anniversary Symposium, supra note 8, at I-193 (observations of John H. Lewis).
79. Barth, supra note 6, at 23–26.
80. Twentieth Anniversary Symposium, supra note 8, at I-188 (observations of Peter S. Barth).
81. Id.; see also Burton, supra note 6, at 27.
82. Twentieth Anniversary Symposium, supra note 8, at I-189 (observations of Peter S. Barth).
83. See Paul J. Smith, Sec'y, Pa. Dep't of Lab. & Indus., Proposed Pennsylvania Workmen's Compensation Amendments for 1971, at 28 (reproducing IAIABC president's Aug. 31, 1970, remarks) (on file with author).
84. Twentieth Anniversary Symposium, supra note 8, at I-189 (observations of Peter S. Barth).
85. See NAT'L COMM'N REPORT, supra note 1, at 110 (R6.16, R6.17).
86. See David B. Torrey, Compromise Settlements under State Workers' Compensation Acts: Law, Policy, Practice and Ten Years of the Pennsylvania Experience, 16 WIDENER L.J. 199 (2007).
87. The seminal essay expressing this philosophy is John F. Burton Jr. & Monroe Berkowitz, Paean to an Active Workers' Compensation Agency, JOHN BURTON'S WORKERS' COMP. MONITOR 1 (Sept.–Oct. 1989), http://workerscompresources.com/wp-content/uploads/2013/07/WC-Monitor-Vol-2-No-7-Paean.pdf.
88. See NAT'L COMM'N REPORT, supra note 1, at 81.
89. See id. at 82.
90. Id. at 110. The trend among states is toward lessened oversight of compromise settlements.
91. See id. at 102–06.
92. Burton, supra note 38, at 33.
93. Examples are easy to find. Under a 1996 amendment to the Pennsylvania Workers' Compensation Act (revised in 2018), only the most severely disabled workers are entitled, after 604 weeks, to wage-loss benefits. See 77 PA. CONS. STAT. § 511.3. Under the Georgia Workers' Compensation Act, workers are entitled to, at most, 350 weeks of temporary partial disability. GA. CODE ANN. § 34-9-262. And under the Kentucky Workers' Compensation Act, benefits terminate when the injured

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worker reaches the age of 70. See Cates v. Kroger, 627 S.W.3d 864 (Ky. 2021) (finding 2018 statute constitutional). All of these restrictions are inconsistent with the Commission's essential recommendations.

94. Donald Elisburg, The National Commission on State Workmen's Compensation Laws: Reflections on the 30th Anniversary—Plus Two and Counting, in WORKERS' COMPENSATION COMPENDIUM 2005–06, at 362, 363 (John F. Burton Jr., Florence Blum & Elizabeth H. Yates eds., 2005).

95. See generally David B. Torrey, Section 305.2 of the Pennsylvania Workers' Compensation Act and Extraterritorial Jurisdiction: Background, Statute, and Interpretation, 7 PA. BAR ASS'N WORKERS' COMP. L. SECTION NEWSL. 31 (Aug. 2009).

96. Cf. Elisburg, supra note 94, at 362 (referring unhappily to the "unfulfilled promises . . . of the commission's vision," but remarking that much more literature, research, and a "more knowledgeable body of professionals" exist in the field than in 1972).

97. MURPHY ET AL., supra note 61.

98. John F. Burton Jr., The National Commission Thirty-Three Years Later: What Have We Learned? (Part 2), 43 IAIABC J. 18, 20 (Spring 2006) (observing that California and Ontario are exceptions).

99. See David B. Torrey & Michael C. Duff, Workers' Compensation Insurance Claims, in RESOLVING INSURANCE DISPUTES BEFORE TRIAL 257 (A.B.A. 2018) (discussing and cataloging state mediation programs).

100. See PRICE V. FISHBACK & SHAWN EVERETT KANTOR, A PRELUDE TO THE WELFARE STATE: THE ORIGINS OF WORKERS' COMPENSATION 150–51 (2000) (discussing the "fractious disputes over state insurance").

101. NAT'L COMM'N REPORT, supra note 1, at 100.

102. Id.

103. "One Third of a Nation": FDR's Second Inaugural Address, HIST. MATTERS, http://historymatters.gmu.edu/d/5105 (last visited May 15, 2022) (containing full text and audio).

104. See, e.g., U.S. DEP'T OF LAB., supra note 70, at 24.

105. Burton, supra note 7, at 5.

106. Id. at 5–6.

107. Keynote Address, supra note 37, at 110.

108. Burton, supra note 7, at 8–18.

109. Twentieth Anniversary Symposium, supra note 8, at I-188 (observations of Peter S. Barth).

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# Managing Firm Growth for Small to Medium Law Firms

## By Smokeball

Growing your law firm from small or mid-sized to a larger firm requires careful planning and strategizing. If you started your firm as a solo attorney, you may already have completed some of these exercises, but now it's time to think bigger.

Each firm will find its own unique path forward to success, but these important steps will help ease your growing pains.

**Develop a Growth Strategy**
Before you take any steps forward, create a clear growth plan that outlines your firm's goals for the next year, five years, 10 years and beyond, as well as the related resources. Because they're so busy with the daily work of practicing law, many firms don't take time to strategize. But this plan sets the foundation for your business decisions should be made; without guiding principles or goals, strategic growth is nearly impossible.

Include a detailed, projected organizational chart while developing your strategy. This document forecasts each department's development and expansion, as well as the number of projected employees in each. Correlate each stage of growth with the necessary resources and budget.

**Build a Successful Culture**
Before adding new staff, establish a positive, focused, supportive work culture for existing employees that reflects your firm's values. A written firm mission statement is an important first step; then, lay the groundwork for a culture that engenders pride, loyalty and enthusiasm. Focus on work-life balance and workplace equality, the two issues law firm employees most often report as lacking in their employment. Regularly reevaluate your culture and adjust your policies and processes at every stage of your development to continuously support a firm that works for everyone.

**Bring Business Skills and Tools to the Table**
Because lawyers are not typically trained as business-people, formal training and development will also help your growing firm as a business. Look to legal continuing education programs, as well as formal business management courses for your partners and senior attorneys.

Naturally, this business acumen must be paired with the technology and tools to run your firm like a business. These include:

- Time tracking and billing: Adopting a system that records every action taken within your software not only reduces time spent on manual billing and time tracking, it also churns out valuable metrics that inform your growth. Unless your valuable hours are accurately recorded and billed, your growth will be stymied.
- Task management: As your firm grows, automating workflow and assigning tasks to appropriate staff ensures your firm can build efficiency. Streamlined collaboration leverages employees' skills and improves performance across the board. Delegation becomes not only easy, but second nature, when tasks, deadlines and reminders are mechanized.

**Hire Strategically**
Rely on your growth strategy to determine which positions to fill and in what order so hiring is balanced across your organizational chart. Seek people who not only are immediately qualified for your open positions, but those who want to advance within your firm.

If you don't already employ non-legal staff, start with an office manager who coordinates and implements your strategy across the board. You also need human resources support via an internal HR position or an outsourced contract position. HR handles office conflicts; disciplinary proceedings; compliance; insurance; and policies covering discrimination, diversity and harassment, as well as training and policy implementation, including an employee handbook.

**Focus on Existing Clients**
Client retention is crucial to growth — otherwise your firm will constantly be focused on replacing them.

Identify your most profitable cases and clients, evaluate their needs and make a plan to support them as you grow, including:

- Consistent communication cadence and channels
- Convenient online payment and administrative processes.
- A friendly, hospitable in-person client experience

**Develop New Clients**

With your existing clients securely in place, it's time to attract new ones. Apply metrics captured by your legal practices management software to calculate the percent of leads who make appointments, appear for appointments and sign with your firm. Then, isolate your most effective leads and demographics to more effectively target your marketing.

Identify the types of new clients the firm wishes to attract to feed your growth strategy. Many firms focus on increasing the number of overall clients, but don't overlook a strategy that concentrates on fewer clients with bigger projects to scale growth.

**Utilize Marketing and Branding**

Once your firm has identified your ideal marketing segments, focus on the features that make your firm unique, including your services and reputation. Use those characteristics as a springboard for your marketing program. Engage professional marketing and branding assistance to build an effective website, digital marketing, social media, SEO and content marketing. While these services come at a price, they also give your firm a professional polish, helping you generate more leads and firmly establish your firm's long-term market segment.

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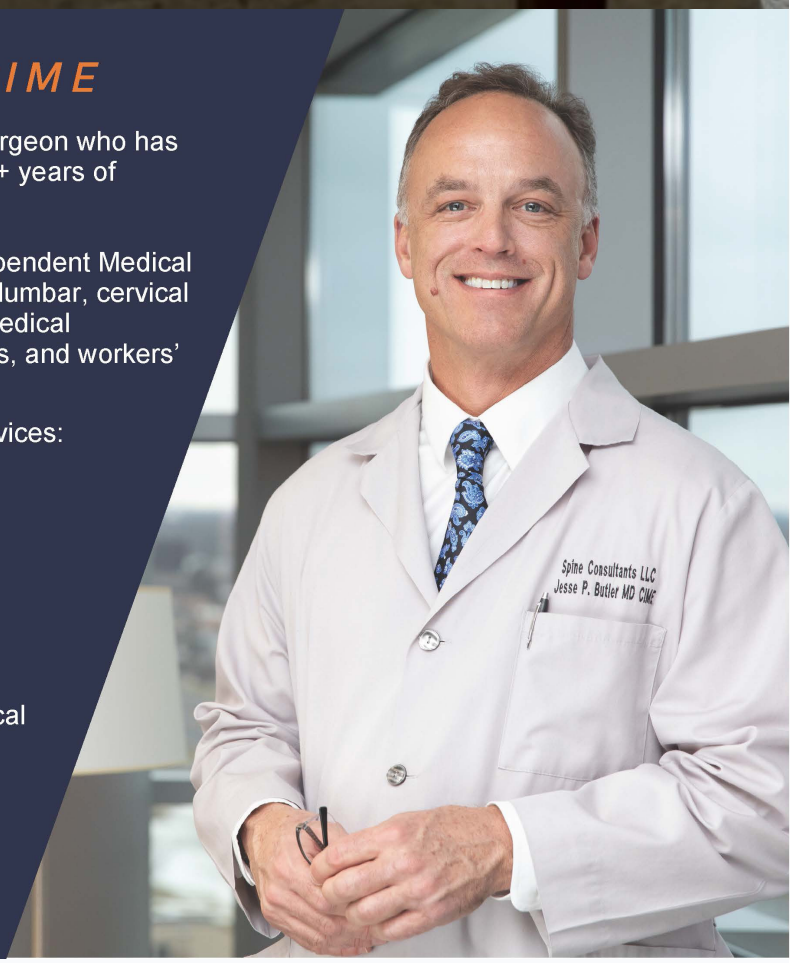


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# Michael Cohen
## Remembered

On September 22, 2022, the workers' compensation bar lost a well-loved fixture at the former Illinois Industrial Commission with the passing of Michael Cohen, long time attorney for the Chicago Public Schools. His intelligence and warmth were unsurpassed at the Commission.

Those that knew him recall his encyclopedic knowledge of foreign cinema, politics, and history. The fact that he spoke five languages and could often be found waiting for an opponent while reading Le Monde, MacLean's or the London Times made him unique. Few people exhibit as much curiosity and joie de vivre as Mike. A true gentleman from another era.

The resounding theme of the testimonials at his Shiva was that Mike was a man of the world and a man of his word. He is survived by his loving wife Svetlana and son Ben, whom they adopted from a Russian orphanage 16 years ago and who is currently enrolled in law school.

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