







## The Colorado Civil Rights Division has a double standard for ladies' nights -- and newspapers

By Patricia Calhoun

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Subject(s):  
[Steve Horner, Colorado](#)  
[Division of Civil Rights](#)

I am being held hostage by Steve Horner.

And the state helped write the ransom note.

I first met Horner two years ago, when he was sending haranguing notes and leaving endless voice-mail messages about how I, and this newspaper, "have been totally insensitive to the needs of this egalitarian society," not to mention aiding and abetting criminal actions, and that, just as he might tackle a burglar he saw breaking the law, he might "tackle a bad girl," too.

Instead, the bad girl bought him a beer and listened while Horner expounded, at stultifying length, on the evils of — what else? Ladies' nights. Horner was a relative newcomer to Denver at the time, but he was not new to this cause and had already filed a complaint with the Colorado Division of Civil Rights regarding a ladies' night at a local club. And, of course, already irritated bureaucrats around town with his haranguing notes and endless voice-mail messages.

But then, Horner had plenty of practice. He'd found his calling in the early '90s, when he was a single father in Apple Valley, Minnesota, and on a rare night out of the house discovered that Gators, a bar in the Mall of America, was letting women in for free when he'd have to pay half of his ten bucks just to get through the door. Horner filed a complaint with the Minnesota Department of Civil Rights about that, and campaigned so hard for his cause that he was convicted of harassing a department official.

After Horner left Minnesota for jobs in radio and advertising in Arizona, and California, and Oregon, and Idaho, he continued the fight against ladies' night, finally bringing it to Colorado in the summer of 2006. Our beery discussion did not dissuade him; instead, he kept filing charges against bars with the Colorado Division of Civil Rights and filing suit against more bars (including the one where we'd met) in Denver County Court, winning some and losing some. And then he filed suit against *Westword*, asking for \$15,000 in damages because "from January to May 2007, the defendant published at least 30 discriminatory ads."

Ads that all promoted ladies' nights.

"This is not only something I can do as a United States citizen, this is something I believe I must do," Horner told Denver County Court Judge Brian Campbell during our day in court, in August 2007. "This is Rosa Parks-ish. This is Martin Luther King-ish.... It's about civil rights. It's about the protections of the U.S. Constitution.... This case is no different than if a black person was up here pleading for his or her rights, if she or he was denied equal treatment at a grocery store."

But it was different — because Horner wasn't suing the grocery store. He was suing a newspaper that had published an advertisement for a bar. He may have been "humiliated over not being invited to the party, and very, very angry," as he proclaimed in court, but *Westword* didn't host the party; we'd just mailed the invitations. Despite hours of mind-numbing testimony from Horner, the judge recognized this and ruled that the words "indirectly discriminate" in the state civil-rights statute do not apply to newspaper ads, because newspapers are not places of "public accommodation."

But Horner wasn't going down without a fight. "As a person in advertising, I know that your interpretation is totally incorrect," he told the judge.

On the surface, it does seem unfair that women can get into a club for free, and sometimes even drink for free, when men cannot. But this injustice hardly rises to the level of Rosa Parks being sent to the back of the bus, and I'd guess a true civil-rights activist would rather drive a bus over Horner than listen to him compare his cause to theirs. Besides, most bar owners would readily tell you that they offer ladies' nights not for ladies, but for *men*, so that they can be sure there are plenty of females in their establishment — an amenity most men appreciate. Liquored-up females, especially.

So *Westword* continued to publish ads touting ladies' nights, and last fall Horner filed a charge with the Colorado Division of Civil Rights, claiming that by repeatedly publishing these ads, we'd discriminated against him. On February 13, we learned that the division had determined there was "sufficient evidence to support the charging party's claims of denial of full and equal enjoyment of a place of public accommodation and discriminatory advertisement by a place of public accommodation." Since this was a "probable cause" determination, division director Steven Chavez concluded, "Parties are hereby ordered to proceed to attempt resolution of this claim by compulsory conciliation."

Thus far, Horner's conciliatory attempt has been to inform us — through the division's mediators — that if we pay him \$7,000, he will settle this claim and never file suit against *Westword* again. But if we up the ante to \$20,000, he will also agree not to teach other people how to make money off of ladies'-night claims.







He is holding us hostage.

And the state helped write the ransom note.

Other businesses report receiving similar settlement offers from Horner: a couple hundred to settle a case, double that for his promise never to file another case. "I got La Rumba's settlement offer and told him (in so many words) to stick it," says Jerri Theil, who was on the receiving end of a Horner complaint for a ladies' night at that club. "By making the Division of Civil Rights handle case after frivolous case, he has taken an agency that was created to help truly oppressed people and turned it into a joke. This isn't oppression."

"It felt like blackmail," another club owner reports. And now the state is playing bagman.

Researching our appeal, we found an earlier charge Horner had filed with the Colorado Division of Civil Rights, this one against the Denver Newspaper Agency, citing a *Denver Post* ad for the Penthouse Club's "Amateur Centerfold Search," along with a drink promotion.

Horner made that charge under the state statute regarding "discrimination in places of public accommodation." Just as he later would in our case.

In its determination released on February 23, 2008, and signed by Steven Chavez, the division noted that "the respondent does not deny any of the facts as stated above, and claims that it is not a place of public accommodation." Just as *Westword* later would.

But there's one critical difference in these two otherwise identical cases: the conclusion. Because while the division found probable cause against *Westword*, it issued a "no probable cause determination" for the Denver Newspaper Agency.

As Chavez explained in that document: "For the Charging Party to establish a claim under this statute, the Respondent must be found to be a 'place of public accommodation.' It is notable that the Charging Party has previously filed a virtually identical case, which involved an identical advertisement, along with other advertisements, against Westword Publishing, with the City and County of Denver. The Charging Party failed on the merits of the case. Although Colorado case law does not speak directly to the topic, there are sufficient grounds to determine that the Respondent in this particular case is not a place of public accommodation. First, the nature of its business is not substantially similar to the categories of businesses listed in the defining statute. Second, the City and County of Denver, in the case cited above, and in an unreported and oral opinion, ruled on this issue and determined that the newspaper in that case was not a 'place of public accommodation.' In fact, the Charging Party, as plaintiff in that case, indicated during the trial that he did not consider a newspaper to be a place of public accommodation. Third, several other jurisdictions have determined that newspapers are not places of public accommodation. Thus, the Charging Party in the instant case fails on the inapplicability of the statute."

Here's the decision stripped of legalese: The Colorado Division of Civil Rights tossed Horner's complaint against the *Denver Post* because a newspaper, unlike a bar, is not a place of public accommodation, and cited Judge Campbell's ruling in the Horner/*Westword* case as precedent.

But last month, this same agency completely ignored its determination of the year before — as well as our own legal argument citing Campbell's decision — when it moved into Horner's corner and decided that "*Westword* is a place of public accommodation under the statute." Unlike the *Denver Post*.

Does the Colorado Division of Civil Rights have a double standard for double standards?

We'll find out: When confronted with this odd about-face, the division said it would reconsider our case.





## Send North High's principal to detention

By Patricia Calhoun

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Subject(s):

[North High School, Ed Salem](#)

### School Daze

Against all odds, Michael Ballez will be graduating from North High School this year.

Those odds include: the classmates who've dropped out, one by one, until only a handful of the kids he started with as a freshman remain in school. The pressures he's faced — and fought — to join a gang. The needs of the two little girls he's fathered. His own learning disabilities. And then keeping his grade point average high enough to play on North's baseball team all four years.

Against all odds, Michael Ballez will be graduating from North this year. But last week he was told that he couldn't line up with other members of his graduating class at the ceremony set for the Colorado Convention

Center this coming Saturday, or walk across the stage when his name was read, or reach out his hand for that hard-earned diploma.

That's because Ed Salem, who became principal of North last fall, had decreed that only those students with 85 percent attendance records for their senior year could participate in graduation ceremonies. Never mind that an 85 percent attendance record isn't a Denver Public Schools requirement for high school graduation. Or that affluent schools in the 'burbs are probably lucky to see half of their seniors these spring days, when the sun is out and their futures look certain.

At North High, which has struggled for decades with high dropout rates and low test scores and was almost shut down three years ago, things are never so certain.

And Michael Ballez wasn't alone in being shut out of graduation ceremonies. About fifty of his fellow seniors also learned that even though they meet all the official DPS requirements to graduate high school, they don't meet Salem's personal attendance requirement. And the list that had been posted at North of the 180 graduating students was suddenly replaced with a list of just 133 names.

Isaiah Baca was one of the students whose names disappeared. He says he learned last Friday that he wouldn't be allowed to participate in the ceremonies because he had a 76 percent attendance rating. "Then I got five classes excused," he said, "but that only moved me up 2 percent." And that wasn't good enough for Salem. "He makes up his own rules," Isaiah told me. "This feels really bad to me. I tried hard, and I have good grades."

Isaiah's mother, Joann Martinez, didn't understand it, either. Her son "got his grades, he got his credits, he went to prom, he's all over the yearbook," she said. "He was excited about graduation. And now they're telling him no." After she'd already scrimped to get the money to pay for Isaiah's cap and gown "and sent out the announcements and everything."

But now Isaiah, "the only one of my five kids who's graduated, they're not going to call his name," Martinez said. "It's a heartbreaker."

Isaiah's cousin, Tiffany Martin, is Michael Ballez's mother. When her son broke the bad news about no graduation ceremony last Friday, she couldn't believe it. "The way I see it, you're telling an eighteen-year-old kid, 'You're not good enough to participate in my ceremony,'" she told me. "When my son contacted me, he had a crackle in his voice. He's been through a lot already."

Unlike her older son, who "hung out with the wrong crowd" and dropped out of North, Michael held strong and stayed in school. "My son is not a gang member, he's not in the legal system, he's a full-time dad," Martin explained — a dad who sometimes has to stay home with sick kids. But even though he's a special-ed student, his grades were good enough for him to play baseball, and he stays on track in his classes. Martin knows, because she checks in with Michael's teacher and education case manager daily to make sure.

So she didn't hesitate to call the school to ask about this new graduation-ceremony policy. Ed Salem returned her call and told her that he'd informed the seniors of the 85 percent attendance requirement at a senior meeting a month ago. By then, of course, it would have been impossible for some of them to go to school enough to raise their average to that mark. Salem explained his rationale, how important attendance was, but it didn't make sense to Martin. "These kids are struggling with a lot of issues," she said. "And they're stripping them of a once-in-a-lifetime privilege. They should be thankful for the seniors you have in that school."

Although Martin didn't know if she could convince North to reverse its policy, she didn't want to go down without a fight. She has a daughter who's a junior at North, and "I'd really hate to see her being put through the same thing," she told me. "I wasn't just speaking for my son. I know there are other students in this position."

After I spoke with Martin, I called North, where I was told that Ed Salem wasn't at school that day and that I'd have to call the DPS regarding North's graduation-ceremony policies. So I did, and while I waited for a return call, I started dialing. One call was to Lucia



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Guzman, the former school-board member who heads the Denver Agency for Human Rights and Community Relations. "These students should be honored," she said when I told her of Salem's special requirement. "They should not be shamed. This is a process that honors graduates. This is not a time to shame these students."

Guzman started dialing, too. She called the DPS superintendent's office, other DPS officials (at one point, she had three on a speaker phone), members of the school board. She called education activists and told them to get ready to rally. "My blood keeps boiling," she said. "There's going to be a huge outcry."

Or maybe just one very big celebration this Saturday.

On Tuesday afternoon, I finally got a call back from Alex Sanchez, spokesman for DPS, who read a statement: "Ed Salem and the Denver Board of Education and the staff of North look forward to having every single one of the graduates at the actual graduation ceremony. We look forward to celebrating their accomplishments."

That's all 180 students, he pointed out. DPS would be calling the parents of the fifty students who were told they couldn't participate, to "clarify" the situation. "The point here," he said, "is that we look forward to having every single student at graduation."

When I called Martinez with the news, she was overcome. Martin was overjoyed. "I just wanted someone to hear me," she said.

Loud and clear.

Michael and his mother have worked hard to get him through school. "Michael was kind of struggling in civics," she admits. Give them both an A for this lesson in civic responsibility. And give Salem an F. Yes, attendance is important — but the time and place to fight truancy is not after a student has already qualified to graduate.

As for North, it's about to undergo a \$34 million, taxpayer-funded rehab. Let's hope DPS remembers to put in some heart.





## Judge Finesilver almost gave the Rocky Flats grand jury a big twentieth birthday present

**Twenty years ago, the Rocky Flats grand jury started its search for justice. It hasn't ended yet.**

By Patricia Calhoun

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Subject(s):

[Rocky Flats](#), [Judge Sherman Finesilver](#), [Wes McKinley](#)

The Denver Public Library has about 4,000 collections donated by corporations, organizations and individuals, but even so, archivist/librarian Roger Dudley recognized that there was something unique about the collection he was sorting through: sealed court records, many of them involving Colorado special grand jury 89-2, which U.S. District Court Judge Sherman Finesilver had impaneled back in August 1989.

Before he passed away in 2006, Finesilver and his wife had donated more than 180 boxes to the DPL, with the stipulation that they be kept closed until 2009. That's when Dudley started cataloguing the incredible material the federal judge had left the library, material that ranged from documents on German restitution to swine flu to the Rocky Flats grand jury.

"When I began going through the grand jury materials, I ran across various forms of the grand jury report that were clearly marked as 'not for public release,' and wanted to find out if there was a time limit on such materials in order to restrict them," Dudley recalls. "I wanted to protect the library from liability."

After calling around, he finally reached Gregory Langham, clerk of the U.S. District Court, who came down with an attorney to look through two boxes. Later, Langham returned to the library with a judge and examined still more documents, then wrote a letter requesting that certain items be returned to the court — including everything involving Rocky Flats. "Which we did," Dudley says.

It would have been so much more convenient had they just dropped them off at our office.

Twenty years ago this summer, rancher Wes McKinley found a jury summons in his mail. "It was one of those punch cards," he recalls. "It looked like one of those things you get in the mail for a free trip." A trip was involved, all right: a 300-mile drive from southeastern Colorado to Denver, where he joined dozens of other people summoned to serve on Colorado's first special grand jury. "I vividly remember driving down there," McKinley says. "Traffic was hideous. It took me three hours to find the courthouse."

McKinley knows his courthouses; back when farmers were protesting against the government in the late '70s, he stood guard outside the county courthouse in Springfield. And although he was tempted to escape jury duty — "It's easy to get off when you live 300 miles from town, have a ranch and no sons," he points out — the more he heard about the focus of the investigation, the more he knew it was his patriotic duty to stay.

Two months earlier, on June 6, 1989, the FBI had staged an unprecedented raid on the Rocky Flats Nuclear Weapons Plant, sixteen miles upwind from Denver. It was the first time a federal agency had raided a federal facility, one created for the sole purpose of manufacturing plutonium triggers for nuclear bombs. The grand jurors would be sifting through evidence seized during that raid, listening to the agents who'd conducted it, hearing testimony from the whistleblowers who'd leaked information to the feds that indicated environmental crimes might have occurred at the plant — and might still be occurring. A ton of missing plutonium. "Pondercrete" spilling poisons into the ground. Secret incinerations at night.

By that fall, McKinley had become the foreman of the 23-member grand jury. He continued in the role for the next two years, through months of discussion and deliberation as the grand jurors began to focus on eight individuals with the Department of Energy and Rockwell International, which managed the plant for DOE, individuals they thought should be charged with crimes.

Instead, in April 1992, U.S. Attorney Mike Norton came up with a deal for Rockwell: The company would plead guilty to five felony and five misdemeanor violations of environmental laws and pay an \$18.5 million fine — less than the bonuses the DOE had paid Rockwell for running the plant.

Outraged by the deal, the grand jurors wrote a report outlining how justice had been denied and asked Finesilver to release it. Instead, he signed off on the settlement and ordered the report sealed. It was — but excerpts appeared in the September 29, 1992 issue of *Westword*, the secrets spilling out like the toxic sludge at the plant itself. And in January 1993, Finesilver finally released a redacted version of the report.

The grand jurors never gave up on their goal of telling the whole truth, though. McKinley ran for Congress in hopes of being able to do so with immunity. In 1996, many other grand jurors filed a motion with U.S. District Judge Richard Matsch asking that they be released from their oath of secrecy and allowed to speak. Their request is still pending.



BACK



And that's not the only Rocky Flats case on hold.

Seven months after the raid, Denver lawyer Bruce DeBoskey filed suit on behalf of homeowners who claimed that both their health and property values had suffered because of their lands' proximity to Rocky Flats. Justice in this case, too, moved slowly, as the government fought against releasing documents. The "discovery history of this case is not pretty," said Judge John Kane back in 1993. It finally went to trial in U.S. District Court in the fall of 2005, by which point ten lawyers were working for the plaintiffs — all on contingency — and the class had grown to more than 13,000 homeowners.

After a four-month trial that involved dozens of witnesses, the jury decided that both defendants — Dow Chemical Co., which had run the plant from its inception until 1975, and Rockwell, which had run Rocky Flats from 1975 until the feds shut down operations in 1989 — were liable. The plaintiffs were awarded \$354 million in compensatory and \$200 million in punitive damages — a record verdict in Colorado, and the first time punitive damages had ever been awarded against a nuclear weapons contractor. By the time Judge Kane upheld the verdict last year, the judgment, plus interest, had reached a whopping \$926 million.

Even though the government will pick up the final tab — the Price-Anderson Act indemnifies contractors like Dow and Rockwell against damage awards as well as legal fees (close to \$100 million has been billed by the defendants' attorneys alone) — the companies are appealing.

But at least one win is definitive: Last month, the ten attorneys who fought for the homeowners were named the 2009 Trial Lawyer of the Year by the Public Justice Foundation, sharing the award with the New York lawyers who'd fought for the victims of the 1988 Pan Am bombing.

"I was a young man," DeBoskey says of the case's early days. "It was such a labor of love, such a lifetime of work for all the lawyers. Citizens against giant corporations and the government. Citizens had the truth, and a team of lawyers from three cities were willing to fight for that truth. A great judge and a great jury were willing to believe that truth."

Will we ever know the truths contained in Finesilver's files? According to court clerk Langham, not while those papers concern "pending issues." Finesilver himself might have thought all Rocky Flats matters would be settled by 2009 — but he, more than anyone, should have known that the truth doesn't come easy at Rocky Flats.

After a ten-year, \$7 billion cleanup, more than 6,000 acres of former plant property were turned over to the U.S. Department of Interior's Fish & Wildlife Service, which plans to open much of the area to the public as a wildlife refuge as early as next year. The Rocky Flats Stewardship Council, a consortium of local governments and groups, is working with the DOE Office of Legacy Management and Fish & Wildlife on a number of issues involved with the project, including environmental monitoring and interpretive signage for site.

"Those who forget the past are condemned to repeat it," quotes David Abelson, the council's executive director. "How do we as a community not forget the past, and also remember the obligations? You can't tell the story of Rocky Flats in a quick little sign."

McKinley has a chapter of that story in the journal he kept during his days on the grand jury, more of it in the book he co-wrote, *The Ambushed Grand Jury*, and he still hopes to tell the rest one day — if not in Congress, then at the State Capitol, where he's now a representative. He's served there twice as long as he served on Finesilver's grand jury.

"And we were the first grand jury to be around long enough to have a Christmas party," he says.

The judge's files would have made a fine twentieth anniversary present.

For Calhoun's selected archive of Rocky Flats coverage, go to the Latest Word Blog. Contact the author at [patricia.calhoun@westword.com](mailto:patricia.calhoun@westword.com)