

The Alaska BAR RAG

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Dignitas, Semper Dignitas

Seventh Anniversary Issue

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Sunset bill signed into law

by Deborah O'Regan

The Alaska Bar Association recently completed the Sunset review process with the Alaska Legislature. Senate Bill 2, which was signed by the Governor on March 8, 1985 extends the existence of the Board of Governors until 1989.

Senate Hearings

The bill, introduced by Senators Pat Rodey and Robert Ziegler, was first heard before the Senate Judiciary Committee on January 22. President Hal Brown testified at the hearing and gave a brief description of the Alaska Bar, its responsibilities and activities. Questions from the Committee centered primarily on the character investigation conducted of applicants to the Bar, and the reimbursement which the Bar receives from the state for the expenses of the three public members on the Board. The bill was passed

out of committee and referred to the Senate Finance Committee. President Brown again appeared and testified. After a few questions about the public Board member expenses, the Finance Committee passed the bill.

The Alaska State Senate considered the bill at the end of January and passed it on a vote of 19 to 0.

House Passes SB2

Senate Bill 2 came before the House Judiciary Committee on February 6. Committee member Max Gruenberg questioned whether he, as a member of the Bar Association, had a conflict which would prevent him from voting on this bill. Since most of the Committee members are members of the Alaska Bar Association, they proceeded to identify themselves as members of the Association and voted to pass SB2 out of committee.

At the House Finance Committee hear-

ing on February 20, the only question asked was whether four years was the usual length of time to extend a Board or Commission. The Committee passed the bill once informed that four years was the usual extension time.

The Alaska House of Representatives passed Senate Bill 2 on March 1, on a vote of 34-2, with 4 absent.

Governor Signs

With the Governor's signature on March 8, Senate Bill 2 became one of the first bills passed in this legislative session. This review process experienced none of the acrimonious debate which characterized the last Sunset review. The Association must be given credit for cooperating fully with the legislative review process; and the Board of Governors should be commended for studying and implementing improvements in the Bar's two most important public functions:

admissions and discipline.

Performance Audit

The review process actually began in November, with the Legislative Budget and Audit Committee conducting a performance audit of the Association. The report, which was released on February 6, concluded that the Board of Governors operates in an effective and economical manner and that the Board should be reestablished for another four years. Nothing came to the attention of the committee that indicated to them that the public's best interest would be better served by any different regulatory method. The Audit Committee made several recommendations to improve the efficiency of the Board's operations.

The complete text of the Committee's report is reprinted in its entirety on page 11.

Law grads find employment

Despite predictions of substantial entry level unemployment among new lawyers, the National Association for Law Placement, Inc. (NALP) found 90.6% of the Class of 1983 law graduates to be employed. The Class of 1983 *Employment Report and Salary Survey*, the tenth annual report produced by NALP, continues to indicate a stable level of employment among graduates of American Bar Association (ABA)-accredited law schools within nine months of graduation. Employment rates, which have hovered at 90% during the 10-year history of the report, have not changed significantly despite the following factors:

1. The total number of lawyers has nearly doubled during the last 10 years.
2. Economic conditions in the nation have fluctuated widely.
3. There have been significant decreases in the opportunities available to new lawyers in the public sector.

Speech excerpts

Kay tells tales on Alaska

by Wendell Kay

Thank you for the introduction and the chance to be here with you today. Trial lawyers are good people to be around.

I think Mark Twain once said, "I remember a great many things—and some of them are true." I hope there is nobody here from Alaska, because if there is I will be placed in the position of the Civil War veteran who was running for county clerk down in Lexington, Kentucky. He got to orating pretty good and began to relate a story about his infantry regiment. Says he, "On the 12th of July we attacked an enormous force of the enemy near Chattanooga and completely routed them. Broke them all up and chased them clear back to the river." About that time a gentleman arose in the audience and shook his finger at the speaker.

Grads in Survey

Information for the *Employment Report* is gathered from law school placement directors across the country to learn of entry-level employment, locations, and salaries of graduates. In 1983, there were 36,389 law students who graduated from 173 ABA-accredited law schools. Responding to the NALP survey were 28,072 of those graduates. These respondents represent 77.1% of all graduates; 160 or 92.5% of the ABA-accredited schools participated. These rates of student response and school participation are the highest in the report's 10-year history.

The percentage figures used in reference to the patterns of employment are calculated using the number of NALP respondents rather than the total ABA graduate population. NALP conducted a validity study in 1983 to verify whether the experience of NALP respondents could be generalized to

the total ABA law graduate population. This study, conducted by Laurie Albright of Stanford Law School, and using an independent sample, concluded that the findings of the 1983 *Employment Report* are valid.

(For further clarification of the numbers and percentages presented, readers are referred to Charts A and B.)

Employment

Of the students responding, 25,426 (90.6%) reported employment; 22,701 (80.9%) were in legal positions. These figures represent a small increase in employment over the experience of 1982 respondents, even though there were 4.4% more law graduates in 1983 than in 1982.

Private law practice employed 58.9% of NALP respondents who reported employment. As in the past, very small firms with 2 to 10 attorneys accounted for the largest

block of respondents; 23.2% of all those employed in 1983 found work in firms of that size. Small firms of 11 to 25 attorneys employed 8.2% of the respondents, and medium firms of 26 to 50 attorneys hired 6% of the respondents. Private law firms with 51 to 100 lawyers employed 5.4% and very large firms with more than 100 attorneys hired

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Letters to the Editor

All-purpose "letter"

Dear Colleagues:

It appears that recently a number of attorneys have been engaged in protracted litigation in order to resolve esoteric constitutional issues involving the compulsory appointment of counsel in criminal conflict cases. The author would humbly submit the following proposed form letter to the accused which would be more likely to obtain the removal of counsel from the case without a lot of appellate practice.

Dear (Accused):

I was pleased to learn that Judge _____ recently appointed me to represent you in Case No. _____, wherein you have been accused of the crime of _____. I have been keeping up with the area of criminal law in that I have been following detective shows quite closely on television over these past years, and have been a regular watcher of Crime Stoppers. Also, as a member of the Board of Directors of our neighborhood crime watch committee, I am frequently asked legal questions by many of my fellow directors.

After getting hold of your file, I looked up the section of the criminal code wherein you have been accused of violating AS 11-_____, which is the crime of _____. I am quite certain that you must be innocent of this crime

because I cannot imagine any human being doing something so disgusting.

I intend to try to beat this case on the merits, since I do not think you would like me to rely upon a lot of "technicalities" that some of the slick attorneys around town have been using. I certainly could not hold my head up at the next Chamber of Commerce meeting or Republican Caucus if I behaved like that, and I am sure you would not want me to.

Over the next month and a half I will be taking depositions in Seattle, Chicago, and Bankock, so I will not be able to interview you personally. However, my secretary will be getting in touch with you from time to time. Also, my nephew, Bruce, is working on a school report on law and he will be working closely with me on your case. I should point out that Bruce is a patrol leader in his local Boy Scout troop and has a merit badge in civics.

I look forward to meeting you at trial, and wish you the best until then.

()
Very truly yours,

()
John Q. Attorney

Sincerely,
J.D. Bell

President's Column

by Hal Brown

The 1985 Annual Bar Meeting is scheduled this year to take place in Sitka, Alaska. For those of you who have never been to Sitka, let me assure you that it is one of Alaska's loveliest settings. Under the leadership of Warren (White Velvet) Christianson, the 17-member Sitka Bar Association is planning a gala celebration that will surely be remembered for years to come.

For the first time (at least in my memory), the meetings of the Judiciary and Department of Law are scheduled to coincide with the Bar Convention. As our Bar continues to grow (135 sat for the Bar Exam in February alone) a rare opportunity presents itself to meet on a less formal basis with those who figure so prominently in the day-to-day regulation of our activities.

The general theme presented at the numerous meetings I have attended as your President and in the mass of materials which I have received, has been that of professionalism, or to put it another way—how to improve the public image of attorneys. I am convinced that there is little new that we can do to convince the public that the vast majority of our membership is comprised of dedicated professionals whose main purpose is to serve the best interests of the client. I do believe, however, that the better we get to know each other the more we respect each other's views. As we gain respect for each other the cost of delivering legal services decreases.

Plan to attend the Annual Bar Convention. Aside from the social and educational aspects of our meeting, significant policy decisions may be made which will affect your profession.

High Court Strikes Rule 42 in N.H.

The United States Supreme Court in *Supreme Court of New Hampshire v. Piper* has struck down Rule 42 of the New Hampshire Supreme Court which limits bar admission to state residents. In its 8-1 decision, the Court ruled that New Hampshire's residency requirement violated the Constitution's guarantee that citizens of one state are entitled to the "privileges and immunities" of citizens in other states. The guarantee of the Privileges and Immunities clause generally has been interpreted to mean that states can't treat residents better than nonresidents.

The ruling was a victory for Kathryn A. Piper, a Vermont attorney, who passed the New Hampshire bar examination but was denied admission to practice in New Hampshire because she lived in Vermont even though her home in Vermont was about 400 yards from the New Hampshire border. Writing for the majority, Justice Lewis F. Powell, Jr., pointed out that the Privileges and Immunities Clause was intended to "create a national economic union" and to prevent "economic protectionism" on the part of the states. Justice Powell stated that "the right to practice law is protected by the Privileges and Immunities Clause." This was so, he observed, not only because of the "lawyer's role in the national economy" but also because of the legal profession's "non-commercial role and duty." Justice Powell pointed out that "out-of-state lawyers may, and often do, represent persons who raise unpopular Federal claims." He added that "in some cases, representation by nonresident counsel may be the only means available for the vindication of Federal rights."

Justice Powell noted that the Court's holding in the case does not interfere with the ability of the states to regulate their bars. The nonresident who seeks to join a bar, unlike the *pro hac vice* applicant, must have the same professional and personal qualifications required of resident lawyers, Justice Powell stated. Furthermore, the nonresident member of the bar is subject to the "full force" of New Hampshire's disciplinary rules. The Court thought that there was no

reason to believe that a nonresident lawyer would conduct his practice in a dishonest manner. The nonresident lawyer's professional duty and interest in his reputation should provide the same incentive to maintain high ethical standards as they do for resident lawyers. Justice Powell believed that a lawyer would be concerned with his reputation in any community where he practices, regardless of where he may live.

Furthermore, a nonresident lawyer can be disciplined for unethical conduct. The New Hampshire Supreme Court has the authority, Justice Powell pointed out, to "discipline all members of the bar, regardless of where they reside."

Because it is "markedly overinclusive," the Court concluded that the residency requirement did not bear a substantial relationship to the State's objective. A less restrictive alternative, according to the Court, would be to require mandatory attendance at periodic seminars on state practice. The Court also found New Hampshire's "simple residency" requirement underinclusive as well, because it permitted lawyers who move away from the state to retain their membership in the bar. Justice Powell thought there was no reason to believe that a former resident would maintain a "more active practice in the New Hampshire courts than would a nonresident lawyer who had never lived in the state."

Justice White agreed with the result but felt that the majority did not have to "reach out to decide the facial validity of the New Hampshire residency requirement." Dissenting, Justice Rehnquist believed that the Court "clearly disregards" the fact that "law is one occupation that does not readily translate across state lines." What is at issue here, Justice Rehnquist stated, is "New Hampshire's right to decide that those people who in many ways will intimately deal with New Hampshire's self-governance should reside within that state."

Mail-in Reader Survey

The Alaska Bar Rag wants to publish the kind of materials its audience wants to read. The following short survey will help us put together future Rags that will entertain, inform, and serve as better bird-cage liners. Fill it out and mail it in.

Please tell us how you feel about current or potential features of the Bar Rag.

	Need More	Just Right	Forget It
Humor articles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Short item, "people news" column	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supreme Court case short item summaries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeals Court short item summaries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ethics opinions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Columns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All My Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President's Column	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Essays/opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Historical articles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Profiles, personality pieces	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photos and artwork	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letters to the editor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leisure and hobbies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Law enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Texts of court opinions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABA resolutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gossip	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
"How to" and advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal and news analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABA program reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial analysis/advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Local Bar news and events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For a profile of our readers . . .

What is your age? _____ Are you Male or Female?
 What's your ZIP code? _____ Are you an attorney? Yes No
 If you're NOT an attorney, what is your profession? _____

Thanks for your time!

Mail to: Bar Rag Survey, Alaska Bar Association, 310 K St., Suite 602, Anchorage, AK 99501.



Law school students decrease

CHICAGO, March 4—Law schools recorded a drop in both total and first-year enrollment again during 1984-85, although slight increases continued in enrollment by women and minority students.

This was the third straight year that first-year enrollment declined, and the second consecutive year that total enrollment was lower than the previous year's total. It is the first time since the Korean conflict that first-year student totals have declined three years in a row, and the 1984-85 drop occurred despite the addition of 209 first-year students in newly-approved Georgia State Law School.

Total law school enrollment, including candidates for advanced law degrees, was 125,698 as of October 1984, a drop of 1.2% from the 1983 total of 127,195. Enrollment of candidates for the basic law degree was 119,847, down 1.1% from the previous year. The first year student figure was 40,747, down 1% from 1983. The previous declines in first year enrollment were 2.1% in 1983

and 1.5% in 1982.

"This experience tracks that of U.S. medical schools. The Association of American Medical Colleges has reported a decline in freshman enrollment at medical schools for the third year in a row in 1984," noted Dean James P. White of Indiana University School of Law in Indianapolis, consultant to the American Bar Association on legal education.

Women now represent 40% of the freshman law school class, a slight increase over 1983. A total of 48,498 women are enrolled in law school programs at all levels; 46,897 are seeking the basic juris doctor degree, and 16,236 are in their first year of law school. In 1983, 47,980 women were attending law school, including 16,049 first-year students. Women constituted 39% of the first-year class in 1983.

Minority students now make up 10.9% of the 1984 first-year class, up from last year's 10.7%. Looking at juris doctor enrollment,

minorities constitute 9.9% of the student body, blacks comprising 4.9%; Asians, 1.7%; Mexican Americans, 1.4%; other Hispanic Americans, 1.2%; American Indians, 0.4%; and Puerto Ricans, 0.3%. A total of 11,917 minority persons are seeking law degrees, and of them 4,419 are in their first year of study.

Enrollments were down in both full-time and part-time programs. Full-time enrollment decreased by 1.2% in 1984, to 98,735. Part-time enrollment dropped by 1%, to 12,112. However, the proportion of all law students who are part-time has remained relatively constant at about 17.5% since 1980. This year it is 17.6%.

—American Bar Association

Discipline caseload declines

Through the concerted efforts of the Discipline Section, the total active caseload of ethical grievances has dropped from 213 on November 1, 1984 to 131 on March 15, 1985. Nearly 140 cases were either closed or dismissed by Discipline staff in that time period.

Of the 131 open cases on March 15, 1985: four matters were pending before the Alaska Supreme Court; eight matters were pending before the Disciplinary Board, 11 matters were pending before Area Hearing Committees; seven matters were pending the administration of a written private admonition; 12 matters were pending the results of fee arbitration hearings; two matters were pending conciliation; and two matters were in abeyance. Of the 85 cases remaining on the active caseload, Discipline Counsel have made procedural decisions in all but 20 cases. The majority of those 20 cases are 1985 cases opened within the last several months.

This increased efficiency means that decisions on grievances filed with the Discipline Section are made at an earlier time

than they were in the past. During its December, 1984 meeting, the Board of Governors authorized the hiring of another full-time attorney to act in the dual role of intake attorney and investigator. With that additional position, the Discipline Section now has a full-time staff of three attorneys and two secretaries.

Assistant Discipline Counsel Susan Daniels joined the Bar staff in January 1984 and handles telephone inquiries from the public as well as incoming grievances and complaints. Working under the supervision of both Discipline Counsel, Ms. Daniels determines whether there is sufficient information to open an investigation or whether the inquiry relates to a matter more appropriately directed to another agency. Her efforts have enabled Discipline Counsel to concentrate on those investigations in which ethical misconduct is properly alleged.

Ms. Daniels is a 1982 University of Puget Sound Law School graduate. She and attorney husband, Ken Lagacki, most recently lived in Ketchikan where she handled court appointments in children's cases.

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Reciprocity Admittees

The following applicants were certified by the Board of Governors for admission to the Alaska Bar Association on motion at the Board's meeting on March 21, 1985:

Lawrence A. Aschenbrenner
James A. Bowen
Francis L. Bremson
Monte Engel
Joseph K. Hage, III
James R. Jackson, Jr.
Steve C. Jones
Reginald S. Koehler, III
Thomas R. Lucas
Michele M. Straube
Scott H. Swan
Delinda L. Wall
Norman E. Williams
William R. Wilson, Jr.

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ALASKA CODE REVISION COMMISSION POSITION VACANCY

The Alaska Code Revision Commission will receive applications for the position of Research Director. The position is in Juneau. The applicant must be a lawyer admitted to the bar of some state and must have experience in legislative drafting. The position is in the partially exempt state service in the legislative branch. Salary depends upon experience and qualifications; current Research Director is paid \$57,500. Applicants should be available in May 1985 upon adjournment of the present session of the legislature. Dutes include legislative research and drafting and supervision over research and drafting done by others for the commission; general supervision over a secretary and over the administrative functions performed by the secretary; and representation of the commission in hearings of legislative committees on its bills. Resumes are requested before March 28, 1985, but resumes submitted after that date may also be considered. Hiring is contingent upon availability of funds for the position. Resumes should be mailed to Tamara Brandt Cook, Executive Secretary, Alaska Code Revision Commission, Pouch Y, State Capitol, Juneau, Alaska 99811, or may be delivered to the commission's office at 110 Seward Street, Juneau. A full job description is available upon request.

ABA Poll: Lawyers Favor Death Penalty

A random sample of 600 lawyers reveals that a majority support capital punishment.

Sixty-eight percent of the lawyers polled favored carrying out capital punishment sentences that have been imposed by the courts; 27 percent are opposed; and 5 percent are undecided, according to a survey in the April issue of *ABA Journal*. (A recent Gallup Poll found 72 percent of the general public in favor of the death penalty.)

Lawyers favoring capital punishment justify it based on punishment (43 percent), deterrence (39 percent) and protecting society (28 percent).

Half of the lawyers disapprove of executions for convicted murderers under age 18.

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All My Trials...

by Gail Roy Fraties

Everybody has some outlandish theory of jury selection, and I make it a practice—among other eccentricities—to make a mental note of the juror's sun sign. This is easily done, because their date of birth is part of the data placed on the juror questionnaire. It's not carved in granite, of course, but I like to think that Capricorns, for example, are more apt to convict than, say, a sympathetic Pisces. It's fun, and it sometimes amuses the jurors—at least it keeps them awake.

What's My Sign?

Anchorage Chief Assistant District Attorney Leonard M. "Bob" Linton (an uncompromising Virgo) challenged me on this notion. "I'll bet you can't tell me a thing about Patty (Mrs. Linton)," he said, "and she's a Capricorn."

"Well," I ventured, "then I'd have to guess that she's pretty tough minded."

"Bullshit!", replied Bob, "she's the only person I know that believes that Charles Manson and Sirhan Sirhan were railroaded."

I tried again. "I'm sure she's practical."

"Are you serious?", he responded. "I have to watch her like a hawk. It's a good day when she can get the car started."

One more attempt seemed indicated. "Capricorns are usually fairly intelligent about money," I offered.

"We're lucky we're not in the poorhouse," he responded.

Personally I've always liked Patty—and I know that Bob does. I think he was just trying to win the argument. Or perhaps her moon is rising in Jupiter. What do I know?

Continuing Education of the Bar

Anchorage Superior Court Judge Victor D. Carlson has remarked on occasion that some defendants would be better off if they said nothing in their own behalf. He's right, of course, particularly when they blame their problems on the victim—as one of them did in the presence of Superior Court Judge Seaborn J. Buckalew the other day.

As a former District Attorney in Anchorage, and judge in the same city for many years, he's used to human tragedy—but he's also a kindly man, and offenses against children bother him. The defendant's remarks in allocution concerning his romance with a nine-year-old child had gone on for some time when the judge intervened in his soft Texas drawl:

"Do you know how shocking it is for me to hear this sort of excuse? Why, if I didn't know the age of the victim, I'd have thought you were describing Cleopatra."

This literary allusion went straight over the head of the defendant at a considerable altitude, and his counsel seemed equally nonplussed.

"She's the one that seduced Mark Anthony," continued the judge helpfully.

A confused silence greeted this observation, and the court directed its further remarks to Assistant District Attorney Alexander "Alex" Bortnick, who was handling the sentencing for the prosecution.

"They called her the serpent of the Nile," he said reminiscently, "but (with a look at the defendant) let it pass. Eight years."

Challenge for Cause

I don't know whether you've ever tried to ask a juror the old reliable voir dire question which requires them to put themselves in the defendant's shoes. Something to the effect that if they were on trial, would they feel comfortable with a juror in their present state of mind. I always screw it up, and can't even write it properly.

That being so, I was comforted by a story Fairbanks trial attorney and former territorial governor Mike Stepovich told some of us one afternoon concerning his first jury trial. He was very young in those days, and had associated himself with a prominent local trial attorney who was to do the majority of the trial work while Mike, hopefully, had a learning experience.

Things had gone smoothly on the first day with the gracious and courtly elder attorney charming one and all with his courtroom demeanor. However, at lunch time he went out and got drunk—a condition that the judge noticed immediately on commencing the afternoon session. The offending attorney was ordered to leave the courtroom, and Mike—like the proverbial understudy getting her first big break when the leading lady can't make the bell—rose grandly to examine the next venireman.

"Mr. Jones, if you were in the defendant's place, and he were in your place, would you want a man in your state of mind sitting in judgment on you?"

The juror gazed at him apprehensively. "I'm not sure what you mean," he said.

"I mean," said Mike, "if you were over there and he was in your spot and you were accused of crime and he was the juror, would he be safe having someone who thinks like

you do—or wouldn't you want someone in your frame of mind sitting in judgment of you if you were him?"

The juror looked at the judge nervously.

"May I ask you a question?"

"Certainly."

"Is he drunk too?"

Someplace in Time

Julie Werner-Simon, the engaging and diminutive young Frankophile in the Anchorage District Attorney's Office, gives no quarter in the courtroom. She's also living proof that being a tough trial lawyer doesn't have to detract from a lady's femininity, as she demonstrated conclusively one afternoon when I went over to Simon & Seaforts to tell her that her jury had just sent out a question. She had been in trial for a number of days, and was having her first beer after work.

"I'm so tired," she remarked, "that even half a beer has got me lightheaded. I'll go over there, but I hope they haven't asked anything complex."

"I guess this is my big opportunity to make a move on you, Julie," I said, with creaking gallantry. She glanced at me demurely with her incredible basilisk eyes. "Gail," she said kindly, "why don't we wait until I'm old enough to appreciate it?"

Famous Last Words

Strange things, the poet Robert Service tells us, are done in the midnight sun—and if he wasn't thinking specifically of former Nome District Attorney William "Bangkok Billy" Garrison, he must have known somebody a good deal like him. We got together recently when Bill was here on one of his infrequent visits, and he reminisced about an investigation he and Alaska State Trooper homicide investigator Charles "Chuck" Miller had conducted into the fatal shooting of an Eskimo fisherman's wife.

The young couple had been out in their boat, and the shotgun they carried for seal went off—purportedly by accident—fatally wounding the lady with a load of buckshot under her arm. It seemed obvious to both men that a terrible accident had occurred, and there was no indication of crime, or even negligence. Nevertheless, propriety required that they take a statement of the only witness, the victim's husband.

Investigator Miller, hoping for some sort of a dying declaration, asked the widower if his spouse had said anything before she

died. The reply was in the affirmative.

Trooper: "Well, what did she say?"

Husband: "She said 'UU'GAH!'"

Trooper: [with growing suspicion] "Come, Mr. Wassillie, 'you know very well we don't speak Upik. What does it mean?'"

Husband: [stolidly] "It's Eskimo for 'ouch!'"

Quotable Quotes

Legal Assistant Pamela Barkhoefer, on studying a chart outlining a smorgasbord of 21 counts graphically depicting a defendant's sexual misconduct with his victims [anal intercourse, oral copulation, vaginal penetration, fondling, and so forth]: "I'll take two of these [pointing], one of these, and four of those."

Trial lawyer and critic Peter Gruenstein, on being asked why the lettering of the Superior Courts in Anchorage follows no pattern perceptible to human intelligence [R and J are on the second floor, B, E, C, D and A on the third, H and K on the fourth—and nothing is in any known sequence]:

"They probably let the same guy that designed the courthouse pick out the letters."

Kenai Assistant District Attorney James L. Hanley, on being informed that Chief Justice Jay A. Rabinowitz disapproves of my column: "I think he has a point. His stuff is usually pretty funny, without being vulgar. You're going to have to try harder."

New Board Members Elected

Several members have been elected to the Alaska Bar Association Board of Directors:

Robert Wagstaff, Third Judicial District

Ralph R. Beistline, Second and Fourth Judicial Districts

Larry R. Weeks or John F. Clough, First Judicial District
(Runoff, results May 8)

ALASKA STENOTYPE REPORTERS

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Discipline imposed upon attorneys

Disbarment

Robert C. Blackford was disbarred on consent, effective October 19, 1984, for abandonment of a large number of his clients, most of whom were located in Fairbanks, Alaska.

Suspension

James S. Lear was suspended for three years effective March 13, 1985, based on his conviction on two felony counts of sexual abuse of a minor.

Nicholas G. Maroules was suspended for two years effective January 10, 1985 based on his conviction on three misdemeanor counts of theft in the third degree.

Public Censure

Jeffery Van Abel was issued two public censures for neglecting a legal matter entrusted to him and for failing to respond to a bar complaint.

Private Reprimands by Board

Attorney X received a private reprimand from the Disciplinary Board for his failure on three separate occasions to answer a request for investigation of a formal complaint in conformity with the Alaska Bar Rules. The Board felt that the mental disability under which the attorney labored during the period involved in these matters, while not excusing his failure to timely respond to inquiries, was a factor in mitigation in considering the imposition of an appropriate sanction.

Attorney X received a private reprimand from the Disciplinary Board for continuing to practice law while suspended for non-payment of Alaska Bar Association dues.

Attorney X received a private reprimand from the Disciplinary Board for his failure to respond to a request for investigation under the Alaska Bar Rules. The Board considered severe family problems which the respondent was experiencing in mitigation.

Private Admonitions by Discipline Counsel

Attorney X received a private admonition for violation of DR 7-104 after he wrote a former client commenting on the representation being provided the client in a malpractice action against Attorney X.

Attorney X received a private admonition for a violation of DR 6-101(A) after he failed to answer correspondence or accept telephone calls from his client and did not advise his client of the status of his case and the options open to him.

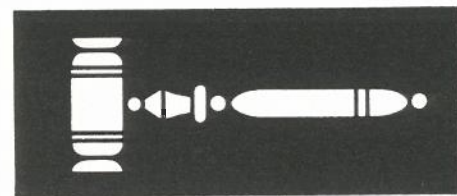
Attorney X received a private admonition for a violation of DR 7-101(A)(1) and (3) after he filed documents with the court, as part of a motion to withdraw, which opposed the bail release of his client and advocated the client be incarcerated pending appeal of his criminal conviction.

Attorney X received a private admonition for a violation of DR 7-104(A) after he wrote the opposing party, questioning the

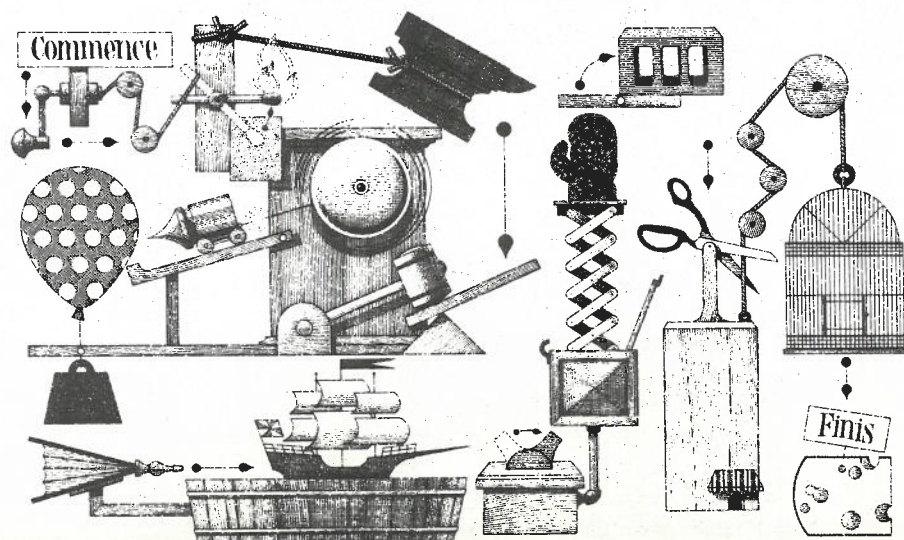
actions taken by the opposing attorney and requesting the client to confirm that he understood the actions and their consequences.

Attorney X received a private admonition for neglecting a personal injury case after he had filed an answer and for failing to properly withdraw from his employment under DR 2-110 after he had accepted another job and left the private practice of law.

Attorney X received a private admonition for failing to inform an out-of-state attorney on behalf of a client that he had ceased efforts to collect a judgment after the date of the filing of bankruptcy. The out-of-state lawyer wrote a large number of requests for information and the responses submitted by Attorney X did not directly respond to his requests on behalf of the client.



Advertise in the Bar Rag



Bar readers may see changes

Regular readers of *The Bar Rag* might have noticed a few changes in the two recent issues. We've gone to a better grade of paper, to keep smears off fingers, to extend the life of articles people save, and to ease strain on the eyes. New design techniques also have begun.

Starting with the next issue, we'll be making additional design changes, reviewing advertising rates and formats, and firming up production schedules for a quarterly publication appearing in January, April, July and October.

If you're an advertiser in the Rag, there will be new modular sizes and rates for the July issue. Rate and specification cards will be in production shortly.

If you're a contributor of copy to the Rag, deadline for the July, 1985 issue will be June 21.

When possible, the editors prefer copy that's double-spaced. Photos, essays, humor, anecdotes, public notice, news items, and opinion articles are always welcome.

Inside this issue you'll find a reader response survey. We'd appreciate your opinions on how to make the Rag entertaining and useful to the legal and related communities it serves.

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Alaska law back then...

Continued from page 1

did you like that, you dirty piss ant."

Goodyear jumped up and grabbed Dad and they both crashed to the floor wrestling. The judge was yelling and the bailiff was grabbing and pulling. Pretty soon things calmed down and the Judge began lecturing them and threatening them. I got out of there, firmly convinced that a trial lawyer was what I wanted to be. What a way to earn a living!

Well, eventually I got through law school, and finished helping General Patton win World War II, and finally in 1946, I ended up practicing law in Anchorage, Alaska.

But first, let me pass on a short vignette from a year spent practicing in Centralia, Illinois.

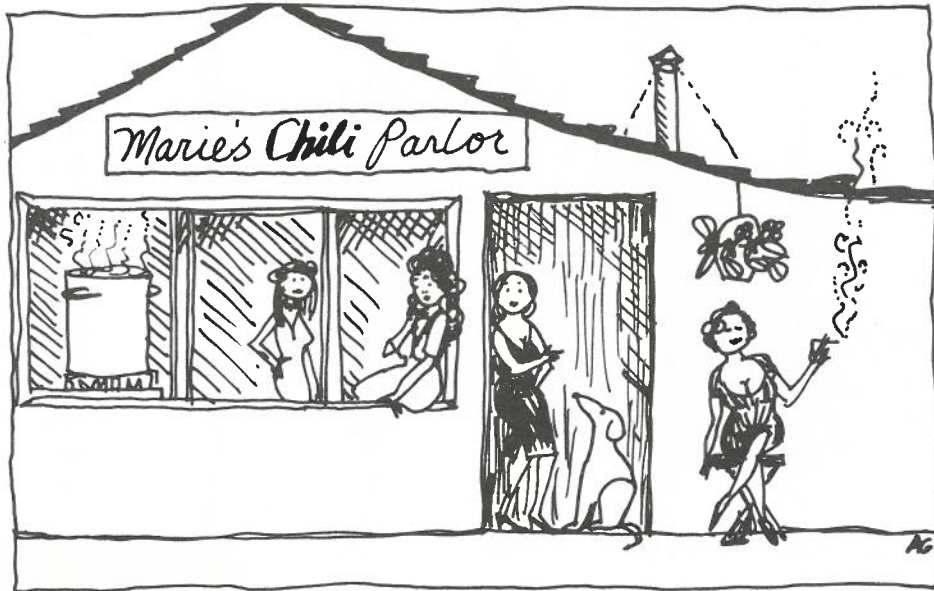
Judge Burnside, of Vandalia, Illinois, sitting in Marion County on the Circuit, was a fine looking figure of a judge. He had a shock of wavy white hair, and an imposing mustache. Beyond appearances, however, he was an excellent judge, intelligent, honest and fair. One of the best I ever saw.

I was trying my first criminal case, an appointment to defend a kid accused of "Grand Larceny Auto"—stealing a car. There was no pay for a criminal appointment in Illinois in 1941.

The witness on the stand was a miserable liar, and he was trying his best to send my boy to the penitentiary. An alleged "accomplice," he was trying to save himself. I went after him on cross-examination. Things went well. I was boring in, finger at his nose, and the witness was squirming and dodging. Suddenly there was an interruption; "Approach the bench, Mr. Kay," roared Burnside. I was shaken; what crime had I committed?

Leaning over so he could whisper almost in my ear, Judge Burnside said, "Get back, young man, you're standing too close. Get out of the way, so the jury can see that lying son of a bitch." "Yes, Sir, Thank you, sir," I said.

Sometimes things just weren't reported at all. One of the young deputy marshals told me one time, about 1950, after returning from a very remote place called Egegik, that he had uncovered an unreported homicide. He was investigating something else when



Anchorage, and all of Alaska, was a very exciting place to be in 1946. It was truly the last frontier. The territory was a ward of the Department of Interior, and local government was limited. The four judges were federal appointees, and most of the law enforcement was done by U.S. deputy marshals. An offense committed out in one of the villages might be reported to Anchorage in 2 or 3 days, and then it would take another 2 or 3 days to get a marshal out to the scene.

someone told him that Mrs. Elsie Topkoff had shot her husband several months earlier. With considerable excitement the marshal ran to the village chief, and the following conversation occurred:

Marshal: "Say, is it true that Elsie Topkoff shot her husband last May?"

Chief: (weighing every word) "Andy Topkoff not seen since spring. Could have been shot alright."

Marshal: "Well, what goes on here? Why wasn't this reported?"

Chief: "Andy very bad fellow. He beat up many people. He beat Elsie all time, mean drunk."

Marshal: "O.K., but Elsie had no license to shoot him. Why wasn't this reported?"

Chief: "Like you white people say, Marshal, this a first offense."

Anchorage was then a town of 15,000 people, with one stop light, three blocks of pavement, and 20 lawyers. There were two "big" firms of two partners each, and the rest were on their own. It was a "high velocity" place to practice. People were constantly buying, selling, going in and out of business, shooting each other or beating on someone, getting divorced, stealing something, or doing something else to generate business.

Of all the lawyers in the Territory, the most unusual and the best, was a gentleman by the name of George B. Grigsby. George arrived in Nome in 1900 as Assistant U.S. Attorney, and he had practiced all over the territory, in addition to serving a term as Attorney General. He was smart, tough, experienced and unflappable, and he worked at the law until 1962, when he finally hung up the gloves after more than 60 years in Court. One story about George.

In 1948 George was defending a young fellow on a charge of assault with a deadly weapon. The knifing was alleged to have occurred in the back hall of an establishment known as "Marie's Chili Parlor," after which the defendant was said to have run out the back door, jumped over a fence, and temporarily escaped. Marie's Chili Parlor was a notorious place, with a lonely pot of chili on a hot plate in the front, and a bunch of willing ladies in the back rooms. The girls were hotter than the chili.

Marie Cox was a somewhat rough old madam alleged to be "half Spanish, half black, and all mean." She had been a client of Grigsby's from time to time, so she did not expect much cross-examination after her direct testimony concerning the events of the evening. George seemed to be very concerned about the back door: did the door open in or out? Was the handle on the right or left? Was there a glass window in the door? And etc., etc. Finally, Marie's short fuse burned down. Fixing George with an evil glare, she demanded, "Mr. Grigsby, why are you asking me all these questions about that door? You know that door—you are in and out of there three or four nights a week!"

There were howls of laughter. Pandemonium!

I don't know about you, but I might have slunk to the water pitcher. George just stood there, beaming and smiling, until the laughter died out. Then he addressed Marie, "Ah yes, Mrs. Cox, you and I know all about that door! But your testimony is vital. None of these fine gentlemen on the jury have ever seen that door."

Now there were real howls of laughter. Even the judge was smiling.

Commencing practice in Anchorage with a banker who was also a lawyer, I found myself conducting exciting battles over promissory notes, evicting widows and orphans, prosecuting lien foreclosures, and doing other stimulating work. Gradually, as word got around, however, I began to represent more substantial citizens in more titillating affairs such as robberies, burglaries, rapes and assaults.

Anchorage was a wild and woolly place around 1950. Thousands of highly paid construction workers, looking for recreation in an area where the bars were open 24 hours a day, drew a swarm of prostitutes and pimps, robbers and con-men.

As P.T. Barnum said, "There's a sucker born every minute—and two to take him." The crooks were busy and the lawyers were busier.

Of course, as we all know, you couldn't win 'em all. In 1953 I received a large Christmas card signed by 8 or 10 former clients. It came from "Kay Row" at McNeil Island Federal Penitentiary.

About that time I lost some clients in an unpredicted turn of affairs. A beautiful young housewife named Edna DeMeers had shot her husband under circumstances that seemed entirely proper to her. The man in question, a very successful young electrical contractor, had come home drunk and beaten her up, conduct which she claimed was habitual. As soon as he passed out, she picked up a .357 magnum revolver and shot him in the head.

Another barrister in town, Stan McCutcheon, represented Edna at trial and succeeded in confusing the jury sufficiently to result in a verdict of manslaughter. The judge imposed a sentence of 10 years to serve and Edna promptly deserted my friend McCutcheon and got me to handle the appeal. There were some possible errors apparent and the appeal looked at least arguable.

In the meantime, a handsome civil service worker out at the Air Force base had come in for a divorce. His name was Bob Speedy and he didn't seem to have any real reason to wind up a 10-year marriage except that he wanted out. What I didn't know was that Speedy had fallen in love with Edna DeMeers, and she was leading him around by the nose. Edna, while toying with Speedy, was actually enamoured of a short order cook by the name of Tony. The termination of this mixup came with a bang.

Tony and Edna were spending a summer afternoon guzzling drinks and dancing to the jukebox at a roadside tavern on the edge of town. Speedy was riding around looking for Edna with a .45 automatic stuck in his pocket. Unfortunately, he saw her car in front of the tavern, and walked in to confront his rival. Edna told him to "get lost," she was through with him. Speedy produced the pistol, shot Edna in the head, Tony in both legs, and then killed himself. This rendered Edna's appeal moot, to say the least, and terminated Speedy's marriage—without a divorce.

There is something very special about defending someone accused of murder. It seems to concentrate the mind sharply, to focus all your energies, in a way no other trial quite does. I've had a wide variety of such defendants—doped up kids, angry husbands, outraged wives, angry people, drunk people—all ages, sizes and shapes—very interesting. I often think that, given the wrong circumstances and an available weapon, almost anyone could find themselves accused of murder. Let me tell you some stories.

Continued on page 8

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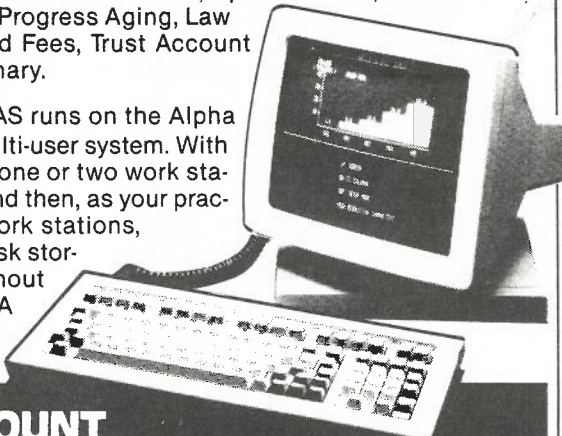
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Legal employment...

Continued from page 1

8.2%. Only 4.3% of the respondents became self-employed attorneys, a figure which has been consistent over the past five years and casts doubt upon the popular notion that many graduates enter solo practice immediately after law school.

Other major categories of employment surveyed for 1983 graduates included judicial clerkships (11.4%), a position in which a graduate assists a judge for one or two years, government service (11.4%), business (10.5%), public interest (3%), military (1.7%), and academic (1.5%).

While the percentage of respondents choosing private practice and judicial clerkships has increased steadily since NALP's first survey in 1974, there has been a decline in the percentage of respondents entering certain other areas of legal employment. For example, 14.7% of the respondents reporting employment in 1979 were in government service, but by 1983 the percentage so employed had dropped to 11.4%. Within this five-year period, there have been fluctuations in government employment levels with 1983 representing an increase. However, it is unlikely that the level of government employment will again grow to the highest level reported to NALP, 17.6% in 1975. Similarly, only 3% of respondents entered public service/public interest positions in 1983, down from 5.4% in 1979.

The percentages of respondents entering business, the military, and academic careers remained steady over this five-year period. However, the distribution between legal and nonlegal employment is slowly changing, with a clearly identifiable and new trend toward nonlegal employment in business. (For these employment trends, please refer to Chart C).

Employment Patterns

NALP's employment data for 1983 reports the experience of minority and non-minority respondent by ethnicity, race, and sex. As in the past, nonminority men who graduated from the Class of 1983 were more often employed than either nonminority women or minority respondents. Of the non-minority men who responded to the NALP survey, 92.7% were employed, compared with 88% of the nonminority women, 86.4% of the minority men and 82.7% of the minority women reporting employment. Minorities are defined in the *Employment Report* as American Indian or Alaska Native, Asian or Pacific Islander, Black American, Mexican American, Puerto Rican, or other Hispanic. (For employment status, trends, please refer to Chart D).

Private practice employed 61.1% of the nonminority men as opposed to 56.9% of responding nonminority women; both of these percentages are higher than those for minorities where 49% of minority men and 41% of minority women entered private practice. The most frequent employment category among minority respondents, other than private practice, was government service, a sector in which 16.2% of minority men and 19.6% of minority women obtained jobs, as contrasted to 9.6% of nonminority men and 11.9% of nonminority women.

More nonminority women reported employment as judicial clerks than any other group responding, 14.3%, compared with 10.1% for nonminority men, 9.5% for minority men and 10.2% for minority women. While each group—men, women, and minorities—has shown a percentage increase in employment as judicial clerks during the last five years, the most dramatic increase has been for minorities. Clerkships reported by minorities have increased to 9.8%, up from 4.9% in 1979. (Please refer to Chart E for employment categories by race and sex.)

Place of Work

Consistent with data from prior years, more respondents reported employment in the Northeast than in any other region with New York City leading the country as a legal employer. The Northeast also accounts for the largest number of law students and law schools. Since historical data appear to reflect a pattern in which law graduates take employment in the geographic area where they attended law school, it is likely that the Northeast will remain the largest entry level employer.

The vast majority of respondents settled in urban areas. Cities employing the most respondents to the 1983 report are as follows: New York City, 2,161; Washington, D.C., 1,174; Chicago, 1,014; Boston, 584; Los Angeles, 577; Houston, 567; Philadelphia, 491; San Francisco, 409; Dallas-Fort Worth, 367; and Minneapolis-St. Paul, 356.

Cities which attracted fewer graduates in 1983 than in previous years are Detroit and Denver-Boulder.

Starting Salary

Salaries are computed by sex, race, and type of employment for more than 1,000 major cities. Very large firms in New York City with more than 100 attorneys traditionally offer the highest average starting salaries with the 1983 annual rate reported as \$44,442. However, the majority of entry level respondents in 1983 list more modest salaries with the salary median at \$24,000 and the salary mean at \$25,903.

Class of 1983

This press release contains a portion of what NALP learned about the ABA class of 1983. Specific information is available in the following areas:

- Salary by type of practice, location, race, and sex.
- Annual number of respondents located in a particular city
- Statistical analysis of employment by geographic area
- Five- and ten-year trends by type of practice
- Part-time versus full-time employment trends
- Statistical validation of the 1983 *Employment Report*.

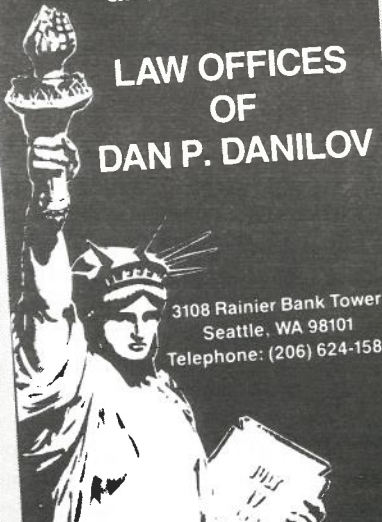
Martha Fay Africa (415-441-2063) chaired the NALP Research Committee during its analysis of the *Class of 1983 Employment Report and Salary Survey*. This report may be obtained for \$50 from the Administrative Office of the National Association for Law Placement, Inc., located at Tulane Law School, New Orleans, LA, or by calling 504-865-5945.

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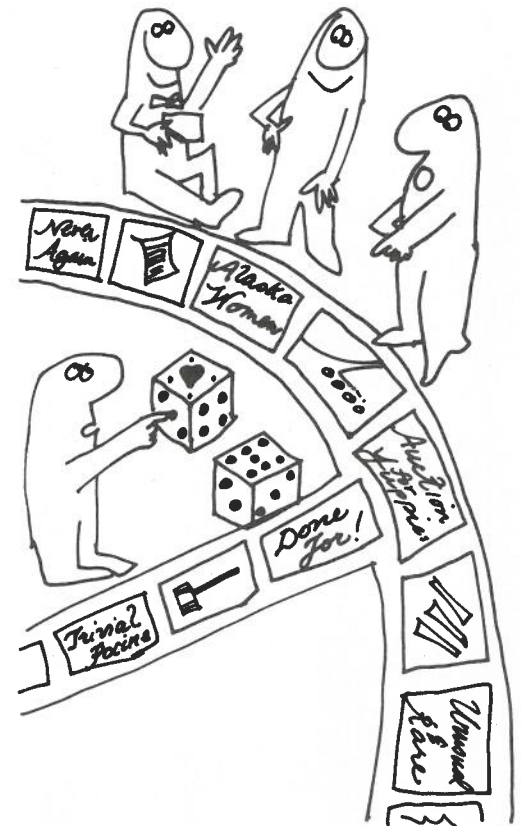


Trivial pursuits for Yuppies

Here it is, trendy people. The event of the spring season. It's the Trivial Pursuit Auction and Yuppie Convention, sponsored by the Alaska Women's Resource Center and being talked up by a few Bar members whose names shall remain anonymous.

The TPA&YC will be auctioning off all manner of trivial stuff and services at the event on May 30 at the Governor's house. Preview of the auctioned goods will be from 5:00-6:30 p.m., wine and hors d'oeuvres will be served and there will be an admission fee (to be determined).

The auction and convention is a fund-raiser for a privately purchased women's resource building at 111 W. Ninth Ave. Offers to donate services or items and inquiries should be directed to Carol Richards at the facility, 276-0528.



*Trivial Pursuit is somebody's registered trademark for a popular board game manufactured by Selchow & Righter, the people who brought us Scrabble; although it could be said that, since the phrase "trivial pursuit" had been in common lexicon prior to the invention of this board game, that Trivial Pursuit does not deserve this copyright notice at all.

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Alaska a great place to practice

Continued from page 6

Joey Nelson was a deep sea diver and part-time fisherman living with his wife in Seward, Alaska in 1960. Alan Abloona was a giant sized Samoan Seward longshoreman. These two had a violent quarrel over a piece of a fishing mesh net, a small item worth perhaps \$400. Threats were exchanged. Finally big Alan grabbed Joey and threw him bodily over the hood of a car and into the muddy street. Joey got drunk and went all over town announcing that "nobody would ever push him around again." Joey drove to Anchorage and purchased a .38 caliber revolver.

Early one morning a week later Alan's body was found floating and bumping on the rocks in the bay. He had a .38 caliber bullet through one ear and into his brain. There were other circumstances pointing at Joey, but no eyewitness. No gun was ever found. We got the evidence in and were ready for final argument. I was really apprehensive because the defendant had not testified, and that always makes things sticky. My opponent, Bill MacKay, was a fine prosecutor and very effective with circumstantial evidence. I decided to do a sort of desperation argument that I had once read about back in law school days.

Back in law school, I had read an English short story about a murder case. The evidence was all circumstantial, and the defendant's lawyer staked everything on final argument. After attacking the weakness of the circumstances, he went on:

"Ladies and gentlemen, no one really knows who killed the deceased. Certainly the evidence you have heard does not require you to find it was my client.

But we have worked long hours; we have followed every possible clue, and now we can tell you that the man is known. (sensation in Court) Not only is he discovered, but at this very moment, he is standing outside the doors of this room. (Sensation and murmurs).

Ladies and gentlemen, in exactly 30 seconds, those doors will open and the person who caused the unfortunate death with which we are concerned will enter this courtroom!" (Dramatic pause with counsel looking at his watch and all others eyes on the door).



No one entered the door. Counsel put his watch back in his pocket and continued:

"Ladies and gentlemen, forgive me for my deception, which I assure you was undertaken only in the interests of justice. But let me point something out to you: anyone who looked at that door must have thought it possible that someone would enter this room. If that be true, then such a juror must entertain a reasonable doubt as to the guilt of the defendant.

Ladies and gentlemen, everyone of you, every person on the jury, looked at that door!"

The case concluded and the jury returned very shortly with a verdict of "Guilty." The attorney was stunned; he encountered the foreman of the jury in the hall.

"I don't understand it," the lawyer said, "everyone on the jury was looking intently at the door. What happened?"

"Well," said the juror, "there was one person in the room that never looked at the door, your client. He apparently knew no one was coming in!"

So went the story. I finally decided to give it a try. The scenario went very dramatically. I pointed to the door. "Mr. Getty," I said, "please bring the person who shot Alan Abloona into the room." Keith went out the door. Joey Nelson jumped up so violently to see who was coming in that he knocked over his chair. The jury eyed the door.

Joey Nelson was acquitted. Many drinks were poured at the Pioneer Club Bar.

In murder cases, as in most criminal cases, the State is vigorously trying the defendant while you are vigorously trying anyone else. If the deceased was a really bad rascal, or a vicious brute, you try the victim. There is really no such legal defense as "he deserved it," but the jury may like the idea. If the police fouled up the evidence badly or committed other offensive practices, then you try the police.

Once I recall trying the doctor who had operated on the victim. George Samuels was a tall, skinny black fellow who got drunk one Saturday morning and started harassing a neighbor, Ida Mac Patterson. Ida Mac finally stabbed George with a WW II souvenir Nazi dagger. The bladed entered under the shoulder blade and went pretty much straight down, missing any vital parts.

Dr. Fred Phillips explored the wound and sewed George up. However, put to bed, George failed to rally and in fact steadily declined. Finally, another surgeon went in and found that Dr. Phillips stopped too soon. The tip of the dagger had penetrated the diaphragm and nicked the top of the spleen, which bled profusely. The repairs were too late and George expired many hours later.

The pathologist called by the State did not like Dr. Phillips. By the time he finished his cross-examination, poor George Samuels would have been alive and well and running foot races if Phillips had not botched up the operation and killed him. The jurors expressed their feelings by letting Ida Mac off with manslaughter.

Harry Burns was a pleasant young hairdresser with a beautiful wife and two little kids. Anna was a beautician and their shop did well, but Anna enjoyed partying and boozing more than she did taking care of kids and bending hair. The fact that Harry was most jealous made for an explosive situation.

One December evening in 1960, Anna was missing and Harry went searching. He was wearing an old hunting knife in a sheath on his side, sharpened to a razor edge, and his temper was as sharp as his knife. He made his way down 4th Avenue in and out of the bars lining the street.

The Sourdough Bar was crowded that evening, smoky and noisy, every stool at the long bar occupied by a drinking citizen. Anna was near the far end of the bar, busily engaged in conversation with Hobo Benson, oblivious to Harry pushing his way toward

them through the crowd.

Hobo was a happy, carefree, rangy fellow who owned a saloon in Galena. He was in Anchorage for a day or two, to get drunk and roister around. He had just sat down besides Anna and launched a friendly conversation, when he saw an angry fellow approaching him flourishing a knife. At the same moment Allan Aktoff, seated on the other side of Anna, also spotted Harry. He and Hobo both jumped up, and Allan flung up a defensive arm. Anna screamed.

Harry swung the knife once and slashed Allan on the arm. One step, and he stabbed Hobo in the chest. A pause, and Harry stepped over to the bar and handed the knife to the bartender. Then he sat down on Allan's stool, put his head in his hands, and began to cry.

We were set for trial on a day in May, 1961. Harry and Anna were back together again, of course, and Hobo Benson was in a peaceful and benevolent mood. Ted Pease was prosecuting, and the judge was Earl Cooper, a man of great humor and limited patience.

Hobo had been out touring the town the night before, and he gazed at the jury through bloodshot eyes. He radiated an odor of alcohol strong enough to wither an artificial flower at 10 paces. Judge Cooper smiled and ordered the bailiff to open a window. Mr. Pease examined the witness (after preliminaries):

Q. Mr. Benson, please tell the jury if you see the man in the courtroom who stabbed you?

A. (Gazing genially around) Can't really say that I do, Mr. Pease. Some of 'em look familiar though.

Q. (Pease flinches noticeably.) Look again, Mr. Benson, please, and identify the man who hit you with the knife.

A. (Pensively) Really, I'm not sure. Can't pick him out, sir. I know a lot of people.

Q. I'm sure you do, Mr. Benson.

Court: Step down, Mr. Benson. Call your next witness, please.

Mr. Pease: State calls Allan Aktoff.

There was a long pause. Everyone gazed around the room. The judge examined his fingernails. Finally the bailiff returned and held a whispered conversation with Ted Pease. Pease turned to the Court:

"Your Honor, Mr. Aktoff was served with a subpoena several days ago, but he can't be found right now. Could I have some time to get him in here, sir?"

Court: "Well, it's 11:45 right now. We'll take lunch. Have your witness here at 1:30. Mr. Pease. Adjourned." Out he went.

We wandered over to the Westward Hotel for a two-martini lunch. One count of the indictment was out the window; only Allan Aktoff remained.

At 1:30 Ted was uneasy and annoyed.

"Your Honor, the State must ask for a continuance. We've had the entire police force out looking for Mr. Aktoff, but they haven't been able to find him. I'm sure we can find him by tomorrow, sir."

Court: "Mr. Pease, the defendant is here ready for trial. The jury is waiting for the witness. Call your next witness."

Pease: "But your honor, . . ."

Court: "Call your witness, sir."

Pease: "The State has no more witnesses, sir, if we can't have Mr. Aktoff."

Court: "You have a motion, Mr. Kay."

Kay: "Judgment of acquittal, sir."

Court: "Granted. Jury dismissed. Adjourned."

Did they ever find Allan Aktoff? Of course. Allan was sitting peacefully in the back row of Courtroom A, where he had been sitting all day. The janitor ushered him out at six o'clock.

The trial was being held in Courtroom C.

There have been great changes in the way we practice law since 1938.

Today, a great many civil cases are not tried; they are smothered. The enormous expansion in discovery, with multiple demands for production, as many interrogatories as the court will allow, repeated depositions of

Continued on page 10

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ALASKA BAR ASSOCIATION

News & Notes

April, 1985

Excellence on tap for convention

by Jennifer Abbott

Sitka '85 may well go down in history as the Convention that featured lawyers-turned-authors as its guest speakers. Well-known fiction authors Barry Reed (*The Verdict*) and George V. Higgins (*The Friends of Eddie Coyle*), will address the Bar at this year's Annual Convnetion, in Sitka. Richard Neely, Chief Justice of the W. Virginia Supreme Court of Appeals and a respected scholarly author, will also speak.



Barry Reed

Reed, a partner in a law firm in Boston, used his experiences in dealing with hospitals and medical practitioners to write the engrossing tale of a lawyer who is given a chance to rebuild his reputation by taking on a prestigious hospital in a medical malpractice suit. Reed's Boston law firm deals primarily with professional liability, medical malpractice and medically-related cases. Reed is a highly sought-after consultant on the prevention of medical malpractice.

Entitled "The Making of the Verdict," Reed's speech will take us behind the scenes of the blockbuster movie in which Paul Newman uttered the unforgettable line "Your Honor, if you're going to try my case for me, please don't lose." A light-hearted, humorous, and delightful presentation, Reed's speech promises to entertain and involve even the most aloof members of the Bar.

George Higgins

No one can describe Higgins with the degree of wit and charm with which he describes himself. His bio sheet reads as follows:

"I have had a disorderly career, the lack of security redeemed by the thusfar-reliable occurrence of luck. Few things that I have carefully and intelligently planned have worked out in satisfactory fashion—the private law practice which I prudently established as a hedge against the wild vicissitudes of living as a freelance writer turned out to be a severe drain upon my time and earnings as a writer. *The Friends of Eddie Coyle* was rejected by publishers who had long encouraged me to write, and accepted by a total stranger whose name I found in *Writer's Yearbook*. *The Atlantic* hired me to analyze the Watergate debacle after years of rejecting my fiction; I was commissioned to analyze the years of Kevin White in Boston by an editor who admired my fiction. I expected to pontificate on politics as a *Globe* columnist, but was prevailed upon to serve as a critic of periodicals, and that work was the basis for the *Wall Street Journal's* invitation to deliver television criticism. . . .

This has made it very difficult for me to deliver helpful advice to people with ambitions in the field of freelance writing. They look at what appears to be a linear progression, but I look back on disorganization verging upon chaos. I started out earning money in my college summers as a truck driver for Coca Cola, expecting to keep that position through the first year or two of medical school. By the time I got my undergraduate degree, I was aiming for a Ph.D. and a career in college teaching. I went into the newspaper business as an escape route from a threatened life in high school teaching, and went to law school—believing I was leaving newspaper work forever—because I wanted to try cases. Approaching the 20th anniversary of my law school graduation, I find myself no longer trying cases and doing quite a lot of work for three national newspapers. The only constant in this is that since I wrote my first novel, back in 1954, I have been spoiling paper, and I really do enjoy it."

Higgins will deliver his speech "Middle Class Outlaws" during the Friday noon luncheon.



Richard Neely

Another lawyer-author to speak at this year's Convention will be Neely, the renown author of *The Divorce Decision* (McGraw-Hill, 1984); *Why Courts Don't Work* (McGraw-Hill, 1983), and *How Courts Govern America* (Yale University Press, 1981).

Neely will be speaking during the Thursday, May 16 luncheon on "The Politics of Courts," a subject that has been the subject of his highly-acclaimed books.

On the morning of Friday, May 17, Neely will be addressing the Judicial Conference on the subject: "Primary Caretaker Parent Rule: Child Custody and the Dynamics of Greed."

Neely received his undergraduate degree in Economics from Dartmouth in 1964, and his LL.B. from Yale Law School in 1967. He is a Vietnam veteran who served as staff economist, Military Advisory Command, and the author of the economic development portion of the 1969 pacification plan. He was awarded the Bronze Star.

Programs scheduled at meeting

In what may very well be one of the best responses yet from the Alaska Bar's Sections, this year's Convention CLE will feature a total of six, half-day programs, four of which are being sponsored by Sections of the Bar.

The Pros and Cons of Presumptive Sentencing will feature a debate between Chief Prosecutor Daniel W. Hickey, Juneau and defense attorney Robert H. Wagstaff, Anchorage. Sponsored by the Criminal Law Section, this debate will be followed by a panel discussion with several members of the Bench who have publicly stated their views on the controversial issue of presumptive sentencing.

Alaska Native Claims: 1991 with Reid P. Chambers, Washington, D.C.; Lloyd B. Miller, Anchorage; Donald C.

Mitchell, Anchorage; David S. Case, Anchorage, and other speakers to be announced, will give the Alaska Native Law Section a noticeable beginning as a newly-formed Section of the Alaska Bar. The program will be a general overview of the 1991-related issues, and will serve as the basis for a major conference this Section plans to sponsor in the future.

The Emerging Doctrine of Wrongful Discharge will be the main focus of the program sponsored by the Employment Law Section. Issues, trends, and cases will be discussed by Elizabeth I. Johnson, Anchorage, and Richard H. Friedman, Sitka.

What's Happening in Community Ownership Association Law: Trends and Cases will be the topic presented by

Wayne Hyatt, Atlanta, Georgia, in his return engagement which is being sponsored by the Real Estate Law Section. This program will deal the UCOA and its ramifications to date.

Discovery and Litigation Negotiation will be two half-day programs presented by Professor Roger S. Haydock, of the William Mitchell College of Law, St. Paul, Minnesota. Haydock is co-author of the nationally-known NITA Deposition courses used widely in CLE programs around the country.

Sitka bar rolls out the fun

The hospitable Sitka Bar Association, the Sitka Visitors Bureau, and several local businesses have banded together to bring us some exciting, delightful and varied R & R.

On Wednesday, May 15, after the joint Bench/Bar Session is done with alcohol testing, IMPRESSIONS, a local art gallery will hold an open house to welcome the Alaska Bar and its guests to Sitka. The wine/cheese/fruit reception will be held from 4:30 to 6:30 p.m. There is an admission charge.

The Sitka '85 Footrace will start at the Centennial Building at 5:00 p.m. It promises to be more of a scenic stroll than a grueling endurance test.

The traditional Welcoming Cocktail Reception, hosted by The Michie Company, will begin at 7:00 p.m. in the Auditorium of the Centennial Building. The Bench and Bar Banquet following the reception will be catered by one of Sitka's most reputable and acclaimed caterers, Frankie Haag.

Thursday night the Bar will savour a delicious fare at the Russian Salmon Bake, while enjoying the

delightful dances of the professional dance group The New Archangel Dancers.

The Sitka Bar's Libel Show, "Nightcourt," will follow Thursday's Salmon Bake at 8:30 p.m. The show is the brainchild of Bill Royce, Tom Meyer and Jeffrey Rubin, among others. Also its contents are one of the best-kept secrets of this year's Convention.

And the highlight of it all, will be the Silver Bay Cruise and Pirate's Cove Picnic, scheduled for Friday, May 17 at 3:00 p.m. The cruise will include a no-host bar and light hors d'oeuvres on board, and the picnic will offer a good All-American fare of hamburgers, salads, beans, etc., plus beer and wine. Price for the cruise/picnic will be \$35 per person. A \$15 "picnic only" option is available for those wishing to sail their own boats from Sitka to Pirate's Cove.

Bar members coming from warmer/dry climates, are reminded to bring warm clothes and rain-gear for this event.

Bench and Bar Meeting

The Joint Bench and Bar Session kicks off the 1985 Alaska Bar Convention on Wednesday, May 15 from 1:00-4:00 p.m.

During this session the Academy of Public Safety, Sitka, will do a demonstration on DWI measuring instruments and field sobriety tests in use in Alaska, and the Department of Health and Social Services, Juneau, will present a lecture on some of the issues surrounding these measuring devices.

The demonstration on the Intoximeter 3000 and field sobriety tests will be done by Corporal David L. Kilpatrick, Sitka. Volunteer judges and attorneys will be asked to submit themselves to some of the tests. Following the demonstration, Dr. Harry J. Colvin, Chief of Public Health Laboratories, Juneau, will discuss some of the controversial and timely issues surrounding DWI methods used in Alaska. A question and answer period following Colvin's presentation will allow registrants to air some of their concerns in this area.

... tells tales

Continued from page 8

every conceivable witness and motions, motions, motions every step of the way, means bloated costs and infinite delay. Discovery has become a way of life—it seems that getting to trial is not the goal—the aim is the complete exhaustion of clients, Court and counsel.

In the 1930s and 40s, criminal cases were a battle of wits conducted in the dark. Defense counsel knew only what the defendant and his friends were telling him. The expected testimony of government witnesses, police reports and statements, and grand jury evidence were the exclusive property of the prosecution.

The first step toward equality came with the *Jencks* case, in which the Supreme Court decided the defendant could examine any prior statements of testimony of a witness, but not until the witness had completed his direct testimony at trial. Now, in most jurisdictions, the defendant is allowed complete

discovery and the old guessing game is a thing of the past.

In 1938 the right to a trial by a jury of 12 was intact and virtually unquestioned. Voir dire was conducted by counsel in almost every court. Today, juries of six persons are common, less than unanimous verdicts are generally the rule in civil cases, and all Federal judges and many State court judges are taking over jury selection.

The selection of the trial jury is a vital part of the trial process. These are the "judges of the facts"; the people who are going to decide your case. The prejudices, inclinations, opinions, and thought processes of the prospective jurors are of great concern to the lawyers involved in the proceedings. The lawyers in the case *must* be involved in the selection of the trial jury; they *must* be allowed to discover bias or prejudice, to detect likes and dislikes, to arrive at some sensible purpose in exercising preemp-

tory challenges.

None of these things are any real concerns of the presiding judge; he is there to referee the dispute, to see that the rules are obeyed.

If these premises are correct, then the judge obviously has no interest in the selection of the jury, other than to see that it is done properly. Who remains in the box, and who is excused, is really none of his concern. It is most decidedly our business, yours and mine.

We trial lawyers have always had our critics, and lately they have been joined by persons in high places. In fact, the C.J. himself has been quite critical of the quality of trial work in the federal courts. For nearly 10 years now the debate over competence has gone on—with nothing decided. Personally, I have always felt that the lawyers in court were every bit as competent as the judges—if not more so!

Competent or not, I think we lawyers can view the work of the bar over the last 40 years with great pride.

Segregation of the races in half the nation was a fact of life in 1945—in schools and in public facilities. Now segregation is largely a thing of the past. Lawyers led the fight.

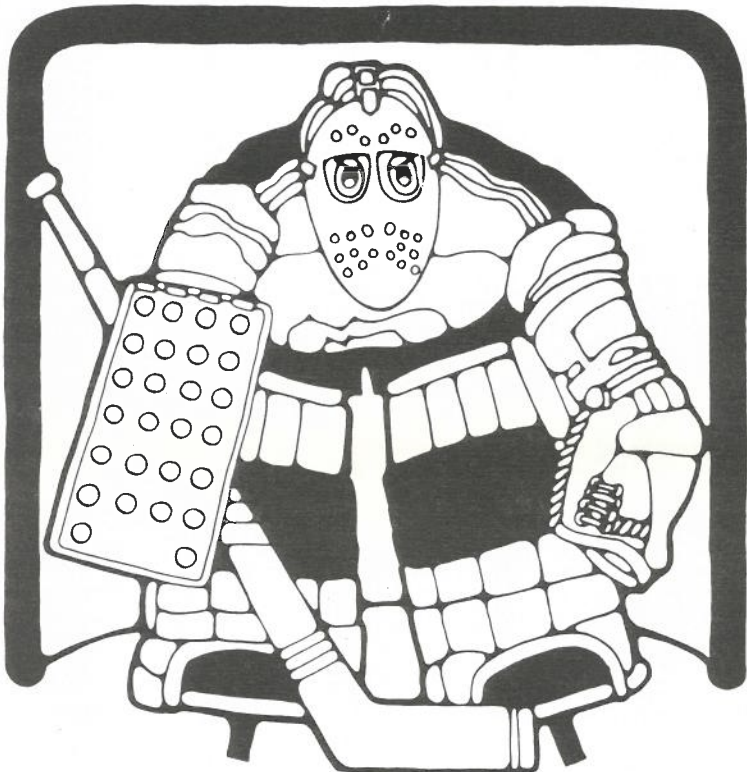
The poor man accused of crime might be appointed a lawyer, or he might not, in 1945. Now every defendant is entitled to the help of competent counsel. Lawyers led the fight.

In 1945, many of our state legislatures were totally unrepresentative, largely gerrymandered to permit the rural districts to control the wicked cities. Now, at least in theory, every man or woman's vote, weighs the same as every other. Lawyers led the fight.

These good things, and many others, are the work of lawyers—good, conscientious, hard-working lawyers—dedicated to making this good nation a better place to live.

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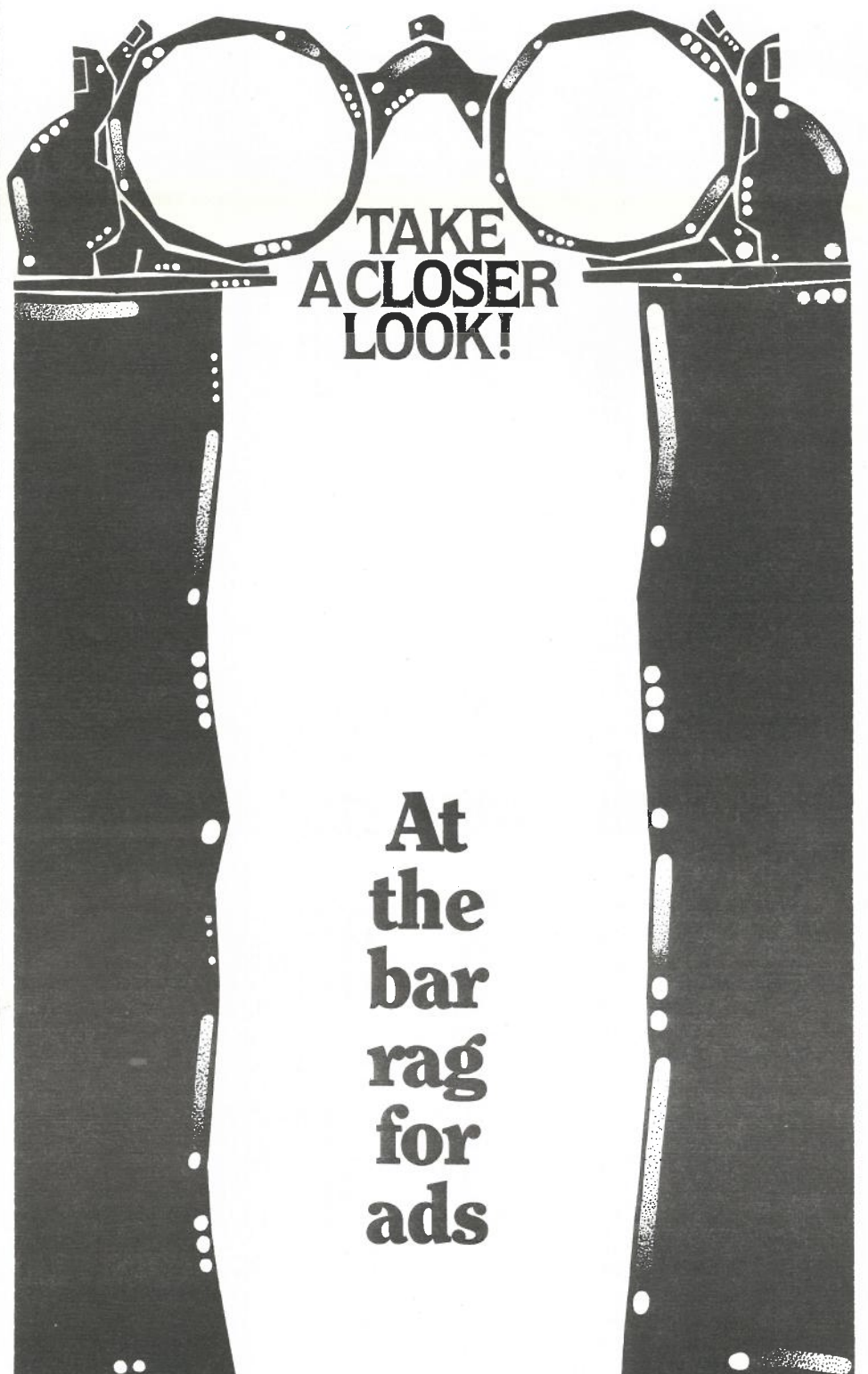
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The text of this speech is from an address Anchorage's Wendell Kay delivered to the International Society of Barristers. The occasion was the annual convention, March 3-9, 1985, at the Arizona Biltmore Hotel.



Legislative review of bar

Purpose of the Report

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Governors of the Alaska Bar Association to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law now specifies that the Board will terminate June 30, 1985, and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Reports can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Organization and Function

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Board consists of twelve members: nine attorneys elected by the active membership of the Association, and three non-attorney, public members appointed by the Governor and confirmed by the Legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08) and the Alaska Bar Rules promulgated by the Supreme Court of Alaska.

The two primary functions of the Alaska Bar Association are the admission and discipline of its members. To accomplish these and other functions, the Association has a 1984 operating budget of approximately \$900,000. Funding is provided primarily by membership dues (\$310 per year), admission fees, lawyer referral fees, continuing legal education, and interest income.

The Association's office is located in Anchorage and is staffed with ten full-time employees.

Report Conclusion

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association (ABA). The final policy decisions affecting the ABA are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations and other information presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion the Board of Governors of the Alaska Bar Association should be reestablished. The regulation and licensing of qualified legal professionals is necessary to protect the public's safety and welfare. The Board provides this protection by reasonably assuring that persons licensed to practice law are qualified and by assuring that those licensed act in a competent and ethical manner through a sophisticated complaint investigation process.

Furthermore, nothing came to our attention during our review, that showed the public's best interest would be better served by any different regulatory method.

Overall, it is our opinion that the Board operates in an effective and economical manner. However, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board's operations (see the Findings and Recommendations section of this report).

Findings and Recommendations

Recommendation No. 1

The Board of Governors of the Alaska Bar Association (ABA) should take prompt action to reduce both the number of backlogged disciplinary investigation cases and the length of time it takes to bring an investigation to a conclusion.

As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation.

An analysis of the status and length of time these cases have been open showed the following.

Status	Cases	Avg. Days Open	Range of Days Open
<i>Pending Proceedings:</i>			
Pending Supreme Court	5	636	396- 853
Pending Discipline Board	6	425	230- 783
Pending Hearing Comm.	10	720	343-1,428
Pending Admonition	3	422	333- 474
Pending Fee Arbitration	12	291	117- 525
Pending Conciliation	5	332	70- 405
Total	41		
<i>Under Investigation:</i>			
Investigator on Case	11	606	252-1,093
Special Counsel	1	1,662	N/A
Investigation—Prelim.	113	188	7- 607
Investigation—Formal	40	342	13-1,097
Total	165		

In addition, an analysis of 21 cases recently dismissed showed the average days these cases were open was 317, ranging from 56 to 943 days.

The Board of Governors is well aware of the serious backlog in disciplinary cases. One of the Board's immediate goals is to take action necessary to reduce this backlog. It should be noted that the backlog and its age has resulted primarily from prior years' turnover and vacancies in the disciplinary staff.

We encourage the Board to take prompt action to reduce the case backlog. In addition, we recommend that during the Board's deliberations of available options, consideration should also be given to the length of time taken to conclude cases. It is in the best interest of the ABA, the complainant, and the attorneys against whom the complaints were filed to take timely action in closing cases.

Therefore, we recommend that the Board's actions not only address the immediate need to reduce the case backlog, but also address the long-term staffing needs of the discipline section.

Recommendation No. 2

The ABA should comply with the public notice requirements of AS 08.08.075.

Chapter 52, SLA 1981 amended the Alaska Integrated Bar Act (AS 08.08) to bring meetings of the Board of Governors under the public meeting statutes, AS 44.62.310 and .312. More specifically, the Bar Act was amended to require that the public shall be given 30 days notice of meetings of the Board, except for emergency meetings.

The ABA has not publicly advertised meetings of the Board since enactment of this statute.

We recommend that the ABA publicly advertise the meetings of the Board in at least three major newspapers in the State.

Recommendation No. 3

The ABA should seek legislation requiring applicants for admission be fingerprinted to determine whether the applicant has a record of criminal convictions.

The standing policies of the Board of Governors require that applicants for admission to the ABA must submit completed sets of fingerprint cards with their application.

In conducting its moral character investigation of the applicants, the ABA submits the fingerprint cards to the Alaska State Troopers for a criminal records check. However, this records check is restricted to information contained in the State's information system. The Federal Bureau of Investigation's (FBI) Identification Division will not accept these fingerprint cards for processing without a specific statute authorizing the ABA to require fingerprinting as an admission requirement.

Effective January 1, 1985, the ABA will institute licensing by reciprocity in Alaska. This process will

most likely bring more applicants from other states who have been practicing law for longer periods. To ensure the good moral character of these applicants, the ABA should have access to the nationwide criminal record information maintained by the FBI.

Recommendation No. 4

The ABA should amend its bylaws to increase the quorum requirements for meetings of the Board of Governors.

In 1981, the Legislature amended the Alaska Integrated Bar Act to increase the membership of the Board of Governors from nine attorney members to twelve members by adding three non-attorney or "public" members.

Article V, Section 9 of the Association's bylaws provides that five members of the Board constitute a quorum at any meeting. This section has not been amended to reflect the statutory increase in the total membership of the Board.

We recommend that the quorum requirement be increased to seven members of the Board of Governors to ensure adequate representation of Association members at all Board meetings.

Analysis of Public Need

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

A. Effective January 1, 1985, the ABA will operate under revised Alaska Bar Rules of Disciplinary Enforcement adopted by the Supreme Court. The revised rules resulted from the major undertaking and joint cooperation of the Supreme Court, the Board of Governors, the ABA staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The most dramatic revision is contained in Alaska Bar Rule 21 which provides for public access to disciplinary proceedings. The previous rules provided for confidential proceedings up until proceedings before the Supreme Court. Relatively few cases ever reached that stage.

In order to alleviate public concern that attorney discipline is not taken seriously by the ABA, the Board voted to open disciplinary proceedings to the public. The revised rules provide for public access at a much earlier stage of the discipline process.

The revised rules also establish procedures for a complainant to appeal the decision of the ABA discipline staff to dismiss a complaint.

B. The ABA provides public notice of any attorney who has been disbarred or suspended.

C. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 42 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.

D. If a complaint received by the ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned

with a fee dispute, the ABA offers a fee arbitration process. This process provides for the dispute to be arbitrated by a third party panel consisting of two attorneys and one public member.

Similarly, the ABA offers a conciliation process to attempt to resolve disputes between attorneys and clients where the dispute is neither fee nor misconduct related.

Failure by an attorney to participate in good faith in the conciliation process may be grounds for disciplinary action.

E. The ABA operates an attorney referral service funded by subscribing attorneys, whereby anyone from around the State or from outside the State can call a toll-free Zenith number and receive the names of three attorneys who practice law in certain disciplines. Subscribing attorneys agree to provide referred clients the first half hour of consultation at a reduced rate of \$35. (See Appendix D for the number of referral calls received, by discipline.)

F. Effective January 1, 1985, revised Alaska Bar Rules will permit licensing by reciprocity.

G. The ABA maintains a Client Security Fund for the purpose of making reimbursement to clients of attorneys who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A portion (\$10) of each ABA member's annual dues is deposited in the Fund.

H. The ABA has actively supported the Conflict Resolution Center in Anchorage and the Alaska Legal Services Corporation.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The ABA is enhanced by an unprecedented involvement of the membership in its operations. A total of 250 members serve on various committees, panels or other adjunct organizations. (See Appendix E for membership and public involvement.)

B. The operations of the Board are enhanced by a substantial budget funded virtually entirely by the ABA membership through dues, admission fees, continuing legal education, lawyer referral fees, conventions, and interest income. The 1984 budget totals approximately \$900,000. (See Appendix A for a schedule of ABA revenues and expenditures.)

C. One of the public member positions of the Board of Governors was vacant from May of 1983 until the Governor made the appointment in June of 1984.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. In the transmittal letter accompanying its 1982-1983 Annual Report to the Legislature, the Board requested legislative support for statutory authority to require the fingerprinting of ABA applicants. See Recommendation No. 3 of this report.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of ser-

Continued on page 13

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Pioneer judge calls Kodiak home

by Suzanne Hancock

Roy Madsen said that all of the members of his law school class who met for their 25th reunion had been successful in the practice of law, but he felt that he had an edge on them because he had returned to practice law and later to be a Superior Court Judge in his home town. Madsen's family, on his mother's side, had been in Kodiak for generations and his father arrived in his teens. Roy grew up in Kodiak and although he spent many years in Oregon, he was drawn back to the place that he considered home.

Actually Roy was born in Kanatak, near Mt. Katmai, on the mainland, where his parents had started a store in the booming oil town of the early 1920's. Roy's family returned to Kodiak, then a sleepy village of about 420 people, when he was four.

His father, Charles Madsen, decided to quit being a trader and become a guide; the elder Madsen's father-in-law Walter Metrokin had been the first guide into Katmai after the 1912 eruption and had taken in a National Geographic Society team to view the area; their account is recorded in a book entitled "The Valley of Ten Thousand Smokes," along with pictures of their one-armed guide.

no doctor. If a person was unlucky enough to get sick when the boat was not around, he would go without medical treatment available in Seattle.

Roy's graduating class in 1941 consisted of eight students. He was appointed to the Naval Academy at Annapolis but he failed the physical due to color blindness. After this disappointment, he began college at Oregon State majoring in the fledgling science of fish and game conservation. The Navy, in the midst of the war, was not so fussy about his color blindness when he enlisted in January, 1943. Taught as a navigator in Melville, R.I., Roy was trained on P.T. boats and sent off to the Pacific Theater. He spent six months in New Guinea and a year in the Philippines and saw a lot of combat.

After the War, Roy returned to Kodiak and guided with his dad in the spring and fall, fishing Bristol Bay in the summer. Most of the hunters during those years were from outside and the hunts for trophy Kodiak brown bear were conducted from a 96-foot yacht that sidled in and out of Uyak, Zachar and Spiridon Bays. Now owned by singer John Davidson, the boat had been a yacht during the '20s, converted into a fireboat



Roy Madsen (center), Charles Madsen (right), Uncle Eli Metrokin (left).

Now Roy enjoys sport fishing, hunting small game for food, and continues his great love for the outdoors, respect for nature and the natural order of things.

During his years of guiding and fishing, he worked at Kraft's store during the winters and began taking a LaSalle Correspondence course in law to fill his quiet evenings. The law fascinated him, although he had merely taken the course to help him in business. Knowing that he would not be satisfied until he learned as much as he could, he returned to Oregon in 1953 and enrolled in law school. He worked during his law school days for Oregon City Abstract Company to support his growing family. He continued with this job after completing school and passing the bar.

From 1955 until 1960, Roy was an assistant District Attorney in Oregon. But during his sojourn away from Alaska, it was always in the back of his mind to return. Many people encouraged him to return to Kodiak, especially when there were openings in the territorial system for an appointed magistrate in Kodiak. In 1959, after his father's death, his stepmother visited him in Oregon and introduced him to a young law student who had been a boarder of hers in Kodiak. All the young man could talk about was how much he wanted to return to Alaska after he completed his schooling. Constant talk about Alaska fired Roy up again about returning and he did in 1961. After spending six months re-establishing his residency, he took the Alaska bar exam and began what was to be a 13-year career in private practice in Kodiak. At first, he had to travel to Anchorage quite often as there was only a magistrate court in Kodiak. After Statehood, the facilities provided by the U.S. District Court, such as a courtroom and a law library, were removed. Roy began his own extensive law library to fill the gap. Superior Court judges began coming to Kodiak for cases every two months, then once-a-month, making local practice a little easier. Madsen went from being the town's only lawyer to having other attorneys practicing on the island.

into the courtroom knowing what his client had told him and not much more. He recounts these courtroom experiences as never dull.

During the mid-1960s, Roy became involved with activities precursing the Alaska Native Claims Settlement Act. He recalls this as a very interesting period of his life. As vice-president of the Kodiak Area Native Association, he was one of the organizers of Native groups throughout the State and traveled to Barrow, Kotzebue, Bethel and other remote places to meet with other Native leaders. He was a lobbyist for the Act, and later counsel for Koniag, the Kodiak Native regional corporation, from 1972 until 1975.

During his years in private practice, Roy was a man for all seasons: active in the Rotary, he served as president of that organization. He was also active in and president of the Navy League; performed in Frank Brink's outdoor historical drama, *Cry of the Wild Ram* for six years; was on the advisory Board for Kodiak Community College; served on the board of directors of National Bank of Alaska; had a term on the school



A young Roy Madsen poses with his rifle and Kodiak bear skull.

By the time he was 11, Roy was joining his father on the hunting trips and helping with the operation; he continued to do this throughout his high school years. He recalls his childhood as being a rather idyllic time, despite the Depression and limited money in the small community.

People lived a subsistence lifestyle having cows, chickens, geese and gardens. "It was like the village in *Fiddler on the Roof*," he reminisces. A friend was responsible for bringing the cows home for milking and Roy remembers helping him in the field that lies below where the Judge now has his home. But there were hardships living on such a remote island in the early 30s; there was only one boat a month connecting the island with the outer world. Until 1936, there was

which was used on the Columbia River during the War, and re-converted into a yacht. It could sleep 22, had a dining salon, a full-time engineer, guides, outfitters, and a Norwegian cook who delighted crew and passengers alike with good cooking and fine baking. But in recollecting those days, Roy regrets hunting the mammoth bears:

"After I quit guiding, I did a complete turnabout. I came to respect the animals alive . . . (we would) do nature and the world a bigger favor if we left those magnificent animals alone (because they are) something to be admired and appreciated, not to be hunted down and killed off."



Madsen served in World War II on PT boats in New Guinea and the Philippines.

board; and was a Regent of the University of Alaska.

His career in private practice ended in 1975 when he became Kodiak's first Superior Court Judge. Summing up his career, Roy finds his judgeship to be very satisfying. Always involved in community service, Madsen feels his position continues this spirit of service. He also finds being a judge to be a completion to an active law career, having seen things full circle and now being able to view cases as a judge rather than an advocate. He especially enjoys working with the jury system in his community.

Although Thomas Wolf insisted that you can't go home again, Roy Madsen did and although the Kodiak of today is a far cry in some ways from the town of 1930, in many ways it is the same. The spirit of a small community pulling together through good times and bad is always prevalent and there is always a place for those who want to do their part to make the town a good place to live, work, and raise a family. Roy Madsen is one of those people.



Madsen (sporting a stocking cap) and others with bear hide (lower left).

His most numerous jury trials were in defending clients charged with fish and game violations. The office of the District Attorney would send prosecutors from Anchorage for these cases. The defense had no right of discovery (as they now do), so Roy would go

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Paralegal numbers grow

According to the Bureau of Labor Statistics, the Paralegal profession has grown in demand 118% nationally in the past decade. The next closest field in demand, Computer Specialist, has only grown 61.2%.

This trend is being exhibited in Alaska as well. When the Alaska Association of Legal Assistants (AALA) was formed in 1981 it had 12 members. The current membership is topping 70. This indicates that the Alaska Bar is becoming more aware that the proper use of trained paralegals can save the attorney time and client money.

The main goals of AALA are the continuing legal education of its members, in-

creased awareness in the legal community of the need for paralegals and the interaction of its members for the purpose of sharing the expertise they have gained through education and experience.

All members of AALA are also members of the National Federation of Paralegal Associations which further insures the membership is kept up to date on their profession as well as educational opportunities available on a national basis.

Anyone interested in learning more about the paralegal profession is encouraged to contact the President of AALA, Susan Cagle at 338-3035.

Performance report....

Continued from page 11.

vice, economy of service, and availability of service which it has provided.

- A. The ABA publicly displays information and forms regarding complaint avenues available through ABA's disciplinary section.
- V. *The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.*
- A. The ABA has not publicly advertised meetings of the Board of Governors as required by statute.
- VI. *The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.*
- A. As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. In addition, an analysis of 21 cases recently dismissed showed the average number of days these cases were open was 317, ranging from 56 to 943 days. (See Recommendation No. 1 of this report.)
- VII. *The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.*

- A. We found no instances where the Board had licensed unqualified applicants.
- B. Although many complaints are filed against attorneys, few have been found to be misconduct resulting in formal disciplinary action. (See Appendix B for a summary of disciplinary statistics.)
- C. The ABA offers a continuing legal education program to its membership and also maintains an education library.
- VIII. *The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.*
- A. Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.
- IX. *The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.*
- Please refer to the previous section. Findings and Recommendation.

—Division of Legislative Audit

Next Issue: The Supreme Court's response to the audit.

Rates double for federal court-appointed attorneys

by Cary Virtue

Hourly rates for federal court-appointed attorneys will double under the new Comprehensive Crime Control Act of 1984, effective October 12.

In-court rates will jump from \$30 per hour to \$60 per hour, and out-of-court rates will increase from \$20 to \$40 per hour under the new measure.

Case competition limits also have doubled under the new act, increasing to \$2,000 for appeals and felonies; \$800 for misdemeanors, and \$500 for other cases.

The new rates will apply to all claims submitted or considered by a judge or magistrate on or after October 12.

Convention Schedules on Page 9

Convention ahead!

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We must know how to find you

When we sat down to draft new disciplinary rules, one of our concerns was our inability, in some cases, to locate attorneys regarding Bar matters or to help clients and former clients in their efforts to locate their attorneys.

Because the Alaska Bar Association has the responsibility to supervise its members, it seemed appropriate to give it the mechanism to keep track of its members. Accordingly, effective January 1, 1985, attorneys have the duty to inform the Bar within 30 days of any change of their current mailing address and telephone number to which communications may be directed by clients and the Bar. Failure to do so is grounds for discipline under the new rules.

So—avoid discipline—keep us informed.

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Bar financial statements completed

The following tables are excerpted from the Alaska Bar Association Financial Report of Dec. 31, 1984. The report reviews the year's financial activities. Supplementary data and the accountant's Notes to the Financial Statements are not included in this excerpt. The report was prepared by Daniel, Hewko and Schamber, of Anchorage, Certified Public Accountants.

ALASKA BAR ASSOCIATION

BALANCE SHEET

December 31, 1984

ASSETS	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
CURRENT ASSETS				
Cash	\$ 204,652	\$150,930	\$ 7,999	\$ 363,581
Time certificates of deposit	401,101	—	—	401,101
Accounts receivable	446,129	—	5,873	452,002
Accrued interest receivable	15,127	2,076	—	17,203
Due from general fund	—	18,885	292	19,177
Prepaid expenses	12,284	—	—	12,284
Total current assets	1,079,293	171,891	14,164	1,265,348
PROPERTY AND EQUIPMENT, at cost				
Video tape library and equipment	8,636	—	—	8,636
Office furniture, equipment and leasehold improvements	170,168	—	—	170,168
Less accumulated depreciation	(54,479)	—	—	(54,479)
	124,325	—	—	124,325
OTHER ASSET, deposit	6,312	—	—	6,312
	<u>\$1,209,930</u>	<u>\$171,891</u>	<u>\$14,164</u>	<u>\$1,395,985</u>
LIABILITIES AND FUND BALANCES				
CURRENT LIABILITIES				
Accounts payable and accrued expenses	\$ 32,785	\$ —	\$13,164	\$ 45,949
Due to Bar Foundation	530	—	—	530
Due to other funds	19,177	—	—	19,177
Revenue collected in advance	652,096	18,850	—	670,946
Total current liabilities	704,588	18,850	13,164	736,602
COMMITMENTS (Note 3)				
FUND BALANCES				
Unrestricted				
Designated by the Board for				
Working capital	25,000	—	—	25,000
Asset acquisition	36,371	—	—	36,371
Undesignated	443,971	153,041	1,000	598,012
	505,342	153,041	1,000	659,383
	<u>\$1,209,930</u>	<u>\$171,891</u>	<u>\$14,164</u>	<u>\$1,395,985</u>

STATEMENT OF REVENUES AND EXPENSES

For the Year Ended December 31, 1984

	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
Revenue				
Dues	\$55,539	\$18,139	\$ —	\$573,678
Admission fees	107,160	—	—	107,160
Continuing legal education	27,701	—	—	27,701
Lawyer referral fees	54,169	—	—	54,169
Annual meeting	43,686	—	—	43,686
Interest on investments	61,733	11,246	—	72,979
Civil jury instruction project	22,340	—	—	22,340
Other	40,760	—	54,326	95,086
Total revenue	913,088	29,385	54,326	996,799
Expenses				
Admissions	111,408	—	—	111,408
Board of Governors	32,598	—	—	32,598
Discipline	229,771	—	—	229,771
Administration	267,574	—	—	267,574
Referrals	33,754	—	—	33,754
Continuing legal education	57,715	—	—	57,715
Fee arbitration	9,689	—	—	9,689
Newsletter	18,447	—	—	18,447
Annual meeting	41,238	—	—	41,238
UCLA/Alaska Law Review	20,000	—	—	20,000
Civil jury instruction project	17,254	—	—	17,254
Other	23,075	—	54,326	77,401
Total expenses	862,523	—	54,326	916,849
Excess of revenue over expenses	<u>\$50,565</u>	<u>\$29,385</u>	<u>\$ —</u>	<u>\$ 79,950</u>

STATEMENT OF CHANGES IN FINANCIAL POSITION

For the Year Ended December 31, 1984

	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
FINANCIAL RESOURCES PROVIDED BY				
Operations:				
Excess of revenues over expenses	\$ 50,565	\$29,385	\$ —	\$ 79,950
Item not requiring outlay of working capital during the year:				
Depreciation	21,502	—	—	21,502
	72,067	29,385	—	101,452
Proceeds from sale of equipment	475	—	—	475
	72,542	29,385	—	101,927
FINANCIAL RESOURCES APPLIED TO				
Purchase of property and equipment	31,558	—	—	31,558
Addition to other asset	6,312	—	—	6,312
	37,870	—	—	37,870
Increase in working capital, as below	<u>\$ 34,672</u>	<u>\$29,385</u>	<u>\$ —</u>	<u>\$ 64,057</u>
SUMMARY OF CHANGES IN WORKING CAPITAL COMPONENTS				
Increase (decrease) in:				
Cash	\$(65,518)	\$30,008	\$ 121	\$(35,389)
Short-term investments	97,347	—	—	97,347
Accounts receivable	36,137	—	(1,099)	35,038
Accrued interest receivable	8,452	(647)	—	7,795
Due from general fund	—	1,064	70	1,134
Prepaid expenses and deposits	(7,098)	—	—	(7,098)
Decrease (increase) in:				
Accounts payable and accrued expenses	(2,838)	—	—	(2,838)
Due to Bar Foundation	7,371	—	908	8,279
Due to other funds	(1,134)	—	(1,134)	—
Revenue collected in advance	(38,047)	(1,030)	—	(39,077)
Increase in working capital	<u>\$ 34,672</u>	<u>\$29,385</u>	<u>\$ —</u>	<u>\$ 64,057</u>

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REVENUE AND EXPENSE STATEMENT DETAIL

GENERAL FUND EXPENSES

	Admissions	Board of Governors	Discipline	Administration	Referrals	Continuing Legal Education	Fee Arbitration	Newsletter	Annual Meeting	UCLA/Alaska Law Review	Civil Jury Instruction Project	Other	Total
Salaries and related expenses	\$ 44,711	\$ —	\$164,523	\$135,640	\$16,946	\$27,378	\$6,880	\$ —	—	\$20,000	\$ —	\$ —	\$396,078
Rent	8,966	—	9,478	34,074	—	—	—	—	—	—	—	—	52,518
Grading	31,340	—	—	—	—	—	—	—	—	—	—	—	52,518
Office supplies and expense	11,378	6,540	12,453	10,194	—	1,981	1,943	5,160	—	—	—	—	49,649
Telephone	1,404	2,614	2,962	1,447	11,478	620	294	—	—	—	—	—	20,819
Travel	—	23,444	6,813	4,725	—	—	—	—	—	—	—	—	34,982
Contract services	580	—	33,542	—	—	—	—	13,287	—	20,000	—	—	67,409
Equipment lease	—	—	—	12,174	—	—	—	—	—	—	—	—	12,174
Postage	—	—	—	17,947	—	—	—	—	—	—	—	—	17,947
Accounting fees	—	—	—	6,500	—	—	—	—	—	—	—	—	6,500
Insurance	—	—	—	9,477	—	—	—	—	—	—	—	—	9,477
Repairs and maintenance	—	—	—	8,158	—	—	—	—	—	—	—	—	8,158
Depreciation	—	—	—	19,774	—	1,727	—	—	—	—	—	—	21,501
Advertising	—	—	—	3,537	4,167	—	—	—	—	—	—	—	7,704
Miscellaneous	13,029	—	—	3,927	1,163	—	572	—	—	—	—	—	18,691
Seminar costs	—	—	—	—	—	26,009	—	—	—	—	—	—	26,009
Civil Jury Instruction project	—	—	—	—	—	—	—	—	—	—	17,254	—	17,254
Committee expenses	—	—	—	—	—	—	—	—	—	—	—	4,285	4,285
Annual meeting expenses	—	—	—	—	—	—	—	—	41,238	—	—	—	41,238
Substantive law sections	—	—	—	—	—	—	—	—	—	—	—	2,405	2,405
Donated services	—	—	—	—	—	—	—	—	—	—	—	5,410	5,410
President's meeting	—	—	—	—	—	—	—	—	—	—	—	1,922	1,922
Office relocation	—	—	—	—	—	—	—	—	—	—	—	8,983	8,983
	<u>\$111,408</u>	<u>\$32,598</u>	<u>\$229,771</u>	<u>\$267,574</u>	<u>\$33,754</u>	<u>\$57,715</u>	<u>\$9,689</u>	<u>\$18,447</u>	<u>\$41,238</u>	<u>\$20,000</u>	<u>\$17,254</u>	<u>\$23,075</u>	<u>\$862,523</u>

STATEMENT OF CHANGES IN FUND BALANCES

For the Year Ended December 31, 1984

	General Fund				Client Security Fund	Insurance Trust Fund	Total All Funds
	Designated for Working Capital	Designated for Asset Acquisition	Undesignated	Total			
Fund balances, beginning	\$25,000	\$43,410	\$386,367	\$454,777	\$123,656	\$1,000	\$579,433
Add excess of revenue over expenses	—	—	50,565	50,565	29,385	—	79,950
Transfer of designated funds	—	(7,039)	7,039	—	—	—	—
Fund balances, ending	<u>\$25,000</u>	<u>\$36,371</u>	<u>\$443,971</u>	<u>\$505,342</u>	<u>\$153,041</u>	<u>\$1,000</u>	<u>\$659,000</u>



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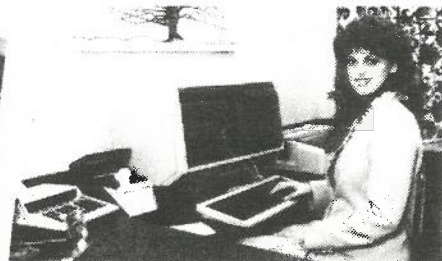
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