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—Page 17

Column high lights

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The Alaska BAR RAG

Volume 14, Number 1 — *Dignitas, semper dignitas* — January-February, 1990

Tales of real men, women and children

Staying at home not the issue, day care is

By Mickale Carter

According to recent statistics, 54.6 percent of the Anchorage workforce is women, more than any other city in the United States.

Fairbanks with 50.6 percent came in eighth.

One of the spin-offs of more working women is that more children than ever before in the history of the U. S. are being cared for by child care facilities. As a consequence, one of the singularly most important issues with which we must deal in the 1990's is pre-school child care.

We are rapidly becoming a society whose children are being raised by day care providers. Heretofore the debate on this issue has focused on whether women should stay in the home and care for their children rather than seek employment outside the home.

Whether it is more noble for women to stay at home than pursue extra income or a career, or both, is really not the issue. The reality of the situation is that women are working outside the home. Children are being sent to day care facilities. We no longer can afford the luxury of hoping that by some miracle the needs of our nation's children will be met. The time has come for us to take a cold hard look at the day care situation.

The Present Situation in Anchorage

Based upon information gathered by Mia Oxley, executive director of the Child Care Connection, a non-profit child care referral organization, there are 65 child care centers in Anchorage. There are an additional 85 children affiliated with Camp Fire, and another 130 licenced homes offer care.

The cost in Anchorage for day care for one child is between$3,000-$5,000 per year; $400 per child per month in a center, and $360 per month per child in a home. According to Oxley, th quality of child care in Anchorage has improved over the last 10 years; there are now fewer really bad and more really good facilities, she says. There continues to be a shortage of infant evening and weekend care providers.

Sharpy and Lefty pursue real wisdom

By Lugnutt McDunkel, Esq.

This is a article about girls. Yeah. I knows about women, 'cause us guys--that's Sharpy and Lefty and me--we talk at the Two Street Bar & Grill.

Anyway, we got this trial comin' up. It's about some dame and her husband. He wants to see the kids and she's makin' up some story. So we had to think about witnesses and evidence and beer.

We figured we knew about girls but maybe we oughta read a book about trials. 'Cause sometimes, women are witnesses in trials, we figure.

So we tossed Lefty's coin--it's always Lefty's coin--and I lost two out of three. So I had to read some books and write a trial brief. Sharpy said he'd find out what a trial brief is.

So I look for a book about dames on the stand. I found the library, where this good-lookin' girl showed me a card catalog with all these little drawers and names of books. I did not find nothin' about cars, but there was lotsa other good stuff.

Guys, I found this book for real men. There is this book in the library--well, it's like a lot of books, and it's called Am Jur Trials. If you wanna look for it, it's got this black and blue cover. It's over on the shelf.

Continued on page 15

The Situation as of April 1, 1990

On April 1, 1990, the Federal Family Support Act of 1988 will go into affect. The act provides for mandatory job training of women who receive welfare. The act provides that when the youngest child in the household reaches age three, the mother, in order to maintain her welfare benefits, must begin some sort of job training.

Continued on page 14

Sun rises 'til '93

As the *Bar Rag* went to press, we learned that HB 120, the Bar Association "sunset" bill, passed out of the Senate on Jan. 17 and is on its way to the governor for signature.

The Board of Governors, like other state boards and commissions, is reviewed by the Alaska Legislature every four years to determine whether it is fulfilling its responsibilities and should continue in operation. HB 120 extends the board until 1993.

This bill passed the House during the 1989 legislative session, but did not make it out of the Senate Judiciary Committee. A hearing was held on HB 120 by the committee in Novembr, 1989. Early this year, the committee passed out the bill and it was placed on the Senate's consent calendar.

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FROM THE PRESIDENT

Jeffrey Feldman

As we began the New Year, I gave some thought to the state of the Alaska Bar Association, and where the organization will be at the close of the next decade. The following is a proposed blueprint for the activities of the Bar Association and the changes that may be considered to meet the challenges we will face. In drafting this agenda, I have focused on the following goals:

1. To advance the administration of justice in our state;

2. To increase public confidence in both the system of justice and the self-regulation of the practice of law by the Alaska Bar Association;

3. To improve the professional competence of the members of the Alaska Bar Association;

4. To better serve the professional needs of the members of the Alaska Bar Association;

5. To maintain the institutional independence of the Alaska Bar Association; and

6. To increase the opportunities of participation by the membership in the Alaska Bar Association.

With these goals in mind, I propose the following:

Bar Examination

1. Speed up the bar examination process. With an applicant pool as small as Alaska's, we should aim at releasing results of the examination within sixty days of each administration of the test. We should relieve applicant's of the unnecessary anxiety and burden of having to wait several months for exam results.

2. Review the bar examination process. The last modification and experimentation with the bar examination was in 1982, when the research question was added to the test. The research question has been a success and has been demonstrated to have a high level of reliability (the results of the research question correlate highly with the results of the test, overall). We should consider:

- Expanding the research question component of the test to an addtional day;
- Abandoning the multistate examination entirely;
- Encouraging further experimentation with the test with an eye towards arriving at a test that mirrors as closely as possible those skills required to be an effective lawyer.

Because of the small number of applicants in Alaska, we have the luxury of being able to experiment with testing alternatives. We should encourage creativity in this area.

3. The Alaska Bar Association should administer a mandatorv ethics orientation class (much like a CLE program) which each successful Bar applicant should be required to take before being admitted to the Bar. The ethics program should cover such topics such as client relations, trust account problems, neglect, relations with the courts and the various ethical problems that arise on a regular basis and which give way to a substantial number of the grievances that are filed each year against Alaska lawyers.

Discipline

4. Speed up the grievance process. We should aim at reducing the time that expires from the filing of an initial grievance to the completion of the investigation by the Bar Association to sixty days. The period from filing a formal complaint until the hearing should not exceed 120 days and all area hearing committees should be required to deliver their decisions within thirty days. Meeting this schedule will require that the Bar Association allocate additional resources to the discipline process. This will include an additional assistant discipline attorney, an investigator, and a secretary. Failure to allocate these resources, will limit the Bar's ability to keep pace with the grievance filings and additionally, will erode the confidence of the public, the legislature and the court in the Bar's ability to administer a system of self discipline.

5. Establish a grievance "fast-track" for quicker resolution of simple grievance cases until such time as the additional resources are allocated to increase the speed in which a grievance proceeding is handled. This will have the effect of reducing backlog substantially.

6. Make all portions of the discipline process open to the public. At present, proceedings are open only after a formal complaint has been filed. Opening earlier portions of the proceedings will increase public confidence in the integrity of the proceedings and reduce suspicions that the Bar Association only protects the interest of lawyers.

CLE

7. Aggressively extend the CLE program state-wide, and provide for a minimum of 6 live CLE programs in Juneau and 6 in Fairbanks each year. CLE is one of the statutorily mandated functions of the Association, and it is long time that we recognize that members outside of Anchorage have received second-hand treatment in the area of CLE.

8. Adopt a mandatory CLE rule as a demonstration of the commitment the Association has to professional competence and to foster confidence on the part of the public in the Association's commitment to this important function.

Board of Governors

9. Expand the Board of Governors to a total of sixteen persons (four additional members). The increase is merited by the growing workload of the board in matters relating to discipline, admissions, rule making and administration of the organization. The four new members should be comprised as follows:

- One additional lay member to be appointed by the Governor;
- One attorney member to be appointed from the second judicial district (presently unrepresented);
- One additional statewide at-large attorney member; and
- One attorney member from the third judicial district not residing in Anchorage (also presently unrepresented).

10. Decisions by the Board of Governors on discipline matters and admissions appeals should be by written opinion, which should be maintained and indexed.

11. Publish the minutes of the Board of Governors in the *Bar Rag.*

12. Publish the proposed and adopted budget of the Bar Association in the Bar Rag.

Better statewide support

13. The Bar Association should devise a more effective and faster way of handling requests for ethics opinions. Several ethics sub-committees should be constituted to render opinions quickly so that attorneys that are conscientious enough to seek ethics advice can be provided with a timely response.

14. Satellite Bar Association offices and improved tele-communications facilities should be developed to provide better services to attorneys outside of Anchorage.

Trust accounts

15. The Alaska Bar Association should randomly audit trust accounts to ensure proper accounting and compliance with ethical requirements. The actual number of accounts audited each year should be determined by auditors selected by the Bar Association. Mandatory audit procedure will require a bar rule change.

16. Participation in the IOLTA Program should be mandatory (Interest on Lawyer's Trust Accounts).

Law review

17. Produce a Manual on Civil and Criminal Practice in Alaska. Unlike many states, Alaska lacks a treatise on civil and criminal practice in our State. Commercial publishers have declined to publish such volumes because of the small number of sales that could be expected in Alaska. We should ask the Duke Law Review to cover several areas of civil and criminal practice in Alaska each year in a series of articles. The actual topics and the sequence of publication should be coordinated between the Law Review and a committee to be appointed by the Bar Association. Over the course of five years, most of the important areas of civil and criminal practice could be covered with scholarly treatment and by 1995 all of the articles could be edited, updated and assembled into what will become a Manual on Civil and Criminal Practice in Alaska. The edited materials could be published either by Duke and sold at a nominal cost to Alaska Lawyers, or, if necessary, could be published by the Bar Association (subject to working out copyright issues with Duke). Many members of the Bar Association have expressed a desire that the Law Review cover topics that are important and are relevant to practice in Alaska. This plan would insure that each edition of the Law Review would be of interest and helpful to many Alaska lawyers and would generate a product which, over a period of time, most lawyers would find very useful. If, for some reason, Duke declines to cooperate with us on this project, we should re-negotiate the law review contract with another university willing to meet our needs.

Minority issues

18. The Alaska Bar Association and the Alaska Court System remain almost exclusively white institutions. A joint Judicial-Bar committee should be appointed to examine issues relating to minority participation in both organizations to identify participation, goals and the means by which those goals can be realized.

Financing/fees

Adoption of some of these changes will generate significant costs to the Association. Consideration should be given to absorbing those costs by some or all of the following:

19. Review the current level of membership dues.

20. Review the level of surplus funds that are legitimately needed by the Association and consider a plan for use of any identified excess.

21. Identify services and items (membership directories, ethics opinions, etc.) that reasonably can be distributed by the Bar Association with a user fee that includes a modest profit.

22. Award costs and fees to the prevailing party in all grievance proceedings. This will have the salutary effect of reimbursing the Bar Association in cases in which the Association prevails and, likewise, reimbursing the attorney/respondent who prevails in the grievance proceeding.

23. Assess costs against non-prevailing attorneys in fee arbitration proceedings.

Bar—Bench relations

24. Appoint a permanent bar-bench committee charged with the responsibility of constantly identifying the sources of bar-bench problems and convening programs aimed at improving bar-bench relations.

BAR PAC

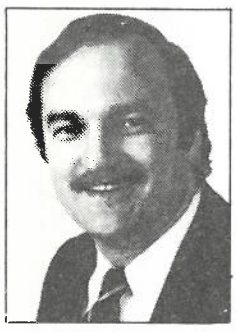
25. As a unified, mandatory bar association, the Alaska Bar Association does not participate in political issues. Yet, there are a number of issues each year that arise (judicial pay raises, court system services, various legislation, etc.) that has an impact on the administration of justice. As lawyers, we have an obligation and a responsibility to participate in the public debate on these important issues and members of the bar should independently organize a political action committee to provide a means by which they may have a voice on these issues.

Reciprocal Conference with the USSR

26. Alaska will be hosting the 1990 Northern Justice Conference in June with lawyers and judges participating from the USSR We should coordinate a reciprocal conference with the Soviet Union in 1991 or 1992 and consider institutionalizing relations and communications between our respective organizations.

There is no doubt that many of the proposals suggested above will spark vigorous debate and controversy. Yet, I believe that these changes will strengthen the organization and help us better realize the goals set out at the beginning of this column.

The Alaska BAR RAG



THE EDITOR'S DESK

Ralph Beistline

I started out the New Year right, or maybe wrong. On January 1, 1990, I stopped by the office, along with my six year old son. I wanted to get some work done, and he wanted to see if the xerox machine could really bring his teddy bear to life. We each went our respective ways. About 20 minutes later, my son returned having made a tour of the building and the many desks, candy dishes, and empty offices. His questions thereafter were thought-provoking:

Q: Why do you need so many people here?

A: We are attorneys and we need secretaries and legal assistants.

Q: I mean -- what do you do? Why are you here? What is this place for?

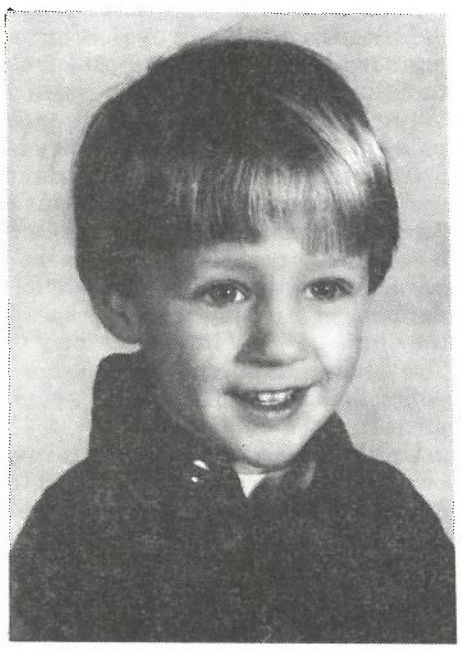
A: Well, we are attorneys and I work here.

Q: I mean, what do you make? What kind of work do you do? Why are all these people here?

He really wanted to know.

A six-year-old can understand the importance of doctors, trash collectors, and even dentists. They have special appreciation for carpenters, firemen, and heavy equipment operators. They don't understand attorneys. Yet, I've heard similar questions from adults, and not voiced with the same inquisitive innocence.

I explained to my son that we solve problems for people; we resolve disputes and we generally make the world a better place in which to live. It sounded trite, and I don't think he particularly understood what I was saying. I know many of my non-attorney friends who would have laughed at the explanation. But the more I thought about it, the more accurate it seemed to be. Maybe this isn't what we all actually do all the time, but it certainly presents a worthy goal.



My son persisted.

Q: But, do you make anything?

A: Not exactly, son, you see....

My answer was lost in the sound of a train whistle. My son's eyes brightened and he ran to the window.

Q: Dad, can you drive a train?

A: No.

Q: Well, what do you do?

I was going to brag about being editor of the Bar Rag. I realized, though, that he would next ask about the name, who reads it and why, and then ask what they all do. I decided to let the subject drop. I'm sure he'll understand when he's older.

35,701 lawyers join ranks

Private practice is still the field of choice

Law school graduates from the class of 1988 continue the employment patterns established by recent classes, says the National Association for Law Placement.

New graduates are choosing their first jobs primarily in private law practice, judicial clerkships, or government service, according to the results of the association's 15th annual survey on the subject. It was released in late November.

Some 93 percent of new grads were reported to have found employment within six months of graduation, a figure that has increased or remained steady over the past 10 years. The most popular option was private law practice, chosen by 14,549 graduates, or 64 percent.

This level represents an increase of 0.8 percent over 1987 and 10.3 percent over 1979. Of those entering private practice, the same proportion of new graduates (17.8 percent) began work with very small firms (2-10 lawyers) as with very large firms of 100 or more.

More than a third of those for whom employment information was available began their careers in non-firm settings:

- Judicial clerkships increased slightly to 12.7 percent according to trend.
- Government service at all levels accounted for 12 percent of the new graduates, and 3.1 chose public service/public interest work directly out of law school.
- Entries to business decreased one percent from 1987 and 2.3 percent from 1986.
- The number of graduates selecting military and academic positions remained stable at 1.3 and one percent, respectively.
- Fewer grads (4.8 percent) accepted non-legal positions in 1989; 7.8 percent did in 1986.

In all, 1,377 new attorneys were reported unemployed and seeking work, and an additional 399 weren't looking.

Average salaries increase

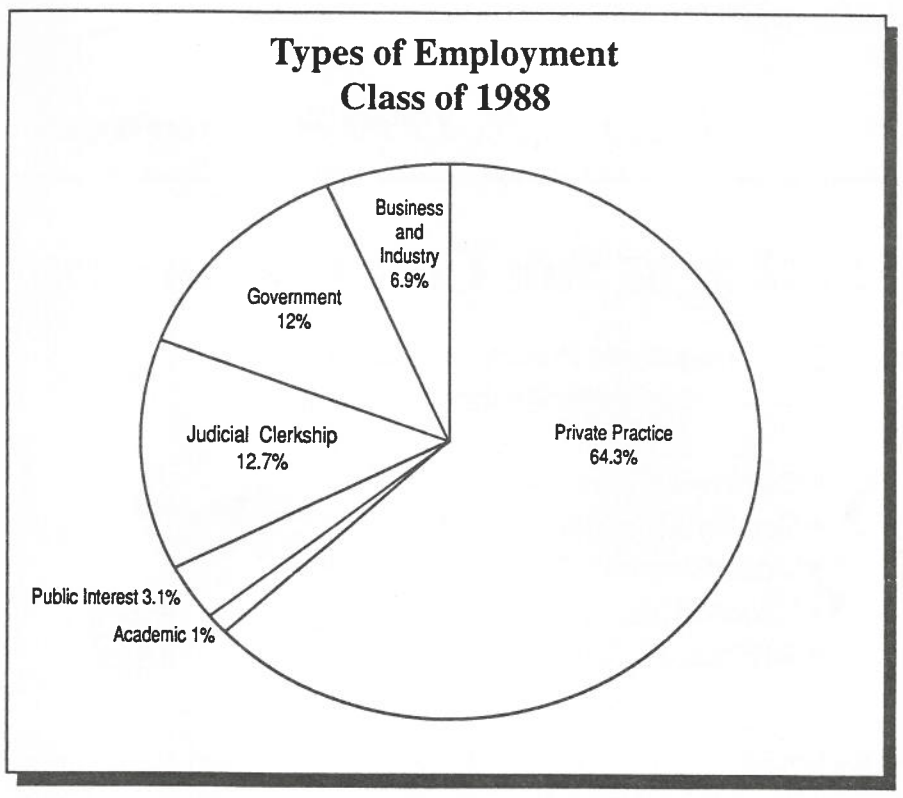
The average starting salary for the class of 1988 was $39,159, an increase of $3,345 over 1987. NALP says the increase was fueled by continuing high salaries paid by the largest law-firms over the past four years. Median salary in business and industry was $33,626, while the median government salary was $26,906. Judicial clerkships paid a median of $25,097, and new public interest lawyers were paid the least at $23,856.

New York topped the list of states where graduates found the most jobs, at 3,532, followed by California, Illinois, Washington D.C., Texas, Pennsylvania, and Massachusetts, hiring 1,000 to 1,871 new lawyers.

NALP says 35,701 students from 20 to 67 years of age graduated from 176 accredited U.S. law schools, joining more than 700,000 lawyers.

National Association for Law Placement

Employment Report and Salary Survey



AVERAGE SALARY DATA FOR VERY LARGE FIRMS FOR SELECTED CITIES (OVER 100 LAWYERS)

City	1988 Salary	1987 Salary	1986 Salary	1985 Salary	Increase 1985 to 1988
New York	$71,361	$66,058	$61,203	$49,027	45.55%
Los Angeles	$60,105	$52,995	$47,216	$41,453	45.00%
Washington, DC	$59,827	$55,163	$47,188	$42,237	41.65%
Chicago	$59,435	$53,267	$44,565	$39,727	49.61%
Cleveland	$56,936	$51,361	$44,151	$39,340	44.73%
Milwaukee	$56,649	$52,058	$42,500	$37,644	50.49%
San Diego	$56,125	$51,143	$45,100	$40,733	37.79%
San Francisco	$56,120	$52,630	$47,047	$39,527	41.98%
Boston	$55,780	$56,196	$48,172	$42,688	30.67%
Columbus	$55,086	$50,400	$42,318	$37,088	48.53%
Philadelphia	$54,703	$48,079	$40,571	$38,370	42.57%
Newark	$54,143	$52,364	$41,800	N/A	
Atlanta	$52,493	$48,569	$42,399	$39,102	34.25%
Miami	$52,295	$49,071	$41,986	$39,371	32.83%
Richmond	$51,789	$43,759	$39,190	$39,214	32.07%
Houston	$51,648	$47,232	$43,666	$39,336	31.30%
Cincinnati	$51,412	$45,368	$40,267	$37,278	37.92%
Dallas	$51,344	$46,767	$43,274	$41,508	23.70%
Austin	$51,125	$49,500	$43,200	$39,000	31.09%

Survey Notes Age and Geographic Distributions

While most graduates continue to be 25 or 26 when they graduate, the newest lawyers range in age from 20 to 67. The proportion of graduates 30 years old or older has steadily increased during the three years that NALP has tabulated age at graduation. The number of graduates at age 30 or older remained the same in 1988 as in 1987 (27%), representing a 5% increase over 1986 and a 6.3% increase over 1985.

The states in which the largest number of graduates were reported to have found jobs were:

New York	3,532
California	1,871
Illinois	1,459
D.C.	1,259
Texas	1,147
Pennsylvania	1,113
Massachusetts	1,049
Ohio	937
Florida	909
New Jersey	894

Charts continued on page 19

TORT LAW

Michael J. Schneider

BY MICHAEL J. SCHNEIDER

We all know that the purpose of a punitive damages award is to punish the wrongdoer and to deter the wrongdoer and others like him from repeating the offensive conduct in question. *See for example Providence Washington Insurance Co. of Alaska v. City of Valdez,* 684 P.2d 861, 863 (Alaska 1984).

Punitive damages can be awarded in excess of actual loss where the wrongdoer's conduct can be characterized as outrageous, such as acts done with malice or bad motives, or conduct engaged in with a reckless indifference to the interests of others. *See for example Bridges v. Alaska Housing Authority,* 375 P.2d 696, (Alaska 1962); *Sturm, Ruger & Co., Inc., v. Day,* 594 P.2d 38, modified 615 P.2d 621, on rehearing 627 P.2d 204, *cert. denied* 102 S.Ct. 391, 454 U.S. 894, 70 L.Ed.2d 209; *Alaska Village, Inc., v. Smalley,* 720 P.2d 945 (Alaska 1986).

The wealth of the defendant is always an important consideration in evaluating a claim for punitive damages. This rule grows out of the trite observation that a given monetary "punishment" may be devastating to a poor defendant, while an identical "punishment" may be so insignificant to a wealthy defendant as to provide virtually no deterrent whatsoever. *See for example Sturm, Ruger & Co. v. Day,* 594 P.2d 38, 48 (Alaska 1979).

Because of the importance of the defendant's wealth in evaluating a punitive-damage claim, most of us handling such claims have wanted to get the defendant's insurance policy before the jury. That policy is a very unique asset of the defendant and is an aspect of the defendant's "wealth" that has to be evaluated before the concept of "punishment" has any meaning. An insured defendant doesn't live in, ride on, or hoard the limits of his insurance policy. The defendant doesn't look to those policy limits to fund his or her retirement.

Unlike the defendant's trains, boats, and planes that are subject to execution following judgment, and for which the defendant will feel a very real loss, the loss of the limits of his insurance policy subjects the defendant to virtually no adverse economic impact. In the absence of a specific exclusion, punitive damage verdicts may be covered by liability insurance. *See Providence Washington Ins. Co. of Alaska v. City of Valdez,* 684 P.2d 861, 862, 863 (Alaska 1984). Thus a punitive-damage judgment against the defendant within the limits of his liability policy may be no punishment at all. Those limits must be exceeded before any punishment is felt by the defendant.

This argument was made in *Shane v. Rhines,* 672 P.2d 895 (Alaska 1983). Shane contended that the trial court erroneously excluded evidence of Rhines' insurance policy after permitting counsel for Rhines to introduce evidence of his financial condition. *Id.* at 899. The purpose of introducing the insurance policy was to establish Rhines' ability to pay punitive damages. The supreme court affirmed the trial court's refusal to allow the policy into evidence. The court reasoned that, although evidence of insurance could be arguably relevant to the appropriate measure of punitive damages, it was not relevant to the threshold question of whether a party's conduct was so reprehensible that punishment was necessary under the circumstances. *Id.* at 900.

When examining a defendant's conduct to determine whether a punitive-damage award is appropriate, it should make no difference that the party is wealthy or impoverished or insured instead of uninsured. *Id.* at 900. Allowing in evidence of insurance could easily prejudice the determination of the threshold issue against the defendant. Two justices dissented, arguing that the jury received a distorted and false depiction of the defendant's financial condition where the defendant was allowed to place his financial condition before the jury with no mention as to available insurance. *Id.* at 903.

The concurring opinion is this three-to-two decision may hold the answer to the problem of accurately evaluating the defendant's wealth. Citing Civil Rule 42(b) regarding bifurcation, the concurring opinion states at page 902:

> the liability issues could be determined without the possibility of the jury's decision being tainted by the evidence of the defendant's wealth. If the jury decides in the first phase of the trial that an award of punitive damages is appropriate, a second phase of the trial, using the same jury, could then be held to determine the proper amount of the award. At this separate phase, the needed evidence of the defendant's wealth, including evidence of any insurance coverage, could be presented. The minimal additional costs and delay entailed in using this procedure would clearly be outweighed by the benefit it would confer in insuring that the interests of justice are fulfilled.

The dissenting justices were not ready to adopt a rule requiring bifurcation in all cases because such a rule would unreasonably divest the trial court of discretion. Even so, it is clear that if the issue of the defendant's wealth had been bifurcated from other issues at trial below, the outcome would have been at least three to two in favor of placing the insurance limits before the jury.

Evidence of the defendant's wealth frequently requires little time and effort to develop. Many defendants have virtually no wealth beyond their available insurance policy limits. Even in the case of large and complex corporations, the evidence relating to their wealth is often put before the jury in the form of financial statements and balance sheets disseminated publicly by these publicly traded corporations.

Bifurcation may, indeed, offer a cheap and easy solution to the competing interests of protecting a defendant from evidence that might prejudice a fair determination of that defendant's liability for punitive damages and presenting a jury with all the important information necessary to evaluate the defendant's wealth in the face of punitive-damage liability.

Samantha Slanders

Advice from the Heart

DEAR SAMANTHA:
I'm a middle-aged attorney from Fairbanks and have been fighting a problem all my life. Every time I see a fire alarm, I have an almost uncontrollable urge to pull it. Last week, while in the courthouse, I almost did. I actually walked over to it. Had the nearby elevator door not opened, I am afraid I would have. What do you suggest?

Tempted in Fairbanks

DEAR TEMPTED:
Thanks for the letter. Your problem is not new or particularly unique. In fact, the first month I began writing advice columns, I had three different letters from people with similar problems. In two of the cases, I recommended psychiatric counseling. This worked very well. The urge to pull fire alarms completely disappeared, although in each case the person involved became a pyromaniac.

What I do personally when confronted with this urge, or any other destructive urge for that matter, is simply grab both ears and pull as hard as I can. It works very well. It is important to note, though, that if you have pierced ears, you pull the ear lobe and not the earring.

Samantha

DEAR SAMANTHA:
I recently passed by 40th birthday and consulted my local physician as to what I should do to keep fit and ensure continued good health. Among other things, he suggested a barium enema. I am not at all familiar with this and request your advice.

Aging In Anchorage

DEAR AGING:
As a result of your letter, I have completely changed a practice of mine that I have followed for many years. In the past, if a reader had a medical question that I was unfamiliar with, I simply underwent the same diet or test procedure myself, and could thereafter give a meaningful opinion. I did the same thing in response to your letter.

Actually, the 24-hour diet wasn't that bad, but the next day's follow-up was far different than I had expected or was prepared for. Surprises like this I don't need. In the future, if you have any medical questions, ask a doctor.

Samantha.

DEAR SAMANTHA:
I have been dating an attorney in Anchorage for some time now and feel that we have a very special relationship. I have always appreciated the fact that he has accepted me just as I am. For Christmas this year, he gave me a $5,000 gift certificate to a local plastic surgeon. Characteristically, he is letting me choose precisely what I want done, and, in fact, told me to start anywhere I like. I have decided to start from the head down and need your advice as to the perfect nose and hairstyle.

Anxious In Anchorage.

DEAR ANXIOUS:
You do have a special relationship and a supportive boyfriend. Your question, though, is an easy one for me. Any questions with regard to perfect features can be resolved by simply referring to the photograph above. I would suggest that you cut it out and take it to your plastic surgeon.

Samantha.

DEAR SAMANTHA:
I am an attractive, well-dressed attorney, living in Fairbanks, Alaska. I chose to live in Fairbanks, comforted by the thought that Nordstrom's was right downtown. Now, Nordstrom's has closed its doors to the few chic in the Golden Heart City. I like my job, I have a terrific life in Fairbanks, but frankly, what will I do when I need an expensive "something" to brighten our dark, winter days? Although relocation is an option, my husband is totally unsympathetic.

Currently Clad In Calvin Klein.

DEAR CLAD:
Please see letter below.

Samantha.

DEAR SAMANTHA:
My wife is an attractive, well dressed attorney living in Fairbanks, Alaska. A devoted Nordstrom shopper, her brown credit card has the warm patina that comes with constant use. She now is considering uprooting our family to move to a city which has a Nordstrom's. How can I tell her it's Nordstrom's or me?

A Tony Lama Guy From 'Way Back.

DEAR TONY LAMA:
The delivery of ultimatums is always traumatic and seldom successful. Possibly the following poem would help.

LOVER'S LAMENT

For years I have nurtured you,
Warmed your heart of gold.
You, in turn, stood by me
Impervious to the cold.
Now, from our midst,
A mercantile departs.
Can this loss be greater
Than our heart of hearts?
So, my love, consider this,
Our eternal destiny.
Make this choice forever
It is Nordstrom or it's me.

P.S. The likelihood of this working would be drmatically increased if accompanied by lots of flowers and monthly first class plane tickets to Anchorage, Seattle or Virginia. Good luck.

Samantha

Video Replay Schedule

REPLAY LOCATIONS:

JUNEAU LOCATION: Attorney General's Office, Conference Room, Assembly Building -- CLE Video Replay Coordinator, Leon Vance, 586-2210.

KODIAK LOCATION: Law Offices of Jamin, Ebell, Bolger & Gentry, 323 Carolyn Street -- CLE Video Replay Coordinator, Matt Jamin, 486-6024

FAIRBANKS LOCATION: Attorney General's Office, Conference Room, 100 Cushman, Ste. 400 -- CLE Video Replay Coordinators, Ray Funk and Mason Damrau, 452-1568.

REPLAY DATES:

***Malpractice Survival (Anch. 11/8/89)**
Juneau: 11/18/89 9AM - 12 Noon
Kodiak: None scheduled
Fairbanks: 2/9/90 9AM - 12 Noon

***Basic Nuts and Bolts of Foreclosures (Anch. 12/5/89)**
Juneau: 12/16 9AM-12 Noon
Kodiak: 1/13/90 Beginning at 10AM
Fairbanks: 1/12/90 9AM - 12 Noon

***Appeals from Agency Decisions (Anch. 1/18-19/90)**
Juneau: 1/27/90 9AM-5PM
Kodiak: 2/3/90 Beginning at 10AM
Fairbanks: 2/2/90 9AM-5PM

***A Primer on Alaska Lands (Anch. 1/23/90)**
Juneau: 2/10/90 9AM-5PM
Kodiak: None scheduled
Fairbanks: 2/23/90 9AM-5PM

***Basic Title Insurance (Anch. 2/8/90)**
Juneau: TBA
Kodiak: TBA
Fairbanks: TBA

***Basic Estate Planning (Anch. 3/30/90)**
Juneau: 4/14/90 9AM-5PM
Kodiak: 4/21/90 Beginning at 10 AM
Fairbanks: 4/20/90 9AM-5PM

*** A Lawyer's Guide to Writing Clearly & Persuasively (Anch. 4/20/90)**
Juneau: Live program 4/18/90
Kodiak: TBA
Fairbanks: 4/27/90 9AM-5PM

***Making and Meeting Objections (Anch. 10/2&4/90)**
Juneau: 10/13/90 9AM - 5PM
Kodiak: 10/20/90 Beginning at 10 AM
Fairbanks: 10/19/90 9AM-5PM

Please pre-register for all video replays. Registration cost is $35 per person and includes course materials. To register and for further information, contact MaryLou Burris, Alaska Bar Association, PO Box 100279, Anchorage, Alaska, 99510 -- phone 272-7469/fax 272-2932.

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FAMILY MATTERS

Drew Peterson

Earlier this year I participated in a panel presentation on mediation to the Alaska Judicial Conference. When questions were taken, one of the first posed by a judge in the audience was how family mediation can empower participants, to assure that weaker parties are not actually harmed, rather than helped, by the mediation process.

The question is a critical one. It is perhaps the most important inquiry into the effectiveness of mediation as an alternative to traditional methods of resolving family legal disputes. How does mediation assure that the individuals with lesser power in the negotiations are protected and empowered throughout the bargaining process?

Comparisons are first appropriate. Under the traditional adversarial method of resolving family disputes, a number of protections are built into the process to equalize the bargaining position of the parties. The Standard Pretrial Order in domestic proceedings creates automatic injunctions, to maintain and stablilize things at the very beginning of and during the pendency of a proceeding.

Suit money may be awarded to the party in the lesser economic position, pursuant to A.S.25.24.140, to equalize the parties' access to justice. And an individually tailored Order for Interim Relief may be entered, to clarify and stabilize the situation pending final trial.

In recent years new empowerment provisions have been adopted to deal with special concerns about family power imbalances, notably those related to domestic violence. A system of shelters has been established and funded, to allow all sides engaged in a domestic dispute to do so from a location of safety. In court a procedure for obtaining immediate and inexpensive injunctive relief has been created, to establish a "cooling off" period between parties who have previously resorted to violence in resolving their disputes.

Such protections afforded by the litigation process have not always been successful in balancing the power between family disputants, however. We are all aware of cases where the protections have been abused or circumvented: cases where suit money has not been available, because of the deliberate subterfuges of the wealthier party or the simple unwillingness of the trial judge to order it; or where effective interim relief has not been available, due to cost or other reasons.

The recent Rene Vega murder case in Anchorage is an example of every family attorney's nightmare, where the best efforts of the domestic violence restraining order system were simply not good enough.

Regardless of such shortcomings, however, at least the protections available through the adversarial process do directly recognize and provide remedies for family power imbalances, giving the parties specific ammunition to use in their quest for fairness through litigation.

What then is similarly available to balance the power between individuals who choose to pursue resolution of their disputes through the alternative of family mediation? How can we be sure that individuals we have referred to family mediation are protected from the negative effect of power imbalances in the mediation process?

Modeling Fairness and Equality. In an article entitled "Dealing with Power Imbalances in the Mediation of Interpersonal Disputes,", A. Davis and R. Salem, 6*Mediation Quarterly* (1984), it is suggested that by its very nature, as a collaborative conflict resolution process, mediation balances the power between disputants. By definition, the mediation process arises out of an innate respect human dignity. Mediators model such respect, by treating the parties with dignity and listening to their concern with care. The process encourages the open and free exploration of options, seeking win-win rather than win-lose solutions to the problems presented.

By providing the parties with a safe place to express their anger and fears, mediation recognizes the reality of human emotions and the substantial part they play in human conflict. People are better able to see one another's point of view once they have had an opportunity to express their own.

Mediation also recognizes human intelligence, making the assumption that the participants are competent to resolve their own disputes. The impartiality of the mediation process itself empowers the parties, as the mediator conveys the message that the parties are viewed equally, in the manner they are greeted, seated, addressed, listened to, and responded to. This treatment is a strong incentive for the parties to treat each others as equals.

The confidentiality of the process allows the parties a private and secure environment in which to explore the underlying causes of the dispute. This can allow for the voluntary discovery of important information which the parties might otherwise be unable to force each other to disclose, or only at a great cost.

The very voluntariness of the mediation process, and the fact the parties can depart at any time, has an equalizing effect. Each party is aware that neither alone has the power to bring about a settlement. This encourages the parties to adopt a cooperative attitude towards each other. The openness of the mediation process strips away the mystiques associated with the adjudicative process. Mediators describe the philosophy, the process and the ground rules involved with mediation, and by their openness convey the message that information is to be shared.

Davis and Salem point out that everyone has some power and it is a mistake to make assumptions too early as to the balance of power between disputants. The beneficial effects of the mediation process noted will often, though not always, combine together to clarify the respective power balance between the parties and allow them to bargain from positions of relative equality.

The Mediator's Twelve Forms of Influence. In his book *The Mediation Process* (Jossey-Bass, 1986) Christopher Moore discusses 12 forms of influence with mediators generally use to incline parties towards settlement. Such methods are most typically used in combination, in a subtle and flexible way, as the needs for such balancing may appear throughout the mediation process. The 12 are:

Management of the mediation process. The mediator can control the sequence of the negotiation steps, agendas, process steps, etc., to manage the course of the mediation.

Communications between and within parties. Not only can she control the communication process, but the mediator models power balancing behavior, through techniques such as active listening and reframing.

Physical setting and negotiations. Simple changes in power can be caused by such mechanical means as the table shape, seating arrangements, room size, etc.

Timing in negotiations. The mediator can be either directive or nondirective in the control of timing, using such areas as the time the negotiations are started, length of sessions, deadlines for settlement, and the like.

Information exchanged between the parties. Mediators inherantly excercise associational influence upon the parties because of the mediation structure. The degree to which such influence is exercised, however, can be varied greatly from case to case. The mediator can assess and often structure when the involvement of other associates of the parties in the mediation process should be included or excluded to induce an equitable settlement.

Expert influence. Mediators can direct the parties to appropriate experts, as well as serve in a neutral expert role themselves under certain circumstances where they are invited to do so by both parties.

Authority influence over the parties. The parties may defer to the mediator on procedural and sometimes even on substantive issues. Mediators may also call on other authorities to influence the negotiations.

Habits of disputants. Mediators can often appeal to the personal habits of the parties to reach settlement, as well as to distract or directly intervene when such habits are becoming counterproductive.

Parties' doubts and unintended consequences. Parties will usually have doubts about the negotiation process and whether a more advantageous bargain could be made. Such doubts are often unstated but lurking in the minds of the participants. Mediators can use such doubts in a constructive way to influence the parties, by bringing them out in the open. Discussions of things such as the likely outcome in court, the acceptable level of risk, the consequences of loss, and the long term impact of alternatives, can be very helpful to the parties.

Rewards, or benefits. The mediator usually only indirectly influences the rewards or benefits that the parties receive as a result of the negotiations. The other party or parties to the dispute are the recipients of such benefits. Some indirect rewards, however, may be of value to the participants. An example is the mediator's friendship and respect for reaching a fair and equitable resolution to the dispute.

Coercive influence. Finally, there is the use of coercive influence by the mediators. Because mediation is voluntary, such coercive influences are not as great as in other nonvoluntary processes of dispute resolution, like arbitration or adjudication. Nevertheless, some such measures, if not overdone to the point where the participants desert the mediation process, can be used. An example is for the mediator to display impatience or displeasure in the mediation process. Such techniques are particularly useful when the party to whom they are directed is invested in obtaining or maintaining the mediator's respect. They must be used cautiously, however. The most direct coercive resource available to the mediator is to call in impasse in the negotiations, or to actually withdraw from them because of a perceived unfairness in the negotiating process. This is used rarely but can be very powerful.

Moore's book gos on to describe specific methods which may be used, following the twelve techniques, to balance the power between disputants, particularly in severly asymetrical power relationships. Empowering moves described include assisting the weaker party in obtaining, organizing and analyzing data; assisting and educating the party; developing additional resources; and referring the party to a lawyer or other resource person. Some such techniques run a risk of appearing to be taking sides in the dispute, which can eliminate the mediator's effectiveness in the job, if so perceived by the stronger party. Moore notes, however, that stronger parties often welcome a mediator's involvement in power balancing, seeking a win-win resolution of the dispute. This is particularly true where a continued relationship between the parties is likely.

A Personal Perspective. My own experience in mediating family disputes is that the techniques described in the literature really do work. And they are not as obscure as they might appear. Most power imbalances are clear at an early stage of the mediation process and are as obvious to the parties as they are to the mediator. One of the techniques I have found to be effective in dealing with power imbalances is to simply bring them out into the open for discussion. The parties themselves can them determine what needs to be accomplished to make the negotiations more fair and equitable.

Another power balancing element that I have mentioned in previous *Bar Rag* articles and that I continuously discuss in my own mediation practice, is the importance for each mediation participant to have their own attorney to advise them throughout the mediation process. Legal representation is not only important to assure that the parties' rights are being protected but it is perhaps even more crucial to the participants' own perception of the fairness of the mediation process. Parties are sometimes reluctant to go the added expense of hiring consultative attorneys but I talk to them at length of the advantages of it and give them repeated examples of how it could help.

Such tatics seem to work and in most cases the mediation participants do consult with attorneys at some point during the mediation process even if they did not have attorneys when the mediation began.

In case of substantial power imbalance, real or perceived, I will sometimes insist upon an independant legal consultation as an absolute condition to continuing the mediation. Such legal representation, in my opinion, involves the absolute best use of lawyers in a family dispute: not to litigate but to obtain independent expert legal advice and feedback to assure fairness throughout the negotiation process.

Continued on page 7

Board OK's ethics opinion

ALASKA BAR ASSOCIATION
ETHICS OPINION 89-3

RE:Ethical Obligations of the Attorney Hired by an Insurance Company to Defend its Insured to the Insured

AGREED STATEMENT OF FACTS

Attorney was hired by insurance company to represent the at the time of slip and fall case. The insured objected to the insurance company's retention of Attorney on several grounds.

QUESTION PRESENTED

What are the ethical obligations of an attorney retained by the insurance company when the insured objects to the retention of such attorney?

Whether the insurance company is obligated to select different counsel because of objections by the insured is not before this committee. Similarly this committee will not address the insurance company's obligations pursuant to the insurance contact. We rather only examine the ethical obligations of the attorney retained by the insurance company to carry out the insurance company's defense obligations to its insured.

In ABA formal Opinion No. 282 it was determined that under the Canons of Professional Ethics which were the opinion, i.e., May 27, 1950, that an attorney could accept employment from an insurance company to represent the company's insured within the limits of the policy without either the request or preapproval of the insured. The opinion stated in pertinent part:

> Whenever the insured is served with the court process as a defendant, the contract of insurance expressly requires him/her to forward such process to the company so that the company may provide the means of defense. It is elemental that this includes retaining and compensating the lawyer at the company's expense.
>
> Under certain circumstances a person may by contract clothe another with power to retain a lawyer to conduct a defense. Especially may this be done when, as here, the power is coupled with an interest resulting from covenants of insurance. . . The essential point of ethics is that the lawyers so employed shall represent the insured as his client with undivided fidelity as required by Canon six.

Thus it is clear that the initial selection of Attorney by the insurance company without preapproval by the insured is appropriate. Thus Attorney did not breach any ethical obligations to the insured by not first seeking approval from the insured before he began his defense.

However, after the defense was begun the insured placed Attorney on notice that he objected to Attorney's continued representation. It is the opinion of this committee that once an attorney is placed on notice that his client, in this case, the insured, desires a dissolution of the representative relationship, the attorney is ethically obligated to accommodate his client's wishes. Attorney is consequently ethically obligated to withdraw from representing the insured.

The committee bases this conclusion upon DR 2-110(B)(4). DR 2-110(B) sets forth the circumstances under which withdrawal as counsel is mandatory:

> A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if: . . .
>
> (4)He is discharged by his client.

Whenever an attorney withdraw from representation there are certai precautions which must be taken t protect the interests of his client. DI 2-110(A)(2) sets forth the responsibilities of an attorney when he withdraws from employment. states in pertinent part:

> . . . a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client. . .

It is the opinion of this committee that this requirement establishes an ethical obligation on the part of Attorney to recommend that the insured seek the advice of separate counsel with regard to the possible ramifications of discharging the attorney selected by the insurance company.

CONCLUSION

When the attorney retained by the insurance company to represent an insured is informed by the insured that the insured does not want the attorney to represent him, the attorney has an ethical obligation to withdraw from such representation. The attorney also has a concurrent obligation to recommend that the insured seek legal counsel with regard to whether the insured's discharge decision may have ramifications un er the insurance policy.

Approved by the Alaska Bar Association Ethics Committee on July 13, 1989.

Adopted by the Board of Governors on October 27, 1989.

MEDIATOR: Pilot

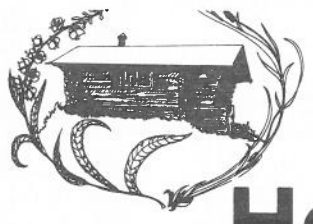
Continued from Page 7

Domestic Violence. One of the hottest debates currently ongoing in the field of family mediation is whether mediation is ever appropriate in cases involving domestic violence. I am not going to take a position on the subject here, having no direct experience on the subject since my policy has been to not handle such matters. Across the country, however, there are many experienced mediators and other responsible individuals who believe that mediation is capable of balancing power even in cases involving domestic violence, as long as certain safeguards and protections are followed.

A number of pilot projects are currently ongoing in this area, funded by the federal government and others and working in cooperation with a number of women's advocacy groups.

It is fair to say that the evidence is not in yet as to whether mediation can provide a viable alternative to the normal litigation process under even these extreme instances of power imbalances.

Conclusion. Balancing the relative powers between parties to a family legal dispute is essential to any method established to fairly resolve such disputes. The traditional adversarial methods of accomplishing such power balancing, while appropriate in theory, have many drawbacks in actual practice. Family mediation methods provide a number of additional techniques and strategies which can be utilized to balance power between family members. Such methods center around the modeling of a dispute resolution procedure whereby the parties themselves define fairness and determine what is necessary to generate solutions, taking into account their relative strengths and weaknesses. With the assistance of their own attorneys people can often obtain their own solutions to disputes through the family mediation process in a manner that is less expensive, less traumatic, leads to a better continuing relationship, and with which there will be better compliance in the future, than a result obtained through litigation.



HISTORICAL BAR

Home Brew divorce at Tony's place

In November, Bob Baumgartner mentioned to the Bar Association that he had some interesting divorce cases that might provide some "lint" for the Rag:

"One article came to mind, about Tony Parich, a well known bootlegger of Home Brew Alley who provided refreshments for many. Well, Tony ran afoul of the law, and Joseph Kehoe, U.S. Attorney had him arrested and brought before Judge Simon Hellenthal. (This was John Hellenthal's father).

Tony comes into the picture because he attended the wedding of Hamilton (Hammy) Graff and Marit Eide, but his appearance shows how different things were in the 1930's.

Graff was married and a few years later I got them a divorce. It took less than five minutes. It's part of the old court records, Graff vs. Graff."

The wedding

Tony Parich lived in a neat log cabin in Home Brew Alley, a section of Seward, Alaska only a stone's throw from Resurrection Bay.

Tony was popular for the numerous dinners that he gave in his small log cabin. Everyone was invited and no invitations were required. There was nothing palatial about his cabin, but his place was always crowded with people of every calling. His razor-back clams were particularly delicious and so was his home brew. His moonshine was the best in the Territory and there was always an abundance of food and drink which Tony served himself in the plainest style and saw to it that everyone got plenty of everything.

Tony's guests were doctors, judges, lawyers, businessmen, longshoremen, cab drivers and any one of Tony's long list of friends. I once met a candidate for the office of President of the United States in Tony's place, and he sure did not go away from there hungry.

But one day, Joe Kehoe, the United States Attorney for the Third Division of Alaska, stationed in Seward, got the brilliant idea that Tony was altogether too popular. He had Tony arrested on some infraction of the Volstead Act and brought before Judge Simon Hellenthal, judge of the district court for the Territory of Alaska, Third Division, wich court happened to be sitting in Seward, at that time.

Judge Hellenthal had been a guest at Tony's cabin on more than one occasion, and was not happy about leaning too heavily on good old Tony.

To be perfectly honest, I don't think the United States Attorney expected the Judge to give Tony a "stiff" sentence. Judge Hellenthal told Tony that he would have to serve two weeks in the federal jail in Seward. He was told that his "cell" was not to be locked and that he could do just about as he pleased, and that he was not to leave the jail without the Court's permission. Tony gave his assurance to the Judge's orders, and the Judge believed him.

It so happened that an important wedding was about to be celebrated that evening. Hamilton (Jack) Graff was going to be married to Marit Eide. A big party was scheduled, which just about everyone in Seward had planned to attend. Jack was owner of the Seward Power & Light Plant and also the Telephone Company. Marit was the daughter of Pearl Smith, wife of the Deputy United States Marshal in Seward. The Smiths occupied the large apartment on the top floor of the federal building. Tony had been invited to the wedding party. Tony was everybody's friend.

"I've been invited to Hammy's wedding down at the power plant," Tony told the Judge. "I'd like to go, please." The Judge knew who "Hammy" was.

"Tony," said Judge Hellenthal addressing Tony by his first name, "You go to the party, but I want you to be back here by midnight!"

"Thank you, Judge", said Tony, "I'll be back here by midnight."

I attended the party and of course I saw Tony Parich. Everyone liked Tony. Then a few minutes before 12, Tony got everyone's attention and said:

"Folks, I've had a nice time at this party, and I sure wish everything good for Marit and Hammy. It's about midnight, and I promised Judge Hellenthal that I'd be back at the jail by midnight. Good luck to all of you. Good bye!"

Everyone laughed and gave Tony the greetings that they would have given to a departing hero.

The federal building, at that time (early in the 1930's) on Fifth Avenue and Washington, housed the Post Office, Signal Corps, Forestry Department and the United States Commissioner's office on the ground floor; the United States District Court (unoccupied most of the year), the Clerk's office, the Deputy U.S. Marshal's office and a few other "interim" and occasional rooms on the second floor.

Tony's job (entirely voluntary) was to empty the wastepaper baskets in these offices and the apartment upstairs, and carry it to a larger container in the alley behind the Post Office. It was a "labor of love" which Tony looked forward to. Each evening as he arrived at the trash receptacle, there was always a crude looking bundle in the bottom of the barrel, which Tony carefully removed. The package was always there.

It was Tony's wine.

The divorce

Just a few years after their widely publicized and heavily attended wedding, Mr. and Mrs. Graff reached a mutual agreement that their marriage was a failure and that it would be best for both parties that the marriage be dissolved. There probably were many mother-in-law inspired conflicts. Mrs. Graff's mother-in-law was a busy-body, and it was difficult for her to live her own life and to cease from interfering with others.

Anyway, "Hammy" (Hamilton Graff) owner of the Seward Light and Power Company, came to see me. He knew that court would hold a session in Seward within a few days. I drew up a complaint for him against his wife Marit alleging an incompatibility of temperament existing between him and the defendant to such an extent as to no longer warrant a continuation of the marital relationship. This was the usual ground of divorce in more than ninety percent of the Alaska divorce cases. Inasmuch as Marit was not going to contest the case, she signed her waiver, which I had also prepared for her. This enabled us to proceed with the divorce proceedings without delay. There were no children, and no property was involved. The case was ready to be heard.

The District Court made its scheduled visit to Seward and at 10:00 a.m. the following morning, *Graff vs. Graff* was called for trial.

Mr. Graff then whispered to me that he and Marit had discussed the matter, and that he had agreed that she would be the plaintiff instead of he. Perhaps this was more of the mother-in-law influence. As far as Mr. Graff was concerned, it made no difference who brought the action. Both parties wanted the divorce. Marit was in the court room.

I asked permission to approach the bench. I explained to Judge Hellenthal what the situation was. He knew the parties quite well.

He also knew that Marit's mother was married to Marion Smith, the deputy U.S. Marshal in Seward, and that they lived in the apartment above the courtroom. Apart from court officials there were no others in the courtroom except the plaintiff and defendant.

The Judge did not bother to call a recess; he merely suggested to me that I write over the names of the parties, so that Marit became plaintiff instead of Hamilton; that I request the dismissal of the present case; that I file with the clerk of court the amended case, and proceed. A waiver had been filed by Marit and the Judge accepted Hamilton's oral waiver.

Marit was called to the stand. After being sworn she testified as to the allegations of the complaint, which were the same regardless of the substitution of the parties.

"You may submit your Findings of Fact and Conclusions of Law, and if you have the Decree drawn up, I will sign it. The fact that it may look a little carelessly drawn up, will not destroy its legality."

In Alaska a Decree of Divorce was final when the Judge signed it. And such was the case here. I glanced at the clock and saw that it was just a few minutes after 10 a.m. The parties were certainly granted a speedy trial. Only in Alaska could a case of this kind receive such pleasant treatment. But in Alaska, in the 1930's we had some mighty fine judges.

Bob Baumgartner was admitted to the Alaska Bar in 1929. He now resides in Santa Barbara, California.

THE MOVIE MOUTHPIECE

Edward Reasor

CHAUTAUQUA, NEW YORK

An earlier article in this august "rag" has prompted several inquiries from members of the Southeast Bar as to what social benefits are available at famed Chautauqua Institution near Jamestown, New York.

One even went so far as to ask if I could sum up in one paragraph or less Chautauqua in relation to members of the profession. That's easy: Chautauqua Institution is too beautiful, too refined, and too serene for lawyers. Period.

For those of you who persist anyway, please be advised that Chautauqua Institution is the second best place in the world to spend two or three weeks with the family (the first being the more expensive original Disneyland in California). On the grounds of Chautauqua Institution are hotels, small quaint restaurants, bed and board facilities, and completely furnished gingerbread Victorian houses for rent.

During the day one can play golf on the 27-hole Chautauqua course (a former landing strip for Amelia Earhardt), or fish for bass and muskellunge in the 25-mile by five mile 100-foot deep lake itself. You can sail, canoe, swim (outside temperature is 80 degrees but the water is like Goose Lake), attend daily lectures or even summer school (art, drama, music appreciation, conversational languages.)

Seven presidents have spoken at Chautauqua including Franklin Delano Roosevelt who opened his 1936 presidential campaign here with his now famous "I hate war" speech. Many world renowned jurists have spoken of justice in terms of world wide concepts as opposed to their own national viewpoints while at Chautauqua. I remember specifically a judge from the war tribunal of the Nuremburg trials and more recently our own Sandra Day O'Connor. Yes, there are lectures of interest for members of the bar.

The early 19th century Athenaeum Hotel sits on a slight knoll so that rooms overlook Chautauqua Lake 100 yards away. Thomas Edison used to entertain Henry Ford here during the summer lectures.

The evenings may be spent walking the moonlit pathway along the lake, listening to modern music interpreters (Sheena Easton and Anne Murray), or dressing in Sunday best (but not tuxedo) for the symphony, a play or the opera.

Every Summer I pen a column "Chautauqua Season" for the Warren Times Observer, a friendly daily located on the banks of the Allegheny River in nearby Pennsylvania. I note that last summer's columns included a lengthy treatise of novelist Kurt Vonnegut, who spent a week at Chautauqua, a luncheon reminiscence of Dr. Wassily Leontief, who won the Nobel Prize for economics in 1973, and review of the operas "The Gondoliers," "Rigoletto," and "Cinderella."

Carole Lombard gets ready for her stage appearance in a Polish acting troupe's impersonation of German officials as Jack Benny seems to ponder "to be or not to be."

What About Cinema?

But, this is a film column, What does Chautauqua offer film buffs? There is a regular, lovely on-campus theater that plays recently released films and yet caters to the Chautauqua program (the film "Carmen" for example, when the opera is playing) and then, of course, there is Mr. David Zinman and his Chautauqua Classic Film Festival.

Mr. Zinman, a senior editor at Newsday, has written several movie books ("Fifty Classic Motion Pictures"), but his film festival is unique. He opens with a short lecture before the film, reviews the career of the major actors and the director, examines the issues the film raises and then after the film participates as moderator for a group discussion. Sometimes these become rather heated exchanges.

During the summer of 1989 film students viewed "Intermezzo," a black and white David O. Selznick release that introduced Ingrid Bergman in 1939. She was only 24 at the time and she played a music tutor whose beauty and vitality caused a middle-aged violonist (Leslie Howard) to leave family and home. The sound scoring of haunting themes from Brahms, Liszt and Tchaikovsky seem most appropriate today since Bergman's real life romance caused her to leave family and home for film director Roberto Rossellini.

Zinman's second choice, "Rebecca," Alfred Hitchcock's first American film and his only Oscar winner (1940), is an adaptation of Daphne du Maurier's Gothic novel that your high school son is now struggling through. Lawrence Olivier, who died just this year, plays a wealthy English widower who was married to Rebecca, a woman who never appears in the film. Joan Fontaine, a rich lady's shy companion, marries Olivier, but she wonders if she can ever fill Rebecca's shoes and more: who was Rebecca and how did she die? This film resulted in the loudest and longest after-viewing discussion at Chautauqua. Some people treat old movies with the same seriousness of Sunday afternoon professional football games.

One of the great film comedies of all times, "To Be or Not To Be" (1942) starring Jack Benny in his best film role, and the lovely Carole Lombard in her last (she died in a plane crash two weeks after filming) wrapped up the festival for 1989. Here a Polish acting troupe impersonates the invading Nazis, successfully hoodwinking the dreaded Gestapo.

As for the summer of 1990, Mr. Zinman advises that the Chautauqua Film Festival will show the original "Lost Horizon," "All About Eve" (perhaps Bette Davis' best film), "Sunset Boulevard" and "San Francisco," a depiction of the 1903 (not 1989) earthquake with Spencer Tracy.

For the Southeast gang, the summer at Chautauqua is high 80's daily and cool 50's evenings. There will be famous authors, statesmen, religious leaders and politicians as well as Mr. Zinman's films. See you there.

1989 CLE Honor Roll

We want to acknowledge the contribution of and participaton by the following Bar members as faculty, program coordinators, planning committee members and/or video replay coordinators for our 1989 CLE programs. Without their hours of volunteer assistance, the Bar CLE programs would not be possible.

John Abbott
Lawrence Aschenbrenner
Helene M. Antel
William J. Bonner
Sidney Billingslea
Bob Blasco
Jonathan Machr
Edgar Paul Boyko
Peter Brautigam
Robin Brena
Robert C. Brink
Bob Bundy
Dave Bundy
Bill Caldwell
Daniel Callahan
Cynthia Christianson
Joan Clover
Mason Damrau
Carol Daniel
Mark Davis
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Tim Petumenos
Rhonda Roberson
Peggy A. Roston
Frank Rothschild
Stephen Dale Routh
Eric Sanders
Bill Saupe
Gordon Schadt
Michael Schneider
Barbara Schuhmann
D. Rebecca Snow
Larri Irene Spangler
Rick Sullivan
Tom Tatka
Steve Van Goor
Leon Vance
Gail Voightlander
Dan Weber
Julie Werner-Simon
Russ Winner
David Wolf
Michael N. White
Judge Victor Carlson
Judge Walter Carpeneti
Judge Beverly Cutler
Judge Dana Fabe
Judge Natalie Finn
Judge Mary E. Greene
Chief Judge H. Russel Holland
Judge Karen L. Hunt
Judge Karl S. Johnstone
Judge Peter Michalski
Judge Ralph Moody
Judge John Reese
Judge J. Justin Ripley
U.S. Magistrate John Roberts
Douglas J. Serdahely
Judge David Stewart
Michael N. White
Judge Michael L. Wolverton

Section Chairs
Helene M. Antel
Doug Barker
William J. Bonner
Bruce Bookman
Robin Brena
Robert C. Brink
Mickale C. Carter
Maryann E. Foley
Lee Holen
Marcia E. Holland
David A. Ingram
Erik LeRoy
James D. Linxwiler
Joseph R. D. Loescher
Thomas R. Lucas
Lloyd B. Miller
Ronald W. Miller
Steven T. O'Hara
Gordon F. Schadt
Dave Schaftel
Thomas J. Yerbich

Mason Damrau
Judge Dana Fabe
Raymond M. Funk
Brian W. Hanson
Dan A. Hensley
Daniel W. Hickey
Kenneth P. Leyba
Joseph R. D. Loescher
John W. Peterson
Mary B. Pinkel
Leon T. Vance

All Bar Section Executive Committees and CLE Planning Committees
We regret any omissions or errors.

Bar Rag summary

Attorney A received a written private admonition for violation of several disciplinary rules. Attorney A violated DR 9-102(B)(1) by failing to notify a client of the receipt of client funds paid to the attorney by a judgment debtor. Attorney A violated DR 9-102(B)(4) by failing to promptly remit to the client on request those judgment debt payments to which Attorney A had no legitimate claim. Attorney A violated DRs 1-102(A)(5) and (A)(6) by refusing to remit to the client judgment debt payments unless the client agreed to pay a fee higher than agreed. Attorney A violated DR 1-102(A)(5) by attempting, in a perceived threatening manner, to persuade the client to withdraw a Bar Association grievance. Although Attorney A's misconduct warranted a higher level of discipline, the misconduct was mitigated because of Attorney A's inexperience and because inadequate or misleading supervision by law firm principals apparently contributed to Attorney A's conduct. Bar counsel also wrote to Attorney A's law firm to remind its principals of the ethical duty to supervise, and not merely be available to, associate lawyers.

Attorney B received a written private admonition for misrepresenting dates of service in billings to a legal insurance program, for attempting to unilaterally convert an hourly fee agreement into a contingent fee, and for inappropriately recording an attorney lien.

Attorney C received a written private admonition for violating DR6-101, which prohibits neglect, incompetence, and inadequate preparation in legal matters entrusted to a lawver. Attorney C failed to adequately learn the current state of the law regarding an issue central to the client's case. Attorney C therefore gave the client misguided advice, detrimental to the client's interests. Attorney C also failed to take measures to remedy the situation within a reasonable time after learning of the error.

BAR PEOPLE

Robert W. Landau has opened his own law office in Anchorage, effective January 1, 1990....**Kimberly Casebeer Crnich** and **Joseph Emil Crnich** have moved to Arlington, Virginia. Kimberly is a fellow with the Women's Law and Public Policy Fellowship Program, administered through Georgetown University Law Center. As a fellow, Kimberly is adjunct faculty at Georgetown Law Center, instructing a third year trial practice clinical class. Students in the class litigate domestic violence cases in the D.C. Superior Court, with instructor supervision....**Scott T. Fleming** announced the relocation of his law office to the Chrysler Building in N.Y.C.

Nathaniel B. Atwood, formerly with Gilmore & Feldman, is now with Atkinson, Conway & Gagnon.-...**Joyce Bamberger,** formerly an assoiciate with Faulkner, Banfield, et.al., is now a sole practitioner in Anchorage....**Linda Beecher** has left ALSC and is now an assistant public defender in Anchorage....The Juneau firm of Baxter & Marks is now Baxter, Bruce, Brand & Rodriguez.

Don Bauermeister, formerly with the law office of Laurel Peterson, is now with Bogle & Gates....**Douglas Barker** is in Tokyo working for Nishi, Tanaka & Takahashi....**Mark Barnes** is Counsel to the Secretary for Drug Abuse Policy in D.C....**Daniel R. Cooper** is now a partner in the firm of Bradbury, Bliss & Riordan....**David Case** has joined the firm of Copelan, Landye, Bennett & Wolf....**John Eberhart** has relocated from Sydney, Australia to Fairbanks.

Jamilia and Rick George had a baby girl, Lily Margaux, 5 lb. 9 oz. on November 3....**Norma Gammons,** who has been a legal secretary with the Alaska Bar Association since 1980, recently passed the required exam to receive the designation of Certified Professional Secretary.

Marilyn Kamm has joined the firm of Call, Barrett & Burbank as an associate....**James Klasen,** formerly with Hughes, Thorsness, et.al., is now with the A.G.'s office in Anchorage....**Andrew Lambert** has relocated from Nebraska and is now with OPA in Anchorage....**Bonnie Lembo,** formerly with the D.A.'s office, is now with the A.G.'s office in Anchorage.

Paul Olson has opened his own law office in Anchorage....**Keenan Powell** is now with the law offices of Phillip Paul Weidner and Associates....**Susan Reeves,** formerly with BP Exploration, is now with the Anchorage office of Heller, Ehrman, White & McAuliffe....**Catherine Stevens** is now with Occidental International Corp. in D.C.

Mickale Carter, formerly of Hughes, Thorsness, et.al., will be with the U.S. Attorney's office beginning in February...**Ruth Bauer Bohms** is now with Alaska Legal Services in Anchorage...**Bill Garrison** is now in Naknek.

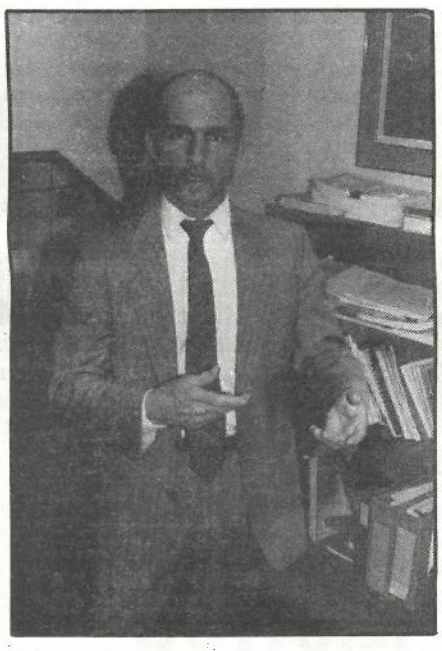
Stan Hafferman has opened an office for the general practice of law in Anchorage...**Jeff Lowenfels,** formerly with Birch, Horton, et.al., is now with Yukon Pacific Corporation...**Christine Schleuss** and **James McComas** have formed the firm of Schluess & McComas...**Maurice McClure** and **Paul Olson** had a baby boy in early January.

Edward Nolde writes that in addition to continuing as an assistant attorney general in Virginia, he has also been appointed an adjunct assistant professor at the University of Richmond School of Law to teach its consumer protection course...**Lee Holen** and **Liz Johnson** (formerly Johnson & Holen) are pursuing individual interests. Liz is leaving the law for a new business venture and Lee is exploring commercial and appellate law opportunities.

Barbara Hood, an assistant attorney general, will be starting at Alaska Legal Services shortly.....**Richard Fossey** is enrolled in a doctoral program at Harvard Graduate School of Education.....**Jim Wanamaker** is now at the attorney general's office.....**Peter Brautigam** was recently made a partner at Hartig, Rhodes, Norman, Mahoney and Edwards.....**Janet Crepps** passed the Idaho Bar and will be working as a lobbyist for the Idaho chapter of the American Civil Liberties Union.....**Alan and Linda Schmidt** had a baby girl, Margaret Elizabeth, 8 lbs. 11 ozs., on Dec. 13

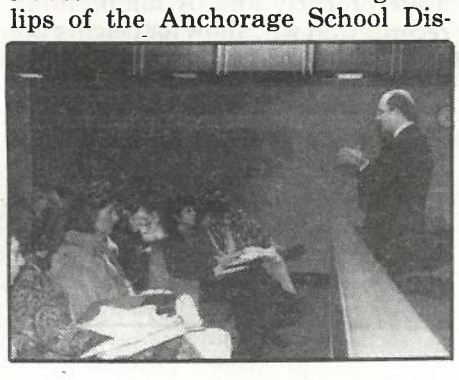
Changed firms? Relocated? Gotten Married? Had a baby? Send your announcements, attention The Alaska Bar Rag, in care of the Bar Association office, P.O. Box 100279, Anchorage, AK 99510.

Lawyers from Anchorage & Juneau present coursework



Phil Volland chaired the Law Related Education Committee which developed the Anchorage course.

For the second year in a row, the Anchorage Law Related Education Subcommittee, in conjunction with the Anchorage School District presented a course for teachers, entitled "Law and Contemporary Issues". The semester long course, which was accredited by APU, was presented by over 30 Anchorage attorneys as faculty and attended by 100 teachers. Course subjects included such topics as Constitutional Law, Torts, Students' Rights and Responsibilities, and mock trial demonstrations. Phil Volland, chair of the Law Related Education committee and Doug Phillips of the Anchorage School District, spearheaded the course.



David Baranow sets the scenario for the mock trail demonstrations.

The Juneau Law Related Education Subcommittee presented a law course for teachers for the first t me last semester. The course was attended by 12 teachers, and about a dozen lawyers served as faculty for the course. Chair Eric Kueffner and Ed McClain from the Juneau School District reported that there continued to be a lot of interest by teachers in the course after registration was closed , and that they plan to offer the course for teachers for the first time cluded family law, contracts, wills and discrimination.

Gissberg joins firm

Formerly the Governor's Distinguished International Business Scholar and lecturer at the Alaska Center for International Business, University of Alaska, Anchorage and University of Alaska Southeast in Juneau, Dr. John G. Gissberg has joined the law firm of FAULKNER, BANFIELD, DOOGAN & HOLMES.

Dr. Gissberg, who obtained his law degree from the University of Michigan Law School and doctorate at the University of Michigan School of Natural Resources in Fisheries, is an expert in the field of international business relations with special emphasis on the fishing industry.

In Memorium

Melchor P. Evans
Jan. 17, 1990
In Washington.

Nominations are sought

The Board of Governors is soliciting nominations for two annual awards which are to be Presented at the Annual Bar Convention, to be held in Anchorage, June 7-9, 1990.

The Professionalism Award recognizes an attorney who exemplifies the attributes of the true Professional; whose conduct is always consistent with the highest standards of practice and who displays appropriate courtesy and respect for clients and fellow attorneys.

The Distinguished Service Award annually honors an attorney for outstanding service to the membership of the Alaska Bar Association.

Please submit your nominations, in writing, for either of these awards to the Board of Governors, care of the Bar Association office, by March 9, 1990.

Get ready for the June Convention and take a Russian language class

The 1990 Northern Justice Conference, an expanded version of our usual annual bar convention, will be held June 7-9, 1990 in Anchorage. We are anticipating participation by lawyers and judges from the Soviet Union, British Columbia, the Yukon Territory and the Northwest Territory.

It is likely that only about one fourth of the Soviet delegates will speak English. So, if you want to brush up your Russian skills or just learn a few fun phrases, here is some information on courses being offered by UAA:

Foreign Language Dept.: RUSS 101 Elementary Russian I and RUSS 102 Elementary Russian II and RUSS 105 Russian Language and Culture I.

Call the Foreign Language Dept. at 786-1685 or Student Information 786-1483 for details.

College of Community & Continuing Education (non-academic credit): LNS017 Conversational Russian I or LNS 018 Conversational Russian II,

Call on-campus 786-1121 or the downtown office at 257-2758 for details.

ESTATE PLANNING CORNER

Steven T. O'Hara

As was discussed in my previous column, "basis" is used in determining gain or loss from the sale or other disposition of property (I.R.C. Sec. 1001 & 1011).

For example, if a client purchases property for $10,000, her basis in that property is $10,000 (I.R.C. Sec. 1012). If she then sells the property for $100,000, her taxable gain is $90,000, which is the consideration received in excess of her basis.

We also discussed that a so-called "stepped-up basis" to fair market value is obtained, in general, on a transfer at death (I.R.C. Sec. 1014).

In this further connection, it should be noted that community property is beneficial, in that both halves obtain a step-up in basis, whereas with joint property only one-half gets a step-up.

For example, consider a husband and wife who own a share of stock as joint tenants with right of survivorship. They purchased the stock for $10,000, so that is their basis. The fair market value of the stock is now $100,000. The husband then dies.

Under such circumstances, the surviving spouse will obtain a basis of $55,000 in the stock. This is because half of the stock is included in the husband's gross estate for federal estate tax purposes (I.R.C. Sec. 2040(b) & 1014(b)(9)). That half is considered to have a fair market value of $50,000, since we said the fair market value of the stock is $100,000 (I.R.C. Sec. 2040(b)(1)).

The surviving spouse's basis in her half (which is not included in her husband's gross estate) is $5,000 - that is, half of the couple's original purchase price of $10,000.

So the surviving spouse's new basis in the stock is her original basis on her half (i.e., $5,000) plus the stepped-up basis in the half that is considered to have passed from her husband (i.e., $50,000), thus totalling $55,000.

So if the surviving spouse then sells the share, she would have $45,000 of gain, which could generate a 1990 federal income tax liability of as much as $12,600 (I.R.C. Sec. 1).

By contrast, suppose the same stock was acquired by the couple with community property and that the couple maintained the character of the stock as community property. Suppose further that before dying the husband executed a Will giving his half in the stock to his wife, should she survive him.

Under such circumstances, the surviving spouse would obtain a basis of $100,000 in the stock. Then the surviving spouse could sell the share at absolutely no tax cost, a saving of as much as $12,600 in income tax.

In other words, the decedent's half of the community property passes through his estate as separately owned and thereby acquires a step-up in basis (I.R.C. Sec. 1014(b)(1) & 2033). In addition, and what is peculiar only to community property, the surviving spouse's half is deemed by statute to have passed from the decedent and thus also gets a step-up in basis (I.R.C. Sec. 1014(b)(6)).

As a further illustration of the community-property advantage, consider again our first example —the married couple with jointly-owned stock worth $100,000. Assume now that they have just received the prognosis that the husband, who has cancer, will probably die within six months.

Since their basis in the stock is $10,000, the wife transfers her interest in the stock to her husband, who will then give it back to her through his Will.

As we discussed in my previous column, the surviving spouse will not receive a step-up in basis in the interest in the stock (that she gave her husband) unless her husband lives one year and a day after her transfer to him (I.R.C. Sec. 1014(e)).

Assume the husband lives only 11 months beyond the transfer. Under such circumstances, the surviving spouse's new basis in the stock should be $55,000. In other words, the surviving spouse should obtain a stepped-up basis (to $50,000) for half of what would otherwise have been joint property, but she should obtain only a carryover basis (of $5,000) on the other half (see I.R.C. Sec. 2040(b), 1014(b)(9) & 1014(e)).

By contrast, if the stock had been community property, no transfer to the likely first spouse to die would be necessary and there would be no required holding period. The surviving spouse's new basis in the stock would be stepped up to its full fair market value of $100,000.

In general, once it has been identified, community property should be preserved by segregating it from separate property and by maintaining records that will allow for tracing the community property from its disposition —including by Will or living trust —back to its acquisition.

A premium should be placed on the maintenance of such records, particularly when a client moves from a community property state to a common-law property state, such as Alaska. Depending on the numbers involved, the retention of an accountant or other professional to maintain the records may be well worth the added expense.

In other words, even though clients may be domiciled in Alaska, it is possible they own substantial assets as community property. Unless the spouses change the character of the property, it remains community property even though they move from one state to another (D. Westfall & G. Mair, *Estate Planning Law and Taxation* at 4-12 (1989)).

Wisconsin is now recognized as a community-property state for federal tax purposes (Revenue Ruling 87-13. 1987-1 C.B. 20). So in discussions with clients, Wisconsin should be included along with the eight familiar community-property States of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

In addition, Hawaii, Michigan, Nebraska, Oklahoma, and Oregon were once community-property states. Thus some clients may still own community property by reason of these "temporary" community-property systems.

If the clients own property outside the United States, the property system of that foreign jurisdiction should also be considered (Houston, Mucklestone and Treacy, 212-3rd T.M., *Community Property: General Considerations* at A-2).

Community property is a good example of the rule that in estate planning, each of the client's assets should be analyzed from a local-law and tax standpoint. The question to consider is what opportunity (or problem) is inherent in the ownership of the asset.

Tanana Valley Bar

Crutchfield said it was just hot flashes

December 22, 1989

The meeting was called to order by President Fleur Roberts. Fleur was given a Santa hat to wear while presiding and commented that it was very warm. Judge Crutchfield commented it was merely hot flashes.

Ron Smith read the minutes of December 15, 1989. Justice Rabinowitz reported that he was shocked by a portion of the minutes reporting that Dave Call stated he had not said that Justice Rabinowitz was not shy. He reported what he had said was that Justice Rabinowitz was not gay. Dick Madson asked Justice Rabinowitz if he wanted a chance to rebut Dave Call's statement that he was not gay. Justice Rabinowitz declined this invitation but still maintained that he was shocked by the minutes of the TVBA.

Fleur corrected the statement of Judge Kleinfeld in the previous week's minutes that Federal Court never has jurisdiction in custody cases. She then proceeded to lecture Judge Kleinfeld and the TVBA on the Hague Convention and that if a child is abducted to a foreign country, the Federal Courts have jurisdiction. That includes Whitehorse.

The minutes of December 15 were criticized for not expressly stating that the motion had passed to tell the Alaska Bar Association and the Court System to take their (contract for the TVBA to keep its copier in the Law Library) and stuff it "where the sun don't shine." It was further resolved to tell the Court system that the TVBA's copier had been moved but not where.

Dan Cooper then stood up and commented that the TVBA has never had a mascot and he just learned of the perfect mascot for the TVBA. Dan made a motion to have the TVBA Treasurer (Gail Ballou) go to Bordicini's store in North Pole and purchase an inflatable sheep. Dan commented that he just learned from a State Judge sitting at his table that such a thing was not only made but locally available.

Judge Crutchfield then stood and asked to explain how he learned of the inflatable sheep. He said that Ann Mitchell, an in-court clerk, and Cindy Brown, a receptionist in the Judge's chambers, were discussing an appropriate Christmas gift to give someone and a metro police officer suggested that they get a life size inflatable doll. This helpful civil servant helped the ladies call Bordicini's dirty book store in North Pole. Cindy was told that they did not have a full size inflatable woman but that they did have a full sized inflatable sheep. Cindy after hanging up asked why anyone would want an inflatable sheep. Ann had to take her into another room to explain it to her.

A vote was called for on Dan's motion. Fleur ruled it was out of order to require Gail to go to that place. Fleur's ruling was shouted down. When the vote was called for the motion passed with one dissenting *Baa*.

There was discussion as to whether Gail should be directed to examine the sheep to determine its sex before she bought it. Someone commented that was something the clerks at the store would expect from their customers. Possible names for the mascot were discussed but no decision was made.

Fleur reported that she had in fact arrived at 8:10, only slightly late, for the Kids Shopping Spree sponsored by the TVBA the previous Saturday and it went well. She stated that the kids all appeared needy and worked hard to wisely spend their $50.00 each to buy presents for their families for Christmas. They gave her son $50.00 and he gave it back.

The location of the 4th of July party was discussed but no decision made. Bob Noreen wanted to have lobster supplied by Captain Hazelwood as the main course. Dick Madson was not so sure this was a good idea as Hazelwood might be in jail. Someone pointed out that Captain Hazelwood had beem employing some high-priced Alaska attorneys and the price of lobsters to the TVBA might reflect these high legal fees. Therefore, the TVBA might not be able to afford his lobsters. Dick Madson assured everyone that the money would go to a good cause.

It was questioned as to whether the TVBA would meet on December 29. Fleur decided that a meeting would be held but it would not be as formal as this meeting. Few at this meeting could imagine a more informal meeting.

Respectfully submitted,
Ron Smith, Secretary

Happy Valentine's Day

Curda named Superior Court judge

Candidate had to emulate needs of community

The Alaska Judicial Council travelled to Bethel on November 20, 1989, to conduct interviews for the Superior Court judgeship. While there, the council held a public hearing to solicit comments on the candidates and the administration of justice in the Bethel region.

Approximately thirty people attended the hearing, but most were reticent about commenting. Bethel city council member Dave Trantham urged the council to recognize that Bethel is "a community of many cultures with very special needs, especially needs reqarding alcohol and drug abuse."

He stressed the need for the council to consider someone "with an understanding of the community and an understanding of our special needs."

Fifteen-year resident Grant Fairbanks spoke specifically in favor of Dale Curda, the only candidate from Bethel. The community was upset, he said, "with judges who had baggage they brought with them that the community had to deal with." Curda, he felt, represented someone without "baggage" who "could give the community what it needs."

High school teacher Michael Grounds reiterated the importance of a local person when he stressed to the council that it was "important to have someone who knows about the town and is willing to stick it out."

At the end of these initial comments, the council's acting director Terry Carns tried to elicit input from the group on the problems the new Bethel judge would have to face. The room was silent until a teenage girl answered "drugs and alcohol". After a moment of reflection she again repeated, "Yes, drugs and alcohol". No further comments were offered.

It was after Chief Justice Warren Matthews called the hearing to a close that the council got a brief taste of a recurring phenomena with the administration of justice in the bush.

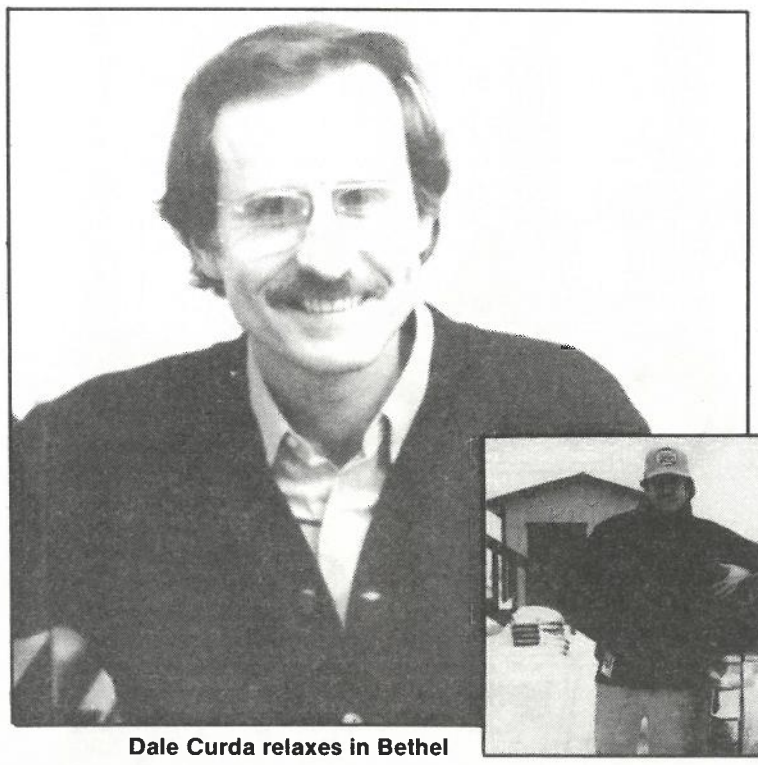
After the adjournment, people with comments started to slowly wend their way into the courtroom. The meeting was reopened to allow Joan Hamilton, a Yupik woman originally from Chevak, to offer her comments in support of a female judge. She spoke at length on the needed perspective a woman could bring to the problems of families, women, and children throughout the Delta. After she finished, the meeting was again closed, but other late-comers held over in the courtroom to offer their input informally.

The council ultimately went into closed session to interview all candidates.

At the end of the day, they reconvened in public session to vote. Dale Curda received a unanimous tally, and Alison Mendel of Anchorage and Jon Link of Fairbanks split the votes for the second nomination. Three names were submitted to Governor Cowper, who named Dale Curda to the bench in December. He is scheduled to assume his new duties in February 1990.

Suzanne Di Pietro, council staff member who accompanied council members to Bethel, suggests that the public hearing was important to the judicial selection process regardless of the extent of actual public comment.

The purpose of the hearing, according to Di Pietro, was "to get an idea of what the people of Bethel thought was important in a Superior Court judge." The council as always interested in public input, she says, especially in outlying areas. "It's worthwhile," she said,
"just to let the community know that council cares about what they have to say."



Dale Curda relaxes in Bethel on the Kuskokwim.

Curda never leaves home without his Fidos.

Distinguished members of the Bethel Bar meet with judicial candidate Allison Mendal after the public hearing. From left to right: Joe Faith, Alaska Legal Services Corporation; Terri Spigelmyer, Public Defender Agency; Carolyn Krinkley, Alaska Legal Services Corporation and Mendel.

Judicial Council members Dr. Bill Hendrickson, Dan Callahan, and Leona Okakok, listen to public comments at the hearing in Bethel.

From Phillippines & teaching, Curda finds adventure

By Barbara Hood

New Bethel Superior Court Judge Dale Curda came to Alaska "looking for adventure" in 1972. Judge Curda was a teacher at the time, and previously had spent three years in the Peace Corps in the Phillippines teaching English as a second language and three years teaching in Washington, D.C. He and his wife, Linda, soon made their way to Bethel, where Dale taught for three years in the public schools and directed a federal remedial education program.

The Curdas left Bethel in 1975 to pursue graduate studies on the East Coast, but ultimately returned in 1980 after Curda graduated from Antioch Law School in Washington, D.C.

Curda served as Bethel magistrate from 1980 to 1983, and entered private practice in Bethel in 1984. In 1986, he joined the Bethel District Attorney's office, where he was employed at the time of his appointment to the bench in December 1989.

The Curda family has strong ties to the Bethel community. Linda Curda is the director of the Community Health Aide Training program at the University of Alaska-Fairbanks Kuskokwim campus, and has worked in the health-related field in the region for many years. The Curda's children, Megan, 10, and Ryan, 8, have grown up in Bethel.

Judge Curda has been asked often recently what inspired him to pursue a judgeship, and the answer comes easily.
"It's an opportunity to be of service to the area and something I feel very comfortable doing," he says, adding, "it's exciting professionally and personally a challenge, and I'm looking forward to it."

Chief Justice Warren Matthews will preside at the swearing-in ceremonies scheduled for February 9, 1990, in Bethel.

Special guests will be the judges from the Fourth Judicial District who have served the Bethel region on a rotating basis throughout most of the past year. Judge Mary E. Greene, Judge Rlchard D. Savell, Judge Larry C. Zervos, and Judge Jane Kauvar will travel from Fairbanks for the occasion. In addition, Curda has invited many of the local people who supported him in his bid for the judgeship.

Undoubtedly, the crowd will include a reporter from the local Tundra Drums newspaper, which not-so-subtly indicated its support in November by reporting that Curda had been ranked as "God" in several categories on the bar poll.

Tundra Typos

Only one candidate, Dale O. Curda, received a "Good" mean rating on any of the sic categories. He was rated "God" on integrity and fairness and "high acceptable" on the other four. From the Tundra Drums, Nov. 16, 1989.

WOMEN: Decent day care a major issue

Continued from page 1

The government will pay for the child care of the woman's children while she is in training and for one year after she obtains a job.

Although it is not easy to calculate, Mia Oxley estimates that the Act will affect about 900 families in Anchorage and about 1,800 statewide.

The impact of the Act in Anchorage will be that on April 1, 1990, there will be at least 900 children who will have been cared for by their mothers who will require child care at a child care facility. With this sudden influx of children there is the distinct possibility that the cost of child care will skyrocket due to the fact that the demand will exceed the supply. Also the federal government's involvement may result in preference being given to children of welfare mothers because the payment for their children's care will be guaranteed.

The Present Regulations Address only Health and Safety

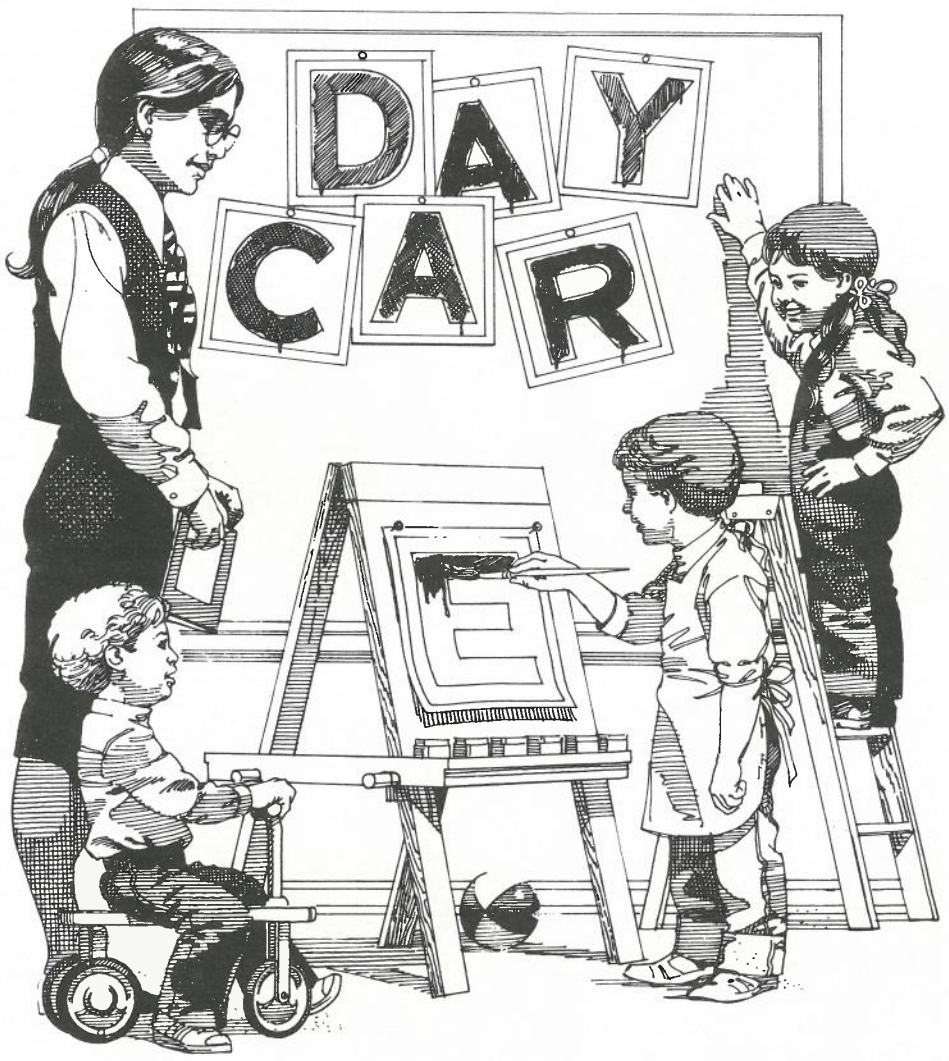
The Municipality of Anchorage is in the process of combining state and municipal regulations in order to provide consistent regulation of the child care facilities in Anchorage.

Presently, however, the regulations address only health and safety. Parents can thus be assured that their children are physically healthy and safe. However, there is no corresponding assurance of a minimal standard for intellectual stimulation or emotional growth.

The cause for the failure to address intellectual and emotional requirements of day care facilities is likely multifaceted. It is certainly easier to identify and quantify health and safety needs. People tend to be more willing to focus on something tangible, like safety. Also, identifying the intellectual and emotional needs of infants and pre-school children is unchartered ground.

Ten or 20 years ago, responsibility for a child's early development was, except for a small minority of cases, within the exclusive province of the child's parents. It has only recently become the rule rather than the exception that our society's children are being sent to day care facilities. As a consequence, the issue of early childhood intellectual and emotional requirements has only recently risen to the level of a societal concern.

It is time that we, as a society, took the bull by the horns and established minimal standards for intellectual and emotional educational requirements for day care facilities. It might be more expeditious to start at the local level, rather than begin by trying to get the entire state to agree.



There are a myriad of possibilities of how this can be accomplished. The standards can be determined by a commission with input from the public including public hearings. Another procedure would be for the standards to be established by our education leaders in much the same way that the educational requirements for school age children are established.

Regardless of the methodology, something must be done soon. Our children are our future. We must do all that we can to assure that our children are as well equipped to handle life's demands as possible.

A Part of the Solution

Virginia Johnson, Dean of the School of Education at the University of Alaska Anchorage has come up with a plan that she hopes will have a positive impact on many current social problems. Her idea is the Middle School Day Care Center.

As conceptualized, the day care centers would be located at the six middle schools in the Anchorage area. The curriculum for the day cares would be developed by the Director of the Day Care Centers.

The Director would be responsible to the board of directors who would include at least one repesentative of each of the following: pediatrician, attorney, university professor, teacher, principal, business leader, municipal representative, parent, and student.

Even when in full swing it is anticipated that the middle school day care centers would only be able to serve 40 pre-school age children per school for a total of 240 children. Thus, this plan would not accommodate the total increase in pre-school children needing day care services as a result of the Federal Family Support Act of 1988. The Middle School Day Care Centers impact nonetheless would be felt throughout the state.

The day care centers would provide laboratory schools for the UAA Early Childhood program. University students seeking a degree in Early Childhood would be required to intern in the day care centers under the supervision of the director. The students, upon graduation, could work in other day care centers throughout the state. The program would thus improve the quality of the day care centers where ever the graduates work.

A special concern of Ms. Johnson is teenage pregnancy. It is her belief that if teenagers are exposed to the responsibilities of child rearing that they will be less likely to "accidently" become a parent. As a consequence, her plan includes middle school students. As a part of the curriculum of the middle schools the students would have the choice of a class in child care which would consist of a class period a day working in the child care center.

Only through joint effort by people representing many segments of society will Ms. Johnson s dream become a reality.

The Anchorage school district must be willing to incorporate the day care center into its middle school curriculum.

The University of Alaska will need funding by the legislature to create an early childhood faculty position as well as provide the back up services for the intern program.

The Municipality of Anchorage must be willing to provide the necessary funding for maintenance of the classroom, including security.

Because the cost of the program may exceed the finacial resources of the parents who wish to have their children in the program the business community may be called upon to donate equipment or give financial assistance directly to the program or indirectly by including in their employee benefit package a contribution to the cost of child care.

This list is not intended to be exhaustive. Rather, it is intended to reveal the complexity of the requirements for beginning to tackle the day care problems in Anchorage. Obviously Virginia Johnson's dream will not solve all the problems in Anchorage. It is meant only to be a part of the solution.

UNIVERSITY OF ALASKA
REQUEST FOR PROPOSALS
LEGAL SERVICES, INCLUDING CIVIL LITIGATION
RFP #SW 90-03

The University of Alaska is issuing a Request for Proposals (RFP) for attorneys to represent it in worker's compensation, tort liability, contract, public construction, wrongful termination/employment discrimination, hazardous materials, marine protection and indemnity/admiralty, and public procurement litigation.

This RFP is designed to develop a register of attorneys to be readily available to represent the University in civil litigation whenever the University does not utilize an attorney within the University's General Counsel's Office. This register is limited to a reasonable number of attorneys based on anticipated case activity in the identified specialty areas. It is anticipated that this register will be used for the next five years.

Attorneys interested in receiving a copy of the RFP should request one by writing:

University of Alaska
208 Butrovich Building
910 Yukon Drive
Fairbanks, Alaska 99775-5640

Proposals must be received by the University at the above address by the close of business on February 15, 1990.

Verdicts and Settlements

Phillip Bohna v. Hughes, Thorsness, Gantz, Powell & Brundin and Allstate Insurance Co. Plaintiff was defendant in a personal injury suit in which plaintiff was severely injured. Bohna has $50,000 in insurance plus unlimited ARCP 82 fee coverage. Bohna sued his carrier and attorneys because offer of judgement in excess claimed value of the judgement plus claimed vlaue of the judgement plus interest and costs.

Plaintiff's demand: $6,500,000
Verdict amount (Jury): $6,500,000

Wild Goose, Inc. v. State of Alaska et al. A 1986 flood on Montana Creek wiped out lodge. Owner sued state whose third party design engineers in 1961 designed creek rechanneling and bridge. Plaintiff claimed loss of real and personal property.

Special damages: $465,000
Verdict amount: $0

Robert Johnston v. Frank B. Hall & Co. Defendant terminated employment contracts of husband and wife brought to Alaska to run bond department. They sued for breach of contract, emotional distress, statutory misrepresentation, negligent misrepresentation and punitive damages.

Description of injuries: Loss of wage and benefits until retirement, premature sale of investment property, withheld back wages.

Verdict amount: $112,292.66 compensatory; $330,000 punitive damages.

WISDOM: Am Jur & Charlie's Angels

Continued from page 1

The girl I gotta cross-examine is about 45 years old, with a couple kids. She's like a defendant. So I looked in this Am Jur Trials at page 310, in the book with the little 6 on the cover. It's got this one section about dishonest defendants.

And then, this what it sez about female defendants. Read this, guys!-- *The cross-examining attorney should not expect consistency in the testimony of a woman defendant because women frequently fall within the category of the dishonest defendant, caring more for the effectiveness of testimony than for its accuracy. Counsel should take exhaustive discovery depositions from women defendants in order to pin them down in their testimony and prevent later contradictions. Most jurors do not seem to object to women being held to the same standard of responsive answering as male defendants. Counsel should use short, simple questions that do not permit unresponsive answers. It is ordinarily a good idea to vary the order of questioning, moving from one point to another, so that the witness cannot anticipate the objective and mend her fences accordingly.*

Wow! Ain't that the truth! Sharpy was sayin' that just the other day. This Am Jur book I almost like better than the old *Charlie's Angels* TV show! I looked for a picture of a girl in a bikini, but they didn't have one.

And listen up, you guys. There's this other Am Jur book. This article about the plaintiff's case. The book had a 5 on the cover, and this good stuff on page 629--- *Women witnesses pose no special problems for the direct examiner unless loquaciousness is a problem. From the "time whereof the memory of man runneth not to the contrary" we* --That's us, men!-*have learned to live with the active tongue of the distaff side. Also, the difficulty of limiting a lady on the witness stand to a terse recital of the facts is one that looms larger to the cross-examiner than to the direct examiner.*

Hey, and ain't that the truth again! You can't get'em to shut up. The guys were just tellin' me that loquaciousness is a problem for distaffs. Lefty and Sharpy know sensitive stuff like that. (For you guys who don't know, loquaciousness is that problem women have every month.)

And AmJur sez women gotta know howta dress. Yeah. This from the article about the plaintiff's case--*A final word must be offered concerning the appearance of the lady to be called. Moderation from head to toe should be the keynote. This includes coiffure, cosmetics and dress, all of which should be suited to the dignity of the courtroom.*

That's what me and the guys figure. If they dress wrong, they're askin' for it.

This Am Jur is a great book! And it has more advice about how to handle dames on the stand. This about the cross-examination of plaintiffs. From the book with the little 6 on the cover, on page 244.

Women, of all types of witnesses, show the widest range of personality traits while on the stand, because they are usually much more emotional than men, and less inclined to observe and to relate occurrences on the basis of intellectual impressions alone. Paradoxically, most women are less inclined to exaggerate than are certain types of men, and are much more observant of minute details than men. As a rule, it can generally be said that women do not make strong witnesses on questions involving technical or factual matters, but make excellent witnesses on those matters involving close observation.

Yeah, yeah, Emotional, talkative, dishonest women. That's why dames need men. Like you and me, pal.

These Am Jur books are from 1966 and 1967. I looked at the inside cover. Am Jur is published in San Francisco! Yeah, honest to God, down there with all them liberal crazies! You'd think all them bra-burners woulda been working for Am Jur back then. The hippies had that summer of love in San Francisco in 1967. And Am Jur has a factory in Rochester, New York, near where the hippies had that Woodstock in 1969. I guess Am Jur didn't go to Woodstock. Real men didn't.

But get a load o' this! I looked up the supplement of this book, which is like this little magazine in the back. All three of those articles have got this new part added to them. Bad news, guys!--

We disagree strongly with any assessment of a female witness by an outside author that tends to characterize her as less reliable than her male counterpart, whether because of alleged intellectual or emotional shortcomings, or because of alleged inherent dishonesty, and we would earnestly caution an attorney to refrain from indulging in any belief if he or she is to deal effectively with either the court or the jury.

Awwwww. Wimp out. Thanks a lot, Am Jur. Maybe they oughta have pink covers instead of black and blue.

Lugnutt McDunkel's mug.

But wait, guys. Am Jur did *not* write, *We think that the stuff we wrote in 1967 is a bunch of garbage and we are gonna take it out of the next edition of the book.* They only sez they disagree with it. And they can do that. Free country.

But don't sweat it. Am Jur is still that good old book for us guys. I kept reading the August 1989 supplement in the book with the little 6 on the cover. This the article about cross-examintion of the plaintiff. There's this new section about alcoholism and mental illness and stuff. There is this little section about sexual delusions and hallucinations. This what it sez, no kiddin'.

--*A lawyer defending a prosecution for a sex offense faces special problems. While he would, of course, like to capitalize on the growing belief that many prosecuting witnesses in offenses of this kind are emotionally unbalanced and subject to delusions and hallucinations as to their contacts with men, and he is faced with the difficulty of affording his psychiatric expert with the necessary, or at least desirable, opportunity of examining the complainant. He should make formal application to the court for an order requiring her to submit to a mental examination, since, although such applications have not met with much success in the past (18 ALR3d 1433), it is thought that the trend in judicial thinking is toward a more sympathetic response to them in the future.*

And how! I've met all kinds of women with weird fantasies. About how sex assaults really aren't their fault. No kiddin'! I met this woman who said that! Lefty and Sharpy have, too. The article don't say nothin' 'bout men having sex delusions. Just girls. Way to go, Am Jur! I wanna buy the editor a beer.

This is good stuff! I didn't know that more judges are thinkin' that women got sex delusions in their heads. I thought more judges was thinkin' the other way around. I am glad AmJur straightened me out on this.

This Am Jur supplement is a big help. It sez this about mental examinations--*The stronger the showing made for such an examination, the more likely it is that it will be granted.* Wow! I could not have figured that out. That's the help you get from Am Jur, guys.

I figure that's enough books for me. The trial is gonna go all rite. Sharpy found out that a trial brief is the underwear a guy has on during cross-examination. No problem there. And from now on, when I need advice about dames, I'm gonna go down to the Two Street Bar & Grill and talk to Lefty and Sharpy and AmJur. Yeah.

The exact whereabouts of attorney McDunkel are unknown, but they say around the Interior that McDunkel and Fairbanks attorney Mark Andrews are never seen together. But Andrews told The Bar Rag that the quotes from AmJur are all accurate. Yeah.

The Convention is Coming

Plans for 1990 Northern Justice Conference on line

The central piece of the 1990 Alaska Bar Convention in Anchorage, June 7-9 is the Northern Justice Conference involving Alaskan, Northern Canadian, and Soviet lawyers and judges. This is a joint project of the Alaska Bar Association and the Alaska Judiciary. Both are very excited about and strongly committed to making this project not only of interest to Alaskan lawyers and judges but of national moment. Twenty lawyers and judges from the Soviet Union are committed to participating. The purpose of the conference is to provide an exchange of ideas and common experiences, as well as differences between lawyers and judges of Alaska's immediate adjacent neighbors to the east and west.

The format will consist of panelist from each of the 3 countries followed by discussion and question. There will be simultaneous diplomatic level translation with headsets available for all participants and spectators to choose either Russian or English. The tentative topics that have been chosen are: Problems of the Administration of Justice and Law Enforcement in the North; Northern Populations and the Law; and Northern Communities as Developing Nations: Environmental/Ecological Problems and Economics/Trade Problems.

There will also be ample opportunities for social encounters with our guests. Of significant assistance in this project has been Weyman Lundquist, a member of the Alaska Bar who currently resides in San Francisco and who pioneered the American Bar Association exchanges with the Soviet Union. The program is being directed and supervised by a joint committee of the Alaska Bar Association and the State and Federal Alaska Judiciary. The Alaska Law Review will make a formal report of the conference.

Alaska law firms have given a total of $8,150 to date as contributions to the conference. Anyone who is interested in more information concerning the conference or wish to be involved should contact the Alaska Bar president Jeff Feldman or the conference committee chairman Bob Wagstaff.

HISTORICAL BAR

Back when the legislature was legit...

EDITED BY RUSS ARNETT

The following is a portion of a speech by John Hellenthal at Anchorage on September 16, 1979, which I had the pleasure of attending. John grew up in Juneau, the son and nephew of lawyers. At the time of his death, John had been admitted to the bar of Alaska just under 50 years.

The Courts here were curious in Ketchikan and Juneau. They were well established. They didn't go out into the boondocks. The people came to them because transportation was available. They'd come on curious little boats for the trials. It wasn't difficult, although for years they excluded Indians from juries and it was pretty much a white man's court.

In fact, I went to a segregated school in Juneau. We had separate schools up until 1926 and we shouldn't have had. We all played together, the Native kids and the other kids. My mother had a lot to do with desegregating the schools in Juneau.

She got mad about it and went up and saw the Common Council and raised hell with them. There is no reason to have separate schools. Our kids played together and she didn't like it. I don't think she had any deep philosophical reasons for it but it didn't seem right, and she spearheaded a group and a bunch of ladies single-handedly did desegregate the Juneau schools and that's the way, of course, it should have been.

But in Juneau they all came in for trial. They had funny stories.

I suppose I ought to tell it. To me it's a hackneyed story, but people seem to like it and I know the lawyers here have heard it many times. They bring the witnesses in from the outlying areas, the Native people. One time they brought a girl in, a Native girl from Hoonah, and she came in on the motorship Estabeth. They asked her in the Courtroom, "When were you subpoenaed by Marshal Brown?"

She said "huh?" She didn't want to answer.

They re-asked, "When were you subpoenaed by Marshal Brown?"

When it was established she had to answer, she said "Once in Hoonah, and twice on the Estabeth."

Another one of our judges, who was a carpetbagger judge, was Judge Fulta, who later stayed here, though, to his credit. He was strictly a Federal appointee. He was one of those that was always writing letters back to Washington about this or that or the judges.

If the judges didn't do right, the District Attorney wrote the Attorney General and there was always an investigation going on.

Fulta was once an eager man, a very strange man. He was trying a rape case once as District Attorney in Juneau. It was unheard of. A Native boy was charged with raping a Native girl.

On the stand Fulta said, "Annie, what happened that night?"

She said, "We were sitting on the dock and he put his hand on my leg."

Fulta very dramatically said, "What happened next?"

"He put his hand near my tummy."

Then the third question was, "What was he doing with the other hand?" And here the answer was, "He was eating a piece of pie."

First thing I ever recall about law was after school in Juneau, once, I decided to go to see the Legislature. My teacher told me, "You should go."

They held it in what they called A B Hall. It later became a fish hatchery. You had to go up three big flights of stairs to get to the Legislature. I'm 12 or 13 years old, probably. So I'm going up there.

All of the sudden I heard the damnedest noise I ever heard in my life. Yelling and screaming profanity and rolling down those flights of stairs, one tier, then another and another, were William Paul and Fate Polly. They were legislators. William Paul is the Native lawyer. A great leader among the Native people. A terrific fellow, but they took their politics very seriously. Those two men went out and fought in the street after that. It was a bloody fight. Then they went back to resume the business of the Legislature. I thought that was great and I said I wanted to go to the Legislature every day.

But Paul was an interesting man. He was a scrapper. He's still alive. He really fought for the Indians and the Establishment didn't like him. They had him disbarred once for some phony deal.

It was phony but he surmounted that and practices law and his sons practice law now. They are very capable men, and they have reason to be kind of iconoclastic.

Bring back totems

Resurrecting a very valuable alternative

B DAN BRANCH

In 1869 Secretary of State Seward visited the Native people of Tongass Village. Chief Ebbts, in the best Tlingit tradition, gave him some presents including a nice bentwood box. Secretary Seward thanked his host, packed up his goodies and skiddled back to Washington D.C. .

Chief Ebbts stayed in his village and waited for Mr. Seward to do the right thing. Fall time came, followed by winter and another spring and summer without a present from the Secretary of State. Mr. Seward incurred a debt to the village when he accepted Chief Ebbt's bentwood box. Under Tlingit law, he should have presented the village with a gift to repay them for the present. A nice carton of Winchester rifles would have been enough.

Unfortunately, Secretary Seward blew it. Chief Ebbts did the only thing he could do. He commissioned a ridicule pole. When finished it sat in Tongass Village alongside the Abraham Lincoln pole. While Mr. Lincoln is depicted standing majestically on top of his handsome pole, Mr. Seward is shown at the top of his ridicule pole sitting like a little school boy on top of a bentwood box. His feet don't even reach the bottom of the box.

Over the years the Tongass Village site was abandoned and the ridicule pole, along with others from the village were moved to Saxman. That village, 2 miles south of Ketchikan, has the world's largest collection of totem poles. Today bus loads of cruise ship passengers travel to Saxman each summer day to see the fine examples of Northwest Coast Art assembled there.

Last summer descendants of Secretary Seward took the tour. They were shocked to learn about their ancestor's unpaid debt and offered to do something about it. Preliminary plans have been made to repay the people of the Tongass Tribe. When this is done, the ridicule pole will come down.

You see, the ridicule pole system works.

o

The Seward pole story came to mind the other day while I read Drew Peterson's November 1989 Alaska Bar Rag column on alternate dispute resolution. Drew starts off the column by describing Alternative Dispute Resolution (ADR) as one of the growth industries of the legal world. ADR is the practice of using arbitration, negotiation, and mediation as alternatives to law suits. I think ridiculing should be added to that list. Instead of bashing each other in court when arbitration fails we could use the subtle and civilized ridicule system of the Tlingit people.

It is time for people to reserve some of their legal budget on wood carvers instead of barristers. When a neighbor's dog bites their client, instead of automatically drafting interrogatories, personal injury attorneys could put up a pole showing the beast chewing the victim's leg. Collection attorneys could commission deadbeat poles. While there are many potential uses for ridicule poles, family law may provide the best use of this conflict resolution technique.

Just think of the possibilities. Women could portray their ex-husbands as adulterers or cheapskates. A football widow could commission a couch potato pole showing her beer-drinking husband hunkered down in front of his T.V. set. Hen-pecked husbands could put up effigies of their wives with oversized mouths and little ears. This would be a lot more fun than a week-long court trial, and probably a lot cheaper.

The possibilities are endless. I wonder if it is too late to add "Win by Ridicule" to the 1990 Mid-Winter CLE agenda?

SOLID FOUNDATIONS

Mary Hughes

In 1983 Delaware created quite a stir in the formative days of IOLTA when it developed the opt-out model. It broke new ground with its innovative compromise between mandatory and voluntary IOLTA which has proven to be a success in several jurisdictions that originally adopted or have converted to opt-out.

Currently, 13 of the 50 existing IOLTA programs follow the opt-out model. Programs in Alabama, Delaware, D.C., Montana, New Jersey, Pennsylvania, Rhode Island, and Utah were created as opt-out programs from the onset. In 1987 South Carolina became the first voluntary IOLTA program to convert its operations to opt-out. North Carolina and Virginia converted from voluntary to opt-out in 1988, with Alaska and Idaho following in 1989. Each state has its own anecdotes about its conversion process from dramatic increases in phone inquiries to reports of drowning in reams of paperwork; from pleas for an extension on a compliance deadline to banks bending over backwards to assist in converting all qualified accounts.

When the Alaska Supreme Court IOLTA opt-out rule took effect on July 15, 1989, no one could have foreseen the plethora of phone calls the rule produced. Alaska lawyers were not only concerned about IOLTA accounts, but trust accounts, generally. The Alaska Bar Foundation sponsored seminars in Anchorage, Juneau, and Fairbanks and fielded more than 200 telephone calls.

The conversion to an opt-out rule focused Alaska lawyers' attention on their trust relationship with clients. It also focused the attention of financial institutions on lawyers and their trust accounts. It was discovered that Alaska lawyers had interest bearing trust accounts. It was also discovered that trust funds were deposited into operational accounts. And expenses, such as rent, were being paid out of trust accounts. Questions of ethics and practice were asked and answered.

As a result of Alaska lawyers' overwhelming quest for knowledge in the trust account area, the trustees of the Alaska Bar Foundation have decided to produce a trust account pamphlet. It is hoped that the pamphlet will be ready for distribution in the Spring of 1990. Although not every question relative to a lawyer's ethical duties with respect to trust monies can be answered, the pamphlet will address many of the most often asked:

What is a trust account?

What funds must be deposited in the trust account?

What non-trust funds may be deposited in the trust account?

What funds need not be deposited in the trust account?

What transactions involving the trust account are specifically prohibited?

The pamphlet will be available at the Alaska Bar Association office. Additionally, the trustees hope to present a trust account seminar at the annual Alaska Bar Association meeting in June.

FREE....FREE....FREE...

Advice is what we are looking for. "We" are the attorneys of the Base Legal Office at Elmendorf AFB. We provide free legal assistance, on a limited basis, to members of the Air Force community. Occasionally, we have questions on Alaska law that can't be readily resolved through legal research. They are the types of questions that can best be answered by someone practicing in the field.

If you are willing to talk to one of our attorneys by phone on an infrequent basis (never more than twice per month and not more than 10 minutes per call) as these questions come up, please contact me, Capt. Todd Sherwood, at 552-3046. We would like to have several attorneys on our list with experience in the areas of family law, real estate law, bankruptcy and debtor law, consumer affairs, and estate and probate law.

Unfortunately, our regulations do not allow us to recommend other lawyers by name, so this would be true Pro Bono work. In exchange however, you should feel free to call us anytime we can help you with questions concerning military laws and regulations.

New bankruptcy fees

PLEASE BE ADVISED that the Judicial Conference of the United States at its meeting on September 20, 1989 created new fees and changed existing fees as follows:

EFFECTIVE DECEMBER 21, 1989

NEW FEE Filing a motion to vacate or modify (lift) the automatic stay;

Filing a motion to withdraw reference to the

district court; or

Filing a motion requiring a trustee or debtor in

possession to abandon property under BR 6007(b)

$60.00 for each such motion.

FEE CHANGE Filing of a case under Chapter 7 or 13.

$120.00 for each petition

EFFECTIVE JANUARY 11, 1990

NEW FEE Deconsolidation of a joint petition

one-half the filing fee

A case deconsolidated and subsequently converted

to a different chapter would require a

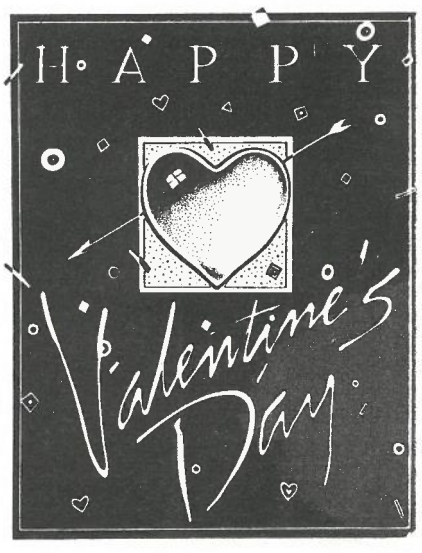
full new fee less deconsolidation fee

already paid.

NEW FEE Filing a cross appeal in bankruptcy

$100.00

FURTHER Documentation avail-
U.S. Bankruptcy Court
Wayne Wolfe, bankruptcy clerk
605 W. 4th Ave., Ste. 138
Anchorage, AK 99501-2296



CLE Schedule

Programs are full day unless otherwise noted.

1990

#34 Jan 11 AM Mini-Seminar	**Chapter 13 Lien Stripping**	**Hotel Captain Cook-Anchorage**
#30 January 11 6 pm - 9 pm	**Off the Record - Juneau**	**Centennial Hall JUNEAU**
#23 Jan 18 & 19 Two Half Days	**Appeals from Agency Decisions**	**Hotel Captain Cook-Anchorage**
#24 Jan 23	**A Primer on Alaska Lands**	**Hotel Captain Cook-Anchorage**
#31a Jan 30 & 31 - AM Mini-Seminar	**Civil Rule 90.3 - Child Support**	**Hotel Captain Cook-Anchorage**
#32 Feb 8 2 hr. Luncheon	**Basic Title Insurance**	**Hotel Captain Cook-Anchorage**
#26 Feb 16 1:30 - 4 p.m.	**Off the Record - Fairbanks**	**Regency Hotel FAIRBANKS**
#31f March 2 Half-Day	**Civil Rule 90.3 - Child Support - LIVE REPEAT**	**Regency Hotel FAIRBANKS**
#20 Mar 13-14 Two Half-Days	**Evidence for Advocates: The Law You Need To Know To Prove Your Case -- James McElhaney**	**Kona Hilton HAWAII**
#27 March 30	**Basic Estate Planning**	**Egan Convention Ctr-Anchorage**
#35 Apr 7 Half-Day	**Advising Clients Re Filing Chapter 11**	**Sheraton Hotel-Anchorage**
#31j April 10 Half-Day	**Civil Rule 90.3 - Child Support - LIVE REPEAT**	**Centennial Hall JUNEAU**
#29j Apr 18 Half-Day	**A Lawyer's Guide to Writing Clearly and Persuasively**	**Centennial Hall JUNEAU**
#29a Apr 20 Full Day	**A Lawyer's Guide -- LIVE REPEAT IN ANCHORAGE**	**Hotel Captain Cook-Anchorage**
#36 May 1	**Military Benefits & QDROs**	**Hotel Captain Cook-Anchorage**
#21 June 7-9	**1990 Northern Justice Conference & Annual Bar Convention**	**Anchorage-Hotel Captain Cook**
#33f Sept 20	**Professional Responsibility & Ethics**	**Regency Hotel FAIRBANKS**
#33a Sept 21	**Professional Responsibility & Ethics - LIVE REPEAT**	**Sheraton Hotel Anchorage**
#14 Oct 2 & 4 AM Mini-Seminar	**Making & Meeting Objections**	**Hotel Captain Cook**

For further information on any of the above programs, contact the Alaska Bar Association, PO Box 100279, Anchorage, AK 99510, phone 907-272-7469 fax 907-272-2932.

Continued from page 3

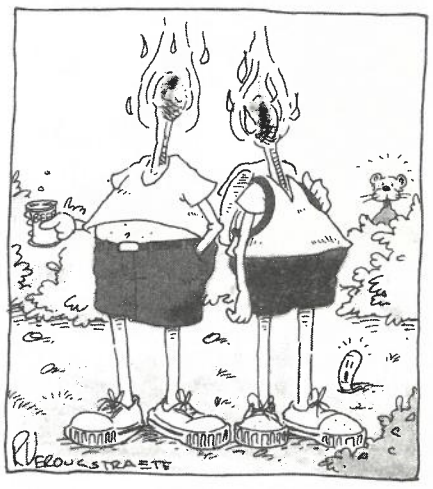
National Association for Law Placement

NATIONWIDE FIFTEEN-YEAR EMPLOYMENT SURVEY PROFILE 1974 TO 1988

Fifteen-Year Comparison of Employment by Field of New J.D. Graduates (Percentage of Respondents With Job Category Identified)

Employment Field	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Private Practice	52.2	51.0	52.4	53.0	53.0	54.0	55.1	57.9	59.6	60.4	57.4	60.2	61.6	63.5	64.3
Public Interest	5.3	5.6	5.0	5.3	5.9	5.4	4.3	3.4	3.0	3.1	3.1	3.3	3.0	3.0	3.1
Business/Industry	9.2	9.6	10.0	10.0	10.6	10.5	11.0	11.3	10.8	10.8	10.8	10.4	9.2	7.9	6.9
Government Military	16.2 [2.5]	17.6 [2.4]	17.5 [1.7]	16.7 [1.8]	15.5 [1.9]	14.7 [1.7]	14.0 [1.8]	12.0 [1.7]	10.9 [1.7]	11.5 [1.8]	10.9 [1.5]	12.7 [1.6]	12.0 [1.5]	12.1 [1.3]	12.0 [1.3]
Judicial Clerkships	8.2	9.6	9.1	8.9	8.9	9.8	10.1	10.4	11.0	11.7	10.1	11.9	12.5	12.5	12.7
Academic	3.3	3.4	3.4	3.3	3.5	3.0	3.1	3.1	3.1	1.5**	1.8	1.5	1.7	1.0	1.0

** In 1983, the academic category excluded those pursuing an advanced degree. These individuals are counted separately in the report.



Spectator at field trial knows how bird feels

Anyone who has read my column for any length of time knows that Troy and I are into dogs. Besides having a poodle, we have three Chesapeakes and are deeply involved in the Interior Alaska Gun Dog Association. Although we're currently part of the gun dog movement, in the past we've also taken part in AKC field trials.

Anyone who has been involved in this dog stuff knows how trials and field tests work. First there are the people who are running their dogs. A lot of them are also knee-deep in the event, running hither and thither.

Then there are the people who aren't running dogs. They stand around and watch. Most of the standees are wives. They don't really understand these husbands who are bonkers about retrievers and ducks and shotguns. But, being faithful wives, they come out to watch the fun.

Hunting tests are always set up in some area where there is water and a fairly large open area. The typical hunting scenario. Organizers try to keep it as close to the actual hunting scene as possible. In layman's terms, this means no bathrooms.

Watching these hunting dogs do their stuff is exciting. But as the hours stretch on and the early morning coffee gives way to sodas, the women start peering about for makeshift bathroom facilities. Because of nature's planning, men don't have to worry about this.

I'll bet I put on 10 miles a summer just strolling around test areas looking for bushes or large trees. As long as I live I'll never forget a field trial at Creamer's Field.

Anyone who has driven by Creamer's Field knows there isn't even a lump in the terrain big enough to hide a person who's heeding the call of nature. After a lengthy hike toward the nearest stand of trees I found the perfect spot. So there I was, all hunkered down in the bushes.

Suddenly I heard voices coming my way. Angry voices. She's just finished running their dog in the trial. He's furious because she screwed up. They stop and face off just a few feet from where I'm squatting.

Hmmm. My mind races. Two choices. I can either stand up and show off my underwear and Mother Nature's generosity when giving me thighs, or I can just be very, very quiet and hope they don't notice me. I stay very very quiet, trying to keep my balance with one finger.

They argue back and forth. She's ruining the dog. If he really cared he'd be out there training. The dog is looking back and forth at them, slobbering. Every time he stands up they both yell "Sit!"

Personally, I don't care two hoots about the dog. For all I care they can send him to the pound. I'm worried about the fleet of mosquitoes that has latched onto my rear.

By now I've heard too much. It's too late to jump up grinning and say, "Hi there!" The finger I'm keeping balance with is numb. The mosquitoes are chowing down. Inches from my nose, a tiny green caterpillar is working his way up the branch of a rosebush.

I catch myself as I start to topple over. The dog's ears perk up and he looks my way. I stiffen. Oh great, I think the stupid dog is going to come bouncing over and bark at me. Then the two dingdongs will come see what he's found. I could just die.

Well, I crouched there in the bushes for about a month until she finally stomped off dragging the dog. He followed. By this time the caterpillar had died of old age and there was a second generation of mosquitoes living off my behind.

I'm writing all this to get sympathy. Our first North American Hunting Retrievers Association hunting test of the season will take place this coming weekend. I'm publicly begging the test committee to have a heart and rent one of those plastic outhouses.

Or, better yet, they could buy a porta-potty. Because of the generosity of one of our club members, we're getting a trailer to use for equipment storage and selling hotdogs. I figure if they bought a porta-potty and tucked it in a corner with a curtain around it, they could make big bucks renting it out. Believe me, I'd pay.

•

Jan Thacker manages the News-Miner branch office in North Pole.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,
Plaintiff,

vs. CASE NO. 89-376-CR-SCOTT

MAURICIO MENDOZA-SERRAT,
Defendant.

MOTION FOR DELAY OF TRIAL

MAY IT PLEASE THE COURT:

On Tuesday, September 5, 1989, President Bush addressed the nation and announced that the United States was 'declaring war' on drugs. The country of Colombia is in the midst of a civil war with the forces that support the cocaine industry.

It is now impossible to pick up a newspaper without reading a gruesome report of further drug violence. My client, Mauricio Mendoza, is a Colombian national. It is unreasonable to believe that the citizenry of this country can ignore the President's declarations as well as the general drug-war hysteria that has gripped this country since President Reagan's last year in office.

It also seems to be the case that in time, the American public will put this "war" out of the collective consciousness when the next crisis hits-whether that be Iran, El Salvador or a minister who chooses to make use of the airwaves in a mercenary fashion.

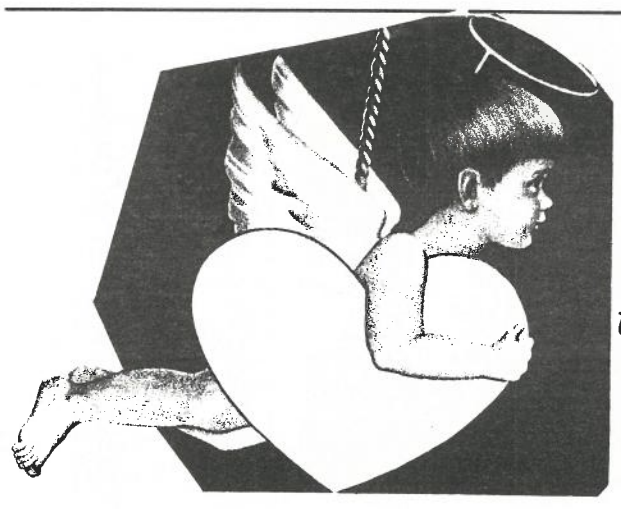
In view of the current hysteria, it is no more likely that my client can obtain a fair trial in Miami than a Japanese national could have obtained a fair trial in Los Angeles one week after December 7, 1941.

This Court sits as the protector of the Constitution. Neither the President nor the Fourth Estate have that concern. The time to avoid a gross violation of rights is now--and not 20 years from now, when in another time the question of reparations might come before the Congress.

The defendant respectfully requests, therefore, that this Honorable Court delay this trial.

Respectfully submitted,
Law Office of Michael J. O'Kane
Fort Lauderdale, Fla.

SUBMITTED BY WAYNE ANTHONY ROSS



Smooch your valentine

IN THE SUPREME COURT OF THE
STATE OF ALASKA

HOMER L. BURRELL,
Appellant,

vs.

DISCIPLINARY BOARD OF THE
ALASKA BAR ASSOCIATION,
Appellee.

Supreme Court No. S-2682

ORDER

ABA File No. 89.001 OP

Before Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

IT IS ORDERED:

1. The recommendation of the Disciplinary Board of November 17, 1989 is accepted.

2. The Findings, Conclusions and Recommendations of the Disciplinary Board are appended hereto as Appendix 1 and the Hearing Committee Report is appended hereto as Appendix 2.

3. The court supplements the conclusions of law by adding that the Bar Association has established by clear and convincing evidence that respondent has engaged in the unauthorized practice of law as defined by Alaska Bar Rule 15(b)(1)(ii) by preparing those pleadings listed in the Hearing Committee Finding of Fact No. 8 for submission in pending litigation before the superior court.

Entered by direction of the court at Anchorage, Alaska on January 8, 1990.

IN THE SUPREME COURT OF THE
STATE OF ALASKA

HOMER L. BURRELL,
Appellant,

v.

DISCIPLINARY BOARD OF THE
ALASKA BAR ASSOCIATION,
Appellee.

Supreme Court No. S-2682

ORDER

ABA File No. 89.001 OP

Before Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

The court issued an order on January 8, 1990, accepting the recommendation of the Disciplinary Board of the Alaska Bar Association of November 17, 1989.

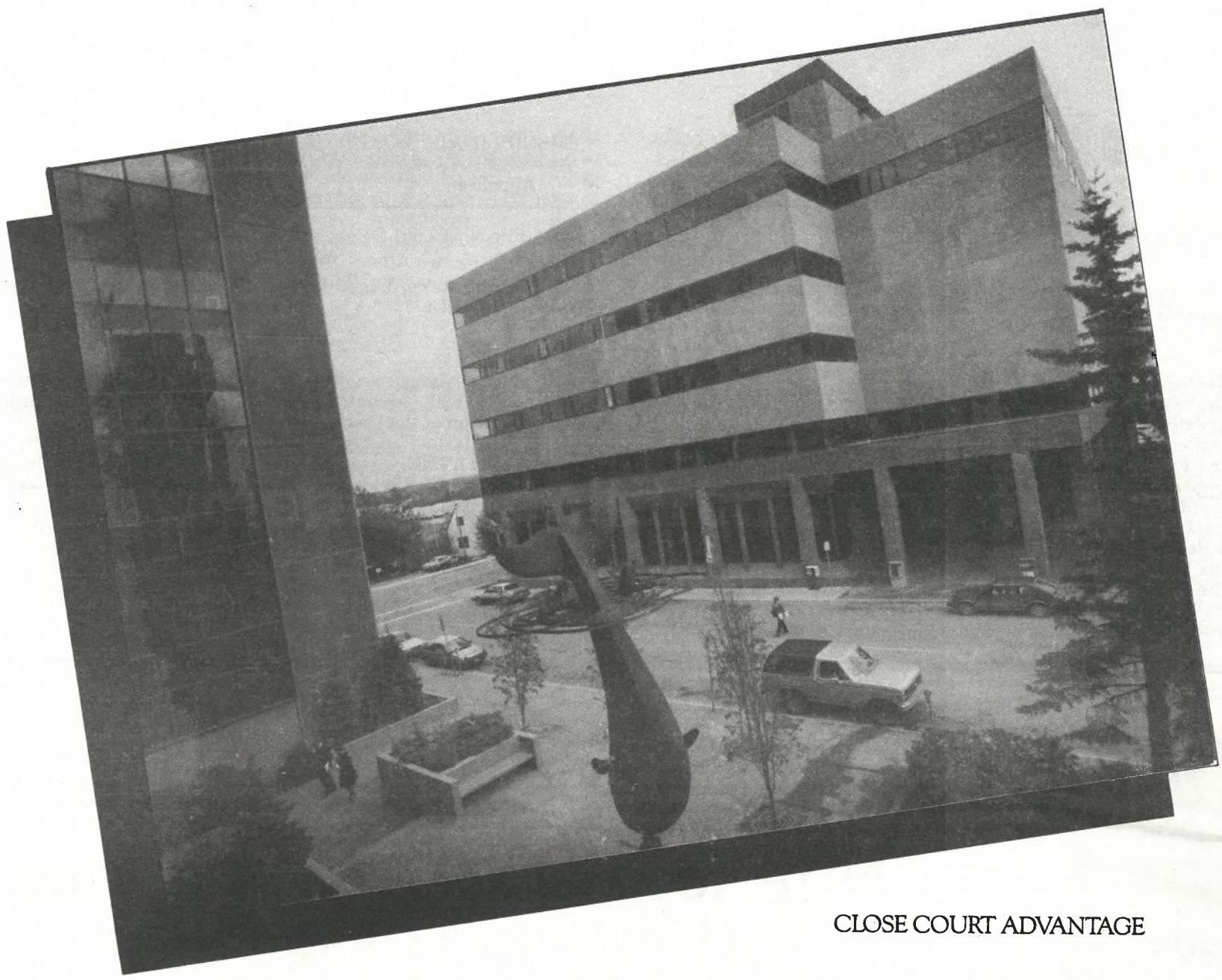
IT IS ORDERED:

1. The one hundred-eighty-day period of suspension from the practice of law shall run from November 19, 1989.

2. Homer L. Burrell shall comply with the requirements of Alaska Bar Rule 28.

3. Any application for reinstatement shall comply with the requirements of Alaska Bar Rule 29.

Entered by direction of the court at Anchorage, Alaska on January 8, 1990.



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