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Growing Court Backlog Alarms Anchorage Jurists

"This job is like trying to suck the city water system dry. The pressure never lets up and it is raining in the mountains," remarked Anchorage Superior Court Judge Carl Johnstone in a recent Bar Rag interview as he described the effect on the Court System of a 70% increase in civil case backlog since July of 1981. At the end of 1981 he had a backlog of 571 civil cases. Two years later the number jumped to 927. Each of the Anchorage Judges assigned to the civil calendar presently carries approximately 1,000 cases with the exception of Judge Rowland whose administrative duties as Presiding Judge make it necessary for him to carry a half load.

Judge Johnstone voiced concern as the work load increases, he and his fellow judges will have less and less time available to them to dispose of cases and consequently, the quality of their judgments will suffer. He notes that he has fifty-four to sixty-four trials scheduled between February and December with 318 days of trial time and no allowance made for seven weeks of accumulated leave.

Reasons

Another Anchorage Superior Court Judge, Douglas Serdahley, attributed the increase to a number of factors.

> "We have a mushrooming population in Anchorage that is expected to reach at least half of a million people by the year 2000. The more people we have, the more litigation we are going to see. There are more and more complex cases today. The 120-day rule coupled with the no plea bargaining position of the District Attorney's Office means that more and more criminal felony cases are going to trial. When criminal judges are not available, judges in the civil division are being tapped to try these cases. We are presently taking approximately 25% of the criminal case load.

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Swearing in the new fast track judges.

The State of the Judiciary Address

by Chief Justice Burke

President Kerttula, Speaker Hayes, members of the House and Senate, ladies and gentlemen: I welcome this opportunity to report to you on the state of Alaska's judiciary.

With me today are my colleagues on the Alaska Supreme Court, Justices Jay A. Rabinowitz, Warren W. Matthews, and Allen T. Compton, and our newest member, Justice Daniel A. Moore. Justice Moore took office last fall, following the retirement of our former associate, Justice Roger G. Connor. I bring you greetings also from those members and employees of the judicial branch not present.

An Overview

The state judiciary, otherwise known as the Alaska Court System, consists of four levels of courts: the Supreme Court, a five person court having final appellate jurisdiction and administrative responsibility for all courts, and original jurisdiction in matters pertaining to bar admissions and discipline; the Court of Appeals, a three person court with appellate jurisdiction limited to criminal cases; the Superior Court, a twenty-six person court with limited appellate and general trial jurisdiction; and the District Court, a trial court having limited civil and criminal jurisdiction. The District Court, in addition to fourteen district judges, is served by a number of magistrates. The latter handle a substantial part of the district court's caseload, particularly in rural areas.

At the present time, the Court System has 579 authorized positions, including judges. These individuals serve in fifty-five separate court locations throughout the state. The court system's operating budget this fiscal year represents a 1.7% share of the total general fund budget. The amount that we are requesting for next year is approximately $39.8 million, an increase of roughly 8% made necessary by inflation and a growing caseload. Our share of the total state budget, however, will not change significantly.

Judicial Appointments

Two new District Court judges were appointed during the past year. Both sit in Anchorage. Natalie Finn and William Fuld were appointed to replace judges voted out of office at the last general election.

This month, Karen Hunt was sworn in as a judge of the Superior Court. She, too, sits in Anchorage. Judge Hunt was appointed to the position left vacant when Justice Moore became a member of the Supreme Court.

There are two positions waiting to be filled: a District Court seat in Juneau, where the incumbent recently resigned, and a Superior Court seat in Valdez. The latter position was created by this body at its last session; that legislation became effective when the District Court at Valdez was recently abolished.

Caseload Increase

In common with courts across the country, we continue to see a substantial increase in case filings at all levels. Between FY 82 and FY 83, Supreme Court filings increased 23%. In the Court of Appeals, filings increased 27%. Superior Court filings increased only about 7%, but the increase over a two year period, since FY 81, was 31%, and felony filings in the past year alone were up 22%. At the District Court level, the increase between FY 82 and FY 83 was approximately 10% overall, with a 15% increase in drunk driving cases.

The last statistic is important because it means also a considerable increase in the number of cases actually tried by the District Court. Experience has shown that defendants accused of drunk driving are far more likely to demand a trial than are other misdemeanor defendants, due to the certainty of jail time and other sanctions in the event of a conviction. Also, these defendants are more likely to insist on a jury trial, where, according to a recent study by the Judicial Council, the likelihood of an acquittal is greater than in cases tried by a judge without a jury.

In addition, it appears that the cases, in general, are becoming more complex. That, at least, is the opinion of many of our trial judges. Civil and criminal trials lasting several weeks are now routine. Thus, the amount of time and deliberation needed to dispose of individual cases is becoming greater, often requiring a degree of effort that would once have been considered extraordinary.

I would like to be able to say that these trends are temporary. One cannot, however, ignore the realities of the society in which we live. Whether we like it or not, Alaska is the fastest growing state in the nation. The motto of this state, "North to the Future," which you adopted in 1967, is not a phrase without meaning. Alaska's economy, compared to that of most other states, is booming and the freedom and opportunity that lured most of us here continues to attract others. To suppose that those people will suddenly lose interest in Alaska and all that it has to offer would be foolhardy; they are as capable of dreams as you and I. Thus, they will continue to come here, no doubt in ever increasing numbers. Their arrival means increased business for the courts.

Our caseload statistics are influenced also by the actions of this body. Legislation such as that dealing with domestic violence, guardianship, drunk driving, and presumptive sentencing in criminal cases has a direct bearing on the number of cases filed and the likelihood

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that a particular case will go to trial. This is not to suggest that such legislation is not needed or that it is unwise. It is simply a recognition of one reason for the increases that we have seen.

Because of these and other factors, it is clear to me that our statewide caseload will continue to grow. The challenge that confronts us is how to deal with that increase.

Use of Computers

Beginning in 1982, the Court System began an automation project that is now nearing completion. With the use of a microcomputer system, we will eventually automate most of the record processing and case management tasks that are required of a modern court system. This, we believe, will enable us to handle the ever increasing caseload with minimum increases in personnel. We expect to have this project fully operational by the end of 1984.

Simplified Procedures

Another project worthy of mention is one designed to simplify civil litigation in Alaska. This project, which began in 1983, is a joint effort of the Alaska Court System and the National Center for State Courts. The project is intended to determine methods whereby the procedures that we now use in civil litigation can be simplified, thereby producing reduction in both delay and cost to the litigants. The committees appointed to study this problem have now completed their work, and a final report has been submitted. The report includes specific recommendations that will now be considered by the Supreme Court. Those recommendations, I hope, will lead to the adoption of new methods and procedures that will enhance both the quality of our performance and our ability to dispose of greater numbers of cases without additional court system personnel.

New Positions

Despite such efforts there will always be a need for qualified people. The increase in our caseload compels us to ask for a number of new positions this year, including additional judges. These judges are most needed in Anchorage, a community that continues to grow at an alarming rate.

The Anchorage District Court has operated with the same number of judges for the past several years. Its caseload during that same period has grown tremendously, particularly in the number of drunk driving cases being filed. As already noted, those cases are not only more numerous, they are more likely to result in a trial. Also, due to the serious nature of the offense and the consequences in the event of a conviction, they are vigorously prosecuted and defended, often requiring as much effort to dispose of as many felony cases.

The Anchorage District Court is at the point of becoming unable to handle its caseload. Without the addition of at least two new judges it is a near certainty that the court will soon have more work than it can be expected to do. The result will be intolerable delay in its civil calendar, and the possible loss of criminal cases for failure to provide a speedy trial. As a result, we have no choice but to ask for two additional District Court judges. So far we have been able to avoid this, by the use of acting judges and temporary assignment of judges from other courts, but those are measures that will not suffice much longer.

At a recent meeting, the Anchorage

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> If we don't have additional resources, more civil cases will have to be postponed in favor of felony cases. The time in which it takes to bring a civil case to trial will necessarily lengthen until it will not be unreasonable to expect to wait six months to a year for a trial setting conference and a similar period of time for dispositive motions followed by a two- to three-year delay in bringing a civil case to trial."

Judge Serdahley noted, "I presently have 41 cases set for trial between now and the year's end. I am now setting cases through April 8 of 1985. The earliest opening in my motions calendar is approximately two months away."

Planning for the Future

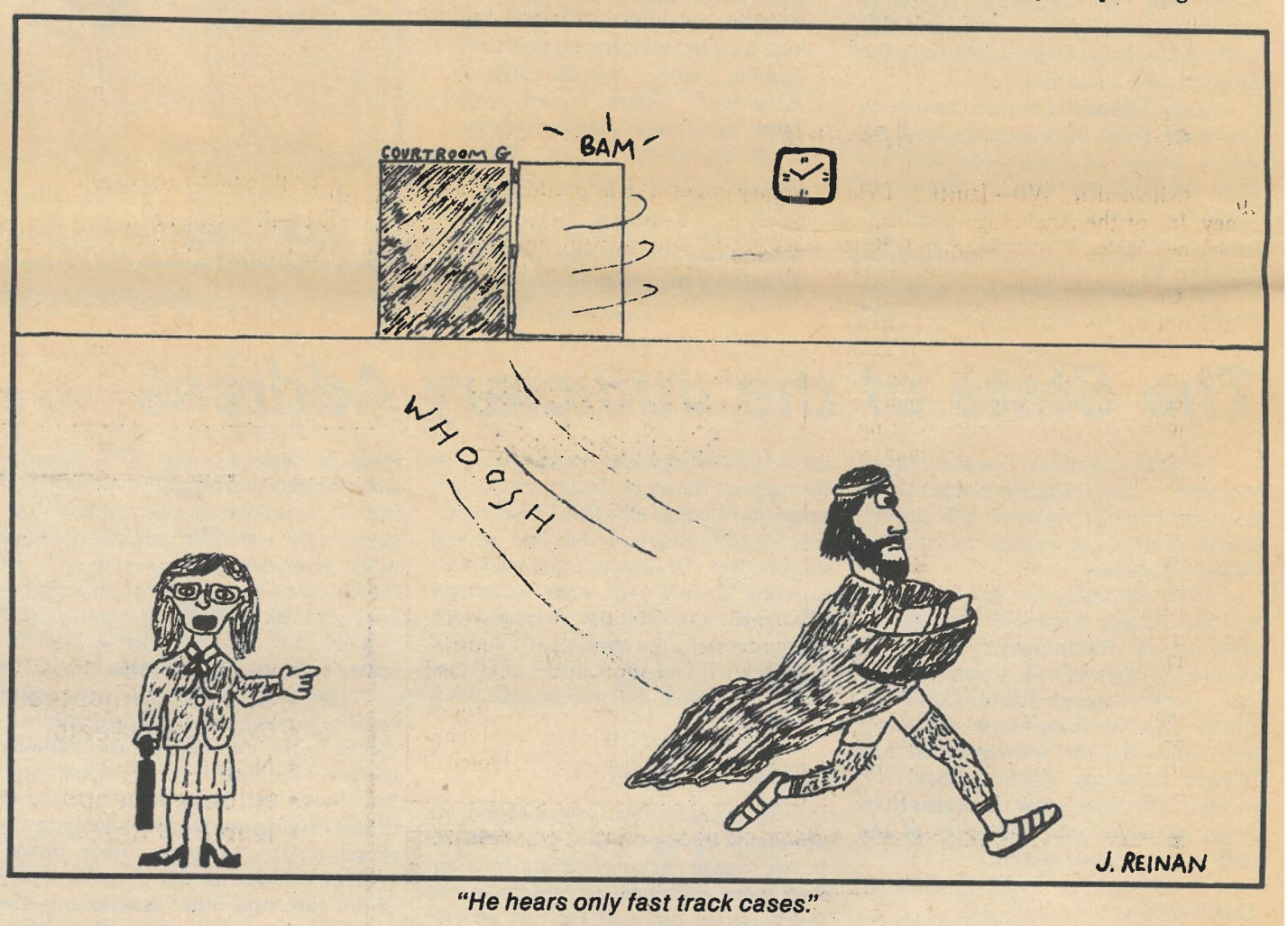
Both Judge Johnstone and Judge Serdahley emphasized that just adding bodies to the bench and support staff isn't going to be enough to solve the problem. Judge Serdahley noted:

> "We need 15- to 20-year projections. We ought to be planning now for the year 2000. Major businesses routinely make future projections to meet their market trends. We should be doing the same thing. The Alaska Court system has a thirty-million-dollar budget a year and no planning except to go to the legislature from time to time and ask for more judges and more money. We should be addressing this problem now instead of waiting until we have a crisis on our hands that we can't solve with just more bodies. This problem deserves the thoughtful attention of the Bar, the Bench and the Administration. We need a multi-faceted systematic approach if we are going to continue to provide service to the public at the present quality level."

New Approaches

Judge Serdahley suggested a combination of several approaches, some of which are being tried successfully in other states. They include the following:

1. Increasing use of Masters compensated by the parties.
2. Mandatory arbitration of civil cases below a certain dollar limit.
3. A full-time settlement judge.
4. The increase of the District Court's jurisdictional limits.
5. The increase of the Small Claims Court's jurisdictional limits.
6. Volunteer pro-bono judges drawn from the trial bar.
7. The assignment of cases to a Fast Track category which would employ abbreviated discovery rules (for example a limit of two depositions and one limited set of interrogatories.) Trial would be scheduled within 90 to 120 days. These cases would be scheduled for no more than a week of trial.
8. The designation of one judge to handle exclusively complex litigation.



"He hears only fast track cases."

Committee Launches Implementation Project for New ABA Model Ethics Rules for Lawyers

Cooperation with and assistance to the states will be the basic approach for the Special Committee on Implementation of the American Bar Association Model Rules of Professional Conduct.

The committee, chaired by Michael Franck, executive director of the State Bar of Michigan, held its organizational meeting in Chicago Dec. 2 and 3. Members agreed to seek formal liaisons with the group in each state responsible for lawyer ethical standards, although some states may not yet be prepared to act on the rules adopted by the ABA in August. About 40 state committees on implementation already are in place.

The committee will offer to furnish materials, information and speakers as requested by the local implementation groups, and will be available to explain differences in rationale between adherents of particular ethics rules and those who opposed the language as it was finally adopted.

Members of the committee are assigned to designated regional districts, and will be availble personally to work with the organizations in each of the states in their districts. Each committee member will contact appropriate state personnel by letter in coming weeks. Committee members will reconvene when the ABA holds its 1984 Midyear Meeting in Las Vegas, to assess the state of implementation in the various states.

The Model Rules were approved by the ABA House of Delegates at the 1983 Annual Meeting in Atlanta, after seven years of effort drafting a new model ethics code and exposing the draft to nationwide debate over emerging issues of ethical conduct for lawyers. The Model Rules represent the first total revision of ethical standards for lawyers since the 1969 adoption of the Model Code of Professional Responsibility, which currently is in effect in most states. The Model Rules address issues that were not recognized in 1969, and in some cases offer new responses to some of the issues that were recognized in the earlier standards.

But the Model Rules will not govern the conduct of any given lawyer until the regulatory authority for lawyer conduct in the state where that lawyer is licensed adopts it. In most states, the regulatory authority is the state's highest court, which governs lawyer conduct by virtue of its power to grant or deny licenses to practice law.

Members of the committee and the districts they represent are:

- Wayne A. Budd, Boston, MA, District 1: Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island;
- Leon Silverman, New York, NY, District 2: Connecticut, New York, Vermont;
- Joseph E. Gallagher, Scranton, PA, District 3: Delaware, New Jersey, Pennsylvania;
- Carolyn B. Lamm, Washington, D.C., District 4: The District of Columbia, Maryland, Virginia;
- W. Stell Huie, Atlanta, GA, District 5: Florida, Georgia, North Carolina, South Carolina;
- E.C. Ward, Natchez, MS, District 6: Alabama, Louisiana, Mississippi, Tennessee;
- John C. Elam, Columbus, OH, District 7: Michigan, Ohio, West Virginia;
- Ben J. Weaver, Indianapolis, IN, District 8: Illinois, Indiana, Kentucky;
- Robert O. Hetlage, St. Louis, MO, District 9: Iowa, Missouri, Wisconsin;
- Roger Brosnahan, Minneapolis, MN, District 10: Kansas, Minnesota, Nebraska, North Dakota, South Dakota;
- Lloyd Lockridge, Austin, TX, District 11: Arkansas, Oklahoma, Texas;
- James T. Jennings, Roswell, NM, District 12: Arizona, Colorado, New Mexico, Utah, Wyoming;
- Edward L. Benoit, Twin Falls, ID, District 13: Alaska, Idaho, Montana, Oregon, Washington;
- Richard Coleman, Los Angeles, CA, District 14: California, Hawaii, Nevada.

Jim Gilmore Appointed To Judicial Council

On February 10th, 1984 the Board of Governors of the Alaska Bar Association, unanimously voted to appoint Anchorage attorney James Gilmore to the Third Judicial District seat on the Alaska Judicial Council. Gilmore succeeds Anchorage attorney Joe Young on the council for a six-year term ending in 1990.

Gilmore finished decisively in first place among 15 Anchorage attorneys in the Bar Poll with 177 votes. He was followed by John Reese with 100 votes; Joe Evans with 73 votes; Bob Richmond with 66 votes; John Conway with 58 votes; and Joe Huddleston with 41 votes.

A native of Independence, Kansas, Jim is a graduate of Princeton University and Stanford University Law School. He was an associate in the Anchorage law firm of Hughes, Thorsness, Gantz, Powell & Brundin from 1967 until 1969 when he joined the newly formed staff of the Anchorage Public Defender where he served until 1971. He practiced solo until 1979 when he was joined by Jeffery Feldman in the law firm of Gilmore and Feldman.

Anchorage Attorney Appointed To State Position

(Milwaukee, WI)—James J. Delaney, Jr., of the Anchorage law firm of Delaney, Wiles, Hayes, Reitman & Brucbaker, Inc., was reappointed as Alaska State Chairman for the Defense Research Institute for the 1984-85 term of office.

Phoenix attorney William T. Birmingham, President of the Institute, announced Delaney's reappointment following the Institute's Annual Meeting.

Delaney's duties as Chairman will include member development for the Institute, and informing the Institute about state level development in tort and insurance law which would impact on defendant's rights. He will also serve as the Institute's liaison with state and local defense lawyer associations.

The Institute, a national association of 12,000 defense trial, insurance and corporate lawyers, located in Milwaukee, Wisconsin, provides publications and educational services for its members. DRI is actively concerned with contemporary issues such as products and professional liability, drug liability, asbestosis, employment and anti-trust law, industrywide litigation, medical malpractice and governmental liability.

CLE Spring Schedule

April 6: Administrative Law Issues Regarding State Practices and Contracting Procedures. Sheraton Anchorage Hotel

April 14: Off the Record (with Judges from the Third Judicial District). Sheraton Anchorage Hotel

April 28: National Jury Project (sponsored by the Criminal Law Section). Westward Hilton Hotel

1984 Annual Convention June 6-9 Sheraton Anchorage Hotel

Wednesday, June 6

Joint Bar/Bench Luncheon
Speaker: Chief Judge Browning, 9th Circuit Court of Appeals

Champagne Reception in honor of Retiring Judge James A. von der Heydt

Committee/Group meetings

Reception/Joint Bar-Bench Banquet

Thursday, June 7

CLE programs* (all day)

Reception/Luncheon

Libel Show

Friday, June 8

CLE programs* (morning)

Computer-Assisted Legal Research Workshop (presentation by Lexis and Westlaw)

Reception/Luncheon

Section Meetings (afternoon)

Monte Carlo Night

Saturday, June 9

Section Executive Committee Breakfast

Business Meeting

CLE program topics include: Native Tribal Sovereignty, Accounting for Lawyers, Torts, Use of Computer in the Law Office, Business Law, Utilizing Paralegals

Hospitality Suite open throughout the Convention.

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President's Column

Dear Colleagues:

As you will recall, on October 24, 1983 the Board of Governors of the Alaska Bar Association requested your comments with regard to two specific issues which were discussed at both the December and March meetings of the Board. Since many of you responded to our request for comment, an update relative to the two subjects is appropriate.

First, a reciprocity rule is being published in this issue of the Bar Rag and we would request additional input from the membership relative to the exact wording and format of the rule. This rule has been passed *only for the information* of association members and was not passed as a prelude to recommending the same to the Alaska Supreme Court for adoption. Reciprocity will be an issue at our June meeting of the Board which commences on June 4. As is evident by a reading of the published rule, an attorney who has (1) graduated from an accredited law school; (2) passed a bar exam in another state; and (3) practiced law in another jurisdiction five of the last seven years would be admitted to the Alaska Bar on motion pending a character investigation. Approximately one half of our Board membership favors some type of reciprocity and therefore the issue may well be one that goes before the membership at our June annual meeting.

The proposed amendment to the Bar rules which would necessitate each lawyer in the State of Alaska to present to the Alaska Bar Association proof that he or she has professional malpractice insurance prior to renewing membership on a yearly basis has been deferred to a debate at our annual business meeting. The membership will then have an opportunity to hear both sides of the issue. A vote of the membership will be taken on whether the Board should pursue amendment of the rules to necessitate a showing of professional malpractice insurance prior to membership renewal.

Another issue which was discussed in the October correspondence was the budget of the Alaska Bar Association. As some of you are aware, the American Bar Association provided a discipline evaluation team of three lawyers who reviewed our discipline system in June of last year. As a result of that review, the evaluation team has made several recommendations, among which is a suggestion to employ a full-time discipline investigator and special counsel to assist the already overworked Bar counsel. The Board has reviewed new discipline rules—which amount to a wholesale rewriting of the present.

Prior to completing my report to the membership, I must comment on the two conferences I attended in February of 1984. Both the National Conference of Bar Presidents and the Western States Bar Conference were extremely valuable. Two issues which were discussed at some length were (1) interest on lawyers' trust accounts and (2) bar foundations generally. Fortunately, I was able to participate in the National Conference of Bar Foundations which further explored both issues. Approximately twenty states (eight western states) have enacted by court rule a provision for collection of interest on trust accounts of individual lawyers (IOLTA) which are too small in amount to proffer the interest to the client. Most plans are not mandatory but have been received well. The interest is used for provisioning of legal services to the poor through a 501(c)(3) organization such as a bar foundation. The concept of interest on lawyers' trust accounts will be discussed at the June annual meeting. A fundamental concept within any IOLTA proposal is a 501(c)(3) organization such as our now quite inactive bar foundation. Bar foundations in other states perform many duties including the purchasing of a building in which the bar association and affiliated organizations may reside, publishing legal treatises and provisioning of law-related education. It would appear definitely time for the Alaska Bar Foundation to arise and begin an active campaign to assist the public and the lawyers of the State of Alaska. Such assistance would of necessity result in great benefits to both.

Although many other issues have passed over the table at Board of Governors' meetings during this past year, the most important have been publicized to the membership and many will be discussed at our annual meeting. The Board is indeed appreciative of the many lawyers who have voiced their opinions relative to the issues upon which the Board must make decisions and recommendations to its membership.

Mary Hughes

Editorial

Chief Justice Burger vs. Bench And Bar

At the ABA mid-winter meeting in Las Vegas, Chief Justice Warren Burger savagely attacked the profession of law and the American legal system as something civilized people should not have to put up with. Ignoring approximately 800 years of legal history, he suggested that trial lawyers ought to be "healers" like doctors instead of "hired guns." He seemed to be advocating the abandonment of the trial process and with it the whole legal system as we know it. As he put it, the legal system "is too costly, too painful, too destructive, too inefficient for truly civilized people." He attacked bar associations for the administration of lawyer discipline on the basis of an obsolete 14-year-old report most of the recommendations of which have been adopted in the interim. He said a lot of other nasty things about lawyers and judges which were picked up on the front pages of newspapers all over the country.

Since Chief Justice Burger did not offer any practical alternative to the present system, it is interesting to speculate as to his motives and general state of mind. Maybe he is doing this because he hates lawyers, hates judges, hates his job and hates himself. Perhaps he loves publicity and knows that any attack on such traditional scapegoats as the bar and the bench is bound to get him extensive coverage in the media. In this regard it should be noted that Burger changed the time he traditionally gives his address in order to meet east coast media deadlines.

What could he be thinking of offering in place of the American legal system? What sort of civilization would we have without the protections afforded us in the Constitution and Bill of Rights? If this man is really serious about what he is saying and understands the implications of his remarks, he shouldn't be holding judicial office.

We would prefer to think he is just having a little annual sport with us, like a stand-up comedian whose routine is built on insulting his marriage, his family, his friends and fellow entertainers.

Harry Branson

An Honorable Lawyer for You

by Bill Hall
from the *Honolulu Star Bulletin*, 2/29/84

LEWISTON, Idaho—Chief Justice Warren Burger wants to civilize the hired guns in the legal profession and I hope he succeeds with your lawyer, but not with mine.

Burger finds it undignified that lawyers fight tooth and nail and stand ever willing to make utter asses of themselves just to win a case.

Frankly, I hope your lawyer shapes up. But I'd rather mine didn't. My lawyer, Mad Dog Brown, will go to practically any emotional length to win a case. He is downright childish in the way he hates to lose. He's just not a good sport at all.

I like that. When next you meet me in court—undoubtedly on some ludicrous legal fiction that your sleazy shyster cooks up—I hope your lawyer will heed the chief justice's admonition and be a good sport.

But I hope Mad Dog Brown won't. In fact, the minute he shows any sign of becoming a good sport, especially about losing my case, he'll be back on the street where he came from selling loud suits to insurance agents.

But my attitude and Mad Dog's tenacity will undoubtedly distress the chief justice.

"Trials by the adversarial contest must in time go the way of the ancient trial by battle and blood." Burger sniffed. He said lawyers are mesmerized by the thrill of juvenile courtroom battles.

AND THAT'S TRUE. But I would worry about the American legal system if we were to do away with the adversarial system—the noble English-American tradition of pitting hysterical lawyers against each other in the conviction that two opposing lies, elegantly stated will average out to the truth.

I would become concerned if we were to abandon the historical concept of the hysterical defense and try instead to turn lawyers into ladies and gentlemen. Next thing you know, the chief justice will be trying to civilize hockey players and journalists.

Oh, I admit it would be pleasant if lawyers could learn to be ladies and gentlemen for certain occasions—cocktail parties honoring members of the Supreme Court, for instance.

And I don't dispute Burger's contention about what kind of people lawyers are. They do have a hired gun mentality, the pompous little roosters. Thank God newspaper columnists aren't like that. So I agree in spirit with Burger's estimate of attorneys. I certainly wouldn't want a lawyer to marry my sister.

On the other hand, I wouldn't want the guy who married my sister to represent me in court. He's a real sweetheart. When I'm in court, I don't want a real sweetheart; I want a real animal, somebody like Mad Dog Brown, somebody like most of the lawyers in America.

Nonetheless, I fear Burger may succeed with this foolishness. And I worry what a community of civilized lawyers would bring us:

"YOUR HONOR, my client won't like this, but as a gentleman, the spirit of fair play commands that I inform you that the cheap little rat I am embarrassed to represent has a separate bank account he has been hiding which, in all fairness, should be shared with this dear lady he is divorcing. I don't know about you, your honor, but that warm smile of hers melts my heart and I think it is the duty of a gentleman though he may technically be retained by others, to see that all parties are dealt with fairly."

Or, "Candor compels me to com-

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All My Trials

by Gail Roy Fraties

A startling development affecting trial practitioners everywhere occurred recently in the Supreme Court opinion dealing with a controversial case involving State Senator George Hohman. Usually, the Supremes have the last word—but they're dealing with press lords now.

The Court of Last Resort

In that case, a defense attorney (who prefers to remain nameless) was acting as co-counsel to the distinguished Anchorage trial attorney WENDELL P. KAY. After a protracted argument on a point of evidence with the astute and determined prosecutor TIMOTHY J. PETUMENOS, said individual—in a mistaken attempt at courtesy—stated "I don't agree (but) I'll accept the ruling of the court" (*Hohman v. State*, 669 P.2d 1316, 1325). In the recently rendered opinion, this unfortunate remark indicated to the justices either that he didn't give a damn what the court did, or that he had resigned himself to his fate. Therefore, it was deemed not preserved for appeal.

Trial counsel, hereinafter, will be well advised to make a more spirited defense of their position—rather than suffer the embarrassment of a waiver. The following scenario may serve as a suggested format.

Trial Court: (After listening to extensive debate on an evidentiary point.) Does either counsel have further argument?

Both Counsel: No, Your Honor.

The Court: Very well, I'll sustain the objection.

Proponent of Objection: Thank you, Your Honor.

Opposing Counsel: Your Honor, I would like to make a record, if it please the court.

The Court: You may.

Opposing Counsel: May the record reflect that I have broken my pencil and thrown it across the room (the Schulz syndrome[1])?

The Court: It may.

Opposing Counsel: Further, that I have offered to punch Your Honor's lights out, flipped the bird, and threatened the life of an opposing counsel?

The Court: Certainly.

Opposing Counsel: Finally, that I've torn my clothing, smeared my face with ashes, and put on a black arm band. Does Your Honor think that will be sufficient?

The Court: Perhaps it would help if you were to kick opposing counsel in the nuts.

Interested members of the judiciary and trial bar may seek further guidance in the seminal article "Power Objections —or How I Learned to Stop Worrying, and Love the Bomb," Weidner, *UCLA Alaska Law Review*, Vol. 25.

Things That Go Bump in the Night

My apologies to whoever it was I frightened half out of his wits the other day, and I hope you read this column. My explanation is as follows:

In an abortive attempt to bring a little class to an otherwise sordid profession, I recently wore my full length, scarlet lined, midnight blue cape to work. As many of you know, there are no more straight men—everybody is a comedian. My beautiful garment did not have the intended affect, but rather elicited such sympathetic comments as, "Can we help you, Count?", and "I'm sorry, the blood bank is down the street." I spent the entire morning being offered directions to Transylvania, and responding to inquiries concerning garlic, the full moon, and other arcane subjects. Assistant District Attorney GENE MURPHY, the author of some of the above observations, actually shrank from me and held up a crude cross he fashioned out of a yardstick.

By noon, I was pretty well sensitized on the subject of my odd attire, and as I strode through the Anchorage Superior Courthouse I thought I saw an old friend, Municipal Prosecutor ALLEN BAILEY, smiling at my appearance. He was some distance away, but as I approached him I felt it best to do a little dance, twirl my cane (another affectation), and swirl my cape as I knelt gracefully at his feet. Thereupon, I looked up into the horrified face of a total stranger, who only vaguely resembles Allen.

The Twilight Zone

Not knowing what else to do, I ran away—but, whoever you are, I'm really not crazy. Not yet, anyway, although my grasp of reality is tenuous at best. I think a few more cross-examinations of psychiatric expert witnesses ought to just about do it.

One of them was actually on the jury panel the other day, and, having answered all of the standard questions posited by the large poster in Courtroom E (Honorable SEABORN J. BUCKALEW presiding), he volunteered with a disconcerting grin, "I think I would make an excellent juror." Assistant Public Defender VENABLE VERMONT and I glanced at each other.

"I wonder who's running the asylum in his absence," he whispered. "Are you going to challenge this nut roll, or shall I?" We stipulated, and he was dismissed with the contempt he deserved.

The Gentleman Bank Robber

We all have our disappointments, and when I was in California recently, San Francisco defense attorney JAMES BROSNAHAN described one of his own. It concerned an entrepreneur entitled the "Gentleman Bank Robber" by the press. When finally captured, he turned out to be a nattily dressed black gentleman with a small mustache, a three-piece suit, and a charming manner. His M.O. was to engage a bank teller in pleasant converation, and after a moment or so, open his coat displaying to her eyes only a gun and a note which stated succinctly, "Wrap up the money, don't make a false move, no one will be hurt." On receiving his package, he would invariably give his charming smile which—if anything—was enhanced by a gold studded incisor, and state, "Have a nice day." Thus, the sobriquet. So suave was this individual that one picture, taken by a concealed camera, showed the bemused teller actually smiling after him as he walked off.

"I went to interview this jive-turkey at the jail," said Jim, "and he certainly lived up to his billing. Furthermore, he apparently had an excellent alibi. He completely took me in, and I was sure that he was telling the truth. No one that nice could be a criminal."

The defense attorney had finished his visit, and was about to leave in high spirits when his client spoke words that shattered his hopes, and clutched his heart with icy fear.

"Have a nice day," quoth the defendant, his gold tooth flashing. "Nevermore," was the faltering reply, and a change of plea followed routinely.

The Babcock Warning

The Ethics Committee is to be commended for their comprehensive reply to a question recently posed by Assistant District Attorney RUSSELL S. BABCOCK, who—on behalf of the prosecution and defense bar alike—posed a question concerning the ethical propriety of a defense attorney advising his client not to submit to a breathalyzer test (a class A misdemeanor) when under arrest for driving while intoxicated.

The committee concluded that "Such a recommendation by an attorney is improper without the addition of further advice and discussion as outlined below. An attorney, however, should present legal theories which the attorney in good faith believes might challenge the validity of the statute; advise the defendant concerning the legality of prospective conduct; explain the legal consequences and judicial response to any refusal to take a breathalyzer in light of recent court decisions; and submit his professional opinion of the scope, meaning and validity of the involved laws."

Having been one of that embattled breed myself, I now invite the Ethics Committee to make further recommendations as to how a defense attorney is to accomplish this high purpose when, as usually happens: 1) It's 3:00 a.m. in a bleak morning, following a hard night, 2) Counsel is semi-comatose, 3) The client is drunk on his ass, 4) He is using his one phone call, with an 8 ft. cop standing by.

Perhaps it would be best to have something printed up, so it can be read to the client under these conditions, like the *Miranda* warning.

Vignettes

Anonymous Attorney: "I can't find a building to jump off of, why don't we go over to Charlie Court and make some noise while Judge RIPLEY is conducting a jury trial?

Federal prisoner TOM WILLIAMS[2] in his letter of March 21, 1983, to Seward Magistrate GEORGE PECK: "Let me tell you about this lovely place the government has sent me to. It straddles the border of New Mexico and Texas. It is built like a Spanish mission. The "Alamo" would be a more fitting description than anything else. The only difference is that the Mexicans aren't fighting to get in, they're already in here."

Honorable RALPH E. MOODY, to the routine assertion by the defendant in a revocation proceeding that he had found God at the Sixth Avenue Jail: "Well, I've been sitting on this bench a good many years—and a lot of you fellows find God there. However, he never seems to accompany you when you leave. I've concluded that he lives there. Therefore, I'm sending you back where he can keep an eye on you."

Honorable VICTOR D. CARLSON, responding to an inquiry at an omnibus hearing by Anchorage defense attorney ROY W. MATTHEWS, III, as to whether his Honor had read the ten voluminous motions filed on behalf of the defendant in a drug case: "Yes (pausing thoughtfully, and then continuing in measured tones), "a national forest has been sadly depleted."

[1]My old friend and former partner, Ketchikan Superior Court Judge THOMAS E. SCHULZ, still holds the Southeast Alaska record in this event—a recorded throw of 35 feet, 7 inches.

[2]Mr. Williams, who is serving five years for a federal law violation, unsuccessfully attempted to resist the determined effort of Kenai Assistant District Attorney JAMES L. HANLEY to have Judge Peck run his fifteen days on the peripheral state misdemeanor charge consecutive to the lengthy federal sentence. When asked by Bar Rag reporters why he was being so insanely chicken shit, Attorney Hanley would only smile modestly and state "Just doing my job."

The Existential Oliver Wendell Holmes

"I dare say that I have worked off my fundamental formula on you that the chief end of man is to frame general propositions and that no general proposition is worth a damn."

—Oliver Wendell Holmes to F. Pollock
letter, November 22, 1920

Sex in Alaska

by Russ Arnett

Sex has always been highly regarded in Alaska. In Nome in gold rush days two miners passed a woman and one tipped his hat. The other said, "Why did you tip your hat?" Don't you know she works on the line?" The other replied, "What difference does that make? She's a lady, isn't she?"

There was little to do during winter in Nome in those days. Evidence of a particularly lurid sex case was presented to the grand jury. No indictment was returned, but, as the winter dragged on, the grand jury had occasion to reconvene to reconsider the evidence ... repeatedly.

A number of the Alaskan towns had their "line" into the early '50s. Public attitude toward the line was ambivalent. At a well attended meeting the Anchorage City Council took up the issue of permitting the line to remain. Both sides were fully and fairly argued. The Mayor, who was of German origin, then stated the concensus of the Council. "All right. The girls stay. But no pimples!"

When I worked on the docks in Seward its line was known as "Sally's Alley." The girls had dyed red hair but were light on the makeup, and showed health and vitality rather than palor. They smiled and waved to us. We had an hour off at midnight when some of the longshoremen would visit the line. I don't suppose it could be called a "nooner" ... maybe a "midnighter."

Anchorage had an area called "Eastchester Flats" or simply "the Flats" during the military construction boom after World War II. Downtown there was a place called the Chili Parlor. When there were prostitution prosecutions, the defendants learned a defense which invariably set the prosecutors back on their heels. When questioned about the facilities the women would reply. "Why you know that. You've been there often enough."

The most prominent and wealthy madam in Anchorage in the '30s and '40s would drive down to Ship Creek in a large black car to meet the boats and pick up customers. After retirement she exercised her right to live the life of the wealthy. A friend of mine, a physician, said she received him socially while reclining on a chaise lounge.

I had two friends in Nome, both former prostitutes and/or madams, who were accepted by a community having knowledge of their past. Both had given up their past ways, though it was said of one that "her door was always open." I was told she had gotten into "the life" as a young chambermaid in Scandinavia.

A lawyer friend had once been a bush pilot in Nome. While in the bawdy house there he would deliberately park his pickup out front so his whereabout was known if anyone wanted him. He made particular friends with one of the girls who never used foul language and would even blush when others did. They would spend her days off together. A banquet was scheduled and my friend invited her to accompany him. She refused. She said, "You know what I am." He replied, "Yes, and I don't care." She said that she cared about his reputation and for that reason refused to attend.

Fairbanks had South Cushman. I once represented a B-girl charged with murder of a prostitute. In the process she also wounded her boyfriend who happened to be the husband and pimp of the prostitute. She directed me to South Cushman where I was to consult a second pimp regarding either (1) a defense or (2) bail money. The procedure for locating the pimp was not

[continued on page 8]

The State of the Judiciary Address to the Legislature by Chief Justice Burke

[continued from page 2]

Superior Court judges urged me to seek two additional judges for their court as well. After careful study, I advised them that we would request one additional judge this year, with a clear indication to you that you can probably expect a request for another judge next year. This was done not because two judges aren't already needed, but because we recognize the difficulty that such a request presents for you and the need to minimize our demands to the extent possible.

The Anchorage Superior Court has ten judges at the present time. Four of those judges are assigned to the criminal division. The other six, one of whom is the presiding judge, are assigned to the civil division. Between FY 81 and FY 83 there was a 130% increase in the number of felony trials in Anchorage, and that trend continues. In July 1981, each full time civil division judge had an assigned caseload of approximately 580 cases. As of last December their assigned caseload averaged better than 1000 cases per judge, not included juvenile and domestic relations cases. The increase in pending civil cases is due partly to the fact that the civil division judges also handle approximately 25% of the felony cases that go to trial. The bottom line is there is an immediate need for at least one additional judge in the Anchorage Superior Court, if not two. When provided, it is anticipated tht the new judge will be assigned to the criminal division, due to the rapid increase in felony trials. This, we hope, will avoid much of the necessity of assigning civil division judges to criminal cases, leaving them free to devote their full attention to their heavy civil caseload.

Anchorage Courthouse

In my last two appearances before this body, I spoke about the need for a major addition to the Anchorage court facility. That need still exists and is becoming more critical as time passes.

Remodeling of the existing building has been completed and there is not space available for additional courtrooms and judges' chambers. Our clerk's office, in the trial courts, is crowded to the point of absurdity. Our administrative staff and other justice related agencies have been relocated to rented space in other buildings. In short, we are bursting at the seams.

The need for expansion is clear and deserves your immediate attention. I urge you, in the strongest terms possible, to recognize this need and deal with it during this session of the legislature. Not to do so can only mean added cost to the state, both in terms of the dollars that will eventually have to be spent and the decrease in our ability to provide badly needed judicial services.

Representation for Indigents

The constitutional right of all persons to the assistance of counsel in certain forms of litigation continues to be a problem. That the right exists is clear; the difficulty lies in how to provide required representation for those that cannot pay for it.

Representation in many such cases is provided by the Public Defender Agency and Alaska Legal Services, and the continued well-being of both of those agencies is vitally important. Given the amount and level of service that they provide to their clients, it would be a mistake not to do everything within our power to guarantee their continued existence and effectiveness. Duplication of those same services, by appointment from among the private bar, would be far more costly and less effective.

In many cases, however, particularly criminal cases, those agencies cannot represent a party, due to a conflict of interest. A classic example is the criminal case in which there are two defendants, both of whom claim the other defendant is the guilty party. At the present time, the court must appoint private counsel to represent one of those defendants, and pay his or her fees. The cost of doing so is considerable, even where only partial compensation is provided, which is what we are doing now.

One solution, which I proposed last year, is the creation of an Office of Public Advocacy within the Executive Branch. Such an agency, as I envisioned it, would not only provide indigent representation in criminal conflict cases, but also public guardian services, representation in child custody cases, and other related services.

I am informed that legislation creating such an agency has now passed the senate. I hope that it will be approved by the house as well. The dangers that I see if it does not are several.

First, the responsibilities of a public guardian are quite inconsistent with those of any court. A guardian is required to protect his ward and his decisions often result in litigation. These disputes must be resolved by the courts. Under the present system, however, the public guardian is a court system employee. The potential conflict should be obvious. Second, the cost of providing legal services by appointment among the prviate bar is demonstrably greater than when those same services are provided by a state agency. Also, there is a serious question concerning the extent of a lawyer's obligation to provide pro bono service. While he or she may have some obligation, as an officer of the court, it is questionable whether tht obligation is unlimited and extends to the state at large. Third, a lawyer who does not practice regularly in these areas may lack both the expertise and interest necessary to do an adequate job for his client.

City Prosecutions

Another proposal that I made last year would require cities and boroughs to pay for the defense of indigents made necessary by a decision to prosecute under their own ordinances. Such legislation, as I understand it, has come under heavy fire from local government entities, particularly my own, the Municipality of Anchorage. It has even been labelled "anti-law enforcement," a view that requires considerably more imagination than I possess.

My position on the subject remains the same. It makes little sense to me to require the state to pay the cost of defending in these cases. It has about all it can handle paying for its own. If a local government wants the state to foot the bill, it should allow the matter to be prosecuted under state law, leaving prosecution in the hands of the district attorney, a state official.

Other Agencies

Two state agencies that are often viewed as part of the Alaska Court System are, in fact, not. The Judicial Council and the Judicial Conduct Commission, like our respective branches of government, are independent agencies created by the state constitution. Their work, however, is of vital importance to the courts.

The Judicial Council nominates candidates for appointment to judicial office, conducts judicial performance evaluations prior to any retention election, and conducts other studies relative to the administration of justice. The contributions that it has made in all of these areas are many and worthwhile.

The Judicial Conduct Commission, as its name implies, investigates complaints against judges, based upon allegations of misconduct or disability. An effective conduct commission can do much to promote public confidence in the integrity of the judiciary, by identifying those unfit for judicial office and exonerating those wrongly accused.

These agencies, although completely independent of the Court System, deserve our support.

Conclusion

At the end of September, my term as Chief Justice will expire. Since consecutive terms are prohibited by the state constitution, there will be a new Chief Justice on October 1, 1984. That person will then have the honor that has been mine for the past three years, the opportunity to address this body, in joint session, on matters pertaining to the state judiciary. Since this is my last appearance as Chief Justice, at least for some time, there are a few thoughts that I would like to share with you that might not otherwise be appropriate.

I have been a judge in this state since 1970, and a member of the state's highest court nine years in April. In that period of time the demands of judicial office have changed substantially. When I started, the work of a trial judge was time consuming and challenging, but it was not the gut-wrenching ordeal that it is today. There were fewer cases, they were less complex, and the bar's approach to litigation, while vigorous and effective for the most part, was not the duel to the death that it has become.

Some of this change is the fault of the judiciary. Much of it is the fault of the bar, and some of the fault is yours. For the most part, however, it is probably only a reflection of changes that have taken place in our society. Whatever the reason, I think it does pose a serious danger.

What I fear most is burnout among our judges. I don't know what else to call it. What I mean is the loss of the excitement and personal satisfaction that comes from being able to perform well in a position of trust and responsibility. I see signs of it in myself and I see it in many of my judicial colleagues, particularly those in the trial courts.

The problem is not one of inadequate salary or other material benefits. At the present time, we are paid well, have a good retirement system, and work in surroundings equal to or better than those of judges in most other states. The problem is simply one of too many cases and not enough time to handle them properly.

At the same time, there is much that we can be proud of.

The Alaska Court System is one that is respected and admired in every state in the union, and in other lands. The benefits of a statewide, unified court system are enormous. Ours is a system far superior to the patchwork arrangement that exists in many of our sister states, where central court administration is only a dream.

Another bright spot in our judicial history was the decision to adopt a system of merit selection and retention of judges. That system, which is the goal of leaders in most states without it at the present time, represents a compromise between the popular election of judges and appointment for life, without prior screening by a nominating commission independent of the governor. Although any system has its drawbacks, it is clear to me that ours is the best of the various alternatives that have been seen in this country. I would hate to see it changed, as has been suggested by some.

It has been a great privilege to be part of the state judiciary, and a particularly great honor to be selected for the office of Chief Justice. Although there have been a few times when I wished I had chosen to do something else, I have no regrets. Working with my fellow judges and our dedicated support staff has been worthwhile and personally rewarding.

Finally, thank you for your support and your willingness to listen. I hope that you will show my successor the same courtesy that you have always extended to me. God bless you all.

STATE OF ALASKA

PUBLIC NOTICE
ALASKA ADMINISTRATIVE JOURNAL

The Lieutenant Governor's Office is gathering information to assess the public interest in subscriptions of a hard-copy to the Alaska Administrative Journal. The journal is a compilation of notices of proposed regulations, of agency meetings, of solicitation for competitive bids, of requests for proposals, executive orders and administrative orders, delegations of authority, the text or a summary of adopted regulations, and reference to attorney general opinions summaries' data base. The journal is currently available only on computer through the State of Alaska Legislative Information Offices and will be published in paper form only if sufficient public interest is shown. See Chapter 45, SLA 1983.

If you would be interested in a subscription to the Alaska Administrative Journal, please fill in the information requested below, clip this form, and return to Stephen McAlpine, Lieutenant Governor, Pouch AA, Juneau, Alaska 99811; telephone (907) 465-3520.

Name _____ Phone _____

Representing _____

Address _____

City _____ State _____ Zip Code _____

New Data on Misdemeanors

A recently-published study by the Judicial Council of 1981 misdemeanor sentences imposed in eight different courts throughout the state found that earlier evidence of racial disparities had disappeared. This was consistent with Council studies of felony sentences which showed that racial disparities in sentencing found for some types of crimes in the 1970s had disappeared by 1980. The Council did find some variation in sentencing by community with defendants in rural areas such as Bethel and Nome likely to receive longer sentences for violent crimes.

More importantly, the Council found that use of alcohol was just as closely associated with the commission of all types of misdemeanors as it was with commission of felonies. Further, 86.6% of all defendants who were reported in court case files to have had a prior alcohol problem also had prior criminal records, usually of one or more misdemeanor offenses. Nearly half (45.0%) of these defendants had previously been referred to alcohol treatment programs but had not successfully completed such programs. Only a handful (31 defendants of 1,366 studied) had completed a treatment program in the past.

The combination of these findings and the Council's other data led to a recommendation that the judiciary and other criminal justice agencies should work together to assure "uniform and quick access to alcohol treatment programs for convicted defendants, as a means of reducing recidivism." The Council also emphasized the need for appropriate incentives to encourage offenders to complete the assigned programs.

The Council is currently completing an additional study of DWI (drunk driving) offenses, which constituted over one-fourth of the 1981 misdemeanor convictions studied. The analysis will look at characteristics of first-time and repeat DWI offenders compared to persons convicted of other types of misdemeanors. Attorney representation (DWI offenders pay for representation by private counsel twice as often as do other types of offenders), case-processing and bail status of defendants are reviewed. The study analyzes sentencing patterns for first-time and repeat DWI offenders, and looks at the impact of these cases on the criminal justice system. The Council expects to publish its report in mid-March.

Memorandum

To: Superior Court Judges
District Attorney
Public Defender (Anchorage)

Info: District Court Judges
District Court Calendaring
Municipal Prosecutor
(Anchorage)

From: Mark C. Rowland
Presiding Judge

Subject: Criminal Rule 45—Establishing Expiration Date

Effective Monday, April 2, 1984, the following procedure will be in effect for all superior court criminal cases scheduled through Anchorage:

1. At superior court arraignment the court, in conjunction with prosecutor and defense counsel, will establish the expiration date of the four-month rule for the case. As of date of arraignment, both counsel will be required to be prepared to do so at that time.

2. A case expiration date for the four-month rule, once established, cannot be changed except by order of a judge. The order will be either in writing or will be made part of the record.

3. Any time a motion or other event delays the case, the judge deciding the motion or dealing with the event will reestablish the expiration date in conjunction with both counsel.

4. If defense counsel accepts a trial date beyond the expiration date of the case, the acceptance is an automatic waiver of the rule.

5. Establishment of the expiration date will be governed by Criminal Rule 45.

If you have any questions regarding the above policy, please contact the presiding judge or the criminal calendaring judge.

The Prevention and Punishment of Terrorism Subject of ABA Proposed Model Convention

A model treaty on transnational terrorism in the Americas has been prepared by the American Bar Association's Standing Committee on World Order Under Law.

"The Model Convention is premised upon the basic concept that each individual is entitled to the right to live without fear," explains committee chairman Robert F. Drinan. That is, "the right to life, liberty and security of person."

Drinan said that the model convention, which would be open to all members of the Organization of American States, requires state parties to either prosecute or extradite alleged terrorists, while safeguarding the rights of the accused by creating a role for the Inter-American Court of Human Rights in extradition cases and guaranteeing fundamental legal protections in the courts.

Drinan pointed out that the convention, which is the end result of a three-year project, incorporates terminology and offenses from other international agreements on terrorism, including those dealing with aircraft hijackings and piracy, diplomatic kidnappings, postal bombs, hostage-taking, and torture. It also goes further than previous conventions by covering such acts as nuclear theft and nuclear sabotage.

Copies of the model convention can be obtained for $3.00 each by writing Order Fulfillment, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

For further information please contact Penelope Ferreira, Staff Director, Standing Committee on World Order Under Law, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036.

Survey Shows Women Lawyers Believe Women's Bar Associations Help

CHICAGO, March 2—A slight majority (52%) of women lawyers questioned in a recent LawPoll survey believe that women's bar associations help them as a group. This sentiment was especially strong among family law practitioners (69 percent) and individuals earning $25,000 or less a year (65 percent). Women lawyers 45 or older were most inclined to disagree with the majority.

These results stem from a LawPoll survey conducted by the New York City opinion research firm of Kane, Parsons and Associates for the *American Bar Association Journal.*

The male respondents to this survey were evenly divided in their positions. Thirty-one percent of the male respondents looked favorably and unfavorably on "women only" associations, and 37 percent were either uncertain or felt that these associations would have no consequence.

When women respondents who regarded these associations favorably were questioned as to how these groups assist the female segment of the profession, they responded that they provide support bases, opportunities for interaction, a source for the development of contacts, and for promotion of issues and influence. The male respondents in general agreed with these responses but less strongly.

Respondents who reacted negatively to single-sex bar associations expressed the primary concern that they would promote separatism, isolation and discrimination.

Complete survey results are published in the March issue of the *American Bar Association Journal.*

Today's Law Students Don't Want Money

More law students decide to attend law school because they are interested in studying law than in seeking financial security following graduation. The foregoing is one conclusion based on the results of a four-year survey of entering students at The Dickinson School of Law in Carlisle, Pennsylvania.

When asked, "How important were the following factors in your decision to attend law school?" more students rated their academic interest in the study of law as being more influential than any of ten other reasons for attending law school. A desire to serve the public was the second most influential factor on the eleven-point scale.

The desire to be self-employed and the usefulness of a legal education in other career areas were rated the third and fourth most influential reasons for attending law school. Financial security ranked sixth.

The question was put to first-year students as part of a survey measuring their attitudes and opinions on the first day at The Dickinson School of Law. An average of 175 students completed each of the surveys from 1980 through 1983.

Family traditions, advice of college professors and advice of career counselors have little or no influence on a student's decision to study law, according to the survey.

Founded in 1834, The Dickinson School of Law is the oldest independent law school in the United States.

Judicial Vacancies

March 6 was the deadline for applications for two judicial vacancies. A Valdez Superior Court seat was authorized by the legislature in 1983, and was created in February with the transfer of Valdez District Court Judge John Bosshard to the Anchorage District Court. A vacancy was also created in the Juneau District Court with the resignation of Judge Gerald Williams, effective March 1, 1984.

A survey of all active Alaska Bar Association members is conducted for each judicial vacancy. Surveys will be mailed to members on March 12; results of the survey will be published in late April. The Council will meet on May 16 and 17 to interview candidates for the two positions.

An Honorable Lawyer For You

[continued from page 4]

ment, your honor, that the distinguished prosecuting attorney has made a shrewd point when he notes that, despite my attempt to present my client's current murder charge as an unfortunate lapse, the fact he has previously been convicted of 16 ax murders and of rooting for the Washington Redskins does tend to cast doubt on hopes for his rehabilitation.

Or, "It won't be necessary, your honor, to rule on opposing counsel's objection. As a lady and a civilized, moral, American lawyer, I am forced to admit that he is in the right. Not only was my question to the witness irrelevant, immaterial and incompetent, but I realize now that it was also quite preposterous and rather naughty. And so, having transgressed against my brother lawyer, I say damn my client! What is a courtroom victory for one pathetic client compared with maintaining one's reputation for civility and decorum?"

Or, "Ladies and gentlement of the press, I have asked you here today so that I might announce my resignation as chief justice of the United States. Now that lawyers have stopped behaving like hired guns and have begun dealing honestly with the guilt of their clients, there are so few appeals any more that we no longer need nine justices of this court."

Lewiston Morning Tribune

Sex in Alaska

[continued from page 5]

unlike using the jungle telegraph but without the drums. Finally he arrived and came in out of the -40° blackness, aglitter with diamonds and gold. As I should have anticipated, he was no help. However, he was plump and jolly and good company.

A number of years ago a national figure visited Fairbanks and was honored at a public banquet. He had some drinks and in his address reminisced upon his experiences as a young man on the line in Fairbanks. Some of the esteemed civic leaders present were mortified that he should be so indiscrete as to bring up that which they would prefer were forgotten.

I propose that the Alaska Bar Association contribute $1,000 seed money to assist Alaska's retired whores and madams to form an association to secure for them the respect and fair play which they deserve. They could hold an organizational meeting at the new convention center in Anchorage, assuming of course that it is large enough. I personally think it is the least the bar can do after all the girls have done for the lawyers of Alaska. I have heard several reports of a sporting girl in the old mining camps of Alaska and the Yukon remembered only as "the black bear." Though it is really none of my business, it would be thoughtful if they named their organization "BLACK BEAR" after their sister from Alaska's mineralized past. They could also use it as an acronym such as "Blast your lack of respect or we'll blab an earfull."

Evaluating Judges, 1984

written by
Francis L. Bremson
and
Teresa White Caens

Twenty-three judges, nearly half of Alaska's total judiciary, are currently slated to stand for retention in the 1984 general elections. Many of the judges will be standing for retention for the first time in their present positions. A judge must file a declaration of candidacy with the Division of Elections on or before August 8, 1984 in order to appear on the November ballot.

Judges standing for retention for the first time in their present positions are: Supreme Court Justice Allen Compton; Intermediate Appellate Judges Alex Bryner, Robert Coats and James Singleton, Jr.; Second Judicial District Superior Court Judges Charles Tunley (Nome) and Paul Jones (Kotzebue); Superior Court Judges Walter Carpeneti and Rodger Pegues, both of Juneau; Superior Court Judges Charles Cranston (Kenai), Douglas Serdahely and Brian Shortell (both Anchorage); and District Court Judges Natalie Finn and William Fuld (both Anchorage) and George Gucker (Ketchikan).

Other judges standing for retention who have been retained in their present positions in prior retention elections are: Superior Court Judge Thomas Schulz (Ketchikan); Superior Court Judges Victor Carlson, Ralph Moody, and J. Justin Ripley (all Anchorage) and Roy Masden (Kodiak); Superior Court Judge James Blair (Fairbanks); and District Court Judges Stephen Cline (Fairbanks) and John Mason (Anchorage).

State statutes require the Alaska Judicial Council to evaluate the performance of each judge prior to the retention elections. The Council evaluations and recommendations must be made public at least 60 days prior to the election, and are included in the Lieutenant Governor's election pamphlet. While the statutes require an evaluation, procedures for conducting the evaluations are determined by the Judicial Council.

Surveys of all active Alaska Bar Association members and of all peace officers have been conducted by the Judicial Council for every retention election since 1976. Content and format of the surveys was initially determined in 1976 in cooperation with both groups and has not changed significantly in the intervening years. 1984 surveys, however, will look very different, and will include revised questions and criteria for both attorneys and peace officers.

The changes came about during the last eight months as a result of the work of a Council Retention Consultant Committee, statistical analysis of responses to the 1980 and 1982 retention surveys, and a review of judicial evaluation procedures in other jurisdictions throughout the country. The Retention Consultant Committee was formed in October of 1983, with 3 members appointed by the Bar Association (Robert Mahoney of Anchorage, James DeWitt of Fairbanks and Susan Burke of Juneau) and 3 judges (Judge Craske, Sitka, Judge Bosshard, Valdez, and Judge Hodges, Fairbanks).

Attorneys who have responded to retention election surveys in past years should find that the 1984 surveys are easier to use. Questions regarding an attorney's experience before each judge have been shortened and are more specific. The evaluative criteria have been reworded in some instances and a few which were duplicative have been eliminated. The inclusion of two or more judges on each page reduces the number of pages significantly, and an index on the first page aids in locating the judges whom an attorney wishes to evaluate.

The Council will also provide a brief statement with the survey, describing for respondents how their responses to the surveys mesh with the rest of the Council's judicial evaluation procedures. Although survey results are an important component of the review process, the Council also reviews matters of public record (such as APOC statements), receives comments from the public and other organizations and conducts additional investigation before reaching its final conclusions and recommendations.

One of the Council's major objectives in revising the surveys for 1984 has been to encourage more attorneys to respond to the survey. Alaska is the only state in which evaluations of judges prior to retention elections are mandated by law, and conducted by a state agency. This may be one of the reasons why attorneys respond to the retention surveys in numbers well above the national average for Bar surveys. Because of the large number of judges standing for retention in 1984, the Council hopes to receive completed surveys from most Bar members in order to have the widest possible basis for evaluation.

Poems

Chuck's Bar: Missoula

The yellow-blonde barmaid
wears a yellow tee shirt that says
"A Dickel for your thoughts."
The Dickel bottle divides two extra-large boobs.
Not gigantic. Just extra large.
It's a slow afternoon. She feeds the jukebox.
After "My Happiness" by Freddy Fender
(second chorus in Spanish)
I ask if she remembers Eddie Howard.
She does.
After "Vaya Con Dios"
(second chorus in English)
we both remember Les Paul and Mary Ford.
After "Disco Duck" by Ricky Dees
neither one of us remembers anything.
She gives the cowboy another coffee
and this time I have a Dickel.
"I never drink," she says,
"unless I'm alone or with somebody."
I think that's an extra-large saying.
But after all, this is Montana.

—Lloyd Davis
Morgantown, WV

Hangover at Holly River, Hair of the Dog at Hodgesville

Driving home after a hunting weekend,
my hands shake on the wheel.
From Kanawha Head to Rock Cave
the radio preacher drives a stake
into my heart—silver.
The Sunday sun is too bright to hide from.
The maples have turned yellow.
At the French Creek Game Farm
I park in front of the deer pens.
Children from church
and the arms of suffering Jesus
giggle and point to the drunk,
trying to sleep
in the front seat of a Volkswagen.
I walk to the men's room
past deer, cages of peacocks, badgers, squirrels,
and one old buffalo
badly in need of a rug shampoo
or a bullet in the brain.
I drive on.
at the Buckhannon National Guard Armory
Second Army tanks are aimed at my German car.
Then into cattle and coal country.
highwalls of clay circling the stripped hills,
bronze water in the streams,
grade herefords and angus grazing,
I pass under an old tipple just before
MOONLIGHT CASINO
BEER
DANCING
comes into view.
I have to stop.
God forgive me—
or someone.

—Lloyd Davis
Morgantown, WV

Importance

Mostly I think it's love,
but who can believe in anything so common
you hear about it on A.M. radio?
So then I think it's faith.
I don't limit this to God.
Faith that for me only
cigarettes don't kill,
yoga has never helped anyone's back,
he will love me
when I least expect it.
After faith, I think it's work,
though work, like marriage,
is always a little unfaithful,
too willing to peek into other people's windows.
To notice the nurse's white feet,
the farmer's table of fresh air,
how she carries her briefcase like an umbrella.
I believe in words
but we all speak these different languages,
so then I believe in silence
and at the end of the day
I believe in sleep—
in what we do,
which is no more
and no less than that.

—Gale Renee Walden
Tucson, AZ

Symphony No. 2

has driven Schumann to seek rest
at Nordency, overlooking the wrinkled
ocean.
Still he works at his piano,
one hand cramped around a pen.
Fanfare done, he needs something
in the second movement;
hours pass and he rests his head
on the music ledge to concentrate
but falls asleep instead.
In the morning his wife's cat
scampers on the keys,
and in Schumann's dream the glissando
is laughing violins.
He has his Scherzo.

Adagio comes harder.
He brings in oboes to represent,
if nothing else, his mood.
He brings in strings and trumpets,
and they, with the creased sea
below the window,
make him more melancholic.
Finally he brings in the cat.
It is a gray Sphinx hairless,
the skin over its whole body
as loose as if it just gave birth.
Schumann rubs his hands
all over the cat
until its cries summon Clara,
and she grabs it as though
it were a present he found
before his birthday.
But not before
he has his theme repeated.

Finale will not come.
He calls the cat
and drops it on the keys,
and when this doesn't work
he merely sits,
pen in hand, hand on ivory.
He gives his three meals to the cat.
It loves the herring.
Scratching his way through
the second theme
Schumann is shocked to find
it is, more than most of his work,
optimistic.
He stalls, and this time
not even sleep will come to him.
He stares at the pitted body of the sea,
plays his hands along the sleeping Clara,
eats a pound of prunes to clean him out.
Still he is nervous,
pen falling from his hand
so many times
he has to tie it
like a twig into a claw.
What gives him his climax,
after one more wizened night,
is a daydream:
he sees a perfect hand
palm down, wide enough
to span twelve keys.
Its skin is stretched so tightly
that the webbing
between his fingers shines.
As the hand turns in his mind
he sees that it has no hair,
it makes no sound
and it holds nothing,
not even fingerprints.

—Mark O'Hara
Oxford, Ohio

Cemetery

The wind is rushing somewhere
pulls at your long hair
like black bats;
this day's first sunlight
offers little warmth

You must come here
same way the season must change;
it is almost winter
trees struggle to hold on to their last leaves
like gloves.

Cold rises from damp stones
silently blessing this earth.

I arrive.
See my name carved deeply.
Know that this is forever.

—Pamela L. Laskin
New York City, NY

"Caraveggio and His Contemporaries" National Gallery, Washington D.C. 1/83

In the museum you stare at the painted saints,
stare at their upturned faces and bleeding heads.
The gallery lights, like electric haloes,
shadow their faces and hurt your eyes.

Once, in a loft apartment, your friends discussed
suicide, how they would do it and where.
One would leap from the roof
wearing her Halloween butterfly wings,

another would swallow a tiny note, whole,
with all her pills, for the coroner to find
like a message in a beached bottle.
They all found it very funny.

They want these immortalized deaths,
to be gorgeous martyrs, oiled on canvas:
"Broken Butterfly on the Pavement,"
"The Half-Digested Note."

Like these Catherines and Sebastians
whose stigmata refuse your staring eyes;
you, one of the anonymous, gaping crowd
which gathers unholy around the disembodied saints.

—L. Dittrich
Bloomington, IN

Fields

In a dream I am walking through fields.
For miles there is horse grass and weeds
tall as a man,
but nothing animal or man-made.
And as far as I can see in every direction,
no trees.
I pass irregular landmarks
of fleabane, wild violets
and, floating like some white sea life,
wind-blown milkweed.
After walking for hours,
horizons giving way
only to more fields,
I come upon my wife.
Neither of us has felt lost,
but we embrace,
and for one of the few times
in my life,
I wake laughing.

I wonder what happens to all the fields
we were in as children,
running as though our kites chased us,
or fields we merely glanced,
as adults, perhaps,
from other, distant fields.
When we are not in them
do fields stop sending up
the noise of flowers
as they bend and blow against themselves
or of wheat as the wind slips
through its dry, gold stalks?
When we walk out of them
do fields simply disappear?

I am in a crowded restaurant,
with good friends and conversation.
I am neither drunk nor distracted,
but suddenly I think of fields.
I do not try to imagine,
as I would with people,
what they are doing at that moment,
but *where* they are,
the places where, between all people,
fields lie and stretch and roll.
Whether they are green or white
or the driest brown,
I know that being in these fields
would make me feel as safe
as a child on Sudnay nights,
in my own bed.
I visualize one field,
a valley bordered by mauve mountains.
Although it takes space on maps,
this field has never been explored.
Now it beckons,
as a voice intruding on my dream,
wanting me to walk through it,
wear it down.

—Mark O'Hara
Oxford, Ohio

Pickled

He looked
as if he'd
been canned
and preserved
and forgotten
about in some
dark cellar
for so long
his skin
had turned
as yellow
as the
beer he
was trying
to get his
terminally
shaking
hand to
hold long
enough
for him
to take
that one
last drink
for the road

—Alan Catlin
Schenectady, NY

On a Vacation in Maine

Here on the trails
opposites pair off
to suggest certainties
besides trust:
mud ravines surprise us
as quickly as moss, green
as sea depths. Tightness of breath
follows easy march of steps
in moist morning air. Sun
closes in. Keep on, keep on,
and the breathing finds a deeper place.

Gravel piddles under our heels
that dig and grab. Our arms grow longer.
Our legs bend lower until the furry rise
of fear severs us from the broken cliff.
Upright we turn our backs.

On a morning that bristles over the pond
we paddle to a landing.
Nodules of rasberries
bob along the path. We nudge them off
their vines into our mouths,
their warm pulp and sweet seeds carry
a taste as sure as the sound of a mother's
voice in the thick of night.
We climb to view the rush of waterfall,
never stopping, never gapping—
the force of bulls at Palamo,
an avalanche. We stand on the firm rock.

Later I stare at the tranquil pond
see the reeds slither beneath.
The loon's call haunts, or echoes
a state of golden toned madness
and I think of the fog that sweeps over
red trail markers like silent laughs.
The night wears on, still as the fire
that warms from the wood stove.
Then the wind exults lifts up the water
bangs uncertain doors
rouses the adolescent in me
who first watched a storm in a lake
and felt a force leap inward.
And I think of my son at home
his boy-like expression peering
from his man face already
beginning to thicken.

—Janet Krauss
Westport, CT

BAR NEWS BAR NEWS BAR NEWS BAR

ALASKA BAR ASSOCIATION

Financial Report

BALANCE SHEET

December 31, 1983

ASSETS	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
CURRENT ASSETS				
Cash	$ 270,170	$ 120,922	$ 7,878	$ 398,970
Short-term investments, at cost which approximates market	303,754	—	—	303,754
Accounts receivable	409,992	—	6,972	416,964
Accrued interest receivable	6,675	2,733	—	9,408
Due from general fund	—	17,821	222	18,043
Prepaid expenses	19,382	—	—	19,382
Total current assets	1,009,973	141,476	15,072	1,166,521
PROPERTY AND EQUIPMENT, at cost				
Video tape library and equipment	11,002	—	—	11,002
Office furniture & equipment	144,047	—	—	144,047
	155,049	—	—	155,049
Less accumulated depreciation	(40,305)	—	—	(40,305)
	114,744	—	—	114,744
	$1,124,717	$ 141,476	$ 15,072	$1,281,265
LIABILITIES AND FUND BALANCES				
CURRENT LIABILITIES				
Accounts payable and accrued expenses	$ 29,947	$ —	$ 14,072	$ 44,019
Due to Bar Foundation	7,901	—	—	7,901
Due to other funds	18,043	—	—	18,043
Revenue collected in advance	614,049	17,820	—	631,869
Total current liabilities	669,940	17,820	14,072	701,832
FUND BALANCES				
Unrestricted				
Designated by the Board for				
Working capital	25,000	—	—	25,000
Asset acquisition	43,410	—	—	43,410
Undesignated	386,367	123,656	1,000	511,023
	454,777	123,656	1,000	579,433
	$1,124,717	$ 141,476	$ 15,072	$1,281,265

The Notes to Financial Statements are an integral part of this statement.

In the last official issue of "Behind Bars," I promised I'd bring you up-to-date on a number of activities. So here goes!

RECIPROCITY AND MANDATORY E & O INSURANCE

During its January 13th meeting, the Board of Governors took up consideration of the issues of reciprocity and mandatory errors and omissions insurance for attorneys. As you are aware, the Board of Governors solicited a response from the entire membership on these issues last fall. There was considerable response. It is fair to say that their was no overwhelming response for or against either proposition.

Issues on Annual Business Meeting Agenda

Both the many concerns stated in the response letters and the lack of any clear direction from the membership has led the Board to leave consideration of and action on these two matters to the membership itself at the Annual Business Meeting during the Association's June 6-9, 1984 Bar Convention in Anchorage.

E & O Debate

Because of the particularly complex and rather sensitive matters raised by the Board's suggestion that the Court impose a mandatory malpractice insurance requirement on active Bar members, the Board will hold a formal debate on the subject during the Business Meeting. Board member Andrew Kleinfeld will speak against the proposal; a proponent has yet to be enlisted, although Judge Karen Hunt has been suggested.

Reciprocity

There was less support evident from the membership for the implementation

ALASKA BAR ASSOCIATION

STATEMENT OF REVENUES AND EXPENSES

For the Year Ended December 31, 1983

	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
Revenue				
Dues	$515,281	$ 16,603	$ —	$531,884
Admission fees	88,883	—	—	88,883
Continuing legal education	58,205	—	—	58,205
Lawyer referral fees	52,203	—	—	52,203
Annual meeting	34,157	—	—	34,157
Interest on investments	45,746	9,005		54,751
Other	38,314	—	52,204	90,518
Total revenue	832,789	25,608	52,204	910,601
Expenses				
Admissions	109,983	—	—	109,983
Board of Governors	22,513	—	—	22,513
Discipline	132,875	—	—	132,875
Administration	243,607	—	—	243,607
Referrals	37,987	—	—	37,987
Continuing legal education	101,063	—	—	101,063
Newsletter	13,330	—	—	13,330
UCLA/Alaska Law Review	11,198	—	—	11,198
Other	41,673	—	52,204	93,877
Total expenses	714,229	—	52,204	766,433
Excess of revenue over expenses	$118,560	$ 25,608	$ —	$144,168

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

REVENUE AND EXPENSE STATEMENT DETAIL

GENERAL FUND EXPENSES	Admissions	Board of Governors	Discipline	Administration	Referrals	Continuing Legal Education	Newsletter	UCLA/Alaska Law Review	Other	Total
Salaries and related expenses	$ 46,459	$ —	$107,916	$109,749	$ 20,255	$ 43,164	$ —	$ —	$ —	$327,543
Rent	9,984	—	7,804	36,556	—	—	—	—	—	54,344
Grading	29,970	—	—	—	—	—	—	—	—	29,970
Office supplies and expense	10,593	6,312	8,718	7,240	—	1,971	4,211	—	—	39,045
Telephone	1,015	1,811	2,416	1,694	6,266	1,058	—	—	—	14,260
Travel	—	14,390	3,201	2,332	—	2,710	—	—	—	22,633
Contract services	8,848	—	2,820	103	—	—	9,119	11,198	—	32,088
Equipment lease	—	—	—	14,067	—	—	—	—	—	14,067
Newsletter	—	—	—	3,514	—	—	—	—	—	3,514
Postage	—	—	—	19,917	—	—	—	—	—	19,917
Accounting fees	—	—	—	6,320	—	—	—	—	—	6,320
Insurance	—	—	—	8,081	—	—	—	—	—	8,081
Repairs and maintenance	—	—	—	9,543	—	—	—	—	—	9,543
Depreciation	—	—	—	17,138	—	1,777	—	—	—	18,915
Interest	—	—	—	1,213	—	—	—	—	—	1,213
Advertising	—	—	—	2,440	9,327	—	—	—	—	11,767
Miscellaneous	3,114	—	—	3,700	2,139	—	—	—	—	8,953
Seminar costs	—	—	—	—	—	50,383	—	—	—	50,383
Committee expenses	—	—	—	—	—	—	—	—	1,953	1,953
Annual meeting expense	—	—	—	—	—	—	—	—	28,350	28,350
Substantive law sections	—	—	—	—	—	—	—	—	1,235	1,235
Donated services	—	—	—	—	—	—	—	—	8,633	8,633
President's meeting	—	—	—	—	—	—	—	—	1,502	1,502
	$109,983	$ 22,513	$132,875	$243,607	$ 37,987	$101,063	$ 13,330	$ 11,198	$ 41,673	$714,229

NEWS BAR NEWS BAR NEWS

by Randall Burns

of a reciprocity rule and, indeed, were it not for the advocacy of Board member Bruce Gagnon, who speaks persuasively on the subject, consideration of a reciprocity rule would have gone down to defeat during the Board's January meeting. As it is, this matter will also be the subject of discussion and action at the Annual Business Meeting.

ETHICS OPINIONS

We will soon be mailing out to each active member of the Bar copies of all ethics opinions formally adopted by the Board during 1983 and the first quarter of this year. In addition, a copy of one opinion not adopted by the Board but which the Board feels should be read and considered by each one of you will also be included.

Particular attention should be given to EO 83-5 (re: whether a law firm, representing a defendant in a contract action, is disqualified from further representation because it hired an associate formerly employed by the law firm representing the plaintiff) and 84-1 (re: advice to defendant to refuse to submit to a breathalyzer test). EO 83-1 was *not* formally adopted but will be sent to you because of its discussion of the propriety of an attorney who has been sued for malpractice to discharge the liability for the claim through a proceeding in bankruptcy. The opinion also discusses the ethical requirement to maintain malpractice insurance and was the motivating factor in the Board's decision to consider adoption of a mandatory malpractice insurance rule.

In addition to the opinions, a copy of the index to all existing opinions will be sent to you. State law libraries have a binder which contains all the ethics opinions adopted by the Board.

In the past, the Board has also published those opinions it has not formally adopted. It will continue to do so, but beginning with January of this year, such opinions will be included in a separate volume and identified by the year of adoption, followed by a letter (i.e., 84-A, 84-B, etc.). Opinions formally adopted are identified by the year and then a number (i.e., 84-1, 84-2, etc.).

The Ethics Committee under the guidance of Chairperson Ken Jacobus has been doing a *wonderful* job. The Committee has been working *very* hard and has been providing effective guidance to the Bar's membership.

Any member seeking an ethics opinion must submit his or her request to the Bar Office. After review by the Discipline Counsel (to preclude attempts by attorneys subject to a Bar investigation from attempting an "end run" around the Disciplinary Board), your opinion will be immediately forwarded to the Committee for a response. The Ethics Committee also issues telephonic "breeze impressions" when informal advice is needed, as well as letters of advice when requested. However, neither the Committee or the Association itself (through the Board and its members) is bound by any opinion except those formally adopted by the Board.

BAR EXAM FEES

In January the Board also made one of its toughest decisions; it has again decided to increase the fee to persons seeking admission to the Alaska Bar. In 1983 the Association took in $88,833 in admission fees and related income, but spent $109,983. The $21,000 difference is, of course, paid for out of general fund income which is, as you know, primarily generated by member dues. In 1984 we have projected admission income of $85,000 and expenses of $121,000, for a $36,000 deficit.

While uncomfortable with our already high admissions fee ($350 for general and attorney applicants, $225 for reapplicants), the Board feels it cannot justify underwriting the admissions process to the tune of $36,000 from general fund monies. As you know, it is a policy of the Association that admissions be self-supporting. Therefore, beginning with the July, 1984 Exam, the admission fee has been raised to $500.00 ($325 for reapplicants).

CIVIL RULE 81

In this edition of the *Bar Rag* is a proposed amendment to Civil Rule 81. The amendment is simple enough: it would provide for the payment to the Bar Association of a filing fee to defray our administrative expense in handling *pro hac vice* admissions. The amendment is being published for your comments. The Board has gone on record as setting $100.00 as the amount of the required fee, should the Board adopt the proposed rule change and should the Supreme Court approve the amendment.

ENFORCEMENT OF FEE ARBITRATION AWARDS

Also published in this paper are proposed amendments to Bar Rules 41 and 61, which would provide the Bar with a mechanism to enforce payment of fee arbitration awards by attorneys. We currently have a charming situation on our hands. For the most part the fees charged to clients by attorneys are upheld by the fee arbitration committee. However, in those (very) few instances where an award is made against an attorney, we find that the attorney often drags his or her feet in making restitution to the client. Currently, once the award is made, if an attorney does not pay, then the client must return to court (probably after having to hire another attorney and pay out more money!) to seek payment of the fee arb award. It's the classic Catch-22: The proposed rule would, after the expiration of the appeal time, make failure to pay a fee arbitration award a suspendable offense. The proposed amendments are published for your comment.

WHOLESALE RE-WRITE OF THE DISCIPLINARY RULES

As a result of the many recommendations made to the Board of Governors (in its capacity as the Disciplinary Board) and to the Supreme Court by the American Bar Association's Standing Committee on Professional Responsibility, the Board is in the process of completing a major rewrite of the Bar's Rules of Disciplinary Enforcement (Bar Rules 9-32). The Association contracted for the services of an Anchorage legal assistant, Kathy Anderson, to assist the Board and discipline staff with the substantial work involved in drafting the amendments.

The Board and its staff met January 14th with Chief Justice Burke and Mark Harrison, Chair of the ABA's Committee on Professional Responsibility and a member of the three-person discipline team which came to Alaska last summer, to review the team's report. Kathy Anderson was present, as was Don Bauermeister, Rules Attorney for the Alaska Court System. After the Board's review of and action on many of the report's substantive recommendations, Ms. Anderson prepared a draft of the proposed amendments for the Board's March 9 & 10 meeting. It is the Board's intent to have finalized the proposed changes by its June 4-6 meeting.

ASSISTANT DISCIPLINARY ADMINISTRATOR HIRED

The Board of Governors during its October, 1983 meeting, hired Teresa E. Williams as the Association's Assistant Disciplinary Administrator. Ms. Williams started work last November 16th, and recently completed her first ninety days of the job.

Ms. Williams resigned her position as Senior Investigator for the State's Ombudsman's Office in Anchorage to come to work for the Bar. Prior to her two year stint for the Ombudsman, Ms. Williams was the hearing attorney for the State's Human Rights Commission from 1979 through 1981. Ms. Williams

ALASKA BAR ASSOCIATION

STATEMENT OF CHANGES IN FINANCIAL POSITION

For the Year Ended December 31, 1983

	General Fund	Client Security Fund	Insurance Trust Fund	Total All Funds
FINANCIAL RESOURCES PROVIDED BY				
Operations:				
Excess of revenues over expenses	$118,560	$ 25,608	$ —	$144,168
Item not requiring outlay of working capital during the year:				
Depreciation	18,915	—	—	18,915
	137,475	25,608	—	163,083
FINANCIAL RESOURCES APPLIED TO				
Purchase of equipment	35,399	—	—	35,399
Increase in working capital, as below	$102,076	$25,608	$ —	$127,684
SUMMARY OF CHANGES IN WORKING CAPITAL COMPONENTS				
Increase (decrease) in:				
Cash	$ 34,811	$ 25,871	$ 4,730	$ 65,412
Short-term investments	103,754	—	—	103,754
Accounts receivable	397,851	—	1,153	399,004
Accrued interest receivable	2,092	(265)	—	1,827
Due from general fund	—	13,803	(201)	13,602
Prepaid expenses	13,312	—	—	13,312
Decrease (increase) in:				
Note payable	22,221	—	—	22,221
Accounts payable and accrued expenses	(18,712)	—	(5,682)	(24,394)
Due to other funds	(21,503)	—	—	(21,503)
Revenue collected in advance	(431,750)	(13,801)	—	(445,551)
Increase in working capital	$102,076	$ 25,608	$ —	$127,684

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

STATEMENT OF CHANGES IN FUND BALANCES

For the Year Ended December 31, 1983

	General Fund						
	Designated for Working Capital	Designated for Asset Acquisition	Undesignated	Total	Client Security Fund	Insurance Trust Fund	Total All Funds
Fund balances, beginning	$ 25,000	$ 50,764	$260,453	$336,217	$102,067	$ 1,000	$439,284
Adjustment applicable to prior years (Note 2)	—	—	—	—	(4,019)	—	(4,019)
Fund balances, beginning as restated	25,000	50,764	260,453	336,217	98,048	1,000	435,265
Add excess of revenue over expenses	—	—	118,560	118,560	25,608	—	144,168
Designation of funds and transfer of designated funds	—	(7,354)	7,354	—	—	—	—
Fund balances, ending	$ 25,000	$ 43,410	$386,367	$454,777	$123,656	$ 1,000	$579,433

The Notes to Financial Statements are an integral part of this statement.

Bar News

[continued from page 11]

has been a member of the Alaska Bar since 1979 and is also a member of the Washington State Bar (1978). She is a graduate of the University of Washington School of Law (1978).

PROMOTIONS!

Also in October, the Board of Governors promoted Deborah O'Regan, who has done such a wonderful job with the Bar's CLE program, to Assistant Director of the Bar. Deborah is now responsible not only for CLE but also assists the Executive Director. Her official title is "Assistant Director & CLE Coordinator."

Upon the resignation of Willie Jones from the Bar staff at year's end, Debbie Johnson, the Bar's highly over qualified Receptionist, was promoted to Executive Secretary of the Bar. After almost seven years with the Bar, Willie joined the Teamsters organization in their no doubt busy PR department. Debbie Johnson has been with the Bar over three years now and has taken over the helm with no problems!

Finally, we hired Alice Yates, a Native Alaskan born in Nenana, to serve as the Board's Receptionist. Alice came to work on January 3rd, and has so far managed to handle the hundreds of calls a day we have been getting of late.

YELLOW PAGES' ATTORNEY "GUIDE"

As the new phone books come out, I think it fair to say that GTE's plan to make lots of money off of attorneys by encouraging subscription into their "guide" has failed, and failed rather spectacularly. In the Anchorage Yellow Pages, for instance, while their are twelve pages of the straight alphabetical listing (pp. 68-80), there are only two pages utilized for the guide (pp. 80-82), and the guide is found at the very back.

For further proof, I assumed that the guides, if successful, would really affect the number of calls received by the Statewide Lawyer Referral Service. Not so! The number of calls to the Service continues to increase!

Finally, my apologies to those of you who have called me to register a complaint against those Board members or their firms whose names somehow found themselves listed in the "Attorney Guide" portion of the Yellow Pages. I acknowledge that the Board's position on the ethical nature of self-designation in the Yellow Pages was effective in precluding participation by many attorneys and firms in the "guide," and I know the Board as a whole sincerely appreciates the membership's decision to basically refrain from buying into GTE's desire to force specialization upon the profession. I see no reason why, with the paltry participation this year, it might not fizzle out entirely if everyone who participated this year opted out of the guide in 1985.

ALASKA PRO BONO PROGRAM

Pro Bono Program Director David Gaffney has resigned to become an office administrator for a law firm in Anchorage. Seth Eames has been hired to replace Mr. Gaffney, and your calls and questions should be directed to Seth from now on. The Pro Bono Program's toll free Zenith Number is 3199.

ALASKA PERSONAL INJURY VERDICTS ANALYZED

Alaska jurors are keeping pace with jurors nationwide and continue to render personal injury verdicts that are consistent with national norms. A recent study by Jury Verdict Research shows that Alaska verdicts are consistent with verdicts rendered nationally for similar injuries with comparable claimed medical and wage loss specials.

Although average awards have not increased, the number of verdicts totaling one million dollars or more rendered by jurors statewide in Alaska continues to rise. The number of reported million dollar verdicts rose to four (4) in 1982. The most recent of these large awards was rendered to a 29-year-old oil rig worker who fell to his death from a platform 46 feet above the ground. A traveling block struck the work platform, driving the platform to the top of its frame and breaking the support cable. The decedent's survivors were awarded $1,600,000.

A complete analysis of Alaska personal injury verdicts is found in the Alaska Verdict Survey, available for $15.00 from Jury Verdict Research, Inc., 5325 Naiman Parkway, Suite B, Solon, Ohio, 44139, Toll Free (800) 321-6910 or in Ohio (216) 248-7960, collect.

INCOME UP IN LEGAL AND PARA-LEGAL FIELDS

The average lawyer working in business and industry receives $60,808 in annual salary and bonus (up 6.8% in the past year, while the Consumer Price Index rose 3.9%), with 10% making under $30,900 and 10% over $95,800. Who's the highest-paid lawyer (in business/industry/government) in the U.S.? The lowest? Composites representing these individuals were drawn by Dr. Steven Langer, using data from his recent survey of 282 organizations. Copies of the complete, 354-page survey report are available for $150.000 from Abbott, Langer & Associates, 548 First Street, Crete, IL 60417.

The highest median total cash compensation is found in San Francisco ($60,372), Boston ($58,400), New York City ($57,900), Los Angeles ($55,200), and Dallas/Ft. Worth ($53,800). The lowest median incomes are found in the Mountain States ($43,200) and the Pacific States—excluding San Francisco and Los Angeles ($45,000).

Those employed by manufacturing/extractive firms make significantly more than those employed by non-manufacturing firms ($56,700 vs. $48,300). The highest median incomes are paid by transportation services ($64,500) and manufacturers of food/beverage/tobacco products ($64,000). The lowest median total incomes are those provided by banks & other financial institutions ($44,009) and insurance companies ($47,118). Total compensation tends to rise with total size of organization. The median income is $47,059 in organizations with under 500 employees, increasing to $54,000 in organizations with 10,000 employees or more.

By length of experience, income rises regularly from $30,000 for those with under one year of experience to $80,650 for those with 30+ years of experience (an increase of 169%). The same pattern was found by age of individual and by year of J.D./L.L.B.

The highest-paid functional areas for attorneys are administration/management and international law ($92,300 & $66,500 respectively). Of the other seven functional areas studied, the lowest incomes went to those engaged in probate/trust law and insurance/negligence/compensation law ($37,600 and $43,800 respectively).

Supervisory responsibility for other professionals is correlated strongly with total compensation. Attorneys who supervise ten or more professional ordinates have a median income of $98,875, 131% more than the $42,769 of those with little or no supervisory responsibility.

Without naming names, the lawyer with the highest income is the Chief Legal Officer for a utility or a firm producing chemical/pharmaceutical/plastic/rubber products with 10,000 employees or more. Naturally, the firm has at least 25 lawyers on staff. This individual is undoubtedly located in the New York City area, and has 20 years of experience or more. While the median income of Chief Legal Officers is $76,000, this individual's total annual compensation is well in excess of $300,000.

At the other end of the income spectrum, the lawyer with the lowest income works in the Mountain States of a paper/printing/publishing firm with 5,000-9,999 employees, including two to four lawyers. This individual is in a non-supervisory position, deals with real property law, and has less than one year of experience. His or her total annual compensation can be as low as $16,600, although the median income of non-supervisory attorneys is $43,000.

Para-legal assistants (semi-professionals who perform limited legal tasks under the close supervision of an attorney) have a median annual income of $21,164. Ten percent of this group earn under $15,500; 10% over $30,000.

1982-1983 ANNUAL REPORT TO THE LEGISLATURE

The Bar has just published and will soon submit its annual report for the previous two years to the Judiciary Committees of the Alaska Senate and House of Representatives. The report details the many and varied activities of the Bar Association and includes sections on Discipline, Admissions, Committees, Sections, the Pro Bono Program, the Conflict Resolution Center and CLE.

PATTERN CIVIL JURY INSTRUCTIONS

Thanks to a very good response to our solicitations and an initial miscalculation in the number of pages the instructions contained, we are pleased to announce that we will be able to reduce to cost of the instructions by at least $25.00! The instructions will be sent to the printer shortly and should be in your hands by mid-April. Thanks for your support! If you have yet to order your copy, please do so soon, as we do not intend to print a substantial number of additional unreserved copies because of the expense.

PARA-LEGAL/LEGAL ASSISTANT SURVEY

Another thanks to those of you responding to our request for participants in the UAA School of Justice's planned Paralegal/Legal Assistance Survey. We appreciate your support of this important project. Again, if you have not yet returned the response card, and intend or are willing to participate, please take the time to complete the card and return it ASAP. If you have misplaced the response card, just give our receptionist Alice Yates a call and leave with her the name of the attorney in your firm to whose attention we should direct the survey when it is ready. Again, THANKS!

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

President Mary K. Hughes has appointed a special committee to review the recently adopted American Bar Association Model Code of Professional Responsibility and directed the Committee to issue its recommendations as to the adoption, in whole or in (amended) part, of the new Model Code by the membership's Annual Business Meeting. The members of this special committee are:

Richard O. Gantz, Chairperson
William P. Bryson
Robert C. Bundy
Robert J. Mahoney
John A. Reeder, Jr.

If you have any comments about the new Model Code, please feel free to direct your comments to any of these gentlemen. Copies of the new Code have been published in the ABA's *Journal* and are also available from this office, should you desire a copy.

INA, THE BAR ENDORSED E & O CARRIER, BACKS OUT!

The following is excerpted from a letter I received from Katherine Gettys and Stan May of Corron & Black/Dawson & Co., Inc., which underwrote for INAPRO:

Please be advised that INAPRO has elected to cease writing Lawyers Professional Liability Insurance in the State of Alaska as of February 28, 1984. We were advised in December, 1983 that INAPRO was cancelling Corroon & Black, Inc.'s underwriting authority. It was not until January 9, 1984 that we learned what exactly that meant in real terms.

First of all, the reason for ceasing their involvement with Alaska is the claims experience of the Association sponsored program. At the end of 1981,

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Proposed Amendment to Alaska Bar Rules 41 and 61 Providing for Enforcement of Fee Arbitration Awards

Rule 41. Appeal.

Should either party appeal the matter to the Superior Court under the provisions of AS 09.43.120-180, the appeal shall be filed with the clerk of the superior court in accordance with Appellate Rules 601 through 609, and notice of such appeal must be filed with the Bar Counsel of the *Alaska Bar Association* (BAR ALASKA ASSOCIATION). *If the award in the matter is against the attorney, the award is final and binding after the expiration of 30 days from its issuance unless the award is appealed. The award shall be final and binding upon affirmance or dismissal by appellant of the appeal, unless otherwise ordered by the Court. Failure to pay a final and binding award will subject the attorney to suspension for nonpayment as prescribed in Alaska Bar Rule 61(c).*

Rule 61. Suspension for Nonpayment of Alaska Bar Membership *Fees and Fee Arbitration Awards.*

(a) Any member failing to pay any fees within 30 days after they become due shall be notified in writing by certified or registered mail that the Executive Director shall, on April 1, petition a Justice of the Supreme Court of Alaska for an order suspending such member for nonpayment of fees.

(b) The Executive Director shall annually notify the clerks of court of the names and date of suspension of all members who have been then or previously suspended and not reinstated.

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of $5.00 per week of delinquency (each portion of a week to be considered a whole week) but not exceeding a total of $160.00 in penalties shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

(2) Any member who has been suspended for a year or more, upon determination of good character by the Board, upon payment of all accrued dues, in addition to a penalty of $160.00, shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the member is of good character and that dues and penalties have been paid.

(c) *Any member who without good cause fails to pay a final and binding fee arbitration award within 30 days after it is final and binding shall be notified in writing by certified or registered mail that the Executive Director shall, after 30 days, petition a Justice of the Supreme Court of Alaska for an order suspending such member for nonpayment of a fee arbitration award. Upon suspension of the member for nonpayment of a fee arbitration award, the member shall not be reinstated until the award is paid or otherwise satisfied and the Executive Director has certified to the Supreme Court and the clerks of court that the award has been paid.*

Proposed Amendment to Alaska Civil Rule Providing for a Fee for Pro Hac Vice Admission

Rule 81, Attorneys

(a) Who may practice

(1) Members of Alaska Bar Association. Subject to the provisions of paragraph (2) of this subdivision, only attorneys who are members of the Alaska Bar Association shall be entitled to practice in the courts of this state.

(2) Other Attorneys. A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association and not otherwise disqualified from engaging in the practice of law in this state, may be permitted, upon motion *and payment of the required fee to the Alaska Bar Association*, to appear and participate in a particular action or proceeding in a court of this state. The motion, and the notice of hearing, if any, shall be served on the executive director (secretary) of the Alaska Bar Association, the State Department of Revenue, and unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With his motion, the applicant must file with the court the following:

(a) The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated, who maintains an office in the judicial district where the action or proceeding is pending and who is authorized to practice in the courts of this state.

(b) A written consent to the motion, signed by such member of the Alaska Bar Association.

(c) A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he is in good standing therein and that his professional character appears to be good.

(d) *Proof of payment of the required fee to the Alaska Bar Association.*

An attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely be such attorney, but must bear the signature also of local counsel with whom he is associated.

THE REMAINING SECTIONS OF THIS RULE ARE NOT AFFECTED BY THE PROPOSED AMENDMENTS.

Bar News

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the ratio of claims paid and expenses to premium dollars taken was 397%; or in simple terms, it cost INAPRO 397% more than premiums taken in, in losses. In 1982, that ratio dropped to 254% and for 1983, it looks like it will be 319%. In real dollars and cents, this equals to:

EARNED PREMIUM:	$ 464,688
LOSSES PAID:	$ 267,024
EXPENSES PAID:	$ 90,200
RESERVES SET:	$1,407,751

(Claims filed but not settled to date amount set aside to handle.)

INCURRED LOSSES & EXPENSES:	$2,622,139

(Amount INAPRO has set aside as final claims and expenses they will pay.)

As you can easily see, the Program has not been successful in pure dollar and cent value. INAPRO's first and foremost consideration here was the profitability of providing a program for your attorneys at a reasonable cost. Out of the One Hundred Ninety Seven (197) law firms that are insured with INAPRO, there were Forty-One (41) claims that make up those amounts. Some law firms posted more than one claim, most posted none.

In this particular instance, the many have been disadvantaged by a few. INAPRO had made filings with the State of Alaska for a rate increase beginning January 1, 1984; but realized that by doing so, they would price themselves out of the marketplace and still not be any closer to being profitable nor affordable to the attorneys.

Attached is a copy of the letter that is being sent to all the Brokerage firms in town that we do business with. On renewal, we will be advising our lawyers, in a similar letter, that INAPRO will not be renewing and seek a new market for their coverage. Those attorneys with existing claim problems will be encouraged to purchase the Extended Discovery coverage, which will make them attractive to their new carrier. Others with no claims may or may not have a problem seeking full Prior Acts Coverage.

At this point and time, we have been unable to come up with a firm recommendation of a carrier to use. Corroon & Black is going to begin using Fremost Indemnity Company through Professional Managers, Inc., in Chicago. The Vice President and Manager is a former INAX employee who helped Stan May set up the Alaska Bar Association program with INAX. He has expressed an interest in providing a market for the attorneys on an individual basis with quarterly loss reports to the holding broker on their client. We feel that Professional Managers will be cooperative, but have yet to really test their abilities or pricing. If they prove to be as cooperative and cost effective as we hope they can be, we might be in a position to seek an Association Program with them.

Randall, we are extremely saddened to see this program dissolve, but under the circumstances, I am sure the Bar Association can see INAPRO's point of view.

If you have any questions, please don't hesitate to give our office a call at your convenience.

As a result of this crisis, the Board of Governors has instructed the Bar staff to seek out proposals from other underwriters. It is our hope that the Board can review the proposals received and take action to endorse a new carrier by the June meeting.

Needless to say, INAPRO's stated loss ratio is damaging to the Bar's chances of attracting a new carrier with reasonable rates. Therefore, we are also requesting more information regarding the manner in which INA set its reserves, etc., in order that we be able to more accurately reflect the claims history in Alaska.

Proposed Amendment Providing for Reciprocity

Amendment to Alaska Bar Rule 2. Eligibility for Admission.

Section 3. An applicant who meets the requirements of Section 1 of this Rule and

(a) Has passed a written examination required by another state, territory, or the District of Columbia for admission to the active practice of law, and

(b) Has actively engaged in the practice of law in one or more reciprocal states, territories or the District of Columbia for five of the seven years immediately preceding the date of his or her initial application,

may, upon motion, be admitted to the Alaska Bar Association without examination. The motion shall be served on the Executive Director of the Alaska Bar Association and sponsored by a member in good standing of the Alaska Bar Association. An applicant will be excused from taking the bar examination upon compliance with the conditions above, and payment of a non-refundable fee to be set by the Board for applicants seeking admission on motion.

Attorneys admitted to the practice of law in other states, territories or districts without taking a written examination will not be eligible for admission under this section. An applicant may not be admitted to the practice of law under this section if he or she has taken and failed to pass an Alaska Bar

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ABA Calendar

A listing of ABA continuing legal education programs, meetings for legal specialists and those working on public interest projects. **Projects marked by an asterisk are produced by the ABA Division of Professional Education.** Fees for programs include course materials.

DATE	EVENT	PLACE
April 4-7	**Law Office Management:** Bridge the Lawyer/Computer Gap, the 11th International Conference on Law Office Economics and Management, sponsored by the Canadian Bar Association and the Section of Economics of Law Practice **Highlight:** This conference was created by and for lawyers who know that computer efficiency is the key to time management and increased productivity. **Registrar:** Donna Spilis 312/947-3911 **Fee:** $475	Westin Street Francis Hotel San Francisco, CA
6	**Immigration Law:** National Institute on Immigration Law for Business and the General Practitioner, sponsored by the General Practice Section and the American Immigration Lawyers Association (AILA)* **Highlight:** This National Institute is designed for lawyers, executives, students, voluntary agencies, personnel officers, school officials and paraprofessionals concerned with the status and processing of immigrants, nonimmigrants, aliens and nationals. **Registrar:** Earnestine Murphy 312/567-4725 **Fee:** $225 non-members $195 ABA members $175 section members and AILA members $ 75 law students	Airport Hilton Atlanta, GA and O'Hare Hilton Chicago, IL
7	**Litigation:** National Institute on Documents in Litigation: Discovery and Management, sponsored by the Litigation Section* **Highlight:** This National Institute will focus on the practical techniques, both manual and computerized, that have been developed for use in litigation discovery for management of documents. **Registrar:** Earnestine Murphy 312/567-4725 **Fee:** $225 non-members $195 ABA members	Fairmont Hotel New Orleans, LA
11-14	**Government Law:** First Annual National Institute on Redevelopment and Growth Management: Financing Infrastructure, Packaging Projects and Legal Implementation, sponsored by the Urban, State and Local Government Law Section* **Highlight:** This National Institute will be of special interest to attorneys in the private and public sectors, developers, consultants and public officials concerned about the growth and regrowth of America's urban areas. **Registrar:** Earnestine Murphy 312/567-4725 **Fee:** $350 non-members $325 ABA members $300 section members	Doral Hotel Miami Beach, FL
12	**International Law:** Joint Luncheon and Talk, sponsored by the American Society of International Law and the Section of International Law and Practice **Highlight:** Jean Kirkpatrick, U.S. permanent representative to the United Nations, is the luncheon speaker. **Registrar:** Cynthia Price 202/331-2239 **Fee:** $22.50	Shoreham Hotel Washington, D.C.
13	**Immigration Law:** National Immigration Law for Business and the General Practitioner, sponsored by the General Practice Section and the American Immigration Lawyers Association* (See April 6 listing.)	Marriott Hotel Houston Airport Houston, TX
13	**Libel Law:** Libel Law Under the Constitution: Marking the Twentieth Anniversary of the *New York Times Co. v. Sullivan*, sponsored by the American Newspaper Publishers Association (ANPA), the American Society of Newspaper Editors (ASNE) and the Forum Committee on Communications Law **Highlight:** What the *New York Times Co. v. Sullivan* decision means, what the impact has been, what vitality it retains, and implications for the future of the press will be examined. **Registrar:** Lorayne Rice 312/947-3855 **Fee:** $125 non-members $100 forum committee members $ 35 law students	Loews L'Enfant Plaza Hotel Washington, D.C.

Editor's Note: The following two programs can be attended either as two one-day seminars or as one two-day seminar.

13	**Negotiation:** ABA Division of Professional Education Seminar on Effective Negotiation and Conflict Resolution, sponsored by the General Practice Section* **Highlight:** This program develops application of a problem-solving framework for conducting negotiations. **Registrar:** Azike Ntephe 312/567-4725 **Fee:** $200/day or $350/both days, non-members	Halloran House New York, NY

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Proposed Reciprocity Amendement

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Examination or engaged in the unauthorized practice of law in Alaska. For purposes of this section, "reciprocal state, territory or district" shall mean one which offers admission to attorneys licensed to practice law in Alaska, without examination, upon their compliance with specific conditions detailed by that jurisdiction, providing the conditions are not more demanding than those set forth in this rule.

Section 4. For the purposes of this Rule, the "active practice of law" shall mean

(i) engaged in representing one or more clients on a fee basis in the private practice of law;

(ii) serving as an attorney in governmental employment, provided graduation from an accredited law school is a required qualification of such employment;

(iii) serving as counsel for a non-governmental corporation, entity or person and performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed;

(iv) teaching law at one or more accredited law schools in the United States, its territories, or the District of Columbia; or

(v) serving as a judge in a court of record in the United States, its territories, or the District of Columbia.

	$175/day or $300/both days, ABA members $100/day or $150/both days, law students	
14	**Evidence:** ABA Division of Professional Education Seminar on Demonstrative Evidence* **Highlight:** Nationally known trial attorney Mark Dombroff will show you how to put the tools and techniques of evidence to work. **Registrar:** Azike Ntephe 312/567-4725 **Fee:** $200/day or $350/both days, non-members $175/day or $300/both days, ABA members $100/day or $150/both days, law students	Halloran House New York, NY
15-19	**Appellate Judges:** 1984 Appellate Judges Seminar Series, sponsored by the University of Utah School of Law and the Judicial Administrative Division **Highlight:** Topics include federal and state jurisdiction issues in natural resources law, federal bankruptcy issues, federal rules of evidence, the taking of private property for public use and significant decisions of the U.S. Supreme Court. **Registrar:** Sandy Ross 312/621-9570 **Fee:** $205 non-members $190 members of Judicial Administration Division	Hotel Utah Salt Lake City, UT
23-24	**Securities and Tax Law:** National Institute on Investment Limited Partnerships 1984, sponsored by the Young Lawyers Division* **Highlight:** This National Institute will focus on the securities and tax issues applicable to tax shelter offerings as well as "income oriented" investments. **Registrar:** Roslyn Powell 312/567-4725 **Fee:** $375 non-members $350 ABA members	Hilton Plaza Orlando, FL
24-25	**Professional Liability:** ABA Division of Professional Education Seminar on Legal Malpractice, sponsored by the Standing Committee on Lawyers' Professional Liability* **Highlight:** This program is a practical approach on how lawyers can recognize malpractice, take particular care in the performance of their professional duties, reduce their own vulnerability, protect their clients from malpractice and prepare for defense against unjustified claims. **Registrar:** Azike Ntephe 312/567-4725 **Fee:** $300 non-members $275 ABA members $100 law students	Denver Hilton Denver, CO
	Editor's Note: The above fee includes one copy each of *Preventing Legal Malpractice* (Jeff Smith) and *Legal Malpractice* (Levit & Mallen). There is a $25 discount for those who already have copies of *Legal Malpractice* and do not wish to purchase another one.	
26-27	**Litigation:** National Institute on the Use of Computers in Litigation, sponsored by the Young Lawyers Division* **Highlight:** This National Institute will explore the potential uses of computers in the management of discovery and litigation dockets, selection of jurors, simplification of evidence, and damage analysis. **Registrar:** Roslyn Powell 312/567-4725 **Fee:** $375 non-members $350 ABA members	Grand Hyatt New York, NY
26-28	**Bar Leadership:** Affiliate Outreach Regional Leadership Institute, sponsored by the Young Lawyers Division **Highlight:** Topics will include tax and financial planning for young lawyers, funding and obtaining grants, motivating volunteers, long-range planning, minority lawyer involvement in bar activities plus public service project presentations. **Registrar:** Deborah Owen 312/947-3882 **Fee:** none	Royal Plaza Hotel Lake Buena Vista, FL

February AAWL Minutes

On Wednesday, February 1, 1984 the February meeting of AAWL came to order at noon at the Tea Leaf Restaurant with President Adrienne Fedor presiding.

1. Announcement—The National Association of Women Lawyers February Convention in Las Vegas, Nevada was again discussed. A report on the convention is expected from that organization's president, Mahala Dickerson at the March meeting.

2. Reception for Superior Court Judge Karen Hunt. After the installation of Judge Hunt on February 17, AAWL hosted a reception for Judge Hunt at the home of Sandra Saville. The catered reception was well-attended and a complete success. Many thanks to Ms. Saville and warmest congratulations to Judge Hunt.

3. Announcement—A recording and transcript of the installation ceremony has been obtained by AAWL. The humorous presentations of Randall Burns, Executive Director of the Alaska Bar Association and attorney David Walsh were memorable and a reprise of these speeches will occur at the beginning of the March meeting.

4. Announcement—Election of officers—although elections are not scheduled until the May meeting, it is time to start thinking about who will be carrying on the important traditions of this organization. This writer can assure you that the experience has been both enlightening and rewarding. When five individuals get together and work as a team, it is a very easy job and worth the few hours each month that may be required. Any interested persons are encouraged to talk with any of the current officers; Adrienne Fedor, Janet Platt, Shelby Nuenke-Davison or Mary Ann Foley.

5. Announcement—Renewed interest has been expressed in a women lawyer's directory. Although attempts have been made in recent years to compile a directory containing the names, addresses, educational histories and areas of specialization of other woman lawyers, an insufficient number of forms have been returned to the persons compiling the directory. Accordingly, a committee is being formed to compile the directory with the authority to telephone the entire roster of members and procure such information as each member is willing to have published in the directory.

6. February Speaker—Anchorage Assemblyman and attorney Dave Walsh spoke to the group regarding effective presentations by attorneys before legislative bodies. Mr. Walsh's candid and thoughtful comments on "legislative" practice provoked many questions and provided many tips on the common errors of attorneys qua attorneys before such decision-making bodies. Many thanks to Mr. Walsh.

7. Announcement—The speaker for March will be Lillie McGarvey, President of the Alaska Native Women's State Organization and Vice President and Director for the Aleut Corporation. Ms. McGarvey will be attending the statewide conference, "ANCSA and Our Heritage" which is being held in Anchorage on March 2-3 and she will share her thoughts on the conference.

Respectfully submitted,
Adrienne Fedor

Letters

January 13, 1984

Mr. Randall P. Burns, Executive Director
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

Re: Herr Georg Dorn—Legal Intern

Dear Randall:

I am sending along the letter, with Curriculum Vitae, which I had from Herr Georg Dorn, a resident of Berchtesgaden, Bavaria, Federal Republic of Germany, who is currently serving a mandatory internship under the German legal system as a Rechtsreferendar (usually translated "junior barrister") with the Landgericht (approximately equivalent to our Superior Court) at Traunstein, which is likewise in Bavaria. As I explained to you earlier, and as you will understand from a reading of his letter, Herr Dorn wishes, for the reasons stated, to take advantage of his option to extern for a three-month period in the United States. He seeks such opportunity in either a lawyer's office or chamber of commerce, but I suspect the latter alternative contemplates an organization similar to the German Handelskammer and not the chamber as we know it in the United States. He would not likely increase his understanding of the Anglo-American legal system at the Chamber, whatever the improvement in his language skills.

I understand that you have kindly agreed to solicit opportunities for Herr Dorn through one or more mailings to the members of the Alaska Bar Association. You are aware that I am currently practicing as counsel to the firm of Hagans, Brown & Gibbs, a status which limits in any case my opportunity to offer a place to Herr Dorn.

I have discussed Herr Dorn's letter with Bernd C. Guetschow, Esq., the Honorary Consul of the Federal Republic of Germany for Alaska, and he is informed of your cooperative gesture. I am designating a copy of this letter for his further information.

Whatever action is taken, I hope that you will inform Herr Dorn directly so that he may plan accordingly. I am grateful for your kind attention, as I know he will be.

Sincerely,
William J. Moran

Berchtesgaden, October 27, 1983

Herr Georg Dorn
Salzburger Str. 10
D-8240 Berchtesgaden
(Fed. Republic of Germany)
(Tel. 08652/5268)

Dear Sirs:

Since September 15th I am a so-called "Rechtsreferendar" (which is about equivalent to a junior barrister attending the courts and thus qualifying for the profession of a jurist such as judge, district attorney, lawyer, etc.) at the Landgericht Traunstein, Bavaria. During the education there I will have the opportunity to take a 3-month elective practical course either at a chamber of commerce or at a lawyer's office in a foreign country.

I have great interest in doing this internship in the United States of America, because I want to gain basic knowledge in the Anglo-American law system—of course just as far as it is possible within 3 months—and improve my language skills in English. I think such an internship in the U.S. would enable me to combine both intentions.

So I would like to ask you, if you would offer such a post in the coming year, precisely from June 16th to September 15th 1984. If you do, I would like to apply for it.

Please inform me about that and let me know if you need further information about myself or my education.

Respectfully,
Georg Dorn

February 22, 1984

Hon. Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Room 124, State Capitol Building
Juneau, AK 99811

Dear Mr. Bussell:

The following is in response to a request for additional information through Rep. Abood's staff in support of our request for two additional district court judges and one additional superior court judge for the Anchorage trial courts.

Anchorage District Court

Problem: The Anchorage district court has had seven judges since FY 1977. During that period, a 69% increase in Anchorage Police Department (APD) officers has contributed to a 175% increase in DWI arrests. A large portion of this increase was due to a special enforcement program operated by the APD and the Anchorage criminal prosecutor. This program, which is now funded by the Municipality of Anchorage, was instituted in 1981 and is slated to continue. The district court has simply been inundated with hearings and trials generated by the increased police activity, particularly that relating to DWI arrests. This, coupled with greater penalties, has caused attorneys to litigate longer and harder to protect their clients' interests. Complex, lengthy pretrial motions are routinely filed in criminal cases. Drunk driving cases often receive as much pretrial attention as many routine felonies. This causes the court to spend more time in each case than was previously necessary.

Consequences: The Anchorage district court is at the point of being unable to keep abreast of all the DWIs as well as other cases coming before it. Routinely, each day's calendar has between five to ten criminal cases trailing, i.e., cases which were set for trial that day or earlier but cannot be reached because the judges are trying other cases. Almost daily the court is faced with the threat of having to dismiss cases under Criminal Rule 45 for not being able to hear the case within 120 days of arrest. If the Anchorage district court does not receive some added judicial and clerical resources, some criminal cases will be dismissed simply because they cannot be reached.

Solution: The district court, in conjunction with the administrative office of the courts, has developed and implemented procedural changes to speed up the trial process. Clerical staff have been added. Visiting judges and magistrates have been scheduled to sit in Anchorage. Supreme court justices, appellate court and superior court judges have sat in district court when their schedules allow. However, these are stopgap measures. Additional judicial resources are now necessary to meet the growing backlog.

Anchorage Superior Court

Problem: The Anchorage superior court has had ten superior court judges since FY 81. Since that time, felony cases and civil cases have become more complex and presumptive sentencing, along with other factors, has made it more likely that criminal cases will be tried. Criminal felony trials have more than doubled from 40 during FY 81 to 92 during FY 83, an increase of 130%. In July 1981; each civil judge had a pending caseload of 588 cases. As of December 1983, that number passed 1,000 cases, an increase of 70%. The Anchorage superior court is also responsible for traveling to six bush locations 36 out of 52 weeks each year (69%). This is a further drain on judicial resources in Anchorage. The bush calendars are predominately criminal cases.

Lengthy trials in both criminal and civil matters are becoming more common. The increased length and number of trials, coupled with Criminal Rule 45 which requires trials be started within 120 days of arrest, has necessitated assignment of criminal cases to the civil division. The civil division has heard approximately 25% of the criminal division's caseload, which has helped create a backlog of civil cases awaiting disposition.

The civil division has had its share of lengthy cases as well. The Olsen v. Afognak case involving multiple parties will require almost ten weeks of trial before completion. The lawsuit challenging Anchorage jail conditions has required seven weeks of trial. One civil division judge has five cases coming up, each of which will require four weeks or longer to try.

Consequences: Without additional resources, more civil cases will have to be postponed in order for the court to hear felony cases. This means more and more domestic cases and other civil cases will take a back seat to the criminal calendar. This will prolong the disruption and uncertainty experienced by civil litigants, particularly in divorce cases involving custody of children. The level of judicial services to which the residents of the third judicial district are entitle will continue to diminish and could approach the inordinate delays of three or more years a person must wait for a civil trial in some jurisdictions in the "lower 48."

Solution: Additional judicial and support resources are required if we are to avert the scenario above. The superior court calendaring system was modified in 1981 with a great deal of success. Growth in court business since then has overcome the benefits of that change. When schedules allow, visiting or retired judges are scheduled into the Anchorage superior court. However, as with the district court, this is a temporary solution.

Both Elaine Andrews, assistant presiding judge for the district court, and I hope to have an opportunity to meet with you at your convenience. If you have any questions regarding this information or any aspect of our request, please contact me at 264-0406. Thank you.

Sincerely,
Mark C. Rowland
Presiding Judge

cc: Members of the House Judiciary Committee; Hon. Mitch Abood; Chief Justice Edmond W. Burke; Arthur H. Snowden, II; Anchorage Superior Court Judges; Anchorage District Court Judges; Albert H. Szal, Area Court Administrator

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In that the district court has not increased its size since FY 77 and the superior court has not increased since FY 81, the statistical information below represents caseload growth before those two courts since FY 77 and FY 81 respectively.

ANCHORAGE DISTRICT COURT

	FY 77	FY 83	Increase	Pctge.
Caseload (Factors)				
Anchorage Police Department (APD) Officers	174	294	120	69%
Square Mileage Patrolled	31	110	79	255%
DWI Arrests by APD	651	1,790	1,139	175%
Search Warrants Requested	99	350[1]	251	254%
Small Claims Filings	2,744	4,734	1,990	73%
Judicial Staffing				
District Court Judges	7	7	0	0%
Committing Magistrates	1	1[2]	0	0%

[1] 182 handled by committing magistrates.

[2] One committing magistrate work station is manned 24 hours each day, 365 days per year by five individuals on a rotating schedule. This position is primarily responsible for setting bail during non-duty hours and conducting traffic trials during duty hours. From 1977 to 1978, one individual was assigned traffic trials only during duty hours.

ANCHORAGE SUPERIOR COURT

	FY 81	FY 83	Increase	Pctge.
Caseload (Filings)				
Felony Cases	413	583	170	41%
Domestic Relations Cases	3,737	4,917	1,180	32%
Other Civil Cases	2,156	2,511	355	16%
Children's Matters	445	593	148	33%
Probate Cases	777	1,356	579	75%
Total Increase	7,528	9,960	2,432	32%
Felony Trials	40	92	52	130%
Judicial Staffing				
Superior Court Judges	10	10	0	0%
Superior Court Masters	4	4	0	0%
Total Increase	14	14	0	0%

Burger Address Dominates Mid-year Meeting

by Donna C. Willard

Taking center stage for his annual state of the judiciary message two hours earlier than usual in order to meet east coast media deadlines, Chief Justice **Warren Burger** once again used that forum to criticize the nation's lawyers.

Providing fodder for later heated debate and sharp criticism, not to mention extensive media coverage, he asserted that the use of what he considered to be unprofessional modes of advertising were responsible for a sharp decline in public confidence in the legal profession.

Not mentioned was the Supreme Court's landmark case, *Bates & Osteen v. Arizona Bar,* which opened the door to advertising or the First Amendment to the Constitution which would seem to negate any attempt on the part of the organized bar to regulate matters of taste.

More Criticism

Citing a 14-year-old study, Burger criticized the lawyer discipline system which according to his analysis is weak. Condemnatory remarks were also leveled at discovery abuse and legal fees.

On the positive side, the Chief Justice praised the efforts at delivery of low cost legal services such as storefront legal clinics and what he perceived to be an increase in the number of qualified trial advocates. In past addresses Burger claimed that up to 50% of trial attorneys appearing in federal court are incompetent.

The House of Delegates, which commenced its two-day session the day after the Chief Justice's remarks, did not have anything quite so exciting on its agenda. What turned out to be the most controversial item was a resolution by the Section of Individual Rights & Responsibilities which would support the lifting of prohibitions against prescribed use of marijuana for treatment of serious illnesses such as cancer where it has recognized therapeutic value. After heated debate, the measure passed.

Student Clinical Experiences

Also the subject of some differing views was a proposal which would encourage law schools to provide students with opportunities for properly supervised, clinical, legal work, for which a student could receive compensation. Those in favor cited the positive effects of exposure to private practice while those opposed contended that the heavy burden on the private practitioner to provide supervision and evaluation would denigrate from service to the client. Also, it was pointed out that the law schools are not agreed that this is a reasonable method of providing practical experience. The resolution failed.

On one of the few measures which actually required a physical count of its members, the House passed a resolution supporting amendments to the Freedom of Information Act to afford protection to all confidential sources in order to make clear that all information furnished to criminal or national security investigations by confidential sources is exempt from disclosure.

Dues Waiver

In the near future, first year members of the American Bar will not be required to pay dues if enrollment is achieved within one year of graduation from law school. It is estimated that the program will result in an additional 10,000 new members per year. The current level is 17,000 to 18,000 per year.

Also approved was an amendment to the American Bar Associaiton Standards for Criminal Justice which will require clear and convincing evidence that release pending appeal will not create a substantial risk that appellant will not appear to answer or is likely to create serious crimes, intimidate witnesses or otherwise interfere with the administration of justice. Currently, the standard provides that a court must find a substantial risk in order to preclude release.

Grand Jury Hearsay

A resolution opposing S.52, the proposed Armed Career Criminal Act was passed. Both prosecutors and defenders oppose the measure—one group because it allows for federal prosecution of persons who have committed state crimes and the other because of the mandatory sentencing provisions.

Despite opposition from representatives of the judiciary, the House passed an amendment to the American Bar Association's Principles of Grand Jury Reform which would have the effect of precluding a prosecutor from presenting a hearsay version of critical eyewitness testimony to a grand jury absent some compelling necessity to do so.

Model Rules, Uniform Acts

Subject to overwhelming approval was a resolution urging state and local bars to cooperate with state and local legal services corporation grantees and other agencies providing civil legal services to indigents. The effect of the resolution is to encourage private bar involvement in providing services to the poor.

Also adopted were:

—The Unauthorized Practice of Law Committee's Model Rules for Advisory Opinions on the Unauthorized Practice of Law;

—the Uniform Premarital Agreement Act promulgated by the National Conference of Commissioners on Uniform State Laws;

—opposition to any regulation, including the Model Title Insurance Act, which would have the effect of prohibiting lawyers from issuing title insurance policies;

—numerous proposed amendments to the Internal Revenue Code;

—the Uniform Transfers to Minors Act adopted by the National Conference of Commissioners on Uniform State Laws; and

—amendments to the Statement of Standards and Practice for Lawyer Referral & Information Services to minimize potential for exposure to anti-trust litigation.

Deferred Proposals

Deferred until the annual meeting of the American Bar Association to be held in Chicago in August were:

—Standards of Practice for Diverse Mediation;

—Uniform Marital Property Act;

—amendments to the ABA Standards for Approval of Law Schools which would specifically recognize the physically handicapped as a group to which full legal educational opportunities should be provided; and

—a resolution supporting enactment of the Income-Dependent Education Assistance Act.

Alaska's representatives in the House of Delegates are **Dick Gantz, Keith Brown** and **Donna Willard.** For any further information, elucidation, etc., on any of the foregoing, please feel free to contact them.

Labor Law Conference Scheduled

The Labor Law Section of the Seattle-King County Bar Association, in conjunction with the University of Washington School of Law, is holding its Seventeenth Annual Pacific Coast Labor Law Conference on May 3 and 4, 1984 at the Weston Hotel in Seattle, Washington. The panel of speakers, comprised of representatives from both the union and management sides of the bargaining table, as well as from academia and government, will present papers and answer questions on the pressing issues facing union/management officials and practitioners in the labor relations field.

The two-day conference will include a review of equal employment law issues such as the recent federal district court comparable worth decision awarding over a billion dollars in back pay to employees of the State of Washington. Remedies for sexual harassment will be treated in depth by means of lecture, panel discussion and a litigation cameo comprised of mock attorney interviews and examination of witnesses which will be critiqued by a federal district judge and counsel.

Recent developments in public sector bargaining, effective utilization of the Merit Systems Protection Board by federal employees and religious exemptions from agency shop obligations will be explored in the program devoted to public sector developments.

The recent changes in the direction of the National Labor Relations Board will be discussed by a tripartite panel including board member Patricia Diaz Dennis and both management and union counsel. The programs on the duty of fair representation and the clash between federal bankruptcy and labor laws will pit some of the leading practitioners in those areas against each other and should be of great interest to a large segment of the participants.

In addition to Ms. Dennis, the speakers will include Edward B. Miller, former NLRB Chairman currently in private practice representing management; the Honorable William Matthew Bryne Jr., U.S. District Court Judge in the Central District of California, and Professor Vern Countryman from Harvard University Law School. There will be several additional speakers from around the country, each of whom is widely respected in his/her field.

Mr. Miller will be presenting the luncheon address on May 3. His topic will be "A Review of EEO and Representation Case Issues in the High Tech Age".

The Washington State Bar has indicated that it will allow participants 13 CLE credits; the Montana Bar, 13.25 credits; and the Idaho Bar, 12 credits.

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Letters

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December 10, 1983

Dear Harry:

I would like to bring to your attention the existence of a new publication which I think would be of interest to the membership of your state bar association—particularly those whose practice involves natural resource development and protection.

The Conference of Western Attorneys General in conjunction with the Lincoln Institute of Land Policy publishes the Western Natural Resource Litigation Digest, *WNRL*.

WNRL is a quarterly publication reporting on approximately 300 currently pending natural resource/environmental cases active in western state and federal courts and the District of Columbia. Cases are updated four times a year and are reported until their ultimate legal conclusion.

Commentary, the magazine section of the *WNRL* Digest, includes highlights of key developments in ongoing cases, coverage of U.S. Supreme Court activity in natural resource litigation, plus articles analyzing the policy significance to the West in key areas of litigation.

What began as a very helpful resource for western state attorneys general has now been made available to the public on a subscription basis. My office has found *WNRL* to be extremely useful in keeping us up-to-date on natural resource litigation throughout the West. I want to share that information with other members of our state bar. Inquiries regarding subscriptions should be addressed to Tish Sprague, Editor, *WNRL* Digest, Conference of Western Attorneys General, 720 Sacramento Street, San Francisco, CA 94108.

Sincerely,
Norman Gorsuch
Attorney General, Alaska

Women and Minority Law Students Grow in Numbers, While Total law School Enrollment Drops

Although total law school enrollment dropped slightly during the current academic year, for the first time since 1968, enrollment by women and minorities has increased.

Figures on law school enrollment were released today by James P. White of Indianapolis, consultant on legal education to the American Bar Association, in the results of an annual study conducted for the ABA's Section of Legal Education and Admissions to the Bar.

As of October 1, 1983, there were 127,195 persons enrolled in ABA-approved law schools in the United States and Puerto Rico. The comparable figure for 1982 was 127,828, representing a drop of 0.5 percent. Enrollment of first year students declined by 2.08 percent, from 42,034 in the 1982-83 academic year to 41,159 as of October 1.

However, the number of women law students increased by 1.9 percent, from 47,083 during 1982-83 to 47,960 as of October 1. Minority students showed an even larger percentage gain, increasing in number from 11,611 in 1982-83 to 11,866 as of October 1, for a 2.2 percent increase.

The decrease in total enrollment occurred despite the fact that there was one more approved law school during the 1983-84 academic year than there had been the year before. Without the addition of that school, total enrollment would have decreased by 0.93 percent, and first year enrollment would have declined by 2.5 percent.

Editor's Note: Tables 1, 2 and 3 attached provide additional statistical information on law school enrollment patterns.

TABLE 3
First Year ABA Law School Enrollment
Men and Women 1978-1984

	1979-80 (169 schools)	1980-81* (171 schools)	1981-82* (172 schools)	1982-83* (172 schools)	1983-84 (173 schools)
MEN	27,227	27,024	26,710	25,898	25,110
WOMEN	13,490	15,272	15,811	16,136	16,049
TOTAL	40,717	42,296	42,521	42,034	41,159

*Figures revised from previous press release—consistent with data in Annual Review of Legal Education.

TABLE 2
Total ABA Law School Enrollment
Men and Women 1978-1984

	1979-80* (169 schools)	1980-81* (171 schools)	1981-82* (172 schools)	1982-83 (172 schools)	1983-84 (173 schools)
MEN	84,233	83,275	82,410	80,745	79,215
WOMEN	38,627	42,122	44,902	47,083	47,980
TOTAL	122,860	125,397	127,312	127,828	127,195

*Figures revised from previous press release—consistent with data in Annual Review of Legal Education.

TABLE 1
1983 ABA LAW SCHOOL ENROLLMENT

	Full Time	Part Time	Total
1st Year	34,568	6,591	41,159
2nd Year	33,167	5,465	38,632
3rd Year	32,149	4,826	36,975
4th Year	—	4,435	4,435
Total J.D.	99,884	21,317	121,201
Graduate	1,655	3,200	4,855
Total J.D. and Graduate	101,539	24,517	126,056
Other	649	490	1,139
GRAND TOTAL	102,188	25,007	127,195

Anchorage Bar Association Forms Young Lawyers Section

At its January 24, 1984, Board meeting the Anchorage Bar Association Board of Directors voted unanimously to amend the Bylaws to form a Young Lawyers Section. The Board also authorized the newly formed Section to affiliate with the American Bar Association Young Lawyers Division. The Board hopes that the establishment of a specific section to address the interests and needs of young lawyers will help to stimulate more participation in Bar Association activities by young lawyers and lawyers new to the practice of law.

Membership in the section is automatic to those members of the Anchorage Bar Association who are age 36 or under or who have been practicing three years or less by January of the calendar year.

President Richard Crabtree appointed Lynn M. Allingham of Ely, Guess & Rudd as chairperson of the section. Doug Marston of Aglietti, Pennington and Rodey was appointed vice chairperson, and Shelby Nuenke-Davison of Erwin, Smith and Garnett was appointed secretary/treasurer. These three now make up the Executive Committee. The Executive Committee met and adopted Bylaws for the section and passed a resolution to authorize the section to affiliate with the American Bar Association Young Lawyers Division. The Executive Committee drafted a petition to the American Bar Association to seek affiliation. This petition was unanimously approved at the American Bar Association Young Lawyers Division

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Anyone knowing the whereabouts of **MOLLY LEWIS,** please contact the Trust Department of Mellon Bank, N.A., One Mellon Bank Center, Room 3845, Pittsburgh, PA 15258, or call (412) 234-6258.

Reciprocity, Sound Recording of Federal Proceedings, Hot Issues at YLD Mid-Winter Meeting

The annual American Bar Association Young Lawyers Division mid-winter meeting took place in Las Vegas, February 9th through the 12th. Many interesting resolutions and recommendations were on the agenda for the general assembly meeting which was held Saturday.

One of the most controversial recommendations was a resolution urging reciprocal admission to the state bars of each state. At the present time 32 jurisdictions admit out-of-state attorneys without additional examination, providing that the attorney has actually practiced in another jurisdiction for a prescribed period of time, is in good standing in the state of prior admission, and meets certain other requirements. Eight states require a special modified bar examination for previously admitted attorneys. Eleven states require all applicants, including attorneys previously admitted in other jurisdictions, to take the same general bar examination as newly graduated applicants. The states' requirements vary as to the length of time of prior practice required for reciprocity. They range from two years in Montana to eight or ten years in Colorado, with most states (including Alaska) having a requirement of five years. The recommendation of the Young Lawyers Division in support of reciprocity passed the assembly by a narrow margin with most of the opposition coming from states in the "Sun Belt" area. The resolution recommended that all states adopt a policy of allowing admission to practice without further examination to those attorneys who had been in active practice for the last three out of five years and who were in good standing and who had graduated from an ABA accredited law school. The resolution will be presented to the ABA house of delegates at their next meeting.

Another resolution which generated a lot of controversy at the YLD assembly was a resolution opposing the authorization of use of sound recording in lieu of shorthand or mechanical reporting of Federal District Court Proceeding. The proponents of the resolution argued that allowing tape recording of these proceedings would inhibit the development of new technology such as computer-aided transcription of stenotype recordings. The resolution was defeated by one vote on roll call after a voice vote and show-of-hand vote both produced a tie.

Other issues debated at the assembly were resolutions in the following areas: (1) Amending conflict of interest rules to allow greater pro bono work by federal attorneys, (2) opposing recent restrictions regarding funding and eligibility rules by the Legal Services Corporation, (3) urging development of

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Labor Law Conference

[continued from page 17]

Attorneys attending the conference from other states should check with their state bar association to determine the procedure for receiving CLE credits, if desired. The Labor Law Section will gladly assist any such person in that respect. The registration fee for the conference is $150.00 if paid on or before April 9, 1984. Thereafter, the fee is $185.00. One lunch, refreshments and a no-host reception are included in the fee. For more information contact Michael H. Beck, Conference Chairperson, at (206) 621-8500, or Tamara Moats at the University of Washington, (206) 543-5280.

Discipline Cases
Informal Admonitions

Nature of Complaint: DR 7-102(6)(7) Assist client in fraudulent conduct and participation in the creation of false evidence

Attorney L represented an out-of-state attorney, client R, who sought to obtain a divorce in the State of Alaska in order to avoid notoriety in his home state. Client R came to Alaska for the first time to appear before a special master in the divorce case. From the testimony actively elicited by Attorney L, the court was given the impression that client R had been in Alaska for about two and one half months. Attorney L was prepared to file an affidavit signed by client R which misrepresented the client's actual presence in Alaska. Attorney L advised this office that he had only asked his client about his "address," and had not asked him whether he lived at his address, so that he had not created false evidence. He also stated that he questioned the constitutionality of Alaska's residence requirement.

Attorney L received a private informal admonition stating that Attorney L knowingly created a false impression of residency although his prior conversation with a local judge had alerted him that his client's contacts with the state were insufficient, in that judge's opinion, to establish residency. Attorney L was advised that any challenge to the residency requirement should have been clear and direct.

Attorney A voluntarily, although reluctantly, withdrew from representation of Mr. S's ex-wife after discussions with this office. He was issued a private informal admonition advising him that he should have withdrawn from representation of his client once he realized that he had spoken with Mr. S in the same matter, prior to his representation of the ex-wife. Attorney A was advised that his conduct violated the standards set out in *Aleut v. McGarvey*, 573 P.2d 473 (Alaska, 1978), DR4-101(B) which protects the confidences or secrets of a client, and Canon 9 which prohibits conduct which creates an appearance of impropriety. Attorney A was advised that the absence of a retainer or fee arrangement was irrelevant and that the attorney-client relationship begins when an attorney voluntarily listens, in his professional capacity, to a client's preliminary statement of the facts.

The complainant, Mr. S, alleged that Attorney A appeared on behalf of his ex-wife in a domestic proceeding, although Attorney A had earlier discussed the same proceeding in numerous conversations with him. Attorney A admits that he had one or two conversations with Mr. S in reference to the action. Mr. S alleges that he had given Attorney A information in confidence, a fact which Attorney A denies. Attorney A gave the following account of the conversation that he recalled:

> About all I recall of this particular conversation is that he indicated that he was divorced, was having problems with visitation, that he was unemployed and considerably behind in his child support, that he had another attorney who was not giving him fast enough action, and that he wanted to file a contempt action against his former wife.

Attorney A states that he advised Mr. S to stay with his present attorney.

Attorney A states that he did not realize when he agreed to advise Mr. S's ex-wife that Mr. S was the same person he had earlier spoken with on the telephone. He realized this after Mr. S raised the issue at the end of the first court hearing in which they both appeared. However, although Mr. S raised the issue at the conclusion of the hearing and filed an affidavit with the court alleging that Attorney A was involved in the conflict of interest, Attorney A continued to represent Mr. S's ex-wife.

IN THE SUPREME COURT OF THE STATE OF ALASKA

Supreme Court No. 6289
ORDER

In the Disciplinary Matter Involving:
PETER B. WALTON,
Respondent-Attorney

Before: Burke, Chief Justice, Rabinowitz, Matthews, Compton, Justices, and Carpeneti, Superior Court Judge. (Moore, Justice, not participating.)

On consideration of the petition for rehearing and the substitute personal statement by Peter B. Walton, lodged October 10, 1983 and filed October 28, 1983,

IT IS ORDERED:

The petition for rehearing is granted in part, Opinion No. 2734, filed on September 30, 1983, is amended by striking out pages 17, 18 and 19 and replacing them with the attached pages 17, 18, 19, 19a, 19b and 19c. In all other respects, the petition for rehearing is denied.

Entered by direction of the court at Anchorage, Alaska on January 3, 1984.

CLERK OF THE SUPREME COURT
ROBERT D. BACON

(Rabinowitz and Matthews, Justices, dissent. They would grant the petition for rehearing for the reasons stated in their dissenting opinion filed September 30, 1983.)

Attachment to Order

ccs: Justices
Counsel
The Honorable Walter L. Carpeneti, Pro Tem
West Publishing Company
Todd Communications, Inc.
All Opinion Subscribers

Only one of the cases cited by Walton for the proposition that due process requires proof by clear and convincing evidence before an attorney may be disciplined actually concerned attorney discipline[7] and that case did not even address the standard of proof issue, much less require proof by clear and convincing evidence[8] A review of the leading cases and consideration of the important policy issues involved here leave us convinced that requiring proof by a preponderance of the evidence—rather than a higher standard—does not violate Walton's due process rights.

Santosky v. Kramer, 455 U.S. 745, 71 L.Ed.2d 599 (1982), provides the analytical framework for the burden of proof issue. In **Santosky,** which concerned termination of parental rights, the Court held that the proper standard of proof could be determined by the "balancing process," 455 U.S. at 754, 71 L.Ed.2d at 607, established in **Mathews v. Eldridge,** 424 U.S. 319, 335, 47 L.Ed.2d 18, 33 (1976). In that process the court must weigh the private interest involved in any given proceeding against the public's interest, and determine whether, given the relative strengths of those interests, the risk of error of an incorrect factual decision should be evenly borne or should be placed more heavily upon the public. If, because the individual's interest is greater than the public's, the risk should be placed more heavily upon the public, then a higher standard of proof must be used.

The private interest in the present case is Walton's interest in practicing law, which is his livelihood, and his interest in protecting the integrity of his name. These are weighty interests indeed. The public interest in the present case is the public's interest in a fair and accurate judicial system, which requires that lawyers working within it act with integrity and honesty. This interest, like Walton's, is a substantial one.

This court cannot conclude, as Walton asks us to do, that his interest in practicing law and in his reputation is so much more substantial than the public's interest in a fairly and accurately functioning judicial system that we should adopt a standard of proof which puts the risk of an incorrect factual determination on the public. Lawyers are licensed by the state (through this court) to engage in activities affecting the public from which others are excluded. Their licensing includes a certification of fitness to hold the trust and confidence of the public at large, including potential clients as well as potential adversaries. The harm which would be caused by a lawyer acting unethically is substantial. Under all of these circumstances, we are unwilling to hold that the risk of an incorrect factual determination in a bar disciplinary proceeding should be placed primarily on the public. Because there are substantial interest on both sides, the risk of error[9] should be borne equally. That is accomplished by use of the preponderance of the evidence standard. Due process demands no more.

Thus, we reject Walton's position that proof by clear and convincing evidence is required as a matter of federal due process.[10] Nor does the authority that he cites persuade us that such is required under the state constitution.[11]

II. Fabrication of False Evidence

Walton contends that, as a matter of law, he did not create false evidence in violation of DR 7-102 (A) (6), since, according to Walton, an unverified complaint is not evidence. The Bar Association contends that the term "evidence," in this context, should not be limited to its technical meaning under the Rules of Evidence. According to the ABA, DR 7-102 (A) (6) should apply to any false document concerning a critical aspect of an ongoing lawsuit, produced by manipulations outside the courtroom.

Like the ABA, we believe that the term "evidence," in this context, was meant to apply to a broader category of items than those admissible at trial under the technical requirements of the Rules of Evidence. Documents attached to pleadings, although not always admissible evidence, are often relied upon by the court and counsel in matters of importance. Opposing counsel, for example, upon seeing a document such as the one in the case at bar, might well conclude that his client's position was untenable and so advise him, despite the fact that the document was fabricated. The danger is that others will be misled, to their detriment, with a potential for harm as great as if the item had been admissible at trial.

III. Evidence of Wrongdoing

Where, as here, findings of fact entered by the Disciplinary Board are challenged in this court, "the repondent attorney bears the burden of proof in demonstrating that such findings are erroneous." **In re Simpson,** 645 P.2d 1223, 1227 (Alaska 1982). And,

> [t]hough this court has the authority, if not the obligation, to independently review the entire record in disciplinary proceedings, findings of fact made by the Board are nonetheless entitled to great

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Young Lawyers

[continued from page 18]

meeting in Las Vegas on February 10th. It is anticipated that this affiliation will bring new resources to the Anchorage Bar Association both in terms of grants for specific projects and information and assistance. Two positions remain vacant on the Executive Committee of the Young Lawyers Section. If interested in serving on the committee, or if you have any ideas for projects for the Young Lawyers Section, please contact Lynn Allingham.

Mid-Winter Meeting

[continued from page 18]

mandatory continuing legal education programs, (4) opposing restrictions of use of polygraphs for government employees, and (5) opposing legislation limiting a lawyer's ability to issue title insurance policies. If you have any questions about the outcome of any of these resolutions, or if you would like more details or information, contact Lynn Allingham of Ely, Guess & Rudd.

Analysis of 1983 to Present Discipline Cases

	Formal Investigations		Preliminary Investigations	
	Investigation	Disposition	Investigation	Disposition
1983				
1st QTR	4	2	1	0
2nd QTR	6	3	17+(1)*	4
3rd QTR	6	1	22+(3)*	4
4th QTR	6	2	31	3
TOTAL	22	8	75	11
1984				
1st QTR	7	1	31	3
Grand Total	**29**		**106**	

*Abeyance Pending Fee Arbitration Hearing

Analysis of Pre-1983 Discipline Cases

The Discipline Section of the Alaska Bar Association has completed a comprehensive review of all pre-1983 disciplinary complaints. This report is divided into two sections: **Investigation,** which reflects those cases which require further investigative effort by discipline staff, and investigator or outside special counsel; and **Disposition,** which reflects those cases which are in a procedural stage: abeyance, dismissal, private informal admonition, petition for formal hearing and formal proceedings. Specific case information includes case number, month and year filed, and assigned counsel.

There were five (5) cases previously classified as informal investigations which have been reported separately on the quarterly discipline report. Since those cases do not have case numbers, they are not reflected on this report. Of those cases, however, three (3) are presently in conciliation, and two (2) have been re-classified as preliminary investigations.

1. INVESTIGATION:

Further Investigation Necessary by Discipline Section:

Case No.	Date Filed	Assigned Counsel
81-039	May 81	Teresa Williams (TW)
81-091	Nov 81	TW
82-017	Apr 82	Stephen Van Goor (SVG)
82-045	Jun 82	SVG
82-063	Jul 82	TW
82-068	Aug 82	SVG
82-077	Sep 82	TW
82-078	Sep 82	TW
82-085	Sep 82	TW
82-110	Dec 82	SVG

10

Investigator Necessary:

81-089	Nov 81	TW
*82-042	Jun 82	TW
*82-104	Nov 82	SVG

(*companion cases) 3

Special Counsel Necessary:

80-012	Apr 80	SVG
*79-001	Feb 79	SVG
*80-016	May 80	SVG
*82-034	May 82	SVG
*82-071	Aug 82	SVG
*82-089	Oct 82	SVG

(*same attorney) 6

Investigation Subtotal 19

2. DISPOSITION:

Abeyance in Effect or Pending:

Case No.	Date Filed	Assigned Counsel
80-018	May 80	SVG
81-013	Feb 81	TW
82-072	Aug 82	TW
82-086	Oct 82	TW

Dismissed or Dismissal Pending:

Case No.	Date Filed	Assigned Counsel
80-126	Nov 80	TW
81-067	Aug 81	SVG
81-071	Sep 81	SVG
82-001	Jan 82	TW
82-002	Jan 82	SVG
82-006	Feb 82	SVG
82-009	Feb 82	SVG
82-014	Mar 82	TW
82-022	Apr 82	SVG
82-026	Apr 82	SVG
82-027	Apr 82	SVG
82-028	Apr 82	SVG
82-031	May 82	TW
82-040	Jun 82	TW
82-041	Jun 82	TW
82-044	Jun 82	SVG
82-047	Jun 82	TW
82-048	May 82	SVG
82-055	Jul 82	TW
82-056	Jul 82	SVG
82-065	Jul 82	SVG
82-076	Sep 82	SVG
82-080	Sep 82	SVG
82-091	Oct 82	TW
82-092	Oct 82	SVG
82-094	Oct 82	SVG
82-097	Nov 82	SVG
82-101	Nov 82	TW
82-102	Nov 82	TW
82-113	Dec 82	TW
82-114	Dec 82	TW
82-117	Dec 82	TW

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Private Informal Admonition Requested or Pending Submission:

Case No.	Date Filed	Assigned Counsel
81-070	Sep 81	TW
82-021	Apr 82	TW
82-046	Jun 82	TW
82-050	Jul 82	TW
82-058	Jul 82	TW
82-060	Jul 82	SVG
82-082	Sep 82	SVG
82-115	Dec 82	SVG
82-118	Dec 82	TW

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Petition For Formal Hearing or Pending Submission:

Case No.	Date Filed	Assigned Counsel
*80-127	Dec 80	SVG
*82-052	Jun 82	SVG
81-084	Oct 81	TW
81-086	Oct 81	SVG
82-081	Sep 82	TW

(*companion cases) 5

Formal Proceedings:

Case No.	Case Name	Date Filed	Assigned Counsel	Status
78-013	Peter T. Walton	Jun 78	John Lohff	Suspension in Effect
78-020	Clark Stump	Jul 78	SVG	Re-Instatement Request
80-011	Melchor Evans	Apr 80	SVG	Pending Supreme Court
81-057	Michelle Minor	Jul 81	SVG	Suspension in Effect
82-051	—	Jun 82	SVG	Pending Disc. Board
82-067	—	Aug 82	SVG	Pending Disc. Board

6

Disposition Subtotal 56

GRAND TOTAL 75

Interview with Judge Hunt

by Randall Burns

Judge Hunt

Randall Burns: I wonder if you would be willing to comment on whether you thought the Judicial Council process was a good one and whether it was effective in selecting judges?

Judge Hunt: Well the winner, I suppose, always has a tendency to approve of the process that resulted in their winning. Several things about the process did surprise me. For example, because of what other people had told me and my own observations of the process over the years, I had anticipated that it would be a political process. I was quite unprepared for just how political it really is. It was more political once the Judicial Council made their recommendations than I had ever imagined that it might be. Either that, or I was terribly naive and did not understand what others meant when they said the process was "political." The process is also political, although in a different sense, even before the Judicial Council makes its determination. I have supported this system, as compared to the election of judges, and I still support this system, but I'm not sure I would ever be willing to be judicial candidate again.

Q: Let's start with the instrument which began all this: the Judicial Council's poll of the members of the Bar Association. Do you think that the poll is a good format for eliciting the opinion of members of the Bar?

A: Partially yes, and partially no; that perhaps sounds like a wishy-washy answer, but the comment section of the poll has always disturbed a lot of people and those people who have gone through the process speak of it with a great deal of unkindness, and I think deservedly so. This last time the Council made the decision that those comments would not be given to the applicants and that comments would be revealed only if a substantive criticism was given that the applicant had not addressed in the application itself.

Q: Do you think that new procedure was a way of simply making the applicants feel better while still allowing the impact of the comments to be felt by the individual council members or do you think that the Council itself also weighed the comment section less as a result of that decision?

A: I don't know. I think that the applicants had some apprehension about that. I do know one thing: after the first time I went through the process I then began to make positive comments on the polls because I recognized, after having gone through the experience myself, that there's a lot of opportunity to make very unkind and brutal comments. I had always heard that that happened, but I guess I didn't pay enough attention to it until I had the experience and realized that an anonymous comment a few words long doesn't really tell anybody anything but it can be quite hurtful.

Q: Would you support the idea of eliminating the comment section of the poll?

A: Oh yes, and I would have supported that before, but now I would support it enthusiastically. I think if you have something to say that is substantive about a candidate then one ought to be willing to step forward and identify oneself and, more importantly, to identify the circumstances and the facts surrounding why it is that you have a particular impression.

Q: There were two women who were nominated by the Council and whose names were sent to the Governor this last time. What is your opinion, since you are now the second woman judge appointed to the Superior Court, about the support of women attorneys for your candidacy and the importance of the "women's vote"?

A: I think, by in large, that the women attorneys were very supportive of both Joan Katz and myself. I think for many of them it was an extremely uncomfortable situation because they wanted to see a woman on the Superior Court bench in Anchorage, and they felt that they had two well-qualified women and that the appointment of either one would have pleased them. How that fell out in terms of numbers I don't have any idea. I feel confident that there were women who supported me because, if I were appointed, there would be a woman sitting on the Superior Court in Anchorage, as well as women who supported me because they know me and they are personally supportive of me. I think the same thing was true for Joan Katz.

Q: It's not your opinion though, that the messages of support that perhaps went to Governor Sheffield came primarily from women?

A: No, I have no reason to believe that. There was broad-based, community-wide input to the Governor that was both male and female. It also came from different economic, social, business, and professional groups.

Q: Ok, one of the things that I think that people are always curious about is how much work does an attorney get done while trying to become a judge?

A: Well, my ex-partners would probably care to comment on that too. I don't think you get very much done.

Q: Do you think it's a full-time job?

A: Applying for a judgeship? I wouldn't say full-time, but it's like anything else: if you put yourself on the line then you have to do what you think is necessary to back that up. If you're involved in something that requires time and energy then you give the necessary time and energy. Fortunately, it wasn't a long process.

Q: Ok, another question: you state that the current process is very political and yet you do support the position that we should not have elected judges. What's the difference between contacting people to garner support for the judgeship and a candidate seeking votes from people? What distinction can be drawn between those processes?

A: It isn't that substantively different. During the process I laughingly remarked that there were really only two differences between getting appointed to the bench and running for elected office. One of them was that I didn't have to raise any money. The other one was that voter identification was very easy. There was one man in Juneau who was going to decide: he cast the only important vote. In lots of ways it isn't any different, therefore, from running for office. I guess there is one difference though: the people that you go to for support are people that have some basis for knowing you. They know you personally, or they know you professionally and they have worked with you, or you have represented them, or something like that. It's not like you are canvassing a neighborhood and stopping at every door.

Q: I guess what I'm getting at is my own concern, based on my observations of the process, that probably what we have here is the election of judges by 2000 people and their friends as opposed to 200,000 registered voters. Do you think that is legitimate?

A: Well, to talk about what makes it legitimate you have to compare it with other systems or other methods that we're aware of. The most common one being straight election of judges where they go through some sort of nomination process, campaign, and then the voters vote. However, it is an absolute keystone to an effective court system that no judge ever pre-decide an issue or a case. In contrast, the electoral process, particularly now in our history, demands that candidates take stands and positions and seek the support of identifiable special interest groups. That is exactly the opposite of what we want our judges to do.

Q: So what you're saying is that in writing to Governor Sheffield in support of your judicial candidacy, for instance that supporters have knowledge of your work and you are not as personally as indebted to them as a candidate who has received a campaign contribution or who has won support because of his/her position on certain issues. Is that what you're saying?

A: Yes, that is very much a part of what I'm saying. I'm not saying that our current system for the selection of judges is perfect and I may even not go so far as to call it real good or the best. But it does at least, on its face, help us to achieve one goal we have in appointing judges: judicial candidates do not have to "campaign" by preannouncing positions, stands or issues, how they would decide issues, etc.

Q: We certainly never had anything like they have in Chicago where they have elected judges taking kickbacks and stuff like that. There simply is not the same kind of motivation here.

A: There's probably lots of factors that result in the recent Chicago situation, but I don't think we can ignore the fact that in the twenty-five years of our Statehood we have been operating under this selection process for judges and I'm not aware of any conviction of a corrupt judge. Twenty-five years is not a tremendously long period when you think of it in terms of the honesty and integrity of the bench in this State.

Q: Ok, let me ask you a question about anti-judge groups like, for instance, the group that's apparently formed against Judge Carlson. What is your feeling about these groups that have identified certain judges to campaign against when those judges are up for retention? Do you think the judge ends up at a disadvantage because he can't actively oppose a negative campaign?

A: Yes, I think the judge ends up at a disadvantage because he can not defend himself. he cannot take to the political or campaign road and reach the people who vote or avail himself or herself of public platforms to respond to any kind of criticism be it reasonable or unreasonable, valid or invalid.

Q: Do you think that it would be appropriate for a judge who finds himself being actively campaigned against to try to make his record clear and defend himself?

A: No, I don't think that the kind of open campaigning that I believe you are suggesting at retention election time is the answer to the criticism. And the reason I don't think that is because you have to look at the system as a whole to see what balances what. The retention election balances the fact that an individual can be appointed to a judgeship and serve for a number of years without any public scrutiny at the ballot box. I'm not sure that it's valid to change the character of the retention election simply because one is more at a disadvantage at one end than one was at the other.

Q: It is sort of ironic isn't it that a candidate for judicial office can basically do all he or she can to make sure that their good qualities are appreciated at the outset of their appointment but when it comes around to defending themselves they can't do it.

A: That's true. That does seem unfair. Well, that *is* unfair. It seems particularly ironic that we're talking about this in the context of the court system which has as one of its inviolate principles that one has the opportunity to be heard on one's own behalf. And it does seem highly ironic that we put judges through a system that denies them the very thing that they exist to make sure does occur for everybody else. If the legal profession feels that this system is a good system that should be retained, in whole or in part, then I really would urge more activism on the part of lawyers, both as an organized whole and as individuals, to come out in support of and help to disseminate to the public the positive information that should be known about a judge that is under attack at retention election time. I think lawyers recognize that they have tremendous power at the beginning of the judicial selection process. I believe that they have a responsibility to look to a balance that power at the other end of the process.

Q: Ok, but from your days on the Board of Governors and as President of the Bar, you know that basically the Bar/Bench Press Committee is a nonexistent group. Even when it was organized it was ineffective. The Bar Association itself can't seem to organize a response to judicial criticism: what's the solution?

A: Well, I think that the Bar-Bench Press Committee never really became a

[continued on page 22]

Anthony J. Dimond

by Russ Arnett

The bar poll which we use in selection of judges is different than the poll originally developed by the bar. No doubt it is easy to evaluate by computer, but it seems to be a technical, even a mechanical exercise. The present poll misses certain qualities which I value in a judge.

After serving as Delegate to Congress from the Territory of Alaska, Judge Dimond sat on the Territorial bench in Anchorage until his death in 1953. He had been hoping to enter law practice in Anchorage with his son, John, who is Senior Justice of the Supreme Court of Alaska.

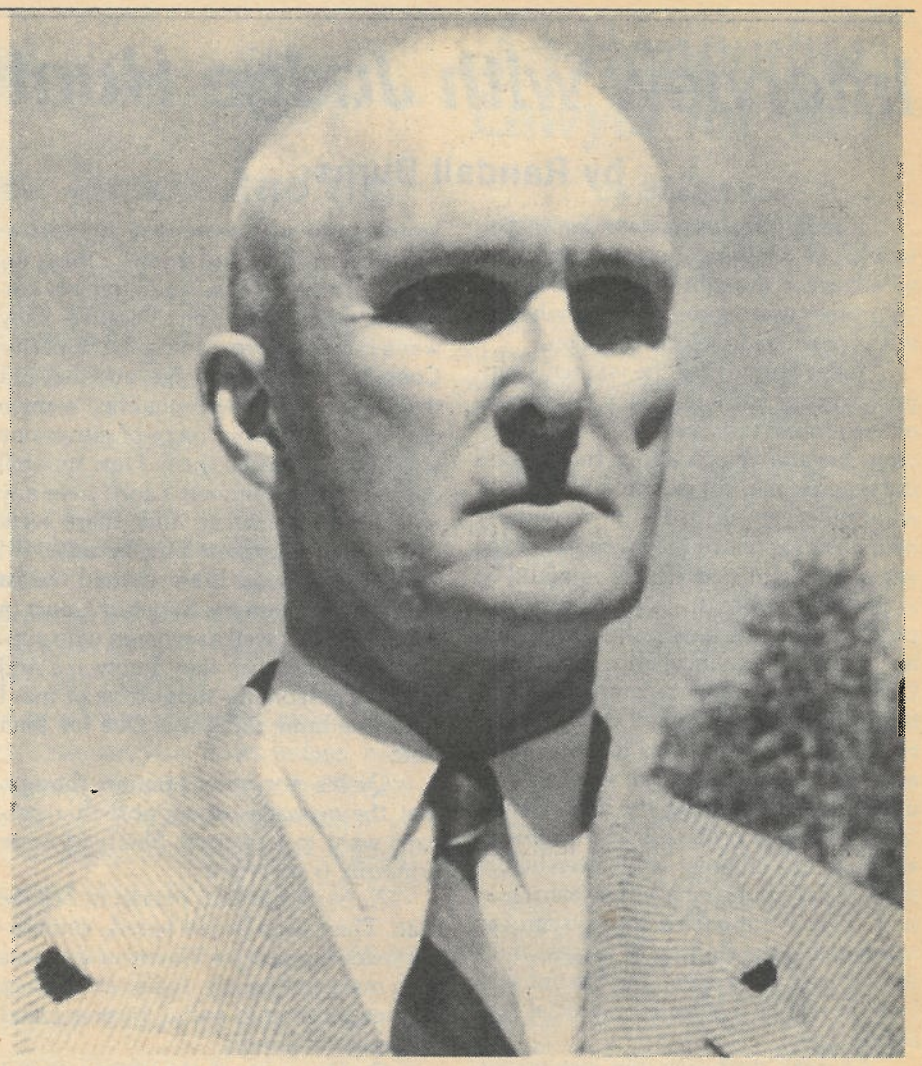
On coming to Anchorage I soon learned of the warm friendship between Judge Dimond and the bar. Trials in those days started at the civilized hour of 10:00 a.m. He once asked the lawyers to remain in court after motion call. He told them that he strongly believed in decorum in the courtroom. Though he was a close friend of most of the lawyers he asked that they call him "Judge" in public, but asked while among themselves for the lawyers to "call me Tony", which they did. He then said something which I have never heard expressed by another judge or lawyer but which nevertheless is true. He told the lawyers that when he had ruled in their favor they should not thank him because it was their right to have the favorable ruling and his duty to make it.

He said that he never presided over a trial which had not been prepared the day before trial, nor did he think there was a case that was not possible to prepare the day before trial. We have since entered the age of mega-discovery which Chief Justice Berger claims is a major source of the trouble with our judicial system. We have all heard the truism that it is better that a case is decided than **how** it is decided. With all our additional discovery and pre-trial procedures is there any more "justice" today? When Pete La Bate would hear a client complain, "Is this justice?" he would reply "The only time you'll see justice is after you're dead, and you won't want to see it then."

Judge Dimond had a pronounced limp from a gunshot injury in his leg which he received while getting on or off a horse. Periodically Judge Folta would come to Anchorage from Juneau to help out. When two courts were in session it was necessary to have one meet in an auditorium on the third floor of the Fourth Avenue Theater. As an act of hospitality Judge Dimond would limp upstairs to hold court there so Judge Folta, who was a long distance hiker and outdoorsman, could hold court in the Federal Building.

Women who have been clerks and secretaries for Judge Dimond all remembered him affectionately. One thought of him as "tall and straight and white as a piece of chalk." Another once asked him if he knew the use of a particular key. He paused and smiled and said it was for the secret garden.

Tony Dimond had been a miner and lawyer in Valdez before going to Washington as Delegate. I believe he participated in a glacier rescue. He thought it was every man's duty to do such a thing. While still mining there was a sort of exchange with one of the Donohoes in which Tony Dimond gave up the mine and went into law practice. The firm of Donohoe and Dimond represented the vested interests of the day, including Alaska Steam, Guggenheim, etc. It was generally considered a negative thing at the time.



Anthony J. Dimond

Judge Dimond was a compassionate person. The single word which would best describe him would be "kind." One day he gave a drunk a stern lecture, concluding with a long suspended sentence. The defendant was soon before him again for being drunk. It was very hard for Judge Dimond to make him serve the sentence. However, he was hard on rapists, often giving the maximum.

Just as the kindly family doctor is replaced by the more hurried and impersonal specialist, perhaps the kindly judge cannot survive in the modern courtroom. Other values have come to predominate.

Peter B. Walton

[continued from page 19]

> weight. The deference owed to such findings derives from the responsibility to conduct disciplinary proceedings which this court has delegated to the Bar Association.

Id. at 1226-1227.

Upon review of the entire record, we conclude that the findings of the Board, in all material respects, are supported by the evidence. The findings and recommendations of the Board are AFFIRMED. Respondent Peter B. Walton is ordered suspended from the practice of law for a period of eighteen months, effective 30 days after the publication date of our opinion. Respondent is ordered to comply with the requirements of Rule II-26, Alaska Bar Rules.

[7] Walton relies principally on Santosky v. Kramer, 455 U.S. 745, 71 L.Ed.2d 599 (1982); Addington v. Texas, 441 U.S. 418, 60 L.Ed.2d 323 (1979); and Mathews v. Eldridge, 424 U.S. 319, 47 L.Ed.2d 18 (1976). **Santosky** concerned termination of parental rights. **Addington** involved a civil mental commitment. **Mathews** dealt with termination of disability benefits under the Social Security Act. For the reasons discussed below, these cases do not persuade us that due process requires proof by clear and convincing evidence in attorney discipline cases.

[8] In re Ruffalo, 390 U.S. 544, 20 L.Ed.2d 17 (1968).

[9] The risk of error, in any event, should be low. There are extensive procedural protections which surround bar disciplinary proceedings. See, e.g., Alaska Bar Rules II-15(f), (h), (i), (j), and II-22.

[10] Walton's argument fails to make clear whether he relies upon the due process guaranteed by the Alaska Constitution or that contained in the Constitution of the United States. The two guarantees are not necessarily the same. South Dakota v. Neville, 74 L.Ed.2d 748 (1983).

[11] In re Hanson, 532 P.2d 303, 308 (Alaska 1975), held that proof by clear and convincing evidence is required in disciplinary proceedings against a judge, for alleged violations of the Code of Judicial Conduct. Today's decision affirms a lesser standard of proof in attorney discipline cases. **Hanson**, however, was not based on due process grounds. Also, in **Hanson** the applicable statutes and rules contained no prescribed standard. **Id.** at 307. Here, there is a prescribed standard: proof by a preponderance of the evidence. Rule II-15(f), Alaska Bar R.

In light of today's ruling, we may be required to reevaluate our holding in **Hanson** if and when we are presented with another case involving disciplinary proceedings against a judge.

Interview with Judge Hunt

[continued from page 21]

viable entity because it was perceived and always tried to be a P.R. committee between the Bar and the bench, not a committee responding to public comments and criticisms. That doesn't mean that there isn't the possibility of another entity responding to these kinds of issues. I don't know why the profession has not done that. Individuals have on occasion.

I don't want to suggest that they haven't. But it has always seemed to me that the profession as a whole exercises the power of the poll at the beginning of the process but has never adequately exercised its responsibility at retention time.

Q: Just as U.S. Chief Justice Warren Burger has many times criticized attorneys, Chief Justice Burke in his recent address to the Legislature also took his swipes at the Bar and made comments about what I guess you might call the overzealous advocacy of attorneys. Do you think part of the reason why there hasn't been a real attempt by the profession to come out in support of the judiciary has been the feeling that judges and justices are often not supportive of the complexities that face individual members of the Bar in their day-to-day work?

A: I think that's possible. I haven't had any time to personally observe it as a judge. Even if it isn't a reality, I think it's a perception. And if attorneys believe that the bench is not supportive of the legal profession and uses the legal profession as a scapegoat to account for some of the things that the court system does or does not do, or has or does not have, then that would clearly result in lawyers not being very enthusiastic about supporting the bench.

Q: You have been on the bench for three weeks now. Let me ask you one last question. I have always been curious: one day you're an attorney then the next day you're a judge. I mean literally, you do a flip-flop. Clearly the skills you had have as an attorney are going to be used in your job as a judge. The perspective is obviously different, but are you still utilizing the same kinds of skills?

A: Oh, yes. I mean, it's still careful, thorough reading and analysis. The different ingredient is the ultimate objective, the purpose for the review. I'm now reading briefs that lawyers file, for example, or motion papers, and I'm reading them to help me understand what it is they want and what it is that the law provides for. Given what everybody wants and given what the law provides, I now must determine what is the fairest thing that the court has the authority to say should be done.

Q: Thank you.

1981 Anchorage Superior Court Case Load

Following is a listing by judge of the pending case load:

Department A. Judge Milton Souter

Cases pending as of 12/31/80	578
New filings from 1/1/81 to 1/28/81	47
Reassignments	4
Cases disposed of 1/1/81 to 1/28/81	19
Disqualified: self (2) party (1)	3
TOTAL CASES PENDING	607

Department B. Judge Karl S. Johnstone

Cases pending as of 12/31/80	550
New filings from 1/1/81 to 1/28/81	48
Reassignments	6
Cases disposed of 1/1/81 to 1/28/81	31
Disqualified: self (1) Party (1)	2
TOTAL CASES PENDING	571

Department C. Judge J. Justin Ripley

Cases pending as of 12/31/80	682
New filings from 1/1/81 to 1/28/81	0
Reassignments	13
Cases disposed of 1/1/81 to 1/28/81	14
Disqualified: self (1) party (1)	2
TOTAL CASES PENDING	679

Department D. Judge Mark C. Rowland

Cases pending as of 12/31/80	758
New filings from 1/1/81 to 1/28/81	48
Reassignments	7
Cases disposed of 1/1/81 to 1/28/81	29
Disqualified: self (1) party (2)	3
TOTAL CASES PENDING	781

Department E. Judge S. J. Buckalew, Jr.

Cases pending as of 12/31/80	756
New filings from 1/1/81 to 1/28/81	0
Reassignments	9
Cases disposed of 1/1/81 to 1/28/81	14
Disqualified: party (3)	3
TOTAL CASES PENDING	748

Department F. Judge Ralph E. Moody

Cases pending as of 12/31/80	41
New filings from 1/1/81 to 1/28/81	2
Reassignments	1
Cases disposed of 1/1/81 to 1/28/81	3
Disqualified	0
TOTAL CASES PENDING	41

Department G. Judge James K. Singleton

Cases pending as of 12/31/80	520
New filings from 1/1/81 to 1/28/81	0
Reassignments	0
Cases disposed of 1/1/81 to 1/28/81	17
Disqualified: by court	18
TOTAL CASES PENDING	497

Department H. Judge Victor D. Carlson

Cases pending as of 12/31/80	693
New filings from 1/1/81 to 1/28/81	0
Reassignments	7
Cases disposed of 1/1/81 to 1/28/81	17
Disqualified: by parties (4)	4
TOTAL CASES PENDING	679

Domestic Cases. Judge Victor D. Carlson

Cases pending as of 12/31/80	2,071
New filings from 1/1/81 to 1/28/81	300
Reassignments	1
Cases disposed of 1/1/81 to 1/28/81	188
Disqualified: by parties (12)	12
TOTAL CASES PENDING	2,172

The following remain assigned:

Judge Kalamarides	124
Judge Hanson	1
Judge Schulz	1
Judge Lewis	15
Judge Occhipinti	61
Unassigned	4

There are several cases that appear on the pending list that should be administratively closed for lack of prosecution under Civil Rule 41(e). The Civil Division is presently working on sending out Notice and Orders on 1977 cases. Several cases prior to 1977 have had Notice and Orders on which attorneys have requested that the case remain open for a specific period of time so that they may get in touch with their client. These cases have been "tickled" and will be closed as the time periods expire.

GRAND TOTAL OPEN CIVIL SUPERIOR COURT CASES: 6,940

1983 Anchorage Superior Court Case Load

	A	B	D	G	K	M	H	C	E	F	F (other)	Total *including* Domestic	Total *excluding* Domestic
Pending 11-1-83	995	886	431	1,009	981	938	3,299	76	77	84	11		
New Cases, Nov.	44	43	22	45	45	44	368	9	8	9		611	243
Reopened	0	0	0	0	0	0	0						
Dist-Sup Appeal	0	0	0	1	1	2	0						
Reassignment	6	6	0	4	5	6	0						
Disq: self	0	3	0	3	1	1	0	1					
party	7	3	0	2	3	2	23	1		1			
other	0	0	0	0	0	0	0						
Case increase	43	43	22	45	47	49	—						
Disposed—Nov.	29	28	12	25	20	26	272	3	2	1		418	140
Pending 11-30-83	1,009	901	441	1,029	1,008	961	3,372	80	83	91	11	8,986	5,360

	A	B	D	G	K	M	H	C	E	F	F		
Pending 12-1-83	1,009	901	441	1,029	1,008	961	3,372	80	83	91	11		
New Cases, Dec.	45	45	21	45	47	46	359	7	8	7		608	249
Reopened	0	0	0	0	0	0	0						
Dist-Sup Appeal	1	1	1	1	1	0	0						
Reassignments	3	5	0	4	4	1	0						
Disq: self	0	1	1	0	2	0	0						
party	1	5	0	0	4	3	21			1			
other	0	0	0	0	0	0	0						
Case increase	48	45	21	50	46	44	—						
Disposed—Dec.	17	19	13	11	20	16	119	1	4	2		241	115
Pending 12-30-83	1,040	927	449	1,068	1,034	989	3,591	86	87	95	11	9,377	5,518

A—Souter
B—Johnstone
D—Rowland
G—Serdahely
K—Shortell
M—Hunt
H—Carlson
E—Buckalew
C—Ripley
F—Moody

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