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$2.00

# The Alaska BAR RAG

Volume 13, Number 2 — *Dignitas, semper dignitas* — March/April, 1989

# Alaska high court opens a new door

The Alaska Supreme Court, in the recent case of *Svend Lanofeldt-Haaland v. SaupeEnterprises. Inc.*, File No. S-2387, Opinion No. 3415, held, in a 3-2 decision, that an attorney for a plaintiff in a personal injury case is entitled to attend and tape record a Civil Rule 35 medical examination. Presumably, this right also will be afforded to defense counsel.

Join with us now as we look to the future and listen in on a candid discussion between a doctor and his receptionist as they prepare for a typical independent medical examination.

RECEPTIONIST: Doctor, Mrs. Jones is here for her examination, should I send her in?

DOCTOR: What am I seeing her for?

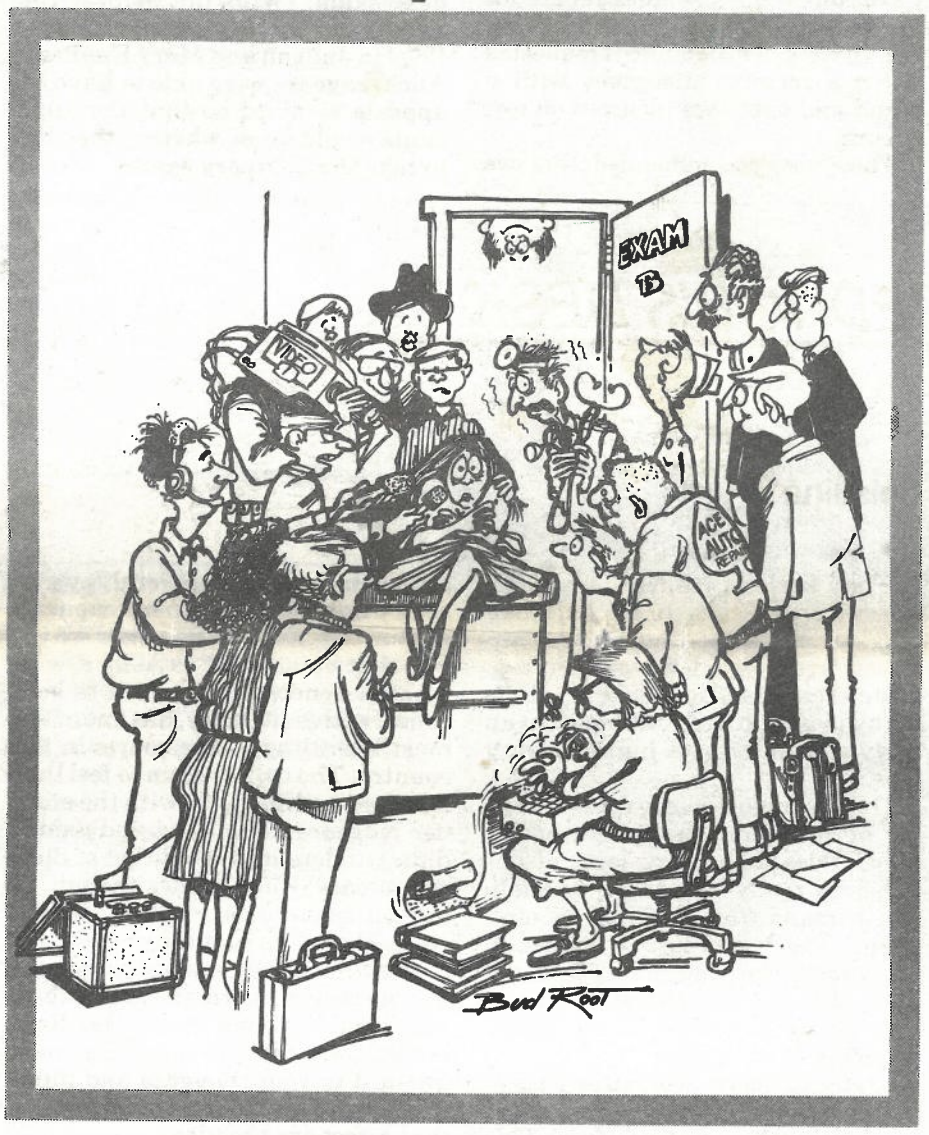
RECEPTIONIST: She was involved in a car accident and was thrust into her steering wheel when her car was struck from behind. She apparently feels that her silicone implants are out of balance and that is what all the lawyers are interested in.

DOCTOR: Very well, send her in. Is there anyone else with her?

RECEPTIONIST: Yes. Her attorney is with her, as well as a photographer and a court reporter. I think your office is going to be too small. Should I send them down to the conference room?

DOCTOR: Sure, send them on down. Is there anyone else coming?

RECEPTIONIST: Yes, sir. Mr. Smith, the attorney that requested this examination, called and asked that you not begin until he arrives. He is bringing his associate with him.




**"OK, who's missing?**

DOCTOR: X%&*@Z#-&#Z! Did you hear from my attorney?

RECEPTIONIST: Yes. He'll be right over. He wants to talk to you before you talk to anyone else. He has some releases for Mrs. Jones to sign and has specifically advised you not to say anything without looking at them first.

DOCTOR: $%X@-$%—-*&#!! Don't I have surgery this afternoon?

RECEPTIONIST: Well, you did—but we had to cancel that. The attorneys expect this to last all day.

DOCTOR: $%&-#@&-*%@!! Anything else?!

RECEPTIONIST: Yes, your malpractice carrier called and said that inasmuch as you are now performing independent medical evaluations with attorneys present, your rates will be going up significantly and you are not to commit any negligence.

DOCTOR: Great! What else?

RECEPTIONIST: The clinic called and wants to make sure you don't do any work in this matter unless you are paid in advance.

DOCTOR: #$%@—&-$*&! Is that it?

RECEPTIONIST: Well no. There were two other calls. Your malpractice carrier called again and told you to make sure that you have a nurse with you at all times and leave the door open. Your attorney called back and said that he is bringing a video technician with him to video the entire examination. He wants to make sure that no one tries to intimidate you.

DOCTOR: You mean they're going to video tape me examining her *****s? Oh brother, anything else?

RECEPTIONIST: Well, yes ... Mrs. Jones' husband just arrived and he's ... Doctor, are you there? Doctor? ???

# Judge Serdahely steps down

BY MICKALE CARTER

*Judge Douglas J. Serdahely, appointed in December of 1980 by Gov. Jay S. Hammond to the Superior Court bench, has announced his resignation (effective Feb. 17, 1989).*

*During an interview on Feb. 3, 1989, Judge Serdahely talked about why he decided to become a judge; what he feels are his accomplishments while serving on the bench; and finally, his motivation in leaving the bench.*

*Listening to Judge Serdahely tell his story, I became overwhelmed with the realization that the Superior Court, and indeed the Alaska Bar, are losing an outstanding jurist.*

*It is my hope that this article will give insight into what attracts attorneys such as Douglas J. Serdahely to the bench and perhaps more problematic, what would encourage them to remain in a judicial career.*

•

Judge Serdahely graduated from Harvard Law School in 1972. He then clerked for one year for then-Chief Justice Jay A. Rabinowitz of the Alaska Supreme Court. The seeds of his desire to become a judge were planted during that clerkship, the judge says.

He was inspired by the professionalism of both Justice Rabinowitz and then Justice James M. Fitzgerald (now Senior Federal District Judge). From these two men, he learned the profound responsibility to not only the Bar, but to society in general, of serving as a judge. Serving as a jurist is a privilege and an honor which requires a commitment to the ideals of justice so that the incredible power granted to the judge is used to promote fairness and due process.

After a two-year stint with an administrative law firm in Washington, D.C., Serdahely returned to Anchorage, initially focusing his practice on plaintiff personal injury cases

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**DON'T FORGET**
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Centennial Hall, Juneau

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# FROM THE PRESIDENT

Larry Weeks

The legislative auditors have done the sunset audit of the Bar Association. They have made several recommendations. They found that we need to devote more attention and resources to the discipline effort. We have just hired an additional half-time discipline counsel and hope that this will help. The Board of Governors allowed the caseload to creep up again after we had gotten it down in 1986. The discipline cases are becoming more complex and more often are going to hearing resulting in increased pressure on discipline resources.

The auditors recommended that we adopt rules limiting our lobbying activity. The Board of Governors has been sensitive about this for the last few years but has not attempted to formulate a policy. The case law has developed in other states that mandatory dues can't be used to indiscriminately lobby. As a general proposition we have been more prudent than we needed to be but the auditors found two places that the Association had acted in what they believed to be a political manner. One of those was when the convention adopted some kind of resolution pertaining to doing business with South Africa in 1986 and the other was when the Board of Governors passed a resolution supporting the continuation of the Women's Commission in 1988. The State of Washington Bar Association is being held up as a model. We are asking them to tell us what they have done recently. Some states have adopted a bar dues rebate for proportional expenses of lobbying activity, e.g. a $10 refund if requested when a member disagrees with a stand and expenses incurred on tort reform.

They also recommended that we not have public discipline hearings and then have private sanctions, a practice that does seem a bit incongruent.

We were also told that we should publish notice of telephone meetings which we will do. The telephonic meetings occur about three times a year and commenced out of a desire to save money when we needed to have a particular decision made before we would have another scheduled meeting. A recent example was two appeals from admission denials frcm the October Bar exam. We held a telephonic meeting to attempt to have the appeals resolved before the next exam. (With the help of conscientious hearing officers, Donna Page in Juneau and Mary Hughes in Anchorage we were able to have the appeals resolved so that the applicants would know whether they had to take the February exam).

Otherwise they said good things about us, including CLE, Referrals, Admissions, membership participation and public access. They did recommend we continue in existance for another three years as being in the public interest.

Legislators during committee hearings were interested in whether we would be adopting Mandatory CLE and Specialization criteria soon. I tried to explain the considerations.

* * *

I've received some correspondence from doctors about the recounting of our joint efforts at dealing with medical malpractice. Nothing in the letters suggests that the breach is narrowing.

# THE EDITOR'S DESK

Ralph Beistline

I have made it a point over the last several months to speak with attorneys and other professionals throughout the state concerning their views of Alaska's legal system and issues they feel are important. I have discovered that while there is no single issue on the minds of the Bar, there is some discontentment. Things certainly are not all well in paradise.

For instance, the gap between physicians and lawyers that was illuminated several years ago by tort reform is not narrowing. As Dr. Johnson's letter to the Editor suggests, mutual distrust and disgust between these two noble professions is growing. Yet in many respects our mutual interests are becoming more and more entwined. It is unwise and unprofessional to allow these disputes to continue and this gap to expand.

We call upon leaders of both professions to set aside the contention, to establish a meaningful dialogue, and in a spirit of mutual respect work to resolve the issues that are critical to us all. The integrity of both our professions require such an effort.

We also note continued criticism of the judicial selection process, and serious criticism about the criteria used for selection. This topic again rises to the fore in light of recent new judicial vacancies in Anchorage. Many feel disenfranchised and contend that the best candidates are not selected. Yet, to date we have not heard of a better process or of a willingness by the Bar to accept the election of judges.

Maybe the solution is to have the Bar select members of the judicial council or, even better, have the Bar directly select judges in the same fashion members of the Board of Governors are selected. While this might go over well with the Bar, it would no doubt be seen as the last straw by the public, who would surely implement Plato's admonition to kill all the lawyers.

There is also significant criticism among the judiciary and others about the pay scale of judges. This is addressed specifically in Mickale Carter's article concerning Judge Serdahely's retirement, wherein it is suggested that insufficient salary leads many judges to leave the bench at an early age and to seek higher paying jobs.

This dispute obviously raises a number of questions. Are judges underpaid? Does the salary level of our judiciary really keep the most qualified persons from seeking appointment? The legislature is currently addressing these questions and will likely act on this matter this year. Should the Bar become actively involved in this dispute?

Lastly, I have even heard some criticism of our Supreme Court (which I valiantly attempted to diffuse). This criticism came from several lay persons who spoke to me in my capacity as Bar Rag Editor and asked why it was that a state such as Alaska, with what is generally perceived to be a conservative citizenry, has one of the most liberal appellate courts in the country. The callers seem to feel that it had something to do with the manner judges were selected and paid. I didn't understand the thrust of their arguments. I do wonder though, is our citizenry conservative? Is our court liberal? Is that alright?

We will attempt to address some of the questions raised above in subsequent publications of the Bar Rag, but certainly in the meantime look forward to your thoughts and input with regard to these and others issues that affect our practice.

# John S. Hellenthal

THE RANKS continue to thin.

Slowly but inevitably Alaskans who were part of the great struggle for statehood and who were participants in one of the truly memorable periods in our history are being taken from us by death.

John Simon Hellenthal, an Anchorage lawyer for half a century, is the community's latest loss among those special pioneers who played significant roles in an era that was rich in personalities and vibrant with issues and challenges.

He was a statewide power in Democratic politics for many years, and served in the first four sessions of state legislatures as a member of the House from Anchorage, 1959-62.

Mr. Hellenthal, who died suddenly of a heart attack, was one of the 55 delegates to the Constitutional Convention which met in the winter of 1955-56 and wrote the constitution of the state of Alaska; the basic document of laws which became effective when the 49th State of the Union was formally created on Jan. 3, 1959.

BY FATEFUL coincidence, Mr. Hellenthal died on Feb. 5 — exactly 33 years to the day when the constitutional delegates signed their names to the constitution in ceremonies concluding the convention held at the University of Alaska in Fairbanks.

Only a quarter of those constitutional delegates are still living. Only one, Republican John B. "Jack" Coghill of Nenana, still holds public office — as a member of the state Senate.

Mr. Hellenthal, who was active and professionally involved to the last day of his life, died just 15 days shy of his 74th birthday, which he would have observed next Monday.

His death removes from the community one whose contributions and service to Aalska were significant, and whose vital interest in public affairs helped shape the state as we know it today.

*—Editorial in the Anchorage Times, Feb. 16, 1989.*


## The Alaska Bar Rag

Board of Governors
Alaska Bar Association
1988-1989

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President Weeks has established the following schedule of board meetings during his term as president. If you wish to include an item on the adgenda of any board meeting, you should contact the Bar office at 310 K Street, Suite 602, Anchorage, Alaska 99501 (272-7469) or your Board representative at least three weeks before the Board meeting.

**June 5 - 7, 1989, Juneau**
**June 8 - 10, 1989, Annual Convention**
**Centennial Hall, Juneau**

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# IN THE MAIL

## Doctors take issue

I am writing in response to Mr. Weeks' "From the President" column in your January-February 1989 issue. As a physician member of the committee organized by the Alaska State Medical Association and the Bar Association, I am appalled by his characterization of the physicians and the meeting. This letter to you is an edited and augmented version of a letter I have previously sent to Mr. Weeks.

The attorney members of the committee focused on legal issues, specifically at the point of tort reform. Their contention was that our committee should document whether there was in fact concern for either availability or affordability of professional liability insurance for physicians in this state, and, if there were, to press for specific legislative action pertaining only to physicians that would remedy those perceived problems.

For Mr. Weeks to say "all of the physicians present basically wanted to talk with the Bar Association only if we were willing to accept the Citizen's Committee (sic) on Tort Reform as our credo" is simply not true.

What we said was that, given the Alaska Supreme Court's predilection for overturning any action that in any way singles out one particular group for special treatment, and given the extremely narrow construction the Supreme Court followed in upholding the expert advisory panels in Keyes vs. Humana, we thought that it was better to proceed with the legislative process with general tort reform, rather than to single out the medical profession for special treatment.

We have twice asked Gov. Steve Cowper for appointment of a commission to study liability issues, once following Lt. Gov. Steven McAlpine's speech at our annual meeting in June of 1987 at which he proposed such a commission, and again by resolution at our annual meeting in June of 1988.

Having been twice rebuffed in our requests, we did not want to have this unofficial *ad hoc* committee be used by our opponents in Juneau, some of whom are members of the bar association, to uphold legislative consideration of tort reform in the general sense while awaiting the report of a group that could not begin to establish necessary background for legislative intent.

To have Mr. Weeks characterize the physician members of the committee as "adamant" and "paranoid" and "fanatic," on the basis of our discussion that day, illustrates that we indeed have "a great breech that is yawning beneath us and which some day will have be bridged." Mr. Weeks' commentary did nothing to build that bridge.

*—David E. Johnson, M.D.*

## Idaho likes us

In reviewing my subscription, and exchange list for *The Advocate,* I discovered that we do not send you folks a copy, although you do send us a complimentary copy of *The Alaska Bar Rag.*

Enclosed you will find the January issue of *The Advocate,* the Idaho State Bar publication, and unless you tell me differently, we will put on our mailing list as an exchange subscription.

The entire ISB staff enjoys your publication, and it is always a highlight for my Editorial Advisory Board meetings. Thanks for bringing a little lighthearted fun into an otherwise intensely serious profession. If you or any of your authors ever have a desire to write a guest article for another publication, please, please give me a call.

*—Linda Watkins-Heywood*
*Managing Editor,* The Advocate
*Idaho State Bar*

## Alleged Wrongdoings

If the politicians are reluctant to make one of their own face up to alleged wrongdoings, it makes it easy to understand the ever-increasing corruption in the judicial system as the judicial system now does in-house settlement of their own wrongdoings (built-in favoritism).

The voters know that it is very unfair to legislators and attorneys to expect them to expose themselves to personal investigation by having them seriously investigate their own.

Our senior citizen organization could expand their activities by taking it upon themselves to help the senators, representatives and officers of the court by assuming the responsibility for leading investigations of alleged wrongdoings of government officials.

Governmaent officials have their jobs to do and attorneys need to concentrate on financially productive work, therefore, they should or would undoubtedly welcome the help from senior organizations.

If the seniors are willing to help, then special or regular grand juries could possibly help.

*—Hal Sellick*
*Palmer*

## Open elections for judges?

We know judges receive a flat salary and legislators receive a flat salary. Legislators are supposed to do their best for the party that voted them in.

Of course, judges are of the pseudo-Judicial Party. Attorneys of the Judicial Party rate the judges for retention. Human nature tells us that judges will subconsciously if not consciously support the financial fortunes of their fellow Judicial Party members even without the additional incentive of the retention vote. When a judge turns repeat offenders loose, makes decisions that require appeal and other actions that unnecessarily increase the cost of seeking justice, it gives the appearance that the judges are taking favors on the side.

Of course, taking favors from other attorneys is almost impossible to prove and will be denied even before congress. How much does an attorney judge really make? Is is possible, however, that the judges nurture the monetary fortunes of their Judicial Party to get favorable retention ratings and general acceptance from the Judicial Party's attorney members?

Newspaper editors need to devise some way to bring about solid solutions without drawing the ire of their judicial friends. Publicly financed, open elections of judicial officers has been suggested, but editorial discussion could develop sound solutions.

—Gary Smart, President
Alaska Tea Party
Mat-Su Branch

## Fitting in

Go to your neat stack of reference material (the *Daily News*) and look up the good editorial of Feb. 18. As you read it, substitute the word "attorneys" for the word "police," "judicial system" for "police department," and "Alaska" for "Palmer." The editor might even give us a re-run making the word substitutions for us.

The referenced editorial declares that Palmer needs policeman beyond reproach and deserving of public trust. The new editorial would state that Alaska needs a judicial system beyond reproach and deserving of the public trust.

You and the editor might add that impartial community committees should accept and review complaints against attorneys and the judicial system also and then recommend appropriate action.

Community committees could give us a judicial system above reproach with credibility worthy of being bragged about on sign buses for the world to see.

*Leonard E. Moffitt*
*Palmer*


**Advertising, Gig Garbor style.**

I had some concern, when I packed my few remaining belongings into a small bag and headed to Washington that I would not fit in. I felt that 15 years with law practice in Alaska would cause me to stand out like a sore thumb in the sophisticated world of the lower 48 law firm. I managed to pass the Washington Bar Exam and on my way to the courthouse to be sworn in, passed a law office with an exterior advertising sign. I knew, after reading the advertising blurb contained on this sign, that I would probably fit in.

*—Mel Evans*
*Gig Harbor, Wash.*

**Continued on Page 13**

# Foreclosure tax consequences

By Stephen E. Greer

Some time ago, when the issue of foreclosures and the income tax consequences of foreclosures first started to occupy the minds of accountants and tax practitioners in this area, I wrote an article in the Alaska Bar Rag which generally discussed the income tax consequences of a foreclosure. The purpose of this article is to clarify and update that article.

First determine whether you have a recourse or a non-recourse note. In the vast majority of circumstances you will be dealing with a recourse obligation. Assuming you have a recourse obligation, there are three figures a person needs to know irrespective of whether the recourse obligation is being foreclosed judicially, non-judicially, or being satisfied with a deed in lieu of foreclosure.

What is the outstanding principal balance of the loan? This does not included accrued interest but could include costs and attorneys fees incurred by the creditor.

2. What is the adjusted basis of the property? If it is residential property, this will be the cost of the property plus the cost of any capital improvements, but don't forget any previously rolled over gain, IRC 1034. In regard to rental property, look at the depreciation which has been taken.

3. What is the fair market value of the property on the date of foreclosure? For a non-judicial foreclosure, this is the fair market value of the property on the date of sale. For a judicial foreclosure, this is the fair market value of the property when the equity of redemption right expires. For a deed in lieu, it is the fair market value of the property at the time it was deeded to the beneficiary of the deed of trust. In a non-judicial foreclosure, the IRS has taken the position that the fair market value is not necessarily the offset amount bid in at the foreclosure sale by the creditor. Therefore, banks are placing a figure on the 1099 which may be significantly less than the off-set bid. As will be seen, the fair market value placed on the property affects the tax consequences.

Once we know the aforementioned figures, we can determine the gain or loss resulting from the deemed sale or exchange which occurred as a result of the foreclosure sale and whether income results from cancellation of indebtedness. Both gain or loss and income as result of cancellation of indebtedness will occur in the same transaction.

In fact when we are dealing with the foreclosure of a personal residence, the typical result is having both a personal capital loss and income from cancellation of indebtedness.

Gain or loss is determined by the difference between the fair market value of the property and the adjusted basis of the property. For instance, if the property were residential and the fair market value is significantly less than the basis of the property, the taxpayer would have a non-deductible loss. On the other hand, if this were rental property and the depreciation results in an adjusted basis less than the fair market value, then the taxpayer would have a taxable gain.

To determine income as a result of cancellation of indebtedness, subtract the fair market value of the property from the outstanding principal balance of the loan. The difference between these two figures will be considered income to the taxpayer.

With a non-judicial foreclosure, this amount becomes income at the time of the sale.

In a judicial foreclosure, this amount would not result in income until such time that the creditor gives up trying to collect on the deficiency judgment, Treasury Reg. 1.1001-2 ex. 8, see also, *Comm. v. Tufts*, 461 U.S. 300, at 310, n.11 (1983) and M. Chirelstein, Federal Income Taxation, sections 3.01 (3rd ed. 1982) for the theoretical underpinnings of the tax consequences resulting from cancellation of indebtedness.

If you have income as a result of cancellation indebtedness you do not necessarily have a problem. The saving grace for most taxpayers is IRC section 108 which states that the taxpayer will not have income as a result of cancellation of indebtedness to the extent the taxpayer is either insolvent or the cancellation of indebtedness occurs in a bankruptcy case.

Concerning the insolvency provision, if a taxpayer, at the time of foreclosure, has more liabilities than assets, he will be insolvent to the extent that these liabilities exceed the fair market value of his assets. The Regulations to 108 say that you should look at the assets at the date of the foreclosure sale, including the asset being foreclosed upon. You take advantage of this insolvency exception by completing form 982.

In my opinion, if the foreclosure sale takes place prior to a discharge being given to the taxpayer, then the bankruptcy exception would not apply. However, if the foreclosure sale takes place after the discharge being given to the taxpayer/debtor, then the bankruptcy exception of Section 108 would apply and there would be no income as a result of cancellation of indebtedness.

Whether the solvency exception or the bankruptcy exception applies, the taxpayer will have to reduce certain tax attributes pursuant to Section 108. In most circumstances this will not be a concern for the average taxpayer, unless he has business, in which case, a reduction of tax attributes may have to be made.

Remember, Section 108 is not applicable to reduce the gain which may be recognized as a result of a foreclosure. A Tax Court case, *Estate of Jerrold Delman*, 73 TC 3, (1979), states that Section 108 is not applicable to gain from the sale and exchange aspect of a foreclosure. However it is has been thought that if you could make this gain taxed to the bankruptcy estate, the debtor could be free of the tax consequences of this gain. The key is Section 1398 which states that when an individual files either a Chapter 11 or Chapter 7, a separate taxable entity is created, i.e., the bankruptcy estate.

Any tax consequences of the bankruptcy estate are that of the bankruptcy estate and not that of the taxpayer/debtor. Therefore, if the foreclosure action could be considered to be taxable event accruing to the bankruptcy estate the debtor would be relieved of the tax consequences. IRC 1398(f) states that the transfer of an asset from the debtor to the estate shall not be treated as a disposition and a transfer of an asset from the estate to the debtor at the "termination" of the bankruptcy estate shall not be treated as a disposition.

Typically when a debtor files bankruptcy, a creditor applies for and is granted a motion for relief from the automatic stay so that he can commence his foreclosure suit. Because the Code does not indicate one way or the other if there is a taxable event when property is transferred from a bankruptcy estate during the pendency of the bankruptcy proceeding, it has been conjectured that a disposition (taxable event) does occur. As a result, any gain should be that of the bankruptcy estate. To the extent that a tax accrues to the bankruptcy estate and there are no non-exempt assets to pay for this tax liability, it goes away and does not affect the tax liability of the debtor.

On the other hand, there is authority which states that an abandonment of assets by the trustee is treated as if the property wer never in fact transferred to the bankruptcy estate, *Mason v. C.I.R.*, 646 F.2d 1309 (1980). The IRS would argue, by analogy, when the creditor applies for and gets relief from the automatic stay, the trustee has effectively abandoned the property and therefore the tax consequences should be that of the debtor/taxpayer and not that of the bankruptcy estate.

For those who are wondering what the tax consequences of a non-recourse note are, one needs only to look at the sale and exchange consequence. There can be no income as a result of cancellation of indeptedness. There will be a gain or loss based upon the difference between the principal balance of the loan and the adjusted basis of the property. Fair market value is irrelevant in determining the tax consequences of a foreclosure when there is a non-recourse obligation. In fact, where you have a nonrecourse obligation, lenders are instructed to leave Box 5 of the 1099-A blank.

*Stephen E. Greer is a sole practitioner in Anchorage with an emphasis on tax. He received an LL.M. in Taxation from the University of Miami, Florida.*

*The uninsured motorist*

# The rules have changed

*Michael J. Schneider*

Because of a built-in sunset provision, the 1984 statute requiring all drivers in Alaska to carry liability insurance came to an end along with 1988.

House Bill 44 is now being considered by the Alaska Legislature. It would reinstate, in some form or another, mandatory automobile insurance in Alaska. It easily passed the house, but its future is uncertain before the senate; in the meantime, we will all see more and more uninsured and underinsured motorist claims. The following discusses some things to think about in developing these claims.

**The rules have changed.**

As we all should know by now, claims accruing before June 11, 1986, will be evaluated under the concept of joint and several liability. Thus, in a multiple-cause or multiple-uninsured-actor situation, if an uninsured driver is only minimally at fault, that driver can still be charged with 100 percent of plaintiff's damages.

For those causes of action accruing between June 11, 1986, and the effective date of Proposition II (the liability initiative approved by voters in November), the uninsured driver may be required to pay no more than *twice* that driver's assessed percentage of fault. See A.S. 09.17.080(c). Under strict several liability (as dictated by Proposition II), the value of plaintiff's claims will equal plaintiff's damages times the uninsured driver's assessed percentage of fault. A minimally responsible uninsured driver thus makes for a minimally valuable uninsured motorist case under most situations.

**Preserve the evidence.**

Because UM/UIM claims involve first-party coverage, it is everyone's *hope* that these claims will be resolved quickly and with a minimum amount of grief. As carriers elect to more vigorously defend themselves against such claims, this hope will be less and less frequently realized. In my opinion, a UM/UIM claim should be handled like any other injury claim. It should be vigorously and immediately investigated upon receipt of the file, and great pain should be taken to secure any evidence that might tend to evaporate with time. These claims are going to be won or lost on the facts, and prudence dictates that those facts be pinned down and preserved.

**Retain experts.**

Again, the message here is that these claims should be treated like any other injury case. Policy limits are frequently low, so they must be considered before making your client's victory purely a moral one by way of an unreasonably expanded cost bill. Nevertheless, these cases are not likely to settle themselves, and they cannot be effectively presented or defended based purely upon the arguments of counsel.

Don't be afraid to spend money on experts, and do so early if it appears that the case requires it. This is particularly true if the case may be destined for bad-faith litigation. Good faith/bad faith is a two-way street, and the carrier should be provided with back up to sustain the theories upon which you demand payment. Expert support for your liability or damage positions is frequently required to make it clear and obvious that the carrier's refusal to pay is indeed an act of bad faith under all the circumstances.

**Establish insurance status.**

Uninsured drivers tend to be a transient, unreliable lot. The carrier has the right to put the claimant to his or her proof on the question of the offending driver's uninsured status. Most carriers will decline to stipulate the issue away. While the police report may *say* that the defendant driver is uninsured, while both you and the carrier may *know* that driver is uninsured, unless you can **prove** these facts when the arbitration finally comes around, both you and your client can be in big trouble.

**Suing the uninsured driver.**

I routinely file suit against the uninsured driver and take his or her deposition. The carrier, adjuster, or defense counsel, as appropriate, is always notified of this action, and their participation at the deposition is solicited (although they rarely attend). This approach is not very expensive. Important information can be obtained without actually ordering a transcript, yet the information is preserved in the event that it is ever needed.

The deposition transcript will likely be admissible at the arbitration hearing to prove lack of insurance or any other fact in dispute. Additionally, suit against the uninsured driver (or at least written notice to him) diffuses any possible defense argument that A.S. 09.30.070, in its new form, precludes an award of prejudgment interest in the absence of such suit or notice.

Following the deposition of the uninsured driver and any other witnesses that I wish to depose, I then direct correspondence to the carrier, adjuster, or defense attorney, as appropriate, indicating that the plaintiff will abandon the litigation and allow the matter to be dismissed absent immediate participation by the carrier in the litigation.

It used to be argued that a claimant's failure to bring suit against the uninsured driver within the *tort statute-of-limitations period* acted to absolve the UM carrier of liability, even under the contract statute-of-limitations period, because a UM claim made over two years from the date of the accident was not being made by one *then* "legally entitled to recover from the owner or driver of an uninsured motor vehicle."

This issue was resolved by the Supreme Court of Alaska in *Hillman v. Nationwide Mutual Fire Insurance Co.*, 758 P.2d 1248 (Alaska 1988), where it was held, at page 1254 of the opinion, that claimants were not required to bring suit against the uninsured driver unless their insurance contract specifically dictated that they do so and that the mere giving of *notice* to the UM carrier within the two-year statute of limitations was adequate to avoid any possible statute of limitations, defense. *Hillman* does not specifically address the situation where the claimant in an uninsured motorist case puts the UM carrier on notice after the two-year tort statute of limitations, but within the six-year contract statute of limitations.

As to this topic *generally see Right of Insurer Issuing "Uninsured Motorist" Coverage to Intervene in Action By Insured Against Uninsured Motorist*, 35 A.L.R.4th 757, s/s 8; *Time Limitations As To Claim Based On An Uninsured Motorist Clause*, 28 A.L.R.3d 580; *When Does Statute of Limitations Begin to Run Upon an Action By Subrogated Insurer Against Third-Party Tort Feasor*, 91 A.L.R.3d 844.

**Presenting proof.**

I would recommend proving liability and damages to a panel of arbitrators the same way that one would go about presenting the case to a jury. I might tend to call fewer experts, depending on my own assessment of the sophistication of the panel on the issues in question and the extent to which my point of view is documented in the record.

Windy openings and closings are generally not well received. Neither are technical objections. A short equivalent of a trial brief is often helpful to the panel. Ground rules on these matters should be established long before the arbitration hearing.

I would recommend presenting *each arbitrator* with his or her own copy of all of the exhibits, depositions, and pleadings. Arbitrations are informal proceedings. Nevertheless, lack of preparation, organization, and skill in presenting information to the arbitrators is of no benefit to your client.

**Conclusion.**

We are likely to see more and more uninsured motorist claims and more arbitration of the claims that are made. It is therefore important to investigate and develop UM claims much as one would investigate and develop any injury claim destined for litigation.

# Family therapy and the law

*By Drew Peterson*

I thought I would digress a bit from the subject of family mediation in this issue of the Bar Rag and discuss family therapy.

The two fields are related. They are similar especially in their newness as recognized professional disciplines and in the rapidly developing influence they are having on the family legal system in the United States.

Family mediation has developed to a large extent from a combination of recent family therapy theories and techniques with the older mediation techniques from the fields of labor negotiations and international diplomacy. Family therapy techniques have allowed such older alternate dispute resolution procedures to be used more effectively in interfamily disputes.

This past summer I took a family mediation training program from Dr. John Lemmon of the Lemmon Mediation Institute of Oakland, Calif. The seminar was excellent and I would recommend it highly to anyone who is interested in pursuing family mediation as a livelihood.

*Family therapy has changed the very nature of the counselling process.*

At the end of the course I asked Dr. Lemmon about the further types of formal education he would recommend. His recommendation was to take a course in family therapy, from which academic background, he told me, many of the practitioners and concepts of family mediation had originally come.

Imagine if you will, a 42-year-old attorney in a masters level psychology course at the University of Alaska Anchorage. Each Monday evening for nearly three hours he is surrounded by a throng of intelligent, highly motivated and competitive graduate students, most of them young enough to be his children. The professor herself, attractive and brilliant, might pass as a younger sister.

Indeed one of the most striking things about the field of family therapy is its youth. It is a creation of the 1960s and especially the 1970s, still awaiting validation of some of its theories by social science research that is just now being devised and carried through. Its earliest antecedents are from the 1950s, notably from studies of certain kinds of schizophrenia and the difficulties encountered in treating them with traditional methods of psychotherapy.

I should add a disclaimer as to any misinformation which I might present herein. Although I finished the course I do not pretend to be an expert on the subject of family therapy. What I primarily gained from the course were some new techniques to use in my family mediation practice.

But I did find family therapy to be a fascinating subject. And I could not help but be struck by the spreading influence which the field of family therapy is having on the family legal system.

**The systems approach.** The essential concept underlying family therapy is that it examines mental health problems in a systems context rather than by looking primarily at the individual psyche as does traditional psychotherapy. Thus, while a Freudian psychoanalyst might look at deep-rooted anxieties caused by a traumatic experience in an individual's childhood, a family therapist would look not only at the individual but at the entire system around him.

Family therapy postulates that the most effective changes necessary to correct the particular behavior identified as a problem might not come form the "identified patient," but from a different part of the system altogether.

I mentioned some of the earlier studies of schizophrenia. What such studies demonstrated was that while other forms of mental illness responded well to traditional psychotherapy, schizophrenia often did not.

Things would appear to be progressing well as long as the patient was institutionalized. Upon release, however, and returning to the influence of the outside world, most notably the family, the patient would revert to former behavior. Only by treating such individuals in the wider context of their family system was progress made.

A related phenomenon was the observation of counsellors that often, when one individual makes progress in a counselling program, someone else in the family gets worse, returning the overall family to its prior state of balance.

This overall balance in the system is called "homeostasis," an equilibrium that the family system tries to maintain to deal with different types of stress. The key to therapy, according to the family therapy theorists, is to shift the overall balance of the family into more healthy patterns.

The influence of these new theories and techniques of family therapy is being felt in a variety of ways. Family therapy has become the favored method of treatment of a number of interpersonal problems. When clients or other individuals that we deal with in the legal arena are involved in counseling, family therapy techniquest are often those that are used.

**Family group counselling.** Family therapy has changed the very nature of the counselling process. In traditional psychotherapy, having two family members together was forbidden. The emphasis instead was on the individual therapist-patient relationship. A husband and wife experiencing marital difficulties would each have a separate psychotherapist. Or the therapist would see the one deemed to have the more severe underlying problems.

All discussions would be kept completely confidential between the therapist and patient. Except for pastoral counselling and some social work, couples counselling was something that was almost unheard of before the development of the family therapy movement.

At the present time, however, under the influence of new family therapy theories and techniques, it is not uncommon for therapists to invite grandparents and other, even more distant, relatives into the counselling sessions, to understand and be able to positively effect the entire family system.

One of the newer and more innovative therapy techniques is called "network therapy" where virtually every person having a significant impact on an identified patient's life is invited into a marathon therapy session, to attempt to solve the problem as a group. Many respected authorities in the family therapy field believe that such work with larger and larger groups is the direction of the future.

**Parenting classes.** One of the discussions that caught my attention concerned parent training. This is something that seems to be recommended routinely these days in family law cases. Yet I do not remember even hearing about parenting classes 17 years ago when I began practicing family law.

I learned that such parenting classes, formally called "behavioral parent training" (BPT), are a major byproduct of the behavioral family therapy approach. They are one of the earliest and most widely accepted methods of "preventative mental health."

Parenting classes minimize a family's reliance on highly trained therapists; instead, these classes use larger groups with lay teachers. Such techniques intervene early and build competence in parents. They are effective especially because of the interchange of ideas between one parent and another.

Simple and proven effective behavioral techniques such as "time out" and "contracting" are introduced to parents who may simply have never thought of them. While the focus of the training is on changing deviant behavior of the children and preventing it from occurring in the first place, the emphasis is on the parents changing their own methods of interaction to cause the desired change.

**Sex therapy.** An area where family therapy is having tremendous impact is in the area of sex therapy. While 20 years ago sex therapy was only something to snicker about, things have now reached the point where a number of sexual dysfunctions can be virtually eliminated through the use of behavioral family therapy techniques.

Success rates cited in the literature include 97.8 percent for premature ejaculation and 73.7 percent for secondary impotence in men, and 83.4 percent for primary orgasmic dysfunction (never having reached climax) in women. The success of family therapy techniques in treating sexual dysfunctions is one of the most dramatic miracles of modern social science.

than a penal setting. Such beliefs can set the therapists in opposition to the powers that be in the traditional legal adversarial process. Legal questions concerning confidentiality and privilege can become very murky indeed where therapists are treating an extended family system.

Another concern about family therapy is that the movement is being led by the counselling practitioners rather than the academic community. As a result, social science research to validate the new theories being implemented in a counselling setting often lags considerably.

It is difficult to conduct effective social science research in any event, in view of the nature of the social interactions being studied. Such academic concerns are somewhat less now than they were 20 years ago when the first innovative family therapy approaches were being used. There has now developed a considerable body of research to validate the field, although there is still much more research to be done.

A related concern is with the nature of the practice of family therapy and qualifications for practitioners. Family therapy theories have not developed within one field but across the range of professional disciplines involved in the field of mental health. Family therapy practitioners come from fields as diverse as psychology, counselling, education, psychiatry, public health, religion, social work, and human development.

Until recently, no specific graduate programs have been available in the area of family therapy, alone. One result has been the proliferation of various family therapy training institutes throughout the United States.

Such institutes, which are usually associated with an urban mental health center, have trained therapists from a diverse academic background. The nature and quality of such training varies widely, however, as do the licensing and certification requirements of the various states.

*Until recently, no specific graduate programs have been available in the area of family therapy.*

**Eating disorders.** Another area where family therapy techniques have been particularly successful has been in the area of eating disorders, notably anorexia nervosa. Anorexia nervosa is a condition which can be extremely serious, even fatal, and is also a condition where a cure can be scientifically measured.

Work involving Salvador Minuchin, who devised procedures referred to as structural family therapy, has demonstrated an 86 percent success rate for treatment of anorexics. Such techniques can also be used for other "psychomatic" illnesses, including types of asthma, diabetes, bulemia and others.

**New challenges.** The rapid development of family therapy as a professional discipline has not been without its growing pains. Complex issues of confidentiality and ethics occur as the therapists work not just with individuals but with extended family systems. This can particularly be a problem where there are legal disclosure requirements, such as with cases involving family violence or sexual abuse.

Like traditonal psychoanalysts, family therapists often believe that the preferred method of dealing with such issues is in a therapeutic rather

As of 1985, only 11 states licensed or certified the practice of family therapy. While such regulation is increasing throughout the U.S., confusion remains as to who is best qualified to practice family therapy. As in other areas, it is best to get a personal recommendation from someone familiar with the practitiioners in the field in your particular locality.

**Conclusion.** Like family mediation, family therapy is a new and innovative field of increasing significance to the legal community. More and more, family therapy is becoming the treatment method of choice for our clients and acquaintances who are referred into counselling or other mental health programs. It makes sense for us to become aware of the field of family therapy and the contribution it can provide our clients to assist them with some of the complexities of modern life.

**Remember, the Bar Convention is June 8-10**

# Courtroom Colloquies

*By Richard Lederer*

Court is now in session, and here are my favorite transquips, all recorded by America's keepers of the word — the National Shorthand Reporters Association — in actual legal proceedings:

Q: Did you stay all night with this man in New York?

A: I refuse to answer that question.

Q: Did you stay all night with this man in Chicago?

A: I refuse to answer that question.

Q: Did you stay all night with this man in Miami?

A: No.

* * *

Q: James stood back and shot Tommy Lee?

A: Yes.

Q: And then Tommy Lee pulled out his gun and shot James in the fracas?

A: (after a hesitation) No, Sir, just above it.

* * *

Q: Doctor, did you say he was shot in the woods?

A: No, I said he was shot in the lumbar region.

* * *

Q: Now, Mrs. Johnson, how was your first marriage terminated.

A: By death.

Q: And by whose death was it terminated?

* * *

Q: What is your name.

A: Ernestine McDowell.

Q: And what is your marital status?

A: Fair.

* * *

Q: Are you married?

A: No, I'm divorced.

Q: What did your husband do before you divorced him?

A: A lot of things I don't know about.

Q: Do you know how far pregnant you are right now?

A: I will be three months Nov. 8.

Q: Apparently then, the date of conception was Aug. 8.

A: Yes.

Q: What were you and your husband doing at that time?

* * *

Q: Did he pick the dog up by the ears?

A: No.

Q: What was he doing with the dog's ears?

A: Tossing them up in the air.

Q: Where was the dog as this time?

A: Attached to the ears.

* * *

* * *

Q: Were you acquainted with the decedent?

A: Yes, sir.

Q: Before or after he died?

* * *

Q: What happened then?

A: He told me, he said, "I have to kill you because you can identify me."

Q: Did he kill you?

A: No.

* * *

Q: Mr Jones, is your appearance this morning pursuant to a deposition notice which I sent to your attorney?

A: No. This is how I dress when I go to work.

* * *

Q: Have you ever been arrested?

A: Yes.

Q: For what?

A: Aggravating a female.

* * *

Q: When he went, had you gone and had she, if she wanted to and were able, for the time being excluding all the restraints on her not to go also, would he have brought you meaning you and she with him to the station?

A: Mr. Brooks: Objection. That question should be taken out and shot.

* * *

Q: At the time you first saw Dr. McCarty, had you ever seen him prior to that time?

* * *

Q: Did the lady standing in the driveway subsequently identify herself to you?

A: Yes, she did.

Q: Who did she say she was?

A: She said she was the owner of the dog's wife.

* * *

Q: Now I'm going to show you what has been marked as state's Exhibit No. 2 and ask you if you recognize the picture.

A: John Fletcher.

Q: That's you?

A: Yes, sir.

Q: And you were present when that picture was taken, right?

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*The above excerpts from Richard Lederer's book, "Anguished English, an Anthology of Accidental Assaults Upon Our Language," published by Wyrick & Co., Charleston, S.C., as quoted in the Journal of the San Juan Islands, Jan. 11, 1989. Submitted to the Bar Rag by Gerald W. Markham, Kodiak.*

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# BBB offers 'business initiated mediation'

*By Stephen E. Greer*

Of interest to practioners who may be attempting to resolve disputes or are drafting agreements with arbitration clauses, is the Better Business Bureau's service called "Business Initiated Mediation."

Member firms of the BBB can initiate mediation and arbitration procedures for problems involving disputed contractual claims having balances due or in other trade disputes where communications are at an impasse.

Arbitration hearings are conducted by trained volunteer arbitrators available to the BBB. The hearings follow guidelines established by the National Counsel of Better Business Bureaus.

It seems that this service is most appropriate for businesses attempting to resolve disputes with their customers. Because the Better Business Bureau of Alaska is situated here, and also because member firms are allotted three hours of mediation free of charge, the cost is significantly less than the cost of initiating arbitration proceedings through the American Arbitration Association.

AS 43.10 et seq. generally states that arbitration clauses are favored in the law. As a result, this avenue for resolving disputes should be considered before assuming that a court or the American Arbitration Association is the only avenue of redress.

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*Stephen E. Greer is volunteer counsel to the Better Business Bureau of Alaska.*

# — Ethics Opinions —

*By Stephen J. Van Goor*

As many practitioners know, the Rules of Disciplinary Enforcement, Part II of the Alaska Bar Rules, underwent a substantial revision which became effective in 1985. Those Bar Rules, numbered 9 through 33.2, can be found in either the single or multi-volume set by Book Publishing Co. or West Publishing Co.

In March 1986, Bar Rule 15, which deals generally with the grounds for discipline, was amended to include standards of conduct prescribed by Ethics Opinions adopted by the Board of Governors.

We currently have several disciplinary complaints in the Bar office in which conduct prohibited by an Ethics Opinion is at issue. In these matters, the attorneys involved have indicated that they weren't aware of the Ethics Opinions in question.

Although a set of adopted Ethics Opinions by the Board should be available in every law library in the state, the Ethics Opinions are not currently published in the Rules of Courts. They are, however, published on a regular basis in the Bar Rag either for comment by the membership before adoption by the Board or after the Board has formally adopted them.

An extensive review of adopted Ethics Opinions is currently being undertaken by the Ethics Committee and we expect that the Ethics Opinions will be printed in a publication more readily available to practitioners in the future. In the interim, however, I wanted to take this opportunity to remind practitioners that a great deal of guidance is available in the Ethics Opinions adopted by the Board and that conduct in violation of an adopted Ethics Opinion may subject an attorney to professional discipline.

Accompanying this article is a listing of the adopted Ethics Opinions of the Board by general subject matter. I encourage practitioners with questions which might be addressed by the Ethics Opinions to research them in the law library. A set of Ethics Opinions is also available for review in the Bar office.

Both members of the Ethics Committee and I are available to give informal ethics advice and are most happy to do so either on the phone or in writing. Requests for formal opinions should be directed to the Bar office. A formal opinion generally takes longer than an informal response since the Ethics Committee must: (1) decide whether an opinion is warranted, (2) draft the opinion, and (3) present it to the Board for final review and adoption.

*The author is Bar Counsel.*

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# Alaska Bar Association CLE Calendar

**Programs are full day unless otherwise noted.**

**1989**

| | | |
|---|---|---|
| **#03 February 24 AM Miniseminar** | **Wrongful Discharge (ABA Tape Series & local commentary)** | **Hotel Captain Cook** |
| **#11 March 3 Afternoon** | **Tax Aspects of Bankruptcy & Insolvency(ASCPA, AATC,ASIA)** | **Clarion Hotel** |
| **#96 March 7-9** | **Hawaii CLE: Unorthodox Trial Techniques (changed from March 6-8)** | **Sheraton Kauai** |
| **#04 March 14** | **Loan Documentation** | **Hotel Captain Cook** |
| **#04 March 16** | **Loan Documentation (Live repeat of Anchorage program)** | **Sophie's Station, Fairbanks** |
| **#05 March 27 Half Day** | **Securities Law for Non-Securities Lawyers** | **Hotel Captain Cook** |
| **#07 April 20-22 Half Day on Th and Fri -- Full Day on Sat** | **Bridge the Gap** | **Hotel Captain Cook** |
| **#09 May 25-26** | **5th Annual Alaska Tax Conference (with APU & Ak Society of CPAs** | **Anchorage Hilton** |
| **#08 June 8-10** | **Annual Convention - CLE: Negotiations Skills (1 day) Media and the Law (3-hr.)** | **Juneau** |
| **#10 Sep 16-23** | **NITA of the North - 8-day Intensive Trial Advocacy Program** | **Hotel Captain Cook** |
| **#06 Oct 20 Half Day** | **Adoption Issues** | **Hotel Captain Cook** |
| **PENDING:** | **Alaska Native Law Symposium Foreclosures--July 14 tentative date--full day** | |

# Bar Association Convention set for Juneau, June 8-10

June 8, 9, and 10 the Alaska Bar Association will meet in Centennial Hall in the beautiful city of Juneau for the 1989 Annual Bar Convention. In addition to section meetings and the Annual Bar Business Meeting on Thursday, June 8, Gov. Steve Cowper is scheduled to make the opening luncheon address.

Friday, there will a morning CLE panel presentation on "Media and the Law," followed by a luncheon speech by Chief Justice Warren Matthews. And on Saturday, June 10, bar members will have the opportunity to attend a day-long CLE seminar on "Legal Negotiations" taught by Mark Schoenfield of Torshen, Schoenfield & Spreyer, a Chicago-based law firm. Mr. Schoenfield is a frequent CLE lecturer and is the author of *Legal Negotiations*, published by Shepard's McGraw Will. the negotiations seminar will include role-playing and video feedback.

Saturday's luncheon keynote speaker will be Neal Blacker, American Arbitration Association, Northwest Regional Vice President, who will discuss the topic of "The Growing Field of Alternative Dispute Resolution."

On the lighter side, there will be an opening reception and a concert by violinist Linda Rosenthal and pianist Lisa Bergman on Thursday evening at Centennial Hall. A salmon-bake cruise with entertainment by "The Grateful Dads (or Honest Lawyers One Flight Up)"—Tom Koester, Av Gross, and Hal Brown—is scheduled for Friday evening.

The Annual Awards Banquet will be held Saturday evening and will feature the presentation of the Distinguished Service, 25-Year, and Professionalism Awards. In addition, there will be spouse activities including tours of the State Museum, the Governor's Mansion, and Wickersham House. The Juneau Bar Association is also planning some other special activities to welcome members to the city.

Hotel space has been blocked for Bar Association members at the Juneau Westmark and Baranof Hotels. The rate is $78 double or single at the Baranof and $88 double or single at the Juneau Westmark. Be sure to make your reservations early and identify yourself as a member of the Alaska Bar Association.

Executive Travel is the official convention travel agent and will be handling airline reservations. Call Executive Travel at 800-478-2434 for further information.

A detailed brochure will be sent to members in April. Watch for the brochure cover art by our own Bar member, Walter Share. Call the Bar Office at 272-7469 for further information.

See you in Juneau!

# • Ethics Opinions

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# THE MOVIE MOUTHPIECE

## Edward Reasor


Movies are the art form of my generation. True, most movies are designed for the sole purpose of entertainment. Hollywood's purpose is to cause the general public to relax. Thus, a good James Bond movie on the eve of one's first bar examination or a rollicking comedy such as "Beverly Hills Cop" is highly recommended before one's first argument before the Supreme Court.

On the other hand, there are movies that do more than entertain. "Dangerous Liaisons" is just such a movie. Although it is highly entertaining and garnered seven Oscar nominations just last month and may very well win an Oscar in 1989, one should attend "Dangerous Liaisons" for the simple educational value of learning how to properly seduce a woman.

Choderlos De Laclos' classic 1782 epistolatory novel written by one of Napoleon's generals (the only novel he ever wrote) was later converted into a play by Christopher Hampton, who then converted his play into the present screen adaptation.

The most interesting thing is that although aristocrats in the 18th century dallied with the art of seduction as though a chess game, deliberately, cunningly and with great passion that was time consuming, the art of seduction itself hasn't really changed from then until now. The problem always has been that you either do or do not trust your lover. Once you reach the trust stage or even fall in love then you risk exposing yourself to ultimate disaster.

Stephen Frears ("My Beautiful Laundrette" and "The Hit") walks his modern actors through 18th century French sexual manipulation, delighting in the art of deflowering virgins and breaking up true love romances. Costume dramas frequently are not accurate, too long and rather boring, but I'm happy to report "Dangerous Liaisons" commits none of these cinematic sins.

Marquise de Merteuil (Glen Close) and villainous Vicomte de Valmont (John Malkovich) were once passionate lovers. They are now mutual friends who on occasion help each other out in the art of seduction.

She approaches Vicomte because she wants to revenge herself on her most recent lover, a general who has spurned her and now plans to marry an attractive virgin of 15. Vicomte, a full-time womanizer with money, declines at first her offer to seduce this young 15-year-old bride-to-be Cecile de Volanges (Uma Thurman) before the wedding to the general, because he feels that this seduction is too easy. After all, this virgin is convent-educated, knows nothing, is naturally curious, and certainly would be unable to stand up to the treacherous tricks of a skilled seducer.

Malkovich therefore refuses; after all, he has a reputation as a man who conquers women easily when he wants to. The Vicomte is proud of this reputation and does not want to make elementary conquests that would not impress his fellow French seducers.

The Vicomte's personal victim — the one he wishes to seduce for the purpose of enhancing his reputation — is Madame de Tourvel (Michelle Pfeiffer), a religious woman, well-respected in French society and the wife of a husband presently away on judicial business. Since she is residing at the country estate of Vicomte's aunt Madame de Rosemonde (Mildred Natwick), he intends to visit his aunt and accomplish the seduction of the moral madame.

**The Vicomte de Valmont (John Malkovich) attempts to seduce Madame de Tourvel (Michelle Pfeiffer).**

The Marquise is so impressed with this forthcoming bout of seduction that she promises her ex-lover Vicomte that if he in fact can seduce the religious madame, spend a full night with her and have that seduction confirmed in writing, she in turn will once again share her sexual favors with him.

With this added incentive by the Marquise, John Malkovich as the Vicomte begins in earnest to topple the beautiful married woman of moral rectitude. In doing so, he just incidentally deflowers the young virgin as a favor to Close.

One of the best lines of the film is Close's reply to the question as to why she is so adamant that this convent-educated bride-to-be should be deflowered before the wedding. Is is treachery? Close's response: "cruelty has a nobler ring to it than betrayal." Here now then is the educational value of "Dangerous Liaisons." How does one go about seducing an attractive married woman of a judicial official?

The Vicomte does it in four well-planned stages:

Step One — John Malkovich, portraying a not handsome, not well built, not manly aristocrat proceeds first, at the estate of his aunt, by telling Michelle Pfeiffer that he realizes his reputation is outrageous.

Of course she shall hear from all of her friends and particularly from her husband that he is an immoral person. There is a simple reason for that. He is surrounded and has been all his life by immoral people, thus he has through close encounters become immoral himself. That's why, he explains to her after Mass, he does not take the sacraments.

Step Two — Impress her with some goodness and then lie to her. Malkovich, being a rich aristocrat, has a full-time manservant. He has the manservant hire a family just off the edge of his aunt's estate and then knowing that Pfeiffer's footman is following him as he goes on his daily pheasant hunt, arranges for his servant to have the tax collector start to evict the family for non-payment of taxes to the King.

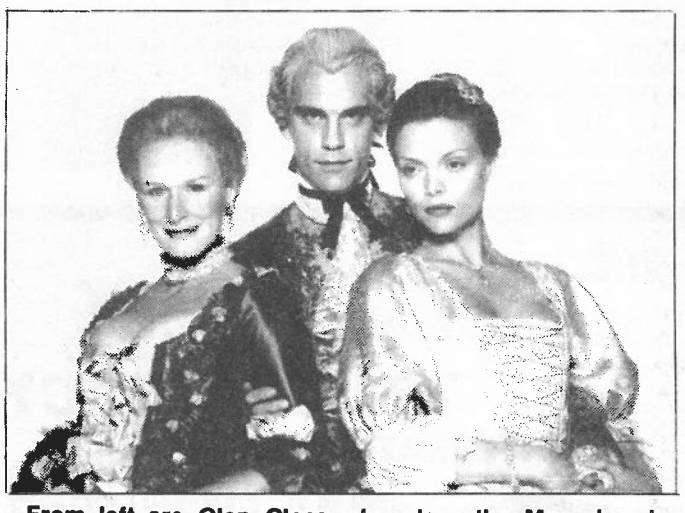
With the footman hiding behind a tree, Malkovich interrupts the tax collector, pays the outstanding taxes himself, and helps the family move their belongings back into their humble abode. This good deed is reported o the lovely Pfeiffer.

Now having gained her confidence, Malkovich proceeds to tell his prey that he is weak, that he is a slave of the flesh, and that she is the first really good thing that has ever happended to him and that he loves her, adores her.

Step Three — Having earlier confessed that his reputation is deserved, that Pfeiffer is the first good thing to bring him out of the abyss of lust into which he has been cast, Malkovich then in a tear-stained conversation reveals this love is real because he has great respect for her. He begins gently: "until I met you I had only experienced desire, not love." Pfeiffer is then convinced that the Vicomte really and truly is fascinated by her beauty, by her womanly charms, by her goodness, and further, that he in fact is determined, himself, to become more like her in the future.

Step Four — Knowing full well that every women's desire is to redo her man in her own image, Malkovich then suggests to Pfeiffer in the final stages of the art of seduction that is love is true, tender, everlasting, yet passionate. On the other hand his love is respectful because he wants to be more like her — moral, good, kind, and he is perfectly willing to listen to her advice and follow suit in accomplishing this goal.

The second part of the fourth step of the art of seduction Malkovich shows us is to convince Pfeiffer not only that is love is in fact tender, true, passionate, and respectful, but in addition, is of such depth and truth that it has already changed him: "I have become more conscientious, more charitable," he whispers to Pfeiffer on the grounds of his aunt's vast estate.



**From left are Glen Close who plays the Marquise de Merteuil, John Malkovich and Michelle Pfeiffer.**

In fact, having watched his good deeds in paying poor peoples' taxes, his politeness with his aunt, his concern for others' health, Pfeiffer is drawn to believe these outrageous lies and in beautiful closeups we see the four steps materialize into the physical consummation, the ultimate goal of the seducer.

Some of the best direction and certainly the best cinematic camera work in "Dangerous Liaisons" is the multitude of closeups. This is a movie of seduction. This is a movie of the use of sex as power. This is a film that is historically accurate in the sense that seduction is not for pleasure but for revenge.

To show this, one must necessarily look at the innermost thoughts and feelings of the seducer and the one being seduced. Love scenes therefore including the ultimate conquest of Pfeiffer are done with extreme and moderate closeups. The camera is not allowed to zoom in or out, nor does it move about indiscriminately. It simply allows the audience to view the seducer in his true light; thus even when he is succeeding in his art, one mutters under his breath: "what a scoundrel!"

Warner Brothers production of "Dangerous Liaisons" does not have the action, the inevitable car chase scene, or the momentum of modern adventure films. Portions of it would in fact play better on the stage (as it did in New York in 1986) and yet the corseted and perfumed wealthy characters dedicated to the pursuit of their own passion become rather familiar and close to us from the screen in this timeless plot os sexual intrigue that delves into the private reaches of the psyche.

Vicomte, who succeeds rather handily in deflowering the young bride-to-be at his aunt's estate, winning also the love of the beautiful Madame de Tourvel (Pfeiffer), undergoes an unexpected complication. He violates his own strict code; he actually falls in love with the woman he is seducing! This emotional weakness is not the mark of a true seducer and results in tragedy not only for the Vicomte but also for the Marquise and those around them.

Movies are indeed the art form of my generation. How else could one take an obscure 1782 French novel, dramatize it, and yet portray the same institutionalized selfishness that existed in pre-revolutionary France, as it does in England and America today: greed, not for money but for power?

Only on the silver screen. Go see "Dangerous Liaisons."

# 14 apply for judgeships

Fourteen attorneys have applied to the Alaska Judicial Council for the position of Anchorage Superior Court Judge and seven attorneys have applied for the position of Juneau District Court Judge.

The applicants will be evaluated by the Council's seven members (the Chief Justice, three public and three attorney members), who will then transmit a list of two or more persons for each position to the Governor. The Governor, in turn, will appoint the new judge from that list.

Background investigations, asurvey of Alaska Bar members and personal interviews with the candidates, are allart of the Council's evaluations, according to the Council's Executive Director, Harold M. Brown. The evaluations are designed to result in the nomination of those persons deemed most qualified to serve as judges.

The Bar survey will be mailed to all active members of the Alaska Bar on March 17, 1989. The survey results will be made public in late April, 1989. Interviews with selected candidates are tentatively scheduled to be held in Anchorage on May 8 and in Juneau on May 9, 1988. The Governor will then have 45 days to make an appointment from the Council's list of nominees.

Candidates for the seats are:

**Anchorage Superior Court**

TERRY C. AGLIETII: Mr. Aglietti is 43 years old, a resident of Alaska for 18 years and engaged in the practice of law for 17 years. He is a 1970 graduate of George Washington University Law School. He is in private practice as a partner in the Anchorage law firm of Aglietti, Pennington, Rodey & Offret.

JACOB H. ALLMARAS: Mr. Allmaras is 42 years old, a resident of Alaska for 13 years and engaged in the practice of law for 13 years. He is a 1973 graduate of Creighton University School of Law. He is in private practice as a partner the Anchorage law firm of Artus, Choquette, Williams & Allmaras, P.C.

GLENN C. ANDERSON: Judge Anderson is 44 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of Willamette University College of Law. He is currently employed as an Anchorage District Court Judge.

DON C. BAUERMEISTER: Mr. Bauermeister is 37 years old, a resident of Alaska for 7 years and engaged in the practice of law for 10 years. He is a 1978 graduate of the University of Nebraska School of Law. He is engaged in the solo private practice of law in Anchorage.

DAN E. DENNIS: Mr. Dennis is 45 years old, a resident of Alaska for 11 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the University of Idaho School of Law. He is in private practice as a partner in the Anchorage law firm of Dennis & Moss.

WILLIAM J. DONOHUE: Mr. Donohue is 43 years old, a resident of Alaska for 17 years and engaged in the practice of law for 16 years. He is a 1971 graduate of Cornell Law School. He is engaged in solo private practice in Anchorage.

PHILLIP J. EIDE: Mr. Eide is 43 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of the University of Minnesota School of Law. He is a partner in the Anchorage law firm of Guess & Rudd.

WILLIAM H. FULD: Judge Fuld is 50 years old, a resident of Alaska for 24 years and engaged in the practice of law for 24 years. He is a 1963 graduate of Columbia Law School. He is currently an Anchorage District Court Judge.

DAVID MANNHEIMER: Mr. Mannheimer is 40 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of the University of California at Berkeley (Boalt Hall) School of Law. He is currently the chief of the Office of Special Prosecutions for the Attorney General.

NELSON G. PAGE: Mr. Page is 35 years old, a resident of Alaska for 10 years and engaged in the practice of law for 9 years. He is a 1978 graduate of Georgetown University School of Law. He is a partner in the Anchorage law firm of Burr, Pease and Kurtz.

JOHN E. REESE: Mr. Reese is 45 years old, a resident of Alaska for 20 years and engaged in the practice of law for 20 years. He is a 1968 graduate of the University of Oklahoma School of Law. He is a partner in the Anchorage law firm of Reese, Rice and Volland, P.C.

DAVID C. STEWART: Judge Stewart is 40 years old, a resident of Alaska for 14 years and engaged in the practice of law for 9 years. He is a 1974 graduate of Boston University School of Law. He is an Anchorage District Court Judge.

BENJAMIN O. WALTERS: Mr. Walters is 54 years old, a resident of Alaska for 39 years and engaged in the practice of law for 23 years. He is a 1965 graduate of the University of California at Berkley (Boalt Hall) Law School. He is a solo practitioner in Anchorage.

LARRY D. WOOD: Mr. Wood is 38 years old, a resident of Alaska for 13 yearss and engaged in the practice of law for 13 years. He is a 1975 graduate of Willamette University College of Law. He is currently general counsel for the Alaska Railroad Corporation.

**Juneau District Court**

MARGARET W. BERCK: Ms. Berck is 40 years old, a resident of Alaska for 13 years and engaged in the practice of law for 16 years. She is a 1972 graduate of Tulane University School of Law. She is currently the supervising attorney for the Alaska Public Defender Agency in Juneau.

MONTE L. BRICE: Mr. Brice is 44 years old, a resident of Alaska for 11 years and engaged in the practice of law for 11 years. He is a 1976 graduate of the University of Tulsa College of Law. He is in private practice as a partner in the Juneau law firm of Brice & Steinmann.

PATRICK W. CONHEADY: Mr. Conheady is 44 years old, a resident of Alaska for 23 years and engaged in the practice of law for 8 years. He is a 1975 graduate of Catholic University of America, Columbus School of Law. He is engaged in a solo private practice in Juneau.

PETER B. FROEHLICH: Mr. Froehlich is 41 years old, a resident of Alaska for 19 years and engaged in the practice of law for 12 years. He is a 1975 graduate of Willamette University College of Law. He is currently employed as an assistant attorney genenal in Juneau.

DAVID A. INGRAM: Mr. Ingram is 46 years old, a resident of Alaska for 11 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the University of Iowa School of Law. He is currently employed as an administrative law judge for the Commercial Fisheries Entry Commission in Juneau.

STEPHEN J. PEARSON: Mr. Pearson is 40 years old, a resident of Alaska for 15 years and engaged in the practice of law for 15 years. He is a 1973 graduate of the University of Michigan Law School. He is engaged in a solo private practice in Juneau.

DAVID T. WALKER: Mr. Walker is 47 years old, a resident of Alaska for 14 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the T.C. Williams School of Law at the University of Richmond. He is engaged in solo private practice in Juneau.

Public commentary on the qualifications of these applicants is encouraged during the evaluation phase of the council's work in March and April. To comment, or for further information, contact Harold M. Brown, executive director, Alaska Judicial Council, 1031 W. 4th Ave., Ste. 301, Anchorage, AK 99501, (907) 279-2526.

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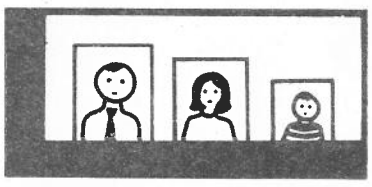


# BAR PEOPLE

**C.J. Allen** is a new assistant bar counsel for the Alaska Bar Association ... **Jeffrey Bush**, formerly with the AG's office in Juneau, is now with the Department of Commerce & Economic Development ... **Ray Brown** is now living in Talkeetna ... **Robin Bronen**, formerly with the Alaska Court System, is now with Alaska Legal Services.

**Sharyn Campbell** and **James Brinker** are now living in Cordova, Tennessee ... **Philip Barnett** is with the U.S. House Subcommittee on Transportation, Tourism and Hazardous Materials ... **Billy Berrier** is living in San Diego... **Thomas Ballantine**, formerly with the Alaska Court System in Ketchikan, is now with the Public Defender Agency in Palmer ... **Douglas Bailey** is now the Attorney General for the State of Alaska ... **Michael Condon**, formerly with Groh, Eggers & Price is now in Silver Springs, Maryland.

**Nathan Callahan** has transferred from the D.A.'s office in Kenai to the Kodiak office ... **Kenneth Covell** has relocated from Barrow to Fairbanks ... **Jerry Coe** has moved from Honolulu to Pohnpei, Micronesia ... **Janet Crepps** is taking a sabbatical from the practice of law and moving out of state to run a bed and breakfast ... **Susan Carney** has transferred from the Public Defender Agency in Anchorage to the Fairbanks office.

**David Devine** has joined the firm of Groh, Eggers & Price ... **Stan Ditus** is now a financial consultant with Shearson Lehman Hutton ... **Renee Erb** is now living in Russellville, Kentucky ... **Charles Evans** has opened his own law offices in Anchorage ... **John Fitzgerald** is with the firm of Koval, Featherly & Guerriero ... **Ray Funk**, former probate master with the court system, is now with the A.G.'s office in Fairbanks ... **Thomas Flippen** is with Kitahama Law Office in Osaka, Japan.

**Robert Flint** is with Hartig, Rhodes, Norman, Mahoney & Edwards ... **Randall Farleigh** and **Steve Shamburek** have formed the firm of Farleigh & Shamburek ... **Kevin Finnigan** has gone to the Municipal Attorney's office in Anchorage, from the Municipal Prosecutor's office ... **Gary Foster** is associated with the firm of Call Barrett & Burbanks ... **Ray Gardner** has taken a year's leave of absence to work with the Pittsburg Midway Coal Mining Co. in Englewood, Colorado ... **Marla Greenstein** is the new executive director of the Alaska Commission on Judicial Conduct ... **Nancy Groszek** is working for Rep. Mark Boyer in Juneau.

**Clifford Holst** has relocated from Phoenix, Arizona to Anchorage ... **Karen Hegyi** has moved from Bethel and is now with the Public Defender Agency in Palmer ... **Michael Heiser** is with the Office of the Municipal Attorney in Kethikan ... **Ellen Hamilton** has relocated to Dallas, Texas ... **Deborah Henthorn** is with the Law Offices of Gordon Schadt ... **Glen Holcombe** has relocated to Madison, Wisconsin.

**Paula Haley** is the Executive Director of the Alaska State Commission for Human Rights ... **William Ingaldson**, formerly with the D.A.'s office is now with the A.G.'s office ... **Kristen Knudsen** has relocated from Ketchikan to Anchorage and is now with the AG's office ... **Beth Kerttula** is now with the AG's office in Juneau ... **Mary Killorin** has become special counsel to the firm of Libbey & Suddock ... **Cameron Kirk** has moved to San Francisco ... **Sarah Kavasharov** has relocated from Anchorage to Arcata, Calif. ... **Andrew Lambert** has moved to Omaha, Neb.

**Dennis McCarty** is with the Law Offices of Clifford Smith ... **Ron Miller** is with the Governor's Office of International Trade ... **Jeffrey O. Bryant** is working for the D.A.'s office in Fairbanks ... **Stuart Ollanik** is living in Denver, Colorado, and working for the AG's officer there ... **Susan Oja** is working for the Cyprus Minerals Company is Englewood, Colo.

**Ray Pastorino** is now living in Fairfield, Iowa ... **Galen Paine** has moved from Bethel and is now with the PD's office in Sitka ... **Janet Platt** has opened her own law office in Anchorage ... **Rhonda Reinhold** has become as assistant borough attorney with the North Slope Borough Law Office ... **Fleur Roberts** has opened her own law office in Fairbanks.

**George Schaefer** writes that he has passed the California bar examination, but has decided not to move to L.A. Instead he ended his 2½ year career with the Office of the Public Defender in Gainesville, Fla., and has set up his own law practice in Gainesville. George hopes "it is not too cold up there" ... **Mark Snyder** has moved from Oregon back to Anchorage ... **Tony Smith** is with Davis, Wright & Jones ... **John Talley** has relocated from Anchorage to Juneau ... **Mary Treiber** is now with the PD's office in Ketchikan ... **Thomas Waldock** is with Enstar Natural Gas.

**Theresa Hillhouse** writes that "we have been cruising on our sailboat in Mexico for the last few months and are headed for Panama." ... **Larry Card** is working as an Assistant U.S. Attorney in Anchorage.

*Please send us news! If you have moved, changed firms, gotten married, gone on an exotic trip, had a baby, etc., we want to hear from you. Send your news to the* Bar Rag *in care of the bar office.*

# Hughes, Thorsness is 50 in '89

**Photos clockwise from top: Dave Thorsness (left), DeEtte Davis (founder Ed Davis' widow) and John Hughes are reunited at a reception Jan. 20. The Anchorage Museum of History and Art hosted 500 clients and friends of Hughes Thorsness. This Fourth Avenue store front was home the the firm during the 1940s.**

The Alaska law firm of Hughes Thorsness Gantz Powell & Brundin began its 50th year with a gala reception for clients and friends in Anchorage on Jan. 20. A similar reception was held in Fairbanks on Feb. 17. Clients and friends were given a firm brochure and coffee mug, both of which were specially designed for the 50th anniversary.

The firm was founded in 1939 by Edward Davis and William Renfrew. Located in Anchorage, Davis & Renfrew grew with Alaska. During the 1950s, John Hughes and David Thorsness joined the firm. In 1957, William Renfrew retired and two years later when the state superior court system was established, Edward Davis left the firm to serve as a judge. The firm then became Hughes & Thorsness.

The 1960s saw the beginning of a new era of expansion. Richard Gantz (formerly the attorney for the City of Anchorage) and Robert Lowe were added as partners. James Powell and Brian Brundin also joined the firm and became partners in 1970. In 1975, upon Bob Lowe's retirement, the firm took on its current name, Hughes Thorsness Gantz Powell & Brundin.

Growth of the firm was not limited to Anchorage. A Fairbanks office was opened in 1975 under the management of Marcus R. Clapp. In 1983, Michael Lessmeier started the firm's Juneau office. Today, three offices, over 80 lawyers and legal assistants, and an extremely dedicated staff have made Hughes Thorsness Gantz Powell & Brundin the largest and one of the oldest law firms in Alaska.

# Hellenthal dies; practiced 50 years in Alaska

*By Dalene Perrigo*
*The Anchorage Times*

Pioneer Anchorage attorney John Hellenthal — who practiced law in Alaska for 50 years — died Feb. 5 of a heart attack at Humana Hospital-Alaska. He was 73.

A prominent figure in the early development stage of Alaska, Hellenthal served on the Territorial Constitutional Convention, was a member of the first two Alaska state legislatures and became an active member of the Alaska Democratic Party.

At the time of his death he was working on a history of the Alaska Bar Association from 1865 to 1965. In the early years of his law practice, he was a well-respected defense and trial lawyer. He served as city attorney from 1948 to 1952 and most recently was a divorce and probate attorney.

Hellenthal was known for his fond recollections of old Anchorage, the days when he said the city funds were kept in the Cheechako Bar and the "town was wilder than hell."

He came to "Tent City" (as he called Anchorage) in later years, because he felt tugged to a place offering the most opportunity. "They even had gambling in the streets where they'd put up tables. The police had to come to the town council meetings in those days."

He practiced law in Anchorage from 1939, without interruption, except for military service, until his death. During his break from law practice, he entered the Army a private and was discharged a captain after fighting in the battle of Attu.

**Continued on Page 13**

# • Hellenthal

Continued from Page 12

Born Feb. 20, 1915, in Juneau, he grew up and graduated from high school there. When his father, Simon Hellenthal, became a federal judge (the floating judge) in Valdez, John was attending college at the University of Santa Clara in California. He received his law degree from Notre Dame University in 1940. He also spent a couple of summers working on a tramp steamer.

In 1939, John Hellenthal joined his father and uncle in the firm that became Hellenthal, Hellenthal and Son in Anchorage.

In 1955, Hellenthal was a delegate to the territory's constitutional convention, where he served as chairman of the apportionment committee. Later he was a member of the first two state legislatures because he wanted to follow up on the work started at the state convention.

"When I was in the legislature, we had nothing but work to do," he recalled. "I don't like the present legislature, with all its lobbying; you vote for my lousy bill and I'll vote for yours."

Active in the Democratic party, he served as party chairman in the early 1960s, and was campaign chairman for the late Gov. William A. Egan. During the 1966 campaign, Hellenthal gained attention by proposing an Indian or an Eskimo be added to the city police department in the interest of Natives he said he saw "shunted into jail every day on drunkeness charges."

In 1955 he sponsored a bill which allowed visits to prisoners serving time in Outside federal jails (the bill's co-sponsor was Sen. E.L. Bartlett). The bill would have granted private visitation privileges to federal prisoners for time with their wives and families. It was dubbed the "Hellenthal Honeymoon."

He leaves LaRue, his wife of 43 years, a daughter, Cathy Braund of Anchorage; two sons, Marc of Anchorage and Steve of Texas, and eight grandchildren.

# • Letters

Continued from Page 3

## Substitutions

While I am undecided where I would land if I jumped into the Richard Johnson advertisement fray, this is not the case with respect to John Huneke's recent proposal for more mirth in the Bar News, which I support. For those people who can't wait for future humorous articles in the Bar News, I would refer them to past editions of the official publication of the Alaska Bar Association, the Alaska Bar Rag (does the title provide sufficient present humor gratification?). In particular, I would refer readers to the Tanana Valley Bar Association minutes as published periodically in the Alaska Bar Rag as particularly poignant.

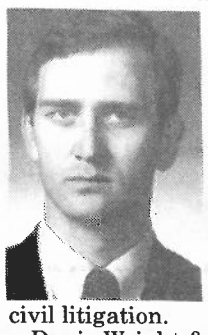
But since, as I understand it, I have the obligation to promote the appearance of impropriety, I will do the only improper thing and recite language from a letter copied to me from Paul Taylor of Bannister, Bruhn and Clark of Mt. Vernon. At the time Paul was representing the purchaser of a barge which had been purchased based upon the apparent false representation that the vessel was free of liens. In the course of my representation of a lien-holder against this vessel, Paul copied to me his letter to the seller demanding satisfaction of the lien wherein he recited "the barge is currently chained to the dockets at the marina." The matter was concluded through the efforts of Mr. Taylor with the barge being unchained from the marina's dockets without ever being chainedto the court's docket.

Best wishes to Messr. Huneke and Taylor and the Tanana Valley Bar Association.

*Scott K. Wilson*
*Wilson and Reardon*
*Bellevue, Wash.*

## Dawson becomes partner in Davis Wright & Jones

**Jon S. Dawson** has become a partner with the law firm of Davis Wright & Jones. Before joining the firm, Dawson served an externship for Chief Justice Edmund Burke of the Alaska Supreme Court. His practice includes commercial litigation, labor litigation, admiralty and maritime litigation, and general civil litigation.



Davis Wright & Jones, with offices in Anchorage, Seattle, Bellevue and Richland, Wash.; and Washington, D.C., is one of the largest law firms in the Pacific Northwest.

## Bar's Board of Governors proposes amendments

The Board of Governors is proposing that the following rules be amended. Members are invited to submit comments to the Alaska Bar Association office. The Board will be considering these rules at their meeting June 4-7, 1989 in Juneau.

**Bar Rule 15. Grounds for Discipline.**

(b) Unauthorized Practice of Law.

(1) For purposes of the practice of law prohibition for disbarred and suspended attorneys in subparagraph (a)(7) of this rule, except for attorneys suspended solely for non-payment of bar fees, "practice of law" is defined as:

(iii) [FOR COMPENSATION,] providing advice or preparing documents for [ANOTHER] **persons other than licensed attorneys** which [E] affect legal rights or duties.

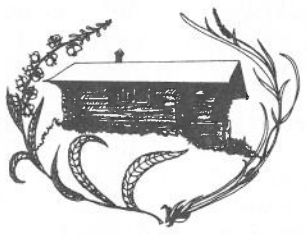
**Bar Rule 2. Eligiblity for Examination*.**

Section 2.

(c) For the purposes of this section, the "active practice of law" shall mean:

(2) serving as an attorney in governmental employment: **or a law clerk for a judicial officer**, provided graduation from an ABA or AALS accredited law school is a required qualification of such employment;

**The Anchorage Legal Secretaries Association Inc. announced recently Douglas C. Perkins, formerly of Lane Powell & Barker (now with Hartig, Rhodes, Norman, Mahoney & Edwards, was selected as Boss of the year at the 34th Annual Bosses Day Luncheon. He was selected after being entered in the competition by his secretary, Nikki Bailey, who wrote a winning essay. A Gold pan and mug were awarded Perkins, while Baily received a gift certificate from Nordstrom.**



## HISTORICAL BAR

# For commissioner in Nome it was 'law west of the Pecos'

BY RUSS ARNETT

In 1952 I was appointed U.S. Commissioner in Nome.

In Territorial times U.S. Commissioners for Alaska tried misdemeanors, acted as committing magistrates, juvenile judges, probate judges, coroners, and recorders; handled vital statistics; performed marriages; sold hunting and fishing licenses; served as Notary Publics and election commissioners; and performed other similar functions.

It was "Law west of the Pecos."

Congress provided that a commissioner's compensation was paid by fees. For example, a fee of about $10 was paid by the United States to the commissioner for trying a misdemeanor or acting as a committing magistrate and possibly $25 as coroner.

On the other hand, fees for recording, performing marriages, acting as Notary Public and probate judge were collected from the parties. As I recall, no trust account was required for these fees. Monthly accounts were filed with the Clerk of Court who usually found fault with them and made you re-do them.

Congress had increased from $5,000 to $7,500 the maximum amount of fees which could be retained as compensation. However, only Anchorage, and possibly Fairbanks, produced sufficient income to result in such a bounty. One reason was that although an office was provided, payments for clerical help and all office expenses were deducted from fees collected.

There was much uncertainty about fee income. I believe the fee for recording a deed was $2.75. I received an affidavit of assessment work on a large number of mining claims and I believe I sent a bill for $2.75. Edith Bullock, who had requested the recording, wrote me that these were paid for by the number of claims and sent me a large check in payment.

I was not so lucky in another case, where the fee was based upon the size of the estate. It involved the trading post at Unalakleet. If only they had found a buyer and closed the estate while I was commissioner, I would have received bountiful riches.

One commissioner was sent to prison for "embezzling" funds, but he must have had deplorable legal representation as most of the funds received belonged to the commissioner. I spoke with him after he got out.

Few of the commissioners had legal training. Rose Walsh was commissioner in Anchorage. Once defense counsel—I think Roger Cremo—complained that she was giving greater weight to testimony of an FBI agent than to a defense witness. Her reply was "Why not. He's on our side, isn't he?"

Appointments were normally political, and with Harry S Truman in the White House the Nome position should have gone to a Democrat. But no deserving Democrat wanted the job, so it went to me. There was no attorney in private practice in the "Second Division" when I arrived, nor was there a District Judge. Jim von der Heydt had recently been appointed U.S. Attorney. My appointment was made by Judge Harry Pratt of Fairbanks. There was a disbarred lawyer servicing legal matters in Kotzebue. There had been a lawyer in Nome, Casey Tanner, but he died and his widow had been unsuccessful in locating a lawyer to buy the practice.

The absence of private practitioners placed a particular burden upon the commissioner. When charged with a felony, I thought one was entitled to more from the committing magistrate than being told, "you have a right to an attorney but, sorry, there are none in Nome." When one was convicted of a crime without being represented by an attorney, I thought he was entitled to more than a sentence from the commissioner. I was criticized for telling one such defendant I might later reduce his sentence, and later did.

The father of a young lady complained to me that she was not right in the head; in fact she had jumped into the Nome river. We discussed a sanity proceeding, which he then favored. No lawyers were involved and at the hearing he testified that his daughter was in fine shape mentally and had never appeared otherwise. I was surprised by his altered testimony and attempted, probably unsuccessfully, to establish what he had previously related to me. One of the jurors, who was a retired gold miner and one of Nome's outstanding citizens, stood up and said that I was being partisan rather than impartial.

Sometime after the sanity hearing, Wendell Kay and Stan McCutcheon came to town (Wendell was considering making himself available for appointment as District Judge in Nome). Wendell recounted a similar story of a one-lawyer court where he first acted as prosecutor and excoriated the accused. Then he reversed roles and as defense counsel made an impassioned plea for charity and leniency. Then Wendell roared with laughter.

A story is circulated of a commissioner who was approached by a young man who was intent on learning the identity of his biological parents. His original birth certificate had been sealed and replaced by a substitute birth certificate issued following his adoption. Though the commissioner was aware of the contents of the original birth certificate, he told the young man that an order of the District Judge would be required to show him the original.

The District Judge was troubled by the request and referred the man back to the commissioner, finding that the matter did not involve a "case or controversy" under the Article III of the U.S. Constitution. The commissioner again sent the man with the sealed birth certificate back to the District Judge.

The District Judge read the birth certificate and his manner softened. He told the man that actually his parents ware not married when he was born which, he supposed, would make the man a "technical bastard."

The young man replied, "that's strange, your Honor. That's exactly what the commissioner said about you."

## New substantive law section

The Board of Governors at their January meeting approved the formation of a new law section: International Law. Doug Barker has been named chair of the section. Watch for this new section on your Section Solicitation Notices which will go out soon. For more information about this new section, please call Doug Barker at 276-3222.

## LEGAL NEGOTIATIONS

1989 Convention CLE
Saturday, June 10
Juneau Centennial Hall

Spend the day with Mark Schoenfield. author of LEGAL NEGOTIATIONS published by Shepard's-McGraw Hill. Call 272-7469 for further information.



# Drug test found constitutional

BY RON FLANSBURG

*Alaska Supreme court upholds employer drug test as constitutional; an Alaska court has discretion whether to set a judicial deed of trust foreclosure upset price or not.*

**The Constitutional Right Of Privacy Does Not Extend To An Employer Required Drug Test.** The Alaska Supreme Court grounded its holding, in part, on the conclusion that the Constitutional inherent rights codified in Article 1, Sec. 1 and the civil rights found in Article 1, Sec. 3 apply only to State actions. And while recognizing the public policy supporting employee privacy and that an employer drug test monitoring employees drug use outside the work place might be a breach of the implied covenant of good faith and fair dealing of an at-will employment contract, the competing paramount public concern for employee health and safety required by grilling employment justifies a test. *Clarence G. Ludtke v Nabors Alaska Drilling Inc.*, Op. No. 3413, February 17, 1989.

**Under Alaska Statutory Law A Court May Refuse To Confirm A Judicial Foreclosure Sale On The Basis Of "Substantial Irregularities In The Proceedings Of Sale;" However, The Supreme court Holds That AS 09.35.180 Was Not Intended To Limit The Traditional Equitable Authority Of A Court To Control The Foreclosure Process And Has Discretion Whether to Set An Upset Price or Not.** Even based on the present economic conditions in Alaska, the Supreme Court stated, through Justice Moore, that the establishment of an upset price before sale is a rare remedy and it may be preferable for the court to allow bidding to proceed and then, in ruling on a motion to confirm the sale, determine whether confirmation should be granted or a resale ordered. *Hayes v. Alaska USA Federal Credit Union*, et al. Op. No. 3406, January 20, 1989.

**Where A Plaintiff's Malpractice Complaint Against An Accountant or Lawyer Sounds Merely In Negligence Under The Professional Contract's Requirement Of Reasonable Duty Of Care, The Action Lies In Tort;, Not Contract For Statute Of Limitation Purposes And Must Be Brought Within Two Years.** And, an actionable tort claim requires an injury or harm; consequently, even if an accountant or attorney breaches the duty of care required regarding a tax matter, no liability exists until the IRS actually imposes a deficiency and tax assessment. *Donald Thomas and Thomas, Head, & Greisen v. Florence Cleary, Eugene Cleary, and Cleary Diving Service, Inc.*, Op. No. 3407, January 27, 1989.

**Actions Against Corporate Directors For Breach Of Their Fiduciary Duties Are Found In Contract, And Are Governed By The Six-Year Statute Rather Than The Two-Year Tort Statute.** The Supreme Court based its holding on Alaska Statute 09.10.050, concluding that a corporation's action against Directors for breach of their duties as such was an action for implied contract rather than by Alaska Statute 09.10.070, relating to torts, or Alaska Statute 09.10.100, providing for a 10-year period for causes not otherwise provided for, which expressly overrules *Blake v. Gilbert*, 702 P.2d 631, 638 n.15 (Alaska 1985). *Bibo v. Jaffrey's Restaurant*, et al. Op. No. 3410, February 10, 1989.

**An Action For Divorce Not Involving Alimony, Property Division, Or Child Custody Issues May Be Maintained In The Superior Court Whenever One Of The Parties Is Physically Present In The State With An Intent To Remain Indefinitely Even Though The Other Spouse Never Resided In Alaska In The Marital Relationship.** The Supreme Court based its holding on the principles that an action for divorce is essentially a proceeding *in rem* and the *res* upon which the judgment operates is the status of the parties. So, if a party is present in the State, his or her marital status is present as well. *Yolanda Marie Sisco Crews v. Anthony Van Crews. Op. No. 3418, Febuary 24, 1989.*

*Ronald D. Flansburg practices with the law firm of Boyko, Breeze & Flansburg and devotes a portion of his practice to Appellate Advocacy.*

**Happy Spring Break!**

# Over and over: it's safer to fly than to drive, it's safer to fly ...

*By Dan Branch*

The plan was simple enough. Take one superior court judge, the district attorney and a public defender, place them in a sling wing Navajo plane, and fly them to Mountain Village for a sentencing hearing. What could go wrong? I'll answer that question later. Here's some background facts first.

You can't go very far in the bush unless you fly. In light snow winters some people drive on the rivers. Only a few fall through the cracks. Most of the time they travel by air. Only a few fall from the sky. Most of these survive.

Village travel centers around mail plane flights. Every morning at first light little Cessna 207s take off from hubs like Bethel and carry mail to outlying villages. They also carry passengers and freight.

Mail plane travel is always an adventure. First you have to climb into the plane. While holding onto the wing with one hand and the seat with the other, the passenger must arch his body enough to carry his left foot up and over his seat and down to the floor of the plane. After that it is a simple matter of bringing the remaining leg to the chest and then over the seat until both feet are on the floor. The upper torso almost always follows its legs into the plane.

Once in the seat, it's all over except for the worrying. Passengers sit watching the mysterious instrument panel while the plane bounces over the gravel airstrip to the take off point. To calm myself, I use FAA air safety statistics as a mantra. Over and over I say, "It's safer to fly than to drive." It works even on bad flights.

A bad flight is one where ice starts building up on the wing struts and the pilot asks you for for help finding Tuntutuliak. A bad flight is one where after circling over your home destination for 30 minutes in a weather hold, the pilot asks you to choose either Atmauthluak or Billy Moore Slough as a place to spend the next week. A bad flight is one where cross winds force the pilot to land sideways. I really hate that.

Sometimes you have really bad flights. Once I was asked to attend a settlement meeting with home owner plaintiffs in a village 14 miles from Bethel. We were banging out the details of a housing settlement and it was all over but for the toilets. We needed to know if they wanted chemical toilets or honey buckets in their new homes. To seek resolution of this issue I boarded the village mailplane along with the pilot and 2,000 pounds of soda pop. Someone forgot to secure the cargo with a net. I realized this when it slid to the back of the plane during takeoff. "Oh well," I thought, "It's just a short flight. What can happen?"

The plane was scheduled to make two stops on its route. Its engine stalled during approach to the first village. I was chanting my mantra like mad as we plunged towards the ground. Somehow the pilot revived her and we landed. "Well," I thought, "at least the pilot will off load some of the pop." He didn't. We actually took on more freight.

We had more problems on the approach to my destination village. The engine quit again, and then the flaps went out. It was the same old scene with me chanting and the plane plummeting. The engine coughed back to life but we had to land without flaps. Fortunately, I guess, someone forgot to plow the snow off the village runway and we came to a safe stop at the end of the airstrip. After the meeting I hitched a snowmachine ride back to Bethel. At that point, FAA statistics aside, ground transportation was my only acceptable option.

Now back to the criminal justice adventure. As we rejoin them, the judge, defense attorney, and district attorney are flying in a twin-engine Navaho from Bethel to Mt. Village. This is the first flight for the DA having just moved to Bethel. He had some doubts about making the flight but the defense attorney talked him into it. "It is safer than driving," he told him, "You will love it."

City fathers claim that Mountain Village received its name from the hill behind it. I think it was named for the small hill in the middle of its runway. When the wind blows from the west planes must approach the runway from the Yukon River end. After touch down on such an approach, they normally climb up the hill and then stop at the top. This was how the criminal justice express approached the Mt. Village strip. Swinging low over the Yukon, the plane touched down on the runway moving a tad too fast. It failed to stop at the top of the runway hill. In fact it didn't stop on the runway at all.

Fortunately, the lawyers crawled safely from the rumpled Navajo and went on to do justice in the village. Legend has it that they entered their replacement plane chanting FAA flight safety statistics. "Don't worry," the defendant called out to the lawyers as they were fastening their seat belts, "no one has ever crashed twice in one day." I can't understand why this didn't make them all feel safe.

# Bar and schools work together

A special cooperative project in law-related education has just been completed by the Alaska Bar Association in cooperation with the Anchorage School District.

Over 50 Anchorage attorneys participated as instructors in a special three-credit college course titled "Law and Contemporary Issues" for teachers and administrators of the Anchorage School District. Over 100 educators took the course while another 100 were turned away due to lack of space.

Attorneys took the educators on a learning tour through various aspects of the law including topics such as legal basics, tort law, school law, Constitutional law, criminal law, and many other areas. The course was jointly sponsored by the Alaska Bar Association's Law Related Education Committee, chaired by Philip Volland, and the school district's social studies program, supervised by Douglas Phillips.

The Law Related Education Committee, composed of attorneys and educators, formulated the curriculum for the course. Committee members include Chairman Philip R. Volland, David W. Baranow, Shelley M. Ditus, Elizabeth I. Johnson, Joseph J. Perkins Jr., R. Scott Taylor, Stanley Howitt, Peter C. Partnow, Joseph A. Kalamarides, Kenneth W. Lehacki, Sharon L. Gleason, Karla Taylor-Welch, Thomas E. Wagner, Mary Bristol, Sharon Clawson, Royce Page and Douglas Phillips. Deborah O'Regan, executive director of the Alaska Bar Association, also played a vital role in the success of the course.

Evaluations for the course were outstanding and the district is hopeful that the course will be offered again during the fall of 1989. To get involved in the bar/school partnership to promote law related education in Alaska, contact Deborah O'Regan at the bar office.

# ABA and Alaska Judiciary host justice conference

*By Robert Wagstaff*

The Alaska Bar Association and the Alaska Judiciary are hosting a Joint Northern Justice Conference in June of 1990. This conference will feature invited Soviet lawyers and judges, Northern Canadian lawyers and judges, and Alaskan lawyers and judges.

The purpose of the conference is to share and to compare experiences, problems, and procedures of common experience and to make a general contribution to knowledge. The subject matter and a format of the conference will be geared so that it will have maximum interest before lawyers and judges and the public at large.

The conference will be held at the Captain Cook Hotel June 7-9, 1990, coincident with the Alaska Bar Convention and Alaska Judicial Conference. A planning session will be held on June 7, 1989 in Juneau with Alaskan, Canadian and Soviet delegates making the final decision as to format and program.

We are living in a unique time in our century when relationships between the Soviet Union and the United States are at a point that has never before been enjoyed, at least in our lifetimes. There appears to be very real and significant movement towards a more open and world-conscious society in the Soviet Union and a corresponding receptiveness to this change in the United States.

This is reflected not only in Alaska's history but our present keen interest in all things Russian and the various missions and exchanges with Siberia. The Alaska Airlines Friendship flight from Nome to Provideniya in June and the recent return visit, are only some of the manifestations of this evolving reality.

The Alaska Bar Association has both a temporal and geographic moment and opportunity to meaningfully contribute to this process, and at the same time bring about more understanding and knowledge of our own legal system through a comparative analysis.

We will gain a better understanding of the operations of our own legal ststem by comparing its substantive and procedural operation to those of others, and particularly the Canadians and Soviets, who live under similar geographic and climatic situations.

We believe that there will be general and specific interest of the Bar Association in this process as well as interest of the public at large. We think that the 1990 Conference will be a unique opportunity to bring general interest and support for our legal system and the role of lawyers in society through a comparison with legal life in our neighboring countries. This will be an exercise that is educational, informative and stimulating for the legal profession and the public, alike.

Ultimately, the primary purpose of the symposium is to bring about better understanding between both diverse and complimentary cultures and make a meaningful contribution to coexistence in our world today.

On one level it is a people to people; lawyer to lawyer; and to judge project which will have a crisp enough focus to have lasting meaning. For example, the symposium will feature a format and a program which will allow a general understanding of all three legal systems and their diverse evolutionary aspects.

This will give a better understanding of the operation of our legal system while at the same time, providing a practical knowledge for those who are interested in, for example, doing business with the Soviet Union or who are involved in international fishing matters and problems of indigenous peoples.

Members of the Bar are encouraged to offer any ideas and comments on the program and format so that they can be incorporated during the planning session this June. Please contact Deborah O'Regan or Barbara Armstrong at the Bar office with your ideas.

# Governors, Legal Services & 9th Circuit Conference rep ballots to be out soon

Ballots for elections to the Board of Governors of the Alaska Bar Association, Alaska Legal Services Board of Directors and the 9th Circuit Judicial Conference Representative will be out shortly. Following are the candidates for the various positions:

**Alaska Bar Association Board of Governors**

First Judicial District
- Sarah J. Felix
- Michael A. Thompson

Third Judicial District (4 seats)
- Lynn Allingham
- William G. Azar
- Bruce A. Bookman
- Homer L. Burrell
- Robert E. Congdon
- Dan K. Coffey
- Jeffrey M. Feldman
- Richard H. Foley, Jr.
- Peter W. Giannini
- Lewis F. Gordon
- John M. Murtagh
- Ronald A. Offret
- Susan Orlansky
- Nancy Shaw
- Randall Simpson
- John B. Thorsness
- Diane F. Vallentine
- Phillip Paul Weidner
- Larry D. Wood
- Clay A. Young

At-Large Representative
- Elizabeth Page Kennedy
- Sen Kwang Tan

**Alaska Legal Services Board of Directors**

**First Judicial District**
- Barbara J. Blasco
- Dennis L. McCarty
- Arthur H. Peterson
- Janine Reep
- Richard Whittaker

**Third Judicial District**
- David S. Case
- Robert K. Stewart Jr.
- Mary Kancewick—alternate
- Timothy E. Troll—alternate

**Fourth Judicial District**
- William B. Schendel

**9th Circuit Judicial Conference Representative**
- James R. Blair
- William D. Cook
- Parry Grover
- Daniel W. Hickey
- Millard F. Ingraham
- Phillip Paul Weidner

# Mafia Case Law ...

*By J.B. Dell*

Tattaglia Bros.
Appellees.
v.
Louie Boccho
Appellant

Supreme "Family" Court
Opinion No. 3495
**OPINION**

BRUNO, Chief Justice.

This is an appeal of the conviction and sentencing of Louie "Big Cheeze" Boccho for violating the law of *omerta*. The facts are as follows.

Boccho was formerly a member in good standing of the Tattaglia family, and was Southwest Regional Director of extortion, prostitution, and vending machines. On Oct. 23, 1988, Boccho allegedly leaked information concerning Tattaglia family activities to one Tony "Boxer shorts" Linguina while earing dinner at Angelo's resturant at 33rd and Wharf street. Boccho was subsequently convicted for violating the law of omerta and was sentenced to death by piano wire strangulation. This appeal follows.

### I. Violation of the Law of *Omerta*

Appellant contends that the law of *omerta* wasnot violated since the information transmitted to Linguina was not privileged because it was allegedly already in the public domain. The subject information conveyed was rhe fact that the recent fire at the Tattaglia warehouse was due to arson, designed to procure insurance. Boccho cites several cases for the proposition that wearhouse fires are *presumed* to be caused by arson, and therefore the information cannot, as a matter of law, be secret. *Rigattone v Guido "the podiatrist" Imperiale*, 234 P2d1[1] 456;*accord, Prizzi v Sammy "Fish oil" Dipesto*, 349 P2d 953. We disagree. Both or these cases were interpleader actions seeking court intervention in distributing funds obtained by fraud and are therefore distinguishable.

### II. The Bimbo Waiver

Boccho also argues that the information lost its privileged status because the head of the Tattaglia family, Ernesto "Compound Fracture" Miglio, discussed the details of the fire in front of his personal Bimbo, one Saucy O'Reilly, whom the parties stipulate was not a member of the Tattaglia family.

The subject of the Bimbo waiver has been addressed by many commentators, as far back as the 1920s, when it was referred to as the "Gun Moll" waiver. See *Cappone v Schultze*, 203 P 201, *dissenting opinion of Justice Cordoza*. The majority view has recognized the waiver only where the Bimbo was not shared by persons outside the family. See *e.q., Santini v Bennie "the Drycleaner" Tessio*, 394 N.J. 202. An emerging minority view, however, has extended the doctrine to apply to all Bimbo communications. *In re 27 Pairs of Cement Overshoes*, 402 P 21. We believe that the latter view best serves the public policy behind the law of omerta and we accordingly adopt it here. *Accord*, Restatement of Coercion, 2d, Sec. 394, Comment a.

### III. Evidentiary Matters

Boccho also contests his conviction on the ground that inadmissable evidcnce was relied upon in the form of testimony or a known snitch, one Alfonso "the weasel" Carfonni. Carfonni testified under a grant of immunity for his actions in betraying the family when he told law enforcement officers of an up oming Tattaglia "hit." We believe the testimony was admissable.

Snitch testimony has been traditionally disallowed only under certain limited circumstances. Compare *Mario Bros. Olive Oil Importers v Will "Three Finqer" Agostinio*, 239 P2d 203 (testimony of snitch disallowed where snitch testified before entire U.S. Congress) with *Frankie "the footstool" Lorenzo v Five Unknown Assailants*, 304 N.J. 102 (snitch testimony allowed where prior evidentiary hearing at gunpoint demonstrated that testimony was trustworthy). As noted in a recent article at 29 *Cosa Nostra Law Review* 30 (Winter 1988):

> The difficulties associated with snitch testimony should go to the weight of the evidence, not its admissability. Moreover, the trial judge has broad discretion to ensure witness reliability through threats, intimidation, and non-maiming force (See Uncivil Rule 9).

Accordingly, we find no error in allowing the weasel to testify.

### IV. Sentencing

Boccho alleges that his sentence is excessive. We evualate this allegation under the *Chenii* criteria for sentencing, which are as follows:

1)To protect the honor of the family.

2)To reinforce the norms of gangland conduct.

3)To deter other scum from fooling with the family.

4)To prevent the intrusion of other families.

Boccho was deemed by the trial judge as the among the "worst type of offender." Boccho argues that he is amoung the mildest offenders and should have received only a token sentence. See *Denardo v Gambini* (entire 212 members of the Gambini family go to bed only to find that someone has "frenched" all their sheets); *Meffiso v DeLuca* (DeLuca's 200 acre Sicilian estate covered with toilet paper).

Although we believe that Boccho is not among the worst type of offenders, we also believe he is deserving of a serious sentence, certainly more than a token punishment. As we noted in *Contraldo Bros. v Aldo "No Teeth" Vincenzo*, 44 P2d 439:

> Betraying the secrets of the family is among the most serious of offenses. The entire organized apparatus of family activities would collapse if these big mouths were to go unpunished. As the old axiom says, it is better that 200 innocent men have their lights knocked out rather than one guilty big mouth be allowed to "sing" to the police. 44 P2d at 442.

Therefore, this case is remanded with instructions to sentence Boccho to some substantial punishment, but less than death by piano wire.

[1]Protection Reports.

## Plan to be in Juneau 8-10 For the annual Alaska Bar Association Convention

### Alaska Bar Association CLE Seminar Video Replay Schedule Winter and Spring, 1989

**Replay Locations:**

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

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

FAIRBANKS LOCATION: Fairbanks Regency Hotel—CLE Video Replay Coordinator, Ray Funk, 452-1568

**Replay Dates:**

*Wrongful Discharge (Anch. 2/24/89)
Juneau: 3/11/89 9AM-12 Noon
Kodiak: 3/5/89 beginning at 12 Noon
Fairbanks: 3/24/89 1PM-5PM, Regency Hotel

*Loan Documentation (Anch 3/14/89)
Juneau: 3/25/89 9AM-5PM
Kodiak: 4/2/89 Full day beginning at Noon
Fairbanks: LIVE PROGRAM 3/16/89 9AM-5PM - Sophie Station Hotel

*Securities Law for Non-Securities Lawyers (Anch. 3/27/89) Juneau: 4/22/89 9AM-Noon
Kodiak: 4/23/89 Beginning at Noon
Fairbanks: 4/14/89 9AM-Noon, Attorney General's Office

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

## Samantha Slanders

*Advice from the Heart*

**DEAR SAMANTHA:** I have a problem. Last week I flew to the village of Kipnik on the Bering Sea with several prospective clients that I wanted to impress. Enroute we landed at Bethel and transferred to a small, single-engine plane. Shortly after leaving Bethel, I started to get a little woozy and my temperature began to rise. Within 20 minutes I was totally sick to my stomach and could not help but vomit. I grabbed the plane's sick bag in hopes of minimizing my embarrassment. Unfortunately, someone had cut the bottom out of the bag and my stomach contents covered the floor, as well as the shoes and clothing of my prospective clients.

Kipnik was fogged in.

We circled for about an hour before heading back to Bethel. By the time we reached Bethel, I had developed uncontrollable diarrhea. My earnest apologies didn't seem to impress my prospective clients.

By the time the doors of the small plane were opened, my clothes, which I bought specially for this trip, were a total mess and my potential clients literally sprinted away from me.

Is there any way of salvaging this situation?

***Sick & Tired***

**DEAR SICK:** Don't worry! One trip to the dry cleaners and your clothes will be as good as new.

***

**DEAR READERS:** It is always heartening to hear from you and comforting to know I have been of help in your lives. Please continue to write.

In the last edition, I wrote to the unfortunate gentleman stuck in a stall in the women's restroom who was too embarrassed to come out. Since then, I have learned that this is not as unusual a situation as one might believe. Only this week I received a letter from a reader telling me of a situation wherein a friend of hers, female in gender, did almost the same thing as our friend in Anchorage. Rather than remain in the stall in perpetuity, she simply lifted her feet and waited until the men's voices outside the stall disappeared. She then dashed for the door. As it turned out, however, she was seen by a male associate who had been traveling with her. She no good explanation. Had she read my advice column prior to this incident, she would have known how to react and been spared a great deal of embarrassment.

It's stories like this that help me understand the important role I play in the lives of my readers and that motivate me to continue forth with this important work. ***Samantha***

*For advice from Samantha, please write to her in care of the Alaska Bar Association, P.O. Box 100279, Anchorage, Alaska 99510.*

# • Serdahely reflects on his career

Continued from Page 1

as a partner in the law firm of Libbey and Serdahely. In 1978 he joined Birch, Horton, Bittner, as a partner again focusing on civil litigation and remained with the firm until his appointment to the Superior Court.

Judge Serdahely as a judicial officer has attempted to provide fairness and due process. Throughout his tenure, he has sought to engender professionalism. He is happy to say that the quality of the litigation before him has been quite high. He further would like to compliment and thank the practicing Bar of the State of Alaska for their cooperation and professionalism for the last eight years. The judge says he is proud that he has not been required to hold even one practicing Alaska attorney in contempt of his court; this, he believes, is a credit to the Alaska Bar.

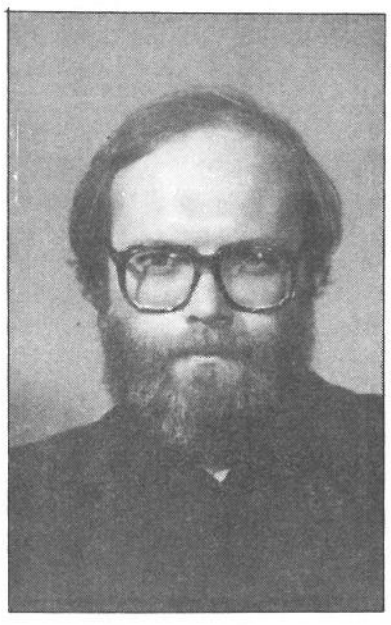
Judge Serdahely says the most satisfying aspect of his being a judge has been his participation in court-assisted settlement conferences. Through the settlement conference, disputes can be resolved in a fair and prompt manner. He estimates that he has over the course of his eight years, presided over 500 settlement conferences, a couple hundred trials, and thousands of motions.

### Memorable Cases

Several of these trials have been quite memorable. He presided over the Sen. George Hohman bribery trials, the first political corruption case brought in Alaska. He also has the dubious honor of being the judge in the case with the single largest file in the Alaska Court System. This litigation involved Koniag Inc., a Native regional corporation.

The judge also has addressed important due process issues in criminal cases. In one of his earlier cases, *Contreras v. State*, he had to decide whether a hypnotically enhanced identification of an assailant should be admitted at trial. He determined that it should not. The Court of Appeals reversed his decision. The Alaska Supreme Court reversed the Court of Appeals. See *Contreras v. State*, 718 P.2d 129 (Alaska 1986).

Judge Serdahely was the presiding judge of the Third Judicial District from 1984 through 1987, appointed to that position by Chief Justice Rabinowitz. During his tenure as the presiding judge, a new procedure for handling certain civil cases was developed and instigated. This procedure is the fast track system for less complex cases.



**Judge Serdahely**

### Keeping up with data

He said he also has attempted (but to date has been unable) to, computerize the information received into the Anchorage Court System. Judge Serdahely envisions an automated system in which all accounting, including filing fees and fines, would be entered into one central data base, as would information concerning warrants and updated information on any filings in a particular case.

He had also hoped that a computerized system could help in case management, not only by type of case, but also for each judge. Although he started to work on computerizing the court system soon after he became the presiding judge, to date, his dream has not come to fruition. He believes that the problems he has encountered make his attempt a case study of the difficulty of bringing major changes into a government institution.

Judge Serdahely provided a wealth of information about the statistics of the court system.

In the Third Judicial District there are 26 district and superior court judges, 15 to 20 magistrates and 250 support personnel. The court has an annual budget of about $39 million, and the average case load of a fast-track judge is 1,000 cases. The average case load of a non-fast track judge is about 425 cases. (See Chart A. For general filing information, see Chart B).

Judge Serdahely's most satisfying accomplishment as presiding judge is the fast track system that was developed to minimize delay. The average time to get to trial had been from 2 to years. This was true even if litigation were a small case that would require only a one to three day trial. If it got stuck behind a large case, there could be unlimited delay. The system was ineffective and did not promote justice, the judge believed.

The goal of the new system is to process cases within one year from the filing of the complaint to the end of the trial. Serdahely said he realizes the fast track system is probably not the final word in judicial efficiency, but he believes that it is a giant step toward that goal.

### Why he's gone

Judge Serdahely decided to leave the bench for at least two reasons.

For one, he thinks that maybe his life runs in cycles of eight years (serdahely says he spent eight years in private practice, he spent eight years on the bench, and now it's time for him to move on to a new, less routinezed challenge).

Serdahely will be joining the Seattle-based law firm of Bogle & Gates as a partner. He will be focusing on large and complex civil litigation, not only in Anchorage in the state and federal court systems, but also in the Pacific Northwest.

The other reason that Judge Serdahely is leaving the judiciary is money. The judiciary has not had a pay raise in the last four years. When he first joined the Superior Court, the court system in Alaska was paid better than any other court system in the U.S. Today, it ranks 36th among the states.

While the pay level of the judges remains static, the private sector salaries have increased. This great discrepancy between compensation as a judge and compensation in the private sector has caused a number of respected jurists to return to the private sector, said Judge Serdahely, including former Supreme Court Justices Bob Erwin and Roger Connor; former Superior Court Judges Chris Cooke and Jim Blair; and former District Court Judges Laurel Peterson and Mike White.

He noted another problem with low salaries is that the judicial positions do not attract highly experienced, well-respected trial lawyers from the private sector. He noted, for example, that when there are judicial openings, you do not see successful trial lawyers such as David Thorsness, Jim Delaney, or Ted Pease apply for those vacancies.

It is Judge Serdahely's belief that if the pay for the Alaska judiciary continues to be modest when compared to the private sector, the Alaska judiciary may ultimately be composed of two basic groups of jurists: (1) those who are wealthy enough to be able to afford judicial service at relatively low compensations, and (2) those who are career government attorneys for whom appointment to the bench may actually mean an increase in compensation.

Judge Serdahely was quick to point out that he did not mean to denigrate the ability or the talent of the people coming from the two backgrounds he indicated. He does believe, however, that in order to have a well-rounded judiciary, we must draw from the talented and successful attorneys engaged in the private practice of law. As it is presently, judicial service for them would require a major financial sacrifice.

The Alaska State Officers Compensation Commission is in the process of making recommendations for increases in judicial salary. The present recommendations, however, cover only the loss in buying power due to inflation. The present salary for a superior court judge is $77,000; the recommended salary is $82,500. The salary which would cover inflation alone, would be $82,406, the commission found.

Judge Serdahely believes that the work of the superior court judge for

Continued on Page 19

## SUPERIOR COURTS
## COMPOSITION OF FILINGS
## FY 88

| COURT | Felony | CIVIL | | | Children's Matters | TOTAL |
|---|---|---|---|---|---|---|
| | | Probate | Domestic Relations | Other | | |
| Anchorage | 941 | 1606 | 4443 | 2715 | 705 | 10410 |
| Barrow | 45 | 21 | 21 | 17 | 83 | 187 |
| Bethel | 171 | 142 | 67 | 55 | 118 | 553 |
| Fairbanks | 393 | 576 | 868 | 704 | 221 | 2762 |
| Juneau | 147 | 195 | 342 | 284 | 110 | 1078 |
| Kenai | 97 | 137 | 345 | 205 | 112 | 896 |
| Ketchikan | 116 | 84 | 221 | 118 | 105 | 644 |
| Kodiak | 109 | 85 | 115 | 85 | 41 | 435 |
| Kotzebue | 103 | 52 | 24 | 26 | 63 | 268 |
| Nome | 100 | 62 | 40 | 36 | 76 | 314 |
| Palmer | 156 | 78 | 275 | 144 | 102 | 755 |
| Petersburg | 32 | 19 | 18 | 9 | 8 | 86 |
| Sitka | 60 | 89 | 110 | 32 | 84 | 375 |
| Valdez | 45 | 9 | 44 | 18 | 8 | 124 |
| Wrangell | 11 | 18 | 27 | 6 | 6 | 68 |
| **Total** | 2526 | 3173 | 6960 | 4454 | 1842 | 18955 |
| % of Total | 13% | 17% | 37% | 23% | 10% | 100% |

## BY JUDICIAL DISTRICT

| | | | | | | |
|---|---|---|---|---|---|---|
| First | 366 | 405 | 718 | 449 | 313 | 2251 |
| Second | 248 | 135 | 85 | 79 | 222 | 769 |
| Third | 1348 | 1915 | 5222 | 3167 | 968 | 12620 |
| Fourth | 564 | 718 | 935 | 759 | 339 | 3315 |

FISCAL YEAR JULY 1 - JUNE 30

## Third Judicial District

Civil Cases — August and September, 1988

| | Fast Track (A, C & F) | | | Non-Fast Track (G, K, M & J) | | | | |
|---|---|---|---|---|---|---|---|---|
| | A | C | F | G | K | M | J | Totals |
| Pending | 1,023 | 912 | 1,164 | 329 | 447 | 364 | 514 | 4,753 |
| New Cases | 99 | 94 | 97 | 17 | 20 | 19 | 20 | 366 |
| Reopened | | 1 | | | | 2 | | 3 |
| **Domestic Assigned To Non-Fast** | | | | | | | | |
| Track | | | | 16 | 14 | 14 | 14 | 58 |
| **Reassigns** | | | | | | | | |
| Received | 18 | 21 | 23 | 8 | 8 | 14 | 16 | |
| Disq.: Self | 2 | 4 | 5 | 3 | 1 | 5 | 6 | |
| Party | 10 | 13 | 24 | | 1 | 5 | 7 | |
| F.T. | 8 | 3 | 4 | 3 | 1 | | 2 | |
| **Other** | | | | | | | | |
| Case Increase | 97 | 96 | 87 | 35 | 39 | 39 | 35 | |
| Disposed | 49 | 109 | 120 | 30 | 22 | 21 | 25 | 376 |
| Pending | 1,071 | 899 | 1,130 | 334 | 464 | 382 | 524 | 4,804 |

**Total domestic cases assigned to G - 85; K - 81; M - 81; and J - 81. A - Judge Souter; C - Judge Ripley; F - Judge Katz (now Judge Fabe); G - Judge Serdahely; K - Judge Shortel; M - Judge Hunt; and J - Judge Gonzalez.**

# IOLTA

*By Mary Hughes*

In September of 1985, the Alaska Bar Foundation initiated the first phase of Alaska Legal Network. Through "Alaska Legal Net," the Trustees of the Foundation hoped to develop better communications among the Bar Association, the Bar Foundation, members of the Bar, and the public.

The toll-free access to Alaska Legal Net for members of the Alaska Bar is still operational. Alaska Legal Net employs Holly Crooks, a legal assistant, who responds to lawyers' requests for copies of cases, treatises, law review articles, briefs, periodicals, and any other information which lawyers are unable to obtain in the locale in which they practice. The phone call is free and the service is free. The telephone number is 800-478-7878.

It is the hope of the foundation to continue Alaska Legal Net indefinitely. However, use of the toll-free service has been waning. Therefore, the Trustees encourage members of the Bar and local bar associations to utilize the service. Any suggestions as to how the service might be improved are welcomed. Comments may be sent to the Alaska Bar Foundation, Box 100279, Anchorage, Alaska 99510-0279.


# Court suspends Harless

In the Disciplinary matter involving Scott D. Harless, respondent. Supreme Court No. S-3050, Order. ABA File Nos. 85.239; 86.141/148. Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

This matter having come before the court for review of the findings of fact, conclusions of law, and recommendations of the Disciplinary Board of the Alaska Bar Association, pursuant to Alaska Bar Rules 22(n) and (r), and the court being advised in the premises,

It is ordered:

1. on review of the entire record in this case, we AFFIRM and ADOPT the decision or the Disciplinary Board of the Alaska Bar Association.

2. Scott D. Harless is suspended from the practice of law in the State of Alaska for a period of four years, effective immediately.

3. Discipline Counsel for the Alaska Bar Association shall comply with all requirements of Alaska Bar Rule 28, which includes, inter alia, the transmission of a copy of the order of suspension to any jurisdiction other than Alaska to which Scott D. Harless has been admitted to the practice of law. Scott D. Harless shall also comply with all requirements of Alaska Bar Rule 28.

4. Any application by Scott D. Harless for reinstatement to the practice of law in Alaska shall comply with all requirements of Alaska Bar Rule 29.

Entered by direction of the court at Anchorage, Alaska, on March 1, 1989.
/S/ David A. Lampen
Clerk of the Supreme Court

## SECTION REPORTS AND UPDATES

**MAY 1, 1989 DEADLINE**

Just a reminder to Section Chairs that Section ANNUAL REPORTS and UPDATES need to be submitted to the Bar Office by Monday, May 1, 1989. Please call Barbara Armstrong at 272-7469 for further information.

## LEXIS TRAINING SCHEDULE - SPRING 1989

| Class | Date | Times |
|---|---|---|
| Lexis Initial | Monday, April 24 | 1:30 - 4:30 p.m. |
| | Tuesday, April 24 | 9:00 - 12:00 noon |
| | Tuesday, April 25 | 1:30 - 4:30 p.m. |
| | Wednesday, April 26 | 1:30 - 4:30 p.m. |
| | Thursday, April 27 | 1:30 - 4:30 p.m. |
| Lexis Refresher | Wednesday, April 26 | 9:00 - 11:00 a.m. |
| | Thursday, April 27 | 9:00 - 11:00 a.m. |
| | Friday, April 28 | 9:00 - 11:00 a.m. |
| Lexis Advanced | Friday, April 28 | 1:30 - 3:30 p.m. |
| | Monday, May | 1:30 - 3:30 p.m. |
| Focus on: Statutes | Monday, May 1 | 10:30 - 12:00 noon |
| Focus on: Banking | Tuesday, May 2 | 10:30 - 12:00 noon |
| Focus on: Federal Materials | Tuesday, May 2 | 1:30 - 3:30 p.m. |
| Focus on: Information on Companies | Wednesday, May 3 | 10:30 - 12:00 noon |
| Focus on: Tax | Wednesday, May 3 | 1:30 - 3:00 p.m. |

All classes will be held in the Easter Island Room at the Hotel Captain Cook, Anchorage. Please bring your Lexis ID number to class. For more information or to sign up for a class, please call Ellen Schwenne at 694-8333.

# Bar Association survey is in the mail on April 7

April 7 is the date that the economic survey of the Alaska Bar Association will be going into the mails, says Harold M. Brown, the Executive Director of the Alaska Judicial Council. The questionnaire, which will qo to all active members of the Alaska Bar, was developed after extensive consultation with the legal community, including local bar associations.

The study will be conducted by Policy Analysts, Limited, which has carried out judicial selection surveys since 1980. A major consideration in the ellection of PAL was its excellent record in handling and reporting sensitive information. A process to insure the confidentiality of each members' response has been developed together with guidelines to protect against the identification of firms by their responses. These protocols will be strictly observed in the manner in which survey results are reported.

The format of the survey has been designed to facilitate ease or response. The range of information requested includes that pertaining to estimates of adjusted gross income from the practice of law, wages or salaries paid to associates, secretaries, paralegals and office managers or received by corporate and government attorneys.

The survey also seeks information about a variety of topics, including billing rates, office rental rates, office equipment, malpractice insurance, CLE and PRO BONO work. Lifestyle and special-interest questions will be asked. The results of the survey will be available to all members of the Alaska Bar Association and, consistent with concerns for confidentiality, will be broken out by Judicial District.

The Alaska Judicial Council is proud to join with the Alaska, Juneau and Tanana Valley Bar Associations in the sponsoring of this survey. The ultimate success of this survey is dependent upon the cooperation of all members of the Bar. Please take the few minutes necessary to respond when you receive your survey in the mail.

# Summmary of disciplinary actions imposed by Bar

Attorney A received a written private admonition for failing to communicate with a client and failing to inform the client if the attorney was unable to handle a matter because of the press of other business.

•

Attorney B received two written private admonitions for neglecting two separate legal matters entrusted to Attorney B. The existence of significant mitigating factors justified resolution of the complaints at this level.

•

Attorney C received a written private admonition for failing to take reasonable action to determine whether descriptions of a client's statements were correctly reported to the court and for failing to take remedial action when those erroneous descriptions were discovered.

•

Attorney D received a private reprimand by the Disciplinary Board for a violation of Bar Rule 15(4) because the attorney failed to provide documents requested by discipline counsel and by a member of an area hearing division and failed to file an answer to an amended petition for formal hearing in a timely manner, all without reasonable or satisfactory excuse.

# California Bar acted illegally

The California Supreme Court ruled Feb. 23 that the State Bar of California acted illegally when it participated in the judicial retention elections of California Supreme Court justices. The court upheld the Bar's political lobbying and participation in court cases unrelated to the regulation of the practice of law.

Representing 21 California attorneys, Pacific Legal Foundation (PLF) brought suit against the State Bar in November of 1982. California law requires all attorneys in the state to belong and pay dues to the State Bar. PLF argued, therefore, that the Bar could not use mandatory membership and compulsory dues to finance a political and ideological agenda with which many of its members disagreed.

"The court's decision outlawing electioneering by the Bar is an important ruling guaranteeing our continued right to free elections," said Ronald A. Zumbrun, president of PLF. "Democratic institutions are endangered whenever any group is able to compel payment of money and then use those funds to affect the election process."

Pacific Legal Foundation filed suit while the Bar was actively campaigning for the re-election of Supreme Court justices. Also that year, the Bar's conference of delegates adopted resolutions supporting ballot initiatives calling for a nuclear weapons freeze and handgun controls.

The Bar's active lobbying campaign was also questioned. The suit noted that the Bar has taken positions on a number of controversial measures before the state legislature, including proposals on the environment, drug paraphernalia, comparable worth and criminal penalties. The Bar also involved itself in controversial litigation, such as participation in the failed attack on the constitutionality of Proposition 8, the Victims' Bill of Rights.

In reaching its decision affirming the lobbying activity, the court rejected the approach taken in such cases by nearly every court across the nation. Ruling that the State Bar was essentially a governmental agency, the court held that there were no constitutional restrictions on the Bar's political and ideological activities, so long as the legislature did not prohibit such activity.

Like other government agencies, however, the court ruled that the Bar is prohibited from advocating a position in election contests.

"Allowing the Bar a continued free hand in its lobbying and other political activity appears to be at odds with the ruling of other courts that review this issue," Zumbrun noted. "That makes this a particularly good case to appeal to the United States Supreme Court."

Pacific Legal Foundation is the nation's largest and most successful nonprofit legal foundation pursuing individual and economic freedom, and limited government.

# Canadian defence lawyer learns 'making eyes' at a jury is a no-no

MONTREAL (CP) — Defence lawyer Daniele Roy, who had been accused of making eyes at a jury last December, was fined $2,000 on Tuesday for contempt of court.

Kustice Benjamin Greenberg of Quebec Superior Court said Roy repeatedly defied his rulings at a murder trial and that her conduct "undermined" the judicial process.

Greenberg presided at both the murder trial and Roy' contempt hearing. His complaint was that despite warnings, Roy repeatedly tried to bend the rules in cross-examining prosecution witnesses at the murder trial, even arguing with a police witness.

Roy, 32, who has been a lawyer for eight years, said she simply got carried away in her will to win. Her client was acquited.

Greenberg told a packed courtroom that Roy's excuse was "less than sincere" and that she showed no remorse for her "unprofessional" behavior.

Greenberg also upbraded Roy's defence lawyer, Jean-Claude Hebert, for his comments on the case last week. Heber had suggested Roy should be let off with a reprimand. To impose any other penalty would be to "add insult to injury," he said.

Eyeing Hebert on Tuesday, Greenberg described those comments as "inappropriate" and "lacking courtesy."

During the murder trial, Greenberg took issue with Roy for her body language, the way she rolled her eyes and her habit of smiling at male members of the jury.

Roy denied she was trying to use her charms on the jury. She said she was just naturally expressive. Greenberg said he gave her the benefit of the doubt on that point.

Roy has 90 days to pay the fine; otherwise, the judge stipulated, she would have to spend five days in jail. Hebert has said he will appeal.

The Association of Montreal Defence Lawyers complained that Greenberg, by presiding at both the murder trial and contempt hearing, was acting as judge, jury and executioner.

Calling the case a throwback to the Victorian age, the lawyers said in a statement that once he charged Roy with contempt, Greenberg should have stepped aside and allowed another judge to determine whether she was guilty.

They added that sanctions for inappropriate behavior are best handled by the profession istelf, and pointed out that Roy faces a hearing before the Quebec Bar's disciplinary committee.

*—Reprinted from the Prince Rupert, B.C., Daily News, Feb. 15, 1989.*

## ANNOUNCEMENT

THE TANANA VALLEY BAR ASSOCIATION PROUDLY ANNOUNCES A KING ARTHUR PRODUCTION. THE 123rd ANNUAL 4th OF JULY PICNIC TO BE HELD FRIDAY, FEBRUARY 24th, AT IVORY JACK'S IN GOLDSTREAM VALLEY (ACTUALLY IT'S IVORY DICK'S NOW, BUT WITH THAT OOSIK ON THE WALL, WE'D BETTER NOT DISCUSS THIS SORT OF THING).

PRELIMINARY EVENTS BEGIN AT 7:00 P.M. WITH SPECIAL PRIZE-FILLED CATEGORIES FOR FINGERGRIP, ELBOWBEND AND THE FASTEST PERISTALTIC CONVULSION. AT 8:00 P.M., THERE WILL BE DINNER WITH A SALAD BAR. WE HAVE TAKEN OVER THE UPSTAIRS LOOKING OUT OVER THE BEAUTIFUL AIRFIELD, DOG KENNELS, ETC. DINNER WILL MANDATORILY CONSIST OF EITHER:

1. **Prime Rib with Prawns at $21.**
2. **New York Steak with Prawns at $21.**
3. **Prime Rib with King Crab at $21.**
4. **New York Steak with King Crab at $21.**
5. **Stuffed Prawns at $17.50.**
6. **Veal Cordon Bleu at $17.50.**
7. **Prime Rib at $17.50.**
8. **Old Dead Cow (Steak) at $17.50.**

FOR ENTERTAINMENT, WE HAVE LINED UP A PIANO PLAYER, A MARCHING BAND, NO BAGPIPES, AND THREE LIVE SEX ACTS. WE'RE HOPING TO CANCEL ALL OF THESE IN FAVOR OF FIREWORKS. WHATEVER THE ENTERTAINMENT MAY HAPPEN TO BE, IT WILL COST A LOT, BUT YOU DON'T HAVE TO PAY FOR IT.

ORATORIAL EXHIBITIONISM WILL BE PROVIDED BY THE INCOMING OUTGOING OFFICERS, THEIR AWARDING OF TROPHIES AND OBSCENE APPELATIONS TO EACH OTHER, AND THE NORMAL SORT OF THING THAT GOES ON.

PLEASE FEEL FREE TO REFRAIN FROM ALL ACTIVITY DURING THE DAY, AS THE RESTROOMS WILL BE GENEROUSLY SUPPLIED WITH TVBA MINUTES, ESPECIALLY PERFORMATED TO TEAR INTO LITTLE SQUARES FOR YOUR EASY USE.

THIS IS A ONCE-IN-A-LIFETIME OFFER. WE PLAN ON ARRESTS GALORE AND POSSIBLY A SMALL RIOT OR TWO. YOU'RE PROBABLY GOING TO PAY FOR THIS THING WHETHER YOU GO OR NOT. COME EARLY AND BRING MONEY TO BUY DRINKS FOR YOUR FRIENDS.

*"BE THERE OR BE A TRONCATED TETRAHEDRON"**

*Worse than Square.

# Tom

Oldborn Tom.
Tomcat, gray.
Told no one.
Gave none away.
Never slept,
At least, alone.
Not about.
Always home.
Any night
Front light on,
Come right up
Talk until dawn.

Aristotle?
Knew him well.
Pass the bottle.
What the hell.
Drank with Plato.
Shared his cup.
Ideal way to fill
The evening up.
He summoned the arts
Of friends like these:
Bacon, Descartes,
Diogenes.

We questioned schemes
For the Highest Good:
The End of Man
Is fatherhood?
Does God exist?
If not, do we?
How about this -
Is my will free?
Are the shadows we see
On our cavern wall
The only things that we
Are meant to see at all?

He answered every question
And replaced it with another.
He knew more than anyone.
Yet, none of us would bother
To try to discover some of those
Unknown sources that he drew from.
Or even, who the hell he was.
Cogito, ergo sum.
Those questions that we didn't ask,
None of our business, I suppose.
Only, sometimes I think we passed
Because we didn't want to know.

Tom died of drink, the Coroner said.
The downstairs neighbors testified:
"We found him alone. A long time dead.
There was an empty wine bottle at his side.
Lived by himself—no friend or visitor
Except for Aristotle, his old gray cat
And the delivery man from the liquor store.
He talked to himself. Nothing wrong with that.
We didn't mind. Oh, maybe once in a while
When he had a skinfull. Then he would pace
And yell and answer back, all riled
Like someone else was there, in his place."

Oldborn Tom.
Tomcat, gray.
Told no one.
Gave none away.
Never slept,
At least, alone.
Not about.
Always home.
Any night
Front light on
Come right up
Talk until dawn.

*—Harry Branson*

# • Salaries should be hiked

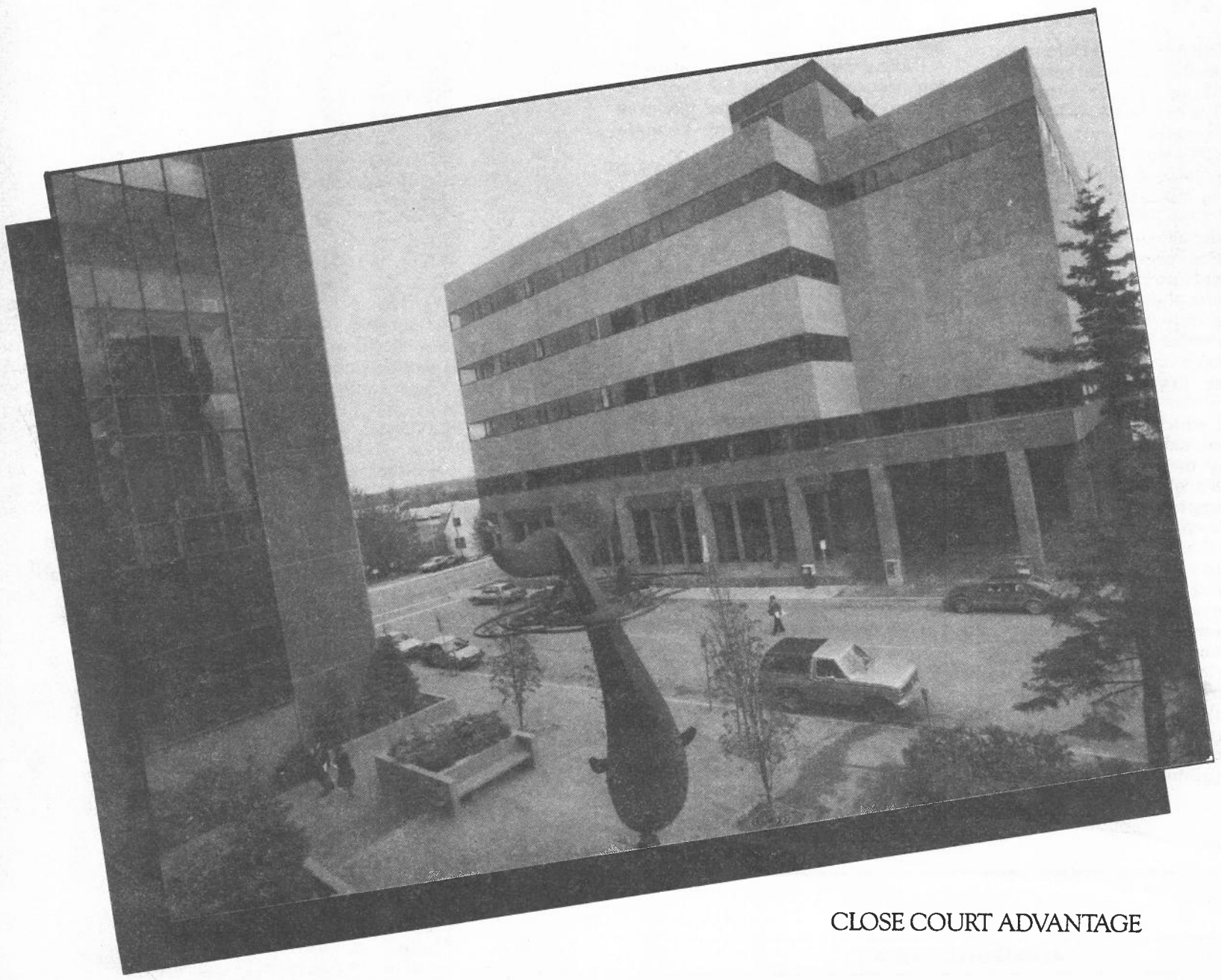
**Continued from Page 17**

the State of Alaska is comparable to the work of a district judge in the federal system, who presently earn $89,500. Recently, United States Supreme Court Chief Justice William Renquist endorsed the federal salary commission's proposal to raise federal court judges salaries to $135,000. Although the raise was recently voted down, increasing the salary of the federal judiciary remains a top priority in Congress.

Judge Serdahely did not necessarily recommend adopting the salary schedules for the federal court system. He rather said that determination of state judges' salaries should be a question of pure market dynamics. The judicial salaries should be set by determining how high the salaries must be in order to encourage experienced and respected law professionals to enter and remain in a judicial career.

On the whole, Judge Serdahely's years on the bench were a very positive experience. If circumstances are appropriate, (perhaps in eight or maybe 16 years), he said he may wish to again serve on the bench, perhaps at a different level.

Judge Serdahely would like to be remembered as a judge who attempted to be fair and conscientious.



CLOSE COURT ADVANTAGE

How much time do you spend in traffic? Probably much more than you realize. In fact, if most of us really analyzed what travel time costs us each year, the results might be rather unnerving.

Many Anchorage attorneys, like yourself, have discovered a way to make their time more productive. They've moved to the Carr Gottstein and 3rd & "K" buildings. . .where the courthouse, professional services, and many of the city's finest shops and restaurants are only steps aways.

Carr Gottstein Properties is now offering space in both of these buildings. Both overlook Cook Inlet, offer flexible office space and outstanding improvement allowances. View suites are available. Best of all, these prime office locations save you time. . .which saves you money.

For more information, call Susan Perri at 564-2424.

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