Save Tibet, watch your manners with the military, learn about wine and tax liens, quarterback the Oscars, catch the latest news from the Tanana Valley Bar, and read more about moonlighting lawyers. Inside!

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The Alaska BAR RAG

VOLUME 15, NO. 2

Dignitas, semper dignitas

MARCH-APRIL, 1991

LAWYERS SEEK LIFE OUTSIDE THE LAW

Pinmaker, Bookmaker, Farmer Three

BY MICKALE CARTER

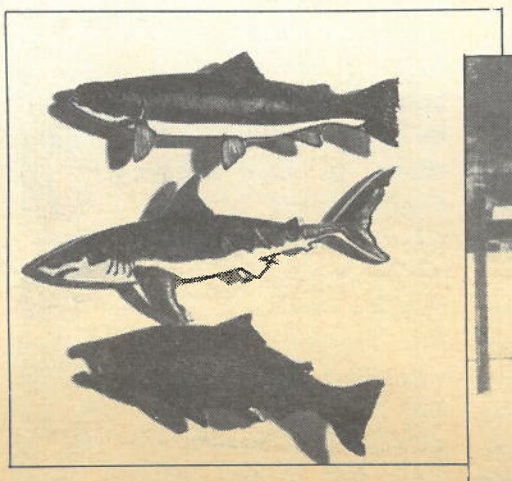
A recent survey conducted by Ronald L. Hirsch of the American Bar Association revealed that attorneys in 1990 were working longer hours and enjoying their work less than their 1984 counterparts. In 1984, only 4% of those surveyed said that they worked over 240 hours per month. In 1990, 13% worked those long hours.

Only 33% of the 2,289 attorneys who participated in the survey said that they were very satisfied with their current job. This compares with 41% in 1984. Forty-three percent of all men in solo practice said they were dissatisfied; among women, it was 55%. And 22% of all male partners in private practice said they were dissatisfied with their work, as opposed to only 9% in 1984. For female partners, the figure rose to 42% from 15%.

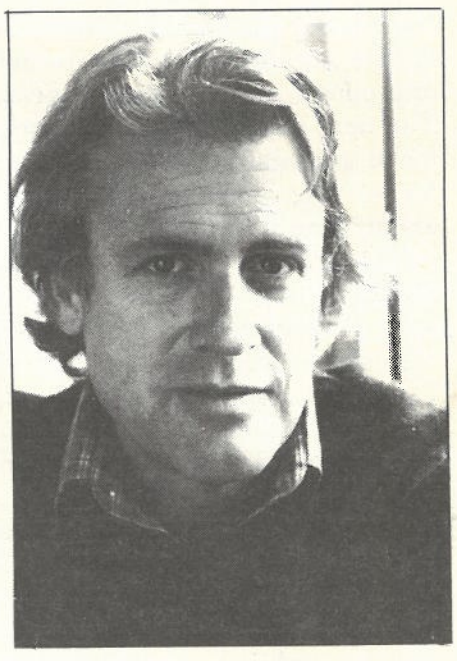
In spite of this increased job dissatisfaction, only 3 to 4 % of those responding to the survey said that they planned to leave the legal profession in the next two years. The survey did not inquire as to the reason for the reluctance of the dissatisfied attorneys to break out of their doldrums.

The editor of your favorite bimonthly newspaper opined jokingly, however, that the reason for this reluctance might be that most lawyers aren't creative enough to figure out how to earn a living if they were not practicing law. As part of his continuing effort to be of service to Alaska attorneys he gave me the assignment of seeking out attorneys who had been able to figure out something other than the law as a means of generating income.

I interviewed two such Alaska attorneys. One, Bill Spear of Juneau, no longer practices law. The other, Marvin Clark, continues to practice as a sole practitioner in Wasilla.



A visitor pets the reindeer at Williams Farm (read all about it on page 13); while some of Bill Spear's fish pins pose for the photographer.



BILL SPEAR

Bill Spear is a prolific designer of enamel pins.

More than 250 of his designs are sold in 700 bookstores, museums, zoos, art galleries, gift shops, and other emporia across the nation. He wouldn't discuss sales figures, but Bill Spear Designs, Inc. appears to be thriving.

On the road to building a successful jewelry manufacturing business, Spear traversed several challenging positions in government and politics.

Midwestern roots

Bill grew up in Nebraska and migrated to Alaska after graduating from Georgetown Law School in 1968.

His first job here came after he interviewed with then-Alaska Attorney General G. Kent Edwards at the Kansas City Airport. Accepting a job as an assistant attorney general, Spear worked in Juneau at the A.G.'s office less than a year.

From there (1971-74) he saw first-hand the creation of the landmark Native Claims Settlement Act and the Alaska Pipeline construction boom as field solicitor for the U. S. Department of Interior.

Politics beckoned, and Bill left the federal service to run the first gubernatorial campaign of maverick Jay Hammond.

Gov. Hammond appointed Bill Deputy Commissioner of Labor, and he held that position from 1975-79. Those were often chaotic times for organized labor, and Bill vividly remembers

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President's Column

By Daniel Cooper

There are those who subscribe to the theory that one can enhance one's physical well being, and therefore the quality of one's life, through aerobics. Yup. People actually think that jumping up and down and flinging yourself around, kind of a helter skelter hokey pokey, is good for you. I tend to subscribe to the competing theory that your mind can prevail over matter, and that all you really need to do is think about it. Better living through aerobic imagery, so to speak.

What does all that have to do with the Bar Association? Simply this ..... the Bar Convention is coming up. One of the highlights will be Judge J. Justin Ripley and Judge Jon Link leading the organized Bar through a Judicial Aerobic workout, just as promised here months ago. Just imagine, two men of such immense stature, leading the rest of us through their judicial routine, splendidly attired in judicial Spandex, 5:30 a.m. Saturday, June 8th. This event is worth the price of the program.

All the details of time and place are set out elsewhere in this edition of the Rag, but to highlight the important matters, the convention is in Fairbanks, June 6-8, and it looks like it will shape up into good CLE and fun social events. ALPS is hosting a series of athletic events with real awards and hats. Golf, racquetball, and running events are all slated. In keeping with the theme that thinking reduces doing, a special event has been planned- the Zero-K Predicted Time Race. Jim Blair has organized this event whereby you send him your name, age (so he can put you in the right age group), prediction for how fast you can cover the course, and a five dollar entry fee. You need not be present to win, and Jim will be the sole judge of the winner, something he really enjoys doing. He says he's already made his prediction, and invites you to do likewise. Multiple entries per person are encouraged.

Other social events include an opening reception at the home of the President of the University of Alaska. This promises to be very nice, with hor d'oeuvres, cocktails, a jazz ensemble, and no speeches. Thursday night will be the Riverboat Discovery, with a buffet and no speeches. Friday evening is a trip to Alaskaland for the salmon/halibut bake. The Palace Saloon Show will be available early in the evening, and later, after the children have been safely shuttled off to safe places, the TVBA's very own "We'll Never Be Ready For Prime Time Players" will present a program at the Palace Saloon. Seating for that program is limited, so get there early.

Substantive programs are covered elsewhere in the Rag. They all look good, and there should be something on the program that will be of benefit to everyone in the Bar. There will also be some spouse and other companion programs this year, dealing with issues such as stress. Maximize your resources by bringing them along, sending them to the programs, and asking them to take notes so you too can learn to live better.

The speakers are great. Chief Justice Rabinowitz will finish the history of Alaska started last year, with footnotes. Attorney General Charles Cole has promised to speak one day as well, and if you haven't heard him wind up and deliver, it's a rare treat. The banquet speaker will be Chief Judge Alex Sanders of the South Carolina Court of Appeals, a truly fine speaker who has a unique message about judges and judging. Without giving away his theme, I think it is safe to say that you will learn that many things you feared about judges are true.

So, please come to Fairbanks this June. The judges will be there, so there won't be any reason to go down to the courthouse, except to get out of the office. The TVBA has promised everyone a good time, and, generally, they keep their promises. So come on over to a place where every case is on the fast track, every lawyer is a trial lawyer, and every judge is a trial.

The Alaska BAR RAG

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

March 22 & 23, 1991
June 3-5, 1991, Fairbanks
June 6-8, 1991, Fairbanks

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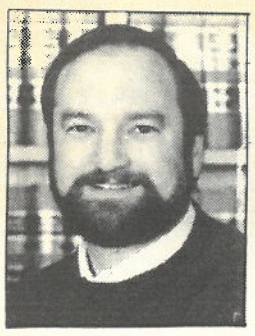

Editor's Column

By Ralph Beistline

This was going to be my best article! I specifically put off writing it until my vacation, when I would have 10 undisturbed days with my wife and 5 children. Days spent exploring the Arizona flat lands, basking in the sun, and relaxing in the quiet tranquility that such a family vacation was sure to bring. The perfect environment for truly creative writing.

Actually, the vacation was only 8 days long - since days 1 and 10 were devoted entirely to travel. This still left 8 quality days.

It was on day 2 that I realized that a majority of my children had become teenagers since our last vacation; this was not the silent majority we hear so much about. I gave in to their desires and spent the day "mall-hopping" -- totally blowing my 10-day budget and making no progress at all on my article.

Day 3 was dedicated to my 7-year old son. He contracted strep throat and had all of the associated symptoms. We spent the day plying him with antibiotics and looking forward to day 4 and our excursion into Mexico.

Mexico was fun! My bartering skills, honed by 16 years of legal practice, were remarkable and gleaned me a hammock, some pens, and several "rare" Mexican blankets, at what the merchants assured me were excellent prices. Unfortunately, just as I was going good, all 5 kids either needed a drink of water or had to go to the bathroom. We had previously determined that none of the aforesaid acts would be carried out in Nogales, so we scooted back across the border to a conveniently located McDonald's.

It was on day number 5 that daughter number 1 realized that we wouldn't be purchasing an entire new wardrobe for her on this trip. She graciously shared her disappointment with all the group and in the process dampened my creative juices. The next day, though, day number 6, promised to be a good one for writing and I sensed a great article would then come forth.

Day number 6 was hot and beautiful and perfect for tanning. The housekeeper, though, who dutifully awoke us daily at 7 a.m. to make up the rooms, was nowhere to be found when son number 2 locked our keys in the room. Without pen or paper, I was left to soak up the sun's golden rays.

Early on day number 7, son number 1 locked the car keys in the car and our talents turned to retrieving them without destroying the car or irritating our severely burned bodies. By noon, access to the car had been obtained and we were able to seek out a local physician to treat daughter number 2's rather severe earache. The ear canal had apparently become infected by too much swimming and another batch of antibiotics was purchased. I did get a few moments to write on the evening of the 7th day, only to find that the pens I had purchased in Mexico came without fillers.

It was on the 8th day that we ran out of cash. Fortunately the credit card still worked and was used to secure some extra spending money. This was in turn used to purchase bandages for son number 1 who had cut

Continued on page 7

Letters

More Mushers!

I bring to your attention the contribution lawyers of the Second Judicial District have made to the sport of mushing. Although some may think dogsledding is the normal means of transportation in this District, it does make one late for court appearances. (Soliloquy of David Monson before Judge Jones December, 1984.)

The Second has contributed Vern Halter of the Public Defender Agency, H. Connor Thomas of Larson, Timbers & Van Winkle, and David Monson, formerly of the Public Defender Agency to the mushing adventure. (It is interesting to note the proclivity of defense attorneys to mushing. Is there an equal protection issue raised by the absence of prosecutors in this august group?) All have run the Iditarod and Connor will joins them this year on the Yukon Quest adventure. Hence, all will have run both the Iditarod and Quest in addition to numerous other races.

I am sure these real mushers, not just dilettantes, would *gladly accept all financial* support proffered by their legal brethren.

Richard H. Erlich

Mystery of socks solved

I read with great amusement your recent article in The Alaska Bar Rag regarding lost socks.

I thought you may like to read an article which was published in *Science 82* magazine explaining this phenomenon.

LeRoy DeVeaux

Of Science and Socks

Scientists have unaccountably neglected a mysterious phenomenon — the sock's infinite capacity to disappear.

By Jake Page

For all its intellectual thrust, its ability to forge new answers to age-old questions and to open new worlds to the human imagination, science has been either uninterested or incapable when it comes to dealing with some of the more important concerns of humanity. For example, socks.

During some 15 years of scrutinizing the scientific literature, I have never seen a sock mentioned, much less a pair of socks, which is, as every aware being knows, the heart of the matter.

Scientists have happily studied particle physics and fusion, the genetic code, and the biochemistry of blood. They have even sought to codify the vagaries of human behavior. But nowhere have they explored so mysterious a matter as the sock and its infinite capacity to disappear.

Socks, in themselves, are not a technological mystery. Each of my several daughters is capable of manufacturing a sock to match the shape, produced over millennia by natural selection, of the feet and ankles of those young men they seek to impress by doing by hand what old-fashioned industrial revolutionaries devised machines to do far more efficiently and with much less emotional stress. Just why young women will, even in the freedom afforded them by a new era of equal rights, dutifully knit socks for what appear to me as evolutionary dead ends is a mystery worthy of the attention of an entire psychology department.

Darning socks, on the other hand, appears to be a lost technology, something akin to the art of sharpening a razor. With razors the industrial strategy was first to make disposable blades and then to make the whole utensil disposable. But surely socks have never been designed to be disposable. Yet they vanish with such regularity that they are not around long enough to bother a dutiful daughter to learn to darn.

I used to think, by the way, that the presence of daughters and the concomitant entropy unleashed thereby was sufficient to explain the antisocial behavior of socks (sock divorce, sock miscegenation, and so forth). But my daughters have now, by and large, fledged, and the vanishing sock phenomenon remains. This is good science. I would like to point out — a negative experiment, conducted with signal patience over many years, that rules out one factor. I have also ruled out my wife as she is still experiencing the same problem. We now confront afresh but alone this most discouraging aspect of American culture: Why do pairs of socks die off into singletons, and why, if you wear singletons from two pairs, do they tend almost immediately to develop lesions on the heel and toe and then, also, vanish?

How many countless times have I, in the thin light of dawn,

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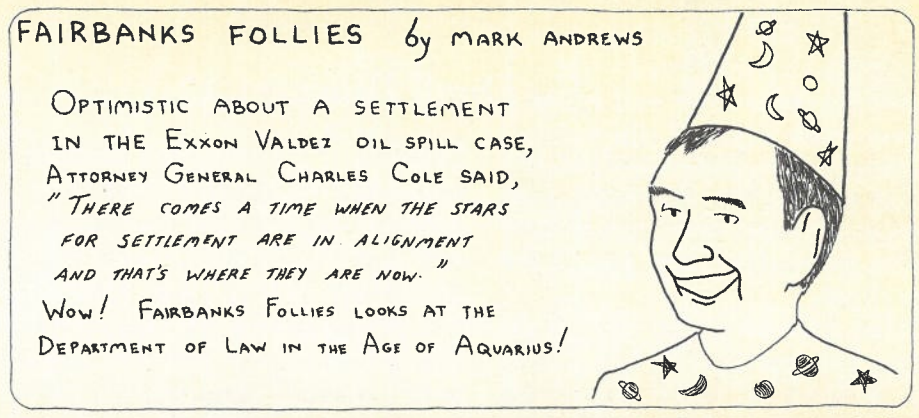

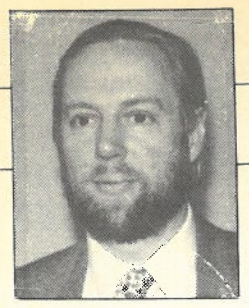

Family Matters

By Drew Peterson

One of the long-standing debates about the divorcing process is whether different lawyer styles effect the final result for the client.

Such aspects of the "art" of divorce representation have been the subject of much anecdotal evidence, but little scientific fact. In the past few years, however, social scientists have commenced some preliminary studies on the matter. The results are interesting and should be better known by the practicing bar.

I have recently been re-reading the book *The Process of Divorce - How Professionals and Couples Negotiate Settlements*, by Kenneth Kressel (Basic Books, Inc., 1985). Dr. Kressel, a Ph.D. psychologist from Rutgers University, has written one of the three most significant books about divorce of the 1980s. The other two are *Surviving the Breakup*, by Wallenstein and Kelly, and *The Divorce Revolution*, by Lenore Weitzman.

In contrast to the findings of *Surviving the Breakup* about the long term effects of divorce upon children, however, and the findings of Weitzman's studies about the economic effects of divorce (both of which have had a substantial impact upon the American family law system) the findings and conclusions of *The Process of Divorce* have been mostly ignored by the family bar.

The Process of Divorce is the first comprehensive review of the existing information available concerning the roles played by therapists, lawyers, mediators, and the parties themselves in the process of negotiating a divorce settlement. In addition to reviewing the available literature on the subject, the book also presents the results of original research by Dr. Kressel and his associates, particularly as to the effect of attorney style upon divorce results.

A review of the "Conclusions and Implications" chapter of *The Process of Divorce* (Chapter 13) gives a good flavor of the overall scope and conclusions in the book. It discusses the practical themes which emerged in the book concerning the divorce settlement process to wit:

• Conflict, even destructive conflict, has its uses.

• The key to constructive management of conflict is cooperative negotiating orientation.

• Exploratory divorce therapy is a potentially valuable and frequently overlooked aid to settlement negotiations.

• The lawyers role in settlement negotiations may be less extensive and less destructive than the popular stereotype.

• Divorce mediation is a promising adjunct to the exclusive use of attorneys, at least for certain types of couples.

• The stresses and complexities of the professional roles in divorce contribute to the difficulties of orchestrating a constructive divorce process.

The book also make specific suggestions for individuals seeking and utilizing professional help in divorce, whether the professionals by therapists, attorneys, and mediators. It also discusses the great need for further research about the divorcing process, including suggestions as to a number of areas where research might be productive.

Of particular interest to the practicing bar are the book's chapters concerning differences in lawyer styles and how such differences effect the quality of representation received.

The book's first discovery in this regard is that unlike divorce therapists or clergy, who expressed some unanimity about their function in the divorcing process, there are strong differences of opinion among attorneys regarding their appropriate professional role in divorce.

Six attorney types

Kressel concludes that it is possible to classify attorneys into a number of distinctive types. Using an elite group of divorce specialists from the New York City area as a study group, six distinctive types emerged.

The different attorney styles are colloquially referred to as the Undertaker, the Mechanic, the Mediator, the Social Worker, the Therapist, and the Moral Agent. Each type had a distinctive style and approach to the divorcing process, as well as a number of adherants with a similar outlook, among the nearly one hundred elite matrimonial specialists in the survey who were interviewed in depth.

Having identified such differences in divorce lawyer type, Kressel and his associates then conducted preliminary research to attempt to obtain insight into their respective effectiveness. In doing so the styles were further simplified, breaking the different attorney types into two primary groups, referred to as Counselors and Advocates.

The Counselors

Counselors had more of a psychological orientation to divorce work. They saw their role as more concerned with the client's psychological makeup. Counselors were more concerned with creating a cooperative post-divorce climate and protecting the welfare of children. They derived satisfaction from the opportunity which divorce work provided them to learn about human psychology. They were also more favorably disposed toward the idea of divorce mediation by mental health professionals.

The Advocates

In contrast, Advocates were more enthusiastic about ideas portraying the lawyer as a legal combatant and the client as a source of irritation and difficulty. They gave greater weight to achieving a superior financial settlement, enjoyed divorce work for the challenge it posed for the exercise of legal skills in

Continued on page 19

Solid Foundations

By Mary Hughes

It is once again time to award IOLTA grants.

Traditionally, the trustees of the Alaska Bar Foundation have awarded IOLTA grants to the Alaska Pro Bono Project, the partnership between the Alaska Bar Association and Alaska Legal Services Corporation. The project has been a recipient each year and will certainly continue to be.

However, there are segments of our Alaska population which are unserved even through the Alaska Pro Bono Project which serves more economically disadvantaged Alaskans than any other service.

The Alaska Bar Foundation IOLTA program funds have been designated to be used solely for the following purposes:

• *The provisioning of legal services to the economically disadvantaged.* The Alaska Bar Foundation is committed to improving access to legal services. IOLTA support is given to projects and organizations which provide legal services to persons who find it difficult to obtain such services. Particular consideration is given to projects and organizations which assist the legal needs of the economically and socially disadvantaged.

• *Improving the administration of justice.* The Alaska Bar Foundation supports projects and organizations which seek to improve the legal system and the administration of justice. Special emphasis is given to the projects which contribute to the substantive understanding of the legal system and to organizations which advocate improvement.

The trustees defer to the following guidelines and procedures for handling of IOLTA grant applications:

1. An applicant shall submit its request for an IOLTA grant by supplying the information and documents requested in the IOLTA application supplied by the Alaska Bar Foundation.

2. All applications for IOLTA shall be submitted to the Alaska Bar Foundation by April 15.

3. The trustees of the Alaska Bar Foundation shall review each IOLTA grant application to determine the applications appropriateness for IOLTA funding.

4. If the application can be funded, the trustees of the Alaska Bar Foundation shall meet as a committee of the whole for consideration and approval of IOLTA grant applications. The trustees meeting shall be prior to June 30.

5. Funding shall be available to successful IOLTA applicants on a fiscal year basis (July 1 through June 30).

6. The president of the Alaska Bar Foundation shall communicate to each applicant the action taken by the trustees.

7. An approved IOLTA applicant shall submit such evaluation reports as requested by the Alaska Bar Foundation.

8. Grant applications are the property of the Alaska Bar Foundation.

9. Applications for emergency IOLTA funds shall be made to the Alaska Bar Foundation through its president. The request will be forwarded to the trustees who may call a special meeting of the trustees to consider the same.

The American Bar Association Midyear Meeting in Seattle provided an opportunity to attend the ABA Commission on IOLTA Workshop as well as the National Conference of Bar Foundations meeting.

Both the workshop and the conference emphasized the importance of IOLTA funding of less than traditional programs. Examples given were: assistance to migrant workers, refugees, prison inmates, AIDS victims and the homeless.

Obviously, the effected populations of the various states determine the IOLTA program's concern with respect to the particular project. Alaska has very few, if any, migrant workers and our refugee and prison inmate concerns are small in comparison to other states. However, Alaska certainly does have an AIDS and homeless population.

The Alaska Bar Foundation welcomes grant requests in the less than traditional programming areas. Grant applications are due April 15, 1991. Any program which provides legal services for the economically disadvantaged is encouraged to obtain an IOLTA grant application.

Applications may be obtained from Mary Hughes, 509 West Third Avenue, Anchorage, Alaska.

Come to Fairbanks — Extremely Alaska!
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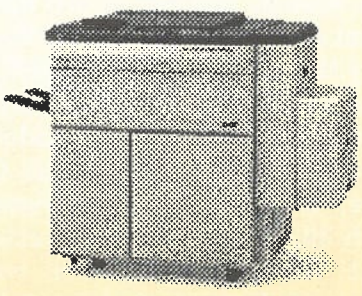


Movie Mouthpiece

By Ed Reasor

On March 25 everyone in Hollywood and at least half of America will be watching (either live or on television) the 63rd Annual Oscar Awards presented by the Academy of Motion Picture Arts and Sciences as the symbol of movie excellence.

The Oscar itself costs only $75 to manufacture and is a simple gold-plated sculpture composed of 92% tin, 7% antimony and 1% zinc. Nonetheless, hundreds of people have vainly sought to possess it, a few have refused to own one when awarded, and others, upon its final acquisition, faded into complete movie oblivion.

The way it works is that actors nominate actors, directors nominate directors, and so on, but the final vote for one of the nominees (now disclosed to you and I and the whole world) is made only by the 3,700 members of the Academy of Motion Picture Arts and Sciences, itself.

Some of these guys haven't made a film in over 50 years and yet they are still on the board. Unfortunately, a good number of them only see a few films a year. Few of the 3,700 members have seen more than half of the films, and almost no one has seen all of the films nominated. To see all of the films that have been nominated this year, one would have to have a full-time job as a film critic, an appreciable inheritance, or an insatiable appetite for movies.

I, personally, see on the average, six movies a week, or about 300 films a year. This is less than the 500 films a year that my friend, Roger Ebert, the noted television critic, sees. So, the result is that often academy members vote because of political or social pressure or past allegiance owed.

Every year people are most excited about the Best Actor and the Best Picture awards. The most knowledgeable suggestion I ever heard as to how the best actor should be chosen came from the late Humphrey Bogart. He won the award for his acting in "The African Queen" in 1951. Bogart thought that after all of the best actors were nominated, one should simply throw all of them on the stage and let them play the same part - any part.

As of this writing, the person who holds the most Academy Awards, that is, the most Oscars, is the late Walt Disney, with 30. Some older great actors that you will remember were nominated several times but never, ever won: Barbara Stanwyck (four, but no cigar), Rosalind Russell (four, likewise), and Richard Burton (six and no cigar).

Some have the idea that once one wins an Oscar, he has it made. Unfortunately, it's like winning a big case. Most clients then want to know: "What have you done for me lately?" Rita Moreno, a fiery, fine actress who worked steadily in films until she won the Best Supporting Actress for "West Side Story" in 1961, is a prime example. What films have you seen her in lately? George Chakiris won an Oscar for Best Supporting Actor in the same film with Rita Moreno - "West Side Story". What is he doing at present? Not much.

Kathy Bates, as seen in "Misery."

At any rate, the March 25 presentation is the best Hollywood has to offer and this year looks like an exciting event.

"Dances With Wolves" has been nominated for 12 Academy Awards, including Best Actor and Best Director (Kevin Costner served as both).

Warren Beatty's "Dick Tracy" has the second largest nomination with seven, tied with the Godfather Part III", also seven.

I'm delighted "The Grifters", a screenplay adapted from the paperback novel by alcoholic Jim Thompson, was nominated for four Academy Awards.

Yet the biggest grossing hit of the year, the film that has made more money for its producers that any film in 1990, namely, "Home Alone," received only two nominations and in the less popular categories of Original Score and Original Song.

Those of us who read with delight "Bonfire of the Vanities," a great book about the legal justice system in Manhattan, were genuinely surprised to hear that the much ballyhooed movie was not nominated for any award, whatsoever.

My highest score for predictions was 75% (but, generally I'm in the low 60's). That's because when setting out which picture is most likely to win an Academy Award in any individual category, I pick the picture that I feel should win regardless of the political connections its producers have or don't have and regardless of the money that is being spent to publicize the film before the actual election.

Here's how I'd mark my ballot:

Best Picture: "Dances With Wolves". This movie had excellent cinematography and incorporated actual Indian Natives using their own language, which is a trendy thing to do in America today.

Best Actor: Jeremy Irons in "Reversal of Fortune". If you haven't seen this film, run to wherever it's showing. He played Claus Von Bulow and was excellent. The trial scenes in this film are word-for-word from the transcripts.

Best Actress: Kathy Bates in "Misery". Everyone likes Julia Roberts in "Pretty Woman" and I grant you she did a fantastic job, but that was a script with a lot of characters. Kathy Bates carries "Misery" almost singlehandedly, although James Caan plays opposite her as the writer trapped in the wilderness by a maniacal fan. Bates is both believable and scary.

Best Supporting Actor: Anyone who saw "The Godfather Part III" has to recognize that Andy Garcia is indeed as fine an actor as his press agent says. He is the last of the Mafia with the street-smarts and muscle to keep some future godfather in business.

Best Supporting Actress: A young female you have never heard of by the name of Annette Bening for her wonderful performance in "The Grifters." Bening plays a young con artist who uses her beauty and sexual allure to make her way in life. How can you not like a girl who puts the rent money on top of a water glass, jumps into bed naked and says, "You choose." If you didn't fall in love with Annette Bening in "The Grifters," write Wally Hickel and tell him you want to come to Wally World in Juneau. You belong there with all the older wolves.

Best Director: At present, the smart money is with Kevin Costner for "Dances With Wolves" and I believe that film will, in fact, win for Best Picture. But, Stephen Frears, a lesser known director, kept us guessing from frame one to the very end in the wonderful film "The Grifters." I vote for Frears.

Best Original Screenplay: Everyone thinks Woody Allen is going to win for "Alice" but writer/director Peter Weir wrote a funny, lovable, and realistic movie of modern immigration in "Green Card." Allen's films also never really make much money.

Best Adapted Screenplay: Michael Blake should win this easily with "Dances With Wolves".

Best Foreign Film: Although "Cyrano de Bergerac" has been made a number of times by a number of different film companies (remember Jose Ferrer in the old black and white classic when we were all in high school in the late 50's?), but "Cyrano de Bergerac" today in color, made by Frenchmen who honored original writer Edmond Rostand, is a definite win.

Continued on page 7

• Editor's column

Continued from page 2

himself on the switchblade he had purchased in Mexico. I also got some fillers for my Mexican pens.

Day number 9 was our last day on vacation. I set the afternoon aside to work on my article. In the morning we hit softballs at Danny's Dugout that featured automatic pitching machines. That's when I threw out my shoulder. The shoulder injury, though, was not nearly as severe as the injury daughter number 2 sustained when she was hit in the mouth by a ball while arguing with daughter number 3 over whose turn it was to bat.

Finally, day number 10 arrived. We were up early and made our way slowly to the airport through the morning rush hour traffic. The winding roads proved an irritant to daughter number 3, for just as we reached the check-in terminal, she emptied her stomach contents on herself, her sister, and the rental car (apple juice and pretzels, reconstituted). The car emptied immediately, leaving me alone to turn it in. As I drove to the rental lot, the attendant was immediately upon me and anxious to take the car. He jumped in and then jumped out. I explained my daughter's plight. He opened the windows and handed me some Kleenex to work with.

Thirty minutes later I was in the airplane and en route back to Alaska. The article I had dreamed of was still unwritten. I asked my wife about next year's vacation. My question apparently went unheard over the roar of the plane engines. Her only response was to repeat over and over again the title of a recent movie we had seen, "Home Alone."

In June

It's

Convention in

Fairbanks

• Oscar picks

Continued from page 6

Best Art Direction: Even your kids will tell you without question that it's "Dick Tracy." I wish my court exhibits looked as interesting.

Best Cinematography: "Dances With Wolves" - the long and medium shots of fast running buffalo herds alone should win the award.

Best Costume Design: "Cyrano de Bergerac", a difficult assignment because it was a period-piece movie, but the costumes are, in fact, real.

Best Documentary Feature: "Building Bombs." I've only seen one of the five nominated documentary features (generally, these are only shown at film festivals or in movie studios to employees), but with the war in Iraq, "Building Bombs" seems to be like the current event and the title is catchy.

Best Documentary Short Subject: We see so much on television about abortion, pro and con, that I feel this year's "Journey Into Life: The World of the Unborn" will beat out other short subjects such as "Rose Kennedy: A Life to Remember."

Best Film Editing: I studied film editing under the tutelage of Woody Allen's film editor, and everything he taught me was done to perfection in "Dances With Wolves," so I think this film will beat out "The Hunt for Red October," which seems to have strong support in Los Angeles but not New York.

Best Makeup: Even your kid can answer this one again - "Edward Scissorhands." Johnny Depp looks handsome, looks not so handsome, and at the right times and in the right locations. That's makeup.

Best Music Original Score: The music can set the tone of any motion picture and an original score can bring laughter or sadness, light or shadow, and I believe the music was a definite asset to "Dances With Wolves," beating out David Grusin, nominated for the loser "Havana" (without doubt Robert Redford's second worse movie).

Best Music Original Song: Although "Blaze of Glory" from "Young Guns II" is a song I found myself humming when I came out of the theater, it can't hold a candle to Madonna singing "Sooner or Later (I Always Get My Man)." Now, if you're the same guy who didn't fall in love with Annette Bening in "The Grifters," then please lust after Madonna in "Dick Tracy." If this song scene by Madonna doesn't turn you on, call me; I'll call Wally personally for you because you REALLY belong with the baying wolves in Juneau.

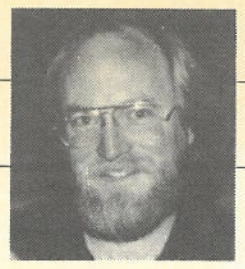
Best Animated Short Film: I haven't seen a single one of these three nominees, but critics speak highly of "Grasshoppers (Cavallette)", so I'm going with the critics.

Best Live Action Short Film: This category is kind of like "What's the best locally made video commercial?" "Bronx Cheers" might win because "Bonfire of the Vanities," which also dealt with the Bronx, did not receive one single nomination in any category. Other nominations are "Dear Rosie" and "The Lunch Date".

Best Sound: If we're talking about sound - not music - which is what this category should award, then without question, "The Hunt for Red October" starring Sean Connery should win, with the beep-beep, beep-beep of the sonar and other realistic submarine sounds.

Best Sound Effects Editing: This is a close category to Best Sound, but they are talking about the editing of sound, that is, removing all of the sound effects to give the most pronounced sound at the right moment. "The Hunt for Red October" is nominated in this category also, but I feel that the medical film "Flatliners," which starred Julia Roberts, makes more sense. I actually heard the heart stopping in this film and then start up again.

That's it for the 63rd Annual Oscars. I'm hoping one day that I will be rooting for some Alaskan attorney entered in one of these categories. Why not give it a try.



TORTS

By Michael Schneider

I. INTRODUCTION.

"Insurance Reform" has become a topic of interest in Juneau. During the last legislative session, a couple of problems were identified relating to uninsured-motorist (UM) and underinsured-motorist (UIM) coverage. The first problem was that people purchasing UM insurance could not normally obtain limits in excess of those purchased under the same policy for liability coverage. In other words, an insurance consumer whose assets and moral perspective were such that $50,000/$100,000 liability limits were adequate could not secure UM or UIM limits greater than $50,000/$100,000, even if willing to pay an additional premium.

The second problem was that people were paying premiums for UIM coverage that was worthless, except in the most unusual and theoretical circumstances. The way UIM coverage was written and interpreted, there would be no trigger of coverage unless the UIM limit procured by the injured party (or applicable to the injured party where the injured party was an additional insured) *was greater than the defendant's liability coverage*. The person with a $50,000/$100,000 UIM limit thus had nothing, since a motor vehicle insured in this state was required to have at least $50,000/$100,000 liability limits. Even a policy issued out of state to a person known to reside in Alaska would be interpreted to provide these minimum limits in the absence of specific language. *See* AS 28.22.101(d) and (f). Since the defendant's liability limits always equalled or exceeded the plaintiff's $50,000/$100,000 UIM limits, UIM coverage was never triggered.

II. THE NEW RULES.

In response to the problems mentioned above, Representative Dave Donley, the House Labor and Commerce Committee Chairman, introduced HB 429. The Senate Committee Substitute for HB 429 ultimately passed the Legislature (as SCSHB 429). *The act applies to contracts of insurance entered into on or after January 1, 1991. See* 1990 SLA Ch. 78, § 7.

Carriers in this state "shall, initially and at each renewal, offer" UM and UIM coverage, and that coverage may not be less than the statutorily required liability coverage described in AS 28.20.440. *See* 21.89.020(c).

Additionally, *and for the first time*, the carrier shall offer its insured the following options:

1. UM/UIM policy limits equal to limits voluntarily purchased by the insured for liability coverage; *and*

2. UM/UIM policy limits greater than voluntarily purchased liability limits in specified optional amounts ranging from $100,000/$300,000 to $1,000,000/$2,000,000. *See* Id., subparagraphs (1) and (2).

AS 21.89.020(h) now provides that the decision of the named insured *or an applicant* regarding selection, rejection, or exercise of the option not to purchase UM or UIM coverage is binding on all additional insureds under the policy. The clear implication is that the family member with the brains ought to be sent to buy insurance.

Among the most critical changes in the law are those contained in AS 28.20.445(a) and (b). These changes in the law make clear that UM and UIM coverage is now "excess to an amount payable under automobile bodily injury, death, or medical-payments coverage, or as workers' compensation benefits." This means that, for the first time, an injured party with lots of damages and a $50,000/$100,000 UIM limit can obtain a $50,000 liability limit from the third-party defendant and go against their own UIM carrier for an additional $50,000.

AS 28.20.440(c) contains antistacking and policy priority provisions. Basically, while the language of the statute treats the stacking of single-policy/multiple vehicle coverages differently than the stacking of identical coverages in multiple policies, the practical effect [when coupled with *Hillman v. Nationwide,* 758 P.2d 1248, 1254 (Alaska 1988)] is to preclude stacking in any but the most unusual circumstances. Similar antistacking and priority changes were made in AS 28.22.221.

III. SOME OBSERVATIONS AND SUGGESTIONS.

A. Insurance consumers always thought they were getting something when they acquired a $50,000/$100,000 UIM coverage limit. Effective January 1, 1991, they will, for the first time, be correct.

B. As we look at our own policies and advise our clients, we should consider acquiring substantial UM/UIM limits. For the first time, substantial limits are required to be available by law and can be purchased in amounts dramatically in excess of the limits purchased for liability coverage on the same policy.

C. Read AS 28.20.445(e)(3), 28.22.201(a)(3), 21.89.020(c) and (e), *Burton v. State Farm*, 796 P.2d 1248, 1251 (Alaska 1990), and *Hillman v. Nationwide*, 758 P.2d 1248, 1251 (Alaska 1988). UM/UIM coverage is in place *as a matter of law*, unless the carrier can produce a *written waiver* of coverage. The declarations sheet can't be relied upon to tell us all there is to know about our clients' UM/UIM coverage status.

D. Ask the hapless client who waived the UM/UIM coverage in writing why they took that action. Was the nature of the coverage explained by the insurance agent/broker? Were any of the dangers of waiving coverage outlined? Was the risk of injury at the hands of an uninsured or underinsured driver commented upon or compared to the risk of injury by an adequately insured driver? If so, was the comment or comparison reasonably accurate? An E & O claim may lie against the insurance agent/broker under the right facts.

JURISPRUDENCE

By Daniel Patrick O'Tierney

During the last decade, Alaska has experienced the largest percentage increase in prison population of any state in the country. This fact and related issues were the subject of the 1990 Annual Report of the Alaska Sentencing Commission.

The Commission was created by the 1990 Legislature in response to concerns about prison overcrowding. Its purpose is to evaluate the effect of sentencing laws and practices on the criminal justice system and to make recommendations for improvement.

The Commission Report observes that Alaska's general population has increased gradually since 1980,while our crime rate has remained relatively stable. However, the prison population has risen much faster than can be accounted for by those two factors alone.

At the end of 1989, the Alaska Department of Corrections housed 2,556 offenders in 15 facilities around the state; 23% of these inmates were being held for sexual assault or sexual abuse of a minor. Violent crime offenders accounted for a full 55% of the prison population.

Needless to say, Alaska's prison statistics are rather alarming. But incarceration rates across the country are spiralling. Since 1980, the number of people held in State and federal penal institutions has increase 115%. According to the Commission Report, in Alaska the number has increased 230%, or twice as much. Further, Alaska had the fourth-highest incarceration rate in the U.S. in 1988.

Many states have attempted to build their way out of a prison overcrowding problem, and spending for corrections has been one of the fastest rising components of state budgets for the past decade. Even if increased incarceration (and prison expansion) had any substantial impact on crime prevention, the question for budgeteers is how to pay for it. According to the Commission, California, for example, projects that its prisons will be more crowded after its $6 billion construction program than they were previously.

In Alaska, the 1990 overall state operating budget was twice the amount of the 1980 budget. Meanwhile, the Commission Report indicates that the 1990 operating budget for the Department of Corrections ($99 million) was four times the 1980 corrections operating budget ($22 million). In addition, Alaska has spent $127 million for prison construction, renovation, and repair since 1980.

Alaska ranked second in the country in 1987 (after the District of Columbia) in the amount of state and local criminal justice expenditures per capita ($540), although this ranking undoubtedly also reflects Alaska's proverbial high governmental costs. The average cost of simply housing a prison inmate in an Alaskan institution in 1989 was $80 per day.

Trying to build prisons fast enough to keep pace with escalating incarceration rates may well be a losing proposition. In any event, there is increased interest in exploring less expensive alternatives to prison construction and operation.

The term "intermediate sanctions" refers to alternatives to prison as means of punishing or controlling the offender. Intermediate sanctions include house arrest and electronic monitoring, residential restitution centers, military-style boot camps for young offenders, and European "day fines" linked to the offender's daily income. Intermediate sanctions provide middle ground options between jail and probation. They are touted as allowing better opportunities for rehabilitation and development of job skills which likely would reduce recidivism in the long run.

The Sentencing Commission itself has expressed an interest in exploring the increased use of intermediate sanctions in Alaska. But the Legislature has tasked the Commission with the responsibility to address a broad range of policy issues related to sentencing reform. At this juncture, the Commission has until June, 1993 to complete its inquiry.

The preceding article is reprinted with permission of Alaska Business Monthly for which the author writes a regular column on legal matters of interest to the business community.

To be or not to be a GP....so many variables

BY ART ROBSON
(Second in a series)

In the introduction to the first round of discussion on general practice (Bar Rag, Jan.-Feb., 1991), your faithful correspondent tripped over a heroic effort to give credits to those who taped the Law Practice Management Session. Bill Bonner also participated, but your diligent correspondent didn't know this because the tape machine wasn't yet on when Bonner made his preliminary remarks. This led to a situation where there were five different voices on an audio tape and I thought there were only four people there. The resulting transcript came out with almost everybody anonymous. In spite of all this, we have applied the journalistic maxim: "Hell, anybody can tell what happened" and we proceed with the second installment of wisdom (and tranquilizers for private general practitioners).

One problem with computers and other office equipment is that you are trying to finance your office automation with one practitioner's time, rather than spread it among a good number of practitioners. This may eventually lead to Bar Association computer centers such as the Tanana Valley Bar Association has had.

One participant felt that the income of people in larger firms was dropping due to this "automation factor," and that we therefore ought not to be quite as worried that it makes a dent in our income. Paralegals who have one area of expertise may create the same problem, unless the GP follows the paralegal into that area of expertise. Certainly, the volume of legal business generated by a single practitioner is not likely to support a series of specializing paralegals that would enable the practice to be organized like a bodyshop.

Specialization

Perhaps generalists should model themselves more like the medical family practitioner, who handles "simple" diagnoses and procedures, runs a few basic tests to find out if the patient's problem requires expertise, and then refers that patient/client to the expert. To a great degree, the British solicitor can be said to do what this model general practitioner would do.

Dividing the practice of law into a series of specialties will almost certainly lead to leftover areas that don't really require any of these specialties, or at least don't go deeply enough into a specialty to require a referral. Property damage and minor injury aspects of an automobile tort are two examples.

Obviously, we are in individual practice partly because we like the lifestyle that's associated with it. Considerable discussion was had on the difference between a sole practitioner's working day and the working day of an attorney in a "factory." Those of us in private general practice willing to give up some of the monetary return for the extra freedom. To we folks, charging time spent in the bathroom in order to get your eight or ten hours' chargeable time per day, just doesn't sit well.

On the other hand, maybe there isn't any concession in income, because some individual practitioners do very well in terms of their standards of living.

How about a mall?

Would it be possible for attorneys to have a sort of shopping mall approach, where the major items of overhead could be shared, and each attorney would represent a different department in a Sear's store? Some of the national consumer firms are organized along these lines. But attorneys, being the independent characters they are, don't seem to be easily organizable along these lines. Each individual attorney would rather think of himself as a boutique with a theme and an area within certain subspecialties (where a better product is offered). Many attorneys are afraid that their specialization would leave them like the tobacco shop or buggy-whip store--interesting wares, perhaps, but little traffic.

Everyone in the panel agreed that you must have an attractive enough product line to maintain a lot of clients. Perhaps the banding together as a Sear's-type emporium has been destroyed for our profession because of the anti-trust rulings (and hints) by the Department of Justice. Apparently, only oil companies are allowed to divide up the market into specialties by agreement between the providers.

Or a clinic?

On the national scene, we have "clinics" like Jacoby & Myers, or Hyatt. The question was raised as to whether clinics pose a threat to a small practitioner. The consensus answer seems to be that the clinic will tend to draw in the general population as clients, and hence take the jam off our own bread and butter. Possibly, we should think of counteracting this by becoming a part of such an arrangement. Some people look down their noses at H&R Block, but they have certainly revolutionized the tax preparation field. Are legal services next?

Referral issues

Considerable discussion ensued on developing referral systems and ties between attorneys. The panel seemed to have the inherent feeling that referral should not be a one-way street.

A good example of mutual assistance is the American Trial Lawyer's Association. ATLA's networking to interconnect small lawyers and exchange information, if not also exchanging cases, satisfies all participants.

Trading information does not, at this time, create a problem, and maybe it will escape the old "fee schedule" ruling.

Mention was made of the recent change in the bar rules which appears to permit referral fees particularly where the general practitioner keeps up contact with the client. We want to maintain this contact, anyway. (However, we should keep a weather eye to the Department of Justice and the Federal Trade Commission.

There is a great need for someone who knows enough about the law to practice "intelligent" lawyer referral. Very often, the client does not know in which specialty his or her problem would lie (or even that there are legal specialties). The problem here is that most members of the general public don't know what their rights are, and many of them do not want to pay to find out what their rights may happen to be, or what specialists they should see. This is the reason that the many referrals from the Bar's referral program often find their way to the Anchorage Equal Rights Commission, or the Consumer Protection Office.

Compterized screening

The question arose of a greater participation with the Alaska Bar Association to help manage the lawyer referral system. We want it to become a more sophisticated system and provide attorneys with a better client selection. It doesn't seem adequate to say that a child adoption is a family law matter. Maybe bar staff should handle certain questions by referring to a (programmed) computer screen that could easily be placed on line for telephone inquiries. In this way, we could know there is an Indian Child welfare issue (because only a few folks practice in that area). This would be of great assistance to the recipient of a referral in avoiding malpractice.

If the Bar Association staff had more assistance from practitioners who participate in the legal referral system, inappropriate referrals could be avoided. A computerized question-and-answer screening process would help the association's staff define caller inquiries into much narrower channels. Referral attorneys should determine among themselves how narrowly subdivided any field should be.

People who are "well to do" in business, generally, already have ties with some legal representation. The inexperienced should have a better lawyer selection system working for them. The effect might be circular, and bring many more people to the referral program.

The lawyer glut

One of the sources of terror for the GP is the sheer number of people being graduated from law school between now and the end of the century. Obviously, all these people can't become partners. Firms are starting to develop permanent associate, permanent employee, and other similar niches for those who are not on a partnership track. This glut will soon fill the void and there will be a great many people squeezed out into small firms and the sole practice field.

Continued on page 19

Listen up, pilgrims: the inside grape story

BY STEPHAN A. COLLINS

Wine can be made in one sentence: crush grapes and let the juice ferment.

While it really is the product of a number of variables and takes longer than a breath to make, wine would not be wine it were not for grapes. Although the world has several thousands of wine grape varieties, this article will present only a cluster of descriptions of the predominant grapes used in making wine. Following the cluster, the true distinction between white, red, and rose wines is discussed.

White grapes

Chardonnay
("Shar-doe-nay")

Many experienced wine drinkers consider this the premiere white wine grape. The major wine houses of Burgundy use it to make the wonderful Chablis, Montrachet, Pouilly Fuisse, and Macon wines of that region. Chardonnay is also used to make Champagne.

California and some of the Northwest wineries have been producing equally superb Chardonnay wines. Well made Chardonnay wines tend to be fuller bodied with smoky overtones or hints of nuts or creamy butter. The wine has the potential for long storage.

Chenin Blanc
("Shay-nan Blawn")

This, too, is a grape used in producing some of France's most famous wines, the Vouvrays and Savennieres for example. These wines come from the Loire valley area. California and the Northwest also produce notable Chenin Blanc wines. The wine varies from medium dry to sweet.

Sauvignon Blanc
("So-veen-yawn Blawn")

Sauvignon Blanc wines tend to be crisp and dry. The wine is intended to be drunk fairly soon after production. The smell of underripe fruit is a common description of Sauvignon Blanc wine. California wineries use Sauvignon Blanc to produce Fume blanc wines.

Riesling
("Reece-ling")

As with the Chardonnay grape, experienced wine drinkers consider this one of the great wine grapes. The wine can withstand long maturation and produce an enjoyably complex wine. When the wine is young it has a flowery fragrance. On maturity, the fragrance becomes sharper. German wine makers use this grape extensively in their production. True Riesling wines are called either Rhine Riesling, Johannesberg Riesling, or White Riesling. Any other wine that says Riesling, like Italian, Laski, or Olasz, does not contain Riesling grapes.

Muscat
("Moose-ca")

Many dessert wines, or those that are very sweet, are made with Muscat. The potential for very enjoyable after dinner wines made with Muscat are great. Muscat can be a delightful finish to a good meal.

Gewurztraminer
("Gavoorts tram me nair")

The Alsace region of France, as well as many parts of Germany, rely on Gewurztraminer to produce exotically perfumed, spicy, high alcohol wines. Many California wineries have produced wines that are comparable to their French and German counterparts.

Red wine grapes

Cabernet Sauvignon
("Cab-airnay So-vin-yawn")

Among red wine grapes, this is the classic. The wine produced from it is dry and tannic when young, and mellow and full when older. Cabernet Sauvignon wines can last for decades, developing into the nectar of gods. Thus, Cabernet Sauvignon is more enjoyable when it is older. Bordeaux wines depend on this as the main ingredient for the world's most famous wines. The grape has adapted well to other parts of the world and has produced notable results. California and Washington have produced good wines with Cabernet Sauvignon.

Pinot Noir
("Pee-no Nwahr")

What Cabernet Sauvignon is to Bordeaux, Pinot Noir is to Burgundy. Pinot Noir, along with Chardonnay, is also the important grape variety used in making Champagne. Unlike Cabernet Sauvignon, Pinot Noir is not noted for its ability to adapt well to regions outside of France. For many of the last years of the 1980's, Oregon was making headway into producing worthwhile Pinot Noir wines. In the last few years though, California, a region once unsuccessful in producing good Pinot Noir wines, has come out ahead of Oregon. A good Pinot Noir is rich and has a heavy perfume, reminiscent of berries, when young, and has a flower scent, mostly violet, when older.

Merlot
("Mair-low")

Merlot is perhaps Cabernet Sauvignon's first cousin. While it grows extensively in Bordeaux, exclusively in the St. Emilion and Pomerol areas, many Bordeaux wine producers blend the softer Merlot wine with Cabernet Sauvignon wine to offset some of the astringency common in Cabernet Sauvignon wine. Merlot has done well in California and Washington.

White, red & rose

Now, on to turning grapes into wine (water has not been turned into wine for many centuries) or why white wine differs from red and rose. Many novice wine drinkers have the misconception that white wine is only made from white grapes and red wine is only made from red grapes.

Also, many, either out of snobbery or just plain naivete, think that rose is the bastard offspring of an illicit liaison between a white wine and a red wine. All of this is about as true as saying that all lawyers are crooks.

The color of the grape does not automatically dictate what color the wine will be. All grapes have greenish colored flesh and, when crushed, produce a clear juice. Remember that Pinot Noir, a red grape, is used in the production of Champagne, which is a clear wine. The distinction between white, red, and rose lies mainly in how the grapes are treated during the production of a particular wine. Before explaining the difference, a slight diversion into how the grape juice becomes wine.

As already mentioned, all wine is the result of the fermentation of the grape juice. Fermentation is the result of the naturally occurring yeasts on the grapes producing enzymes that feed on the sugar in the juice, leaving alcohol as a byproduct. The yeast will continue to convert the sugar to alcohol as long as there is sugar to consume or until the yeast produces so much alcohol that the alcohol kills the yeast itself. The higher the alcohol content, the drier the wine. Some residual sugar may be left behind (thus producing a sweeter wine) if the alcohol kills the yeast before all the sugar is consumed. Very few yeast strains can survive in a wine with an alcohol content higher than 16%. Normally, any wine with an alcohol content higher than 16% is what is known as a fortified or dessert wine. The extra punch comes from the addition of brandy to the wine to either stop the yeast or to purposefully increase the alcohol content.

White wine is white, or clear, because the wine maker has pressed the grapes in a way to minimize the amount of contact between the juice and the grape skin, stalks, and pips. White wine production is mostly the process of regulating the conversion of the grape juice into alcohol. Because the most noted characteristic of white wine is the fruity flavor, which comes from the juice itself, the wine maker regulates the fermentation process to prevent the yeast from converting all the juice into alcohol. This is why white wines tend to have lower alcohol levels than reds.

Red wine is darker than white because instead of minimizing the amount of contact between the juice and the other parts of the grape, the wine maker encourages the contact. The grape skins are left in the juice to induce the transfer of pigment and tannin into the fermenting juice. Most, if not all, of a wine's color comes from the pigments in the skins.

Tannin is the stewed, tea-like substance that acts as a preservative. It allows well-made red wines to last for years while the more complex, fruit based flavors slowly emerge. Because of the process of allowing the grape skins time to transfer pigment and tannin, red wines traditionally have more alcohol than whites because the fermentation process goes on longer. Finally, contrary to misconception, rose is made like red wine but the grape skins are not allowed to remain in contact with the fermenting juice as long.

To benefit from any knowledge is to put it to use. Go out and enjoy the difference between white, red, and rose wine and avoid all bad whines (sic) at all cost.

Stephan A. Collins is a board member of Les Amis Du Vin, the friends of wine society.

SOCIAL EVENTS

Wednesday, June 5	*Opening Reception* at University of Alaska President's House
Thursday, June 6	*Discovery III Boat Cruise* and Buffet
Friday, June 7	*Alaska Salmon Bake & Palace Saloon* Theatre Show Alaskaland

The TVBA's *"Never Will be Ready for Prime Time Players"* in a special show at the Palace Theatre Saloon.
(Parental discretion is advised.)

Saturday, June 8 -	*Awards Banquet* Westmark Fairbanks Hotel

LAWYERS SEEK LIFE

Spear, Clark find fame in art pursuits

Continued from page 1

when the state took the issue of local hire all the way to the United States Supreme court--and lost. (The state has not won a local hire case since, either).

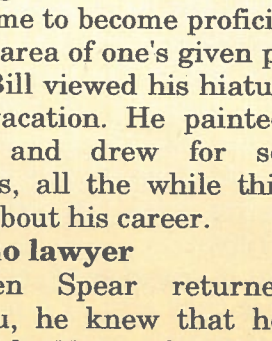
Spear then requested appointment to and was appointed chair of the innovative Alaska Renewable Resources Corp., a state run venture-capital bank to stimulate Alaska-based industries. The goal of using a portion of Alaska's non-renewable resource (oil) revenues to create renewable resource industries was an idea whose time had not yet arrived in Alaska, and the corporation was disbanded in 1982.

When the program died, Bill went on sabbatical to Italy. And although some view a sabbatical as a time to become proficient in a new area of one's given profession, Bill viewed his hiatus as a long vacation. He painted pictures and drew for several months, all the while thinking little about his career.

He's no lawyer

When Spear returned to Juneau, he knew that he had changed. Not only didn't he want to work for the government or a private law firm, he realized he didn't want to be a lawyer, either. ("I was the last person to realize I wasn't a lawyer," Bill recalls now).

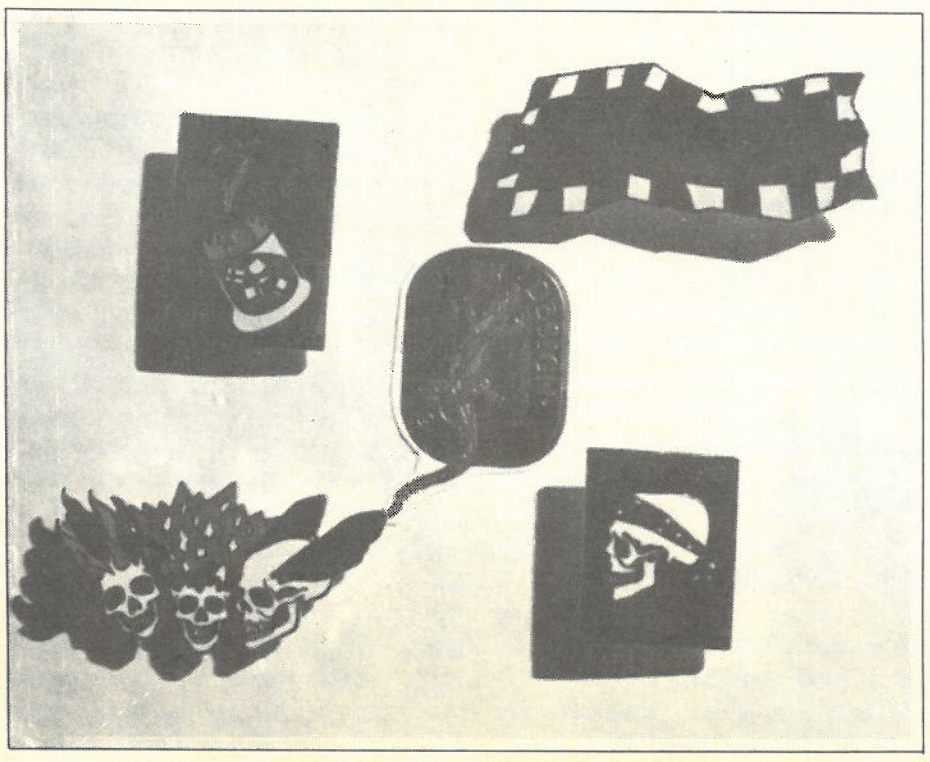
Knowing he wasn't cut out for the law was one thing. Doing something about it was quite another. Bill says he knew he had to "jump out of being a lawyer." He was recently divorced and so had what he calls "the opportunity for change." So he closed his eyes and jumped, acknowledging today that the leap was "scary."



His advice to others on the threshhold? "Realize that you don't know one person who has starved to death."

Although Spear wanted to remain in Juneau, the politics of the capital was not an option. He is too "one way" to go into politics, he says. Besides, "I don't stay bought. I keep changing my mind."

The sabbatical and his art in Italy were fresh in his memory, and thousands of cruise ship tourists were right in front of his eyes in Gastineau Channel. And although he doesn't think people should expect to make a living from their personal expression, art design was his answer.



Black and white photography doesn't do Bill Spear's brightly colored pins justice, but these are a selection of his "voodoo art," said to banish demons of the Far North. Clockwise from top left are: "The night my goddamed drink caught on fire;" "Barbed wire;" "Ride Hard-Die Free;" and "Three Skulls." Spear's logo is a lizard. Warren B. Suddock

Obsession takes over

Spear got the idea of designing and selling enamel pins, and it became his obsession. (Bill believes that if you really want something to succeed, you must be obsessed with it.)

Nevertheless, he doesn't think that people should expect to make a living from their personal expression.

It took about 5 years to get his business "on step," and today Bill is looking to expand; he wants to paint once again.

Although the thousands who are familiar with his intricately designed, wearable pieces of art might argue the point, Bill insists that his pins are not art. His sees his pins as commercial objects, leaving him free to pander to the desires of the buying public. "The pins you see here are commercial products. Any art you get is free," says his eclectic catalog.

Bill is glad he's left the legal world of torts and courtrooms. He doesn't like the changes he's seen from 1968 to the present.

In the past, he says, small town lawyers focused on fellowship, human nature and judgment. That has been lost. We have become a litigious society, and everyone is sue- crazy, and everything is a cause of action. There is no such thing as bad luck. He doesn't blame the lawyers. He believes, rather, that it is a reflection of the American state of mind.

Alaska's most well-known jewelry designer likes the difference in his life, which leaves him time to step back and look at society and politics with whimsical disinterest.

Bill Spear feels like he is a more valuable member of society; it is a more positive act to create and produce his pins than to shuffle pieces of paper.

MARVIN CLARK

Marvin Clark operates a publishing business.

President of Great Northwest Publishing and Distributing Co., Inc., he publishes and distributes "outdoorsy" Alaska books.

Marvin has lived and worked in Alaska since 1971, starting in Kodiak with the Pinnell and Talifson game guiding service in search of the legendary brown bear. He enrolled at the University of Alaska Fairbanks in 1973, interrupting his education to work on the Alaska Pipeline. Clark finally finished his degree in political science with a minor in journalism in 1978, graduating from Gonzaga Law School in 1982.

Anchorage was Marvin's next career hunting ground, and before moving to Wasilla in 1984 (more room and a slower pace), he worked at Owens & Turner; Lynch, Farney & Crosby; and Wayne Anthony Ross at Ross, Gingras, Bailey & Miner.

After a two-year stint with John Davies, Clark opened his own office in 1986.

The writing bug bites

Marvin began his career as a writer while a student in Fairbanks. His journalism professor, (and well-known outdoorsman) Charles Keim encouraged him to write a book, so between 1973 and 1976 Clark wrote a book about his experience working for the grizzly bear hunting guides in Kodiak. He called the book *Last of the Great Brown Bear Men*.

Having invested nearly four years of his life for literary posterity, Marvin's next problem was getting the book published.

He took his manuscript to New York to the editors of the major publishing companies, and predictably received a stack of rejections for his first-time effort.

Why he became a lawyer

Pavement-pounding getting him nowhere, Clark hired an agent and proferred his new representative a check for $250 with which to launch a best-seller's career.

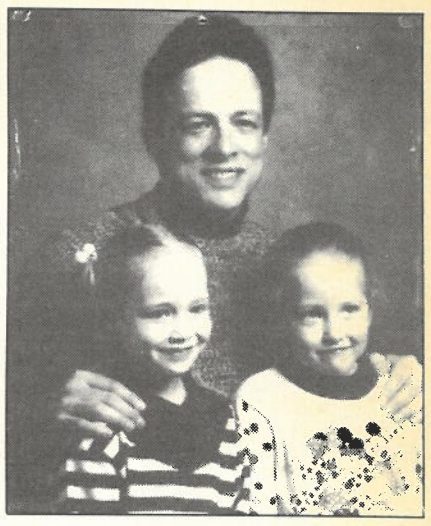
The agent took the money and wrote him a letter saying that nobody cares about hunting.

Undaunted, Marvin went to New York again in 1977. This time, he found a publisher who liked his book. Elated, he returned to school in Fairbanks and shortly thereafter received a letter stating that his book had been accepted for publication, with contract to follow.

No contract ever came.

He graduated in the spring of 1978 and had gone to law school that fall when the manuscript was returned. Marvin contacted the publisher and asked him what was going on. The publisher told Marvin that if he could find 500 people who would buy the book that he would publish it. "Advertise it as a pre-publication sale," suggested the New Yorker. Dutifully, Marvin advertised the book to the client mailing list of Pinnell and Talifson, from whence the grizzly tales had come.

The requests came pouring in.



Marvin Clark poses with his daughters, Alaina and Alissa.

With more than 500 pre-publication orders in hand, Marvin went victoriously to the publisher, only to experience first hand the dilemma of fighter-pilot Yossarian, who, in *Catch-22*, never achieved enough missions to be sent home a hero.

The publisher didn't agree to publish the book. Instead, he said, if Marvin could get 750 requests he could get the book published for an even cheaper price.

Marvin began to be a little

Continued on page 13

OUTSIDE THE LAW

Farmer Williams finds unique reindeer niche

BY SALLY J. SUDDOCK

In his 50th year, Tom Williams appears at ease with his life as an attorney in Alaska; but it's not just the law that generates his enthusiasm.

TOM WILLIAMS

Williams is a farmer. Or, as he puts it, "I'm a farmaloholic." Since 1987, when he went to Canada to purchase his first 20 reindeer, Williams Farm has populated 160 acres with a reindeer herd that now numbers nearly 250 animals. "We'll be adding 120 more during the fawning season this spring," said Williams.

Williams didn't start out being Alaska's only non-Native reindeer farmer. His father was a dairy farmer who came to Alaska from Oklahoma in 1942 when Tom was just two, taking up residence on the southern flank of The Butte in Palmer to raise milk cows. Young Tom thus grew up with farming in his blood, graduated from Palmer High School during the 1959 year of Alaska's statehood, and earned his law degree from Southwestern University in 1974. He was admitted to the Alaska bar that same year, moved to South Anchorage and it didn't take long for the farming bug to hit.

"I kept the same horse for 30 years, and farmed a few pigs," he says. The now-defunct Prinz Brau brewery figured significantly in his operation; Williams hauled away the brewery's mash for use as pig fodder, and soon found himself with a dump truck convoy up to the valley, as well. "This got me going with this farming thing I have again," says Williams, and in 1978, Williams took over his father's old dairy farm in Palmer, together with another 640 family acres at Point MacKenzie. He moved his law practice to Eagle River.

But Alaska's dairy industry was due for hard times, and the Point MacKenzie hayfarm by the mid-1980's found itself with no market. "We had 1,000 tons of hay with no animals to feed it to," says Williams. Why not start a reindeer farm?

Enter the federal Reindeer Act of 1937, an obscure statute wherein the federal government assumed ownership of all reindeer in Alaska in trust for Native peoples via the Bureau of Indian Affairs. In 1987, the federal government decided to get

April the reindeer flirts with Anchorage Convention & Visitors Bureau President Bill Elander during a November Egan Center event. Tom Williams referees.

out of the reindeer-ownership business, and decreed that all reindeer (that is to say domesticated caribou, but that's another story) are to remain in the ownership of Alaska Natives and their descendents.

For anyone other than a lawyer, federal law would appear to have stymied any dreams of a "non-Native, white guy" to raise reindeer for profit or otherwise. Williams did his research, and discovered that nothing in law prohibited him from procuring reindeer outside of Alaska, and that's what he did. "The state and federal government don't like me very much," he says, because he is outspoken about the discriminatory inconsistencies in federal law. In fact, 40 reindeer in his herd trace their origins to Western Alaska Native herders; one of Williams' workers on the farm is Native, and purchased

Continued on page 24

• Clark's books

Continued from page 12

suspicious of this guy. As a first-year law student, he realized that he was in a vulnerable position because he had never gotten a written contract.

Do it yourself

Meanwhile, the budding author was getting calls from those who had ordered his book, wondering where it was.

Marvin bit the bullet and was making plans to return the money when he got a bright idea. Why not find a printer and publish the book, himself? With the pre-publication sales money, he paid for a modest press-run. Three printings (and more sales) later, he broke even.

While *Bear Men* is still his best selling book, others soon followed, although not all from his typewriter.

While studying for the bar exam he began to write *Track of the Kodiak*, completing his second effort while working for Ross (who says that he gave a copy of it to George Bush).

Great Northwest is born

Early on in his publishing career, Marvin advertised his books by direct mail and in hunting magazines. He continues to do so but also distributes to book stores such as The Book Cache.

Recognizing that other authors are also often stymied by the Catch-22 tactics of the East, Marvin now publishes other peoples' books along with his own.

After receiving a number of manuscripts from writers who ask for his opinion about their works, Clark publishes the best ones.

He reviews manuscripts 50-100,000 words in length, specializing in outdoor themes. If he accepts the manuscript, he will do the editing, send the manuscript to typesetters, design text and cover lay-out, review the galley proofs and get the book published and distributed. The authors of the manuscripts are paid royalties.

To date he has published about 12 books. Among the titles of Great Northwest Publishing & Distributing Co., Inc. is one written by Richard Folta, a part-time magistrate in Juneau. *Of Bench and Bar—Alaska's Bear Hunting Judge* is about George W. Folta, a territorial judge who resided in Juneau. During his lifetime, Judge Folta killed over 200 bears, averaging about five per year.

Luckily for Marvin Clark, the old judge left behind the bears of Kodiak.

Life with the federal tax lien (or "FTL")

BY TOM YERBICH

A general Federal tax lien ("FTL") attaches to "all property and rights to property, whether real or personal" of the taxpayer [IRC § 6321] at the time assessment for taxes is made [IRC § 6322]. There is *no* requirement that any notice of an FTL be given or that an FTL be filed before it attaches. However, before an FTL is effective as against certain persons, other than the taxpayer (e.g. purchasers, holders of security interests, judgment lien holders), it must be filed [IRC § 6323(f)].

An FTL, if filed, is a statutory lien not avoidable as a preferential transfer under BC § 547(b). However, an FTL not enforceable against a bona fide purchaser is avoidable by a trustee under BC § 545(2). Thus, a trustee (but not a taxpayer) takes property free of an FTL if notice of the FTL is not properly filed before commencement of a case; but takes property subject to an FTL if notice has been properly filed.

Although a trustee takes property subject to a "perfected" FTL and the Service generally enjoys the benefits of a secured creditor, claims for federal taxes are subordinated to claims having a higher priority under BC § 507(a), irrespective of whether or not notice of the FTL has been properly filed [BC § 724(b)]. Therefore, the effect of a "perfected" FTL is avoided to a limited extent by subordination of the FTL to unsecured creditors entitled to priority under BC § 507(a)(1)-(6).

An FTL does not have an unlimited life; its life is coextensive with that of the assessment from which it springs [IRC § 6322]. As a general rule, the time for collection on an assessment is limited to six years after the date of assessment [IRC § 6502(a)], after that time the Service may no longer summarily levy (collect) on the property of a taxpayer. Collection is thus time-barred unless a suit is brought on a tax assessment prior to expiration of the six-year limitation period, and thereafter the Service must use judicial procedures. The period for collection may be extended by agreement, absence from the U.S., pendency of proceedings in the U.S. Tax Court, and is automatically extended by filing a petition in bankruptcy. In a bankruptcy the period of extension is for the time the Service is prohibited from collecting (from date of filing until six months after the first meeting of creditors [*U.S. v. Turner*, 625 F.2d 328 (9th Cir. 1980)]) plus six months [IRC § 6503(i)].

A "perfected" FTL, as well as a "perfected" FTL avoided by the trustee under BC § 545(2), survives bankruptcy even if the underlying tax liability is discharged [*In re Isom*, 901 F.2d 744 (9th Cir. 1990); BC § 522(c)(3)]. If the underlying tax liability is discharged in bankruptcy, a "surviving" FTL is limited to that property which the taxpayer had an interest in when the bankruptcy was filed and which passes through to the taxpayer whether by exemption, exclusion, or abandonment by the trustee [see S.Rep.No. 959, 95th Cong., 2d Sess. 76 (1978)]. However, if the underlying tax liability is not discharged, an FTL also attaches to all after-acquired property interests throughout the life of the FTL.

As noted, an FTL attaches to all property interests of the taxpayer. However, neither the IRC nor other Federal law define "property." Generally, state law determines whether a taxpayer has "property" for the purposes of an FTL. Also, the security of the lien is derivative: that is, it is only as good as the taxpayer's interest in the property: the Service stands in the taxpayer's shoes. Thus, the security interest of an FTL is subject to the same restrictions, conditions and disabilities the taxpayer has with respect to the property.

An FTL attaches to property of a taxpayer on the assessment date and all after-acquired property throughout the life of the lien [IRC § 6322; *Glass City Bank v. U.S.*, 326 U.S. 265 (1945)]. Although there are exemptions from levy [IRC § 6334], no exemptions are provided with respect to an FTL [*United States v. Barbier*, 896 F.2d 377 (9th Cir. 1990)]. Consequently, an FTL may be foreclosed on property which is exempt from levy. (As a practical matter this is of little consequence in most cases because the exemptions are so miniscule as to make FTL foreclosure uneconomic except in the most unusual circumstances. The same rationale applies to a "surviving" FTL when the underlying tax liability is discharged in bankruptcy. Except for big ticket items (such as, homestead exemption, spendthrift trusts, or commercial fisheries permits) lien foreclosure is simply not economic.) Although state law determines to what extent a taxpayer has a property interest, whether the state-created property interest constitutes "property or rights to property," as well as the consequences of that determination, is a matter of federal law. [*U.S. v. Bess*, 357 U.S. 51 (1958)]

The union of state law "creation" and federal law "effect" creates some interesting problems, most of which deal with priorities among creditors which is, happily, beyond the scope of this article. There are, however, some areas in which false expectations may arise or misconception exist. Three in particular are joint ownership, trusts and state issued licenses.

In a co-ownership situation, particularly arising out of a marital relationship, there are two issues involved: (1) can jointly owned property be sold; and (2) does an FTL attach to an interest of a co-owner?

As a general rule a taxpayer has an interest in co-owned property to which an FTL attaches [see e.g. *Shaw v. U.S.*, 331 F.2d 493 (9th Cir. 1964)]. As in a bankruptcy [BC § 363(h)], this "interest" may be foreclosed under IRC § 7403 to satisfy the tax liability of a taxpayer, even if it requires sale of the entire property [*U.S. v. Rogers*, 461 U.S. 677 (1983)].

Whether an FTL arising out of the separate tax liability of one co-owner attaches to an interest of another co-owner depends on whether a co-owner's interest is subject to claims of another co-owner's creditors, and is determined by reference to state law. Where tax liability is joint, an FTL attaches to the entire property. In Alaska, when property is held as tenants by the entireties the interest of one tenant is not subject to the separate debts of the other; however, property may be partitioned or sold by a creditor and the proceeds received from a sale of an interest of a taxpayer used to satisfy claims of creditors including the Service (AS 09.38,100). On death of a taxpayer co-owner, the survivor of a joint tenancy or tenancy by the entireties takes the full estate by virtue of the original grant, not by a transfer, for determining transferee liability on delinquent federal taxes [*Tooley v. CIR*, 121 F.2d 350 (9th Cir. 1941)]. Furthermore, in a tenancy by the entireties, the interest of the survivor is superior to that of an FTL (if the FTL arises after the tenancy was created) and the property therefore passes to the survivor free of the FTL arising out of the separate tax liability of the deceased spouse [*see In re Estate of Wall*, 440 F.2d 215 (DC Cir. 1971)]

In an Alaska partnership, a partner may not sell or transfer his/her interest in specific partnership property [AS 32.05.200(b)]; accordingly, an FTL against an individual partner attaches only to the interest of that partner in the partnership and not to any particular partnership property [Rev.Rul. 73-24, 1973-1 CB 602]. On the other hand, an FTL against a partnership is also a lien on the property of an individual partner [see *U.S. v. Coson*, 288 F.2d 453 (9th Cir. 1961)].

The second area of specific concern involves trusts. To the extent a taxpayer has an interest under a trust instrument, that interest is clearly one to which an FTL attaches. However, to what extent is that interest protected by restrictive terms in the trust instrument enforceable under state law? A spendthrift trust, enforceable as such, is excluded from the bankruptcy estate [BC § 542(c)(2)]. But is it protected from an FTL? The answer, not surprisingly, is that the interest of a beneficiary of a spendthrift trust can be reached to enforce a claim for unpaid federal taxes [*Leuschner v. First Western Bank & Trust Co.*, 261 F,2d 705 (9th Cir. 1958)].

One must, however, distinguish between a simple spendthrift trust and a discretionary or "sprinkling" trust. In a spendthrift trust, although a beneficiary cannot anticipate distribution, once a distribution is due, a beneficiary can compel a trustee to pay it over. This, of course, is the "interest" to which an FTL attaches. On the other hand, if a trustee has discretion to pay or withhold ("discretionary" trust) or to whom among several beneficiaries distribution is to be made ("sprinkling" trust), a beneficiary has no power to compel distribution. Accordingly, neither does an assignee or creditor (including the Service) have power to compel payment. However, once a trustee exercises discretion to make a distribution to a taxpayer, an FTL attaches and the Service may levy on a distribution while it is still in the hands of a trustee.

The final area involves state issued licenses. In Alaska, liquor licenses [AS 09.38.015(a)(7)] and commercial fisheries entry permits [AS 09.38.015(a)(8)] are exempt. However, although bound by state-imposed restrictions on transferability, a state issued license is, nevertheless, a property interest to which an FTL attaches [*U.S. v. California*, 281 F.2d 726 (9th Cir. 1960)]. When the sale (or transfer) is approved, an FTL clearly attaches to the proceeds of the sale [*U.S. v. Blackett*, 220 F.2d 21 (9th Cir. 1955)].

An action to foreclose an FTL on specific property is an in-rem action brought in the federal district court where the property is located. Parties to the action include, in addition to the taxpayer(s), all persons having liens upon or claiming any interest in the property [IRC §§ 7401(a), 7403]. After a court trial, property may be sold and the proceeds distributed according to the court's findings. Because a purchaser at a judicial sale receives better title

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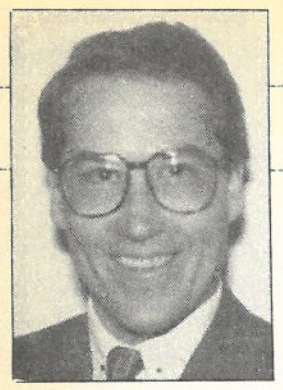


Estate Planning Corner

By Steven T. O'Hara

The gift tax is tax-*exclusive*, but the estate tax is tax-*inclusive*. This difference can be significant.

Suppose we have a client, domiciled in Alaska, who has never made a taxable gift. Suppose she has a certain asset she wishes to leave to her child. Suppose the asset is worth $1,000,000.

Suppose the client signs a Will that gives the asset to her child. Suppose the client dies, with no surviving spouse, and her only asset is the one going to her child.

Under these circumstances, the child will receive approximately $850,000 (ignoring administration expenses), since the decedent's estate will owe approximately $150,000 in estate taxes on a taxable estate of $1,000,000 (I.R.C. Sec. 2001, 2010, 2011 & A.S. 43.31.011).

The estate tax calculation is based on the full $1,000,000 value, even though the net devise to the child is $850,000. In other words, there is no deduction for the estate tax paid.

By contrast, the gift-tax system is tax-exclusive. This exclusion can take two forms.

First, gift tax paid by a donor is excluded in computing the amount of the taxable gift (Westfall and Mair, *Estate Planning and Taxation* Sec. 9.07[1][e] (2nd ed. 1989)).

For example, a gift of $1,000,000 on which a gift tax of $150,000 is *paid by the donor* is a taxable gift of $1,000,000 and not $1,150,000.

Second, since the donor is obligated to pay the gift tax, the donee's actual payment of the tax is viewed as consideration back to the donor, resulting in a net gift (I.R.C. Sec. 2502(c) & 2512(b); Rev. Rul. 75-72, 1975—1 C. B. 310; and Rev. Rul. 71-232, 1971—1 C. B. 275).

For example, a pre-tax gift of $1,000,000 on which a gift tax of $X is *paid by the donee* is a taxable gift of ($1,000,000 minus $X) and not $1,OOO,OOO. In the Revenue Rulings cited above, the IRS has provided guidance in calculating the tax payable in a net-gift situation.

After recognizing the tax-inclusive nature of the estate tax, and after learning of the tax-exclusive nature of the gift tax, clients may decide to make substantial gifts before death.

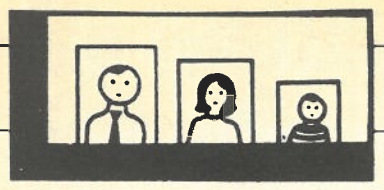
All related rules, however, should be considered. For example, gift tax paid within three years of the client's death is generally includable in the gross estate for estate tax purposes (I.R.C. Sec. 2035(c); Westfall and Mair, *supra*, at Sec. 8.03[3]).

In addition, when a lifetime gift is made, the donee takes, in general, a carry-over basis in the gifted property (I.R.C. Sec. 1015). "Basis" is used in determining gain or loss from the sale or other disposition of property (I.R.C. Sec. 1001 & 1011).

For example, if a client purchases stock for $100,000, her basis in that stock is $100,000 (I.R.C. Sec. 1012). If she then sells the stock for $600,000, her taxable gain is $500,000, which is the consideration received in excess of her basis.

Depending on the circumstances, the carry-over basis of gifted property can be a major disadvantage to gifting, since a so-called "stepped-up basis" (to fair market value) is obtained, in general, on a death transfer (I.R.C. Sec. 1014; O'Hara, *Estate Planning Corner*, Alaska Bar Rag p.14 (November-December 1989)).

An additional trap for the unwary appears in the net-gift situation. To the extent the gift tax paid by the donee exceeds the donor's basis in the gifted property, the donor realizes taxable income (*Diedrich v. Commissioner*, 457 U.S. 191 (1982); *Estate of Weeden v. Commissioner*, 685 F.2d 1160 (9th Cir. 1982)).



People

Julienne Bryant, formerly of Faulkner, Banfieldd, is now with the A.G.'s office....**Margie MacNeille** and **Julian Mason** had a baby boy, Alexander in early February.....**Richard Bradley** has moved from Juneau to Baltimore.

Peter Crosby and **Rod Sisson** have formed the law firm of Crosby & Sisson. **Laurence Keyes** is associated with the firm.....**Joseph Cooper**, formerly with the A.G.'s office is now with Russell & Tesche.....**Carolyn Dallinger** is now with the Alaska Human Rights Commission, and **Adrienne Fedor** has relocated from Anchorage to Ketchikan.

Julie Garfield reports that she is really enjoying her sole practice in San Rafael, California.....**Mindy Kornberg**, formerly with Birch, Horton, et.al., is now with Alyeska Pipeline Service Co.....**Nancy Lashnits** is now working for the IRS in Washington, D.C.....**Mark Moderow**, formerly with Moderow & Reichlin, is now working for General Communication, Inc.

John Novak, formerly of Hughes. Thorsness, et.al. is now with the D.A.'s office.....**Michael Patterson**, formerly of Smith, Coe & Patterson, has opened his own law office in Anchorage.....**Jeffrey Sauer**, formerly of the P.D. agency, has now opened his own law office in Juneau.....**Jane Sauer** has joined the Kodiak firm of Jamin, Ebell, Bolger & Gentry.

Joseph Schierhorn, formerly of KeyBank, is now with Northrim Bank.....**Paul Stockler**, formerly of the D.A.'s office, is now with Delaney, Wiles, et. al.....**Richard Thwaites** has opened his own law office in Anchorage.....**James Torgerson**, formerly with the Office of the Governor in D.C., is now with the U.S. Attorney's office in Anchorage.

Diane Vallentine is of counsel to Gaitan & Cusack.....The partnership of Whittaker & Zelenski is dissolved as of January 1, and **Richard Whittaker** and **Michael Zelensky** each have their own law office.....**Kenneth Rosenstein**, formerly with Lynch, Crosby & Sisson, is now with OSPA.....Former assistant D.A. **Kenneth Roosa** is now with the U.S. Attorney's office.

Douglas Blankenship, formerly with Birch, Horton, et.al,, is now with the A.G.'s office in Juneau.....**Susan Mack** has relocated from Anchorage to Idaho.....**James Plasman**, formerly with the Alaska Dept. of CRA, is now with the Nuclear Claims Tribunal, Majuro, MH.....**Jacquelyn Parris**, formerly with Hughes, Thorsness, et.al., is now with the D.A.'s office.....**Myra Munson**, former HSS Commissioner, is now with Sonosky, Chambers, Sachse, Miller & Munson.

The Alaska Association of Legal Administrators, Inc. recently elected its 1991 board members. They are President, **Mary Hilcoske**, Staley, Delisio, Cook & Sherry; President-Elect, **Marilyn Shelton**, Hoge, & Lekisch; Vice President, **Kate Walker**, Atkinson, Conway & Gagnon; Secretary, **Julie Singleton**, Perkins Coie; and Treasurer, **Katherine Flynn**, Burr, Pease & Kurtz.

Michael Stahl has moved from the Prosecutor's Office to the Civil Division of the Anchorage Municipal Attorney's Office.

Two attorneys and a district court judge have been appointed to new positions. Anchorage District Court Judge **Elaine Andrews** was appointed to Superior Court; Anchorage attorney **John Lohff** was appointed district court judge; and Kotzebue attorney **Richard Erlich** was appointed Superior Court judge in that city.

Verdict, settlement report

McGuire v. Molitor. Accountant sued for failure to timely mail tax court petition and to keep proof of mailing stamped by Post Office.

Injuries: Tax liabilities for years 1979, 1980, 1982, 1983.

Verdict: $37,842 + $2,634. (Negligence: 51% defendant, 49% plaintiff.)

Alaska lawyers do first videoconference

What does a 6,000-mile conference table look like?

Recently, two Anchorage based attorneys, Matthew Peterson of Hughes, Thorsness, Gantz, Powell & Brundin, and Peter Gruenstein of Burr, Pease & Kurtz, used such a table. They conducted the first two-way videoconferencing deposition from Alaska to the Lower 48.

The two attorneys spent approximately three hours using Pacific Rim Telecommunication's (PRT) videoconferencing system. Peterson estimated 30 hours of travel time were saved using the new technology, with costs of food and lodging plus the jet lag experience also eliminated. Very conservatively speaking, an estimated net savings of $5,000-$7,000 resulted from eliminating travel and using two-way videoconferencing.

This is what attorneys look like in a videoconference.

What is the technology that makes videoconferencing from Alaska to distant locations feasible and, more importantly, affordable? The answer to that question is compressed digital video. This technology has been in the marketplace for more than five years. Recent software upgrading has further improved the video quality dramatically. Driven by new technology, the cost of providing this service is now in the range of hundreds of dollars per hour, rather than thousands.

Previously, the transmission of full motion video required the equivalent of 50 telephone lines. Today's compressed digital video can be transmitted over the equivalent of two telephone lines. This has driven the cost down significantly and made videoconferencing affordable to businesses.

Face-to-face interaction with witnesses thousands of miles away is now possible. The entire meeting can be conducted as if all parties were present in the same room. Both attorneys, and the court reporter from R&R Court Reporters, agreed this new technology was very successful. The defense attorney was able to study the witnesses facial expressions, eye movement and body language as the meeting took place, just as he would had they been in the same room.

Videoconferencing has come of age and is being used by businesses large and small.

PRT's connection to the US Sprint Meeting Channel offers 900 public facilities in addition to many private corporate conference rooms worldwide. Most major American metropolitan areas provide public videoconference rooms. All of these can be connected to Anchorage.

The equipment used for this videoconferencing is provided by PictureTel Corporation in Peabody, Mass. PRT is PictureTel's authorized representative in Alaska.

Don't Forget the Annual Business Meeting

Friday, June 7 from 3:00 p.m. - 5:00 p.m.
Ballroom, Westmark Hotel

Ethics committee reprises corporate rule

ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 91-1

Communication with Former Employees of Corporation Represented by Counsel (Reconsideration of Ethics Opinion No. 88-3).

The Committee has been asked to re-evaluate Opinion No. 88-3 regarding communications with former employees of a corporation represented by counsel. The Committee expressed the view in that opinion that "an attorney representing an opposing party in a lawsuit against a corporation may contact former employees of the corporation, including former members of the corporation's control group, who dealt with the subject matter of the litigation without permission of corporate counsel." The opinion was qualified to the extent that counsel could not contact the former employee if that person was individually represented with regard to the pending matter, and further, the questioning attorney could not inquire into privileged attorney-client communications with the former employee. Otherwise, the attorney was free to "communicate with a former employee of an adverse party if the former employee is not represented by counsel."

The opinion of the Committee, as expressed in Opinion No. 88-3, is hereby reaffirmed. Nevertheless, because there are some isolated court opinions supporting a contrary conclusion, the Committee believes it appropriate to discuss the rationale behind its opinion and underlying rule, and distinguish its conclusion from that reached by others considering the issue.

DR 7-104(A)(1) prohibits a lawyer from communicating on the subject of his representation with "a party" he knows to be represented by another attorney, without that attorney's consent, or unless authorized by law. The purpose of that rule is to prevent lawyers from deliberately dodging adversary counsel to reach - and exploit - that party, thereby obviating the effectiveness of retained counsel. By doing so, the rule minimizes the likelihood that clients will make improvident settlements, ill-advised disclosures and unwarranted concessions against which counsel would advise. *Niesig v. Team I,* 559 N.Y.S.2d 493 (1990).

The issue is whether former employees of a corporate party are also to be considered as "parties" under this rule. Since corporate parties act only through natural persons, it is obvious that some of the current employees must be classified as parties, or the corporation would be deprived of any protection under the rule. Consistent with that reasoning, certain categories of employees, whether described as the "control group," or those employees whose acts or omissions are binding on the corporation, are considered to be "parties" to litigation involving the corporation.

Frequently confusion occurs in the application of DR 7-104(A)(1) because the attorney-client privilege is injected into the analysis. This tends to expand the application of the prohibition because the confidential nature of a communication is not lost by termination of the representation or resolution of the matter for which representation was sought. Rather, the privilege continues and the confidence may not be breached without consent of the client unless otherwise required by law. But the privilege *does not immunize the underlying factual information*; it only protects the communication between the attorney and client. Opinion No. 88-3 recognizes the continuing nature of that privilege.

Once it is recognized that the attorney-client privilege does not require extension of the "party" definition to include former employees, the question is whether the rationale for the attorney-client privilege would otherwise present a basis for extending the prohibition of DR 7-104(A)(1) to former employees. The Committee does not find any compelling reason for that extension.

That is not to say that a former employee could not provide information that would be damaging to the corporation. Such information would be prejudicial, however, whether it is disclosed informally or only after more expensive and perhaps formal procedures are utilized by the party seeking such information. We do not believe that artificial barriers to the informal development of such information would promote any policy or objective that would outweigh the expeditious and less expensive resolution of disputes that may result from use of the informal discovery. Because the corporation has unique access to the information available from its documents and employees, and the best opportunity to gather information from its employees, the Committee does not believe any burden is imposed on corporate parties by its interpretation of the rule.

The Committee is aware of cases which interpret Rule 4.2 of the Model Rules of Professional Conduct to prohibit ex parte contacts with former managerial employees of an organization. *See Soerber v. Washington Heights-West Harlem-Inwood Mental Health Council, Inc.*, No. 82 CIV 7428 (S.D.N.Y. Nov. 21, 1983) (vacated and withdrawn); *Amarin Plastics, Inc. v. Maryland Cup Corp.*, 116 FRD 36 (D. Mass. 1987). *See also*, Miller & Calfo, "Ex Parte Contact with Employees and Former Employees of a Corporate Adversary: Is It Ethical?" 42 Bus. Law. 1053 (August 1987); Comment, "Ex Parte Communications with Corporate Parties: The Scope of the Limitations on Attorney Communications with One of Adverse Interest" 82 Nw. U.L.Rev. 1274.

Rule 4.2[1] is the counterpart to DR 7-104(A)(1). The Comment to the Rule states, *inter alia*, the following language:

> In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. (Emphasis added.)

In Sperber, supra, the court interpreted the language in the comment to include former employees:

> The phrase preceding the second category of the Comment, "any other person," is plainly broad enough to cover certain former employees, and there is nothing explicitly limiting the Comment's application to current employees.
>
> Also, in this case [the former employees] were the individuals who made and carried out the decision to discharge Sperber. It is their actions and motives as officers of the organization at the time which are the subject of plaintiff's claims of discrimination and which plaintiff will seek to impute to the defendant organization in order to hold it civilly liable to plaintiff. It would appear, therefore, that the conversations with [the former employees] fall into the protection of Rule 4.2 (as interpreted by the second paragraph of the Comment.)

A majority of the Committee does not agree with the reasoning of the Sperber court, and it should be noted that the opinion has been vacated and withdrawn, though for reasons which may be unrelated to the court's analysis of this policy. Objectives of the rule are not advanced by preventing an attorney from discussing *factual* issues with a former employee even if those facts may impute liability to the organization. Presumably those facts will not vary depending on whether the organization's counsel does or does not consent to the interview. There is no indication that DR 7-104(A)(1) was intended to protect organizations from the efficient and unimpaired development of facts relating to the matter in dispute, and the Committee declines to stretch the rule's premise in order to reach that result.

Approved by the Alaska Bar Association Ethics Committee on January 3, 1991.

Adopted by the Board of Governors on January 18, 1991.

[1] The Board of Governors for the Alaska Bar Association have approved a version of the Model Rules of Professional Conduct, and they are presently pending before the Alaska Supreme Court for adoption. The version adopted by the Board has retained the language of Rule 4.2, as well as the comment interpreted by the Sperber court.

Ethics panel clarifies estate issue

ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 91-2

Responsibilities of Attorney Representing Personal Representative of Estate When a Conflict Exists Between the Personal Representatives and the Heirs of the Estate.

The Committee has been asked whether an attorney representing the personal representative of a probate estate should advise the personal representative to seek independent counsel when there is a "conflict" between the personal representative and the heirs regarding settlement of the estate.

It is the opinion of the Committee that an attorney representing the personal representative of an estate is not prohibited from representing the personal representative in disputes with heirs. The attorney may not, however, represent the personal representative in such disputes if the attorney has obtained relevant confidential information from the heirs while acting for the personal representative; nor may the attorney assist or counsel the personal representative in conduct inconsistent with the best interests of the estate.

An analysis of the issue presented must begin by first considering the identity of the "client" being represented when an attorney is providing services related to the probate of an estate. There appears to be a tendency to consider the estate as an entity that is acting through the personal representative, and that the estate is therefore the client of the attorney, much the same as a corporation or other organizational client. However, while the estate is an entity for some limited purposes, such as taxation, it is for probate purposes a collection of assets rather than an organization, and is not an entity involved in the probate proceedings.

AS 13.16.410(21) provides, in pertinent part, that:

> *[A] personal representative,* acting reasonably for the benefit of the interested persons, may properly
>
> . . .
>
> (21) employ persons, including attorneys . . . even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties . . . ,

There is no reference in that section or elsewhere in the probate code to the estate retaining the services of an attorney, nor to an attorney representing the estate. It is clear, therefore, that the attorney handling a probate proceeding is representing the personal representative and not the estate.

Opinions from other bar associations almost uniformly reach the same conclusion, and further advise that an attorney representing the personal representative in the probate of an estate is not precluded from also representing the personal representative in the representative's individual or personal capacity. For example, the Mississippi Bar Association found that counsel for an executor could represent the executor in a dispute with beneficiaries who took exception to the final accounting of the executor because the attorney represents the executor and not the estate. [Opinion 46, 25 Mississippi Lawyer 9 (December 1978).] In its Opinion No. 237, the Los Angeles County Bar Association. determined an attorney for an administratrix of an estate might also represent the administratrix in her individual capacity as an heir in a contest with other heirs if the attorney has gained no relevant information from the other heirs while acting for the administratrix. The Alabama Bar expressed the opinion that an attorney can represent a client as administratrix of an estate and as creditor in her claim against the assets of the estate. [Alabama Bar Assn., Opinion 83-167 (November 16, 1983).]

A personal representative in Alaska is under a duty to settle and distribute the estate of the decedent in accordance with the probated will and applicable statutes as expeditiously and efficiently as is consistent with the best interests of the estate.

The authority conferred by the statutes and court orders must be used by the personal sepresentative for the best interests of successors to the estate (AS 13.16.350.) The attorney for the personal representative has a duty to advise the client of actions deemed necessary for the proper administration of the estate and to refrain from counseling or assisting the personal representative in conduct the attorney deems inconsistent with the best interests of the estate. [Opinion 512, New York State Bar Assn. (July 11, 1979).] The attorney does not, however, have a duty to advise heirs or creditors of the estate, and is prohibited from informing beneficiaries or the court of facts that would be adverse to the personal representative, or from taking any position hostile to the personal representative's interests.

The opinions discussing the prohibition against disclosure of information adverse to the personal representative make it clear that a personal representative is entitled to the same protections and loyalty as any other client, notwithstanding the fiduciary relationship to the estate. The Bar Association of Greater Cleveland, for example, advised that an attorney for an executor who becomes aware, through information provided by the executor, of an asset that should be included in the estate, may not disclose that information to the beneficiaries or bring a declaratory judgment action against the executor on behalf of the child beneficiaries. If the executor refuses to include the asset in the estate, the lawyer was advised he must withdraw. [Opinion 125 (September 2, 1976).]

Oregon State Bar Opinion 314 (February 1976) similarly holds that an attorney for the personal representative has no duty to disclose to beneficiaries that property they propose to select from the estate is worthless, but if the representative has the duty to make such a disclosure to do so and refuses, counsel should withdraw.

The Michigan Bar similarly held that an attorney who believed a co-representative he was representing was guilty of misconduct in managing the estate could not reveal the alleged misdeeds to the other devisees of the estate, but could only withdraw. [Opinion 47 (May 10, 1984).] However, if information received by the attorney *clearly establishes* that his client has perpetuated a fraud upon a person or a tribunal, the attorney must promptly advise the client to remedy the results of that fraud, and if the client refuses or cannot make the correction, the attorney shall reveal the fraud to the court and may reveal the fraud to the affected person. [DR 7-102(B)(1). (See Rules 3.3(a)(2) and 4.l(b) of the Model Rules of Professional Conduct presently under consideration by the Alaska Supreme Court.)]

An attorney for an administrator is prohibited from petitioning for the removal of the administrator who has become incompetent due to drug addiction, but was advised to notify the court and the administrator that he was withdrawing because the administrator's conduct rendered him unable to fulfill his obligations to the court in the orderly and timely closure of estates in probate. [Oregon State Bar Association, Opinion 100 (October 1961).] An attorney representing an executor in Virginia is not obligated to advise an estate beneficiary, whose interests are potentially in conflict with those of the executor, to seek independent counsel, but should advise the client that the conflict exists and that the executor should recommend that the other beneficiary retain independent counsel. [Informal Opinion 239, Virginia Bar Association (no date).]

The request to this Committee for this opinion expressed concern with the apparent unfairness if the estate paid the fees of the attorney for the personal representative in the conflict situation, while the other beneficiaries were required to pay their own fees. That result does not necessarily follow. Under AS 13.16.440, the court is authorized to determine the propriety of the employment of the attorney and the reasonableness of the compensation. To the extent attorney fees are incurred to protect the interests of the personal representative as a beneficiary or creditor of the estate, and not in furtherance of its administration, the personal representative is not entitled to reimbursement. *Matter of Estate of Stephens*, 117 Ariz. 579, 574 P.2d 67, 73 (1978); *Estate of Riemcke v. Schreiner*, 80 Wash. 2d 722, 497 P.2d 1319, 1327 (1972).

Approved by the Alaska Bar Association Ethics Committee on November 14, 1990.

Adopted by the Board of Governors on January 18, 1991.

Fun in the Sun in Fairbanks!

ALPS through Sedgwick James has donated funds for prizes and goodies for the following events.

Call the coordinators listed below to sign up!

All these events are scheduled for Saturday, June 8. Times TBA.

Open Golf Tournament — How about a Midnight Sun Tee-Off Time?
Call Bob Noreen at 452-8390

5K Walk/run — Stroll, jog or race
Call Dan Callahan at 456-1136

Racquetball Tournament — Ah, The Challenge!
Call Dan Winfree at 452-1700

Predicted Time Zero K Run — Mail-In Event.
Call Jim Blair at 456-3518

• Counselor style may be best in divorce

the pursuit of victory for a client, and felt that a principal obstacle to settlement was clients' neurotic behavior.

Advocates were readier to endorse the value of an adversarial relationship with opposing counsel, and stronger in their rejection of responsibility for providing the client with emotional support. They were, however, enthusiastic about being relieved of this "burden" by psychotherapists.

Are counselors better?

The most controversial portion of *The Process of Divorce* is found in its conclusion in Chapter 8 concerning the advantages of the Counselor stance in divorce representation. While admitting that competitive attorneys can sometimes obtain good results, Kressel nevertheless argues that the weight of current evidence favors the more cooperative stance. There is first of all much evidence, Kressel asserts, that interpersonal sensitivity facilities effective professional assistance. Such evidence is abundant in studies on the physician-patient and psychotherapist-patient relationships. Such research applies with equal validity to the divorce attorney role, Kressel asserts.

There is also extensive psychological evidence which indicates that cooperatively motivated parties experience more pleasurable and rewarding interactions than those who are competitively motivated. While most such studies involved manipulation, Kressel asserts that investigations of interactions in the real world have demonstrated that a predisposition to behave cooperatively has similarly been shown to have advantages over a competitive disposition, as was also found in experimental settings.

The limited research which exists from the legal sphere is consistent with the research from the experimental psychology laboratories. For example, in a study of New Jersey divorce specialists, peer ratings of the highest competence (taken from Martindale-Hubbell) were received only by Counselors.

In a Phoenix study of 350 attorneys, 58% of the cooperatively-oriented lawyers were rated effective, as compared to a mere 25% of their more competitively oriented peers. Among attorneys judged as effective negotiators, effective cooperators obtained settlement in 84% of their cases in contrast to effective competitives, who settled only 67% of their cases.

After coming out strongly in favor of the Counselor attorney style, Kressel goes on to discuss the limitations involved in making such conclusions and the need for more research in the area. The reader is also urged to recall the book's more comprehensive conclusion that the overall role of attorneys in divorce settlement negotiations is less extensive and less destructive than the popular stereotype.

Nevertheless, the conclusions of *The Process of Divorce* about the effects of attorney styles on the outcomes of divorce are both controversial and significant to the practice of family law. The book is a fascinating study of the divorcing process in the United States. I believe the book should be mandatory reading for every practicing family law attorney.

Vote for

Board of Governors

Seats Soon

• Life with a GP

Continued from page 10

Apportioning income

After some discussion, it seemed every Law Practice Management Section panelist knew some attorney who opted for sole practice after coming to the conclusion that he was wasting the 30% of his time spent on inter-firm communications. This led to a big discussion of whether 30% was the correct figure for the amount of time wasted in coordination and communication in multi-partner offices.

Apparently, in firms with 100 or more attorneys, this is a reliable figure. With income, these firms seem to use the rule of thirds: one third of your time and money goes to overhead; one third goes to the attorney doing the work and one third goes to profit.

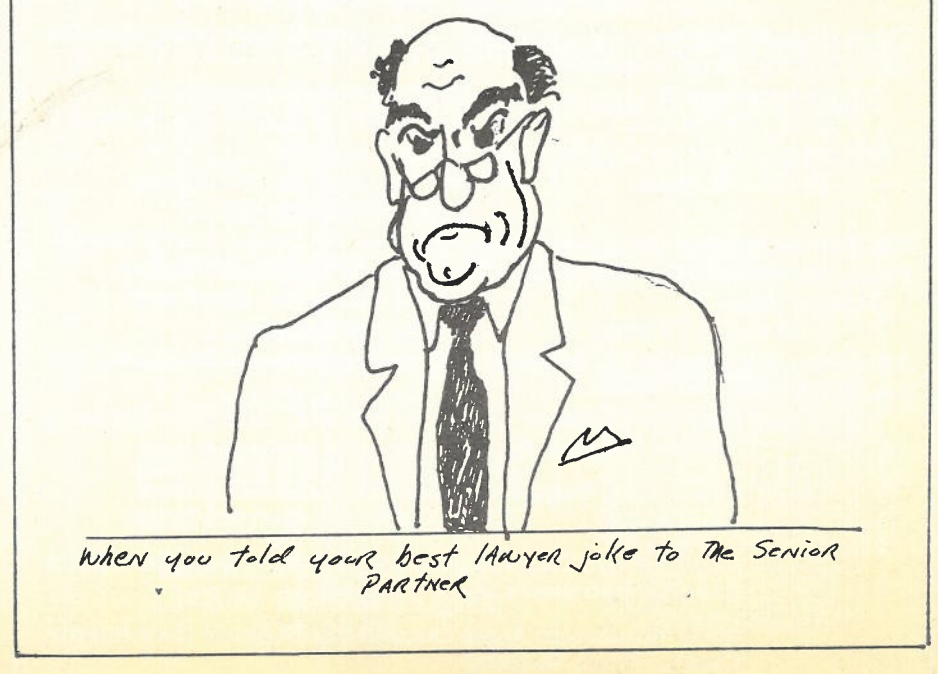
Several modern firms are talking about a rule of fourths: half goes to overhead, a fourth to profit, and a fourth to the attorney staffed with the work. This latest rule apparently comes from handling attorney salary negotiations, and may (or may not) be replacing the rule of thirds. (Specific firms were discussed as examples, but by way or safeguarding trade secrets, they are not included in this article).

There was then a brief discussion on subcategories, such as whether paralegal time is counted as overhead, or whether the paralegal services are billed. This writer had assumed that everyone billed paralegal services separately, but it turned out that only about half of the people do this. The Supreme Court ruling that paralegals are a cost, rather than part of the fee, seems to reinforce those who wish to include them in overhead. There certainly is no clear rule on the horizon to guide us at this time.

• FTL's

Continued from page 14

than at an administrative sale, an FTL foreclosure action may be beneficial to a taxpayer as well as the Service because it may result in a higher bid/purchase price being realizes. Revenue officers are instructed to give serious consideration to judicial foreclosures to ensure that a taxpayer's liability is satisfied. [IRM § 58(10)0, Legal Reference Guide for Revenue Officers § 485, MT58(10)0-17].



After Kuwait, lawyers can help save Tibet

BY PHYLLIS SHEPHERD

While the world's attention was focused on the liberation of Kuwait, March 10 is the day set aside to commemorate the uprising of another nation currently under occupation.

March 10 is Tibetan National Uprising Day. The nation of Tibet has been occupied by the Peoples Republic of China (PRC) since 1950; however, on the 10th the Tibetan people rose up to confront the PRC army and many were killed. Thus, it is a day of sad commemoration for Tibetans around the world.

Tibet has a history that goes back at least 2,000 years. However, since 1950 the PRC has made large scale transfers of settlers into Tibet in violation of the fourth Geneva Convention of 1949 according to Michael C. van Walt van Praag, an international lawyer who practices law in Washington, D.C. and in London. Mr. van Walt supports the position that Tibet to this day has not lost its statehood; it is an independent state under illegal occupation. Massive transfers of Chinese into Tibet risk making Tibetans a minority in their own homeland.

Equally threatening to the Tibetans is the nuclear industry installed there by the PRC. It is reported that the PRC operates five nuclear missile bases and two test sites on the Tibetan plateau.

The head of the Tibetan government in exile is the Dalai Lama. The seat of the exiled government is in Dharamsala, India. Each March l0 the Dalai Lama delivers a speech similar to our State of the Union address. In 1987 the Dalai Lama issued his now famous Five Point Peace Plan which is his response to the growing support offered to Tibetans from peoples of other nations and in hopes of establishing a dialogue with the PRC which will call an end to human rights violations in Tibet. The Five Point Peace Plan is:

1. Transformation of the whole of Tibet into a zone of peace;

2. Abandonment of PRC's population transfer policy which threatens the very existence of the Tibetans as a people;

3. Respect for the Tibetan people's fundamental human rights and democratic freedoms;

4. Restoration and protection of Tibet's natural environment and abandonment of PRC's use of Tibet for the production of nuclear weapons and the dumping of nuclear waste;

5. Commencement of earnest negotiations on the future status of Tibet and the relations between the Tibetan and Chinese peoples.

This year the U.S. Congress has enacted two pieces of precedent legislation to assist Tibetans in exile, according to Michelle Bohana, Director of the International Campaign for Tibet. one thousand immigrant visas have been approved allowing Tibetans living in India and Nepal to migrate to the United States and secondly, humanitarian assistance in a minimum amount of $500,000 with a maximum of $1million can be provided to Tibetans living in Nepal and India.

Ms. Bohana says that more remains to be done and Congress is responsive when citizens write. She suggests that anyone wishing to assist the human rights issues raised by the Tibetans should urge Congress to resist granting "most favored nation " status to the PRC. She asks all of us to consider: "If we can see what the Chinese government does to its own students who demonstrate for democracy in their own nation, what do you think the PRC is doing to Tibetans when it is more difficult to monitor what is going on in Tibet?

Of special interest to lawyers is that there exists the International Committee of Lawyers for Tibet (ICLT) which publishes a document called the "Tibet Brief". The ICLT's mission is to work in "solidarity with the Tibetan people in their struggle to achieve self-determination through peaceful, non-violent action; the ICLT provides legal expertise and resources for Tibet Support Groups and Non-government organizations in order to address human rights abuses."

The office of the ICLT is located at 347 Dolores Street, Suite 109, San Francisco, CA. 94110.

Anyone interested in the legal status of Tibet should read van Walt van Praag's "The Status of Tibet: History, Rights and Prospects in International Law."

While the war in the Persian Gulf remains a controversial means to liberate a nation. lawyers may wish to assist in the peaceful liberation of Tibet by using the resources described in this article. Best wishes to those who respond, or as the Tibetans say: "Tashi delegs!"

• Scientific sock explanation

Continued from page 3

approached my bureau, opened the drawer and been struck by the chilling knowledge that I would find no two socks alike in its disorderly innards? In such moments, I have wondered if this is some plague, some affliction visited on me for various sins against an angry and vengeful god, a certain retribution to reduce the otherwise natty and prideful to a state of humiliation. It is impossible to exude a sense of competence if you can feel the leather of your shoe damp against your heel. I took to wearing boots to disguise my problem from an inquisitive and gossipy world.

This is neither a frivolous nor merely personal matter, it is a phenomenon deeply involved in our national economy and ultimately our security. To provide 220 million Americans with, say, five pairs of socks each year — using two balls of fingering yarn or its equivalent (with 200 yards of wool in each ball) — require 250 million miles of wool or cotton or a petroleum-derived impersonation of wool or cotton. You could wrap that amount of wool around the Earth at the equator more than 10,000 times before you ran out.

They do not go down the drain, those errant socks. On those occasions when I have had the chore of exploring what magical items have somehow traveled into the plumbing, I have discovered no socks. Experiments with a double boiler have shown that heat will not vaporize a sock or even reduce it to lint that can escape through an electric dryer's filter. More negative evidence.

Humorist Robert Benchley used to feel insecure in the sure knowledge that a chair in his study would deliberately trip him up if he left his desk. A Friend of mine, Robert Cochran, has shown fairly conclusively that wire coat hangers, if left alone in a closet, will tangle themselves up, apparently mating and reproduce. It occurred to me that perhaps socks might be cannibals. Could each pair of socks be essentially a separate species with an alpha sock and a beta sock? Could it be that when the alpha sock established its hegemony — behavior that is hastened by contact with the human foot — it then eats the beta sock? Then, when matched with another alpha sock from another species, could it go into massive depression, its immune system in collapse, and in a kind of allergenic fit, develop mortal lesions in the heel and vanish?

It further occurred to me that this was a testable hypothesis. All I had to do was tag all of my socks with various radioactive substances, a different substance for each sock in a pair. Then when a pair turned into a singleton, I could see if it contained both radioactive substances, which would prove cannibalism. Failing that, I could perhaps track it down once it vanished from the bureau, listening for it, as it were, with a Geiger counter.

At that very moment of insight, the national science budget was slashed along with every other government program, and I knew two things. First, I would be unable to obtain a grant for the necessary laboratory equipment for this experiment, so I cannot solve the problem of the disappearing socks. Second, I knew the federal budget cuts, designed to ultimately create new jobs in the private sector, would also create another problem: Who, I ask you, can get a job if he shows up in a personnel office with socks that don't match?

Reprinted from Science 82 Magazine, May, 1982.

Spouse Programs

Three spouse programs will be held at the Westmark Fairbanks. There is no charge for these programs.

Thursday, June 6
9:30 - 10:30 a.m. — De-Stressing Relationships: Things To Do And Things To Say
and
11:00 - 12 noon — "Taking the Edge Off: Stress Relaxation Techniques"

The two morning programs will be conducted by Lynne Curry Swann, Ph.D., Management Consultant and Personal Development Trainer.

Friday, June 7
9:00 a.m. - 12 noon — "When One is Too Much and Five is Not Enough"

A program presented by the Substance Abuse Committee of the Alaska Bar Association.

Speakers: Charles A. Baker, Program Director, Addictive Behavior Center, Humana Hospital

Jim Griffin, Substance Abuse Counselor & Former Pharmacist

Obed Nelson, Program Director, Breakthrough, Providence Hospital Substance Abuse Program

Mary Westbrook, Legal Community Services Coordinator, Charter North Hospital

Representative from Lakeside Recovery Centers

It's the beavers against citizen groups

BY DAN BRANCH

The U.S. Forest Service owns most of Southeast Alaska. Clumps of private property like Juneau, Sitka, and Petersburg float like little freehold islands on a sea of federal green.

Since we just moved to Southeast a couple of years ago, I am still giving the forest service the benefit of the doubt. They do OK managing most of the recreational land around Ketchikan. The Brown Mountain Road provides decent cross country skiing in winter. The nature trail at Ward Lake is a great place to be on a warm summer evening.

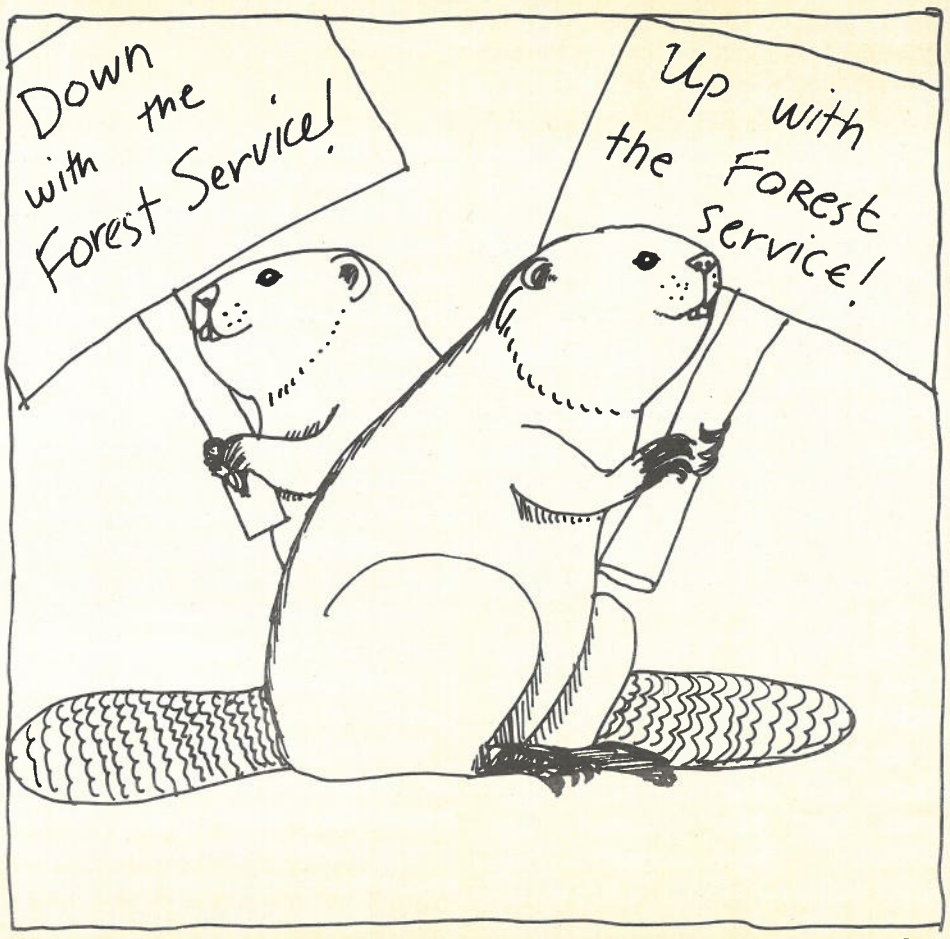
Not much changes at Ward Lake. The ice comes and goes. Salmon move through on their way to their spawning beds. The wild crabapple trees leaf out in the spring and provide a flash of red in the fall.

You come to take these things for granted until the force of nature pays the lake a visit. Sometimes it comes as a heavy windstorm to blow down hemlock and spruce. Other times it is a heavy rain that floods out the nature trail.

Today beavers are the agents of destruction.

Beavers share the lake with waterfowl and land otters. You can see their deep "V" shaped wakes move across the water on calm summer evenings. They slap their tails on the water and dives for safety if something spooks them. What harm can such benign over-achievers do to the lake? The answer came last fall.

I was contemplating the reflection of red crabapple leaves



in the waters of the lake when a friend approached.

"The beavers are going to kill that tree," he said pointing to a pile of shavings on the ground. Closer examination of the branch above the shavings revealed the deep incisions commonly made by beaver teeth. Only one tree was involved, so I told my friend not to worry about it.

In two weeks the beavers had dismantled one crabapple and started work on another. In a month the second tree was gone. Only three others remained, My friend called me in despair. We went out to inspect the damage, That is when we noticed some small green fences on the trunks of the remaining trees.

"There," I said. "The forest service has finally taken a stand."

Until the beaver incident my friend had stayed out of the controversy surrounding land use in the Tongass National Forest. All the big players in the forest complain about unfair treatment, he would say. If they are all unhappy, the forest service must be doing something right. So, I told him to call up the folks in green to see what they were doing to save the crabapple trees.

The Ward Lake forester told him that they can chew anyplace they choose. She would not intervene on behalf of the crabapples.

My friend decided that he could live with that philosophy. After all, beavers were mowing down hardwoods long before he stepped off the Alaska Marine Highway. He told me that the beavers had a right to the wood.

Then I remembered the anti-beaver screens.

"Who put up the fences?" I asked.

He thought for a minute and replied, "She said something about 'citizen groups'."

"Citizen groups" was a term used in another time to describe vigilantes. I asked him if vigilantes would take matters at Ward Lake into their own hands if the fences fail.

He thought for a minute and then launched into a speech.

"The next thing you know they will set out snares. They'll trap 'em first and sort the bodies out later. That is an ugly thought, Hey, they are just animals. Now I'm mad. What is wrong with those bureaucrats? If they do nothing the lake will lose the trees *and* the beavers."

"Aren't you the guy always defending the forest service?" I asked.

He admitted taking that position, for the sake of argument, during past discussions about the Tongass National Forest.

I told him that he was only complaining now because they finally gored his ox. He looked confused and told me that we were talking about beavers and not draft animals. He was calling the S.P.C.A. as I walked out the door.

Act protects military's rights

BY CAPT. GENE KIRSCHBAUM

Are you wondering why such a small segment of our population has been singled out for civic relief?

For instance, why is there no Orphans' Old Folks' Civil Act Relief Act? Or perhaps Doctors' and Dentists' Civil Relief Act? Nope, no dice, the cynics lose. It only goes to show that a strong lobby can't buy everything (but stay tuned for tort reform which could make life easier for doctors and dentists).

Military people get special treatment because when they get drafted, or called up, or sent to Timbuktu they (1) often take a cut in pay and (2) have a hard time representing themselves in a court of law because of their geographical location.

The year 1940 was not the first time we saw civil relief for soldiers and sailors. Congress held a moratorium on civil actions brought against Yankee soldiers during the Civil War. And during WWI, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918. The present statute, passed in honor of Adolf Hitler, is basically a repeat of WWI legislation.

What can the Soldiers' and Sailors' Civil Relief Act (SSCRA) do for you? Let's imagine that you are a typical Anchorage attorney raking in $300,000 per annum. Plus you are a reserve lawyer in the National Guard. And then BANGO, you're called to active duty and your unit gets deployed to the big beach.

Suddenly your income, as a military lawyer, plummets to $3,000 per month. What are you going to do with the $5,000 monthly mortgage payment? SSCRA can help you by capping your interest payments at 6% as long as you are on active duty. (50 U.S.C. App. Section 526).

Just as suddenly your spouse decides divorce is the answer to a recent rash of rubber checks and the question is: How can you respond from your site in the sand? SSCRA can help you by postponing the proceedings until such time as you are able to represent yourself. (50 U.S.C. App. Section 521).

Gradually, during a sweaty and steamy and sandy court martial, just as your star witness is about to perjure himself on the stand, it occurs to you that the Statute of Limitations is about to expire on a PI suit back in Anchorage where you are the plaintiff. You'd like to call for a recess. Good luck with the military judge, but in civilian court the SSCRA can help by suspending the Statute of Limitations. (50 U.S.C. App. Section 523).

Purpose, scope, duration, jurisdiction

The Act allows soldiers and sailors to devote their entire energy to the defense needs of the nation. Those protected include active duty Air Force, Army, Navy, Marines, Coast Guard, National Guard, and Reserves. Active duty means full-time duty in the service of the United States. Coverage remains in effect typically from the date of entering active military services until the date of discharge. one exemption to this general rule is that enlisted reservists fall under SSCRA protection from the date of receipt of orders to active duty. The SSCRA has effect in any state or federal court where the United States is sovereign.

It does not apply to criminal cases.

Continued on page 23

Section Meetings 1991

The following sections will meet Saturday, June 8 at the Annual Convention:

Administrative Law
Alaska Native Law
Alternate Dispute Resolution
Criminal Defense Law
Employment Law
Environmental Law
Estate Planning & Probate Law
Family Law
Natural Resources Law
Tort Law

TANANA VALLEY BAR

FEBRUARY 1, 1991

We again gathered for Chinese with our mini-maximum leader Gail Ballou presiding.

Still awed by her pink robe with rabbit fur trim, she displayed it once more for all to admire. Notably present were R. Dryden Burke who clarified his gastronomical idiosyncrasies. Apparently, it is not that he doesn't like Chinese food - it is the Chinese food that doesn't like him. However, he went on to add that he didn't particularly like the Chinese government or the Iraqi government or Iraqi food and a host of other things including calendar call and a courthouse that has a fourth floor.

Dick told us the war would last 90 days. Our past president, Dan Cooper, was also present. This was a surprise because immediate past presidents usually don't show up for awhile. Dan has lost his title as maximum leader even though he still headed the Alaska Bar Association. Some side bar discussion was heard as to how we should now address such a distinguished colleague.

After comments of "Past President," "Mad Max," and even "Ex Law" were heard, "Ex Max" or E. M. Cooper seemed most fitting.

Gail braved the question as to what the spouses or dates thought of our behavior at the 4th of July party. Justice Rabinowitz's law clerk said he was still working on damage control with his date.

Alice Marie Closuit related that her husband thought that attorneys were all dweebs.

Ex Max Cooper rose in our defense and said "Oh yeah, well guys that date attorneys are dweebs." These sounded like good fighting words. I knew Alice's husband was a big guy and Cooper is an ex-marine, but, I had to ask my teenage son what a dweeb was, only to learn a dweeb is a "geek." Even I knew a geek was the lowest of carnival performers, the kind of guy who bites the head off the chicken.

Ex Max Cooper noted that he really liked the T-shirt logo where a sheep was being branded with a TVBA brand under a bar. He added that his secretary who was from West, "By God," Montana, was ordering a branding iron of similar fashion. I leave the readership to speculate as to some of the comments and ideas circulating as to how the TVBA would employ their branding iron. I for one would like to test it on Cooper's leather aviator's jacket.

We turned to serious business as Cooper and Winfree discussed the West opinion. West is apparently the attorney who saved his clients day by signing the client's name wrongfully. Much was made of the mere 90-day suspension. Someone was quick to note that according to Burke's war prediction, West's re-emergence as an active practitioner would coincide with the end of the war in Iraq.

Judge Steinkruger noted that a felony act carries the same degree of punishment as was imposed for failing to respond to bar counsel. Many of us were unaware of this fact and at least at my table, we decided it might be wise to send Van Goor a monthly "just checking in" letter as a matter of routine.

Lastly, it was noted the Daily News-Miner, via its trivia column, reminded us that it was illegal to feed beer to a moose in Fairbanks. Madson, always looking for a defensive angle, or perhaps reminiscing on last week's 4th of July party, asked whether the provision distinguished between feeding a moose used or reprocessed beer.

Jeff O'Bryant promised to look into the matter and report back. Having accomplished so much important business in her first luncheon, Gail decided it was time to adjourn. These are the facts as I best recall.

Robert S. Noreen

P.S. Cooper also announced that Charlie Cole had agreed to be the luncheon speaker for the bar convention. Someone pondered what we would do if Charlie wasn't the A.G. by then. Cooper opined that in this event, the speaker would still be Charlie, however, his speech would be more interesting.

VIDEO REPLAY

ALASKA BAR ASSOCIATION CLE SEMINAR
VIDEO REPLAY SCHEDULE
1991

REPLAY LOCATIONS:

FAIRBANKS LOCATION: Please note there are now TWO locations: Attorney General's Office, Conference Room, 100 Cushman, Ste. 400 -- CLE Video Replay Coordinator, Mason Damrau, 452-1568 AND Guess & Rudd Conference Room, 100 Cushman St., Ste. 500 -- CLE Video Coordinator, Jim DeWitt, 452-8986. Be sure to check location listed below.

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.

REPLAY DATES

***Debt Forgiveness Income (Anch. 3/7/91)**
Fairbanks: 4/5, 8:30AM-Noon, GUESS & RUDD
Juneau: Cancelled
Kodiak: No replay scheduled

***How to Win With the Evidence You've Got (Anch. 4/12/91)**
Fairbanks: 5/17, 9AM-5PM, ATTORNEY GENERAL'S OFFICE
Juneau: 4/20, 9AM-5PM
Kodiak: 4/27, Beginning at 10AM

***Employment Law: Wrongful Discharge (Anch. 4/26/91)**
Fairbanks: 5/10, 9AM-5PM, GUESS & RUDD
Juneau: 5/4, 9AM-5PM
Kodiak: 5/11, Beginning at 10AM

***Resolving Common Platting and Zoning Problems (Anch. 5/2/91)**
Fairbanks: 5/24/91, 9AM-1PM, ATTORNEY GENERAL'S OFFICE
Juneau: 5/11/91, 9AM-1PM
Kodiak: No replay Scheduled

***Bankruptcy & Divorce (Anch. 5/10/91)**
Fairbanks: 6/14, 9AM-1PM, GUESS & RUDD
Juneau: 5/18, 9AM-1PM
Kodiak: 5/25, Beginning at 10AM

***Paralegal Fees: Are They Recoverable? (Anch. 5/14/91)**
Fairbanks: 6/28/91, 9AM-11AM, ATTORNEY GENERAL'S OFFICE
Juneau: 5/25/91, 9AM-11AM
Kodiak: No replay scheduled

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

EFFECTIVE JANUARY 1, 1991

VIDEOTAPES AND COURSE MATERIALS

(Unless otherwise noted)

Individual Video Rental	$20.00 per person
Course Materials Purchase	$25.00 per set
Total Cost	$45.00 per program

INDIVIDUALS WHO DO NOT RETURN VIDEOTAPES BY THE DUE DATE WILL BE INVOICED A $40.00 DUPLICATION AND RESTOCKING FEE FOR THE VIDEOTAPE.

The Alaska Bar Association makes every attempt to provide quality videotapes. However, in some instances, technical difficulties have resulted in tapes of less than desired quality. We regret the inconvenience and appreciate your patience and understanding.

Archived videotapes and materials from 1982 through 1986 are available upon request. A list of archived programs may be obtained from the Bar Office. Because archived programs are stored off-site, please allow 7-10 days for your request to be filled.

"Tanana King"

A signed, limited edition of "Tanana King" by artist Ayse Gilbert will be on sale at the convention.

Watch for it!

Soldiers protected in time of war

Continued from page 21

Key words: "Material Effect"

For the most part, the SSCRA protects military folks only when their military service has a material effect on either their ability to meet financial obligations, or their ability to represent themselves in court. For instance, soldiers who took drastic cuts in pay to enlist can argue their military service has a material effect on their ability to pay their bills. Similarly, soldiers stationed on the sand, living under a palm tree, can argue their military service has a material effect on their ability to appear in court. "Material effect" is an equitable concept and the judges have considerable discretion in determining its existence. Typically, it does not work to try to game the system or take unfair advantage of the SSCRA.

Do all military get 6% loans?

I wish it were this good. Under Section 526, the 6% cap only applies to pre-service obligations. And the creditor can challenge the soldier/debtor by showing evidence of no material effect. For instance, if your burger-flipping client wants to purchase a brand new hot rod with an 18% loan and then join the Army to get the loan reduced to 6%, he's going to lose. When your income increases with enlistment, it's hard to show material effect. On the other hand, the SSCRA can work for reservists who get called up and simultaneously take a massive hit to the pocketbook.

Do they ever have to make up the difference between the normal rate of interest and the 6% rate? No. At least that's what the legislative history and the case law suggests.

How about a co-signer? Basically, any co-signer, guarantor, or surety on the debt may claim the same right as the soldier.

Stay of proceedings & execution

Soldiers and sailors may get a stay when their military service has a material effect on their ability to assert or protect a legal right. Duration of the stay is at the discretion of the judge, but in any case it ends 3 months after discharge from the service. The burden of proving material effect varies among the circuits. Soldiers often are expected to provide evidence of their unavailability along with their request for a stay. The courts are more likely to grant a stay when the soldier provides a reasonable date of availability along with the stay request. Soldiers are normally required to be diligent in their attempts to appear.

Any appearance by the soldier may preclude protection and, of course, the meaning of "appearance" varies from state to state. Filing an answer through counsel or even pro se can be considered an appearance. The best bet seems to be a request from the soldier directly to the judge along with evidence of unavailability.

Default judgements

Section 520 provides relief against default judgements. You are probably already aware that plaintiffs must sign an affidavit that their defaulting defendants are not soldiers. In addition, if a default judgement is entered, the soldier/defendant may apply to reopen. To qualify for reopening, the soldier must (1) have been prejudiced by the military service, (2) have a defense which appears meritorious, and (3) not have made prior appearance. Again, hiring an attorney to answer the complaint may constitute an appearance.

Can they terminate leases anytime they want?

Not so fast. Only pre-service leases may be terminated under Section 534. But if you and I both have the same landlord, then it might be worth it to join up and skate the lease. The lease can be for a dwelling, professional, agricultural, business, ar similar purpose. However, your landlord may petition for relief and the court may restrict your termination in accordance with the gentle hand of equity. Conceivably, you could be in the military and stuck with your old landlord.

Suspend the statute of limitations?

Indeed. And under Section 525, there is no need to show material effect. However, although it works whether or not the soldier is plaintiff or defendant, it does not work against the IRS, and career soldiers might not get the suspension.

Prevent evictions?

Yes, the SSCRA can deliver up to a 3 month stay of eviction proceedings. It's available for either the soldier or dependents. Section 530 facially applies only in cases where rent is under $151, but at least one court has adjusted this figure for inflation. (See *Bolconi v. Dvascus*, 507 N.Y.S. 2d 788 (Rochester City Ct. 1986).)

Stop repossessions and foreclosures?

If the soldier made a payment on an installment contract prior to entering military service, then the creditor needs a court order to repossess. Contracts entered into after enlistment are not effected by this section. As almost always, "material effect" is a player. The court may either (1) order repayment to soldier of any prior installments as a condition of repossession, or (2) a stay with the proceedings, or (3) rule equitably. Foreclosures, under Section 532, work almost the same.

Taxes?

Soldiers can escape state income tax and personal property tax in their host state (where they are stationed). Of course, they must still pay those taxes in their state of permanent residence. Note that non-military income is not affected by this section; thus soldiers are still liable for host state income taxes levied on their off-duty jobs. Likewise, dependents' income is unaffected by Section 574. There is also a provision for deferment on collection of income taxes where enlistment has materially impaired the soldier's ability to pay. This deferment only applies to the initial period of service.

Anything else?

You bet. Soldiers can keep their motor vehicles licensed in their state of permanent residence instead of licensing them in their host state.

Finally, the Veterans' Administration can guarantee payment on some types of life insurance.

Post-finally, a related topic is re-employment rights of National Guardsman and Reservists. Start with 32 U.S.C. 2021 & 2024, or stay tuned to this Rag.

Post-finally-addendum, I just heard word of pending legislation designed to enhance the SSCRA, but the Rag must roll.

Captain Kirschbaum is chief of preventive law at Elmendorf Air Force Base. He graduated from the University of Wisconsin-Madison Law School in 1990 and is a member of the Wisconsin Bar. Prior to attending law school he was a Weapon Systems Officer on the F-111. He's willing to discuss the SSCRA in return for the location of good fishing holes.

Guest Speakers

Thursday, June 6
Lunch
Chief Justice Jay A. Rabinowitz
Supreme Court of Alaska
Friday, June 7
Lunch
Attorney General Charles E. Cole
State of Alaska
Saturday, June 8
Lunch, Speaker TBA

Awards Banquet
The Honorable Alexander M. Sanders, Jr.
Court of Appeals, South Carolina

CLE Calendar

#08 Mar 29 1:30pm-4pm 2.8 cles	Off the Record - FAIRBANKS	Regency Hotel- FAIRBANKS
#13 Apr 12 6 cles	How to Win With the Evidence You've Got	Hotel Captain Cook-Anchorage
#04 April 26 7.2 cles	Employment Law: Wrongful Discharge	Sheraton Anchorage Hotel
#17 May 2 Half Day cles tba	Resolving Common Platting & Zoning Problems	Hotel Captain Cook-Anchorage
#15 May 3 5pm-7pm 2.4 cles	Off the Record - JUNEAU	Baranof Hotel- JUNEAU
#09 May 10 Half Day 4.2 cles	Bankruptcy & Divorce	Anchorage Hilton Hotel
#18 May 14 AM Miniseminar cles tba	Paralegal Fees: Are They Recoverable? (CLE presented in cooperation with AK Assn. of Legal Assistants	Hotel Captain Cook-Anchorage
June 6, 7, 8	ANNUAL CONVENTION Morning 6/6 #19 Legal Writing - 3 cles Afternoon - Concurrent CLEs: 6/6 #20 Medical Records - 2.5 cles or #21 Settlement Techniques - 2.5 cles 6/7 #22 Anatomy - 3 cles	Westmark Hotel- FAIRBANKS

• Best clients? Reindeer.

Continued from page 13

the animals with a loan from Williams.

"The fact that I loaned money to a Native woman to purchase reindeer was repugnant to the government people," who ordered the farm to destroy the animals within 30 days when they got wind of it. Reason prevailed, but the Western Alaska herd was segregated to prevent breeding with the Canadian animals.

(Don't get Williams started on federal/state reindeer management policies, but suffice to say that the Eagle River lawyer sees government behavior as ironic. A few years ago he discovered a fascinating history of territorial reindeer herding in the book *Fifty Years in Alaska*, wherein the contribution of Judge Carl Lohman, of Nome, is recounted, picking up where Sheldon Jackson's introduction of the deer to Alaska left off. The bottom line: a five-year reindeer drive of domesticated animals to the Northwest Territories decades ago can be traced as the origins of the Nelchina, Central Arctic, and Porcupine caribou herds in the wild today. "The only difference between a domestic reindeer and a caribou is the boundary they cross," says Williams. If a caribou enters a Western Alaska herder's range, he's a reindeer.)

The reindeer bureaucracy aside, Williams, his wife Gene, and their four children relish their lives on the farm. "We're taking it slow and letting the business build, says Williams. "In 10 years--at retirement age--I hope to be able to retire to the farm and earn a living, but right now we're at the cutting edge of starvation."

Still, Williams Farm has discovered a number of markets for the herd of 240 reindeer.

"Well, first there's the Christmas trade," says Williams. Decked out in full Santa and His Eight Tiny Reindeer array (plus Rudolph), Tom and Gene are regulars at Christmas parties and events, charging a few hundred dollars for each appearance. This year, they were the main attraction for reindeer races in Mulcahy Stadium during Anchorage Fur Rendezvous.

"Then there's show business." Williams reindeer have appeared in a couple movies; in an advertisement for Carnival Tours; and in ads that have appeared in *Vogue* and *Vanity Fair* magazines.

Williams Farm also slaughters about 50 animals each year for the Alaska Sausage Co., which processes reindeer sausage. Reindeer also produce prime hides for leather.

"Antlers are another product," says Williams, principally exported to Korea after antler-trimming in the springtime. ("We leave the antlers on all of Santa's reindeer and Rudolph," he says.)

Live animal sales also generate income, and Williams said he recently sold his first group of 11 deer to game farms in the West. He cannot sell his animals in-state (remember the Reindeer Act), but Williams said he has discovered an interesting Outside demand for live deer.

And, the farm has begun to explore tourism, operating a low-key tour of the farmyard from June through August. "We take folks on a little tour, let them visit with the reindeer in

Pet turkeys live with the reindeer

pens and feed them, and charge $2 or so," he says. Sleigh rides and horseback trips also are offered at the farm, into the hills of Palmer and The Butte.

Does life with the reindeer make the stress of law practice easier to survive day to day? "I could handle it without the reindeer," says Williams, "but I have always loved animals. They're not like clients. You settle a case and they go away. Reindeer reproduce. They're fun, enjoyable, gentle, easy to handle, forgiving, and fun. They never file malpractice claims, and they bring joy to children."

Williams estimates he spends 20 percent of his workday on the farm in the fall, winter, and spring. During the spring/summer fawning season, "I'm out there 50 percent of the time, running around helping the fawns and females," he says. Especially during the nursing free-for-alls. "Those fawns hit the females at 25 miles per hour looking for milk," and those that are born late lose out unless assisted in their search for a meal.

This July, Williams Farm hopes to be certified as one of the few (if not only) disease-free reindeer herds in the nation, thanks to nearly four years of careful management by Williams, his family, and the 2-10 employees who work the herd throughout the year.

As for the pigs and hay, says Williams, the reindeer are better (although he grows his own hay for feed). "We've progressed from something that's boring and mundane to something fun and enjoyable on the farm."

Sally J. Suddock is a member of the Bar Rag staff.