MYSTERIES! Of The Alaska Court System

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The Alaska BAR RAG

May 1987

Dignitas, Semper Dignitas

VOLUME 11, NUMBER 2

Judges say fast track works

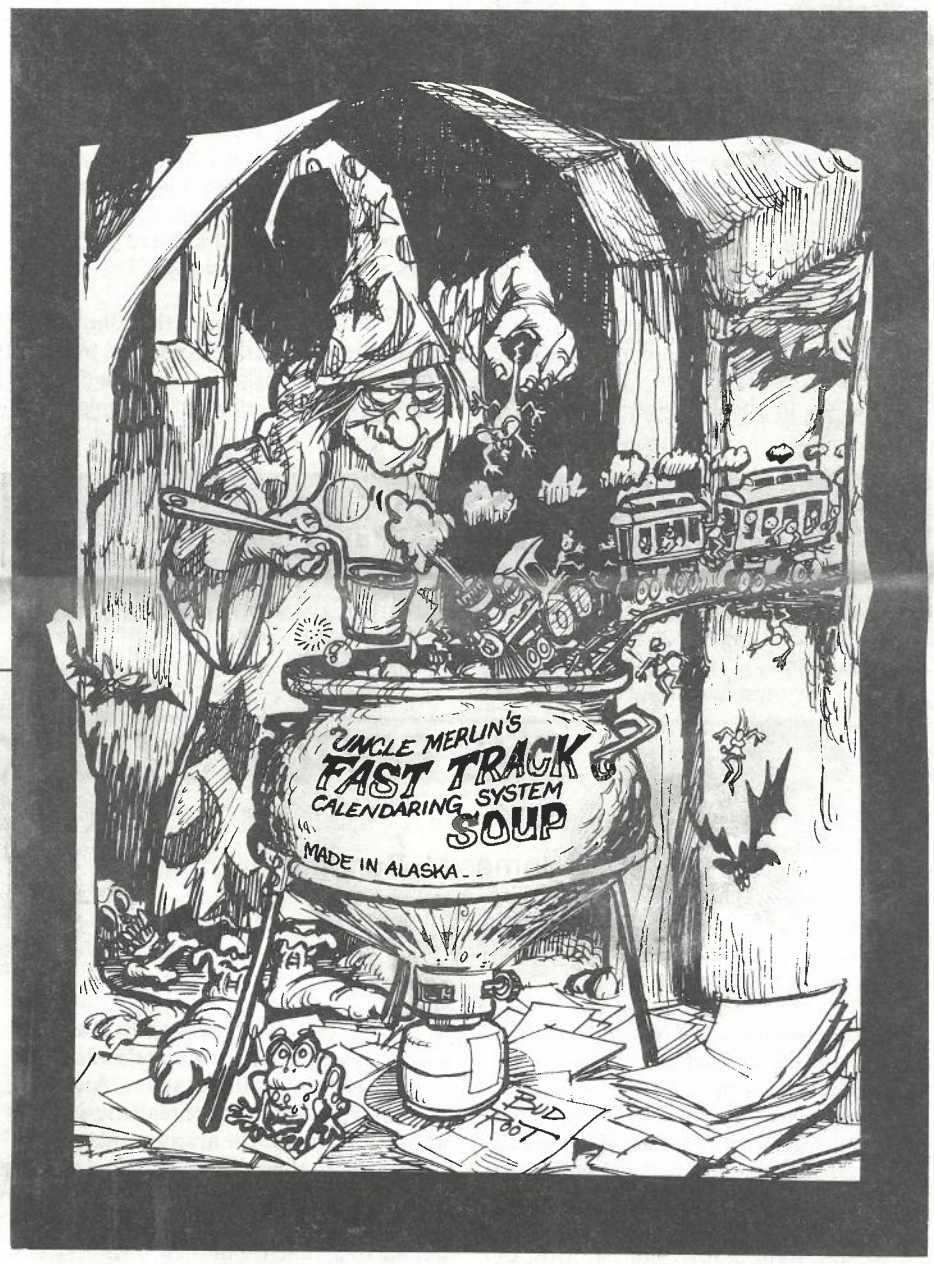
By Chuck Ray

The fast track rule, Alaska R. Civ. P. 16.1, was the first major administrative project undertaken by Superior Court Judge Douglas Serdahely, presiding judge of the Third Judicial District. Although Judge Serdahely believes there may be room for some fine tuning of the rule, he believes that Rule 16.1 is meeting its goal of resolving civil litigation in relatively short order, resulting in benefits to litigants, the Bar, and the Bench.

Prior to adoption of the rule just over one year ago, judges and litigants were suffering under burgeoning demands on Anchorage's seven superior court civil trial judges. More than 6,000 non-domestic civil cases were allocated among those judges. In early 1986, some of those 6,000 cases had been pending since the late 1970's, and many more had been languishing in various stages of the judicial process for over five years. It did not appear to Anchorage Superior Court Judges Serdahely and Milton M. Souter that the involved parties were receiving the prompt resolution of their disputes that they deserved.

Moreover, all indications were that the backlog of pending cases would continue to build as more civil cases were filed without existing cases settling or reaching the courtroom. Every Anchorage superior court trial judge was scheduling trial about one and one-half years from the date of trial-setting conferences. Every available trial date was "overset," *i.e.,* more than one trial was scheduled to be taking place on any given day. However, there was not a procedure in place to allocate cases to other judges for trial in the event that all cases scheduled for trial on a particular date in fact required trial. Thus, some cases would be bumped from the trial calendar to a date one and one-half years later than originally scheduled.

Continued on page 22



Court security: an honor system

By Chuck Ray

Have you ever wondered why one can walk right into the Court of Appeals chambers area of the fourth floor of the Anchorage State court building, but one needs to get "buzzed in" to the third floor? It seems the court personnel on each floor made their respective decisions by consensus. There are more criminal judges with offices on the third floor, and fourth floor personnel apparently think they are less at risk. Besides, says one fourth floor secretary, it can be a real hassle dealing with the lock system during off hours.

Not that it matters one way or the other, you might be thinking. Select the judge with offices on the third floor that you have a particular desire to encounter, whether your intentions are good or evil. Check his or her calendar, and proceed to the third floor where the appropriate button may be pushed. Someone will inquire about your identity, to which you can respond "Charlie Manson here for [fill in the appropriate proceeding]." A buzzer will sound, and in you go.

Does that scenario spell impending doom for the selected judge? Not to worry. Scattered throughout the state court building, including chambers, are alarm buttons linked to Alaska State Troopers' offices in the courthouse.

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To encourage full participation in the
1987 Alaska Bar Association Convention in Fairbanks,
June 4, 5, & 6, 1987,
the Board of Governors has

Lowered the Convention Registration Fee to $75

Don't miss this opportunity to
visit Fairbanks and join in all the activities.

Refunds will be sent to those already registered at the $150 rate.

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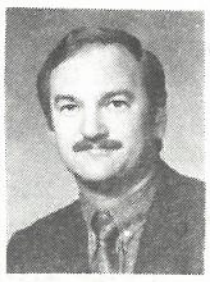

FROM THE PRESIDENT

R. Beistline

I had forgotten, when they assigned me a bulkhead seat, that there wouldn't be any place close by to stow my carry-ons.

Consequently, I hadn't retrieved any reading material from my briefcase before the stewardess grabbed it and disappeared somewhere toward the back of the plane. This was probably for the best, though, for it gave me some "cognitive time." Time to prepare my last President's Column and to reflect upon the accomplishments of the last 12 months.

Old Bar presidents, however, can only "cognitate" so long before they need reading material, of one type or another, to challenge their active and inquisitive minds. Therefore, when the stewardess offered the January issue of *People* magazine, I readily accepted — not knowing that therein lay the inspiration for this article and empirical proof that our emphasis this year on PROFESSIONALISM had paid off.

As I began to skim the pages of the magazine, my thoughts drifted to the Bar Association and the events of the last year. I wondered why the year seemed to have gone by so fast and so well. Of course, I knew that much of this year's success was merely the natural result of efforts last year by President Branson. I had always admired Harry's energy and dedication to the Bar, but having succeeded him as President, I found myself benefiting directly from the fruits of his labors. This, of course, was greatly appreciated.

I also had to acknowledge that much of this year's success lay in the fact that I had such a good Board of Governors to work with. Prior to becoming a member of the Board, I had been somewhat skeptical about Bar politics and was suspicious of the motives of those actively involved. This apparently was uncalled for, for I have now seen first-hand that Board members are truly representative of the Bar and motivated solely by a desire to improve the practice and the profession. In my estimation, each of the current members of the Board of Governors is a true professional. This makes being President easy.

I, of course, realized that one of the main reasons that things seemed to go so smoothly this year had to do with the fact that we had a superb Bar administrator in Deborah O'Regan and a dedicated and energetic CLE director in Linda Nordstrand. It was additionally helpful to have the Supreme Court as accommodating as it was, and I was especially pleased at the accessibility and responsiveness of Chief Justice Rabinowitz.

It occurred to me that the reason the year went so well was a combination of each of these factors. At this point, though, my mind raced to the future, and I wondered how the Bar could possibly get along without me as President. It was then that I realized that all the factors that have existed this year will continue to exist in the future (except that I will now be more of a danger as a voting member of the Board as opposed to President). Additionally, we can all rest easy knowing that our future will be in the safe and eminently competent hands of President-Elect Bob Wagstaff.

About this time, without warning, we hit some real turbulence. The stewardesses were instructed to take their seats, and I stopped thinking (temporarily). That was the first real turbulence I had experienced this year — but it only lasted a few moments. When I turned back to my *People* magazine, I was near the end. That's when it happened! The words literally leaped from the pages. We had succeeded in our quest for professionalism!!!

If you recall, when I assumed the Presidency of this organization last year, lawyers were generally perceived to be lower than used car salesmen in terms of their honesty, integrity and overall professionalism. In the last year, this all changed, for there in the *People* poll were the facts. Lawyers had leaped ahead of used car salesmen, politicians and stockbrokers and were now in fifth place among professionals, just behind aerobic instructors. Granted, we still have not found the public favor enjoyed by teachers and doctors, but we clearly are well on our way.

While I cannot take full credit for this development, the timing certainly is fortuitous. It is now for our new leader, President Wagstaff, to continue the quest, and with our support, he will be able to report to you next year that we have leap-frogged the aerobic instructors and are considered among the most professional of professionals.

I have especially enjoyed serving as President of this association for the last 12 months and greatly appreciate the opportunities I have had to work with many of you. I continue to hold a high regard for our profession and for its membership and certainly intend to continue my active involvement in this association.

Thanks for the memories.

Fairbanks Convention Fairbanks Convention Fairbanks Convention

THE EDITOR'S DESK

James M. Bendell

Some weeks ago I attended a trial-setting conference before Judge Ripley. The conference went until close to 7 p.m. before the case was finally settled. The time and energy that Judge Ripley gave to this matter is typical of what I believe to be the high caliber of Alaskan judges. By and large our judges are intelligent, dedicated, and scrupulously honest. Most of them could be earning higher salaries in the private sector if they so desired.

Why then, given the excellent quality of our judiciary, are there so many flaws in the court system? Although the stories in this Bar Rag featuring the court system contain some encouraging items, there is a distressing number of glaring flaws in the system at the present time. Most notable among these is the dangerous lack of security, the lack of maintenance of complete copies of file documents, and the experimental "guinea pig" approach toward implementing drastic rule changes such as deposition taking and fast track calendaring.

One possible answer to this question is that the judges ultimately do not administer the court system. Another possibility, perhaps more realistic, is that good lawyers do not always make good managers. In the private bar, some of the most outstanding practitioners seem incapable of maintaining even a modest degree of efficiency in their own offices. The two skills do not go hand in hand. Actually, I don't have all the answers, or even most of them. What I do believe is that it may be time for the Bar Association to create a Permanent Standing Committee on the court system. At the present time, the Bar is sometimes asked for commentary before proposed rule changes. Other court system changes, of a more administrative nature, are frequently undertaken without Bar comment.

It is important to remember that the Bar represents the public. Whenever an attorney cannot find a court file, cannot obtain adequate discovery before trial, or is in some other way frustrated in representing his client's cause, there is a member of the public out there someplace who just has been denied justice. In some countries, citizens are denied justice because they live in a despotic system without any fundamental constitutional guarantees of liberty or due process. Is the aggrieved litigant in this country any better off when he is denied justice because of bureaucratic bungling?

The time for Bar review of the court system has arrived.

The Alaska Bar Rag

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1986–1987

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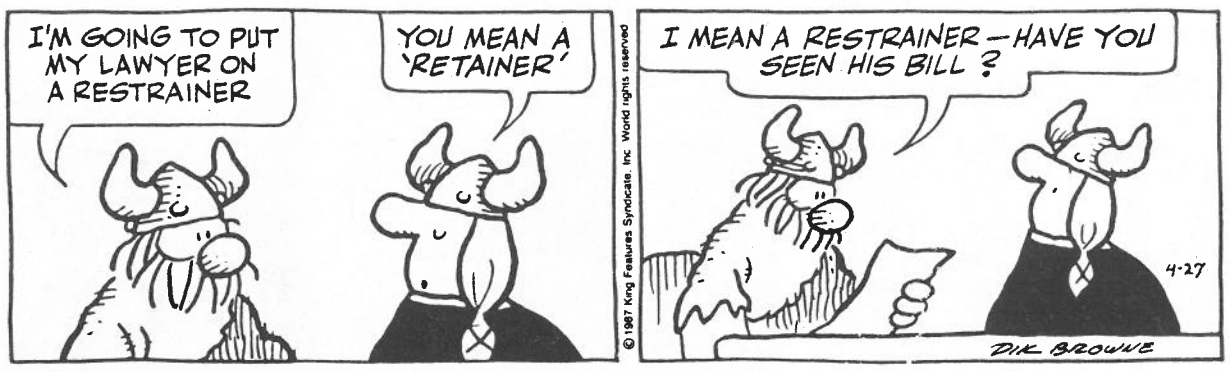
President Beistline has established the following schedule of Board meetings during his term as president. If you wish to include an item on the agenda of any Board meeting, you should contact the Bar office or your Board representative at least three weeks before the Board meeting.

September 4, 5 & 6, 1986
November 6, 7 & 8, 1986
January 8, 9 & 10, 1986
March 19, 20 & 21, 1987
June 1, 2 & 3, 1987—Fairbanks

IN THE MAIL

HAGAR THE HORRIBLE



Courtesy, Dik Browne and King Features

Avis stands pat

February 27, 1987

Dear Ms. O'Regan:

Avis is pleased to announce that the Special Rates offered in your Avis Member Benefit Agreement will remain the same through December 31, 1987. This means that members will continue to enjoy the same low rates this year with only two program modifications that become effective April 1, 1987. These modifications are as follows:

- Limited mileage of 100 miles per day will apply to Special Bar Association Rates. Excess miles will be charged at $.20 per mile.
- A surcharge of $8.00 more will apply in Manhattan and at all New York area airports; and $5.00 more at Boston, Washington, D.C.; Detroit, Philadelphia, Chicago area airports, and at the Chicago N. Clarke Street location.

We are proud to provide your association with this money saving member benefit program and ask that you remind your members of the details. Your Avis representative will be contacting you shortly with the necessary material to update the program.

Thank you very much for your support, and please do not hesitate to call if you have any questions.

Sincerely,
James D. Krapf
Avis Rent A Car System, Inc.

Stump remembered

I was saddened to hear of the death of Wilfred C. Stump, attorney at law, of Ketchikan. I never met Mr. Stump and had only one memorable dealing with him.

As a junior law student in 1967, I was looking for summer employment in Alaska. Like every other law student in the world, I wrote every major firm in Anchorage, Fairbanks, Juneau and Ketchikan. One of my letters went to Mr. Stump. He wrote a note on the bottom of my original letter, kept the original letter and his note, and sent me back a xeroxed copy of my letter and his note. I remember his words to this day:

"There is no place for you in Ketchikan! Try Anchorage, Juneau, or Fairbanks!"

Though I never met him, I always looked forward to the day when I would. He apparently was a direct man of few words.

I remain,

Sincerely,
Wayne Anthony Ross
Attorney at Law

Regrets

February 25, 1987

Mr. Seth Eames
Pro Bono Coordinator
Alaska Pro Bono Program
Suite 200
550 West 8th Avenue
Anchorage, Alaska 99501

Dear Mr. Eames,

I regret that I could not accept your luncheon invitation, but you have my very best wishes for success in your Alaska Pro Bono Program.

For most of this country's history, it has been accepted that lawyers will devote a portion of their time to representing people who need legal assistance even though they can not afford to pay for it. The gap between the need for legal assistance and the ability to pay for it seems to be widening. Various factors explain this development. As our society has become more regulated and more transient, we have become more litigious. Costs of legal services have escalated beyond the means of many people to afford them. Legal services offices and high volume, low cost clinics fill some of the demand for legal assistance. But my impression is that the gap should be narrowed further by lawyers volunteering to help where help is needed without regard to the lawyer's compensation. A number of Bar Associations are sponsoring various programs to assist in developing *pro bono* work. Some are calling for mandatory *pro bono* services. Implicit in all such activities is the concept that lawyers have moral and social responsibilities in such instances and that those responsibilities need to be discharged by the Bar, willingly, and some would say, even unwillingly.

When I was first admitted to the Arizona bar, it was still customary for federal district court judges to appoint young lawyers to provide free legal services for certain criminal defendants in the federal courts. I remember well the excitement of handling such a matter and the feeling of service to one's fellows that it gave me to render the needed legal assistance. I don't think any legal service for which I was paid gave me greater satisfaction than simply helping someone who needed it without expectation of financial compensation.

After all, we as lawyers and judges hold in our possession the keys to justice under a rule of law. We hold those keys in trust for those seeking to obtain justice within our legal system. Lawyers who are sensitive to their role in society will surely view their responsibility to the public as transcending the purely technical skills of their profession.

I hope your program serves to inspire and encourage every lawyer in Alaska to take some of the opportunities available to perform some *pro bono* legal services for others in need. Without doubt, they will look back at such service with pride.

Sincerely,
Sandra Day O'Connor

George Grigsby

March 18, 1987

I read with much pleasure some (but not all) of the articles in the Alaska Bar Rag. Your latest issue had an article by Russ Arnett about George Grigsby.

I attended a trial in Juneau, I believe it was in 1934 when George Grigsby defended a man from Hoonah charged with a major crime. Harding was Judge, Howard Stabler was U.S. Attorney and George Folta, the Asst. U.S. Attorney was the chief prosecutor. What makes the case interesting, and Grigsby's cases usually were, was his handling of a witness from Hoonah, a nice looking native girl who was brought to Juneau by the deputy U.S. Marshal as chief prosecuting witness.

"You were subpoenaed in this case?" asked Grigsby when the girl took the stand. Apparently the witness didn't understand what being subpoenaed meant, but Mr. Grigsby had a hunch that the girl had an idea that it had something to do with the deputy U.S. Marshal who brought her to Juneau, and he worded his question so that Mr. Grigsby got an unmistakeably clear response.

"Yes," answered the witness, after a little more of Grigsby's cleaver prompting, "Once on the boat (from Hoonah) and once here in the jail."

Everyone in the courtroom laughed excepting the red-faced deputy marshal from Hoonah. Grigsby won the case.

You want more of this kind of material, including the shortest divorce case in Alaska history. You will let me know.

Sincerely,
R.E. Baumgartner
(Member Alaska Bar since June 1929)

TVBA Writes

The Tanana Valley Bar Association, at a meeting held on February 20, 1987, requested that the Minutes of the TVBA be forwarded to the Alaska Bar Rag. Presumably, although not necessarily, the editors of The Bar Rag might find something in these Minutes which does not appeal to the prurient interests of your readers.

Since the Minutes are fairly long, I would imagine that excerpts would be more appropriate than inclusion of the entire set of Minutes.

Very truly yours,
Law Offices of
DANIEL R. COOPER, JR.
Daniel R. Cooper, Jr.

(Ed note: See Minutes elsewhere in this issue.)

Needs Lodging

April 27, 1987

I will be in Anchorage from the first week in June until the end of July to prepare and sit for the Alaska Bar Exam. I am wondering if the Bar Association can be of assistance in helping me locate a housesitting or other temporary living situation for myself and my fiance (who will also be taking the Bar Exam). We will be moving to Anchorage to practice in September, but need somewhere to live and study for the seven-week period mentioned above. We are both non-smokers, would care for plants and/or pets and are very responsible. Both of us can supply Anchorage references. Anyone interested in helping us out (or having us help them by not leaving their house unattended) should give us a call (206) 367-6835, or drop us a letter at the address below. Also, a message can be left at the Anchorage office of Davis, Wright and Jones.

Perhaps you could post or publish this request in the local Bar newsletter? Any assistance would be greatly appreciated. Thank you in advance.

Gina M. Zadra
14381 30th NE #24
Seattle, WA 98125

Bar Association Office Hours Change

The Bar Association office began summer hours effective May 1, 1987. The hours are 8:00 a.m. to 12 noon and 1:00 p.m. to 4:30 p.m. (The office will open and close a half hour earlier than the previous office hours.)

Attend the Bar Convention

SOLID FOUNDATIONS

How IOLTA works

By Mary K. Hughes

Interest on Lawyer Trust Accounts

On November 20, 1986, the Alaska Supreme Court adopted amendments to DR9-102 establishing the Alaska IOLTA program. The program became operational in March of 1987 and is administered by the Alaska Bar Foundation Board of Trustees (ABF).

The purpose of the Alaska IOLTA program is to provide funds for civil legal services to the poor. ABF will use the income generated by the IOLTA program to make grants to nonprofit providers of legal services throughout the state. The IOLTA Program is important in Alaska because government budget cuts have drastically eroded the funds available for civil legal services for the poor.

The Alaska IOLTA program is similar to programs developed in 43 states and the District of Columbia, the Canadian provinces and elsewhere. One hundred million dollars has been generated through IOLTA programs nationwide on trust funds once deposited in non-interest bearing accounts.

The Alaska Bar Association Code of Professional Responsibility charges attorneys with the responsibility of ensuring access to justice to those unable to afford it, promoting improvements in the efficient and fair administration of justice and assisting in the understanding of our legal system by the public at large. Attorneys have a professional obligation to contribute to the delivery of legal services to the poor. Participation in the IOLTA program is a convenient, ethical and efficient mechanism to render part of this responsibility.

Q. What is a lawyer's "trust" obligation?

A. Attorneys routinely receive client funds, securities or other properties to be held in trust for future use. If the trust amount is large or if it will be held for a long period of time, the attorney has an obligation to place these trust Properties in an interest-bearing account for the benefit of the client. However, in the case of trust properties that are small or are to be held for a short period of time, it is impractical to establish separate interest-bearing accounts for individual clients.

Q. Where have these nominal and short-term trust properties been deposited in the past?

A. They have been held in non-interest-bearing checking accounts separate and apart from all other funds belonging the lawyer. As DR9-102 of the Alaska Bar Association Code of Professional Responsibility has always dictated, trust accounts may never be commingled with lawyers personal accounts. The lawyer is a fiduciary for these trust account funds and cannot derive any direct or indirect personal benefit from them.

Q. How does the IOLTA program affect current attorney trust fund practices?

A. IOLTA imposes no new decisional burden upon attorneys. Lawyers have always exercised their discretion in determining whether a given client's trust deposit was of sufficient size or duration to justify placement in a separate interest-bearing account, with the interest payable to the client. Under the IOLTA program, attorneys retain their discretion and continue to make these fiduciary decisions after considering associated costs and practicality. By joining IOLTA, however, attorneys unsegregated trust accounts can generate interest income, which will be sent to the Alaska Bar Foundation to be used for grants to programs which provide civil legal services to the poor.

Mary Hughes, president of the Alaska Bar Foundation, presents the first IOLTA (Interest on Lawyers Trust Accounts) check to Connie Deuber, assistant vice president at First National Bank of Anchorage. The check was from the IOLTA account of Robert C. Brink, in the amount of $46.24.

Q. Where does a lawyer draw the line between which funds can be deposited individually and which funds cannot?

A. The Alaska Bar Association Code of Professional Responsibility DR-102(c)(2) states that:

> Only funds of clients which are nominal in amount or are expected to be held for a short period of time may be deposited in such [an IOLTA] account. Funds which reasonably may be expected to generate in excess of $100 interest may not be deposited in such account.

The following table shows the time required to generate $100 gross interest at the prevailing passbook rate:

Principal Deposit	Number of Days Required
$ 1,000	693
5,000	144
10,000	73
20,000	37
30,000	25

Q. What effect does IOLTA have on clients?

A. IOLTA has no effect on clients. When no interest is earned on funds in attorney trust accounts which are nominal or short-term, no one benefits except the financial institutions. The practical effect of the IOLTA program is to shift a part of the economic benefit from depository institutions to tax exempt organizations. There is no economic injury to any client. The program creates income where there was none before.

Q. What are the tax consequences?

A. There are no tax consequences for either the lawyer or the client if IRS requirements are met. The IRS has ruled that the IOLTA program must apply to the nominal and short-term funds of all clients of a participating lawyer (if an individual could elect not to participate in the program, an assignment of income problem would arise).

Q. Must clients be notified that a lawyer is joining the IOLTA program?

A. No. In a 1982 opinion regarding the nation's first IOLTA program, the Supreme Court of Florida ruled that notification is not necessary to clients whose funds are nominal in amount and are to be held for a short period of time. Some lawyers, however, prefer to inform their clients that they are participating in an IOLTA program.

Q. Is the IOLTA program ethical, constitutional and otherwise legal?

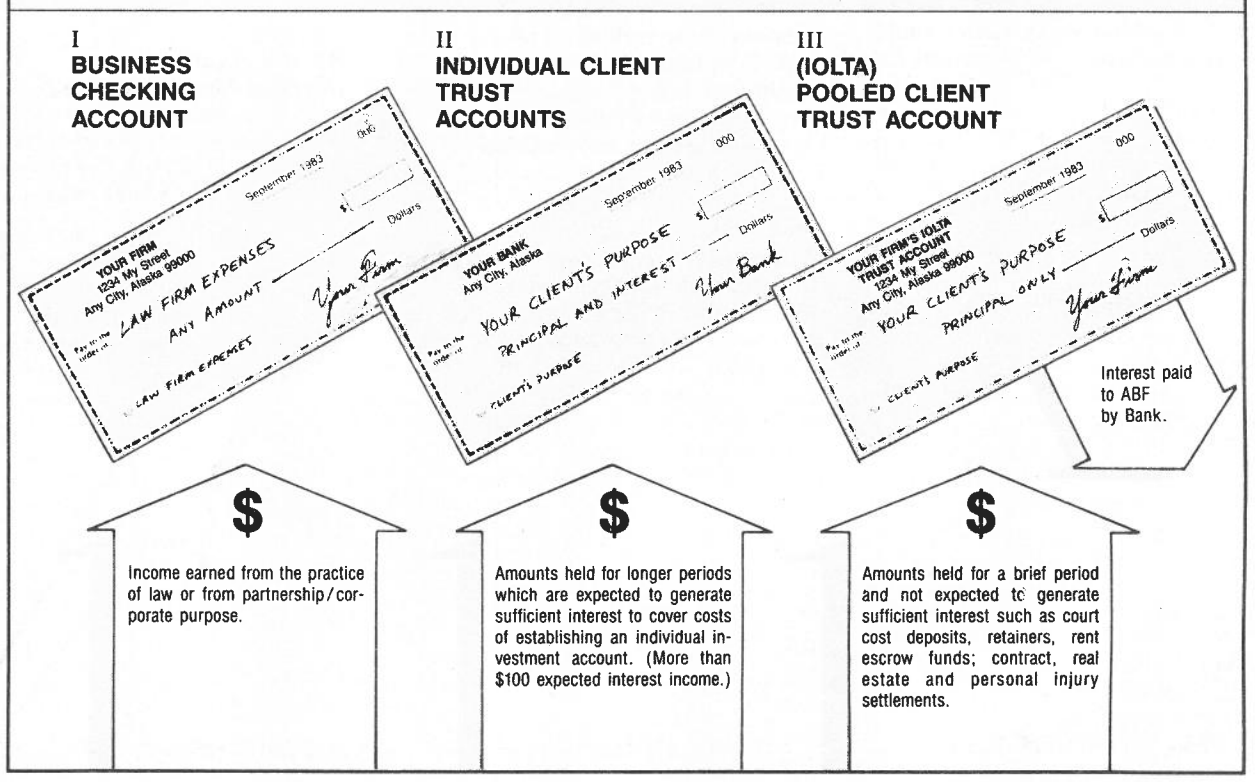
A. Yes. IOLTA programs have now been created in 43 states and the District of Columbia, including nine programs which require all attorneys to use IOLTA. There have been several decisions by state and federal courts relative to IOLTA challenges which have uniformly upheld the program, and the U.S. Supreme Court has rejected two requests for review of lower court approvals of IOLTA. The IRS has approved IOLTA, and the American Bar Association's Standing Committee on Ethics and Professional Responsibility and numerous state bar committees have concluded that attorney participation in IOLTA is ethical and commendable.

Q. What effect will joining IOLTA have on an attorney's banking relationship?

A. Most lawyers will see no change in the relationship relative to their banking institutions.

Continued on page 5

A View Of How The IOLTA Account Fits Into Law Practice Checking



$45.6 billion for national justice

The nation spent approximately $45.6 billion in 1985 for all types of justice activities, according to a study recently released by the Bureau of Justice Statistics through the Statistical Analysis Unit at the University of Alaska, Anchorage.

Nationally, 6.1 percent of all state and local spending in 1985 was devoted to civil and criminal justice. About half of this was for police (2.9%), followed by corrections (1.9%) and judicial and legal services (1.2%).

The proportion of Alaska state and local expenditure for the justice system in 1985 was 10 percent lower than the national average. In Alaska, 5.5 percent of total state and local expenditure was for civil and criminal justice. This figure includes 2.0 percent for police, 2.2 percent for corrections and 1.3 percent for judicial and legal services.

According to the BJS study, however, the Alaska per capita justice expenditure was second only to that of the District of Columbia. Alaska spent $592 per capita; the District of Columbia, $612. The national average was $167.

Federal, state and local justice expenditures of all types were 2.9 percent of the $1.58 trillion total government spending that year and were distributed as follows:

- 1.4 percent for police protection;
- 0.8 percent for corrections; and
- 0.6 percent for judicial and legal services (0.4 percent for courts, 0.2 percent for prosecution and legal services and 0.1 percent for public defense; subcategories do not add to totals due to rounding).

"Altogether, federal. state and local government spent twice as much on housing and the environment as on justice activities," said Bureau of Justice Statistics Director Steven R. Schlesinger. "They spent twice as much on public welfare as on justice and more than four times as much on public education."

"Although the proportion of all government spending devoted to justice activities dropped slightly between 1979 and 1985, state and local governments increased the justice share from 5.9 percent in 1979 to 6.1 percent in 1985," Schlesinger said.

Federal, state and local government spending was $6,623 for each U.S. resident. The per capita spending was divided according to function as follows:

Social insurance payments	$1,377
National defense and international relations	1,209
Education	862
Interest on debt	723
Housing and the environment	449
Public welfare	397
Hospitals and health	267
Transportation	240
Justice	191
Space research and technology	31

As of October 1985 the country's civil and criminal justice systems employed more than 1.4 million people, and the payroll that month exceeded $2.8 billion.

"For the first time since 1979 we are able to show a detailed breakdown of the costs of judicial and legal services in this report," Schlesinger noted. "This category totaled about $10 billion in 1985. We found that since 1976 costs for prosecution, public defense and corrections increased at about the same rate during these years — about twice the rate as the increase in police protection."

Single copies of the bulletin, "Justice Expenditure and Employment, 1985," (NCJ-103360), as well as other statistics publications and information about Bureau of Justice Statistics programs, may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

• IOLTA

Continued from page 4

Q. What additional bookkeeping will be required?

A. The bank automatically sends the interest directly to the Alaska Bar Foundation. The client trust account statements will remain the same. No tax liabilities or tax benefits are created by the program for the lawyer or the lawyer's client. Since ABF is the recipient of the interest, the bank uses the ABF federal ID number and sends the 1099's to ABF.

Q. Who pays the bank service charges?

A. ABF pays all normal bank charges relating to the operation of IOLTA accounts, including check and deposit fees. Client funds are never affected.

Q. How do I sign up for IOLTA?

A. The process of converting trust accounts is simple and once it is done no further time or effort on the part of the lawyer is required. Forms to convert trust accounts to IOLTA accounts are available from the Alaska Bar Foundation, Post Office Box 100279, Anchorage, Alaska 99510. Lawyers may also contact their banks directly.

Rainier Bank Alaska, N.A.
Administration Division: AK-590
P.O. Box 7007 (550 W. 7th Ave. Suite 1700)
Anchorage, Alaska 99510, (907) 276-8080

Ronald L. Bosi
President and Chief Executive Officer

Make your trust accounts more interesting... and more convenient.

When you open a new IOLTA at Rainier Bank Alaska you get some interesting benefits.

First, you save time. Your Rainier Bank Alaska IOLTA lets you open new accounts quickly, with no additional paperwork.

Second, your one IOLTA agreement covers both types of trusts . . . pooled and non-pooled.

Third, you have a choice of interest bearing accounts.
Pooled Accounts — Premium Rate Checking
Non-Pooled Accounts — Premium Investor Fund or Regular Savings

Fourth, Rainier Bank Alaska handles remittances of accrued interest to the Alaska Bar Foundation on a monthly basis, automatically.

Ronald L. Bosi

RAINIERBANK ALASKA

Put your trust in Rainier Bank Alaska.

If you are involved with trust accounts, talk to Rainier Bank Alaska about our complete IOLTA program. We would be happy to send you our new brochure on legal trust accounts.

For more information, please call any one of our offices:

Main Office 263-3297
Dimond/Jewel Office 266-7433
University Office 263-3488
Tudor Office 261-6230

Or write, **Rainier Bank Alaska**, IOLTA Program, P.O. Box 107007, Anchorage, Alaska 99510-7007.

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Special Events, CLE Highlight Fairbanks Convention

Plan to attend the 1987 Alaska Bar Convention in Fairbanks. Excellent CLE programs are planned and the Tanana Valley Bar Association has put together an exciting agenda of activities for the whole family.

James W. McElhaney's full day program on "Evidence for Advocates" is an excellent seminar by a nationally acclaimed lecturer. The seminar on foreclosures prepared by Barb Schuhmann and Jim DeWitt will provide an update on the latest information and decisions affecting the depressed real estate market. The program on opening and closing argument, presented in Frank Rothschild's unique style, will sharpen these important skills.

Rock to 50's music at The Center, participate in tournaments and races, enjoy the scenery along with Chena and Tanana rivers aboard the "Discovery II," eat all you can at Alaskaland, be entertained by music and comedy at the Palace Saloon Show, and cap it off with a banquet featuring Dan R. White's hilarious, tongue-in-cheek view of the legal profession. It's all happening in Fairbanks at the Alaska Bar Convention, June 4 through 6. See you there!

Pre-registration is a must for a number of events, so please register early. See you in Fairbanks!

TVBA Hosts Kickoff Event

The Tanana Valley Bar Association is hosting a special convention kick-off event on Wednesday, June 3. The local bar has planned a fun-filled stopover in Denali National Park with whitewater rafting on the Nenana River, a campfire cookout, and TVBA's unique brand of hospitality. Leave Anchorage a day early and enjoy the majestic scenery of this great park.

Pizza and Horses

On Thursday, June 4, spouses and children can enjoy an afternoon of pizza and horseback riding. The bus leaves the Travelers Inn at 11:00 a.m. for the ride to Chuck E.Cheese for lunch. At 12:30 p.m. depart for Wynfromere Farms for trail or ring horseback riding.

CLE Options for Thursday

Frank Rothschild, former Anchorage district attorney, will present a program on opening and closing argument, or, as he refers to it: "Getting Off to a Winning Start Through Opening Statement" and "Putting It All Together in Summation." Frank will cover Alaska cases on the dos and don'ts of opening and closing.

Real Estate

The present state of the real estate market and pending Supreme Court decisions should spark a good deal of interest in this seminar scheduled for Thursday afternoon, June 4. Fairbanks' attorneys Barb Schuhmann and Jim DeWitt are coordinating a program on how to avoid problems in judicial and non-judicial foreclosures. The course will include a review of recent Supreme Court decisions.

Pony Tails, Bobby Sox and Hula Hoops

The Center is going to rock Thursday night. There is fun planned for the whole family. A buffet spread will be available or you can eat in Big Patty's art deco diner. Devote the evening to bowling, rollerskating, a movie, or dancing to 50's music provided by a live band in The Roof nightclub. A bowling tournament and pool tournament are planned for adults. Dress for the 50's dance contest or give your waist and hips a workout in a hula hoop contest sponsored by The Center. Prizes donated by The Center. A supervised play area for small children will be provided at a nominal cost. Transportation is provided from Travelers Inn.

Annual Meeting

An always interesting assortment of resolutions will be considered by the membership in addition to other business matters Friday morning, June 5. Reports are expected on the progress of the multistate lawyer-owned insurance plan and IOLTA. Guest speaker Robert Utter, Justice of the Supreme Court of the State of Washington, will speak about the importance of Alaska's new IOLTA program.

McElhaney on Evidence

James W. McElhaney will provide convention attendees with a dynamic new CLE program on "Evidence for Advocates." The program features "The Open Door Theory of Relevance," character evidence and impeachment, foundations and objections, making and meeting objections, privileges, hearsay, and expert testimony.

McElhaney is the author of the West Publishing Company casebook, *Effective Litigation: Trials, Problems and Materials* (1974). He is former Editor-in-Chief of the American Bar Association's Litigation journal, and contributes a column entitled "Trial Notebook" which focuses on basic trial skills. A collection of those articles is the feature of his latest book, *Trial Notebook,* which continues to break all ABA records as a runaway bestseller. As a frequent lecturer in evidence and trial advocacy, McElhaney appears in continuing education programs throughout the country. As this is a copyrighted seminar, the bar association will not be videotaping this program.

All Aboard the Riverboat "Discovery"!

Adam Apple, aka Reginald E. Gates, bar member and Acting District Court Judge from Barrow, will provide an evening of musical entertainment aboard the "Discovery II" as we cruise the Chena and Tanana Rivers. Gates sings, plays piano and harmonica and will entertain you with music from rag to rhythm and blues to old time rock 'n roll. This cruise is always a popular event, so sign up to enjoy the food and entertainment planned for Friday evening.

An Afternoon at Alaskaland

An afternoon of fun awaits you and your family at Alaskaland with numerous activities available for adults and kids alike. Start off the afternoon with the delightful flavor of Alaskan salmon, halibut and ribs, an all-you-can-eat meal at the Alaska Salmon Bake. Children age 12 and under can enjoy the traditional hot dog plus salad bar, baked beans and lemonade. At 2:00 p.m. head for the Palace Theatre & Saloon for the musical comedy "Good as Gold," a "revue of the comic life and musical times of Fairbanks." At 3:30 p.m. participate in the canoe race or the two- or five-mile fun runs. Both races start at Alaskaland.

Banquet

"OBJECTION" Definition: "The cry of a lawyer who sees truth about to creep into the courtroom."

Dan R. White is the featured speaker for Saturday evening's banquet. Be ready for White's hilarious, irreverent view of the legal profession. Dan White's *The Official Lawyer's Handbook*, published in 1982, was number one on the D.C. best-seller list and number five nationally. The *Washington Times* called it "undeniably hilarious . . . The funniest and best-written of all the recently issued parody handbooks." In 1985 White continued his writing with a humorous primer, *"White's Law Dictionary."* Professor Irving Younger commented, ". . . This may mean the end of the legal profession as we know it. *White's Law Dictionary* is, quite simply, beyond improvement." White's newest book, which will be released in late April and already selected by the Book of the Month Club, is *What Lawyers Do . . . And How To Make Them Work For You.* Relax and listen to the legal profession described as you've never heard it described before.

Distinguished service and professionalism awards will be presented to deserving members of the bar.

Lawyers have text of ANILCA on LEXIS base

Mead Data Central, Inc. is pleased to announce the availability of the full text of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), PL 96-487, on LEXIS.

LEXIS is the world's largest computer-assisted legal research service, with extensive federal and state case law, statutes, codes and regulations, and other authoritative legal material. Included online are Alaska Supreme Court and Court of Appeals cases, Alaska Attorney General Decisions, and Alaska Department of Revenue Decisions.

The following full text Alaska Lands materials are now online in exclusively on LEXIS:

- Alaska National Interest Lands Conservation Act of 1980 (PL 96-487)
- Committee Prints — studies of a problem or issue by a House or Senate Committee
- House, Senate and Conference Reports
- Portions of the Congressional Record that relate to Alaska Lands matters
- Hearings held before various House and Senate Committees and Subcommittees on issues relating to Alaska Lands matters
- Bills and Amendments relating to Alaska Lands matters
- Markup Transcripts — discussions of the Committee or Subcommittee regarding changes to be made to Alaska Lands related bills before the Committee Report is produced
- Catalog of Legislative History material relating to Alaska Lands matters — Includes resource lists from Alaska, the DOI Solicitor's Office and the DOI Master List.

The Alaska Lands materials, along with Alaska State Statutes and other legal research materials, will be demonstrated to Bar Association Members at the Annual Convention in Fairbanks. Plan now to attend the LEXIS demonstration on Friday, June 5, 1987, at 10:30 a.m. in the Chena Room.

For more information, please contact Ellen Salisbury, the local LEXIS representative, at 694-8333 or Gerry Downes, Bar Association Controller, at 272-7469.

Referral assists 8,000

During 1986, the Alaska Bar Association Lawyer Referral Service made 8,061 referrals.

The service was established to assist members of the public select a lawyer. When a client contacts the service on the toll free line, the lawyer referral receptionist briefly interviews the client to determine the type of legal problem. The caller is then provided with three attorneys in the geographic location requested on a rotating basis and according to the type of legal problem indicated.

The caller is instructed to contact one of the lawyers to set up an appointment, and told to be sure to inform the lawyer they were referred by the Lawyer Referral Service. This referral information will insure the caller will receive the special rate.

The Lawyer Referral Service panel members agree to provide a consultation for a fee of no more than $35 for the first half- hour. After the initial consultation, the client is under no obligation to proceed with the referred lawyer, nor is the lawyer obligated to represent the referred client. If additional service is needed, the fee for that service is to be agreed upon between the lawyer and the client.

Presently 157 lawyers are signed up for 28 panels on the lawyer referral service. To become a lawyer referral service panel member, a lawyer must be an active member in good standing of the Alaska Bar, and carry professional liability insurance of at least $50,000. There is a fee of $25.00 for each panel the lawyer signs up for ($10.00 for renewal) and a charge of $2.00 for each referral given.

For information on joining the Lawyer Referral Service, contact Shaunda Hale at the Alaska Bar office.

Bar associations submit resolutions for June vote

RESOLUTIONS OF THE
ANCHORAGE BAR ASSOCIATION
TO BE SUBMITTED TO THE
MEMBERSHIP OF THE
ALASKA BAR ASSOCIATION

1 WHEREAS, the current registration fee of $150.00 for the Alaska Bar Convention is so excessively high as to discourage members of the Alaska Bar from attending the convention, and

WHEREAS, the Alaska Bar Association should take all appropriate steps to encourage as many members to attend the convention as possible,

BE IT RESOLVED that the registration fee is reduced from $150.00 to a sum not greater than $50.00.

APPROVED unanimously with Mr. Van Goor abstaining.

2 RESOLVED, if an active member of the Alaska Bar Association has attained the age of 70 years and has practiced law in Alaska for a total of 25 years or more, his or her Bar dues shall be 50% of those of active members of the Bar, less than age 70.

PASSED, 5 to 0.

3 RESOLVED, at the annual business meeting of the Alaska Bar Convention, all members who wish to be heard shall be given a reasonable opportunity to address the membership.

PASSED, 5 to 0.

4 WHEREAS, the Anchorage Bar Association feels that Wayne Anthony Ross, Esq. was not given a reasonable opportunity to present his views at the annual business meeting during the 1986 Alaska Bar Convention,

BE IT RESOLVED, the Alaska Bar Association hereby extends an apology to its colleague Wayne Anthony Ross, Esq., and further, encourages him to attend all future bar conventions.

PASSED, 5 to 0.

5 RESOLVED, all Alaska attorneys are encouraged to participate in IOLTA Program.

PASSED, 5 to 0.

6 Resolved, that the Alaska Bar Association hereby petition the Alaska Court System and the legislature for immediate creation of a second Superior Court judgeship at Kenai.

Submitted by
Kenai Peninsula Bar Association

RESOLUTION OF
KODIAK BAR ASSOCIATION

7 WHEREAS, Kodiak is an island replete with history, blessed with unparalleled scenic beauty, and the home of the fiercesome Kodiak brown bear. WHEREAS, Kodiak has adequate hotel space, a variety of meeting areas, and a 750-seat auditorium. WHEREAS, Kodiak has a semi-active and highly visible Bar Association consisting of approximately 25 members. WHEREAS, no one can remember there ever being an Alaska Bar Association meeting held on our fair island. NOW THEREFORE, be it resolved that the Kodiak Bar Association formally invites the Alaska Bar Association to consider having its 1988 Convention in Kodiak, Alaska.

Dated: April 20, 1987

L. BEN HANCOCK
President Kodiak Bar Association

8 Be it resolved that the Tanana Valley Bar Association's 1986 Resolution Number 3, *that the Alaska Bar Association recommend to the Alaska Legislature that the Department of Health and Social Services, Division of Family & Youth Services, be abolished,* which was at the 1986 Convention of the Alaska Bar Association tabled, be now considered and adopted.

Tanana Valley Bar Association

9 Be it resolved that the Alaska Bar Association seek the amendment by the Supreme Court of Rule 30, Alaska Rules of Civil Procedure, to prohibit smoking in any room in which oral deposition is, at that time, being conducted.

Tanana Valley Bar Association

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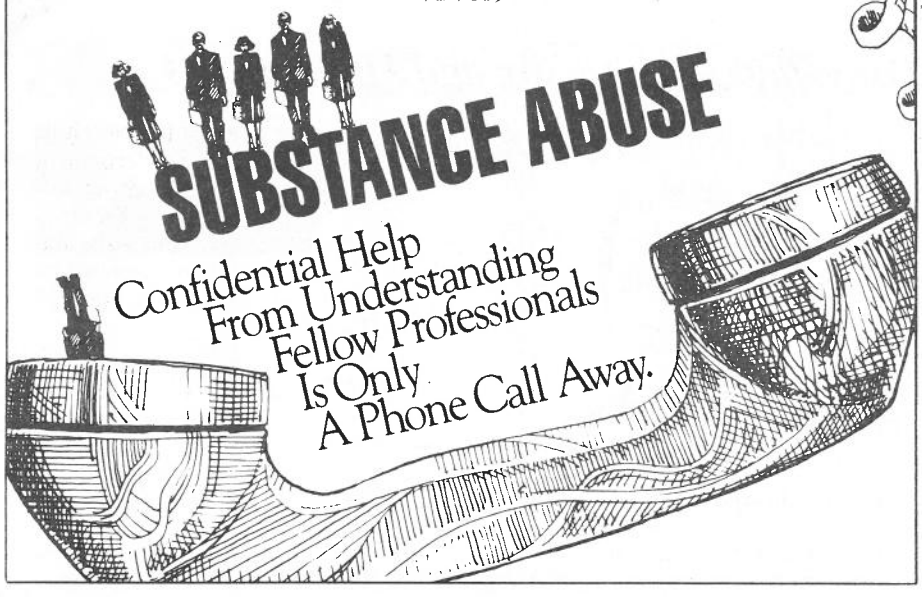
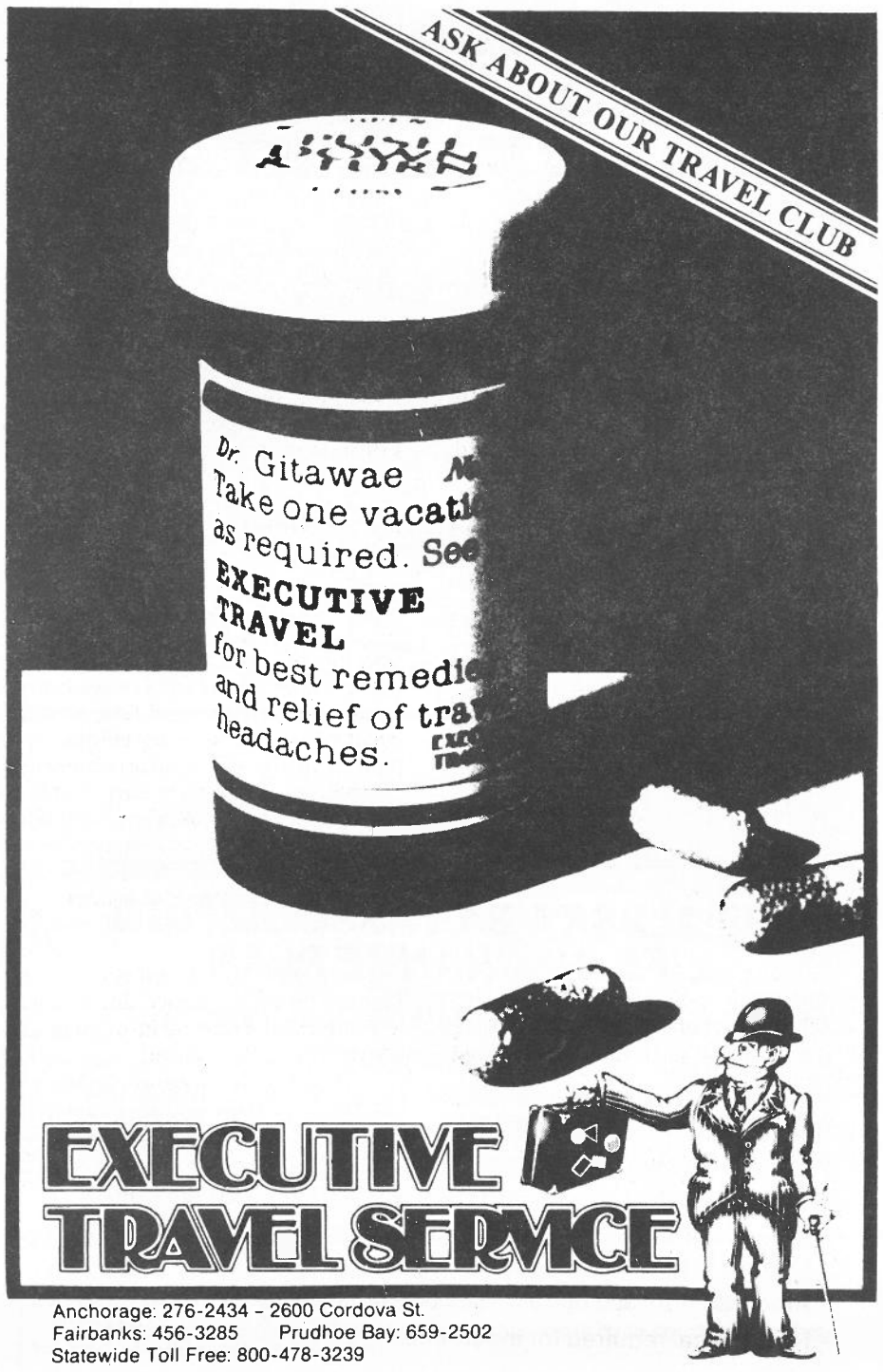
272-7469





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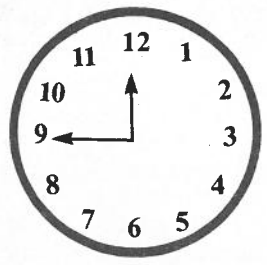

ALASKA TIME LIMITS

Statute and Court Rules

Lists statutes and rules that have a provision with a time or date deadline. Each citation lists the applicable statute or rule, indicates the subject and area involved and applicable comments or notations.

Information can be accessed by individual statute or rule number, or by use of the extensive index.

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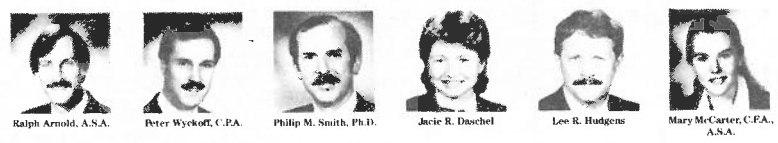

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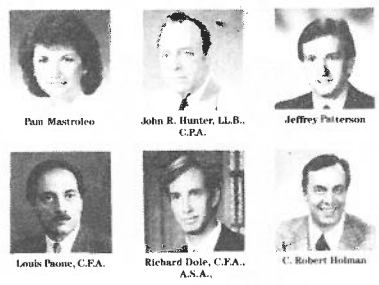

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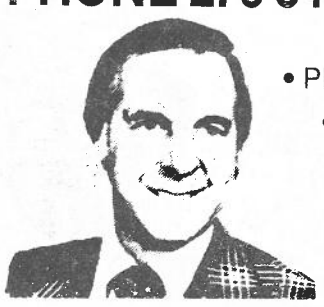

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Fee arbitration

Fee decisions interpret rules

86.043 (3/27/87) Failure of attorney to interview expert witness, or ascertain availability of witness for trial or place experts name on witness list resulted in client inability to prove damages at trial. Legal fees for clients counter claim discounted to zero.

86.038 (3/26/87) Statements fell short of duty to inform client of actual work performed and why short, seemingly routine motion should take three hours instead of one. Because of several discrepancies, twenty hours deducted from billing.

86.037 (3/4/87) Discipline Referral: Numerous personal loans, suspect business transactions with client; billings which reflect work carried out by Respondent to protect own interests, not clients; Power of Attorney attempted to be used to collect fees from clients bank account; Fees charged after termination disallowed. Fees which were actually personal loans and interest thereon disallowed. Insufficient documentation to allow charges, failure to credit sums paid, resulted in $78,000 claim for fees reduced to zero.

86.034 (3/5/87) Without time slips to support purported expenditure of time, without consent of client to associate another attorney, and given ambiguity of written fee agreement and client difficulties with English language, clients understanding of fee agreement will prevail.

86.004 (11/4/86) Contracts for compensation entered into after the attorney client relationship has been established are construed most strongly against the attorney, and are enforceable only where there was a full understanding by the client. Without specific agreement, and especially where no itemized billings, attorney is at peril should client make showing of misunderstanding . . ., even if services are valuable and fees do not appear to be excessive.

86.002 (1/2/87) Delays in bringing client's matter on for hearing reduced value of services rendered to client. Fee reduced by $1,392.

86.001 (2/13/87) Fees disallowed where services performed were nonproductive to client's case or irrelevant to matters then pending. Discipline Referral for failure to appear at court hearing, neglect.

85.075 (7/18/86) Unsubstantiated items on billing statement disallowed. No charge allowed for withdrawal.

85.072 (10/10/86) Where no express agreement for charges for legal assistant's time, charges are disallowed.

85.071 (4/16/86) Total fees reduced where several discrepancies in billing practices led panel to doubt accuracy.

85.069 (12/22/86) Client not advised how fees to be calculated or given accurate explanation after she inquired. Fees charged after client's inquiry disallowed. Practice of using one's memory to calculate billing statements months after work has been completed is unacceptable.

85.065 (12/10/86) Because of attorney's inexperience, encouragement of clients pursuit of matter beyond any sensible extent and at enormous expense, and clients having received no explanation justifying fee, panel disregards hourly billings and substitutes reasonable fee for type of services provided. In disregarding attorneys billing panel notes that dishonesty and overreaching by attorney make billings unreliable as business records. Also unreasonable considering attorneys demonstrated bad judgement and inexperience. Total payments of $65,700 reduced to $22,500, requiring $45,000 refund to client. Discipline Referral: veracity before arbitration panel.

85.061 (12/18/86) In absence of written fee agreement, clients understanding of fee prevails.

85.060 (7/7/86) Increased fee disallowed when not communicated to client. Interest disallowed — no agreement.

85.059 (11/30/86) Fees for services not agreed to disallowed.

85.031 (6/19/86) Panel questions propriety of "non-refundable retainer" which would result in attorney receiving twice normal hourly rate. Fee reduced (decision appealed).

85.010 (4/22/86) Charging client for what is essentially an administrative task that is an integral part of firm billings is not appropriate. Fee also reduced due to failure of attorney to advise client of additional expenses not included in estimate, and resulting lack of approval by client.

85.009 (8/20/86) Fee agreement provided for maximum fee of $500.00. Client not responsible for remedial efforts to set aside default.

85.007 (9/5/86) In absence of written fee agreement, issue is resolved against existence of contingency agreement. Panel makes quantum merit award based on its estimate of number of hours case would reasonably have taken.

85.004 (6/16/86) Attorneys reservation of right to withdraw prior to trial inappropriate because it created the risk of duplicative effort and fees, of which client not aware. Attorney entitled to be paid only for those efforts substitute counsel would not later have to repeat.

85.002 (3/10/86) Attorneys efforts shifted from representation to withdrawal. At that point fees disallowed.

84.056 (6/17/86) In absence of written fee agreement, clients understanding will prevail.

84.045 (8/26/86) Compensation for Petition for review denied due to failure to communicate expense involved or likelihood of success to client.

Copies of fee arbitration decisions (names deleted) are available on request. Also available is the entire subject index to fee arbitrations dating back to 1980.

FAIRBANKS FOR YOUR FAMILY...

Remember, the upcoming Bar Convention in Fairbanks will be chock full of wonderful events for your whole family — so bring everyone and be prepared to have fun.

JUNE 4, 5 & 6

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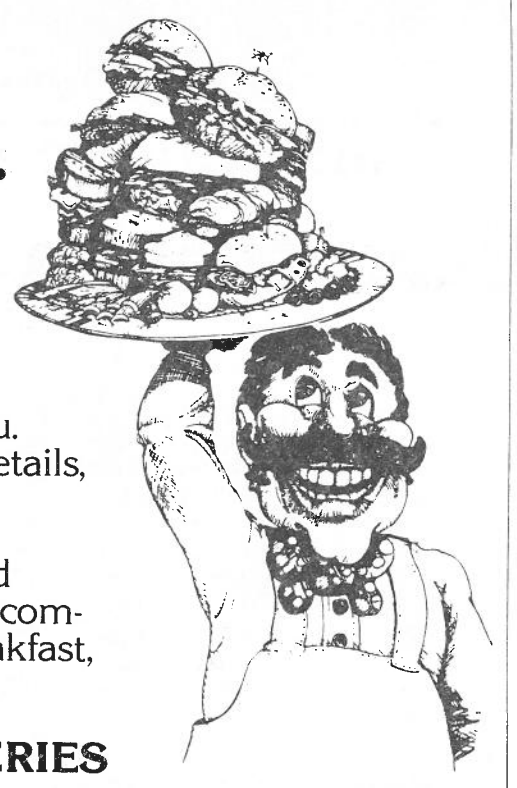

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Law school enrollments

Totals decline; women, minorities up

Continuing a four-year pattern, the enrollment figures for law schools in terms of both total population and first year students declined in 1986, but enrollment of women and minorities increased.

First year enrollment totals have been in decline for five years, with the most recent drop measuring 1.5 percent, from 40,796 in 1985 (the 1985-86 academic year) to 40,195 in 1986 (the 1986-87, or current, academic year). Since the all-time high year for first year student population in 1982, when the total was 42,521, the drop has totalled 5.5 percent.

In measuring overall enrollment, which includes juris doctor (J.D.) degree students, post-J.D. students and non-J.D. students, the decline stretched over four years and amounted to 3.6 percent. Overall enrollment went from 124,092 in 1985 to 123,277 in 1986, a one-year drop of 0.7 percent. The four-year drop also has shown up in measuring only J.D. student population, which has declined 3.3 percent since 1982. The totals for J.D. candidates were 118,700 in 1985 and 117,813 in 1986, a one-year drop of 0.8 percent.

Overall enrollment of women law students increasing sliqhtly, from 49,050 (representing 39.5 percent of the overall student enrollment) in 1985, to 49,522 (representing 40.2 percent of the overall student enrollment) in 1986. Counting only those women working toward J.D. degrees, there were 47,486 in 1985 but 47,920 (or 40.7 percent of the J.D. student total) in 1986. However, the number of first year women students decreased 0.1 percent, from 16,510 in 1985 to 16,491 in 1986.

The number of minority students in ABA-approved law schools also increased over last year. Counting first-year minority students only, there were 4,534 in 1985 and 4,738 in 1986, a jump of 4.3 percent. As a portion of first year students, minorities represented 11.1 percent in 1985 and 11.8 percent in 1986.

A total of 12,357 minority students were working towards J.D. degrees in 1985, while that number had increased to 12,550 in 1986, an increase of 1.6 percent. Minorities represented 10.4 percent of total J.D. enrollment in 1985 and 10.7 percent in 1986.

Law schools awarded fewer degrees in 1986 than they had the previous year. They awarded 36,121 in 1986, dropping two percent from the 1985 figure of 36,829. However, the number of degrees awarded in 1986 still was 3.7 percent higher than in 1982.

Looking back 10 years, first year enrollment in 1986 was nearly equal to that of 1976, which was 39,996. There were 174 ABA-approved law schools in 1986, but only 163 in 1976. J.D. enrollment in 1986 was about 5 percent higher than in 1976. About 20.5 percent more degrees were awarded in 1986 than had been given in 1976.

Student Minority Breakdown
1986–87

Minority	1st Year	2nd Year	3rd Year	4th Year	Total
Black	2,159	1,800	1,735	200	5,894
Indian	176	155	148	9	488
Asian	929	685	650	39	2,303
Mexican	564	486	431	31	1,512
Puerto Rican	191	165	147	7	510
Other Hispanic	719	548	537	39	1,843
Other	0	0	0	0	0
TOTAL	4,738	3,839	3,648	325	12,550

NOTES:
1) 171 out of 175 schools reporting
2) 3 Puerto Rican schools **not** included; enrollment for ABA-approved law schools in Puerto Rico totaled 1,572 students
3) No data available from Oral Roberts University
4) "Year Not Stated" category was **not** applicable this year

LAW SCHOOL ATTENDANCE FIGURES FOR 1986*

Approved Schools	First Year Total	First Year Women	Second Year Total	Second Year Women	Third Year Total	Third Year Women	Fourth Year Total	Fourth Year Women	JD Total Total	JD Total Women	Post-JD Total	Post-JD Women	Other Total	Other Women	GRAND TOTAL Total	GRAND TOTAL Women
Full Time	34,020	13,944	32,025	12,988	31,356	12,660	0	0	97,401	39,592	1,649	430	612	245	99,662	40,267
Part Time	6,175	2,547	5,237	2,187	4,707	1,892	4,293	1,702	20,412	8,328	2,700	766	503	161	23,615	9,255
TOTAL	40,195	16,491	37,262	15,175	36,063	14,552	4,293	1,702	117,813	47,920	4,349	1,196	1,115	406	123,277	49,522

*For ABA-approved law schools only.

Society to issue policies July 1

Why an ALPS

During the second quarter of 1987 — some 20,000 attorneys in the States of Alaska, Montana, South Dakota, Kansas, Wyoming, West Virginia, North Dakota and Delaware will receive an Offering Circular from Attorneys Liability Protection Society (ALPS). This unique, multi-state Risk Retention Group will ultimately provide these legal practitioners a stable market from which to purchase Attorneys' Professional Liability Insurance.

ALPS Board of Directors (each of whom is a practicing attorney) is determined to maintain a quality of excellence unprecedented in the professional liability arena. To maintain that quality, not only will ALPS be philosophically committed to provide coverage whenever possible, but also their underwriting practices will be extremely thorough. As an example, each attorney in a multi-attorney firm will be required to warrant such critical informational items as: his or her personal, professional claims history; his or her individual practice characteristics, etc. Such attention to detail will help assure that all applicants are treated fairly and that premium levels are sufficient to maintain ALPS's fiscal integrity.

Presuming sufficient surplus has been contributed by mid-June, ALPS will issue its first policies effective July 1st. Ultimately, all policies will renew on a common January 1st date. (This procedure has been adopted to provide ALPS tax benefits necessitated by 1986 Federal Tax Legislation in respect to tax liabilities for certain insurance company operations.) Each Insured-Firm's premium will be pro-rated from the firm's effective date to December 31, 1987. Commencing January 1, 1988, all policy premiums will be for a full year.

Subject to regulatory and reinsurors' final approval, ALPS Policy terms and conditions will be among the broadest available while still consistent with sound underwriting practice.

Each eligible attorney will be asked to make a contribution to ALPS' Surplus of $1,000 — thus creating the economic base upon which ALPS can become an operating reality. Once a minimum of $3,500,000 has been deposited in ALPS' Escrow Account in Nevada (ALPS's intended State-of-Domicile) and the Nevada Commissioner of Insurance has given his approval — ALPS will begin the underwriting process.

You have received (or will receive shortly) your personal Offering Circular, Question & Answer Brochure and Subscription Agreement. During the first 60 days from receipt of these documents, your required Surplus Contribution will be $1,000. After this "60-day window," the required contribution will be the greater of $1,100 or 50% of the unmodified premium for a $1,000,000/1,000,000 limit policy with a $1,000 deductible in the Attorney's State of practice. This "window" should encourage early participation by all eligible attorneys.

Many in the legal profession are facing an unprecedented coverage crisis — a situation that could ultimately threaten the very foundations of the normal practice of law. A problem that may help drive the cost of legal representation beyond the ability of some to pay.

The availability and affordability of Professional Liability Insurance are concerns that face every profession, business and institution in the country. For many years now, attorneys have been at the mercy of a declining number of insurance companies willing to offer Liability Coverage. Indeed, many attorneys may not know from year to year what company, if any, may be willing to offer coverage. The coverage itself, seems to diminish with each renewal. The one thing that has been firmly established is the near certitude of increased cost. Rate increases of 50–300% are not uncommon among Liability carriers. And, once coverage has been granted, there are no guarantees that it will be extended beyond the term of the current policy.

Recently, however, State Bar Association Executives from around the United States have joined to formulate an answer to the increasingly troubling question of Professional Liability Coverage for their member attorneys. Based on opinion research and feasibility studies, the creation of a multi-state captive insurance company, funded by policy holders has been adopted by State Bar organizations in West Virginia, Montana, Kansas, South Dakota, Wyoming, Delaware, North Dakota, Nevada and Alaska.

This new entity, to be known as Attorneys Liability Protection Society, will be company owned, and controlled by its policymakers — practicing attorneys in the member states.

Throughout the next several weeks, those participating State Bar organizations will be undertaking their initial fund raising and marketing efforts. According to ALPS President, Robert Minto, "It is our firm intention to have the company up and operating within the year."

Alaska felony sentences increase in 1984

Presumptive sentencing caused only part of the increases in court felony trials and prison populations during the early 1980s according to a study released March 19 by the Alaska Judicial Council at its annual meeting with the House and Senate Judiciary Committees. A one-hundred percent increase in the number of convicted offenders, and legislative reclassification of drug and sexual offenses contributed equally to high court caseloads and jail overcrowding. The Judicial Council's study was based on data about all 1984 felony case filings that resulted in a conviction and sentence.

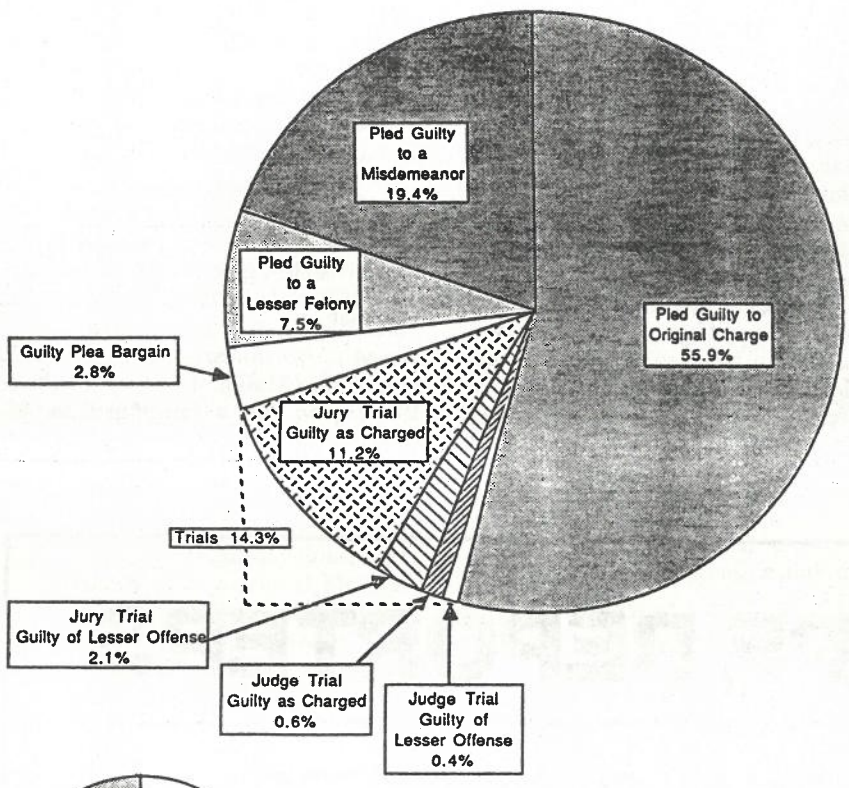
The data were provided by state agency computerized information systems, especially the Department of Law's PROMIS system. Department of Public Safety and Department of Corrections also contributed data for the report.

The study noted that 80% of the cases were found in the urban areas of Anchorage, Fairbanks, Juneau and Palmer. The percentage of convicted drug offenders in rural areas doubled between 1980 and 1984, while the number of sexual offenders convicted statewide increased by 300% during the same period. A higher percentage of urban robberies and homicides were convicted in 1984 as compared to 1980. In general, the report shows that a higher percentage of serious offenders were being convicted in 1984 than were convicted in 1980 and earlier years.

The report estimates that the increased numbers of convictions between 1980 and 1984 accounted for about 40% of the increased prison time in 1984. Legislative changes, including presumptive sentences for first-time felony offenders convicted of Class A offenses and reclassification of sexual and drug offenses, accounted for another 40% of increased prison time. The balance of the increase was due to the fact that a higher percentage of 1984 offenders were convicted of serious crimes than were 1980 offenders.

Additional copies of the report are available upon request from the Alaska Judicial Council. Contact: Teresa W. Carns, Acting Director, Alaska Judicial Council, 1031 W. 4th Avenue, Suite 301, Anchorage, Alaska 99501, telephone 279-2526.

Alaska Felony Sentences: 1984
Comparison of Mean Sentence Length For Selected Offenses by Class of Offense*



*Number of sentences is shown in parentheses. All sentence lengths are in months.

**Includes one sentence of 20 years (240 months)

Alaska Felony Sentences: 1985
Types of Convictions

Original vs. Amended Charge

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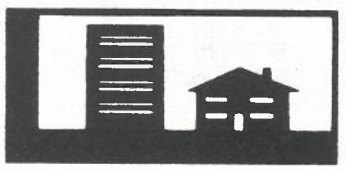

Representing the Injured Worker with a Third-Party Claim: Some Strategies

By Michael J. Schneider

Introduction

Most of us know what a cross-fire is. But Vietnam veterans, mallard ducks over the Susitna Flats on opening day, and Plaintiff's counsel representing an injured worker with a pending Workers' Compensation claim are among those few groups that really appreciate the devastating potential of this strategy. The possibility of serious and simultaneous litigation before the Alaska Workers' Compensation Board (AWCB) and the court provides the opportunity to set up a cross-fire. In this article I will attempt to offer some thoughts on how to make sure that you are the one doing the shooting.

Face Reality

You can't ignore the existence of the pending compensation claim. As I tried to point out in the last installment in this series, a third-party claim shouldn't be settled without an analysis of the value and potential of the workers' compensation claim and the possibility of obtaining a considerable compromise of the workers' compensation carrier's "lien." When you enter the third-party litigation on behalf of your client the carrier may be paying all of the benefits that are due and there may be no disputes between the employee and the carrier at that time. Even so, the most certain thing about this situation is that it is likely to change. You cannot presume that these anticipated changes will have no impact on your client's rights in the third-party action or that you can safely ignore them because you are handling the client's litigation in the court system and have not undertaken to represent that client before the AWCB.

Face Reality Early

Having faced the fact that management and monitoring of the compensation claim is required, when should this process begin? In my opinion, it should begin immediately. Whether you begin to manage and monitor the workers' compensation claim at once, as I would recommend, or at some other point in time, you must decide initially whether the primary responsibility for prosecuting your client's rights before the AWCB will fall upon you or some specialist in AWCB litigation. This is another decision that should be made at once so that you or the compensation attorney in the case can be ready to face a termination of benefits by the compensation carrier. Your client is likely to run out of courage in the third-party action if compensation benefits are cut off and the client has no means of support pending resolution of the third-party claim. Defense counsel are very sensitive to this leverage and rarely hesitate to use it. You need to be ready to respond at once when defense counsel in the third-party action and defense counsel in the workers' compensation claim decide to put your client in this economic cross-fire.

Monitoring and Management of the Workers' Compensation Claim

Let's assume that you have referred your client to Gil Johnson, Eric Olson, Bill Erwin, Joe Kalamarides, Chancy Croft, Pat James, or some other competent practitioner who *regularly* appears before the AWCB. May you now relax, concentrate on your third-party case, and ignore the litigation that is pending before the AWCB? Absolutely not!

The economics of the workers' compensation system are such that the sort of intensive and extensive case development perfectly appropriate to your client's third-party action may not only be inappropriate in the context of the compensation claim, but potentially ruinous of the compensation attorney and/or the compensation client. Nevertheless, your client will continue to see health care providers and rehabilitation specialists in the course of the workers' compensation claim. These people are potential and probable witnesses in *both* forums. It's critical to make sure that these potential witnesses are provided with *all* the relevant information and given the detailed preparation, care, and encouragement typical in a serious third-party case, even if they are only testifying in the workers' compensation claim. It is very frustrating to appear at a deposition of a key witness in your third-party action only to find out that the witness has been previously placed under oath in the compensation case, given damaging testimony, and is unwilling to modify that testimony based upon the new or additional information that you can now provide. It is important to do everything you can to make sure that this frustration is experienced by your opponent and not by you.

The rules of law and procedure are frequently very different between the two systems. I am going to outline just one small area of where this difference is apparent. The rule in third-party litigation regarding damages recoverable by an injured person with a pre-existing condition or disability is stated by the following jury instruction:

> A person who has a condition or disability at the time of an injury is not entitled to recover damages therefore. However, he is entitled to damages for any aggravation of such pre-existing condition or disability legally resulting from the injury.
>
> This is true even if the person's condition or disability made him more susceptible to the possibility of ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury.
>
> Where a pre-existing condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional injury caused by the aggravation.

BAJI 14.65, see also generally CJS Damages Sections 58 and 184; West's Key Number Digest, Damages Key Sections 33 and 213; and Westlaw Topic No. 115.

Workers' compensation claimants have a considerably easier burden:

> . . . the appellant is entitled to compensation if the work-connected accident or injury "aggravated, accelerated, or combined with the disease or infirmity to produce . . . disability, ..."

Brown v. Northwest Airlines, 444 P.2d 529, 533 (Alaska 1968), *Providence Washington, Inc. v. Fish,* 581 P.2d 680, 681 (Alaska 1978), *Thornton v. Alaska*

Continued on page 13

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ABA delegates act on tort reform

By Donna C. Willard

At its mid-winter meeting in New Orleans on February 17 and 18, 1987, the major issue to come before the American Bar Association's policy making body was proposed policy with respect to tort reform. While efforts were made to defer the issue for further study, the House of Delegates voted not only to consider the subject but also to do so under special rules.

In a prolonged debate, and after several close votes, the House adopted the following as the official policy of the ABA with respect to the subject of tort reform:

- that a commission be established by the ABA to study and recommend ways to improve the liability insurance system as it affects the tort system.
- there should be no ceiling on awards for pain and suffering. Instead, trial and appellate courts should make greater use of the powers of additur and remittitur where awards are clearly disproportionate to community expectations.
- tort award commissions empowered to review awards during the preceding year, publish information on trends, and suggest guidelines for future trial court reference, should be established.
- the appropriate ABA entities should explore the subject of whether additional guidance could or should be given to juries on the range of damages to be awarded for pain and suffering.
- punitive damages should not be abolished. Rather, the scope of punitive damages should be narrowed by limiting them to cases warranting special sanctions, with a threshold requirement for submission being a showing that the defendant demonstrated a conscious or deliberate disregard with respect to the plaintiff. Further, the standard of proof should be clear and convincing evidence. Frivolous claims should be eliminated in the pretrial process and no evidence of net worth should be introduced until both liability for compensatory damages and the amount thereof have been established.
- where multiple judgment torts are involved, appropriate safeguards should be put in force to prevent any defendant from being subjected to punitive damages that are excessive, in the aggregate, for the same wrongful act and the court should be authorized to determine what portion of such an award should be used to compensate the plaintiff for bringing the claim with the balance being allocated to public purposes.
- the doctrine of joint-and-several liability should be modified to reflect that defendants whose responsibility is substantially disproportionate to liability for the entire loss are to be held liable only for their equitable share of the plaintiff's non-economic loss.
- contingent case fee arrangements should be set forth in writing and information given to the client as to the basis of calculation. Courts should discourage the practice of taking the fee from the gross amount. Rather, fees should normally be awarded only on the net amount recovered after costs.
- there should be adopted a "fast track" system for the trial of tort cases and non-unanimous verdicts should be permitted.
- licensed professionals should be disciplined where warranted and a judgment or settlement against a licensed professional should be reported to the licensing authority.
- a commission should be established to undertake a comprehensive study of the mass tort problem with the goal of offering a set of concrete proposals for dealing in a fair and efficient manner with them (this addresses such problems as the Bhopal disaster).

The other highly controversial topic addressed by the House of Delegates was a resolution presented by the New York State Bar Association which would have required the ABA to lobby for a ban on media advertising of all tobacco products. Largely on the basis of the first amendment right to freedom of speech, the proposed resolution was defeated on voice vote.

A proposal which would have established principles for oversight of undercover operations by law enforcement agencies and promoted adoption of federal and state legislation incorporating them was defeated while the Uniform Criminal History Records Act was adopted.

Other topics considered and acted upon included a proposed amendment to 42 U.S.C. § 1983 and § 1988 to prohibit the award of injunctive relief and/or counsel fees against a judicial officer for an act committed in his role as a judicial officer, the nomination and appointment process of judges for the Court of International Trade, support for the Caribbean Basin Initiative, ratification ofthe International Labor Organization Convention and sanctions for violations of intellectual property rights and counterfeiting of goods.

The House also approved a recommendation that the diversity jurisdiction statute, 28 U.S.C. § 1332, be amended to raise the necessary amount in controversy from $10,000.00 to $50,000.00.

A resolution urging the guarantee of right to counsel for children in juvenile proceedings was approved as was the Revised Code of Recommended Standards for Bar Examiners. Also, the House approved the Uniform Statutory Rules Against Perpetuities which had been proposed by the National Conference of Commissioners on Uniform State Laws.

Other action taken included:

- a resolution condemning the documented genocide in Cambodia and a resolve to work with all institutions in an attempt to bring the responsible parties to justice;
- support for legislation which would designate one week each year as Volunteer Income Tax Assistance Week;
- expression of grave concern for alleged violations of law in the conduct of U.S. foreign policy, specifically arms sales to Iran and diversion of funds to the Contras and the necessity for a full, complete, and prompt investigation; and
- passage of proposed amendments to the regulations interpreting the term "meeting" in the Government In The Sunshine Act which currently provide that any communication whatsoever is considered to be a meeting.

Finally, like all organizations in these fiscally difficult times, the American Bar Association is facing budgetary constraints which necessitated the reluctant recommendation for and passage of a dues increase. Thus, effective for association year 1988, the following schedule of dues will be in effect:

$ 25.00	1–4 years
45.00	4–6 years
90.00	6–10 years
180.00	more than 10 years

As can be seen, the greatest burden with respect to the new amounts has been placed on those the longest in practice where it more appropriately belongs. Also, all ABA members should be aware that waiver provisions are available for those who cannot afford to pay full dues.

For any questions regarding any of the foregoing, or for that matter, anything else which occurred during the mid winter meeting, contact either Keith Brown or Donna Willard, Alaska's representatives in the House of Delegates. Also, be sure and calendar the next meeting of the American Bar Association which will take place in San Francisco commencing August 5, 1987.

• Third-party claims

Continued from page 12

Workmen's Compensation Board, 411 P.2d 209, 211 (Alaska 1966).

Not only is the injured workers' total condition compensable if aggravated by or contributed to by his employment, the last employer in line (under the "Last Injurious Exposure" rule) picks up the entire tab if the employment is established as a substantial factor in bringing about the harm to the employee. See *Fluor Alaska, Inc. v. Peter Kiewit Sons' Company*, 614 P.2d 310, 312–313 (Alaska 1980).

Imagine that the deposition of one of the treating physicians is being taken. The treating physician is likely to confirm that the injury was caused, and the treatment occasioned, as a result of the on-the-job injury. Defense counsel representing the compensation carrier might as well pack up and go home at this point. Further effort is simply a waste of his/her time and the carrier's money. Defense counsel in the third-party action, on the other hand, is just barely getting warmed up. Frequently the physician, having testified that the on-the-job injury was a substantial factor in generating the need for treatment (and thus securing the payment of that physician's fee from the compensation carrier), is often entirely too willing to concede that the relationship is a lot less substantial than you would like to have it for the purposes of your third-party action.

How can you make sure that you are the one doing the shooting in his potential "cross-fire?" In most cases, your odds are enhanced by being the first one to the witness and by controlling the forum in which the deposition takes place. It might well be to your client's advantage to take a critical physician's testimony in the compensation case and take it first. You can be present at that deposition, and conduct it with the assistance of your associated workers' compensation counsel whether or not you are actively involved in the compensation case.

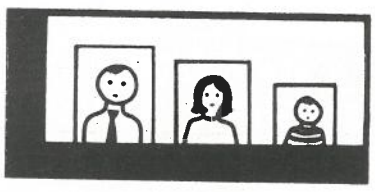
For the reasons mentioned above, this deposition is likely to promote your interests in the third-party case much more effectively than a deposition of the same physician taken by defense counsel in the third-party action or noticed by you and taken by you in that action. Why can't third-party defense counsel simply notice the same physician in the third-party case? This can easily be done. Nevertheless, doctors rarely like being deposed once, let alone twice. Their frustration with this situation is often visited upon the person they see to be responsibile for this (second!) needless intrusion upon their schedule. You are in a position to provide them with a copy of their first deposition and the physician may frequently hesitate to expand on his or her initial comments despite the persistence of your opponent and the fact that the second deposition is taking place in a different legal context.

Frequently litigation is underway (or can be initiated) in the compensation case before the third-party action is filed. This provides Plaintiff's counsel with an opportunity to thoroughly document the client's contentions in the demand brochure with *sworn* testimony from many of the key players. The third-party carrier then must face the specter of litigating with you under circumstances where many of the key witnesses have already been deposed and are committed to a point of view. The third-party carrier understands that it will have another shot at these people, but also must understand that it must endure the frustration of constantly coming upon your tracks once it assumes the trail of defending the third-party action.

Under other circumstances, the compensation carrier can be caught in the cross-fire set up by proper manipulation of your resources in these two different forms. Consider the situation where the compensation carrier has a significant lien (let's assume $100,000.00) and, for some marginally meritorious reason or other, has elected to terminate your client's benefits and controvert further compensation. If your client can survive without this continued income and a third-party action is underway, that action may be used to develop evidence showing your client's clear entitlement to continuing workers' compensation benefits. While you are assembling this information in the context of the third-party action, the compensation carrier's liability for back benefits and interest continues to mount. This leverage can be used to induce the carrier to completely abandon its considerable workers' compensation lien at the time of settlement of the third-party claim. Under the right circumstances the workers' compensation carrier might actually abandon its lien *and* affirmatively contribute to the third-party settlement (see the prior installment in this series in the last issue of the Bar Rag).

Summary and Conclusion

Plaintiff's counsel in a third-party action brought on behalf of an injured worker cannot do the best job possible for that client without a detailed understanding of the way the client's rights and remedies in *both* forums effect the ultimate outcome. Plaintiff's counsel should actively monitor and manage the progress of the worker's compensation claim and do so at the earliest possible stage of the litigation. Management and timing of litigation in one forum can be used to enhance the client's outcome in the other forum.



BAR PEOPLE

Ella A. Stebing and **David G. Stebing,** both attorneys practicing in Homer, have added to their family Holly Miowak Stebing, born February 18, 1987 (8 lbs. 5 ozs.) . . . **Lloyd B. Ericsson** of Martin, Bischoff, Templeton, Biggs & Ericsson, practicing in Portland, Oregon; Port Townsend, Washington; and Anchorage, Alaska has been appointed vice-chair of the committee on aviation and space law of the section of tort and insurance practice of the American Bar Association for the 1987–88 year . . . **Peter Ashman** is the Acting District Court Judge in Palmer . . . **Lynn Allingham** is now working with the Anchorage Municipal Attorneys Office . . . **Margaret Berck** is now with the Public Defender Agency in Juneau . . . **William J. Bonner** has joined the firm of Hagans, Brown, Gibbs and Moran as an associate . . . and **Robert C. Bassett** is now in St. Louis, MO, with the American Youth Foundation . . .

Other Bar people on the move: **Jack Chisolm** has relocated to Tallahassee, FL . . . **Joel D. DiGangi** is now living in San Diego, CA . . . **Jill De La Hunt** is now with the firm of Sonosky, Chambers, Sachse & Miller . . . **Brian Easton** is now with the Public Defender Agency in Bethel . . . while **Robert A. Evans** is working with the Office of the Governor in Juneau . . . **Brian J. Farney** has relocated to Bellevue, WA . . . and **Andrew Lambert** is now with the Anchorage Municipal Prosecutor's Office.

Louise Ma, formerly with OPA, is now with Khourie and Crew in San Francisco, CA . . . **Peter Mysing,** formerly of Homer, is now living in Kenai . . . **Jeffrey Sauer,** who was with the Public Defender Agency in Sitka, is now with that office in Ketchikan . . . **Cameron Sharick** has joined the law firm of Preston, Thorgrimson, Ellis & Holman . . . **Thomas Slagle,** formerly of the Department of Law, is now with Robertson, Monagle & Eastaugh in Juneau . . . **Richard D. Thaler,** formerly of Hughes, Thorsness, et. al., is now with Giannini and Associates . . . and **Michael N. White,** formerly a District Court judge, is now with Preston, Thorgrimson, et. al. . . .

Alan L. Schmitt has left Alaska Legal Services Corporation to join the firm of Jamin, Ebell, Bolger and Gentry in Kodiak . . . **James T. Mulhall,** formerly with Birch, Horton, et. al. in Fairbanks, is now with the Fairbanks City Attorney's Office . . . **Nancy J. Honhorst** has relocated to Homer. . . **Vernon D. Forbes** recently went on retired status as a member of the Alaska Bar. Mr. Forbes, who now lives in California, was a District Judge for the Territory of Alaska from 1954–1960 . . . and **Stephanie Cole,** Deputy Administrative Director for the Alaska Court System, is a graduate student in the Master of Fine Arts Program in Creative Writing at UAA. She recently presented her composition "Gardens" as part of UAA's Tuesday Arts Forum . . .

Deborah Medlar got her tax degree from NYU and she's now teaching at Central Washington University in Washington State. She and her husband have an adopted 4-year-old Thai daughter, Allison, and they are awaiting the arrival of their son from Thailand . . . Rebecca Wolverton, daughter of **Michael** and Katie, was born February 6, 1987 . . . **Judge Elaine Andrews** and **Roger DuBrock** had a 6 lb., 14 oz. boy, Russell Charles Andrews DuBrock on March 17 . . . and **Jack** and Barbara **Clark** had a 10 lb. boy, Wade Eric . . .

Brown appointed

The Alaska Judicial Council that it has appointed Harold M. Brown to serve as the Council's Executive Director. Mr. Brown was employed as the state's Attorney General until December 1, 1986. He will begin work on April 20.

The position was left open when the former director, Francis L. Bremson, was appointed to serve as Circuit Executive for the Ninth Circuit Federal Courts. Twenty-seven attorneys applied to fill the position, and seven were interviewed by the Council.

Brown graduated from Boston University Law School in 1968. He has worked as the District Attorney in Ketchikan and was in private practice in Ketchikan for 11 years with the firm that is now Ziegler, Cloudy, King and Peterson. He was also President of the Alaska Bar Association for the 1984–1985 term.

The Judicial Council is a constitutionally-created agency mandated to nominate candidates to the governor for judicial appointment under a merit selection system. The Council also evaluates judges who stand for retention election and publishes its evaluations in the media and the Lt. Governor's Official Election pamphlet. Recent research conducted by the Council includes a report on investigative grand juries and a study of presumptive sentencing. The Council is composed of three non-attorney members with the Chief Justice serving as Chairman *ex officio.*

Ed. note: See grand jury study elsewhere in this Bar Rag issue.

Greene heads Hiscock & Barclay

Hiscock & Barclay, a Syracuse, New York law firm, announced April 17 that William A. Greene, a long-time Anchorage, Alaska attorney, has joined the firm as partner-in-charge of its newly established West Coast Operations with an office in Anchorage, Alaska and one scheduled for Seattle, Washington, according to Ferdinand Picardi, Managing Partner of the firm. The firm expects to open its Seattle, Washington office in early summer.

A graduate of Denison University, Granville, Ohio and the Ohio State University College of Law, Greene has practiced law in Alaska since 1967. Beginning in 1974 with the organization of Alaska Pacific Bank, the first of its subsidiaries, Greene continues to act as counsel and Corporate Secretary to Key Bancshares of Alaska, Inc., Key Pacific Bancorp and their bank and other financial service subsidiaries.

Hiscock & Barclay is the oldest law firm in Syracuse, New York with other offices in Augusta and Portland, Maine; Orlando, Florida; and Albany, Buffalo and Watertown, New York.

Farewell to Mrs. Goodfellow

Members of Alaska's legal community can breathe a little easier. The lady who knows where the skeletons are buried has retired. Who took documents from a court file back to his office where his secretary "inadvertently" destroyed them because he decided he didn't want them in the file? Who took a court file to his office after adamantly being told he could not do so, then when caught in the act, flippantly told the clerk, "So go tell the Presiding Judge," and as she started down the hall to do just that, called her back, apologized and returned the file? Goldeen Goodfellow's last day at work was May 15.

The court system has been paying Goldeen to be something called the Assistant Area Court Administrator and Clerk of Court since 1980, but everyone in the court building knows she's been far more than that. As the *Anchorage Times* once observed, she kept her "fingers on the pulse and her eyes on its purse." If you're an attorney in Southcentral Alaska, the chances are almost 100 per cent that she's followed your paper trail.

She's also the lady who made front page news six years ago by leading a crew of court employees out to the city dump to recover some files that had been accidently discarded. This is the woman who has been known to physically stop very large and very determined men from leaving the courthouse with unauthorized documents.

Goodfellow started her legal career as secretary to George Hayes and the late Chief Justice George Boney, and with the advent of Statehood in 1959, was instrumental in setting up the State of Alaska District Attorney's office in Anchorage. In 1962 the Attorney General transferred her to Juneau to be his secretary.

Goldeen Goodfellow

Her first job with the court system was in 1966 as secretary to the late Justice John Dimond. Three years later she returned to Anchorage to become secretary to the Administrative Director of Courts. A year later she became Chief Deputy Clerk and special assistant to the Area Court Administrator for the Third District.

After four years of "retirement" in Nebraska, she and her husband, former State Trooper Jim Goodfellow, returned to Anchorage. In 1980 she captured a job she had long wanted — Clerk of Court. Her administrative responsibilities have included civil, criminal, small claims, traffic proceedings, as well as special projects, budget preparation, and assistant to the Area Court Administrator. She is very proud of her many years of service to the court system and has been nostalgic when talking of leaving her many friends and co-workers.

Goodfellow is a determined Wisconsin Dane. She graduated from Colfax High School in Wisconsin, later completed two Associate of Arts Degrees, one in Office Administration and one in Accounting at Anchorage Community College, and finally a Bachelor of Business Administration at the University of Anchorage in Anchorage. She is also a Fellow of the Institute for Court Management.

Goldeen has been very active in court and community events, also. She played a key role in the consolidation of the District and Superior Courts. She has been on the Alaska Court System Forms Committee, working to unify forms statewide. She also worked on the Management Committee under the direction of the Personnel Director, evaluating facts for a personnel classification study. And she was on the Policy Committee for installation of computerization of the Anchorage trial courts.

She participated in RSVP (Rural Student Vocation Program) for many years and also Youth in Government Day, sponsored by the Elks Club. In high demand as a committee and board member, she served on the Advisory Council of the Institute for Court Management and the Advisory Council of Alaska Business College. She attained her Certified Professional Secretary rating in 1966 and is past president of Anchorage Legal Secretaries Association and of Billikin Chapter of Professional Secretaries International. She is also a member of Cook Inlet Club of Soroptimist International and active in her church.

Goodfellow and her husband are thinking about heading for a relaxed life in a house they purchased recently in Prairie Farm, Wisconsin, where there's not even a Dairy Queen or a movie theatre, leaving behind two sons, Rick Goodfellow and Darrell Rude, their wives, two grandchildren, and the entire Alaska Court System to miss them on their departure.

Cowper names Savell to Fairbanks bench

Gov. Steve Cowper April 28 announced the selection of private attorney **Richard D. Savell** as a new Fairbanks superior court judge.

Savell, 50, is a 15-year Fairbanks resident who replaces recently retired Judge Gerald Van Hoomissen in the Fourth Judicial District.

Savell was one of three Fairbanks lawyers nominated by the Alaska Judicial Council to the vacancy. The others were Rebecca Snow and Christopher Zimmerman.

"All three candidates are eminently qualified for the job and the selection was not an easy one," Cowper said. "Dick Savell is an outstanding lawyer with excellent credentials, a broad range of experience and a long history in Fairbanks."

Savell has practiced law in Fairbanks since 1972 including civil and criminal work with an emphasis on commercial law. He holds a J.D. degree from Columbia University School of Law.

Savell is secretary of the Alaska Bar Association, president of the Tanana Valley Bar Association, board member of the Alaska Legal Services Corp., member of the American Civil Liberties Union, Women in Crisis-Counseling and Assistance, Fairbanks Symphony Association and the Fairbanks Drama Association.

Savell served as a clerk-reporter under Alaska Supreme Court Justice Jay Rabinowitz in 1973 and since has practiced with various Fairbanks lawyers, including Charles Cole, Elaine Bulley and Gail Ballou.

He and his wife Margo have two children. He will be paid $88,128 annually.

— Press release, Office of the Governor

Palmer District Court applicants

Five apply for Palmer district seat

Five attorneys have applied to the Alaska Judicial Council for the new position of District Court Judge in Palmer. The judgeship is currently filled by an Acting District Judge.

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

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

The bar survey was distributed April 27, 1987 and the survey results will be made public in June, 1987. Interviews with selected candidates are tentatively scheduled to be held in Palmer on June 29. The Governor will then have 45 days to make an appointment from the Council's list of nominees.

Candidates for the seat are:

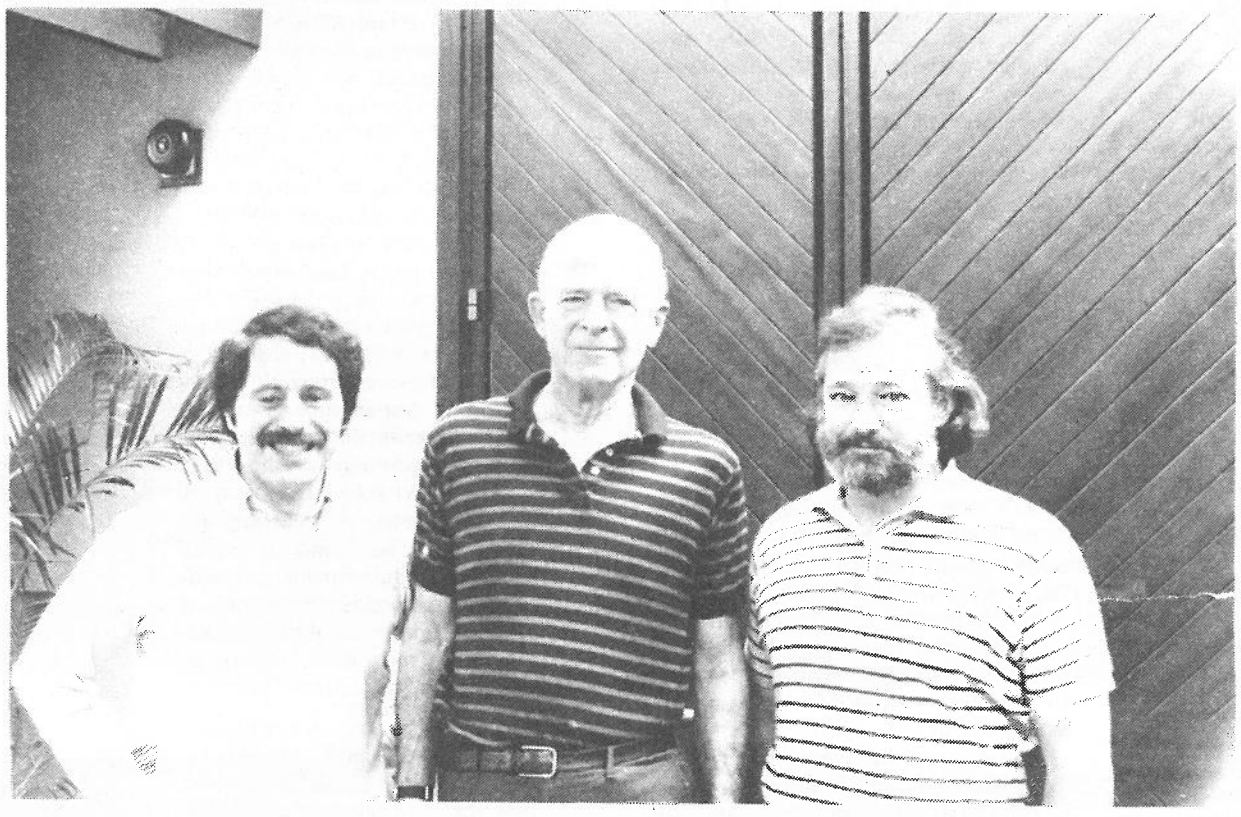
Peter G. Ashman: Ashman is 34 years old, an Alaska resident for 6 years and engaged in the active practice of law for 9 years. He is a graduate of the University of Virginia School of Law. He is currently Acting District Court Judge in Palmer.

Dennis Patrick Cummings: Cummings is 40 years old, an Alaska resident for 20 years and engaged in the active practice of law for 5 years. He is a graduate of Gonzaga University School of Law, Spokane, Washington. He is an Assistant Municipal Prosecutor in Anchorage.

John Thomas Maltas: Maltas is 40 years old, an Alaska resident for 5 years and engaged in the active practice of law for 4 years. He is a graduate of Temple University School of Law. He is an Assistant Municipal Prosecutor in Anchorage.

Daniel Weber: Weber is 39 years old, an Alaska resident for 6 years and engaged in the active practice of law for 5 years. He is a graduate of Boalt Hall School of Law, University of California at Berkeley. He is in private practice in Anchorage.

Mark I. Wood: Wood is 39 years old, an Alaska resident for 27 years and engaged in the active practice of law for 11 years. He is a graduate of Cornell Law School. He is an Assistant District Attorney in Fairbanks.



David Mannheimer, Archibald Cox, and Robert H. Wagstaff (left to right) speak at Appellate Advocacy seminar in Kauai, March 9-15, 1986.

If you know of news of members of the Alaska Bar (both in and out of state), we'd like to hear about it. Send your items to the "People" column in care of the Alaska Bar Association office.

In what's believed to be the largest law-firm merger thus far in Alaska, Smith, Gruening, Brecht, Evans and Spitzfaden has merged with Wohlforth & Flint & Associates.

The merger took effect March 2. The new firm will have nine partners. Clark Gruening and Robert Spitzfaden will operate from the firm's Juneau offices. Robert Flint, Eric Wohlforth, Julius Brecht, Peter Argetsinger, Robert M. Johnson, Charles Evans and Kenneth Vassar will head the Anchorage office. Serving as "of counsel" will be Richard Garnett III, former Anchorage municipal attorney, and former Supreme Court Justice Roger G. Connor.

Posing here in their sun-streaked Anchorage downtown offices are (left to right) Wohlforth, Flint, Argetsinger, Brecht, Johnson, Evans and Vassar.

Photo courtesy of Imre Nemeth, Alaska Journal of Commerce

After Sheffield proceedings

Council recommends changes

The Investigative Grand Jury in Alaska
Executive Summary
and Recommendations

On August 5, 1985, following the conclusion of its deliberations into the matter of issuing articles of impeachment against Governor William J. Sheffield, as had been recommended by a Juneau grand jury, the Alaska Senate adopted S. Res. 5 am calling upon the Alaska Judicial Council to "study use of the power of the grand jury to investigate and make recommendations . . ." and ". . . to consider a possible amendment to the State Constitution." In response to that request the Judicial Council identified the weaknesses of the existing system. The Council looked to alternatives adopted by other jurisdictions and recommendations of national organizations.

Although the Council initially considered addressing the full scope of grand jury activities, the focus of the study was ultimately limited to the grand jury's investigative function and its power to issue investigative reports. The Council's recommendations for improving the existing system (in the form of a proposed Criminal Rule re: Grand Jury Reports) were based on the belief that the grand jury's broad grant of investigative authority in the Alaska Constitution should be preserved. However, this provision should be read together with the due process and privacy provisions of the Constitution.

Art. I, § 8 of the Alaska Constitution states:

> "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."

"Public welfare or safety" has been interpreted very broadly and includes concerns with public order, health, or morals. *Black's Law Dictionary* defines general welfare as "the government's concern for the health, peace, morals, and safety of its citizens." "Suspend" is defined in case law and by *Black's* as "to cause to cease for a time; to postpone; to stay, delay or hinder." In other words, the Alaska Constitution gives grand juries the power to investigate into and make recommendations addressing virtually anything of public concern. This broad general power can never be hindered or delayed.

Just as grand juries in Alaska are constitutionally empowered to investigate any matter of public concern, so are they free to report on their findings. Indeed, there is no law in Alaska preventing grand jury reports from naming names, recommending referral to government or private agencies or alleging indictable conduct. As a result, individuals named or referred to in reports may be deprived of basic constitutional rights and protections. While a constitutional amendment restricting the grand jury's investigative powers could reduce these problems, an amendment would substantially alter the role of the grand jury envisioned by the delegates of the Alaska Constitutional convention.

While safeguards are needed, the grand jury, as a citizen's body, serves a valuable function in its investigative role. A proper balance between the grand jury's reporting power and other constitutionally-protected rights of individuals can be achieved through the development of procedures that provide: (a) due process protections for individuals named or referred to in reports; (b) judicial review; and (c) guidelines for the publication and dissemination of reports.

A. Due Process: Protection of Individuals Named or Referred to in Reports.

Basic fairness and constitutional due process require that persons identified in grand jury reports be provided with certain protections not currently specified by Alaska law. Unindicted individuals named in at least three Alaska grand jury investigative reports lacked a forum or mechanism through which to respond to those criticisms.

The Judicial Council recommends the following:

If the report reflects adversely on a person who is named in the report or whose identity can be determined in the report: (1) that the report be supported by substantial evidence, (2) that it be related to the public welfare or safety and (3) that it not infringe upon any protected rights or liberties of that person.

B. Judicial Review

No guidelines, statutes or case law presently exist in Alaska to provide standards for judicial review of grand jury reports. Other than the constitutional requirement that the report address some aspect of "the public welfare or safety," judges have no additional guidance in reviewing the subject matter of reports or the circumstances under which a report should be issued.

The Judicial Council recommends the following procedures for judicial review of grand jury reports:

(1) If the judge determines that part of the report is not supported by substantial evidence, the judge may refer the report back to the grand jury with instructions.

(2) The judge may also return the report to the grand jury if any part of the report is not reasonably related to the public welfare or safety, unlawfully infringes on any protected rights or liberties, or otherwise violates any law.

(3) In addition, a person identified in a report may move for a hearing. At the close of the hearing the judge determines whether the report is supported by clear and convincing evidence.

(4) Any action taken by the reviewing judge is also subject to review under the rules of appellate procedure and any aggrieved person, the state or the grand jury may seek review.

C. Publication and Dissemination of Reports

The Judicial Council recommends that after a report has been approved for release it be made public. A report shall not be made public by any person except the presiding judge. In addition, the judge may direct that additional materials be attached to the report as an appendix.

The above recommendations could be implemented either by legislation or court rule. The material which follows is a draft criminal rule and commentary which the supreme court may wish to consider for adoption.

Proposed Criminal Rule 6.1
Grand Jury Reports

6.1 Grand Jury Reports

a. Authority of the grand jury to make reports.

(1) The grand jury shall have the power to investigate and make reports and recommendations concerning the public welfare or safety.

(2) Grand jury reports may include allegations of criminal conduct.

(3) A report shall be made only upon the concurrence of a majority of the total number of grand jurors and shall be signed by the foreman.

(4) An indictment is not a "report" under these rules.

b. Examination by presiding judge: reference back.

The grand jury shall present its proposed report to the presiding judge. At the earliest possible time before the grand jury is discharged, the judge shall examine the report and the record of the grand jury. The judge may order production of audio copies or transcripts of the grand jury proceedings and may request the prosecuting attorney to submit a summary of the evidence before the grand jury. The judge shall make specific findings on the record as required by each subsection below.

(1) The judge shall first determine whether the report is within the grand jury's authority. If it is not, the judge shall proceed under subsection (3).

(2) The judge shall then determine if the publication of the report would i) unlawfully infringe upon any protected rights or liberties of any persons, including but not limited to unlawful interference with a person's right of privacy or right to a fair trial in a pending criminal proceeding or ii) otherwise violate any law.

(3) If the judge determines that the report is not within the grand jury's authority under subsection (1) or that publication of the report would be unlawful under subsection (2), the judge shall return the report to the grand jury. The judge shall advise the grand jury of the reasons for returning the report. The grand jury may then conduct further proceedings, may revise the report, or may seek review of the decision not to release the report, as provided in section (e).

c. Proceedings when report reflects adversely on identifiable person. Notwithstanding a determination that the requirements of section (b) are satisfied, the judge shall determine whether any part of the report may reflect adversely on any person who is named or is otherwise identified in the report. "Person" includes a natural person, organization or agency. The judge shall then determine from a further review of the record if the part of the report under review is supported by substantial evidence. If the judge determines the report to be unsupported by substantial evidence, he shall return the report to the grand jury suggesting specific changes which would permit publication of the report.

If the judge finds that the part of the report under review is supported by substantial evidence, the judge shall proceed as follows:

(1) The judge shall order that a copy of the report be served on each such person. Such persons shall be advised of the rights provided in this section.

(2) Each such person may, within ten days of service of a copy of the report, move for a hearing. For calendaring purposes, the hearing shall have priority over all other non-criminal matters. The hearing shall be *in camera* and shall be recorded.

(3) Each person requesting a hearing shall be given a reasonable period of time prior to the hearing to examine the grand jury report and the record of the grand jury proceedings.

(4) At the hearing, the person may be represented by counsel, may call and examine witnesses who testified before the grand jury, and may present additional evidence that may explain or contradict the evidence presented to the grand jury. The prosecuting attorney may be present at the hearing and may examine witnesses called.

(5) At the close of the hearing, the judge shall determine whether that part of the report reflecting adversely upon a person named in the report is supported by clear and convincing evidence. If the judge finds that it is not, he shall return the report to the grand jury and shall advise the grand jury of the reasons for returning the report. The grand jury may then conduct further proceedings, may revise the report, or may seek review of the decision not to release the report, as provided in section (e).

d. Release of the report; secrecy.

(1) No person may disclose the contents of the report or any matters revealed in an *in camera* hearing except as permitted by the judge, who shall withhold publication of the report until the expiration of the time for the making of a motion for a hearing by a person under subsection (c). If such motion is made, publication shall be withheld pending determination of the motion. Publication shall also be withheld pending any review under section (e).

(2) The judge may order the report released only after complying with the procedures of sections (b) and (c). The judge, in his discretion, may order that additional materials be attached to the report as an appendix as requested by the person or persons entitled to a hearing under section (c). The report and appendices, if any, shall then be filed with the clerk of the court and be available for public inspection. The judge may further direct that copies of the report be sent to those public agencies or officials who may be concerned with the subject matter of the report as well as any other persons as may reasonably be requested by the grand jury.

e. Review.

(1) Any judicial determination under this rule is subject to review by the supreme court under the rules of appellate procedure.

(2) Any aggrieved person, the state or the reporting grand jury by majority vote may seek review.

(3) The grand jury shall be permitted access to the record of the *in camera* hearing to assist it in determining whether to pursue appellate review. The grand jury shall at all times maintain the confidentiality of the record. The grand jury may request that it be represented by the attorney general in pursuing review under this subsection.

Continued on page 17

to state grand jury system

Continued from page 16

Commentary to Proposed Criminal Rule 6.1 Grand Jury Reports

6.1 Grand Jury Reports.

The purpose of Criminal Rule 6.1 is to set out procedures relating to the grand jury's investigative reporting powers, including the instance where a report reflects adversely upon an individual. It does not address proceedings before the grand jury itself, which are covered in Rule 6. The rule establishes the superior court as the forum for a person to object to the publication of a report if it reflects adversely upon him. In this respect, its purpose is generally analogous to the protections afforded to an indicted defendant.

a. Authority of the grand jury to make reports.

Subsection (1) is based upon Article 1, Sec. 8 of the Alaska Constitution. The only significant difference between the language in the constitutional provision and that in the rule is that the rule refers to "reports," while the constitutional provision does not. The drafters of the rule believed that the power to report is included in the power to make recommendations concerning the public welfare or safety.

The grand jury is not prohibited by law from issuing reports in lieu of indictments [(a)(2)]. It remains unclear whether reports may accompany indictments. This rule is structured to allow a report to be issued where there may be evidence that a crime has been committed as long as the report does not interfere with an individual's right to a fair trial (see subsection (b)(2) below).

b. Examination by presiding judge; reference back.

This rule requires an explicit finding by the presiding judge that a report is within the grand jury's authority. Publication is not automatically precluded where there is evidence that a crime may have been committed [(b)(1)], but publication may be withheld if publication could interfere with the right of an individual to a fair trial in a pending criminal proceeding [(b)(2)(i)]. "Pending" includes both proceedings following the filing of criminal charges in any court and grand jury proceedings in which return of an indictment against identified persons is under active consideration.

The judge may also withhold publication if the report unlawfully infringes on any person's constitutionally protected right of privacy [(b)(2)(i)]. A judge may also prevent publication of a report containing information which would be unlawful to publish. For example, release of a report that reveals government secrets protected by law or contains obscene materials [(b)(2)(ii)] could be prevented.

When the judge makes a finding that any part of the report is unacceptable for publication, the judge returns the entire report to the grand jury with reasons for returning the report [(b)(3)]. The grand jury may, at that time, conduct further proceedings, revise the report, or seek appellate review of the judge's decision. These procedures allow the judge to review the report's legal sufficiency while the grand jury retains final authority over the report's content. Judicial determinations under this section can be made at any time prior to publication of the report; the judge need not delay conducting an evidentiary hearing under section (c) pending the completion of any other determination under this section.

c. Proceedings when report reflects adversely on idenfiable person.

Where the report reflects adversely upon a named or otherwise identifiable person, the judge must make a determination under this provision, even if he has concluded that publication of the report would not unlawfully infringe upon any protected rights or liberties of any person. The purpose behind this section is two-fold: first, to prevent publication of a report that is not supported by substantial evidence; and second, to afford a person upon whom the report reflects adversely an opportunity to object to the release of the report on the grounds set out in the rule.

Whenever a report reflects adversely on an identifiable person, that person is entitled to review the report and request a hearing before the judge [(c)(1-2)]. The hearing would be held *in camera* to protect both the secrecy of the grand jury proceedings and the privacy of the adversely affected individual [(c)(2)]. The adversely affected person may have an attorney at the hearing, may call witnesses who appeared before the grand jury and may present additional evidence, both written and oral, but only to explain or contradict the evidence presented to the grand jury [(c)(4)]. Although the prosecuting attorney may also be present at the hearing, his role is limited to examining the witnesses called. The purpose of the hearing is to assess the sufficiency of the evidence upon which the grand jury's conclusions were based, not to determine liability in the matter under consideration.

The goal of the hearing is to provide a mechanism for identifiable individuals to respond to reports. The person identified in the report often has not had the chance to participate in the grand jury proceedings and has not had the opportunity to present his or her story. The hearing is conducted for a limited purpose: to create a forum for response and rebuttal.

Although the allegations in the report may be found to be supported by substantial evidence, evidence of allegations adverse to identified individuals must be found at this hearing to be clear and convincing [(c)(5)]. The "clear and convincing" test reflects the Council's position that the standard for publication should be relatively high where individuals may be adversely affected.

d. Release of the report; secrecy.

A report may not be released except upon order of the court. The report is to be treated as a single document and may not be released in parts [(d)(1)]. The rule does not permit release of a report by fewer than a majority of the grand jury since the constitution contemplates action by the grand jury as a body. The rule does allow the judge, in his discretion, to attach additional materials to the report if requested by a person who has the right to a hearing under the rule [(d)(2)].

e. Review.

Any of the judge's decisions under the recommended procedures are subject to review by the supreme court. The provision for review by the supreme court reflects the need for appellate jurisdiction over both the civil and criminal aspects of the proceedings. The grand jury, the state, or any person who might be adversely affected by the judge's ruling has the right to seek review. Most often, the adversely affected individuals will be those individuals who were entitled to a hearing under section c. The grand jury was given the right to seek review to avoid potential abuse of judicial discretion. Whether and how such appeals should be expedited should be considered by the Supreme Court's Criminal Rules and Appellate Rules Committee.

This rule does not give standing to an individual grand juror or any number fewer than a majority to seek review of the superior court's action since the constitution contemplates action by the grand jury as a body. The grand jury should be represented by counsel in any appeal. Counsel may be provided by the attorney general or the grand jury may choose to be represented by other counsel. Any representation by the Department of Law would be subject to the discretion of the attorney general.

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272-1610

New transcript rule a potential timebomb

By Lynda Batchelor

On December 15, 1986, two significant changes to the civil rules governing the taking of depositions in Alaska went into effect. They concern the filing of original deposition transcripts with attorneys instead of the court, and allowing the taking of either audio or audio-visual depositions by an interested party rather than a court reporter.

Now, more than four months later, there is still a great deal of confusion regarding:

- what attorneys are supposed to do with original transcripts;
- what happens if one is lost;
- whether transcripts have to remain sealed;
- what to do if alterations or omissions are suspected;
- whose recording or transcript in multi-party litigation is the "official record";
- what procedures are to be followed for a witness to verify the integrity of an attorney-recorded tape; and
- a host of other related questions that are simply not addressed under the rules changes.

The changes to Civil Rule 30(f)(1) and the addition of Rule 30.1 have taken most Alaskan attorneys by surprise. There was a forewarning, however, in May of 1984 when the Court Rules Attorney for the Supreme Court circulated a draft of the proposed Civil Rule 30.1 entitled "Audio and Audio-Visual Depositions" for comment. A few suggestions and comments were received from attorneys, court reporters and other interested persons and the matter lay dormant for two years.

On Aug. 25, 1986, a memorandum was circulated advising that Supreme Court Orders 731 and 734 (among others) would go into effect on Dec. 15, 1986.

The thrust of SCO 731 was to require the filing of original deposition transcripts with the attorney ordering the transcript rather than the court.

SCO 734 contained the text of Rule 30.1, taken unchanged from the 1984 draft. The arbitrary adoption of these significant rules changes by the Supreme Court has caused much consternation in the legal community. The Court Rules Attorney received requests for a stay of the implementation date pending further study from the Ketchikan, Juneau and Anchorage Bar Associations, the Alaska Bar Association's Board of Governors, the Civil Rules Committee of the Supreme Court, the Alaska Court Reporters Association, plus members of the Alaska State Legislature.

Despite this unprecedented and overwhelming response, nevertheless, the Supreme Court nevertheless denied the request for a stay of the implementation date and the rules changes went into effect on Dec. 15, 1986.

The Court Rules Attorney, however, issued a clarifying memorandum on the use of Rule 30.1, specifying that it was not the Supreme Court's intent it be used in "all or even most (deposition) situations."

This four-page discussion was sent to attorneys on Nov. 25, 1986 together with a summary of all rules changes to become effective Dec. 15, 1986. Court Rules Attorney William T. Cotton outlined some of the many pitfalls if Rule 30.1 was used improperly. He also noted that this rule was not to be considered in its final form, and that comments and/or suggestions were welcome. The Supreme Court has requested that a survey be conducted after a six-month trial period, to solicit opinions from the legal community regarding modifications or clarifications to Rule 30.1.

The changes

As this is an area still unfamiliar to many attorneys, a discussion of what the actual rules changes are and how they came about would seem to be in order.

SCO 731 requires original deposition transcripts to be filed with the "party who requested that the deposition be transcribed," regardless of which attorney actually noticed up or took the deposition. Attorneys are required to maintain the original transcripts in their offices until they are used in court proceedings, at which time they are to be filed with the court.

"With the addition of 30.1 to the Civil Rules, new areas of litigation have been opened up."

Problems developed almost immediately when attorneys began being flooded with envelopes labeled, **"Original. Do not break seal."** Questions of storage, identification and retrieval in years hence began to arise. In some cases, there were questions regarding which was an original transcript and which was a copy. What happened if a sealed original was mistakenly opened by a secretary? What sanctions could be invoked if an original transcript was altered or lost?

SCO 734 authorizes the recording, by either audio or audio-visual means, of deposition proceedings by a party without the presence of a court reporter and without the consent of other parties involved in the case. There is a requirement, however, that the other parties be notified in advance that the **"deposition will be recorded by audio or audio-visual means."** Also, there is a specified procedure to be followed when taking Rule 30.1 depositions.

In his "Summary of Rules Changes Included in December 15, 1986 Supplement" sent to attorneys on Nov. 25, 1986, Cotton identified the two reasons why Rule 30.1 is being given a "trial run." The first is to liberalize the use of video depositions by making them easier to take, i.e., without the prior consent of the court. The second is to permit, in certain limited circumstances, the taking of audio or audio-visual depositions without the presence of a court reporter and without the consent of opposing parties. The "limited circumstances" identified by the Supreme Court are situations when the cost savings anticipated by not having a court reporter present offset the potential for an inadequate or unusable transcript, should one be required. These situations include depositions taken in small or medium-sized cases in rural areas where no court reporter is present, documents depositions and "investigative interviews" where information from subpoenaed witnesses is needed to develop a case, but a lengthy transcript may not be needed for trial.

The problems

Even in these limited situations, there are a number of problems which may develop when a court reporter is not used to preserve the record. It is inconvenient and time-consuming for an attorney to set up, test and monitor recording equipment. The charges for this additional time, either by the attorney or his staff, are not recoverable as costs under Civil Rule 79, whereas charges by a court reporter are.

It is also very distracting when conducting an examination to follow the procedures set forth in Rule 30.1(c)(1), such as identifying counsel, swearing the witness, stating stipulations, announcing the beginning and endings of tapes, and indexing by a "brief written log" the beginning of direct examination, cross-examination, and so forth.

Another potential problem is that most attorneys have neither the experience nor the multi-channel recording equipment to ensure a high-quality audio recording suitable for accurate transcription, free from the annoying (and often disastrous) "inaudible" and "indiscernible" notations that frequently sprinkle transcripts made from audio recordings. Incorrectly identifying speakers is another common problem in transcriptions from audio-only recordings.

The greatest potential problem, however, presented in taking Rule 30.1 depositions is the probability of increased litigation costs. The ONLY situation in which not hiring a court reporter could save money is one where no transcript is ever needed. Then the attorney would save the approximately $30-per-hour attendance fee. This cost savings would more than likely be offset, however, by the increase in attorney time, and therefore charges, required to perform the recording services. Since attorneys generally charge $100–$150 per hour, any cost savings in this area appears fairly unlikely unless travel expenses are also involved.

The real potential for cost escalation arises when an attorney needs a transcript prepared from tapes he or she recorded. This can be a "time bomb" situation, depending on the audio quality of the recording. The quality may be good, fair, poor, or even nonexistent. The latter discovery may be cause in itself for retaking of depositions, motions for new trials or continuances or additional appellate issues. The cost of having a transcript prepared from attorney-recorded tapes can be another unpleasant surprise. It can range anywhere from 25 to 100 percent higher than a court reporter's normal transcript rates. Because of the additional time needed to prepare a transcript from attorney-recorded tapes, transcripts will frequently have to be ordered on an "expedited" basis, thus increasing the overall cost again.

There are other potentially troublesome situations which may arise under Rule 30.1. Opposing attorneys not wishing to rely on each other's recordings may opt to make their own recordings or hire their own court reporters. In multi-party litigation, there could be several tape recorders and/or court reporters making simultaneous "records." Which recording and/or transcription would constitute the "official record"? The Civil Rules are of limited assistance in answering that question.

Which is "official?"

Under Rule 30.1, it is the tape recording and not any transcription made therefrom which would be considered the official record of the deposition. However, when a court reporter is present, Rule 30 provides that their transcript would be the official record. So it is conceivable that there could be more than one official record, and it would undoubtedly be up to a judge to sort it out if there were significant discrepancies between them.

An additional point of concern is the fact that signature and/or corrections by the deponent is a subject simply not addressed under Rule 30.1. The rule provides that the original tape recording is the official record, and it is to be retained by the attorney noticing the deposition until its use in the lawsuit. There is no provision whatsoever for verification of its accuracy by the witness before submission to the court. If parts of the audio recording are inaudible or missing, it is questionable to what extent such a recording could be used for impeachment purposes at trial.

Another potential difficulty lies in the attorney's being able to locate taped depositions when cases go to trial months or years after the original recording. Also, magnetic tapes require special storage conditions away from heat, cold, dust and magnetic interference to ensure their integrity. Even static electricity can accidentally erase magnetic tapes!

With the addition of 30.1 to the Civil Rules, new areas of litigation have been opened up. Loss of original recordings or damage thereto will almost certainly result in additional litigation or motion practice. Sanctions may be sought against attorneys who delete, either intentionally or unintentionally, or otherwise alter critical portions of testimony contained on original tapes in their custody. Additionally, there is some opportunity for abuse of these new rules which could produce further litigation.

Continued on page 23

• Staff of two protects court from 9–5

Continued from page 1

Theoretically, troopers could be on the scene of trouble in seconds. You may doubt the accuracy of that theory if you've ever waited for an elevator to the third or fourth floors of the Anchorage courthouse.

Of course, even the third floor buzzer system can be avoided by going directly to a particular judge's courtroom when he or she is on the Bench. After all, when is the last time you saw a bailiff in an Anchorage court room? But there, too, court personnel have access to troopers via the alarm system.

The Anchorage courthouse does have its own security staff. It is comprised of Security Chief Frank Garfield and Security Officer Ira Ryan. Those two men, not Alaska State Troopers or Anchorage police officers, are primarily responsible for the courthouse safety of 23 judges and hundreds of court employees.

Despite the relatively low key approach to courthouse security, neither Chief Garfield nor Administrative Director Art Snowden is overly concerned about the situation. They both agree that if a wayward individual is bent on doing harm to court personnel, an attack more likely would occur outside the courthouse where interference from law enforcement personnel would be less likely. Although the security staff consists of only two people, prisoner transport and in-court appearances require the routine presence of numerous law enforcement officers.

Chief Garfield reserves his greatest concern for acts of spontaneous violence that may arise during domestic violence proceedings or actions on behalf of children in need of aid. Thus, Chief Garfield tries to be present in the courtroom during all domestic violence cases where the petitioner, almost always a woman, seeks protection from an abusive spouse. He occasionally has had to intervene between the parties, both in and out of the courtroom. Chief Garfield fears the frustration and anger of a demonstrably violent man may erupt into attacks on court personnel as well as a party opponent when the man suddenly finds himself prevented from returning to his own home or contacting in any way his wife and children.

To reduce the possibility of such occurrences, Chief Garfield has undertaken a bit of informal counseling with men against whom domestic violence petitions are filed. Prior to hearings on petitions to restrain allegedly abusive husbands or fathers from further contact with their victims, Chief Garfield invites the respondent to his office for a brief chat. There, he explains the possible outcome of the proceedings, and advises the men that continued abuse or violations of court orders will not benefit either party. Chief Garfield thinks his efforts may be helping, since he notes a decrease in the number of in-court altercations, as well as a reduction in incidents outside the courtroom doors.

Still, things are not easy for the understaffed security crew. Officer Ryan generally is stationed in the area of the district courtrooms where numerous criminal proceedings take place. Chief Garfield most often keeps to the area of the superior courtrooms. Sometimes a domestic violence proceeding will be taking place in one courtroom, while another court is hearing a proceeding by the state on behalf of a child in need of aid. In those situations, Chief Garfield necessarily makes choices as to where his services most likely will be needed. Only in extremely volatile situations to which Chief Garfield cannot personally attend due to an equally volatile situation elsewhere does he call for a trooper to actually be present at civil proceedings. Chief Garfield recognizes that troopers, too, are shorthanded in these times of tight funding. When Chief Garfield feels he should be in a particular courtroom, he can be summoned to another by the beeper he constantly wears.

Another concern brought on by Chief Garfield's manpower shortage is the lack of any security staff whatsoever for night proceedings, generally arraignments, conducted in the district courtrooms. Chief Garfield likens the situation to an honor system for would-be troublemakers. Since the Troopers are not in their courthouse office after hours, the alarm tied to that office and trooper headquarters is of little practical use. The Anchorage police department provides the most reliable and expeditious source of assistance for security problems occurring at night. Fortunately, the most serious night time difficulties seem to be caused by downtown transients seeking shelter.

Of course, not all of the strange people with whom court security officers come in contact are dangerous — at least not to others. For example, Chief Garfield vividly recalls the woman who filed 17 separate lawsuits against Anchorage and its various officials, including Mayor Tony Knowles. She alleged that city officials were exerting mind control over Anchorage citizens via a mysterious hallucinogen. She also claimed that the only reliable prophylaxis was placement of Vicks Vap-O-Rub into each orifice of the body. Thus, the minimal security concern presented by the woman was further reduced by Chief Garfield's ability to detect her presence by the overwhelming scent of mentholatum.

No doubt Chief Garfield and Officer Ryan wish all potential troublemakers could be so easily identified.

Bar Rag breaches security

Less than two weeks after disallowed evidence was found in the jury deliberation room at the close of the sensational Neil MacKay trial in Fairbanks, two Bar Rag representatives "tested" security in the George S. Boney Memorial Court Building in Anchorage. One was a writer who is not an attorney, member of the bar, or known to court officials or staff. Accompanying the writer was a member of the bar. The following is their report.

It took less than one hour during a mid-afternoon on a Tuesday to "breach" courthouse security at Third Avenue and K Street in Anchorage.

But for a watchperson outside of a jury room door on the fourth floor and a non-uniformed Department of Public Safety escort of a handcuffed prisoner in the main courthouse lobby, little security was in sight.

In Fairbanks, evidence that tainted a jury raised eyebrows statewide. In Anchorage, it's likely just as easy to taint evidence by tampering with it in the office of the clerk. Court files are, for the most part, public record. Any resident may examine case logs and indexes, request the file, be seated at a table among the volumes of files kept, and remove or alter documents with ease . . . if the stakes are high enough to alter the course of justice.

Upstairs, security does not improve.

• On the second floor, home of the District Court, a security lock designed for key-in code entry was not in commission; access to judges' chambers was gained with ease.

• On the third floor, where most Superior Court cases are tried, it's not as simple to gain access to rear corridors that lead to judges' chambers and to the rear doors to courtrooms. The door locks to judges' chambers areas were operating, but entry was easily gained by browsing the calendar for the day, adopting an alias, and dialing a judge's secretary. "I'm here for a pre-trial conference from the office of (law firm noted on calendar)." The door buzzed and access was gained.

• The third floor was the only level where the security lock was operating; even so, access to nonpublic corridors was possible through the rear of courtrooms on the floor, thereby obviating the need to craft a ruse to gain entry through the locks.

• The fourth floor was something else again. There, where the Court of Appeals sits, the security door was not energized (as on the second floor). Several judges' chambers were unattended by staff. Accordion files of evidence were found in a vacant courtroom, unattended by guards, clerks, or staff. Access to courtrooms through rear doors (outside of judges' chambers corridors) was gained with ease (all tested were empty).

• Of all areas in the building, the most secure was found on the fifth floor, where the Supreme Court offices and courtroom are located. The Court was not hearing arguments, so no guards were in evidence. To access the Courts' chambers, one must pass through a locked security door, after having been scheduled for an appointment. Even so, chambers could be entered through the courtrooms.

• Next to the Boney Building, in the District Court annex, free access was even more apparent. Back stairs to judges' chambers were unlocked. Easy access was gained to unattended court mailboxes through back hallways. Access to judges' chambers also was possible through courtrooms. A grand jury was in session, but nothing prevented the courthouse visitor from listening at the door (only muffled sounds were heard; the reporter was not equipped with a listening device).

In the brief hour spent on this cursory pulse-taking of court security, no court official, employee, or staff inquired as to the purpose of the writer's meanderings. Whether because of budget cuts or an early spring day, few outer offices in judges' chamber areas were manned by secretaries or other staff. Other than the one guarded on the fourth floor, no jury or witness rooms were locked or closed to public use; although it is presumed that the rooms, once pressed into service, would be swept for suspicious characters or evidence.

Overall, people in the courthouse were cheerful, cordial and nonsuspicious this Tuesday at 2:30 p.m. In a recent trip to the nation's capital, visitors to the Department of Interior were searched and asked for identification at the front door. Somewhere, there is a middle ground for the protection of the judiciary, the public record, and the process of justice.

No more microfilm

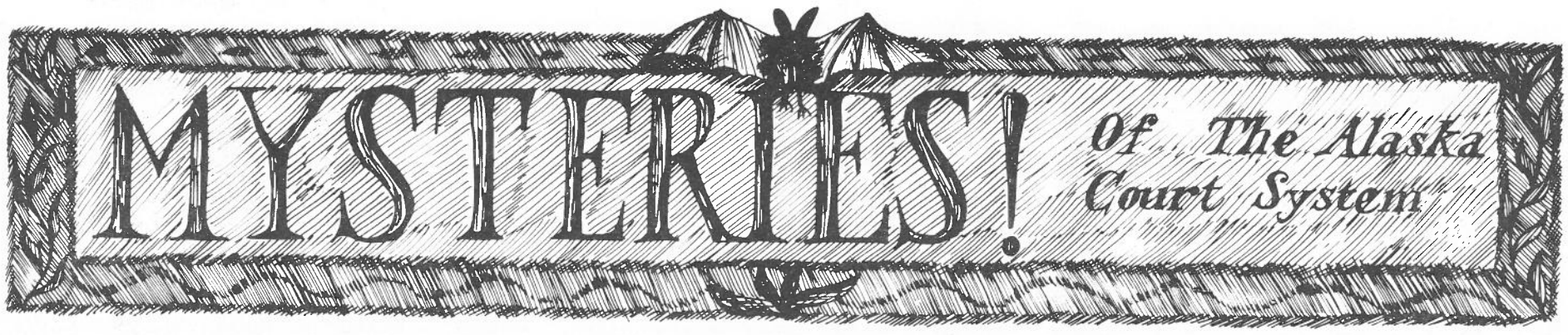
The Bar Rag spoke to Mike Hall of the Alaska Court System concerning the microfilming of pleadings filed with the court.

Starting one year ago, the court system is no longer microfilming pleadings and the court system therefore does not have a duplicate record of all filed documents.

In the interview with the Bar Rag, Mr. Hall explained that there were several reasons for this change in procedure.

First, there was the obvious budgetary concern. Second, it was found that a significant number of documents were not being micofilmed, anyway, due to procedural problems within the court system.

Hall was then asked about the proposed solution to the problem of individuals removing documents from the court file or the court system losing the files and he stated that this subject should be controlled or referred to Art Zahl under the general heading of Better Document Control.



The maze of court rules

By Mickale Carter

The Alaska Supreme Court has instituted changes to ensure access to and uniformity of the procedural rules applied in the various courts throughout the State of Alaska. First, the Alaska Rules of Court are on line to be published in a single soft-bound book which will contain all the rules of court presently printed in an expensive, cumbersome six volume binder format. The goal of publishing the rules in this new format is to provide easier, more convenient access to all the rules of court. The second change has involved local rules.

In the past, local courts could promulgate rules with only local attorneys being aware thereof. In response to this situation, the Alaska Supreme Court established a system with which it could not only monitor the fairness of the local rules, but at the same time compile the local rules so that they could be accessible to all attorneys practicing in the State of Alaska. The local rules are compiled in a notebook called the Judicial Administrative Orders/Local Form Orders Notebook. This compilation is available at all state law libraries.

The Alaska Rules of Court

The upcoming, soft-bound Alaska Rules of Court will include not only the rules but also annotations. It will have an appearance similar to that of the federal rules book published by West Publishing Company. The publisher of the new rules book is Book Publishing Company. West Publishing Company will also publish an Alaska rules of court book formatted similar to its federal rules book. This book, like its federal rules publication, will not include annotations.

The rules publication will be updated every six months with a new edition each year. The Supreme Court will time the effective dates of the rules which it adopts with the publishing dates of the updates and the new editions, says the Court.

Rule 44 of the Administrative Rules, found in Volume IV of the Alaska Rules of Court, sets forth the procedure for changing the Alaska Rules of Court. The person in charge of facilitating the procedure for changing the rules is William Cotton, the Court Rules Attorney. To initiate the procedure, one merely indicates in writing the rule desired to be changed, what changes one thinks ought to be made and why. The rule proposals are made by attorneys, judges and clerks of court.

Upon receipt of the request for change, Cotton starts the process by opening a file. He researches the history of the rule sought to be changed and investigates the corresponding federal rule. The change requested is referred to the appropriate Standing Rules Committee, depending on whether the rule pertains to civil, criminal or appellate litigation. These committees are made up of attorneys and judges. The committee makes recommendations on the proposals. The Committee's recommended change is circulated to the Bar and judges who are given about a month to comment. Cotton then presents a proposal to the Supreme Court. The proposed changed is accompanied by a memo setting forth the history of the rule as well as the reason for the proposed change, the Rules Committee recommendations and copies of all comments. If the Supreme Court adopts the change, the change becomes effective when the next Rule Supplement is published.

Bill Cotton sees his job as making sure that the rules reflect how the Bar actually practices law. After there has been a major change in the rules, Cotton requests feedback, since rules often require fine tuning. For example, Cotton plans to send out requests for comments on the rule change which allowed depositions to be taken without being recorded by a court reporter.

Local Court Rules

In an effort to avoid prejudice and to encourage uniformity in the local rules, the Alaska Supreme Court promulgated Supreme Court Order 663, effective March 15, 1986. That rule, which is Administrative Rule 46 (found at Volume IV of the Alaska Rules of Court), sets forth the procedure by which local rules may be promulgated.

Only the presiding judge of the judicial district has authority to make and promulgate administrative orders. The procedure set forth in Administrative Rule 46(e) requires that the presiding judge file the proposed order with the office of the administrative director. Within 30 days of filing, all orders are reviewed by the office of the administrative director to determine consistency with the uniform rules. If inconsistent or if the rule would result in an unusual fiscal impact, the proposed order is referred to the Supreme Court for review. The Supreme Court may disapprove or modify the orders. Only those orders which have been issued under the authority of Rule 46 are valid as of Jan. 1, 1986, except for orders which consist solely of the appointment or assignment of judicial officers.

All judicial administrative orders promulgated pursuant to Rule 46 are available to the public in a collection known as the Judicial Administrative Orders/Local Form Orders Notebook which are located at the Offices of the Clerks of Court, as well as state law libraries. Pursuant to Rule 46(e)(4), the documents in these notebooks are to be grouped according to appropriate appellate court or judicial district heading.

Cotton says that frequently, the local form orders contain provisions which are in conflict with the Alaska Rules of Court. Because these local form orders thus have the force of changing the uniform rules, the form orders were brought under the ambit of Administrative Rule 46. However, the local form orders are approved with a lesser standard of scrutiny than are the administrative orders. This is because the local form orders, unlike the Administrative Orders, are distributed to all parties in the case, providing all parties with notice requirements.

The Local Form Orders include scheduling orders and omnibus hearing orders. Although these orders are generally consistent among the various judicial districts, each does contain requirements which are unique to that judicial district. When receiving a scheduling order from an unfamiliar district, it would be well worth one's time to read very carefully the requirements set forth in the form order.

An example of this sort of idiosyncrasy is illustrated by comparing the First Judicial District's Scheduling Conference Order with that of the Third Judicial District. In the First Judicial District (Southeastern), counsel must indicate whether the witness will testify live or by deposition on the initial witness list for a civil case. Then, on or before a date designated by the court, counsel must file a list of witnesses which were previously listed whom counsel no longer intends to call at trial. Opposing counsel then has 10 days after this notification to delete any other witnesses. Witnesses not deleted must be produced at trial by the parties listing them unless all counsel stipulate that the witness need not be produced.

On the other hand, in the Third Judicial District, Anchorage, there is no need to designate whether the witness will testify live or by deposition. Also, there is no requirement in the Third Judicial District to produce all the witnesses who have been named on the witness list.

Because the Local Administrative Orders are not subject to general distribution, the chances are high that an "out of the area" attorney will be unaware of these provisions. Table I sets forth examples of the kinds of topics which are addressed by the Judicial Administrative Orders. Here again, one would be wise to review the Judicial Administrative Orders/Local Form Orders Notebook whenever one is practicing in an unfamiliar judicial district.

Summary of selected administrative orders

First Judicial District

Order No. 101: 12/21/81 Letter to Ketchikan Bar from Judge Schultz. Motions and Calendaring Practices.

- Each Monday morning is reserved for hearings on pending motions to commence at 9:00 a.m.
- If a party does not appear at the time set for oral argument, the court assumes that the party does not desire to be heard and will hear the arguments of those present.
- For hearings on shortened time, the attorney must call the calendar clerk to obtain the date and time of hearing and then include that information in the motion. If only local counsel are involved, then the hearing will be no sooner than 24 hours after the request. If out-of-town counsel are involved, the attorney requesting the hearing must inform the calendar clerk thereof. Three additional days are then added to the 24 hours.
- No oral arguments are heard on motions for enlargement of time under Civil Rule 6(b).
- Trial setting conferences are held four months after filing of the complaint or upon request of a Party.

Second Judicial District

Order No. 201: 4/24/86 Memo on Child in Need of Aid Procedures.

- Sets forth procedures dealing with children in need of aid for courts in Barrow, Kotzebue and Nome.

Order No. 204: Administrative Order No. 86-03: Domestic Relations Standing Order.

- Standing injunction restraining parties in all domestic relation actions from: (1) removing child who is the subject of the action from the State; (2) disposing of or otherwise encumbering or transferring marital property without written consent of the other party; and (3) threatening, harassing or harming the other party.
- This injunction is effective against the party upon receipt of a copy of this standing injunction.

Third Judicial District

Order No. 308: 3AN-AO-85-08: Court Files.

- Only the following are treated as "walk throughs" for which an attorney may check out a file and walk it up to the judge's chambers: Temporary Restraining Orders, Orders to Show Cause, Orders Shortening Time, Injunctive Relief, Writs of Attachment, Rule 88 Claim and Delivery, Commission to Take Deposition.
- If a judge needs briefs, memoranda or pleadings on an extremely expedited basis, the attorney is instructed to file the original of the document with the clerk's office and then deliver a "courtesy copy" immediately to the judge's chambers.

Order No. 310: 3AN-AO-86-10: Notice by Publication.

- This order sets forth the procedure for giving notice by publication to absent defendants.

Fourth Judicial District

Order No. 403: Administrative Order No. 86-4: Closing Fort Yukon.

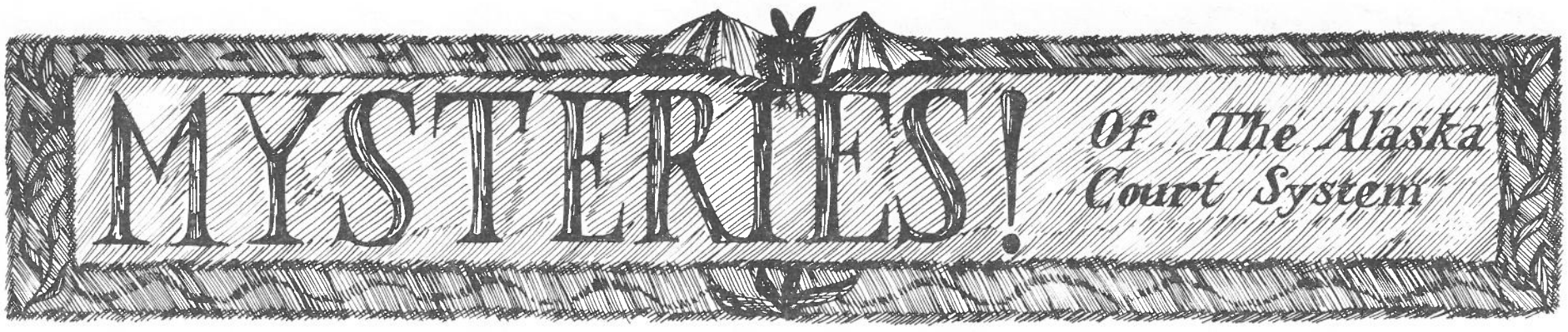
- Effective September 5, 1986, all Yukon pleadings shall be filed in the clerk.s office for the Fourth Judicial District at Fairbanks.

Order No. 406: Administrative Order No. 85-8: Log Notes in Confidential Proceedings.

- In proceedings designated as confidential, the yellow log note sheets will be kept and filed in the confidential Yellow log note file. These confidential yellow log notes will be maintained in a secure separate location in the transcript department which is only accessible to authorized court system personnel to maintain the secrecy of the proceeding.

Order No. 407: Administrative Order No. 86-2: Acceptance of Bonds.

- The clerk's office for Fairbanks is ordered to refuse all bonds written by Allied Fidelity Insurance Company. This order is to remain in effect until satisfaction or forfeiture of four designated bonds.



Local Court Rules Changes, Under Rule 46, Uniform Rules

1 Judicial District presiding judge promulgates administrative order

2 Proposed change filed with Office of Administrative Director

3 Administrative District reviews for uniform rules consistency, 30 days

4 If consistent, rule may be adopted*

5 If inconsistent, order referred to Supreme Court*

*Court may disapprove or modify

Rule 44 Procedure for Uniform Alaska Rules of Court Changes

1 Change proposed
- In writing
- Cited change
- By attorneys, judges, court clerks

2 File opened by Court Rules Attorney

3 Court Rules Attorney researches rule history, federal rule

4 Referred to Standing Rules Committee (Civil, Criminal, Appellate) of judges, attorneys

5 Standing Rules Committee recommendations circulated to . . .

6 Bar and judges for 30-day comment; returned to Court Rules Attorney

7 Court Rules Attorney sends to Supreme Court, with memo

8 Supreme Court adopts/rejects

Security a matter of common sense

By Warren B. Suddock

This year's terrorist-type attacks on the state's two largest newspapers (one of them fatal) and the highly publicized tainting of a Fairbanks jury should raise many questions in the minds of attorneys and others in business. But it is important that one does not respond with too much paranoia.

In my years as a career police officer I was called upon to provide protection for many dignitaries. I helped design security plans for a couple of United States Presidents, one Pope, and quite a few lesser personages. I learned one hard and fast lesson: unless the protectee is willing to be totally isolated from the outside world protection cannot be 100% guaranteed. An organization must weigh the need for public access against the level of security desired.

There is a fine line between a rational analysis and response to security needs and a paranoid reaction. No business can consider itself safe from attack. A terrorist may be any one from the most recently fired employee to a client who fancies that he or she has been unfairly treated. Some companies may be singled out as a target simply because of the type of business they are in. Oil companies are very cognizant of the fact that certain segments of society are not happy with how they conduct business. If I were a banker in the Midwest with many outstanding loans to farmers, I would be very security conscious. Still, I could not stop doing business. While I would still have to be accessible to clients, I would implement certain procedures designed to minimize my exposure to attack.

Threat and risk levels are fluid. A company identified in the news as a polluter of the environment probably has a higher level of risk than it did before the story broke. A supervisor who has just terminated a long-time employee should consider very carefully how the employee reacted to the firing. If it was an acrimonious termination, the risk level has been raised. It goes without saying that litigants may well harbor resentment toward all components of the justice system.

Almost every business owner or executive is aware of the need to protect the firm from robbery and burglary. Receipts are deposited in the bank on a regular basis. Valuable tools or inventory are kept locked up when the firm is closed. Alarms are installed when required. These are obvious responses to real security threats. One reads about burglaries and robberies every day.

Very few executives perceive themselves or their company as prospective targets of terrorist attacks. Therefore very little attention is given to personal security or the protection of the physical plant from such assaults.

Every business operator should analyze the threat level of his or her company. If the business provides a service to the public and that service is viewed by some members of the public in a negative light, that business has a higher risk than, say, an ice cream shop. Public utilities are often seen as oppressive. This is particularly true in times of high unemployment when bills are not paid and service may be cut off.

I am not implying that companies should not take positions which increase the risk of assault. An unacceptable employee should not be kept simply to avoid risk. An unpopular position should not be modified simply to avoid upsetting a segment of society. The possibility of an armed assault is, in reality, for most businesses very remote. The *Anchorage Times*' Bob Atwood observed earlier this year, one attack in 50 years is probably insufficient reason to turn the *Times* into a fortress. The *Daily News* was not as fortunate as the *Times* in the aftermath.

It is only good management to analyze the company's susceptibility to attack. An executive should do this if only to satisfy his or her curiosity.

So the questions arise. Does my particular company need increased security? If so, how much? At what point do security measures begin to cause a negative image which results in fewer customers? Are we addressing a real risk or simply responding to paranoia? How much risk is the company willing to live with? What can the company do to reduce the risk of attack or at least minimize the chances of a successful assault?

Every attorney and business manager should try to answer each of these questions. If you determine that increased security is required there are many organizations available to assist in threat and risk analysis. Some of these companies are in the business of selling alarms, security doors and related hardware. Others will simply advise you of the various options available to meet security needs.

There are a few security companies that are very skilled in appealing to a manager's ego. This is to say that some people are willing to install expensive and sophisticated security systems simply because such actions make them feel important.

No amount of electronic equipment, armed guards, dogs, fences, or steel doors and locks can insure that no attack will succeed. All one can do is reduce risk and minimize the chances of attack.

If you or your staff has analyzed the company's risk and found that security should be increased there are a couple of avenues available to address the need. A reputable security firm could be contacted and the entire matter given over to

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Justice Burke discusses Supreme Court

The Bar Rag wishes to thank Justice Edmund Burke for taking the time for this interview. The comments of Justice Burke, paraphrased below; do not constitute an official opinion of the Court but rather reflect his own views.

Bar Rag: Since the creation of the Court of Appeals, has the Supreme Court noticed the significant lessening in its case load? Are there any statistics available on this issue?

Burke: After the creation of the Court, there was an immediate decrease in the number of criminal appeals to the Supreme Court. However, the Supreme Court's total case load is now about the same as it was previously. This is due to the increase in the number of civil and criminal cases in the State. The Supreme Court certainly has "plenty to do."

Justice Burke commented that the Court does have some power to control the extent of its own work load. He noted that, in past years, the Court rarely disposed of cases without a full opinion. Now the Court is attempting to utilize summary opinions in more routine cases and is reserving full opinions for cases meriting more extensive analysis. Detailed statistical information on the numbers and types of cases filed in the court system can be found in the lengthy 1986 Alaska Court System Report which is available to the public.

Bar Rag: How many law clerks work for the Justices? What recruiting mechanism is used to find them?

Burke: Each Justice has two full-time law clerks. These are law school graduates who serve a one-year term. Burke noted that the Justices may also have "externs" who are law students working for law school credit.

The law clerks are found through a nationwide recruitment process which begins in late summer and early fall when two Justices travel outside visiting law schools and interviewing. The Justices then thoroughly review the resumes, recommendations, and law school transcripts. Moreover, some applicants travel to Alaska for interviews after applying to the Court. Finally, the Justices take turns on a rotation basis selecting the names of applicants they desire to hire, much like the NFL football draft. The successful applicants are then quickly called in order to confirm their acceptance of the position.

Bar Rag: How are cases assigned to individual Justices for opinion writing? Do certain Justices develop areas of special interest or expertise?

Burke: The assignment of a particular Justice to a case takes place immediately when the appeal is filed and the clerk assigns the case to a Justice. The assignment is done on a rotation basis. Burke noted that there are certain occasions when a clerk will try to direct a case towards a particular Justice where it is apparent that consolidation of cases will be appropriate or where an appeal on a similar issue is pending. In such circumstances, the clerk will assign the case outside the rotation order.

After case assignment, a law clerk working for the Justice will prepare a memo summarizing the case. This takes place before oral argument or before conferences on cases which are appealed on the briefs without oral argument.

The Justices then confer very shortly

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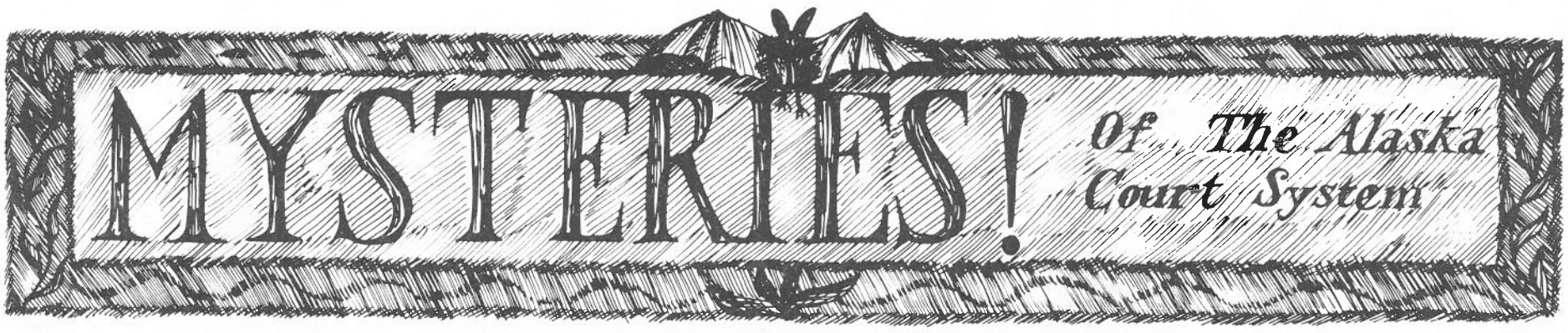

• Fast track modeled after Phoenix, D.C.

Continued from page 1

Judge Serdahely, urged by Judge Souter and Supreme Court Justice Daniel Moore, decided it was time to take scheduling management out of the lawyers' hands. Other jurisdictions (most notably Phoenix, Arizona), had successfully streamlined case management and drastically reduced the time between case filing and resolution by imposing time deadlines applicable to cases from filing through the beginning of trial.

Anchorage Area Court Administrator Albert Szal and Anchorage judges studied the Washington, D.C., and Phoenix municipal trial scheduling rules in search of an appropriate model. Washington, D.C., employs an initial screening process, separating cases into relatively simple and relatively complex categories. Each group is subject to its own set time constraints regarding discovery, motion practice and trial scheduling. In Phoenix, all cases are placed in a single tracking system controlled by judicial conventions specific to particular types of cases and their expected complexity. The cornerstone of both systems, in Judge Serdahely's words, is "judicial management of scheduling."

The key to success for both Phoenix and Washington, D.C., is that the cases are moved inexorably to a fixed trial date on which the case *will* be tried, if not earlier settled. The certainty of the trial date is made possible by the depth of available judicial resources in those jurisdictions. For example, Phoenix has a regular cadre of trial judges who routinely overset their weekly trial calendars by 40 days or more. The theory, of course, is that 80% or 90% of all litigation settles before trial, and the hoped for result is five trial days per judge per week.

When those expectations are not met, and more parties elect to go to trial then one judge can handle, Phoenix has reserve judges available to pick up the overflow. If cases requiring trial will overburden the reserve judges as well, Phoenix can call upon a significant number of retired judges to sit *pro tem*. Finally, Phoenix has a system to appoint experienced trial lawyers to preside as adjuncts over one case per year. It therefore is virtually impossible for a case not to be tried at the scheduled time if it does not settle.

Unfortunately, Judge Serdahely knew that Alaska did not have the judicial resources to fully implement similar management of scheduling by the Bench. It therefore was apparent that any case tracking system would have to be a compromise. The Bench therefore solicited input on a feasible fast track rule from plaintiff and defense trial lawyers. Some insurers also were consulted, since so much litigation is funded by them. Judges Serdahely and Souter, with Mr. Szal, then traveled to Phoenix for a first-hand look at that city's case tracking system, and discussions with Phoenix judges and laywers. The judges, with consultation from the Bar, went to work producing a draft rule.

Although Judge Serdahely proposed to promulgate the rule under his administrative rulemaking authority as a presiding judge, the Supreme Court viewed the rule as effecting so substantial a change in established procedure that it implemented the rule under its rulemaking authority after review and some minor modifications to the draft. In order to obtain baseline data for future studies of the rule's effectiveness, the Judicial Council conducted a study of the Anchorage civil case filings.

The rule as it finally emerged employs an initial screening process much like that used in Washington, D.C. However, only the cases not expected to involve difficult or extended discovery, more than 10 trial days, or difficult legal issues requiring substantial motion practice are subject to judicial management of scheduling. The determination whether to fast track a case is made on the basis of the case characterization form filed with the complaint. If the characterization is not opposed, the case automatically goes to the fast track or nonfast track process, according to its characterization by the plaintiff. When the characterization is opposed, Judge Serdahely determines which cases go to the fast track.

When Rule 16.1 was first implemented, plaintiff's lawyers in all pending cases were required to file case characterization forms. For those cases falling on to the fast track, lawyers suddenly found themselves faced with relatively severe time constraints for a large number of cases, since the goal of Rule 16.1 is to bring disputes to trial 15 months after filing. The compression of Anchorage civil trial lawyers' calendars led to initial dissatisfaction and concern among many Bar members. Judge Serdahely believes we now are "over the hump," in the sense that the 3,000 or so cases initially transferred to the fast track should be coming to a conclusion and lawyers' trial calendars should be stabilizing with a much lesser load than imposed at the inception of the rule.

Judge Souter notes that initiation of judicial management of scheduling also ruffled the Phoenix Bar at first. Several years into the program, however, the Phoenix Bar overwhelmingly supports the system, and similar support is expected to develop in Anchorage.

After a year's experience with Rule 16.1, fast track Judges Joan Katz, Justin Ripley and Souter believe the goals of the rule are being met. Cases seem to be reaching a conclusion within the 15-month range anticipated by the rule. Moreover, there is a nearly 15% reduction in pending cases since adoption of the rule. As of April 1, 1987, there were 2,880 fast track cases fairly evenly divided between Judges Katz, Ripley and Souter. Another 2,361 cases are not fast tracked, and are the responsibility of Judges Serdahely, Rene Gonzalez, Karen Hunt and Brian Shortell.

As the fast track judges' experience with the rule increases, they are cautiously increasing the overset of their trial calendars. Judge Ripley is routinely setting 30 to 35 trial days per week, and Judge Souter has increased his trial calendar to 40 to 45 trial days per week. In fact, Judge Souter has found that the percentage of settlements has increased as his overset has gone up. The same thing seems to be happening in Judge Ripley's court room, where in a recent two-week period, 20 cases scheduled for 100 trial days all settled, leaving Judge Ripley available to try remaining cases without sending any of his cases to other judges for trial. As more statistical information accumulates, the judges anticipate honing their schedules to further reduce case loads and speed the resolution of disputes.

Judge Souter sees other benefits from Rule 16.1 besides expeditious calendaring of trials. For example, lawyers are finally coming to grips with the automatic discovery provisions of the Rule. Judge Souter says that discovery motion practice has decreased markedly, especially in the last four to five months. In addition, lawyers generally seem to be handling their cases more economically, which Judge Souter believes enables litigants to accept settlements that might have been scuttled by a party's need to recoup high legal fees.

With the three judges assigned to the fast track spending more time in court for trials, the Bar has raised concerns regarding timeliness of their ruling on motions. The judges are aware of that concern, but think the Bar's complaints may be overstated. In recent months, the legal technicians on the court staff have been flagging fast track cases for delivery to chambers as soon as motions are fully briefed. The motions therefore come to the judges' attention sooner, enabling them to be ruled on promptly. One fast track judge keeps up with the motion practice by routinely working on pending motions while presiding over jury trials.

Another Bar concern has been the affect on the quality of trial work caused by shorter preparation time. Again, the Bench sees this concern as more imagined than real. The fast track judges were uniformly complimentary about the quality of case preparation and presentation.

All in all, the judges have been pleased with the results of the fast track rule. They think the lawyers, in time, will

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Comments pan fast track rules

By Thomas A. Matthews

In response to the Bar Association's call for comments on the Fast Track system currently in effect in Anchorage, members of the Bar were uniformly critical. Ten Anchorage law firms responded to the Bar Association's November, 1986 questionnaire. Although all of the persons commenting were all critical of Fast Track, they were not uniform in their degree of hostility. Some writers suggested scrapping the Fast Track system altogether, while others simply wanted minor changes.

The two most common complaints are that Fast Track is unduly confusing because all deadlines are keyed to service of process and because the discovery provisions create an undue burden at such an early stage of the litigation. As one writer wrote, "Since the deadlines run from a date that is not known to the Court or necessarily even to all parties, the deadlines are unclear and therefore lose much of their effect." Another writer complained of the perceived advantage Fast Track gives to plaintiff's attorneys. "Plaintiff has had the opportunity to discover his case and prepare for two years prior to the filing of the complaint. Once the complaint is filed, the defense is required to try and do their best to catch up with plaintiff's two-year 'headstart' within the Fast Track deadlines." Other responses complained of similar burdens in responding to the Fast Track Rule 16.1(d) discovery requirements.

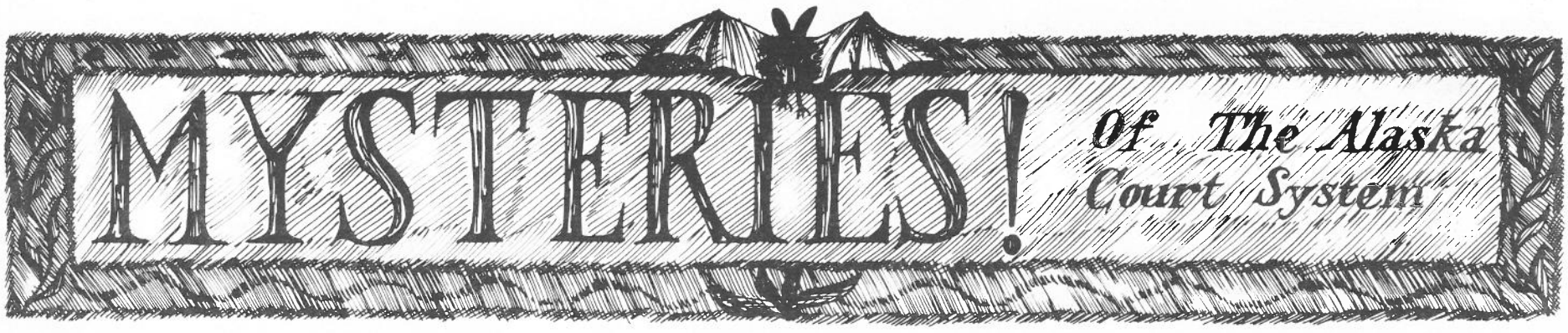
Another complaint centered on the classification of cases as complex solely on counsel's opinion that the case can be tried in 10 days or less. As the writer pointed out, many complex cases can be tried in 10 days or less. On the other hand, the case can be classified as involving complex pretrial discovery or motion work, but the writer expressed doubt as to the court's willingness to accept such a characterization.

Others complain that the court is not enforcing the Fast Track rules. The judges are not enforcing the requirement that a party file and serve witness and exhibit lists prior to filing a motion to set the case for trial. Given the crowding of trial schedules with the requirement that trials be scheduled within four months of a trial-setting conference, if one party has not filed and served his witness and exhibit lists, it is difficult to complete discovery and adequately prepare for trial in four months. A corollary complaint is that the courts are not as sympathetic as they need to be to counsel's complaints of non-compliance or inability to meet the deadlines. Either the courts need to stricly enforce the rules or scrap the system altogether. On the other hand, other writers felt that the deadlines imposed by the rules are simply too strict for lawyers to be able to comply.

Anchorage attorney Steven DeLisio submitted the most extensive comments to the Bar Association. Although DeLisio concludes that the Fast Track system should be discontinued, he was sympathetic to the courts' attempt to clear the backlog. "I find great merit in trial judges expediting a great many cases to trial on a fast calendar. Unfortunately, the way the system is set up, there is almost no consideration given to the individual characteristics of any lawsuit that does not, by its very nature, fall outside the Fast Track system, provided it can be tried in ten trial days or less."

DeLisio went on to suggest that the system be revised so that the assigned trial judge would conduct a very early preliminary pre-trial conference to evaluate the issues in the case, the parties' expectations regarding discovery, and other matters. "[I]nstead of waiting for six months to a year to hold a scheduling conference, a preliminary scheduling conference could be held within a couple of weeks after the issues were joined. If the case was simple enough, that might be the only scheduling conference required. If it was more complicated, it could then be scheduled at a time further down the road for a final scheduling conference, after the parties have had a better opportunity to get into the issues." Mr. DeLisio's suggestion for an early pre-trial conference is one which has been implemented by several of the United District Court judges across town.

Although not all writers took the time to write lengthy responses such as Mr. DeLisio's, if the 10 law firms that responded constitute a statistically valid sample for Anchorage, then it is clear that the Fast Track system requires, at a *minimum*, some fine tuning.



• Transcript rule could cost

Continued from page 18

Protections

There are several things attorneys can do to protect themselves from these potential "time bomb" situations. The first thing to do is begin an organizational system *now* to handle original deposition transcripts. Whether you decide to file them by case, deponent's name, date of taking or whatever, make sure you have a separate area set aside for their storage and retrieval. You will also need an area protected from excessive heat, cold and dust and magnetic interference for the storage of audio or audio-visual tapes.

Whenever possible, leave the original deposition envelopes sealed. This will avoid any questions as to authenticity or confusion as to which is the original and which is your copy of the transcript. Make sure the sealed transcript is stamped "Original" for further clarity. If a sealed transcript is opened accidentally, either re-seal it yourself or request your court reporter to do so. The Civil Rules don't address the question of whether a transcript must remain sealed after it has been delivered to the attorney, only that it must be furnished that way.

One point to keep in mind regarding this issue is that the federal rules do not require original deposition transcripts to be sealed at all, so whether transcripts of depositions taken in Superior Court cases remain sealed or not is probably just a matter of prudence on your part.

Rule 30.1(a)(3)(c) provides, "The notice for taking an audio or audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio or audio-visual means." When you are notified that a Rule 30.1 deposition is going to be taken, the easiest way to protect your client's interests is to arrange, yourself, for a court reporter to be present to preserve the record. You need not order a transcript at that time or ever. The only fee you will incur at that point will be the reporter's small hourly charge. If a transcript is later needed, it can be produced at regular page rates, and with greater speed than one produced from unfamiliar audio tapes.

Additionally, many court reporters use computers to translate their shorthand notes, thereby considerably shortening production time. Court reporters using computerized equipment are usually able to produce copies of their transcripts on PC-compatible floppy disks, which can be used by attorneys with either standard word-processing programs or specialized high-speed search and retrieval litigation support software.

It is always a good idea to familiarize yourself with the reputation of the court reporter or firm prior to your deposition. Just as with attorneys, court reporters can have a wide range of experience and abilities. Sources to check with are other attorneys, other court reporters, or with the Grievance Committee of the Alaska Court Reporters Association, which is set up to handle court reporter-related complaints or disputes. Georgi Haynes is chairman of that committee and can be reached at 274-5661.

If you elect to take a Rule 30.1 deposition, first determine that your situation falls within the guidelines enunciated by the Supreme Court in Cotton's Nov. 25, 1986 "Summary." Weigh the pros and cons discussed in that summary and in this article. Extreme care should be used in selecting, testing and monitoring the recording equipment to be used. If possible, arrange to set your equipment up well in advance and check it before, during and after the deposition. Be sure to familiarize yourself with the procedures set forth in Rule 30.1(a)(3)(d) and follow them carefully. When the deposition is over, make sure you properly identify and store the tapes for their future use in the proceedings.

Comments

If you encounter any problems with misuse or abuse of Rule 30.1, or difficulties with retention of original transcripts under Rule 30(f)(1), be sure to let the Court Rules Attorney know immediately. In his Nov. 25, 1986 "Summary," he states, "As with any new rule, adjustments and changes will almost certainly be needed. Attorneys and court reporters are urged to keep the Court Rules Attorney informed of problems with the wording and practice of the new rule."

During the month of June, the Court Rules Attorney will be conducting an opinion survey regarding the rules changes. Additionally, the Alaska Court Reporters Association will be distributing a survey at the Bar Convention in Fairbanks. Please take advantage of these opportunities to let your feelings be known. Point out any ambiguities you perceive and request clarification or changes where you feel they are needed. It is vitally important that you put your opinions in writing and let the Supreme Court know how these rules changes are affecting your deposition practice and what you think should be done to avoid future problems.

Avoiding the pitfalls under the new deposition rules depends largely on an attorney's awareness of the potential "time bomb" situations present therein, and in practicing preparedness and avoidance techniques. Another strategem would be to keep advised of the proposed rules changes circulated for "comment," and to make your comments loudly heard on the changes you perceive as unhelpful to the status quo.

In doing so, perhaps both attorneys and court reporters can look forward to having more of a voice in negotiating the rules governing their daily professional practices than they have had in the past.

Lynda Batchelor is president of the Alaska Court Reporters Association and a registered professional reporter.

• Burke

Continued from page 21

after oral argument. The Justice who was assigned the case leads the discussion and conducts the voting. A tentative decision is then reached. If the assigned judge is in the majority, he keeps the case and drafts the opinion. The opinion is then circulated and the Court votes on the opinion in writing. Burke pointed out that the Court meets weekly and discusses all pending matters.

Finally, it comes time for a final decision on the opinion. If there is a dissent, then the Chief Justice or the senior dissenting Justice assigns the task of drafting the dissent. The dissent is also circulated and voted upon.

Bar Rag: During the exchange of opinions, either written or verbal, how frequently do Justices change their votes on cases? How often do such changes actually result in a switching of the Court's ultimate decision on a case?

Burke: The changing of a Justice's vote is a "common occurrence," according to Burke. And, sometimes, this will cause a shift in the majority. Burke pointed out that most Supreme Court decisions are unanimous.

Bar Rag: What are the most common mistakes an attorney makes when briefing or arguing before the Supreme Court?

Burke: Burke pointed to four areas that he feels reflect the most common mistakes made by appellate advocates.

1. *Alleging too many points of error:* Burke noted that it is tactically important to select the number of claimed points of error with great care. Advocates should select the points "they really want to raise." "Every trial will have some error," noted Burke. However, not every one of the errors rises to a sufficient level of gravity to merit inclusion in an appeal brief. Peppering the appeal with weak claims of error obscures the important points of appeal that the advocate wishes to make.

2. *Excessive designation of items in the record on appeal:* Burke noted that generally only a limited part of the record below need be part of the record on appeal. Again, over-inclusiveness tends to hide the evidence truly important to the appeal.

3. *Using ridicule or attacking personalities in the brief:* Burke stated that briefs should be written in a clear, concise, and lawyer-like manner. The use of unnecessary adjectives describing the opinions or points of opposing counsel should be scrupulously avoided. If the opposing counsel makes "a preposterous point," it will become "obvious," noted Burke.

4. *Requesting oral argument when unnecessary:* Burke stated that oral argument should only be requested when truly necessary. "Unless you have something to add, it is needless," he stated. In fact, cases where counsel merely stands up and repeats in paraphrase form the brief already submitted can actually irritate members of the court.

Bar Rag: Do most Justices find their job pleasurable?

Burke: Burke said yes. "Like anybody, we can get tired or irritable." Burke noted that the Justices have good days and bad days and can get discouraged. On balance, most Justices enjoy what they are doing and are glad to be doing it. Burke stated that the Justices often feel frustrated because ethical restraints forbid them from speaking out and commenting on controversial issues.

• Common sense

Continued from page 21

them. I would suggest that this be accomplished through bid process. The proposals can supply you with a good overview of the security firm's capabilities and professionalism. A competent firm will have knowledge of state-of-the-art electronic devices, the engineering experience necessary to insure installation and compatibility of the various devices with the physical plant, a staff trained in the various aspects of industrial security (this includes everything from developing alternate routes of travel for executives to minimize kidnapping attempts to combating employee theft), and all of those other attributes which you would expect when dealing with any type of bid. Qualification also will be stated.

For most firms a less expensive method of risk reduction is available. Few companies require heavy obtrusive security measures. Adequate locks and doors, segregation of sensitive areas (executive suites, research areas, confidential records, inventory storage, etc.) from the general public, good outside lighting around areas of access, are only a few of the areas which can be addressed by the owner and staff personnel. The level of security needed by most businesses is a matter of common sense and an awareness of the need.

The author is a retired captain of the Anchorage Police Department.

• Fast track

Continued from page 22

come to like the rule, too. In fact, Judge Souter is receiving more positive than negative comments, and says that the perhaps more reliable hearsay about the Bar's reaction also is favorable.

Still, Rule 16.1 is an experiment and nothing about the rule is etched in granite, says Judge Serdahely. Some things that may receive future scrutiny are the definition of fast track cases, whether motions truly are being resolved in a timely fashion, whether the automatic discovery provisions are being observed, and whether defendants have sufficient time to fully discover their cases. The Judicial Council is expected to begin its follow-up study in the near future. No doubt the results of that study, as well as continued discussions between the Bench and Bar such as the recently conducted seminar on the fast track rule, will assist in fine tuning Alaska R. Civ. P. 16.1.

THE MOVIE MOUTHPIECE

Edward Reasor

Los Angeles — The American Film Institute (AFI) was established in 1967 to serve as a national point of focus and coordination for individuals and institutions concerned with the moving image as an art form.

While striving to increase understanding of film as art and to preserve the works previously praised, AFI also attempts to identify, develop, and encourage new talent in America. It exists legally as a non-profit corporation, receiving both public and private funds. Its formal offices are located at both the Kennedy Center in Washington, D.C., and at the sprawling, neatly-trimmed campus near the Hollywood Hills in Los Angeles.

The Los Angeles Campus was once a Catholic school and a careful observer can still see amongst the red tiled roofs and tall belfries, (all nestled on a carefully manicured eight-acre campus), strategically carved Christian Crosses.

The most noteworthy and best known production of the Institute is a monthly magazine entitled "American Film" which is read religiously by 14,000 subscribers, as well as countless librarians and school patrons across America.

The April '87 issue, for example, spotlights movies of the indomitable Barbara Stanwyck, AFI's Life Achievement Award Winner for this year. "Raising Arizona," a newly released film, is also highlighted. This article explores the creative genius of two brothers, Joel and Ethan Coen, who gave us the earlier "Blood Simple." Only it's not just a movie review — "American Film" explores the script, quotes from personal interviews of the film makers, and gives a bird's eye view of the problems and triumphs of making this feature. An article appropriately entitled "The Ten Best Unproduced Screenplays," which follows "Raising Arizona," presents the reader with the other side of the coin — creativity and heartburn. Completed screenplays not produced, broken deals, and expenditures of huge sums of money ($5 million alone for "Everybody's All American") without the film's completion gives ample evidence to Hollywood's oldest axiom: "Anyone who wishes to make a movie has absolutely no respect for money."

So why am I writing about the American Film Institute and perhaps more relevant, what am I doing here? I am here to attend a one-day seminar presented by studio lawyers, accountants, independent bankers, movie producers, and movie distributors on "Financing Options for Motion Picture Production." This is hardly the hornbook law of contracts or bills and notes. Rather, it is a practical, down-to-earth, realistic presentation of the endless impossibilities of raising money, filming a good script, and then distributing the finished product at a profit. If the would-be independent producer in my class was not discouraged before he came, certainly he was at the end of the session. In short, making movies is a really tough business.

Rear view of stacks of Louis B. Mayer Library at northwest edge of campus.

Aerial view of the campus with Warner Communications, Inc. building in center, Sony Video Center upper left, Louis B. Mayer Library upper right, and as-yet-unnamed seminar center site in the trees at the right.

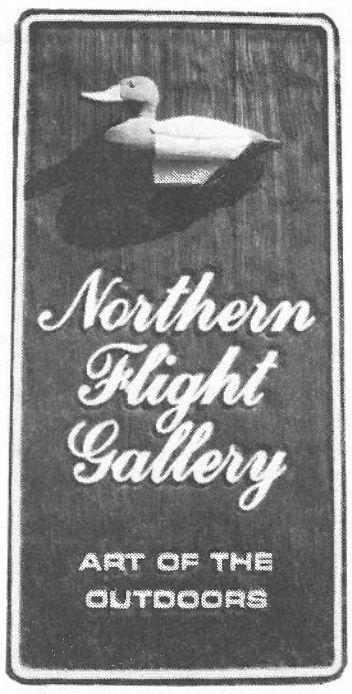
Seminars, workshops, and conferences addressing a wide range of current media issues, artistic concerns, and professional responsibilities are presented by AFI and open to the public as well as members of the trade, film professors, and teachers of film throughout the year. Some forthcoming seminars scheduled in Los Angeles are: "Acting for the Camera;" "Introduction to Screenwriting," "Advanced Film Directing," and "Nuts and Bolts of Post-Production." These classes range from one day to eight weeks, with tuition costs varying from a low $20 to $270. The student must find his own room and board.

For those of you who want more than a short reprise from the rigors of the law practice, AFI also has an answer. You can attend the academy full-time for two years (earning a master's degree in fine arts), or you can register for the one year program and end up qualified (by training at least) to be a director, producer, screenwriter, or production designer. No job guarantees are offered and the tuition cost ($6,500 per year) and the need to supply your own room and board necessitate that only serious students apply. Out of the 500 annual applicants, only 90 are accepted by AFI. Their average age is 31, and for the most part these students have already accomplished some small success in their own home environment or they feel that they definitely have something important to say.

So, if you're in mid-life, have saved a buck or two, and are interested — then by all means apply for full time admission as a film maker to American Film Institute. Just think how envious the rest of the bar will be when in early August, Judge Justin Ripley leans over his bench to announce to you that you will be ready for a five day fender bender in his court by September 2, and you respond casually: "No I won't, Your Honor, I'm going to AFI to learn how to make movies."

Good Luck!

WELLENSTEIN'S



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We the People

The government's structure

This year we celebrate the 200th anniversary of the U.S. Constitution. We are therefore including with each issue of the Bar Rag a sample of the Federalist Papers written by Madison, Hamilton, and Jay under the pseudonym Publius. These letters were written to promote the ratification of the new Constitution by the former thirteen colonies which were loosely affiliated under the weak Articles of Confederation.

Although these letters are in the public domain, we are greatful to the New American Library for their permission to use this text.

We include these documents of the "founding fathers" not only because of their historical value but also because they demonstrate such a refined command of the English language — a virtue highly prized by English and American politicians of the Enlightenment era.

— Editor

NO. 47: MADISON

Having reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the Constitution is its supposed violation of the political maxim that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to everyone that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal, bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort.

The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator.* Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor.*" Some of these reasons are more fully explained in other passages; but briefly stated as they are here they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.*" Her constitution accordingly mixes these departments in several respects. The Senate, which as a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient though less pointed caution in expressing this fundamental article of liberty. It declares "that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves.

I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution and even before the principle under examination had become an object of political attention.

The constitution of New York contains no declaration on this subject, but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate, a partial control over the legislative department; and, what is more, gives a like control to the judiciary department; and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment members of the legislative are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors is to consist of one branch of the legislature and the principal members of the judiciary department.

The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The same legislative branch acts again as executive council to the governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department, and removable by one branch of it, on the impeachment of the other.

According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning, in certain cases, to be referred to the same department. The members of the executive council are made EX OFFICIO justices of peace throughout the State.

In Delaware, the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others appointed, three by each of the legislative branches, constitutes the Supreme Court of Appeals; he is joined with the legislative department in the appointment of the other judges. Throughout the States it appears that the members of the legislature may at the same time be justices of the peace; in this State, the members of one branch of it are EX OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislative; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature.

Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other. Her consitution, notwithstanding, makes the executive magistrate appoint-

Continued on page 28

VERDICT AND SETTLEMENT REPORTING SUMMARIES

Following are brief summaries of the Verdict and Settlement Reporting Forms submitted to the Alaska Bar Association. Copies of the forms may be purchased for $.50 per form. Please refer to Alaska Bar Rag Volume and Number and the number of the summary below when ordering. For more information, please call the Bar office at 272-7469.

1. Alaska National Bank of the North v. Ken Snyder d/b/a Aviation Network and Jack A. Carpenter (4FA-85-2608). Promissory note. Plaintiff's demand: Default judgment as to Jack Carpenter $36,158.24. Dismissed as to Ken Snyder d/b/a Aviation Network.

2. Dana Bowles v. Hannah Beth Kirk (3AN-86-15553). Rearend collision. Neck pain and headaches, numbness of left hand. Cash settlement: $12,000.

3. Gillen v. Hoffman Construction (3HO-84-579). Wrongful death. Settlement: $150,000 plus workers compensation settlement of $130,000.

4. Grayboff v. Alaskan Floral (4FA-86-2599). Rearend collision. Back and neck strain. Settlement: $7,176 including costs and fees.

5. Greater Anchorage, Inc. v. Clark (3AN-84-9800). Breach of contract. Verdict amount: $1,000.

6. Lowry v. Miller. Motorcyclist injured when auto made illegal U-turn. Plaintiff's demand: $300,000. Cash settlement: $275,000.

7. Patricia McDonald v. Martin J. Schur (3VA-86-73 Civil). Medical malpractice. Deformed toe, pain and suffering. Plaintiff's demand: $75,600. Defendant's offer: Default. Verdict amount: $3,600 specials, $36,000 for disfigurement, pain and suffering, etc. and $36,000 for punitive damages.

8. Ostby v. Haywood (3AN-86-13247). Pedestrian hit by truck in cross walk. Fracture right proximal fibula. Special damages: $7,000 estimate. Cash settlement: $75,000.

9. Parks v. Yenney (1986). Dump truck backed over surveyor's legs on job site. Broken left foot, crush injury to right foot. Special damages: $30,000. Plaintiff's demand: $300,000. Cash settlement: $225,000.

10. Steciw v. Yah Sur Club (3HO-84-540). Dram shop case. Head and facial injuries, scalp, knee injury, possible brain dysfunction. Plaintiff's demand: $300,000. Defendant's offer: $235,000. Verdict amount: Not reported.

11. Linda L. Warren v. Manufacturers Hanover Mortgage Corp., Security Title & Trust Co. of Alaska, Alaska Housing Finance Corp., and Douglas Nielson (3AN-86-2963). Didn't receive full notice of a non-judicial foreclosure sale. Plaintiff did not have opportunity to cure her default. Plaintiff's demand: $150,000. Defendant's offer: $8,000. Verdict amount: None.

12. James Woodle v. Alyeska Pipeline Svc. Co. (3AN-85-5598). Wrongful termination. Lost wages, lost future income, emotional distress. Plaintiff's demand: Unknown. Defendant's offer: Unknown. Verdict amount: None.

13. John Zahari, et. al. v. Chisum Flying Service of Alaska, Inc., et. al. (3AN-85-5935). Helicopter crash. Permanent back, shoulder, head and psychological damages. Plaintiff's demand: Unknown. Defendant's offer: Unknown. Zahari = $889,771.94; Catalfio (Wm.) = $219,125.92; Catalfio (Nancy) = -0-.

New Bar Association Medical Plan Rates

The Bar Association group medical plan is renewing June 1, 1987.

Rates are increasing significantly for most participants, but not as much as many had feared. Groups of over nine are seeing increases of between 18½% and 21% for the same "census."

Groups of five through nine are seeing increases of about 30%. A new provision, however, will allow these groups to qualify for lower rates through submitting health statements. This will help the plan stay competitive with other insurors, who invariably require health statements for groups of less than 10.

Groups of less than five are now rated by the actual ages of participants rather than on an average rate being developed for the group.

Premiums continue to be 20% or more lower than Blue Cross group rates.

Renewal rates were computed on a pure loss ratio without reserves of 78%. To this is added two month's losses for claims runout reserves. Also added are total expenses of 14% and a medical inflation factor of 14% on an annual basis. Although Alaska's overall economy is deflationary, medical expenses have been continuing to rise at a rapid rate. Nationally, a factor of about 11.5% is used. Alaska's higher figure reflects providers attempting to hold the same income level with fewer patients and, also, greater utilization by employees who feel they may lose their jobs and their coverage.

Participating firms will share in any surplus developed during the coming plan year. One month's revenue will be set aside as a loss stabilization reserve (belonging ultimately to the group plan, not Blue Cross). Any surplus beyond that will be distributed in the proportion that a firm's premiums were to total plan revenue.

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Buckalew discipline case

IN THE SUPREME COURT OF THE STATE OF ALASKA
Supreme Court No. S1077

In the Disciplinary Matter
Involving

ROBERT J. BUCKALEW, Respondent.

ABA File No. 85.090

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

On consideration of the petition for rehearing, filed on January 20, 1987 by the Alaska Bar Association,

IT IS ORDERED:

1. The petition for rehearing of the Alaska Bar Association is granted.
2. Opinion No. 3147, filed on December 30, 1986, is hereby amended as follows:

(a) The final sentence of the text appearing on page 11 of our slip opinion, is modified to read as follows:

Therefore, we will refer to the ABA Standards and methodology as an appropriate model for determining sanctions for lawyer misconduct in this state.

(b) Footnote 14 is deleted, and the remaining footnotes and references thereto are renumbered accordingly.

(c) The beginning sentence of section IIB, appearing on page 12 of our slip opinion, is modified to read as follows:

Under the foregoing methodology, our task in this case is three-fold.

(d) In the separate opinion of the Chief Justice, in which Justice Moore joins, the beginning sentence of footnote 1 is modified to read as follows:

I concur in the majority's reference to the American Bar Association's Standards for Imposing Lawyer Sanctions as an appropriate model for determining sanctions for lawyer misconduct in Alaska.

Entered by direction of the court at Anchorage, Alaska on February 27, 1987.

CLERK OF THE SUPREME COURT
David A. Lampen

ccs: Justices
Counsel
Publishers
All opinion subscribers

THE LUNCH CIRCUIT

By Philip Matricardi

Talk about a place full of lawyers. Simon & Seafort's can be fun, if you bring the fun with you, know what I mean?

Simon & Seafort's looks like, feels like, and tries to be like the better class of saloon or grill one finds in San Francisco or Seattle. The Tadiche Grill serves better food. So does Musso & Frank's Grill in Hollywood. Yet Simon & Seafort's captures a lot of the atmosphere of what used to be known as "men's grills." Until recently you could still find saloons in Vancouver, British Columbia, that had separate entrances for women. Simon & Seafort's reproduces that era without the gender segregation.

Actually the food at Simon & Seafort's impresses most people. A lot of care goes into finding high quality ingredients. Seafood overshadows the more traditional beef dishes. Simon's guarantees the fish to be fresh. They pack it on ice, the old-fashioned way. They limit their salmon offerings to Kings and Silvers. A daily "fresh sheet" indicates which is available.

Simon's tends to burden both its beef and the seafood with butter. Lots of folks like it that way. I like the fact that Simon's consistently provides a choice of fresh oysters on the half shell. Blue points from the Atlantic, many of the Puget Sound varieties, and even fresh oysters from Japan show up at Simon's. I also enjoy their steamed fresh Puget Sound clams, yet this dish is better without the butter. The usual method of preparation includes steaming the clams to order in a broth of butter, white wine and herbs.

Simon's prepares and serves delightful salads. My favorite is their spinach salad, prepared with fresh spinach with bacon, toasted almonds, chopped egg, Romano cheese, mushrooms and our egg mustard dressing. They also offer nice sesame chicken salad and shrimp salad with bleu cheese.

The daily fresh soup is usually superb. So is the New England clam chowder and the onion soup. Soup and salad with sourdough bread can turn out to be one of the better lunches available at Simon's, especially if time is a factor.

Simon & Seafort's staff don't hold reserved tables very long at lunch. They'll usually give yours away if you're more than a couple minutes late. Most of the staff are efficient but not cordial. Some are positively East Coast in their approach. Maybe they're underpaid, yet the regular clientele appear to enjoy the unobstrusive discreet style of service.

For less formality, the saloon is a good choice over the grill. Fewer tables enjoy the inlet and mountain view, but service can be both faster and friendlier. The saloon's "Pub Lunch Menu" offers sandwiches, quiche, soup, and salads. The menu doesn't list the salads available from the grill, but they are available. So are the fresh oysters.

For businesslike atmosphere in quiet comfortable setting, try the grill, but be on time for your reservation or be prepared to wait. For a quick bite between hearings, count on the saloon. Simon & Seafort's features a wide selection of imported and domestic beer, wine, scotch, and brandy.

FAIRBANKS NOTE: While in Fairbanks for lunch, brunch or breakfast go to Freres Jacques — best french bread and pastry in the state in a charming log cabin close to everything downtown. You'll think you're in Quebec. Omelettes, soups, salads, and unusual burgers.

(Philip Matricardi can be heard talking aobut food Saturday mornings on Weekend Edition on KSKA FM 91.1 listener-supported-radio for South Central Alaska.)

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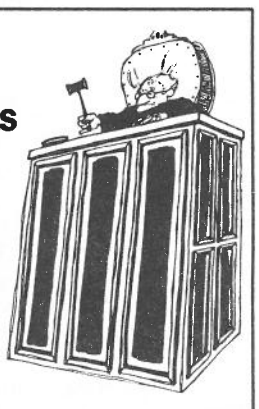

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We the People

Continued from page 25

able by the legislative department; and the members of the judiciary by the executive department.

The language of Virginia is still more pointed on this subject. Her constitution declares "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercises the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly." Yet we find not only this express exception with respect to the members of the inferior courts, but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department. The executive prerogative of pardon, also, is in one case vested in the legislative department.

The constitution of North Carolina, which declares "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other," refers, at the same time, to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department.

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State.

In the constitution of Georgia where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State governments. I am fully aware that among the many excellent princples which they exemplify they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is that the charge brought against the proposed Constitution of violating the sacred maxim of free government is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper. PUBLIUS

No. 48: Madison

It was shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compliers of most of the American constitutions. But experience assures us that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble against the more powerful members of the government. The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark that they seem never for a moment to have turned their eyes from the danger, to liberty, from the overgrown and all-grasping prerogative of an heriditary magistrate, supported and fortified by an heriditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reasons prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

Serious matters confront the Tanana Valley Bar...

MINUTES
TANANA VALLEY BAR ASSOCIATION
Meeting February 20, 1987

Meeting was called to order by newly invested President Dan Callahan. President Dan introduced former President Dick as the Tanana Valley Bar Association corollary to Jimmy Carter.

The Minutes of the previous meeting were not read as Fleur only had notes and she said they weren't very interesting anyway.

Introduced as a guest was Mary Hamilton, a professional librarian. The Federal Defender was also present, but President Dan refused to introduce him as a guest as El Jefe believed the Federal Defender no longer qualified.

Fleur Roberts stood up and made an impassioned plea for checks made out to cash. It then turned out that these checks were to reimburse the TVBA by individuals who attended the Fourth of July Party. It turns out that fifty-eight (58) people attended the Fourth of July Party, but the DA's office was six (6) people short. Several comments were made about Larry, Darryl and Darryl attending and trying to eat on the TVBA tab, but Dick Madson informed the body that he broke Larry, Darryl and Darryl's plate. It wasn't clear whether he broke three (3) plates or one (1). Fleur Roberts introduced a motion that the Tanana Valley Bar Association make up a $150.00 shortfall from the treasury for the six DA's who didn't attend and that Ken Lougee be billed $20.00 for his failure to attend after RSVPing that he would attend. The motion was seconded by David Call.

Discussion then promptly moved to the copy machine in the library. It was announced that the machine was broken but it will be fixed as soon as the new repairman is finished reading the manual. When he comes to a full understanding of the manual he will repair the machine. Upon repair of the machine, bills will immediately be set for copying charges. Fleur reported that she had received a letter from the former bookkeeper which stated, essentially, that the former bookkeeper had some problems and the bills hadn't gone out and she hoped we wouldn't hate her. Somebody made a motion to send the former bookkeeper a letter saying we do hate her, but the motion died for lack of second.

A vote was then held on the earlier motion made by Fleur and seconded concerning the shortfall from the Fourth of July Party. After the question was called a voice vote was held. All persons present except Richard Burke voted in favor of the motion. Burke voted no, and offered no explanation.

There was a private report by Dick Savell that the kaka was off his car.

Dave Call then introduced a motion, requiring that attendance be taken at all future meetings of the Tanana Valley Bar Association. There was no second. When questioned as to why he wanted attendance taken, Mr. Call responded that somebody was telling the newspapers what was going on at the meetings and he wanted to find "Deep Throat." The mere mention of these magic words tickled a memory somewhere, and Fleur Roberts recalled that she went to high school with Harry Reems. Harry Reems was known as Herbie Striker in those days. Apparently, both Fleur and Herbie attended the same Jenior High Prom where, it was reported by Fleur, Herbie wore patent leather pumps.

President Dan made a comment bout the Far North Press Club wanting to send someone to talk to the TVBA. He then made a statement that he would like to have people come to the meetings and talk. He could barely be heard over the members talking amongst themselves.

Ed Noonan announced that he had committed the Tanana Valley Bar Association to provide eleven (11) people on March 9, 1987 from 8:00 to 11:30 p.m. to answer telephones for the KUAC Festival Fund Raiser. He mentioned that the TVBA was being asked to do this because the Medical Association of Fairbanks could not come up with eleven (11) people. There was then lots of peer pressure to sign up. It was noted by a member of the TVBA that Oral Roberts only had forty (40) days left to raise the required funds, as if that report had anything to do with KUAC.

Will Schendel pointed out that the TVBA should support a program on KUAC. Mr. Noonan stated that the current show carried by KUAC on terrorism was good and said he wanted to support terrorism.

The Foreign Policy Committee Report was requested, but not forthcoming. Burke mumbled something about when Reagan gets his fourth (4th) story out, he'll have a fifth (5th).

There was no Federal Court Business.

There was no State Court Judges.

Dick Madson reported on the status of the Saturday Afternoon Show for the Alaska Bar Convention. Essentially, Mr. Madson asked for help in obtaining material for the show. Since Fleur Roberts had gone to school with Herbie Striker, she was asked if she could get Harry Reems to come. She stated that she wouldn't touch that with a ten (10) foot pole.

Dave Call made comments on the raft trip on the Nenana River as part of the Bar Convention. Much discussion was had as to whether the TVBA should support a business which was headquartered in San Diego in the wintertime. In any event, apparently the groups that put on these trips provide all the rain gear for you. Art Robson, however, expressed concern about whether or not they could get rubber underwear for the trip.

The meeting was adjourned at 11:50.

Continued on page 29

...TVBA practices free press credo

Continued from page 28

Dear Mr. Bendell:

The Tanana Valley Bar Association, once again, asked that I send you copies of the Minutes of their meeting of March 20, 1987. They also asked that I send a copy to Stan Jones who had been the speaker that week. I enclose for your review a copy of the Minutes we sent to Mr. Jones. You can see that we are trying to find out who is leaking information to the News Miner.

Very truly yours,
Daniel R. Cooper, Jr.

MINUTES
TANANA VALLEY BAR ASSOCIATION
Meeting March 20, 1987
(Original Text)

The meeting was called to order early by President Dan Callahan. Dan introduced his guest, Stan Jones of the Fairbanks Daily News Miner (of whom more later). Also present as a guest was Marjorie Gorsuch from the State Department of Education. Most of the Alaska Judicial Council were present and were introduced by Barbara Schuhmann as follows:

Attorney members: Jim Gilmore
Bill Council

Senior Staff Associate: Theresa Carns

Staff Attorney: Marla Greenstein

Dick Madson interrupted to tell Barbara that he had just gotten a call from Dick Savell and Savell was picking up the tab for the Judicial Council's lunch. Madson then reported that Savell's wife had asked Madson to represent Savell in a lawsuit against the hospital for his recent almost dying episode. Madson evaluated the case and decided that although liability might be easily proven, if Savell died there would be no damages.

Jim DeWitt introduced one of his partners, Phil Eide, and a new associate attorney in Fairbanks, Michael McTighe. Mr. McTighe is a former bank officer and maybe he can be of some assistance if the TVBA needs to float a loan to pay KUAC for the ongoing radio program.

Marjorie Gorsuch announced to the group that somehow the Bar Association was cooperating with the school districts throughout the State in an attempt to educate children about law. She informed us she would send us more information later.

The Westlaw Committee in the form of Jim DeWitt reported that there are 15 subscribers and that they had all been sent a questionnaire asking whether the Westlaw System as we currently know it should be shut down. Seven responded in the affirmative and the 8 non-respondents were deemed by DeWitt to have responded in the affirmative as well. Motion was made and seconded to close down the Westlaw System effective April 1st and sell the equipment. Unanimous consent was asked and granted. DeWitt then stated that all of Westlaw was now available on a compact disk. Roger Brunner, of course, wanted to know what it sounded like. DeWitt said he thought it sounded a lot like Judge Blair.

Stan Jones was introduced as the speaker from the Far North Press Club. Mr. Jones started out his presentation by stating he felt he was at home as journalists, lawyers, used car salesmen and politicians were all grouped at the same low level. It turned out that Stan had his drawers in a knot because the *Harrington* case had held an open court hearing that was unannounced. Mr. Jones is of the view that adverse pretrial publicity is not really a problem because to get a fair trial all you have to do is move the trial somewhere else. He hinted, darkly, that trials were seldom moved because it would disrupt the Judges and the lawyers lifestyles.

The thrust of Mr. Jones' argument seemed to be that the press doesn't want to cover just the results, they want to cover the process as well. Mr. Jones once again hinted, darkly, that this was so because the press doesn't trust lawyers.

Mr. Jones concluded his prepared remarks by saying the press only wanted to be treated fairly, that they had not been treated fairly in this case, and Stan thought the parties involved should each contribute $1,000.00 or an hour's fee, whichever is greater, to the Society for Professional Journalists.

Madson moved to chastise Harry Davis soundly. The motion died for lack of second.

Several questions were posed to Mr. Jones by members of the audience, including one that somehow implied that journalists could feel remorse. Mr. Jones' reply was lost in the crowd noise.

Harry Davis asked for the opportunity to make certain things straight. However, his voice couldn't be heard which prompted Paul Cragan to state that if Harry wanted to defend himself he ought to speak up and do it in public.

David Call asked Stan when he was going to do another good story. Stan replied that this Governor had only been in office a short time and we would have to give him a little more time and rope.

Stan was asked who leaked the story from the courthouse to the News Miner that the open hearing which was unannounced would take place. Stan Jones replied that reporters always kept their sources confidential as this somehow encourages freedom of the press. John Franich then stated the obvious that it seems that the press can keep things secret if they wish but the judicial system can't. This was construed to mean that the press was publishing the results (of the secret source) but not the process.

John Franich wanted to go on the record stating that many of the defense lawyers in town were concerned about the things that Harry Davis and his prosecutors did in private and the defense lawyers wanted to open the grand jury proceedings. Stan Jones then wanted to go on record saying that he wanted the press to have subpoena power. Fortunately, there were no court reporters there, and so these statements went unrecorded.

After that, nothing else much of interest happened and the meeting adjourned with Harry Davis walking slowly towards the doors, shoulders bent and head shaking sadly side-to-side.

Respectfully submitted, etc.

MINUTES
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Meeting March 20, 1987
(Press Copy)

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Respectfully submitted, etc.

Judges come to Reno for more education

Does the judge who hears your case in court have to be a lawyer? In some cases, no. Or even if he is, he may not be experienced in the type of law involved in your case.

Even the most seasoned judges cannot easily keep up with such legal developments as computers in courts, malpractice, product liability and the rights of children.

What can judges do to increase their competence, their efficiency and their ability to understand the current issues?

They can come to Reno, Nevada!

Reno? Isn't Reno a remnant of the Old West, where the law was enforced with the sheriff's six-gun and a kangeroo court in the local saloon? Well, maybe at one time, but no longer.

Reno is the home of both the National Judicial College (NJC) and the National Council of Juvenile and Family Court Judges (NCJFCJ). These two institutions are meccas of the nation's judiciary, with good reasons.

The judicial colleges of Reno offer concentrated courses especially for judges — how to make decisions, how to act like a judge, how to settle disputes, how to organize the system to promote justice, meet human needs, how to deal with the media, etc. The courses are extremely helpful to non-lawyer judges. one recent student had been a refrigerator repairman before being elected a judge.

More than 14,000 judges have attended resident courses at the National Judicial College in its more than twenty years of service. Since its founding in 1963 at the University of Colorado and its move to its permanent home in 1965 at the University of Nevada–Reno, the College has become the leading residential judicial education institution in the country.

Its former dean, Judge John W. Kern III, who served for sixteen years as an Associate Judge of the District of Columbia Court of Appeals, heads an all-volunteer faculty of top-quality judges, lawyers and specialists and a staff of thirty-five. The fifteen-member NJC Board of Directors is chosen by the American Bar Association Board of Governors.

NJC's continuing lecture series has brought to Reno such outstanding jurists as U.S. Supreme Court Justice Sandra Day O'Connor, (the first NJC alumna to sit on the Supreme Court), U.S. Attorney General William French Smith, Vice President George Bush and Gannett Newspapers' Allen Neuharth.

Course offerings at the National Judicial College range from basic courses for new judges like "General Jurisdiction," to courses that deal with new technologies like "The Courts, the Media and the Public," to nuts-and-bolts courses like "Traffic Court Proceedings" and "Anatomy of a Misdemeanor Trial."

Judges can tap resources from other professions. One valuable course features one-on-one critiques by judicial writing experts. Judges can also develop psychological and philosophical skills from courses like "The Process of Decision Making" and "Great Issues of Law as Reflected in Literature."

One of the most popular NJC courses is taught by a non-lawyer judge about the use of computers in court systems. This course is so much in demand that it is split into two sessions, beginning and advanced. Judges are strongly encouraged to bring their administrative personnel to the advanced section with them, to discuss how they can talk to each other to get what each needs from the computer system.

The National Council of Juvenile and Family Court Judges, the largest and oldest judicial membership organization in the nation, this year celebrates its Fiftieth Anniversary. The National College of Juvenile Justice was established at the University of Nevada in Reno in 1969, to offer continuing judicial education courses which specifically address juvenile and family law.

Serving about 2,500 active members from almost every state, the National Council has provided continuing judicial education to more than 60,000 participants with 13,500 participating last year. The 120 courses offered each year include annual summer and fall colleges tailormade for judges newly appointed to juvenile or family court, and the National Conference on Juvenile Justice which attracts about 1,000 participants yearly.

The volunteer faculty of nationally recognized experts in law, the behavioral and social sciences, and medicine and other juvenile justice specialists provide their expertise and experience. Judges investigate the latest trends in American family law, model programs of child support enforcement, mediation techniques and the economic impacts of divorce.

Recently, the National Council developed a curriculum explaining what judges need to know when hearing child sexual abuse cases. The curriculum, the only one in the country specifically for judges, is in the evaluative process and will be available nationally next year.

The active committees of the National Council address some of society's toughest issues. Some examples are alcohol and substance abuse among youths and their families, victims of child sexual abuse and the traumas associated with such victimization, and the victims of crimes.

Other problems that juvenile and family court judges try to resolve almost daily are permanent homes for abused or neglected foster children,, solutions for the treatment of the serious, chronic or violent juvenile offender,, and how learning disabilities can be related to juvenile delinquency. No wonder they need some extra training in many different fields!

"When judges come in here," says Judge Kern, a former judge on the District of Columbia Court of Appeals, "I tell them to lay aside their armor in order to be receptive not just to new techniques and new, substantive law, but also to the interchange of ideas and experiences with their fellow judges in attendance. We think, and the judges agree, that the educational experience here is a more effective way of becoming a competent and productive judge than on-the-job training."

For further information contact Barbara Devinney, The National Judicial College, University of Nevada, Reno, NV 89557, 702-784-6747, or Judith Citterman, National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507, 702-784-1662.

Submitted by the City of Reno News Bureau.

School partnership begun

The Alaska Bar Association and the Alaska Department of Education have received a grant from the American Bar Associaton which will bring the technical assistance of the ABA to Alaska's lawyers and into the classroom. Through the ABA's Bar-School Partnership Program, bar associations join with school districts to develop and improve law-related education for elementary and secondary students. Funded through a grant from the U.S. Department of Education to the ABA's Special Committee on Youth Education for Citizenship (YEFC), this one-year program will be especially concerned with supporting bicentennial program efforts and with making law studies a permanent part of school programs.

Initial efforts will involve the Anchorage, Mat-Su, and Kenai Bar Associations and those three school districts. Bar-school team members will attend an institute in Chicago in June for initial training and ABA/YEFC staff will conduct workshops in Southcentral Alaska in the Fall 1987. The ABA will also give each state materials supporting the efforts of the state and local bar-school partnership teams.

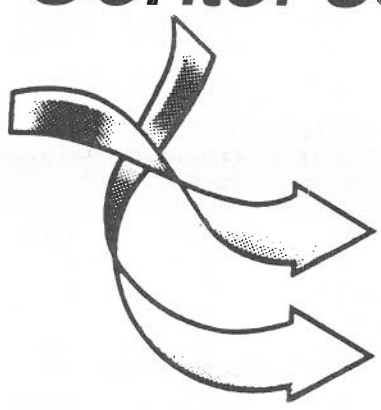
The Bar team members include Ralph Beistline, Joe Perkins, Paul Kelly, Karen Hunt, Stanley Howitt, Joe Kashi, Ken Cusack, Jean Schanen, David Qwick, and J. Randall Luffberry. Deborah O'Regan, Executive Director of the Alaska Bar, will coordinate the effort with Marjorie Gorsuch, Curriculum Specialist, Social Studies/Fine Art, Department of Education.

This program grant is part of a broad-based effort of the Department of Education to support the improvement of law-related education in the social studies curriculum of Alaska's schools. As part of this effort, two social studies teachers, Gayle Thieman (Fairbanks) and Mike Morris (Sitka), were chosen to participate in a Center For Research & Development In Law-Related Education program in citizenship education at Wake Forest Universiy School of Law. As a result of their particpation, technical assistance from the Center will be made available in Sitka, Fairbanks, and Juneau.

The Department of Education and the Alaska Bar Association also have plans to survey lawyers for inclusion in the Bar-School Partnership Directory. The Directory would identify attorneys who would be willing to serve as resource persons in the classroom and the topics they would be willing to address.

— Submitted by Marjorie Gorsuch

Center solves tiffs



Conflict Resolution Center

conciliation • mediation • arbitration

The Conflict Resolution Center is pleased to announce a two-day workshop on June 27 and 28 (also Monday, June 29 from 6:00 to 10:00 p.m.). This workshop will be presented by well-known professional arbitrators and will emphasize hands-on practice.

Participants will have two options:

(1) Apply to be a volunteer for the Conflict Resolution Center. If you are willing to make a one year commitment and are selected, you will receive this professional training for free. Volunteer applications are available through CRC and are due by June 5.

(2) You can receive this valuable training with no commitment for a tuition of $250.

For more information call the CONFLICT RESOLUTION CENTER at 272-5922.

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QUESTIONS AND ANSWERS ABOUT ALPS

Number 1 in a Series

What is ALPS?

ALPS, the Attorneys Liability Protection Society, is a corporation initially organized by the Bar Associations and State Bars of West Virginia, Montana, Kansas, South Dakota, Wyoming, Delaware, North Dakota, Alaska, Idaho and Nevada. The organization has incorporated in the State of Nevada as a domestic mutual insurance company for the purpose of providing Professional Liability Insurance to member attorneys.

Will other states join?

ALPS' Board of Directors is currently considering applications from New Mexico and Nebraska.

ALPS

For More Information call 1-800-FOR-ALPS

QUESTIONS AND ANSWERS ABOUT ALPS

Number 2 in a Series

What is ALPS' principal objective?

To provide a stable and affordable market for Attorneys Professional Liability Insurance.

On what basis is ALPS being formed?

ALPS will be a Mutual Insurance Company domiciled in Nevada, and formed under the Federal Liability Risk Retention Act of 1986.

Who will own and control ALPS?

The practicing attorneys to whom it issues a policy, within ALPS' member states, who have made the required surplus contribution.

ALPS

For More Information call 1-800-FOR-ALPS

QUESTIONS AND ANSWERS ABOUT ALPS

Number 3 in a Series

How much am I being asked to contribute to surplus?

During the first sixty (60) days of surplus solicitation, each attorney will contribute $1,000. Attorneys wishing to join ALPS after this sixty day window will be required to contribute one-half (½) of the indicated premium for a mature $1,000,000 - $1,000 deductible policy for the state in which he or she lives, or $1,100 whichever is greater. Depending upon the state in which the attorney has his or her practice, such amount may substantially exceed $1,000.

Why the difference?

First, to encourage early commitment to ALPS. Next, to assure that ALPS Premium to Surplus Ratio be kept to acceptable levels.

ALPS

For More Information call 1-800-FOR-ALPS

QUESTIONS AND ANSWERS ABOUT ALPS

Number 4 in a Series

May I readily sell or transfer my Surplus Contribution Certificate in ALPS?

No — your certificate may only be transferred upon your death, dissolution of your law firm, operation of law, or otherwise with the prior ***written*** *consent of the Board of Directors of ALPS.*

Will Surplus Contribution Certificates bear interest?

No. The Board of Directors has determined not to make certificates interest bearing to avoid registration requirements that would otherwise be imposed by the Securities and Exchange Commission and state regulatory authorities.

ALPS

For More Information call 1-800-FOR-ALPS

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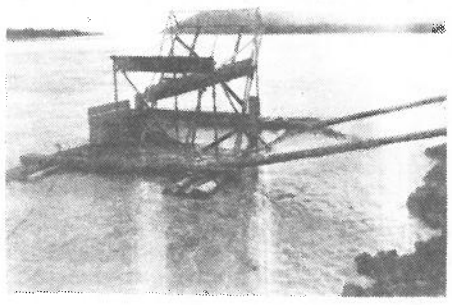
Our small, contemporary, non-smoking law office, located in a beautiful mid-town setting, is seeking an *experienced* (minimum 2 yrs.) paralegal in workers' compensation to join our fun, yet very busy team. Word processing skills are required. We will train the right person to use MicroSoft WORD. The successful applicant must be a self-starter, highly motivated, and able to leap tall buildings in a single bound (sense of humor a must). Salary DOE. *No phone calls!* Please bring resume to 2525 Blueberry Road, Suite 102 before May 20, 1987. The position becomes available June 1, 1987. We are an Equal Opportunity Employer.

HISTORICAL BAR

Pictorial history of Fairbanks... the early 1900's



Photos courtesy University of Alaska, Anchorage Archives & Manuscripts Department; collections of H.I. Staser, Wilson W. Brine. Also photos courtesy University of Alaska, Fairbanks, Alaska and Polar Regions Dept. Archives.

Life plan performs

Participation in the Bar Life plan is up over 40% in the last six months. Gerry Downes, Association Controller, credits "good rates and good communication" with its success.

Bar members and their employees may receive from $50,000 to $150,000 through the plan. Spouses may receive up to $100,000. No physical exam is required.

Sample Annual Premiums at $100,000

Age	28:	$ 96
	38:	120
	48:	312
	58:	1,032

Permanent Coverage Conversion

Participants now qualify *automatically* for a permanent policy through Sun Life. Sun provides some of the very best returns available.

As an example, a non-smoker age 35 can pay $1,404 for seven years to purchase an initial death benefit of $100,000. After the seventh year, no more payments are made, but benefits are projected as follows:

	Total Outlay Stops at	Surrender Value	Gain	Death Benefit
10th Year	$9,828	$11,011	$ 1,183	$133,343
15th Year	"	18,272	9,444	163,998
20th Year	"	35,894	26,066	203,106
30th Year	"	84,082	74,254	309,638

The surrender values are not subject to taxation while they are in the policy, or if they are "borrowed" from it.

For comparison, in thirty years or at age 65:

	Value	Death Benefit
Sun Life	$84,082	$309,638
No load IRA or Municipal Bond at 8%	79,428	79,428
One of the better Universal Life contracts at 9%	55,736	155,736

These projections are based on Sun's current dividend scale, which is not guaranteed. Sun has not, however, failed to pay a projected dividend in its 122 year history. Sun is rated A+14 by Bests Guide an has a reputation for being the most progressive of the insurance industry giants offering participating policies.

The example shows why we are so excited about the new permanent option for Bar members, and why we feel the conversion privilege we have negotiated for group term participants is so valuable. It is an excellent vehicle for deferred compensation, key-person insurance, personal savings and estate planning.

For more information, contact the plan's administrator:

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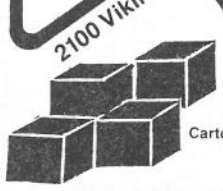

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Law grads get work despite attorney population

Approximately 91.6% of the law school graduates who responded to a 1985 report conducted by the National Association for Law Placement (NALP) indicated that they had found employment, despite the fact that the number of lawyers has nearly doubled over the past decade. The Employment Report surveys law school graduates' geographic locations, starting salaries, types of positions and other variables.

Out of 36,829 law students graduated from ABA-accredited law schools in 1985, 30,510 responded to the report and 25,978 provided employment information. Out of the 175 ABA-accredited schools, 145 (83%) participated.

Despite much publicized reports of 1986 starting salaries in New York firms of $65,000 per year, the average salary for the J.D. Class of 1985 was $29,224, less than half that of the large New York firms.

Some highlights from the 1985 report include:

Employment

- 60.2% of the NALP respondents were employed in private law practice in 1985, a notable increase compared with 1975 when the total was 51%.
- Very small firms with two to 10 attorneys accounted for the largest percentage of graduates in private practice (21%); following behind were small firms, 11–25 attorneys, with (8.8%); medium firms, 25–50 attorneys with (6.8%); firms of 51 to 100 attorneys (7%); and large firms with more than 100 attorneys (12%).
- Only 2.9% of the respondents became self employed.
- Of the 91.6% of respondents who found employment, 8.2% were in non-legal positions.
- 11.9% of the NALP respondents accepted judicial clerkships.
- Government service (12.7%) increased slightly from the 1984 figure of 10.9%, a decline from a decade high of 17.6% in 1975. Employment in public service/public interest positions stabilized at 3.3% after having declined from a high in 1975 of 5.6%.
- Business (10.4%), military (1.6%) and academic careers (1.5%) have all remained steady over the past six years.

Salary

- Large firms (over 100 attorneys) located in New York City traditionally offer the highest starting salaries; 1985 was no exception with these firms reporting an average rate of $49,027. Other city averages for the large firm over 100 attorneys include: Boston at $42,688, Washington, D.C. at $42,237, Los Angeles at $41,453, Chicago at $39,727, San Francisco at $39,527 and Atlanta at $39,102.
- Average starting salaries in very small firms varied from city to city from $12,000 in Augusta, GA to $50,000 in San Jose, CA.
- 70% of all graduates earned less than $35,000 per year.

Age

For the first time in the 13-year history of the Employment Report, age at graduation was tabulated. Most law school graduates were between the ages of 25 and 26. 20.7% of all graduates were over the age of 30 with slightly more male (1% more) than female in this age range. 8.1% were over the age of 35. The youngest law school graduate was 21 and the oldest graduate in the report was 72. The largest number of graduates over 30 found employment in government (26.6%), in very small firms of 2–10 attorneys (21.6%) and in business and industry (13.9%).

The NALP Employment Report published annually, is conducted by means of surveys that are distributed approximately six months after graduation to placement directors at ABA-approved law schools in the U.S. The NALP Employment Report is prepared in cooperation with the Columbia University Social Sciences in New York. The percentages reported by NALP are based upon survey respondents rather than the total number of law school graduates.

The entire 1985 report will be available in May 1987 and contains a more detailed analysis of these results, as well as other topics:

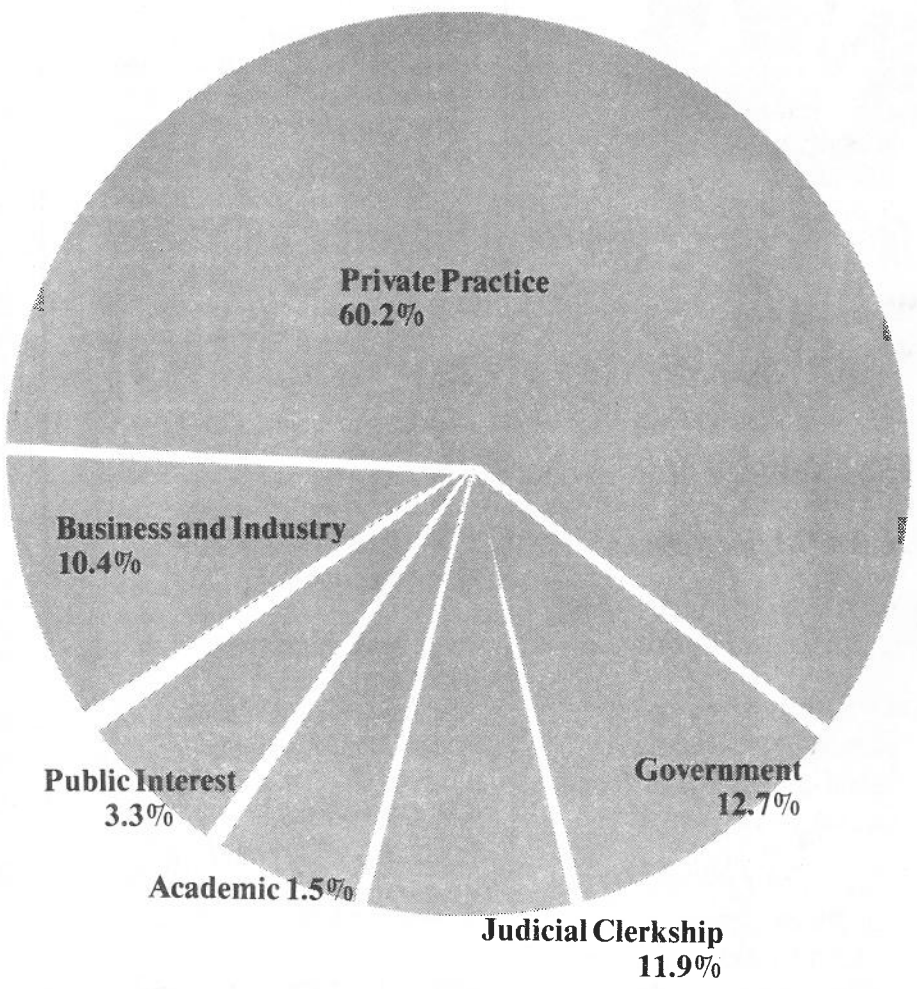
- Employment location
- Salary reports
- Analysis of types of employment
- Employment patterns and rates of respondents grouped by sex and race

The 1984 Employment Report and Salary Report is presently available and may be obtained for $50 from the Administrative Office of the National Association for Law Placement, Inc., located at Suite 302, 440 First Street, N.W., Washington, D.C. 20001 or by contacting Jane Thieberger, NALP Research Co-Chair, at (212) 598-2521, for further information.

National Association for Law Placement

Class of 1985 Employment Report and Salary Survey

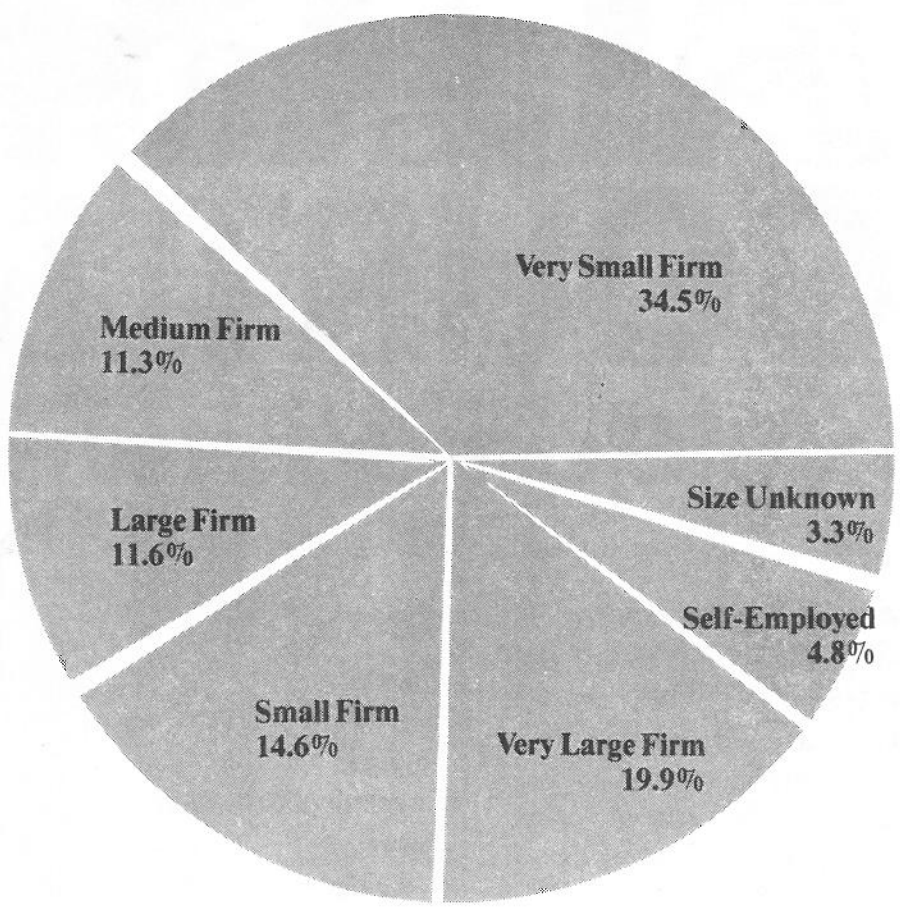
Total number of Class of 1985 graduates surveyed by type of employment. (Showing J.D. graduates from 145 law schools nationwide.) Pie below based on 23,788 graduates who furnished their types of employment.



Types of Employment

Class of 1985

Total number of the Class of 1985 graduates (J.D.) or 14,328 working in private practice shown by size of firm.



Private Practice by Size of Firm

Class of 1985

Attorneys, bar membership by state

	Mandatory	Lawyers	Members
Alabama Bar Assoc.	Yes	8,073	8,073
Alaska Bar Assoc.	Yes	2,452	2,452
S.B. Arizona	Yes	9,350	9,350
Arkansas Bar Assoc.	No	4,500	3,200
S.B. California	Yes	103,911	103,911
Colorado B.A.#	No	11,500	9,500
Connecticut B.A.	No	12,000	8,900
Delaware S.B.A.	No	1,400	1,100
D.C. Bar	Yes	Unknown	45,045
D.C. Bar Assoc.	No		4,100
Florida Bar	Yes	29,000	39,000
S.B. Georgia	Yes	18,700+	18,700+
Hawaii S.B.A.	No	3,500	2,500
Idaho State Bar	Yes	2,575	2,575
Illinois S.B. Assoc.	No	47,400	26,593
Indiana State B.A.A	No	10,800	8,750
Iowa State B.A.	No	6,000	5,500
Kansas Bar Assoc.	No	7,000	4,500
Kentucky Bar Assoc.	Yes	7,600	9,100
Louisiana S.B.A.	Yes	13,200	13,200
Maine State Bar	No	2,862	1,989
Maryland S.B.A.	No	16,400	11,600
Massachusetts B.A.	No	30,570	17,000
S.B. Michigan	Yes	24,000+	24,000+
Minnesota S.B.A.#	No	16,000	11,375
Missippi S.B.	Yes	4,609	5,631
Missouri Bar	Yes	12,732	16,534
S.B. Montana	Yes	2,200	2,500
Nebraska S.B.A.	Yes	4,000	6,700
S.B. Nevada	Yes	2,669	2,669
N.H. Bar Assoc.	Yes	2,800	2,800
N.J. State B.A.	No	25,000	16,000
S.B. New Mexico	Yes	4,050	4,050
New York S.B.A.	No	80,000	46,000
N.C. B.A.	No	10,600	7,300
N.C. State Bar	Yes	10,600	10,600
S.B.A. North Dakota	Yes	1,613	1,613
Ohio State B.A.	No	24,919	18,500
Oklahoma State B.A.	Yes	9,226	11,300
Oregon State Bar	Yes	9,000	9,000
Pennsylvania B.A.	No	21,490	25,867
Rhode Island B.A.	Yes	3,100	3,100
South Carolina Bar	Yes	5,007	5,899
S.B. South Dakota	Yes	1,776	1,776
Tennessee B.A.	No	10,000	6,000
S.B. Texas	Yes	46,664	46,664
Utah State B.A.	Yes	4,700	4,700
Vermont Bar Assoc.	No	1,500	1,380
Virginia Bar Assoc.	No	20,000+	4,100
Virginia S.B.	Yes	20,000+	20,000+
Washington S.B.A.	Yes	13,000	13,000
W. Va. Bar Assoc.	No	3,500	1,211
W. Va. State Bar	Yes	3,500	3,500
S.B. Wisconsin	Yes	10,626	14,517
Wyoming State Bar	Yes	1,128	1,581

"Mandatory" — whether a lawyer must belong to the association to be permitted to practice law in the jurisdiction

"Lawyers" — lawyers in the jurisdiction

"Members" — lawyers who are members of the association

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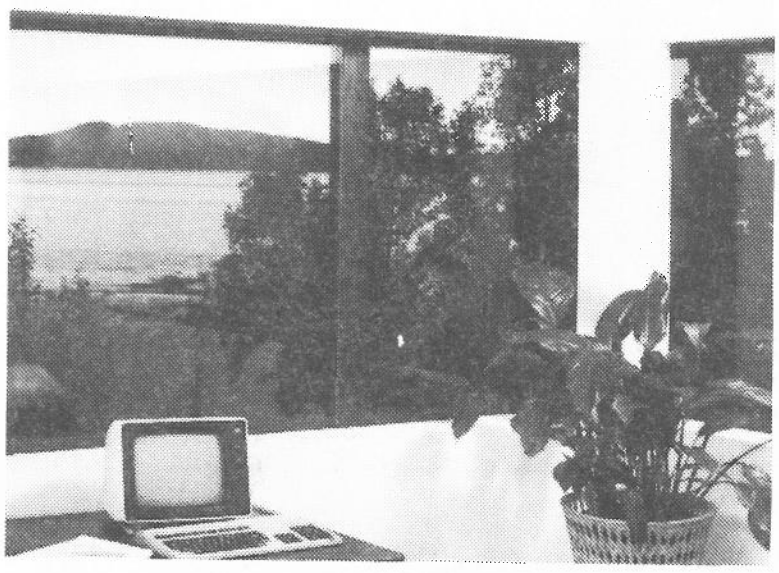

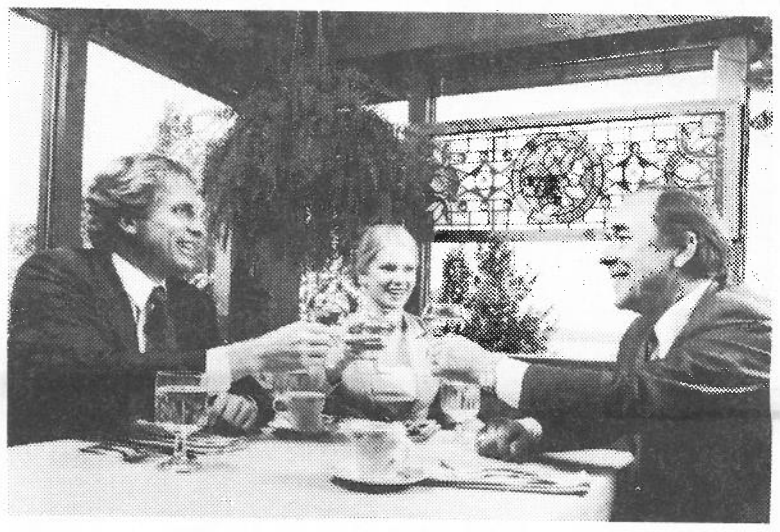

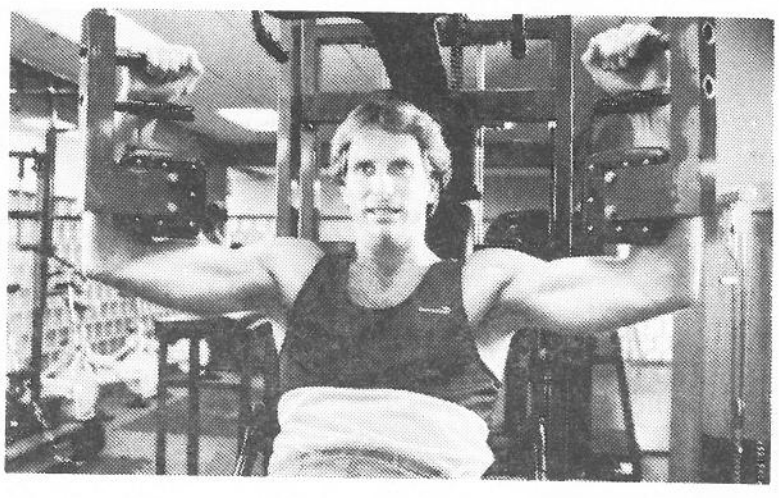

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