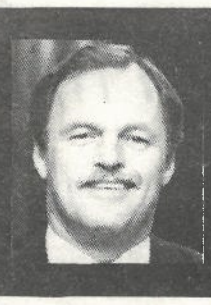
Convention to Feature Archibald Cox

Pages 7-8



Cowper, Boyko also to appear

$1.50

The Alaska BAR RAG

May, 1988 — *Dignitas, Semper Dignitas* — Volume 12, Number 2

Major problems on real estate scene

BY WILLIAM L. MCNALL

Conrad and Moening:
Lenders: 2 Consumers 0

Once upon a time, in a Kingdom located far from the seat of world powers, there was found a precious black liquid. The discovery caused the leaders of the world powers to meet and discuss what to do with this liquid. At a meeting hall in the emperor's palace in the Kingdom of Houston, all the representatives agreed to send their citizens to the far away Kingdom, and to have them erect a large pipeline through which the precious liquid could be pumped. The liquid would be stored in large vats and then placed upon ships and transported to other kingdoms, where it would be refined and made more civilized. The emperor and his advisors estimated that it would take 20 years to remove all the precious liquid from the far distant Kingdom of the North.

In the meantime, the representatives of the fardistant Kingdom were rejoicing because the discovery, and the pipeline, meant large investments of money and a huge increase in population with the resulting upward pressure upon demand for available developable land and other scarce commodities. The citizens of the Kingdom all raised the prices for their homes and developed and subdivided their homesteads. The representatives of the Kingdom erected a corporation to loan money to anyone that wished to purchase a home. "We will make every citizen a homeowner," they said. "We will insure our loans from losses by causing the homeowner to carry mortgage insurance and the corporation to obtain pool insurance," they said. And the citizens of other kingdoms came to the Northern Kingdom and bought the new homes, zero lot lines, condos and trailers and understood that the loans were insured and they were protected, and all was good.

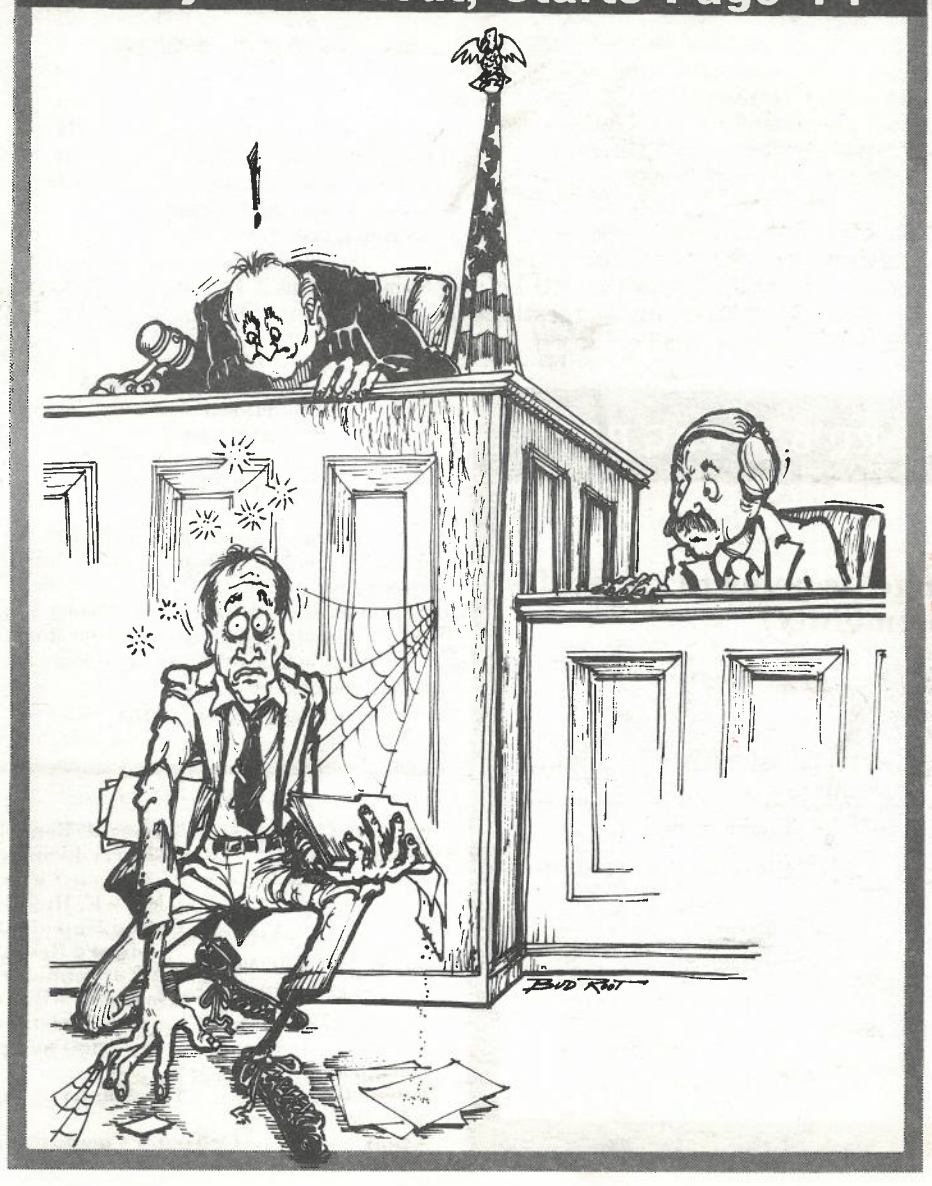
The lenders lent; the builders built; the agents sold; and the purchasers borrowed. Nay sayers soon arrived upon the scene to speak against building for the sake of building. They warned against overbuilding. They used such trickery as statistics and argued from such vagaries as facts and common sense. But the contractors, and the lenders, rose against them and showed the nay sayers to be low-down academicians or bureaucrats or worse, and the lending and building continued and it was good. And then, on a dark and stormy night, the sky fell upon the Northern Kingdom and the selling and borrowing stopped. For a while the building continued and then it stopped. And then the foreclosures began as jobs were lost and the citizens could not pay their bills. For a while the lenders just took the keys and the quit claim deeds, and let those who were fleeing the Northern Kingdom return outside to their homes in other kingdoms, unscathed.

When the rate of delinquencies on real estate loans began to alarm the corporation, a new decision was made: threaten judicial foreclosures. The press warned the populace that if they did not pay their mortgages there would be judicial foreclosures. The people quaked with terror but still could not make their mortgage payments, for they had no money because they had no jobs. The corporation met again and created a program to help out those unfortunate, previously threatened, souls who were staying in the Northern Kingdom. The program created some help in the form of a reduced payment. After two years of such help, the help would then be added on to the principal of the underlying loan, thereby helping the borrowers into greater debt than they had, before being helped.

The foreclosures continued, bankruptcies increased, and matters did not appear to be well in the Kingdom. The great court of bankruptcy stayed open nightly till 8:30 to accommodate all who wished to attend. Its'

Continued on Page 24

Lawyer Burnout, Starts Page 14



Bar initiates first statewide member economic survey

The first statewide economic survey of the Bar membership is scheduled to go out later this year. The survey is sponsored by the Alaska Bar Association, the Juneau and Tanana Valley Bars, and the Alaska Court System. The Judicial council will assist with the design, production and analysis of the survey.

Responses to this survey will help provide us with a profile of the membership so that Bar programs can be better tailored or developed to meet membership needs. The responses will also give you a demographic picture of your colleagues, and a summary of practical economic information about the practice of law in the state of Alaska. Demographic and economic information will be broken down on a regional basis to avoid the distortions that might result from inclusion of information remote from your geographical area of practice.

Confidentiality to those providing information is of critical importance. With that in mind, the Bar association and the Judicial Council will be contracting with a professional survey and research organization to receive, tabulate, analyze and summar-

Continued on Page 25

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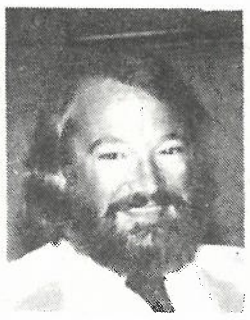


FROM THE PRESIDENT

Bob Wagstaff

This is the last President's column that I will be writing. A year goes very quickly. Not only does it seem that I was just writing my first column, but that actually is the case. It has been very enjoyable working with a thoughtful and non-devisive Board and exceedingly competent staff. After one year I feel that I am just ready to emerge as President. One year is probably the right term as it's not enough time to get into serious trouble. This will also conclude my three year term on the Board of Governors. I initially ran for the Board of Governors because I was dissatisfied with how two lawyer clients had fared before the Board of Governors.

I have written before about how discipline functions of the Board of Governors are its most important activities. Lawyers judging lawyers is at best a difficult task. The three lay members of the Board often have acute insights that the lawyer members find very helpful, often specifically turning to lay members to get their views on certain issues.

When a lawyer appears before the Board of Governors in disciplinary proceedings it is usually best that he or she be represented by counsel. However, there are cases where good presentations can be made by the lawyers themselves. But these are the exceptions. The hearing should be approached as a combination trial and appellate argument. While there is a transcript available, it is my experience that while the majority of the Board members have read the majority of the record below, there are still some nooks and crannys that have evaded review and an occasional Board member who simply has been physically unable to read everything. Each Board member has attempted to read the entire record, but it actually may not have been accomplished. I suspect that this is true with most courts as well. Therefore, it is very important to give a concise factual exposition of the salient facts. You should never assume that someone else is going to make your important argument or point out crucial facts. Anticipate questions as you will be questioned vigorously, in some cases aggressively. While I did not vote in the majority on every discipline case that came before the Board during the three years of my term, I can say without hesitation that every case got a full and complete hearing and that all opportunities to be heard were accorded. I think this is the spirit on the Board of Governors that you will find if you have to appear. Remember too, that the Board not only determines whether there has been wrong doing, but also recommends the appropriate sanction. It is therefore very important to be able to answer the question as to why certain action was taken. In a real sense the proceedings are a trial de novo, appellate argument, and sentencing held all at once. In contrast to what some appellate courts say however, what is presented at the hearing is significantly more important than the contents of the brief. It is also important not to assume anything. Rules and customs of practice that seem everyday to a private practitioner may seem equally foreign and perhaps even inappropriate to a member of the public bar. Remember that the Board of Governors brings diverse legal backgrounds to the issue that is being presented.

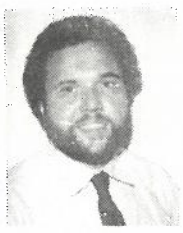
I've also written at some length about our upcoming Anchorage Bar Convention. Two of the featured lawyers are two of the best that I have ever seen, Archibald Cox and Edgar Paul Boyko. Ed Boyko gave me my first job in Alaska when he was attorney general in 1967. I later worked in his office along with Steve Cowper. We have had several cases over the years, the most interesting was the 1978 election contest. I have seen him in court many times. He is without doubt the best trial lawyer I have ever seen. I cannot claim to have seen them all, but I have seen my share throughout the United States. I've tried to attend famous trials of the day when they are happening and geography allows. It's hard for me to put in writing why Ed Boyko is so good. He has it all - a brilliant grasping mind, a sense of theatre, memory, voice, aggression, command of English, and all of the other basic prerequisites that a quarterback needs to compete in the NFL. The most impressive single thing that he has is presence. When he is in a room, particularly a courtroom, no one can take their eyes off of him. And he is always professionally courteous. For those who do not remember the election contest of the 1978 Republican primary between Jay Hammond and Walter Hickel, I can describe it as bitter, consuming, intense and exhausting. Five years of litigation was compressed into about 60 days. It culminated with a Supreme Court argument and a midnight written decision. The lawyers who were participating were all called into the clerk's office by Art Snowden and given the opinion. Ed Boyko spoke first, "You've won, congratulations."

Ed Boyko has as interesting a background as could exist. He was born in Vienna, Austria, educated in Scotland, and came to the United States shortly before World War II. He received his legal education at the University of Maryland and George Washington University and has been practicing law in Alaska since 1953. He has divided his practice between San Diego and Anchorage for a number of years. I won't steal his war stories except to confirm that he's been involved in some exotic campaigns.

I have never heard Archibald Cox actually argue before the United States Supreme Court. I have read transcripts of his arguments and we participated in an appellate law seminar last year in Hawaii. I can say he is the best appellate lawyer that I have not heard argue. I am confident that he is the best that I've ever encountered. It is impossible to imagine anyone other than Daniel Webster who has argued more than 90 cases before the Supreme Court. And what cases: *Baker v Carr, Shapiro v Thompson, Bakke v Board of Regents,* and the list goes on. Law clerk for Learned Hand. Solicitor General. Special Watergate prosecutor. Harvard Law professor. It not only looks good on paper, it is good. Even though he confesses he has never presented a jury case, he has that same presence and talents of Ed Boyko, it's just a different arena, a different level of legal consciousness.

I am truly glad that these two lawyers who are the best I have seen in my 22 years of practicing law, will be here at the Alaska Bar convention in June in Anchorage. Come and share their experiences. You will not be disappointed.

The Alaska Bar Rag



THE EDITOR'S DESK

James M. Bendell

Lawyer burn-out is our lead topic for this issue. We were going to carry a story concerning judicial burnout too, but the attorney assigned to this story couldn't find time to write it — no doubt demonstrating that he may be a future burnout victim himself.

We are given two views of burnout — the clinical view by psychologist Dave Sperbeck and the layman/lawyer view in a story by Mikale Carter. Cartoonist Bud Root shows us hypothetical burnout under what one might call "field conditions."

It has always been an underlying theme of the Bar Rag that lawyers generally devote insufficient attention to having fun. The title of the publication itself certainly conveys the message that we shouldn't take ourselves too seriously. Some of our past columnists such as Gail Fraties have certainly shown us some of the burlesque aspects of life in and out of the courtroom. Judge Ralph Moody has hinted that he may start a column soon and I would appreciate it if you would all call the judge and bug him about getting started (Stan Ditus — could you please give this top priority?).

Meanwhile, all of you disappointed the editor of our poet's corner, Chancy Croft. Not one poem was submitted! Maybe lawyers don't suffer enough.

Our next issue will be the Bar Rag's Tenth Anniversary issue. We frankly don't know what's going to be in it but you can bet it will be a keeper. If you have any suggestions or contributions, send'em in.

TENTH ANNIVERSARY BAR RAG POLL

Should the *Bar Rag* change its name to reflect its august stature in the Community?

☐ **Yes**
☐ **No**

I nominate the following as its new name _____

Should the *Bar Rag* begin publishing six times a year?

☐ **Yes**
☐ **No**

Clip and send this to the Bar office

President Wagstaff 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.

June 6-8, 1988

IN THE MAIL

The Rag's image

I always seem to have a special fondness for the Alaska Bar Association delegates at ABA meetings. We seem to think alike. Maybe it is because Alaska is the biggest state area wise and Rhode Island is the smallest, an attraction of opposites.

Rhode Islanders and Alaskans are fiercely independent and don't feel we have to "go along" on a lot of things. Rhode Island was the first colony to declare its independence from England and the last to ratify the Constitution, so we've been at this for a long time. So, when I see your official publication is called "The Bar Rag," I have mixed emotions. I can see the frontier spirit deflating the stuffiness of the law and its practitioners, but where is the line between self-image and public image? Since I don't have to live with the consequences either way, I enjoy reading "The Bar Rag." I guess that's the whole point of a publication, to get people to read it.

—Ed Smith
Executive Director Emirtus
Rhode Island Bar Associaiton

Support our School

The administration of the University of Alaska Anchorage is in the process of dissolving the School of Justice and merging the justice academic programs with the College of Arts and Sciences or some other program.

Although the research and academic programs will still be available, the loss of status as a School will have an effect on areas such as future funding at the federal level, the summer minorities program for students from the bush, and other programs which result in preparing Alaskan residents for service in the Justice fields.

The students enrolled in the School of Justice are urging all interested parties who oppose this move to write the Board of Regents, legislators, and President O'Dowd and express your support for the retention of the School of Justice.

—Pam Stanford, secretary
UAA Justice Club

Bring back Gail

Enjoy reading the Rag, but miss the articles that used to appear written by Gail Fraties. Few have had the experiences or the writing abilities of Gail. When are you going to have him back?

—Vernon L. Snow
Provo, Utah

TVBA needs more bucks

March 18, 1988

To all to whom these Presents shall come, Greetings:

The Tanana Valley Bar Association requests the honor of your membership and association with them for the year 1988. Membership in the TVBA may be had upon payment of the annual dues in the amount of $60.00. It is not a prerequisite for membership in the Tanana Valley Bar Association that you reside in, or near, the Tanana Valley. For example, this invitation is extended to lawyers living or practicing in the Matanuska Valley, the Grand Canyon, and the Great Rift. Anchorage lawyers are particularly invited to become members so they too can receive the benefit from that professional cachet of listing this membership in Martindale-Hubbell.

The TVBA, as pointed out in previous Dues Notices, is active in several areas. For instance, the TVBA actively supports Law Day, provides support to the Law Library, and intervenes in foreign policy of the United States when the TVBA deems appropriate.

The TVBA meets every Friday, or almost every Friday, at noon at the Regency Hotel in Fairbanks. This is a new meeting place, and the food is better than the Travelers. The weekly meeting provides the most important benefit of membership in the TVBA: the opportunity to meet with members of the Bar and Bench in an informal atmosphere. The informality of these meetings is widely known, but less well known is that there are actually topical discussions on the law as it is and as it should be. These discussions often benefit all or some of those present. This year, President Randy Olsen is arranging to have someone present a topic at each meeting for exposition and discussion. Usually, it will be about the law or at least on a legal topic, but not necessarily.

Don't be like Jimmy Swaggart, who would rather sit back and watch, come participate in the TVBA. Just send your checks, cash or money orders for $60.00 to: TVBA, P.O. Box 676, Fairbanks, Alaska 99701. Thank you for your support.

Editor's note: tangible benefits include secret codes which will be made available upon membership or when they come from the manufacturer, whichever comes first.

Cheap group rates

We are pleased to have received the invitation to join the Tanana Valley Bar Association. The Ketchikan Bar Association would like to extend to the Tanana Valley Bar Association a like invitation. Our dues are approximately $200 per year and, if you want to join, we will cut that in half to $100.

If you join ours, we will join yours!

—Clifford H. Smith
Secretary-treasurer, KBA

Only if the deal includes safe passage

I am in receipt of your March 18, invitation to membership in your association. I am both humble and proud to have been included among the select practitioners permitted to apply. That the invitation was anonymously authored, xeroxed and unsigned only contributed to my perception that nomination to your fellowship is indeed a rare honor.

I am well acquainted with the activities of the Tanana Valley Bar Association. Included among my dearest casual acquaintances, are members of the Fairbanks Bar and Bench.

Not withstanding my enthusiasm to join your number, I do have a preliminary inquiry which bears upon the cost/benefit of membership. It is this: should I become a member of TVBA will I still be ethically obligated to associate a resident member of your association as a condition of avoiding the jingoistic prejudice of the Fairbanks Bench. I am sure you will understand my concern. The annual dues of $60.00 seem to me to excessive, without the corresponding benefit of being relieved from the duty to tithe under threat of judicial sanction.

Should the answer to this question be yes, then one additional question arises. It is this: are you able to assure me that your promise of safe solo passage in the courtrooms at Fairbanks would be honored universally by the judiciary within that city?

I have endured occasional exposure to some members of your Bench. Confidentially—and I trust this private opinion will go no further—I have found them generally a garrulous, querulous and unpredictable bunch. Unlike the typical Anchorage judge, some tend to mutter about principles of law in open court. Indeed, there is a persistent rumor (though not one I have been able to confirm) that at least one of their number has cited legal authority when none was offered by either counsel in a proceeding.*

I do not know how my reservations concerning the ability of TVBA to retrain the Fairbanks Bench can be satisfied. Nor, am I aware of a method by which my special status and identity as a bonafide TVBA member can be disclosed in open court. Clearly, some sort of device or secret signal must be employed; given the short attention and memory span of the average sitting judge—a problem which although severe in Fairbanks is not limited to your District.

I would very much appreciate your clarification of the forgoing points in order that I may further consider the advantages of membership in your association.

—Kenneth D. Jensen
Jensen, Harris & Roth

*My personal feeling is that the rumor is totally unfounded, unless, of course, Judge Singleton has recently been frittering away his valuable time on the Fairbanks trial Bench.

No, but we'll sell you a trinket

It was with warm pride that received your invitation for membership in the TVBA. Regretably, I am unable to join at this time due to geographic superiority.

However, speaking of money, our firm recently received a promotional item which we found unsuited to the cosmopolitan nature of the Third Judicial District. I am sure members of the TVBA would find it suitable. An example is enclosed. Please send the copy you wish printed and a cashier's check for $25.00 for each item desired. These things will get you lots of new business, and your clients will really like to get them, too.

—John Reese
Reese, Rice and Volland

Editor's note: the promotional item enclosed was a plastic pocket-protector with the name "Reese, Rice & Volland" imprinted on it.

Application being received four a quartet of judicial vacancies

Applications are now being received for four judicial vacancies. One is for the position of Superior Court judge in Anchorage, a seat now held by Judge Seaborn J. Buckalew, Jr. who will retire on July 31, 1988. Another is on the Superior Court in Fairbanks, a vacancy created by the retirement of Judge James R. Blair, effective August 15, 1988. Earlier resignations by District Court judges Hugh Connelly and Michael White have created vacancies on the Fairbanks and Anchorage District Courts. Interested persons may obtain application forms from the Alaska Judicial Council offices in Anchorage. The filing deadline for this position is 4:00 p.m., May 27, 1988.

A Superior Court judge must be a citizen of the United States and of the state, a resident of the state for five years immediately preceding appointment, have been engaged for not less than five years immediately preceding appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law is defined in AS 22.05.070.

A District Court judge must be a citizen of the United States and of the state; a resident of the state for five years immediately preceding appointment, have been engaged for not less than three years immediately preceding appointment in the active practice of law, or have served for at least 7 years as a magistrate in the state, and be a graduate of a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools; and at the time of appointment be licensed to practice law in Alaska. For these purposes, the active practice of law is defined in AS 22.05.070.

Applications are reviewed by the Judicial Council, a seven member state agency, which includes three attorneys, three private citizens, and the Chief Justice of the Supreme Court, who serves as Chairman, ex officio. The Council then submits a list of two or three nominees for each vacancy to the Governor, from which list the Governor appoints.

To be considered by the Council, each applicant must complete an 18-page questionnaire covering all aspects of the applicant's personal and professional history. Applications must also include one legal writing example, letters of reference, and a medical certificate of good health.

Following the application closing date, all active members of the Alaska Bar Association will be surveyed regarding their evaluations of the qualifications of all applicants. At the same time, Judicial Council staff will conduct detailed investigations into the background, experience and qualifications of the applicants.

Based upon its review of the applications, the bar survey and the staff's investigations, the Council will then select those applicants to be interviewed. Nominations to the Governor immediately follow such interviews which, for the current vacancies are tentatively scheduled to be held in mid to late July in Fairbanks and during the first week in August in Anchorage. Thereafter, the Governor has 45 days in which to decide whom he wishes to appoint from the Council's list of nominees.

Persons interested in applying for the position(s) should contact the Judicial Council at 1031 W. 4th Avenue, Suite 301, Anchorage, Alaska 99501, (907) 279-2526, for further information.

PRACTICAL POINTERS

Use of protected documents is a waiver of that protection ...

BY ROGER S. HAYDOCK

Rule 612 of the Federal Rules of Evidence provides that witnesses who use documents to refresh their recollection at trial must disclose such materials to the adverse party. This rule has been applied by extension to depositions as well as to trials. Courts that have considered the issue of whether Rule 612 applies to depositions have concluded that the use of protected documents to refresh recollection for a deposition constitutes a waiver of the protection. *James Julian, Inc. v. Raytheon*, 93 F.R.D. 138 (D. Del. 1982); *Prucha v. M. & N. Modern Hydraulic Press Co.*, 76 F.R.D. 207 (W. D. Wis. 1977).

Not all materials protected by work product or privilege are discoverable if used by a deponent to refresh recollection. Courts have required documents to be disclosed which were protected by the attorney-client privilege because the use of documents to refresh recollection operated as an effective waiver of the privilege. *Wheeling-Pittsburg Steel Corp. v. Underwriter's Labs., Inc.*, Al F.R.D. 8 (N.D. Ill.). The privileged documents may well contain facts which aid the witness's memory and therefore ought to be produced. Other courts have held that the disclosure of work product documents to an expert do not render the documents discoverable. *Bogosian v. Gulf Oil Corp.*, 738 F.2d 587 (3d Cir. 1984); see also *Sporck v. Peil*, 759 F.2d 312 (3d Cir. 1985), *cert. denied* 106 S. Ct. 232 (1986). Many work product documents do not contain facts, but rather legal theories and conclusions which would not assist a deponent in refreshing the recollection upon a factual matter.

The proper procedure in discovering documents used to refresh recollection during a deposition is to ask the deponent two questions: (1) What documents did you review in preparation for this deposition?, and (2) Which documents, or which portions of documents, helped refresh your memory for this deposition?. Alaska Rule of Evidence 612(b) permits the disclosure of documents used by a trial witness to refresh recollection if the interests of justice so require and if it is practicable. The discoverability of such documents at the deposition stage may be easier because the use of the documents in preparation for the deposition demonstrate their discovery relevance, and there ought to be no practical problem in obtaining the documents during or after the deposition.

Some attorneys, aware of the discoverability of documents used to refresh recollection, do not prepare their deponents by showing them documents but, rather, explain to them the contents of the documents. Accordingly, during depositions deponents should be asked not only if they reviewed any documents that refreshed their recollection, but also whether their attorneys discussed the contents of any documents that refreshed their recollection. Whether or not the documents will be discoverable remains an open question.

The discoverability of documents used to refresh recollection follows the two basic premises of discovery: (1) When in doubt, ask. (2) When in further doubt, ask the judge.

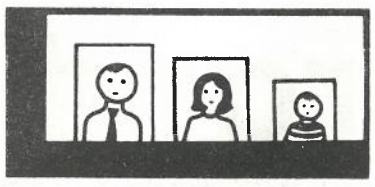
Roger S. Haydock is professor of law at William Mitchell College of Law and was the faculty for the "Deposition Skills" program held in Hawaii in March.

Antitrusters Set Conference

The Oregon State Bar and Washington State Bar Antitrust sections are co-sponsoring a two-day conference May 21-22, at Salishan Lodge in Lincoln City, Oregon.

Featured speakers will include professor Phillip Areed, discussing antitrusts and the protection of intellectual property; Judy Whalley, deputy assistant U.S. attorney general for the Antitrust Division, discussing congressional activity in the antitrust arena; and Douglas Rosenthal, former Chief of the Foreign Commerce Section of the Antitrust Division, discussing the regulation of international competition practices.

A brochure describing the program with registration information is available from Richard Braun, 209 S.W. Oak St., Portland, Oregon 97204, (503) 227-1601.



BAR PEOPLE

Debra Braga is now an Assistant Borough Attorney with the Fairbanks North Star Borough.....**Dan D. Dixon**, formerly Director of International Trade for the State of Alaska has become International Counsel for Galbraith & Owens; **Julie E. Hofer** has become an associate with the firm.....**John Michael Eberhart** is with Baker & McKenzie in Sydney, Australia.....**William Estelle** is now an assistant district attorney in Palmer.....**Martha Anne Fox** has moved from D.C. to Anchrage where she is with the Governor's Office of International Trade.

Clifford Groh, II, formerly a D.A. in Anchorage, is now with the Permanent Fund Dividend Division, Department of Revenue, in Juneau..... **John Gissberg**, formerly the Regional Fisheries Attache with the U.S. Embassy in Japan, has joined Guess and Rudd as International Counsel in Juneau.....**William W. Garrison** is now in Tenstrike, Minnesota.....**Arthur R. Hauver** and **Sara S. Hemphill Hauver** are now in Seattle.....and **Carol Johnson** is now with Chugach Electric Assn. Inc.

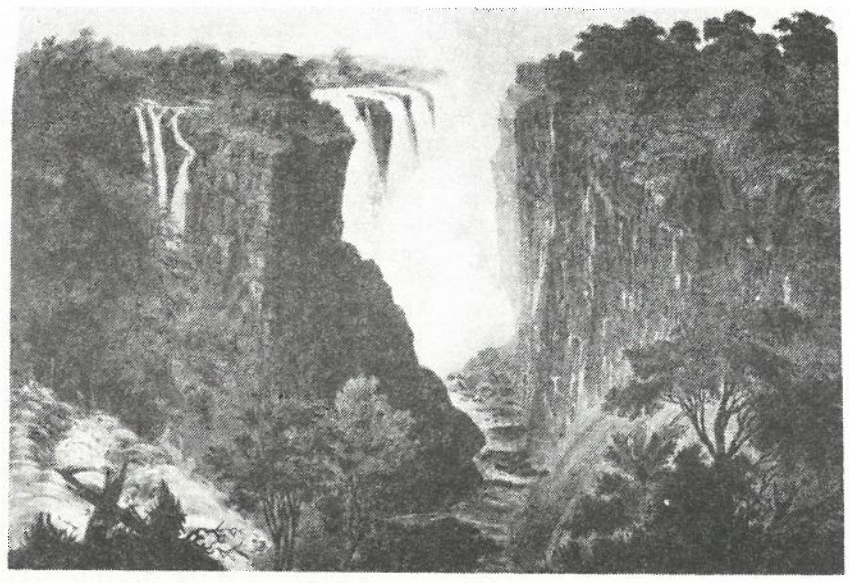
Anthony M. Lombardo has moved from Anchorage to Ketchikan where he is with Keene & Currall .....**Margaret E. Moran** is now with the Public Defender Agency in Kenai.....**Kevin M. Morford** is now associated with Jensen, Harris & Roth.....**Robert P. Owens** is associated with the Anchorage office of Taylor & Hintze.....**James Ottinger** is with the District Attorney's office in Kotzebue.

Tasha M. Porcello is now a solo practitioner.....**Anne M. Preston** has moved from Ketchikan to San Diego. .....**Geoffrey Y. Parker**, formerly with the Sierra Club, is now with Olson Law Office.....**Mark W. Regan** has relocated from the Alaska Legal Services office in Anchorage to Juneau.....**Jeffrey K. Rubin,** formerly of Sitka, is with the Law Office of Richard H. Friedman in Anchorage.....**Wev Shea** has opened his own law office in Anchorage,.....and **Michael Swanson** has moved from Anchorage to Clam Gulch.

A. William Saupe is associated with Baily & Mason.....**Jeffrey F. Sauer** has relocated from the Public Defender Agency in Sitka to the P.D. office in Juneau.....**Thomas A. Sofo** has moved from Juneau to West Palm Beach, FL.....**Paul D. Stockler** is now with the District Attorney's office in Anchorage.....**Mary P. Treiber** is an assistant public defender in Palmer.....**Gerald O. Williams** has relocated from Eugene, OR to Palmer.....**Stephen M. White** has moved from Seattle to work for the Department of Law in Juneau.....**Carol Zamarello Johnson** and **Curtis Johnson** are parents of a baby girl, Caroline Patricia, born March 13.

Allan Tesche began working at Russell & Gabbert in Anchorage March 29....**John Eberhart** was sworn as an attorney and solicitor of the Supreme Court of New South Wales, Australia in December, where he also became a member of the Law Society of New South Wales. He also informs the Alaska Bar that he commenced work as an associate with Baker & McKenzie in the construction law group in Syndey in February.....**Ann Przyna**, formerly with the Attorney General's Office in Anchorage, has been appointed assistant regional counsel with the U.S. Environmental Protection Agency in Seattle. In between, she travelled cross country for a year.

TRAVELOGUE II: The Lawyers write from Victoria Falls



Dear Bar Rag,

We finished our four-month overland trip by truck from London to Nairobi in early February. Highlights of the trip included a truck breakdown in the middle of the jungle in Zaire, a ride on the Congo River ferry, a visit with a mountain gorilla family in eastern Zaire, the spectacular wildlife reserves of Tanzania and Kenya, and a climb of Mount Kilimanjaro. Now we're exploring Zimbabwe while we wait for our South Africa visas, which could take 6-8 weeks since we indicated we were "lawyers" on our applications, which triggered an automatic referaal to Pretoria for further scrutiny. Just another example of how is doesn't pay to admit you're a lawyer!

We now expect to return to Anchorage around the end of June or July.

Regards,

Bob Landau and Linda Cerro
Mar. 17, 1988

More news

of Alaska Bar people ...

Judge Michael I. Jeffery of the Superior court in Barrow, Alaska has completed the Dispute Resolution held Feb. 7-12, at The National Judicial College.

The course provided an overview of methods for resolving cases and disputes that are alternatives to traditional trial proceedings. Workshops demonstrating arbitration, mediation and other alternative techniques of resolution were presented.

The course was attended by 28 participants from 8 states.

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In January 1988, **Mark Barnes** was appointed Associate Director for Administration of the United States Office of Personnel Management. He is primarily responsible for coordinating OPM's fiscal, administrative, automatic data processing, and business management functions, in accordance with law, regulations and public policy. He is also Director Horner's principal policy coordinator on the President's "Drug Free Federal Workplace."

Barnes formerly was an associate attorney at Davis Wright and Jones, Anchorage; served as chief counsel to Sen. Ted Stevens; and was a clerk-extern to the Alaska Supreme Court.

•

Hughes, Thorsness, Gantz, Powell & Brundin recently admitted **Gregory W. Lessmeier** as a partner in the firm.

Lessmeier specializes in commercial law and personal injury defense work. He has been with Hughes Thorsness as an associate since 1983. The firm provides a variety of legal services, including insurance defense, real estate, municipal and natural resource law. It is the largest law firm in Alaska and one of the oldest.

Lessmeier, who holds a bachelor's degree in accounting from the University of Alaska, received his law degree from Willamette University. Prior to joining Hughes Thorsness, Lessmeier practiced with Merdes, Schaible, Staley, DeLisio & Cook. He is an avid outdoorsman and long-time Alaskan resident.

•

The Alaska Public Offices Commission has elected **Daniel Patrick O'Tierney, an Anchorage lawyer, to continue as commission chairman. O'Tierney's term with the commission ends Feb. 1, 1989. Burke Riley** of Juneau was elected vice chairman. Other members of the commission include Annie Laurie Howard of Anchorage, **Patrick Owen** of Anchorage, and Allen Vezey of Fairbanks. The commission administers laws governing campaign finance, lobbying, and conflicts of interest among public officials.

•

Anchorage Mayor Tom Fink has named **James F. Wolf** as municipal prosecutor. Wolf has served in the capacity of acting municipal prosecutor since November 1987.

Wolf has worked in Anchorage since July 1975, where he served as legal intern for the District Attorney's office. He joined the Municipality of Anchorage in August 1977 as assistant municipal prosecutor

Our Pro Bono ranked best in U.S.

The Alaska Pro Bono Program is Number One! The American Bar Association has released the statistics for the calendar year of 1987. Based on their calculations, the Alaska Pro Bono Program has the highest percent of registered volunteers in the United States, with 52.4 percent of the attorneys in Alaska participating in the delivery of free civil legal services to low-income people.

The members of the Alaska Bar Assocation have every reason to be proud of this accomplishment.

Seth Eames, the coordinator of the Alaska Pro Bono Program, has been elected Director of the National Pro Bono Coordinators by his peers.

House of Delegates Report

Mandatory IOLTA urged

BY DONNA C. WILLARD

At its midwinter meeting held in Philadelphia in February, the American Bar Association's House of Delegates overwhelmingly approved, by voice vote, a resolution encouraging the adoption of mandatory IOLTA programs by the states.

IOLTA, or Interest on Lawyers' Trust Accounts programs, have now been adopted in 47 jurisdictions including the District of Columbia. Of that number, 10 mandate participation by each lawyer who is required to maintain a trust account.

The funds garnered from the program are utilized to support law-related public services including legal aid for the indigent, law-related education and improvement of the administration of justice.

Experience has proven that the comprehensive, or mandatory programs, generate substantially more funds than the voluntary programs. For instance, California's comprehensive system, in five years of operation has generated some $49,000,000. On the other hand, New York, which has a comparable attorney base, has accumulated only $2,579,226 in the four years in which it has been in existence.

Figures from the smaller states also reflect this divergence. Iowa, with an eligible attorney population of 4,250, has generated $4,115,115 in the three years during which its comprehensive program has been in existence while Arkansas's voluntary program has received $131,822 in the same time frame.

The Conference of Chief Justices has long been a supporter of the IOLTA concept, having first endorsed and encouraged the program, by resolution in 1979.

Alaska currently has a voluntary program which all attorneys with trust funds are encouraged to join.

Kidnapping

In what was otherwise a less than exciting meeting, the House of Delegates, which is the policy making body of the American Bar, adopted a resolution urging the United States to cease its practice of utilizing tariffs to discriminate against imports in contravention of Article III of the General Agreement on Tariffs and Trade. The vote was 163 to 142.

A resolution which would have had the effect of urging Congress to confirm that the federal district courts have the power to resolve the issue of conflicting state claims concerning jurisdiction over child custody disputes based on the Federal Parental Kidnapping Prevention Act, was withdrawn for further work. It is expected that the issue will once again be presented to the House at its Annual Meeting in Toronto.

An attempt to bring parity to the number of peremptory challenges in criminal cases, by amendment to the Association Standards Relating to Juror Use and Management, failed. The apparent reason was the sense of the Delegates that, while the principle was commendable, the restrictions on the number of challenges were unacceptable.

Motherhood and Apple Pie

A "motherhood and apple pie" issue, compliance with the tax laws to reduce the gap in tax revenues, which now exceeds $100 billion a year, passed unanimously through a resolution urging ABA support of the Report and Recommendations of the Commission on Taxpayer Compliance.

Support was also given to the enactment of legislation such as S.1575 and H.R. 3071 which have the following goals:

- To promote an increased level of voluntary counselling and testing for AIDS;
- To prohibit disclosure of information obtained without the consent of the affected individual except where required to be provided to public health officers by law; and
- To prohibit discrimination against otherwise qualified individuals solely by reason of the fact that he or she is infected by HIU or has AIDS or an AIDS related condition.

Immigration

Congress was urged to extend application for legalization of immigrant status under the Immigration Reform and Control Act of 1986 beyond the existing expiration date of May 4, 1986.

A change to the Model Rule For Trust Account Overdraft Notification will require financial institutions to send notice of any overdraft of a trust account to both the affected lawyer and his state supreme court.

As a result of House action, state and federal authorities are being requested to enact provisions which would preclude prosecutors from subpoenaing an attorney, to provide evidence obtained as a result of the attorney-client relationship, without prior judicial approval.

It was further provided that any such enactment should include provisions requiring that judicial approval be withheld unless the court finds that the information sought is not protected by any applicable privilege; that it is essential to the successful completion on an ongoing investigation or prosecution; that the subpoena lists the information sought with particularity; that its purpose is other than to harass the attorney or his client; and that the prosecutor has tried and has been unsuccessful in attempts to obtain the information from non attorney sources.

Bar Dues

The state bar associations are being asked to reduce the bar fees for judges and lawyers in public service including legal services, military lawyers and lawyers employed as court personnel. The suggested reductions were 25 percent for individuals, with an additional 5 percent for groups up to 50 and an additional 10 percent for groups of 50 or more.

The federal judiciary was urged to develop an appropriate program for confidential evaluation of judicial performance of all federal judicial

Continued on Page 9

Convention

Cox is featured speaker

Archibald Cox, former Solicitor General of the United States, Harvard Law Professor and first Watergate Special Prosecutor, will be a featured speaker at the Joint Judicial Conference and Alaska Bar Convention to be held June 9, 10 and 11, 1988 at the Hotel Captain Cook in Anchorage. On Friday afternoon, June 10, Professor Cox will speak on "Current Constitutional Issues" during a bench-/bar CLE, and on Satuday morning, June 11, he will address the bench during a special judicial program . Cox's convention banquet speech on Saturday evening will focus on the topic, "Watergate v. Irangate."

Currently the Carl M. Loeb University Professor Emeritus at Harvard University, Archibald Cox is a leading authority on constitutional law and labor law. Cox has a long history of service to government and education, serving on the University of Cambridge and Harvard University faculties, numerous state and federal commissions, and most notably as Solicitor General, first Watergate Special Prosecutor and victim of the "Saturday Night Massacre." He is a prolific writer on labor law, constitutional law, the Supreme Court, and most recently published *The Court and the Constitution.* He was a law clerk for Learned Hand, and he has personally argued over 90 cases to the U.S. Supreme Court. The convention participants will have the opportunity to meet not only a preeminent legal scholar and statesman, but a major historical figure of our time.

Other notable CLE speakers at the convention include John Dwyer, Acting Professor of Law at Boalt Hall School of Law who will speak on "New Wave Litigation: The Impact of Technology and Scientific Issues on the Practice of Law" as well as Alaskan attorney Edgar Paul Boyko who will make a presentation on "Unorthodox Trial Techniques," assisted by Josef Princiotta, a nonverbal communications expert and forensic artist.

Cox to Speak

Due to a scheduling conflict, Alan Dershowitz, Harvard Law Professor, has cancelled his appearance at the 1988 Bar Convention. In his stead, Professor Archibald Cox, former Solicitor General, Harvard Law Professor, and first Watergate Special Prosecutor, will present the CLE seminar on "Current Constitutional Issues" on Friday, June 10, from 2 p.m. to 5 p.m.

Convention Social Events Feast and Fun

These events (with the exception of the awards banquet) are open only to conference registrants.

Thursday, June 9,

Luncheon—$15 per person

12 noon 2 p.m., Speaker: Governor Steve Cowper, Hotel Captain Cook

6:00 7:30 p.m.*, President's Reception, (included in registration fee —$25 for guests), International Hors d' oeuvres by Marx Brothers, Music by Borealis String Quartet, Anchorage Museum of History & Art

8:00 p.m. 10:00 p.m*, "Whale Fat Follies"—$8.50 per person, Fly By Night Club

Friday, June 10

12 noon 2 p.m., Luncheon—$15 per person, Speaker: Chief Justice Warren W. Matthews, Alaska Supreme Court, Hotel Captain Cook

6:00 p.m. 10:00 p.m.*, Salmon & Halibut Bake—$30 per adult/$15 per child, under 12, Sports activities sponsored, by Anchorage Bar Association, Kincaid Park Chalet

Saturday, June 11

12 noon 2 p.m., Luncheon—$15 per person, Speaker: Herb Shaindlin, Columbia University School of Law Graduate and Radio Talk Show Host, Hotel Captain Cook

6:30 p.m. 10:30 p.m., Reception and Awards Banquet, Speaker: Archibald Cox, Harvard Law School, Hotel Captain Cook. The banquet is open to the public. $30 per person for conference registrants and guests. $50 per person for non-registrants.

*Bus transportation is available to and from these events. Bus will depart from and return to the Hotel Captain Cook. Transportation cost is included in convention registration fee.

Computer Users, Economics of Law Practice Section will meet

The newly formed Computer Users, Group of the Economics of Law Practice Section will be holding a meeting on Thursday, June 9, 1988 during the Bar Conventicn at the Hotel Captain Cook. Featured are three one-hour demonstrations of software applications that will be of practical usage to the lawyer with a computer on his desk.

Simple macros to handle common applications will be featured in the word-pro,cessing session. The, latest versions of MicroSoft's Word and WordPerfect s WordPerfect will be used on MS-DOS machines, projected onto screens so that attendees will be able to see how easily a common problem is solved with two leading products in use in many Alaska legal offices.

Similarly, a demonstration of a brief search on both LEXIS and WESTLAW with a common problem will be performed by representatives of West Publishing and Mead Data Central.

Finally, several time/billing and accounting packages will be featured in the last session, including other modules such as docket control/calendaring, where part of the package. Ease of use for the neophyte computer lawyer will be stressed in all of the sessions, but there will be some time for answers by the presenters to perplexing questions by attendees.

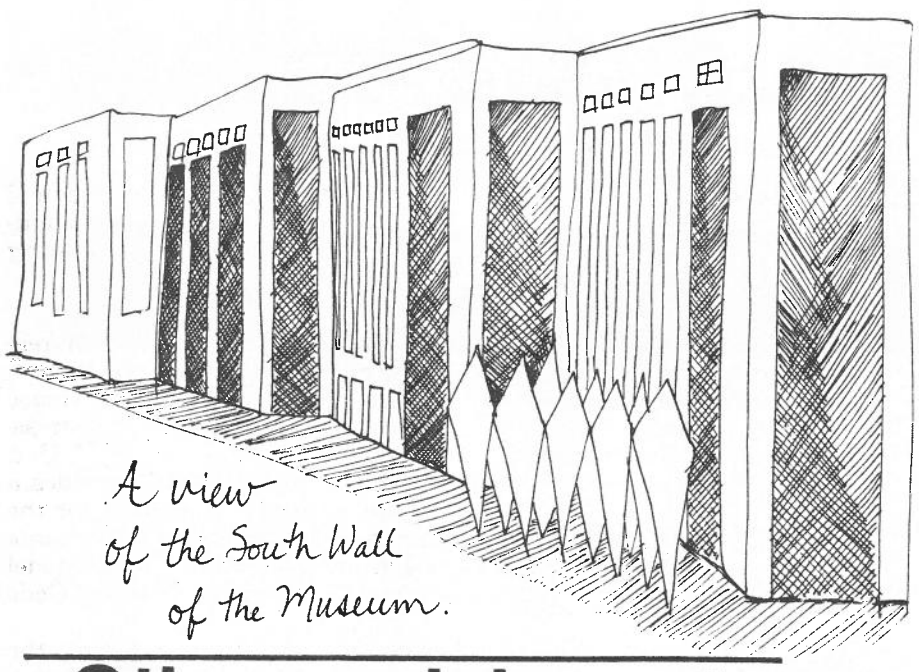
You are urged to indicate your attendance at an early date in advance of registration, since we must limit the group to 60, given the restrictions upon viewing overhead projections of computer images.

Section Meetings

9:00 a.m.-10:15 a.m.
Resolution Room ... Administrative law
Voyager Room ... Alaska Native
10:30 a.m.-11:45 a.m.
Whitby Room ... Business law
Aft Deck ... Criminal defense law
Club Room 1 ... Employment law
9:00 a.m.-12:00 noon
Economic of Law Practice (3-hour software applications demonstration of various packages).
10:30 a.m.-11:345 a.a.
Resolution room ... Estate planning/probate law
Voyager room ... Family law
Whitby room ... Natural resources law
Aft Deck ... Real estate law
Club Room 1 .... Tort law

Be sure to register for sections you will be attending. Space is limited for the Economics of Law Practice Section. Register early to ensure a space. You may attend any section meeting you wish. All bar members are welcome.

More convention details on next page



Other enrichments

Win a $250 travel certificate

Be sure to stop by the Hotel Captain Cook Ball Room Exhibit Area during the convention to qualify for a drawing for a $250 travel certificate donated by Executive Travel. You will receive a form at registration for the drawing. Look for it and have exhibitors initial it and then drop the form off at the convention registration desk. The drawing will be held at the convention banquet, Saturday evening, June 11 at the Hotel Captain Cook.

Special convention Westlaw Mini-course

WESTLAW will offer a Computer-assisted Legal Research Instruction two-hour mini-course at no charge to conference registrants from 2:00 p.m. 4:00 p.m. on Saturday, June 11 at the Hotel Captain Cook. Watch for information in the daily convention updates that will be available at the convention registration desk.

"Real time" demonstrations

The Alaska Shorthand Reporters Association will be presenting periodic demonstrations in the Hotel Captain Cook Ballroom Exhibit Area on "Real Time," the new technology that provides on-screen translation of stenotyped materials during any proceeding. This technology is being installed in courtrooms across the country. The Exhibit Area will be open from 8:00 a.m. daily on June 9, 10, and 11.

Banquet Kudos

Do be on hand for the Saturday, June 11, Reception and Banquet at the Hotel Captain Cook at 6:30 p.m. In addition to an address by Archibald Cox, the Distinguished Service, 25-Year and Professional Awards will be presented. And there will be a drawing for the $250 Travel Certificate!

Convention Deadlines

"Whale Fat Follies," reservations and payment: Monday, May 23.

Gov. Steve Cowper

Gov. Cowper to give address

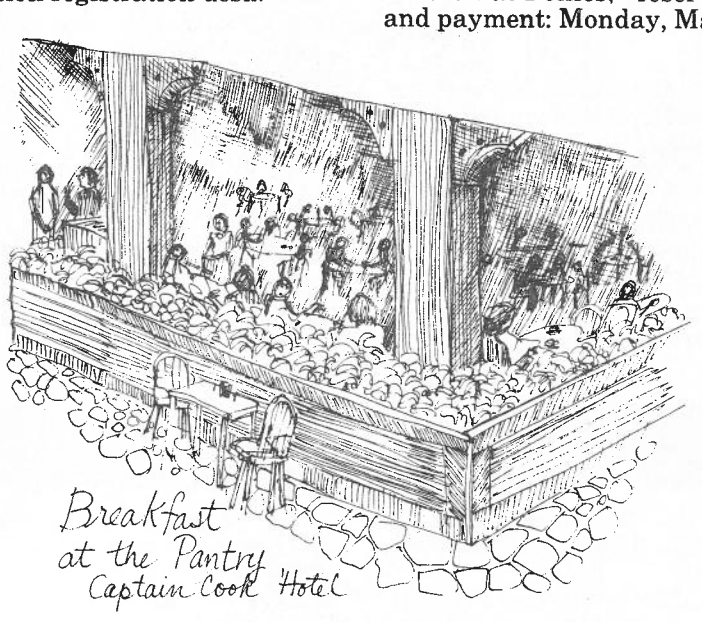
Gov. Steve Cowper is currently scheduled to address the convention on Thurday, June 9 at noon. A member of the Alaska Bar Association and the Tanana Valley Bar Association, Governor Cowper is looking forward to speaking to his legal colleagues. Friday, June 10, Chief Justice Warren W. Matthews of the Alaska Supreme Court will disucuss "Issues of Concern to the Bench and Bar." Admitted to practice in Alaska in 1965 and appointed to the Supreme Court in 1977, Chief Justice Matthews has served as a member of the Board of Governors of the Alaska Bar Association, the Alaska Bar Ethics and Unauthorized Practice of Law Committees, and the Supreme Court Criminal Rules Revision Committee. Herb Shaindlin, popular and often controversial local radio talk show host, will speak to the convention on Saturday, June 11. A graduate of the Columbia University School of Law, Shaindlin is sure to have some pithy comments to share with the assembled bar.

Alaska Bar Convention Exhibitors

From 8:00 a.m. daily, June 9, 10, and 11, the Exhibit Area in the Hotel Captain Cook Ballroom, Main Lobby Level, will be open. The coffee service will be located in the Exhibit Area so sip and munch while you browse through exhibits by:

ABA/net
ALPS
Alaska Bar Foundation
Alaska Independent Medical, Inc.
Alaska Micro Systems
Alaska Shorthand Reporters Assn.
Bayly, Martin & Fay of Alaska, .Inc./Pacific Brokerage Ltd.
Bancroft-Whitney Co.
Book Publishing Co.
Charter North Hospital
Computer Application Services
Custom Software Services Inc. (CSS)
Fred. S. James & Company
InformAlaska, Inc.
Informatics
Lewis & Lewis Computers
Matthew Bender & Co., Inc.
MeadDataCentral
Michie Company
Pictures, Inc.
R & R Court Reporters
Vocational Management Consultants
Wang Laboratories, Inc.
WESTLAW

Register Today!



April series is well attended

Topnotch topics and speakers and a buffet breakfast complete with bagels, lox and cream cheese combined to lure local bar members to a series of early morning Corporate Law Mini-Seminars. Offered 8:00 a.m.-10:00 a.m. on 3 consecutive Wednesdays in April at the Hotel Captain Cook, the programs were co-sponsored by the Business Law Section and designed as a general overview that would also be of interest to practitioners in the field of corporate law. Over 60 attorneys registered for each of the 3 sessions, a very respectable turn-out for "early bird" seminars.

"The advantage of a 2-hour seminar is the ability to cover more topics," noted Erik LeRoy, coordinator of the series and chair of the Business Law Section. "Alaska practitioners are starved for CLEs, and the mini-seminar series fulfills that need. It's beneficial to hear updates and to see how other attorneys analyze issues. And it's much easier to find speakers for a 2-hour program than a day-long one." Participant evaluations of the series were very positive according to Barbara Armstrong, CLE Director. Plans are under consideration for other early a.m. seminars.

Topics and speakers included (April 13) Erik LeRoy on "Avoiding or Preserving the Corporate Shield" and Chris Foote Hyatt on "Finding Another Pocket: Individual Liability of Corporate Representatives," (April 20) Ralph Duerre on "Selecting the Appropriate Business Entity," and (April 27) Bill Bankston and Peg Roston on "Selected Alaska State Securities Issues."

Watch your mail for other upcoming mini-seminars. Get breakfast, information, and CLE credits all before 10:00 a.m.!

10 Time-Saving Tips For Attorneys

From Forest Bowman, Professor of Law, West Virginia University

1. Let go of tasks that are not cost-effective. Don't spend $5.00 time on $.05 items.
2. PLAN your day, week, month, year. Very few things get done unless you set a goal.
3. Delegate and supervise. You don't have to do everything yourself. Get over any fear of delegating and start spending time on more productive tasks.
4. "Cluster" your activities. Set aside a specific time of day to make phone calls, for example, or do dictation, instead of constantly switching tasks.
5. Organize your phone calls. Prepare a "script" in order to make sure what you want to happen does happen. Know beforehand what questions you need to ask to keep things on track. Think before you talk!
6. Pre-plan meetings. Write out an agenda of issues to be raised and phrase those issues in the form of a question. Start on time. Stick to your agenda—answer each "question." Send a follow-up memo to clinch assignments and establish responsibility.
7. Establish "out of office" time—a period of no interruptions while you actually are IN the office. Or go to another location where you can complete tasks without interruption, but schedule such "get-away" time on a regular basis.
8. Learn "speed reading"—learn to skim materials and discard what you really don't need to read. Certain materials may be available in synopsized form or in abstracts. Also, realize that you can't read everything. Select those materials that are most critical to your practice. You just may not be able to look over all those "interesting" cases that deal with issues outside your area of law.
9. Make use of waiting time in planes, doctor's offices, etc. Have a "reading" file of articles or other materials in your briefcase and take it with you whenever you think you may have waiting time. Use waiting time to proof materials or draft letters. Carry an "office in a briefcase"—tape, scissors, pens, paper, paperclips to help you carry on with your tasks even if you're away from your desk.
10. Wake up one hour earlier every morning! It's amazing what you can get done in that one hour early in the day. Try it—it becomes a positive addiction!

Shorthand Reporters Assn. gives RPR/CM test results

The Alaska Shorthand Reporters Association proudly announces the results of its RPR/CM test of November, 1987:

New RPRs

Rebecca Zimmerman, Juneau

New CMs

Jeanine M. Riley, Anchorage

Passing the written knowledge portion of the RPRL: Kathleen Connell, Anchorage

Passing one or more legs of the CM, not to complete: Nancy L. Means and Valerie E. Morley, Anchorage.

What is an RPR?.

An RPR is a Registered Professional Reporter—a reporter who is skil knowledgeable and dedicated to achieving and maintaining a high level of professionalism.

Through comprehensive testing and continuing education, the RPR h a proven command of English grammar and spelling, medical and legal terminologies, and the ability to write and transcribe varying types material at high speeds.

The nationally recognized RPR examination includes a three-part skills test and a Written Knowledge Test (WKT). The skills portion of the test is a dictation test of Literary matter at 180 words per minute (wpm), Jury Charge at 200 wpm, and Testimony at 225 wpm. The WKT portion tests those areas of knowledge needed to perform the duty of a shorthand reporter, such as English, terminology, courtroom rule and procedures, transcript format, use of legal research materials, a professional responsibility.

The American Council on Education has evaluated the RPR examinat and has determined it is equivalent to 21 college credits.

The RPR designation is renewed periodically. Every three years RPR accumulates 30 continuing education credits to maintain certificate Each RPR attends state and regional seminars and/or approved courses of study for continuing education credits.

The National Shorthand Reporters Association's national seminar programs are accredited by the Council for Noncollegiate Continuing Education, an agency recognized by the U.S. Office of Education.

NSRA's RPR program insures that when you use an RPR for your law firm or in your court, you will receive dependable service and anaccurate verbatim record.

The Certificate of Merit

RPRs can achieve further recognition by passing the Certificate of Merit exam, which is similar in scope to the RPR examination but tests reporters at higher levels of knowledge and speed. The CM includes a skills—Litery matter at 200 wpm, Jury Charge at 240 wpm, and Testimony at 260 wpm—and a merit-level Written Knowledge Test. A CM certificate is an attainment of distinction.

—Submitted by Marianne Lindley Girten, RPR

• Delegates

Continued from Page 6

officers in light of the ABA Guidelines for Judicial Performance.

Potpourri

In other business, the House passed the following resolutions:

1. Approval of the Standards for Professional and Personal Leave promulgated by the National Conference of Special Court Judges;

2. Approval of the Uniform Anatomical Gift Act drafted by the National Conference of Commisioners of Uniform State Laws;

3. Approval of the Uniform Custodial Trust Act and the Uniform Franchise and Business Opportunities Act;

4. Approval of the Uniform Rules of Criminal Procedure; and

5. Support for federal and state legislation establishing minimum requirements for reasonable, unpaid job-protected family and medical leave for employees and the continuation of health benefits during any such absence.

Inaction

Withdrawn for a variety of reasons, but undoubtedly likely to surface at a future meeting of the House of Delegates were resolutions addressing lawyer advertising; the McCarron-Ferguson Act which provides a limited antitrust exemption for the "business of insurance" in any state which regulates insurance; the Model Adoption Act; and the Lawyer's Code of Professionalism.

Alaska's representatives in the House of Delegates are Keith Brown and Donna Willard. For any further information, please contact either of them.

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY
REQUEST FOR PROPOSALS
ASPS 88-0335

Proposals will be received by the Office of Public Advocacy until 4:30 p.m. on May 31, 1988 for the following:

The Office of Public Advocacy desires to contract with private attorneys and other professionals to accomplish the following statutory function:

A. Attorney services for criminal cases in areas where there is no OPA staff coverage; and multiple co-defendant and OPA conflict cases in Anchorage, Fairbanks, and Barrow.

B. Attorney services for wards and respondents in guardianship proceedings.

C. Visitor services in guardianship proceedings.

D. Expert services in guardianship proceedings.

E. Attorney representation for child in need of aid, child custody, and juvenile delinquent cases.

F. Guardian ad litem representation for which OPA is responsible under AS 44.21.410 (a) and OPA conflict cases in Anchorage, Fairbanks, and Barrow.

AREAS TO BE SERVICED

(1) Barrow
(2) Kotzebue
(3) Nome
(4) Fairbanks
(5) Bethel
(6) Palmer
(7) Anchorage
(8) Valdez/Cordova
(9) Kenai Peninsula
(10) Kodiak
(11) Dillingham
(12) Naknek
(13) Juneau
(14) Sitka
(15) Wrangell
(16) Petersburg
(17) Ketchikan

Interested persons may submit proposals for any area and for any function.

Interested persons may obtain copies of the Request for Proposal from:
Office of Public Advocacy
900 West 5th Avenue, Suite 525
Anchorage, Alaska 99501
(907) 274-1684

THE MOVIE MOUTHPIECE

Edward Reasor

YES, it is Tracy and Hepburn, but no - not from Adam's Rib - Lowe's 1952

Although, I correctly predicted that "The Last Emperor" and "Moonstruck" would run away with the Academy Awards for the 60th Anniversary of Oscar, and although further, I beat both Siskel and Ebert and almost every other nationally known movie reviewer percentage-wise, I am not particularly pleased with the total results of last issue's predictions.

In addition to the "The Last Emperor" and "Moonstruck," I successfully predicted that Michael Douglas would win Best Actor for his performance in "Wall Street" and that "I Had the Time of My Life" would be elected best original song in "Dirty Dancing." I also predicted that Rick Baker would win best makeup award for "The Abominable Snowman," that the best Animated Short Film would be "The Man Who Planted Trees," and that the best Documentary Feature would be "Ten Year Lunch—the Wit and Legend of the Algonquin Roundtable." Nevertheless, I only successfully picked 11 out of 22 categories for a measly 50 percent accuracy. That's hardly the Dean's List!

more to come

An Eagle River woman who won the Anchorage News contest picked 16 of the 22 awards, beating every nationally known movie reviewer and yours truly. How did she do it? Simple, she hadn't seen hardly any of the movies and said, "it was guess work." I wonder if jury verdicts are more predictable.

Several of you have called me to ask if I would recommend video-cassette movies that deal with the law or lawyers. Since it's springtime, the time of the year when a young man's fancy turns to thoughts that women have been thinking all winter, I will be glad to do that in combination with a recommendation of videos that depict heavenly bodies.

Ot was Pablo Picasso who said, "women are either doormats or Goddesses." What is a female Goddess. Well, in Alaska it is simply a woman with enough physical attributes to cause one to think of movies about women instead of moves about the law.

For my first pick of a heavenly body appropriately worshipped by moviegoers, I choose "The Blue Angel," a 1930 release that starred Marlene Dietrich. Dietrich was only 29 when she made this film in Germany, but the fact that her accent was heavy and the movie had a definite European flair did not detract. In fact, this movie and the remaining films she made with Josef Von Sternberg made her a movie legend.

"The Blue Angel" is a terrific film well worth any video-cassette rental. She begins the film as a tawdry, teasing, overripe woman who leads a poor professor to ridicule and ultimately, death. This film presents what has become Dietrich's hallmark song: "Falling in Love Again." Remember however, that the man to whom she sings "Falling in Love Again" becomes the proverbial fool. Oh, sweet spring!

Now to mix a law film with a heavenly body, I choose and highly recommend "Body Heat," starring William Hurt and Kathleen Turner. "Body Heat" is a story of a mediocre lawyer who falls in love with a rich woman and while so doing, gets caught up in her husband's murder. It is one of the best written screenplays in the past 25 years. It has a hero, conflict, a need for courage and combines originality and familiarity. It is an adult look at sexuality and how sexuality can blind, whether one is mediocre or brilliant. In fact, the sexual scenes between Hurt and Turner are extremely graphic. Hurt, the mediocre lawyer Ned Racine, is a murderer, but a nice guy. He is a victim as much as a villain. He wants something more in life and he can't get it.

While watching "Body Heat" remember that the movie director had in mind that William Hurt would in fact be the eye of the audience. Hopefully, you as an audience member will become surpised at the ending as was the lawyer Hurt played.

For sheer beauty along, I recommend "Gilda," a 1946 film starring Rita Hayworth, who oozes sex and sin in equal proportions. Hayworth was only 27 when she made this 110-minute film for Columbia Pictures. She is sexy, dropping furs and occasional one-liners that jar you.

One of the best sequences to look for in this film is when the husband of Gilda and another man stand outside her room while the husband innocently asks, "Gilda, are you decent?" Then the camera moves closer for a view of Gilda with at least 10 yards of hair being swept in a seductive manner by a gentle, teasing, headshake, who laughingly answers, "Me?"

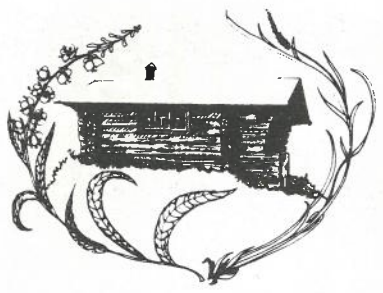
A more wholesome movie starring a husband and wife attorney team where one is a prosecutor and the other a defense attorney is "Adams Rib," a black and white feature made in 1949. In this movie Judy Holliday is on trial for shooting her no-good husband, Tom Ewell. As a lawyer you might be disappointed in the lack of realistic courtroom procedures, but remember the film was made as a comedy and does succeed in anticipating later feminist movies. One of my friends saw this movie twice and promptly broke his engagement with a Vassar girl simply because she was going to law school.

What would spring be without some complete silliness? If your are too old to pretend that you are a young colt and you can't still leap up into the air and click your heels twice before hitting the floor, the least you can do is to go to the neighborhood video-cassette rental and check out the hilarious Woody Allen feature "Bananas," made in 1971.

Every trial lawyer who ever thought he was a good cross-examiner should watch "Bananas" again. Devastating cross-examination, according to Allen's film, has as much to do with lawyers' style as to the questions they ask. Woody plays Fielding Mellish, who is on trial for subversive activities. Some of the courtroom scenes include a man bursting into the courtroom and confessing and then sheepisly withdrawing when he realizes he is in the wrong courtroom and is confessing in the wrong case. Nice try, Guy!

Finally, Woody cross-examines himself. Jumping from the lectern where he has just finished a question, to the witness stand, where he gives an answer. Back and forth, back and forth. This irritates the judge to such an extent that he has Woody bound and gagged. Not to worry. Allen contines the cross-examination regardless. But all you can hear are mumbles. This upsets the prosecution's witness to such an extent that he admits in open court that, yes, he has been lying.

Happy Spring, Happy Movie Viewing, and Happy Future Cross-Examinations.



HISTORICAL BAR

"They won't let me vote"

BY FREDERICK PAUL

Your last issue welcomed submissions. Herewith is one from my book to be published late this year titled "Then Fight for It." My father was William L. Paul Sr., (1885-1977) admitted, December, 1920.

One day in 1922, Gramma saw her old friend, Charley Jones, walking downcast and sort of defeated looking. In the Tlingit language, she asked him, "Kah-da nay-eek, what is the matter?"

He replied, "I just came from the voting place. They won't let me vote."

"Come," she said, "We'll go back and force them."

Charley Jones was a high caste Tlingit of the Nan-yuh-ah-yee Tribe, a part of the Wrangell Federation of Tribes. We figure he was born about 1875. He could neither read nor write buy he was a leader, destined even in the white man's world to be Shakes, Chairman of the Wrangell Federation. He was caught up in the fervor of the Indian movement to be first class citizens. Thus, he gave full support to the Alaska Native Brotherhood. Still at home was an invalid son, Richard, a victim of rheumatic fever, and Charley's favorite dog, named Captain Wilson for his good friend, the superintendant of the local sawmill.

When Gramma and Charley arrived at the polling office, they met William G. Thomas, Ole Gunderson and J.G. Grant as the election judges. Both knew that these three each had an Indian wife. I still wonder what went through their minds when they forbade Charley, again, the right to vote.

Gramma was not to be intimidated. Dad had schooled the the Alaska Native Brotherhood and Sisterhood in the procedure. She demanded that Charley be given the right to challenge their decision. He swore that he was a citizen. He voted. Thus was born *United States of America v. Jones and Tamaree.*

Back in 1887, the Congress had enacted the Dawes' Act. As to Indians, they did not become citizens simply by being born on United States soil, a status recognized by the United States Constitution and a status unchallenged when immigrants gave birth on United States soil.

The Fourteenth Amendment provides in its first section:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Instead Indians throughout the United States had problems. In Alaska, the territorial legislature in 1915 had enacted a law setting up the procedure whereby Indians could beccme citizens.

Hindsight is always 20/20. Within the Native community and encouraged by their friends, there was a philosophy of latent suffering, fully restrained from activism. In the Tlingit and Haida world, the Presbyterian Church recognized the social injustices, but its leaders bent their efforts at conforming to thelaw and, I suppose, urging a change in the law through prayer. No doubt these leaders had had a faith in the uprightness of the political leaders that they would recognize injustices wherever occurring and would, under their own volition, correct them. It is no wonder that Sheldon Jackson School encouraged their students to renounce their tribal connections so that they could qualify for United States citizenship under the 1915 Territorial law. Its newspaper, *Verstovian*, for January, 1919, proudly tells the story.

"Pupils Apply for Citizen Certificates

Eleven young men and women from our Eighth Grade and High School Classes were examined on Jan. 31 as to their qualifications for United States Citizenship. The examination was conducted by the teachers of the United States Bureau of Education as is required by law. The examiners certified that in their opinion the applicants had abandoned all tribal customs and relationships, had adopted the habits of civilized life, and were properly qualified to exercise intelligently the obligations of electors in the Territory of Alaska. To pass the examination required a good working knowledge of American history, of the form of government of the United States and Alaska and of current events.

A day or two after the examination these applicants for certificates appeared before a Notory Public and renounced on oath all tribal customs and relationships. It was also necessary for each applicant to have five white citizens of the United States who are residents of Alaska sign a statement to the effect that they have been personally acquainted with the applicant's life and habits for more than one year and that in their opinion he or she had abandoned all tribal customs and relationships and was qualified to exercise the rights, privileges and obligations of citizenship.

The applications were then forwarded to the Judge of the United States District Court at Juneau who will set a day of hearing on the applications when the applicants will be examined by him. The Clerk of the Court will post a notice in his office setting forth the facts and the applicants will post a copy of that notice in their nearest Post Office.

Those pupils making application for certificates are Margaret Cox, Lily Kennedy, Dora Walton, Matilda Walton, Jessie Weir, Andrew Johnson, Louis Kitkoon, James McKinley, Stephen Nicholas, Ned Simeon and Frank Williams."

My Uncle Louie told a different approach. He had finished Carlisle and had attended the Chewawa Indian School at Salem, Oregon, Whitworth College and a business college in Portland. He then returned to Wrangell and joined the Army during World War I. By 1919, he had married Mathilda Jones, the daughter of Charley and Susie Jones, and was elected Grand Secretary of the Alaska Native Brotherhood.

The family attributes his militancy to General Pratt of Carlisle. Gramma's independence, no doubt, made him fertile ground. His approach back in 1919, was to defy the 1915 statute because he and, indeed, all Natives were, upon being born in the United States, axiomatically United States citizens. The *Verstovian* for November, 1919, tells the story in its report of the 1919 ANB convention:

> "Mr. [Louis] Paul, speaking of the 'Indian Vote Challenged,' contended that the right of franchise was granted the Indian Americans by the Constitution of the United States. Legislatures had no right to disqualify any Indian American a vote because he was an Indian, and that the certificate of citizenship demanded of the Indian voter (by Territorial law) did not make of him any more a citizen than he is now."

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Dealing with closed head injuries

By Michael J. Schneider

This article will provide only the briefest general overview of this interesting and complex subject area. The goal will be to help you spot clients with closed head injuries and evaluate their cases. Reference materials will be identified.

Closed Head Injury Defined

Open head injuries are those where the brain is actually opened, if even microscopically, to the outside atmosphere. This occurs with puncture wounds to the brain, or when the skull is split open. Closed head injuries, in contrast, are much more frequent and involve damage to the brain, but not necessarily to the skull itself. As will be mentioned below, they can nevertheless cause serious and irreparable damage to the brain and dramatic functional impairment.

Causes of Closed Head Injuries

Acceleration/deceleration injuries with or without blows to the head, blows directly to the head, loss of oxygen, and temporarily reduced blood flow are among the causes of closed head injury. As this partial list of causes suggests, the client with a pre-accident history or post-accident history of cardiac difficulties, vascular insufficiency, or hypoxia from any etiology is likely to be faced with causation difficulties. Similarly, those clients with pre-accident histories that include head trauma, particularly accompanied by any period of unconsciousness, will be facing some serious upstream swimming on causation.

Symotoms of Mild Head Injury

The symptoms fall into three categories: physical symptoms, cognitive symptoms, and psychosocial symptoms. The physical symptoms of mild head injury (also referred to as traumatic brain injury ... a much more useful term, particularly if you are prosecuting the claim) include dizziness, fatigue, headaches, visual complaints, and sleep disturbance. The cognitive symptoms include inability to concentrate, memory problems, impulsivity/poor judgment, reduced efficiency in task performance, and difficulty putting thoughts into words. "I.Q." levels may be diminished significantly. Some of the psycho-social symptoms are depression, anger, outbursts, irritability, personality changes, and suspiciousness.

The word "concussion," when applied to the brain, refers to the injury to the tissue occasioned by the jarring of that organ. The symptoms above, to some extent or other, frequently manifest themselves following a concussion and thus this constellation of problems is often referred to as "post-concussion syndrome."

Unloved, Misunderstood, and Unwanted

People with post-concussion syndrome are often terrible historians and hard to get along with. They may follow directions poorly, frequently miss appointments, and *appear* to be ill motivated, disorganized, and the greatest source of their own difficulties. For the run-of-the-mill orthopedic surgeon, if it can't be seen on an x-ray, it simply doesn't exist. Imagine how impressed the primary treating physician (frequently an orthopod) is likely to be with such a patient. The same applies to the vocational rehabilitation counselor who can't understand why the client follows through poorly with job searches, job interviews, and the other sorts of organizational and planning functions required to successfully make it through a rehabilitation program. Impairment of these planning and organizational skills, or "executive functions" as they are frequently referred to by neuropsychologists, will not go unnoticed by you or your staff. The unfortunate fact is that our profession is frequently no more insightful than our brethren in the medical community when it comes to dealing with the victims of head trauma. It's unwise and unfair to write off as a "flake" or malingerer the client who is suffering from the effects of a legitimate closed head injury.

Identifying the Legitimate Closed Head Injury

The symptoms of closed head injury are listed above. Does your client, or potential client, exhibit some or all of these symptoms? Have they been seen by a neurologist? Have they been seen by a neuropsychologist? Though recognizing that their ability to provide a history may well be flawed by the nature of the injury itself, what can they tell you about the incident in question? Do they remember hitting their head?

Unconsciousness is the hallmark of the closed head injury. Remember that "unconsciousness" for the purpose of defining closed head injury includes both periods of "coma," during which the client is motionless and totally unresponsive, and periods of post-traumatic amnesia (frequently referred to in medical records as PTA). During this latter period, of which the client may have no memory, or a limited or altered memory, of events, the client may well appear "normal" to onlookers. A skilled observer can determine rather easily whether or not the individual in question is suffering from post-traumatic amnesia. The patient may be disoriented as to time, place, or person, though actively moving around, conversing, and appearing outwardly normal.

Most experts will testify that a legitimate closed head injury is marked by a history that has no actual recollection of head impact. In other words, the client will describe the event right up until the point of impact, but will have no actual memory of the impact itself. This is very important and frequently very troublesome. The client who "wakes up" to observe a cracked windshield will frequently tell emergency personnel, treating physicians, and you that they remember hitting their head. You must probe carefully to determine whether or not this is, in fact, a recollection (thus casting doubt on the validity of their claim) or a conclusion or opinion based on what they observed when coming to. Medical examiners frequently do a miserable job of making this distinction. Thus many people with legitimate closed head injuries have their claims called successfully into question through no particular fault of their own. In evaluating a closed head injury case, you should determine how many times the client has provided a history with regard to the event and examine those histories carefully to determine whether or not the client has inadvertently passed the point of no return on this issue.

Neuropsychologists are professionals whose business it is to study the brain-behavior relationship. They can be instrumental, and are frequently required, in order to evaluate a closed head injury. CAT scans, x-rays, MRIs, and EEGs are frequently normal for people suffering from closed head injury. The neuropsychological testing done by a neuropsychologist is virtually the only method to objectively verify the nature and extent of the physical injury to the brain and to quantify and describe the functional implications of this injury for the patient/client.

These evaluations are not cheap. A neuropsychological battery and the attendant evaluation report may or may not improve your case. These procedures will, without question, generate a bill of approximately $800.00 to $1,200.00 (1988 Anchorage, Alaska, prices).

A number of things should be done prior to determining whether to pursue the claim of closed head injury and whether or not to incur the expense of the neuropsychological evaluation. Medical records should be examined carefully for indication of loss of consciousness or altered state of consciousness. Look for notations such as "no L.0.C." or "patient reports L.O.C. of x minutes duration." Look carefully at emergency room records, ambulance records, and those of the initial treating physician. If a head x-ray, MRI, or CT-scan was taken, this should be noted. Look very carefully for denials by the patient of loss of consciousness. Whether accurate or not, these will be very difficult to overcome in the face of an educated defense.

Interview witnesses at the scene with particular emphasis on their observations of your client. How did the client act? Did the client appear oriented? Did the client make any statements or engage in any conduct that seemed inappropriate under the circumstances? Was the client in coma? Was the client in PTA?

Interview friends and family members. Has the client undergone what is perceived by family and friends to be a change in personality? Does the client believe he has suffered a personality change? Is the client often angry and irritable? Is the client impulsive? Does he seem to have lost his self-esteem? Is he suspicious, edgy, or otherwise exhibiting moods or behavior markedly different than before the incident in question?

School records and school testing results can be used to determine if intelligence has been affected as compared to results of neuropsychological tests.

While the information suggested above may be necessary to evaluate the wisdom of securing an expert in this area, it is also necessary in order to adequately develop the case for trial. If this information is unavailable for any reason, you may have a very difficult time establishing your claim of closed head injury.

Semantics: A Bio Problem

Most experts will testify that a concussion causing loss of consciousness, by definition, results in permanent and irreparable damage to the white-matter pathways in the brain. The implication, of course, is that, if you have unconsciousness, you have brain damage. In a case that I recently tried, an expert was asked, with regard to closed head injury: "Doctor, what happens to these people? Do they get better, do they get worse, do they stay the same? What really happens to them?" The doctor answered, "All of the above."

While you may be able to get testimony that your client has suffered brain damage and that the brain damage is irreversible, that is not enough. A given level of brain damage may have virtually no functional significance for your client, or it may irreparably and inalterably destroy the quality of their life. Your experts and witnesses must be constantly schooled to avoid "mild head injury," to use terms like "traumatic brain injury," and to refer, *not to the amount of physical injury, but to the extent to which your client has been impaired because of that injury.*

Similarly, your experts have to be advised to get away from terms like "loss of executive functions." The jury may wonder why your client, an individual with no executive expe-

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• "They won't let me vote"

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In March, 1923, a United States grand jury was convened at Ketchikan when the United States Attorney Arthur G. Shoup presented as witnesses William G. Thomas, Ole Gunderson, and J.G. Grant to testify that Charley Jones voted, after being sworn, and Tillie Paul Tamaree had egged him on.

On March 20, 1923, the inexorable might of the United States was manifested when I.G. Pruell, as foreman of the grand jury, returned a true bill indicting Charley Jones for illegally voting and for perjury for lying under oath that he was a citizen, and indicting Gramma for aiding and abetting my tribal uncle in the commission of a crime.

U.S. District Judge Thomas G. Reed issued a bench warrant for their arrest:

> "This is to command you forthwith to arrest the Defendant Charley Jones and Tillie Paul Tamaree and bring (them) before (the) Court to answer the said indictment."

Deputy U.S. Marshal H.D. Campbell did arrest them and brought them from Wrangell to Ketchikan. Their arrest made the indictment public and thus to the newspapers. Dad, at Juneau, grabbed the first steamer to Ketchikan. He met his mother and Kah-da-nay'eek in the custody of Campbell as they arrived.

"Thank goodness you are here!" Marshal Campbell greeted him. "I didn't know what I was going to do with your mother." Campbell was a decent man and really could not see Tillie Paul Tamaree incarcerated in jail as a common criminal. The Reverend Fred Falconer of the Presbyterian Church and A.J. (Otto) Inman paid their bail of $2,000.

In those days routinely, Indians had to put; up bail. Bail isto guarantee the prisoner will not flee.Indians don't leave their homeland, but such were the rules.

After arraignment and their plea of not guilty, they returned to Wrangell to await trial. Dad began his trial preparation. He felt he could not rely on the federal judge ruling simply on the basis of the Fourteenth Amendment, especially in view of the Dawes Act. The latter act put the burden on the Indian to prove that he had abandoned his tribal ways and had adopted Western culture.

How does one prove that he has "graduated" from an "inferior" culture? What distinguished one from another? So, he made up his own set of standards. Does he have a house? Does he use knives and forks? Does he pay taxes? Do his children attend school? I can remember Dad's telling about the ultimate criterion (which argument he did not use): Does he use toilet paper?

That fall at Ketchikan, Charley's case was called and a United States petit jury empanelled. The case for the United States of America was simple. Charley Jones was an Indian; he had attempted to vote; been denied the right; with Gramma's help had challenged the denial; was sworn; swore that he was a citizen and voted—so testifed William G. Thomas, J.G. Grant and Ole Gunderson. He was an Indian, thus obviously not a citizen. Furthermore he had not complied with the Territorial Act of 1915.

Then it was Charley's turn. He was his own best witness. Dad went through his criteria. Charley had actually kept his receipts for the payment of town taxes since 1907. Perhaps the most poignent story related to his support of the Red Cross:

> "Yes, I give for myself. I give for my wife. I give for my son, Richard, and I give for Captain Wilson."

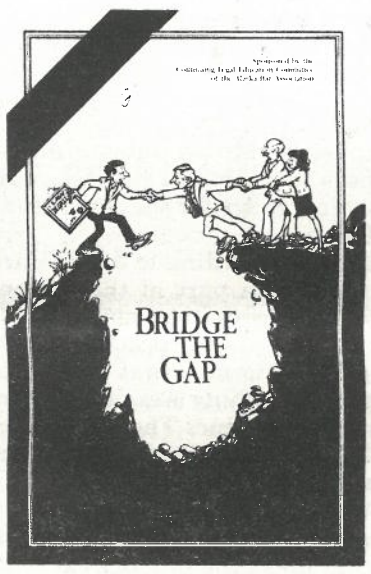
The United States petit jury found Charley Jones not guilty. On motion of the United States attorney, the perjury charges were dismissed and so was the indictment against Gramma. I must give the devil his due: Shoup told Dad, "I'll never bring a charge like this one again."

True to expectation, when Dad offered a jury instruction based on the Fourteenth Amendment, it was refused by Judge Reed. Even so, it was the signal that told the world that an Indian who could neither read nor write had the right to vote.

Judge Reed, too, had specifically ruled that the Territorial Act of 1915 was unconstitutional. No longer could an Indian be forbidden to vote because of that law. Here is his ruling:

> "I instruct you ... that no state, territory or authority has any power or authority to modify or add to the (federal) statute which provides that an Indian who is born in the United States ... who has ... adopted the habits of civilized life is a citizen of the United States ..."

With the 1922 election, and with the unanimous consensus of the Alaska Native Brotherhood, the Indians were beginning to be a powerful force in territorial politics. With the spectacle that the whole majesty of the United Sates of America directed at what most called an ignorant Indian and its failure, the whites reacted predictably. My tribal uncle's case worsened their attitude.



Update #1 to the Bridge-The-Gap Manual is now Available!

The first update to the Bridge-The-Gap Manual is now available. Editing or substantive changes are included in updates to the following sections: Administrative Law, Bankruptcy Law, Business Law, Clerk to Court, Ethics, Family Law, Law Office Management, Legal Resources, and Probate Law. Cost of the update is $10.00. Checks should be made payable to the Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510.

• Head injuries

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rience or aptitude, is harmed by such a loss. Your experts must communicate that everyone in every walk of life uses the planning and organizational skills that this term of art describes and that their lives are immeasurably harmed if such skills are impaired.

Sources of Information About Head Injuries and Their Implications

Good Samaritan Hospital, Center for Cognitive Rehabilitation, 618 North Meridian, Puyallup, Washington 98371, phone: (206) 845-1750, publishes a bulletin that deals with the head-injured patient or client. Topics range from guardianship for the brain-injured client to the efficacy and cost of postacute rehabilitation for such individuals. A phone call or letter will secure all of their publications to date and allow you to be placed on their mailing list. This service is free of charge.

Additionally, one or more of the following publications may be helpful in handling head-injury cases in your office:

Rehabilitation of the Head-Injured Adult, F.A. Davis Co., Philadelphia 1983;

Levin, H.; *Neurobehavioral Consequences of Closed Head Injury*, Oxford University Press, New York (1982);

U. S. Department of Health & Human Services, *Head Injury: Hope Through Research*, (1984);

Neuropsychological Assessment of Neuropsychiatric Disorders,(I. Grant and K. Adams, Eds. 1986);

Massachusetts Academy of Trial Attorneys, *The Silent Epidemic, Handling Head Injury Cases*, (1986);

R. Sagonov, *Secondary Losses and Post-Traumatic Sequelae Following External Traumatic Head Injury*, (1986);

Handbook of Clinical Neuropsychology, edited by Susan B. Filskov and Thomas J. Boll, John Wiley & Sons, New York (1981);

Clinical Diagnosis of Mental Disorders, edited by Benjamin B. Wolman, Plenum Press, New York (Oct. 1982).

Summary & Conclusion

We could all do a better job of identifying and representing the traumatically brain-injured individual. Examination of the medical literature, factual inquiry focusing on the symptoms of closed head injury, and the retention of appropriate expert evaluators, consultants, and witnesses is necessary in order to obtain adequate compensation for the head-injured client.

LAWYER BURNOUT

The view from your peers ...

BY MICKALE CARTER

Attorney burnout. What is it? What causes it? Can it be avoided? Is there a cure?

I selected the three people who were interviewed for this attorney burnout article in order to address head on some commonly held beliefs about attorney burnout: e.g. (1) Attorneys in high pressure or highly emotional areas of practice experience burnout more often than attorneys practicing in less stressful areas; (2) Attorney malpractice is often a result of attorney burnout; and (3) Drug and alcohol dependancy is a common result of burnout.

Judge Karen L. Hunt

Judge Hunt was admitted to practice law in Alaska in 1973. She was appointed Superior Court Judge for the Third Judicial District by Govenor Sheffield in 1984.

As a judge, Judge Hunt has seen attorneys who she believes are suffering from burnout. There are two symptoms which she believes are typical of burnout victims. These symptoms, although distinct, are really different sides of the same coin.

The attorney who previously was level headed loses his perspective about the case. He fails to be able to distinguish the important from the trivial. Attorneys react to this phenomena differently. Some attorneys will give equal time and energy to both the trivial and the important. It is as if they are afraid that they might miss something important. There are those, on the other hand, who treat everything as if it were unimportant and give no time or energy to anything.

The other common symptom of burnout is that attorneys who were otherwise good natured and professional, begin to speak and act as though everyone were against them. They take everything personally. If he is unsuccessful at trial, he acts as if the verdict were directed against him personally. He perceives a Judge's adverse ruling as being against him, rather than on the issue.

Judge Hunt distinguished this symptom from what she feels is a legitimate and very beneficial form of inquiry. That is, upon being unsuccessful on a motion, etc., examining one's self to determine what one could have done in order to have prevailed.

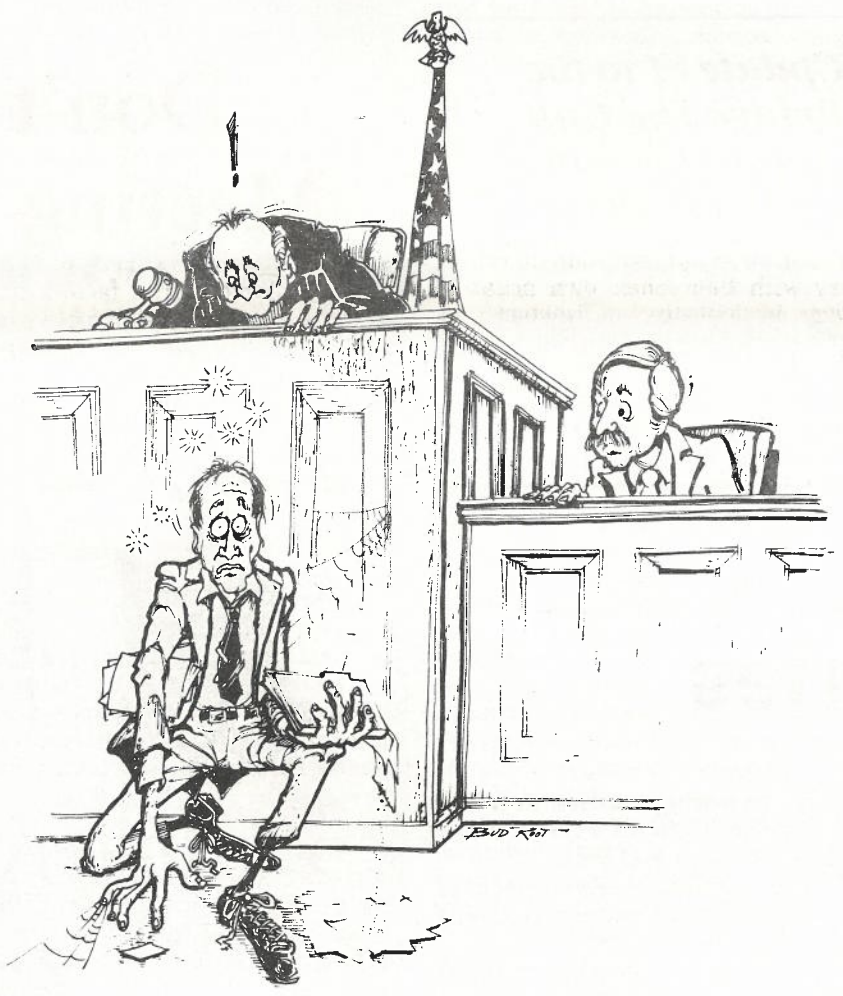
The person suffering from this syndrome becomes very egocentric. Everything is analyzed with the person suffering burnout as being the focus of the world. It is almost, she stated, as if the person has reverted back to early childhood, where the child is the center of his Universe.

Another outgrowth of this egocentricism is that attorneys who were once polite and acted toward others with courtesy and respect, over a period of time, become rude and demand things of the judicial system that the system has never been able to do for them.

Judge Hunt thought that the changes in behavior that she has observed are the manifestations of certain personality types suffering from burnout. She, however, thought it was very possible that there is a quieter form of burnout that is less easily observed. These people may respond to burnout by withdrawing.

Judge Hunt stated succinctly her view as to the cause of burnout: "burnout occurs when what the attorney is getting from the practice of law is not worth the energy that it takes to get it." She reached this articulation of the cause of burnout after analyzinq the distinction between those who suffer from burnout and those who don't. She initially thought that maybe burnout was caused by work overload. However, she concluded that, by and large, most attorneys work too hard at least for the first 10 years of their practice.

She thought also that maybe not being able to set the time limits may be another contributing cause. Someone, the client, the Court, whomever, decides when the attorney must perform. The last person who gets to determine his schedule is the attorney.



The multiple demands on an attorney determine the price paid for the rewards being an attorney provides. Usually during the first 10 years of practice when the attorney is trying to establish himself and learn the profession, he enters into a marital relation and has children. Any one of these alone could be very stressful and can make great demands on the attorney.

Judge Hunt believes that there are three things that separate those who burnout from those who don't. Those who don't burnout know that they are not perfect and they can't do everything. They set limits on what they will do. They prioritize what is important in their life and they make sacrifices in the areas that are less important.

Another characteristic of those who do not burnout is that they keep or develop a sense of humor about themselves. They either know or learn how to laugh at themselves and they do not take themselves too seriously. The third thing that she believes separates the burnouts from the non-burnouts, is that those who do not burnout learn how to relax with something other than drink or drugs.

Because whether one will burnout or not burnout is a very personal thing, it is difficult to make generalizations about which cateqories of attorneys will burnout and which will not. For instance, a workaholic won't burnout as long as that person is getting what he wants from the practice of law. Similarly, distinctions cannot be made between those who love the law and those who are just neutral about the law. As long as the reward is worth the price paid, that person will not burn out.

Judge Hunt recommends that each of us make a self-analysis to determine what it is that we want out of the practice of law. She acknowledges that there is an inherent problem with this self-analysisyou really can't rely on your answer. This is especially true when you first begin to practice because you simply may not know what you want out of the practice of law. Also, it takes time to figure out if what you want is worth the price. Indeed, it takes awhile to figure out what the price is.

In an ideal world, we would do what we want to do. However, in the real world, there are spouses to support and children to be educated and mortgages to be paid. It is not possible for an attorney to just pick up and leave the practice. If an attorney is not getting out of the practice of law what he wants, then he has to realize that he is going to need to get his energy from a different source. He will need to re-examine his life to determine what that source of energy can be. He may need to reorder his priorities. The problem that some attorneys have is that when they realize that the practice of law is not fulfilling, they turn to their spouse and families for support only to discover that they no longer have a family or a spouse to turn to. They also may discover that they have no other interests or other people to draw upon.

It is an ugly place to be and it will take a great deal of work to get oneself in a different place, but as Judge Hunt said, "I never said it was easy." If one is in that rut, he must do something to reach outside the practice of law for some energy, i.e., join a softball league, a church, go bowling, just do something.

Judge Victor Carlson

Judge Carlson was admitted to practice law in Alaska in 1963. He was appointed Superior Court Judge for the Third Judicial District in 1970 by Governor Miller. Judge Carlson has been the criminal, as well as the family law judge for the Third Judicial District.

Burnout, according to Judge Carlson, may be a part of the various stages that an attorney goes through as he matures in the practice of law. When an attorney first begins to practice, everything is exciting. Then, it becomes routine. Then the attorney can see different nuances and there is renewed interest. Then, it becomes routine again. If the attorney cannot see new nuances in the law that make the practice exciting, then to revive his interest, the attorney may redirect his energies to teach those who come after him.

Judge Carlson views burnout as a condition of being without joy. The symptom of a person who is burned out is that he loses interest in his practice. He shows a lack of enthusiasm and is generally depressed.

Judge Carlson does not believe that burnout results in not representing the client. In his opinion, only a few attorneys have put their heads in the sand maybe two or three out of the hundreds who have practiced in his court. There may be more client complaints about family law attorney however, he believes that these complaints are due to the highly emotionally charged nature of this type of practice. He stated belief that it is emotionally more traumatic for a person to lose custody of his child then to go to jail. He also believes that rejection by a spouse is more traumatic than losing one's job or one's home, or even going to jail. Consequently, people involved in those situations, are more sensitive and perhaps more demanding than those who are faced with the prospects of losing mere money.

If an attorney burns out and is unhappy with the practice of law, he is going to have to figure out a way to make the best of it. Judge Carlson believes that we are stuck with being attorneys. For a multitude of reasons, we are not going to be able to change professions.

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LAWYER

BURNOUT

The view from the professional

BY DAVID J. SPERBECK, PHD.

Essential to the task of self-preservation and effective work performance is the ability to cope with chronic, unremitting stress. A host of recent surveys of American workers all conclude, with some estimates as high as 90 percentof professional workers, that the American worker reports experiencing at least moderate and in some cases extreme stress in their professional activities at work.

Most observers and analysts of recent trends in perceived and real job stress attribute the problem to such factors as increasingly complex job tasks taking the place of primarily physical activities which in the past required only physical stamina and routinized schedules. New environmental, social, and intellectual demands require new sets of skills to prevent workers from being cognitively and perceptually overloaded with multiple demands requiring multiple choices and multiple decisions. In America's present service-oriented labor market, primary demands on workers, at both the skilled and professional levels, are mental and interpersonal, rather than the traditional physical activities of preceding decades and centuries.

> *"Adding to the increased demands and pressures at work are increasing demands and pressures at home."*

Adding to the increased demands and pressures at work are increasing demands and pressures at home. Most American families require two incomes to maintain any sense of financial stability. Most working couples increase their sense of feeling overwhelmed as they struggle to control their lives by feeling pressured by time restraints and a continual need to spend what little time they have with one another and/or their children. This is in addition to trying to run a household, which most families agree is at least a full-time job in and of itself. The necessity of two incomes in families is a recent trend which is a generation or so in the making. The demands at work and at home that seem to overwhelm us are similarly a generation or so old. However, our primary mental and physical characteristics took several million years to evolve and as a result, we are demanding of ourselves things that we were not designed to do, and consequently we have fallen prey to any and all manner of physical and emotional forms of stress.

Manifestations of Stress

The physical effects of stress are only now being fully understood and a preciated. Recent estimates place the overall costs of stress to our economy as high as $150 billion a year when absenteeism and spiraling medical costs are included in the analysis. According to recent estimates, stress related occupational disease claims accounted for 14 percent of American Worker's Compensation Claims in 1987, up nearly threefold nationally since 1980.

When people suffer from acute stress or are unable to manage chronic stress effectively a wide variety of manifestations are experienced.

Physical Manifestations: Among the physical manifestations of stress, most commonly experienced are elevated blood and urine catecholamines and corticosteroids, increased blood glucose, increased heart rate, increased blood pressure, shallow and difficult breathing, numbness, tingling, coldness in the extremities, a queasy stomach, light muscles, back and head tightness, dry mouth and sweating. If acute stress continues in its duration, these physical manifestations can, over time cause the breakdown of vital organs, and produce serious and at times chronic disease. Over longer periods, chronic daily stresses wear us down, and frequently lead to secondary severe problems. For example, as tension builds up we may fruitlessly begin smoking, drinking, eating too much, or depending upon other forms of addictions that carry with them their own negative affects. In this case, an argument can be made that many of our most severe health and social problems ironically stem from our own ineffective attempts to find relief from the tension of everyday stress. Therefore, serious illness can and often does result from long-term stress or from the self-defeating methods we use in managing it.

Emotional Manifestations: The emotional and psychological distress that we experience in response to job stress can also be debilitating. Anxiety, anger, boredom, depression, fatigue, frustration, irritability, moodiness, tension, nervousness, self-hate, and a constant state of worry are all included in the emotional sequelae of acute and chronic job stress.

Mental Manifestations: Perhaps the most notable effects on our mental and intellectual functioning of acute and chronic job stress are concentration impairments, inefficient or poor task performance, defensiveness towards co-workers and/or supervisors, an overfocus on details with a tendency to become obsessional, mental blocks, and intellectual lethargy. I have frequently had patients suffering from acute and chronic job stress who complained of deteriorated memory functioning at work, only to eventually discover that their "memory" problems were really the result of impaired concentration in the work setting. Multiple stimulus input in a complex work station will quickly lead to stimulus overload, which results in distracted concentration, inefficient memory coding, and result in defective memory retrieval. In almost all cases, this is a functional disorder of information processing, and does not represent an organic memory defect.

Behavioral Manifestations: Some of the effects of acute and chronic job stress on our behavioral functioning include the use and at times overdependence upon prescription and nonprescription drugs, alcohol, and nicotine. In addition, many people who are victims of chronic stress suffer from disruptions in their eating patterns with overeating or loss of appetite as the most common behavioral manifestations.

In addition, impulsive or aggressive outbursts, accident proneness, restlessness, a tendency to blame others, withdrawal and eventual social isolation can result from extended exposure to high stress situations.

Organizational Manifestations: The effect of high and chronic job stress on an individual's overall personality organization can result in job burnout, low morale, high absenteeism, poor overall performance, high turnover, high job dissatisfaction, high use of health facilities, poor working relationships with colleagues, high accident rates on the job, and at times a desire to pursue different forms of revenge against employers (e.g. litigation). This latter point is underscored by the numerous mental stress evaluations I have conducted where claimants litigation was rooted in a sense of emotional injustice and victimization rather than having suffered a disabling physical or mental injury.

The important point to emphasize in assessing the effects of job stress on the individual is that any such assessment must be multidimensional and take into account the total person. For example, looking at the factors noted above in isolation would lead to spurious conclusions about the effects of job stress on the individual, who for example may have as a character trait blaming others for their problems. Excessive job stress has negative effects on all dimensions of our life, and usually creates physical, emotional, innerpersonal, and overall organizational distress.

Controlling the stress response

Researchers and analysts of the stress response in humans have long espoused the notion that there is a curvilinear relationship between stress and performance such that an optimal level of stress must be present to produce an optimal level of performance. That is to say, too much or too little stress will produce under or overactivation of the central nervous system and when this occurs, performance declines proportionate to the degree of under or overactivation. So, for example, an individual who is understimulated is going to be bored and their perptual receptors will not function efficiently. The same holds true for the individual who is over stimulated and cannot keep up with the amount of information needed to be processed. Each individual finds some stressors more difficult or demanding than others, and this usually has to do with our personal style, coping skills, and background. Everyone can list scores of common stressors in our lives and most of us report that we experience continual pressures in our lives. However, when we experience several pressures at once or if the stressor we are currently suffering is especially severe, our level of stress increases and we are at risk to suffer the effects already noted above.

> *"Too much or too little stress will produce under or overactivation of the central nervous system."*

Some of the most common stressors that can result in clinical distress and anxiety include:

- Any life change or important life event
- Threats to our person or self-esteem
- Loss of someone or something we care for or depend on
- Conflicting or ambiguous demands or, expectations made on us at work or at home
- Pressure of deadlines, too much work, and/or confused priorities
- Conflicts or difficulties with other people
- Frustration or threats to our personal, physical, and emotional needs.

To some degree, we manufacture stress unnecessarily in our minds. By this I mean, that in order for our body to experience stress, our minds must first consider the situation to be threatening or difficult. Some of the differences between individuals in their perception of stress include self-confidence, self-esteem, real and perceived differences in our ability to deal with certain tasks, and motivation to overcome threatening circumstances.

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One of the most common sources of manufactured stress occurs when we worry, anticipate the worst, or otherwise create unrealistic demands on ourselves. When we imagine a stressful situation, or imagine a nonstressful situation turning into a catastrophy, our body responds to these imaginal events as if the event was really happening. This type of negative thinking is sometimes referred to as catastrophizing and produces additional stress, and magnifies existing real stress. Therefore, it is possible to reduce the amount of stress we experience simply by reducing the amount of negative thinking which we engage in.

The degree to which people differ in their experience and evaluation of stress depends on several factors: first, our childhood learning creates patterns and expectations that we carry into adult life. Feelings about ourselves, our abilities, our expectations of ourselves, and our expectations of other people can all stem from childhood conditioning. Each one of us learns a style of responding to challenges and thinking about the world that greatly affects how safe or threatening the world appears to us. A person who feels safe and confident in themselves is going to experience less stress than a person who is fearful and full of self-doubt.

Regardless of the intensity of the stress which we experience, and regardless of the nature of our evaluation of the stress that we experience, when we perceive something as evenly mildly stressful, we activate our central nervous system and therefore our stress response. Typically, this response includes a tightening of muscles, a release of adrenaline into the bloodstream, a constriction of blood vessels, a tightening of the stomach muscles with a simultaneous acid secretion, and a disruption in our breathing such that it becomes more rapid and shallow. It has been my experience that when

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• Burnout: the peers' views

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Attorneys who have burned out need to realize that the law is only a small part of the big picture. We need to develop interests in other things in order to help keep our life in perspective.

Judge Carlson acknowledged that some people are single purposed and that the practice of law may be enough to sustain those personality types. However, there are others who cannot be happy devoting their entire life to the law.

Sometimes a change in the area of practice is very helpful. He suggested that a year sabbatical may be very persuasive in showing just how good it is to be an attorney. Although there is a sabbatical program for judges, and it has been worthwhile for some judges, he believes that he will not participate in that program. What has helped him more than anything is to talk with his cousin who is about his age. He then realized that they had the same feelings about life and that those feelings were natural. Each person has to figure out what he needs in order to be happy and then he has to act to bring about that happiness.

Judge Carlson believes that burnout is a privilege of the wealthy. Our ancestors didn't have the opportunity to suffer burnout. Part of our problem is that we think life is supposed to be exciting all the time. But, life isn't always exciting. We also need to take a more aggressive attitude toward being responsible for ourselves. We need to take the initiative and find things that we find interesting.

If an attorney is not experiencing joy in the practice of law, he needs to find excitement someplace else. Where he will find that excitement will be different for each person. It can be coaching a little league baseball team. It can be mountain climbing. Wherever he finds it, the enthusiasm for that area of interest will carry over into the practice of law. "The goal is to get more units of fun out of the effort."

John Reese

John Reese is a partner in the law firm of Reese, Rice & Volland. He was admitted to practice in Alaska in 1969. Reese is the chairman of the Substance Abuse Committee of the Alaska Bar Association.

Reese believes that substance abuse very likely is not related to burnout. He is convinced that burnout is not a result of substance abuse. Similarly, substance abuse is not necessarily the natural outgrowth of burnout. Although alcohol or other drug abuse does not cause burnout, if one is beginning to burnout, the substance abuse may act as a catalyst to bring about the burnout much more quickly.

Whether one abuses alcohol or other drug, depends on that person's predisposition for such abuse. Whether that predisposition is carried to its fruition is dependent upon a myriad of circumstances. We are not attorneys and nothing more. We are rather attorneys with our own unique excess baggage and hang-ups.

As Reese sees it, burnout is the result of the pressure an attorney puts on himself to do magic. Unfortunately, when the goal is perfection, we mortals are destined to fall short of that goal. Also, as part of this calculus, is the fact that the work itself is very open ended. There are often no clear cut answers. As a result of this, the attorney's emotional strength may not be enough to sustain him. He begins to meet only minimal requirements. "One can do a pretty marginal job before crossing the malpractice threshold."

Ten percent of the population of the United States are substance abusers. For those in the legal profession, the percentage is much higher. It is between 20 and 30 percent. The percentage of abusers in the medical profession, is even higher. Within that category, the dubious honor of having the highest percentage of abusers goes to dentists. Although there are no statistics for Alaska, Reese thinks that because people in Alaska drink more on the average than people Outside, it is likely that the percentages are higher here in Alaska than for the United States as a whole.

Although substance abuse and burnout are not necessarily related, Reese stated that a substance abuser may exhibit symptoms similar to those displayed by a person suffering from burnout. The literature indicates that there is a tell tale pattern when one is abusing a substance. He comes to work late. He leaves early. He doesn't return client calls. He misses deadlines. The situation may get so bad that he quits doing any work at all. However, if he still makes it to Court and he files his papers on time, he doesn't commit malpractice.

Reese was asked by Harry Branson when he was the president of the Alaska Bar Association to put together some sort of a substance abuse committee. When he began to ask around to assess people's interest in this committee, he discovered that there was a great deal of interest. Everyone has somebody close to him who has had an alcohol or drug problem. Substance abuse has effected all of our lives in some way. Many people who have been effected, want to help others. Some of the volunteers on the Substance Abuse Committee are recovering alcoholics. Some have close family relatives or friends who are alcoholics.

Reese stated that being an alcoholic does not necessarily mean that one is incapable of functioning as an attorney. In fact, there are alcoholics who have been extremely successful in their legal careers. He can't help but wonder what that special talent that managed to blossom in spite of the alcoholism, would have been, if there hadn't been the substance abuse.

If you think you may have a substance abuse problem or know of someone who you think does, You may contact any member of the Substance Abuse Committee. To get their names and numbers, call the Bar office and ask for the names of committee members. You can call the members until you find one with whom you feel comfortable speaking. (John Reese's phone number is 276-5231.)

The program is as anonymous as the person seeking assistance desires. The Committee keeps no records of the people seeking assistance, so there should be no fear that your name will end up on some list somewhere, or otherwise be divulged.

No single definition for term "legal assistant"

By Beth Crow Adams

Alaska's attorneys have long recognized the advantages of using legal assistants (used synonymously here with "paralegals") to deliver legal services more effectively, efficiently, and economically.

Because the profession is relatively new (the ABA only recognized its existence twenty years ago), many attorneys are unsure about what kind of qualifications an applicant should have. Many Alaska attorneys are starting to require that applicants graduate from a "paralegal program". The meaningfulness of this requirement may be questionable, however, because until recently there were no standards for paralegal education programs.

The incredible rate at which the profession has grown has resulted in scores of paralegal schools and programs nationwide, with courses ranging in length from a few weeks to several years. However, there is no single definition of the terms "paralegal" or "legal assistant", and no standards exist for paralegal education. The ABA has an approval process, but less than a hundred such programs have gone through the hoops necessary to obtain this stamp of approval. Further, the process is costly, and the ABA is thinking about scrapping it. In light of this lack of standardization, how should employers evaluate an applicant's educational background, particularly attendance at a "paralegal school"?

Representatives of professional associations involved in the paralegal field, including the two national paralegal associations, paralegal educators, attorneys and law office administrators held a "conclave" in March of this year to discuss paralegal education. For the first time, these groups agreed on some ideals for paralegal training programs. Further, representatives to the conference agreed that there is insufficient information available to employers on what constitutes a quality training program, making informed hiring decisions difficult.

Conclave participants promulgated guidelines which will assist attorneys in evaluating the educational programs applicants have attended. First, it was recognized that there is a trend towards requiring the baccalaureate degree or its equivalent for entry level legal assistant positions. Also, it was agreed that a "good general education" is essential in the field of paralegal education. A minimum of thirty semester or forty-five quarters of general education courses should be required. Course offerings should include communication, analytical and quantitative skills; ethics; computers, math or accounting; and history and government. In addition to substantive and procedural legal specialty courses, the following subject matters should be taught in required legal courses: factual and legal research; legal ethics; the American legal system; and the professional legal environment.

It should be noted that current ABA guidelines require a minimum of fifteen hours of legal specialty courses. Conclave participants agreed that this requirement is too low. Further, the group recommends that continuing education of legal assistants be encouraged by all members of the legal profession.

Alaska lawyers who want further information regarding employing legal assistants can contact the Alaska Association of Legal Assistants. The association can provide information about specific educational programs in many instances. Also, a wealth of information on other requirements attorneys may want to consider is available. The association can be contacted through its answering service, at 338-2055, extension 80.

Beth Adams is a legal assistant with Young & Sanders, and is currently president of the Alaska Association of Legal Assistants.

• Burnout: view from the psychologist

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individuals under stress begin breathing quickly and in a shallow manner, that these individuals typically begin thinking faster, almost to the point that their mind begins racing and/or operating on three or four different levels simultaneously.

The simultaneous experience of fearing losing control can actually exacerbate and magnify the individual's actual physical response to stress, and without considerable discipline and counterconditioning and training, the individual could lose control and escalate into more serious reactions such as panic attacks. More often however, we experience a heightened sense of emotions such as intense rage, intense fear, intense anger, or intense anxiety. This integrated response to threatening stressors, which probably has its roots in evolution many thousands of years ago, allows us to mobilize tremendous energy necessary for surviving, changing, and being decisive. However, in our current culture, this mobilization response to stress can be as much of a problem as it is a survival mechanism.

"The simultaneous experience of fearing losing control can actually exacerbate and magnify the individual's actual physical response to stress."

Deactivating or otherwise avoiding activating our stress response in the first place is absolutely necessary to prevent physical, emotional, and professional burnout. I have frequently evaluated individuals who complained of complete exhaustion, emotional depletion, muscle tension, and depression, all of which turned out to be signs of repeated and unnecessary arousal of the person's stress response without appropriate release or ventilation outlets. While there are many ways to activate the stress response, there are many fewer methods available to deactivate this response. Unfortunately, alcohol and drug abuse are overutilized because of their ease of implementation, relative cheapness, ready availability, and relatively rapid deactivation: results. However, substance abuse and alcoholism do not help an individual cope with stress, only to avoid feeling the effects of stress.

Healthy management of our daily stress, whether it is job or family related, requires responding in one of the three following areas: 1) turning off the stress response by actively responding to a situation and thereby solving the problem which produced the threat or conflict, 2) deactivating the central nervous system through physical exercise., and/or 3) deactivating the central nervous system through quiet forms of relaxation that activate an opposing psychophysiological state, such as the relaxation response. Techniques which have been usefully employed to produce this opposing psychophysiological state include meditation, progressive relaxation, guided imagery, and self-hypnosis.

"There are other forms of reducing job stress that have been found to be effective."

There are other forms of reducing job stress that have been found to be effective. Certainly, developing a sense of comraderie and team spirit at the work setting has been found to be effective in developing a sense of unity and improving morale at the work setting. A collective and unified defense among office staff, managers, and administrators can dramatically improve individual and overall morale, which is essential to staving off some of the more advanced phases of job stress and burnout, such as social isolation, individual defensiveness, and pathological blaming. Employers can greatly improve the conditions at the work place by hiring managers who are sensitive to these issues and serve as good role models for deactivating the stress response, rather than provoking or otherwise stimulating and accentuating the stress response.

Another essential component in an overall plan to combat stress in the workplace is the provision of a forum for talking out problems, differences, and conflicts as an alternative to avoiding or otherwise acting out these conflicts and problems. High stress job settings require a debriefing period at the end of the work shift which should ideally be provided and encouraged by the employer. Again, the point of such an activity is to provide the individual with positive associations in the workplace, rather than to associate their job setting with nothing but negative associations and a overactive stress response. I have treated many individuals who spent half of their waking adult life in a setting which had nothing but absolutely negative associations, as manifested by their conscious and unconscious perceptions of their workplace.

Job stress & depression

When an individual is constantly frustrated by job or personal circumstances for a prolonged period of time, but is not able for a variety of reasons to solve the problem that frustrates him or her, depression will occur. Simply put, when an individual's stress response is continually activated as the result of chronic unremitting job stress and pressure, the brain will naturally use more adrenaline than normal, and if the crisis goes on for a long time, the end result would be as if the brain was running out of adrenaline. The brain tries to keep up with the demand for adrenaline by producing as much adrenaline as possible, but sooner or later if the frustrating job or personal conflict doesn't resolve, the brain begins running out of adrenaline because it can no longer produce as much as needed. Adrenaline is to the central nervous system what gasoline is to an automobile. Continual unremitting stress will eventually cause the central nervous system to run out of gas. Adrenaline helps to regulate sleep, concentration, and appetite. Adrenaline also helps us feel pleasure when we engage in activities that normally make us feel good, and adrenaline helps to stabilize our moods. When we "run out of adrenaline" these functions become disturbed.

The most common forms of severe depression which I have evaluated and treated and which were job related usually can be broken down into two main categories: changes in an employee's sense of self-identity due to physical impairment or disability connected to job related injuries, and second and perhaps more deleterious in its effects, depression related to inability to complete a job which the individual has been hired to do but has not been given the power or authority to do right. Whenever an individual perceives an absence of any connection between their efforts and the consequences that follow their efforts, learned helplessness and eventually depression will result. Simply put, skilled and motivated individuals who are prevented from doing a good job by an untenable job environment (e.g. unrealistic demands, expectations, and constant exposure to "no win" situations) will eventually become depressed. It is not uncommon to find well functioning and highly motivated individuals who are depressed. Of paramount importance is the individual's *perception* of their ability to control their world, and the usual therapeutic intervention for this problem is directed towards helping that individual recognize that they can indeed control events around them more than they believe they can. Well motivated, skilled people are often unnecessarily frustrated because they don't effectively assert their needs and wishes to others, and they consequently become unable to make needed changes in their life, or are constantly taken advantage of by others. When this occurs, this often leads to anger that builds up inside, causing even more adrenaline to be used up. Depression has often been called anger turned inward, and when a highly motivated and skilled individual is continually frustrated by an unresponsive work environment, this frustration builds into anger which, without appropriate alternatives, becomes inverted inward and eventually results in clinical depression.

"It may be that appropriate coping skills are simply not in the individual's behavioral repertoire."

Obviously, some people get depressed even when they aren't facing severe stress. Usually this is because of genetic factors which cause certain individuals not to synthesize adrenaline very efficiently, and results in the brain "running out" of adrenaline even without much stress, in simplistic terms.

Treating job related depression

Continual exposure to stress can lead to neurochemical imbalances. In these cases, certain antidepressant medications can be effectively implemented into the treatment plan. When an individual suffers from severe depressive symptoms including sleep and appetite disturbance as well as loss of interest in usual activities, almost 80 percentof the time these symptoms can be significantly improved by the use of antidepressant medications. That is not to imply that antidepressants or any type of medication can make people happy, rather this class of medication can help restore normal brain function by helping adrenaline to last longer. in the brain before the adrenaline is metabolized or used up. This is a pharmacological effect of the medication on the brain's chemical functioning, with the expected and desired result that the brain can begin restoring its normal supply of adrenaline again, which then should lead to normal sleep patterns, normal appetite, improved concentration, and a stabilization of moods. In cases of severe depression, antidepressants usually result in extreme feelings of sadness and hopelessness being reduced, but obviously no medication can eliminate sources of frustration. Frustrating stressors will not fade away until the problem which is producing the frustration is solved. Essentially then, antidepressant medications can serve to increase one's resistance to the effects of excessive and continuous stress.

When the physiological determinants and/or consequences of stress and depression are treated, and addressed, the search for potential cognitive and environmental determinants of stress and frustration must then begin. Negative, depressive reactions to job stress may result from one or a combination of the following factors: 1) the individual's *efforts* to bring about positive outcomes are inadequate, 2) the individual's *perceptions* of their ability to control their world are distorted, or 3) the individual's *environment* is unresponsive, in the sense of containing few rewarding outcomes to their efforts.

With respect to solving the problem of inadequate effort, an individual's belief that they cannot control their world may in fact be accurate; objectively, they may not be able to cope with the demands of their particular environment. Assessing exactly why this ability is lacking is essential to solving the frustration that this problem produces. It may be that the individual did not have the skills to complete the particular job that they have been hired to complete, in which case pre-employment screening and post-employment continuing education and skills training will become paramount priorities. It may be that appropriate coping skills are simply not in the individual's behavioral repertoire, and typically the inability to cope with one's environment is a function of inhibitions. The treatment of inhibited coping skills requires focusing on a direct reduction of the individual's anxiety either through specific skill training (e.g. social skills or assertiveness training), some form of desensitization, or if the inhibitions are cognitively mediated, some type of rational/cognitive restructuring. The underlying assumption of the cognitive therapy of depression is that the depressed individual's emotional disturbance follows from distortions in their thinking so that improving the individual's depressed mood over the long run will require changes in their thinking patterns which occur during their treatment.

Usefully employed techniques for restructuring a person's distorted thoughts and expectations about themselves and others involves gathering with the depressed individual evidence for or against other interpretations and testing the validity of these interpretations. Individuals who are at risk for becoming depressed because of their distorted thinking tend to demonstrate certain styles of thinking, characterized by dichotomous thinking (i.e. all or nothing extremes), selective abstraction (i.e. focusing only on small parts of a situation and ignoring the bigger picture), arbitrary inference (i.e. inferring a conclusion from irrelevant evidence), a tendency towards overgeneralization (i.e. concluding from one specific negative event that other negative events are more likely), and the already reference catastrophizing (i.e. the tendency to focus on the very worst possible scenario in any situation).

Because of upbringing and preexisting personality characteristics, many employees will be at risk for not dealing with stress appropriately, and their long-term thinking patterns and styles may only be exacerbated under even the most minimal stress, making depression predictable without intervention.

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• Burnout: pyschologist's view

The liklihood of job stress developing into more severe forms of anxiety and depressive disorders is also directly related to the extent to which the employee defines their personality through their job identification. That is to say, unidimensional individuals who place all of their personality eggs in their job basket so to speak, will be extremely vulnerable to any threats that may occur at work and thereby shake their personality foundations. The obvious treatment for this problem is to develop outside interests and activities and to distribute one's personal energies and therefore potential for improved self-esteem, across a variety of settings, activities, and individuals. Active engagement, as opposed to passive engagement (e.g. television watching) is much healthier to an individual who is attempting to develop many dimensions to their personality. Simply put, it is easier to fight the war against stress and depression if one has many fronts with which to attack stress and defend oneself from.

From job stress to depression to professional burnout

Professional burnout is at the end of the continuum that starts with job stress, which in turn deteriorates to depression, which in turn deteriorates to burnout. Burnout can be viewed as a syndrome of emotional exhaustion, a sense of depersonalization, and pervasive and hopeless sense of reduced personal accomplishment that occurs among highly motivated individuals who have been overwhelmed by the emotional consequences of continuous job related frustration. Burnout is frequently referred to as being the result of job stress that arises from the *social* interactions between professionals and the people with whom they deal. It is particularly common among professionals who do "people work" such as the helping professions, the legal professions, and the medical professions. A pattern of emotional overload, emotional investment, and subsequent emotional exhaustion is usually at the heart of the burnout syndrome. Professionals frequently become overly involved emotionally in cases, tending to take negative outcomes and/or defeats personally. When this occurs, these individuals frequently overextend themselves and feel overwhelmed by emotional demands imposed by co-workers, clients, and/or fellow professionals. The response to this situation is usually emotional exhaustion. Professionals feel drained and used up and they frequently complain of lacking enough energy to face the next day. There is a sense of emotional depletion, and a sickening empty feeling that there is no source of replenishment.

Research into the psychological etiology of burnout has suggested clear individual variations in the type of personality profile most likely to suffer from the burnout syndrome. By personality profile, I am referring to a professional's style of interpersonal relations, methods of handling problems, style of expressing and controlling their emotions, and conception of self as significant factors relating to potential for burnout.

Identifying burnout potential

Researchers who have analyzed professionals who have suffered from the burnout syndrome describe the burnout-prone professional as someone who is first and foremost weak and unassertive in the way they deal with peers, co-workers, and people in general. These individuals usually describe themselves and are seen by others as submissive, anxious, and afraid of becoming involved. These individuals frequently have difficulty in setting limits in their professional and personal relationships and often are unable to exert control of a situation in which unrealistic demands are being made of them. These individuals will frequently passively yield to other's excessive demands rather than actively limiting their own behaviors to that which they have a capacity to give. For these individuals, it is easy to see how they become overburdened emotionally and with continued passive yielding, the risk of frustration building into inverted anger and eventually turning into emotional exhaustion is high.

"Professional burnout is at the end of the continuum that starts with job stress."

Researchers also describe the burnout-prone individual a someone who is easily angered and frustrated by obstacles in their job duties. These individuals are frequently impatient and intolerant of frustrations, and more likely to act out their frustration than talk or work it out with co-workers or clients. Typically, these individuals are likely to project their hostile impulses onto their clients or co-workers and to treat them in depersonalized and derogatory ways.

Finally, burnout-prone individuals frequently lack self-confidence, have little ambition, and tend to be fairly inhibited and conventional. Typically, these individuals have difficulty clearly defining their goals and usually lack the determination and self-assurance necessary to achieve professional and personal goals. The burnout-prone individual is more likely to acquiesce and adapt to the constraints of a situation than to confront the challenges by being resourceful, forceful, and enterprising. Usually, when these individuals are faced with self-doubt they attempt to establish a sense of self-worth by gaining the approval and acceptance of other people, but in so doing, may become so accommodating that they become extremely overextended because they are never able to say "no."

This character sketch of the high risk burnout personality is a composite of several characteristics, and it would be a mistaken assumption to conclude that anyone who matches this composite are the only ones at risk for burnout. Everyone is at risk for burnout if the emotional stress of their job becomes excessive, but individuals with a certain personality makeup will be particularly vulnerable to job burnout if they are unaware of the steps necessary to control their predisposed characteristics.

Combatting the efffects of job burnout

There are constructive and effective approaches to coping with burnout, and each of them focus on one or more of the following general goals: 1) to reduce the emotional strains of working with people, 2) to offset the negative, depersonalized views we have of people who frustrate or otherwise block our prior coping methods, and 3) to boost our sense of personal accomplishment, self-control, and self-esteem.

At the individual level, there are a number of coping techniques that we can implement on our own. These include:

1. *Working smarter instead of working harder* requires analyzing one's job tasks and functioning for the purpose of reducing the sense of frustration and emotional exhaustion that results from redundancy or continual personal failure that occurs when we attempt to accomplish tasks beyond any human's reasonable capacities. This may simply require changing one's schedule to perform the most complex tasks in the morning when an individual may be most alert and refreshed. The basic point here is to counteract the natural but selfdefeating and self-perpetuating tendency to work harder in an attempt to relieve emotional exhaustion.

2. *Setting realistic goals* is essential to boosting an individual's sense of personal accomplishment. In my analysis of individuals who have complained of burning out at their job or profession, I have frequently heard well intending but naive and misguided individuals talk about their attempts to accomplish abstract ideals which even under the most optimal circumstances were not realistic goals (e.g. fighting to eliminate injustice, fighting to eliminate mental illness, fighting to "blow the whistle" on inefficient or unfair institutional practices wherever they may exist, etc.). Developing and working towards realistic goals is necessary for us to know if we are making progress and accomplishing anything. The key to preventing or reversing the burnout syndrome is to develop specific signposts towards the accomplishment of our goals, such as developing specific behaviors, rather than general abstractions, which we can work towards to indicate our progress in the work that we provide to our clients, coworkers, and employers. The point here is that by focusing on these concrete steps, an individual can measure their progress and feel a real sense of accomplishment, rather than running around in circles seeking to capture a general abstraction which by definition will always elude them and contribute to a sense of frustration and ultimate failure.

3. *Finding new ways to do the same old thing differently* helps to counteract the learned helplessness that produces burnout. By *choosing* to do things differently and varying our time schedules and work routines, we can have a real sense of climbing out of the same old rut and feeling more in control of our personal destiny as well as our actual job duties and tasks. Once again, this type of intervention requires a job analysis in which one has to determine what aspects of their job can be changed and which cannot. The important point here is to focus on what can be modified, varied, shifted around, or handled with some latitude, rather than focusing on what cannot be changed. Obviously, the benefits of doing things differently is usually going to be psychological in the sense of providing us with a greater sense of autonomy and personal freedom. It is, of course, possible and common that when we begin doing things differently, we look at them differently and develop more efficient and therefore effective ways of alleviating sources of stress that we had previously accepted. By looking at a situation from a different perspective, we may see that we had been handling a task in an ineffective manner and that this was an inadvertent cause of additional emotional stress.

"A positive attitude which emphasizes pleasantness and enthusiasm is essential."

4. *Arranging intermitent rest periods or breaks* is an essential technique which people who work under contant stress, deadlines, and/or frustrating "people work" (e.g. customer complaints, insurance adjusters, etc.) must do to allow themselves an emotional breather. These breaks can be formal and scheduled, such as coffee breaks or lunch breaks, or informal and unscheduled in which we may simply ask the client or co-worker we are interacting with to wait a moment while we pause to consider the discussion at hand, or pause to relax and figure out what to say next. For example, a nurse asking a patient to wait a moment while she or he goes to pull their file from the next room may give the nurse a moment to collect his or her thoughts, relax, and control or otherwise reduce their reaction to an otherwise frustrating interaction. In the same manner, it is essential that professionals be able to leave their work at work when they go home for the day. Perhaps more than any other factor is the blurring of distinction between work and personal roles which contributes to the burnout syndrome. Being able to completely withdraw or break away from one's job responsibilities is essential to maintaining a healthy personality which is multifaceted and intellectual terms, rather than personalizing others' comments. Objectifying a situation will cause us to become less emotionally entangled and therefore less likely to make other peoples' problems our problems. For professionals working in the helping professions, maintaining a more objective perspective will lead to better quality service since one can be a more effective helper when one does not experience their clients' feelings and can disengage from the emotional aspects of the problem to focus on the intellectual problem analysis and eventual solution.

6. *Emphasizing the positive* aspect of our contacts with others can promote our psychological wellbeing and reduce potential for job burnout. Professionals who expend all of their emotional reserves become cynical and tend to develop a negative bias in their relationships with others, tending to focus only on what is wrong about others and failing to recognize or acknowledge positive aspects of their relationships. Obviously this negative bias becomes self-perpetuating in the sense that this individual projects an attitude which guarantees that which they fear most, namely rejection by others. Perhaps the most beneficial aspect of emphasizing the positive is that it increases the liklihood that others will respond to you in a positive and rewarding manner, which is satisfying in and of itself. Jokes, compliments, and small talk can make positive moments lubricate an otherwise stressful job setting, and also have the advantage of attracting others attention in a positive manner. I have worked with many professionals who complained of burnout, and who were typified in their presentation as an individual whose professional products were of high quality, but had such lousy wrapping on them that everyone rejected them. The fact that their high quality but poorly wrapped gift was rejected, frustrated them unnecessarily and contributed to their sense of resentment and emotional frustration. A positive attitude which emphasizes pleasantness and enthusiasm is essential for people who work with and around other people. On the other side of the coin, offering praise, thanks, and appreciation is traditionally underutilized in work settings, especially where workloads are heavy and schedules are demanding. In these settings, job feedback is usually confined to criticism rather than compliments due to traditional management styles of intervening only when there is a problem. However, this problem has improved considerably over the past two decades, as people become aware that it is just as appropriate to compliment as it is to criticize, and that accentuating the positive yields high dividends in work productivity.

7. *Rest, relaxation, and recreation*

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Governors discuss CLE, policy

Barbara Armstrong, the new CLE Director, was introduced to the Board.

The Board approved 7 weeks paid medical leave for Gerry Downes, the Bar's Controller, who had open heart surgery.

The Board sat as the Disciplinary Board in four discipline matters on March 11 and one discipline matter on March 12. In the Disability Matter Involving Case No. DI 87.010, the attorney was reinstated to active status. In the Matter of the Reinstatement of Peter Toll Walton, Mr. Walton was reinstated to active status.

The Board voted to put Case No. 87.236 in abeyance, not to exceed 12 months, or until determined by Bar Counsel.

The Board met with nine Duke University Law School students who are on the Alaska Law Review. The Board members expressed their concern that the law review meet the needs of practicing attorneys in Alaska.

Chief Justice Matthews appeared before the Board to discuss the Unauthorized Practice of Law proposal circulated by the court. The Chief Justice stated that the court has very limited objectives and has put forth two proposals. The first definition applies to AS 08.08.230 which makes the unauthorized practice of law a misdemeanor, and narrowly defines "practice of law" in the context as falsely holding oneself out as a lawyer. The second definition applies to limit what disbarred, suspended or inactive attorneys may do.

Judicial Council Executive Director Hal Brown reported on the progress of funding for the proposed survey of members. The Alaska Court system matched the amount the Alaska Bar agreed to commit of $4,000. The Juneau Bar voted to contribute $200 towards the survey. The Anchorage Bar Association voted not to contribute any funding towards the survey. The Alaska Bar Board of Governors authorized the expenditure of the $4,000 which they had committed, plus Bar staff assistance, so that the survey could proceed. Mr. Brown will continue to seek additional funding.

The Board voted to publish a list of the members of the Alaska Bar, including address, phone number and member number; that one directory will be provided free of charge to members of the association; that nonmembers may purchase the directory for $10.00; and that the first directory would be published before the end of 1988.

The Board considered a proposed ethics opinion regarding the referral of repeated fee arbitrations (involving the same attorney) to discipline counsel. The Board decided that this would be better handled by a rule change and directed Discipline Counsel to draft an appropriate amendment to the Bar Rules.

The Board adopted Ethics Opinion No. 88-02, entitled: "May an attorney participate in consummating a real property conveyance transaction where the client is attempting to avoid obtaining consent required under a 'due on sale clause' from the original creditor?"

The Board considered the proposed ethics opinion entitled "Use of 'Trial Advocacy Specialist' designation in advertising." Discipline Counsel suggested that the Board should consider the advertising rule when they take up the Model Rules. This opinion was not approved.

The Board adopted the proposed investment policy, as amended.

Beistline expressed his concern regarding the adverse publicity to a Respondent Attorney as a result of open discipline proceedings at both the hearing committee and Disciplinary Board levels and wondered whether discipline proceedings should be confidential until the Supreme Court level. The Board decided to place this issue on the June agenda.

The Board voted on the recipient of the Distinguished Service award. A subcommittee was named to discuss and make recommendations for the Professionalism award.

Discipline Counsel presented the Discipline and Fee Arbitration status report. (At the end of the lst quarter, there were 156 open discipline cases and 42 open fee arbitration cases.) The Board voted to withdraw a private reprimand which had been issued at the January meeting.

The Board discussed the discipline case load and whether to hire half time discipline counsel. The Board tabled this until the June meeting and directed staff to gather information such as the types and number of cases, average processing time for cases, etc.

The Board voted to approve the proposed bar rule which would allow foreign law consultants to practice the law of their country in Alaska. The rule will be published in the *Bar Rag* and then forwarded on to the Supreme Court.

Jonathan Blattmachr was recommended for admission under reciprocity. The Board gave an opinion to two attorneys that their part time work in a reciprocal jurisdiction was sufficient for the purposes of meeting the requirements of the reciprocity rule.

The convention report and proposed budget was presented. The Board voted that a lawyer must be registered for the convention in order to buy tickets to any of the social (separately priced) functions, not including the banquet.

The Board voted to recognize lawyers who are CLE faculty by publishing a periodic "honor roll" in the Bar Rag.

The Board voted to expand the CLE committee to include a judge to be selected by the Chief Justice and the President.

The Board was advised as to the progress towards the proposed 1990 Northern Legal Conference which would include lawyers from Siberia, the Yukon, Northwest Territories, British Columbia and Alaska.

Discipline cases before bar, court

Private Discipline:

Attorney A received a written private admonition for failing to return a partial retainer when requested by a client. The client had left a partial retainer with the attorney with the understanding that no work would be done until the full retainer had been paid. The client was transferred out of state and didn't pay the full retainer, but later requested the return of the partial retainer. Attorney A had ignored repeated requests for a refund and returned the retainer only after intervention by the Bar Association.

Attorney B received a written private admonition for failing to advise an opposing party that a pleading which had been filed in court which requested a particular action had been rejected by the court as defective. The attorney had several opportunities to inform the opposing party that the document had been rejected and the matter was no longer before

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• Burnout: psychologist's view

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are essential goals to achieve for people who experience chronic stress. As we noted in earlier portions of this article, there are a wide range of physical, emotional, and behavioral sequelae that result from chronic job stress which not only have unpleasant symptoms, but can also have serious long-term health implications. Reducing these health risks can be achieved by learning how to relax, both physically and mentally. There are many forms of relaxation techniques which can be implemented, but they all have one key to their effectiveness; practice. Regardless of the technique chosen, be it guided imagery, progressive relaxation techniques, deep muscle relaxation, meditation, etc., the important key is setting aside the necessary time every day and practicing the procedures until they become second nature. The time to practice relaxation techniques should not be in the midst of a crisis anymore than learning how to shoot a gun should occur on the front lines of a war. One must practice deactivating the stress response when it is not necessary need to relax so that they will be able to employ the technique naturally in a crisis and with a sense of mastery and control. As we noted in earlier sections of this article, relaxing in the midst of a crisis is unnatural because as a species, we have evolved a flight or fight response to stress. This innate flight or fight response is largely obsolete, and requires practice to recondition ourselves to respond calmly to crisis and threatening job stress.

8. *Making the transition between job and home* is essential to preventing job burnout. Learning to decompress from one's job requires unwinding, relaxing, and leaving the job completely behind before becoming fully involved with one's family and friends. Therefore, engaging in activities that are very different from one's job activities is important. So, for example, for an individual who works in a care giving occupation where the emphasis is usually on problem solving and intellectual skills, many helpful decompression activities avoid mental exertion, and tend to emphasize physical exertion. I believe that there are a number of societal pathologies that have developed as a result of our need for decompression activities. For example, alcohol drinking and even television watching can become addictive to the professional who requires decompression activities which avoid mental exertion and which require little or no original thinking. Exercise is often a key element in successful decompression activities, last are transition activities in which an emotionally overloaded person seeks a peaceful, quiet period of time for themselves. With working couples, this is not always possible and many families develop crises in the first one hour that the family is together in the evening as a result. Sometimes just unwinding and relaxing with a hot bath, a sauna, or a nap can be a very effective way to downshift in one's transition from work to home.

9. *Increasing one's social and collegial companionship* is a very important part of reducing professional burnout. Informal get-togethers with coworkers during lunch or after work is an important form of emotional and social support that peers can provide one another. This is critical for survival on any type of job, but especially jobs where high stress is chronic. Peers can provide one another with help and advice in handling certain types of job related problems, comfort and emotional support which goes a long ways in reducing stress and providing a sense of empathy,insight in the sense that peers in the same job location can help us see things differently and perhaps express the same thoughts and feelings we have in a different and more helpful way, positive feedback in the sense of being a source of praise, compliments, and recognition for a job well done, and humor which reduces emotional strain by making job related stress seem less serious, less frightening, and less overwhelming. The key to any work related support group obviously is trust. People should feel comfortable with one another and have faith that they all have one another's best interests at heart. Trust is essential because whenever we open up to one another, we are exposing vulnerabilities that we sometimes fear will be exploited.

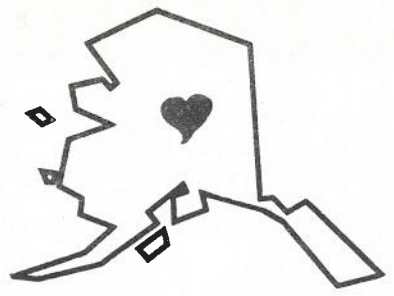
In summarizing what we can do to prevent or avoid burnout, the adage "an ounce of prevention is worth a pound of cure" is especially relevant to keeping job stress, depression, and eventual burnout from happening in the first place. Taking action before burnout occurs is always the preferred course of action since there is no guarantee that burnout can be reversed with some types of individuals in some professions. In addition, the financial, emotional, and professional costs may be too high to ever be overcome and therefore it's always wiser to avoid them from ever happening in the first place.

For these reasons, it is important as employers, employees, and professionals that we seek to employ solutions to burnout before we have burnout problems. Job stress, depression, and burnout can all result in physical and psychological dysfunction, emotional exhaustion, illness, and an increased use of alcohol and drugs. These are expensive personal costs which can be avoided with a variety of personal strategies which all involve different ways of changing one's style of work and of taking better care of ourselves. In the final analysis, we can all take better care of ourselves to develop a more balanced lifestyle, a lifestyle in which we achieve a balance between giving and getting, a balance between stress and calm, a balance between work and home, and a balance between knowing when to acquiesce and knowing when we have a choice to take the initiative and fight our sense of being overloaded, understaffed, and overcommitted. Developing a balance between giving of ourselves and giving to ourselves is a sign of a mature successful professional who can extend their career while at once improving the quality of their professional and personal lives.

Dr. Sperbeck is a licensed clinical psychologist and Fellow in the American College of Forensic Psychology. In addition to serving as a forensic psychologist for the State of Alaska, Dr. Sperbeck also is in private practice in Anchorage, is a Clinical Instructor in the Department of Psychiatry at the University of Washington School of Medicine, and holds Adjunct Professorships at Boston University and Alaska Pacific University.

FROM THE GOLDEN HEART

Ralph Beistline



BY RALPH R. BEISTLINE

When summer comes to the Golden Heart, we catch fire literally and figuratively. One of the highlights, though, of Spring, at least as far as the local Bar is concerned, is Law Day. This year I was privileged to speak at that function and have utilized, for this article, the text of my Law Day comments made to the Fairbanks Bar in the famous Palace Saloon.

It is an honor for me to have been asked to speak to you this evening, in these regal surroundings, and on this suspicious occasion. I am, of course, aware that many dignitaries throughout the country coveted this microphone this evening; men and women who would have readily trekked here barefoot to have spent this evening with you; here on the banks of the mighty Chena River; here in Alaska's Golden Heart; here where lawyers and judges excel; where secretaries are respected; and where the pre-adolescent homo sapien is better than average.

It comes as little surprise to me that among those who sought to speak to you this evening, who eyed this stage as a spring-board to universal acclaim, were educators, giants of industry, heads of state, and at least one presidential candidate. Realizing, though, that you would not be happy with such relative unknowns, I accepted the gracious invitation of the Law Day Speaker's Committee and have agreed to share with you some of my thoughts this evening.

I am quite frankly moved by the surroundings in which we find ourselves tonight—the famous Palace Saloon—that features a bar that has felt the weight of many a lawyer over the years, and that now sits just across the street, here in Alaskaland, from the Wickersham House. The house built by the very hands of Judge James Wickersham—he first federal judge to sit in the Tanana Valley. Judge Wickersham's decision to build the Federal courthouse in Fairbanks, as opposed to the town of Chena, 15 miles to the west, is one of the main reasons Fairbanks survived its early years. There are streets, mountains, dormitories, and children named after this famous frontier lawyer and judge.

As I drove here this evening, I passed over the Noyes Slough and drove down Cowles Street. I could have driven on Claypool Avenue, but that's in North Pole and would have prolonged my trip considerably. Noyes, Cowles, Claypool, and Wickersham were all early Alaskan lawyers who practiced in Fairbanks prior to World War I. They must have been men of substance to have these great monuments named in their honor.

Today, the only thing that people want to name after lawyers are penitentiaries and sanitary disposal sites. They cry, "There are too many lawyers;" they don't seem to like us.

This perception was driven home to me again recently by an article that I read in the Reader's Digest. It told of a Russian, a Cuban, an American businessman, and an American lawyer who were all traveling together by train across Europe. The Russian took out a bottle of vodka, poured everyone a drink, and then threw the half full bottle out the window.

"What did you do that for?" asked the American businessman. "We have much vodka in my country," responded the Russian. "In fact, we have more than we need."

A short time later the Cuban produced a box of Cuban cigars, passed one out to each of his traveling companions, and then threw the remainder of the box out the train window.

"What did you do that for?" screamed the American businessman. "We have many cigars in our country," responded the Cuban. "In fact, we have more than we need."

The American businessman sat in silence for a few moments, then stood, opened the train window, and threw out the lawyer.

Now that would have never happened in early day Fairbanks. In addition to lawyers, law enforcement officials are not viewed with the same degree of trust and respect today as they were in the early days.

I am reminded of a story my father recently told about a farmer who was involved in a personal injury action as a plaintiff, as a result of some injuries he sustained in a traffic accident.

On cross-examination, the skillful, but woefully underpaid, insurance defense attorney was able to get the farmer to admit that the first thing that he said to the police officer after the accident was; "I never felt better in my life."

On re-cross, the plaintiff's attorney asked the farmer how he had come to make such a statement, and the following explanation was given by the farmer.

> On the day of the accident, I was driving my horse and wagon along Farmer's Loop Road enroute to Fairbanks. Seated next to me was my dog and faithful companion of many years. Just after passing Grenac Road, a Cadillac came speeding around the corner on the wrong side of the roadway. It slammed head-on into my wagon and threw everything every which way. Moments later a policeman arrived on the scene. He approached my horse, which was lying in the roadway seriously injured, looked at it for a moment, pulled out his service revolver, and shot my horse in the head. He then walked to my badly injured dog, looked at it for a moment, pulled out his service revolver, and shot him in the head too. The officer then walked over to me, lying in the roadway, and asked how I felt. I responded, "I've never felt better in my life!"

And so the farmer was able to explain what at first appeared to be an admission against interest. The law, though, teaches us that we have to say what we mean, for the English language, as beautiful as it is, often leads to misunderstandings.

A classic example of this type of thing occurred recently between a father and his son. The father had been working in his garden getting prepared for the upcoming growing season. Before too long, he realized that he would need more fertilizer, and therefore traveled to a nearby farm where he obtained a bucketful of manure. Returning to his home, he met his 8-year-old son on the front porch. The son looked at his father and the bucket he was carrying and asked, "What's that for?" The father explained that it was horse manure and that he was going to put it on the strawberries. The young boy shuddered momentarily, eyed his father sympathetically, and then asked, "can I have mine with whipped cream?"

A lawyer (at least not one reared in the Golden Heart) would never have been party to such a misunderstanding. In fact, it is our job to add clarity to life; to smooth the bumps that occur from human interaction. That's what our predecessors did so well!

In this nostalgic environment and on this special occasion, one cannot help but wonder what happened to those early day lawyers whose activities and dedication to the law provided the foundation upon which we thrive today. Did they go to heaven? Or, then of course, there are those more fundamental questions: can a lawyer go to heaven? Are there any clients we'd want in Hell? Would Angels be good jurors? Could the Lord afford a good defense attorney? All interestingly perplexing subjects that warrant further investigation—that, though, will have to wait another day.

What did happen to the great pioneers? Do you suppose that each year, on Law Day, their spirits walk the earth? Do they visit their old chambers law offices libraries and bars? I don't know. But if they do, some of them just might be here tonight, propped up at that very bar and telling war stories, deeds of yesteryear, and dispensing good advice.

Of course, they do speak to us from out of the dust, as we apply legal precedent that they established, and as we study the legal opinions that they issued.

If Wickersham were here, and Cowles and Claypool, after observing the questionable state of sobriety of those here in attendance, as well as the dice displayed at the back bar, they may well have some timely advice for us. In fact, we need only refer to one of the very first cases ever issued in the Tanana Valley the case of *McGinley v. Cleary,* Vol. II, Alaska Reports, p. 269, to know what that advice would be. In that case, which evolved in 1903 when Fairbanks was but an infant, the question raised was whether or not the law would assist a drunk bar keeper regain his business establishment that he lost in a dice game.

The parties were plaintiff McGinley, the proprietor of the lost bar, and defendant Cleary, a successful early day miner for whom Cleary Hill is named. The establishment in question, known as the Fairbanks Hotel, was located on Front Street near the present day Cushman Street bridge.

The decision was rendered by Judge Wickersham on August 8, 1904. The writing was typical for the time. Let me share some of the pertinent parts of that decision with you, and might I suggest that those of you who are considering entering into some games of chance later in the evening, pay particular attention. Wickersham wrote as follows:

> On the 29th of last November, the plaintiff was, and for some time previous thereto had been, one of the proprietors of that certain two-story log cabin described in the pleadings as the "Fairbanks Hotel." The opening scene discovers him drunk, but engaged on his regular night shift as bar keeper in dispensing whiskey by leave of this court on a territorial license to those of his customers who had not been able, through undesire or the benumbing influence of the liquor, to retire to their cabins. The defendant was his present customer. The defendant testifies that he had a $5 bill, that he laid it on the bar, and that it constituted the visible means of support to the game and transfer of property which followed. That defendant (Cleary) had a $5 bill so late in the evening may excite remark among his acquaintances. The proprietor is plaintively positive on his part that at that moment his brains were so benumbed by the fumes or the force of his own whiskey that he was actually *non compos mentis*: that his mental faculties were so paralyzed thereby that they utterly failed to register or record impressions. His customer, on the other hand (Cleary), stoutly swears that the vigor and strength of his constitution enabled him to retain his memory, and he informed the court from the witness stand that while both were gazing at the bill, the proprietor produced the nearby dice box and they began to shake ... Neither the memory which failed nor that which labored in spite of its load enabled either the proprietor or the customer to recall that any other money or its equivalent came upon the board...
>
> They were not alone. Tuper Thompson slept bibulously behind the oil tank stove. Whether his mental receive was likewise so hardened by inebriation as to be incapable of catching impressions will never be certainly known to the court. He testified that when he came to, the proprietor was so drunk that he hung limply and vine-like to the bar, though he played dice with the defendant, and later signed a bill of sale to the premises in dispute, which Tuper witnessed...
>
> It is currently believed that the Lord cares for and protects idiots and drunken men...

Let me pause for a moment to note that we have both here this evening. At any rate, Wickersham proceeded to describe in more detail the nature of the dispute, then asked the compelling question:

> How much credence must the court give to the testimony of one drunken man who testifies that another was also drunk? Is the court bound by the admission of the plaintiff that he was so paralyzed by his own whiskey that he cannot remember the events of nearly 24 hours in which he seems to have generally followed his usual calling? Upon what fact in this evidence can the court plant the scales of justice that they may not stagger?

Then Wickersham establishes new principles of equity and renders his decision:

> *Equity will not become a gambler's insurance compayn,* to stand by while the gamester secures the winnings of the drunken, unsuspecting, or weak minded, in violation of the law, ready to stretch forth its arm to recapture his losses when another as unscrupulous than he wins his money or property.
>
> The case will be dismissed; each party to pay the costs incurred by him. Judgment accordingly.

Cleary retained ownership of the Frontier Hotel and, as you know, went on to have a ski resort named for him. McGinley was never heard from again. And so another frontier problem of great moment was resolved, peace was maintained, and the rule of law took route in the Tanana Valley.

My admiration for lawyers, though, is not limited, as is the case among the general population, to those who are dead. We have in our midsts many Wickershams, Cowles, and Claypools. Judge Noyes was later indicted for contempt and conspiracy as a result of his activities in Nome and stood trial in San Francisco. There may even be a few Noyes among us.

I do know, though, that the excitement and vigor of the Past still exists today and can be seen weekly at meetings of the Tanana Valley Bar Association. In 1976, I was secretary of that esteemed body and had occasion to record in verse the events of one meeting that in many ways is descriptive of every meeting. It was entitled "Ode to a Chena Burger." Let me share it with you now:

See Famous Fairbanks Poem, Page 21

Famous Fairbanks poem

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Ode to a Chena Burger

A bunch of attorneys were whooping it up at the Chena View Saloon;
The waitress was there, with messed up hair, but the tables were set by noon.
When out from the street, where it was 50 below, and into the din and the glare ...
there stumbled some attorneys fresh from the bar ... there was Madson, Noonan, and Blair.
They looked like men with their feet in the grave, and were covered all over with louse;
but they found their chairs, and the meeting began, after Madson toasted the house.
With faces ... most hair ... and dreary stares ... like a bandit facing guns,
they ordered their CHENA BURGERS one by one, knowing ... they'd soon have the runs.
There are men that somehow just grip your eyes, and hold them hard like a spell;
but the men that were here were not like these, although they carried an awful smell!
Then the President stood (Kleinfeld), like we hoped he could, and he called for his meat and his brew;
but no one heard, the strange man's word, til he slammed his fist in my stew.
Then his eyes went rubbering round the room and he seemed in kind of a blur;
but the Minutes were read, and they cleared his head, and he realized where we were.
Then the hungry bunch received their lunch and tried to stuff it down;
but it fought like a dog and wouldn't unclog, and lifted some right off the ground.
Then the heartburn came, like a burning flame, and it seemed that it wouldn't pass;
but sure enough, before too long ... it was followed by some gas.
Then all of a sudden, the stomach howls became so loud you scarce could hear;
and you thought that your stomach had been looted clean of all that it once held dear.
That someone had sat on the food that you ate, that your tongue had been covered with lye;
that your guts were gone, and the best for you was to crawl away and die.
'Twas the crowning cry of a stomach's despair, and it thrilled you to the pink;
"I guess I'll have a second one," said Attorney Jonathan Link.
Then Savell slurped and someone burped, and the business at hand was completed.
There was more that took place, but of questionable taste, and mention thereof is deleted.
Then as quick as it began, the meeting did end, and the attendance began to erode;
and crowd did appear, and started to cheer, as the attorneys rushed to the commode.
These are the simple facts of the case, and I guess I ought to know.
They say the attorneys were crazed with hooch ... and I'm not denying it so.
I'm not as wise, as the lawyer guys, but strictly between us two;
The CHENA BURGERS that they loved so much ... sawdust, manure, and glue.

I might add that this poem received the 1977 Alaska Bar Association's Fast Food Poetry award.

Attorneys have now been applying their trade in the Tanana Valley for roughly 86 years, and every year they get better. We have learned from our ancestors; from both their successes and their failings. Our posterity too will learn from us.

When we were sworn in as attorneys in Alaska, we promised, among other things, that we would strive to uphold the honor and to maintain the dignity of the legal profession, and to improve not only the law, but the administration of justice. We should never forget that promise nor deviate from those principles. Law Day certainly is the appropriate time for each of us to remind ourselves of those high ideals; to recognize those that have paved the way before, and to rededicate ourselves to the rule of law - to fairness - freedom - and justice for all.

Well, my time is up and so I bid you now, farewell, here from the banks of the mighty Chena River; here in Alaska's Golden Heart; here, where lawyers and judges excel—where secretaries are respected, and where the pre-adolescent homo sapien is better than average.

The End.

Delta Blues

It was a very hot, dusty day in Bethel. After a night of heavy drinking, the jail was full of pretrial detainees, including a couple of guys charged with unclassified felonies. The smell of honey bucket hung heavy in the place. To provide the prisoners some relief, the guards propped open a back door, making possible the only jailbreak in Bethel history.

Two guys walked out the door, and over to the bank of the Kuskowkim River. After a smoke, they hopped into a skiff, fired up the kicker, and headed upriver to their home town. I often wondered if they did a bit of fishing on the way. The troopers had them in custody in a couple of days.

Employment in a bush jail requires diverse skills even of the cook. You would expect a prison serving mostly Yupik Eskimo people to be sensitive to the dietary needs of Eskimo men. However, no one would think of providing the cook wth a copy of the Koran. In Bethel, some Muslim prisoners started a hunger strike to protest the presence of pork in their beans. Things looked bad until the cook caved in and substituted Hormel Chili for Van de Kamps on legume night.

Unfortunately, the quality of food served in the Bethel jail was often mixed. One of the local probation officers narrowly averted a riot by talking the cook out of serving tomato upside down cake to the prisoners. That is why frequent customers of the jail were always happy when Frank was arrested. He spent a lot of time in the Bethel jail awaiting trial on bootlegging charges. There he cooked many fine meals for the inmates. They were always sad to see him make bail.

The clothes worn by Bethel prisoners disturbed me. The attorney-client conference room wasn't too wonderful, either. Lawyers talked with their clients in the old jail's linen closet. Imagine sitting on a pile of towels, reviewing the criminal complaint against your client when he enters in a pale green jump suit with matching foam rubber skuffs, a little smiling happy face decorating each shoe. After the hours I spent talking to prisoners in that closet, I can never see a happy face without thinking of crime.

Some of the things that happen in bush jails are funny. Unfortunately, there is nothing funny about the alcohol problem that plagues these villages. One downriver village, probably tired of the frustrations and delays inherent in the state criminal justice system, sought a solution at home. They built a little wooden jail to house detainees. It was a plywood and two-by-four affair. Intoxicated lawbreakers were locked up in this slam until they sobered up in the morning. At that time, the policemen would present them with a bill for $50, the cost of one night's rent. The scheme insured public safety and meted out a balanced punishment at a time when the prisoner was most receptive to constructive criticism. It also helped to balance the village municipal budget. Unfortunately, it rested on shaky constitutional grounds, a fact that eventually closed the jail/motel. One of the guests got tired of paying his bill.

Some of the larger villages hire jail guards to free up their police for other duties. They do the best they can, but their lack of training and experience, sometimes leads to problems. One night in a village jail, while the guard was flirting with his girl friend on the front porch, a prisoner wrenched free a section of his cell's metal bunk bed and used it to remove the window screen. Free of this impediment, the detainee made good his escape. Borrowing a neighbor's boat, he traveled to Bethel. Upon discovering the escape, the inexperienced guard promptly called up the arresting officer and quit. I guess he figured that without a prisoner to guard, his services were no longer required. The prisoner eventually ended up in the more secure Yukon Kuskokwim Correctional Center.

Thanks to the oil boom, the bigger bush towns now have modern correctional facilities. Some might be sad to see the funky old jails go. For these people, I direct you to the smaller villagers where lack of funds insures that the prisons still retain that rustic rural flavor of times gone bye.

I know a place where you can still spend the night in an old wooden water tank and corrections will pick up the tab. If you don't like pilot bread, be sure to bring your own food.

The author of this article wishes to be known as Sparrevohn, nom de plume of a Western Alaska member of the bar.

Foreign consultant provision sought

BY DOUGLAS J. BAKER

The Alaska Board of Governors is soliciting comment on a proposed rule regarding a foreign legal consultant provision to be enacted as Alaska Bar Rule 64. The proposal licenses qualified foreign attorneys to give advice in Alaska on the law of their home jurisdiction.

The text of the proposed rule provides as follows:

Rule 64—Licensing of Foreign Law Consultants.

A person who is admitted to practice in a foreign country as an attorney or counselor at law or the equivalent and who complies with the provisions in this rule for licensing of foreign law consultants may render legal services in the State of Alaska to the extent allowed by this rule.

64.1 Eligibility. In its discretion the court may license to practice as a foreign law consultant, without examination, an applicant who:

(a)for a period of not less than 5 of the 7 years immediately preceding the date of application:

(1)has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country, and

(2) has engaged either (A) in the practice of law in such country or (B) in a profession or occupation that requires admission to practice and good standing as an attorney or counselor at law or the equivalent in such country;

(b) be of good moral character, which shall be found unless prior or present conduct of the applicant would cause a reasonable person to believe that the applicant would, if admitted to practice as a foreign legal consultant, be unable or unwilling to act honestly, fairly, and with integrity;

(c) intends to practice as a foreign law consultant in the State of Alaska; and

(d) is over 26 years of age.

64.2 Applications.

(a) Every applicant for a license as a foreign law consultant shall file with the Executive Director at the office of the Alaska Bar Association an application, in duplicate, in the form provided by the Board. The application shall be made under oath and contain such information relating to the applicant's age, residence, addresses, citizenship, occupations, general education, legal education, moral character and other matters as may be required by the Board. Any notice required or permitted to be given an applicant under these rules, if not personally delivered shall be delivered to the mailing address declared on the application unless notice in writing is actually received by the Board declaring a different mailing address. Any notice concerning the eligibility of the applicant sent by certified mail to the last mailing address provided shall be deemed sufficient under these rules. Every applicant shall submit two 2-inch by 3-inch photographs of himself, or herself showing a front view of the person s head and shoulders. The application shall be deemed filed only upon receipt of a substantially completed form with payment of all required fees. Applications received without payment of all fees or which are not substantially complete shall be promptly returned to the applicant with a notice stating the reasons for rejection and requiring payment of such additional fees as may be fixed by the Board as a condition of reapplication.

(b) The application shall be accompanied by the following documents, together with duly authenticated English translations if they are not in English:

(1) a certificate from the authority having final jurisdiction over professional discipline in the foreign country or jurisdiction in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive body of such authority and which shall be accompanied by the official seal, if any, of such authority, and which shall certify:

(A) as to the authority's jurisdiction in such matters,

(B) as to the applicant's admission to practice in such foreign country, and the date thereof and as to the applicant s good standing as an attorney or counselor at law or the equivalent thereof, and

(C) as to whether any charge or complaint has ever been filed against the applicant with such authority, and, if so, the substance of each such charge or complaint and the adjudication or resolution thereof.

(2) a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or court of general original jurisdiction of such foreign, country, certifying to the applicant's professional qualifications, together with a certificate from the clerk of such authority or of such court, as the case maybe, attesting to the genuineness of the person's signature.

(3) a letter of recommendation of at least two attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, setting forth the length of time, when, and under what circumstances they have known the applicant, and their appraisal of the applicant s moral character.

(4) such other relevant documents or information as may be called for by the court or by the board.

(c) The statements contained in the application and supporting documents shall be reviewed by the board who shall report the results of their review to the court, together with their recommendations thereon. Prior to the grant of any license, the court shall be satisfied of the good moral character of the applicant.

(d) In considering whether to license an applicant as a foreign law consultant under these rules, the court has limited discretion to take into account whether an attorney in Alaska would have a reasonable and practical opportunity to establish an office to give, legal advice to clients in the applicant's country of admission. In order to exercise its discretion, the court shall require a reasonable showing of the following:

(1) an attorney in Alaska actively sought to, establish an office in the applicant's country of admission, and

(2) the authority in the foreign country having final jurisdiction over the application process in subsection (1) denied the attorney in Alaska an opportunity to establish an office in that foreign country, and

(3) the denial in subsection (2) raises serious question as to the adequacy of the opportunity for an attorney in Alaska to establish such an office.

64.3 Hardship Waiver. Upon a showing that strict compliance with the provisions of subsection 64.1(a) or 64.2(b) of this rule would cause the applicant unnecessary hardship, or upon a showing of exceptional professional qualifications to practice as a foreign law consultant, the court may in its discretion waive or vary the application of such provisions and permit the applicant to make such other showing as is satisfactory to the court.

64.4 Scope of Practice. A person licensed as a foreign law consultant under this rule may render legal services in the State of Alaska, subject, however, to the limitations that such person shall not:

(a) appear for another person as attorney in any court or before any magistrate or other judicial officer in the State of Alaska, or prepare pleadings or any other papers in any action or proceeding brought in any such court or before any such judicial officer, except as authorized in Alaska Civil Rule 81(a)(2) relating to admission pro hac vice; or

(b) prepare any deed, mortgage, assignment, discharge, lease, agreement, sale or any other instruction affecting title to real estate located in the United States of America; or

(c)prepare:

(1) any will or trust instrument affecting the disposition of any property located in the United States of America and owned by a resident thereof; or

(2) any instrument, relating to the administration of a decedent's estate in the United States of America; or

(d) prepare any instrument with respect to the marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of such a resident; or

(e) render professional legal advice on the law of the State of Alaska or the United States of America or any other state or territory of the United States of America or the District of Columbia or any foreign country other than the country where admitted as an attorney or counselor at law or the equivalent, whether rendered incident to the preparation of legal instruments or otherwise. If the particular matter at hand requires legal advice from a person admitted to practice law as an attorney in the State of Alaska, other states or territories of the United States of America or the District of Columbia or other foreign countries, the Foreign Law Consultant shall consult such attorney, counselor of law of the equivalent in other foreign countries on the particular matter, obtain written legal advice and transmit the written legal advice to the client;

(f) in any way represent that such person is licensed as an attorney in the State of Alaska, or as an attorney or foreign law consultant in another state or territory or the District of Columbia, or as an attorney or counselor at law or the equivalent in a foreign country, unless so licensed; or

(g) use any title other than "foreign law consultant"; provided that such person's authorized title and firm name in the foreign country in which such person is admitted to practice as an attorney or counsel at law or the equivalent may be used if the title, firm name, and the name of such foreign country are stated together with the title "foreign law consultant".

64.5Disciplinary Provisions.

(a) Each person licensed to practice as a foreign law consultant under these rules is subject to the jurisdiction of the Alaska Supreme Court, the Disciplinary Board of the Alaska Bar Association, the Rules of Disciplinary Enforcement and Ethics Opinions adopted or to be adopted by the Board of Governors of the Bar.

(b) Each person licensed to practice as a foreign law consultant under these rules shall execute and file with the clerk, in such form and manner as the court may prescribe:

(1) a statement that the foreign law consultant has read, and a commitment to observe the Rules of Disciplinary Enforcement, Ethics Opinions adopted or to be adopted by the Board of Governors of the Bar, and the Code of Professional Responsibility, as referred to in subsection 64.5(a) of this rule;

(2) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure such foreign law consultant's proper professional conduct and responsibility;

(3) a signed document, setting forth the foreign law consultant s address within the State of Alaska and designating, the clerk of this court

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Burnout help

Family mediation grows, brings need for standards

By Drew Peterson

In the fall of 1987 a number of individuals in Alaska involved with the field of family mediation joined together to form an organization devoted to issues of common concern to practitioners in the field. Of particular impetus to the formation of the group was the introduction by Senator Duncan in Juneau of Senate Bill 302: "An Act Relating to Mediation in Divorce Actions." The newly organized group called itself "The Alaska Dispute Resolution Association."

With the rapid development of the field of Family Mediation in recent years a number of different national organizations have become involved and concerned about standardization of such family mediation issues as impartiality, neutrality, confidentiality, fee procedures, mutual financial disclosure, considerations for the best interests of the children, mediator training, continuing education, and the like. In a previous article for the Bar Rag the author discussed the American Bar Association's "Standards Of Practice For Family Mediators", adopted by the A.B.A. in August, 1984. Formal standards of family mediation practice have also been promulgated in the 1980 's by the Association of Family and Conciliation Courts, the Society of Professionals in Dispute Resolution, and the Academy of Family Mediators. Other professional organizations involved with family mediation include the National Center for Dispute Settlement, and the American Arbitration Association.

The formation of the Alaska Dispute Resolution Association has been an educational experience for those involved. To date some 20 to 30 individual practitioners have been identified who are engaged in family mediation practice in Alaska. Members of the Association have been encouraged by the growing recognition of the field. At the same time, however, they have shared many frustrations with misconceptions about mediation and the role of family mediators. Some common concerns expressed by the mediators have included the following:

A Need to Educate the Public About Mediation. There are many misconceptions about family mediation. Comments heard have confused mediation with everything from arbitration to meditation. (No we don't read palms.) Even in the practicing bar and the mental health community, the two professional disciplines most closely connected with the field, ignorance about family mediation is widespread. Those who are currently practicing in the family mediation field are unanimous in their desire for increased public education about mediation and the significant alternatives which it can provide to the traditional adversarial system of family law.

Concerns About Certification and Training. As a new field with no single regulatory or professional organization and with practitioners coming from different backgrounds there is a concern about minimum requirements for mediators and minimum training requirements. Senate Bill 302, with its call for a court roster of family mediators meeting certain minimum qualifications, brings to the forefront this issue of common concern. One of the exciting things about family mediation to the practitioners in the field has been its very newness and the many different and often innovative approaches which have been utilized in mediating family disputes. With the increased recognition of family mediation as a professional discipline, however, the pressures for standardization of the field are increasing, as is the recognition of the family mediators themselves of the need for some sort of certification procedure.

A Need to Coordinate Efforts With Others Dealing With the Family Law System. One of the strongest concerns about family mediation throughout the country has been with perceived abuses of the process by individuals involved in physically or emotionally abusive relationships. Particularly some of the women's advocacy groups, which deal on a daily basis with results of domestic violence, have expressed reservations about mediation because of the fear that it can be used as a tool to continue the cycles of such abusive relationships. Other organizations with particular concerns about different aspects of the family law system have similar concerns about mediation and whether it places the proper emphasis on thos aspects of family law that are on their particular agenda.

The members of the Alaska Dispute Resolution Association believe that it has been demonstrated that family mediation can deal in a responsible way with all of the issues of concern to the family law community. They believe that when successful family mediation is generally less expensive, less traumatic, less time consuming, leads to longer term satisfaction by all of the parties, and is demonstrably better in those matters effecting the long term welfare and happiness of children, who are the true victims of family disputes. The participants in a successful mediation 'own their own agreement,' which gives everyone a much greater incentive to make the agreement work. The Association members agree, however, that it is important that family mediators coordinate their efforts with the other individuals and groups dealing with the family law system, to keep abreast of developments in family law and cognizent of all areas of concern. Family mediation works by virtue of being at the cutting edge of what is currently being learned about family disputes and their effects on parents and children. The members of the Alaska Association recognize the need for continued coordination with others involved with all aspects with the family legal system, to maintain that edge.

Alaska Senate Bill 302. As noted above, a particular impetus to the creation of the Alaska Dispute Resolution Association was the introduction of Senate Bill 302, concerning family mediation in divorce and custody actions. While generally in agreement with the intent of the bill, it has received much comment from the family mediators practicing in the field who have various concerns relating to its provisions concerning mediator qualifications, confidentiality, cost, whether it should be voluntary or mandatory, and the like. The bill has already been once amended to respond to some of the concerns and it now appears likely that no further action will occur on it this session, while the interested participants explore a consensus position of the more controversial issues involved. It is the hope of the writer that the debate on S.B. 302 can be used as an opportunity for the family mediators in Alaska to join together with others inolved with Alaska's family law system, to educate each other and begin a dialog on the subject of how to permanently improve the family law system in our state.

Anyone desiring to join the Alaska Dispute Resolution Association (the yearly membership fee is $25.00) or wanting further information about it can contact the author or the Association's primary contact persons: Marilou Laisnez in Anchorage (276-1355); Sarah Jackinsky in Homer (235-6417); or Steve Porten in Fairbanks (456-6556).

***News Flash* - Mediation Training in Anchorage By The Lemmon Mediation Institute.** Marilou Laisnez informs us that John Lemmon of the Lemmon Mediation Institute of Oakland, California, has expressed an interest in coming to Alaska to conduct Mediation training from July 28 through 31, 1988, if a sufficient number of interested participants can be found. While not cheap ($750.00 for the session), Mr. Lemmon's training program is reputed to be the best available in the field. John Lemmon is best known to family mediators as the Editor of the "Mediation Quarterly", the Journal of the Academy of Family Mediators. The training program will satisfy the certification requirements of the Academy and those of most other family mediation certificiation organizations as well. Anyone interested in joining the author at the training session should contact Marilou at 276-1355. Marilou has been through the Lemmon Institute program and can describe it to those who are interested.

Drew Peterson is a family mediator/attorney practicing in Anchorage. The opinions in this article are his own and do not necessarily reflect the opinions of any other member of the Alaska Dispute Resolution Association.

• foreign legal consultants

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as the consultant's agent upon whom process may be served, with like effect as if served personally upon the consultant, in any action or proceeding brought against the consultant arising out of or based upon any legal services rendered or offered to be rendered by the consultant within or to residents of the State of Alaska, if due diligence service cannot be made upon the consultant at his or her address; and

(4) a commitment to notify the court of any resignation, or revocation of the foreign law consultant s admission to practice in the foreign country of admission, or of any censure, suspension, or expulsion in respect of such admission.

Comments to the proposed rule are available by contacting Douglas Barker, associated with Lynch, Crosby, Molenda & Sisson in Anchorage, or Deborah O'Regan, Executive Diirector of the Alaska Bar Association.

Burnout help

Alcohol/substance abuse treatment relatively new

By Tom Salestrom

The treatment of alcoholism and chemical dependency has undergone major changes in the past few years.

In fact, as an area of study, drug dependency is still a relatively new science. As research and technology continue to improve, so will effectiveness in treatment.

Until recently, most facilities followed the Minnesota 28-day inpatient treatment program. However, due to changes in treatment and technology as well as prevailing marketplace conditions that affect the individual's ability to participate in a 28-day treatment model—new programs have been developed.

A new adult chemical dependency program, called STOProgram, is now in place at Charter North Hospital in Anchorage to meet these new demands. This program is a treatment package consisting of four phases.

The first phase consists of one to five days of inpatient detoxification.

The second phase involves nine days of inpatient therapy with intense individual and group therapy; recreational and occupational therapy; as well as educational lectures and self-help meetings. A family program begins during this phase which provides education, support, and counseling to immediate family members and/or significant others.

Phase three moves to eight weeks of outpatient care with therapy three nights a week.

The final phase involves 3 to 6 months of aftercare, incorporating weekly individualized group therapy sessions and includes involvement with the AA/NA Programs.

Steven Berkshire, administrator of Charter North, says "not all patients will be appropriate for this program." If the physician and treatment team feel that the individual requires mor time in the hospital the person will repeat the inpatient portion. "The beauty of the program is that individuals are placed back in their home and work environments in a much shorter time; and by reducing the number of nights in the hospital, treatment cost is dramatically reduced."

Videotape Crisis

The Bar Association CLE library is suffering from "overdue videotape-itis." Many members have tapes that are long overdue. Please return tapes promptly so we can meet other members' requests for materials as well. Normal check-out time is TWO WEEKS. Please check your office shelves, desk drawers, and home videotape collection to make sure no Bar Association tapes are lingering there. We appreciate your assistance!

• Catch 22 exists in real estate

Continued from Page 1

guest book grew long with entries. The borrowers became desperate as the value of the real estate continued to decline, 40 percent, 50 percent, 70 percent, and more. Some of the cities began sending green cards to help the borrowers understand how bad things were by listing new and lower values each year for the homes. When the green cards showed the values to be 25 per cent of the purchase price of the homes, some of the homeowners became concerned, others became depressed. Many stopped paying upon their loans. Foreclosures and judicial foreclosures became a boom industry, and the attorneys were happy.

Some borrowers had V.A. guaranteed loans. These people celebrated when the lenders chose to do non-judicial foreclosures. Unbeknown to them, the federal law creating the guarantee does not recognize the state antideficiency statute and the federal law is the Supreme Law of the Kingdom.

Then on February 26, 1988, the high court of the Kingdom issued two decisions (*Conrad v. Counsellor's Investments,* Opinion No. 3275, Feb. 26, 1988, and *Moening v Alaska Mutual Bank,* Opinion No. 3274, Feb. 26, 1988) confirming the right of a beneficiary on a deed of trust to bring an action on the deed of trust note, independent of the action to foreclose. And there was silence upon the land for approximately two weeks.

The silence was broken by loud cheering in the lending industry and the bankruptcy attorneys' offices as the import of the decision was understood. The beneficiary could sue upon the deed of trust notes and need not foreclose until after the judgment had been obtained and an execution returned unsatisfied. Then the lender could foreclose judicially or non-judicially. The lender then had a judgment for the entire indebtedness and also had recovered the property.

The borrowers went to their counselors and were advised that the lender could sue them on the note and that they must prepare to do battle and must retain counsel. The borrowers wailed, "We have no money with which to do these things!" The counselors then said, "Let us talk of bankruptcy."

A new age dawned in the Northern Kingdom. A borrower would first take what assets he had left and move them into bankruptcy protected categories and then default on their home loan. The foreclosures were replaced by suits on the note and property values continued to decline.

© Ken Catalino, In the Alaska Journal of Commerce

The borrowers went to their elected representatives and said, "How can this be when, at the closing of the loan, the escrow agent represented to me that the mortgage insurance would pay my loan if I defaulted and the lender would then foreclose against me?" The representatives agreed to look into the matter and see if it could be changed. Meanwhile, in the Kingdom, the solicitors and barristers were wrestling with the high court's decision and attempting to formulate the issues that their clients might know the truth and not sue for malpractice. In the course of time the following issues became recognized as important:

1. With *Conrad* and *Moening*, the lender has absolute power in determining what to do with a defaulting borrower. They can sue on the deed of trust note, obtain a judgment and then foreclose on the subject property, either judicially or non-judicially. In essence, the beneficiary gets a double recovery. They have the judgment for all of the debt. They can judicially foreclose and recover the property and a deficiency judgment. Assume the following facts: Condo owner owes $80,000 on property with a MOA tax appraisal (green card) of $25,000. The lender brings an action on the note and obtains a judgment for $80,000. Having executed on the judgment and received less than full payment, the beneficiary now judicially forecloses and ultimately bids $25,000 for the property. The beneficiary then recovers a deficiency judgment for $55,000, and has foreclosed on the property. The beneficiary now has judgments for $135,000 and has recovered the property.

2. Defenses to an action by the lender on the note include the following:

(a) mortgage insurance
(b) estoppel
(c) consumer protection statute violation
(d) insurance statute violations
(e) Regulation Z violations
(f) bad faith
(g) election of remedies

3. In domestic relations (a thank you to Vincent Vitale, Bessie O'Rourke, Paula Williams for domestic relations concerns) matters, the following concerns need to be considered:

(a) How will the party keeping the home protect the departing spouse in the event of a default?

(b) What about the impact of negative equity in the home or other real estate on the division of assets?

(c) What about debt forgiveness tax liability under 26 U.S.C. Section 108 that may be in place if the parties have previously defaulted on their deed of trust.

(d) What about the benefits of a joint bankruptcy prior to divorce?

(e) What is the chance of negotiating with the lender for a release of one spouse from the deed of trust and the deed of trust note, that the other spouse default, and both become united once again years later as defendants in a suit on the note?

(f) Is it appropriate to consider reducing/increasing child support?

(g) Alimony with bankruptcy consideration requires artful drafting to avoid problems with bankruptcy court's interpretation of alimony and its' decisions on whether it really is alimony or support versus property division.

(h) Notice of default: The parties must require their mortgage servicer to send two notices of default to protect the non-paying party who will have a chance to cure before a law suit is filed.

(i) What about the potential liability of the veteran under the V.A. guarantee if the previous default was on a V.A. guaranteed home loan?

(j) What about malpractice if these matters are not, or were not, addressed?

4. Partnership obligations on real estate needs to be understood. Assume your client brings you a partnership agreement that allows the partners to expel a partner for failing to meet cash calls. Your client explains that he was expelled from the partnership previously but now the partnership has defaulted on the deed of trust and deed of trust note. Your client then hands you the complaint filed by the beneficiary of the deed of trust seeking a judgment on the note. Your client further explains that he and his now ex-wife both executed the deed of trust note on the advice of their attorney. The ex-wife never had an interest in the partnership, but signed the note because she was your client's wife, and their attorney said it was okay. The attorney forgot to explain to the client that unless the creditor knew of the withdrawal prior to the sale, the client could be estopped from denying he was a partner (A.S. 32.05.110).

The divorce decree and property settlement do not address the partnership liability of the ex-wife on the note but did award the partnership interest to your client. Your client advises you that the ex-wife has talked with him about a "crossclaim."

Finally, your client raises the real issue for his visit: his present wife is so upset about all the financial mess that she is filing for divorce. They have formed a partnership which borrowed money on her home equity to start a business. Their business attorney advised them to have your client also execute the second deed of trust on the present wife's home to make it clear that the money was for the partnership business. Your client indicates that he has limited funds available to him to defend the law suit on the note, related crossclaim, and the new divorce action. What is your advice?

5. Bankruptcy (a thank you to David Rankine for bankruptcy commentary) protection must be understood by the practitioners. Assuming the average client owns a home worth $80,000 with a current value of $40,000, and there is the threat of a law suit for the $80,000. In the event that the client has any assets that can be converted into items protected in bankruptcy, they should do so prior to default. For example, one client was facing three foreclosures/suits on notes but still had $30,000 cash. He purchased a low end condo for $30,000 down and then defaulted on his other real estate. Because the bankruptcy homestead exemption is $29,700 he had protected all his cash.

In some circumstances the client would be wise to file bankruptcy immediately; when there is substantial negative equity and depreciable property involved this may avoid recapture of prior deductions and the resulting tax liability for discharge of indebtedness that would occur without a bankruptcy.

6. Future credit problems must be addressed. Defaults, foreclosures and bankruptcies all create future credit problems for the homeowner. A clear discussion of this must be made with the client. Bankruptcies will show on their credit for seven years (like the broken mirror). However, the bankrupt is not precluded from borrowing money. For example, AHFC regulations set forth in the seller servicers guide allow a borrower to purchase a new home even if they have gone bankrupt so long as the bankruptcy was not caused by an abuse of credit. *See A.H.F.C. Seller/Services Guideline,* Section 4005.07. By contast, a simple foreclosure within five years of the application is the Death Knell of credit (Section 4005.05).

• Bar initiates economic survey

Continued from Page 1

ize in narrative form information that you provide in response to the survey.

Several different techniques can be employed to assure confidentiality. Most of you are already familiar with the two envelope system. This involves the placement of the envelope containing the requested information in another envelope which is then sealed and signed by the responder. When the information is received, the signature on the outside envelope is checked against a master list of Bar Association members by the contractor. Then the inner envelope containing the desired information is removed from the signed envelope and the signed envelope is discarded. From that point on there is no way to identify the responder unless, contrary to instructions, the survey is marked in such a way that the responder can be identified.

Another confidentiality technique, equally effective and usually less expensive, involves the use of numbered outer envelopes. The process has been described by one of the professional research and survey organizations, ASK Information Search, as follows:

"Before removing a returned questionnaire,the unique coding information, which will appear on the return envelope, will be logged in. Once the return envelopes are logged against the master list, the questionnaires will be removed from their envelopes and *separately* numbered for computer input. This method of handling will assure the fullest confidentiality. The return envelope serves as a check to a master number list to assure no two questionnaires are returned with the code and this master list will be compared to the follow-up survey labels to decide which ABA members should be mailed the second wave of questionnaires."

All steps in the process, from the time the answered survey leaves your hands, until the final information is tabulated (and cross-tabulated) are carried out by employees of the contractor. It is the goal of the Alaska Bar Association and the Judicial Council to restrict access to all survey documents to the number of contractor employees minimally necessary to perform the work.

It was originally contemplated that the survey would be distributed during the first week of May. However, notifications have just been sent out seeking candidates for two District Court and two Superior Court seats. The selection procedures call for a survey of all members of the Bar to assess the qualifications of the applicants for the positions. In addition, each member of the Bar and each peace and probation officer, has been asked to evaluate two Supreme Court Justices and 15 Superior and District Court judges who are required by law to stand for retention at the next general election in November, 1988. Earlier, most members of the Bar were asked to evaluate certain judges who during the last two years had been assigned to hear cases on a Pro-Tempore basis. Due to the unusual number of surveys that are being sent to the Bar as a part of the routine process of judicial selection and retention, distribution of the economic survey will be delayed until later in the year.

We hope that when each of you receive the economic survey, you will take the time to fully complete all of its parts and return it for analysis. Confidentiality will be preserved. This is a survey that requests information from lawyers—for lawyers.

1988 Retention Elections

The Alaska Judicial Council's evaluations of the 17 judges standing for retention election in November 1988 began on April 4, 1988 with the mailing of the first set of surveys for Bar members and peace and probation officers. Questionnaires were sent to 2,272 active Bar members with U.S. addresses and to 1,120 Alaskan peace and probation officers (see attached questionnaires). In late April, follow-up surveys were mailed to those who did not respond to the first mailout. The Bar surveys were revised this year to make them shorter, clearer and easier to use. The survey pages for appellate judges have been expanded to include several criteria (sense of basic fairness and justice; courtesy) that were previously subsumed under other headings.

The Bar and peace and probation officer surveys are crucial to the effectiveness of the Council's evaluations, but are not the only source of information. The Council also asks each judge to complete a brief self-assessment and to submit a list of five cases presided over during the judge's most recent term. The Council sends a questionnaire to each of the attorneys participating in the five cases. Past experience indicates that the comments on the attorneys' questionnaires are generally consistent with ratings from the Bar survey, but tend to give more detailed, substantive information. The Council reviews public records, including court filings, Alaska Public Offices Commission records, and Commission on Judicial Conduct records. Finally, the Council publicizes the evaluation process and encourages public comment and evaluation of judicial performance.

The Judicial Council is required by law to evaluate each judge and justice standing for retention and to publish its evaluations in the Lieutenant Governor's Official Elections Pamphlet. Alaska's program, established in 1976, was the first state-sponsored judicial performance evaluation program in the country. It has been used as a model by other states and by the American Bar Association to develop guidelines for judicial evaluation.

Judges standing for retention in 1988 include two Supreme Court justices (Edmond W. Burke and Jay A. Rabinowitz); nine Superior Court judges, including one from the First Judicial District (Thomas M. Jahnke, Wrangell); seven from the Third Judicial District (John Bosshard, III, Valdez; Rene J. Gonzalez, Karen L. Hunt, Karl S. Johnstone, Joan M. Katz, Peter A. Michalski, and Milton M. Souter, Anchorage); and one from the Fourth Judicial District (Mary E. Greene of Fairbanks). Six District Court judges are also included in the 1988 retention elections. They are George L. Gucker (First Judicial District/Ketchikan), Glen C. Anderson, Natalie K. Finn, William H. Fuld and John D. Mason (Third Judicial District/Anchorage); and Peter G. Ashman (Third Judicial District/Palmer). Eight of these 17 judges are facing voters in a retention election for the first time in their present positions. Superior Court judge Seaborn J. Buckalew, Jr. announced his retirement from the Third District Superior Court after the surveys had been printed and the first surveys mailed. Survey results for him will not be tabulated or printed.

The Judicial Council is an independent, constitutionally created agency charged with the responsibilities of nominating candidates to the Governor to fill judicial vacancies and of conducting justice system research, in addition to its retention evaluation functions. The Council consists of three attorney members (Daniel L. Callahan, Fairbanks; William T. Council, Juneau; and James D. Gilmore, Anchorage); three non-attorney members (Dr. Hilbert J. Henrickson, Ketchikan; Renee Murray, Anchorage; and Leona Okakok, Bethel); and the Chief Justice of the Supreme Court, (the Honorable Warren W. Matthews), who serves as Chairman ex officio of the Council.

Risk retention group now covers Alaska, Northwest

Attorneys Liability Protection Society, a Risk Retention Group, is now providing Lawyers Professional Liability Insurance to attorneys in private practice in the States of Alaska, Delaware, Idaho, Kansas, Montana, Nevada, North Dakota, South Dakota, West Virginia and Wyoming.

A joint effort of the 10 State Bar Associations, ALPS, was initially capitalized by attorneys from the sponsoring states for $2.5 million. Lloyds of London and several foreign and U.S. Reinsurers protect ALPS for losses in excess of $100,000 with policies available for limits from 100/300 to $5 million with deductibles from $1,000 to $50,000.

As a Risk Retention Group, ALPS must be owned and controlled by its insureds. Therefore, it is insulated from potential takeovers by commercial insurance groups or other interests. ALPS Board of Directors is composed of practicing attorneys from each of the sponsoring states to help assure the philosophical integrity of the company—whose sole purpose is to provide broad, stable and reasonably priced insurance to lawyers in private practice. In turn, the Board has contracted with various firms to provide technical expertise as follows:

1. Overall management, including marketing, data processing, policy issuance, etc.—Fred. S. James & Co.
2. Auditing—Coopers & Lybrand.
3. Actuarial—Milliman & Robertson.
4. Claims Management—Jerry Weil & Co.
5. Legal—Barger & Wohlen.

Several unique procedures will be used by ALPS for example:

1. Each attorney in an applicant law firm will be required to complete a personal supplement to the firm's insurance application. (This will help assure more consistent and equitable underwriting for all insureds.)
2. Attorneys who are denied coverage will have the right to appeal directly to ALPS' President for reconsideration.
3. In the event an insured attorney disagrees with the handling of a claim insured by ALPS, he or she will have the right to request a Peer Review composed of other attorneys in private practice.

A unique software package has been developed which allows James to provide various optional quotations and to insure policies within 48 hours of receipt of written confirmation that a given firm wishes coverage. Insureds are provided the opportunity to finance their premiums at prevailing interest rates.

Your board of directors has mandated that every effort be made to increase ALPS surplus account as rapidly as possible. (To be eligible for coverage—ever attorney to be insured must have made the appropriate contribution of the company's surplus account. This contribution is roughly equal to 50 percent of the average annual premium for a $1,000,000 policy in the attorney's state of practice. This helps assure that ALPS surplus will be below the insurance industries guideline of three-to-one ratio--premium versus surplus.)

Some of the benefits of the ALPS program include:

- Full prior acts coverage built into the basic contract;
- Individual rating for each attorney in a firm based on his or her own practice characteristics, claims history, etc.;
- Availability of an extended reporting endorsement (e.g., "tail") whether you or ALPS cancel or nonrenew your policy;
- The contractual right to a peer review committee for disputed claims;
- A company created exclusively for lawyers—owned by lawyers—under the absolute control of lawyers.

Sales and marketing efforts are directed by Charles H. Steilen, senior vice president of the James office in Spokane, Wash., (509/455-3900). All administrative functions and underwriting are the responsibility of Rick Cowan, vice president of the James office in San Francisco, Calif., (415-/983-5600). Any attorney wishing a quotation or other information regarding ALPS can call the ALPS toll free hotline at 1-800-FOR-ALPS.

And here they are: the minutes you've been waiting for

To Judge Blair in Panama : 'burn microfilm'

February 26, 1988

The meeting was called to order by president-for-a-day Fleur Roberts, who reported that the real president, Randy Olson, was sympathizing with the plight of the Olympic athletes as inclement weather kept him from his appointed duties.

Judiciary count: Federal District Court 1, 4th Judicial District, Superior 0, 4th Judicial District, District 1, Supreme Court 0.

Roberts reported that there was no need to call for the introduction of guests because no one present had paid his or her—or, in questionable cases, its—dues and therefore all attendees should be viewed as guests.* She added that we can expect to be dunned shortly.

For his swan song, Dan Cooper read the final minutes of his august tenure as the Association's secretary. Colleagues who do not maintain their offices in a building populated by doctors made mental notes to consult their medico-legal dictionaries to look up the phrase "severe hypoxia," which Cooper had used in his discussion of the TVBA's annual Fourth of July picnic. Roberts later pronounced the picnic to have been a success, and no one protested the form or substance of the minutes.

Upon learning that Judge Blair, who is milling about Costa Rica, must change planes in Panama before returning to the frozen north, fellow jurist Zimmerman proposed that the TVBA send Blair a telegram instructing Blair to "burn the microfilm and to be sure to bring back the suitcase."

Mention of a foreign hot spot brought no discernable report from the chair of the foreign policy committee, although the person who occupied that chair, chairman Dick Burke, made some comment which was lost to this reporter as a result of the general din which prevailed in the room.

Cooper again piped up to explain that we ought not to expect to see dues bills because he refuses to sign the dunning letter prepared by Fleur Roberts, which begins, "I greet you with fond enthusiasm."

The association's poet laureate for 1988, Roger Brunner, presented a dramatic reading from one of his better-known works, Famous Fee Follies and Foibles, which read:

Roses are red,
Violets are blue;
Pay your bill
Or I'll sue you.

Cooper complained that he had received on February 24 a January 31 memorandum from Rules Attorney Bill Cotten regarding proposed changes in rules governing the unauthorized practice of law. Judge Zimmerman moved to abolish the Rules Attorney; the motion was seconded by Dan Cooper before Zimmerman proposed that the motion be revised to provide that the position of Rules Attorney, rather than the Rules Attorney himself, be abolished. Zimmerman added that no Rules Attorney is necessary because judges do not follow the rules anyway.

The subject of the whereabouts of the plastic plant or its replacement was again raised, and Treasurer Cooper advised that he would send Justice Rabinowitz a bill for the plant which the justice unpotted in a fit of drugged frenzy during his hospitalization.

Ed Noonan sought more volunteers to answer telephones during KUAC's fund-raising festival. Mac Gibson inquired whether Dave Call would "call Mr. Hopp-nuh again."

Dave Call reported that Doris Loennig is doing fine after her hospitalization. Several members inquired about Barry Jackson's recuperation from his recent brain surgery, about: which no one had any recent: news, and Dan Cooper added a comment for which this reporter will lose her notes and memory upon receipt of a handsome bribe. Several members expressed their gratitude for Jackson's heroic effort to shorten the bankruptcy court's Fairbanks calendar but suggested that a less drastic course of action than brain surgery might have been sufficient.

Warren Taylor arrived at 12:55; the meeting was adjourned at 12:56.

Respectfully submitted,
Gail M. Ballou
Secretary

**Correction: Allie Closuit protested that she had paid her dues, and Roberts added that Judge Crutchfield had done so as well."*

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March 4, 1988

[Before the meeting was formally begun, talk turned to the rise and fall of Jimmy Swaggart, about which Mac Gibson remarked, "Thank God his name wasn't 'Oral'."]

Vice-President Fleur Roberts called the meeting to order and added that President Randy Olsen sends his regrets from Hawaii.

Judiciary count: Federal District Court 1, 4th Judicial District, Superior 0, 4th Judicial District, District 1; Supreme 0.

Captain Robin Caillouet from Eielson Air Force Base was introduced as a guest by Paul Barrett. The Captain has now made no fewer than two guest appearances, so the treasurer should consider sending her a bill for TVBA dues.

Barrett added that he had learned from a "usually reliable source" that Judge Blair had been robbed in Costa Rica and that an enterprising local was now richer by at least one plane ticket plus whatever cash the judge had not yet spent on vacation. Dick Burke allowed that the incident might have been masterminded by the covert wing of the Foreign Policy Committee, but Burke declined to comment further.

TVBA members offered several proposals or motions relating to Judge Blair's plight. An unidentified member suggested that Blair might be appointed as a special investigator to serve process upon General Noriega, and the Secretary moved to send Blair a plastic poppy. The membership agreed, upon motion duly made and seconded, to stare mournfully at the tablecloth for a moment. The question of the appropriate length of the moment was avoided by the observation that the membership had already offered a brief period of silence and that the matter had therefore been taken care of.

Treasurer Cooper announced that the TVBA has money in the bank account and that the Westlaw bill is almost fully paid, thereby nearing Dave Call's goal of turning the Association into a respectable one which actually pays its bills.

Discussion turned to the question of membership in the TVBA, and Bob Noreen offered to recruit members on a percentage basis.

Paul Barrett announced that Randy Olsen plans to implement a program by which attorneys who have made lots of mistakes can share the benefit of their experience with those among us who haven't yet made so many. Barrett indicated that he had planned to offer his thoughts on the topic of criminal trends in aberrant sexual activity, but he decided that this topic would be of no interest to TVBA members. Instead Barrett provided several pointers on avoiding malpractice when making Rule 68 offers of judgment. Barrett also predicted that offers of judgment might become more popular with the recent rule change. Most of the membership mouthed, "*What* rule change?" but no one actually inquired.

Next week, Judge Hodges will reveal all and tell what *really* annoys him, presumably about attorneys' behavior.

Warren Taylor had adjusted his watch to Alaska Standard Time and arrived at 11:56 rather than 12:56.

Adjourned.

Respectfully submitted,
Gail M. Ballou
Secretary

Join Everybody's Bar

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March 11, 1988

Treasurer Dan Cooper called the meeting to order, sort of, explaining that President What's-His-Name is in Hawaii and that Veep Roberts is back east.

Gene Hardy introduced Deborah Braga, the latest in the stream of Assistant Borough Attorneys in training to join Paul Cragan and Gordon Duval at Hughes Thorsness. Gary Vancil also made a guest appearance.

The treasurer circulated a proposed dues notice, attached, for comment and adulation.

The treasurer submitted a proposed invoice to be sent to Justice Rabinowitz, stating, "Payable ASAP, cash, for one potted plastic plant with card, $37.99." Cooper also pleaded for members to send their dues payments, for even though Cooper, a CPA, had neglected to balance the checkbook, he was able to ascertain that the TVBA had no money. Cooper added that anyone who is able to sign on the account should identify himself or herself so that he can write checks notwithstanding the account's zero balance.

Cooper mentioned that he now had concrete evidence that TVBA minutes are read by persons outside of Fairbanks because the Alaska Bar Association had demanded cash in advance before sending mailing labels for the TVBA's use.

Ed Noonan gave a report from the ersatz KUAC committee, which had dutifully appeared on television to solicit funds for public radio and television in the Interior. Twelve TVBA members participated, excluding attorneys from Hughes, Thorsness, Gantz, Powell & Brundin, who, according to spokesman Bob Sparks, did not want to be associated with the rest of us and would be appearing separately on KUAC on March 11 to kick off the new Hughes Thorsness advertising program. Those who tuned in to see how many Hughes Thorsness attorneys actually gave up their Friday night to do good for KUAC learned that most simply sent their secretaries.

Art Robson says he has never used Bender's Forms of Discovery in the half-decade since he bought it and will turn loose of his set for the price of the current pocket part, which he has just installed.

John Franich announced that he had read comments from Dick Burke, Chairperson of the Foreign Policy Committee, in an article on Ev Mecham in last night's News-Miner, and Franich asked why this Committee was involved in the internal affairs of the nation. Burke explained that Arizona borders on the Republic of Mexico and that therefore "we felt it necessary to get involved."

Ed Noonan berated the state court law clerks for the manner in which they calculated the time for response to a motion for sanctions, turning a 10-day motion into one which the opposing party had 24 days to oppose. Terry Thorgaard retorted, "So what?—the court sits on things for months anyway."

Art Robson added the court had miscalculated the time for response in any event if the court had included February 29 in the calculation, for Feb. 29 is, in Art's words, a "sexa-something" day which doesn't count for anything, according to Black's Law Dictionary.

According to Dave Call, Gene Hardy had moved to sanction Judge Hodges, who had been scheduled as the day's guest lecturer and presumably had been notified of that fact, for failing to appear at the meeting. Hardy strenuously protested that he had made no such proposal, by motion or otherwise, but presiding officer Cooper called for unanimous consent, and the motion was passed. Cooper directed the reporter to send a resolution to Judge Hodges in chambers advising the judge of the sanction. Allie Closuit added that only she and Cooper were eligible to vote and that she had abstained.

Ron Smith mentioned that Law Days is around the corner and requested that the TVBA commit up to $200 for Law Days paraphernalia. Treasurer Cooper again observed that the TVBA has no money, and if there was a second or vote on the motion, this reporter missed it.

Warren Taylor arrived at 12:42, in time to wonder aloud how the TVBA might go about getting on the Permanent Fund Dividend check-off list. Cooper appointed him to head a committee to look into the issue.

Judiciary count: Federal District Court 1, All other courts, 0.

Adjourned.

Respectfully submitted,
Gail M. Ballou
Secretary

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March 25, 1988

The meeting was called to order by President Randy Olsen, and Janet Crepps, whoever she may be, was introduced as a guest.

The invited speaker for the President's tip-of-the-day program was Barbara Schuhmann. Schuhmann advised that, when one receives a $300,000 retainer check, one ought not to deposit the entire amount into a single account at, say, Alaska National Bank of the North. Schuhmann's helpful advice prompted John Franich to protest that these weekly tips were supposed to be practical and inquired whether anyone sitting in the room had ever had the problem of deciding where to deposit a $300,000 retainer check. Schuhmann added that the state court's calendaring department will not know that a party wishes calendering to take any action which affects a hearing which was, will be, or should be scheduled unless calendaring receives a piece of paper.

Ron Smith announced that the Law Day running race will be April 30 and requested volunteers to speak in the area schools in connection with the observance of Law Day.

Judge Savell, after tolerating the customary measure of "short" jokes, offered to host an "Off the Record" session to share his thoughts with practitioners while he is still green enough to remember what life is like on the other side of the bench. He then regaled the membership with tales from a recent trial with Dick Madson. According to Savell, as prospective jurors were being questioned, one volunteered that she knew Madson's wife and had been to Madson's home. Madson replied, "I guess you know that if you ever want to come to my house again, you'll have to vote my way on this case..." Savell didn't stop with this story, and anyone who wants to hear the rest can call him at 452-9315. At the conclusion of the trial the jury was so taken with the participants' efforts to liven the proceedings that the jury prepared a special verdict form rating counsel and the bench on their humor. The assistant district attorney reportedly received a rating of minus 4.

Dan Callahan announced that there will be a family law seminar in October and requested that anyone who has suggestions regarding topics to be covered in the seminar contact him.

Adjourned.

Respectfully submitted,
Gail M. Ballou
Secretary

• Bar, court act on discipline

Continued from Page 19

the court. The failure to inform the opposing party under the circumstances constituted a misrepresentation as to the status of the matter.

Attorney C received a written private admonition for his conduct in bringing a child custody modification action on the eve of a child's scheduled return trip home out of state. Attorney C evidently overlooked the fact that Alaska was not the home state of the child, and there was no colorable argument for bringing a custody modification action in Alaska.

Attorney D received a written private admonition for a series of discussions with an opposing party which the attorney knew to be represented by opposing counsel without the consent of the opposing counsel. Attorney D said the opposing party told Attorney D that the client was no longer represented by opposing counsel but Attorney D did not confirm that fact with the opposing counsel.

Attorneys E and F received a written private admonition after filing a supplemental interrogatory answer stating that a an expert witness would testify in a particular manner as to causation of injuries in a personal injury matter. It was later determined that the expert witness had issued a medical report several months earlier that contradicted the interrogatory answer. There was insufficient evidence to support a finding of intentional misrepresentation.

Attorney G received a written private admonition after Attorney G threatened an opposing party that Attorney G's client would attempt to block the opposing party parole unless the opposing party consented to a judgment and assigned the opposing party's rights against the opposing party's insurer to Attorney G's client.

Attorney H received a written private admonition because, after drawing up a real estate agreement for two parties, Attorney H represented one party against the other.

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Public Discipline:

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Disciplinary Matter Involving: DAVID M. CLOWER, Respondent. Supreme Court No. S-2463. ORDER. Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

This matter having come before the court on the decision and recommendation of the Disciplinary Board of the Alaska Bar Association, filed with the court on November 10, 1987,

IT IS ORDERED:

1. Upon a full review of the record in this case, the decision of the Disciplinary Board of the Alaska Bar Association recommending that DAVID M. CLOWER be suspended from the practice of law for a period of one (1) year and that the suspension be stayed on the condition that the respondent complies with the following terms and conditions is AFFIRMED and ADOPTED.

2. The one year suspension shall be stayed and the respondent shall be placed on supervised probation for a period of two years from the filing date of this order on the condition that the respondent DAVID M. CLOWER comply strictly withthe following terms:

(a) Respondent shall commit no further ethical violations.

(b) Respondent shall pass the Multi-State Professional Responsibility Exam within the probationary period.

(c)Supervision of the respondent's practice of law shall include the following:

(i) That a supervising attorney and a program of supervision be approved by Discipline Counsel.

(ii) That the supervising attorney submit monthly reports to Discipline Counsel.

(iii) That the supervising attorney conduct an inventory of respondent's files and periodically review his calendar as required by Discipline Counsel.

3. Martin A. Farrell, Jr. shall act as supervising attorney for respondent

4. The decision of the Disciplinary Board of the Alaska Bar Association recommending that respondent DAVID M. CLOWER be publicly censured for his failure to respond in a timely manner to inquiries from the Alaska Bar Association concerning grievances is ADOPTED and AFFIRMED. The respondent is hereby publicly censured.

Entered by direction of the court at Anchorage, Alaska on March 17, 1988.

/S/ David A. Lampen
Clerk of the Supreme Court

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In the Disability Matter Involving: ROY W. MATTHEWS III, Respondent, ABA File No. DI 87.011. Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

On consideration of the stipulation of the respondent and the Disciplinary Board for transfer to disability inactive status, pursuant to Alaska Bar Rule 30(b), and the recommendation of the Disciplinary Board of the Alaska Bar Association, filed with this court on November 13, 1987,

IT IS ORDERED:

The recommendation of the Disciplinary Board of the Alaska Bar Association that ROY W, MATTHEWS, III, be placed on disability inactive status immediately is ADOPED and AFFIRMED. Any application for reinstatement to the practice of law shall comply with the requirements of Alaska Bar Rule 30(g).

Entered by direction of the court at Anchorage, Alaska on December 8, 1987.

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In the Disciplinary Matter Involving: Roger W. Carlson, respondent. ABA File Nos. 85.206 and 86.137. Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, justices.

The court entered an order on January 3, 1988 adopting and affirming the decision of the Disciplinary Board of the Alaska Bar Association recommending that ROGER W. CARLSON be suspended from the parctice of law for a period of two years. The order noted that the suspension would be stayed if Mr. Carlson submitted a probation plan that complied with the seven conditions listed in the Board's recommendation, and if the plan was approved by this court. The order also set specific conditions that would have to be met, regardless of whether the period of suspension was stayed or not. The Disciplinary Board of the Alaska Bar Association forwarded a recommendation to the court on April 11, 1988.

IT IS ORDERED:

1. On a full review of the record in this case, the recommendation of the Disciplinary Board of the Alaska Bar Association of April 11, 1988, recommending that the two-year period of suspension be stayed conditioned upon compliance by the respondent with the revised plan for supervised probationary practice, is ADOPTED. Respondent ROGER W. CARLSON is placed on probation until February 15, 1990. The respondent is ordered to strictly comply with the terms and conditions of the revised plan for supervised probationary practice, dated April 6, 1988, and attached to this order and incorporated into this order by reference, marked Appendix A.

2. In connection with paragraph 4 of the revised plan, attached as Appendix A, respondent ROGER W. CARLSON is ordered to register and pass the Multistate Professional Responsibility Examination given in July, 1988. If the respondent does not pass the examination, he will be ineligible to practice law until he passes the MPRE examination.

3. David W. Rosendin shall act as supervising attorney. A status of practice report shall be submitted to this court every six months during the probationary period.

Entered by direction of the court at Anchorage, Alaska on May 5, 1988.

/S/ David A. Lampen
Clerk of the Supreme Court

[Rabinowitz, Justice, dissents. He would reject the recommendation of the Disciplinary Board and impose a six-month period of suspension that could not be deferred and thereafter place the respondent on probation for a period of two years upon the terms and conditions adopted by the majority in the above order.]