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# The BAR BAR

VOLUME 14, NUMBER 3

Dignitas, semper dignitas

MAY-JUNE, 1990

## Soviets in Alaska for historic session

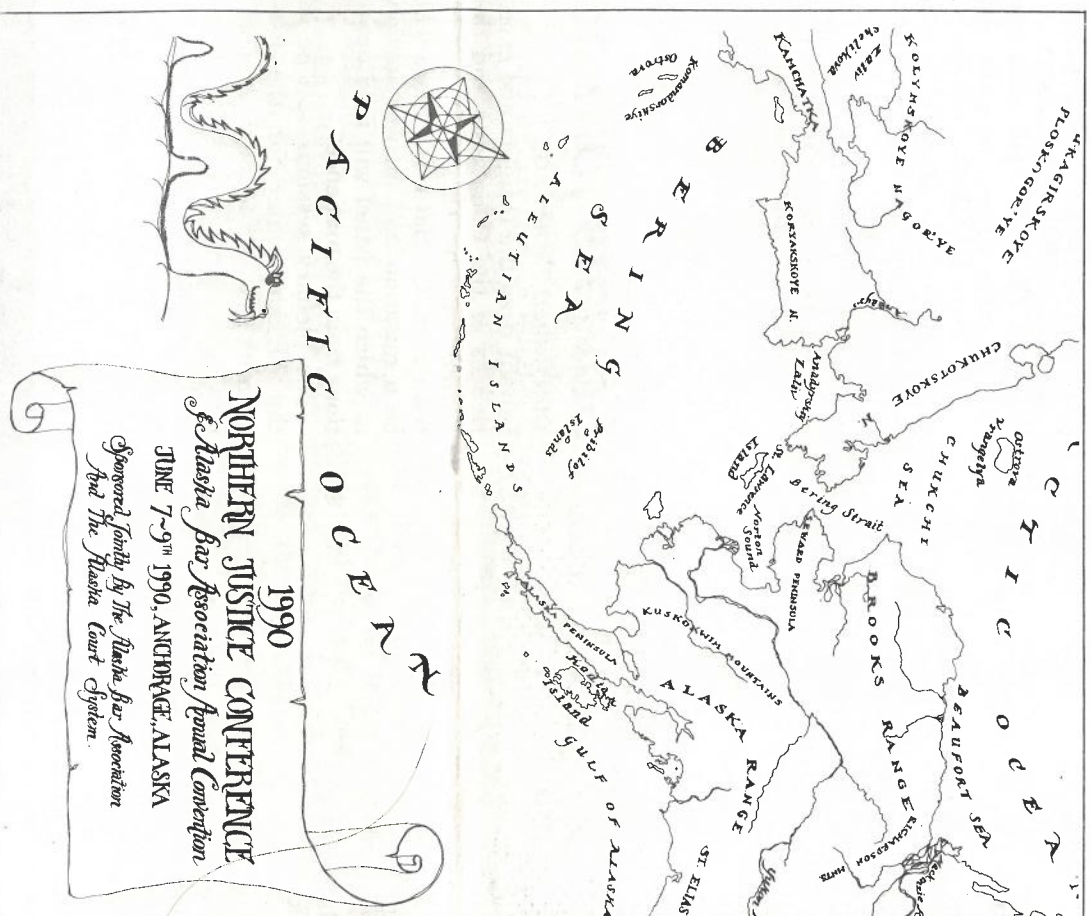
By MICKALE CARTER

On June 7-9, 1990, the Alaska Bar Association will meet for its annual convention. This year the convention will be in Anchorage. The convention, aptly referred to as the "Northern Justice Conference," is sponsored jointly by the Alaska Bar Association and the Alaska Court System. The focus of the conference is the examination of legal issues common to northern latitudes.

This is a conference which we Alaskans cannot afford to miss. This year's conference promises not only to be informative but also historically significant.

The three plenary sessions, one each day of the conference, are in a panel discussion format. The panels are made up of attorneys from Alaska, British Columbia, the Yukon Territory, and the Soviet Union. The topics which will be discussed are: "Problems of the Administration of Justice and Law Enforcement in the North," (Thursday, June 7); "Symposium: Northern Communities as Developing Nations--Environmental and Economic Problems," (Friday, June 8); and "Northern Native Populations and the Law," (Saturday, June 9).

According to Jeff Feldman,



1990  
NORTHERN JUSTICE CONFERENCE  
Alaska Bar Association Annual Convention  
JUNE 7-9<sup>th</sup> 1990, ANCHORAGE, ALASKA  
Sponsored Jointly by The Alaska Bar Association  
And The Alaska Court System

Alaska Bar Association president, the idea of this year's conference took shape more than two years ago. Due to the political climate in the Soviet Union that existed then, the possibility of having Soviet attorneys participate in a conference seemed remote at best. However, with the recent developments in the Soviet Union, the dream has become reality.

Although the people of Alaska, Canada and the Soviet Union have different political systems we have many things in common.

We share a similar climate along with similar extractive economies and industries, including fishing, lumber, mining and oil. We have similar population mixes with a dominant legal and cultural system superimposed upon indigenous societies which speak a Native language. We share the problems of vast distances from our central governments. We have sparse populations and similar social problems including drug and alcohol abuse.

The panel format was selected so that there could be an exchange of ideas. The panel discussions will explore different approaches and methods of dealing with our shared, yet unique, cultural and environmental problems. We will

CONTINUED ON PAGE 2

By MIKE SCHNEIDER

Unimak Island is a wild, untouched place. Its wolves, bears, semi-active volcanos, and its incessant winds make this first island in the Aleutian chain an exciting, somewhat eerie place to visit.

I was on Unimak to stalk one of its great brown bear with a bow and arrow.

It was 4:00 p.m. on Monday the 11th of May, 1987. The broken 2,000-foot ceiling hid all but the lower portion of the 6,000-foot volcanic cone that rose just across the lagoon from us. Our pilot, Warren Johnson, was taking off in his Cessna 180, having just dropped us off on Unimak's northwest coast. We were preparing to hike our gear a few hundred yards to a protected area where we would set up camp.

Tim Booch, my good friend, was along to back me up. We were confident and optimistic. We had seen fox, brown bear, caribou, and

wolves on our flight in. As we moved our gear, we followed fresh wolf tracks and the tracks of the eight-foot sow and two cubs that had been in our landing area until our plane's final approach.

We worked late into the night securing our camp against the gales that we expected during what was planned to be 10 to 12 days of hunting. Driftwood was everywhere around our lagoon on this treeless island. We lashed, wired, and nailed together an "A-frame" structure of wood and plastic tarp that completely covered our tent and provided a "front room" (complete with portable wood stove) for cooking, relaxing, and game spotting. We crawled in out of the wind and started dinner as it began getting dark around 11:00 p.m. We finally called it a day at about 1:00 in the morning.

**The Hunt Begins**

Mid-morning Tuesday found us scanning the open country behind the lagoon for brown bear. After

glassing inland for a period of time, we began to walk the beach. We were finding old Russian and Japanese glass net floats as we moved along the shoreline. We saw something close to the surf's edge miles ahead of us. It looked like it could be a bear, but it was mo-

tionless on the sand and we were too far away to be sure.

Once we were within a mile of this object, it became clear that we were looking at a good brown bear. We unloaded our collection of glass

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# 1990 NORTHERN JUSTICE CONFERENCE

In lieu of the regular President's Column, we simply want to encourage all our Bar members to attend the 1990 Northern Justice Conference on June 7-9 at the Alaska Center for the Performing Arts. This event will provide a fascinating opportunity for us to meet our colleagues from the Soviet Union, British Columbia, and Yukon Territory. We hope to see you there.

## 1990 Northern Justice Conference June 7-9, 1990

Conference Social Events  
Feast and Fun

### Thursday, June 7

Luncheon - \$15 per person

12 noon - 2 p.m.

Ballroom, Hotel Captain Cook

Speaker: Chief Justice Warren W. Matthews, Jr.,  
Alaska Supreme Court.

Reception\*: Anchorage Museum of History and Art  
Atrium

\$10 conference registrant/\$25 guest of registrant

6:30 - 8:00 p.m.

Music: Argyll String Quartet

Caterer: Marx Bros.

### Friday, June 8

Luncheon - \$15 per person

12 noon - 2 p.m.

Ballroom, Hotel Captain Cook

Speaker: TBA

Salmon & Halibut Bake\*: Kincaid Park Chalet

\$30 adult/\$15 children under 12

6:30 - 9:00 p.m.

Music: Johnny Collinsworth Band

Caterer: Hotel Captain Cook

### Saturday, June 9

Luncheon - \$15 per person

12 noon - 2 p.m.

Ballroom, Hotel Captain Cook

Speaker: TBA

Closing Banquet/Awards and Addresses

Ballroom, Hotel Captain Cook

\$30 per person

Music: Dixieland Ensemble

\*Bus transportation is available to and from the Museum Reception and the Salmon & Halibut Bake. Bus will depart from and return to the "K" Street entrance of the Hotel Captain Cook. Transportation cost is included in social event fee.

The Anchorage Bar Association is sponsoring a One-pitch Softball Tournament. Specific times and teams will be announced during the conference. Sign up may be either as teams or individuals. The softball field at 9th Avenue and "B" Street has been reserved for Saturday and Sunday, June 9 & 10. Practice times will be available on Saturday, with the tournament proceeding on Sunday (depending upon participation). If you wish to participate call Paul Stockler at 277-8622.

## Resolutions for Annual Business Meeting, June 8, 1990, 2:00-3:30 p.m., Hotel Captain Cook Ballroom.

1. Resolved that the Alaska Board of Governors have at least one meeting outside of Anchorage, Alaska every year and that it be rotated among cities in the four judicial districts in the State.

2. Resolved that the Alaska Annual Judges Meeting coincide with time and place with the Annual Alaska State Bar Association Meeting.

*Juneau Bar Association*

**WHEREAS** there is inadequate funding for defense of indigent persons in the State of Alaska;

**WHEREAS** appropriations by the Alaska State Legislature are consistently below the level necessary to adequately fund the Alaska Public Defender Agency and the Office of Public Advocacy;

**WHEREAS** there exist interest bearing trust accounts at major Alaska banks available to all lawyers;

**IT IS HEREBY RESOLVED** that the Alaska Bar Association make IOLTA accounts mandatory for attorneys in private practice who are admitted to the practice of law in Alaska;

**BE IT FURTHER RESOLVED** that the interest on the IOLTA accounts be distributed to the Alaska Bar Association and that the Alaska Bar Association then divide the proceeds equally among the following: The Alaska Public Defender Agency, The Office of Public Advocacy and Alaska Legal Services.

—Signed by 10 attorneys of the Bar.

## Soviets join convention

### CONTINUED FROM PAGE 1

benefit from the insights and experiences of the Canadians and the Soviets just as they will benefit from ours. On Saturday there will be a question and answer session in which the panel will field questions from the audience.

The plenary sessions will be in the Alaska Center for the Performing Arts. Professional translators have been hired to simultaneously translate during the sessions. Local interpreters will translate during the social func-

tions. The plan, according to Jeff Feldman, is to have one translator assigned to each Soviet. This 1990 conference promises to yield important insights and cooperation to our nations' unique, common challenges.

## The Alaska BAR RAG

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

June 4-6, 1990

June 7-9, Annual Convention

Hotel Captain Cook, Anchorage

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ДОБРО ПОЖАЛОВАТЬ

WELCOME

## CONFERENCE PATRONS

The Alaska Bar Association wishes to express its appreciation for the generosity of the following individuals and organizations in contributing funds to underwrite the 1990 Northern Justice Conference:

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Support was also provided by the Alaska Humanities Forum and the National Endowment for the Humanities, a federal agency.







Ralph Beistline

## THE EDITOR'S DESK

As I review the articles for this edition of the Bar Rag, I see a clear hodge-podge developing; a wide diversity in articles and subject matter, which is very reflective of the membership of the Alaska Bar. I found the Tanana Valley Bar Association minutes this time to be particularly entertaining and to accurately reflect the typical TVBA meetings.

Russ Arnett's article from the historical Bar was also interesting and illustrated the resourcefulness of some of our predecessors.

As usual, the movie mouthpiece provided to be both enlightening and thought-provoking, and once again raised the critical question, who really was the best James Bond?

Mike Schneider's bear story adds an outdoor "Alaskan" perspective to the paper and serves to illustrate that insurance companies are not the only things that Schneider has in his sights.

Dan Branch's parable of two hamsters was also insightful and blended well with Drew Peterson's thoughts on the negotiating process. (Interestingly, Peterson continues to write articles on negotiation and, to date, has written at least a half dozen such articles without ever repeating the same

thing twice. This in and of itself is incredible).

There is also a lot of practical legal advice contained in this edition of the paper. We continue to benefit from Steve O'Hara's estate planning corner, while Tom Yerlich continues to keep us updated on the intrigues of bankruptcy law.

Then there was Harry Branson's poem. I think it was really good, but I'm not an expert on poetry. Every time I read it, though, it seemed to convey a different meaning. I'm not sure if that was intended. We'll have to ask Harry.

There are, of course, numerous other contributors to the paper for whom we are quite grateful. Mickale Carter, Mary Hughes, and Donna Willard continue to make significant contributions to the paper, as well as many others whom I am sure I have failed to mention. It is these contributions that have now made the Alaska Bar Rag one of the best legal publications in the country. All who are involved with it have a great deal to be proud of.

### NEXT MONTH:

A trip through the singles ads with (who else?) our own Julie Clark.

## Video Replay Schedule

### REPLAY LOCATIONS:

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

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

**FAIRBANKS LOCATION:** Attorney General's Office, Conference Room, 100 Cushman, Ste. 400 -- CLE Video Replay Coordinators, Ray Funk and Mason Damrau, 452-1568.

**\*Residential Mortgage Reduction Under Bankruptcy Chapter 13**  
(Anch. 1/11/90)

Juneau: 2/3/90 9AM - Noon  
Kodiak: 2/17/90 Beginning at 10 AM  
Fairbanks: 3/23/90 9AM - 11 AM

**\*Civil Rule 90.3 -- Child Support** (Anch. 1/30-31/90, Fbx. 3/2/90, Jno. 4/10/90)  
Kodiak: 3/10/90 Beginning at 10AM

**\*Basic Title Insurance** (Anch. 2/8/90)

Juneau: 3/3/90 9AM-12 Noon  
Kodiak: 3/3/90 Beginning at 10AM  
Fairbanks: 3/9/90 9AM-12 Noon

**\*Basic Estate Planning** (Anch. 3/30/90)

Juneau: 4/14/90 9AM-5PM  
Kodiak: 4/21/90 Beginning at 10 AM  
Fairbanks: 4/20/90 9AM-5PM

**\*Advising Clients Re Filing Chapter 11** (Anch. 4/7/90)

Juneau: TBA  
Kodiak: 4/28/90 Beginning at 10 AM  
Fairbanks: TBA

**\*Military Benefits & QDRO's** (Anch. 4/30/90)

Juneau: TBA  
Kodiak: 5/12/90 Beginning at 10 AM  
Fairbanks: TBA

**\*A Lawyer's Guide to Writing Clearly & Persuasively**

(Anch. 4/20/90 & Jno. 4/18/90)  
Kodiak: 5/5/90 Beginning at 10 AM  
Fairbanks: 4/27/90 9AM-5PM

**\*Professional Responsibility and Ethics** (Anch. 9/21/90 & Fbx. 9/20/90)

Juneau: 9/29/90 9AM - 5PM  
Kodiak: TBA

**\*Making and Meeting Objections** (Anch. 10/2&4/90)

Juneau: 10/13/90 9AM - 5PM  
Kodiak: 10/20/90 Beginning at 10 AM  
Fairbanks: 10/19/90 9AM-5PM

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

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# THE MOVIE MOUTHPIECE

Edward Reasor

I confess freely to the fact that sometimes I forget women attorneys are women.

As a litigator it seems to me that women have this false idea that men litigators won't appreciate them unless they are twice as good as any other litigator, so they unnecessarily come on too strong at the first meeting. But as I said, that is only sometimes. Other times, I fully appreciate just what they bring to the Bar that makes it a more palatable table--creativity, sensitivity, laughter, and a love of things besides the law.

This was just such a week when two women attorneys asked my opinion as to which made the best James Bond, the inestimable Sean Connery or the present, handsome Timothy Dalton. The attorneys were together when they inquired as they both had just watched and enjoyed "The Secret Life of Ian Fleming," a docudrama which appeared on an Anchorage TV cable station.

I told them the truth that the adage "beauty is in the eyes of the beholder" applies equally to male beauty as to female, but if I had my druthers, I think Sean Connery came closest to capturing the James Bond found in the novels of Ian Fleming.

Their view of the docudrama was interesting. I thought while watching it that Ian Fleming's mother, a wealthy widow who insisted on Eton and then Sandhurst, was one hell of a woman, but they pointed out, quite correctly, that she was self-centered, arrogant, and rather cold. At any rate the three of us spent a quiet hour away from the hustle and bustle of subpoenas and writs, depositions and trial-setting conferences, recalling as many Bond films and we could (17) and an equal amount of dialect.

In case you're prone to do the same some warm sunny morning I am summarizing our recollections and adding one film none of us discussed, the last one "License to Kill," which starred Dalton, thus making a full 18 movies available for your video pleasure.

It was 28 years ago when a little-known TV actor uttered the words:



Who's your favorite 007? Sean Connery (seen here in 1983 in Warner Bros. *Never Say Never Again*)....

"My name is Bond...James Bond" in the first feature film 007 escape adventure "Dr. No." Films were good for the Fleming novels, because with the exception of President John F. Kennedy, no one seemed to have read the dozen novels and numerous short stories Fleming wrote before his death in 1964. In fact, he had only received \$1,000 for "Casino Royale," which was a 60-minute television episode with Peter Lorre and then an equally disastrous movie starring David Niven and Peter Sellers.

In film, Bond always lived in a dangerous world, and he brought to it a touch of cynicism and ruthlessness that kept him alive and in and out of beds of beautiful women. (Women of ample bosum.) In fact Julie Christie, who could hang her shingle out in almost any Anchorage law office, lost the co-starring role in "Thunderball" because the Bond producers thought she didn't measure up. Claudine Auger did and she got the role. Modern viewers might call the films a bit sexist--I mean, would

you have courage enough to name the heroine in "Goldfinger" Pussy Galore? Yet women kept coming to the theatres along with young men who really fashioned themselves spies.

Through it all, no one took Bond seriously. In actuality, he is a killer--a killer who knows how to drink a properly made martini, choose the right wine, wear the right suit, and speak in four separate recognizable languages, but a killer nonetheless. That's one Bond ingredient both Connery and Dalton have in common. Look at either of them. Do you doubt for a minute that either one would not pull the trigger? After all, we all know the prefix 007 is in fact a legal license to kill.

"From Russia With Love" followed "Dr. No."

"Dr. No" had done wonders at the box office (as has every Bond film except "Casino Royale"), even though critics were not particularly amused and Saturday Review called it "the best bad film of the year."

"From Russia With Love" is Sean Connery's favorite and well it should be as it was the Bond film that maximized intrigue and foreign travel on the screen, a story set in Istanbul and on the Orient Express. It allowed Connery to globetrot in future films and established him as a fighter of Russian spies and female assassins. Remember the beautiful Chinese girl in "You Only Live Twice," who was going to bring him the best pressed duck he'd ever had, which turned out to be a fast-firing machinegun at short range?

"Diamonds Are Forever" had the good sense to be filmed in Las Vegas during a time (1971) when many Anchorage attorneys jetted there on chartered flights for gambling junkets. If we couldn't bring back the money we took with us, we could at least on our return, point to the wild car chase sequence filmed smack down the Vegas strip and say, "that's where I lost the supplements money for AM Jur."

Before covering the two Dalton films, I urge you to rent



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# Beach, bow & bear

CONTINUED FROM PAGE 1

balls and scallop shells and sneaked behind the sand dunes paralleling the beach. This kept us out of sight of the big bear. We moved quickly against the offshore wind. A pack of five wolves watched us from only 300 yards away. We slowed our pace as we came closer to the bear and neared a safe observation point: a big sand dune 200 yards from him.

The old bear had a beautiful light-brown coat. He was sleeping on the sand at the water's edge where the wind and the spray from the pounding surf hit him full force. He was camping atop a dead sea lion he had claimed. Tracks around him told of his defense of this find against scavenging wolves and other bears.

The surface of the beach where he lay was smooth and steep. The steep beach crested 10 yards above the bear. There was then another 40 or 50 yards of absolutely open sand before the first blade of grass appeared to provide any cover.

It wasn't the best of circumstances. On the other hand, things didn't appear destined to improve. The big bear's tracks leading to the sea lion were one or two days old. He hadn't left despite the efforts of other bears and wolves to drive him away. He knew by now that, if he left, the resident wolf pack would make short work of his sea lion. If he did decide to move, there was no way of predicting his path and almost nowhere to set up an ambush. We decided to make the stalk.

The wind was coming from the ocean and was blowing at about 20 knots. That and the pounding surf helped hide any noise we made as we moved across the sand. The topography of the dunes leading up to the open beach hid us. Once out of the open beach hid us. Once out of the dunes, we got down on our stomachs and crawled the remaining 40 or 50 yards to be within bow range of the bear.

When we were 40 yards from the animal, he lifted his huge head and caught movement in our direction. He charged to the top of the sand berm, swinging his head and popping his teeth. He must have thought we were wolves coming to rob him of his prize. At that point, the bear turned slowly and moved back toward the sea lion. As soon as he turned his back to us, I gained another 10 yards on him and assumed a kneeling position.

Tim was to my left and behind me. He was in a prone position and ready to fire. The bear pawed more sand over his sea lion. He turned broadside to show his full size. I was impressed. I misjudged the distance and shot the first arrow right over his back. I knocked another arrow and sunk the broadhead into his chest inches behind the shoulder. The shot was perfect. The bear roared, tried to bite at the arrow, and started wheeling clockwise. This went on for what seemed like an eternity, but was probably but a few seconds. Tim and I were hugging the ground and hoping that the bear would die in place or head off in some direction other than ours. That was not to be.

The bear stopped turning, took a split second to get his bearings, looked at us, and charged! He knew exactly where he was going. He was covering the ground fast,

and he had precious little ground to cover. Tim yelled, "I've got to shoot! I've got to shoot!" The 270-grain slug from the .375 H&H magnum caught the big bear slightly under his right orbit and exited the back of his neck. It completely destroyed the brain case. The animal died in his tracks and plowed up a mound of sand in front of him as he collapsed to his death.

We were excited; we were elated; we were sad. This magnificent animal was literally dead on his feet with the wound inflicted by the broadhead, but he easily summoned the determination to take us with him. As the adrenalin wore off, we appreciated very clearly that we were fortunate to be the survivors in this encounter. The experience gave us more to think about than to cheer about.

And think about it, I did. I should have been terrified as the bear charged us, but I wasn't. I was already beginning to feel disappointment. It wasn't disappointment in Tim; he was as steady as a stone. The bear was no more than one or two seconds from being on us when Tim put him down. He had time for only one shot, and it was, thankfully, a perfect shot.

I felt a little empty as we worked over the old bear. I wondered at first if I was jealous that it was Tim's bullet, not my arrow, that took the animal, but that wasn't it. Nor was I feeling the sadness a hunter always feels at the death of any wild creature. I finally confronted the source of my disappointment. The challenge of our adventure was to regress in time, to find patience where haste encouraged action, and to understand our prey.

I knew the stalk was a mistake, even as we were deciding to execute it. The beach was open, and the bear was likely to see us in advance of being hit. It did. Even then, I pressed the bear, encouraging the charge and its death by Tim's bullet. It was one of the most dramatic hunting experiences of my life. Still, my failure to wait for



Photo courtesy of the GreatLander Bush Maltier and Alaska Dept. of Fish & Game

the right opportunity spoke of how much I had to learn about patience, the most important discipline of this oldest of aboriginal arts. Impatience converted our careful stalk into a frontal assault that was met in kind by our prey.

The rest of the day and late into the night was spent skinning the bear and packing its 160 pounds of skull and hide the four miles down the beach to camp. We couldn't get the hide in either one of our packs, so we put half the hide in each one, tied the two together side by side, and stumbled down the beach together under the load. Tim was holding up better than I, though he put in an eight-mile round trip to get our packs while I skinned out the skull, turned the ears, and worked on the hide. We were both glad to get to the tent.

Wednesday was spent fleshing and salting the hide and beach-combing. More glass balls, sea shells, and a sea otter skull. We were able to get a radio message relayed to Warren. He was to pick us up Thursday afternoon, weather permitting.

Thursday morning found us watching the whales rolling just beyond the surf while we headed down the beach to excavate a whale skull Tim noticed in the lagoon as we stalked our bear two days before. The wolves had already consumed the sea lion and the meat from the carcass of the 96" bear. Weather in the Port Moeller area kept Warren from leaving Bear Lake Lodge to pick us up. One hundred eighty miles away on Unimak Island, we were having weather rarely seen there: sunny skies and light breezes.

We had a wolf in camp Thursday night. It was close to midnight. I head Tim yell. I charged out of our shelter to see Tim and the big light-colored male staring at each other across 15 yards of beach grass. The wolf had come to get our bear hide. It finally melted into the darkness. A few minutes later I called it and another wolf up to within 100 yards of our tent. Unlike the first encounter, these ani-

mals were now downwind from us. We were surprised by their courage and curiosity. They showed little fear. The wolves were an exciting addition to our last night on the island.

Friday May 15, 1987. Warren was able to pick us up. We had seen magnificent country, done some hard work, shared some risks, and learned more about ourselves. We saw a big blonde bear on the flight out to Cold Bay. It was a great sight and the perfect end to a hunting trip of a lifetime and a uniquely Alaskan adventure.

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# Connerly is better

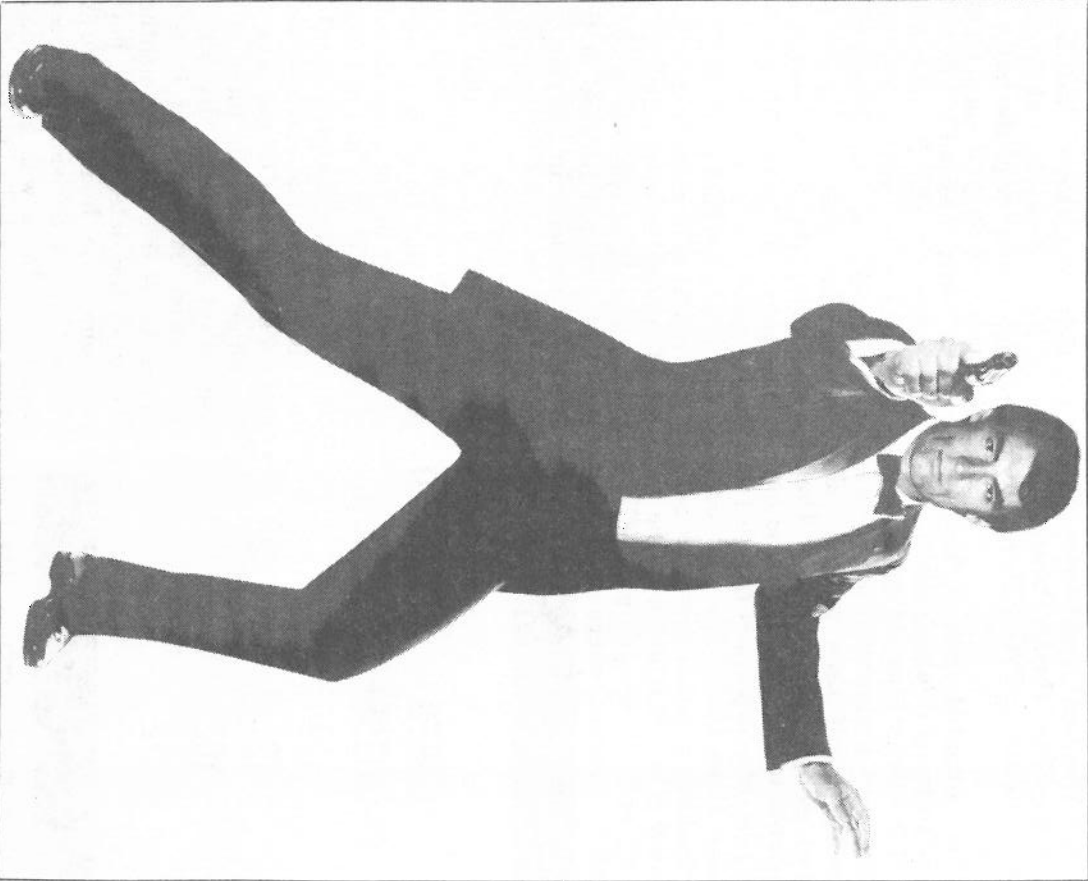
CONTINUED FROM PAGE 5

"Goldfinger," for my money the best of the Connerly attempts. This is the flick that introduced special effects and the creative gimmicks that have become the mainstay of any Bond picture whether the hero was played by Connerly, Roger Moore, or Dalton: Connerly and the Aston Martin that fires a machine-gun, contains an ejector seat, laser beams that can kill...or worse, Oddjob and his deadly hat that can sever a head from a marble statue. As for dialogue, how about "Shocking, quite shocking" to a would-be assassin Connerly has just dumped into a tub and electrocuted?

Timothy Dalton has only made two Bond films, so obviously we are more familiar with the face of Sean Connerly in the role. The two studio photos accompanying this article attest to the fact that although both are handsome, well-dressed men, Dalton clearly is the younger, more stage-trained actor. Take your pick.

"The Living Daylights" involved less gadgetry than "Goldfinger," but was a more sophisticated, stronger story line—a tale of megalomaniacal arms smugglers, double agents, beautiful cellists, counter-intelligence, and deception from the top of the Rock of Gibraltar to the fleshpots of Tangiers. This is also the only Bond film where he's satisfied with one beautiful bed partner, the cellist played by Maryam D'Obo.

Dalton's second attempt, "License to Kill" is really "Licensed Revoked." His 007 prefix, weapons and official status is revoked. Bond is Bond anyway, against the establishment's orders to the disappointment of a Latin American drug kingpin (Roberto Davi). The



...Or Timothy Dalton, in MGM/UA's *The Living Daylights* Bond flick (1987)? Maybe Samantha Slenders can settle this.

reason for this personal vendetta is that drug king Davi wounded and almost killed Felix, the American CIA agent, after killing the agent's wife. Wayne Newton has a cameo role as a not-so-religious evangelist. The story line implies that Dalton as the new Bond is more than a talented killer. He's a thoughtful, brooding man pushed by the circumstances of life and time into doing what he does. As I've said, take your pick - either Connerly or Dalton. Both can relieve the tension of a forthcoming bar exam, an appeals court oral argument, or the regularity of *stare decisis*.

## POEM

### Conversation

Will you walk with me, Daddy?  
Just a little way. Please?  
There's so much I need to tell you.  
And I want to now, you see.

That last time when I left you  
(it was such a long, long time ago),  
I squeezed your hand and blessed you  
Then turned away before the final no.

I learned to stand and walk by myself.  
There were things I found that I could do.  
Married. Had children. Chased after wealth.  
Became a success. Almost like you.

For awhile, my children walked by my side.  
They questioned me as I questioned you.  
And, after listening to them, I really tried  
To tell them everything - all that I knew.

Then, so they wouldn't feel so damned insecure  
About the road they walked and what we knew,  
I told them that you and I were quite sure  
It would go wherever they wanted it to.

I said there was nothing they had to fear.  
And I gave them your word as authority.  
I told them the answers they needed to hear.  
The answers I wish you had given to me.

I lied to them, Dad. I lied at your end.  
I made up the man I wanted you to be:  
A guardian, advisor and constant friend.  
Forgive me Father, for making you me.

Will you walk with me, Daddy?  
Just a little way. Please?  
There's so much you could tell me.  
And I need you now, you see.

Harry Branson

## CLE Schedule

Programs are full day unless otherwise noted.

1990		
#21 June 7-9 12 des	1990 Northern Justice Conference & Annual Bar Convention	Anchorage- Hotel Captain Cook
#33f Sept 20	Professional Responsibility & Ethics	Regency Hotel FAIRBANKS
#33a Sept 21	Professional Responsibility & Ethics - LIVE REPEAT	Sheraton Hotel Anchorage
#14 Oct 2 & 4 AM Mini-Seminar	Making & Meeting Objections	Hotel Captain Cook
#38 Oct 22	3rd Annual Alaska Native Law Conference	Hotel Captain Cook

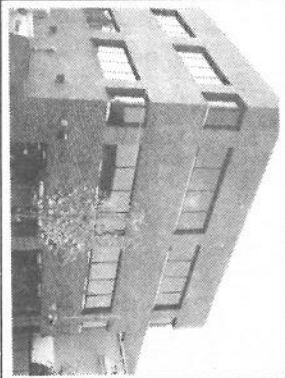
For further information on any of the above programs, contact the Alaska Bar Association, PO Box 100279, Anchorage, AK 99510, phone 907-272-7469 fax 907-272-2932.

### The Historians Committee of the Alaska Bar Association

will meet at noon on Thursday, June 14  
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# Discipline cases level off, but closure rate increases

By PAT KENNEDY

The Board of Governors has been concerned for a number of years about the backlog in discipline cases. Following a recent citizen complaint to the Board at its January meeting, the president appointed a four person committee of Board members to work with Bar staff to recommend solutions to the problem. The committee met six times and made the following findings:

1. The figures below show the incoming complaints, new cases opened, and cases processed over the last four years:

YEAR	COMPLAINTS	NEW CASES	CASES PROCESSED	CARRIED OVER
1986	256	140	139	1
1987	304	143	121	22
1988	255	112	102	10
1989	251	117	112	5

(Note: Between 1987 and 1988 more staff was added.)

The figures show that the complaint volume per year is fairly steady while the number of new cases opened is fairly steady if not declining, but the cases processed seem to be declining despite new staff time. Nevertheless, the input and outflow since 1987 seems to be pretty well under control. Therefore, it appears that the system may have enough manpower to keep the cases flowing in and out on a steady basis, without building a backlog, if the cases are moved a little more efficiently. Two problems exist in this analysis:

- a. There is no leftover staff time to pick up the slack represented by the backlog (hereinafter referred to as the "bulge").
  - b. It is not clear that the cases carried over are not the tough ones; that is, the easy ones can clear through the system, but any tough case drops into the bulge by its nature and stays there. The committee had no way of measuring the nature, size, complexity and oppositional nature of the cases left over at the end of each year.
2. The number of informal ethics opinions given by the Bar staff is growing yearly:

YEAR	*CJA	MW	SLD	SVG	YEAR TOTAL
1987	N/A	N/A	87	181	268
1988	N/A	N/A	143	218	361
1989	68	35	N/A	385	488
Total	68	35	230	784	1117

\*CJA - Carol Jane Allen, MW - Mark Woelber, (part-time bar counsel), SLD - Susan Daniels (no longer on staff), SVG - Steve Van Goor).

The estimated time of the new distribution of this task shows 10% of C.J. Allen's time, 15% of Steve Van Goor's time and 10% of Mark Woelber's half time (or 4% full time) going into this task. That amounts to 30% of a full time bar counsel. The process is for most of these questions to be answered immediately, but a computer-generated printout is made of the request and the opinion given. This task is growing every year. Bar

counselors were much in favor of continuing the task as a preventive step, as a service for the bar which gives discipline counsel a more positive contact with their constituency, and as an effective self teaching tool. Mark Woelber had begun doing opinions to give himself wider legal background, and as a break from straight case analysis. The amount of time spent on giving informal ethics opinions may have been underestimated because of bar counsels' desire to keep this task as a service, and because the actual time spent giving opinions has never been tabulated.

3. Fee arbitration cases have remained fairly constant. When C.J. Allen was hired it was anticipated she would spend only 10% of her time on fee arbitration; however she spends 25% of her time on this task. There is some possibility that paralegal time added to fee arbitration may free C.J. Allen up to do more discipline cases.

4. Of 152 cases currently accepted for investigation, Steve Van Goor estimated that all but 19% (29 cases with 21 attorneys) would pass out of the system short of a full hearing. Assuming that that statistic is generally accurate for any given year, and that the Board meets six times per year, the

Board should have been hearing five discipline matters which have come from hearings at every meeting, at least until the bulge is gone. Once the bulge is gone, on an average yearly caseload of 117 new cases, there should be no more than 22 cases per year to hear. In fact, since it is presumed that the bulge is heavy on cases needing to go to hearing, the yearly average of cases going to hearing may be much lower.

5. Bar counsel had made the decision not to take cases from a status of "under investigation" to a determination of whether a violation had occurred because of the logistical problems in carrying the cases on from there to hearing if there were too many of them. However, it appeared that the critics of the system are more angered by having no decision made as to whether or not the case will go forward than they are by potential delays once a charging decision has been made. The current average time for a case languishing in the bulge between the filing of a complaint and the bar deciding if a violation has occurred is estimated to be five to eight months. Based on the dates of cases, however, some cases had been there for years. Once a decision had been made that there was a violation, there did not seem to be time limits which would require action by bar counsel until the filing of a formal petition.

In response to the report of the committee, the Board at its March meeting made several changes to the current discipline process in an attempt to clear up the backlog:

- 1. President-elect Dan Cooper was appointed as the President's designee to oversee the discipline system, assist bar staff, and act for the Board in implementing necessary changes to the system.
  - 2. A full time paralegal will be added to the discipline staff for an initial period of one year. The paralegal is to help prepare backlogged cases for decision/hearing.
  - 3. Informal ethics opinions will be given by one staff member only on a rotating weekly basis. This will prevent all staff from being frequently interrupted by phone calls.
  - 4. The Board set time limits on case handling:
    - a. From the time a complaint is filed until a decision is made about its sufficiency to constitute a violation of the code of ethics, six months is the limit.
    - b. From the time a complaint is accepted as sufficient until a decision is made as to the kind of discipline that is anticipated and whether a formal complaint should be filed, three months is the limit.
    - c. Any deviations from the time limit must be approved by the President's designee for discipline.
    - 5. The backlog of cases will be attacked in chronological order, oldest first.
- Once these new policies are implemented and the backlog disappears, the Board will be looking at the ability of the system to keep up with incoming cases and will make further staff decisions at that time.

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## FAMILY MATTERS

Drew Peterson

What are the characteristics of effective negotiators? Is it good to use aggression in the negotiation process? How about preparing multiple arguments to strengthen each negotiating point? Can the skillful use of questioning improve a negotiator's effectiveness? When is it appropriate to express your personal feelings? And what is the best time to present a counter-offer? These and many similar questions permeate the process of negotiations.

I have recently been listening to an excellent audiotape about the psychological process of negotiation, by Neil Rackham (Listen and Learn USA, 1983). In doing so I realized that my perspective about the negotiating process has changed substantially in the past few years, as I have mostly left behind the "normal" practice of law, and instead focused my career on mediation, other alternative dispute resolution techniques, and teaching. Rackham's comments seemed valuable to me, and I thought they would be worth sharing, together with some related thoughts of my own.

*The Use of Aggression in Negotiations.* Rackham first discusses the age old debate as to whether an aggressive stance aids the negotiation process. Examining the subject on the basis of the behavior of negotiators judged by their peers to be particularly effective, Rackham concludes that aggression is not a technique normally favored by such skilled negotiations.

I had an interesting experience concerning aggressive negotiations in a paralegal class which I was teaching recently. I assigned a simple negotiation as a role play exercise, giving both sides instructions with sufficient overlap to allow for settlement to be reached.

In the role play, one side presented itself in an extremely aggressive manner and then refused to budge. The other side tried and tried to get the other side to move, making concession after concession. Eventually they even made concessions beyond their own limits of authority. The aggressors still failed to yield, however, even when warned of time constraints. Time finally ran out with no agreement having been reached.

In short, both sides failed miserably in the negotiations, due in large part to the deliberately aggressive stance which one side brought into the negotiations. It

reminded me of some real life negotiations I had seen with similarly disastrous results.

Rackham particularly counsels to avoid spiraling aggression. If you are going to hit the other side aggressively, he asserts, hit hard and then return to a non-aggressive posture for continuing the negotiating process. That advice rings real true to me, both in thinking back on past negotiations as an attorney and also in the context of the negotiating which I currently see in mediation.

A substantial number of the techniques which are used in mediation are intended just to stop such spirals of aggression from developing. The job of the mediator is to keep the participants focused on their mutual goals and desires for peace rather than to let them get lost in the emotional baggage which such spiraling aggression so often brings to the surface.

*The Use of Irritators.* A related point which Rackham makes is to not use irritators in negotiating, such as to describe your offers repeatedly as "fair", "reasonable", or "generous". Such words add nothing to the negotiating process except to needle the other side with the implication that they are somehow unfair, unreasonable, or stingy.

An excellent resource which I have recently discovered to help one recognize such implicit messages and learn how to deal with them is Suzette Elgin's book *The Gentle Art of Verbal Self Defense* (Prentice Hall, 1980). I was particularly taken by her comments on how to perform verbal jujitsu, to counteract verbal sniper attacks.

It is my impression that many lawyers have the fault of allowing such verbal sniping to damage their overall credibility, with no related gain from the use of such tactics.

*Timing of Offers.* Rackham notes that people are least receptive to a proposal from someone else just after they have set forth their own proposal. Thus it is not a good idea to respond quickly to a proposal with a counter-proposal as is so often done.

A better course is to ask questions about the original offer, probing into any possible problems which it might raise, while at the same time validating it as an offer. When the offer has been thoroughly discussed and analyzed a counterproposal may fall on much more willing ears, especially if it

can be offered as a solution to a mutually recognized problem arising from the earlier offer.

This point is also validated by my experience in mediation. After each new offer is made in the mediation process it can be very productive to carefully analyze the offer, including committing it to writing on a flipchart and adding as much detail to its terms as possible, before any counterproposals are made by the other side.

*Argument Dilution.* Rackham next talks about what he calls the sins of the educated: the reason that simple uneducated negotiators often are better at negotiating than are those who are highly educated. It is the concept of argument dilution: that a weak argument dilutes a strong one.

The highly educated, Rackham asserts, always want to add further scholarly arguments to strengthen their case, in fact accomplishing the exact opposite effect.

I remember Rackham's point being made in law school in the context of legal writing, particularly the writing of appellate briefs. I wonder how many of us similarly remember it during day to day negotiations, however.

*Behavior Labeling.* The preceding points consisted of Rackham's list of "don'ts" in negotiations. He also has a list of "dos", the first of which is to do use behavior labeling. By behavior labeling he is referring to statements such as "I am now going to make you an offer. It is that..." (and then make the offer). Such labeling of behavior is a simple technique to increase the clarity of communications, which is certainly one of the most basic skills needed in the negotiating process.

I never fail to be amazed in the mediation process how an extremely significant message, the importance of which is clear to the maker and which I hear loud and clear as a neutral participant, is often totally missed by the other side.

The dynamics of the negotiation process are such that parties are often paying more attention to what they are going to say next than in listening carefully to what the other party is saying. Alerting the other side to the significance of your statements before making them can only help to increase the likelihood that important messages will get through.

*Clarification and Summarization.* Similarly, Rackham suggests the frequent use of clarification and summarization in the negotiation process. There is nothing worse, he asserts, than a negotiation gone astray because of a lack of mutual understanding by the

parties as to what occurred.

The point is again borne out by my experience in mediation, where clarification and summarization is perhaps the single most important element in the mediator's bag of tricks. Indeed the mediator's primary tool, the flip chart, has the main purpose of clarifying and summarizing what has been said and agreed directly before the participants' eyes, so that any misunderstandings can be immediately corrected.

*The Value of Questions.* Rackham asserts that the single most significant indicator of expert negotiators is their emphasis upon the use of questions in the negotiation process. Not only can questions work wonders at discovering the other party's position, lines of authority, and bottom line, but they are particularly useful in discovering areas of overlapping interests, where mutual solutions can be found of benefit to both sides.

Questions can even be used in a "dirty trick" fashion, for example as a way of gaining time to think about a new or unexpected development, or in distracting attention from a weakness.

My experience with mediation is that careful questioning of the significance of and the interests underlying the various positions of the parties can be one of the best ways to make real progress towards settlement.

*Feelings Commentary.* Rackham's last suggestion is to not be afraid of including a personal feelings commentary in the negotiating process. It is a mistake, Rackham asserts, to ever forget that negotiating is essentially something that takes place between people, real breathing and feeling human beings. Do not be afraid to appear as a real person, perhaps even a vulnerable one, in the negotiating process.

We are all human, and this fact is well known to the other side. It does no good to attempt to hide our human side, while it may well be to our advantage to demonstrate it to the other parties to the negotiations. After all they are human too.

The negotiation process consists of people relating to one another in an effort to find mutual gain. It is a civilized and civilizing process between people, most effectively carried forth from a position of personal respect and integrity.

The best negotiators are those who remember the essentially human aspects of negotiations, and treat the other side with courtesy and respect, while constantly exploring for mutual interests to both sides of the negotiation process. In the best negotiations there is neither a winner nor a loser, but both sides win.

## Verdicts & Settlements

**Albert Van Huff v. Sohio Construction Co. et al.** 3AN-85-2816. Plaintiff was terminated from job with company on the North Slope in 1984 on grounds that the company was reducing its work force due to less work. Plaintiff alleged wrongful termination because (a). he had been promised work with the company or other Sohio companies until retirement

and (b). breach of good faith and fair dealing in the manner of evaluation.

**Injuries.** Loss of wages, retirement, medical and savings plan from date of termination until retirement in approximately 2004.

**Verdict.** Defense verdict. Offer of judgement, Rule 68. Amount unknown.

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# More on bankruptcy practice

By THOMAS J. YERBICH

## I. Discharge of Tax

In bankruptcy, a claim for Federal taxes may be either secured, unsecured or undersecured (i.e., partially secured and partially unsecured). The Service has an unsecured claim against assets of a bankruptcy estate if either (1) no notice of a Federal tax lien ("FTL") has been filed or (2) the value of the property is less than the amount of a FTL. If unsecured, a claim may be either entitled to priority (if it meets the requirements of BC Sec. 507(a)(7) discussed in Part III, below) or the unsecured claim may be relegated to general creditor status.

Generally, tax claims are not discharged in bankruptcy if any of the following apply: (1) claim is entitled to priority under BC Sec. 507(a)(7) (generally dependent upon when the tax was first assessable); (2) a taxpayer has failed to file a return, filed a fraudulent return, or attempted in any manner to evade taxes, without limitation as to the time the tax was first assessable. Also, where a taxpayer files a return after the due date, including any extensions, the tax liability is not discharged if the return was filed within two years of the date the petition was filed. [IRC Sec. 523(a)(1)].

There is no statutory definition of "fraud" as used with respect to returns. Although fraud most commonly consists of omissions of income, it may also consist of claiming false deductions, exemptions, tax credits, or the false characterization of income, and reporting fictitious transactions. Generally, if the act is one for which a fraud penalty [IRC Sec. 6653(b)] is properly imposed, the *entire* underlying tax upon which it is based will not be discharged [See *In re Harris*, 59 BR 545 (BC WD Va. 1986)].

The "attempt to evade" language parallels IRC Sec. 7201 and the definitions under that section are helpful. An attempt to evade tax requires: (1) a tax deficiency; (2) engaging in an affirmative act constituting an attempt to evade or defeat the tax; and (3) willfulness [Sansone v. U.S., 380 US 343 (1965)]. Such acts as maintaining a double set of books, making false entries or alterations, false invoices/documents/intentional destruction of records, concealment of assets or covering up sources of income, conducting affairs to avoid making usual and customary records, and conduct, the likely effect of which would be to mislead or conceal, can constitute an attempt to evade or defeat [see *Spies v. U.S.*, 317 U.S. 492 (1943)]. Other acts which have been held to violate IRC Sec. 7201 include lying to government investigators, filing a false W-4, obstructing investigations into taxpayer's affairs, use of false SSN, and failing to report personal expense paid by a corporation. "Willful" is the "voluntary intentional violation" of a known legal duty" [U.S. v. Pomponio, 419 US 10 (1976)].

It should also be remembered that although not discharged in bankruptcy, collection of the tax may be time-barred. As a general rule, the time for collection of a tax assessment is limited to 6 years af-

ter the date of assessment [IRC Sec. 6502(a)] unless an action is brought on the assessment. After the expiration of the 6-year limitation period the Service may no longer summarily levy (collect) on property of a taxpayer but must use judicial procedures. The period for collection may be extended by agreement, absence from the U.S., pendency of proceedings in the U.S. Tax Court, and is automatically extended by filing a petition in bankruptcy. In bankruptcy the period of extension is for the time the Service is prohibited from collecting (from the date of filing until six months after the first meeting of creditors [U.S. v. Turner, 625 F2d 328 (9th Cir. 1980)]) plus six months [IRC Sec. 6503(i)].

## II. Interest and Penalties

Discharge of interest on taxes follows the tax liability on which it is computed. That is, if the underlying tax liability is dischargeable, so is the interest on that tax [Pan American Van Line v. U.S., 607 F2d 1299 (9th Cir. 1980)]. On the other hand, if the underlying tax liability is nondischargeable, neither is the interest accruing on that tax liability, including interest which accrues subsequent to the time the bankruptcy petition is filed. [Bruning v. U.S., 376 US 358 (1964); *In re Hanna*, 872 F2d 829 (8th Cir. 1989)].

Tax penalties present a somewhat different situation. BC Sec. 523(a)(7) excepts from discharge non-pecuniary ("punitive") penalties other than certain tax penalties. Tax penalties excepted from the exception to discharge are those: (1) relating to a tax not specified in Sec. 523(a)(1) [i.e., the underlying tax liability is discharged]; or (2) imposed with respect to a transaction that occurred more than 3 years before the petition was filed. Thus, tax penalties are discharged if either the underlying tax liability is discharged or the penalty relates to a transaction which occurred more than 3 years before the petition was filed. [In re Burns, 887 F2d 1541 (11th Cir. 1989); but see *Cassidy v. CIR*, 814 F2d 477 (7th Cir. 1987)].

## III. Priority

To be entitled to priority under BC Sec. 507(a)(7), a Federal tax claim must first be unsecured [includes that portion of a lien claim that exceeds the value of a taxpayer's interest in property subject to a FTL as of the date of filing if the Service is undersecured and the amount of a FTL subordinated under BC Sec. 724(b)]. If for income tax, a claim must be for income tax for a period in which the return is last due, including any extensions, not more than three years prior to the filing date, or assessed not more than 240 days before filing, or still assessable as of the petition date. The key is the disjunctive *or*: a tax claim is entitled to priority if it meets any *one* of the conditions [see S.Rep. No. 95-595, 95th Cong. 2d Sess., 70-71 (1978)]. For example, a tax assessed 270 days before filing but for which the return was last due two years before filing is entitled to priority. Also, a tax properly assessed 180 days before filing but for which the return was last due three years and two months before filing is likewise entitled to priority. In addition, taxes

the return for which was last due more than three years prior to filing but not assessed prior to filing may be entitled to priority if the general three-year assessment period has been tolled or extended (e.g. waiver of statute of limitations or case pending in Tax Court) and the taxes are still assessable as of the filing date. Factors which can complicate the computation of time include offers in compromise, or where a taxpayer has agreed to an extension of the assessment period.

In any case in which the assessment has been made within 240 days of the projected filing date but more than three years after the due date (or filing date if later) of the return, inquiry should be initiated to determine if the assessment was, in fact, proper. E.g., was the assessment made within three years of the return date or during any extension; did the Service follow the proper procedures before assessment [see e.g. IRC Sec.'s 6212, 6213] such as notice; if a summary or jeopardy assessment was made, did the Service meet the statutory requirements [see e.g. IRC Sec.'s 6212(b), 6851, 6861]. Counsel should also inquire whether an offer in compromise has been made and it's current status. An offer in compromise tolls the running of the 240 days and the tax still has priority if the petition is filed within 30 days after the offer is withdrawn. It is strongly urged that in the event any question arises about the priority of an assessment or the running of time a tax specialist be consulted.

Where a taxpayer is a sole proprietor, partner in a partnership, or responsible person under IRC Sec. 6672, priority is also given under BC Sec. 507(a)(7) to the so-called "trust fund" taxes, i.e., federal income tax and FICA withheld from employees' paychecks, collected in whatever capacity and without limitation as to time. If a taxpayer is an employer, the employer portion of employment taxes, if the due date for the return is less than three years prior to the filing date, is included in BC Sec. 507(a)(7)--also included are excise, sales, gift, estate, gasoline and special fuel taxes with a return due date within three years of filing.

## IV. Exemptions

Property exemptions under BC Sec. 522 are broader and more generous than the exemptions contained in IRC Sec. 6334. This is true whether a taxpayer elects Federal exemptions under BC Sec. 522(d) or state exemptions under BC Sec. 522(b)(2). The exemptions provided by the IRC pre-empt all other exemptions with respect to exemption from Federal tax levies [IRC Sec. 6334(c)]. In general, assets exempt from Federal tax levies include: (1) necessary wearing apparel and school books; (2) fuel, provisions, furniture and personal effects (NTE \$1,650); (3) tools of trade or profession (NTC \$1,100); (4) unemployment benefits; (5) workers' compensation benefits; (6) amount necessary to comply with all child support orders; (7) some annuities and pensions; (8) weekly wages up to an amount equal to the sum of the standard tax deduction plus personal exemptions divided by 52

[e.g., 1990 weekly wage exemption for a married person filing jointly with 3 dependents would be \$262.50 (\$5,450 standard deduction plus \$8,200 in personal exemptions divided by 52)]; (9) certain service-connected disability payments and (10) certain public assistance payments.

Although there is no "homestead" exemption as such, TAMRA (1988) added a provision [IRC Sec. 6334(a)(13), (e)] exempting principal residences from tax levies unless a district director or assistant district director approves the levy in writing; or there is a finding that collection of the tax is in jeopardy. Neither the IRC nor the legislative history give any indication of what standards are to be applied by district directors or assistant district directors in granting approval. One might expect, however, that levies on principal residences, in nonjeopardy situations, will become more of an exception than a rule. This author believes that levies on principal residences will be limited to unusual situations such as tax avoidance or other system abusive activities by the taxpayer, no reasonable expectation that collection can be made from other assets or future income, or time for collection is approaching expiration and levy is preferable to a suit (which requires approval of the Tax Division, Justice Department). Also, Service personnel, as in any bureaucracy, naturally avoid taking actions which require higher level approval. In a typical district, a Revenue Officer will, before levying on a principal residence, have to proceed through the chain of command (i.e., group manager, section chief, branch chief and division chief) to obtain written authorization from the district director or assistant district director.

Failure to appreciate and inform clients of the differences between exemptions in bankruptcy proceedings and tax levies can result in hardship and heartache. What can happen is that a taxpayer claims certain property as exempt in bankruptcy; however, upon entry of the discharge (dissolving the stay), the Service may proceed to levy on assets which were exempted in the bankruptcy but are not exempt under IRC Sec. 6334. This can come as quite a shock to a client who may believe everything was resolved and the "exempt" assets were protected from the claims of creditors, including the Service. This is particularly true of the "big-ticket" exemptions under the Alaska exemption law which may be applicable, such as: homestead exemption (up to \$54,000); liquor licenses (exempt without value limitation); limited entry fisheries permits (also exempt without value limitation); and pension plans to the extent that the ERISA pre-emption problem is resolved in favor of the debtor.

Los Anchorage invites you to the Northern Justice Conference, where we'll show you a friendly, great time.



# The Notting Bough: More odd tales

By JERRY BUCHMEYER

I have come to believe that sentencing is really an art--and that there are only a few judges who were masters at it. The late *Hon. Sarah T. Hughes* was one, in my opinion; but I suspect those of you who saw her at her best on sentencing day will agree.

There was one example of Sentencing Art in the last column (the "humanity and compassion" of a Texas judge in 1843) and, I have a couple of others to share with you. But first...

## The Plea for Mercy

JUDGE: Do you have anything to say before I pass sentence?<sup>1</sup>  
 DEFENDANT: May God strike me dead, my lord, if I did it.  
 (The judge waits for A Considerable Time, then looks sternly at the defendant and breaks the silence.)

JUDGE: As Providence has not seen fit to interpose in your case, it now becomes my duty to pronounce upon you the lighter sentence of the law.  
 As reported by *Blackie Sherrod*, the Dallas sports writer:

JUDGE: I sentence you to 15 years in prison and fine you in the amount of \$10,000.  
 DEFENDANT: Judge, I just can't imagine no way I can raise \$10,000. And as far as the 15 years goes, *that's simply out of the question...*

## The Sentence

Imaginative sentencing? Try Circuit Court Judge *Laurence L. Korda* of Broward County, Florida--who, according to the Associated Press (circa 1987 or thereabouts), sentenced the defendant in a murder case *To Watch A Movie!*

Actually, the 77-year old defendant (*Philip Tiger*) and his wife had a suicide pact. He admitted to stabbing his wife to death and then trying to kill himself. And, the judge actually sentenced him to 30 days in jail, two years under house arrest, and 500 hours of community service. However, according to the AP story:

The defendant was also sentenced to watch a movie classic: *"It's A Wonderful Life"*--the holiday tearjerker starring Jimmy Stewart in one of his most pop-

ular roles, which was being shown on a local station the weekend of his sentencing.

In the movie, an angel prevents the character played by Mr. Stewart from committing suicide and shows him how difficult life would be without him.

Judge Korda said after the hearing he hopes the movie will show Mr. Tiger that life should be valued.

Mr. Tiger expressed remorse during Friday's hearing. "I had no right to do it," he said. "It's against the law to do anything like that."<sup>2</sup>

## The Defendant's Reaction

In the very first criminal case for a judge in Alberta, Canada, the defendant plead guilty to armed robbery. The sentencing went something like this:

JUDGE: I sentence you to four years in the penitentiary.  
 (Pause--during which the new judge realizes that he hadn't asked the defendant to speak before sentencing.)

JUDGE: I'm sorry. I'm new at this sort of thing. I should have asked you if there is anything you wish to say to me before sentencing. I'll ask you that now.

DEFENDANT: Yeah! There is. You're a stupid ass.<sup>11/3/4</sup>  
 According to the report in *Court Jesters*: "The judge could have greatly increased the sentence because of the contempt of court, but he figured this was no way to start his judicial career, so he let it ride. Still, he was reluctant to allow this foul-mouthed fellow to have the last word and as he got up to leave, the thought persisted that he should say something." So...

JUDGE: (Turning to look back at the defendant.) *That, sir, was just a lucky guess.*  
 Let's Be Particularly Careful Out There

According to *Court Jesters*, a Canadian Justice of the Peace was faced with a case where the defendant admitted that he took a rowboat without the owner's permission:

The JP had to decide what to charge the culprit with, so he started thumbing the index to his trusty Criminal Code. He looked under "boat" and it said

"see ship." He turned to "ship" and it said "see piracy." Then he looked under "piracy" and it referred him to a section that said that stealing a ship amounted to "piracy." It also referred him to a section that said that the punishment for piracy--the only punishment--was death.

Undaunted, the JP promptly prepared charges of piracy. Then, after the defendant plead "guilty," the JP imposed sentence.

The sentence of this court is that you be hanged by the neck until you are dead, and may the Lord have mercy on your soul.

Gallows shall be constructed immediately for the execution of this sentence, and it is ordered that the Official Hangman be sent as soon as possible.

An appeal, of course, followed on technical grounds: capital offenses could only be tried before a judge and a jury. The gallows were never constructed. The hangman never showed up. And neither did the defendant--who, having received enough justice, escaped and "fled as far and as fast as he could."

## The Notting Bough

Speaking (as we were) of the Art of Sentencing, this classic is by an unknown federal judge in the New Mexico territory in 1881 who rendered this sentence in *United States v. Gonzales*.

Jose Manuel Miguel Xavier Gonzales, in a few short weeks it will be Spring. The snows of Winter will flee away, the ice will vanish, and the air will become soft and balmy. In short, Jose Manuel Miguel Xavier Gonzales, the annual miracle of the years will awaken and come to pass, but you won't be there.

The rivulet will run its soaring course to the sea, the timid desert flowers will put forth their tender shoots, the glorious valleys of this imperial domain will blossom as they rose. Still, you won't be here to see.

From every treetop some wild woods songster will carol his mating song, butterflies will sport in the sunshine, the busy bee will hum happy as it pursues its accustom'd vocation, the gentle breeze will tease the tassels of the wild

grasses, and all nature, Jose Manuel Miguel Xavier Gonzales, will be glad, but you. You won't be here to enjoy it because I command the sheriff or some other officers of the country to lead you out to some remote spot, swing you by the neck from a notting bough of some sturdy oak, and let you hang until you are dead.

And then, Jose Manuel Miguel Xavier Gonzales, I further command that such officer or officers retire quickly from your dangling corpse, that vultures may descend from the heavens upon your filthy body until nothing shall remain but bare, bleached bones of a cold-blooded, blood-thirsty, throat-cutting, sheep-herding, murdering son-of-a-bitch.

## And Still More Footnotes

<sup>1</sup>This phrase--"I pass sentence"--reminds me of a new Fundamental Truth: There is nothing meaner and more cranky than a constipated federal judge.

<sup>2</sup>Actually, this should have taken place in California--where this story (hopefully apocryphal) comes from: A judge sentencing an elderly prostitute had doubts after hearing her convincing plea for leniency. So, he called a recess, and then asked one of his fellow judges: "Just what would you give a 59-year-old prostitute?" The reply:

*"Oh, no more than ten dollars."*  
<sup>3</sup>All things considered, I would prefer a milder reaction from the defendants I sentence--much like that of James Shin of St. Louis who was sentenced to 20 years in prison for stealing over \$100,000 in rare books from libraries in several cities, and who said: "I really kind of expected it."

<sup>4</sup>Note to Editor: I'm confused. I would have used "hole" for this line. However, last year, the Texas Lawyer used ass ? Is this now the preferred form? Anyway, just do what you think best.

<sup>5</sup>Contributed by James Hambleton, Director of the State Law Library in Austin, who found this version of the sentence--which has been reprinted in various publications over the years--in *"Three Southwestern Legal Documents,"* collected by John Jenkins and published in a limited edition by Pemberton Press in Austin in 1973.

## SOLID FOUNDATIONS

Mary Hughes

## Election to be audited

The Trustees of the Alaska Bar Foundation have authorized an audit of the Notices of Election which were to have been submitted by each member of the Alaska Bar Association by September 1, 1989. The purpose of the audit is to confirm compliance, register IOLTA participants, provide a data base for discussions with Alaska financial institutions, and report to the Alaska Supreme Court. The audit will begin June 1, 1990.

Although election forms were distributed by the bar association last summer, if any member of the bar does not have an election form, Mary Hughes should be contacted and one will be sent immediately for completion. Additionally, ques-

tions with respect to trust accounts and specifically IOLTA accounts can be forwarded to Mary.

Further, if any member of the bar has had a particular problem with his/her trust or IOLTA account, such information is helpful in providing feedback to Alaska financial institutions. Any comments may also be directed to Mary.

A product of the audit will be a listing of IOLTA participants and financial institutions which will be published in September. The Alaska programs benefited by IOLTA grants would be unable to provide their services without such participation.



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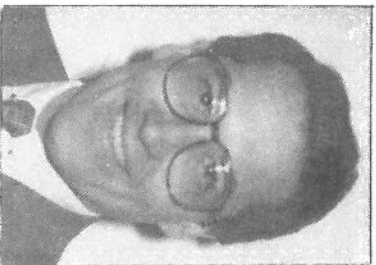
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## ESTATE PLANNING CORNER

Steven T. O'Hara

In estate planning, it is difficult (and sometimes impossible) to advise on the tax consequences of a contemplated transaction. This is due to constantly changing law and, in particular, its often retroactive effect.

For example, consider the recent tinkering with the marital deduction. This deduction provides, in general, that a transfer to a spouse is not subject to gift or estate tax (I.R.C. Sec. 2056 & 2523).

In 1988, Congress changed the law to provide, in general, that the deduction is available only with respect to transfer to spouses who are U.S. citizens (I.R.C. Sec. 2056(d) & 2523(i)). Although this legislation was passed by Congress in October and signed by the

President on November 10, 1988, its effective date for gift tax purposes was *July* 14, 1988.

Suppose a married couple consulted you in late July 1988 to prepare their Wills. In the process of that work, you advised that they should, from a tax-minimization standpoint, equalize their assets.

So the wife then transferred, say, half an interest in the family business to her husband's separate name. Assume that the half interest had a value of \$300,000 and that the wife had, in a previous year, used her unified credit (I.R.C. Sec. 2505).

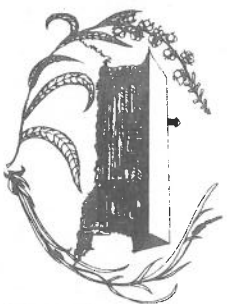
Later in finalizing their Wills, you learn that although the husband has lived in the United States for over 25 years, he has never become a U.S. citizen.

Congress then passes the 1988 tax act and, because the \$300,000 gift occurred after July 14, 1988, the wife owes at least \$75,000 in gift tax (I.R.C. Sec. 2502).

To the extent possible, it is thus important to keep abreast of legislative proposals and to advise clients of the possible retroactive effect of legislation.

A proposal that is currently pending in Congress is to limit the annual exclusion from gift taxation to an aggregate of \$30,000 per donor per year. Currently the annual exclusion is \$10,000 per donor per donee per year (I.R.C. Sec. 2503(b)).

For example, consider a client with five children, and assume he has, in a previous year, used his unified credit (I.R.C. Sec. 2505). As



## HISTORICAL BAR

# How they labored

By A.C. SWALLING

EDITED BY RUSS ARNETT

**NOTE:** In 1934 Al Swalling worked as a bridge carpenter in Cordova for the Copper River and Northwestern Railroad. The "Northwestern" indicated the intention that it would reach Fairbanks someday, but it never made it. The "Commissioner" in territorial times among his varied duties was trial judge for misdemeanors. Al Swalling is presently Chairman of the Board of Swalling Construction Company.

In the year of 1934, in the village of Cordova, there arrived a person known as a labor organizer.

If you recall the history of those times, it was the era of the birth of the CIO, the emerging of John L. Lewis' U.M.W. to a position of power, and Dave Beck of the Teamsters flexing his biceps as he staked his claim in the fertile field of new members and prestige. Congress at the bidding of Madam Perkins was almost daily granting and extending new privileges to organized labor.

The man's name was Carlos Monroni, very neat and polished in appearance, well-dressed and apparently well-funded.

The union that he represented was the Mill, Mine, and Smelter Workers and they had done their homework in choosing Cordova as a place to plant their flag. Cordova at that particular time, like many other cities, was in the depths of the Depression. It was the second time the railroad had shut down for the winter. Last season's fish prices were ten cents per fish for reds, five cents per fish for humpies, twenty-five cents per fish for kings, and the silvers were not

fished at all. Clams were six cents a pound and had a limited pack. Women cannery workers received twenty-five to thirty-five cents per hour. A cannery tender skipper earned about one hundred dollars per month and a deck hand about seventy-five.

There was some membership in various unions in town. Most restaurants had the union house emblem in their window. The conductors and brakemen belonged to the Brotherhood of Trainmen and the engineers and firemen belonged to the Locomotive Brotherhood. To the best of my knowledge, up to this period no negotiations had ever taken place in the labor field so no labor contract existed or was contemplated. From all appearances, the area was certainly ripe for a union organizer.

Carlos was a pro. He was very careful not to hold any mass meetings. He soon determined who might be the most fruitful persons to cultivate and where to plant the seeds of discontent. His efforts seemed to be effective. There commenced a small groundswell of unrest among various employees in several categories.

The principle employers, the railroad, Kennecott Mines, the Steamship Company, and fish, clam and crab companies all were quite aware of Carlos' efforts and were deeply concerned. The old order was changing and nobody knew all the rules. Nothing like this had ever happened before.

In this period there existed a group of people who traveled the entire territory from Ketchikan to Nome about three times a year. The group was the Traveling Salesmen. They were also known as the Knights of the Road. These men were not the type that were portrayed in the Police Gazette entitled "The Salesman and the

Farmer's Daughter". These people were solid citizens and represented national firms in the territory.

To give you some idea of their wares and names, the list would include Hills Brothers, Folgers, and Chase and Sanborn coffee, Schilling and Crescent spices, Armour, Frye and Carsten's meat packers and processors, United Fruit, DelMonte, U&L Sugar, Fischer Flour Mills, Blake Towne and Moffet Paper Company, Schwabacker hardware, Remington and Winchester Arms and ammunition, Dupont, Hercules and Atlas Powder, Stetson and Hardeman hats, Hart Schaffner and Marks, Kuppenheimer Clothes, Arrow shirts, Pendleton and Utah Woolen Mills, Florisheim and Bostonian shoes, Exide Batteries and AC sparkplugs, Johnson and Evinrude outboards, Bethlehem and U.S. Steel, and all of the cereal companies, just to name a few!

I mentioned these varied companies and products because nearly every one of the salesmen would visit their product supplier at least once a year and they were all telling the stories of their last visit's back East and the labor unrest. One in particular I recall was the AC sparkplug man being in Detroit when the Dearborn riots against Ford Motor Company occurred.

These tales, of course, gave local law enforcement people concern and many quiet sessions were held with various employers. After all, their appointments or reappointments hinged on the influential people endorsing the conduct of their offices.

So it came to pass that Mr. Monroni was put under very close surveillance.

Mr. Monroni was no fool and seemingly a reasonably well educated person. However, if he read

the Bible he forgot about Delilah. If he read history he forgot about Cleopatra. And he hadn't been in the North country long enough to have read about the lady known as Lu.

He met a lady and became involved. Her name was Bonita, a waitress in the Model Cafe. She owned a modest small house or cabin in the Old Town where she resided.

Some years before, Bonita had been in a close call with the authorities involving sea otter pelts and wanted very much to stay on good terms with the law. So she was approached and told that when she was in Monroni's company she may be followed and if she noticed this fact she was to keep it to herself and not blow the whistle.

Her shift was from 12 noon to 8 p.m. On this particular night Carlos met her coming off shift. They stopped by the Alaskan Hotel bar and purchased a bottle, then proceeded to her cabin in Old Town. The surveillance man clocked them in at 8:45 p.m. and took his watch into a grove of spruce trees close by.

An hour or so went by and his boss joined him, bringing a thermos of coffee and a sandwich and news that snow was predicted. His boss visited a bit, then departed leaving instructions that in the event Carlos left to let him go and not to follow. However, if Carlos remained, the deputy was to stay put. Pray for snow and he would see him in the morning. About 10:30 p.m. or so, a real heavy snow began to fall. It accumulated about four inches in an hour or so and then ceased.

Carlos remained the night. Just

CONTINUED ON PAGE 15



# ABA debates all the top U.S. issues...

By DONNA C. WILLARD

In a debate which featured incredible oratory and legal argument, not to mention some of the most abstruse parliamentary maneuvering ever witnessed, the American Bar Association's House of Delegates approved the following resolution by a vote of 238-106, after several motions to defer action were narrowly defeated:

BE IT RESOLVED, that the American Bar Association recognizes the fundamental rights of privacy and equality guaranteed by the United States Constitution, and opposes legislation or other governmental action that interferes with the confidential relationship between a pregnant woman and her physician, or with the decision to terminate the pregnancy at any time before the fetus is capable of independent life, as determined by her physician, or thereafter when termination of the pregnancy is necessary to protect the woman's life or health.

While it was made clear that the House was not taking a position for or against abortion, the resolution nevertheless brought to the surface deep philosophical differences among the delegates with vigorous argument being made that the ABA should not be taking a position on the issue.

Joe Nolan, Treasurer of the ABA, publicly resigned as a consequence of the vote and other ABA leaders have threatened to do so. Moreover, it is expected that the issue will be revisited at the ABA Annual Meeting in Chicago, August 2 through 9, 1990. (See separate story: "Controversy Will Continue.")

## Marijuana Policy

Prior ABA policy, adopted in 1972, which urged the decriminalization of marijuana, was rescinded. In its place, a resolution was adopted which would have the effect of putting the American Bar Association on record as deploring the use of marijuana and other harmful drugs.

The President and Congress were urged to substantially increase funding to establish education, prevention and treatment programs, to reduce and discourage the use of harmful drugs.

By DONNA C. WILLARD

Pro-choice foes have placed the American Bar Association on notice that the resolution passed by the House of Delegates at its midwinter meeting in February will come under attack at the Annual Meeting scheduled for August 2nd through 9th in Chicago.

The resolution, as proposed by Anthony R. Palermo, Secretary of the Association, albeit in his individual capacity, provides that the ABA, without adopting a policy supportive of a particular viewpoint, recognizes and respects the right of individual members to hold and express divergent views on the subject of pregnancy termination.

The measure goes on to state that the question is an extremely divisive one and that the ABA, for the good of the Association, will

In related action, the House approved a resolution that the ABA endorse and support the Drug Recognition Program initiated by the National Highway Safety Administration and called on Congress to reconsider the civil money penalties provided in the Anti-Drug Abuse Amendments Act of 1988.

The commentary to the latter resolution pointed out that the civil penalties section of the Act contains numerous ambiguities, inconsistencies and internal contradictions that will make it virtually impossible to implement the legislation in a manner consistent with the Administrative Procedures Act.

## Fair Employment Laws

Another resolution prompting heated debate was that supporting enactment of the Civil Rights Act of 1990 which would clarify the rights of minorities and women in the work place, rights which were severely limited by a recent series of decisions of the United States Supreme Court. The House approved the recommendation, and the Board of Governors placed the topic on the association's list of legislative priorities for 1990.

## Justice Department Ethics

The House also took action in response to a memorandum from Attorney General Richard G. Thornburgh which advised Justice Department attorneys that they were exempt from Rule 4.2 of the Model Rules of Professional Conduct. The provision mandates that a lawyer shall not communicate with a person represented by counsel on the subject of the representation, unless the lawyer has the consent of counsel or is authorized by law to do so.

The unilateral pronouncement had the admitted intention of providing to the government a prosecutorial and investigative advantage or convenience which is squarely in conflict with the Rule.

The House went on record stating that ABA policy precluded the grant of blanket exemptions and that any attempt by the Department of Justice to exempt its lawyers from the professional conduct rules would be opposed.

## Mass Torts and Federal Diversity

A recommendation was presented which would have expressed ABA support for the creation of new federal jurisdiction to permit federal district courts to adjudicate certain multiparty, multiclaim controversies involving personal injury, death and property damage in cases arising from a single event or occurrence where 25 or more persons have been injured in the amount of \$50,000 or more. It was defeated.

The ABA Commission on Mass Torts submitted a revised comprehensive proposal addressing mass torts issues to meet concerns expressed at the 1989 Annual Meeting. For example, the number of cases that would trigger the mass torts provisions was increased from 100 to 250. However, strong opposition lead the Commission to withdraw the Report. It is expected to be once again addressed at the Annual Meeting in August.

presented which would have expressed ABA support for the creation of new federal jurisdiction to permit federal district courts to adjudicate certain multiparty, multiclaim controversies involving personal injury, death and property damage in cases arising from a single event or occurrence where 25 or more persons have been injured in the amount of \$50,000 or more. It was defeated.

## State and Local Bars

The House passed a resolution urging state and local bars to develop resolutions for presentation to the House of Delegates regarding issues of concern to their members and them. Furthermore, the American Bar Association resolved to actively work with state and local bar associations in developing a joint agenda of items of mutual concern to the membership.

## Ninth Circuit

After debate which revealed a schism between the states of the Ninth Circuit, the House approved a resolution of the Appellate Judges Conference which had the effect of rescinding prior ABA policy adopted in October of 1973.

Now, rather than supporting a realignment of the Ninth Circuit Court of Appeals, which would create a new circuit comprised to Alaska, Hawaii, Oregon, Washington, Idaho, Montana, Guam and North Mariana Islands, the ABA has no position on the issue. A bill to accomplish this result is currently pending in Congress.

## Whistleblowers

The House approved resolutions supporting federal legislation to protect private sector "whistleblowers" who make good faith disclosures about certain unsafe or unlawful actions, including worker or public health and safety threats, or violations of federal statutes and regulations, and to

protect workers who refuse to participate in a federal time.

The resolutions call for a single statute of limitations of one year, endorse uniform procedures, prompt and thorough agency investigations of complaints, and a right to prompt hearings on appeals.

An amendment approved by the House resolved that legislation should also protect employers from frivolous or retaliatory complaints and also protect employers who terminate or otherwise discipline employees for their own wrongdoing.

## Federal Civil Jury

At the urging of the Tort and Insurance Practice Section, the House approved a resolution supporting legislative efforts to increase the size of a federal civil jury from 6 to 12. The recommendation further provides that a verdict be rendered by 10 of the 12 jurors.

The report accompanying the resolution argued that the recommendation was needed because a 6 member jury greatly reduces the jury's ability to represent its community and makes verdicts more extreme and less predictable.

## Lengthy Meeting

Some of the other measures adopted, from an agenda, which contained over 70 items and occupied two very full days, included:

- Increased ABA dues effective with the 1990-91 fiscal year;
  - The Uniform Foreign-Money Claims Act;
  - Amendments to Article 6 (Bulk sales) and Article 4a (Fund Transfers) of the Uniform Commercial Code;
  - Uniform Rights of the Terminally Ill Act;
  - Uniform Pretrial Detention Act;
  - Expansion of the Medicaid program to provide coverage for children and pregnant women;
  - Model State Generation-Skipping Tax Statute;
  - Assistance to attorneys in non-democratic countries; and
  - Standards for Judicial Compensation.
- Anyone desiring further information should contact either Keith Brown or Donna Willard, Alaska's delegates.

# ...And will have another round in 1990

not adopt a policy supportive of a particular point of view. Finally, it expressly rescinds the statement of policy adopted at the midwinter meeting.

Palermo, in his cover memorandum claims that some 400 hundred members have already resigned as a result of adoption of the pro-choice resolution and that many more are threatening to do so if the policy is not changed.

The issue will be raised before the Assembly of the ABA, which is made up of all registrants at the ABA Annual Meeting. The Assembly generally meets on Monday afternoon, preceding the convening of the House of Delegates. The Assembly may take positions on properly presented resolutions. If approved, the resolutions are then presented to the House of Delegates for review and action. If the House and Assembly take opposing

sides, a second meeting of the Assembly is called for yet another vote. The Assembly also has the power, by a two-thirds vote, to submit issues to the entire ABA membership for a referendum vote.

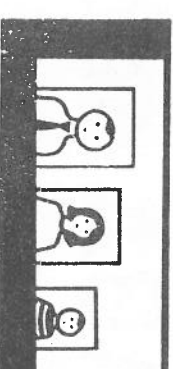
Various sections and divisions of the ABA are already gearing up for the controversy. Both the Section of Individual Rights and Responsibilities and the Section of Litigation have circulated memoranda, urging members to take certain steps to protect the resolution. These include register for the annual meeting and stay through Monday, August 6th so that your vote can be counted; join the ABA, if you have not already done so and indicate when you do so that you support the pro-choice policy; write letters to the ABA Journal and President L. Stanley Chauvin; indicate on your ABA dues form that you support the pro-choice policy;

and make a tax-deductible contribution to the "Women's Legal Defense Fund" to assist in opposing the Assembly resolution.

As stated by Michael E. Tigar, Chairman of the Section of Litigation: "I have focused on the position that the government should not involve itself between a pregnant woman and her physician prior to the viability of the fetus; nor should it restrict later abortions which are necessary for the woman's life or health. The ABA resolution is not 'pro-abortion'; nor does it support 'abortion on demand.' It merely acknowledges that there are privacy rights grounded in the Constitution and recognized in *Roe v. Wade* which limit government intervention in certain reproductive decisions."



# BAR PEOPLE



**Shelly Ditus** has married and her new name is **Shelly Biegel**....**Michele Brown**, formerly of the A.G.'s office, is now regional administrator at the Department of Environmental Conservation....**Carlene Faithful** has become associated with the firm of **Fortier & Mikko**....**Shannon Turner** has recently married and is now **Shannon Hanley**....**Jeff Lowenfels** is vice president of **Pacific Corpora-**

**tion**....**Thane Mathis**, formerly with **Garretson & Cnrich**, is now with **Lynch, Crosby & Sisson**. **Peter Maassen** is now with **Burr, Pease, & Kurtz**....**Steve Marks** has relocated from Juneau to **Portland**, ....**Matthew Reynolds**, formerly with **Hughes, Thorsness**, is now an assistant D.A. in **Kodiak**....**Ella Anagich-Stebing** is now with the law offices of **Ronald E. Cum-**

**mings**....**Toby Steinberger**, formerly of **Jerman, Dunnagan & Owens**, is now an assistant A.G....**Gary Vancil and Linda Walton** have relocated from **Fairbanks** to **Kailua-Kona, Hawaii**. **Tonya Woelber** has left the Office of Special Prosecutions and Appeals to work for the **Mystrom** for Mayor campaign in **Anchorage**....**Russell & Tesche** has moved to **510 L St., Suite 300, Anchorage 99501**....**Bob Owens** is now with

**Copeland, Landye, Benett & Wolf**....**Phyllis A. Shepherd** is now practicing at the law firm of **William G. Azar**....**Les Romo** has relocated to **Austin, Tex.**....**John Holmes** has moved from **Barrow** to the **P.D.'s** office in **Ketchikan**....**Kristen Bomegen**, formerly with the A.G.'s office in **Juneau**, is now a hearing officer with the **Commercial Fisheries Entry Commission**.

## Review kids travel here;



**Alaska Law Review** staffers tempt fate on the ash-tainted **Seward Highway** on their recent visit.

Nine editors of the *Alaska Law Review* recently travelled from **Durham, N.C.** to **Juneau, Fairbanks**, and **Anchorage**, to meet with members of the **Alaska Bar**.

The purpose of the annual trip was to establish personal contacts between members of the *Review*, which is based at **Duke University**, and members of the bar. Meeting with more than 40 members who represented a broad spectrum of the **Alaska bar** enabled the student editors to steer the *Review* in the direction which will best serve its readers. The members of the *Review* extend their thanks to everyone who met with them (and hosted them) on this year's trip.

As always, we welcome any comments or suggestions you might have for the *Review*. Please contact **Bonnie Freeman**, Senior Editor, or **Vince Taylor**, Editor in Chief, c/o the *Alaska Law Review*, **Duke University School of Law, Durham, N.C., 27706; (919)684-5745**.

We also encourage bar members to contribute articles for publication in the *Review*. Feel free to contact **Doug Nazarian**, Articles Editor, if you have an interest in writing for the publication. Submissions from **Alaska's** practitioners are always welcome.

As a final note, **Vince Taylor** will also be attending the **Northern Justice Conference** in **Anchorage June 7-9**.

## Court of Appeals Names New Bankruptcy Judge in Alaska

The **United States Court of Appeals** for the **Ninth Circuit** announces the appointment of three new bankruptcy judges in the circuit.

**Alaska: Donald MacDonald, IV**  
**Donald MacDonald** was appointed to a newly-created position on the **United States Bankruptcy Court** for the **District of Alaska**. Born in **Fairbanks**, Judge **MacDonald** was raised and worked in **Missoula, Montana**. He graduated from the **University of Montana** and from its law school in **1974**. He served as a law clerk to the **Honorable Russell E. Smith**, **United States District Judge** in **Montana**.

He also served as a **Deputy Missoula County Attorney** for one year before entering private practice in his own firm in **Missoula**.

While in private practice, he served as an **Adjunct Professor of Bankruptcy Law** at the **University of Montana School of Law** from **1980-1983**, and from **1989-1990**. Judge **MacDonald** is a member of the **Montana Bar**, the **American Bankruptcy Institute**, the **National Association of Bankruptcy Trustees**, the **American Bar Association**, and other professional organizations. Judge **MacDonald** will maintain his chambers in **Anchorage** and will assume his position on **July 7, 1990**.

## Rule 40 Change

The **Board of Governors** proposes the following amendments to the **Alaska Bar Rules**:

**PART III. RULES OF ATTORNEY FEE DISPUTE RESOLUTION, Rule 40(q).** Decision of the Arbitrator or Arbitration Panel.

The original of the decision shall be signed by the arbitrator or members of the arbitration panel concurring in the decision. A separate dissent may be filed. The award may provide for payment over time. The arbitrator of the panel chair will forward the decision, together with the file and the record, to **Bar Counsel**, who will then serve a copy of the signed decision on each party to the arbitration.

## Probate Reminder

Please note that the probate rules were revised effective **Jan. 15, 1990**. The clerk of the probate court will reject pleadings that do not conform to the new rules. The probate forms published in the court rules have not yet been revised to reflect the rule changes. Please consult the new rules before using the probate forms. The new rules appear in the **January update** to the **Alaska Rules of Court 1989-90** and are available in the law library or from the court rules attorney.

--Christine E. Johnson  
Court Rules Attorney

# TVBA once again shows no respect

## Jury facts

**Dan Cooper** gave a lengthy report on his recent jury service in a criminal case...He said he had found jury service "very boring" because of the lengthy delays. He indicated that he was surprised at how well the jurors did at listening to the arguments, keeping an open mind, and discussing the evidence brought out during the course of the trial. **John Franich** asked if **Dan** could suggest a way to get jurors "to listen to the arguments, keep and open mind, and ignore the evidence." **Dan** also mentioned difficulties he and others had because of the delays during the trial in scheduling bathroom use. He said that when the clerk came out and told jurors it would be 5 or 10 minutes, the jurors sat and drank

coffee and 20 minutes after they returned to the courtroom (which was generally 40 minutes after they had been told it would be 5 minutes), they all had to go to the bathroom as they hadn't gone because they thought they'd be going right back into court.

**Dan** said that if you have two or more jurors who are over 40, chances are that one of them has a bladder infection.  
--April 20, 1990

## Gail would like this tale.

### So would Jimmy Carter

Some comments were made regarding the priest in **Bethel**, **Father McCaffery**, who (allegedly) shot an alleged robber who had (allegedly) struck him with a pipe

wrench. **Father McCaffery** apparently pulled a .357 and shot the alleged perpetrator while (allegedly) shouting "go henceforth and sin no more." Apparently, the only mistake **Father McCaffery** has made so far in regard to his statements has been to indicate that he had the .357 magnum for hunting rabbits. Someone noted that rabbits are much larger in the **Bethel** area than in **Fairbanks**.  
--April 20, 1990

## MDL Madson gets no respect

**Ken Covell** gave the **Hazelwood Report**, again stating that he knew no more than he read in the paper. He stated that, thus far, it appeared that all of the State's witnesses have been good witnesses

for the defense. He mentioned that all he knew, other than what he read, was that the **Captain** had drunk all 100 bottles of **Moosey non-alcoholic beer** which were found empty on the ship between 3 a.m. and 11 a.m. the morning of the grounding.  
--Feb. 24, 1990

**Ken Covell** reported, in response to inquiry about the status of the **Hazelwood** trial, that **Madson's** room on the 17th floor of the **Captain Cook** is very nice and that you "can see all over **Anchorage** from there." He said that the room's one weakness was that it had no refrigerator.  
--Mar. 9, 1990



# Dan Branch tells us the hamsters' lesson

## By DAN BRANCH

I was shuffling along the Ketichikan waterfront the other day trying to come up with a humane alternative to domestic relations litigation. Cabin fever makes me do it. I was about to give up the search when a friend pulled me aside and told me a story. Family practitioners might find it helpful. Here's how it goes.

A few months ago my friend bought two hamsters for his daughters, Karen and Stacey. They named the hamsters Fred and Ethel. The hamsters shared a cage in the kids' bedroom.

Fred and Ethel spent their days doing hamster things like sleeping and exercising in the squirrel cage. The hamsters showed no sexual interest in each other so the kids assumed they were just good friends. One night, while the sisters slept, Fred and Ethel crossed the line of friendship. Soon Ethel found herself in the family way.

Last week, while the kids watched, Ethel dropped a brood of young. At first this blessed event repulsed the girls. "It's gross," they shouted. Gradually repulsion gave way to fascination and then to greed. Before long the girls were locked into a heated debate over ownership of the offspring.

Karen took the feminist line. She argued that since her hamster carried the babies in her stomach, pushed them out into the world and now must feed them, the babies belonged to her. The children would be nurtured in a sexist free environment and then placed in loving homes.

Stacey, suddenly an advocate for male rights, disputed Karen's logic. "Without Fred," she argued, "there would be no babies." They belonged to Fred who belonged to her so she owned the newborns. She would sell them as snake food to the pet store.

That night the sisters fought a pitched verbal battle back and

forth, falling way behind in their homework in the process. In desperation they sought counsel from their wise father. He told them that he lacked jurisdiction so they petitioned their mom. She set the matter on for a hearing after the children completed their homework. The kids recognized that this was a delay tactic.

"Mom," Stacey said, "we have decided to turn all the hamsters over to you and dad until you decide who the babies belong to." They knew that the parents would not want to care for the hamsters. The tactic worked and soon mom and dad sat down to hear oral arguments. Karen and Stacey reiterated their positions. Karen quoted her mother's stand on the ERA while Fred's owner fell back on some Archie Bunker dialogue from "All in the Family".

After a fair hearing the kids were sent up to do their homework and mom and dad worked out a reasoned decision. Just before bed-

## New law databases released

West Publishing Co. has updated state statutes databases for 24 states. In addition, new statutes related databases such as updated insurance statute databases, up-

dated general statutes indices, new historical statutes databases, new historical legislative service databases, and updated court rules and court orders databases are also available on Westlaw. The following are summaries of databases of interest to the Alaska Bar.

**Alaska Statutes - Annotated and Unannotated 1989 Update (AK-ST-ANN and AK-ST).** The Alaska statutes databases, including the insurance statutes database, *AKIN-ST*, have been updated through the Cumulative Supplement. The statutes are now current through laws passed in the 1989 Regular Session of the Alaska Legislature. Notes of decisions are current through Sup. Ct. Op. No. 3450 published in 775 P.2d 1062, and Ct. App. Op. No. 937, published in 775 P.2d 519. A 1988 ver-

sion of the annotated Alaska statutes is now available in a new database, *AK-STANN88*.

**Hawaii Statutes - Annotated and Unannotated 1989 Update (HI-ST-ANN and HI-ST).** Annotated and unannotated statutes, as well as the insurance statutes database, *HIIN-ST*, have been updated through the 1989 Supplement to Hawaii Revised Statutes Annotated and are current through laws passed at the 1989 Regular Session of the Hawaii Legislature. Notes of the decisions are current through 772 P.2d 1058.

**NEW HISTORICAL STATUTES DATABASES**

**Alaska Statutes - Annotated 1988 (AK-STANN88).** Alaska Statutes are current through the Second Regular Session of the Alaska Legislature, as contained in the 1988 Cumulative Supplement, and the 1989 Advance Code Service, Pamphlet No. 1. Notes of decisions are current through Sup. Ct. Op. No. 3388, published in 763

P.2d 219 and Ct. App. Op. No. 861, published in 732 P.2d 505.

**Hawaii Statutes - Annotated 1988 (HI-STANN88).** Annotated statutes are current through the 1988 Regular and Special Session of the Hawaii Legislature. Notes of decisions are current through 748 P.2d 306.

**UPDATED COURT RULES AND COURT ORDERS DATABASES**

**California Court Rules and Orders (CA-RULES and CA-ORDERS).** *CA-RULES* include state and federal rules set forth in West's California Rules of Court - State and Federal - 1989 Revised Edition, with amendments received through August 1, 1989. *CA-RULES* also includes The Trial Court Delay Reduction Act of 1986 set forth in CA-ST-ANN. *CA-ORDERS* includes court orders which update rules contained in *CA-RULES*.

## Tanana Valley Bar Association minutes

CONTINUED FROM PAGE 14

In light of the Hazelwood verdict, someone suggested the following formula for sentencing the Captain: A Little Negligence X A Lot of Oil = 90 days.

--Mar. 23, 1990

Dick Madson was present, having returned from his recent triumph in the Hazelwood matter in the "metropolis by the mudflat, Los Anchorage." Dick was regaling the other table with tales of his adventures in Judge Johnstone's courtroom in the big city. Dick noted that he had been chastised by the Judge for rolling his eyes and making faces. Dick indicated that when he was summoned to the bench to have his hand slapped, that he had brought (assistant D.A.) Brett Cole's head-shaking to the Judge's attention and that Mr. Cole was reprimanded, as well.

--March 30, 1990

**Glasnost gets no respect, either**

The Foreign Policy Committee was requested to report on recent events in the Soviet Union. Chairman R. Dryden Burke reported that Gorbachev was still a dangerous person and that we should avoid letting down our guard. It was moved, seconded and approved that the TVBA not reduce its defense budget. Mr. Burke further reported that he did not believe that the Soviet Union was coming apart and pointed out that there was a strong royalist movement in the "evil empire" which is a dangerous force to be dealt with. The subject of a royalist movement led to speculation about whether or not there were any survivors of the Russian royal family. Someone suggested that the lone survivor was Anastasia's daughter who had been masquerading for years as Mary Nordale. John Franich was appointed to check out this rumor, and R. Dryden was appointed to prepare a press release reporting

the TVBA's position on events in the Soviet Union.

--March 9, 1990

R. Dryden Burke, on behalf of the Foreign Policy Committee, moved that the TVBA purchase guns for Lithuania and arrange for their shipment. The motion died for lack of a second. The assn. did, however, vote to recognize Lithuania as a sovereign nation. R. Dryden indicated that he would draft an appropriate communique and arrange that it be sent to "occupant" of the presidential office in the Lithuanian capital. Someone inquired if addressing the communication to "occupant" might not result in its being delivered to Moscow.

--March 23, 1990

Art Robson gave a report on his proposed "May Day at the Palace Saloon Party." He had tentatively scheduled the party for Tuesday, May 1...He also noted he had ar-

time they called the girls down to hear their wisdom. When they are old enough all the babies will be placed in a good home pursuant to the decree. Fred and Ethel will get separate cages purchased with the money earned from the sale of the offspring.

Neither child was happy with the decision. Each has filed a written appeal with their favorite grandparent. Application for a stay was denied.

The parable of the hamsters does point out the major risk of family law practice. As every divorce lawyer knows, if you forgo settlement in favor of a contest in court, you might prevail. On the other hand you could easily find yourself without the babies and a lonely hamster for a client.

## Great Alaska history

CONTINUED FROM PAGE 12

at daylight the Marshal arrived and with a camera he and the deputy very carefully took several pictures of both the front and the back entrances of the cabin, showing untracked and undisturbed snow in both cases.

They then knocked on the door. Carlos opened it, standing in his pajamas and robe. They informed him he was under arrest on the charge of cohabitation. They released him on his own recognition, and informed him to be in the Commissioner's office at 10:00 that morning.

At the hearing, the Commissioner heard the testimony of the Marshal and his deputy, establishing the fact that Carlos had spent the night there. They had developed the pictures showing the trackles snow, further proving their case.

The Commissioner, after listening, rendered to Carlos three options: one, marry the lady, which he knew wasn't possible as a check on Carlos revealed he was already married; two, stand trial on the charge of cohabitation; or three, leave town on the next available. Carlos left town.

ranged for Bob Groseclose to bring his Soviet flag and that the theme of the party would be Law Day/May Day/Glasnost...Bob Noreen indicated that he thought we should invite Miss U.S.S.R., who was currently at the Miss Universe pageant somewhere in California and has also recently been engaged in advertising yogurt...Someone suggested we might ask Gov. Steve Cooper (an ed.'s note: the TVBA knows how to spell Fairbanks' Favorite Son good) to contact Miss U.S.S.R. so as to improve the possibilities that she might attend our party. Bob Noreen indicated that he suspected Gov. Cooper has close and intimate relations with the Russians, especially the beauty Queen contestants.

--April 13, 1990





## A New Fitness Center Just for Carr-Gottstein Building Tenants

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