MUSH! To the Annual Convention

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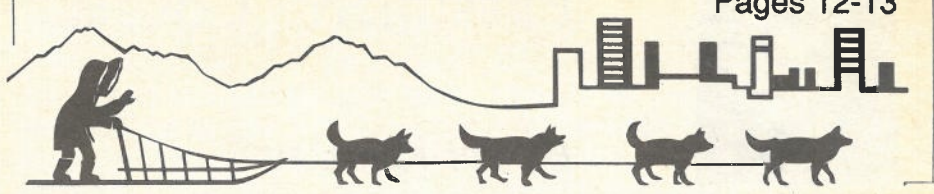

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The Alaska BAR RAG

MAY-JUNE, 1992 — *Dignitas, semper dignitas* — VOLUME 16, NO. 3

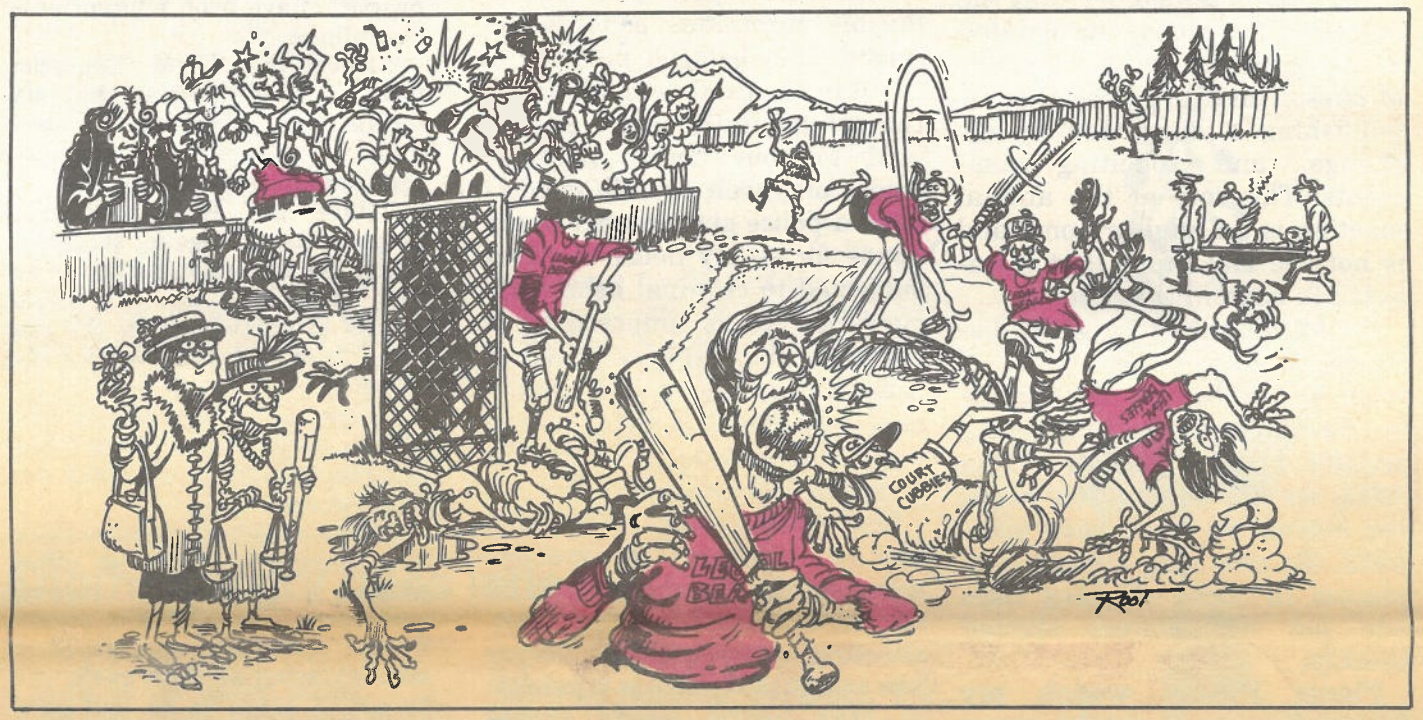
GAMES OF SUMMER: If we play it, will they fight?

BY BARB KISSNER

There should be no doubt that softball is on the minds and in the hearts of Alaskans.

Last year, the state's highest court ruled that softball injuries fell under the workers' compensation statute. Then, the state legislature enacted its own "softball legislation" in record time (and coincidentally, immediately prior to the legislative softball tournament). In Anchorage as well, summertime means that lawyers all over town will be playing softball...when they are not fishing, of course.

Every year, approximately 30 teams compete in the Anchorage Legal Softball League. The teams are as unique as the individuals who play on them. Teams may represent big or small firms, public or private practice, in-house counsel, or even court system employees. The only common element is a desire to play softball and have fun.



The attraction is obvious. After a winter of working long hours, attorneys, spouses, and staff are encouraged to swing bats at each other with no umpires in sight! Not only is softball a team-building exercise, but it allows some unusual matchups. PDs can defeat some of the civil litigators. Small firms can challenge the big guys. Secretaries have the chance to strike out attorneys. Associates can laugh at the partners. Laugh at? No, laugh with, yeah, laugh with the partners.

Having fun is the key. There is no skill requirement. While some law schools may have had beer leagues or pick-up games between faculty and students,

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Will the WSBA rival the TVBA in new food fight?

Jerry Wade, who often reluctantly serves as president of the West Side Bar Association of Anchorage, has announced that the association is now meeting at noon Monday through Friday in the banquet room at the Keyboard Lounge.

What, you ask, is the West side Bar Association?

It is the last vestige of a collegial tradition which once made it fun to practice law in Anchorage. In the early 60's virtually all of the lawyers then practicing in Anchorage met for lunch daily at the Hofbrau, a cafeteria-style diner on 4th Avenue. The Hofbrau was destroyed in the 1964 quake, but a group of lawyers have persisted in what must be the oldest established, permanently floating lunch club in Anchorage.

There are no dues. It is possible to get a free lunch. You can go "Dutch" or brown bag it. Lawyers, judges and anyone else who seriously wants to be associated with them are eligible for membership. It is widely believed that former Chief Justice Nesbett insisted that his administrative assistant John Peterson attend and report any irreverent comments about the court. It is probably the best place in town to pick up a mass

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Celebrate a Silver day

Alaska Legal Services Corporation is planning its silver anniversary. The celebration will be marked by a dinner on Wednesday, June 3, 1992.

Since 1967, Alaska Legal Services Corporation (ALSC) has been providing free legal representation to Alaska's poor. Recently under severe budget reductions, ALSC has gone from a high of 14 offices and 96 staff statewide to its current level of 7 offices and under 40 staff. Nevertheless, in spite of this, and with the aid of more than 1,000 Pro Bono Program volunteers, ALSC has resolutely continued to provide assistance to more than 5,000 low-income people each year.

Although ALSC is widely known for notable cases such as *Wassillie v. Simon* and *Tobeluk v. Lind* (the "Molly Hootch" case), ALSC and pro bono volunteers routinely provide assistance to thousands of people

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President's Column

By Pat Kennedy

BITS AND PIECES

For my last column, I wish to put forward the following two bits and a piece. The bits are merely informational. The piece is from John Murtagh, Anchorage Board Member, written in response to some communication received by him in his official capacity. The caption is his own. (Some editing has been done for space reasons.)

Bit #1: Concerning the question of the raising of dues, it is important to remember that the Board is statutorily designated as the group to set the amount of dues. The board does that by publishing a suggested by-law change, and soliciting comments. The vote at the annual meeting is an advisory one, and is not the last input that members can have in the process.

Bit #2: Thanks to a great discipline staff and three years of work by the board, the backlog in discipline cases is dropping rapidly. From a high of 217 in 1984, we are now at 104 cases, the lowest we have been since 1982. We now turn around complaints in three working days and get the process started quickly.

Piece: Please watch my house for me, I might come back and use it — but I don't want to pay $.40 a day.

One of the many benefits of being on the Alaska Board of Governors has been to review and study the different persuasive techniques of attorneys. This is sometimes seen in the area of discipline or proposed Rule changes. It has been seen in its most vehement form with regard to the recent changes in inactive dues and the proposed change in active dues.

The basic question I am usually asked about these things is "what do I get for my money"? Having been a Bar Association "outsider" for the first thirteen (13) years I practiced in Alaska, I can understand the initial sentiment in that regard. Based upon my three (3) years of the service on the Board of Governors, I must disagree with the attacks on maintaining a self-supporting self-governing association.

Concededly, perhaps the irreducible minimum benefits received from being a member of the Bar Association is similar to that of having a police station next to your house. A home owner may well say, "What do I need a police station next to my house for — my house is never subjected to criminal behavior?" However, it is impossible to measure the benefits received from having the police station next door, and it is naive to suggest that having no criminal problems is unrelated to that.

The Alaska Bar Association has a category of inactive membership. By choosing to be an inactive member rather than choosing to resign, the lawyer has recognized there is a potenti al that he/she would choose again to practice law (make money) as an attorney in Alaska.

Traditionally, the Bar Association has decided to reduce dues for those individuals choosing an inactive status. Additionally, those who can demonstrate a hardship can have even those fees waived.

It seems that when an inactive member chooses to again become an active member he/she would wish to have all of the benefits of an ongoing active member. That is they would wish to:

1.Have had the admissions process continuing so that their colleagues or opponents, employers or employees meet the appropriate standards for practicing law in Alaska.

2.Have had the disciplinary process ongoing such that their colleagues or opponents have been cleared of unsupported disciplinary charges or that those attorneys whom they will face in court, in litigation, or in their practice, have been appropriately disciplined.

3.Have the Legal Education function continuing so that materials are available to help him/her to rapidly become current in applicable Alaska law.

4.Have the Lawyer Referral program as an ongoing successful entity, so that upon return to active practice, should he/she choose to participate in the program, it is well administered and ongoing.

5.Have a fee arbitration program established to assist in recovering rightfully obtained fees from reluctant clients.

6.Have an administrative structure ongoing — with an office, phones, insurance, copying equipment — available to answer his/her questions and assist in administering all these goals.

It would seem to be self-serving to suggest that while all these activities should be ongoing when the member is inactive and should be ready the moment he/she decides to become an active member, that the member should not at least be partially financially responsible fos keeping these activities in place for their return.

The inactive member is not necessarily receiving fewer benefits **from the Bar Association** than an active member. A hypothetical active member is not receiving any benefits from the admissions program, may choose not to participate in the Lawyer Referral program, may not have had the necessity for fee arbitration, may as yet not participated in Continuing Legal Education, and as yet may not have filed a claims of ethical misconduct against an attorney or had to defend those charges. That is the exact same position that an inactive member is in.

In short, the question really seems to boil down to "what's in it for me?" The answer that I have come up with is what's in it for all of us is the opportunity remain self-governing. Having been on the Board for three (3) years during a complete turnover in public members and a partial turnover in lawyer members, I am absolutely convinced that this is the very best way for us to regulate practice.

There is a cost to remaining self-regulating. While that cost, ranging from $.40 a day to $1.25 a day depending on inactive or active status, is something that is real and should not be considered to be de-minimis, all of our interactions with governmental bodies, appointed bureaucracies and the machinations of the court system should convince us that we are better off being self-

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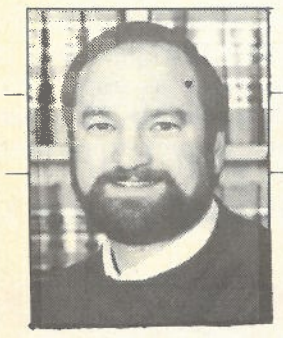

Editor's Column

By Ralph Beistline

This has been a strange spring! Usually by now I have tilled the garden, burned the lawn, and received my first several mosquito bites. My garden spot, though, is covered with snow, as is my lawn, and the mosquito larvae are still encased in ice cubes.

Everyone here is unsettled — like one of the episodes of Northern Exposure. Our collective biological clocks are screaming for sunshine and warmth, but are finding only snow showers and cold.

I'm not sure if the situation is any better in Anchorage. I know I spent a night there in March, parked my rental car on the windward side of the hotel, and found it buried in snow the next morning. Really, only the roof was visible. I actually had to leave the rental car at the hotel and take a cab to the airport. That's one of the reasons I'll be at the Bar Convention in Anchorage in June; to see what ever happened to that rental car. I'm also looking forward to the sunshine.

See you there.

The Alaska BAR RAG

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Letters

Gender neutrality

The Alaska Bar Association of the modern era can, I submit, be justly proud of its record for gender consciousness and neutrality. For proof of this proposition one need only look back to the Association presidency of Donna Willard, Esq., our nation's first woman integrated bar president, or forward to the present in which our current president sports a gender-neutral professional first name.

Against this neutral backdrop of professional gender consciousness, however, appear two colorably troubling documents: pastel; one pink, one blue. I refer, of course, to the "Third District" and "At Large" ballots for the Board of Governor's election. Certainly Bar Staff had no control over the fact the candidates for the former were Marc, Brant and Mike, or that for the latter the candidates were Maryann and Diane. Still, had Staff been functioning at their usual high level of gender awareness and neutrality, I have no doubt that ballot stock colors might have been chosen other than baby girl pink for the women and baby boy blue for the men.

I am sure you agree with me that in these matters eternal vigilance is the price of progress, and that you would wish to take the lead in rooting out the wrongthink, if any, which led to this situation. For that reason I bring this matter to you, personally, for such action as you deem appropriate.

J. Justin Ripley

President Pat replies to Ripley

Thank you for your sensitivity and vigilance in noticing the ballot stock colors for the Board of Governors election.

However, these matters were not left to mere chance. The color issue was extensively discussed by staff. When dealing with busy judges and lawyers, we believe that color coding to avoid confusion and guide in selection is usually very helpful to those making quick, but important decisions.

Additionally, in the event that the country will retrogress into the 50's, the Bar Association would like to think that it is on the cutting edge of such a movement. Indeed the price of progress is anticipating the next wave.

Again, thank you for your concern, and rest assured that we have the best interests of our members at heart.

Elizabeth Page Kennedy
President

Boo on dues

Like a good soldier, I marched along and paid the inactive dues increase assuming there must have been some equitable across the board hike. Now I read Robert Mullaney's article in the March/April *Bar Rag* and learn inactive members got _____, and you didn't even kiss us.

Exactly what was the justification in our singular 100 percent increase?

Richard Avery

Let state pay CLE

The other day I opened my mail to discover, to my disgust, that the jackasses at the bar association had made the expense of mailing, apparently to all members, the same "blue ribbon committee report" which they had already printed in the *Bar Rag*; and mailed to all bar association members. The subject of this report was, of course, the question of what to do about the association's inability to keep its expenditures within its means.

We are told that the association is facing financial ruin "even if the Board should reverse its *present conservative policies...*". Presumably the committee has the same type of conservative policies as do the members of the U. S. House; as does the national Congress; and as does the state legislature; none of whom appear to be able to grasp the concept of spending no more than they take in.

The heart of the problem seems to be the discipline function. Your committee seems to expect attorneys to foot the bill for what should be a public cost. I don't mind paying for a problem to which I have contributed. That is not the case. Neither I nor 99% of the attorneys involved in discipline cases have been responsible for this expense. The report states that "the Board of Governors has adopted a policy calling for a strong disciplinary effort as being in the best interests of the public and the association." If the present level of funding discipline is "in the best interests of the public", then the public should pay for it. If the Board of Governors feels that we need this dues increase, the major reason for which is to pay for discipline staff, it should explain to us why, it is "in the best interests of ... the association." The Board of Governors had better tell the Legislature, "If you want us to employ three full time discipline counsel, then you pay for it." The Bar Association should pay no more than 1% of the expense of discipline. If the balance isn't funded, it shouldn't be expended.

Another ill-advised expense appears to be Continuing Legal Education. The report states that "Attorneys ...would [probably not] willingly bear the burden of a CLE program operated on a break-even basis. ...in order to assure that all members of the Bar have a reasonable opportunity to participate in CLE, ...CLE should continue to be subsidized." Another way of saying this is that attorneys will not willingly pay the full cost of CLE so we must force them to. THIS IS MANDATORY CLE, EXCEPT THAT WE DON'T HAVE TO ATTEND THE COURSES, JUST PAY FOR THEM. It is even worse than that. Under the present CLE budget, attorneys who are unable to pay for even a below-cost CLE program are forced to subsidize the attorneys who can afford to attend. The report implies that this unfair regime should continue.

Your report justifies it's recommendation by stating that while NEA dues are $634 per year, and ASEA dues are $336, neither of these groups "enjoy incomes as high as those generally associated with the practice of law." If the Alaska Bar Association could assure me a steady income approaching that which members of those groups enjoy, I would gladly pay dues at the proposed level. It does not, it cannot, and I will not.

Terrence H. Thorgaard

The weasel returns

Thank you for mentioning the "Cheese Weasel" comic book in the Alaska *Bar Rag*. Many of your readers bought a copy and have written to tell us how much they enjoyed it.

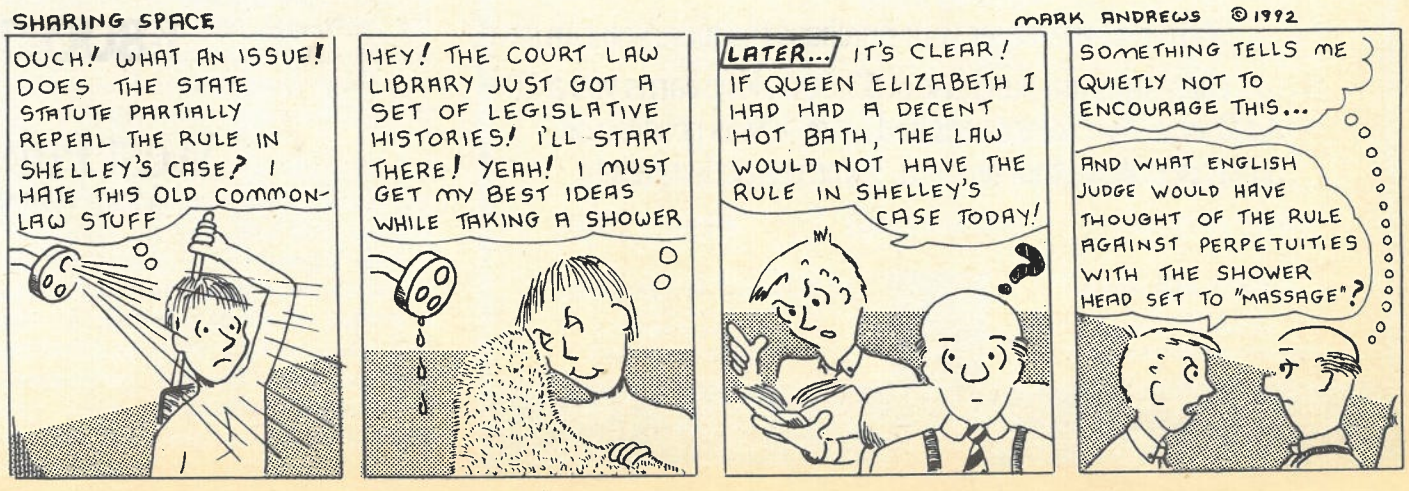
Well, he's back....Cheese Weasel is coming back for issue #2 and issue #3 in July. I will send you copies when they are published. This advance notice is to let you make any deadline for your July issue.

Even Vice President Dan Quayle likes Cheese Weasel (see accompanying letter).

In the upcoming issues, Cheese Weasel is up to his usual tricks. In court, he uses the Tyson Defense, blaming the victim for the crime. He becomes Legal Weasel, a superhero who catches criminals, turns them in for the reward, then represents them in court; he beats them up to subdue them, then files a brutality lawsuit against law enforcement. He uses the large tax dollars which support prisoners to justify claiming John Wayne Gacy as a tax deduction.

If you mention Cheese Weasel, please mention that each book (including issue #1) is available for $2.95 from Side Show Comics, PO Box 464, Herscher, IL 60941. I ask this because when issue #1 was published, I received hundreds of calls from across the country from people wanting to know how much the book cost and where they could get it. The article mentioned my name and town, so the lawyers (or their secretaries) had to call Information to get my phone number, then call me to ask. It would be a great service to your readers if you would mention the cost and my address.

Jim Ridings



Estate Planning Corner

By Steven T. O'Hara

The federal generation-skipping tax

Most attorneys are generally familiar with the federal estate tax. Less familiar, but still recognized by many, is the federal gift tax. Least familiar is the federal generation-skipping transfer tax.

The generation-skipping tax system was originally enacted in 1976. That original system was repealed retroactively in 1986 and replaced by a new generation-skipping tax that is with us today.

The concept is that whenever a gift, bequest, devise or inheritance occurs and a generation is skipped, a 55 per cent generation-skipping tax could be owed *in addition* to any estate or gift tax (I.R.C. Sec. 2601 & 2641).

There are three types of transfers that are subject to generation-skipping tax. The first is the so-called direct skip. The most common direct skip is a transfer by a grandparent to or for the benefit of a grandchild.

For example, consider a single parent in need of financial assistance. Her parents are unable to assist, but her grandmother helps with support by paying the grandchild's rent. Under such circumstances, the rent payments would be considered direct skips and could be subject to generation-skipping tax (I.R.C. Sec. 2511(a) & 2612(c)).

The second type of transfer that is subject to generation-skipping tax is the so-called taxable distribution. This is a transfer made by a trust to a beneficiary who is two or more generations younger than the grantor of the trust.

For example, suppose the grandmother in the above example creates and funds an irrevocable trust that includes, among others, the grandchild as a beneficiary. Suppose the trust then begins paying the grandchild's rent. Under such circumstances, the rent payments would be considered taxable distributions and could be subject to generation-skipping tax (I.R.C. Sec. 2612(b)).

The third type of transfer that is subject to generation-skipping tax is the so-called taxable termination. Using the same example as above, suppose the grandmother's trust terminates, with all trust funds being distributed to the grandchild. Under such circumstances, the final distribution from the trust would be considered a taxable termination and could be subject to generation-skipping tax (I.R.C. Sec. 2612(a)).

The assignment of generations for generation-skipping tax purposes is not limited to the family context. Just as gift and estate taxes may apply to gratuitous transfers from one friend to another, regardless of any family relation, so the generation-skipping tax may apply.

For example, suppose a client creates an irrevocable trust for her three-year-old child, who is the sole beneficiary. The client does not want to bother with so-called Crummey powers or Section 2503(c) Trusts, which were discussed in the September-October 1989 issue of this column, so her child's trust does not qualify for the $10,000 annual gift tax exclusion (I.R.C. Sec. 2503 & 2642(c)).

Suppose that a good friend, not related to the child by blood, adoption or marriage, wants to make a gift to the child and does so by contributing a modest sum to the child's trust. Suppose that friend happens to be 41 years old.

Under such circumstances, the friend's good deed would be caught by the generation-skipping tax system. She would be considered to have made a direct skip because she is more than 37.5 years older than the child.

In other words, where the parties are not related by blood, adoption or marriage, they are assigned to a generation on the basis of their age. An individual born not more than 12.5 years after the transferor's birth is considered a member of the transferor's generation (I.R.C. Sec. 2651(d)(1)). An individual born more than 12.5 years but not more than 37.5 years after the transferor's birth is considered a generation younger than the transferor (I.R.C. Sec. 2651(d)(2)). An individual born more than 37.5 years after the transferor's birth is considered two or more generations younger than the transferor (I.R.C. Sec. 2651(d)(3)).

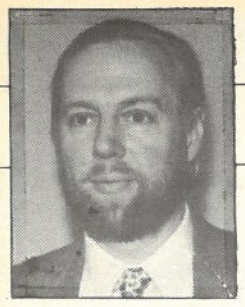
Thus, because the child is three years old and the friend is 41 years old, the child is considered two generations younger than the friend.

The background to the generation-skipping tax is that Congress perceived that the very rich can afford to create trusts that run for several generations and avoid estate tax in the "skipped" generations. In reality the only thing skipped may be the estate tax because the members of the "skipped" generations can enjoy the benefit or use of the trust assets. For example, the family mansion may be placed in trust for the maximum period allowed by the rule against perpetuities, with each generation having use of the mansion.

Other taxpayers, on the other hand, cannot afford to create such long-term trusts and are subject to estate tax at each generation.

The generation-skipping tax is an attempt to close what Congress considered to be a loophole available, as a practical matter, to only the very rich (R. Adams, *Estate Planning Manual For Trust Officers* 5-1 (3rd ed. 1989)). Accordingly, though it is important to know the workings of the generation-skipping tax, there are important exceptions that make this tax, in general, a tax of only the very rich.

For example, each individual has been given a so-called GST exemption, which can be used to shelter as much as $1 million of generation-skipping transfers (I.R.C. Sec. 2631). Thus, in general, no generation-skipping tax would actually be owed under the above examples unless the grandmother or friend had previously exhausted her $1 million GST exemption.



GETTING TOGETHER

By Drew Peterson

What is it that we want in our relationships with other people? Whether it is with our family members, the clerk at the supermarket, or business relationships - or whether we are representing our government in international negotiations with another country — what are the elements that are common to all such interpersonal negotiations? And how can we best achieve our own goals in such relationships? These are the questions posed by the book *Getting Together - Building Relationships As We Negotiate,* written by Roger Fisher and Scott Brown of the Harvard Negotiation Project (Penguin Books, 1988).

According to Fisher and Brown, the appropriate goal for all such interactions is a relationship that can deal well with differences. All too often we confuse good relations with approval, or with shared values. In fact neither are essential to a good working relationship. We can have a good working relationship with our enemies as well as our friends. What *is* essential to all negotiations is a substantive outcome that we can live with, plus a sense of inner peace that leaves us with positive feelings about ourselves and the other party. In addition, at least if the relationship is going to continue beyond the initial interaction, we need to be able to deal successfully with differences when they arise again in the future.

Separating the People from the Problem. The first step for building a good relationship is to separate relationship issues from substantive issues. In every situation we have two kinds of concerns — the way we handle the situation and the results. If we fail to separate the two concerns we are likely to subordinate the relationship interests to the substantive interests. This can lead to success in the current issue but damage the long term relationship. Equally dangerous is the tendency to trade off relationship and substantive issues. Thus we could make the relationship contingent on the agreement, or alternatively try to buy a better relationship. A much preferable alternative is to separate the issues completely from one another. In so doing we can fail to reach agreement on the short term substantive issues and yet maintain a good working relationship for the future.

Be Unconditionally Constructive. Fisher and Brown propose a comprehensive overall strategy to keep in mind through the negotiating process. Simply stated, it is to be unconditionally constructive in your dealings with others. Remember that different people see things very differently from one another. Because of these differences, reciprocal good will is not a sound foundation on which to build a working relationship. What seems to you to be showing good will may be perceived very differently by others. A successful strategy for dealing with differences is one that will work regardless of disagreement and independent of concessions. It will be independent of partisan perceptions, reciprocity or permanent differences. It is a strategy that will work with our enemies as well as with our friends, and regardless of whether the other side follows the same guidelines.

Rationality. The book asserts that there are six basic elements for establishing such a working relationship. The first is rationality. We must balance our emotions with reason. Too much emotion can cloud our judgment. On the other hand, too little emotion can also be a problem. Emotional sensitivity is important to effectiveness in problem solving. From family experience we all know that there are some times when hugs are more useful than lectures. The key is to find a proper balance between emotions and reason. We do that first of all by becoming aware of the emotions on both sides of an issue. When we recognize emotions in the acts of ourselves or others, we can take certain steps to diffuse such emotional reactions. Simple examples are to take a break, count to 10, or consult with another. Simply acknowledging the emotions can help to legitimize them and minimize any negative effects. Talking rationally about emotions is often all that it takes to put reason back in charge. Anticipating emotional outbursts in advance and developing strategies to deal with them can also be very helpful.

Understanding. The second basic element for establishing a productive working relationship is to learn how they see things. To walk a mile in their moccasins. Misunderstandings arise for many reasons. The more we know about the other side's perspective and they know about ours, the easier it will be to avoid misunderstandings. Specific suggestions that Fisher and Brown provide for learning how they see things are to: ask "what do they care about?;" look specifically at their interests, perceptions, and values; not be afraid to learn something new; be open and confident; and use tools to break into their world, like strategies to learn their story, role reversals, charts of perceived choices, or a third party neutral intermediary. In sum, we can overcome barriers to understanding by pursuing three unconditionally constructive steps of exploring their thinking, being open to learning, and using tools to break into their world.

Communication. The third basic element of a working relationship is communication. Fisher and Brown's advice is to always consult before deciding — and then listen. Such a strategy does not require you to be friends, nor does it in any way require you to follow the advice that you receive. But with your enemies there is an even greater need to avoid communication problems.

The book asserts that there are three barriers to effective communications: 1.) We assume there is no need to talk; 2.) We communicate in one communication only: we tell people; and 3.) we send mixed messages. The antidotes to such barriers are to: 1.) always consult before deciding, 2.) listen actively, and 3.) plan the communication process to minimize mixed messages. Agreement is not necessary. The power of such a communication process is in the respect that it demonstrates for others, regardless of the eventual results.

Reliability. The fourth element of a good working relationship is to be wholly trustworthy, though not wholly trusting. The goals of reliability are to be highly reliable in our own behavior, while at the same time we make an accurate assessment of the risk of relying on another.

In dealing with our own reliability first, we should analyze whether we treat our promises lightly and whether we are ever ourselves deceptive or dishonest. The four rules of reliability are to be predictable, to be clear, to take promises seriously, and to be honest.

In dealing with the reliability of our adversary we must start by recognizing that we are limited in what we can do about it. Sometimes, however, we can affect their reliability by analyzing whether we place too much emphases on trust, or too little. If we criticize them no matter what we do, we can work on our own part of the problem. We can also help them to be more reliable by not overloading trust, by trusting them when they deserve it, and by being precise in giving both merited praise and blame. We can also reframe the issue of trust as a joint problem. Finally we can recognize that sometimes it is the system itself that discourages reliability and we can concentrate on improving that system.

Persuasion. The fifth element of establishing a working relationship is to persuade rather than coerce. The goal is to negotiate side by side rather than as adversaries. Coercion tends to damage a working relationship. It also damages the quality of any agreement that comes out of the negotiations. Coercive tactics can be reframed, however, to attack the problem rather than the individual. This all comes down to the basics of exploring their interests and underlying goals, as opposed to their bargaining positions, and then looking for options that can provide mutual gain.

Acceptance. The final building block of an effective working relationship with another is simple acceptance of them as people. To deal seriously with those with whom we differ. Rejection creates serious physical and psychological obstacles to problem solving. If instead we can deal with people with the utmost respect, we can build good will, even if we do not get agreement.

Put It All Together So That It Fits. Once the six building blocks of a good working relationship are established, the final job is what Fisher and Brown call "congruence": to put it all together so that it fits. Relationships differ, and we need to take the special qualities of each into account in determining how best to establish a productive relationship. We should always consider what is special about the other side, be it cultural difference, emotions, expectations, pace, expectations of formality, or whatever. Our actions should be congruent with each other, and fitted to the individuals with whom we are dealing.

A good working relationship will work even better when we are able to work it out together, based upon mutual respect and understanding.

Bear your opinions
June 4-6, Anchorage

ABA Mid-Year meeting covers numerous topics

House of Delegates actions
Jan. 29 - Feb. 4, 1992
Part Two

BY DONNA WILLARD

INTERNATIONAL LAW MATTERS

The House *approved* a resolution urging Congress to continue the exemption for capital gains derived by foreign investors on sales of United States corporation stock (other than United States real property holding corporations), so as not to burden foreign direct investment in the United States with a second level tax not imposed on United States individual investors similarly situated. This resolution is offered in anticipation of the reintroduction of proposed legislation before Congress which would impose federal income tax on the sale of stock in United States corporations by foreign investors.

JUDICIARY MATTERS

1. Standards Relating to Trial Courts

The House approved a resolution by the Judicial Administration Division recommending the adoption of the black letter amendments dated November, 1991, to the American Bar Association *Standards Relating to Trial Courts*. These amendments update the 1976 black letter standards, commentary, and bibliography and the 1987 amendments. These revised standards reflect developments during the past 15 years in trial court organization and management. In addition to amending certain standards, these revisions also add eight new standards and delete three standards.

2. Federal Sentencing Guidelines

The House *approved* a resolution endorsing the recommendation of the Federal Courts Study Committee for an immediate, in depth, and independent study of the Federal Sentencing Guidelines System to determine whether the system is fair and effective, and whether it meets Congressional objectives. The Guidelines became effective November 1, 1987. There is now sufficient information available to allow an assessment of the Guidelines. Recognizing that the Guidelines represented a dramatic, comprehensive and major change from prior practices, and that many have expressed concern about the current system, this resolution seeks to provide a mechanism to determine whether they are meeting the stated objections in the enabling legislation.

3. Trial Management Standards

The House *approved* a resolution recommending the adoption of the black letter "Trial Management Standards." These standards complement the widely adopted ABA "Court Delay Reduction Standards" which focus on court management of the pretrial phase. One of the major features of these standards is the concept of a "trial management conference" which is designed to prepare both judge and attorneys to participate in the trial.

4. Multi Court Litigation

The House *approved* a resolution supporting the establishment of methods of cooperation and coordination between federal, state and territorial courts (and among state and territorial courts) for the conduct of litigation filed in a combination of federal, state and territorial courts (or in multiple state or territorial courts) arising out of common facts. The resolution further supports the exploration of methods of consolidation for some or all phases of such litigation, within the context of constitutional limitations.

5. Limitations on Pretrial Discovery in Civil Cases

The House *approved* a resolution recommending that certain limits be imposed on pretrial discovery in civil cases and additional discovery based on market incentives, with the understanding that such recommendations first be incorporated in plans under the Civil Justice Reform Act and other pilot projects with their results being evaluated before specific rule changes are adopted. Specifically, it recommends appropriate limits on pretrial discovery, it urges additional discovery beyond reasonable limits set by the Court not to be permitted, and it recommends a judicial officer be authorized to condition particular discovery upon that party's payment of certain listed expenses.

6. Office of Improvements in the Administration of Justice

The House *approved* a recommendation supporting the reestablishment of the Office for Improvements in the Administration of Justice within the U.S. Department of Justice with broad authority to pursue a range of programs and projects relating to the entire justice system. It further calls for the office to be headed by an Assistant Attorney General under the direction of the Attorney General. Finally, it recommends that the OIAJ be authorized and responsible for developing ways to improve the operation of the civil and criminal justice system and to enhance citizen access to justice. Based on past performance, the recreation of the OIAJ is seen as providing a positive and vital link to improvements in the American justice system.

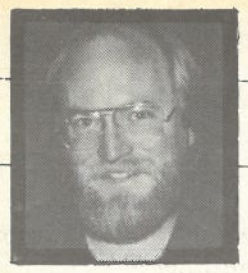
7. Bankruptcy Appellate Panels

The House *approved* a resolution supporting the enactment of federal legislation urging each circuit to create Bankruptcy Appellate Panels. It further places consent by the parties as a precondition of a Panel's jurisdiction over a case. Studies show that in jurisdictions where BAP's are in place, especially the 9th Circuit, they have not only reduced the workload of district court judges but also the number of appeals to the Courts of Appeal.

8. Uniform Transfer of Litigation Act

The House *approved* a resolution urging the approval of the Uniform Transfer of Litigation Act promulgated in 1991 by the National Conference of Commissioners on Uniform State Laws as an appropriate Act for those states desiring to adopt the substantive law suggested therein. Under the UTLA, the appropriate court would have dual authority to transfer litigation to another court and to receive litigation transferred to it from another court. Any such transfer would be discretionary.

Continued on page 19



Torts

By Michael Schneider

Several liability litigation update

Good news! The Alaska state Supreme Court has granted a petition for review in *Owens v. Robbins* and *Robbins*, defendants and third-party plaintiffs, v. Miller, third-party defendants, Case No. 1SI-90-354 Civil. Bad news followed immediately. The case settled soon after it was accepted for review and prior to any briefing. *Dunaway v. Alaskan Village, Inc.*, Alaska Superior Court Case No. 3AN-90-3526 Civil, has also recently settled. This writer is unaware of any other cases currently pending that are likely to result in a state supreme court decision directly addressing the procedural implications of AS 09.17.080.

On February 21, 1992, the Honorable James K. Singleton, Jr., entered an Order in *Nancy Robinson v. U-Haul Co.*, Case No. A90-0467. *U-Haul* had sought joinder, consistent with Judge Zervos' decision in *Owens* of other "possibly liable persons." The federal court, consistent with Judge Fabe's opinion in *Dunaway*, noted a number of problems with this approach:

1. If potentially liable parties are joined as "persons to be joined if feasible" under Federal Rule of Civil Procedure 19(a), who is to be responsible for their attorney's fees if they are exonerated of fault?

2. Must a court evaluate the validity of defendant's assertions before permitting joinder?

3. May a court compel a plaintiff to amend a complaint to name such potentially liable persons, even if plaintiff is of the opinion that such a complaint would not pass muster under the requirement of Federal Rule of Civil Procedure 11 that a pleading be "well grounded in fact and [be] warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law?

4. How is a defendant to effectively raise theories adverse to a party technically aligned with it in the litigation, or, stated otherwise, how may the court allocate responsibility to frame the cause of action and the theories presented to the finder of fact?

See Robinson Order, pages 7 and 8.

The approach taken by Judges Fabe and Singleton was to allow defendants to join potentially responsible parties as third-party defendants. The defendant seeking joinder would thus be responsible for framing the claims against the third-party defendants and paying their attorney's fees if the parties so joined were found not to be liable. *Id.* at 8.

Participants in *Robinson* are Victor Krumm, 1800 - 2nd Street, Suite 770, Sarasota, Florida 34326, phone (813) 955-2201 and Matthew K. Peterson, Esq., Hughes, Thorsness, Gantz, Powell & Brundin, 509 W. 3rd Avenue, Anchorage, Alaska 995012 (907) 263- 8256.

Local lawyers join writers guild group

If you want to be a published writer, come and join us at the monthly meetings of the Anchorage Writers Guild. The Guild meets from 7:00 p.m. to 9:00 p.m. the third Tuesday of each month in the Loussac Library Boardroom, fourth floor. Guest speakers discuss how to get published. Members represent a wide range of interests. There are no fees. The Guild is a relaxed environment for writers to meet and discuss topics of mutual interest. If you need more details, call Mary Jane Sutliff 276-5384.

Past speakers include: Steven Levi, author of 15 books; Steve Pradell, self-published author; Sarah Juday, editor, Alaska Northwest Books; Marlene Blassing, acquisition editor, Alaska Northwest Books; John Sweat, buyer, Alaska News Agency; Mary Pignalberi, coordinator, Alaska Film Office; Ann Chandonnet, author, reporter; Thomas Wilsey, director, National Archives office; Richard Taylor, executive producer, R.T.R. Television; and Jo Michaelski, owner, Once Upon A Time Books.

TANANA VALLEY BAR

Sheep kidnapping update

Judge Holland, who thrives on danger, was a guest. When he arrived, he sat next to Cooper and observed that he believed we will have more luck in finding our sheep than he has had in finding his bench in Ketchikan. Since the federal judiciary doesn't use the bench, it apparently was given away or sold and he wants it back so he can use it. Maybe this explains things.

No further clues have been received regarding the disappearance of our one and only ewe. Noreen reported we need to start a sheep reserve account since we really don't even have enough money in the treasury to give a good party, much less pay any ransom.

Dan Cooper requested a Foreign Relations Committee investigation into reports that France has reinstituted dwarf tossing. He believes a travel advisory to 4th judicial district judges is appropriate.

Respectfully submitted
Aly Closuit
Secretary and Dog Lady
Mar 13, 1992

Bad day in Fairbanks

Ron Smith called the meeting to order.

Our only guest was Judge Singleton, who inquired into how many times you had to attend before you got a dues notice.

The meeting was not up to our usual standards. We learned that you know it's going to be a bad day when:

1. You're in a case with 3 parties and the other two attorneys withdrew in lieu of opening argument.

2. Your best, most lucrative case now involves a statute of limitations/notice issue in front of the Alaska Supreme Court.

3. While you are frantically attempting to clear your calendar for a vacation, your secretary puts though a call from Seth Eames.

4. While you are on vocation, the attorney you hired to office - sit faxes you a ransom note and a picture of a blindfolded sheep with a nasty-gram saying she doesn't do livestock.

5. You apply for a state judgeship in Anchorage and discover there are 26 other applicants and they all supported Governor Hickel in the last election and hired a consultant to advise them on their interview with the Judicial Council.

6. Your accountant informs you that your accounts receivable is 3 times bigger than the mortgage on your house.

7. You attend the Board of Governor's meeting on the McNally admission and the witnesses sicken you to the point you have to leave prior to the vote and then have to stay in Anchorage an extra day to recover.

Justice Jay Rabinowitz enters the Race Judicata.

8. You enter the Race Judicata whose rules require that you chase an ambulance and look like an attorney when you run and the judges award you the prize for the runner who most resembles Don Logan.

9. You get to work on Monday, look at your calendar and discover that the highlight of your week is attending the TVBA luncheon.

10. When you go to the TVBA luncheon on Friday:

a. Bob Groseclose gives a Rules Committee report; and

b. You discover the food committee has changed the meeting to the Road Kill Cafe which has items on its menu like: Late Night Delights, Served Fresh After Dark: Rack of Raccoon, Awesome Possum, and the Chicken that didn't cross the Road. Cheap Sheep — you can't beat it; and K-9 Cuisine—You'll eat like a hog when you taste our dog.

Respectfully submitted,
Aly Closuit, Secretary
and Dog Lady
March 27, 1992

WHITE SHEEP WANTED ALIVE REWARD

Will ewe be found at convention?

First ransom payment

TANANA VALLEY BAR ASSOCIATION
SLUSH FUND
P.O. Box 676
Fairbanks, Alaska 99707

4493

Apr. 1 19 92

PAY TO THE ORDER OF Fat Fonse AKA Lamb Lover $ 1.25

One and 25/00 DOLLARS

First National Bank of Congress Fairbanks Branch

Ransom Installment TVBA

⑈004493⑈ ⑆252000080⑆ 2512 595 6⑈

April 5, 1992

Dear TVBA Blockheads:

How is your sheep? Is it baashful? Do you think it is sheepwrecked on some island? Or maybe it is lounging by the pool at the Shearaton in the Baahamas? Do you think that you should send for Columbaas so he could say "Lamb Ho"?

I know, did Ali Baa Baa steal your sheep? When you found out that someone had pulled the wool over your eyes, did you come unraveled? Do you think your sheep is dancing sheep to sheep tonight?

Maybe a mysterious spacesheep abducted your poor wooly buddy? Have you looked out your window this evening? Did you see any Ewe.F.O.s?

The person that stole your sheep is a "Baaaad person"! What a "Sheep skate" Why didn't they buy their own sheep? Should we hire "LAMBO" to retrieve it? Would that bring you shear ecstasy?

At the next Bar luncheon would you like Sunny and Shear to sing, "The Bleat Goes On"?

I think until your sheep returns home that you should form a "Bleating Hearts Club".

Enough Sheep humor, or can there ever be too much? (I'm baaad, I'm baaad). Get real. Call 276-5121. Ask for Joe. He'll tell you where to send the money. No phoney accounts receivable. I know the score. Remember, cash on the barrelhead, or say good bye to Lamb Chops.

Your friend, the lamb lover.
P.S. Silence of the Lambs is my favorite movie. Heh-heh-heh.

Third ransom note

Book Review

Yes, judges do have a sense of humor

By Michale Carter

COMPILED AND EDITED BY JOHN B. McCLAY, ESQ. AND WENDY L. MATTHEWS, ESQ.

Corpus Juris Humorous, 771 pages, contains over 280 judicial opinions extracted verbatim from the official reporters. Its total price is $28.95 and it can be purchased by sending a check or money order to MAC-MAT, P.0. Box 2025-131, Tustin, California 92680.

The book is organized under a variety of idiosyncratic chapter headings such as "alcohol, drugs, gambling vice, profanity, lewdness, obscenity, indolence, sloth, vagrancy, and other assorted prevalent evils" and "lawyers, judges, legal procedures, processes, interpretation, subtleties, distinctions, loopholes, technicalities, nuances, and intricacies."

The opinions were researched and assembled by two Orange County, California attorneys. Four Alaska cases are included in this compilation of "Humorous, Extraordinary, Outrageous, Colorful, Infamous, Clever, and Witty" reported judicial opinions dating from 1256 A.D. to the present.

The four Alaska cases are indeed uniquely Alaska. They deal with subjects near and dear to the hearts of Alaskans: Bear hides, taxes, sex, and drinking while driving. In *Starry v. Horace Mann Insurance Co.*, Justice Allen T. Compton tackled the hairy question of whether a "bear hide wall mount" is a "fur" within the meaning of an insurance exclusionary clause. The bear hide had been stolen from the insured's home. The insurance company denied coverage, claiming that the hide was not covered under the policy because it was excluded under the clause which denied coverage for furs. Justice Compton's conclusion was based upon his "suspicion" that "one would have nearly as much difficulty using the brown bear hide as a garment in its mounted condition as one would before the bear's demise."

United States v. Turnbull, a 1989 case, presented the Ninth Circuit with the conflict between the defendant's religious freedom and his constitutional right to counsel. Turnbull, who was charged with failure to pay income taxes, refused to waive his right to counsel, but informed Magistrate Judge Roberts that his religious beliefs precluded him from using the services of any member of the bar. Turnbull stated that he believed that the teachings of Jesus required him to avoid associating with lawyers. Judge Roberts, at some length, attempted to explain the advantages of trained counsel. He also informed Turnbull that his request for a lay person to represent him was impossible under the rules of court. Judge Roberts appointed Federal Public Defender Michael Karnavas as his "stand-by" counsel.

At the time of trial, Judge Fitzgerald ordered Karnavas to sit at counsel table and conduct Turnbull's defense. Karnavas did the best he could in the "nightmarish position of representing a client who objected to his very presence on religious grounds and refused to cooperate with him in any way." Turnbull refused to participate in his own defense, stating that Karnavas's presence prevented him from participating in the trial.

The issue in *State of Alaska v. Stagno*, a 1987 Court of Appeals case, was whether airboating on land while intoxicated could result in revocation of a driver's license and seizure of the airboat. The defendant, Stagno, was operating a 15-foot 1985 Air Gator airboat powered by a 455 cubic inch Buick engine near the Chena and Tanana Rivers. He and two other men were heading back to Fairbanks around midnight or 1:00 a.m. They beached their airboat and went to a local bar, where they drank alcoholic beverages. Stagno's friends each bet him $200 that he couldn't take them via airboat from their present location to a nearby topless bar. The destination was about three-quarters of a mile over land. Stagno apparently accepted the bet, because the three men boarded

...But there are no cases from Montana.

Stagno's airboat and headed for the next bar.

The airboating of the men on land was reported to the Alaska State Troopers after they frightened a motorist who caught sight of the airboat in his rear view mirror. Near the airport, the motorist thought the airboat was an airplane about to crash. Stagno's intoximeter reading was .197.

Justice John H. Dimond wrote the opinion for the court in *Conway, Inc. v. Ross*, a 1991 case. The issue addressed was whether an employee had breached an employment contract. Cleopatra Ross was hired to appear as the Shamrock Bar's "featured topless stripper." The owner of the bar fired her at the request of the Ketchikan District Attorney because she had allegedly engaged in an act of prostitution during the contract period. The Supreme Court concluded that the employer did not have good cause to fire Ross and affirmed judgment in her favor.

Justice Rabinowitz dissented. He acknowledge that the Shamrock's attitude toward its "girls was somewhat schizophrenic." On the one hand, "it clearly wanted to hold out to its customers the pleasurable prospects of following in the footsteps of the subject of Cleopatra Ross's prostitution. On the other hand, it was clear that the Shamrock intended its customers reaches to exceed their grasps. As the Superior Court noted, "[a]s best I can interpret it, the dancers are required to tease but not expected to connect."

Justice Rabinowitz shared the majority's sympathy for Cleopatra Ross's position: "The Shamrock's objections to her exploitation of her body for financial gain ring a trifle hollow, in light of its own clear intent to do the same." However, he was convinced that Ms. Ross had violated a condition of the employment contract. He therefore concluded that the discharge was justified.

The book is indexed not only by names of cases and the judge who wrote the decision, but also by the court. This made it quite easy to locate the Alaska decisions. It also made it easy to locate Michigan Court of Appeals Judge John H. Gillis. No collection of judicial humor would be complete without Gillis's classic version of Joyce Kilmer's poem "Trees."

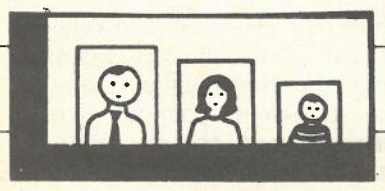
Gillis's inspiration was an 1983 case of *Fisher v. Lowe*, a suit by an aggrieved property owner for damage sustained when his beloved oak tree was rammed by a wayward auto. The suit had been dismissed by a lower court. Gillis, writing for the court stated:

We thought that we would never
see
A suit to compensate a tree.
A suit whose claim in tort is
prest
Upon a mangled tree's behest;

A tree whose battered trunk was
prest
Against a Chevy's crumpled
crest;
A tree that faces each new day
With bark and limb in disarray;

A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court's
decree.

The Court of Appeals of Michigan concluded the poem with a footnote. And, as is the practice of the Alaska Supreme Court, included the pertinent case law and reasoning in the footnote.



People

Shari Donaldson, formerly with the D.A.'s office in Fairbanks, is now with the Tanana Chiefs Conference.....**Pamela Kelley** has joined the firm of Foley & Foley.....**Stephanie Galbraith,** formerly with Lane Powell, et.al., is now the Municipal Ombudsman for Anchorage.....The firm of Bradbury, Bliss & Riordan is now Bliss Riordan.....

Francine Harbour has opened her own law office in Anchorage.....**Douglas Lottridge,** formerly with Pletcher, Weinig, Lottridge & Moser, is now an Assistant A.G. in Anchorage. The firm has changed its name to Pletcher, Weinig, Moser & Merriner.....**Susan Orlansky** has left the P.D.'s office and is now at Delaney, Wiles, Hayes, Reitman & Brubaker.....**Jane Pettigrew** is a law clerk for the U.S. Bankruptcy Court.....**Dick Ray,** former D.A. in Fairbanks, Kodiak, and former Bar Counsel for the Alaska Bar Association, is now the D.A. in Kenai.....**Robert Royce,** formerly with Jermian, Dunnagan & Owens, is now with the Government Affairs Section of the A.G.'s office.

Paul Stockler, formerly with Delaney, Wiles, et.al., has opened his own law office in Anchorage.....**Scott Sidell** has relocated to Bethel.....**Vince Watson** is now with State Farm Insurance Co.....**Wayne Watson** is House Counsel for Allstate Insurance Co.....**Jane Wright,** formerly with the Law Office of Charles Evans, is now with the Anchorage Equal Rights Commission.....**Karla Forsythe** is now the Director of Governmental Affairs for the Homebuilders Association of Metropolitan Portland.

• West Side Bar ponders great questions

Continued from page 1

of apocryphal information about what is happening in the courthouse. Free, and occasionally useful opinions are available on any issue. Judge Fitzgerald and Dave Talbot often provide conflicting insights into the history of the legal community in Anchorage. On rare but choice occasions Roger Cremo or Ed Boyko provide definitive accounts of the reign of J. L. McCarrey Jr. More regularly Joe Young, Jim Delaney, Laurel Peterson, Dave Thorsness, Bill Erwin and Jim Powell break bread and joust about the latest verdict or tort reform proposal. Completely subjective reviews of supreme court decisions are sometimes delivered even before the decisions are officially published.

No subject is off limits, but the conversation tends to center around the law, politics, and sports. Occasionally someone tells a repeatable joke. You can usually find a pigeon who is eager to place a small wager against your favorite team.

The food is tolerable and reasonably priced.

Some members gamble daily for the honor of buying lunch. The winner is deemed to have been elected president for the day. It is a relatively painless way to accumulate an additional accolade to list in Martindale and Hubbell. New members are usually sponsored for one free chance to win the presidency. However, participation is strictly optional. Some regular members have never been president. On the other hand, Ed Boyko was elected the first time that he attended and has never been persuaded that it was an honest election.

The association met at the Keyboard for several months in 1989, moving when the restaurant closed temporarily to get rid of them. The members hope that the return to a meeting place which is close to the courthouse will stimulate attendance by old members and prompt a radical influx of new members. The association recognizes a real need for participation by more women and young lawyers. The currently active members have become so cliquish that it takes a certain toughness to join in and demand a fair share of the conversational pie.

However, that toughness can be rewarding. Just the other day a new member took advantage of a quiet microsecond to ask advice about representing a client who had been sued for forcible entry...Joe Palmier announced from the other end of the table that he had handled a rape case that did not involve forcible entry, but to make a long story short...Jim Merbs said that he liked to have Judge Occhipinti handle his FED cases because Connie had no sympathy for deadbeats. Several members implied that they certainly never handled FEDs for landlords let alone tenants!

Ben Walters said that it was not beneath his dignity to handle FEDs, but he never happened to have tried one. He did have strong opinions about how they should be tried and proceeded to express them. Tom Melaney casually said that he had been involved in several FEDs within the last year. He explained that there was little chance that the current client would have to cope with Judge Occhipinti, not only because he has been retired for ten years, but because FEDs are now being handled in District Court. He explained how they are currently calendared; the four ways in which three judges had responded to motions for continuance; the consequences of exercising a preempt; and the most recent wrinkle with regard to severance of claims for rent from the FED proceeding. He suggested that, while the statute and procedure was inflexible, Judge Fuld occasionally uses extra-judicial persuasion to cut a little slack for a sympathetic defendant. The visitor explained that his client really needed a break because he had just lost his wife and two kids in a plane crash.

There was a tremendous commotion as lawyers who don't handle FEDs rushed over to explain that they hadn't caught the new member's name but were very pleased to know him. They also expressed a sincere desire to meet his client and help out in his defense.

Palmier was absorbed in an explanation of the fourth reason why he never lets his clients take the stand in rape cases.

If you are in the neighborhood of the state courthouse at lunchtime, stop by and join the West Side Bar. We are at the back near the parking lot. If you are embarrassed about the prospect of being seen entering the Keyboard at noon, you can bypass the front door across from the courthouse, pound on the door in the parking lot and utilize our private entrance.

Some hints which might enhance your first visit to the West Side Bar Association:

1. Come early. Membership is limited to about 20 each day.

2. A soft rubber earplug is good insurance against an unfortunate seating.

3. The tables are narrow. Don't sit directly across from Ron West if your shoe shine is important to you.

4. Dumb questions and silly answers are a tradition here, don't be afraid to speak right up.

5. It is inappropriate to discuss a given judge's intelligence or integrity while that judge or another judge who is closely associated with him is present.

6. Judges sometimes attend for reasons other than self defense. In order to promote legitimate communication between bench and bar you should exercise a little discretion when they are in attendance.

7. If you play the presidential game and there are three numbers left when it is your turn, don't pick the middle number if the person on your left is either your boss or your sponsor. In fact, any selection which may unnecessarily limit the next member's choice to a single number is generally considered to be bad form if you are seated next to anyone other than Vince Vitale.

• ALSC celebrates 25th Anniversary

Continued from page 1

each year in more mundane cases such as public entitlement denials, evictions, and domestic relations.

Wm. Reece Smith, Jr. to be guest speaker

Wm. Reece Smith has agreed to be the guest speaker at the 25th anniversary celebration. Mr. Smith, a resident of Tampa, Florida, and a senior member of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., is a past-president of the American Bar Association, a past-president of the International Bar Association, and current president of the American Bar Foundation.

While president of the ABA, Mr. Smith lead a dramatic Bar Leader's march on Washington, which is often credited with saving the Legal Services Corporation. He established the ABA's Private Bar Involvement Project which was crucial to the development of hundreds of pro bono programs around the country. He is currently on the Steering Committee for the ABA Center for Pro Bono.

Mr. Smith received his LL.B from the University of Florida College of Law, and did post-graduate studies as a Rhodes Scholar at Oxford University. He also holds numerous honorary degrees and memberships, and is the recipient of countless awards for his work in improving the delivery of legal services to the poor. In 1989, he received the ABA's Gold Medal for "exceptionally distinguished service to the cause of American Jurisprudence". Mr. Smith is married to Gay Culverhouse who is currently president of the Tampa Bay Buccaneers.

Don't forget —

June 4, 5, & 6

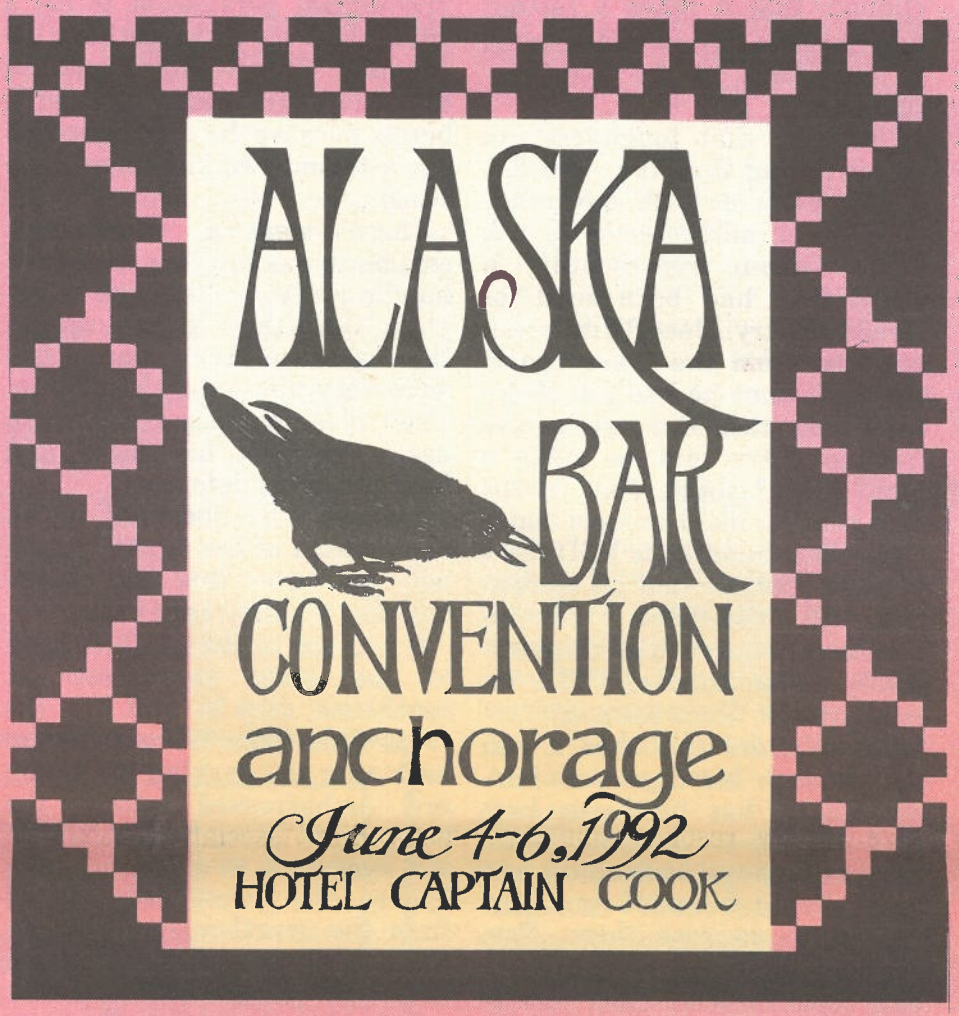
Alaska Bar Association Annual Convention

Hotel Captain Cook - Anchorage

PARTY WITH CARE!

1992 Convention: CLE & more!

In addition to 10 CLE seminars being offered at this convention, there are social events and a hospitality suite hosted by the Anchorage Bar Association. The President's reception on Thursday evening is the welcoming event at the Anchorage Museum. Come relax, nibble on appetizers and quench your thirst. On Friday, June 5, the Annual Awards Banquet will take place in the Ballroom of the Hotel Captain Cook. After the presentation of awards and passing of the gavel, stay on to hear the music of McLeod with our own bench and bar players! And don't forget the Salmon & Halibut Bake at Kincaid Park on Saturday, June 6. The chefs from the Hotel Captain Cook preside over the huge outdoor grills for this seafood feast.



Section Meetings

The following sections will meet on Saturday, June 6 in conjunction with the Annual Bar Convention:

12:00 noon - 1:15 p.m.

Admin Law, Whitby Room

Alaska Native Law, Easter Island Room

Environmental & Natural Resources Law, Quadrant Room

Estate Planning/Probate Law, Voyager Room

Family Law, Adventure Room.

1:30 p.m. - 2:45 p.m.

Criminal Defense Section, Voyager Room

International Law, Quadrant Room

Real Estate Law, Adventure Room

Tort Law, Whitby Room.

3:00 p.m. - 4:15 p.m.

ADR, Adventure Room.

UPDATES will be distributed at the meetings, but will NOT automatically be mailed to each member. Call the Bar office at 272-7469 to request your UPDATE if you cannot attend the Annual Meeting.

Come to lunch!

On Thursday, June 4 at noon, Chief Judge H. Russel Holland, U.S. District Court, and Chief Justice Jay A. Rabinowitz, Alaska Supreme Court, will address the bench and bar on the "State of the Judiciary."

Friday, June 5, State Attorney General Charles E. Cole will address the bench and bar.

Supreme Court Standards Thursday - Friday

Thursday, June 4, 9:00 a.m. - 5:00 p.m. and Friday, June 5, 9:00 a.m. - 12:00 noon. **Time Standards and Case Management.**, The Alaska Supreme Court is committed to the implementation of new time standards for all cases in the Alaska Court System, with the goal of establishing definite time limits for cases from filing to disposition. This program, led by Maureen Solomon, Court Consultant, and Judge Ronald Taylor, Chief Circuit Judge, 2nd Circuit Court, St. Joseph, Michigan, will take several steps toward the adoption of the new system. The identification of categories of cases and the reasonable time limits for each milestone for those categories will be addressed.

Participation by the bar is critical to assuring that any time standards adopted are realistic. This is the bar's opportunity to have an effect on the way that cases are handled by the courts.

Thursday-Friday CLE

Thursday, June 4, 1:30 - 3:00 p.m. **Memory Skills: Making the Complex Retrievable.**

3:15 - 4:45 p.m. **Win-Win: Success in Relationships between Attorneys and Non-Attorneys, Clients, Partners, Staff, Jurors, Family**

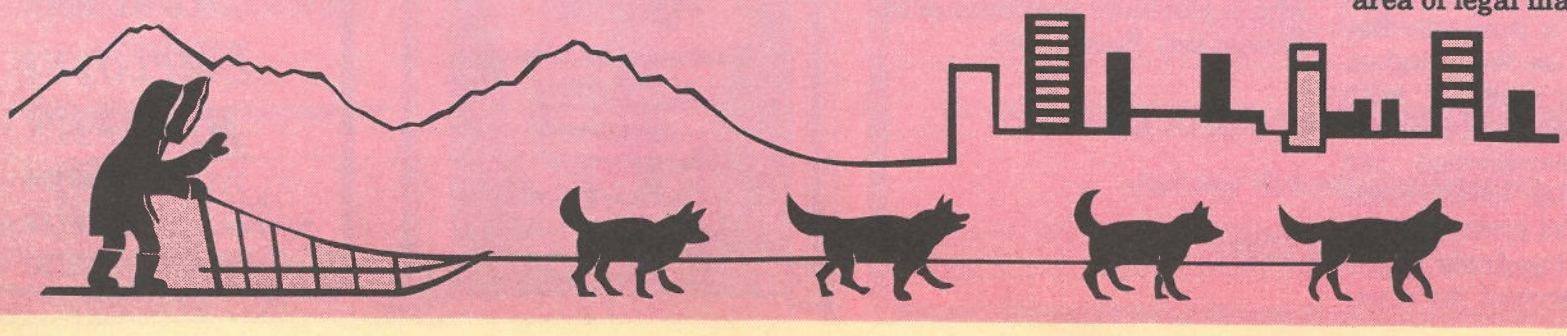
In these workshops led by Lynne Curry-Swann, Ph.D., you will focus on techniques for improving your memory in a variety of situations ("Memory Skills"), and learn strategies for increasing success in your personal relationships ("Win-Win").

Thursday, June 4, 1:30 - 3:00 p.m., **Collaborative Negotiations: Coordinate - Don't Alienate.** Learn how to maximize resolution through "collaborative" techniques, including mediation, to focus on interests, not positions. Sponsored by the Alternative Dispute Resolution Section.

Thursday, June 4, 3:15 - 4:45 p.m., **Ethics for Public Attorneys.**

Friday, June 5, 1:30 - 4:30 p.m., **Unethical Conduct = Legal Malpractice**

Both these programs are designed to inform practitioners how to avoid common and unforeseen legal ethics problems in the ever increasingly complex arena of law practice today. Professor Robert H. Aronson and Professor John A. Strait are experienced teachers and lecturers in the area of professional responsibility and appear as expert witnesses in the area of legal malpractice.



TGIF Events

Friday, June 5 - 9:00 a.m., - 12:00 noon, **What Makes A Happy Lawyer?: Strategies for Sustaining Career Satisfaction** — Today's challenging economic and professional environments can try even the most committed lawyers. Deborah L. Arron, the author of *Running from the Law: Why Good Lawyers Are Getting Out of the Legal Profession* will present a workshop focusing on ways to prevent job or career dissatisfaction while bringing new vitality to your career.

Friday, June 5, 1:30 - 5:00 p.m., **Recent U.S. Supreme Court Opinions.** — This program will provide a review of recent Supreme Court decisions with commentary by professor Peter L. Arenella and Professor Erwin Chermerinsky, two nationally recognized scholars in the areas of criminal law and constitutional law and federal court jurisdiction.

Friday, June 5, 1:30 - 4:30 p.m., **Seeing Is Believing: Demonstrative Evidence in the Courtroom.** — This program will highlight strategies for using demonstrative evidence effectively to communicate your message to the judge and jurors. Judge Karen Hunt, two experienced Alaskan litigators, and representatives from local resources firms will be on the panel.

Resolution for action

We, the undersigned members of the Alaska Bar Association, propose that the following resolution be adopted at the 1992 Annual Alaska Bar Convention.

"RESOLVED, that the annual dues for active membership in the Alaska Bar Association be increased to $450, including $10 for the Lawyers Fund for client protection, effective January 1, 1993."

—*Current and past presidents of the Alaska Bar Association*

Date	Signature	
3/26/92		Harold M. Brown 1984-85
3/26/92		Donna C. Willard 1979-80
4/1/92		Kenneth O. Jarvi 1978-79
4/3/92		Dick L. Madson 1977-78
4/7/92		Ralph R. Beistline 1986-87
4/7/92		Daniel R. Cooper, Jr. 1990-91
4/9/92		Andrew J. Kleinfeld 1982-83
4/13/92		Mary K. Hughes 1983-84
4/10/92		Jeffrey M. Feldman 1989-90
4/13/92		Keith E. Brown 1975-76
4/13/92		Barry Branson 1985-86
4-14-92		Karen L. Hunt 1981-82
4/15/92		Edward A. Stahla 1976-77
4/16/92		Larry R. Weeks 1988-89
4/22/92		William B. Rozell 1980-81
4/23/92		Elizabeth P. Kennedy 1991-92
5/6/92		Robert E. Wagstaff 1987-88

Resolution for action #2

During the Kenai Peninsula Bar Association Meeting of April 17, 1992, a proposed resolution was submitted by Judge Jonathan Link and passed by all of the Bar Association members present. The resolution is as follows:

We hereby resolve that the Alaska Bar Association should waive bar dues for the first three (3) years for new attorneys, not previously members of other bar associations, who are admitted to the Alaska Bar Association; or, in the alternative to provide for a sliding scale for new attorneys, not previously members of other bar associations, consistent with the principals followed by the American Bar Association and the Association of Trial Lawyers of America.

TVBA FUND RAISING ANNOUNCEMENT

LEGAL NOTICE OF SALE

The Tanana Valley Bar Association hereby gives notice that several "North of the Range Survival Kits" will be sold at the upcoming Alaska Bar Association Convention currently scheduled for Anchorage during June of 1992.

Bidders should be advised that these kits will be in limited supply, and all sales are final.

LOCATION OF SALE

Sale location will be within 50 feet of the hospitality suite.

TIME OF SALE

The time of sale will be 15 minutes following the initial opening of the hospitality suite.

PRE-BID SCREENING

No pre-bid viewing will be allowed; however, each survival kit will contain the following:

One sleeveless "T" shirt with the official "MOMS" (Men of Merit Society) logo on the front and back, guaranteed as suitable for wear with floral weight-lifter pants or designer leotards, depending on personal preference.

One clear plastic pocket pen protector with stylish TVBA logo (Hand embossed with felt tip pen). Guaranteed to allow plaid shirt colors to show through with no interruption of patterns.

One reversible duct tape tie. This trend-setter requires neither clips nor tying, simply peel back and stick in place. Each tie is hand-decorated with tasteful TVBA logo in ball point pen. This tie is designed to enhance the plaid shirt and pocket pen protector combination.

Finally, ONE lucky random bidder will receive a remnant of black cloth, designed to look like a judicial robe when laid on the back seat of ones car when driving fast north of Nenana.

Contents will be hand-packed in a genuine Oly 12-pack cardboard "carrying case" for the bidder's convenience and recommended display.

All bids will be final. Proceeds will supplement the next TVBA road trip.

RESPECTFULLY SUBMITTED this 24th day of April, 1992.

/s/ Robert S. Noreen, TVBA Treasurer

Annual Business Meeting, Saturday, June 6, 3:00 p.m.

On this year's agenda is the proposed membership dues increase. Plan to attend and share your views with the board of Governors.

Play Golf With ALPS

ALPS through Sedgwick James is sponsoring a Golf Tournament on Saturday morning, June 6. Green fees and prizes are compliments of ALPS. Sign up by Calling Mark Ashburn at 276-4331. Moose Run is the course; tee off time tba. See you there.

• "No referee" rule fails to dissuade ballgames

Continued from page 1

none typically offered Softball Skills or a Softball Legal Clinic. Do not expect to see the Law Offices of Willie Mays or Babe Ruth & Associates on the list of teams.

This is not to say that there aren't skilled players, there are. There are a few local attorneys who played high school ball and have always believed that the Dodgers made a big mistake by not drafting them right out of high school. There are even a few summer clerks who were hired based on their batting average rather than their research skills. Observant spectators are quick to realize that some of the skilled players are not attorneys at all, but secretaries, paralegals, and spouses.

Different kinds of players with different skill levels who are out there for the fun of playing is part of what makes the Legal Softball League so unique. In fact, the league was started years ago as an alternative to the competitive city league teams. The idea was to create a "recreational" league without an emphasis on competition.

Naturally, it is hard for lawyers, as a whole, to be non-competitive, and disputes arise. Which brings us to another unique element in the Legal Softball League: NO referees or umpires.

Foregoing the cost of umpires saves a lot of money and allows more teams to enter the league, but the lack of a decisionmaker often leads to arguments. It's near impossible to get a group of lawyers to agree on whether to increase Bar Association, dues much less getting 20 lawyers to agree on whether someone was safe at second base. Oh sure, there may be a judge around, but deference is rarely given to an 'honorable' opinion when it merely advocates the team position.

And of course, there are always attorneys who think they are correct because they took Advocacy of Softball Calls in college, or perhaps the Softball Strategy CLE. Regardless, there are no officials in blue at the games. The League, after all, is recreational, not competitive. The original intent was to allow the players and coaches to settle the disputes in an amicable manner, with an option for appeals to the commissioner of the league.

Nevertheless, there is at least one fight every year. Last year, rumor has it, there was even a bench-clearing brawl. This year, in an effort to reduce the competitiveness of the league, the coaches decided to have an open playoff, rather than only allowing the top teams to compete for the Championship. Hopefully, this will reduce the competitiveness among the teams in their quest for the genuine imitation gold plated trophies.

But there are more benefits to playing in the Legal Softball League than meet the eye. Apparently, one former legal softball league player now plays for the Anchorage Bucs...or is it the other way around? And, of course, we cannot forget the legal softball league's former commissioner, Paul Stockler, who is now a television sportscaster. Was this a coincidence? Or did Paul strategically use the softball league as a stepping stone?

The season reaches its peak in August with play-offs. The top four teams win trophies and bragging rights until next spring. The real prize for some is simply knowing that his or her softball team beat some or most of the others. For the rest, just getting out and having fun is the prize...that is what the Anchorage Legal Softball League is all about.

Insurance warning

The Department of Commerce and Economic Development, Division of Insurance has just been notified by the Colorado Insurance Department about certain purported activities of an unauthorized insurer; American Trust Insurance Company Ltd.

The Division is informed by the Colorado Department that American Trust has not paid claims for over a year. The Colorado Insurance Department further informs the Alaska Division that the Colorado Department has obtained certain records which indicate that American Trust has issued malpractice insurance to numerous lawyers and law offices throughout the United States. The Alaska Division has not independently verified this information.

Your members should be advised that it is outside the authority of the Alaska Division of Insurance to offer financial advice. To suggest that any of your members so situated should seek replacement coverage would be the rendering of financial advice. Accordingly, other than re-communicating the above unverified information received from the Colorado Department, the Alaska Division makes no statement about this matter other than as follows.

First the Division suggests that attorneys who have coverage from American Trust discuss this matter with their licensed insurance professional who may or may not have assisted them in this purchase and who should be versed in these matters or discuss this matter with their financial and\or legal advisors. Secondly we suggest that you advise your members that if any attorney has coverage through American Trust they or their licensed insurance sales professional should contact Michael M. Chavie, Investigator, Colorado State Insurance Department at (303) 894-7470, Ext. 389.

Finally, we refer your membership to AS 21 and in particular AS 21.33 and .34.

Eugene W. Furman, CPA
Insurance Financial Examiner
State of Alaska

Alaska Legal Services Corporation's
25th year Anniversary Celebration

Anchorage Hilton Hotel
June 3rd, 1992
6:00 p.m. reception — 7:00 p.m. dinner

Guest Speaker:
Wm. Reece Smith, Jr.

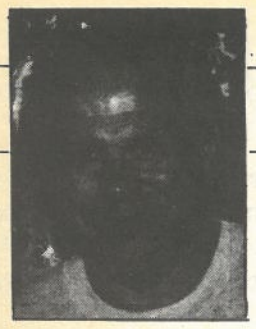
President, American Bar Foundation

Past President, American Bar Association

Past President, International Bar Association

$40.00 per person

Call for reservations 276-6282



Movie Mouthpiece

By Ed Reasor

"He'd be the perfect criminal if he wasn't a perfect cop" (movie poster advertisement for "Deep Cover").

I have mixed emotions about the film "Deep Cover." It is not really a film that Siskel and Ebert would give two thumbs up to, on the other hand it is a film worth seeing.

Earlier this year, I advised members that movies now and in the near future would continue to blast attorneys, and "Deep Cover" is no exception. In fact, Jeff Goldblum ("The Fly") delivers a remarkable performance as the corrupt lawyer and part-time drug pusher. His big claim to fame is wanting to get enough money together from illegal drug sales to produce drugs legally, namely synthetic drugs.

From the opening shots of the movie, the viewer is aware that the movie is too long. The opening shots use a stop frame, push the button, move forward, credit sequence, in a dramatization of John Hull's (Larry Fishburne) childhood watching his father use drugs, and inevitably die from drugs by being shot at a bungled robbery.

In essence, "Deep Cover" is a film about a good cop who goes undercover in the drug world largely as a result of his childhood background. But through the orders of the DEA and the assignment's dangerous situations, becomes not only an undercover cop posing as a drug lord but ultimately a drug lord posing as a cop.

"Deep Cover" is hard-hitting and it is infused with gritty, urban intensity. Hull's job is to arrest Antone Gallegos (Arthur Mendosa) a drug dealer who effectively controls 40 percent of the Los Angeles cocaine market. Gallegos has such a large share of the L.A. market because his uncle, Hector Guzman (Rene Assa) is an influential Latin-American politician. (By dialogue we learn this uncle plays golf with George Bush).

At the start of the movie, both the DEA and U.S. State Department want to quell Guzman's growing power and by using John Hull as the undercover cop, they hope to smear the nephew with enough drug charges to effectively destroy Guzman's political influence. Hull need only report directly to one man, Carver (Charles Martin Smith), who provides him with money and resources. Smith's portrayal of Carver is quite believable. Carver is a Princeton graduate who wants to stop the cocaine drug movement in the United States but who does not want to fight back on the same level that Hull can. In fact, Carver gives Hull one warning: "Don't blow your cover".

Betty McCutcheon (Victoria Dillard) and John Hull (Larry Fishburne) in New Line Cinema's contemporary action-drama, *Deep Cover.*

Realistically, the movie shows how a cop would go about infiltrating a cocaine operation. Hull approaches Eddie (Roger Guenveur Smith) for a kilo of cocaine, quite a large amount. A meeting is set up but a bust occurs and Eddie informs on Hull, who doesn't say anything and as a result is accepted by Eddie's superiors.

Because Eddie informed to the police, Eddie's supplier, Felix Barbosa (Gregory Sierra) kills him in cold blood by pummeling him to death with a pool cue. Hull the cop can only watch, to interfere would be to blow his cover.

Goldblum's and Fishburne's characters now become partners. Hull is given the kilo that he's owed plus an additional one on consignment. He is even introduced to Betty McCutcheon (Victoria Dillard) an art importer who launders attorney Goldblum's drug money. Naturally, Betty is suspicious of Hull but the two fall in love (that's a movie given).

As in all drug dealings, one never can completely trust his associates and ultimately Hull, Betty, and attorney are arrested receiving drugs — set up by Barbosa who had earlier killed Eddie and encouraged attorney Goldblum: "You will kill a man someday. It's liberating". Goldblum complies by killing Barbosa during a car chase by the police.

Playing a policeman in today's society is not difficult. Almost every movie seems to follow the same line, but here Fishburne is surprisingly charismatic with a genuine understanding of his role as a cop turned pusher turned cop again. Another outstanding police portrayal is done by Clarance Williams III, playing policeman Taft. Hull calls him "The Preacher" because Taft is one of those rare policeman who not only believes in what he is doing but who makes a serious attempt to rehabilitate street people. Taft dies for his efforts. Clarance Williams III makes us feel and care about Taft the policeman and what he is doing before his unlucky demise.

My mixed emotions for this film revolve around the philosophy that in cinema, less is sometimes more. You can show things on the screen without explaining them through any dialog and the audience receives more information than a stage play which relies almost entirely on dialogue. Yet at times in "Deep Cover," the dialogue alone conveys the message the filmmakers want you to receive. For example, Hull confronts his contact Carver with what he's doing. He's lied, killed, and pushed drugs. Carver's simple but truthful answer is a description of the birth and life of a crack baby in Los Angeles. This answer is equally as powerful as any cinematic picture.

Another example of well-written dialogue that portrays an image as powerful as the visual is Carver's interviewing of various black police officers for the position of undercover cop. We see him ask three separate applicants the same question: "What's the difference between a nigger and a black man?" Each answers differently (including Hull, who gets the job).

Overall the pacing for this film is slow. Its running time is 1:52 and some crisp editing could have cut the running time by at least 12 minutes. In its way, "Deep Cover" is a thought-provoking film. I have the impression that the filmmakers fell in love with their story and were quite serious about the movie conveying a message of drug abuse and its hold on American society today.

Jeff Goldblum as the ambitious attorney with the double life of a drug dealer, has said publicly that he played the character like a man who had "unfulfilled, unsatisfied urges."

Director Bill Duke, known for "A Rage In Harlem," wants "Deep Cover" to be more than a black film about blacks selling drugs on the street. He wants to eradicate from the American memory the false concept that it is black people or other minorities who produce and sell drugs. He effectively explores the merchandising structure of the trade in "Deep Cover." According to Duke (and perhaps it's true) "the cocaine business in America last year grossed more money than AT&T, IBM, U.S. Steel, and General Motors combined."

Nine discipline cases resolved

Failure to appear

Attorney X received a written private admonition for violations of DR 6-101(A)(3) and DR 1-102(A)(5). Attorney X represented Husband in a domestic violence matter. Husband, without notice to attorney, failed to appear for a hearing as planned. Attorney X did not seek a continuance of the hearing, nor did he appear at the hearing to protect his client's interests. Further, despite having entered a prior appearance in the matter, the attorney made no attempt to notify the court of his intention not to appear at the scheduled hearing. Attorney X had no prior record of discipline imposed, and this appeared to be an isolated instance of poor judgment not likely to be recur.

Angry outburst

Attorney X received a written private admonition for violation of DR 1-102(A)(5) and DR 1-102(A)(6). Attorney X represented himself as a party in a civil dispute. During a deposition, Attorney X threatened to "rip the face off" an opposing party litigant if he did not stop making what Attorney X perceived to be offensive statements. In mitigation, the statement was made in a fit of anger, no harm actually resulted, and bar counsel concluded the misconduct was an isolated incident unlikely to recur.

Angry threat

Attorney X was hired by Government Entity's insurer to represent Government Entity in a civil action. Attorney Y was Government Entity's general counsel. Attorney Y copied a letter critical of Attorney X's performance to insurer. In a heated conversation with Attorney Y, Attorney X stated that "if [Attorney Y] didn't stay away from [his] client and stop writing such letters [he] would see a six foot tall big black man who would break both of [his] kneecaps." Bar counsel concluded that a reasonable person could have perceived the statement as a threat of serious physical harm. The offensiveness of the statement was further aggravated by its exploitation of negative racial stereotypes. In mitigation, the statement was made in a fit of anger, without actual intent to do harm, no harm resulted, and Attorney X had no prior record of discipline imposed. Attorney X was admonished for violation of DRI-102(A)(5) & (A)(6).

Neglect of duty

Attorney X received two separate written private admonitions for neglecting legal matters entrusted to him in violation of DR 6-101(A)(3). In each of the two matters, which involved different clients, Attorney X was late in meeting filing deadlines without request for extension and/or failed to maintain adequate communication with his client concerning his client's case. No actual prejudice resulted to clients in either case. In mitigation, Attorney X introduced evidence that his misconduct was the result of psychological problems for which he was receiving treatment. Attorney X admitted misconduct, expressed remorse, and had no prior record of discipline.

Continuance denied

Attorney X received a written private admonition for violations of DR 1-102(A)(5) and DR 7-106(C)(6) & (7). Attorney X willfully failed to return to the courtroom for trial after the court denied his third request for continuance. Attorney X returned to the courtroom only after an order of the court, upon threat of arrest. The fact that Attorney X had already received independent sanctions from the court was considered in mitigation.

Bouncing check

Attorney X received a written private admonition for violation of DR 9-102(B)(4). Attorney X issued a trust account check to a bankruptcy trustee which was twice returned for insufficient funds. The problem was caused by negligent bookkeeping practices which hindered prompt transfer of trust funds from one account to another, resulting in a deficiency. Attorney X was also advised that his practice of holding trust funds in privately insured depository accounts, rather than in "government insured accounts," violated DR 9-102(A). The attorney promptly transferred the funds pursuant to bar counsel's request.

Attorney of record

Attorney X entered an appearance for defendant (D) in a civil action. During the course of the litigation, D left the state, willfully absenting herself from her Attorney X and intentionally refusing his repeated requests for direct contact. Although Attorney X threatened withdrawal if

Continued on page 17

Fly through research with your CD ROM

BY BARB KISSNER

The scenario: In order to prepare for an upcoming trial in federal court, you need to research some fine points of law and specific issues. One option is to head to the library and work your way through the federal practice digests, relevant treatises, practice and procedure manuals, and more. Another option is to attempt some electronic research on Westlaw or Lexis, but it seems that you are always time-conscious. After all, on-line research may be beneficial, but it is not cheap.

The solution: Try both of these forms of research at one time by scanning a few compact discs.

The Anchorage Law Library now offers electronic research in the form of CD-ROM libraries. These CDs incorporate statutes, cases, unpublished materials, teatises, and other sources of legal information onto compact discs. Several discs together create an entire library for a particular topic area. For example, the Bankruptcy Library contains four discs which include such materials as Bankruptcy Law Finder, Bankruptcy Rules and Forms, West's Bankruptcy Digest, Cowan's Bankruptcy Law and Practice, Bankruptcy Cases and more. Other libraries available in Anchorage include the Government Contracts Library and the Federal Civil Practice Library.

It is easy! Just put one of the CDs into the disc drive and start your research. To obtain the specific information you need in that particular library, you may conduct a "boolean" search, using words and phrases, similar to some Westlaw and Lexis searches. You may also browse through the various treatises and materials in the same manner as you would with a hard copy of a book (i.e. examining the Table of Contents, Index or certain chapters).

A particularly notable feature of the CD-ROM libraries is the *hypertext* feature. When you are reviewing one document or case, and another case or statute is mentioned, you can immediately retrieve the cited work, review it, and return to your original search as if you never left. You may have to enter another CD from the library, but you will have the case or statute retrieved within a matter of minutes.

Perhaps the best feature in the CD-ROM libraries is the fact that your research is not on-line. This allows the researcher to conduct several searches, fully examine the materials retrieved, even have time to sit back and think about the assignment without incurring the hard costs associated with on-line legal research.

Unfortunately, this advantage also indicates a disadvantage. Like materials which are on the shelves in hard copy, the CDs are out of date as soon as they are published. Therefore, the researcher needs to take an additional step to bring the research up to date.

Just as you would check pocket parts or use Shepard's for an update, so must you also update your CD-ROM research. Once a search has been performed on the CD-ROM portion of the library, on-line updates can be performed with the automatic menu-driven update service providing access to current materials not yet available on CD-ROM discs.

The CD-ROM libraries allow a researcher who is not a computer whiz to search all of the relevant documents in a particular topic area, and gain experience at electronic research. The Westlaw/CD-ROM trainer will even provide free training on how to use the CD-ROM libraries.

Some practitioners may also be interested to know that West offers the CD-ROM libraries for sale. According to Reed Weicks of West, more and more Anchorage firms are supplementing their own libraries with the CD-ROM libraries, which not only save them trips downtown to the Law Library, but also save a significant amount of shelf space. In addition to the CDs available at the Anchorage library, West also offers the Delaware Corporation Library, the BNA Tax Management Library, the Federal Taxation Library and the Federal Securities Library in CD format.

If you are researching in bankruptcy, government contracts, or federal civil practice, you may consider spending a little extra time learning about the CD-ROM libraries for more efficient electronic legal research in the future.

DIAL

800-478-7878

FOR CLE & BAR INFO

The Alaska Bar Association now has an 800 information number thanks to the Alaska Bar Foundation. The outgoing tape message on this number gives you the Bar office hours, address, phone, fax, upcoming CLEs, and other program information — such as the Bar Exam and MPRE dates and locations.

If there is other information that you think would be helpful to have on this tape, please call Barbara Armstrong, CLE Director, at the Bar office at 272-7469.

Solid Foundations

By Mary Hughes

On April 24, 1992, the Trustees of the Alaska Bar Foundation awarded IOLTA grants for 1992-93. The recipients are:

The Alaska Pro Bono Program. The Trustees provided $165,000 to the APBP to allow continuation of its provisioning of legal services to the economically disadvantaged. The monies are to be utilized to cover direct program expenses including the Elderlaw Project, which serves low income Alaskans 60 years old and older, and Tuesday Night Bar Advice-Only and Pro Se Clinics, which provide classes on various legal needs, such as wills, uncontested divorces, custody and support orders and bankruptcy. APBP has a panel of 920 Alaska attorneys or 59.6 percent of the Alaska Bar Association's membership. Two hundred and twenty-five non-attorney professionals (doctors, court reporters, translators, structural engineers, accountants, paralegal assistants and private investigators) also volunteer their time. Over 7,000 hours/year are donated by professionals. Approximately 1,200 Alaskans are served on a yearly basis by APBP.

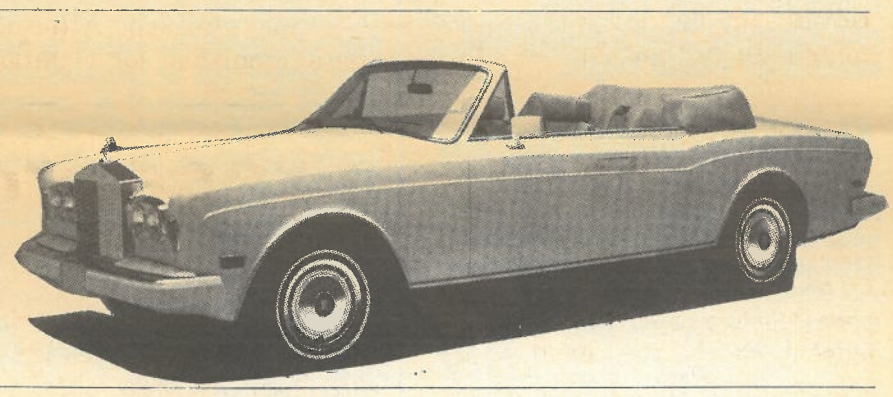
Catholic Social Services. A $27,090 grant was awarded CSS for its Immigration/Refugee Program. Since many immigrants to Alaska, in addition to other problems they face in attempting to enter the United States, speak little or no English, special assistance is required to understand immigration law. CSS provides legalization assistance to potential immigrants of various nationalities and religious backgrounds. The breadth and depth of the program includes: preparation and presentation of cases before the immigration judge; small claims court filings; meetings with attorneys to interpret; filing of complaints with the Equal Rights Commission; preparation of legalization and asylum appeals; traffic court appearances; and intervention in workers' compensation cases. CSS employs a Legal Affairs Coordinator to process over 1,000 requests/year for assistance.

Anchorage Youth Court. AYC received $40,000 from IOLTA funds. The alternate preadjudicatory system for Anchorage youth is over four years old. It allows juveniles accused of breaking the law to submit their case to the AYC, wherein they are represented and judged by their peers. Those that are convicted within this system are required to perform community service; however, the wrongdoing does not appear on a criminal record. AYC trains youth between the ages of 12 and 18 to represent and judge their peers. The course is ten weeks in length and a bar examination must be passed upon completion to serve as bailiffs, clerks, prosecuting and defense attorneys and judges.

A total funding of $232,090 from IOLTA monies was authorized. The grant applications were, as they usually are, excellent. The IOLTA goals of provisioning of legal services to the disadvantaged and assisting in the administration of justice were achieved.

This is not his father's Oldsmobile. . . or Chevy

By Dan Branch



My attraction to General Motors' vehicles started on the day uncle Sherwood let me drive his Pontiac Bonneville over Idaho's White Bird Pass. After turning over the keys, he laid down for a nap on the Pontiac's spacious back seat. It was great fun to guide the car through White Bird's slalom course. I would have gotten the big cruiser up to 100 miles an hour if Uncle hadn't fallen onto the floor while we skidded through a hair-pin turn. This was heady stuff for a 14-year-old accustomed to traveling great distances in the back of the family Studebaker Champ.

My uncle overlooked his near death experience when he saw a gleam of genuine affection in my eyes for the Pontiac. It was the look of a boy doomed to see the USA in some sort of General Motors product.

After we returned to Lewiston he took me out behind the house to appreciate his '56 Buick. A canvas cover had preserved the shine on its two-tone finish and the three chrome supernumerary holes that decorated each side of the car. He told me it was mine. I just had to convince my dad to go along.

Like a fool I ran to my father with the good news. He rejected the plan.

"Son," he asked me, "why would you want a Buick when in a couple of years the family Studebaker Lark will be yours?" When I told him that the Studebaker was a box of wheels, he pulled out a tattered black and white photograph from his wallet. It was a picture of two prewar sedans parked headlight to headlight on a Montana mountain road. Two young guys that looked vaguely like my dad and his brother Sherwood faced each other in the photograph. He told me that he and his brother had bought the cars in the picture with money from jobs at the Kila silver mine. Uncle Sherwood bought the Buick and dad purchased the Studebaker. They have been arguing about cars ever since. He finished his story by telling me that "No son of mine is going to drive home a General Motors product."

I am a baby boomer and brand loyalty was a foreign concept. Still, I went along with the family GM boycott because my dad was a great guy and Studebaker went out of business before I was old enough to apply for a driver's license. On that sad day, dad made us a Plymouth family. Our first one was a blue and white station wagon with tail fins and a push button automatic transmission. For sheer mass, the Plymouth was up there with Mack Trucks. Dad didn't like the Plymouth. Still, he never said anything bad about the car, even after the trans blew out in Mojave leaving us stranded in that desert town for two days while the garage guy sent to LA for parts.

I never owned a car of my own

Continued on page 20

• Discipline

Continued from page 16

D failed to contact him, he negligently failed to follow appropriate procedures for withdrawal pursuant to DR 2-11O(A). Accordingly, Attorney X remained attorney of record when a default judgment was later issued against D. In mitigation, withdrawal would have been justified under DR 2-110(C)(l)(d) had Attorney X made the required request of the court and the evidence suggested that D, rather than Attorney X, was the proximate cause of the default judgment. With the approval of the Disciplinary Board, Attorney X was given a written private admonition for negligent violations of DR 2-110(A) and 6-101(A)(3).

Public reprimand

Attorney Chris A. Johansen received a public reprimand for neglecting a legal matter entrusted to him in violation of DR DR 6-101(A)(3). Mr. Johansen represented plaintiffs in a personal injury action. Early in the case, Mr. Johansen led plaintiffs to believe that the case was weak and should not be continued if discovery efforts proved unsuccessful. Plaintiffs heard nothing further from Mr. Johansen for two years, and assumed the case had been dropped. Instead, Mr. Johansen continued to litigate the case to an ultimate resolution against plaintiffs. A judgment was entered against plaintiffs for costs and attorneys fees. During the course of the litigation, Mr. Johansen failed to keep his clients adequately informed of important events in their case, failed to convey two separate settlement offers, and made decisions not to act on important or dispositive motions without prior consultation with his clients. In mitigation, Mr. Johansen admitted his misconduct to the Bar Association, expressed remorse, and made full restitution to the plaintiffs. The evidence indicated that the problems were due in part to inadequate office staffing and procedures, which have since been improved. Mr. Johansen has had no prior discipline imposed by the Bar Association. The Disciplinary Board approved a stipulation for public reprimand, with the additional condition that Mr. Johansen take and pass the MPRE.

LOOK AT WHAT WE'RE DOING WITH 48%.

Your participation in the Alaska Bar Foundation's IOLTA program requires so little. Just a few minutes at your bank signing some forms. Then you can forget it. Maybe forever. At least for years.

In the meantime, the nickels, dimes, and dollars generated as interest on those small or short-term trust accounts—combined with hundreds of other IOLTA contributions—will add up quickly. Last year, with only 48% of Alaska's law firms participating, $260,000 were contributed to seven important projects.

With so little effort, so much good was done. Think what we could do if every law firm participated. That's something none of us would forget.

Alaska Pro Bono Program

is jointly sponsored by Alaska Legal Services Corporation and the Alaska Bar Association. It is a statewide, nonprofit, direct service program involving private and public sector attorneys in the delivery of free legal services to low income Alaskans.

In 1991, $130,000 were provided for free legal services for the economically disadvantaged; for the Elderlaw project, which serves Alaskans 60 years old or older; for the Tuesday Night Bar Advice-Only and Pro Se Clinics, which provide classes on various legal needs, such as wills, power of attorney, uncontested divorces, custody and support orders, and Chapter Seven bankruptcy; and for appointments for low income *pro se* plaintiffs filing U.S. District Court civil cases.

Catholic Social Services

operates an Immigration/Refuge Program which is the only program available in Anchorage to aid immigrants with the immigration laws. In 1991, $18,000 in IOLTA funds were given to meet the increased demand for legal services and to create a part-time staff position to deal with the numerous requests for legalization and asylum.

Alaskan Aids Assistance Association

is committed to providing legal help for those infected with the HIV virus and those suffering from the AIDS disease, many of whom fear discrimination and of which 81% are below the poverty line. The IOLTA program provided $7000 to assist this important organization with legal case management.

Participating Law Firms as of January 1, 1992

Alaska Legal Services Corporation,P.C.
Artus, Choquette & Williams
Ashton & Dewey
Atkinson, Conway & Gagnon, Inc.
Joyce E. Bamberger
Bankston & McCollum, P.C.
Barokas & Martin
Batchelor, Murphy & Brinkman,P.C.
Baxter, Bruce, Brand & Rodriquez
Beaty, Draeger, Locke & Troll, P.C.
Birch, Horton, Bittner & Cherot
Bledsoe & Knutson, P.C.
Bogle & Gates
Boyko & Flansburg
Bradbury, Bliss & Riordan
Frederic E. Brown, Atty. at Law
Burr, Pease & Kurtz, P.C.
Rex Lamont Butler, Esq.
C.A. Cook Company
Call, Barrett & Burbank
William B. Carey
Swan T. Ching
Nils Christiansen, Atty.
Clark, Walther & Flanigan
Bonnie J. Coghlan
Hoyt M. Cole, P.C.
Copeland, Landye, Bennett & Wolf
Coryell & Associates
Barbara R. Craver
Davis & Goerig, P.C.
Davis Wright Tremaine
Jill Dean
Delaney, Wiles, Hayes, Reitman & Brubaker, P.C
Dan E. Dennis, Attorney at Law
William F. Dewey, Atty.
Dillon & Findley
Loren Domke, P.C.
Ely & Havelock
Farleigh & Shamburek
Faulkner, Banfield, Doogan & Holmes
Thomas E. Fenton
Franklin D. Fleeks
Foley & Foley
Alexis G. Foote
Friedman & Bros.
Gaitan & Cusak
Walter H. Garretson, P.C.
Giannini & Associates
Gilmore & Doherty
John C. Gissberg
David E. Grashin & Asssociates
Gray, McLean, Cole & Razo P.C.
Brian Mark Gray, P.C.
Groh, Eggers & Price
Gruenberg & Clover
Patrick J. Gullufsen
Hagans, Brown, Gibbs & Moran
Richard L. Harren
Arthur Hauver
Hedland, Fleischer, Friedman, Brennan & Cooke
Richard C. Helgeson
Heller Ehrman White & McAuliffe
Hintze, Herrig & Wright
Hoge & Lekisch
Lee Holen
Holman Law Office
Houston & Henderson
Hughes, Thorsness, Gantz, Powell & Brundin
Kenneth P. Jacobus
Jamin, Ebell, Bolger & Gentry
Thom F. Janidlo
Jermain, Dunnagan & Owens, P.C.
Michael Jungreis
Kalamarides & MacMillan
William W. Kantola
Joseph L. Kashi
Kemppel, Huffman and Ginder, P.C.
G. Rodney Kleedehn
Koval & Featherly, P.C.
Kenneth R. Lamb
Lane Powell Spears & Lubersky
Larson, Timbers & Van Winkle, Inc.
Law Firm of Donald F. Logan
Law Office of Daniel W. Allan
Law Office of C.R. Baldwin
Law Office of Arona S. Blachman
Law Office of Carol A. Brenckle
Law Office of Teresa Foster Brimner
Law Office of Patrick T. Brown
Law Office of Roger Brunner
Law Office of Mark Clayton Choate
Law Office of Alicemary L. Closuit
Law Office of Dan K. Coffey
Law Office of Gregory F. Cook
Law Office of Charles C. Coy
Law Office of John E. Duggan
Law Office of Richard D. Ellmers
Law Office of Richard H. Erlich
Law Office of James E. Fisher
Law Office of Maryann E. Foley
Law Office of William T. Ford
Law Office of Carl C. Frasure, II, Esq.
Law Office of Stephen F. Frost
Law Office of Stephen Greer
Law Office of Marc Grober
Law Office of Donna Habermann
Law Office of Alan J. Harper
Law Office of J. Glen Harper
Law Office of Kathleen Harrington
Law Office of Theresa Hillhouse
Law Office of Amrit Kaur Khalsa
Law Office of Robert W. Landau
Law Office of Kenneth Lebya
Law Office of Erik LeRoy
Law Office of James W. McGowan
Law Office of John M. Murtagh
Law Office of Richard P. Newman
Law Office of Edward R. Niewohner
Law Office of Robert S. Noreen
Law Office of Paul E. Olson
Law Office of Michael J. Patterson
Law Office of F.P. Pettyjohn
Law Office of Teri L. Powers
Law Office of Colleen A. Ray
Law Office of Julian C. Rice
Law Office of Patrick G. Ross
Law Office of Patti J. Saunders
Law Office of Sandra K. Saville
Law Office of Ernest M. Schlereth
Law Office of R. Brock Shamberg
Law Office of Robert E. Stoller
Law Office of R.N. Sutliff
Law Office of Janet K. Tempel
Law Office of G. Nanette Thompson
Law Office of Vincent L. Usera
Law Office of Vincent Vitale, P.C.
Law Office of Frank J. Vondersaar
Law Office of Karl L. Walter, Jr.
Law Office of W. David Weed
Law Office of Thomas R. Wickwire
Law Office of Charles Winegarden
Law Office of Steve K. Yoshida, P.C.
Law Offices of Louis E. Agi
Law Offices of Christian N. Bataille
Law Offices of William Bixby
Law Offices of William J. Bonner
Law Offices of Robert C. Brink
Law Offices of Linda M. Cerro
Law Offices of Charles W. Coe
Law Offices of Kathryn Coleman
Law Offices of Glenn E. Cravez
Law Offices of Ronald E. Cummings, P.C.
Law Offices of Ralph B. Cushman
Law Offices of Robert B. Downes, P.C.
Law Offices of Deitra L. Ennis
Law Offices of David V. George
Law Offices of James B. Gottstein
Law Offices of Andrew Hemenway
Law Offices of John L. Hoffer, Jr.
Law Offices of Alan J. Hooper
Law Offices of David E. Kohfield
Law Offices of Charlene Lichtmann
Law Offices of Patrick J. McKay
Law Offices of William L. McNall
Law Offices of Dick L. Madson
Law Offices of A. Lee Petersen, P.C.
Law Offices of Janet D. Platt
Law Offices of Daniel T. Saluri
Law Offices of Gordon F. Schadt
Law Offices of Dana Robert Stoker
Law Offices of Tucker S. Thompson
Law Offices of Donna C. Willard
Law Offices of Richard J. Willoughby
Law Offices of Tonja Woelber
Law Offices of Thomas J. Yerbich
Le Doux & Le Doux
Karl Fulton Lehr, P.C.
Libbey & Suddock
Michael J. Lindeman, Atty. at Law
James S. Magoffin, Jr., Atty. at Law
David D. Mallet
Maloney & Haggart
Paul Mann II, Atty at Law
Martin, Bischoff, Templeton, Langslet & Hoffman
J. Jeffrey Mayhook
Dennis L. McCarty
McNall & Rankine, P.C.
Mendel & Huntington
Mestas & Schneider, P.C.
Miller, Joyner & Associates
Phil N. Nash, Atty. at Law
Thomas G. Nave
William E. Olmstead
Owens & Turner, P.C.
Parrish Law Office, A.P.C.
Pearson & Hanson
Perkins Coie
Stanley B. Pleninger
Tasha M. Porcello
Preston Thorgrimson Shidler Gates & Ellis
Chris Provost
Raven's Wing Legal Service
Rice, Volland & Gleason, P.C.
Julian C. Rice
Robertson, Monagle & Eastaugh, P.C.
Arthur S. Robinson
Romo & Cole
Rose & Figura
Ruddy, Bradley & Kolkhorst, P.C.
Schanen Law Firm
Schendel & Callahan
Schleuss & McComas
Richard W. Shaffer
Roger W. Smith, Atty. at Law
Smith, Coe & Patterson
Sonoky, Chambers, Sachse, Miller & Munson
Stafford, Frey, Cooper & Stewart
Staley, DeLisio, Cook & Sherry, Inc.
James T. Stanley Corp., P.C.
Melvin M. Stephens, II
Stump & Stump
Taylor & Hanlon, P.C.
Valerie M. Therrien, Atty. at Law
Colette G. Thompson
Michael A. Thomson, Atty. at Law
Richard S. Thwaites, Jr. Atty.
Torrisi & Snyder
Warren Tucker
Wade & De Young
Wadsworth & Associates
Wagstaff, Pope & Clocksin
David T. Walker
Daniel C. Wayne
Kevin A Wehrung
Daniel W. Westerburg
Kirk Wickersham
Winfree & Hompesch, P.C.
Wohlforth, Argetsinger, Johnson & Brecht, P.C.
Clarke Logan Young Law Office
Ziegler, Cloudy, King & Peterson

Anchorage Youth Court

is a program in which youths are tried by their peers without receiving a criminal record. Through membership in the Anchorage Youth Court (AYC) Bar Association and participation in AYC trials, the program offers young people an understanding and awareness of their legal responsibilities to society. Those who have committed crimes are given a chance for redress and erasing their criminal record by participating in community service projects. Students in junior and senior high schools receive training in representing and judging their peers. The IOLTA program provided a donation to this organization in 1991 in the amount of $55,000.

Rural Alaska Outreach Project

is an outgrowth of the Alaska Law-Related Education Program and is tailored to pilot law-related education in rural Alaska. The goal is to help secondary students develop an understanding of the United States legal system and the skills necessary to be responsible citizens. The program also helps students gain practical experience and one-on-one contact with law enforcement personnel. In 1991, $22,000 were given to the project.

Women's Education & Leadership Forum

received $3000 for legal brochures distributed at the Forum's annual conference in March 1991, which was co-hosted by Senator Ted Stevens. The conference was non-political in nature and provided networking opportunities and educational information on topics of universal concern to women, as well as information on resources and options available to women.

Alaska Legal Services Corporation

received an emergency grant of $25,250, half in 1990 and half in 1991, which allowed the Fairbanks office to remain at then-current staffing levels.

For more information on the IOLTA program and how you can participate, call the Alaska Bar Foundation at 272-7469.

Alaska Bar Foundation

THINK WHAT WE COULD DO WITH 100%.

• House takes action on standards

Continued from page 7

LEGAL PROFESSION

1. Law School Admission Standards

The House *defeated* a resolution of the Delaware State Bar Association recommending that the ABA establish an independent special task force or committee to review and evaluate the character and fitness standards applied by law schools in determining admission and retention policies for students. This measure called for an examination of the validity of Standard 503 of the ABA's Standards for the Approval of Law Schools to determine whether it produces an over-reliance by law schools on standardized tests such as the LSAT. Opponents argued the proposal was unduly burdensome and unworkable. They also disputed the allegation that the LSAT is culturally biased.

2. Amendments to Standards for Imposing Lawyer Sanctions

The House *approved* a resolution by the Standing Committee on Professional Discipline urging the adoption of the black letter amendments dated February, 1992, to the ABA *Standards for Imposing Lawyer Sanctions* (1986). The recommended changes address certain issues that have become apparent after five years of greatly expanded use of the Standards. Four standards are to be amended under this resolution.

3. Law School Loans

The House *approved* a resolution by the Law Student Division recommending an amendment to the Higher Education Act of 1986 to permit a student to borrow up to $10,000 under the Stafford Loan Program. The current maximum is $7,500. The accompanying report states that this level had been in effect since 1985.

4. Legal Assistant and Paralegal Programs

The House *approved* a resolution granting final approval, reapproval, provisional approval and extending final approval for specified legal assistant and paralegal education programs. It withdrew approval from Widener University Paralegal Program, Chester, Pennsylvania, as the program has been discontinued.

5. Report of the Commission on Evaluation of Disciplinary Enforcement

The House considered in detail the Report of the Commission Evaluation of Disciplinary Enforcement. In adopting the recommendations the ABA does so with the understanding that the decision to accept or modify the individual recommendations rests with each jurisdiction. The House voted as follows:

a) It *approved* Recommendation 1 which provides that regulation of the legal profession should remain under the authority of the judicial branch of government.

b) It *approved* Recommendation 2 which provides that the ABA should continue to place the highest priority on and should continue to provide adequate funding and staffing for activities to support judicial regulation and professional responsibility. It calls for the ABA to establish written policies to insure the coordination of all of its judicial regulation and professional responsibility activities.

c) The House *approved* Recommendation 3 calling for the establishment of a system of regulation of the legal profession which consists of stated components intended to expand the scope of public protection.

d) The House *approved* Recommendation 4 that each Court establish a Lawyer Practice Assistance
Committee. This Committee is to consider cases referred to it by the disciplinary counsel and the court and should assist lawyers voluntarily seeking assistance.

e) The House *approved* Recommendation 5 that all jurisdictions should structure their lawyer disciplinary systems so that its officials are appointed by the highest court of the jurisdiction or by other disciplinary officials who are appointed by the Court. These officials should possess sufficient independent authority to conduct the lawyer discipline function impartially, with certain measures listed to assure this.

f) The House *approved* Recommendation 6, as amended, that disciplinary counsel be provided sufficient authority for prosecutorial independence and discretion, and further, that Courts should promulgate specifically listed rules delineating the authority of disciplinary counsel.

g) The House *approved* Recommendation 7, as amended, providing for public access to disciplinary information and proceedings after a determination has been made that probable cause exists to believe misconduct occurred.

h) The Commission *withdrew* Recommendation 8 that complainants receive immunity from civil suit for all good faith communications with the disciplinary agency and all good faith statements within the disciplinary proceedings. This action was taken in light of the amendment to Recommendation 7.

i) The House *approved* Recommendation 9 outlining complainants' rights in these proceedings including notice of the status at all stages, a seasonable opportunity to rebut statements, and written notification of the dismissal of the complaint.

j) The House *approved* Recommendation 10 outlining procedures to be adopted in lieu of discipline for matters in which a lawyer's actions constitute minor misconduct, minor incompetence, or minor neglect.

k) The House *approved* Recommendation 11, as amended, urging all jurisdictions to adopt simplified, expedited procedures to adjudicate cases in which the alleged misconduct warrants less than suspension or disbarment or other restriction on the right to practice. The recommendation includes specific provisions to be included within the expedited procedures.

l) The House *approved* Recommendation 12 that the statewide disciplinary board not review a hearing committee determination except upon request by the disciplinary counsel or upon a

Continued on page 20

8 nominated for district court

Following its meeting in Anchorage on May 10-12, 1992, the Alaska Judicial Council announced that Jacob H. Allmaras, Paul Cossman, Stephanie Joannides, Sigurd E. Murphy, Stephanie Rhoades, John A. Scukanec, Stephen J. Van Goor, and James N. Wanamaker had been nominated to fill two Anchorage District Court positions. The Governor now has 45 days in which to make the appointments from these nominees.

Jacob H. Allmaras: Mr. Allmaras is 45 years old, an Alaska resident for 16-2/3 years, and has practiced law for 16-1/2 years. He graduated from Creighton University in 1973 and is presently a private practitioner in Anchorage.

Paul Cossman: Mr. Cossman is 36 years old, an Alaska resident for 6-1/2 years, and has practiced law for 7-1/2 years. He graduated from University of Oregon School of Law in 1984 and is presently a private practitioner in Anchorage.

Stephanie E. Joannides: Ms. Joannides is 37 years old, an Alaska resident for 8-3/4 years, and has practiced law for 9 years. She graduated from Gonzaga University Law School in 1981 and is presently an assistant attorney general in Juneau.

Sigurd E. Murphy: Mr. Murphy is 45 years old, an Alaska resident for 19-3/4 years, and has practiced law for 19-1/2 years. He graduated from University of Southern California Law School in 1972 and is presently in private practice in Anchorage.

Stephanie Rhoades: Ms. Rhoades is 33 years old, an Alaska resident for 5-1/2 years, and has practiced law for 5-1/2 years. She graduated from Northeastern University School of Law in 1986 and is presently an assistant district attorney in Anchorage.

John A. Scukanec: Mr. Scukanec is 41 years old, an Alaska resident for 35-3/4 years, and has practiced law for 14-1/2 years. He graduated from Brigham Young University in 1976 and is presently an attorney with the Office of Special Prosecutions and Appeals in Anchorage.

Stephen J. Van Goor: Mr. Van Goor is 42 years old, an Alaska resident for 14-1/4 years, and has practiced law for 16-1/2 years. He graduated from University of Kansas School of Law in 1975 and is presently bar counsel for the Alaska Bar Association.

James N. Wanamaker: Mr. Wanamaker is 56 years old, an Alaska resident for 30-1/2 years, and has practiced law for 30-1/2 years. He graduated from University of Washington Law School in 1959 and is presently an assistant attorney general in Anchorage.

The Judicial Council is required by law to submit a list of names of two or more qualified candidates for each judicial vacancy to the Governor. The Governor appoints a judge from the candidates nominated by the Council. The Judicial Council uses written information from the applicant, investigations, a survey of Alaska Bar Association members, public comment, references and personal interviews to make its nominations.

For more information, please contact: William T. Cotton, Executive Director, Alaska Judicial Council, 1029 W. Third Ave., Suite 201, Anchorage, AK 99501. Ph: (907) 279-2526.

• President's column

Continued from page 2

regulated.

There is no doubt that we can choose to toss up our hands and "let someone else do it." The dollar and change per day that would be saved by such a practice is truly penny wise, pound foolish.

The question of being a self-regulating body is the ultimate focus. It is really no different than buying insurance. Certainly if you have fire insurance for your home, you keep it in effect whether you live there or not. The alternatives are worse. Those members who wish to keep the structure of the Bar Association available for them should be required to pay for that maintenance. For those individuals who do not wish the Bar to continue in those activities and who will never take advantage of those activities again, resignation from the Bar is the answer.

John Murtagh
Anchorage Board Member

• House of Delegates mid-winter actions

Continued from page 19

majority vote of the Board. It also limits judicial review both as to the situations in which it hears cases and in the scope of its review.

m) The House *approved* Recommendation 13 calling for the immediate interim suspension of a lawyer upon a finding that the lawyer poses a substantial threat of serious harm to the public.

n) The House *approved* Recommendation 14 that the Court insure that adequate funding and staffing be provided the disciplinary agency so that its work is carried out promptly, thoroughly and efficiently.

o) The House *approved* Recommendation 15 that each jurisdiction keep specified case load and time statistics to assist in determining the need for additional staff and resources. It also calls for the development of standards for staffing levels, case load, case processing time and compensation levels for professional and support staff.

p) The House *approved* Recommendation 16 that disciplinary counsel have sufficient staff and resources to be able to use field investigators to full investigate complaints and to be able to regularly monitor sources of public information.

q) The House *approved* Recommendation 17 as amended that the Court authorize the audit of lawyer trust accounts selected at random without having grounds to believe misconduct has occurred, and also providing appropriate procedural safeguards.

r) The House *approved* Recommendation 18 that the Court adopt a fee arbitration rule that places the burden of proof on the attorney of all facts in the absence of a written fee agreement or a continuing relationship in which the fee agreement has otherwise been established.

s) The House *approved* Recommendation 19 that the ABA continue studies to determine whether malpractice insurance coverage and mandatory coverage be the subject of a model program and rule.

t) The House *approved* Recommendation 20 that orders of disbarment and suspension be effective on a date 15 days after the order except where the Court finds that immediate disbarment or suspension is necessary to protect the public.

u) The House *approved* Recommendation 21 that the ABA provide or seek adequate funding to automate the dissemination of reciprocal discipline information by means of electronic data processing and telecommunications to allow such means of access to the National Discipline Data Bank, and to create an ability through such means to cross-check jurisdictions' rosters of licensed lawyers against the Bank. It also calls for the dissemination of the Bank's listing of contents to disciplinary officials quarterly or semi-annually.

v) The House *approved* Recommendation 22 that the ABA and appropriate officials in each jurisdiction should establish a system of assigning a universal identification number to each lawyer licensed to practice law.

LIBRARY OF CONGRESS

The House *approved* a resolution that the Library of Congress continue to be arranged in two departments, and that any reorganization of the Library not change the status of the Law Library as a Department or in any manner alter its status, autonomy or function. It further encourages and supports the creation of a National Law Library through Congressional legislation which would include the present Law Library of the Library of Congress.

PROBATE LAW MATTER

The House *approved* a resolution approving the Uniform Probate Code Article II - Intestacy, Wills and Donative Transfers (1990) by the National Conference of Commissioners on Uniform State Laws as an appropriate Article (Act) for those states desiring to adopt the substantive law suggested therein. This revision reflects a recommitment of the UPC to family protection, to reducing the risk of technical invalidation of wills, and to harmonizing rules of presumed intention for probate and non-probate transfers of property at death.

TAXATION LAW MATTERS

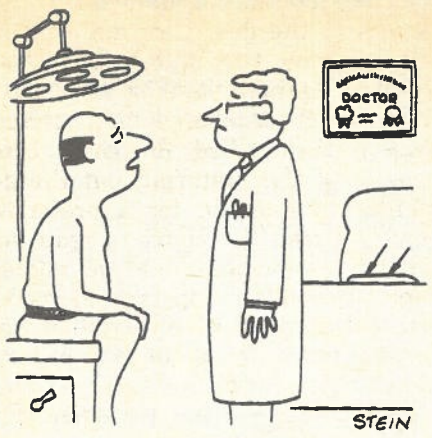
The House approved a resolution by the Section of Taxation urging Congress to follow certain specified principles to minimize the adverse effects of "retroactive" tax legislation. The proponents recognize that virtually all tax legislation will contain some "factors akin to retroactivity". This resolution does not take a strict stance against retroactive legislation, but urges Congress to consider transition relief as a remedy for ameliorating the retroactive effects of tax legislation in appropriate cases.

ZONING LAW MATTER

The House *approved* a resolution urging the adoption of legislation prohibiting initiative or referendum in site specific zoning cases. It further urges that, in states or territories which have the right to initiative and referendum, specific steps be taken to resolve any inconsistency which might arise when such a proposal is placed on a ballot that is in conflict with a community's land use plan.

FAX machines use increases

The use of fax machines to transmit documents in connection with court proceedings has now moved into the mainstream in a very short period of time, from its early pioneer beginnings just a few years ago. In Minnesota, for example, attorneys may file any document by fax with the court or with fellow lawyers. Many states now authorize the use of fax, including California, Colorado, Idaho, Florida, Michigan, Missouri, Nevada, New York, Oregon, South Dakota, and Washington, to name a few. Most states that use fax for court business now allow the fax to serve as the original document.



"Give it to me straight, Doc. How many more billable hours do I have left?"

Anchorage attorney Drew Peterson's fax cover sheet.

The more common use of fax has brought up other questions that must now be addressed; for example, examination as to how to make fax use most practical in clerks offices. Another issue facing the court is determining the best method for collecting fees on faxed documents. States are experimenting with use of 900 numbers and credit cards for fee collection. Many jurisdictions are also developing court rules to control the fax process.

The foregoing article was distributed by the National Center for State Courts and the State Justice Institute. The organizations compile the annual "Report on Trends in the State Courts," where 98 percent of cases are heard. Other trends will be covered in future issues of the Bar Rag.

Notice

Proposed Bylaw Change re Civil Rule 81 Fee

The Board of Governors is proposing the following change to the Association Bylaws. Please send any comments to Deborah O'Regan at the Bar office.

Article III. Section 4. **REQUIRED FEE FOR OTHER ATTORNEYS.** The required fee for other attorneys under Civil Rule 81 (a)(2) is $100.

IN MEMORIAM

J. Gerald Williams,
May 11, 1992

Harold J. Butcher
May 5, 1992

Courtland Hirschi
April 18, 1992

• Cars

Continued from page 17

until I left home after law school. Before then I spent most of my road time behind the wheel of the family's '64 VW bug. I think dad bought the little sedan because Chrysler was in the middle of a bad five year plan. He also liked the fact that the bug looked a little like a prewar Studebaker.

After taking the bar exam in my home state I moved to Bethel—the hub city for Alaska's Yukon Kuskokwim Delta. There, with real money in my pocket for the first time and thousands of miles between myself and dad, I bought my first car. It was a 1958 Chevrolet side step Pickup Truck. Twenty years before the owner of the Oscarville Trading Post had shipped it to Bethel on a Seattle barge. He used it to haul seal pokes and other staples to and from the trading post.

A couple of years after I bought the pickup, dad announced a visit to Bethel. I had to tell him about the Chevy. He didn't take the news well but he didn't cancel his trip. I drove the Chevy out to the airport to pick him up on the day he arrived for the visit. He wouldn't ride in it until he had tied a Volkswagen symbol onto the engine hood.

There have been other Chevrolet trucks in my life. I am driving a '66 sidestep pickup now. Rust is doing some heavy damage to the body and I just dropped $500 into the front end. It's time to get a new vehicle. It won't be a General Motors product this time. They just haven't been the same since liters replaced cubic inches as the measurement of engine size. I think I might buy a Toyota. Dad would like that.

Secrecy in litigation: Public protection or injustice?

BY BOB GIBBINS

In 1984, a San Francisco federal court case set the stage for a display of the potential of protective orders to delay government regulation and conceal threats to public health. It provides a potent look at the workings of secrecy in litigation-and clearly reflects why determined action is essential to restore balance to America's justice system. (For another view, see Arthur Miller's "Private Lives or Public Access," August 1991 *ABA Journal*, page 64.)

That case, *Stern v. Dow Corning Corp.* (U.S. Dist. Ct., N.D. Cal., No. C83-2348), involved silicone breast implants used in reconstructive surgery. The jury rendered a verdict for the plaintiff on her complaint that the manufacturer committed fraud and failed to warn of the potential for severe side effects. The case was settled while on appeal.

After *Stern* was concluded, a protective order demanded by the implant manufacturer remained in force. It prohibited the plaintiff's attorneys and expert witnesses from telling government regulators or anyone else what the discovery documents showed about safety tests of the product.

Even at a 1988 U.S. Food and Drug Administration hearing held to consider requiring implant manufacturers to demonstrate safety, a *Stern* attorney subject to that protective order was unable to disclose information about clinical or animal tests.

A medical school professor who examined more than a dozen breast implant litigation files has been similarly prohibited, by protective orders in very case, from sharing his knowledge of tests with FDA or congressional investigators. Here is an example of a publicly funded inquiry of a possibly dangerous product; yet a medical school professor is legally gagged through a process funded by taxpayers.

The protective-order strategy was used by several manufacturers, and it bought them time. Manufacturers produced and sold implants for at lest six years after the *Stern* verdict, until the FDA took its first look at the companies' clinical data in 1991.

The agency concluded that no test results submitted by any manufacturer demonstrated the safety of implants, and one manufacturer has since recalled its entire line and announced its withdrawal from the breast implant market. But while the FDA vacillated and numerous product liability cases were settled with confidentiality "agreements" and protective orders, 150,000 new patients received implants each year.

Secrecy devices have been used increasingly in litigation during the past decade. A comprehensive new study of products liability litigation involving punitive damages awards revealed a marked increase in the use of confidential settlements after 1986. Conducted by professors Michael Rustad of Suffolk University Law School and Thomas Koenig of Northeastern University, the study examined a quarter-century of data.

Recent litigation involving the prescription sleeping medication Halcion further shows how secrecy, along with lax pharmaceutical regulation, multiplies consumer risks.

In 1989 a blanket protective order was entered in *Grundberg v. The Upjohn Co.* (U.S. Dist. Ct., D. Utah, No. C89-274), a case that alleged severe, unpredictable mood changes caused by this drug now used by several million Americans. The *Grundberg* protective order effectively made all documents produced by the defendant confidential and required their return or destruction following the conclusion of the lawsuit. But shortly after *Grundberg* was settled, Halcion's manufacturer acknowledged that clinical data submitted to the FDA during the drug approval process were incomplete.

As it stands, the *Grundberg* protective order leaves an unknown number of patients and doctors wondering what caused side effects. Considering that the plaintiff in *Grundberg* had killed her own mother (although charges against her were dismissed because of involuntary intoxication with Halcion), access to complete information is crucial. A consumer organization is now asking the court to modify the protective order.

Other examples of the threat posed by secrecy are, unfortunately, not hard to come by:

- A patient with a Shiley artificial heart valve is unable to learn of the danger that the device's mechanism may fracture. She dies when the valve fails, and her husband later learns that the manufacturer secretly settled litigation brought by other victims years before.

In part through that practice, the company avoids the notoriety that could have led to earlier warning of patients and/or withdrawal of the valves from the market.

A congressional investigative report ("The Bjork-Shiley Heart Valve: Earn as You Learn," House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, 2/90) cites "numerous instances" of deaths that might have been avoided had patients and doctors been aware of the danger earlier. *Barbee v. Shiley, Inc.* (claim was settled in 1989 without filing complaint).

- The widow of a police officer killed in the crash of a traffic-control plane is denied discovery of evidence of the airplane's design defect because of a confidential settlement "agreement" in another case. The aircraft type is still in use. *Turnberger v. Cessna Aircraft Co.*, Broward Cty., Fla., 17th Jud. Cir. Ct., No. 83-12392.

- A scientist who herself suffered a potentially fatal allergic reaction to a painkiller-later with drawn from the market-discovers that other victims were similarly affected several years earlier but were sworn to secrecy. She also discovers that some confidential settlement "agreements" even prohibited discussion of adverse reactions in scientific journals. *Davis v. McNeilab, Inc.*, U.S. Dist. Ct., D.C., 85-CV-3972 (case settled in 1986).

While private matters having no public impact and true trade secrets justify confidentiality, it is inconsistent with the impartial administration of justice for a publicly created and maintained legal system to help hide responsibility for misconduct.

Events that lead to litigation often have an impact well beyond the immediate parties, and that impact can be deadly. In today's age of mass manufacturing and distribution, a dispute brought before a court can involve a potentially life-threatening hazard that already may have affected thousands of citizens, and may affect even more in the future.

Confidentiality "agreements" in products liability cases can keep information about the dangers of defective products from coming to the attention of government regulators, the news media and others who could alert the public.

And in medical negligence cases, the doctors alleged to have caused an injury may well have other patients undergoing the same procedures. Secret settlements and sealed files can enable physicians to keep practicing without having to account for substandard care. The same concerns apply to injurious behavior in other professions.

In fact, in all types of tort litigation, both the deterrent and compensation functions of the civil justice system can be stifled by secrecy. Beyond leaving past victims ignorant of the cause of their injuries and future victims vulnerable, secrecy also can make it more difficult for victims to prepare and prove their cases.

Secrecy can make it more likely that critical evidence will be concealed or destroyed without ever being discovered.

A legal system that functions in this way is out of balance, which is why there is growing support for changes in court rules and procedures to eliminate unwarranted secrecy. Those who advocate such change seek a fairer balance between privacy and property rights on one side, and public health and safety on the other. Restoring lost balance also could help to reduce injuries and resulting litigation. T he imbalance in the tort litigation system is rooted in abuses of otherwise legitimate rights. The litigation playing field was level when the Federal Rules of Civil Procedure and other similar reforms of litigation practice were inaugurated in the 1930s. The system at that time provided protection for truly personal information (the reasons why a divorce was sought, or why child custody was refused) and true trade secrets (chemical formulae, manufacturing methods, and details of distribution networks).

Some segments of the legal community now attempt to protect classes of information that go well beyond the original plan. They are advised to misuse the "trade secret" and "privacy" labels, claiming special protection for information never intended to have confidential status under the rules of civil procedures, and claiming corporate privacy rights never recognized by American law.

From this attempt to expand the idea of protected information into new areas, there has developed a well-known arsenal of devices intended to protect wrongdoers:

- "Agreements" that prohibit disclosure of the compensation paid in a settlement, the names of the parties, and sometimes even the fact that litigation occurred;
- Sealed court files that can conceal the very existence of the lawsuit;
- Protective orders that require the return or destruction of discovery information after the termination of the litigation, and prohibit sharing discovery material with other attorneys handling similar cases or with government agencies; and
- Prohibitions against attorneys handling similar cases in the future.

New secrecy strategies are still emerging. In medical malpractice cases, for instance, negotiated dismissals of individual physicians have been used to keep the doctors' names out of the federal government's data bank of malpractice verdicts and settlements, thus thwarting an important public policy.

Secrecy proponents argue that confidentiality makes litigation go more smoothly and promotes early settlement, and indeed it may - when the advocates of secrecy get their way.

But secrecy also can delay the resolution of litigation, consume large amounts of lawyers' time, and strain the courts' capacity to move cases toward a conclusion - as shown by a recent federal court opinion in *Wauchop v. Domino's Pizza, Inc.* (U.S. Dist. Ct., S.D. Ind., No. S90-496). The plaintiffs in *Wauchop* sought information on the corporation's promise to deliver food by car in 30 minutes or less, arguing that the policy may have led to an auto collision.

The defendants demanded that much of the discovery material requested by the plaintiffs be protected against further disclosure. The court concluded that secrecy was not justified for most categories of the material, but the defendants' demand for a protective order forced the court to read motions, review and analyze numerous discovery requests, and render its conclusions in an opinion and order more than 30 pages long. The judge properly lamented that the federal rules on discovery "should be self-executing through the cooperation of counsel."

To stabilize this out-of-balance system and counteract the harm

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Another view of dues from inactive bar

BY BRUCE ABRAMSON

The Board of Governors doubled fees on inactives last year as a political gambit: inactives cannot vote, while the actives, the Board believed, would raise hell if they were told the truth about the deficit. Despite all those **Bar Rag** articles about the budget, the Board has yet to level with the Bar about deficits and fee increases.

For over a year now the Board has been in litigation over the inactive fee increase. The Supreme Court is put in an awkward position because it wears two hats. In addition to its traditional judicial role, it is also the supervisor of the Board. As supervisor, the Court must make a political decision in an unequal battle between the Board (and voting actives) and nonvoting inactives. Both the Board and the Court have withheld information the Bar needs to exercise self-government.

If all this is news to you, read on.

The deficit

This much the Board has disclosed. In 1990, the Board became concerned over the size of its budget deficit. Its large cash reserve was being rapidly depleted. The Board responded by doubling the inactive fee, leaving the active fee at the 1981 level. Revenue from the inactive increase would allow a slower spend-down of the cash reserve.

What the Board has not disclosed are the specific decisions it made which caused the deficit, and why it doubled the inactive fee, and why it left the active fee untouched. Discovery during litigation over the inactive fee revealed what the Board has not.

The cause of the large budget deficit is the Board's decision to provide four services without charging user-fees sufficient to cover costs. The Board has not disclosed, with one exception, these deficit-spending decisions: (1) Admissions, $75,000 deficit in 1991 ; (2) CLE, $75,000; (3) the Northern Justice Conference, $35,000 (this is the one figure that the Board has disclosed); (4) Discipline, running about 25 percent of the budget: although the Board has authority to impose costs on disciplined attorneys, it chooses not to do so. (The Bar's disciplinary expenses are only for the salaries of Bar counsel and staff; all other costs are borne by the public through appropriations to the Supreme Court.)

The politics

Why hasn't the Board explicitly told the membership about these deficit-spending decisions? And what have those decisions to do with the singling out of inactives for a double fee increase? Transcripts of the 1990 budget meeting tell the story. As one board member bluntly stated:

> We've got almost $150,000 in proposed deficits in two areas where the members may not want us to run deficits. I mean CLE...(and) admission...I think a significant number of the members don't want to subsidize this...I would like to know from the members whether or not they want admissions, CLE to balance out...And I think most of the members would rather have some sort of assessment on discipline matters.

Another Board member explained that actives would not tolerate a fee increase as long as the Bar had a large cash surplus: "It's a slush fund, and that's basically the way it's termed by most of the people out in the sticks." Another member said that if the Board attempted to raise active fees, "People would squawk like hell."

The Board was in a bind: How can it keep providing services to actives without significantly increasing user-fees? How can it kept the actives from "squawking"? And how can it keep the cash surplus from being rapidly depleted? The Board devised a two-part strategy: launch a campaign to soften up the actives for a fee increase in the next two or three years, and immediately raise fees on inactives. (Inactives cannot "squawk": they cannot vote, 88 percent live out-of-state.)

The fiduciary duty

The Board's budget jam strategy lost sight of two separate fiduciary duties. First, the Board exploited political power over the nonvoting inactives. Second, during its softening-up campaign, the Board withheld basic information about its deficit-causing decisions.

Self-government

For the legal profession to exercise self-government, the members of the Bar need one thing: information. Everyone appreciates the hours the Board members put in to serve us. We are a small Bar, and the Board members are our friends and colleagues. But that does not mean that fiduciary duties can be dispensed with. To the contrary: our greater trust means we are less skeptical about what we are told. More, not less, candor is called for.

Did the Board ever get around to asking the voting members whether they wanted to use annual dues to subsidize admissions, CLE, and discipline? Look again at the Board's survey "regarding the continuation of certain services," and the writeup of the survey in the September 1991 issue. No questions about these three subsidies were asked. (Inactives did not even get this survey, although their fees support all services.) Did the Board ever disclose the financial details necessary for the members to make any decisions on subsidies? Every member can reread the *Bar Rag* issues from the past year and a half and judge the Board's lack of candor.

How far has the Board gone in withholding information that the membership needs for self-government? For over a year the Board has been in litigation over the inactive fee increase. This litigation alleges the Board abused its power. Do inactive and active members have an interest in being told by the Board of the existence of this litigation?

Both inactive and active fees pay for the *Bar Rag*, the primary purpose of which is for the Bar Association to keep its members informed of matters of importance. The Board used inactive fees to defend its increase of the inactive fee. Furthermore, the Board defended itself against breach of fiduciary duties in the name of the membership. In a self-governing Bar, active members have the right to control litigation, either through instructions to the Board or by changing the Board. To do this, active members must know about litigation while it is pending, not afterwards.

The litigation over the inactive fee increase has raised another problem which affects the ability of the profession to exercise self-government: the Supreme Court's role of supervisor of the Board. Before this problem of self-government is discussed, here are some highlights of the case.

UPDATE

The Alaska Supreme Court in March issued two orders in the cases referenced in this article, titled *Abramson et al*, which were filed in February, 1992. The orders read as follows:

"It is ordered: The petition for rehearing, filed by Bruce Abramson of Feb. 18, 1992, is denied. Entered by direction of the Supreme Court on March 26, 1992."

"It is ordered: Motion for written opinion, filed by Bruce Abramson on Feb. 18, 1992 is denied. Entered by direction of an individual justice on March 3, 1992."

The litigation

When the Board doubled the inactive fee, I declined to pay, protesting not only taxation without representation, but also the Board's targeting of inactives to avoid political risks of increasing fees on actives. The Board petitioned the Supreme Court for suspension. Two out-of-state inactives who paid under protest, Mr. Mullaney and Mr. Eustis, intervened.

We filed a motion for summary judgment breaking down the political targeting problem into five issues: (1) Taxation without representation (See Mr. Mulaney's article in the last issue); (2) The Board's political targeting of a nonvoting minority violates due process and equal protection; (3) Since inactives are barred from self-government, forcing them to subsidize a mandatory Bar violates freedom of association and speech; (4) Under the Bar Act, inactives are only nominal members (they cannot practice law, vote, or hold office); since the Act requires that fees be "consistent with" the Bar Act, nominal members must be limited to a nominal, or record keeping fee; (5) Since 88 percent of the inactives are nonresidents, the political targeting of inactives violates federal privileges and immunities.

The inactive fee increase was also challenged because three of the Board's deficit-creating decisions were ultra vires. A look at the Board's sources of authority, the Bar Act and the Bar Rules, shows that the Board exceeded its powers in three areas: (1) The Board has no authority to put on CLE courses (it can only make recommendations on CLE rules); (2) The Board had no authority to put on the Northern Justice Conference; (3) The Board cannot pass costs of non-members' admissions on to the membership. (In controlling admissions, the Supreme Court has delegated to the Board the authority to set an applicant user-fee. By contrast, charging X to pay for a government service to Y is a tax. The Court has never enacted a Bar Rule which imposes a legal obligation on members to pay for this government service.) For some of these activities the Board may have been relying on the Bylaws. But bylaws, being regulations of a government instrumentality, cannot expand the Board's authority beyond those in its charters.

The two hats of the Supreme Court

The Board acts on authority delegated by the Supreme Court. In hearing litigation against the Board, the Court wears two hats: one supervisory, the other judicial. In the past when the Board has been sued for violating due process, the Court has always used its supervisory, not judicial, authority to reverse the Board. The Court is the Political head of the Bar, and it can enhance or diminish the Bar's self-government by both its substantive decisions and its process.

In this litigation, the Court must decide in its judicial role whether the Board acted within the law in raising the inactive fee. But in its supervisory role, the Court makes a political decision. Two groups under its supervision are fighting in an unequal battle: one group wields all the power, the other group holds none. At what point will the supervisor draw the line prohibiting its delagees from running up expenses and then passing those expenses off on those who are powerless? This supervisory decision is political, not legal.

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• What's fair for inactive members and others?

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The question of ultra vires expenses is even more tricky for a court wearing two hats. When an agent exceeds its authority, the supervisor must consider the financial and political consequences of those actions as it handles the crisis. If the Board were an Executive Branch agency (or a private organization), the Court would ignore these considerations as it performs its traditional judicial role of interpreting the law. But what does it do when it wears two hats?

How the Court has handled each of its two roles, and how it has reconciled them, we shall perhaps never know. The Court denied the inactives' motion for summary judgment without written opinion.

The Court was asked to write an opinion. It was argued that a statement of what the Court has decided and why, on each of the litigated issues, is needed by the profession to exercise self-government. For example, when the Board requires members to subsidize applicants' admissions, it has made a tax decision. But was it the Legislature or the Court that made the prior political decision that members, and not just applicants, should bear this government expense? That is, which specific statute or Bar Rule made the delegation?

If the Court does not explain where the Board's authority comes from, then the members lack information needed for self-government: What specifically would the members have to change if they wanted a change? A statute? Bar Rule? Board members? Bylaw?

What? If the Court made the tax decision using its supervisory powers, did it do so as a reaction to the litigation, that is, did the Court impose a retroactive tax? If so, the members should be told this as well.

The same can be said for each of the issues raised in the litigation. To the degree that governing officials withhold information from those they govern, self-government-government is denied.

The Court has declined to write an opinion.

What's next?

In exercising self-government, three basic decisions now face the active members. One is the process question: What degree of fiduciary duty — of candor — shall be demanded of Board members? Another is priorities: What services are important enough to the actives that they are willing to pay for them, in user-fees or dues? Third is the fairness question regarding nonvoting, nonpracticing, mostly -out-of-state inactives: What expenses are legitimately "theirs"? What is the fair way to answer that question given that inactives are a disenfranchised minority?

What is most at stake for the bar is not money. If the inactive fee had been reduced to a nominal $15 record keeping fee, then the active fee would needed to have been raised by a mere $25. What is at stake is best described by the author Martin Mayer:

> A layman, McGeorge Bundy, once suggested...that "the fundamental function of the law is to prevent the natural unfairness of human society from becoming intolerable." What we value in the best of the lawyers is not their technical skill, their ability to manipulate the system, but their feelings of fairness, for the realities of a conflict not only of interests but of principles. Lawyers themselves, off duty, usually reserve their highest respect for other lawyers who radiate this sense of equity.

How the legal profession handles self-government shapes our reputation in the community. And perhaps even the amount of self-government the public will permit us to enjoy.

From the public's viewpoint, admissions, discipline, and CLE are consumer protection matters that our self-governance removes from their control. If the public sees the legal profession as not being fair to its own, can we expect the public to trust us to be fair to them?

Another angry dues letter

Lawyer claims corruption

Thank you for setting up a Blue Ribbon Commission on Dues and Fees and for sending me a copy of the Commission's report. The report calls forth these questions:

Is there any reason at all to think the Commission and its Report are not corrupt? Do we have any reason at all to think that the Bar Association itself is not corrupt?

If—as our Bar Association representative reports—only those who attend the convention can vote, doesn't that give an undue influence to Anchorage members, who have no travel expenses this time around? If only those who attend the convention can vote, doesn't that disenfranchise those who cannot afford to attend?

So if it is true that only those who attend the convention can vote, doesn't that corrupt the legitimacy of the Bar Association?

Doesn't the Report itself state that Anchorage lawyers use CLEs more than non-Anchorage lawyers? And doesn't the Report itself also state that CLEs are subsidized by the Association?

Then the logical result is that non-Anchorage lawyers are subsidizing the taking of CLEs by Anchorage lawyers.

But the subsistence reports of U.S. Fish and Wildlife Service show that the rural areas of Alaska have a lower income than do the urban areas.

So that means that rural low-income lawyers are subsidizing the taking of CLEs by high-income Anchorage lawyers.

Is this not the height of corruption, especially when combined with the rule that only those attending a convention in Anchorage—no travel costs to Anchorage lawyers, high cost to others—can vote on the issue?

So subsidized Anchorage lawyers have no travel cost to attend to vote on subsidies and dues, but one must attend to vote? And the Commission (dishonestly?) says this is not a question of equity or of preferential treatment to Anchorage attorneys? Yes, it is.

If members don't want to pay the full cost of CLEs, lower the cost of CLEs and reduce their number. The members voted NOT to have mandatory CLEs, so subsidizing CLEs remains corrupt because the subsidy attempts to "hook" members into CLEs despite their vote. But non-Anchorage lawyers aren't biting.

Award the Commission a Black Ribbon. Please change your voting rule to allow all members to vote on dues, whether they attend the convention or not.

Remove subsidies from CLEs. Revise the *Bar Rag* by ending space-consuming expensive humor and 'features' (wine, movies, romance, cartoons, T.V. Bar); sell more advertising instead. Cut discipline staff by eliminating solicitation and advertising rules (made anachronistic by *Bates*). Cut expenses instead of increasing revenues-dues-fees. End Conventions and do all business by mail—as you mostly do already.

Your Commission is mistaken in its intents and purposes. Reject their report. Make the changes suggested here—and others—to avoid dues increases.

Joseph A. Sonneman

VISIT THE JUNE FLOWERS IN ANCHORAGE

• Secrecy

secrecy can cause, this country needs a strong presumption of openness for court proceedings and records.

We need adequate procedures to ensure that the trial judge will consider the public's interest in information that would be concealed under a proposed protective order. Advocates of secrecy argue that existing procedures already allow courts to consider the public interest as part of the exercise of judicial discretion, but widespread approval of protective orders and confidentiality "agreements" suggests that the public interest has not been made a routine part of the courts' calculus.

The Association of Trial Lawyers of America acted in 1989 to focus attention on the multiple problems caused by secrecy. ATLA's Board of Governors passed a resolution encouraging:

- Courts to scrutinize requests for secrecy and grant them only when information sought to be protected is a true trade secret or can qualify for some other privilege;
- Courts to allow sharing of discovery material with attorneys handling similar cases, regulatory agencies and professional boards;
- Courts to liberally grant relief from pre-existing orders and "agreements" that unfairly impose secrecy; and
- Attorneys to resist secrecy demands that preclude sharing information with regulatory agencies and other lawyers, and discouraging them from agreeing to proposed secrecy orders.

By now eight states have joined the movement away from secrecy. Some of this initiative has come from judges themselves. In 1990, the Texas Supreme Court was the first court to amend its rules to recognize a presumption of openness for all court proceedings, and to establish procedures to be followed for any request to seal court files.

Court rules with a similar focus on openness have been adopted by the New York State Administrative Board of the Courts, the San Diego County Superior Court, and the Delaware Supreme Court and Chancery Court.

In 1990, a different approach was taken by Florida, which passed legislation that identified a class of dangers as "public hazards," and prohibited concealment of such hazards through judicial processes.

Narrower mechanisms have been adopted in several other states. These include specific procedures to be followed in disclosing discovery material to attorneys handling similar cases (adopted in Virginia in 1989), and standards for confidentiality regarding litigation by and against state government (adopted in North Carolina, Florida and Oregon).

Other bills and proposed court rules are under consideration in may states, most based on either the Texas or Florida models, and usually with the support of consumer, labor, environmental, senior citizen or media organizations.

The mechanics of the new measures aside, an obvious question is what the new rules and procedures change, and what they leave unchanged.

The new mechanisms give no one any new substantive rights of action. They cannot engender new cases. Nor, in any known case, do they expose strictly personal information or reveal genuine trade secrets to the public.

The changes do, obviously, give judges new duties of review in a number of situations. But once it becomes clear that requests for secrecy will be measured against the public interest, the number of secrecy demands should decrease, so that the net result is the same or better that what has been observed in the past.

The same effect should be noticeable in terms of the cost of litigation. Market forces can be expected to work against satellite litigation when clients realize that demands for unjustified secrecy will not succeed, and that they may be penalized.

Perhaps most importantly, the new measures do not infringe on judicial discretion. Indeed, they depend on judges to exercise discretion as much as the former rules ever did. They provide standards to be met by litigants, like many other written standards of proof, and prescribe what the result will be if the judge determines that the standards have not been met.

There is at least some evidence of improvement already. An ATLA member who practices in Minnesota, where no legislation has yet been passed on secrecy, recently observed a dramatic reversal of the Shiley heart valve manufacturer's previous use of secrecy demands, as well as judges' awareness of the issue of secrecy and the potential it has for harm.

These developments suggest that secrecy advocates' dire warnings about increased satellite litigation and diminished access to information are exaggerated. Their predictions imply that America's judges would allow the courts to slow to a crawl, and that members of the bar and public would accept dramatic increases in litigation costs. Experienced judges and trial lawyers, however, will not tolerate such a result.

The goal here is to have a safer society. One way to attain that goal is to create mechanisms designed to help protect us all.

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Note: The Alaska House Judiciary Committee, chaired by Representative Dave Donley, introduced HB 171 last session, a bill that prohibits sealing court records to conceal public hazards. Senator Rodey introduced a similar bill, SB 411, February 14, 1992.

Fish for business at the convention!