Inside

Tort reform box score, *Tao,* vehicle forfeiture & insurance, dog news at the TVBA, court security...and more

BAR NEWS & NOTES

$2.00

The Alaska BAR RAG

VOLUME 18, NO. 3 — *Dignitas, semper dignitas* — MAY-JUNE, 1994

Employment in the wake of the *Exxon Valdez*

BY SCOTT BRANDT-ERICHSEN

The judicial progeny of the Exxon Valdez incident has involved dozens of law firms from both within and outside of the state.

While specific figures regarding the number of attorneys and paralegals are not available for public consumption, the number is large by anyone's estimate. As the Exxon Valdez trial(s) get underway, the vast resources allocated to preparation and discovery in the case are freed up for other work. The question is whether there is any other work to which those resources may be applied.

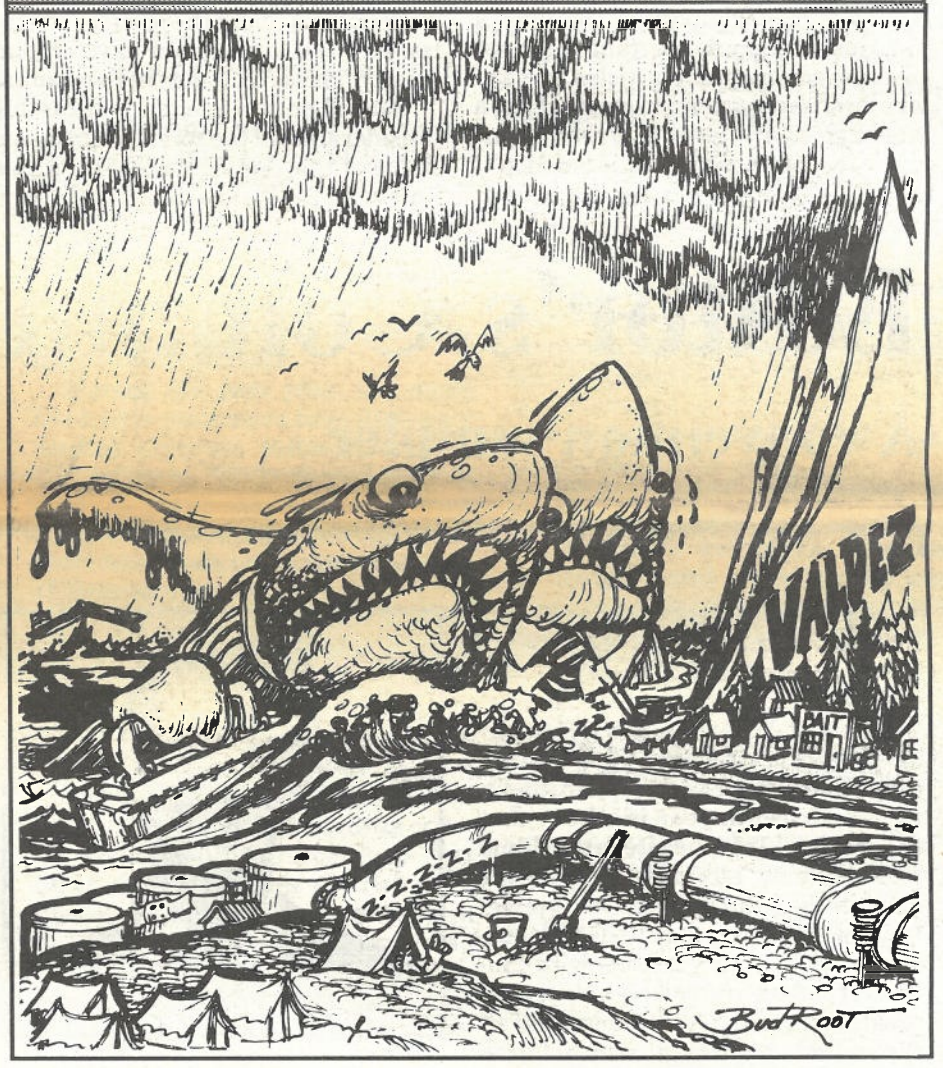
The employment picture keeps getting dimmer as the legal field in Alaska becomes increasingly more crowded. The number of attorneys and the number of active attorneys in Alaska have continued to increase, although not at the rate experienced in the early 1980's. The number of new admittees has been fairly stable for the last four years. The number of active attorneys per thousand population has been stable for the last five years. However, the total number of cases filed has not remained stable.

As with any type of enterprise it makes sense to keep in touch with the marketplace. For attorneys the sources of information about the marketplace are limited. Short of extensive surveys of firms and practitioners (which may be incomplete if people do not wish to respond) analysis of court statistics is one of the few simple ways to take the pulse of the legal profession. Over the last 15 years that pulse has slowed considerably, but it has been stabilized for the last five years. Granted, statistics such as these are still of limited utility because they don't show the amount of pre-litigation settlement, alternate dispute resolution, administrative or non-litigation work going on. For a measure of what is making it to the courts, however, the information is illuminating. As the information in the table below shows, there just isn't as much litigation to go around as there used to be.

The first table shows the number of attorneys and new admittees. The second table shows the case filings and number of cases per active attorney. While the total number of cases per attorney has dropped more than 50 percent since 1980, backing out traffic offenses which rarely involve an

continued on page 3

OIL SPILL LAWYERS (YES, THEY'RE BACK)



CJRA plan: annual assessment of dockets

BY H. RUSSELL HOLLAND, CHIEF JUDGE DISTRICT OF ALASKA

By Miscellaneous General Order No. 698, this court adopted its Civil Justice Expense & Delay Reduction Plan. The plan was modified by Amendment No. 1 to, among other things, make provision for a schedule for effecting various components of the plan. The Civil Justice Reform Act of 1990 requires that:

> [Each court shall] assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court.

28 U.S.C. § 475. In order to accomplish the foregoing, the court examined both the state of its docket, as well as the state of its realization of goals or objectives set out in the court's plan.

Attached hereto is the court's summary appraisal of the state of its civil and criminal dockets. Appendix 1. The court has employed the most current statistical data available. Also attached hereto is the court's appraisal of the status of its CJRA Plan. Appendix 2.

The court summarizes the condition of its civil and criminal dockets as follows.

As to criminal cases, the court continues to process cases in compliance with the Speedy Trial Act. Criminal cases are entitled to substantial priority over civil litigation, and they receive that treatment. While there have been some "peaks and valleys" in the flow of criminal cases through this court over the past two years, the court's criminal docket has been rather stable. See Appendix 1, Part B. Although the cold statistics do not reflect this very well, anecdotal information from the judges suggests that there has been a noticeable decrease in the complexity (along with a modest decrease in the absolute number of) criminal filings made in this district during the past twelve months. We think this is in part the result of a change in administration at the department of Justice. A new United States Attorney has recently been appointed and sworn into of-

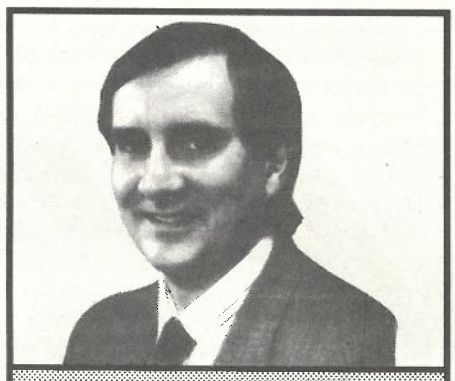
continued on page 18

Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

Non-Profit Organization
U.S. Postage Paid
Permit No. 401
Anchorage, Alaska

President's Column

My turn to swing the cat by the tail



Daniel Winfree

I recently heard Mark Twain quoted as saying that a man who swings a cat by the tail learns things that can *only* be learned by swinging a cat by the tail. So it is with becoming President of the Bar Association. Nonetheless, as befits a proud member of the TVBA, I'll do my swinging in full view and see what happens. I am buoyed by the knowledge that my TVBA pals will, throughout my perilous adventures, provide me with the comfort, compassion, and guidance for which that organization is widely renowned.

First on the agenda for the year is the continuation of the communications program initiated by Philip Volland. We made a concerted effort over the last year to provide you with more information about issues facing the Bar and about actions taken by the BOG. We will attempt to move on to another level this year, taking advantage of a monthly page in the Alaska Journal of Commerce (and perhaps regular commentary articles in various local newspapers) to start taking a message to the general public about what the Bar Association is (and isn't) and does (and doesn't do), about how the Bar Association operates to protect the public, and about various aspects of legal issues of current topical interest. Whether it is one lawyer at a time, one client at a time, or one public issue at a time, the Bar Association and its members must make every effort to walk the talk about the positive effects lawyers can and should have on our society. This is true even in Fairbanks.

Second on the agenda is a careful consideration of the recent Legislative Audit of the Bar Association. As you know from Philip Volland's last column, the Audit concluded that the Bar Association presently is doing a competent job of regulating the profession. At the same time, the Audit noted that the Bar is self-regulated, that self-regulation has always been viewed skeptically, and that the recent ABA disciplinary system task force concluded that state disciplinary systems should be controlled and managed exclusively by state supreme courts. Before the Bar Association is audited again in 1998, we need to address that issue and either make a strong case for the present system or be prepared to accept changes that may be foisted upon us. Before the year is out, we hope to have a task force in place to meet this matter head on.

Last on the agenda is the consideration of three specific substantive issues that have been around for some time and need to be dealt with one way or the other. **First,** the unauthorized practice of law ("UPL") is becoming a problem in Alaska, just as it has in many other jurisdictions. By statute, the UPL is supposed to be defined by Bar Rule, but no definition has ever been approved. That must be taken care of in the next year. At the same time, however, we may have to consider options being considered in other jurisdictions, such as having "legal technicians" licensed and certified to assist in the preparation of certain limited kinds of legal documents. There is a growing concern that lawyers are too expensive for certain kinds of minor legal matters, and legal technicians are clamoring to fill that void. How should we deal with this problem? **Second,** the notion of mandatory CLE is back. The Audit recommended that the Supreme Court should consider issuing a rule for mandatory CLE because the Bar Association did not do so, and the Court has indicated it will study the matter. It is imperative that the Bar participate in that study with the Court for both policy and financial reasons. **Lastly,** we will continue looking at the issue of mandatory malpractice coverage or some sort of mandatory insurance information disclosure requirements. We have no preconceived notions about this issue, and it will take some time to review the policy considerations and economics of it — we expect to have ALPS and some other ALPS states involved in the discussions.

Yes, these are big issues, and, no, I don't expect to have them all wrapped up by the end of my one-year term. It's a TVBA maxim to set low expectations to avoid failure—If I can get the discussions started and a timetable set for future decisions, I'll be happy with my swing of the cat.

Editor's Column

A convention sampler

Peter Maassen

Anyone who's dealt with the Alaska Legislature knows that the real work on the most complicated issues gets done in the final hours of the session, when legislators are suddenly horror-struck at the prospect of going home and telling Joe and Jane Constituent, for the sixteenth year in a row, that the problem of otter waste in the Kenai mud bottoms has once again gone unaddressed. But that last-minute legislative flurry is okay, we tell ourselves; when you're dealing with millions of dollars and complex statewide programs, you'll never understand all the nuances anyway, so why not drop the debate-and-educate charade and cut to the vote directly?

But the Alaska Bar Association should be different. Our issues are simple, our budget meager. A little pre-voting debate could actually be constructive, or so many of us have thought. That's why I — and I don't think I'm speaking only for myself here—I was stunned at the number of resolutions that passed through this year's Bar Convention in the final half hour (actually after President Winfree had announced the no-drink limit in the cocktail lounge next door). For those of you who had to leave, here's a sampling of what the Bar imposed on you in your absence.

Number 999, call me re partnership opportunities. An attorney's hourly billing rate cannot be greater than the last three digits of his or her Bar membership number. This resolution passed over my strenuous objection (my operative digits are 032). The general feeling, however, was that an average local rate of $499.5 per hour ain't bad in today's legal market.

"We're nice people with expensive educations." Law firms that advertise on public television are required to adopt new slogans by June 1, or new slogans will be foisted upon them. An astute member pointed out that the current crop of mottos, *e.g.* "Meeting the legal needs of Alaska for fifty-six years," "Serving Alaska's legal needs for nearly sixty years," and "Providing legal services to Alaska for over half a century," is somewhat — dare I say it? — lackluster. Another member held up for aspiration the old motto of the Public Defenders' softball team: "A reasonable doubt at a reasonable price."

Under the new resolution, law firms that do not opt voluntarily for snappier slogans will be required to select from the following list and pay a licensing fee to the Bar:

"We know the law better than you ever will."

"Suing your neighbors so your life can be just a little bit better."

"Comprising graduates of accredited law schools, for the most part anyway."

"Saying whatever you want as long as you pay us for it up front."

"Holding them down, in a purely legal sense, of course, so you can kick them if you want to."

"Serving Alaska for longer today than we did just a week or so ago."

Have gun, will cavil. The voting membership decided that the happy confluence of the new concealed-weapons law and the new courthouse security system make it mandatory that lawyers henceforth carry sidearms at all times. The rationale behind this resolution was pure civic-mindedness: what could be better than to take several thousand handguns out of the pawnshop-to-criminal-to-pawnshop circuit and put them in the pockets of people who are trained to resolve the most highly contentious disputes by putting words on paper? Enforcement of this mandate will come via the courthouse metal detector. Lawyers who pass through without setting off the alarms will be subject to progressive discipline. The question of safety instruction will be taken up at next year's Convention, after a survey of first-year mortality rates has demonstrated whether there's really a need for it.

More obfuscation. A vocabulary list will be sent to all Bar members at the beginning of the month, from which we must select a challenging word a day to use correctly in legal pleadings or intra-Bar correspondence. This regimen is a result of the general feeling in the Bar that the trend toward simplification of legal language has made the law accessible to people who really have no business knowing what we're up to. A praiseworthy example was drawn from *In re Compass Van & Storage Corp.*, 65 B.R. 1007, 1012 (Bankr. E.D.N.Y. 1986), in which Judge C. Albert Parente wrote, "Allied's equivocation and incertitude as to the nature of the contract elicits a negative credibility impact with reference to the *bona fides* and validity of its position." Who among us could have said it better?

The first week's-worth of words, so you can get started, are "usufructuary," "sclaff," "renvoi," "prelibation," and "oh." Anyone who can combine them into a snappy, usable advertising slogan wins a pin-striped shoulder-holster.

The Alaska BAR RAG

The *Alaska Bar Rag* is published bimonthly by the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, Alaska 99501 (272-7469).

President: Daniel E. Winfree
President Elect: Brant McGee
Vice President: J. John Franich, Jr.
Secretary: Dennis L. McCarty
Treasurer: Diane Vallentine
Members:
Patricia Browner, Public Member
David H. Bundy
William E. Dam, Sr., Public Member
Marc June
Elizabeth Kerttula
Ethel Staton, Public Member
Philip R. Volland
Executive Director:
Deborah O'Regan
Editor in Chief: Peter J. Maassen
Editor Emeritus: Harry Branson
Contributing Writers:
James M. Bendell
Dan Branch
Drew Peterson
Mary K. Hughes
William Satterberg
Ken Gutsch
Scott Brandt-Erichsen
Walt Arden
Michael J. Schneider
Daniel Patrick O'Tierney
Steven T. O'Hara
Thomas J. Yerbich
Sally J. Suddock, Managing Editor
Design & Production:
The Alaska Group
Advertising Agent:
Linda Brown
750 W. Second Ave., Suite 205
Anchorage, Alaska 99501
(907) 272-7500
Fax 279-1037

The *Alaska Bar Rag* is published in January, March, May, July, September, and November.

Bar People

Green Law Offices, P.C. has expanded its real estate and family law practice, and added Attorney **Dorothea Aguero**. Her areas of practice include real estate, divorce, custody, personal injury and probate. She has joined the firm's Spenard and Minnesota location.

Dorothea Aguero

D. Kevin Williams has joined the firm of Steven Pradell. Williams is experienced in personal injury and maritime litigation....**Larry Keyes,** who has a masters' degree in maritime law, has joined the law firm of Russell, Tesche & Wagg.

Juneau partners form new partnership

James M. Seedorf, managing partner of Hughes Thorsness Gantz Powell & Brundin, on April 27 announced that the firm's three Juneau partners will be forming another partnership in Juneau concentrating on insurance defense and litigation matters. The firm will close its Juneau office effective May 1, 1994. Seedorf stressed that this was an amicable decision.

Founded in 1939, Hughes Thorsness remains one of the oldest and largest law firms in Alaska, and will continue to maintain offices in Anchorage, Fairbanks and Valdez.

"Hughes Thorsness will continue to provide comprehensive legal and business representation to our clients in Southeast Alaska out of both our Anchorage and Fairbanks offices," said Seedorf.

Officers elected

The Alaska Association of Legal Administrators, Inc. elected their new officers and board for 1994-1995. Serving as president is Susan Lamb of Owens & Turner, P.C.; President-elect is Jan Joseph of Jermain, Dunnagan & Owens, P.C.; Vice President is Jennifer Walker of Kemppel, Huffman and Ginder, P.C.; Beth Izold of Tugman & Clark is Secretary; Herb Kluge of Bliss Riordan is Treasurer; and serving as board member at large is Gail Chain of Faulkner, Banfield, Doogan & Holmes. Past President Kate Walker of Atkinson, Conway & Gagnon, Inc. also serves on the Board.

The Alaska chapter is part of an international organization whose mission is to promote, enhance and support law office administration.

Employment

Continued from page 1

attorney the decrease drops to only a 24 percent reduction per attorney. A 24 percent reduction is nothing to take lightly.

Additional statistical review shows that the percentage of cases in the areas of criminal and domestic/children's matters has been increasing while general civil/commercial matters have been making up a smaller percentage of the new filings. Among civil filings in the general civil category (18% in 1993 down from 29 percent in 1980) the largest increases have been in the areas of administrative review (9 percent in 1993 up from 5 percent in 1980) and "other" (33 percent in 1980 and 52 percent in 1993). The largest decrease in the general civil category has been in debt/contract matters (39 percent in 1980 down to 14 percent in 1993).

YEAR	TOTAL BAR	ACTIVE BAR	NEW APPLICANTS	NEW ADMISSIONS	ACTIVES PER 1000 PEOPLE
1993	3112	2552	187	113	4.26
1992	3030	2512	187	116	4.28
1991	2955	2462	161	101	4.32
1990	2896	2404	180	116	4.37
1989	2777	2347	137	86	4.39
1988	2711	2258	142	94	4.25
1987	2615	2216	154	106	4.12
1986	2521	2175	208	136	3.97
1985	2390	2061	277	194	3.82
1984	2183	1840	250	159	3.52
1980	1463	1316			3.27

Cases indicates trial court (District and Superior) case filings of all types. This does not take into account Federal Court filings or administrative proceedings. Appellate filings include both the Court of Appeals and the Supreme Court.

YEAR	NEW CASE FILINGS TRAIL CT.	NEW PER ACTIVE	NON TRAFFIC CASE FILINGS	NON TRAFFIC FILINGS PER ACTIVE ATTY	APPELLATE FILINGS	APPELLATE PER ACTIVE
1993	128093	50.19	69393	27.19	1052	.41
1992	129512	51.55	68543	27.29	1014	.40
1991	121314	49.27	64892	26.36	1126	.46
1990	121088	50.37	65524	27.26	1068	.44
1989	133628	56.94	64726	27.58	1059	.45
1988	146959	65.08	67141	29.73	1104	.49
1987	156593	70.66	72644	32.78	1110	.50
1986	157736	72.52	73992	34.02	1219	.56
1985	164570	79.85	75793	36.77	1034	.50
1984	162066	88.08	67184	36.51	1072	.58
1980	143217	108.83	47204	35.87	641	.49

It doesn't take much analysis to realize that as the work available is spread among more and more attorneys the market pressures may force some to change the type of services offered, decrease prices in hopes of increasing the market share or drop out of the market altogether. Cases involving the Exxon Valdez matters, Mental Health Trust litigation or the State royalty oil cases may postpone the inevitable market pressure by tying up many attorneys on a small number of cases, but in the longer term it is not realistic to expect consistent events which produce such complex litigation.

Gruenstein, Hickey & Stewart in the offices of the law frim named after them: at work or at play.

New law firm announced

Peter Gruenstein, Dan Hickey and David C. Stewart have announced the formation of a law firm to be called Gruenstein, Hickey & Stewart for the purpose of practicing law. The law firm, which is named after its respective members, will de-emphasize the areas of trusts and estates, security law, the 21st Amendment to the United States Constitution (Prohibition) and workers compensation. By process of elimination, Gruenstein, Hickey & Stewart will emphasize personal injury, business and commercial litigation, white-collar criminal defense, oil and gas royalty litigation and the 22nd Amendment to the United States Constitution (two-term Presidential limit).

The agreement to form the new law firm culminated 12 1/2 years of negotiations among the partners when Hickey agreed to work on the pronunciation of Gruenstein's name (GRU-en-stine) and the partners determined that Stewart would get the dictaphone. Hickey is a former Chief State Prosecutor, Stewart is a former judge and Gruenstein is a former substitute on the Burr, Pease & Kurtz softball team.

Hospital calls

By William Satterberg

Undoubtedly, one of the most enjoyable parts of practicing criminal defense law involves hospital calls. This is when one gets to see the complete interaction of doctor, patient, trooper, and attorney. Sometimes, the roles even change.

I remember one particular date when I received a call from a good friend of mine. He was camped out in the emergency room undergoing treatment for injuries allegedly suffered as a result of a serious, one car rollover. Or at least that is the story that was being given to the troopers.

In point of fact, his primary area of injury pertained to the ingestion of too much of a volatile liquid "substance." I advised my friend and client, Frank Jones (name withheld, obviously), that he should not answer any questions that might be asked of him by the trooper who was waiting in the waiting room, and that he should continue to seek extensive medical care, refusing blood tests at all times for religious reasons. After all, religion is something which often occurs at traumatic moments such as these, and I saw no reason why Frank should not take advantage of what could be a spiritually enlightening experience. I then proceeded to travel, post haste, to the hospital emergency room.

I arrived at the emergency room to find one of my favorite troopers in a quite obviously frustrated condition. Although the trooper was reasonably aware that my client had telephoned me, he was informed, nonetheless, that my client was yet not in a condition to speak to him, and was barely conscious. Clearly, something did not jive, although he was not able to put it together quite that quickly.

I explained to the nurse and doctor the urgency of seeing my client as soon as he was able to speak to his attorney, in a somewhat loud voice, knowing that my client was probably hearing me talk in the waiting room.

During all this, another individual who was obviously in acute distress, came into the waiting room. He was placed in the emergency room, on the other side of the curtain from my client, and due to the nature of his condition, doctors proceeded to work on him first.

It was during this point in time that I was allowed to see my client. I entered the emergency room, on the other side of the curtain from the emergency which was actually in progress, and spoke to Frank.

I briefly counseled Frank that he should pay particular attention to his rights to remain silent, and not answer any question which might be asked of him by the trooper. He assured me that such was the case, and that he would simply remain selectively on the edge of consciousness, moaning and mumbling only in response to any questions which might be asked. I explained to Frank that I had previously informed the trooper that Frank was exercising rights to remain silent, but that the trooper was challenging my legal authority to represent Frank, indicating that he wanted to hear from Frank, directly, that I was the attorney, and not from my own lips. It has something to do with the way to tell if an attorney is lying — when his lips are moving (a joke I never have understood).

The trooper then entered the emergency room, note pad in hand, and attempted to question my client, all over my objections, to which he paid no attention. It want something like this:

"Mr. Jones, this is Trooper Doright and I would like to ask you some questions."

"Uh huh," responded Frank, groaning out every syllable of the two syllable response.

"Mr. Jones, do you feel like you can talk to me?"

"Uh?"

"Mr. Jones, can you hear me?"

"Uh?"

"Mr. Jones, if you can hear me, I need to know if you want to answer any questions."

My client responded, through forcibly strained groans and utterances "Uh. . . (silence) . . . remain silent. . . uh."

Clearly, Frank was in terrible agony, and the mere thought of trying to respond to the trooper was taking his last ounces of energy.

Suitably convinced, the trooper folded his note pad and indicated to me, quite quietly, so as not to disturb my client, that he would be leaving and apologized for the intrusion. Quite relieved, I began to relax.

At the same time, events took a sudden turn for the worse on the other side of the curtain in the emergency room. The other patient, who was quickly falling into unconsciousness and, as it later turned out, did pass away, was rapidly losing it. The doctors, in a valiant attempt to revive him, had become increasing agitated and loud, and finally one of the physicians yelled at the top of his lungs, on the other side of the curtain to the companion patient, "TELL ME YOUR NAME. TELL ME YOUR NAME!"

Immediately, in what could only be termed a most miraculous cure brought on from his religious experience, undoubtedly, Frank sat bolt upright on the gurney, without any visible assistance, and shouted loudly, "Frank Jones!" Apparently, the strain was too much for Frank, however, and after looking around quickly and realizing that no one on this side of the curtain had asked the question, he once again sank terribly into the depths of his delirium.

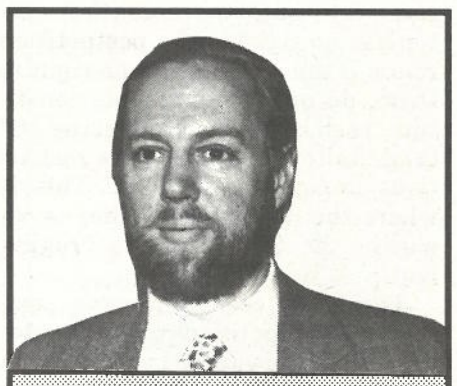
Try as I might to explain to the trooper that this sudden burst of energy must have resulted from a blow to the head, a religious experience, or some other vision, the officer seemed less than convinced. Ultimately, criminal proceedings were brought against my client, but were later successfully defended, recognizing that my client truly had undergone a religious experience, and had exercised his right to remain silent and not to submit to a blood test.

Getting Together

The Tao of Negotiation

It takes two to tango. Does it also take two to resolve a problem? We often seem to assume that it does. We assume that unless both sides to a problem are committed to working out a solution, the problem will continue. But what if one side is simply unwilling to move into an attack mode when conflict arises? Can unilateral action resolve a dispute without simply giving in? Some would assert that such unilateral dispute resolution is indeed possible.

The Tao of Negotiation by Joel Edelman and Mary Beth Crain (Harper Business Books, 1993) asserts that it often only takes one person to resolve a conflict, or to prevent it from occurring altogether. The book asserts that it is how we choose to respond to conflict that determines whether its effect will be positive or negative. *The Tao of Negotiation* purports to teach us how to be warriors: warriors of peace.



Drew Peterson

Joel Edelman, whom I met in May, 1993, at the National Conference on Peacemaking and Conflict Resolution, is a fascinating fellow. He holds both a law degree and a masters in marriage, family, and child counseling. His background includes experiences as a research analyst for the Rand Corporation (studying United States policy in Viet Nam), and as the founding Executive Director of the Neighborhood Justice Center in Los Angeles (currently the largest community mediation program in the country). Along the way he has traveled extensively and studied with many different spiritual teachers and transformational healers. He has taught at USC and Loyola Law Schools as an adjunct law professor, and is a certified instructor in Holotropic Breathwork. Along with his professional writer co-author, Mary Beth Crain, Edelman has written a book which provides some interesting new perspectives on the fields of mediation and win-win negotiations.

Edelman begins by noting the relationship between the similar and often confused words of mediation, meditation, and medicine.

Mediation and meditation are the two cornerstones of Edelman's philosophy for dealing with conflict. The two, moreover, make for "good medicine," and Edelman views himself as a "dispute doctor," with particular emphasis on a preventative, holostic approach. With techniques such as centering oneself and using silence, he believes that one can act from their highest and best parts. By placing the focus upon oneself, Edelman asserts, the result is not some theoretical mumbo-jumbo, but effective, practical actions and interventions that work in the real world of negotiations.

In Chapter Two of *The Tao of Negotiation*, the authors point out the importance of the simple truth that "a dispute isn't a dispute until it's a dispute." The vast majority of the things we worry about are simply fears that have not and may never materialize into disputes. This is especially so if we can learn to recognize them early and deal with them effectively.

Chapter Three deals with communication skills. It asserts that the ten basic elements of effective communications are; 1.) commitment; 2.) self-observation; 3.) honesty; 4.) going beneath the surface; 5.) separating intention from conflict; 6.) separating facts from feelings; 7.) using "I messages"; 8.) listening; 9.) having the willingness to admit that you don't know everything; and 10.) having the willingness to admit your mistakes. Conscious communications is by no means easy. Being honest, open and vulnerable takes courage. But by doing so we greatly increase our chances for real understanding of one another.

Chapter Four notes that many disputes come from confusion over exactly what it is that we want. We seldom stop to clarify our true wants, either for others or ourselves. It is also important to differentiate between wants and needs, which are often confused. We need to eat, while we may want Chinese food. It can be very helpful to analyze just exactly what it is that we want at the most basic level, and then to ask for it. Asking for what we really want involves risk, as we face the possibility of rejection. But without figuring out what we want and asking for it clearly, we are unlikely to get what we need.

In Chapter Five, the authors turn their attention to information gathering. They assert that preparation is the single most important part of a successful negotiation. Using his Rand Corporation experience, Edelman provides some interesting perspectives. Of particular importance in intelligence gathering is analyzing the power structure. Edelman discusses a continuum of different power styles that we may encounter. The book also emphasizes the difference between "white magic and black magic" intentions. It asserts that the intention of the information gatherer is crucial to the success of an investigation.

Chapter Five also emphasizes the importance of using statements in skillful communication rather than asking questions. Such advice is contrary to that contained in other negotiation books emphasizing the importance of questions. Edelman and Crains' criticism of questions is that they "have a quality of 'theft' about them," thereby making people feel defensive, invaded, or manipulated. I am not sure that I agree with Edelman and Crain about the use of questions, but their comments provide an interesting perspective on the subject.

Chapter Six discusses inner conflict and its effect on negotiations, particularly on our inner "disowned selves." The authors' point is that when we repress certain inner parts of ourselves that such parts often erupt unconsciously as "pet peeves" or other irrational thought processes which can interfere with our ability to negotiate effectively.

Finally, in Chapter Seven, the authors focus on how to make negative emotions work for rather than against us. While feelings such as anger, fear, envy, depression or hate are usually repressed, *The Tao of Negotiation* asserts that all feelings are normal and valid in the panorama of the human condition. Rather than repressing negative emotions the book suggests that we face such feelings, acknowledge them, and learn how to express our feelings constructively. Just as conflict itself can have positive as well as negative connotations, emotions such as anger or fear can be a positive force in resolving conflict in a healthy and life affirming way.

The remaining portions of *The Tao of Negotiation* deal with the application of the principles of the book to different life settings. Chapter Eight analyzes love relationships in general, and intimate relationships in particular. Chapter Nine deals with divorce, and the path "from pain to peace." Chapter Ten discusses conflicts in the workplace. Chapter Eleven concerns business partnerships. Chapter Twelve deals with creating and conducting successful meetings. Chapter Thirteen analyzes conflict in the marketplace, including consumer disputes, as well as disputes with the IRS and other government and corporate bureaucracies. Each chapter provides some interesting new perspectives on such conflict areas derived from the general approaches previously described in *The Tao of Negotiation*. The final Chapter is a brief conclusion and summary, entitled "Waging Peace."

I found *The Tao of Negotiation* to provide a number of fascinating new insights into the negotiation process. It was well written, understandable to a broad audience, and easy to follow. I would recommend it highly to lawyers looking to expand their knowledge and effectiveness as negotiators.

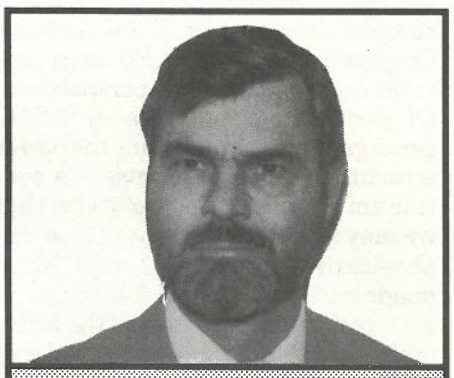
Bankruptcy Briefs

Postpetition rents as cash collateral

11 USC 363 (c) restricts the use of "cash collateral" by the bankruptcy estate and requires its segregation, a concept universally understood by counsel representing debtors, trustees and secured creditors. Section 363 (a) defines cash collateral and is generally fairly straightforward, at least with respect to prepetition "cash collateral." With respect to postpetition accruals, 363 (a) limits "cash collateral" to "the proceeds, products, offspring, rents, or profits of property subject to a security interest * * * as provided in section 552 (b)." It is this provision of 363 (a), added in 1984, that engenders no small measure of disagreement as to its proper application in the area of postpetition rents. This article discusses the interaction between 363 (a) and 552 (b), starting with a brief overview of 552 (b) and its application to postpetition rents.

As a rule, 552 (a) prevents a prepetition security interest in after-acquired property from attaching to property acquired by the estate. Section 552 (b), the sole exception to this rule, applies to proceeds, product, offspring, rents or profits of encumbered property acquired postpetition: (1) if the parties entered into a security agreement before the bankruptcy filing; (2) the security interest extends to prepetition property of the debtor and to proceeds, product, offspring, rents or profits of such property; and (3) to the extent provided by applicable nonbankruptcy law. Section 552 (a) is intended to allow a debtor to gather into the estate as much money as possible to satisfy the claims of all creditors. Section 552 (b) balances the Code's interest in freeing the debtor of prepetition obligations with a secured creditor's rights to maintain a bargained-for interest in certain items of collateral. It provides a narrow exception to the general rule of 552 (a). [*In re Bering Trader, Inc.*, 944 F2d 500 (CA9 1990)]

Section 552 (b) does not extend the interest of the holder of a nonconsensual lien (e.g., statutory or judgment lien) to postpetition accruals. [*In re Fuller,* 134 BR 945 (BAP9 1992)] In addition, if the security agreement does not so provide, the secured creditor is out of luck. Moreover, whether a creditor has an interest in the proceeds, product, offspring, rents or profits at the time



Thomas Yerbich

the petition in bankruptcy is filed is a question of state law. [*Butner v. United States,* 440 US 48, 99 SCt 914, 59 LEd2d 136 (1979); *In re Park at Dash Point,* L.P., 985 F2d 1008 (CA9 1993)]

This brings us to the heart of this article: assignment of rents clauses in Alaska deeds of trust. AS 09.45-680 specifically provides:

> "A mortgage of real property is not a conveyance which will enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale."

This section has been construed as making Alaska a "pure lien theory" state. [*Brand v. First Federal Savings & Loan Ass'n of Fairbanks*, 478 P2d 829 (Alaska 1970)]

Alaska follows the rule that an assignment of rent clause in a deed of trust, which allows the beneficiary to collect rents upon default to satisfy the secured debt, does not automatically assign the rents accruing after the date of default to the beneficiary. The beneficiary must take some action to acquire possession of the property or the rents before the rent clause becomes operative. [*Bevins v. Peoples Bank & Trust Co.,* 671 P2d 875 (Alaska 1983); accord *Teal v. Walker,* 111 US 242, 4 SCt, 28 LEd 415 (1883) — applying identically worded Oregon statute; *In re Federal Way Shopping Way, Inc.*, 457 F2d 176 (CA9 1972) — applying identically worded Washington statute.] Therefore, if the creditor has not taken some action to reduce the rents to "possession" before the petition is filed (e.g., commenced collection of the rents, made demand therefore, or obtained the appointment of a receiver to collect the rents), the creditor has no right to the postpetition rents. If the creditor has no right to them, do postpetition rents constitute "cash collateral" within the 363 (a) definition subject to the restrictions imposed by 363 (c)? This is where the disagreement lies (even within the 9th Circuit a "raging battle" is being waged).

There are essentially two positions: (1) postpetition rents are automatically sequestered by 363 (c) even if the creditor has no existing right to those rents under applicable nonbankruptcy law [*In re Tucson Industry Partners,* 129 BR 614 BAP9 1991)]; or (2) a mortgagee may "perfect" by giving notice to the debtor, the functional equivalent of other action that may be necessary under state law to perfect with the right of the creditor to rents, operating prospectively from the date notice is given [*Virginia Beach Savings & Loan Ass'n v. Wood,* 901 F2d 849 (CAIO 1990); *Casbeer v. State Federal Savings & Loan Ass'n of Lubbock,* 793 F2d 1436 (CA5 1986)]. The form this notice can take varies: a demand to sequester the rent, notice of interest in the rent, request for relief from stay or notice of nonconsent to use of cash collateral have all been deemed sufficient to "perfect" the secured creditor's interest from the time filed. [E.g., *In re American Continental Corp.*, 105 BR 564 (Bkrtcy.Ariz. 1989)]

Which position is correct? In the opinion of this author the positions of the 5th (*Casbeer*) and 10th Circuits (*Virginia Beach*) apply in Alaska cases, but for reasons other than relied on by those courts.

The "automatic sequestration" position of *Tucson Industry* (a case that should be read for its extensive analysis of the problem and the case law), is incorrect in two respects. First, as the dissent points out, it effectively gives a mortgagee greater rights under bankruptcy than it would have under state law, contrary to Butner. Second, if sequestration is "automatic," irrespective of the right of the mortgagee to collect under applicable state law, the language added to 363 (a) in 1984 referring to 552 (b) is rendered essentially superfluous.

There has also been much ado over differentiating between "perfection" and "enforcement" [*In re Park at Dash Point,* L.P., 121 BR 850 (Bkrtcy.WDWash 1990)] and "inchoate" versus "choate" [*In re Raleigh / Spring Forest Apartments Ass'n,* 118 BR 42 Bkrtcy.EDNC 1990)]. It is suggested that this distinction is more semantical than substantive and irrelevant to the issue. Although the courts have used the term "perfection" in discussing mortgagee's rights to postpetition rents, 552(b) itself does not speak in terms of "perfection," "enforcement," "choate" or "inchoate." The "plain meaning" of 552(b) in this context is simply: a secured creditor has an interest in postpetition rents only "to the extent provided by such security agreement and applicable nonbankruptcy law." (Emphasis added)

Under *Bevins* it is clear that under Alaska law a mortgagee has no right to collect the rents until the mortgagee has taken some action to obtain possession of those rents. Whether one speaks in terms of "perfection" or "right to enforce," the result is the same — if a creditor has no right to collect postpetition rent under applicable state law, it hardly constitutes "cash collateral" as defined in 363 (a), subject to the restrictions of 363 (c). Conversely stated, as long as the debtor has the right under the security agreement or applicable state law to use the rent, the debtor has an equal right under the Code. This approach is consistent with Butner — bankruptcy has not affected the rights of either party.

While agreeing with the *Casbeer-Virginia Beach* results, the author gets there by a different route. The *Casbeer-Virginia Beach* "functional equivalent" theory relies on the 546 (b) provision permitting perfection by notice as a substitute for other action. [This approach also obviates any automatic stay violation problem by application of the exception contained in 362 (b) (3).] *Casbeer-Virginia Beach* overlook the fact that 546 (b) permits postpetition perfection in situations where state law permits such perfection to relate back prepetition (e.g., a PMSI 10-day perfection under the UCC). [*In re Glasply Marine Industries, Inc.*, 971 F2d 392 (CA9 1992)] Unfortunately, in lientheory states, "perfection" of an interest in rents does not "relate back," i.e., a mortgagee has no right to rents already collected by the mortgagor. [*See Bevins v. People's Bank & Trust Co., supra.*] 10-day perfection under the UCC). [*In re Glasply Marine Industries, Inc.*, 971 F2d 392 (CA9 1992)] Unfortunately, in lientheory states, "perfection" of an interest in rents does not "relate back," i.e., a mortgagee has no right to rents already collected by the mortgagor. [*See Bevins v. People's Bank & Trust Co.*, supra.]

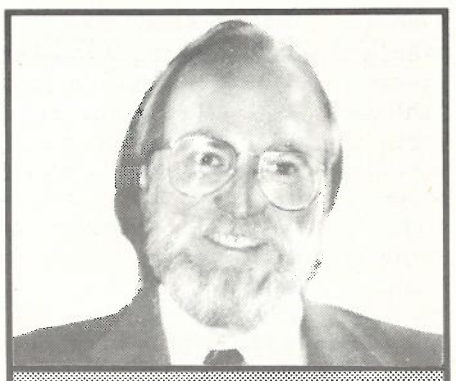
However, Bevins also specifically held that demand by the mortgagee on the mortgagor to pay over the rents is sufficient to "perfect" the interest of a mortgagee in the rents. Thus, under Alaska law, once a mortgagee has made the demand by notice, the requirements of 552 (b) are satisfied and the mortgagee's interest in the postpetition rents is enforceable from that date forward. Moreover, filing such a demand in the bankruptcy court does not violate the automatic stay against perfecting liens [363 (a) (4)] because the automatic stay does not apply to actions brought in the "home" bankruptcy court. [*In re North Coast Village Ltd.*, 135 BR 641 (BAP9 1992)]

The whole issue may very well become moot in any event. Section 206 of the Bankruptcy Reform Act of 1983 (SB 540) ostensibly adopts the "automatic sequestration" rule by amending 552 (b) to provide that the security interest extends to rents whether or not such security interest in rents is perfected under applicable nonbankruptcy law. However, until SB 540 becomes law, mortgagees would be well advised to immediately file with the bankruptcy court a notice that satisfies *Bevins*.

Whether SB 540 will change the result is problematical. While SB 540 may eliminate the "perfection" issue, it retains the "to the extent provided in the security agreement" language, and the language of the mortgage instrument itself probably requires the mortgagee to take additional action to collect the rents. No real change: when the mortgagee's "inchoate" but "perfected" right to postpetition rents ripens into a "choate" right will still have to be determined from the prepetition agreement between the parties — existence of default and demand.

Torts

Since the last Epistle: Christians: 1 - Lions: 0



Michael Schneider

The news isn't quite that good. As most of you know, certain members of Republican-dominated coalitions in both the state house and senate have made it their business to take the wheels off the civil justice cart during the last two sessions of the legislature. A number of bills were proposed, and all had superb chances of becoming law by the May 10, 1994 end of the Eighteenth legislature. It would have meant the obliteration of decades of common law and the end of the even playing field Alaskans have come to expect from the civil justice system. It was a long and costly battle. It would not have been won without the tireless efforts of many attorneys, legislators on both sides of the isle who were willing to do the work and take the heat for correct but unpopular decisions, and the combined forces of many groups, including:

American Association of Retired Persons-Alaska State Legislative Committee
AFL-CIO
AkPIRG
Anchorage Police Department Employee Association
Alaska Environmental Lobby
Alaska Health Project
The Alaska Network on Domestic Violence and Sexual Assault
Alaska Women's Lobby
National Education Association-Alaska
The Green Party
Trustees for Alaska

The smoke is still clearing. A body count follows.

On the way to the Governor/ Signed into law:

1. HB 160/Statute of Repose for Design Professionals:

Introduced in mid-February of 1993, this bill had ten sponsors (Green, Phillips, Larson, Hudson, Bunde, Vezey, Mulder, Kott, and James). But for the hard work of Russ Winner, it would have become law much sooner and without the benefit of amendments that help protect consumers of design and construction services. HB 160 repealed and reenacted AS 09.10.055 to provide for a fifteen-year statute of repose following date of substantial completion. *Id.*, § 3 (the original draft of the bill proposed a ten-year statute of repose). Injury, death, or property damage in the fifteenth year may be the subject of an action, but only if a case is filed within one year of the date of the event. *Id.* The protection applies to an action based on a defect in "design, planning, supervision, construction, or inspection or observation of construction of an improvement to real property." This section does not apply to a defendant "in actual possession and lawful control of the improvement at the time the defect caused the personal injury, death, or property damage," or in the event that the damage was caused "intentionally or resulted from gross negligence, fraud, fraudulent concealment, fraudulent misrepresentation, or breach of an express warranty or guaranty," or in the event a longer limitation period was contracted for. Section 4 makes the bill applicable to defects arising on or after the effective date of the act.

For the hapless plaintiff or litigator affected by this bill there is still hope in the form of *Turner Construction Co., Inc. v. Scales,* 752 P.2d 467 (Alaska 1988), which casts much doubt on the constitutionality of HB 160.

2. SB 44/Alaska Ski Safety Act of 1994:

This bill is fifteen pages long and what follows is only the most cursory description of its contents. The bill had its genesis in Senator Kelly's desire to make the world safe for Seibu Corporation. After all, if Seibu is going to build all those nice buildings and provide all those jobs, shouldn't it have an open season on its customers...?

Section 1 of the bill contains in excess of two pages of legislative findings and purposes. The legislative findings (you really need to read these findings; they're enough to make Jiminy Cricket puke in his hat...) are followed by the act's stated purpose, which is "to repeal and revise state law relating to skiing...as interpreted by the Alaska Supreme Court in *Hiibschman...*" Basically, this bill sets up lots of standards by which operators and users of ski slopes are supposed to conduct themselves. Violations of these standards by the operator makes the operator "negligent and civilly liable" for the resulting injury and damage. On the other hand, the immunity born out of the "inherent risks of skiing" provides a complete defense for claims brought by users of the slope if the users have breached one of the various standards set forth in the statute. This complete defense applies, however, if and only if the ski area operator has complied with all standards.

The bill requires operators to develop, for each season, written programs for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. The bill requires that operators provide a variety of warning signs and other protections for tramways, trails, and slopes. "Reckless skiers" can be 86'd off the slope. The bill precludes the use of liability releases as a condition to use of the slope and otherwise provides fifteen pages of fascinating reading.

While this bill is bad public policy, there is plenty in it for injured skiers and it is unlikely to signal the death of litigation in this area. These optimistic statements and the favorable provisions of the bill come only as a result of the hard work and determined advocacy of Mr. and Mrs. Rizer, who lost a son in 1992 on the slopes of Alyeska, and of their attorney, Dennis Mestas.

3. SB 178, An Act Limiting Civil Nuisance Actions:

This bill provides that a private nuisance action may not be maintained based upon air emission or water or solid waste discharge (other than placement of nuclear wastes) if the emission or discharge "was expressly authorized by and...not in violation of" a statute or regulation, a license, permit, or order, (but only if the license, permit, or order was issued after public hearing by the state or federal government and subject to continuing compliance monitoring, public review by the issuing agency, renewal on a periodic basis, or AS 46.40) or a court order or judgment. Further, the limitation does not apply where the emission or discharge produces "a result that was unknown or not reasonably foreseeable at the time of the authorization."

The bill refers to the definition of pollution in AS 46.03.900 and the definition of emission in AS 46.14.990, and provides that its limitation will become ineffective upon a change in those definitions. The bill further provides indemnity and defense exposure for someone otherwise protected by the bill as to claims brought against the state as a result of emissions/discharges for which the shielded individual would have otherwise been liable. If the defense tender is rejected, the shielded person is subjected to full reasonable costs and fees exposure.

The act applies to any action for which final judgment has not been entered as of its effective date.

Dead in Committee

SB 367 (Health Care Reform) died in committee. The bill contained a few not terribly dramatic changes in the way medical malpractice cases would be handled. Late-breaking efforts to broaden its title in the Senate Finance Committee were set right through the effort of senator Robin Taylor.

House Bill 300 got through the House before serious attention was focused on it. It has the potential of immunizing broad categories of recreation-related activities. It died in the Senate Judiciary Committee.

House Bill 360 would have immunized non-commercial aircraft and watercraft operations. It died in the Senate Judiciary Committee.

House Bill 403 would have repealed the existing statutory mandate that insurance carriers writing liability coverage offer UM limits equal to or exceeding liability limits. This bill made it to the Senate Rules Committee, but the clock ran out before a floor vote was scheduled on the bill.

Senate Bill 206, intended to immunize real estate agents from exposure for innocent misrepresentations, died before adjournment as well.

They Said It Couldn't Be Done...

The omnibus tort deform bill, HB 292, supported by a six-figure lobbying budget, Representative Brian Porter, the Alaskans the bill would have benefited (both of them...), and the confused perspective of a number of majority members, died in the House Finance Committee when Representative Porter pulled the bill on or about the 4th of May, 1994. This victory was won at the cost of an all-out effort by the Alaska Academy of Trial Lawyers, the Alaska Action Trust, and groups and individuals mentioned in the first paragraph of this article. While HB 292 never made it to the Senate, Senator Robin Taylor often voiced strong opposition to the bill and played a major role in the campaign to protect the public from its provisions. Before any of us breathe too easily, we should remember that there will be an election in November, and, most likely, proponents of tort deform will be back, making up in money and lobbyists what they lack in social responsibility and understanding of the civil justice system.

NEWS FROM THE BAR

At the Board of Governors' meeting on May 3 & 4, 1994, the Board took the following action:

• Welcomed new members David Bundy and Dennis McCarty.

• Listened to the report on the status of the Bar's sunset bill.

• Received the annual report on ALPS and Alaska's experience with ALPS for the past year.

• Reviewed 2 quotes for the Association's professional liability coverage and delegated to the president the decision of the insurance selection in consultation with two board members.

• Granted an applicant's request for special testing accommodations for the July bar exam due to a disability.

• Approved continuation of the Minority Tutorial program for the July bar exam, with this program put on the October meeting agenda for re-examination.

• Certified an applicant for admission on reciprocity.

• Voted to send to the supreme court the proposed rule which would require all active members to sign an affidavit that they have read and are familiar with the new Rules of Professional Conduct.

• Reported on a meeting several board members had with Chief Justice Moore, including that the supreme court declined to adopt the Board's proposal to open up the discipline process at an earlier stage. The court said they would be willing to reconsider the proposal and the Board decided to put this on the August meeting agenda.

• Tabled until the August meeting the draft of a rule which would require mandatory disclosure of whether an attorney has malpractice insurance.

• Voted to publish a proposed rule defining the unauthorized practice of law, as amended.

• Voted to publish proposed rule changes relating to immunity in admissions and the Lawyers' Fund for Client Protection.

• Adopted the ethics opinion "Simultaneous Use of More than One Name for Law Firm."

• Heard the discipline report, and that there were currently 88 open cases.

• Took a discipline matter out of abeyance.

• Heard the CLE and convention report and voted to go to a 60 minute credit hour for CLE.

• Considered the availability of an additional 150 sq. ft. of office space.

• Reviewed letters from two inactive members and asked the director to get together some information for inactive members.

• Voted to send a letter of support for the Judicial Council's proposal to do a study on Rule 82.

• Held a hearing and voted to reinstate David Clower to inactive membership.

• Heard public comment from Theresa Obermeyer.

• Considered the five resolutions before the membership and voted whether to take positions on the resolutions.

• Reviewed the long range planning goals and progress during the past year and discussed doing another planning session at the August meeting.

• President-elect Winfree discussed his goals for the upcoming year.

• Voted on a slate of officers to present to the membership.

• Approved the minutes from the March meeting.

At the Board of Governors' conference call meeting on April 14, 1994, the Board took the following action:

• Voted to approve the appointment of Christopher Zimmerman to the Judicial Council.

• Voted to approve the following appointments to ALSC: Allison Mendel and Linda Johnson to the regular and alternate seats for the 3rd district; Jim Gould to the regular seat for the 2nd district; Vance Sanders and Marilyn May to the regular and alternate seats as the Board representative.

• Voted to recommend the appointment of Edmond Burke as one of the Lawyer Representatives to the 9th Circuit Judicial Conference.

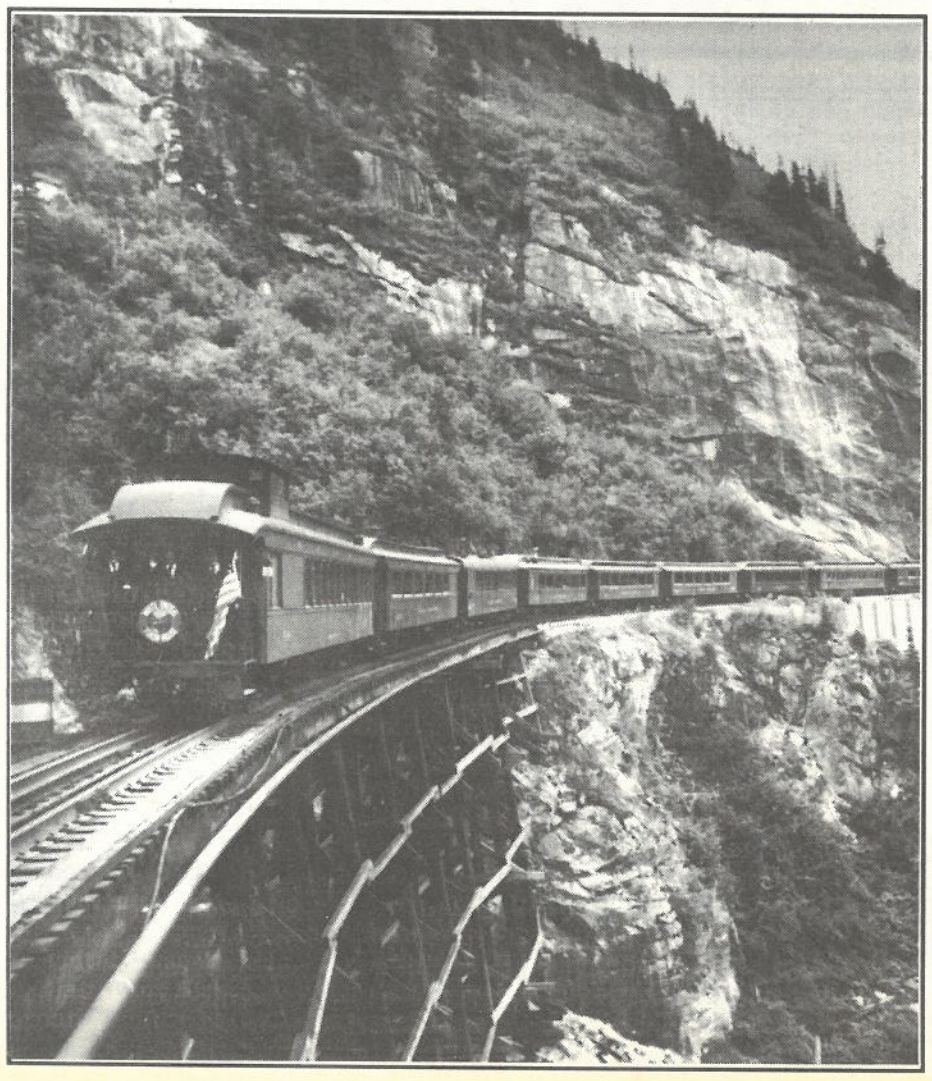
• Accepted the resignations of Kimberly Hueter Gilworth and David Schieferstein.

• Reviewed the status of the Bar Association's search for professional liability insurance.

• Discussed the status of the Bar's sunset bill.

Admiralty Rules Revision Committee

The Admiralty Law Section of the Alaska Bar Association has recently formed an Admiralty Rules Revision Committee. The Committee's goals are to review the current local U.S. District Court Admiralty Rules, draft suggested revisions, and circulate proposed changes to the Bar. Members of the Bar interested in serving on the Committee, or in providing input regarding revision of the Local Admiralty Rules, should contact co-chairs Steve Shamburek, Farleigh & Shamburek, 601 West 5th Avenue, Suite 510, Anchorage, AK 99501 (907-274-6641); or Morgan Christen, Preston, Gates & Ellis, 420 L Street, Suite 400, Anchorage, AK 99501 (907)276-1969).



ALASKA BAR ASSOCIATION EMPLOYEES

Deborah O'Regan, Executive Director: Board of Governors, admissions, committees, administration, staff supervision.

Steve Van Goor, Bar Counsel: discipline administration and prosecution, Fee arbitrating, ethics committee, Lawyers' fund for Client Protection committee, admissions litigation.

Barbara Armstrong, Assistant & CLE Director: CLE, annual convention, sections.

Mark Woelber, Assistant Bar Counsel: discipline prosecution.

Mike McLaughlin, Assistant Bar Counsel: discipline prosecution.

Gerry Downes, controller: computer programming, accounting, bar group insurance plans & investments.

Lori O'Brien Rooney, Paralegal: research & investigation for discipline prosecution.

Ingrid Varenbrink, Fee Arb/CLE/Discipline Assistant: schedule and administer fee arbitrations, CLE library and seminar assistance, answer discipline process inquiries.

Carol Woodstock, Executive Secretary: secretary to executive director, system administrator and WP expert, bar exam scheduling including calibration and grading, bar committees, member status changes.

Norma Gammons, Legal Secretary: secretary to bar counsel, system administrator and WP expert.

Vacant, Legal Secretary: secretary to bar counsel.

Karen Schmidlkofer, Accounting Assistant: accounting and system maintenance, payable and purchasing.

Rachel Tobin, CLE Assistant, assistant to CLE Director and for sections and the convention.

Mia Jackson, Admissions Secretary/Receptionist: answers phones, admissions secretary, legal intern permits & Civil Rule 81.

Krista Dauenhauer, Lawyer Referral Receptionist/Clerical: gives lawyer referrals, does the main, member address changes, sells jury instructions and ethics opinions.

Election and advisory poll results

The Bar Polls and Elections Committee counted and certified the election and advisory poll results on April 7, 1994.

Board of Governors

3rd Judicial District

Lynn Allingham•	98
David Bundy•	140
Ken Ford	73
Leslie Hiebert	46
Robert Owens	84
Mark Rindner	88
James Stanley	72
	601

*Run-off Election: April 27

*David Bundy	299
Lynn Allingham	212

1st Judicial District

* Dennis McCarty	Unopposed

2nd and 4th Judicial Districts

*John Franich	Unopposed

Alaska Legal Services Corporation

Third Judicial District

*Allison Mendel	240
Robert Stewart	177
	417

*Linda Johnson ran unopposed for the alternate position.

Second Judicial District

No candidates filed for the regular or alternate seats, so the Board will make the appointments.

Judicial Council (2nd & 4th Judicial District)

Dan Callahan	58
*Chris Zimmerman	64

Lawyer Representative to the 9th Circuit Judicial Conference

*Edmond Burke	339
Scott Datton	37
Walter Featherly	89
Mark Rindner	121
Steve Shamburek	66
Wev Shea	24
	676

ALSC - 2nd District

Board appointed Jim Gould to regular seat

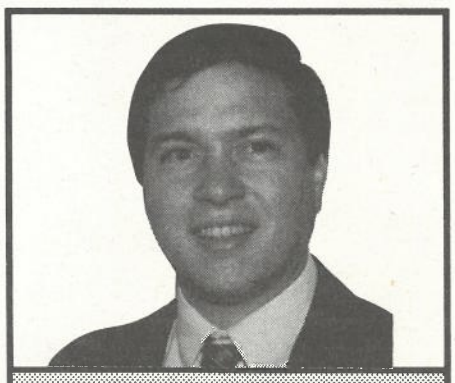
ALSC - Board Representative seat

Vance Sanders - regular seat

Marilyn May - alternate

The Public Laws

Anchorage's new vehicle forfeiture law


Scott Brandt-Erichsen

Starting in January, Anchorage put a new law into effect which treats a vehicle used in a driving while intoxicated incident as a nuisance and seeks impoundment or forfeiture of the vehicle.

During the first three months of operation Anchorage filed complaints seeking impoundment of 138 vehicles and forfeiture of an additional 57. Beginning April 4 the municipality started seizing the vehicles at the time of arrest. From April 4 through April 26th Anchorage has filed impoundment complaints against 59 vehicles and has filed complaints for forfeiture of 22 others.

If these rates continue, the municipality will be seizing an additional 900 to 1,000 vehicles between May 1 and December 31 of this year.

The ordinance allows for the impound or forfeiture to be sought either in the underlying criminal action or in a separate civil action. As a routine matter these cases are being processed as civil in rem cases. The ordinance also allows the complaints to be handled in either the District Court or in front of an administrative hearing officer. Most cases are handled in the hearing officer context.

The general procedure calls for a vehicle to be seized and towed to a storage yard upon the arrest of the driver. If Anchorage seeks to hold the vehicle pending a hearing on its complaint for impoundment or forfeiture it must file its complaint and request a detention order within 2 working days of the seizure.

"Bail" hearings at which probable cause for the continued detention is reviewed and conditions for release of the vehicle pending a hearing are set are held every business day at 2:30 p.m. Anyone wishing to have terms of vehicle release set or modified may appear at these hearings.

If the owner or another party with an interest in the vehicle requests a hearing, a hearing on the municipality's complaint is set 15-30 days after the request is filed. The ordinance offers a vehicle owner opportunities to explore settlement without the vehicle actually being held for the full 30 days or without forfeiture. Specific conditions for settlements, such as payment of all fees and a promise that the driver charged in the DWI incident will not operate the vehicle until properly licensed, are specifically addressed in the ordinance.

In a typical case for a first offender, the "bail" on the vehicle might be some percentage of the value of the vehicle with conditions limiting transfer and limiting who may operate the vehicle. Any time the vehicle is taken out of the storage lot the towing and storage fees must be paid. At the present time the towing fee runs about $60 unless particular aspects of the tow require special treatment or equipment. The current storage rate is approximately $2 per day, although this may be subject to change in the future.

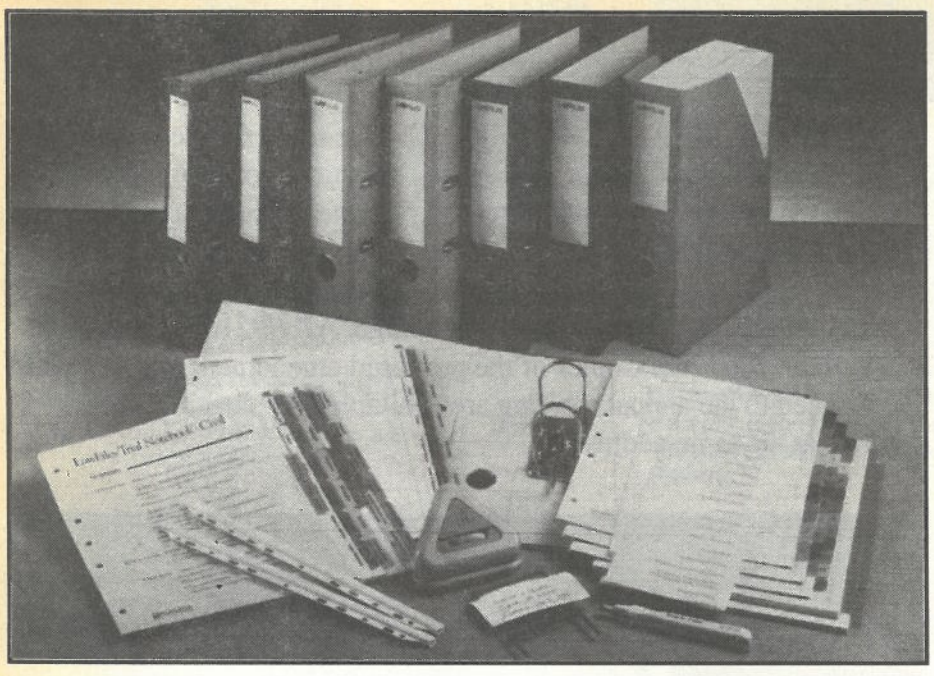
A vehicle eligible for forfeiture based upon the status of the driver may, in appropriate cases, only be impounded for a certain period rather than forfeited outright. However, it is safe to assume that a third or fourth time offender will be facing a forfeiture case. Appropriately, the "bail" in a forfeiture case is based upon the market value of the vehicle.

The ordinance does not seek to penalize unrelated lienholders or third party owners who reasonably did not know that the individual to whom they have rented or entrusted a vehicle would be operating the vehicle illegally. The ordinance does contemplate that a third party owner would have a duty to determine whether the person entrusted with the vehicle at least has an apparently valid operator's license in their possession and is not intoxicated at the time they are entrusted with the vehicle.

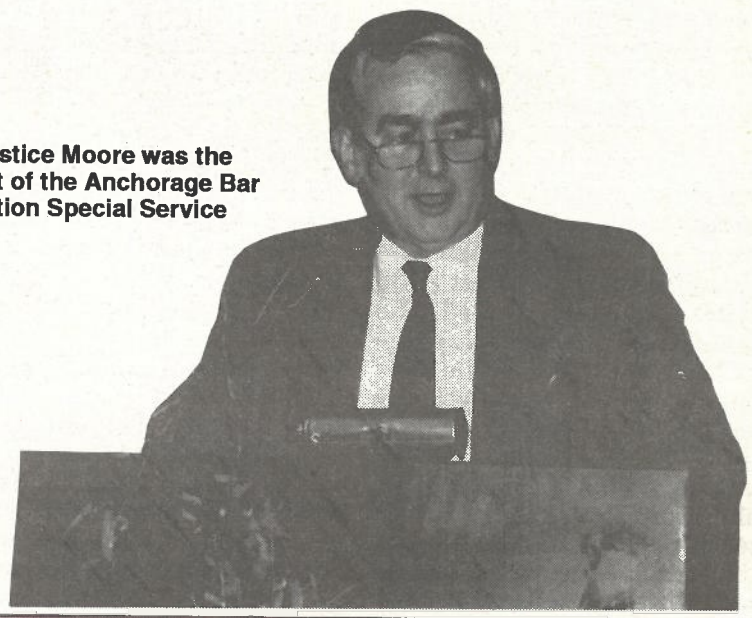
The City of Ketchikan is apparently considering a similar ordinance. Inquiries have also been received from the Anchorage District Attorney's office. If this program results in some verifiable reduction in DWI offenses then it would not be surprising to see similar programs in other areas of the state. Copies of the Anchorage ordinance, AMC 9.28.026 as amended on April 26th by AO 94-71(5), are available through the Anchorage Municipal Clerk's office.

Lawfiles organization system available in three new kits

Lawyers across the nation are discovering that they are better organized and have greater control of case documents with LawFiles—the exclusive system of binders and index tab dividers designed for the legal profession. The LawFiles system replaces clumsy file folders with efficient, easy-to-use ring binders. The contents of each binder are clearly organized and indexed for fast access—it takes one-sixth the time to locate, access and replace documents in LawFiles compared to prong file folders. And now, three specially priced introductory kits give lawyers the opportunity to try the system for as little as $20. To order or for more information, call Bindertek at (800) 456-3453.



Convention Highlights



Chief Justice Moore was the recipient of the Anchorage Bar Association Special Service Award.

William M. Erwin, recipient of the Sole Practitioner Pro Bono Award, is pictured with his wife and daughter.

Alaska Bar Association Annual Convention
May 5-7, 1994 • Anchorage, Alaska

SPONSORS

Alaska Association of Legal Administrators
Alaska Association of Legal Assistants
Alaska Court System
Alaska Legal Services Corporation
American Cancer Society, Alaska Chapter
Anchorage Association of Women Lawyers
Anchorage Bar Association
Anchorage Inn of Court
Anchorage Legal Secretaries Association
Attorneys Liability Protection Society (ALPS)
(A Mutual Risk Retention Group)
AVIS Rent a Car
Brady & Company
Dean Moburg & Associates - Court Reporters, Seattle
Hagen Insurance
Information Services - Jerry Dortch
The Michie Company
Midnight Sun Court Reporters
Professional Business Video
R & R Court Reporters

EXHIBITORS

Alaska Academy of Trial Lawyers
Alaska Association of Legal Assistants
Alaska Legal Services Pro Bono Program
Alaska USA Federal Credit Union
Anchorage Legal Secretaries Association
Attorneys Liability Protection Society (ALPS)
(A Mutual Risk Retention Group)
AVIS Rent a Car
Matthew Bender & Co.
Book Publishing Co.
Bureau of National Affairs
Butterworth Legal Publishers
Charter North Hospital
Hagen Insurance
Lawyers Cooperative Publishing
Mead Data Central
The Michie Company
Northwestern School of Law of Lewis & Clark College
The Office Place
Pacific Data Storage
Seattle Deposition Reporters
Vocational Economics
WEST Publishing

Judge Karen Hunt of the 3rd Judicial District Superior Court is the recipient of this year's Board of Governors Distinguished Service Award.

During the Annual Meeting of the Association on May 6, 1994, a petition was presented to amend Alaska Rule of Professional Conduct 4.2 to provide an exception to the general prohibition against contacts with represented parties.

By majority vote, the membership voted to refer the proposed amendment to the Bar's Model Rules Committee for its review and recommendation. If you have comments concerning the proposed amendment which you would like the Committee to consider, please send those comments to the Model Rules Committee, c/o Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510-0279 no later than June 10, 1994. Copies of the proposed amendment and materials presented to the annual meeting are available by contacting the Bar office at the same address.

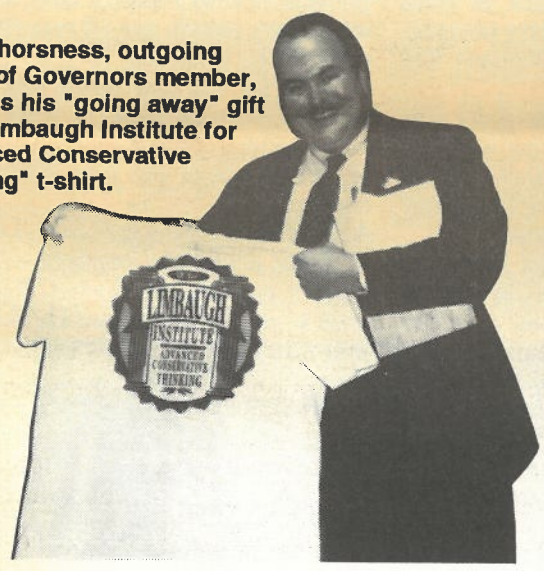
John Conway (r), recipient of the Board of Governors Professionalism Award, responds with body language to comments by his partner, Bruce Gagnon, at the podium.

Convention Highlights

25-Year Membership in the Bar Certificates were presented to these members who attended the Awards Banquet: front row, Meredith Ahearn, Tim Middleton, Alan Sherry, Arden Page, back row, John Reese, Ken Jacobus, Wayne Anthony Ross, Robert Goldberg, Peter Lekisch.

1994 25-Year Member Certificates

Meredith A. Ahearn, James C. Ausum, John Bigelow, Keith E. Brown, Frederic E. Brown, Marcus R. Clapp, James F. Clark, Hoyt M. Cole, Richard B. Collins, Stephen Cooper, Stephen C. Cowper, Charles K. Cranston, H. John DeNault, III, B. Richard Edwards, Barry A. Fisher, Charles P. Flynn, Marvin S. Frankel, Walter H. Garretson, Sanford M. Gibbs, Robert M. Goldberg, L. Ben Hancock, John S. Hedland, Kenneth P. Jacobus, James H. Lack, Peter A. Lekisch, L. Ames Luce, Dick L. Madson, Timothy G. Middleton, John K. Norman, Arden E. Page, Clayton J. Parr, E.J. Peskind, Raymond E. Plummer, Jr., John E. Reese, Wayne Anthony Ross, Sanford Sagalkin, Alan G. Sherry, William E. Spear, Edward A. Stahla, Catherine Ann Stevens, Robin L. Taylor, William H. Timme, Gerald J. Van Hoomissen, J. Douglas Williams, II



John Thorsness, outgoing Board of Governors member, displays his "going away" gift — a "Limbaugh Institute for Advanced Conservative Thinking" t-shirt.

Photos by Steve Van Goor

At the "Legal Implications of Breast Cancer Detection and Treatment: A Forum for Lawyers and the Public," (l to r) Phil Volland, Outgoing Board President; Mary Dee Moseley, Cancer Survivor; Dan Hensley; Linda Chase, Cancer Survivor; and Sanford Gibbs discuss "Informed Consent and the Cancer Patient."

Heather Grahame accepts the Law Firm Pro Bono Award on behalf of Bogle & Gates from Chief Justice Moore.

Left to right, Roger Brunner, Board of Governors President-Elect Dan Winfree, Cathy Winfree, and Niesje Steinkruger decompress at the President's Reception.

Solid Foundations

Crisis in funding devastates Alaskan programs

As of April 30, 1994, the balance of funds in the Alaska IOLTA Program was $125,000 — a decrease of $35,000 from monies monies available last April. And 1993 numbers reflected a drop of $100,000 in funding from 1992!!!

The crisis in funding, caused primarily by sharply falling interest rates, continues to devastate Alaskan programs essential to the provisioning of legal services to the disadvantaged. Only $170,000 in grants was awarded in 1993 and, while grant requests total over $240,000, less monies are available for 1994 funding.

Mary Hughes

Alaska is no exception to the national trend in IOLTA funding losses. Nationwide IOLTA funding has decreased dramatically in the last two years. So much so that foundations have found it necessary to implement different mechanisms for funding of IOLTA programming.

One such mechanism is the waiver of bank fees by the financial institutions which hold IOLTA monies. There has been a national effort to define "reasonable" bank fees. Many foundations are insisting on the waiver of service and administrative charges by banks. In Alaska, account service fees are waived by most banking organizations. Additionally, Bank of America, Denali State Bank and First Bank do no charge the Alaska Bar Foundation the administrative reporting fee. The fee, between $1 and $9 per reporting period (either quarterly or monthly), is usually charged by a bank on each IOLTA account and the total administrative report fee charges are deducted from the interest paid to the Foundation. Bank fees for 1993 totaled $17,772.

Filing fee surcharges on civil cases is another mechanism which has assisted in raising IOLTA revenues. In Ohio, the institution of a $4 to $15 surcharge per civil case more than tripled IOLTA revenues. The states of Massachusetts, Oregon, Virginia, Florida, Minnesota, Nevada and North Dakota have also established a fee surcharge for IOLTA funding purposes. Michigan has allocated a percentage of filing fee revenues of the legal services delivery system.

The Trustees of the Alaska Bar Foundation intend to review options to supplement IOLTA revenues. It is hoped that such a review will yield answers to a very serious financial situation and provide additional funding for necessary Alaskan legal services programs.

Plus ça change, plus c'est la même chose

By Joyce Weaver Johnson

New, but familiar: that's how to describe the security system being put in place this spring at the state courthouse in Anchorage.

Judge Karl Johnstone said the key to the new system will be to close off to the public all entrances but one, and channel everyone through metal detection similar to that used at airports.

Thus — unless you're a court system employee or a prisoner in custody of law enforcement officers — you will only be able to enter via the big K Street entrance to the Boney Memorial Court Building. Whether your business is with the superior or appellate courts housed there, or with the District Court in the older building facing onto Fourth Avenue, you will enter from K Street.

Upon entering you will have to put your briefcase, purse, etc. on a conveyor belt while you walk through a magnetic detector. Those in wheelchairs will pass outside the mechanized system, but security staff equipped with wands will scan them, too. When these changes go into effect, possibly by the end of June, at least three guards from a security contractor will be on duty throughout the courts' open hours.

Beyond the entrance, nothing else will change. Where existing security schemes limit access to areas of the second through fifth floors of the Boney building, those will continue.

Have there been violent incidents lately at the court, endangering the lives of judges, employees and the public? There has not been a major incident, said Johnstone, although "we have discovered lots of people in the building in places where they should not be." In the past, those people were not frisked, but simply escorted out.

The point of the changes is to prevent terrorism and violent incident by intercepting weapons. Elsewhere in the United State, judges, lawyers, parties and witnesses have been victims of courtroom attacks, most notably in family courts.

Other doors will still be used by employees, probably with computer-coded cards. As for the rest of us, signs, audible alarms, and an alarm monitored at a remote location will discourage us from taking shortcuts.

Johnstone asked for public patience while the court system and security contractor figure out how to cope with periods of heavy traffic flow, such as when jury panels are all reporting for duty in the morning.

Now for the questions you really care about, and answers from Judge Johnstone:

Q: What about the law library entrance?

A: No change from status quo ante.

Q: What about the smokers who now cluster outside all doors? Will they soon be concentrated outside the main entrance, creating a massive blue cloud?

A: Probably not — they're mostly employees, whose cards will allow them to use other doors.

Q: What about the real Alaskan who comes packin', unaware of the new rules? Can he check his piece at the door?

A: No. He will be escorted out and must stow it elsewhere before returning to do his courthouse business.

Q: How about judges or other court system employees who have kept firearms with them at the courthouse for self-protection?

A: They won't have to change. They can still bring a firearm to work or take it home again via the employee doors, employee stairways and key-operated elevators.

Eclectic Blues

Winter blues

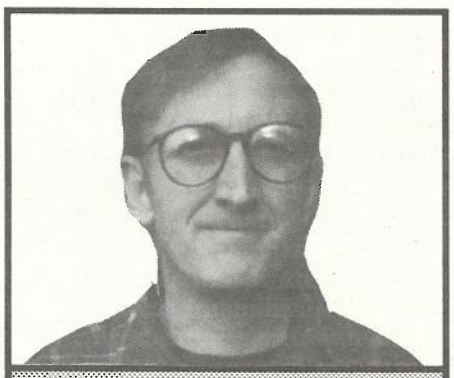
Ketchikan, like most Alaskan towns, is both blessed and cursed by its location. In early Spring people with little more than hope and a ferry ticket climb the Alaska Marine Highway ramp looking for cannery work. Loggers, driven north by the spotted owl collapse, hunt for jobs in the Tongass.

When the drier summer months arrive, cruise ships daily disgorge thousands of passengers onto downtown streets. Those not snagged by dock side tour vendors head for Creek Street and Tongass Avenue curio shops.

When things start looking too much like Disneyland, the seine fleet rafts up in front of town for the Fourth of July closure. Decks hands and captains blow off steam in downtown drinking establishments.

Things quiet down in late September so we can enjoy town before the autumn storms. The other time between tempests and tourists comes in Spring. That season is here now. Yellow-headed daffodils show prettily along the Tongass Avenue tunnel and optimistic fisherman are already trolling for king salmon out of Knudson's Cove. It is a time when residents are happy to live in this place where ravens chase eagles off fast food scraps behind the mall.

Throughout the year another Ketchikan progresses. The lumber and pulp mills run double shifts on both ends of town. Families pack the high school gyms for basketball games, wrestling tournaments and rope-skipping competition. Northwest carvers fill commissions ordered during the tourist season. It's a town that works for a living.



Dan Branch

Most folks in Ketchikan can usually find something good to say about the place. We even like the way annual rain is measured in feet rather than inches. When, like last winter, the rain fell in a steady drone for months, those with time shares on the Mexican coast head south. The rest of us pray for snow.

In the midst of the wet winter months, I sought solace in a McDonald's value meal behind the Mall. There, with Ketchikan at my back, I parked the Dodge facing the Tongass Narrows. Feral cats materialized out of the storm to beg for french fries. Ignoring them, I strained to see Pennock and Gravina Islands through a wall of rain. As fog condensed on the windshield, the Kuskokwim River bluffs across from Aniak appeared. I was overwhelmed with the desire to be on the frozen river, driving an eight dog team up the Chauthbaluk Trail.

I had a bad case of the winter rain homesick blues. There was only one thing to do—write a poem. Here it is:

Some Day I'll Miss This Place Too

Standing in a dream on the Aniak dike
I watch Gib's Homestead
form a quilt with snow, birch trees and spruce
across the Kuskokwim.
A train of snow travelers from the Kalskags passes.
Empty gas drums lashed to plywood sleds
rattle behind their machines when they cross the road berm.
They give the wave.
Everyone waves in this town of 400.

The dream continues while I sit at a plywood table in The Lodge
while Lou cooks my cheese burger on the big oil grill.
Once again Bummy Sakar tries to puzzle out my face.
Suddenly awake, I miss Bummy and the sound of village church bells
tolling on the hour while relatives drag for his body.

I miss driving a big string of dogs out of town at sunset
and the sound of water rushing over a beaver dam
when we follow the tractor trail over Rusty Slough.
My dog dream is always the same:
The moon throwing long shadows off the dogs while
they pull towards tree line on the Buckstock River Trail;
Dave and I eating jerked moose meat with tea
while the dogs snack;
Dave's old leader breaking into a sprint
when he smells a moose.

I once caught king salmon on the Aniak
and Silvers at the mouth of the Holokuk;
hooked for grayling on new ice after freezup;
and savored fresh caribou meat dropped off by Moxie
after a summer of eating salmon.

We also canned blueberries picked on the tundra
above Big Mamma Slough;
low growing treats carrying sugar and the taste of new earth.

I miss those things and Fred Holmberg, the village cop before he
flew his 185 into the mountain behind Upper Kalskag;
Buck Sally so free with his time and tools;
Auntie Mary who told me I should have pushed harder the day Nick
and Herman beat me by seconds in the
Five Dog Race.
I even miss the old A frame across the slough
and hauling home four cords just to heat it.

Hell, I miss it all; missed it most before we left.

TANANA VALLEY BAR

By Ken Covell

Dick Savell had pictures of a 1972 Christmas party. There were lots of guys in polyester pants suits with side burns and mustaches, looking like young Jim Blairs and another guy with a giant beard and a long pony tail looking as if Marlin Smith had taken a supporting role in the ever popular theatrical production of Jesus Christ Superstar.

Judge Steinkruger was happy to announce that Judge Ralph Beistline was no longer a virgin as he had indeed decided his first dog custody case. Niesje still, however, has the outstanding distinction of having done the only known dog custody case on expedited consideration. Ralph went on to announce that the date for the Christmas party would be July 15, 1994. He went on to clarify this statement saying, "right in the middle of July." It was noted that a comment of that nature was as subtle as a train wreck. Others exclaimed "now I know why he was put on the bench".....

Judge Kleinfeld turned to more serious business and noted that indeed state courts did not have exclusive jurisdiction over dog cases. He noted that the Ninth Circuit has had before it at least two dog cases, one involving doggy custody in Los Angeles and another involving federal dogs on public lands in Idaho.

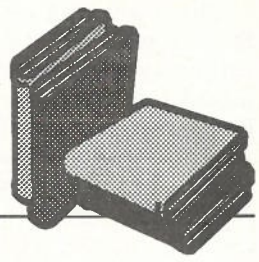
Colonel Chandler recalled how at one point he was acting as defense counsel and he was very patiently explaining to his client that he had a choice of three defense counsel, either appointed, individually selected, military or private civilian counsel. The client listened very carefully and absorbed this information in depth. He then asked a reasonably astute question, "can I pick my prosecutor?"....

— Jan. 21, 1994

....Bob Noreen made a motion for something but my notes don't reflect what it was. Andy Kleinfeld noted with relief that the Ninth Circuit had put all its doggy custody cases behind it, that this week they were facing a number of dog bite cases. It seems that some unenlightened police departments will send in the canine patrol to roust alleged criminal defendants from the bushes rather than crawl in there amongst the wildlife themselves. This tends to lead to numerous § 1983 actions being filed as there tend to be various slits, tears and stitches following the canine patrol apprehension of these various alleged criminals. Chris Zimmerman in a soleminic pronouncement suggested perhaps that the police ought to begin using pointers.

—Jan. 28, 1994

Book Review



THE LOST LAWYER
Failing Ideals of the Legal Profession
Anthony T. Kronman
Harvard University Press. $35

Anthony Kronman describes a spiritual crisis affecting the American legal profession, and attributes it to the collapse of what he calls the ideal of the lawyer-statesman: a set of values that prizes good judgment above technical competence and encourages a public-spirited devotion to the law.

For nearly two centuries, Kronman argues, the aspirations of American lawyers were shaped by their allegiance to a distinctive ideal of professional excellence. In the last generation, however, this ideal has failed, undermining the identity of lawyers as a group and making it unclear to those in the profession what it means for them personally to have chosen a life in the law.

Many factors have contributed to the declining prestige of prudence and public spiritedness within the legal profession. Partly, Kronman asserts, it is the result of the triumph, in legal thought, of a counter ideal that denigrates the importance of wisdom and character as professional virtues. Partly, it is due to an array of institutional forces, including the explosive growth of the country's leading law firms and the bureaucratization of our courts. *The Lost Lawyer* examines each of these developments and illuminates their common tendency to compromise the values from which the ideal of the lawyer-statesman draws strength. It is the most important critique of the American legal profession in some time, and an enduring restatement of its ideals.

Anthony T. Kronman is Edward J. Phelps Professor of Law, Yale Law School.

Freshman wins Polar Extremes

Students Debate Death Penalty

Laurence Bleicher won top honors at the third annual Polar Extremes debate, taking home $1,100 in awards from tournament sponsor Burr, Pease & Kurtz.

Bleicher, an East Anchorage High School freshman, was the winner after the final round of debating the question, "Should the State of Alaska adopt the death penalty?"

Runner-up was Service High School senior David Mull, who won $600 in awards.

Students had to advocate either side of the question during five successive rounds of competition. The toss of a coin minutes before each round determined who had to take the affirmative and negative position in that round. In the final round, Bleicher had the affirmative and Mull the negative.

Debaters were judged on reasoning, analysis, evidence, delivery and persuasiveness. Professional judges evaluating them included Alaska Supreme Court Justices Warren Matthews and Allen Compton and former Justice Edmond W. Burke; U.S. District Court Judge John W. Sedwick and Superior Court Judge Elaine Andrews. Other final round judges were attorneys Robert Ely and Nelson G. Page.

Polar Extremes was co-sponsored by Burr, Pease & Kurtz and the Anchorage School District and took place at the Martin Luther King Career Center. Twenty-one competitors came from six Anchorage high schools and Palmer High School. East, as the winner's school, will have the Polar Extremes trophy until after next year's debate.

(L to R) Nelson Page; Judge John Sedwick; Justice Warren Matthews; Laurence Bleicher; Edmond Burke; Robert Ely.

Polar Extremes director Thomas P. Owens III noted it was the first time in the tournament's history that a freshman had won. Winners may opt to take their prizes in the form of a scholarship paid directly to the college of their choice, or as cash.

One lawyer's meditation on mediation

By Martin Priedman Zeller

After practicing law for 25 years (an event recently acknowledged by receipt of the Alaska Bar Association's 25 year endurance certificate) a persistent professional doubt surfaced. Was I, and the legal profession, providing a forum for clients to creatively and effectively resolve their conflicts?

The law works well to redress violations of civil and constitutional rights; to confront issues of public interest and pursue precedent setting principles; and to coerce through sanction and injunction the enactment of safety modifications and regulations for the public health and welfare.

However in the area of many domestic, commercial, and organizational conflicts the inherent combative nature of the practice of law has not worked well. It perpetuates and excites conflict, and increases the costs, (monetary and psychic) and time expended. Although there is ultimately an outcome, it is usually the result of the system grinding down the participants, and is unconnected to their real goals and interests.

My frustration peaked in a moment of meditation. I was at a maritime death-on-the-high-seas case deposition in a Seattle law office conference room circled up with 7 suits and skirts (a mixed-gender group of $150.00 to $250.00 per hour insurance and large firm lawyers); a videocamera technician with enough media equipment to record in fine detail each cellular transformation in the life cycle of the African split-tailed newt; an immaculately manicured legal-stenographer recording every precious utterance, including the awesome snoring of the Korean shipowner's local counsel; and a state-of-the-art audio recorder wired to each lawyer and cementing 'for the record' every expensive exhalation and silver-tongued sound.

The widow was also there: she, the solitary human element in this modern gothic representation of law in action. My task was to defend her with my tongue and other body parts as each lawyer in her turn searched with lawyerly looks and loops for ways to shift their company's monetary exposure to one of the other lawyer's clients, as well as show some justification for their billable hours. The anus-of-the-bull indicator was approaching blast-off and I emerged from my meditation in time to deflect an ugly lawyerly snore from contaminating my client.

What was I doing there? Was this a healthful and valuable human experience? In what mysterious way was this connected to the reasons I first idealistically entered the law? How was this event contributing to creative and generative changes in my community?

These same questions arose when I observed couples in emotionally destructive conflicts around parenting or property issues; or when neighbors, business partners, or employees were attempting to resolve their conflicts through a legal system historically tethered to adversity.

Conflict is neither good nor bad, it is a dynamic of human interaction, a difference of opinion. The challenge is discovering the most effective and responsible method to resolve conflict without exciting and distorting it.

Most people, with good reason, reluctantly approach the law to resolve their conflicts. When it is in their interest to minimize costs, to maintain or salvage a relationship, to actively participate in decisions affecting their lives, or reach a prompt and fair resolution, the law is a creature to approach reluctantly.

The heart of law is civilized dispute resolution. It is an awkward attempt to overcome the inequities of trial-by-combat. The law does, at times, support its romantically compelling and idealistically formidable archtype; i.e. the warrior advocate charging forth to battle injustice, real or imagined. That image is fairly accurate in certain areas of the law. In issues of constitutional law, personal and civil rights, institutional and precedential changes, or where a person seeks vindication, the law mirrors that image. There is the victor and there is the vanquished, and good triumphs over evil.

Our social, economic, and judicial system showcases the 'ends' while ignoring the 'means'. Mediation does not work in this manner. Mediation (sometimes confused with meditation) as generally defined as 'an informal voluntary conflict resolution process where a neutral third-party assists the parties-in-conflict to communicate and define the issues in dispute and reach a mutually acceptable agreement.'

The mediation process offers and uses means that in many areas are ends in themselves; i.e. listening and understanding, rephrasing, stating needs clearly, negotiation, searching for common interests, and collaboration. These skills can be used in almost all areas of human interaction irrespective of age or culture.

Mediation has steadily entered the dispute resolution vocabulary. In reaction to the groans of an overworked, expensive and glacially moving justice system, ADR's (Alternative Dispute Resolutions) are asserting their legitimacy and infiltrating the system.

Mediation trainings are proliferating. In Alaska, the courts recently adopted Civil Rule 100 which allows a party to a lawsuit to request mediation, or a judge, on her own, can order mediation. Many people, in and outside the legal profession, are offering mediation services and information.

I anticipate that attorneys will soon have an ethical duty to advise their clients of the availability of mediation alternatives and how those alternatives might best satisfy their client's needs and interests. I can also foresee mediation training in schools to begin the process of responsible problem solving.

In this past year of mediating experience and education I've seen the mediation process work. I believe that most people want a resolution that recognizes their primary interests and goals, and one that they actively participate in creating. In that situation the results are the work of the parties and they are then more likely to honor and respect the agreement as a product of their own making. Mediation is the best method to achieve these goals, and it is a welcome and welcoming alternative.

Well, that's my piece, and there is always new stuff out there to explore; and 25 years of a life can pass in a slow breath. Ah, now that's a meditative thought.

Estate Planning Corner

Trustee removal and appointment powers

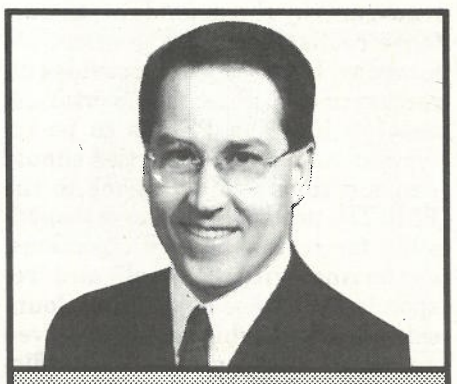
If the creator of an irrevocable trust ("grantor") has the unrestricted power to remove a trustee at any time and *appoint himself as trustee,* the grantor may be considered for tax purposes as the owner of the trust (*see, e.g.*, Treas. Reg. §§ 20.2036-1 (b) (3), 20.2038-1 (a) (3), and 1.674 (d) -2 (a)).

The IRS has long tried to extend this principal by ruling that if a grantor has reserved the unrestricted power to remove and replace a trustee, even if the grantor cannot name himself as trustee, the trust is included in the grantor's estate for tax purposes (Rev. Rul. 79-353, 1979-2 C.B. 325).

Relying on Revenue Ruling 79-353, the IRS has also advised that if a trust owns insurance on the grantor's life and the insured-grantor reserved the unrestricted power to remove and replace the trustee, even if the insured-grantor cannot name himself as trustee, the insurance proceeds may be includable in the insured-grantor's estate for tax purposes (Technical Advice Memorandum 8922003 (June 2, 1989)).

Recently, the Tax Court has rejected the holding of Revenue Ruling 79-353, characterizing it as a "quantum leap" from established authority (*Estate of Wall v. Commissioner,* 101 T. C. No. 21 (1993)).

The IRS is expected to appeal to the 7th Circuit, where this writer believes the Tax Court's rejection of



Steven T. O'Hara

Revenue Ruling 79-353 will be affirmed.

In any event, it appears the IRS would like Congress to add a new Section 2047 to the Internal Revenue Code, providing that if an individual has a power to remove and replace a trustee, the individual shall be deemed to possess the powers of the trustee (*U.S. Trust - Practical Drafting* 3574 (January 1994)).

This writer questions whether such a code section, at least as so broadly described, would be constitutional (*Cf.* Blase, "Is the Kiddie Tax Unconstitutional?" 127 Trusts & Estates 46 (June 1988) (arguing the tax on one person's property cannot be based on the property of another)).

For future planning purposes, there does not appear to be any issue with the grantor reserving the power to name a successor trustee (other than the grantor) if the incumbent trustee fails or ceases to serve, provided the grantor does not retain the power to remove the incumbent trustee.

If the client wants someone to have the power to remove the trustee, consider avoiding issues in this area by making the trustee remover different from the trustee appointer.

If the client insists upon the trustee remover and the trustee appointer being the same individual, consider limiting the trustee's discretion as may be appropriate from a tax standpoint (*see, e.g.*, Treas. Reg. §§ 20.2036-1 (b) (2) and 20.2041-1 (c) (2)).

In addition, or alternatively, consider limiting the circumstances in which the trustee may be removed to those listed in IRS Private Letter Ruling 9303018 (January 22, 1993) and IRS Private Letter Ruling 9328015 (July 16, 1993), as follows:

Removal of a trustee for "cause" shall mean any one of the following:

1. The legal incapacity of a trustee.
2. The willful or negligent mismanagement by the trustee of the trust's assets.
3. The abuse or abandonment of, or inattention to, the trust by the trustee.
4. A federal or state charge against the trustee involving the commission of a felony or serious misdemeanor.
5. An act of stealing, dishonesty, fraud, embezzlement, moral turpitude, or moral degeneration by the trustee.
6. The use of narcotics or excessive use of alcohol by the trustee.
7. The poor health of the trustee such that the trustee is physically, mentally, or emotionally unable to devote sufficient time to administer the trust.
8. The failure by the trustee to comply with a written fee agreement or other written agreement in the operation of the trust.
9. The failure of a corporate trustee to appoint a senior officer with at least five (5) years of experience in the administration of trusts to handle the trust account.
10. Changes by a corporate trustee in the account officer responsible for handling the trust account more frequently than every five (5) years (unless such change is made at the request of or with the acquiescence of the other trustee).
11. The relocation by a trustee away from the location where the trust operates so as to interfere with the administration of the trust.
12. A demand from the trustee for unreasonable compensation for such trustee's services.
13. Any other reason for which a [state] court of competent jurisdiction would remove a trustee.

All about gender:

Everything you always wanted to know but were afraid to ask

By Karen Larsen, Ph.D.

Miss Grammar scarcely knows how to begin what is certain to be a steamy discussion — the ubiquitous use of *gender* when what's needed is *sex*. Tsk. Let us begin anew: *Gender* is a grammatical distinction that is used to talk about nouns, pronouns, adjectives and even verbs in some languages. Gender is something that words have. *People* do not *have* gender — people have sex. Ahem. Or not. Latin and German, by way of illustration, have three genders: masculine, feminine and neuter; French has two genders: masculine and feminine.

Grammatical gender distinctions may or may not be based on characteristics of sex — they may entirely arbitrary. In a gender-rich language like German, even inanimate objects are masculine, feminine or neuter. In English, they are, with few exceptions, neuter. When we speakers of English use a noun, we often do not realize that it has a gender. But when we replace the noun with *he, she* or *it*, we choose only one of the three without hesitation because we automatically give a gender to the noun we are replacing. It is custom, not logic, however, that leads us to refer to a ship or a country as *she*.

In fact, there appears to be a distinct dearth of logic in the assigning of gender to nouns: In German, a fish is masculine, but a trout is feminine. In French, a table is feminine, in German masculine and in English neuter. One wonders whether these distinctions have a subliminal effect on those who live with them. A German evidently isn't fazed by saying:

> Where is the pencil? He is lying on the table where the girl left him. I saw it put him there after it came through the door and left her open behind it.

But gender is very different from sex. And for reasons hidden perhaps even from themselves, people have begun to shy away from the word *sex* in favor of the genteel *gender*. At one time, sensitive souls bent over backward to avoid the word *leg,* even to the extent of speaking of the "limb" of a piano. We seem to be performing similar acrobatics again, perhaps because *sex* is uncomfortably close to *sexual*.

The Oregon Revised Statutes bravely discuss an individual's "race, religion, color, *sex*, marital status, national origin, age (and) disability" in Chapter 659 (emphasis added), but take cover in gender in Chapter 197: "Age, gender or physical disability shall not be an adverse consideration..." ORS 197.020.

And how about those Feds? Our own *Bulletin* reported in July that "the 9th Circuit Gender Bias Task Force delivered a preliminary report," concluding among other things that "'while men occasionally suffer from gender bias, women bear the brunt of the harms.'"

Miss Grammar hasn't quoted H.W. Fowler in eons, but she is pleased to do so now. Fowler says, "To talk of *persons* or *creatures of the masculine* or *feminine gender,* meaning of *the male* or *female sex*, is either a jocularity...or a blunder."

A dictionary of Modern English Usage 221 (2d ed 1965).

Let us examine the following realife examples without characterizing them as either jocularities or blunders.

> [T]he Court held that it was error for the trial court not to consider the comparative treatment of the two genders [read *sexes*]... *Orbovich v. Macalester College,* 119 FRD 411, 415 (D Minn 1988).

> Her basic contention was that she did not get the Manager position...because of her gender [read *sex*].
> *Gafford v. General Elec. Co.*, 997 F2d 150, 154 (6th Cir 1993).

> The word *sexism* was coined, by analogy to *racism*, to denote discrimination based on gender [read *sex*]. In its original sense, *sexism* referred to prejudice against the female sex. In a broader sense, the term now indicates any arbitrary stereotyping of males and females on the basis of their gender [read *sex*].
> "Guidelines for Equal Treatment of the Sexes in McGraw-Hill Book Company Publications."

> The plaintiff produced no direct evidence of either race or gender [read *sex*] discrimination.
> *Harper v. Frank*, 61 Fair Empl Prac Cas (BNA 78,79 (1993).

> A statute [was] designed to establish a color-blind and gender-blind workplace...
> *Johnson v. Transportation Agency,* 480 US 616, 677, 107 S Ct 1442, 94 L Ed 2d 615, 659 (1987).

Miss G. carefully considered inserting "read *sex-blind*," but found the result too hilarious.

It has been said that the Victorians spoke readily of death but never of sex. Miss Grammar, considered by many to be a true representative of that Gentler Time, is indeed more *likely* to speak of one than of the other, but she prefers (in her deepest heart) to ignore both and all their trappings. *But*, because she is all for direct and accurate language, she must perforce speak out here and now against the many coy, if not mindless euphemisms employed in place of *died* — "passed away," "passed over," "passed on," just plain "passed," "went to sleep," "fell asleep," "went to his reward," "went to the big law firm in the sky," "kicked the bucket," "croaked," "bought the farm," "bought it," "departed," "quit this world," "made one's exit," "shuffled off this mortal coil" (Miss G.'s favorite because it sounds faintly reptilian), "breathed his last," "turned his face to the wall," "put out to sea," "went to Boot Hill," "went west," "cashed in his chips" and "turned up his toes."

We act as though speaking of death would cause it to happen. Miss G. thinks there is a connection here — do we think saying *sex* will have the same invocational power? Miss Grammar must confess that she tried that once but nothing happened.

Karen Larsen, Ph.D., is a writing consultant with the Portland firm of Miller, Nash, Wiener, Hager & Carlsen.

—Submitted by Gerritt J. Vankommer, from the Oregon State Bar Bulletin.

Correctional services in the federal criminal justice system

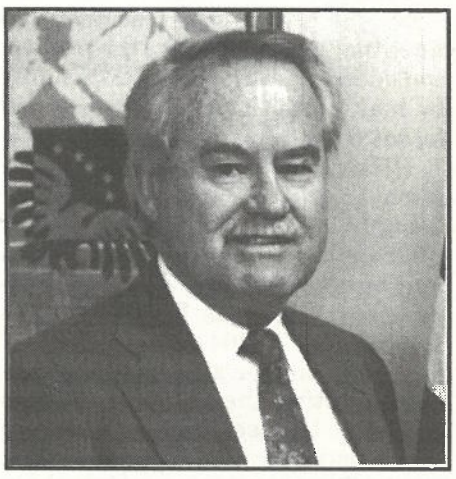
By Norman E. Mugleston

The concept of probation is only half as old as the American correctional system. The first probation law was enacted in 1878. Probation saw its greatest advancement between 1950 and the present; its future is undiminished. Even in a period of "get tough on crime, " probation continues to be a viable part of the criminal justice system's response to crime in the United States, and at any given time represents four-fifths of the entire offender population. Probation is thus, by far, this nation's major response to crime. In spite of this importance, probation is still considered the new kid on the block, and is a misunderstood concept.

Webster's Dictionary defines probation as "the action of suspending the sentence of a convicted offender and giving him freedom during good behavior under the supervision of a probation officer." A probation officer is defined as "an officer appointed to investigate, report on, and supervise the conduct of convicted offenders on probation." While the second definition is still accurate, the purpose of probation was modified when the Sentencing Reform Act of 1984 abolished suspended sentences in the Federal system and created probation as a punitive sanction.

The basic duties of probation and pretrial services officers as set forth in the law are found in Tile 18 of the United States Code. Sections 3154, 3552, and 3603 provide that probation and pretrial services officers shall conduct investigations and prepare reports prior to the pretrial release hearing or the imposition of sentencing hearing. Rule 32 (c) of the Federal Rules of Criminal Procedure further supports this role. The probation officer is also required to furnish each probationer/supervised releasee under his/her supervision a written statement of the conditions of supervision and instruct him/her on these conditions, and supervises the offender in the community and reports the progress of supervision to the judicial officer.

With the enactment of the Sentencing Reform Act of 1984 and 1987, which some have described as the most revolutionary change in the Federal Criminal System since the founding of the Republic, the role of the officer and, indeed, the purpose of sentencing was dramatically changed. The medical model which had existed for so long in the criminal justice system was shifted to one of punishment and deterrence. The wide discretion of the Court was limited



Norman E. Mugleston

with the implementation of the Federal Sentencing Guidelines. The probation officer, as an employee of the Court, was placed in a critical role of conducting independent investigations of the defendant's background and the facts of the criminal case, and applying a set of sentencing guidelines to calculate the sentence to be imposed. Many times this new role of the probation officer places the officer in an adversarial situation not only with the defense attorney but with the attorney for the government as well. Some have referred to us affectionately, or not so affectionately, as "plea busters."

Nonetheless, the Court has directed and continues to direct that the presentence investigator conduct an independent investigation into the facts of the case, and present the findings and the calculation of the guideline range to the court. The Court then, as the trier of the facts, makes a finding on the appropriate guideline range for which the defendant will be sentenced. The court's findings may be consistent with the probation officer's guideline calculations, but more often then not, deviates slightly from the probation officer's initial guideline calculations.

The presentence report (PSR) prepared by a probation officer goes through a series of reviews both in-house and by the defendant, the defense counsel, and the government attorney. Local Rule 3.4 provides direction to all parties in the criminal case on how the PSR is to be reviewed, and how the parties should respond timely to objections to the PSR. The probation officer is responsible for reviewing any objections, conferring with counsel, and responding to these objections. Counsels' objections which can be resolved are done so, and unresolved or disputed objections are submitted to the Court prior to the sentencing hearing by means of a sentencing memorandum. The final PSR is submitted to the Court with any adjustments that have been made as result of counsels' objections. The probation officer reviews all objections, and revises the PSR if there is a showing that the officer incorrectly stated the facts of the case or misapplied the guidelines. In future issues of this newsletter, we will go into more detail about the sentencing process of the Federal system and include background information about the Federal Sentencing Guidelines. The team leader for the PSR unit is Mary Frances Barnes.

As noted earlier, our office is also involved in the pretrial phase of criminal cases. We have officers in our Anchorage and Fairbanks offices assigned to the pretrial services unit. Len Richison is the unit's team leader.

The pretrial services officer interviews defendants charged with Federal offenses, investigates their background, and advises judicial officers on release or detention issues. If the defendant is released on pretrial services supervision, the officer supervises the defendant in the community for the purpose of assuring the defendant's appearance at all future court hearings, and managing any risk activities. Additionally, this office provides pretrial diversion investigations and supervision for cases referred by the U.S. Attorney. These cases are usually first-time criminal offenders who have been charged with less serious offenses in which rehabilitation without a conviction is an appropriate disposition of the case.

Offenders on probation, supervised release, parole and military parole are supervised by our officers in Anchorage and Fairbanks. We have relatively few offenders on parole since Federal parole was abolished. The objectives of supervision are to enforce conditions, reduce or control risk, and provide correctional treatment. On a limited basis, officers can make available to the offender drug and alcohol treatment, mental health, halfway houses (community treatment centers) , and electronic monitoring to assist in meeting the supervision goals. Also, there are community agencies available to assist, but they are often too few in number to meet all of the needs of the offenders. Officers also supervise offenders who are ordered to perform community service by placing them with suitable non-profit or governmental agencies. A sentence to perform community service is an appropriate sentence in many cases, and can be used in lieu of a fine for offenders who do not have the ability to pay a fine. Paul Richards is the team leader for the supervision unit.

Our office is in a rapidly changing and growing mode. Our staff has more than doubled in the past five years, and we now employ a wide range of individuals with diverse backgrounds including the FBI, the military, paralegals, and adult and juvenile corrections. Administration of the Probation and Pretrial Services Office has also changed significantly with the operations and functions being decentralized from Washington, D.C. Joshua Wyne serves as second in charge, and Karen Brewer handles the majority of the administrative matters.

With the changing role of the Probation and Internal Services Officer, and the dramatic increases in the caseload, our staff will have to be more proactive, more involved with the individuals whom we supervised, and more skilled in investigative and research techniques if we are to meet challenges we are to face in the next few years.

The author is Chief U.S. Probation / Pretrial Services Officer.

Review your current auto insurance

By Dave Donley

To better protect themselves and their families every Alaskan with automobile insurance should consider increasing their uninsured and underinsured motorist coverage.

Alaska's mandatory auto insurance act was firs adopted in 1984. Strong opposition by the insurance industry yard blocked it for many years. Prior to passage of the mandatory auto insurance law Alaska was *the* most profitable market in the nation for auto insurance companies and they naturally don't want any changes.

As part of the 1984 law, auto insurance companies were required for the first time to offer both unisured and underinsured motorist coverage to their insureds. Commonly called "UM/UI", uninsured and underinsured motorist coverage protects policy holders by compensating them for damages caused by drivers who have no insurance r insufficient insurance.

This is what's called "first party" insurance because it protects the person who buys it as opposed to "third Party" insurance (such as liability insurance) which protects persons the insurance buyer may negligently injure.

After 1984, the availability of "UM/UI" insurance gave Alaskan drivers the opportunity to purchase insurance to protect themselves and their families from injuries caused by the negligence of others.

But the way some insurance companies structured their "UM/UI" coverage made it less valuable to insureds. Some companies only offered "UN/UI" at amounts equal to what liability insurance amounts an insured purchased.

Since most drivers only purchase the minimum amount of liability insurance required by law, $50,000, they were prevented from buying a greater amount of coverage to protect themselves and their families from unisured and underinsured drivers.

In 1989 the Legislature changed that by mandating that auto insurance companies offer consumers the option to buy up to $2,000,000 of UM/UI to better protect themselves and their families. Insurance companies can still charge rates that are appropriate and make a profit, but they must offer consumers this option to better protect themselves.

UM/UI insurance is typically a relatively inexpensive option to provide drivers direct protection from the illegally uninsured automobiles which constitute about 11 percent of the vehicles in Alaska.

Unfortunately not many consumers have taken advantage of this valuable option to protect themselves and their families. Consumers are often confused by the various types of auto insurance and request only that amount of auto insurance required by law.

Many such consumers who are later involved in serious accidents greatly regret this failure to protect themselves. I believe that if properly educated and advised as to their options in buying UM/UI insurance, many more consumers would choose to better protect themselves by purchasing the higher levels of UM/UI.

Currently there is a bill, House bill 403, requested by the insurance industry, which is before the Legislature, that would remove the requirement that insurance companies offer higher amounts of UM/UI coverage. I oppose this bill as it removes this valuable option from insurance consumers.

If you have auto insurance I recommend you contact your insurance agent and discuss your UM/UI coverage and consider what level of coverage is best to protect yourself and your family. Also remember that such insurance rates can vary greatly between different companies and by shopping around you may not only save hundreds of dollars but also obtain better protection. Spending a little time now to better understand your auto insurance and properly protecting your interest could mean a great deal to you in the event of a future injury.

The author is a state senator from Anchorage.

Proposed Bar Rules

The Board of Governors is considering the following addition to the Alaska Bar Rules which would define the unauthorized practice of law for the injunctive purposes of the Integrated Bar Act, AS 08.08.210. If adopted by the Supreme Court, this definition would permit the Attorney General or an affected person to file suit for injunctive relief against a person engaging in the unauthorized practice of law in Alaska. This proposal will be on the Board's August 18-19, 1994 meeting agenda. Comments should be directed to Executive Director Deborah O'Regan, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510-0279, no later than August 5, 1994.

Proposed Bar Rule 33.3 defining the practice of law in Alaska for the injunctive purposes of AS 08.08.210

Section 1. UNAUTHORIZED PRACTICE OF LAW PROHIBITED.

No person may practice law in the State of Alaska, unless that person is an active member in good standing of the Alaska Bar Association.

Section 2. "PRACTICE OF LAW" DEFINED.

For the purposes of AS 08.08.210, the practice of law includes any act, other than that excluded by Section 3 of this Rule, whether performed in court, an office or elsewhere, which attorneys or the courts customarily identify as the practice of law, including; but not limited to:

(a) holding oneself out as an attorney or lawyer admitted to practice in Alaska;

(b) providing advice, for compensation, as to the legal rights and duties applicable to the specific circumstances of any person;

(c) appearance in or conduct of litigation or performance of any in connection with proceedings, pending or prospective, before any court or any governmental body constituted by law in this state which is operating in its adjudicative capacity;

(d) preparation of pleading and other documents, for compensation, to be used in legal proceedings;

(e) preparation of documents and contracts, for compensation, by which legal rights are affected; or,

(f) engaging in any act or practice determined by any court of this state to constitute the practice of law.

Section 3. EXCEPTIONS TO DEFINITION OF PRACTICE OF LAW.

The following acts shall not constitute the practice of law for the purposes of Section 2 of this Rule:

(a) acts performed for and on behalf of oneself as an individual;

(b) acts performed by a paralegal or other non-lawyer assistant under the supervision and control of an attorney who is admitted to practice law in this state, and who is both legally and ethically responsible for the acts of the paralegal or non-lawyer assistant;

(c) acts performed pursuant to the authority and in accord with the provisions of Alaska Civil Rule 81 (a) (2) and Alaska Bar Rules 43, 43.1, 44, and 44.1;

(d) acts described in 2 (d) of this rule when performed in the regular course of a business or non-profit organization having a primary purpose other than the performance of those acts, provided the acts are limited to the completion of forms adopted by the court system for use by nonattorneys or standardized forms prepared of reviewed by counsel;

(e) acts described in 2 (e) of this rule when performed in the regular course of a business or non-profit organization having a primary purpose other than the performance of those acts;

(f) acts described in 2 (c) and (d) before administrative agencies when they are specifically authorized by Supreme Court rule, statute, administrative regulation, or ordinance;

(g) acts described in 2 (b) when performed for the public by a governmental employee concerning the statutes, policies and regulations which apply to that employee's agency provided that the employee is designated by the Commissioner or Executive Director of that agency to give such advice;

(h) acts performed by a governmental employee designated by the Commissioner of Health and Social Services in the filing of a petition before the children's court; or,

(i) acts described in 2 (e) when performed by public officials acting within the scope of their authority in the preparation of proposed legislation.

(j) acts described in 2 (b) and (d) when performed by an incarcerated person for another incarcerated person.

Section 4. REMEDIES FOR UNAUTHORIZED PRACTICE OF LAW.

The Attorney General of any affected person may maintain an action for injunctive relief in the superior court against any person who performs any act consisting or which may constitute the unauthorized practice of law within the provisions of this Rule. The superior courts may issue temporary, preliminary or permanent orders and injunctions to prevent and restrain violations of this Rule, without bond.

Section 5. DEFINITION.

The term "person" as used in this Rule includes a corporation, company, partnership, firm, association, organization, labor union, business trust, banks, governmental entity, society, or any other type of organization, as well as a natural person.

The Board of Governors is considering the following additions to the Alaska Bar Rules which would provide immunity for members of the Board, members of committees, and Bar staff involved in the admissions process (Bar Rule 1) and in Lawyers' Fund for Client Protection proceedings (Bar Rule 60). These proposals will be on the Board's August 18-19, 1994 meeting agenda. Comments should be directed to Executive Director Deborah O'Regan, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510-0279, no later than August 5, 1994.

Proposed addition to Bar Rule 1 relating to immunity in admissions matters

Rule 1. Board of Governors: General Powers Relating to Admissions, *Immunity*

Section 11.

*(1) **General Immunity**. Members of the Board, members of the committee, the Executive Director, Bar Counsel, and all the Bar staff are immune form suite for conduct in the course and scope of their official duties as set forth in these Rules.*

*(2) **Witness Immunity.** The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in admissions proceedings upon applications by the Board, Bar Counsel, the applicant, or counsel for the applicant, and after receiving the consent of the appropriate prosecuting authority.*

Proposed addition to Bar Rule 60 relating to immunity in Lawyers' Fund for Client Protection matters

Rule 60. General Provisions.

*(c) **Immunity***

*(1) **General Immunity**. Members of the Board, members of the committee, the Executive Director, Bar Counsel, and all the Bar staff are immune form suit for conduct in the course and scope of their official duties as set forth in these Rules.*

*(2) **Witness Immunity.** The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in Lawyers' Fund for Client Protection proceedings upon application by the Board, Bar Counsel, the lawyer, or counsel for the lawyer, and after receiving the consent of the appropriate prosecuting authority.*

The Bar Rag welcomes articles from its readers

SOLICITATION OF VOLUNTEER ATTORNEYS

The court system maintains lists of attorneys who volunteer to accept court appointments. The types of appointments are listed in Administrative Rule 12(d)(2)(B). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(d)(2)(E)-(I).

Attorneys may add their names to the volunteer lists by contacting the area court administrator(s) for the appropriate judicial district(s):

First District:
Kristen Carlisle
415 Main St. Rm 318
Ketchikan, AK 99901-6399
(907) 225-9875

Second District:
Mike Hall
303 K Street
Anchorage, AK 99501-2099
(907) 264-8250

Third District:
Al Szal
303 K Street
Anchorage, AK 99501-2083
(907) 264-0415

Fourth District:
Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701
(907) 452-9201

CJRA plan

continued from page 1

fice. We think the appointment is likely to result in a near-term "surge" in criminal filings.

With respect to the court's civil docket, the court continues to be modestly encouraged. The number of civil cases filed and the number of civil cases pending over the last five years have remained more or less constant, during which time the court has absorbed both a year-long hiatus between the departure of Judge Kleinfeld and the appointment of Judge Sedwick and the impact of the *Exxon Valdez* litigation. Perhaps we are no better off, but we certainly could have been a whole lot worse off.

By the end of March, 1994, the court (both district judges and magistrate judges) had substantially improved the state of their matters under advisement for six months. For all practical purposes, all of the judicial officers are current with respect to their motion practice.[1]

We can again report that this court does not have a "backlog" of civil cases which are ready for trial but have no assigned trial date. As civil cases come ripe for trial, trial dates are routinely and promptly assigned, usually at times requested by the parties and generally no more than six months from the date of the request.

In its report last year, the court reported its view that discovery was still taking too long. During the last year, the court has consciously imposed modest restrictions of the time requested by counsel for discovery. In doing so, the court has made provision for an automatic two-month extension of the time for discovery if counsel are in agreement that such an extension is needed. The court has done no statistical study of the results of this initiative, but anecdotal information suggests that most parties (probably over 50 percent) have absorbed the constriction of discovery time without difficulty. A number of parties (perhaps 25 percent) have taken advantage of the automatic two-month extension. Only a very few have either asked for in excess of a two-month extension or have endeavored to avoid the restrictions imposed by the court. Some of the latter endeavors have succeeded, others have been squelched.

A *pro bono* discovery master program has been underway during the past year. The program has not received quite as much use as the court had expected. The program will be promoted at a continuing legal education seminar to be held in conjunction with the Alaska Bar Association convention in May. Initial reports indicate that this initiative has been well received by those involved in the process.

Last year, the court reported its intention to revisit the question of "fast-track" proceedings and alternative dispute resolution. The CJRA Group subcommittee which reexamined the fast-track concept has just submitted its report to the Group. No progress was made in the area of alternative dispute resolution.

A year ago, the court suggested that its CJRA Group reevaluate this court's plan in light of the model plan for reduction of expense and delay in civil cases. This did not happen. It is the court's intention to insist that this be a top priority for the coming year.

The annual assessment of the court's plan for reduction of costs and delay in civil litigation is intended to achieve three goals:

(1) to inform the court itself of the impact of its plan so that adjustments can be made;

(2) to provide information to other courts and advisory groups who may benefit from this court's experience; and

(3) to provide assistance to the Judicial Conference of the United States in reporting to Congress.

By performing the foregoing self-analysis, the court concludes that satisfactory progress has been made in several areas. As noted in Appendix 2, a number of major goals have been achieved. However, it is also the court's perception at this time that the process of delay and cost reduction has reached a sort of plateau. While modest gains in limiting the duration and expense of discovery will probably be achieved through the continued implementation of early case management procedures, significant gains in either cost reduction or delay reduction will not be achieved without some breakthrough—without some new initiative. That is why the court is, of the view that its entire plan should be reevaluated.

It is the court's perception that its civil docket has improved modestly during the last year; however, a lengthy, complex trial of the *Exxon Valdez* claims is expected to commence on May 2, 1994. The initial three phases of this litigation are expected to take three months. While that trial will dispose of most of the claims, there could yet be many weeks of trial of individual cases not included in the first three phases. Inevitably, this will affect the court's overall ability to address other matters. Responsibility for all criminal cases has already been shifted to two of the three active judges, rather than all three. Additional adjustments to balance immediate work demands will be implemented at this time.[2] Litigation over the federal subsistence hunting and fishing program for rural Alaskans continues, but has this month reached a point where initial, fundamental issues have been decided and a stay pending appeal has been imposed. Two of three Alaska Native sovereignty movement cases have been tried and are being briefed at the present time. Decisions in these cases will require considerable amounts of time, but neither the subsistence nor sovereignty cases are expected to disrupt the normal flow of routine cases or the criminal or civil dockets. The court is satisfied that civil cases will proceed at the pace contemplated by individual scheduling and planning orders and be set for trial or otherwise terminated without delay.

Not mentioned above, but probably the high point of the year for meetings of the CJRA Group was a seminar put on by Dr. Dale Lefever (Applied Theory Incorporated) of Ann Arbor, Michigan. Dr. Lefever routinely works in the area of strategic planning for the University of Michigan Medical Center and does private consulting work in the area, often with court systems. His one-day seminar, sponsored by the CJRA Group at the end of October, appeared to have been very well received. It is the court's hope and expectation that his presentation will bear fruit in the coming year in the form of a general reappraisal of the court's CJRA plan.

Finally, the court sought input for this report from the members of the CJRA Group. The number who took the time to respond was disappointing. The court is appreciative of the input from those who did make the effort. By and large, the comments tended to mirror what is contained in this report. We continue to "tinker" with the system in various specific areas; and, by and large, civil litigation appears to be progressing to the satisfaction of the bar. Your reporter wonders what the public thinks. Quite probably the public still thinks that litigation takes too long, is too complicated, and, above all else, is too expensive.

As already suggested, the court would like to see the CJRA Group reevaluate its entire plan, and would also like to see a survey of litigants undertaken to test the court's perception of the litigants' impression of how litigation is handled by this court.

[1]Unless one manipulates the reporting system, it is inevitable—under the current reporting regimen which operates off the date a motion was filed—that there will be a few motions which get filed and, for one or another good reason, are not ruled upon within six months from the date of the filing of the motion. For example, one currently reported case involves a summary judgment motion which was pending for approximately a year before opposition was filed. The court considers there to have been good reason for this delay.

[2]Full-time magistrate judges at Anchorage will be asked to assist with routine civil motion practice during the *Exxon Valdez* trial so that the normal flow of that work will not be disrupted.

APPENDIX 1
Pending motions & trials

The Civil Justice Reform Act of 1990 requires the court to conduct an annual assessment of the condition of its civil and criminal dockets. The following is a summary of information available from various statistical reports prepared by the office of the clerk and the Administrative Office of the United States Courts.

Part A. Judicial officers of the district are required to make a report semiannually of motions and bench trials held under advisement for more than six months. The following chart details the semiannual status reports.

		03/92	09/92	09/93	10/93	03/94[1]
HRH	motions	40	60	27	20	3
	trials	0	0	0	0	0
JKS	motions	13	52	17	3	2
	trials	0	0	1	0	0
JWS[2]	motions				31	2
	trials				0	0
JDR	motions	16	43	38	3	0
	trials	0	0	0	0	0
HB	motions	22	28	26	12	0
	trials	0	0	0	0	0

The following chart reflects the number of civil cases pending per Judge from just prior to institution of the court's CJRA Plan to date. The numbers reflect the net cases assigned to a judge at the end of the month, after reduction for closed cases and addition of new assignments during the month.

	09/91	03/92	09/92	03/93	09/93	03/94
Holland	435	617	704	552	475	432
Singleton	371	472	434	243	195	216
Sedwick	0	0	0	259	251	235
von der Heydt	138	124	147	155	114	82
Fitzgerald	2	2	3	3	2	1

Total Number of Civil Cases Pending

September 1991	1040
March 1992	1221
September 1992	1293
March 1993	1216
September 1993	1040
March 1994	968

The impact of the *Exxon Valdez* litigation on the foregoing statistics can be roughly approximated by subtracting 300 cases from the statistics for Judge Holland for September 1992 and March 1993, and by subtracting 270 cases for subsequent time periods. Similarly, these subtractions from the total number of cases pending will reflect the state of the court's overall civil docket apart from the *Exxon Valdez* litigation. Despite the pendency or 270 *Exxon Valdez* cases, the total number of civil cases pending in the district has declined steadily since mid-1992 when the *Exxon Valdez* filings cause a "spikes' in the statistics. Thus it continues to appear that the court's processing of general civil litigation has not been adversely impacted to date by the *Exxon Valdez* litigation.

Attached as the next page to this appendix is the most recently published judicial work load profile for the District of Alaska as compiled by the Administrative office of the United States Courts. The latter document is included in this analysis primarily for reference to three items. Firstly, the weighted filings per judge dramatically increased an 1992 due to a very large influx of *Exxon Valdez* cases in that period. The weighted filing number per judge has dropped back considerably in year 1993, reflecting a return to more normal business. Secondly, this report discloses that terminations per judge are up significantly, as would be expected in light of the decrease in pending cases.

Finally, the attached report indicates that the median time from filing to disposition for civil cases has been reduced slightly, again hopefully confirming that some progress is being made in expediting civil litigation. The median time from cases being at issue to trial has increased somewhat. This number probably suggests that during the last reporting period some of the court's older cases went to trial, thereby driving the median time upwards.

continued on page 19

U.S. DISTRICT COURT — JUDICIAL WORKLOAK PROFILE

ALASKA — TWELVE MONTH PERIOD ENDED SEPTEMBER 30

			1993	1992	1991	1990	1989	1988	NUMERICAL STANDING WITHIN U.S. CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings*		763	1,112	759	683	705	858	
	Terminations		975	822	755	612	724	933	
	Pending		1,132	1,345	1,055	1,104	1,049	1,077	
	Percent Change In Total Filings Current Year	Over Last Year...	-31.4						93 / 15
		Over Earlier Years...		.5	11.7	8.2	-11.1		63 / 10
	Number of Judgeships		3	3	3	3	3	3	
	Vacant Judgeship Months**		7.0	12.0	.6	12.0	5.9	.0	
ACTIONS PER JUDGESHIP	FILINGS	Total	254	371	253	228	235	286	86 / 13
		Civil	222	317	225	203	209	248	82 / 12
		Criminal Felony	32	54	28	25	26	38	80 / 13
	Pending Cases		377	448	352	368	350	359	43 / 7
	Weighted Filings**		294	447	281	242	250	286	80 / [illegible]
	95% Confidence	Upper	322	504	309	266	277	309	
		Lower	266	389	254	217	222	263	
	Terminations		325	274	252	204	241	311	74 / 9
	Trials Completed		13	19	16	12	11	17	90 / 13
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.7	5.0	4.5	5.2	4.8	4.3	33 / 6
		Civil**	12	12	15	13	13	13	85 / 14
	From Issue to Trial (Civil Only)		27	22	33	32	14	21	83 / 11
OTHER	Number (and %) of Civil Cases Over 3 Years Old		120 11.3	114 8.9	124 12.4	173 16.3	160 16.0	148 14.4	81 / 14
	Average Number of Felony Defendants Filed per Case		1.8	1.5	1.7	1.4	1.3	1.2	
	Jurors	Avg. Present for Jury Selection**	63.84	54.12	45.31	46.55	49.29	38.58	90 / 15
		Percent Not Selected or Challenged**	50.8	45.9	34.7	54.1	43.5	37.2	92 / 15

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

1993 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	665	3	3	104	43	30	32	150	158	7	45	1	89
Criminal*	96	4	2	7	1	5	10	25	-	16	2	5	19

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
** See Page 167.

Part B. Criminal case assignments are not reported on a judge-by-judge basis. The cases are usually assigned equally amongst all active district judges[3] and are reported for statistical purposes on the basis of number of cases handled by district judges versus the number of cases handled by magistrates.

Number of Criminal Cases/Defendants Pending

	09/91	03/92	09/92	03/93	09/93	03/94
district judges	57/90	81/132	85/121	59/127	65/96	67/92
magistrate judges	70/73	11/17	44/50	43/49	40/40	57/58

Total Number of Criminal	Cases Pending	/	Defendants Pending
September 1991	127	/	163
March 1992	92	/	149
September 1992	129	/	171
March 1993	102	/	176
September 1993	105	/	136
March 1994	124	/	150

Between 1991 and 1992, the court experienced a significant bulge in the number of felony criminal cases assigned to district judges. The impact of these filings was somewhat masked in the combined statistics for the entire court because of a significant offsetting decrease in the number of cases assigned to magistrate judges in this same period. The bulge of felony criminal cases (which was largely driven by the filing of a number of drug cases involving a large number of defendants) has passed through the system by the end of 1992 or early 1993. Both felony and misdemeanor filings have since dropped back to a more normal, workable level.

Not too far into the administration of Attorney General Reno, all United States Attorneys were asked to resign. At that time, United States Attorney Wevley Shea was replaced by Acting United States Attorney Joseph Bottini. Mr. Bottini was, and remains, a highly-experienced litigator on the staff of the United States Attorney. On March 4, 1994, Robert Bundy was sworn in as United States Attorney for the District of Alaska.

Based upon anecdotal information, the court has the impression that there may have been some criminal matters which were briefly deferred pending confirmation and installation of Mr. Bundy. It may be that the court will experience a brief surge of indictments following installation of the new United States Attorney.

[1]Based upon projected data as of March 31, 1994; reports not yet filed.

[2]Judge Sedwick was not subject to a reporting requirement until September 30, 1993, based upon his date of appointment.

[3]As of January 1994, Judge Holland was, by agreement of the judges, taken off the criminal "draw" in anticipation of the heavy motion practice and expected three-month trial in *In re the Exxon Valdez.*

APPENDIX 2

By Amendment No. 1 to Miscellaneous General Order No. 698, the court set out a schedule of objectives or goals for the court's Civil Justice Expense & Delay Reduction Plan. As a part of the court's annual assessment of its civil and criminal dockets the court has conducted a review of the progress which has been made with respect to the goals and objectives of the court's original plan. What follows is a full exposition of the court's appraisal of the progress made to date.

I. SYSTEMIC CHANGES

A. Prompt action to fill vacant judgeships

This goal was achieved with the appointment of Judge Sedwick who took office on October 22, 1992.

B. Add additional court judgeship

Especially with the removal of a very significant number of *Exxon Valdez* cases to this court in 1992, this court gave serious consideration to the possibility of securing an additional district judgeship. The September 30, 1992, judicial work load profile placed the weighted filings per judge in the District of Alaska at 697 at that time. That work load placed the court far over the 400-case guideline for new judgeship's. The Judicial Conference Subcommittee on Judicial Statistics declined to consider Alaska for off-cycle appointment of an additional judge. Thereafter, the weighting formula was changed such that the 1992 weighted filings (originally reported at 697 per judge) were downgraded to 447 per judge (see Appendix 1, page iv), and the weighted filings per judge for 1993 dropped back into the normal range of prior years (as refigured under the new weighting formula) such that Alaska is considerably below the 400-case guideline.

As a practical matter, there is no possibility of securing an additional district judgeship at this time.

C. Upgrade Anchorage part-time U.S. magistrate judge position

Magistrate Judge Branson's status was upgraded to full-time as of May 3, 1993.

D. Adopt a mandatory disclosure rule

This aspect of the court's plan has been rendered moot by the revisions to Rule 26, Federal Rules of Civil Procedure, which now out of the disclosure requirements of this rule[1] While it is too early to evaluate the new provisions of Rule 26, the court is yet to receive any negative comment, nor has any unusual motion practice been generated by changes in the discovery rules.

E. Assignment of certain cases to "fast-track" schedules

The CJRA Group currently has a subcommittee studying use of "fast-track" procedures. A report from this committee has just been received.

Through a computerized case management system, the court continues to do invidualized case management for all civil cases.[2]

F. Increased discovery master utilization

The court has made heavy use of a discovery master in the *Exxon Valdez* oil spill litigation. That discovery master continues to deal with hundreds of motions which have been diverted from this court's regular motion calendar. The number of appeals from decisions of the discovery master have not been exceptional.

During the past year, the court has had in place a *pro bono* discovery master program initiated by the CJRA Group. While there have not been as many appointments from this panel as the court had expected, there have been seven appointments of discovery masters.

At this point, the court has received very little feedback on this program. Evaluation of the program through the CJRA Group is probably still premature.

G. Revised case weighting criteria

The CJRA Group had hoped that revisions of the case weighting criteria would result in recognition that cases pending in this district were "under-weighted". The new criteria have been applied as mentioned above. The new weighting criteria have substantially decreased the weighting of those cases filed in this district.

H. Bifurcation of issues and staged discovery

This matter has received little or no attention during the last year. The court remains committed to the proposition that there are economies to be gained both through bifurcated trials and the staging of discovery in complex cases.

I. Alternative dispute resolution

The Alaska Court System has adopted a new Civil Rule 100 which implements a court-annexed mediation program. The court is considering adopting a similar rule as a part of the local general rules of this court. Quite probably the fact that the Alaska Court System has entered this area will make it feasible for this court to do a*, whereas it would not have been feasible for this court to do so on its own.

J. Assessment of judicial impact of new legislation

This matter continues to be a concern; but there is nothing new on the subject to report at this time. The court does not perceive that legislation adopted in the last year has materially affected the cost or duration of civil litigation in this district.

K. Abate the paper shuffle

See Section II.A, below.

L. Criminal Justice Advisory Committee

The Criminal Justice Advisory Subcommittee of the CJRA Group continues in a standby capacity.

[1]The bankruptcy court has elected to delay implementation of automatic disclosure.

[2]Through reports received pursuant to Rule 16(b), Federal Rule& of Civil Procedure, and scheduling and planning orders, the court fixes a case-specific calendar for the development of virtually all civil cases. In a sense, individual case management is the ultimate extension of differential case management (the use of tracks).

II. RECOMMENDATIONS FOR JUDICIAL ACTION

A. Standardization of procedures

The court continues its efforts to standardize procedures. We continue to reexamine and revise case management forms and procedures. Most recently, revisions have been necessary to incorporate into the court's case management procedures the changes that were effected in Rules 4, 16, and 26, Federal Rules of Civil Procedure. These changes are in place at this time.

B. More aggressive case management

As reported last year, the court continues to employ and upgrade its individualized case management system. As already noted, changes in this system have been occasioned by changes in Rules 4, 16 (b), and 26. These changes should result in case" coming to issue more rapidly, and in the earlier entry of a scheduling and planning order for the development of all civil cases.

The changes in Rule 16 (b) and Rule 26 have occasioned further revisions in the court's form scheduling and planning order. The court is in the process of effecting a changeover to a new scheduling and planning order at this time.

C. More rapid resolution of dispositive motions

The court's automated program for tracking and reporting motions ready for attention by judges has remained in place and essentially unchanged during the last year. Aging reports of pending motions are periodically available to judges. Updated reports are available from the data base at any time. The court believes that it has made substantial progress in the last year in its efforts to decide civil motions more expeditiously.

D. Early screening and tentative ruling experiment

This suggestion has been dropped by the CJRA Group.

III. RECOMMENDATIONS FOR ACTION BY LITIGANTS AND COUNSEL

A. Representation by counsel with power to bind

This subject has not presented a problem in the last year.

B. Case management plans

The CJRA Group recommended that the court reject the concept of discovery/case management plans. The recently effected changes in Rule 26, Federal Rules of Civil Procedure, coupled with this court's decision to implement that rule as written, now require counsel to submit a discovery plan as a part of an initial report leading to the issuance of a scheduling and planning order. The court is currently approving discovery plans which are a little imprecise. As the court gains more experience with disclosure procedures under Rule 26 (a), and the feasibility of limitations on discovery, the court expects to develop a "feel" for what an appropriate discovery plan should include. The court expects to steer counsel through the use of scheduling and

continued on page 20

Save the Whales

Among the many worthy causes, let's also save the profession

By James E. Brill

There is worldwide concern over the actual or threatened extinction of many of our fellow creatures. "Save the Whales" is only one of the rallying cries of those who are sensitive to the plight of beautiful things whose existence is endangered by the thoughtlessness of a few.

Extinction *is* forever. Regardless of the imaginative premise of the blockbuster movie "Jurassic Park," for example, dinosaurs *are* extinct. Extinction, however, is not limited to living creatures.

In our everyday society, the bad is driving out the good. Poor grammar substitutes for the King's English, tank tops for dress shirts, and boorishness for good manners. To many like me, the practice of law also has changed so much that many have become endangered.

We fear the destruction of the ancient landmarks of our great profession. Respect has declined for the law, its interpreters, the dignity of the process and the system itself.

We treat our fellow lawyers with indifference, disrespect and outright hostility. Collegiality is restricted to close friends and longtime acquaintances. Even our clients are the subject of this disdain.

Some efforts are being made to reverse this trend. Speakers denounce the lack of professionalism. Lawyers' creeds are being written, discussed and widely disseminated. Committees are being formed to study and deal with the problem. These movements are springing up like mushrooms after rain.

In spite of all that is being done, there is a raging sea of self-centeredness, shortsighted self-interest and outright hostility that surrounds and threatens to breach the bulwarks surrounding genteel law practice. Unless something more is done, we will be engulfed by those who would pervert our system of justice into a modified form of trial by battle.

Unfortunately, most of us have observed lawyers who conduct themselves in that manner. I recently met a lawyer who was the victim of this insensitive arrogance. While her grandfather was hovering near death, she was frantically calling opposing counsel in an effort to reset a routine hearing.

Since the other lawyer refused to return her calls, she had to leave the hospital to attend the hearing. Even when she arrived at the courthouse and explained the situation to the other lawyer, the lawyer, sensing a tactical advantage, would not agree to continuance. Imagine her stress and inner turmoil as she awaited her turn at the hearing.

Admittedly, she should expect times when law practice is stressful, but this should not have been one of those times.

Fortunately, she made it back to the hospital minutes before her grandfather died, but she was deprived of most of the last period of time they could have had together.

Although I applaud the efforts of the organized bar in it attempts at re-igniting the spark of professionalism, I know only too well that it all begins at the grass roots of the profession—with individual lawyers like you and me. Like almost everything else, if it is to be, it is up to me. Those 10 two-letter words sum it up for me. I realize that I cannot do everything, but I can do something. And so can you.

Changing Course

As a solo practitioner, I do not have to wait for this to be discussed at a partnership meeting or for a pronouncement from the management committee. There is nothing to hold me back. My opportunity exists today.

When I receive a call from an opposing lawyer, I will be polite and try to listen and empathize with what that lawyer has to say. I need to disagree, I will try not to be disagreeable. I will not raise my voice, use profanity or slam the receiver in anger.

I will give my fellow lawyers the benefit of the doubt. I will honor every commitment that I make and an oral agreement will be every bit as binding as any that I make in writing. I will try to keep my clients out of the courthouse and will focus on trying to resolve disputes prior to filing suits, motions and requests for discovery.

In court, I will be respectful of the judge, the witness, and opposing parties and counsel. I will be prepared and will try to conserve the court's time.

I will not use the system as a bludgeon but will use it as a precision instrument to seek to represent my client's interests in the best and fairest possible way.

I have observed that kindness, gentleness and patience will prevail over other forms of behavior. I hope that my own attitudes and efforts will be joined by others, and that the goodness of the profession will not be washed away and become extinct.

I hope we can save the whales, but I pray that we can save the profession.

James E. Brill, a solo practitioner in Houston, is a former chair of the ABA's Law Practice Management Section and a member of the ABA's Task Force on Solo and Small Firm Practitioners.

—American Bar Journal, Oct 1993

CJRA plan

continued from page 19

planning orders on this subject.

C. Parties' signature to requests for extension of discovery deadline or trial date

The court has not deemed it necessary to take any action in this regard.

D. Continuing legal education

During the past year, the court has, with the Alaska Bar Association, jointly sponsored three CLE programs on subjects involving civil litigation. Attendance at these programs was good. The court expects to continue to participate in such programs, and will be presenting a program on the new discovery rules at the May meeting of the Alaska Bar Association.

IV.
RECOMMENDATIONS FOR ACTION BY THE CLERK'S OFFICE

A. Redundant docketing

The court continues its efforts to integrate its automated case management system with electronic docketing. The court is currently testing a new automated system with live data.

B. Speed up processing of orders

It is the court's perception that orders are now being processed to everyone's satisfaction.

C. Law Clerk training

The court conducts an orientation program for new law clerks on an annual basis.

D. File Clerk position

The clerk's office continues to suffer rollbacks in staffing. For this fiscal year, the clerk's office has been reduced to 79 percent of authorized staffing. With test kinds of constraints, the creation of new positions is our of the question.

V.
AREAS FOR FURTHER STUDY

As already mentioned, the court is hopeful that in the coming year the CJRA Group will reevaluate this court's plan and consider whether is should be replaced with the model plan.

[1] Based upon projected data as of March 31, 1994; reports not yet filed.

[2] Judge Sedwick was not subject to a reporting requirement until September 30, 1993, based upon his date of appointment.