The Alaska BAR RAG

Inside:

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Board to vote on mandatory CLE Rule

The Board of Governors is poised to take action on mandatory continuing legal education (MCLE) requirments at its upcoming board meeting in August. If the proposed rule is approved, Alaska would become the 41st state to adopt MCLE.

As proposed, all active Bar members must complete 24 hours of approved CLE over a two-year period, and members would be suspended for non-compliance. There are a number of means by which members could fulfill their CLE requirements under the proposed rule, including live CLE, CLE video replays and continuing judicial education programs.

The Board of Governors is accepting comments on the proposed rule until Aug. 15, 1998. If approved by the board, the rule would be submitted to the Alaska Supreme Court for approval.

The following is the rule as proposed; highlights of the MCLE provisions are also found on page 16.

Proposed Mandatory Continuing Legal Education Rule

Rule 65. Mandatory Continuing Legal Education

(a) In order to promote high standards of competence and professionalism in members of the Association, the Association requires all its members to engage in Continuing Legal Education. These rules are intended to set minimum standards for Continuing Legal Education.

Comments: See Alaska Rules of Professional Conduct, Rule 1.1.

(b) Every active member of the Alaska Bar Association must complete at least 24 credit hours of approved continuing legal education (CLE), including 2 credit hours of ethics CLE, in each 2 year reporting period.

Comments: The requirement extends to every active member. Twelve hours of CLE per year is a middle of the road choice. Among the states which have mandatory CLE in effect, the requirements range from 8 - 15 hours per year, with the majority choosing 12 or 15 hours. Spreading the MCLE requirement over a two year period encourages members to complete longer, more intensive programs and lessens the reporting burden. Ethics is required because of its importance to the profession and its applicability to every member of the Association.

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Legislature modifies tort statute, caps damages

Punitive damage caps take effect for causes of action after August, 1997

By Terry A. Venneberg

In its latest effort to "reform" our allegedly ailing tort system, the Alaska State Legislature saw fit to make changes in the way that courts and juries impose punitive damages. AS 09.17.020 sets out those changes, which are effective for causes of action accruing after August 7, 1997. Among the modifications made by the Legislature in the law concerning punitive damages are caps on the recovery of such damages. In most tort cases, punitive damages will be limited to the greater of three times the compensatory damages or $500,000. "[I]f the fact finder," however, "determines that the conduct proven ... was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decision on behalf of the defendant," the cap goes to the greater of four times the compensatory damages, four times the aggregate amount of financial gain received as a result of the misconduct, or $7,000,000.

Given the irresistible urge to build protections into the law for outrageous and reckless conduct by institutional defendants, it is little wonder that the "mad cappers" in Juneau also saw fit to impose limits on punitive damages in actions brought under the state anti-discrimination statute, AS 18.80.220. The caps imposed under this provision are more severe than those imposed in your garden-variety tort case, ranging from $200,000 where an employer has fewer than 100 employees in the state, to $500,000 where an employer has more than 500 employees in Alaska. These caps would apparently be in place regardless of whether the persons responsible for the financial gain were "motivated by financial gain," or whether "the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant." Regardless of the nature or character of the discrimination involved, or for that matter the size of the institution involved, the maximum penalty which may be imposed against a company in Alaska for employment discrimination is $500,000 under the new punitive damage cap.

Employers also affected

To be fair, it should be noted that the federal anti-discrimination law, Title VII, imposes caps on recovery of compensatory and punitive damages based on the size of the company involved. If an employer has fewer than 100 employees nationally, the maximum compensatory and punitive award may be $50,000. The cap gradually increases based on company size to $300,000 for companies that employ over 500 employees. It is not yet settled whether the caps mean, for example, that an employee could recover

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President's Column

Thoughts on progress in the last year & tasks which remain

☐ David H. Bundy

As this is written, the bar staff and this former Bar president are recovering from the convention in Girdwood, which was a good experience for those of us who went. My thanks to the Alaska Court System and the U. S. District Court for their cooperation and assistance, as well as to the sponsors, exhibitors and CLE faculty. I know that most of the Bar doesn't attend these conventions very often, or ever in some cases. (One of my best attorney friends, who has his home and office in Girdwood, had no idea there was a convention in progress!) But it is worthwhile for those who do participate and I encourage those who haven't gone to try it sometime.

In my first column a year ago I outlined five areas in which the Board hoped to make progress this year, and I can report that there has been movement in all areas:

MALPRACTICE INSURANCE:

A rule requiring uninsured lawyers to make disclosure to clients has been recommended to the Supreme Court, in combination with a requirement for written fee agreements. This will address an issue raised in the recent legislative audit and a problem which arises in many fee arbitrations.

CERTIFICATION:

The Board has recommended to the Supreme Court rules which will allow the Alaska Bar to recognize organizations which certify lawyers as specialists. In response to objections, the Board did not include a disclaimer requirement which would have required non-certified lawyers to acknowledge their lack of certification.

MANDATORY CLE:

The Board has proposed a mandatory CLE rule for member comment. Please review the details elsewhere in this issue and let us know what you think. Based on the reaction received to date, we already know this is controversial. Should we join the 40 states and most of the other licensed professionals that already have this requirement? There are those who feel strongly that we should not, but the Board was influenced by the views of our three public members. They are intelligent and thoughtful people (even if they're not lawyers!) and I invite any who oppose mandatory CLE to contact Joe, Barbara or Deborah and discuss the subject with them. Our licenses are granted by public institutions and we need to be responsive to public feelings.

ACCESS TO JUSTICE:

With the encouragement of Alaska Legal Services Corporation, the Superior Court presiding judges, and others, the Supreme Court has appointed an Access to Justice Task Force, chaired by Justice Fabe, which will work to simplify access to the legal process in areas of interest to middle and lower income persons, such as family law, probate, landlord-tenant and consumer disputes. The Bar Association will participate in this ongoing effort, which has been underway since the start of this year.

REVIEW OF BAR EXPENSES:

Last year I invited any member who is upset with Bar expenses to review the budget and make suggestions for cuts. I have to say I do not recall receiving any specific suggestions. This did not prevent some generalized complaints to and through the Legislature during the quadrennial "sunset" review. I understand that one of the attorney members of the Legislature was told by his colleagues to address his concerns to the Board of Governors, rather than to his fellow committee members. I join this plea. I realize that some of the "public" lawyers, as well as lawyers who do not practice full time, feel disconnected from the Bar and resent the mandatory membership and dues requirement. We cannot force you to feel included if you refuse to be, but this is in fact your association and we welcome your active participation.

The Bar has survived for another four years, which may not make everyone happy but is on the whole a good idea, especially considering the chaos now threatening California. My thanks to those who worked with legislators and to Gordon Evans, our "point man" in Juneau through this process. Having been relatively apo-

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Editor's Column

Love your Mother, love your Bar Association

☐ Peter Maassen

It's no coincidence that the Alaska Bar Convention nearly overlaps Mother's Day on the calendar. When you think of the instruction, the discipline, the ethical training that molded you into a rebellious, long-haired sixteen-year-old with a passion for Three Dog Night, who comes to mind? Your mother, of course.

Now jump ahead twenty or thirty years. When you think of the instruction, the discipline, the ethical training that molded you into the upstanding lawyer you are today, who comes to mind? Why does everybody shout "Ally McBeal?" The correct answer is "The Alaska Bar Association."

Which is why people can make you feel guilty about missing the annual Bar Convention. It's like missing Mother's Day. To pay your mom a visit just once a year; is that really too much to ask? The guilt multiplies when you hear that this year's Convention was even more worthwhile than usual, other than the fact that you couldn't turn around without tripping over a judge, which some saw as a mixed blessing somewhat akin to seeing your in-laws walk into the Karaoke bar while you're belting out "Cracklin' Rosie" in Swedish, or at least something that sounds like what you think Swedish would sound like if you had heard it, which you haven't.

I didn't make it to the Convention this year myself, but not for lack of trying. I wish I could say I was down in Juneau instead, staving off assaults on our civil liberties. You probably know that our legislators failed to turn the judiciary into an arm of the legislative branch; what you probably don't know is that they *did* manage to slip through that 120-day limit on court sessions, all in the name of equipoise among coequals. (It was a midnight rider to SB98, the bill prohibiting the Governor from carrying a concealed weapon unless all other gubernatorial candidates are carrying them at the same time.) The shorter court sessions should mean more Bar activities, however, since we've got to have something to keep us out of trouble.

As I say, I didn't make it to the Convention this year. I did get as far south as Potter's Marsh before the clutch gave out on my 1985 Honda. With my usual foresight I had brought along a banana, a book, and a cup of coffee, but none of these could be substituted for the mangled part. The tow-truck driver, when he finally came, told me that he was having a bad reaction to his insulin, which explained not only the delay but also his jumpy combativeness with oncoming traffic. So believe me, schmoozing with my brothers and sisters in the law presented an attractive alternative scenario.

The doubters will say, "Yeah, sure, as if you ever drive anywhere now that you've got the *Bar Rag* helicopter." But it's a matter of public relations. So many of you scrape together your nickels for months beforehand, forgoing lunch and elective surgery, living for that annual chance to stand tall before the Board of Governors, grasp your lapels in your calloused countryman's hands, and carp about the dues. You come by train from Seward, by car from Kenai, by trawler from Petersburg, and by God from Anchorage, too, all cramped and whoozy from the travel. Think of the contrast: If I were to breeze into Girdwood in my white, gold-trimmed Alouette, blades whump-whumping above my ducking head as I wipe the croissant crumbs from my moustache and the flight steward hands off my briefcase, would you be likely to vote for an increase in the *Bar Rag* budget? I don't think so.

So I drove the Honda. And didn't make it. And I regret it. I've heard raves about the poetry-reading, the Supreme Court review, and especially the legal writing seminar — everything, in fact, except the weather. For me, the only consolation is that since I was on *Bar Rag* business when the Honda went south, your dues will cover my new vehicle. I'm thinking about a HumVee. My mother will be very happy if I surround myself with three and a half tons of heavy steel every time I venture forth.

And if it makes Mother happy, you'd better do it.

The Alaska BAR RAG

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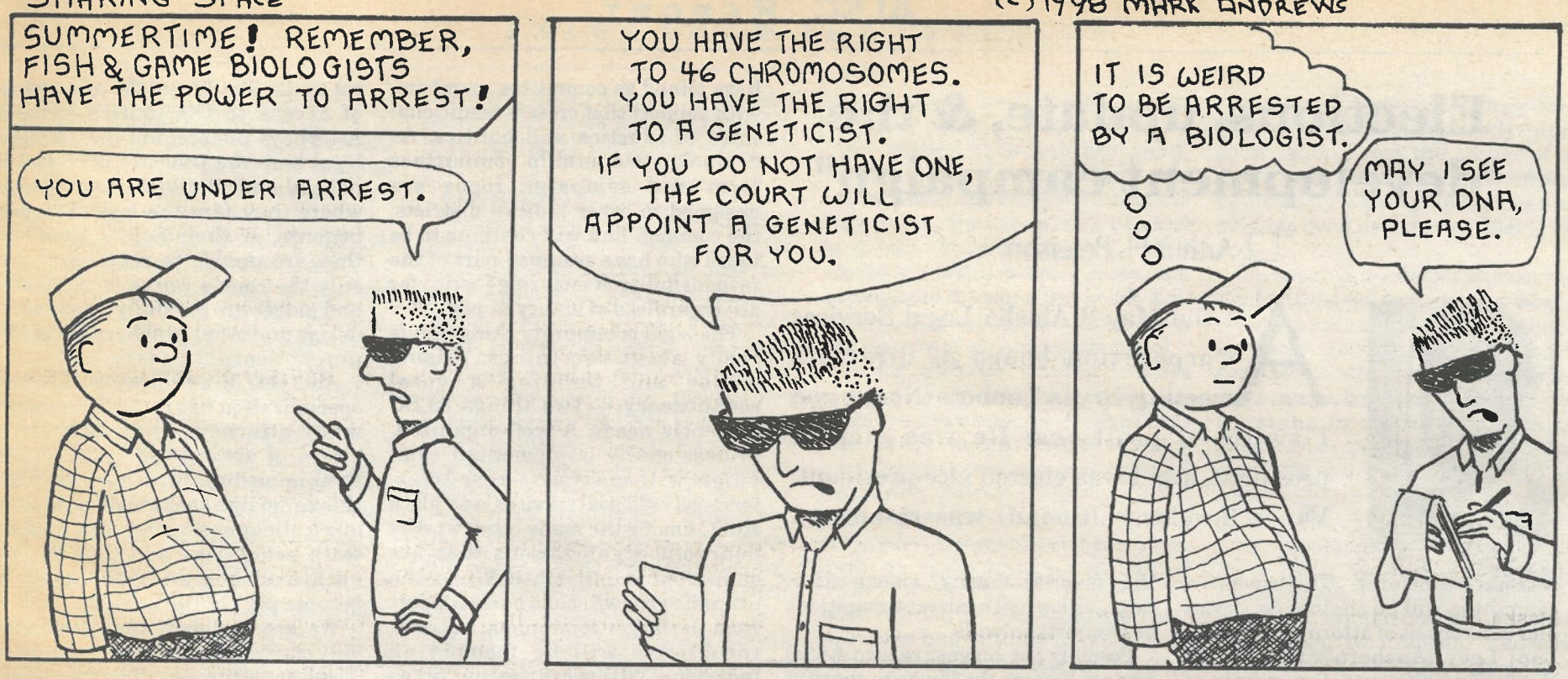

Bar Letters

Claims should be tested

I saw the debate about mandatory CLE in the March-April *Bar Rag.*

Some of the claims made in favor of CLE are subjective, such as the claim that CLE will make the practice of law more meaningful. Some of these claims are doubtful, such as the enhancement of the image of the legal profession. Thirty-nine states have mandatory CLE already, and the public image of lawyers is still terrible.

However, some of the claims produce results which show up as numbers which can be compared to each other. Before the bar pursues this issue any further, some claims should be tested:

- After the start of mandatory CLE, premiums for professional liability insurance decrease.
- In states which have mandatory CLE, the cost of professional liability insurance is lower than in states which do not.
- After the start of mandatory CLE, polls show that the public's image of the legal profession improves.
- After the start of mandatory CLE, the number of disciplinary actions decreases. Alternatively, the number is unchanged, but the severity of the ethical violations decreases.

This effect would show up in Alaska, for example, as more private admonitions and fewer public reprimands.

I oppose a reform which makes us all feel good, but which actually does nothing. I suspect most bar members feel the same way.

On the other hand, if there are real results, then perhaps mandatory CLE is worth another look.

—Mark Andrews

Mandatory CLE again? NOT!

(JUNEAU) Here in the Capital City, a Board of Governors [BOG] representative brought up the mandatory continuing legal education [MCLE] question again. As Juneau Bar Association [JBA] minutes should show, the JBA debated for weeks a resolution for JBA support of MCLE, before voting it down by a lopsided vote of about 27-3.

Researching MLCE, I E-mailed MCLE directors in several other states. Here's the real McCoy: Dick McCoy, a curriculum developer for Pennsylvania's MCLE, named these as major issues for and against:

FOR MCLE: (1) extra incentive to develop professionally; (2) interaction with others in the profession; (3) public expectation that professionals are current: (4) a systemmatic study of many areas of law, unlike self-study.

AGAINST MCLE: (1) cost; (2) the burden of time; (3) lack of appropriate programs, especially in sophisticated subjects; (4) dislike of *having* to do anything.

That was in Pennsylvania. Back in Juneau, during the JBA debate, some noted that many other licensed professions have mandatory continuing education requirements. Indeed, most other states have MCLE. But error, multiplied, is still wrong.

Requirements such as MCLEs are how guilds, crafts, and professions hope to limit or reduce their membership. Under the guise of consumer protection, they add requirements either to entry or to continuation in the profession as a way of reducing membership and thus increasing their rates. MCLE does this, too. In other words, MCLE may reduce the number of Alaskan lawyers while increasing the hourly or other rate of those who continue lawyering in Alaska.

What is the likely social cost of a proposal for MCLE of 12 hours annually?

Let's see. The Todd Directory shows that the First District has 297 lawyers; the Second, 26; the Third, 1650; and the Fourth, 216. This is about 2,150 lawyers in Alaska.

At an average of $100 per hour, the opportunity cost (i.e., income lost by taking 12 hours of MCLE) would be 12 x $100 x 2,150, or $2,580,000.

Most CLEs are about 3 hours long. The least expensive way to take a CLE is to see a video replay at $45. To get 12 hours worth of MCLE would probably take 4 CLEs x $45 x 2,150 Alaskan lawyers, or $387,000 gross costs paid by Alaskan lawyers.

The combined total of opportunity costs and out of pocket costs is just $2.58 million + $.387 million, or not quite $3 million total.

[Actual costs might be somewhat less (because some Alaskan lawyers already take CLEs) or more (because some would take CLEs in person, which takes more time, may incur travel and lodging costs, and usually is $90 per CLE instead of $45)].

So call it $3 million, more or less, for MCLE in Alaska. Who is going to pay that $3 million every year?

Well, lawyers will pay, at first, in lost time and out of pocket costs, about $1400 each ($3 million divided by 2,150 and because this education is required, its cost may not be tax deductible.

But economics teaches that lawyers will try to pass some of this cost on to their clients, by means of rate increases. How much of the $3 million can be passed on to clients depends on what economists call the 'elasticity of demand.' This term includes the clients' need for lawyering and the ability of clients to find other alternatives to lawyers.

Most clients' need for lawyering isn't going away, but alternatives (alternative dispute resolution, acting as their own attorney) are increasing. So Alaskan lawyers will absorb some of the $3 million MCLE cost and the Alaskan public will have to pay the rest.

But the Alaska Supreme Court—which by itself could force an MCLE requirement, regardless of the BOG or Bar—is presently seeking ways to make law more affordable for Alaskans, as more people turn to do-it-yourself lawyering.

The cost of lawyers, combined with Legislative shredding of Alaska Legal Services' budgets, already makes justice less than equal for all economic classes of Alaskans. So MCLE ought to be improbable.

A similar economic analysis also signals the likely defeat of recent BOG proposals for malpractice insurance or insurance information. Like MCLE, this is a disguised method of raising Alaskan lawyers' rates at a time when equal justice already costs too much for too many.

—Joe Sonneman

Officers elected


William Schendel | Kirsten Tinglum | Barbara Miklos | Bruce B. Weyhrauch | Lisa M. Kirsch

William B. Schendel was elected president of the Alaska Bar Association at its annual convention held at the Alyeska Prince Hotel in Girdwood, May 7-9, 1998.

Mr. Schendel is a partner in the Fairbanks firm of Schendel & Callahan.

The other officers elected at the convention are President-elect **Kirsten Tinglum**, a partner with the Anchorage firm of Ashburn & Mason; Vice President **Barbara Miklos**, Public Member and Director of the Child Support Enforcement Division in Anchorage; Treasurer **Bruce B. Weyhrauch**, of the Law Offices of Bruce B. Weyhrauch in Juneau and Secretary **Lisa M. Kirsch**, an Assistant Attorney General in Juneau.

BOARD MEETING SCHEDULE FOR 1998-1999

Here are the Board of Governors meeting dates during Will Schendel's term as president.

August 27 & 28, 1998

October 30 & 31, 1998 (July Bar Exam results)

January 15 & 16, 1999

March 5 & 6, 1999

May 11 & 12, 1999 (Fairbanks)

May 13 & 14, 1999 Annual Convention (Fairbanks Princess Hotel)

Elections, update, & the "development campaign"

☐ Arthur H. Peterson

At the May 2 Alaska Legal Services Corporation board of directors meeting, Bryan Timbers (Nome) and I switched positions. He was elected president, and I was elected vice-president. Vance Sanders (Juneau) was re-elected secretary/treasurer. The executive committee will be chaired by Bryan and will consist of attorney members Loni Levy (Anchorage) and Greg Razo (Kodiak), and lay members Mary Charles (White Mountain) and Antone Anvil (Bethel).

As of this writing (May 12), it looks like the final figure for the state's FY 99 direct appropriation to ALSC will be the one submitted by the governor - $125,000. There has been no movement on President Clinton's federal budget, which includes a request of $340 million for the LSC.

The Supreme Court's Access to Civil Justice Task Force, and its subcommittees, have been meeting, and three of those subcommittees are to report this month. Reports from the other three are due next month. Concurrent with the Task Force activities are the efforts of ALSC's development director, Jim Minnery, in getting the development campaign off and running. The remainder of this report was written by Jim (and slightly edited by me)1 discussing the "legal community campaign" — the first phase of the overall development campaign.

ALSC has always functioned on the premise that the attainment of "equal access to justice" is among the highest moral and ethical responsibilities of the legal profession. Many in our field believe this firmly and, in fact, the Alaska Pro Bono Program is one of the best in the nation. Since the early 1980's, increased pro bono participation by private attorneys has helped to educate many volunteer attorneys about the important work being done by ALSC. There has not been, however, sufficient dissemination of that information nor has there been any real financial support from the larger legal community. In fact, only about five percent of all active attorneys in the state financially contribute to ALSC each year. ALSC has not yet become the "favorite charity" among attorneys, either with current donations or bequests in wills.

Possibly the biggest reason ALSC has not become the "favorite charity" has been a failure to develop a strong, vocal constituency, beyond the formal organized bar, to express the role and importance of legal services, and to oppose cuts in public funding. And, while the bar has sometimes been a powerful and important ally, too many members of Congress and the Alaska State Legislature seem willing to ignore the pleas for increased or even continued funding for the legal needs of the poor. We need to inform politicians, as well as supporters and opponents of legal services, of what is actually being accomplished.

This lack of strong local and vocal support has left funding on the national and state level subject to an extreme swing of political mood. Opponents of public funding bring up the same horror stories again and again, sometimes with little regard for the truth. Some of these stories persist in spite of the good and important work that is performed each day by legal services programs for the most vulnerable and needy people. We need to correct that situation.

Efforts are underway to take the cause of "equal access to justice" into the legal community in a much more vocal way. With support from the Fundraising Project, an Atlanta-based program dedicated to providing resource development assistance to legal services organizations, recently hired Development Director Jim Minnery has laid the foundation for several "legal community campaigns" around the state.

In the Third Judicial District, attorneys Doug Baily, Lloyd Miller, and Doug Serdahely have already signed on as co-chairs. Nearly 40 others have joined as committee members, with support that crosses traditional lines of practice and politics. As campaign leadership committees form and campaign logos are designed in other judicial districts, the common link will continue to be those who have assumed part of the responsibility of ensuring justice for all, regardless of ability to pay.

The legal community campaign is really about two things: raising money and building a vocal constituency — two things ALSC currently needs. A well-organized, professionally implemented campaign will maximize resources, increase essential services, and place ALSC among the many other worthy nonprofit organizations that are supported in our state. While the ultimate goal will be to build support from the larger community, initially, the efforts will be focused on individual attorneys (in public as well as private practice), firms, and those serving as corporate counsel.

An initial goal has been established, based on successful efforts in other communities, of two billable hours, or approximately $300, per attorney. The primary difference in this approach and what ALSC has done previously will be that solicitations will occur on a firm-to-firm and peer-to-peer level. It is said that those who teach something learn it best. When attorneys give their time and money, and when they ask other attorneys to give, then understanding and commitment will follow.

Attorneys are a natural constituency for legal services programs. Apart from the client community, attorneys generally have the greatest understanding of the importance of access to the justice system. Attorneys understand that without legal help the poor are unarmed in judicial and administrative systems where they face the loss of income benefits, or their homes, or where they are unable to seek relief that only the courts can give. Attorneys and judges are painfully aware of the delays and other problems caused by unrepresented litigants.

And yet, in a profession in which specialization has rapidly increased, many attorneys are only vaguely aware of areas of the law outside their immediate practice area. What this campaign seeks to do is educate our colleagues about the critical work being done and then to give each attorney an opportunity to become part of the solution.

We are confident that this effort will strike a positive chord among Alaskan attorneys. The campaign will provide an opportunity to inform members of the legal community about what is truly going on at Alaska Legal Services Corporation. In a tangible way, attorneys will see that the establishment of justice is a cornerstone of our federal and state Constitutions and that as a nation of laws we must still hold out the promise, and strive for the reality, of justice for all. As attorneys become more aware that ALSC provides basic assistance with the everyday problems that threaten to divide our families and disrupt our communities, and that it is the only organization providing those services, then we should have achieved valued support in the community.

PRESIDENT'S COLUMN

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litical most of my life, it was an education for me to see the legislative process when I was personally affected by the actions being taken. After this I have to agree with the adage that we have the worst form of government — except for all the others. The Senate originally voted to renew the Bar for only two years, instead of the usual four, largely in reaction to the perception that the Bar has been too good a steward of its members' money and thus accumulated a larger than anticipated budget surplus. But then the House went along with the usual four years and in the last days of the session the Senate acceded to the four years unanimously. I assume that Governor Knowles will sign the bill!

This was a difficult year in Alaska politics, highlighted by divisions over Native sovereignty, school funding and related subjects. Although the mandatory bar is limited in taking official positions, as lawyers and citizens we need to do what we can to help reach solutions in these areas. There cannot be winners and losers in this type of conflict; unless answers are found there will be only losers, and Alaska cannot afford to let this happen. I think many people are coming to this conclusion, and I urge all of us to participate.

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Legislature modifies tort statute, caps damages

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$300,000 in compensatory damages and $300,000 in punitive damages, or whether the total of both categories may be limited to $300,000 for large companies. In any event, the caps imposed in Title VII actions are certainly as restrictive, if not more restrictive, than those imposed under AS 09.17.020.

So why should Alaskans complain about damage caps under AS 18.80.220? Very simply put, capping punitive damages against employers who are found liable for discriminatory acts sends the wrong message to those responsible for making employment decisions in Alaska. Managers and supervisors who may be inclined to hire white males over equally qualified African-American or Native-American females have been given the signal by the Legislature that, if you get caught, your punishment will be limited, regardless of your size. Employers who may wish to avoid promoting minority employees in order to preserve a certain "corporate image" have been told that juries will be limited in their ability to punish for this behavior. While most employers certainly will not see punitive damage caps as "open season" on their minority employees and applicants, some might. If even one employer gathers that message from the change in this law, the Legislature should feel shame for its action.

And what about those employers who are "motivated by financial gain" to discriminate? What about employers who actually know the "adverse consequences" of their conduct? Unlike the situation in other tort cases, there is no provision in AS 09.17.020 for awarding additional punitive damages in the face of such conduct. A company could decide that it would be more profitable if it were a "whiter" company or if it had more men to handle its business affairs. A company could decide that the placement of minority employees in managerial or supervisory positions would likely cause customers to go elsewhere, and could adopt hiring and promotion practices that would address this "concern." Under 09.17.020, the punitive damage caps would remain in place for employment discrimination claims based on such conduct. Surely, the Legislature could not have meant to send such a message to the business community.

When he was interviewed concerning his tort reform efforts last year, Rep. Brian Porter stated he was promoting damage caps in order to protect the small businessperson in Alaska. The punitive damage caps imposed in employment discrimination cases do not meet that goal. Under the new law, a company that has over 500 employees *just in Alaska,* and perhaps many more employees in other locations, can institute corporate policies which promote and foster discriminatory practices, and still only be held liable, at the maximum, for $500,000 in punishment for such policies. For a multi-billion dollar company, it could be viewed as cost-effective to discriminate. Is that the message that we want to send to the business community? Is that a message that we want to send to our workforce? One can only hope that the Legislature, at some point, rethinks the public policy implications of caps on punitive damages in employment discrimination cases, and comes to the right answer about the message that should be sent.

Book Releases

TELECOMMUTING FOR LAWYERS

BY NICOLE BELSON GOLUBOFF

Get out of bed, walk down the hall, switch on the computer and the fax machine. Your commute to work is now over. With today's advanced computers and telecommunications equipment, working from home - or telecommuting - has become a viable alternative to the typical 999 to 5" office arrangement. The American Bar Association Law Practice Management Section's latest book, *Telecommuting for Lawyers,* brings this concept to the legal industry - helping both the law firm and lawyer plan and monitor a successful telecommuter program.

Distilling years of telecommut-ing experience, author Nicole Bel son Goluboff shares the best tools, policies, and monitoring systems to make this an effective working arrangement. Her book covers every aspect of teleconununuting, from writing and submitting a proposal to developing policies, training, budgeting, supervising participants, and evaluating the program. Complete with valuable forms - such as a sample outline proposal, pretraining survey, and a six-month evaluation - the author clarifies misconceptions and steers readers away from common pitfalls.

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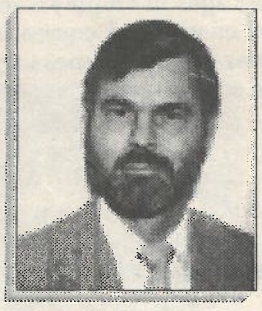

March brought some significant bankruptcy decisions and increased dollar amounts under title 11. Effective April 1, 1998, the dollar amounts under various Bankruptcy Code sections were increased.

The Code sections affected and the new amounts are:

109(e) limits on chapter 13 eligibility: $269,250 in unsecured debt and $807,750 in secured debt.

303(b) minimum aggregate claims to file an involuntary petition: $10,775.

522(d) (1) homestead exemption: $16,150.

522(d) (2) motor vehicle exemption: $2,575.

522(d) (3) household goods exemption: $425 per article and $8,625 in the aggregate.

522(d) (4) jewelry exemption: $1,075.

522(d) (5) "wildcard" exemption: $850 plus up to $8,075 of the unused homestead exemption.

522(d) (6) tools of trade exemption: $1,625.

522(d) (8) exemption for insurance policy loan value: $8,625.

522(d) (11) (D) exemption for personal injury awards: $16,150.

523 (a) (2) (C) luxury goods or advances amount: $1,075.

March also brought several significant appellate decisions from the U.S. Supreme Court and the Ninth Circuit.

Cohen v. De la Cruz, __ US __, 118 SCt 1212 decided March 24, 1998 held that treble damages, attorney's fees and costs awarded were nondischargeable under § 523 (a) (2), abrogating the prior rule in the Ninth Circuit under *In re Levy*, 951 F2d 196 (CA9 1991). The Supreme Court rejected the rationale of *Levy* that "to the extent obtained by" language of 523 (a) (2) limited the nondischargeability of fraud awards to the actual damages flowing from the fraud. The Supreme Court looked to pre-Code law and found that such a limitation did not exist under the Act and, in the absence of a clear indication that Congress intended to change prior law, the Court was not inclined to give such a restrictive reading to 523 (a) (2).

Kawaauhau v. Geiger, __ US __, 118 SCt 974, decided March 3, 1998, another nondischargeability case, held that the 523 (a) (6) "willful and malicious injury" exception to discharge did not bar discharge of a medical malpractice claim. Debts arising from recklessly or negligently inflicted injuries do not fall within the willful and malicious injury exception. The Court adopted the Restatement approach that intentional torts generally require that the actor intended the consequences of the act, not simply that the actor intended to do the act. In short, the unintended consequences of intentional acts are not "willful and malicious" within the context of 523(a) (6).

March also brought 3 significant Ninth Circuit decisions.

In re Robert L. Helms Construction & Development Co., Inc., __ F3d __ (1998 WL 120259) decided March 19, 1998 (*en banc*) held, applying the Countryman approach, that option contracts were not *ipso facto* executory contracts, overruling *In re Easebe Enterprises*, 900 F2d 1417 (CA9 1990).[1] *Helms* illustrates the difficulty of classifying certain agreements as executory. One must look to the outstanding obligation at the time the petition was filed to determine whether both sides must still perform. Performance due only if the optionee chooses, at its discretion to exercise the option does not count unless the optionee has chosen to exercise it. The critical question is at the time of filing does each party have something it must do to avoid materially breaching the contract? In unexercised options the answer is typically no; the optionee commits no breach by doing nothing, it has no obligation to exercise the option and the optionor has no duty until the option is exercised.

Beyond its clear overruling of *Easebe, Helms* becomes bizarre. The optionee had been a debtor in a Texas chapter 11 in which a plan was confirmed. The Ninth Circuit remanded the case to the bankruptcy court to determine if the confirmed plan extinguished the option, or if it survived. [It was unclear whether the plan addressed the option. Although the plan referred to a list of contracts to be assumed, that list did not include the option at issue. However, the court was uncertain whether it may have been treated elsewhere in the plan and, if not, did undisclosed assets revert to the debtor under the plan.] However, if the plan did not resolve the issue, the bankruptcy court was instructed to apply the *Helms* rule in deciding the case.[2] As the dissent points out, a Fifth Circuit decision controlling at the time the optionee's plan was confirmed appeared to hold that options were executory contracts and the majority opinion precluded the bankruptcy court from considering that point.[3] *Helms* accomplishes a very neat feat: it creates an inter-circuit conflict and then resolves that conflict by effectively declaring Fifth Circuit controlling authority inapplicable to a Texas bankruptcy.[4]

In re Kord Enterprises II, __ F3d __ (1998 WL 117865) decided March 18, 1998, held that *In re Fobian* [951 F2d 1149 (CA9 1991)] proscribing awarding attorney's fees for litigating "issues peculiar to federal bankruptcy law" does not apply to oversecured creditors under 506(b).[5] Fee awards are not limited to "basic contract enforcement actions." Moreover, 506(b) preempts state law and whether fees are properly awarded under state law is irrelevant. An oversecured creditor is entitled to attorney's fees under 506(b) irrespective of the origin of the issue being litigated, federal or state, as long as: (1) the claim is allowed secured claim; (2) the creditor is oversecured; (3) the fees are reasonable; and (4) the fees are provided for under the agreement. Thus, an oversecured creditor may recover its attorney's fees and costs if recovery is provided for in the loan agreement for litigating such peculiarly bankruptcy issues as relief from stay, cash collateral utilization and plan confirmation. Although *Kord* did not address the issue, it does not seem that the creditor need be the prevailing party, *e.g.*, have successfully obtained relief from stay, unless the agreement itself contains such a restriction.

In re Parker, __ F3d __ (1998 WL 113872) decided March 17, 1998, held that 521(2) (A) does not restrict a debtor having secured consumer debts to redemption, reaffirmation or surrender of the collateral. The Ninth Circuit joined the Second, Fourth and Tenth in declining to hold that a debtor who neither redeems nor reaffirms must necessarily surrender the collateral. The debtor may retain the collateral and continue to honor the agreement, a "quasi-reaffirmation." As the facts in *Parker* illustrate, this removes an arrow from creditors' quivers, *i.e.*, extraction of substantial concessions from the debtor as a condition to agreeing to reaffirmation.

In *Parker*, a *pro se* debtor owed a credit union $10,000 on a vehicle worth between $9,000 and $10,000. In addition, the debtor owed the credit union $2,000 on an unsecured debt. The debtor executed a reaffirmation agreement with the credit union agreeing to pay the secured debt plus $1,500 of the unsecured debt. The credit union agreed to reduce the monthly payment on the secured debt by $29/month. The bankruptcy court refused to approve the reaffirmation agreement (not in the best interests of the debtor). The bankruptcy court told the debtor if he wanted to keep the car, keep paying for it. If he wanted to preserve his good credit with the credit union, pay the discharged debt. But the court was not going to make him do it.

Parker eliminates in this circuit the ability of a creditor to effectively coerce a debtor into a "tying" arrangement whereby the debtor must reaffirm an unrelated obligation in order to get the consent of the creditor to reaffirm the secured consumer debt. *E.g.*, "I'll let you keep the car but only if you agree to pay the debt on the car and the credit card debt." The debtor can refuse to reaffirm, keep the car, make the payments, and obtain a discharge of personal liability on the obligation, leaving the creditor with a nonrecourse obligation.[6] The clear message of *Parker* to creditors is *caveat* in attempting to extract from debtors conditions to agreeing to reaffirmation, it may backfire.

All in all, March was a "mixed bag" for creditors and debtors alike; both gained and lost.

1. The panel decision in *Helms* is reported at 110 F3d 1470.

2. The option agreement would not be an executory contract (still in existence).

3. In that case, it would be a deemed rejected executory contract (no longer existing). Practitioners note: If in doubt as to the executory nature of a contract, treat it as an executory contract. If it is not an executory contract, this does no harm. On the other hand, if it is, failure to treat it as an executory contract may result in inadvertent rejection.

4. This author got a large chuckle from the dissent's observation that "[t]he Ninth Circuit has a large geographic reach, but to date does not include the State of Texas." Was this an attempted preemptive strike by the majority against splitting the circuit?

5. The Court also held other cases in the *Fobian* line, *e.g.*, *In re Coast Trading Co.*, 744 F2d 686 (CA9 1984) and *In re Johnson*, 756 F2d 738 (CA9 1985), inapplicable to 506(b).

6. In that case, if the debtor later decides to "walk" or defaults under the agreement, all the creditor can do is repossess. The creditor has no remaining right to a deficiency.

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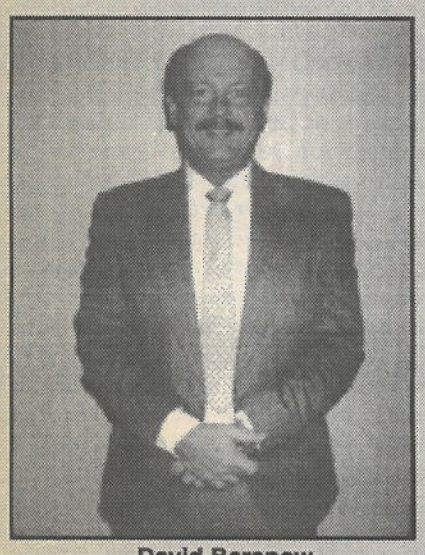
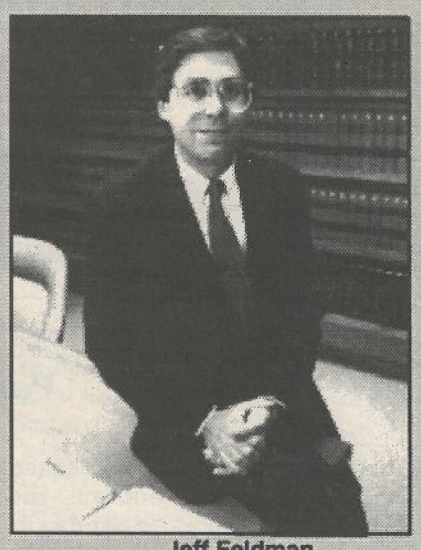


David Baranow

Anchorage attorney David Baranow was the recipient of the Alaska Bar Association's Distinguished Service Award, which was presented during the Bar's annual convention held May 7-9 in Girdwood. This award honors an attorney for outstanding service to the membership of the Alaska Bar Association.

David Baranow, who grew up in Eagle River, has served as Chair of the Law Related Education Committee since 1990. Under David's leadership, this Committee has annually taught college credit courses on different areas of the law for Anchorage School District teachers and facilitated numerous mock trials with students in both elementary and secondary schools.

JEFF FELDMAN RECEIVES ALASKA BAR ASSOCIATION PROFESSIONALISM AWARD



Jeff Feldman

Anchorage attorney Jeff Feldman received the Alaska Bar Association's Professionalism Award at its annual convention held May 7-9 in Girdwood. This award recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys.

Jeff Feldman is a partner in the firm of Feldman & Orlansky. He is a past president of the Alaska Bar Association and has been in practice in Alaska since 1976.

Standards of care, Alaska, 1987-97

By Joe Sonneman

Negligence cases often turn on the standard of care used. This Note collects Alaska cases which during the last decade mentioned standard of care in more than a passing manner.

Ordinary negligence is failure to recognize a substantial and unjustifiable risk of a particular condition or result, which failure to recognize is a deviation from the standard of care a reasonable person would observe, Alaska's Supreme Court said in *State v. Hazelwood,* Slip Op. #4691 (Alaska Oct. 3, 1997). Criminal negligence is more extreme, the Court said, being a gross deviation from the reasonable person standard.

The gross deviation standard for criminal negligence was also applied in *Panther v. State,* 780 P.2d 386 (Alaska App. 1989), where the court asked if the risk was so great that disregard—or failure to observe—it was a gross deviation from the reasonable person standard. *See Lord v. Fogcutter Bar,* 813 P.2d 660 (Alaska 1991) (citing AS 04.21.080(a)(l) and "gross deviation" as the standard or care for criminal negligence).

How others in the industry perform an activity is relevant to the standard of care, the Court held in *Gonzales v. Safeway Stores, Inc.,* 882 P.2d 389 (Alaska 1994), where a failure to perceive a substantial and unjustifiable risk was a gross deviation from the standard of care (reasonableness). In *Petersen v. State,* 930 P.2d 414 (Alaska App. 1996), whether stalking was criminally negligent (gross deviation) depended in part on the reasonableness or not of the victim's fear. In *Williford v. L.J. Carr Investments Inc.,* 783 P.2d 235 (Alaska 1989), the court said the Legislature by law established that giving, selling, or serving intoxicants to a person observable as already drunk was a gross deviation from the reasonable person standard of care.

Laws, and even administrative regulations, may establish a standard of care showing per se negligence, but negligence can be found only if a duty exists and was breached. Thus, no standard of care applied in *Schumacher for Milton v. City & Boro. of Yakutat,* Slip Op #4864 (Alaska Aug. 15, 1997), where the Court said the city had no duty to prevent children from sledding in city streets, even though a child was killed while doing so. The Court there said negligence did not allow persons injured by their own conduct to compel payment from those who failed to prevent that. *Compare with M.A. v. U.S.,* slip Op. 4929 (Alaska Jan. 2, 1998), where the Court allowed a negligence award against a doctor after a misdiagnosis of non-pregnancy. Note also that even an internal training manual might show a standard of care, the Court said in *Estate of Day v. Willis,* 897 P.2d 78 (Alaska 1995), but an internal training manual will not by itself create a duty.

In *Lyons v. Midnight Sun Transp. Svcs.. Inc.,* 928 P.2d 1202 (Alaska 1996), the Court discouraged use of the 'sudden emergency instruction (under which persons in such situations may be thought to have a different than usual standard of care). Police drivers even in emergency pursuits must, by administrative regulation, still maintain highway safety; the Court in *State v. Malone,* 819 P.2d 34 (Alaska App. 1991) said the regulations set the standard of care. All motor vehicle operators should use the adult standard of care, the Court held in *Leob v. Rasmussen,* 822 P.2d 914 (Alaska 1991).

Like drivers, highways must also remain safe. The Court in *Beck v. State, Dept. of Transp. & Public Facilities,* 837 P.2d 105 (Alaska 1992), said the standard of care for highways is that the State should use reasonable care to keep highways in safe condition for reasonably prudent travelers.

The basic rule of per se negligence also appeared in *Busby v. Muni. of Anchorage,* 741 P.2d 230 (Alaska 1987), where the Court said that if the Legislature by statue creates a duty, and if the law meets the conditions of Section 285 of the Restatement (2nd) of Torts, courts *may* determine that the law establishes the standard of care for such cases. In *Busby,* the Court held that a law requiring police to take intoxicated persons to treatment facilities set the standard of care for police handling of intoxicated persons.

However, even in per se negligence cases, a law will not always set the standard of care, for example, if the law is obscure (meaning, unknown to those in that trade). *Homer Elec. Ass'n v. Towsley,* 841 P.2d 1042 (Alaska 1992). Similarly, the Court in *Shanks v. Upjohn Co.,* 835 P.2d 1189 (Alaska 1992) said courts can refuse a standard of care instruction if the law (upon which the per se instruction is predicated) is obscure, unknown, outdated, or arbitrary. Courts do hold discretion to refuse to adopt a law as the standard of care, provided Section 286, Restatement (2d) of Torts conditions are met, the Court said in *Sweet v. Sisters of Providence in Washington,* 895 P.2d 484 (Alaska 1995).

The Court in *Jackson v. Power,* 743 P.2d 1376 (Alaska 1987) said hospitals remain liable for physician malpractice, even if the doctor is an independent contractor rather than a hospital employee. Physicians' standard of care remained unchanged. Although plaintiffs in professional malpractice cases must usually establish a standard of care, the Court in *Johnson & Higgs of Alaska. Inc., v. Blomfield,* 907 P.2d 1371 (Alaska 1995) excused that requirement where the negligence was so non-technical as to be evident to lay people. But doctors' services differ from title insurance policy, because in the latter, the policy itself sets out conditions where payment is proper. *Bank of Calif., N.A., v. First Amer. Title Ins. Co.,* 826 P.2d 1126 (Alaska 1992).

In *Sievers v. McClure,* 746 P.2d 885 (Alaska 1987), the Court cited *Moloso v. State,* 644 P.2d 205 (Alaska 1982), and Section 413, Restatement (2nd) of Torts as setting out the standard of care for employers of independent contractors performing work with peculiar risks of harm. Employers must ensure the safety of the contractor and its employees from unusual hazards of which the contractor is unaware.

Negligence is failure to be aware of a substantial risk of present circumstances of future results, so the Court in *Inquiry concerning a Judge,* 822 P.2d 1333 (Alaska 1991), said such a failure would be negligence if a deviation from the standard of care of a reasonable lawyer in a similar situation. Failure of a judge to recognize that self-issuance of reduced fare airline tickets might appear improper violated the standard of care in *Inquiry Concerning a Judge,* 788 P.2d 716 (Alaska 1990).

Lawyer malpractice cases appear, too, usually citing ABA Standards and Sections 285, 286 of the Restatement (2nd) of Torts. *Jones v. Wadsworth,* 791 P.2d 1013 (Alaska 1990) suggests that lawyers' standard of care is at least to handle cases expeditiously and to keep clients informed. *Disciplinary Matter Involving West,* 805 P.2d 351, 356 (Alaska 1991), cites to the ABA Standards definition of negligence.

An insurance expert said a defense attorney's standard of care requires the use of insurance money to settle a case rather than exposing the client to excess judgment risks, in *Bohna v. Hughes, Thorsness, Gantz, Powell & Brundin,* 828 P.2d 745 (Alaska 1992). There the Court defined the standard of care in attorney negligence cases as the use of such skill, prudence, and diligence as other attorneys have and would use.

Unlike lawyers, sailors remain 'wards of admiralty,' because of history, because of hazards of the sea, and because of the Jones Act, so that sailors' employers have a higher standard of care than the reasonable person level; in fact, the Court in *Brown v. State,* 816 P.2d 1368 (Alaska 1991) said even the slightest employer negligence violates that standard.

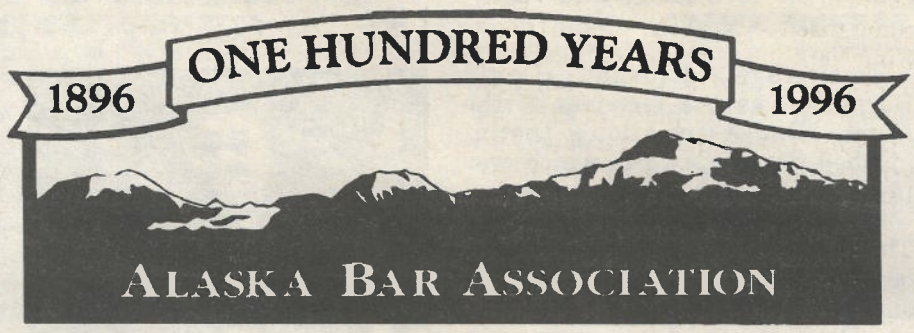
The sailor standard may differ from most, but some standards of care are like others. Thus in *Shade v. Co & Anglo Alaska Svc. Corp.*, 901 P.2d 434, n.2, the standard of care for torts was held to be the same as the standard of care for an implied warranty of workmanlike performance. Similarly, the "gross deviation" departure from the reasonable person standard defines both criminal negligence and recklessness, though the Court in *Hazelwood* notes that one can be criminally negligent without being aware of the risk and recklessly disregarding it.

Vague standards limit redress: citing *Haley,* 687 P.2d 305, 320 (Alaska 1984), the Court in *Chizmar v. Mackie*, 896 P.2d 196 (Alaska 1995) said that breach of an unclearly defined standard of care will not lead to punitive damages.

Finally, failure timely to act excuses even a personal representative from a standard of care review of property sold, the Court said in *Carroll v. Carroll*, 903 P.2d 579 (Alaska 1995), because no objection was made to the representative's motion that the court allow such sale.

These cases give some flavor of Alaska law on standards of care in civil and criminal negligence cases, but of course non-negligent attorneys will also check both pre-1987 cases and also the post-1997 published cases and slip opinions, ensuring by Shepardizing that none has been overruled.

Home from the final voyage of Alaska's floating court



BY JAMES H. CHENOWETH

Part 3

"Nome" is an odd name. It's not derived from any English, Russian or Eskimo words but it began appearing on British charts around the middle of the 1800s.

Research shows that when the British chart of the region was being composed, the cape in that area had no name. A "? name" was penned onto the chart. That question mark was later interpreted as being a "C" and because the "a" in "name" also looked like an "o", the original notation was read by the next draftsman as "C. Nome". So that body of water became Cape Nome, and the town that grew there was named after the cape.

Though I had occasionally sent radio messages to Fred, this was my chance to chat with him on the phone. I was curious about what was going on in my own bailiwick, and whether or not Fred thought I should continue on with the Coast Guard. He reassured me. "Nothing much going on here," he told me. "We're all taking advantage of your absence by developing our talent for letting sleeping dogs lie." And when I phoned Dennie, she insisted that she and our children, Pam and Geof, were just fine, were having a good summer and that my continuing on the cruise posed no problem for them.

Leaving the matter of duration somewhat open-ended, I was aboard the *Wachusett* when it sailed around midnight in a heavy, "pitch and roll" sea. For the most part, I spent the next day trying to keep from being seasick. Sometimes I was successful. But as we headed back to **St. Paul Island** in the Pribilofs, the weather started to clear. We landed around noon on August 2 and spent the rest of the day touring the processing plant and visiting a seal rookery. In talking with Roy Hurd, the manager of St. Paul, there seemed to be little work there for us. The village had a six-man police force whose elected chief picks his own crew. Fines were imposed whenever possible although a local jail was maintained "just in case." The Fish and Wildlife Service, which manages the Pribilofs, had wisely placed emphasis on community responsibility.

We left that same evening, pushing toward **Adak** through a storm center with rough seas and a high wind and arriving there late the next day. Adak is one of the Andreanof Islands in the Aleutians but when Alaskans refer to Adak, they're talking about the Adak Naval Base. There's nothing else there, aside from the "Adak National Forest" (a handful of evergreens planted for fun and carefully nurtured) and the Adak Totem, a pole carved by the Seabees during World War II which has the bust of an officer at the bottom, a sailor just above it, and a bee at the very top. Lt. Commander Gottshall was waiting for me with papers from Anchorage. We spent some time discussing the naval problems relating to jurisdiction over civilian criminals. I don't know what the Coast Guard did during the next two days. I sent a wire to Fred saying I would stay with the *Wachusett*.

After serving some civil writs in the case of *Broussard v Broussard*, I just visited and wandered around with my camera. Small world! The bartender at the Chiefs Club in Adak had been born in Clifton, NJ, where Dennie had lived and gone to school. And at the Adak bank where I cashed a check Dennie had sent me, the teller recognized Dennie's handwriting because she had previously worked at our bank in Anchorage.

The Aleutians are really tough! That's where warm waters from the Pacific clash with colder currents from the Bering Sea.

The Aleutians are really tough! That's where warm waters from the Pacific clash with colder currents from the Bering Sea. Wind and sea battle the volcanic islands constantly, and anyone there has to live knee-deep in muck and mire. In spite of winds that forced everyone to walk doubled over, military construction engineers in World War II built Adak into the base from which we would attack the Japanese, dug in on Attu and Kiska after their invasion of Alaska. Told they needed four months to build the base, the engineers did it in ten days. "See that landing strip over there? Back in those days it was the only level spot on the island but it was at the bottom of a tidewater lagoon. Those guys penned in the lagoon, let the receding tide drain it out, and then closed the intake gates. That's how they got a dry landing strip."

Living aboard the *Wachusett* was really quite pleasant for me. Except for climbing up the mast to where the radar was installed, I had the run of the ship and was made to feel right at home. I dined a couple of times with Captain Applegate in his cabin but took most of my meals with the Chiefs. (In my opinion, they ate better than anyone else aboard, probably because they were in charge of the galley. And their habit of a late night snack with freshly baked bread, toasted and spread with peanut butter, is still a habit with me.) The Chiefs answered questions, pointed out areas of interest, and saw to it that I stumbled safely into and out of the surf boat.

Around midnight on the 5th we moved a bit eastward to **Atka**, a small village with little community activity. Most of the males worked in the Pribilofs during the summer but there seemed to be no activity during the winter and no boats arrive then. Apparently it had been some years since the Bureau of Indian Affairs visited Atka and the inhabitants of the town were quite content to exist on whatever government largesse was available. The water was calm and smooth when we arrived. There was much talk about a planned reindeer hunt, but I decided to abstain. Since there was little for me to do here and eagles were easy to spot, I climbed a few craggy cliffs and took some photos. Then I skinny-dipped in a shallow area, but only briefly! The spirit was willing but the flesh was weak. The reindeer hunters returned about 8:30 p.m. - no reindeer!

Our schedule called for us to return to Adak and transport mail and supplies from there to Attu, but as we neared Adak on August 8, our orders were changed. Instead, we scooted back to **St. Matthew Island**, picked up the two Fish and Wildlife agents we left there earlier, and relocated them on Hall Island, right next door. They went ashore to get soil and plant samples. The Captain went along to pick up ivory on the beach.

The operational plan for our patrol included a swing through Russian waters in the area near Wales, Alaska. However, diplomatic clearance had been denied for that action so we had a few extra days for other things. I talked to the Captain about using the time to reach Barrow a few days earlier. He had similar thoughts as did the crew. By 8:00 p.m. on August 9, we were underway back to Nome. Taking advantage of the warm and bright weather the next day, I found it would not be too difficult to get sunburned at sea. We paused at Nome just long enough to pick up mail and more water, then headed up the western coast to Teller and Teller Mission.

The two villages are right across the bay from each other. **Teller Mission** was almost unoccupied at the time. Only two women, two children and two dogs greeted us. The Natives wanted to go to Teller so we took them aboard. The dogs elected to stay behind. Teller Mission had a small population, a school and a church. It was led by a five-man council, two of whom were town marshals. People there worked in Nome or in mines and between May and October, they hunted and fished. No wonder the town looked empty. We crossed the bay and anchored outside **Teller** in the early afternoon of August 11.

An alert had been issued about Russian submarine activity off the southeast cape of St. Lawrence Island.

Teller became a town in 1864. It looked like a frontier town except for several freshly painted buildings. Teller was where the lighter-than-air dirigible *Norge* (with Roald Amundsen aboard) landed after having made the second aerial crossing over the North Pole in its 1926 "Rome-to-Nome" flight. I talked with some natives at Teller who could still recall seeing the *Norge* come down through a stormy sky, looking like "a great seal riding through the clouds". Teller was also the doorway to mining locations east of the bay. And the telegraph line which was to be the communication link from North America to Europe through Russia got as far as Teller before the completion of the Atlantic cable ended the project.

In spite of its happy face, Teller suffered from commercial problems; two aggressive merchandising companies had split the town into factions. There was a landing strip and a good - although shallow - harbor. With a population of 300, Teller had a U.S. Commissioner, a school, a church and a National Guard unit, but no local council. People managed a reindeer herd, picked berries or worked at fishing and mining. In five years, the town had gone through four teachers but aside from an occasional drunk or brawl, there seemed to be little need for a peace officer.

While ashore we discussed the possibility of going up-river 20 miles to hunt reindeer but decided against it. Just as well because we had a rough trip back out to the ship. The wind was at 17 knots with a high surf. For the first time, I had worn my parka and was glad I did.

While I was asleep, the ship had moved into quieter waters around 10:30 that evening, getting ready to leave. There were still two boats ashore, along with the medical team. They were recalled and the 15 residents of Teller who were still on the *Wachusett* were taken back to Teller. Though an eye bolt broke on the last boat as it was being hoisted up, the ship was ready for sea again at 3:30 a.m.

Suddenly we had new orders. An alert had been issued about Russian submarine activity off the southeast cape of St. Lawrence Island. A patrol plane had spotted the sub around noon yesterday. When the plane made a second pass at the submarine, it slipped under water. We joined the search, coordinating our efforts with several military "hunter-hiller" planes. Depth charges, looking like 50-gallon drums, were hoisted on deck and locked into K-guns on both sides which would hurl them out into the air. It was unlikely that the sub had lingered, once spotted. Under instructions, we circled the St. Lawrence area until midnight, and then resumed our patrol. I wondered if the presence of the Russian submarine had been the reason we were refused permission to cruise through Russian waters near Wales.

By mid-morning on the 13, we were again anchored outside of Teller. Dr. Thompson, ashore with the medical team, radioed the ship, asking for permission to fly to a mine 60 miles away where someone had suffered a heart attack. According to scuttlebutt around the ship later, the Captain had been highly annoyed at the request since it didn't fit within the parameters of our mission and we were now one day behind schedule. If so, he must have relented because he did approve the request. The preacher at Teller flew Dr. Thompson to the mine. It was the doctor's first flight in a small plane. The medical and dental teams finished their work and around midnight we moved on to **Wales**.

Once there, the violent wind, heavy swells and shallow beach made things quite difficult. I decided not to take the first boat ashore so the medical-dental teams could get squared away before I went in. Just as well I did since they were the only ones to make it that day and had to remain on the beach until 7:00 that evening. Some dental patients came out by skin boat but only one boatload made it. The next day the Captain thought he'd give it a go. He took the motor launch and a small boat, planning to anchor the launch out from the beach and ferry personnel and patients to it,

Continued on page 9

Home from the final voyage of Alaska's floating court

Continued from page 8

using the small boat on ropes. Tried to get ashore twice but succeeded only in losing an anchor. We did manage to bring a new passenger aboard. He was a technician from the U.S. Navy Electronics Laboratory at Wales who was conducting a study of the currents in the Bering Strait. Our job was to transport him from Wales to the International Date Line and return him to Wales.

The Bering Strait is the narrowest part of the Bering Sea, separating Russia from Alaska by only 53 miles. Early piratical adventurers like Max Gottschalk crossed regularly to traffic illegally with Siberian natives, bringing back to Nome rich pelts and ivory tusks. The International Date Line runs down through the Bering Strait, squeezing snugly between two islands, Russia's **Big Diomede** and our own **Little Diomede**. They are only three miles apart. The naval technician had been taking current measurements all the way from Wales. He kept right on as we passed down between the islands, but I stared at the land mass that was Russian.

It was a memorable event for me. Between 9:15 and 11:00 that evening we crossed the date line twice, passing - as it were - from August 16 to August 17 the first time and back again into August 16 the second time. I had done time-travel before but never twice in two hours. "Backward, turn backward, O Time, in our flight." And when it happened, we were only one-and-a-half miles away from Russian territory. In 1957 that was close enough!

We returned the technician to Wales in the morning via skin boat, a skeletal frame over which walrus skins had been stretched and fastened. (He took correspondence from me to Fred, wrapped in foil.) In the turbulent weather, it was still impossible to take the surf boat to the beach so medical and dental patients came out to the boat in their own skin boats, called "umiaks." Chatting with them, I learned that the isolated winter conditions and constant importing of liquor sometimes resulted in violence. Six months earlier one man had been shot and wounded seriously by his own brother. Aside from such incidents, there seemed to be no other crime patterns. The Arctic Field Station of the U.S. Navy was located there, and the non-com in charge of the National Guard unit was also the Alaskan Department of Health representative. The Natives bartered skins and ivory for supplies. An elected council met monthly.

With two passengers aboard who had to be dropped off, **Shishmaref** was a brief stop the next day. It was a long village, set low on the beach, and quite exposed to northern storms. A registered and incorporated village, with about 200 Natives and 10 whites, it was governed by a five-man council. The residents were apparently semi-nomadic. Some worked at Nome, some carved ivory, and some hunted seals. The medical and dental teams finished around 8:00 p.m.

Kivalina, our next stop, lies north of the Arctic Circle. Sailors who cross the Circle for the first time (dubbed "Ice Worms") are traditionally hailed before a hideously whiskered and magnificently enthroned "King Neptune" (usually enacted by the most formidable member of the crew) and subjected to a humiliating hazing in honor of the occasion. There had been some discussion about conducting a King Neptune initiation on this leg of our journey but it was quietly rescheduled to take place after I left the ship. My ubiquitous movie camera probably inspired those second thoughts.

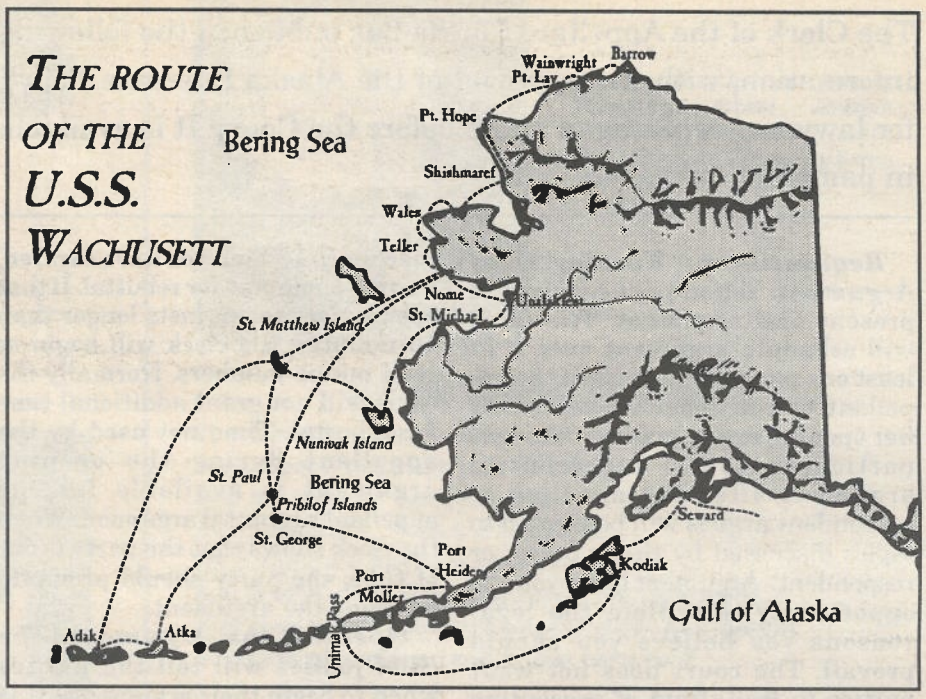
However, as we crossed the Circle at Longitude 165 degrees, 49 west, I had qualified. Certification arrived by mail some time later. I am now a member of the ORDER OF THE TOP OF THE WORLD, Bering Sea Patrol, and an honored citizen of the "Auroral Arctic Empire in the Silent Realm" by order of "Boreas Rex, Emperor of the Realm of Eternal Whiteness." The certificate is countersigned by Captain Applegate, but Chief Louis Steyskal, self proclaimed "Arctic explorer", applied the seal of authenticity.

I learned that the isolated winter conditions and constant importing of liquor sometimes resulted in violence.

We arrived at Kivalina in a fairly calm sea early on August 19. It seemed to be a pleasant, well-adjusted community with a population of about 130. The temperature can drop to 70 below in the winter. Liquor problems were rare; Kivalina had a strong local council. A 9 p.m. curfew was imposed during the school year. Boy Scout and Girl Scout chapters were active, as was a National Guard unit. The Natives fished and hunted caribou, ducks and seals. They also did longshoring and lighterage when work was available. Many worked in Fairbanks or Nome during the summer.

The next day we were at **Point Hope**. (Personally I still prefer the older name, Tigara.) Like many other coastal villages, it sat on a long peninsula with a wide beach between it and the sea. The earlier village had been slowly eaten away by waves so newer buildings were being built a bit further inland. It had a happy, active population of about 275 with a town marshal who was seldom needed. The 11-man council, elected for three-year terms, was strong and aggressive. Under its leadership, the village had acquired two defunct diesel engines, repaired them, and began constructing lines to supply electricity to village houses. Poles were floating timbers, rescued from the sea, or brought in from Kotzebue. Piping water to the houses from existing communal wells was being studied. When not busy improving the village, whaling and hunting polar bears were their major occupations. Whaling season closes in the early part of June, and whale feasts are held by rival whaling groups. Whale bones are construction material. The fence surrounding the cemetery was made of upright whale bones. Some years ago an old village site was found about a mile inland and for a while Point Hope was flooded with scientists, probing the old ruins.

I'd like to have stayed longer at Point Hope but we had to push on. In the morning of August 23, we dropped anchor off **Point Lay** in a surf rough with heavy on-shore breakers and high winds. Sixteen DEW Line workers and 28 Natives called it home. I thought it would be the most remote village I would visit; however, I never got ashore. Neither did the medical-dental teams. With only 16 patients to treat, they came to the ship instead. Done by noon, we sailed on to **Wainwright**, arriving early Saturday morning, August 24.



It was a somewhat scattered village built on a boggy tundra overlooking a narrow beach. Drainage was poor and mud was plentiful. Roald Amundsen used Wainwright as a base during polar explorations. Moving toward our anchorage, I caught a slow, distant glimpse of his house, "Maudheim", three miles before we reached Wainwright. It was a long, low building parallel to the beach and at the mouth of a lagoon that stretched for miles into the interior. Amundsen lived there for two years. I'd liked to have looked around inside.

A sunny day and a very calm sea. I went ashore with the Captain who began organizing a caribou hunt while I made my usual rounds. The *Wachusett* crew got permission to join some natives in hunting caribou, providing that those they shot were turned over to the Natives for food. I went along, armed with my camera instead of a rifle. One caribou was lassoed from a surf boat while swimming across a lagoon. Shades of the wild, wild west! Hauling the seven dead caribou back to where they could be hoisted into a boat and taken to the town turned out to be a wet, back-breaking chore. We were back on the ship at 11 p.m.

I went ashore with the Captain who began organizing a caribou hunt while I made my usual rounds. The *Wachusett* crew got permission to join some natives in hunting caribou,

The next day was overcast with a cold wind. With medical-dental work about done, we could be in Barrow tomorrow. Mail for the ship was still in Fairbanks. Timing for arrival in Barrow was tricky. The ice pack was only seven miles offshore and the Captain wanted to be sure the ice-breaker *North Wind* was available to cut us out if the ice closed in. I ate lunch with the Chiefs and supper with the Captain, Haislip and McDowell. (The Chiefs eat better than anyone!)

We moved from Wainwright to **Barrow,** arriving about 10:00 am on August 27th. The sea was extremely rough. Getting me ashore was only possible by using a landing craft from another vessel there. I made my sincere but hasty farewells to the hospitable crew of the *Wachusett*. The ice pack was slowly moving closer and they didn't want to get locked in. And the Barrow-Fairbanks plane was waiting for me to climb aboard. I took a quick look at Barrow and then did just that. When we touched down at Fairbanks, Marshal Dorsh chatted with me at the airport until my flight left for Anchorage.

Traveling about 6,500 miles over almost two months to visit 23 towns and villages, I had been told of only five cases with real criminal potential. All involved welfare violations or illegal sexual activities, including one case of statutory rape. ("Prosecutor" David Haislip agreed that the cases should be referred to appropriate authorities for further investigation.) The cost to our department was $324. I was home at last in the late evening of August 27.

Home from the final voyage of Alaska's floating court.

There's a song that's sung by those who have sailed the Bering Sea. Writing this, I recall the final stanza:

"So when you boast of fiercest gale,
That ever ocean you did sail,
You cannot salty sailor be
Until you cruise the Bering Sea."

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Oral argument in the Alaska Supreme Court

The Clerk of the Appellate Courts has published the following information, with the approval of the Alaska Supreme Court, for lawyers preparing to argue before the Court. It is available in pamphlet form.

Requesting or Waiving Oral Argument. You are not required to present oral argument. The court will schedule argument only if at least one party requests it. If the appellant or petitioner waives his or her opening argument or limits it to particular issues, any rebuttal argument after the appellee or respondent argues will be limited to topics discussed by the appellee or respondent. Argument gives you the opportunity to explain the legal reasons you believe you should prevail. The court does not want parties to feel afraid of presenting oral argument.

Order of Argument. Normally appellants or petitioners argue first. Appellees or respondents argue next. Appellants or petitioners may close with a rebuttal argument if they have any remaining argument time. Complex cases involving multiple parties may require a different argument order.

Time for Argument. Before the court enters the courtroom, the clerk will ask the appellant or petitioner how he or she wishes to split the allotted time between opening argument and rebuttal. For example, if the allotted time is 15 minutes, an appellant may wish to leave 5 minutes for rebuttal. When the opening argument begins, the clerk triggers a clock that counts down the time. If the appellant tells the clerk that the opening argument is to be 10 minutes long, when the clock reaches 0, 10 minutes have expired, leaving 5 minutes for rebuttal. If that opening argument lasts longer than 10 minutes, the clock will begin to read minus numbers. Normally the court will not grant additional time for rebuttal. Time not used by the appellant during the opening argument is available for the appellant's rebuttal argument. When the clock shows that the party is out of time, the party should promptly conclude the argument.

Opening the Argument. The chief justice will tell the parties when to begin their arguments. It is common, but not mandatory, to begin an oral argument with words to the effect "May it please the court . . . ." It is not necessary to address the chief justice and each justice by title or name. You must identify yourself after addressing the court.

Structure of Argument. It is helpful to announce briefly the legal issues to be discussed, and to then discuss each significant issue in turn. Experienced appellate lawyers usually do not discuss every issue in an appeal, but focus on those they feel are most important. Please be aware that the supreme court decides legal issues, and is not a trial court that decides factual disputes. There is nothing complex about presenting an oral argument and it is not necessary or desirable to try to phrase it in legal jargon. You should simply explain the factual and legal grounds for the result you seek.

Questions by the Court. It is not unusual for justices to ask questions. The questions are often pointed at issues the justice finds important. They may concern the facts of the case or some proposition of law. The party should answer the question without delay. The questions often do not reflect how the entire court views the case or even that issue. The questions give an opportunity to respond to a justice's possible concerns. No additional time is added to a party's argument time for the time spent on questions.

Demeanor. Parties and their attorneys are expected to act with courtesy in the courtroom and to be quiet during an opponent's presentation.

Preparing for Oral Argument. The court expects the person arguing to have a good working knowledge of the significant facts and the controlling legal doctrines. The time allotted is short, and preparation helps use the limited time effectively. Notes or an outline can be useful. Reading a written speech is rarely effective, but for persons, especially non-lawyers, not familiar with the process, this practice can be helpful. It can be useful to practice before the argument, preferably in front of someone else. Practicing with a tape recorder can also be helpful. You may want to listen to prior arguments to know what to expect.

Exhibits, Evidence. Exhibits displayed in the courtroom are often difficult to read. Be sure the type size is ample, equivalent to 72 point, and can easily be read by justices who may be as far as 40 feet from the display. Unless properly used, such displays are potentially distracting. In real property disputes, however, the court often finds legible displays such as maps to be very helpful.

The Court's Preparation. The justices will have read the parties' briefs, the excerpts of record, and a law clerk memorandum which thoroughly summarizes the arguments, the facts, and pertinent legal propositions. The justices will have already given substantial attention to your case before you begin. Oral argument, nonetheless, can be very helpful in persuading the court. It allows the court to inquire into areas that might be important, and to explore implications the parties may not have considered.

After Argument. The court normally confers promptly after leaving the courtroom, and discusses each of the pertinent issues and reaches a tentative consensus on how the case should be decided. The case will have been assigned to a justice before the argument, and if the conference position taken by that justice is in the majority, that justice will be assigned responsibility for drafting an opinion or other disposition. If the conference position of that justice is no longer in the majority, the case will be reassigned. The assigned justice circulates a draft to the other justices. The other justices then vote on the draft. They often exchange memoranda during the voting process. The opinion will normally be published within 6-12 months after argument. In some cases, justices may write separate opinions. Sometimes the majority changes during the voting process, and the case must be reassigned. The time it takes the court to publish its opinion varies depending on the complexity of the issues and on whether the court is divided on one or more of the issues. It may also depend on whether the case is expedited.

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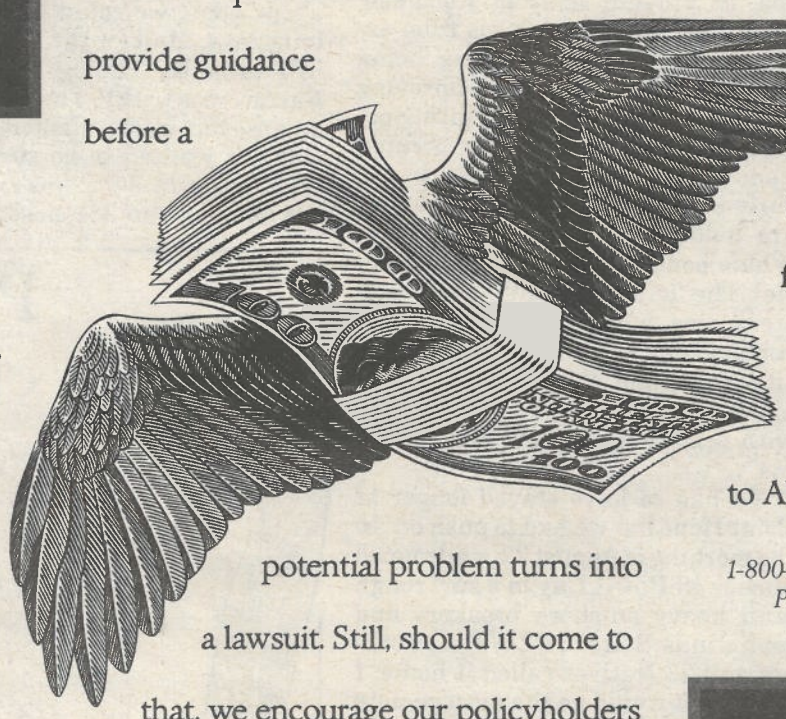

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Bar People

The law firm Holmes Weddle & Barcott is pleased to announce **Elizabeth Daubert Goudreau** has become a shareholder. A graduate of the University of Idaho, College of Law, she was admitted to the Alaska Bar and the Washington Bar in 1990, and the Idaho Bar in 1989. Goudreau practices in the firm's Anchorage office with an emphasis in employment law and insurance defense.

Elizabeth Daubert Goudreau

Kenneth M. Lord has joined the law firm of Heller Ehrman White & McAuliffe as an associate attorney. Formerly a law clerk to Alaska Superior Court Judge Harold M. Brown, he is admitted to the State Bars of both Alaska and California. Lord holds a law degree from Cornell Law School, where he specialized in International Legal Affairs and Advocacy and was the Note Editor for the *Cornell International Law Journal*. He holds Doctor of Philosophy and Master of Science Degrees in Geology from the University of Florida. Lord's employment history includes positions as a research assistant at Cornell University, a teaching assistant at the University of Florida, a geologist for DuPont, and a police officer in Florida. Lord also is currently a volunteer instructor for the Kenai Peninsula Youth Court Program. Heller Ehrman White & McAuliffe is a law firm with over 350 attorneys. Established in San Francisco in 1890, the firm has offices in Anchorage, Seattle, Portland, Washington, D.C., San Francisco, Los Angeles, Palo Alto, Singapore, and Hong Kong.

Kenneth Lord

Mike Barnhill, formerly with Faulkner, Banfield et al. in Anchorage, is now with the A.G.'s office, Division of Oil, Gas & Mining in Juneau.....**Fran Bremson** has relocated to Gold River, California.....**Krissell Crandall**, formerly with Perkins Coie, is now with BP Exploration (Alaska).....**Glenn Gustafson**, formerly with the AG's office in Anchorage, is now with the Office of the City Attorney in Yuma, AZ.....**Tim Jannott** has relocated from Anchorage to San Francisco.....**James Robinson** has relocated from Anchorage and is now an Assistant Borough Attorney in Barrow.

Sharon Sturges has relocated from Anchorage to Grand Junction, Colorado.....**John Shaw** is now with the Law Office of Margaret D. Stock & Associates in Anchorage..... **Nicholas Theotocatos** currently lives in Geneva, Switzerland where he works for the United Nations Compensation Committee as a Legal Officer.....**Karla Forsythe** is the Chapter 13 Bankruptcy Trustee for the Western District of Washington in Longview.

On June 1, 1998, **Robertson, Monagle & Eastaugh's** Anchorage law office will move to 1400 West Benson Boulevard, Suite 315. The telephone and fax numbers remain the same.

Reed McClure names new executive committee members

Stuart Allen, President of the Reed McClure law firm, announced today that shareholders **Earl Sutherland** and Bradley Grisham have been named to the firm's three-member Executive Committee. Sutherland and Grisham join the firm governance as directors for terms of two and one year, respectively.

Sutherland, who currently leads Reed McClure's Insurance practice group, joined the firm in 1994 from Hughes Thorsness Gantz Powell & Brundin, in Anchorage, where he was a partner for eight years. With more than 14 years of trial court experience, Sutherland's practice will continue to emphasize insurance coverage disputes and "bad faith" litigation, and the defense of claims concerning professional errors and omissions, premises and products liability. He received his J.D. from the University of Washington School of Law in 1981 and his BA from Reed College in 1978. **Sutherland is a member of the Alaska Bar Association.**

Reed McClure, established in 1890, is a professional services corporation providing businesses and individuals throughout the Northwest with legal expertise emphasizing cost-effective, personal service.

Sam Baker becomes name partner as firm changes name to Oles Morrison Rinker & Baker LLP

Oles Morrison & Rinker LLP, one of the Northwest's most respected construction and public contract law firms, has changed its name to Oles Morrison Rinker & Baker LLP.

Founded in Seattle in 1893, Oles Morrison Rinker & Baker LLP'S main practice areas in addition to construction and public contract law include liability and insurance law, and general business law. In addition to its Seattle office, Oles Morrison Rinker & Baker LLP also maintains an office in Anchorage, Alaska.

Hughes Thorsness names partner

Kimberlee Colbo

Kimberlee A. Colbo has been elected a partner of the law firm of Hughes Thorsness Powell Huddleston & Bauman LLC. Colbo joined the law firm in 1992 as an associate attorney. A 1988 graduate of the University of Southern California, Colbo received her juris doctorate degree from the University of Washington Law School in 1992.

Her practice focuses in the areas of employment law, product liability, and general litigation. In addition to her activities in the legal community, she is active in the Anchorage Chamber of Commerce.

Hughes Thorsness Powell Huddleston & Bauman LLC is one of the largest and oldest law firms in Alaska, The firm is located in Anchorage.

Coeur d'Alene Mines names vice president, corporate counsel & secretary

Ray Gardner

Coeur d'Alene Mines Corp. has appointed Ray Gardner as the company's vice president, corporate counsel & secretary.

Mr. Gardner is a mining lawyer with 17 years of experience with resource development companies. Prior to his employment with Coeur d'Alene Mines Corp., he was the chief legal officer of Kennecott Utah Copper Corp. in Salt Lake City, Utah.

Gardner is a graduate of the University of California's Hastings College of the Law. He is a member of the bar in Colorado, Utah, and Alaska.

Gardner has served as a member of the Board of Directors of the Legal Aid Society of Salt Lake City; the Alaska Mineral & Energy Resources Education Fund; the Anchorage Chamber of Commerce; and the Alaska Resource Development Council.

Sherry Lucus receives honor

The Anchorage Legal Secretaries Association has named Sherry Lucus Anchorage's "Legal Secretary of the Year." To be awarded the honor, a member must exemplify the high standards of the national association and compete with other well qualified local candidates. Sherry Lucus has been employed in the legal field for 18 years, nine of those with her current employer, Bankston & McCollum, P.C. She has a bachelor's degree in elementary education, with a major in language arts and a minor in history.

Sherry Lucus has experience in various facets of the legal support field, including foreign and domestic trademark law, family law, civil litigation, and school law. Sherry is a willing volunteer on numerous committees and will serve as ALSA's vice president for 1998-99. In addition to being a member of the National Association of Legal Secretaries, Sherry is also a member of Wasilla Lions Club.

Anchorage Legal Secretaries Association is a nonprofit association affiliated with the National Association of Legal Secre-taries. Founded in 1929, NALS is the oldest legal support service organization in the country. Its membership cuts across many levels of legal support and includes legal secretaries, legal assistants, and court support professionals. Through NALS, members enrich their knowledge of the legal profession through continuing legal education, certification and networking. The Anchorage chapter meets once a month on the first Thursday of each month at Chris' Mixed Grill.

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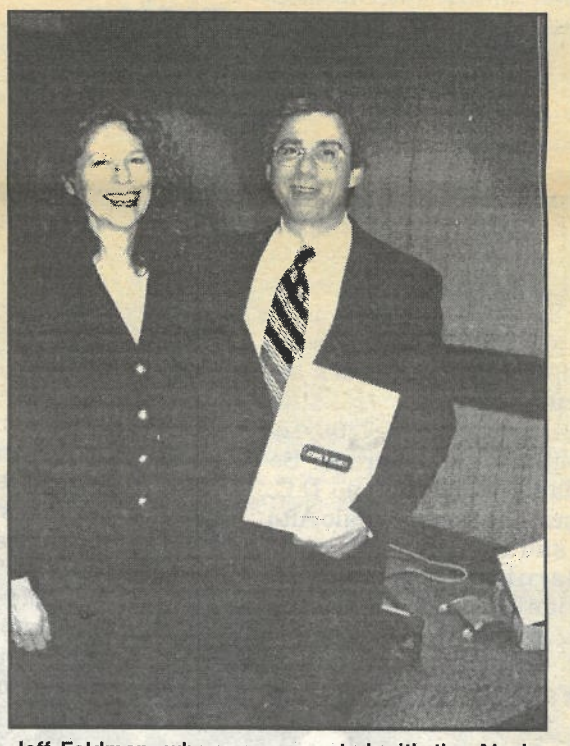
Av

Board of Governors members at the annual business meeting pause for a group portrait — front row, l to r — Bruce Weyhrauch, Will Schendel, Joe Faulhaber, Barbara Schuhmann, Kirsten Tinglum, Lisa Kirsch, Rob Stone. Back row l to r — David Bundy and Venable Vermont.

L to right Rhonda Fehlen, President, Anchorage Bar Association, presents State Law Librarian Cynthia Fellows, with the Anchorage Bar Association Service Award.

L to r Irene and I Baranow, accepte Service Award or Awards Banquet. to tell him there w and his wife had thought surely Da the cruise tickets. to attend the bar Baranow was deli

L to r — President-Elect Will Schendel and Outgoing President David Bundy share the podium just before the passing of the gavel at the Awards Banquet.

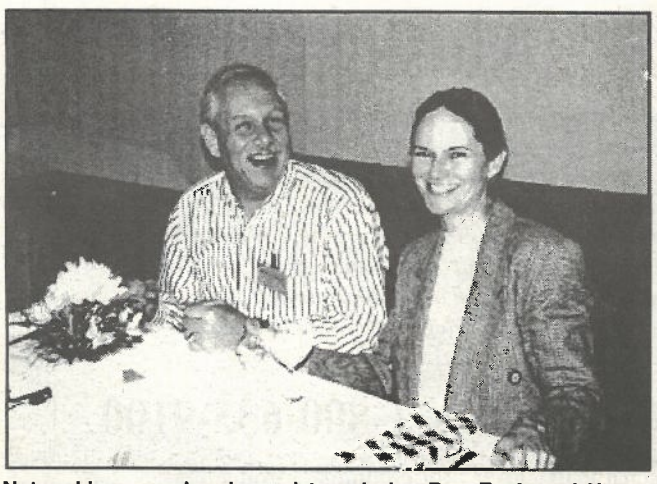


Jeff Feldman, who was presented with the Alaska Bar Professionalism Award, and his wife Marge, at the Awards Banquet.

Mark Rindner of La his wife, Chris Sc Banquet where Individual Attorne second Alaska att donated hours ma

Photos by Barbara Hood

unless otherwise noted



Networking over lunch are l to r Judge Ben Esch and Nancy Shaw.

Through the auspices of Rotary International, an exchange group of Russians from Vladivostok, was in Anchorage at the time of the Bar Convention. Bar member Steve Yoshida hosted them and brought them to the convention. L to r — Igor Tarasenko, Esq.; Evgenia Klohova, interpreter; Steve Yoshida; Evgeniy Korovin, Esq.; Judge Ludmilla Zinkova.

L to r — Art Peterson at the Awards Banquet holds the golf bag he's just won courtesy of ALPS and ALPS representative Eagan McAlear.

ighlights

ska • May 7-9

d Recipients

now, parents of David ska Bar Distinguished ranow's behalf at the d first called his father ct on the date — David a cruise — his father ing to ask him to take d David asked his father is place — which Mr. o.

Perkins Coie was the recipient of this year's Law Firm Pro Bono Award. L to r — Chief Justice Warren Matthews who presented the award; Seth Eames, Pro Bono Coordinator; Jim Leik, Tom Daniel, and Bruce Bookman, all partners in Perkins Coie. This marks the second time Perkins Coie has received this award as they continue to be a leader in law firm commitment to providing equal access to justice.

Spears & Lubersky and lax at the Bar Awards presented with the o Award. Mark is the ave passed the 999.99

L to r — 25-Year Membership Certificate recipients who attended the Awards Banquet — Bill Bryson, Gene DeVeaux, Ken Eggers, Ben Esch, Art Peterson, John Messenger, Robert Stoller, David Marquez, David Bundy - Bar President, Larry Weeks, and Phil Weidner.

EXHIBITORS

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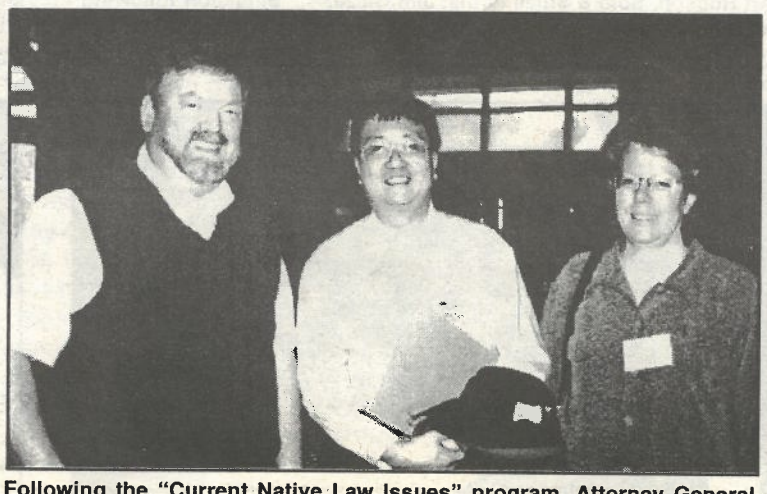
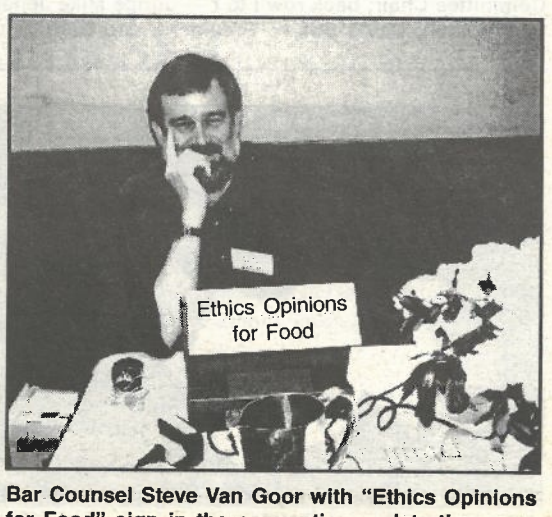
West Group

at the Awards Banquet are l to r Jim Leik, Susan Reeves, Reeves.



Following the "Current Native Law Issues" program, Attorney General Bruce Botelho, Judge Sen Tan, and Averil Lerman pause for a moment.



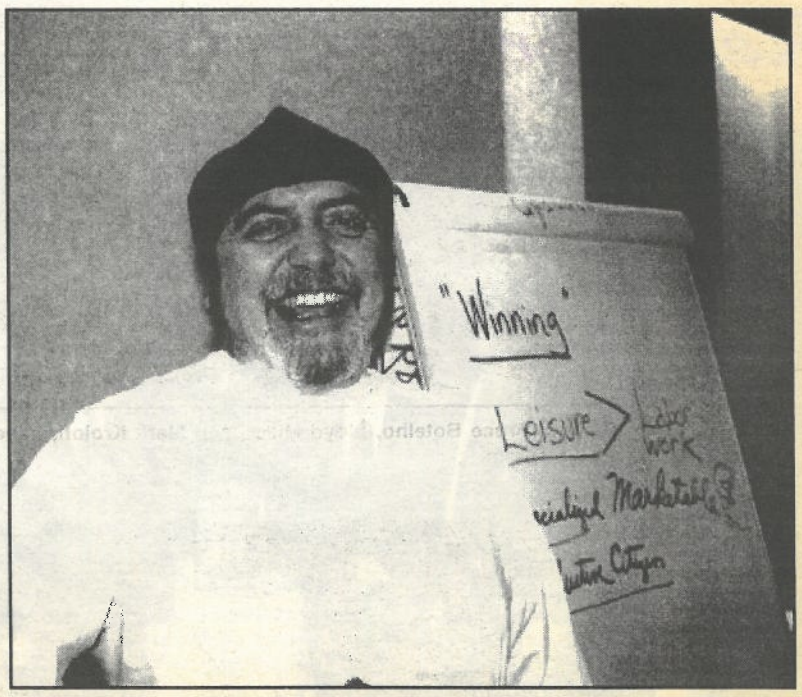
Bar Counsel Steve Van Goor with "Ethics Opinions for Food" sign in the convention registration area. He was getting so many calls at the hotel asking for informal ethics opinions that the Bar had to get a separate phoneline for him to handle all his requests.

1998 Convention

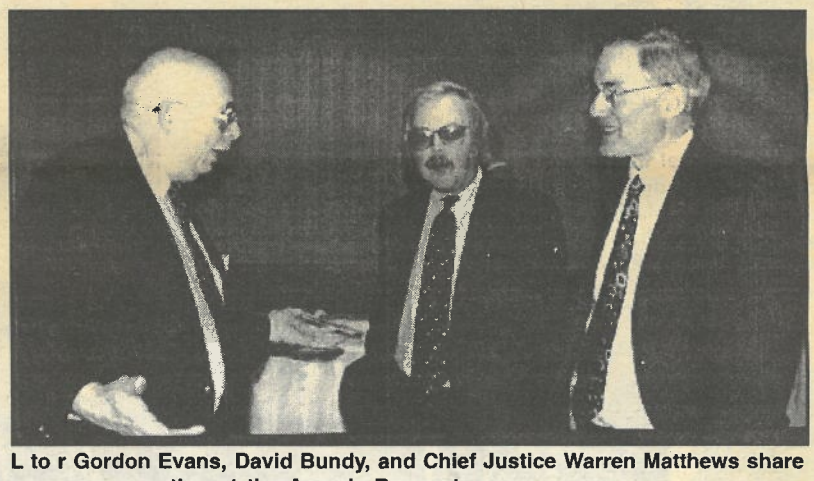
Westin Alyeska Prince Hotel

Rex Butler reviews the exhibit, "Women in Alaska Law," a project of the Joint Federal-State Courts Gender Equality Task Force.

Co-Chairs of the Joint Federal-State Courts Gender Equality Task Force Chief Judge James Singleton and Justice Dana Fabe pause before the "Women in Alaska Law" exhibit.



Fr. Michael Oleksa during his presentation on global literate society and tribal literate cultures and the impact of their differences on the legal community.

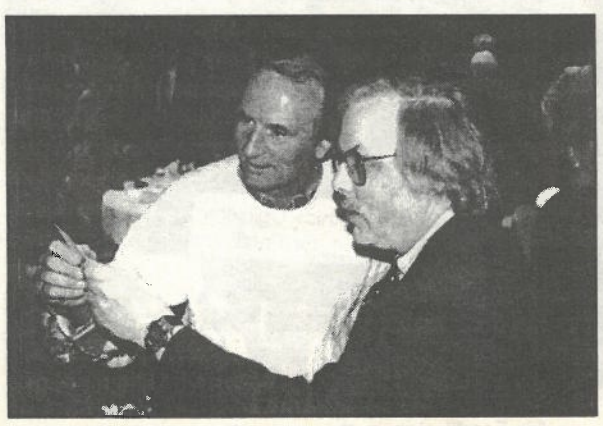


L to r Gordon Evans, David Bundy, and Chief Justice Warren Matthews share some conversation at the Awards Banquet.

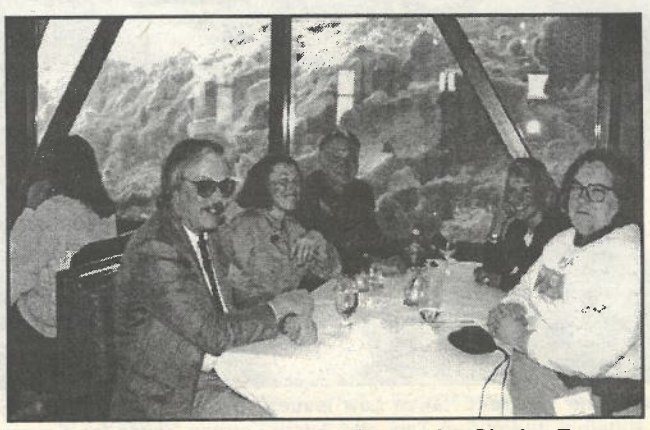
Attendees at this year's Section Chairs' Breakfast — front row l to r — Valli Fischer, Intellectual Property; Barbara Armstrong, CLE Director; Rachel Tobin, CLE Assistant; Tonja Woelber, Estate Planning & Probate; Randal Buckendorf, Environmental & Natural Resources; second row l to r — Deborah O'Regan, Executive Director; Teresa Williams (filling in for Mark Kroloff), Native Law; Will Schendel, President-Elect; Jim Stanley, Real Estate; Gary Sleeper, Bankruptcy; Dave Ingram, CLE Committee Chair; back row l to r — Judge Mike Jeffery; Art Robson, Solo & Small Firms; Jim Glaze, Immigration; David Bundy, President, and Barbara Jones, Employment.

L to r — Chief Justice Warren Matthews and Chief Judge James Singleton following the "State of the Judiciaries" address.

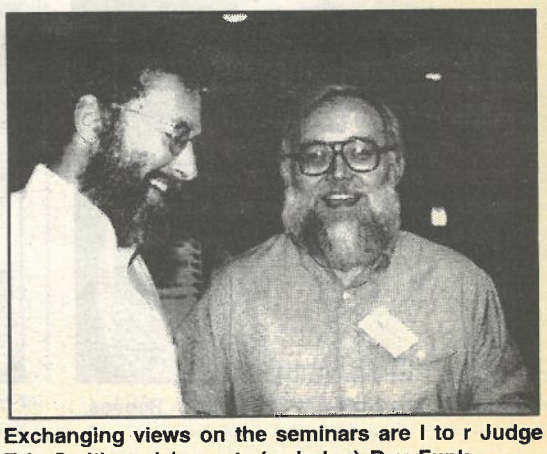
L to r — Professor Erwin Chemerinsky of USC Law Center and Stephanie Cole, Alaska Court Administrative Director, after Professor Chemerinsky's "U.S. Supreme Court Opinions Update."



Cabot Christianson and outgoing Board President David Bundy take a closer look at the 1904 Lewis & Clark Expedition Commemorative Stamps.



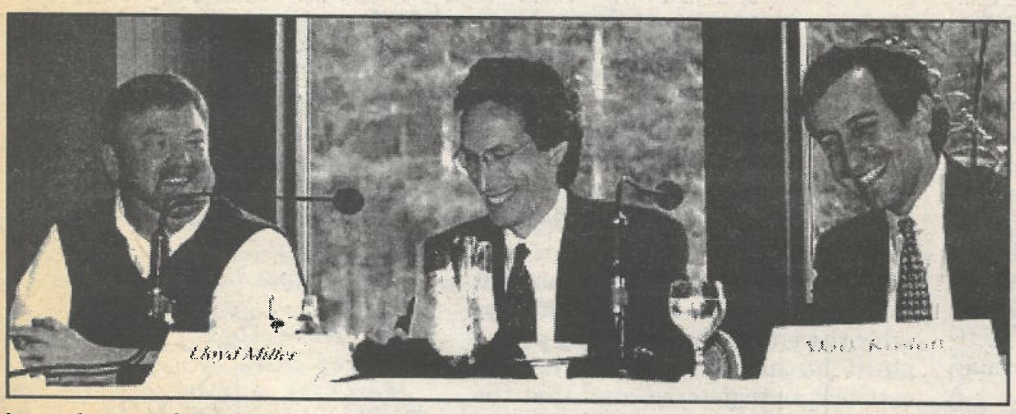
Enjoying the President's Reception at the Glacier Express atop Mt. Alyeska — l to r President David Bundy, Mauri Long, Joe Faulhaber, Kirsten Tinglum, and Jean Bundy. (Photo by Karen Schmidlkofer)



Exchanging views on the seminars are l to r Judge Eric Smith and (soon-to-be judge) Ray Funk.

Highlights

Girdwood, Alaska
May 7-9



L to r Attorney General Bruce Botelho, Lloyd Miller, and Mark Kroloff, panelists for the "Current Native Law Issues" program.

L to r Chief Judge James Singleton, Judge H. Russel Holland, Judge John Reese, and Judge Bud Carpeneti admire outgoing Board President David Bundy's gift from the Bar: a set of 1904 stamps commemorating the Lewis & Clark Expedition.

Photos by Barbara Hood unless otherwise noted

Bryan Garner, nationally known legal writing expert and instructor, during his "Advanced Legal Writing" presentation. Watch out for "deep issue" analysis and "whirlybird" outlines from those who attended!

The faculty for "44 Winning Tactics To Use Before Trial" — l to r — Ray Brown, Morgan Chu, and Mauri Long.

At the closing of the Awards Banquet the gavel was passed, and now President Will Schendel is wondering what to do with it!

L to r Justice Alex Bryner and Judge Eric Sanders are aghast at some of the U.S. Supreme Court decisions reviewed by Professor Chemerinsky!

L to r — Bar members Lynda Limon and Herman Miller enjoy a break in the seminars.

At the 2nd Annual Poetry Reading, Chief Justice Matthews recites his "Barn Roof Sonnets." (Photo by Karen Schmidlkofer)

BARN ROOF SONNETS

The baron was four years consecutive
our country's highest paid executive.
And his wife for one year less
was America's richest executess.
He bought a Bitterroot ranch in '84
and liked it so well purchased twenty-two more.
And now comes a tale of wealth pride and reproof,
of hubris of kindness and of our barn roof.

THE UPSTREAM PLACE
Baron Myron Moesch looked out
on his Sheep Creek homestead,
groomed and green and planned, no doubt,
by a modern Frederick Olmstead.
From the window of his manse
to our stile, a full mile down the stream
(at the furthest reach of his expanse)
all was order, a handsome scene.
Fence rails were split, stained to match,
horses, all greys, and cows, Charolais, each bore his mark,
brown trout in the creek dimpled the hatch:
A perfect Montan' ranch theme park.
And a first class spread, throughout forty carat,
reflecting the owner, showing his merit.

A WEN IN THE EYE OF THE BARON
Then to this scene so justly earned
a flash, a glimmer, then a gleam,
a beam of light his mood it turned
transgressing from a place downstream.
His eyes grew moist and then they burned
his view, bought dear, had turned to tear,
his amber waves of grain were blurred,
his picture window now a smear.
"What is the cause of this cursed ray?"
He asked his builder with reproof.
"The sun reflects this time of day
off your neighbors' tin barn roof."
And now a solution must be sought.
All questions have answers. All can be bought.

THE BARON PAYS A VISIT
From a cloud of dust, from a gilded Suburban
strode the cowboy from Greenwich, the baron of beef.
The glint from our barn he found most disturbin'
he was goddam unhappy and he wanted relief.
Then he made us an offer, he called it win win,
he'd pay from his coffer, the contract he'd make
to tear off our roof of couduroy tin
and replace it with one of split cedar shake.
We told him no thanks, we'd not take his charity
we liked what we had and it fit the decor
his new ranchette shakes would be a disparity,
then we gave him a smile and showed him the door.
And we asked as he passed if he'd use this same etiquette
on the real estate of his friends in Connecticut.

FAVORS
Until the winter of our disarming
when the tenant ignored what he owed us
he'd had enough of hay farming
and he left the place without notice.
Horses must eat every day,
but the fields were filled with ice nubble
the tenant had sold all the hay
and they could not get through to the stubble.
They might have starved without our knowing
but the baron's man showed kindly heed
and every day rain, wind, or snowing
he drove the road and pitched them feed.
So we dispensed with our sense of injured offence and our attitude
and we let Myron put a new roof on to show our gratitude.
And so ends our story of wealth pride and reproof,
of hubris of kindness and of our barn roof.

By Warren W. Matthews

Board to vote on Mandatory CLE Rule

Continued from page 1

(c) At the end of each reporting period, each member will submit an affidavit on a form prescribed by the Committee, listing the member's approved CLE hours earned during the reporting period, or carried over from the prior period, and designating the number of hours to be carried forward to the next reporting period.

Comments: The "affidavit" reporting system used here is preferable to the "transcript" reporting system where the Bar Association maintains CLE records for each member, and sends a transcript to the member for verification at the end of the reporting period. First, the affidavit method is much less expensive, because only one filing per member per two year period has to be processed. The transcript method would require a member report and Bar processing each time a member took a course. Second, the affidavit method, by requiring the member to keep his or her own records on CLE activities, encourages the member to take responsibility for preparing a CLE educational plan, instead of reacting to Bar notices of credit hour deficits. The affidavit method is used by 22 of the 39 states which have MCLE rules in effect; 9 use the transcript method. Regulation 1 explains how the reporting period is determined. To spread the administrative burden on the Bar Association, there will be six reporting groups; three groups will report each year.

Rule 66: Non-compliance

(a) Within 30 days of the end of the reporting period, the Director shall send each member whose affidavit shows that the CLE requirement has not been met (or who has failed to file an affidavit) a notice of non-compliance. Within 60 days of the end of the reporting period, the member shall either remedy the non-compliance or submit an affidavit of compliance, if the affidavit is alleged to be in error. If at the end of this 60 day period, the member is still out of compliance, suspension will be sought under Rule 61.

(b) Within 60 days of the end of the reporting period, a member may file a written request for an extension of time for compliance, an extension of time to comply with a notice of non-compliance, or an extension of time to file an affidavit. A request for extension shall be reviewed and determined by the Committee or by such of its members as the Chair may, from time to time, designate. A member's first request for a 30 day extension shall be freely granted. Subsequent requests or requests for longer extensions shall be granted for good cause shown. The member shall be promptly notified of the decision by the Committee.

Comments: The object of this Rule is to encourage members to comply, not to punish them.

Rule 67: Transition

These rules shall become effective six months after approval by the Supreme Court, except that Rule 65 shall become effective 18 months after approval. A member may apply approved CLE credit hours earned in the 12 months prior to the beginning of his or her first reporting period towards the requirement for that period.

Comments: The intent is to allow a gradual start-up period. The Bar would begin approving courses and activities for credit six months after the rule is approved. A year later, reporting periods would begin for half of the members. The first affidavit would be filed 3 1/2 years after the Rule is approved.

Comments on Funding: A fee will be collected from course sponsors seeking approval of courses or materials.

Amendment to Rule 61

Suspension for Nonpayment of Alaska Bar Membership Fees and Fee Arbitration Awards or Non-compliance with MCLE Requirements.

(d) Any member who has not complied with Rule 65 within 90 days after the end of the reporting period shall be notified in writing by certified or registered mail that the Executive Director shall, after 15 days, petition the Supreme Court of Alaska for an order suspending such member for failing to complete the minimum continuing legal education requirement.

Upon suspension of the member under this section, the member shall not be reinstated until compliance has been achieved, a reinstatement fee in the amount of $50 and any dues accruing during suspension have been paid, and the Executive Director has so certified to the Supreme Court and the clerks of court.

Amendment to Bylaws

Article VII Section 1(a)(2)

The Continuing Legal Education Committee, a 15-member committee responsible for preparing legal education seminars for the membership and for administering the required continuing legal education program.

Regulation 1: Reporting Period

Each active member will be assigned to one of six reporting period groups: 1A, 1B, 1C, 2A, 2B, 2C. Reporting periods are two years long and end as follows:

Group
1A: April 30, odd numbered years
1B: August 31, odd numbered years
1C: November 30, odd numbered years
2A April 30, even numbered years
2B August 31, even numbered years
2C November 30, even numbered years

Members admitted after the effective date of Rule 65 will be assigned to one of the next three groups reporting after the date of admission.

Regulation 2: Approved continuing legal education

(a) Approved activities

The CLE requirement may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. The following activities may be considered for credit when they meet the conditions set forth in this rule

i) preparing for and teaching legal education courses (in person or by video or teleconference);

ii) studying of audio or video tapes

Continued on page 17

THE PROPOSED MCLE RULE AT A GLANCE

- ✔ **All active members must complete 24 hours of approved CLE credit over a 2-year period.**
- ✔ **The requirement can be fulfilled by attending or participating in a variety of activities in addition to live CLE and live CJE (continuing judicial education).**
- ✔ **All active members must report every 2 years via affidavit provided by the Bar.**
- ✔ **All active members will be notified of reporting dates, sent an affidavit, sent notice of non-compliance.**
- ✔ **A member can request extensions of time to report.**
- ✔ **An active member will be suspended for non-compliance and must pay a $50 reinstatement fee and any dues accrued during suspension before reinstatement will be completed.**

The Board of Governors will vote on August 27-28 on whether or not to send this proposed rule to the Alaska Supreme Court for approval. Please submit your comments to the Bar office by August 15.

Each active Alaska Bar member would be required:

1. To complete 24 hours of approved CLE credits over a 2-year period. Up to 12 excess credit hours could be carried forward to the next 2-year reporting period. The Alaska Bar Association calculates CLE credits on a 60-minute hour.

2. To report via provided affidavit to the Bar once every two years by an assigned date of April 30, August 31 or November 30 that the required number of hours of approved CLE have been completed.

3. Approved CLE activities that fulfill the requirement include:
   a) Attending live CLE approved courses — these may be presented by any number of providers other than the Alaska Bar,
   b) Preparing for and teaching approved CLE courses (in person or by videoconference or teleconference),
   c) Studying of audio or video tapes or technology-delivered (computer/online) approved CLE courses,
   d) Writing published legal texts or articles in law reviews or specialized professional journals (up to a total of 15 hours per reparation period),
   e) Attending substantive Section or Inn of Court meetings (section meetings may be attended telephonically)
   f) Participating as a faculty member in Youth Court or Moot Court,
   g) Attending in-house approved CLE courses,
   h) Participating as an appointed member of Court System committees,
   i) Completion of special projects approved by the CLE Committee, and
   j) Attending approved continuing judicial education (CJE) courses.

4. Approval of CLE courses can be obtained by submitting Bar provided forms.
   a) The CLE provider (including law firms providing in-house courses) may apply to the Alaska Bar.
   b) Bar members may apply by petition for approval for CLE courses attended or to be attended.
   c) Bar members may apply by petition for approval of writing/publications by submitting the publication. Up to 15 credit hours will be approved for law review articles, texts or specialized professional journals.
   d) Bar members may apply by petition for approval of special projects.

5. Standards for approval include:
   a)The activity must be of intellectual or practical content and where possible include a professional responsibility component.
   b) The activity must contribute directly to members' professional competence or skills, or to their education about their professional or ethical obligations.
   c) Course leaders or lecturers must have the necessary practical or academic skills to conduct the activity effectively.
   d) Each course participant in the activity must be provided with appropriate and thorough course materials which will assist the participant in learning the materials and integrating it into his or her practice.
   e) Courses must be conducted in a suitable setting conducive to a good educational experience.

6. Bar members who do not complete the MCLE requirement:
   a) Will be notified by the Bar of non-compliance.
   b) Will have the option of applying for an extension of time.
   c) Will be suspended if still in non-compliance after 90 days, unless a request for extension has been granted.
   d) Will be reinstated after compliance is achieved and after payment of a reinstatement fee of $50 and any dues accruing during suspension.

7. These rules become effective 6 months after approval by the Supreme Court, except that Rule 65 becomes effective 18 months after approval.
   a) Bar members will be notified of approval date and effective dates.
   b) A member may apply approved CLE credit hours earned in the 12 months prior to the beginning of his/her reporting period towards the requirement of that 2-year period.

Board of Governors invites member comments

The Board of Governors invites member comments concerning the following proposed amendments to the Alaska Rules of Professional Conduct submitted by the Alaska Rules of Professional Conduct Committee.

ARPC 3.6 concerns trial publicity. The proposed amendment would clarify that the rule applies only to a lawyer who is participating in or has participated in the investigation of a matter. It would also make the rule applicable to lawyers associated with that lawyer in a firm or government agency. Finally, the ambiguous phrase "without elaboration" would be dropped from subparagraph (c) which describes permitted disclosures about a matter.

The recommended changes to **ARPC 8.5** are intended to clarify that regardless of where a person may commit professional misconduct, Alaska has the authority to pursue disciplinary proceedings against that person for the misconduct if the person is admitted to practice law in Alaska or if the person is engaged in the practice of law in Alaska under a court rule or order.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by July 1, 1998.

ARPC 3.6
PROPOSED AMENDMENTS TO ALASKA RULES OF PROFESSIONAL CONDUCT: TRIAL PUBLICITY
(Additions italicized; deletions bracketed and capitalized)

Rule 3.6 Trial Publicity

(a) A lawyer *who is participating in or who has participated in the investigation or litigation of a matter,* shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding. *All lawyers associated in a firm or government agency with a lawyer who is participating or who has participated in the investigation or litigation of a matter are subject to the provisions of this Rule.*

(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of an examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Notwithstanding paragraph (a) and (b)(1-6), a lawyer involved in the investigation or litigation of a matter may state [WITHOUT ELABORATION]:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case:

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigation and arresting officers or agencies and the length of the investigation.

ARPC 8.5

PROPOSED AMENDMENTS TO ALASKA RULES OF PROFESSIONAL CONDUCT: JURISDICTION
(Additions italicized; deletions bracketed and capitalized)

Rule 8.5 *Disciplinary* Jurisdiction

A [LAWYER] *person* admitted to practice in [THIS JURISDICTION] *Alaska* is subject to the disciplinary authority of this [JURISDICTION ALTHOUGH ENGAGED IN PRACTICE ELSEWHERE] *state, regardless of where the conduct occurs, and even though the person may be subject to the disciplinary authority of another jurisdiction for the same conduct.*. A person who, although not admitted to practice law in [THIS JURISDICTION] *Alaska*, engages in the practice of law pursuant to court rule or order is subject to the disciplinary authority of this [JURISDICTION] *state to the same extent as if the person were admitted to practice in Alaska.*

Board to vote on Mandatory CLE Rule

Continued from page 16

or technology-delivered approved CLE courses;

iii) writing published legal texts or articles in law reviews or specialized professional journals;

iv) attendance at substantive Section or Inn of Court meetings;

v)participation as a faculty member in Youth Court or Moot Court;

vi) in-house continuing legal education courses;

vii) participation as an appointed member of Court System committees;

viii) completion of special projects approved by the CLE Committee; and

ix) attendance at approved continuing judicial education (CJE) courses.

(b) Approval process

The Continuing Legal Education Committee shall approve or disapprove education activities for credit. The Committee may delegate administration of these rules, including initial approval or disapproval of educational activities for credit, to the Continuing Legal Education Director. CLE activities sponsored by the Association are deemed approved. Forms may be submitted electronically.

(1) Accredited provider.

An entity or association may apply to the Board for accreditation as a CLE provider. Such accreditation shall constitute prior approval of CLE courses offered by such provider, subject to amendment, suspension or revocation of such accreditation by the Board.

(2) Procedures for accreditation.

The Board shall establish by rules the procedures for accreditation of accredited providers, including any fees, and for sanctions including the revocation of accreditation.

(3) Minimum Standards for Providers.

A provider shall have engaged in CLE during the two (2) years immediately preceding its application and have sponsored at least three (3) separate courses in that two year period which would comply with the requirements for course approval under these rules.

(4) The Board may establish by regulation additional minimum standards for providers.

(5) Sponsor's application for course approval.

Course sponsors other than the Association shall submit an application for approval to the Director.

(A) Application

The application shall be in the form prescribed by the Committee, and shall include identifying information, date and location of the course, the fee, the names and qualifications of the instructors, a complete description (or copies) of the materials to be distributed to the participants, and a detailed outline of the course presentation, including discussion of ethical considerations, if any. The application form shall be accompanied by a fee to be determined by the Board of Governors.

(B) In-house courses

Sponsors seeking approval of in-house courses must in addition state the number of attorneys who will participate, whether the course is open to members not employed by the sponsor, and what precautions against interruptions will be taken.

(C) Course monitoring

All approved courses must be open for monitoring by a Committee member or Association staff. Sponsors of other CLE educational material (such as interactive computer software) shall state on their application how their materials meet the standards of subsection "C".

(D) Approval statement

Sponsors of approved courses may include in informational materials the statement: "This course has been approved by the Alaska Bar Association for x hours of continuing legal education credit."

(6) Member's petition for credit hours approval.

A member seeking approval of credit hours for activities other than courses shall file a petition with the Director on a form prescribed by the Committee.

(A) Teaching

Members teaching approved CLE courses do not have to petition for credit. Members teaching other courses must describe the course materials, the audience, the outline of the presentation, and the nature of the preparation required of the member.

(B) Publications

Members seeking credit for published legal articles or texts shall submit the publications.

(C) Course credit

Members seeking credit for courses or material whose sponsors have not applied for approval shall submit the information required in (5).

(7) Approval and appeal.

The Director shall respond in writing to a completed application or petition within 30 days of receipt. If the application or petition is denied, the Director shall state the reasons for denial. An aggrieved member or sponsor may appeal the Director's decision to the Committee within 15 days of receipt. Appeals to the Committee shall be conducted under procedures adopted by the Committee; appeals from the Committee may be taken to the Board.

(c) Standards for approval by Committee

(1) The activity must be of intellectual or practical content and where possible included a professional responsibility component.

(2) The activity must contribute directly to members' professional competence or skills, or to their education about their professional or ethical obligations.

(3) Course leaders or lecturers must have the necessary practical or academic skills to conduct the activity effectively.

(4) Each course participant in the activity must be provided with appropriate and thorough course materials which will assist the participant in learning the materials and integrating it into his or her practice.

(5) Courses must be conducted

Continued on page 19

Clarence Darrow -- In the wrong?

By Les Gara

Recently our firm put up photographs of great lawyers, like Clarence Darrow, William Jennings Bryan, Gandhi and others. This gave me the opportunity to vent on something that has bugged me for years. Darrow and Bryan faced off against each other in the famous "Scopes Monkey Trial". My gripe has been that we are taught to remember Clarence Darrow as the clear-cut hero in this trial. He did champion our right to learn evolution in public school. However, portrayals of Bryan have been less than fair. He was a populist and passionately championed poor and working peoples' causes at the turn of the century. Yet he has been portrayed in our books and movies as a sort of know-nothing Bible-thumper because of his role in this case. The truth is that his opposition to the teaching of evolution was motivated in large part by his knowledge that people at the time of the 1925 trial were misusing evolutionary theory to justify claims that white people and the wealthy were superior to non-whites and the poor. The book John Scopes taught from said just this.

Under the guise of bringing life to the new photographs in our office, I propagandized by writing an office memo on the Scopes trial. It's fair to say that no one really liked the memo too much, with perhaps one exception. One of my partners said something like, "That's the type of stuff I'd expect out of the *Bar Rag*." I'd like to interpret this comment as a compliment and a cry that I publish my work. So, here is an office memo I have spent 10 minutes editing for publication in the *Bar Rag*. It addresses some socially significant and insignificant parts of the great 1925 trial that haven't made their way into the movies or popular textbooks.

It was the most widely watched trial in the world to date. Press packed the small town Tennessee courtroom, and the case made world headlines daily.

EVOLUTION: GOOD SCIENCE OR RACIST RATIONALIZATION?

The well-known part of the Scopes trial was the argument over whether a Tennessee public school teacher should be allowed to teach from an evolution textbook. It was the most widely watched trial in the world to date. Press packed the small town Tennessee courtroom, and the case made world headlines daily.

Tennessee law made it a crime to teach anything but biblical creationism in science class. Darrow, the civil liberties champion of his day, defended Scopes' right to teach from his evolution textbook. Bryan was by many accounts a great man himself, had run for president as a member of the Populist Party in 1896. At the turn of the century he demanded workplace and other progressive legislation aimed at treating working people more humanely. Many of his proposals found their way into New Deal and Great Society legislation decades later. Bryan was hired by the State of Tennessee to prosecute Scopes.

By the 1920's many had begun to mis-use evolutionary theory to argue that just as monkeys evolved from lower life forms, rich people and white people deserved their more privileged social status because they were genetically superior to poor people and non-whites. Nazis in Germany and hate groups elsewhere espoused this theory of Social Darwinism. And it cannot be said that Darwin was wholly irresponsible for this use of his scientific theory. For example, he criticized government for spending money on the poor in his book on evolution, *The Descent of Man*. In his view, it kept humans with inferior genes alive, and allowed them to propagate when survival of the fittest should have resulted in the end of their gene line.

The book Scopes tried to teach from, and that Bryan tried to keep from being used, included noxious rantings as well. It was titled *Civic Biology*. That textbook dangerously claimed "Caucasians" were the "highest type of all" humans. It suggested certain of what the book considered lower forms of humans, like those in poor asylums and jails, should not be allowed to reproduce so their supposedly inferior genes would disappear. He wrote that we needed to separate or abolish this "low and degenerate race" and that "remedies of this sort have been tried successfully in Europe. . . ."

The popular rendition of the Scopes Monkey Trial leaves out the fact that this sort of elitism and racism offended Bryan. By stipulation, the parties waived their right to present closing arguments. But Bryan's proposed closing has been preserved. In it he quoted Darwin's criticism of "the poor laws" and other social protections that he thought led to the preservation of "weak" people. He quoted Darwin's statement that our empathy causes us to "bear the undoubtedly bad effects of the weak surviving and propagating their kind."

After citing these and similar passages from Darwin, Bryan decried: "All of the sympathetic activities of civilized society are condemned because they 'enable the weak members to propagate their kind.'" It was these racist and elitist uses of evolution as a social theory that led him to conclude: "Could any doctrine be more destructive of civilization?" Bryan wasn't the simple-minded religious zealot our popular culture, and a major Hollywood movie "Inherit the Wind", made him out to be. It is true he also believed in creationism, but his beliefs were passionately motivated.

Ultimately, Darrow and Scopes lost. The jury verdict was a given. The jury was asked to determine whether Scopes taught something other than creationism, which he did. That was a crime, and he was convicted.

JUDGE RAULSTON: NOT A BRIGHT LIGHT

Darrow's only chance to win was to file a motion arguing the Tennessee law outlawing evolution from the schools was unconstitutional. He expected to lose at the trial court, and hoped to take this issue to the Supreme Court. Darrow filed a motion which laid the groundwork for some fairly humorous moments at trial. With Don Knotts as the judge, "Inherit the Wind" could have been a much funnier movie.

THE PRESS LEAK:

When Darrow filed his motion in court to declare the Tennessee law unconstitutional, the world was watching. Judge Raulston said he would consider it seriously and announce his decision to the public the next day. The press wanted to report it as soon as possible. Early the next morning, before the Judge's clerk had typed his order, and before the order was announced, the newspapers had announced the judge had denied Darrow's motion. The Judge launched an investigation to find out what member of the press corps stole his opinion from his clerk before he could announce it in open court.

This is what the investigator found. He reported to the judge that he found the reporter who leaked the order. The investigator then told the judge how the reporter got the information, and that there had been no improper conduct. This is how it happened.

The reporter had seen the judge walking home the night before the decision was announced. The reporter knew if the motion was granted, the case would be dismissed and there would be no trial the next day. If it was denied, trial would continue. So the reporter asked the judge when trial would resume the next day. Judge Raulston said it would resume at noon. Hearing this, the reporter sent out a news wire that Raulston had denied the motion. That's how the world learned of Raulston's opinion before he had a chance to announce it.

The judge became enraged. He thought the reporter was pretty sneaky for asking a question that caused Raulston to inadvertently leak his own opinion. So he entered an order the next day literally forbidding the press from outsmarting him again. The trial transcript shows Judge Raulston decreed: "I do not believe any pressman has a right to ask the court a question except for direct information which the question indicates he wants."

DARROW'S SANCTIONS:

Later Darrow stung the Judge with a comment many of us, at some frustrating moment, wish we had the guts to make. Darrow knew he was going to lose, and told the judge the deck was stacked against him. And the trial transcript made clear the deck was stacked. Morning prayer began the trial day, and Judge Raulston seemed to have little sympathy for Darrow's separation of church and state views. So Darrow advised the Court in effect that all he wanted to do was create a record for appeal. In doing so he suggested in a thinly veiled criticism that he could not trust the judge to grant a fair hearing.

To this, Judge Raulston said: "I hope you do not mean to reflect upon the court."

Darrow responded: "Well, your honor has the right to hope."

Ouch.

Hopefully you will take away two lessons from this article. One, William Jennings Bryan was not a bad guy. And two, there are journals that will publish almost anything - even an office memo. So, dust off your last office memo - on any subject. You, too, can become a published journal author.

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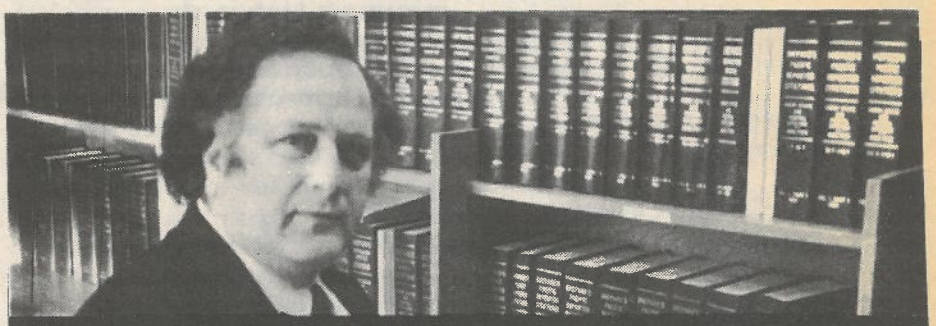

Need help? Call Joe Sonneman at

Alaska Legal Research 463-2624

FAX 463-3055 senator@ptialaska.net

GOOD NEWS FROM JUST RESOLUTIONS

Justin's April 30th hip surgery appears to have been successful. Recovering at JR South, Kingston, WA. Thanks for all the kind thoughts and get well wishes. We'll be back in Anchorage on July 5th.

ESTATE PLANNING CORNER

The predeceased-parent exception

☐ Steven T. O'Hara

The Taxpayer Relief Act of 1997 broadened the so-called predeceased-parent exception under the generation-skipping transfer ("GST") tax. (For a primer on the GST tax, see O'Hara, *Working In A World With The GST Tax, 137 Trusts & Estates 47 (1998).)*

Recall that the basic concept of the GST tax is that whenever a gift, bequest, devise, inheritance or even a change in trust beneficiary occurs and a generation is skipped, a flat 55 percent GST tax could be owed *in addition* to any gift or estate tax paid when the property was initially transferred.

Recall further that there are three types of transfers subject to GST tax. First, there is the direct skip. This is a transfer subject to gift or estate tax by an individual to another two or more generations younger (IRC Sec. 2612(c)(1)). The transferee, the individual two or more generations younger than the transferor, is known as a "skip person." A trust may also be considered a skip person if, in general, all interests in the trust are held by skip persons (IRC Sec. 2613(a)). The most common example of a direct skip is an outright gift by a grandparent to a grandchild.

The second type of transfer is the taxable distribution (IRC Sec. 2612(b)). This transfer is made by way of a trust to a skip person—that is, to a beneficiary two or more generations younger than the person who contributed the property to the trust. In general, the portions of a trust attributable to contributions from different individuals are considered separate trusts for purposes of the GST tax (Treas. Reg. Sec. 26.2654-1(a)(2)).

For example, suppose a grandparent creates and funds an irrevocable trust that includes her children and grandchildren as beneficiaries. (If her children were not also beneficiaries, then the trust would be considered a skip person and its funding by grandparent a direct skip (IRC Sec. 2612(c)(1) and 2613(a)(2)). Suppose the trust then begins paying a grandchild's rent. Here the rent payments would be considered taxable distributions for purposes of the GST tax.

The third type of transfer is the taxable termination (IRC Sec. 2612(a).) This transfer is deemed to occur when a trust interest terminates and thereafter only skip persons are beneficiaries. Using the same example as above, suppose grandparent's last-surviving child dies, leaving only grandchildren as beneficiaries of the trust. This event would be considered a taxable termination for purposes of the GST tax.

If an individual's parent has died, an exception to the generation-assignment rules under the GST tax may be available where the parties are related by blood, adoption or marriage. This exception provides that if a transfer is made to (or in trust for the benefit of) an individual two or more generations younger than the transferor, and if the individual's parent is deceased at the time of the transfer (or the creation of the beneficial interest), then the individual will generally be considered only one generation below the transferor (IRC Sec. 2651(e)(1)).

For example, suppose a grandparent gives a grandchild $25,000 and the grandchild's parent, who is the child of the grandparent, is then deceased. Here the grandchild would be bumped up into her parent's generation for GST tax purposes, and the transfer would not be considered a direct skip.

Under new law, the predeceased-parent exception can also apply in the case of a taxable distribution or termination occurring after December 31, 1997 (Id. and Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Sec. 511(a) and (c)). For example, suppose the grandparent in the above example creates and funds an irrevocable trust that includes her children and grandchildren as beneficiaries. Suppose the trust then makes a distribution to the grandchild whose parent was deceased at the time the trust was created. Here the distribution would appear not to be a taxable distribution.

Suppose further that the grandparent's last-surviving child dies, leaving only grandchildren as beneficiaries of the trust. Here this event would appear not to be a taxable termination because of the continuing beneficial interest of the grandchild whose parent was deceased at the time the trust was created.

As mentioned, the predeceased-parent exception will apply, if at all, only where the parties are related by blood, adoption or marriage. The individual who would otherwise be considered a skip person must be a descendant of a parent of (1) the transferor or (2) the transferor's spouse or former spouse. Besides a grandchild, a grandniece or grandnephew is a good example. An additional limitation is the exception will apply to a transfer to or in trust for the benefit of a collateral relative (e.g., a grandniece or grandnephew) only where the transferor has no lineal descendant living at the time of the transfer (IRC Sec. 2651(e)(2)).

In drafting wills and trusts, consideration should be given to providing in the instrument that any beneficiary who dies within 90 days after the transferor's death (other than the transferor's spouse) shall be deemed to have predeceased the transferor. Under the current GST tax regulations, if a child dies up to 90 days after her parent's death, the child's children will be bumped up to the child's generation for direct skips if either the governing instrument or applicable law provides that the child is treated as predeceasing her parent (Treas. Reg. Sec. 26.2612-1(a)(2)(i)). Since the predeceased-parent exception can also apply to taxable distributions and terminations occurring after December 31, 1997, the GST tax regulations will presumably be amended to extend this 90-day rule to situations involving potential taxable distributions and terminations.

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Board to vote on Mandatory CLE Rule

Continued from page 17

in a suitable setting conducive to a good educational experience.

Comments: (a) The committee believes that continuing legal education comes in many forms and that credit should not be restricted to classroom programs. Recognition of alternate educational activities is especially important where members are geographically spread out and where live courses are not available in every location. The committee has included credit for studying audio or videotapes or technology-delivered approved CLE courses without requiring supervision or testing. The committee believes that monitoring mechanisms would unduly restrict use of tapes and should not be imposed unless abuses occur. Sponsors are encouraged to apply for course approval and members are encouraged to petition for credit approval in advance for the course or activity. However, seeking credit after the course or activity is permissible.

(b) This language paraphrases Section 7 of the ABA Model Rule, removing some specific restrictions, like writing surfaces, or available live faculty during video courses.

Regulation 3: Number of hours approved

Credit hours will be given for approved CLE activities as follows:

(a) Courses: One credit hour per 60 minutes of in classroom instruction, not including breaks, meals, or time spent reading materials. One credit hour per 60 minutes of audio or videotape or technology-delivered CLE of an approved course. Credit hours for computer-based materials as determined when approved.

(b) Teaching: One credit hour per hour of instruction or preparation for
instruction up to a maximum of the total approved credit hours for the course.

*Comments: Present Bar practice is to give course credit to members teaching
or preparing materials for a course.*

(c) Legal publications: Up to 15 credit hours for law review articles, texts or specialized professional journals.

(d) Carry-forward: A member may carry up to 12 excess credit hours forward to the next reporting period.

Regulation 4: Section Meetings

All substantive section meetings shall be teleconferenced at no cost to any Association member who requests it.

Comments: The intent is to cut costs and increase availability to all members.

Attorney Discipline Summaries

Robert A. Breeze disbarred

The Alaska Supreme Court disbarred Robert A. Breeze (ABA Membership No. 7402004) from the practice of law, effective April 6, 1998, for knowingly misapplying funds that had been entrusted to him as a fiduciary.

On January 3, 1995, Breeze entered a plea of no contest to criminal charges arising out of the misapplication of a client's funds, reserving certain appeal issues. Breeze intentionally withdrew $25,000 from a client trust account and had the monies deposited into his law firm's general account. He then wrote a check on the law firm's general account in the amount of $25,000 for a personal expenditure. He was convicted upon his plea and the court's finding of guilty to one count of the misapplication of property in violation of AS 11.46.620, a felony.

On March 15, 1995, the Alaska Supreme Court entered an order of interim suspension immediately suspending Breeze from the practice of law pending a final determination of appropriate discipline as a result of his conviction. Final sanctions proceedings could not proceed without Breeze's request until all appeals had been completed on February 27, 1997. Upon conclusion of the appeals, an Area Hearing Committee was convened to conduct a sanctions hearing. The Hearing Committee and later the Disciplinary Board recommended that Breeze be disbarred.

Breeze violated his professional ethical obligations by knowingly misapplying funds that had been entrusted to him as a fiduciary, by failing to safekeep a client's money and keep it separate from his own, by failing to provide a full accounting of the client's funds upon his client's request, and by engaging in illegal conduct involving dishonesty, fraud, deceit, or misrepresentation.

The public file is available for inspection at the Bar Association office in Anchorage.

Written private admonition issued for unauthorized removal of disputed funds

Bar Counsel issued a written private admonition to Attorney X for removing funds involved in a fee dispute from a client trust account to the attorney's general account without resolution of the dispute or notice to the client.

Attorney X asserted an attorney's lien on $10,000 due to the client under a settlement. Attorney X did not provide notice to the client of the assertion of the lien. Attorney X later informed the client in writing that the settlement check had arrived and had been applied to the fee balance pursuant to an attorney's lien.

Attorney X later determined that the fee was in dispute. Attorney X withdrew the $10,000 from attorney's personal account and placed it back in attorney's trust account pending resolution of the fee dispute. The billing statements did not reflect this transfer.

Attorney X made two unsuccessful attempts to notify the client by certified mail of the client's right to arbitrate. Approximately three months later Attorney X withdrew the $10,000 from the trust account without the client's consent and without notice to the client. After several months the client requested a fee arbitration proceeding.

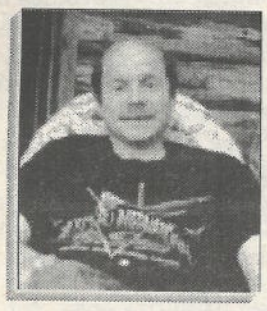
A fee arbitration panel upheld the fee, but referred the matter to Bar Counsel on the issue of whether the fee was collected in an improper manner.

The general rule is that if the fee or part of it is in dispute, it should not be removed from the trust account until resolution of the dispute. Attorney X erred by failing to account to the client for the deposit and withdrawal of trust funds, and by withdrawing funds that the client disputed were properly earned without resolution of that dispute.

TALES FROM THE INTERIOR

Russian adventure

☐ William Satterberg



It was mid-January. True to form, the Alaska winters were cold. Daylight was still a thing of the past, and spring was but a future fantasy. Then the call came.

"Bill," my good friend David said, "it's time *for us to go to Russia."*

I was no longer a rookie for Russian trips. I had been to Moscow over a half dozen times; even some of the bartenders there remembered me. I was also savvy enough to know that Moscow was not a place to visit in the dead of winter. Even Napoleon and Hitler had both figured that out.

"Dave," I responded, "Why would I want to go to Russia in the dead of winter?"

"Because," he answered, "we' re going to Southern Russia. Actually, we're going to Southern/Eastern Russia. A town called Khabarovsk which is just north of the Chinese border."

"Why "Khabarovsk?" I queried. I've never been able to pronounce that place, regardless, although it is easier to spell. Why me? Did I do something wrong?"

Dave explained that the purpose of the trip was to promote Alaskan businesses. As such, my experience with Russian business ethics and commercial practices (or the lack thereof) would be a tremendous benefit. We were to fly over on Alaska Airlines out of Anchorage, returning on a direct air cargo flight riding in the hump of a Boeing 747-400 air freighter. In fact, one of the best-kept secrets of the traveling world is that the 747 air cargo freighters have luxurious accommodations in the hump, consisting not only of first class seating, but bedrooms as well. The meals are tremendous. And there is no door to the cockpit. It was the ideal trip.

Having never been to South/Eastern Russia, I figured it would be a good chance to continue to familiarize myself with this massive nation which covers 11 time zones. I quickly accepted Dave's offer. In less than one week, we were off to the Siberian subcontinent

The night preceding our departure, I met with European representatives of the cargo airline to coordinate our excursion. After offering them generous amounts of libations, I turned them loose with my snowmachines which they promptly proceeded to customize. The next day, complete with generous hangovers, we boarded the jet for the short trip to Anchorage and our departure to Russia.

Not to be outdone, Alaska Airlines did its best to emphasize the fact that everything in Russia is predicated on delay, except the Moscow Metro. We predictably "pushed back" one hour late, after racing full speed through the terminal to reach the gate on time. After boarding the aircraft, we then sat on the ground for another hour waiting for Russian air traffic clearances.

As luck would have it, our initial point of landing, Petropavlovsk-Kamchatski, was having predictably unpredictable weather problems. Rather than run out of fuel, Alaska Airlines wisely decided to stop midway and refuel. The attendants explained that contrary to most American destinations, the airports in Russia are often up to four hours apart in the Far East. It is critical that the aircraft have ample fuel (for obvious reasons). I chose not to debate the point.

Three hours after departure, we would land at an arctic outpost known as Anadyr. A former military base, Anadyr could accommodate our landing and refueling needs.

After some more delay, we departed for the Russian Far East. Following some heavy on-board celebration, we landed in Anadyr. The turnaround was not to be quick, however. Instead, we sat on the ground in forty below weather for approximately three hours while the Alaska Airlines crew negotiated a renegade fuel deal to get us to the next destination.

And it was at Anadyr that the fun and excitement of the trip wore thin. The vodka bottles had long been emptied, and our collective hangovers had returned with vengeance. That was not the major problem, however.

The problem, which is little known in America any more, is that the average Russian loves to smoke American cigarettes. In fact, it appears that all Russians may be required to smoke as part of their existence. Many Russians are chain smokers, and the rest try to be part of America's growing foreign aid program, courtesy of *Philip Morris, et al.*

Unfortunately, the Russian philosophy of chain smoking clashed with Alaska Airlines' intractable "no smoking" policy. Had there been a terminal in Anadyr, that policy would not have been a problem, either. But we were doomed to sit on the tarmac.

The guards outside the aircraft mandated that no one was to depart the aircraft without a specific clearance. Smoking on the ramp was strictly forbidden. Something stupid about refueling. Still, those were the rules and people are supposed to follow the rules. So everyone just decided to argue, instead, with anyone in sight, except the lucky ones who had locked themselves into the smoke-filled lavatories. At least the time passed quickly. I was in my element.

Following refueling, we departed Anadyr, bouncing and beating our way down the fractured concrete-pad runway. We were all unmercifully slammed to and fro in our seats before the jet finally clamored into the air. The takeoff was a missionary's delight. The opportunities for religious conversion on the takeoff alone more than made up for the sins of the previous six hours.

Our next scheduled stop was Petropavlovsk-Kamchatski, where over half of the airplane would deplane. Finally on our way again, I inwardly breathed a sigh of relief in expectation of the relaxation to come. Perhaps I could breathe again. After all, the cigarette smoke in the cabin was becoming intolerable.

Several hours passed. Figuring that we should have landed, I concluded that my mental clock was off. Eventually, I asked the flight's onboard special loadmaster (a/k/a bouncer) when we would begin our descent to Petropavlovsk-Kamchatski and fresh air. Recognizing I was an American, he confided in me that we had overflown the destination more than an hour ago.

After what seemed like an eternity, we landed in Khabarovsk. I ignored the other passengers, who were struggling desperately with each other over the few scattered cigarettes on the ramp that someone had carelessly dropped, and anxiously looked around for my welcoming committee.

Eventually, my hosts found me struggling under a pile of angry flight attendants. I was impressed. The committee consisted of a group of Russian businessmen who all wore leather topcoats and appeared to care very little for such niceties as clearing customs, police guards or the like.

Following the obligatory handshakes and customary pat-downs, I was told that it was time to go to our first meeting. When I pointed out that we had yet to clear customs, I was simply told, "No problem." My bags, as well, would be "No problem" and would be safely at my room when we arrived. I bid farewell to my precious guitar, a week's change of underwear, and the critical supply of soft American toilet paper. Our group then strode past the guards, one of whom even seemed to salute when our entourage passed. I reasoned that I was with the "good hands people." Obviously, no criminal would dare steal my luggage. They already had it.

Following the preliminary meeting with our new associates, we went to the hotel for dinner. The main course was a distilled derivative of the Russian potato. The evening was brought to a close with yours truly playing guitar in the hotel's nightclub, belting out the all time country favorite, "Up Against the Wall You Redneck Mother." Given some encouragement, the Russian audience loudly joined in with me on the rousing chorus. After we were thrown out of the club, it was gently explained to me that my music repertoire was somewhat politically incorrect, even in Khabarovsk. Not that I really cared at the time. I was beyond feeling any pain.

The next day, David and I stayed in our rooms awaiting news of the sensitive negotiations which were taking place. It was a large deal. We were told by the client that our Russian business associates felt that, as important "American Counterparts," our presence was not necessary during the early negotiations. We were only required at the actual closing of the transaction. The drill was a familiar one. We were to be the "Mr. Big," whose influence was best appreciated outside of the boardrooms. Either that, or I had so thoroughly embarrassed both my European and Russian hosts the previous evening that I was conveniently left out of the negotiations. Given the choice, I preferred to think of myself as Mr. Big. Certainly, my head felt that way.

At 5:00 p.m., two thuggish-looking gentlemen in leather jackets and watch caps knocked on the door. In broken English, they brusquely announced "We go. Not official." That clearly was the signal for David to take his briefcase and me to leave my guitar. After all, we were supposed to be at the meeting, weren't we? According to our European hosts, our presence would eventually be required at the airport for the signing ceremony.

We boarded a van with our two new-found escorts. Inside the van, two other sullen types occupied the driver's and front passenger's seats. David and I were ordered into the third seat in the rear. The side door slammed shut and the van lurched into motion, rattling down the potholed street. There was little conversation, Russian or otherwise.

In expectation of the formalities which would take place at the airport, David and I had previously rehearsed proper protocol and behavior for such an important and prestigious event. As with the overflight of Petropavlovsk-Kamchatski, time once again passed slowly. I checked my watch. After 20 minutes, I remarked to David that the airport was to the east. By my calculations we should have arrived in 10 minutes, even with traffic and a headwind. I then realized that we were driving into the sunset. Even in Russia, an eastern bloc country, the sun still sets in the west. I nervously looked around. There were no signs of any airport in the area. In fact, the entire city of Khabarovsk appeared to have vanished. Instead, we were now careening down a narrow country road, otherwise known as a Russian highway. I was nervous, almost to the point of panic. This was not the time to forget the American toilet paper.

Perhaps sensing my mood, one of our surly Russian "hosts" turned around and barked "Piva!" "Piva" is one of the few Russian words I know. It is the Russian equivalent for Budweiser, Miller, Coors, or any other alcoholic beer-type beverage.

Summoning up my courage, I flexed my muscles and gruffly squeaked ("Dah". "Dah," when used in that context, is the Russian equivalent for, "Give me anything alcoholic.")

We pulled over to the side of the road. Our host ran into a small house, soon emerging with six one-liter bottles of Russian beer. The caps were pried off with a large knife and the bottles distributed to all, including the driver. The journey resumed. Following orders, everyone drank silently as we continued our drive away from Khabarovsk and into the sunset.

I began to have concerns for our European hosts. We hadn't seen them all day. We previously had been told that certain serious disputes had arisen between the Russians and the Europeans which hopefully would be resolved in the negotiations. "How serious?," I wondered. Had there been a final solution? Just then, a car caught up with us, and then dropped back to pace our van, choosing not to pass despite the clear opportunity. It was beginning to look like something out of a B-grade movie.

David, as well, was now becoming agitated. "Where do you think we're going?," he asked. I told him I didn't know. But it was a good question, so I tried another one of my Russian

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TALES FROM THE INTERIOR

Continued from page 20

words on our morose audience. "Guh-Day?" I inquired, using the Russian word for "where?" The response was quick, "Good day to you, too."

I asked again, stressing the syllables differently, after remembering that every Russian word always had the stress on the wrong syllable. My second attempt was apparently understood. The response again was quick. "China." A chill ran through me.

It then dawned on me that China was, in fact, less than thirty miles from Khabarovsk. We had been heading in that direction all along. Our journey had to be nearing an end.

I translated for Dave. "China." Dave gave me an exasperated look. Even he couldn't understand that much Russian, he later told me. "Isn't that where the Russian/Chinese border war broke out a few years ago?," he asked. "Ten thousand people were killed there."

I agreed. Obviously, this was not a guided tour. In scarcely minutes, the scenery had become even more foreboding. A full winter moon now illuminated the harsh, barren landscape. It was 40 degrees below zero. I had lost all my bearings, and was on the verge of losing my marbles. This trip was making my first Aeroflot trip to Moscow look like kid's play.

By then, David and I had reached the same conclusion. Without doubt, our European hosts had really upset their Russian counterparts this time. The same people who had so effortlessly cleared us through customs were now going to give us a special goodbye party deep in the middle of nowhere. Our frozen carcasses wouldn't be found until spring, that is if the tigers didn't scavenge us first.

I pondered my fate.

Should I whack the guy in front of me with my beer bottle now? Or should I wait until they all drew out their Makarov pistols and the opportunity was lost? Better now than never, I concluded. I hefted the heavy bottle in my hand and gripped the neck, awaiting an opportune moment. With any luck, I calculated that I could take out at least one of them and maybe two in true James Bond style before the others even knew what happened. Hopefully, David could take the hint and follow suit. Since David was bigger than I, I also figured that he could absorb most of the bullets.

My fears were propelled to virtual terror when the car suddenly turned off the main road onto a rugged dirt path. I began to regret all the billable hours which I would miss. The end would shortly be upon us. If so, would the courts grant continuances in my cases? I dreamed of being found in contempt for having been killed. I would never live it down...

We turned into another road. Escape in this harsh, bitterly cold region would be futile, but it was the only choice. The car suddenly jerked to a halt. Engrossed in mentally saying my last prayers, I raised my bowed head to take a last quick look around, fully expecting to stare down the muzzle of an automatic pistol.

To my surprise, we had stopped outside of an extremely well lit, large ornate dacha. The cedar lodge was truly magnificent! White marble stairs graced a main glassed entrance, safely protected by a manned guard shack. Two very congenial Russians in traditional garb were standing on the porch with their arms graciously outstretched in the symbolic Russian bear hug, warmly beckoning us to come in from the bitter cold. The other occupants of our van were now beaming with smiles, shaking hands, and talking excitedly to all around.

I hastily reconsidered my plans. This clearly was not the time to bash the guy in front of me over the head with a beer bottle. That could wait until later. I sheepishly smiled and flicked the bottle discreetly into a snow bank. From the corner of my eye, I saw that Dave followed suit, apparently having deciphered my plan as well sometime during the trip.

We entered the dacha as most honored guests and had another feast in true Russian style. This second evening in Khaborovsk came complete with a traditional wood-fired sauna, boisterous singing, arm-wrestling in the kitchen with the cook, and endless vodka toasts extolling the virtues of everything from business to Russian women to Hillary Clinton. When David and I were finally asked to contribute to the entertainment, David pulled out his briefcase. I announced that I had forgotten my guitar. Not to worry. Once again, "No Problem." The dacha had satellite T.V. As the evening closed, the entire Russian crowd amused itself watching Mighty Mouse cartoons on big screen American T.V.

As for myself, I never knew Mighty Mouse could be such a welcome sight.

Joy in the practice of law?

Joy in the practice of Law? will be the theme of the International Alliance of Holistic Lawyers this year.

Funny that this question even exists. Are we sure that we want it to rest that to be a lawyer must infer a joyless existence?

After seemingly opening a Pandora's Box, the organization has decided to start off the conference with this debate. It will be followed by programs focusing on practical ways to discover Joy in the profession both in the courts and the community, several forums for sharing, a performance by a comedic theatrical company instructed to help us laugh at ourselves, a laughter workshop, and a dinner/dance celebration. Spouses and partners are not only encouraged to participate throughout, but the IAHL has found that their insight is especially valuable.

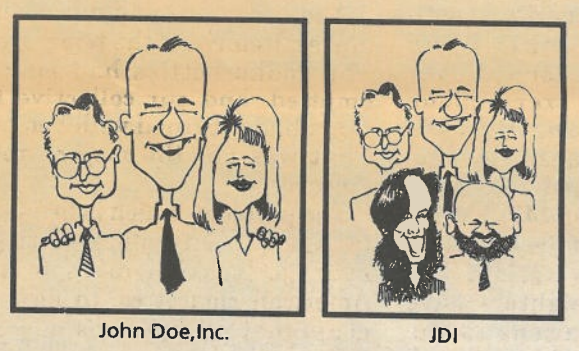
The 1998 Annual Conference will be held in Vancouver, British Columbia, Canada, November 12 - 15, 1998 as "How to Find Joy in the Practice of Law."

For more information please contact the International Alliance of Holistic Lawyers; P.O. Box 753; Middlebury, Vermont 05753; USA. (802) 388-7478; FAX: (802) 388-4079; E-Mail: Lawyer@Holistic.com.


John Doe John Doe & Associates

No matter what size your business is, or where you want to be in the future,

you'll have a lot more time and energy to manage your business


John Doe,Inc. JDI

when you have a landlord who's an expert at theirs.


JDI Worldwide Network John Doe, Consultant

We Make Life Easier

Over the past twenty years, Carr Gottstein Properties have become property management experts. To make our tenant's lives easier, we've developed a full line of services including a complete tenant improvement department to take remodeling hassles off of your shoulders and on-site maintenance to keep our buildings looking and operating at their best.

Whether You Need One Office...

If you are in sole practice, or part of a small firm, Carr Gottstein's new concept, Pacific Office Center, may be a fantastic solution to your office needs. Pacific Office Center is located on the second floor of the Carr Gottstein Building and offers complete support services to its clients - including spacious offices, receptionist and phone answering, conference rooms, state-of-the art office equipment and additional clerical and secretarial staff - all in a beautifully appointed facility and at a fraction of what the services would cost on an individual basis.

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No matter what size of office suite you need, if you have a lease that's coming up for renewal in the near future, we'd like a chance to make you an offer. We can provide many advantages that you're probably not getting now. Advantages like competitive lease rates and generous tenant improvement allowances, "heart of the city" convenience, and on-site gym, and excellent maintenance record and turn-key construction management services. So if you're considering a move, make sure you talk to us first! We specialize in solutions.

for more information call **Gail Bogle-Munson** or **Bob Martin**
Carr Gottstein Properties 564-2424

First week of May proclaimed Jury Appreciation Week

Governor pays tribute to juries

By Peter Gruenstein

Governor Tony Knowles has proclaimed the first week of May to be Jury Appreciation Week, and that designation provides an appropriate opportunity to consider why we, as a democratic society, go to the considerable cost and trouble of compelling busy citizens to disrupt their lives (for almost no compensation) in order to decide conflicts in which they have no personal interest.

In reciting the litany of fundamental rights we Americans too often take for granted—speech, religion, the press, voting and equal protection—the right to a trial by jury is often overlooked. But as James Madison wrote in 1789: "Trial by jury in civil cases is as essential to secure the liberty of the people as any one of the preexistent rights of nature." More recently, U.S. Supreme Court Chief Justice Rehnquist has called the preservation of jury trials "an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary."

There is something very reassuring, and significant, about a society that entrusts ordinary citizens—chosen more or less randomly—with making some of its most important decisions. And few, if any, societies on earth rely on their citizenry more than ours to resolve both criminal and civil disputes.

Jury service is a unique personal experience: Individuals are asked to make decisions that have profound impact on the lives of others with scrupulous integrity, without hope or fear of personal benefit or loss. No act of citizenship is more selfless.

It is the almost universal experience of those members of the legal profession who spend a significant portion of their lives in windowless courtrooms that jurors almost always fulfill their responsibilities with extraordinary care and diligence. Just as gratifying, although perhaps more surprising, is the common experience of jurors: With few exceptions, they are ennobled by the experience and impressed by the quality of the professional participants—the judges and, yes, even the lawyers.

This is particularly so in Alaska. Our constitutional founders crafted for us a judicial system that emphasizes merit and minimizes political influence in the selection of our judges. It is a judicial system that, since statehood, has been remarkably free of scandal and widely praised for its quality. It has become the envy of—and a model for—other American jurisdictions.

And I'll let you in on a little professional secret: Most of us lawyers are proud of our judicial system and of our profession—the O.J. Simpson case and lawyer jokes notwithstanding. We know that the vast majority of attorneys follow a strict code of ethics, and that we can count on the vast majority of our colleagues to play by the rules, judges to conscientiously interpret the law, and juries to apply the law to the facts without bias or passion.

As the late Supreme Court Justice William 0. Douglas wrote: "A jury reflects the attitudes and mores of the community from which it is drawn. It lives only for the day and does justice according to its lights... It is the one governmental agency that has no ambition... It takes the sharp edges off a law and uses conscience to ameliorate a hardship. Since it is of and from the community, it gives the law an acceptance which verdicts of judges could not do."

The Governor is right to pay tribute to those Alaskans who perform this special act of citizenship. Jury service is a sacrifice that should never be taken for granted. And neither should the right to trial by jury.

Peter Gruenstein, is President of the Alaska Chapter of the American Board of Trial Advocates (ABOTA), an organization of both plaintiff and defense lawyers that promotes the jury trial system.

Alaska Bar Association Announcing the Formation of a New Section! Corporate Counsel Section

This section will meet on Wednesday, June 10 for an organizational meeting at 12 noon at the Bar office, 510 L St., Ste. 602. The section is geared toward the issues of lawyers employed in business corporations.

For more information, call Peter Giannini, Interim Chair, 907-261-0313/e-mail: giannini@chugach-ak.com

ALASKA BAR ASSOCIATION 1998 CLE CALENDAR

(NV) denotes No Video

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#36 May 22 1.5 CLE Credits Afternoon	Off the Record in Fairbanks	Fairbanks Westmark Hotel	TVBA	
#37 May 29 1.5 CLE Credits Morning	Off the Record with the Supreme Court in Fairbanks	Fairbanks Westmark Hotel	TVBA	
#15 June 4 3.0 CLE Credits Half Day	ALPS Trust Accounts	Anchorage Hotel Captain Cook	ALPS	
#16 June 4 3.0 CLE Credits Half Day	ALPS Risk Management	Anchorage Hotel Captain Cook	ALPS	
#34 July 15 2.0 CLE Credits Afternoon	Off the Record with the 9th Circuit	Anchorage Museum of History & Art	US District Court	
#07B September 11 CLEs tba Half Day (p.m.)	Professional Responsibility in Cooperation with ALPS	Juneau Centennial Hall	ALPS	
#88 September 11 3.0 CLEs Half Day (a.m.)	Mandatory Ethics: Professionalism in Alaska (NV)	Juneau Centennial Hall		
#88 September 14 3.0 CLEs Half Day (a.m.)	Mandatory Ethics: Professionalism in Alaska	Anchorage Hotel Captain Cook		
#07A September 14 CLEs tba Half- Day (p.m.)	Professional Responsibility in Cooperation with ALPS	Anchorage Hotel Captain Cook	ALPS	
#88 September 18 3.0 CLEs Half Day (a.m.)	Mandatory Ethics: Professionalism in Alaska	Fairbanks Regency Hotel		
# 07C September 18 CLEs tba Half Day (p.m.)	Professional Responsibility in Cooperation with ALPS	Fairbanks Regency Hotel	ALPS	
#27 September 23 CLEs tba Full Day	Deposition Skills & Strategies	Anchorage Hotel Captain Cook		
#20 October 1 CLEs tba Half Day (a.m.)	1998 Probate in Alaska	Anchorage Hotel Captain Cook		Estate Planning & Probate
#05 October 14 CLEs tba Full Day	11th Annual Alaska Native Law Conference	Anchorage Hilton Hotel		Alaska Native Law
#30 October 22 CLEs tba Half Day	Evidence	Anchorage Hotel Captain Cook		
#29 November 5 CLEs tba Half Day	Real Estate Issues	Anchorage Hotel Captain Cook		Real Estate Law
#28 November 19 CLEs tba Full Day	1998 Nonprofit Seminar	Anchorage Hotel Captain Cook		
#06 December 4 CLEs tba Morning	Off the Record -- Anchorage (NV)	Anchorage Hotel Captain Cook		

10 organizations pursue IOLTA funds for 1998-99

Mary Hughes

The Alaska Bar Foundation received 10 applications for 1998-99 IOLTA grants. The applicants are: Alaska Pro Bono Program; North Star Youth Court; CASAs for Children; Alaska Women's Resource Center; Kodiak Teen Court; Community Dispute Resolution Center; Alaska Legal Services Corporation; Catholic Social Services; Kenai Peninsula Youth Court; and the Alaska Mock Trial Team. A total funding of $318,573 is requested of the Foundation.

The **Alaska Pro Bono Program** requested $180,000 to support all aspects of the program in order that it may continue to achieve the goal of assisting more than 1,200 economically disadvantaged people statewide each year utilizing volunteer attorneys. The APBP is supported by 950 volunteer attorneys and 265 other professionals. The **North Star Youth Court**, which serves the Fairbanks area, requested $8743. The monies, part of a $54,000 budget, were earmarked for a teacher's salary and benefits to teach a course in the American legal system and additional legal advisor/trainer services. The NSYC was organized in September, 1996 and funded through the Alaska Department of Education.

CASAs for Children, a children's advocacy program, requested $4,000 to be utilized to fulfill the emergency needs and other direct services for the children in Anchorage, Kenai and the Matanuska-Susitna Valley. The program provides volunteer advocacy for children. There are more than 200 active advocates who volunteer approximately 23,000 hours/year assisting some 550 children in CINA cases.

A $5,000 grant was applied for by the **Alaska Women's Resource Center**. AWRC provides legal information and referral for its clientele. AWRC assists more than 5,000 individuals on a yearly basis, of which some 2,000 are in need of legal information and/or referral. The grant monies would facilitate the provisioning of legal services. **Kodiak Teen Court** requested $7,500 to hire a legal advisor and a youth/school/court liaison. The KTC, funded by a DFYS grant, began its program in the fall of 1995. Similar to other youth courts, the KTC is an alternative diversion program for juvenile offenders.

An amount of $22,330 was requested by the **Community Dispute Resolution Center** for its Parent-Adolescent Mediation (PAM) program. The dollars would fund a new position of PAM case manager and public education and outreach efforts. The **Alaska Legal Services Corporation** suggested the funding of the equal access to justice campaign—$50,000/year over a period of three years. The donation would be matched by private giving. **Catholic Social Services** Immigration and Refugee Program submitted a grant application for $20,000 to fund legal representation to immigrants who are seeking political asylum and to create a pro bono program to train attorneys who are willing to provide pro bono representation to immigrants seeking political asylum.

The **Kenai Peninsula Youth Court** requested $15,000 to serve the communities of Soldotna, Kenai, Nikiski, Kasilof, Ninilchik, Anchor Point, Homer, Nikolaevsk, and Voznesnenka. The KPYC was created in 1996 and receives DFYS funding as well as community support from Homer, Kenai and Soldotna. An amount of $6,000 was requested for the 1999 **Alaska Mock Trial Team** to defray the expense of traveling to the national competition.

The Trustees of the Foundation will meet in May to award IOLTA grants which may serve two purposes: the provisioning of legal services to the disadvantaged and the administration of justice. IOLTA funds of approximately $200,000 are available for distribution.

It's not too late to contribute to the Women in Alaska Law Archive

A collage of photographs and excerpts from the 1998 "Women In Alaska Law" archive was on display at the Alaska Bar Convention in Girdwood May 7-9, and will be displayed at courthouses around the state over the next few months.

Collections for the archive are well underway, but contributions are still being sought. The Alaska Joint State-Federal Courts Gender Equality Task Force, sponsor of the archive, encourages everyone to contribute photos, anecdotes, reminiscences, clippings, transcripts, announcements, correspondence, or any other information that will help commemorate the many contributions women have made to the legal profession and the justice system in Alaska.

The goal is to complete the permanent archive by the end of the year, and contributions will be accepted through December 1998. Nordstrom has agreed to display excerpts from the archive throughout March 1999 in commemoration of Women's History Month.

Please send contributions to: 1998 Women in Alaska Law Archive, 2413 Lord Baranof Drive, Anchorage, AK 99517. For information, contact Barbara Hood in Anchorage at 248-7374.

Grace Berg Schaible, the first woman to serve as Alaska's attorney general, visits the display "Pioneering Paths: Photos & Excerpts from the 1998 Women In Alaska Law Archive" at the Alaska Bar convention in Girdwood. Schaible was admitted to the Alaska Bar in 1960.

Thank You!

The Alaska Joint State-Federal Courts Gender Equality Task Force extends its gratitude to the following individuals & organizations for their invaluable contributions to the 1998 "Women In Alaska Law" Archive:

- Alaska Bar Association
- Alaska Court System
- Anchorage Association of Women Lawyers
- Anchorage Law Library
- Elmer E. Rasmuson Library, UAF
- U.S. District Court
- Rita T. Allee
- Lynn Allingham
- Ella Anagick
- Hon. Elaine Andrews
- Barbara Armstrong
- Leroy Barker
- Martha Beckwith
- Marge Bell
- Ruth Bauer Bohms
- Edgar Paul Boyko
- Barbara Brink
- Robert Bundy
- Victor Carlson
- Teri Cams
- Suzanne Cherot
- Stephanie Cole
- Hon. Patricia Collins
- Cynthia (Hora) Cooper
- Susan Cox
- Pamela Cravez
- Hon. Beverly Cutler
- M. Ashley Dickerson
- Hon. Dana Fabe
- Cynthia Fellows
- Hon. Natalie Finn
- Sheila Gallagher
- Sarah Elizabeth Gay
- James Gilmore
- Hon. Mary E. (Meg) Greene
- Rev. Carla Grosch
- Jewell Hall
- Karen Hegyi
- Leslie Hiebert
- Elizabeth Hickerson
- Robert Hickerson
- Marcia Holland
- Barbara Hood
- Hon. Karen Hunt
- Chris Foote Hyatt
- Rosanne (Rosy) Jacobsen
- Joyce James
- Hon. Michael Jeffery
- Monica Jenicek
- Christine Johnson
- Hon. Jane Kauvar
- Heather Kendall-Miller
- Shirley Frances Kohls
- Mary LaFollette
- Timothy Lynch
- Susan Wright Mason
- Mary Alice Miller
- Holly Montague
- Jeneane Moore
- Mary Nordale
- Linda O'Bannon
- Deborah O'Regan
- Deborah Parsons
- Mary Pinkel
- Judy Rabinowitz
- Barbara Ritchie
- Susan Reeves
- Robertson, Monagle & Eastaugh
- Karen Russell
- Sandra Saville
- Helen Simpson
- Hon. James Singleton
- D. Rebecca Snow
- Hon. Neisje Steinkruger
- Hon. Thomas Stewart (Ret.)
- Gina Tabachki
- Sue Ellen Tatter
- Margaret Thomas
- Ben Walters
- Heidi Wanner
- Patricia Chapman Wilder
- Teresa Williams
- Donna Willard
- Juliana Wilson
- Joan Woodward
- Gladys Wynd

AkCLUF Looking for Attorneys

Please consider taking a case or pledging your law firm to take a case for the Alaska Civil Liberties Union Foundation (AkCLUF). AkCLUF is a non-profit, non-partisan organization dedicated to preserving and defending the guarantees of individual liberty found in the U.S. Bill of Rights and the Alaska State Constitution. AkCLUF has only two full-time employees, and the cases it accepts must be handled by attorneys who donate their time and agree to share the attorneys' fees recovered when AkCLUF wins the case. AkCLUF generally agrees to cover most litigation expenses.

The cases AkCLUF litigates are challenging, exciting cases often raising novel questions of constitutional law. Alaska's state constitution is one of the strongest in the country in its guarantees of individual liberty and privacy, and many AkCLUF cases go up to the Alaska Supreme Court. In short, as an AkCLUF cooperating attorney, you have the chance to make new law! These are the memorable cases, the ones you'll be proud to talk about for years to come.

Please fill out the form here and return it to AkCLUF. We need your help! AkCLUF is willing to work with you to ensure that handling a civil liberties case is a rewarding experience that you'll want to recommend to your colleagues. If you have any questions, contact Jennifer Rudinger, Executive Director, at 258-0044.

AkCLUF Cooperating Attorney Questionnaire

Name: Date:

Firm (if applicable):

Address:

Phone: Fax: E-mail:

Are you currently a member of the Alaska Bar in good standing? Yes___ No____ If yes, date of admission:

What type of law do you practice?

Do you, or your firm, do pro bono or reduced-fee work? Yes___ No___

If Yes, what type of pro bono or reduced-fee cases do you accept?

What types of cases would you like to work on for the AkCLUF? (Circle all that apply.)

Free Speech — Religion
Police Brutality — Prisoners' Rights
Reproductive Freedom — Privacy
Due Process — Equal Protection
Other (Please Describe):

What types of services can you offer? (Circle all that apply.)

Legal Research/Writing — Litigation — Copying/Filing
Depositions — Preparing Evidence — Consultation

Please mail to the Alaska Civil Liberties Union Foundation, P.O. Box 201844, Anchorage, AK 99520-1844, or fax it to (907) 258-0288.

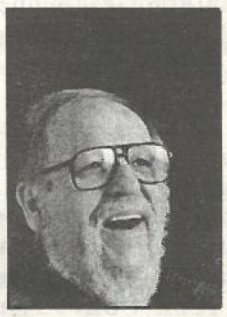
1998 Annual Convention 25-Year Certificate Recipients

Admitted in 1973 — A Photo Gallery

Below are photographs of members who responded to our request for permission to print a photo — either a recent one or the original one submitted to the Bar. Most of the members who responded said to go ahead and print their original photo.

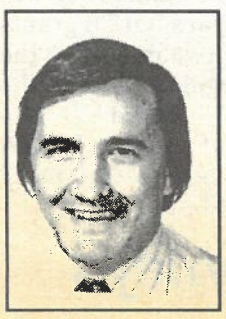

Paul A. Barrett

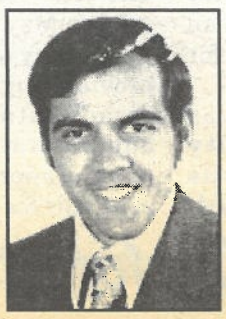

John H. Bradbury


Joseph J. Brewer


William P. Bryson


Leroy "Gene" E. DeVeaux


William R. DeVries


James E. Douglas


Kenneth P. Eggers


Ben J. Esch

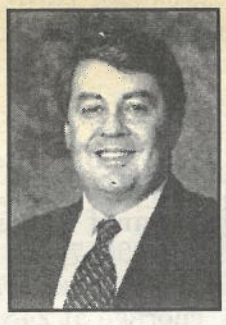

Lawrence T. Feeney

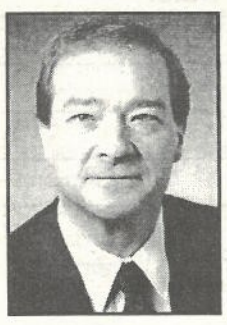

Karen L. Hunt


Jane F. Kauvar


David T. LeBlond


Weyman I. Lundquist


David W. Marquez

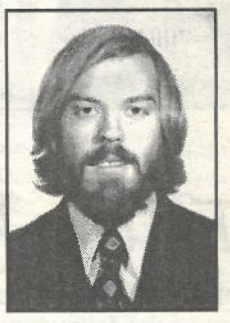

John R. Messenger


Eugene P. Murphy


Nicholas C. Newman


Arthur H. Peterson


Douglas Pope


John F. Rosie


John R. Silko


James D. Sourant


Robert E. Stoller


Daniel R. Walsh


Larry R. Weeks


Phillip Paul Weidner


James A. Witt

Photos not available

Fred B. Arvidson

Carl J.D. Bauman

William F. Brattain, II

Walter W. Cardwell, III

Cheri C. Copsey

C. Deming Cowles, IV

James P. Doogan, Jr.

Natalie K. Finn

Stanley T. Fischer

Terry L. Johnson

Noel H. Kopperud

Raymond V. Manning

Robert G. Mullendore

A. Lee Petersen

Richard J. Ray

Anita M. Remorowski

Richard J. Riordan, Jr.

James T. Robinson

David Shimek

John R. Snodgrass, Jr.

Michael R. Spaan

Richard D. Thaler

Bruce C. Twomley

Vincent Vitale