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The Alaska BAR RAG

VOLUME 10, NUMBER 4 — Dignitas, Semper Dignitas — $1.50 — NOVEMBER, 1986

Sentencing, TV juries and applicants are evaluated

Council releases varied findings

JUDICIAL COUNCIL RESEARCH

SENTENCING ANALYSES: The Council continues to monitor sentencing practices of Alaska judges. Recently, Council staff have been studying data on sentences imposed under the presumptive sentencing statutes which became effective in 1980 and which were modified in 1982-1983. Two separate data bases are being analyzed: Sex-related offense sentences imposed (1982-1984); and (b) Felony sentences imposed (1984).

(a) Sentences for Sex-Related Offenses (1982 - 1984): Alaska Courts have experienced a three hundred percent increase in sex-related offense filings over the past five years. Persons convicted of such offenses since the adoption of the presumptive sentencing scheme in 1980 serve about the same amount of net jail time as did persons convicted of such offenses prior to 1980. There appears to be no evidence of racial disparity in sentencing. Persons facing presumptive terms go to trial at twice the rate of persons facing non-presumptive terms. The Legislature's reclassification of first offense sex-related crimes from non-presumptive to presumptive in 1982-83 generated a 25% increase in the number of defendants most likely to go to trial.

(b) Felony Sentences (1984): In a report scheduled for release later this year, the Council will analyze sentences imposed for conviction of felonies charged during 1984 to assess the impacts of the adoption of presumptive sentencing on judicial resources and prison capacity. The report will also provide descriptive data about sentences imposed, including types of dispositions, characteristics of defendants and case-processing factors.

FAIRBANKS TV ARRAIGNMENT EVALUATION: In April, 1986, the Judicial Council published its final report evaluating the use of television to conduct arraignments in Fairbanks. The study concluded that: there are no legal barriers to the use of TV for non-evidentiary proceedings; the equipment configuration in use in Fairbanks is not particularly conducive to attorney-client communications or to multiparty proceedings, such as bail hearings; television has no effect on the severity of sentences imposed in misdemeanor cases; law enforcement and corrections agencies, as well as defendants, are more supportive of the experimental use of the technology than judges and magistrates; and overall cost savings to the criminal justice system in Fairbanks was about $50,000 per year, primarily in law enforcement agency personnel time and transportation expenses.

Based on these findings, the Council recommended that the TV arraignment system be made permanent in Fairbanks and that it be considered by other communities; that other court locations adopt the use of the facsimile machines and videotape components demonstrated in the Fairbanks project; that efforts to improve the quality of attorney-client and multiparty communications continue; and that experimentation continue regarding TV communications among court location and for proceedings other than arraignments and misdemeanor sentencings. The Supreme Court adopted Criminal Rule 38.2, and made revisions to other Criminal Rules to allow the use of video arraignments in other courts. At present, interested agencies are considering plans for similar projects in Anchorage and Juneau.

Continued on page 9

Burglars hit attorney offices

Anchorage police are investigating a rash of burglaries in attorneys' offices downtown.

Detective Sgt. Shirley Warner, of the Anchorage Police Department burglary unit, said the burglar or burglars appear to be concentrating their break-ins on weekends during the day and during other nonbusiness hours. "All kinds of buildings are being burglarized," said Warner, and many offices are not secure. Businesses other than law offices have been hit for the past several months, with some 40 burglaries reported overall.

"What is being taken are computers, office equipment and cash lying around in offices," said Warner. Other valuables also are being taken, including artwork and collectibles. One attorney lost a walrus tusk valued at $10,000, Warner said. A couple of attorneys have been burglarized more than once.

The bar association was first made aware of the break-ins by the law offices of Gary Eschbacher, Ames Luce, George Dickson, Bob Wagstaff, Donna Willard and Hughes, Thorsness and Gantz.

"This is definately a brand new" crime

wave, said Warner, adding that some of the burglaries may have been planned, possibly by professionals.

"Perhaps the burglars think that attorneys have a lot of money to afford expensive computer and office equipment," said Warner.

Warner said police are working leads in the case. Police reports have been compiled for a computer crime analysis. Burglars appear to have gained entry to offices with no use of force, or by bodily force or smashing of windows.

The sergeant advised attorneys to install deadbolts in their doors, record serial numbers of equipment, photograph valuables, and think about alarm systems. "The serial numbers and photos help us tremendously when goods are recovered," she said.

Happy Holidays

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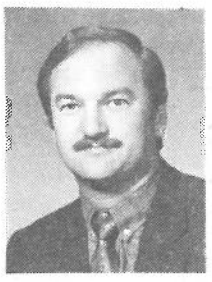

FROM THE PRESIDENT

Ralph Beistline

Once again, I find myself in an airplane preparing the president's column for the Bar Rag. The last time I did this, I was wedged between two doctors, flying between Anchorage and Fairbanks, writing on professionalism, as it applies to interlawyer relations.

Today, though, I'm among lawyers, flying from Leningrad, Russia to Paris, France, and am writing about professionalism and the attorney-client relationship. My emphasis on professionalism this year is not unique for the American Bar Association has encouraged Bar presidents and individual members to do what they can to emphasize the importance of Professionalism in the practice of law. I find as I study this subject that I have as much to learn as anyone.

Before I proceed with my comments on professionalism, I must express my appreciation to the Tanana Valley Bar Association for all the support and good advice they had for my trip to Russia. They encouraged me to drink lots of water, photograph as many military installations as possible, trade my dollars on the black market, and accept any maps anyone might want to give me. They also suggested I tour the Chernobyl Nuclear Facility, and gave me a Russian word to use during any toasts. Flying into Russia, I mentioned the Russian word to the Defense Attache for the United States Embassy in Moscow, next to whom I happened to be seated. Although he refused to translate the word for me, he advised that the best way for me to get to Chernobyl, or very likely even further north, was to use this word in a toast. I chose to remain with my group and just smiled during the toasts.

While in Russia, I learned that there are far fewer attorneys in Russia than there are in the United States. In Moscow, with a population of 8.5 million, there are approximately 1,050 practicing attorneys. Leningrad, with a population of approximately 5 million, has only 650 attorneys. The attorneys are state employees and earn 330 rubles or approximately ($495.00) a month. There are no private practitioners in Russia. I must note, though, that the Russians seem to understand the value of lawyers in relation to other professionals. Judges make 200 rubles a month and doctors earn 135 rubles a month. This may be due to the fact that both Lenin and Gorbachev were lawyers.

If one needs a lawyer in Russia, he merely goes to the College of Advocates and requests one. An assignment is made and the lawyer-client relationship is established. The lawyer need not be overly concerned with this relationship for the client has little or no choice in the matter, and the lawyer always has another assignment available.

In the United States things are not as simple. There is a strong emphasis on professionalism and attorneys have an obligation to seek the best interests of their clients. The public, though, does not seem to perceive that lawyers are serious in pursuing the client's best interest. In fact, recently, Ann Gerber, a columnist for the Chicago Sun Times, wrote that there "are no honest lawyers." Responding to a $300,000,000 class action lawsuit, she tempered her opinion somewhat and wrote that, "I didn't really mean that all lawyers are dishonest. Just that the honest ones are all poor." Hopefully, Ms. Gerber's perception is not representative of the general public.

If we are going to improve our relationship with clients, probably the first and most important step is to insure that lines of communication are open. A lawyer must know what the client wants and the client must know what the lawyer is doing. While competency is certainly important, communication with the client is equally important. Consequently, timely response to client phone calls and candid answers to questions are an integral part of a professional relationship with one's client. In the end, though, the best way to insure that one's relationship with a client is appropriate, is merely to treat our clients the same way we would like to be treated ourselves. If this attitude were more prevalent, there would be fewer grievances filed, and the public perception of attorneys would be enhanced.

The legal system in Russia seems to work well; at least that's what the Russian lawyers say. American lawyers are also satisfied with the system we have. As professionals, though, we should strive to insure that our clients share the same high assessment of our system that we do. Then, in the event of a revolution, maybe the lawyers would be spared the gallows.

I will toast to that. Garagki!

Ralph R. Beistline, President

THE EDITOR'S DESK

James M. Bendell

Our core topic for this issue is legal ethics. We have provided articles explaining how the disciplining of attorneys and judges takes place. We also describe the fee arbitration process. However, such measures are only taken for infractions of the explicit ethical codes to which the bench and bar adhere by statute or regulation. Unaddressed by the disciplinary procedures and by the canons are the day-to-day offenses that attorneys routinely commit against each other which cannot result in disbarment but nevertheless diminish the tone of practice in the legal community. These might be called the "manners" of the practice of law. I am talking about such things as refusing to return phone calls to attorneys, noticing depositions without determining convenience to opposing counsel, filing summary judgment motions prior to an attorney's three week vacation, and assorted other infractions of civilized behavior.

To understand such misbehavior we must analogize to the function that manners serve in society at large. It is true that our civilization will not come apart at the seams if people routinely belch in restaurants, use profanity in mixed company, or show up at Josephine's in jeans and tank tops. Nevertheless, the quality of life for all of us is diminished by such boorishness and our brief passage through this veil of tears is made that much more roughshod.

And so it is with the practice of law. Professional courtesies are not binding but are certainly the hallmarks of professionalism which make the practice of law much less abusive, and, on occasion, actually enjoyable. Perhaps we need a Miss Manners or Emily Post to codify the directives of civilized behavior in the bar. Of course, we should not agonize over such trivialities such as those which compare to cutting lettuce with a knife at dinner. I am talking about the basics. Infractions will, of course, not be met with punishment or discipline, but perhaps the kind of stares and disdain that are reserved for the ill-mannered.

Our next issue's core topic will be lawyers at fun — hobbies, games, and other things lawyers do to entertain themselves when not practicing law. It's a long winter and the economy is slow — we sure could use it.

For those of you who would like to contribute, copy deadline is January 15, 1987.

IN MEMORIUM

June 17, 1986
Joseph A Kovarik

The Alaska Bar Rag

Editor in Chief . . . . . James M. Bendell
Associate Editors . . . . . Patrick Rumley
Charles W. Ray, Jr.
Editor Emeritus . . . . . Harry Branson
Contributing Writers . . . . . Mary K. Hughes
Philip Matricardi
Edward Reasor
Mickale C. Carter
Design and
Production . . . . . The Alaska Group
Advertising
Agent . . . . . Computer Composition

President Beistline has established the following schedule of Board meetings during his term as president. If you wish to include an item on the agenda of any Board meeting, you should contact the Bar office or your Board representative at least three weeks before the Board meeting.

September 4, 5 & 6, 1986
November 6, 7 & 8, 1986
January 8, 9 & 10, 1986
March 19, 20 & 21, 1987
June 1, 2 & 3, 1987—Fairbanks

Happy Holidays

IN THE MAIL

MISTER BOFFO
by Joe Martin

Courtesy of Tribune Media Services

How about a counterpoint?

August 22, 1986

Mr. John Havelock, Atty.
3210 Baxter Road
Anchorage, Alaska 99504

Dear John:

I recall the first time one of my articles was not published in the Bar Rag and how unhappy I was that I did not get to see the fruit of my labor. This feeling was especially strong because, as you know, writers for the Bar Rag are not paid. I was therfore sympathetic to your concern that your recent column was not published in our last issue.

As I mentioned to you on the phone, I had to make a judgment call and elected not to publish the article. As I indicated, I felt it inappropriate for you to suggest in an imaginary conversation with Wendell Kay that Wendell was adopting your point of view on a matter of political interest and controversy. I feel that a conversation with a historical figure who had died long ago in the past might have been more appropriate. However, I wanted to preserve a certain amount of reverence and respect for Wendell's memory so soon after his death. I realize this was a close judgment call and I did not find the choice an easy one.

Your comment to me that the article was submitted some time ago and that I should have caught this previously and given you a chance to rewrite the article is well taken. I admit this was an error on my part. I only got to proofread the final copy the day of publication and I will change our procedure so that I review all copy well advance of that day. I'm sure that you can appreciate that the demands of private practice often limit the amount of available time for me to review and edit this paper.

Finally, I would like to discuss the future of your column with the paper. I wish to change the format so that you are engaged in a debate on public issues rather than a single opinion forum. I have contacted Steve DeLisio and he has graciously agreed to participate in a kind of "point counterpoint" format wherein each of you would write a piece on one issue. Thereafter, you would see each others copies and write a brief rebuttal.

The reason I am changing this format is because I believe very strongly that the Bar Rag should publish all points of view on controversial issues. The Bar Rag is the official publication of the Alaska Bar Association. As such, it is a quasi-governmental institution. I therefore feel that the situation is somewhat analogous to the "equal time" regulations that apply to the public airwaves. That is, in a sense you have a captive audience of all members of the Bar when you write in this publication. I therefore feel it is important to present both sides of controversial issues. I find this need even more compelling because you have been a candidate for public office. Your use of a semi-governmental organ to express your views therefore should be accompanied with the opportunity for different points of view to be expressed.

I hope that you eagerly adopt this new format. I will be contacting you and Steve in the near future to discuss the issue for the next copy of the Bar Rag which will be coming out in the winter (the Bar Rag is now a quarterly publication).

Thank you very much for your past and continuing contributions to the Bar Rag. I hope that this early misunderstanding does not get us off to a bad footing.

Very truly yours,

James M. Bendell

August 24, 1986

The Letters to the Editor Editor
The Bar Rag
310 K St., suite 602
Anchorage, Alaska 99501

"The Last Potshot"

Dear Fellow Bar Rag Readers,

With this issue I resign from writing a regular piece for the Bar Rag and my office (or whatever it is) as a charter contributing editor or writer for the Bar newspaper. Now I realize that for everyone but my mother this is, to say the least, "Ho Hum." The newly established importance of maintaining good taste prohibits me from suggesting what others might say with respect to this big non-event. However, a few of you might be interestd in the provocation of my departure.

When the August Bar Rag came out, I noted that the column that I had submitted was not included. This was a bit surprising since it had been submitted more than a month before. A telephone call to Mr. Bendell elicited the response that he had personally, and apparently without consultation, pulled it the day before publication.

Mr. Bendell said he had pulled the column because it implied that Wendell Kay would agree with my views and the views expressed in the column where "controversial." Since Mr. Kay had recently died, Mr. Bendell indicated, the implication that he agreed with the sentiments expressed was in bad taste.

Mr. Bendell said that he had written a letter to me explaining his actions. However, this letter must have got lost in the mail.

This consequence and the reasons left me dumfounded. I had written columns every week for the Anchorage News and Times for over four years cumulatively. Though some had won prizes, others had been stupid or tasteless or, worse and more frequently, shamefully dull. I never had a column pulled though Mrs. Fanning had once called me in to placate an irate University President. Of course, Mrs. Fanning and Mr. Atwood had every right to do whatever they pleased. Their papers are, after all, proprietary.

I rushed to reread my copy. The offending references to Wendell were sentences in the first paragraph and close. I wrote, "I had an imaginary conversation with Wendell Kay on this matter to (sic) which he overcame my hesitancy with a typical, 'absolutely,' . . ." The column closed, "'What do you think, Wendell?' 'Absolutely!' ".

Between these references, I propounded a no doubt exaggerated thesis that the Constitutional Bicentennial could be used by Justice Berger and others to forward the constitutional revisionism of the day. This revisionism favors emphasizing historical intent and the Articles of the Constitution as initially adopted over the Bill of Rights, the Civil War Amendments and the gloss, in particular, of the last fifty years of judicial interpretation.

Now I put it to you that my referencing an "imaginary conversation" puts Wendell's credibility behind my views only if you think I converse with the dead. Secondly, since I had known Wendell for more than 25 years, it was not inappropriate for me to make a reference to what I think he might think.

In fact, and this is a bit embarrassing, the reason he was in the column was that, like many of you, I had been grieving Wendell the week I wrote and in fact did have an "imaginary" (and not hallucinatory) conversation with him in front of my typewriter, testing whether the thesis was too overblown. Wendell was not known for his timidity and was known to pay "absolutely!" to propositions that boldly made a point but would not stand a refined test of accuracy at the edges.

Further, though not emphasized in Judge Fuld's affectionate tribute, Wendell Kay was a great champion of individual rights including the right of free expression, an area in which your editor is demonstrably deficient. Thus, Wendell seemed to fit comfortably into a common literary device which is intended to pull a piece together and engage the reader at the personal as well as the abstract level.

That the boundaries of taste are staked great distances apart according to the eye and perhaps sobriety of the surveyor has been amply demonstrated in this paper's history. It is the function of a wise editor to try to keep his copy within the bounds that his readers may normally tolerate. Such an editor might have called me and said, "you know, it's a real shocker, you imagining yourself quoting Wendell, why don't we just knock out the first and last sentences?" Being insecure in matters of taste as a result of frequent and unsparing criticism of my choice in ties, sports coats and various gaffs such as showing up in court with shoes that did not match each other, I would have crumbled, no doubt with gratitude. So much for my own dedication to free expression. But this did not happen.

I guess I was just censored for expressing views that were controversial and in bad taste. You let some things only happen to you once.

Dignitas, Semper Dignitas. Vale, amicae legalis!

Anyone who wants a copy of the offending column may have a copy on inquiry for one dollar.

LAW OFFICES
John E. Havelock
3210 Baxter Road
Anchorage, Alaska 99504
907-276-1916

No counterpoint.

October 17, 1986

James M. Bendell
Editor, The Bar Rag
2525 Blueberry Rd., Suite 106
Anchorage, Alaska 99503

Dear Mr. Bendell:

No, Mr. Editor, I am not interested in doing a "point counterpoint" series, alternating with Steve DeLisio. The idea is another example of wrongheaded editorial policy.

In the years that I wrote for the Bar Rag, anyone who didn't like what I had to say was always free to write a "counterpoint column". You evidently want to stuff me into an ideological place which, in your mind, is polar to DeLisio's. It happens that, by and large, I agree with most of what Steve has written and spoken over the years.

I do, however, believe that Bar Rag readers are entitled to know that I resigned out of objection to your censorship policies. Please see that this letter or my letter of resignation is printed in the Bar Rag "letters" column.

Sincerely,
John Havelock

(P.S. I did eventually get your letter dated 8/26 so, to avoid raising a false issue, if you print the resignation letter, you may skip the fourth paragraph.)

Last Ditch Try

October 29, 1986

John Havelock, Esq.
3210 Baxter Road
Anchorage, Alaska 99504

Dear John:

Thank you for your letter of October 17. I am sorry that you will not be writing your column for the Bar Rag as the newspaper simply will not be the same without it.

As a last ditch effort to persuade you to continue writing, would you be willing to continue writing your column but allowing me to have some other person write a column in the same issue and dealing with the same subject matter but taking a different point of view? This procedure would not confine you editorially to a point/counterpoint format but at the same time would present opposing points of view on controversial issues. I can't imagine what opposition you could have to this proposal unless the term "radom potshots" was designed to reflect the dictionary definition of a potshot as "a shot taken in a casual manner or at an easy target" (Merriam Webster Dictionary).

Earnestly looking forward to your reply, I remain,

Very truly yours,

James M. Bendell

Trees need help.

June 16, 1986

Deborah O'Regan, Esq.
Executive Director
Alaska Bar Association
Box 10-0279
Anchorage, Alaska 99510

Re: Forest Resources and Practices Act Hearing Officers

Dear Deborah:

The division of forestry, Department of Natural Resources, has asked our office to assist it in expanding its list of hearing officers, appointed by the Attorney General from among members of the Alaska Bar Association after nomination by the Board of Forestry, for hearings under the Forest Resources and Practices Act, AS 41.71, et seq.

Provisions governing hearings under the act are outlined in AS 41.17.139-41.17.143. Under AS 41.17.139(a) hearing officers are to be "knowledgeable and experienced in the subject matter" covered by the act, a broad ranging law generally concerned with the protection of the state's forest land base as a renewable resource. Presently, hearing officers appointed to handle matters under the act are paid at the rate of $75 per hour.

If possible we would like to arrange with you a notice to Alaska Bar Association members, perhaps in the Association's next mailing, soliciting resumes of those bar members interested and qualified to serve as hearing officers. Bar members can send resumes directly to my attention and can make further inquiries to Michael Peacock of the division of forestry here in Anchorage.

Can you help us out?

Sincerely yours,

Harold M. Brown
Attorney General

By: Stanley T. Fischer
Assistant Attorney General
Chief, Anchorage Civil Office

Continued on page 20

Conflict center a success

By Sharon Zandman-Zeman

The Conflict Resolution Center has enjoyed a very special relationship with the members of the Alaska Bar Association.

As a result of the innovative thinking and hard work of the attorneys who sat on the Committee on Alternative Dispute Resolution, the Conflict Resolution Center (CRC) came into being, opening its doors as a separate entity in October of 1982. For two years, CRC received assistance from the Bar in the form of Employee Health Insurance coverage and access to office supplies. From April, 1985 until September, 1986 the Conflict Resolution Center administered the Fee Arbitration process for the Bar under contract.

This historical relationship has been a constructive one, operating to the mutual benefit of both organizations. Many of the individual members of the Bar have also found a relationship with CRC that can be of mutual benefit. The services provided by this private non-profit organization are complimentary to those provided by the legal community, and are in no way intended to supplant those crucial legal services. While there are attorneys who are using CRC as a valuable adjunct now, perhaps there are still many more who are unsure as to how we can be utilized effectively to help you and your clients. The following brief description of CRC services may help.

As an alternative dispute resolution center, the main processes offered by the Conflict Resolution Center are general mediation and arbitration, and divorce mediation. The general mediation and arbitration hearings are administered by staff to the point of hearing, while the hearing itself is presided over by community volunteers. These are people who have been recruited, screened and given about forty hours of training in the specific processes of mediation or arbitration. They are selected in part based on their background in fields that commonly come to the dispute center, such as real estate, landlord/tenant, construction, etc. However, volunteer mediators or arbitrators are not offered as substantive experts. They are lay people who are skilled in managing a process, and it is incumbent upon the parties to the hearing to provide all of information needed to fully cover the issues. This is consistent with the history of arbitration and mediation as common-sense processes, rather than legal procedures.

In a general mediation hearing, the parties (two or more) to the dispute meet in private with a neutral mediator in order to negotiate their own agreement in resolution of a civil conflict. The advantages of the process are many. Most mediated disputes at CRC involve relatively small amounts of money or relationships such as neighbors, friends, or coworkers. These are very important to the people involved, but not appropriate or cost-effective for litigation. In addition, the process is both effective and constructive.

Those who agree to mediate retain control over their own decisions, and once they sit down at the table, virtually always reach a satisfactory settlement. Parties often come to a much better understanding of one another in the process, and rather than walking away angry, walk away with a sense of accomplishment and appreciation for their one-time adversary. Arbitration, of course, involves requesting a panel of neutral arbitrators to make a final and legally binding decision to end a dispute. CRC most often arbitrates contract disputes such as those involving earnest money, small partnerships, or construction. The advantages involve savings of time, money and aggravation over a litigation process. All hearings are private and confidential. Local attorneys often find it useful to refer cases involving less than $10-20,000 to arbitration rather than entering into lawsuits.

It is continually stressed by CRC staff to clients that get- ting good legal advice concerning rights and responsibilities is crucial. It is not a good idea to enter into mediation or arbitration without knowing what one's options may be under the law. Unfortunately, as we know, a person may have a statutory right that is so costly or cumbersome to implement through the civil courts that it is not worth it. Mediation and arbitration thorugh CRC offer good alternatives.

Attorneys who are involved with divorce cases know how drawn out these situations can get. There is so much pain in a family break-up that the attorneys for the two sides can get caught up in a long and bitter struggle between two people that sometimes requires more stamina than legal expertise.

Once again, CRC offers an alternative. Divorce mediation is not done by community volunteers but by professionals, as it is believed that this process is more complex and requires somewhat more expertise. By working both with attorneys and with a family mediator, the two parties to a divorce (or dissolution of cohabitation) can reach a satisfactory agreement on division of assets, support payments, and parenting, that takes the needs of both of the parties, the children, and even the grandparents into account. The agreement is written up as an informal "memorandum of understanding" which the parties are then encouraged to take back to their attor- neys for a final review before filing with the courts. Any legal questions that arise in the process of working out this agreement are taken also to be answered by legal counsel and brought back to the table at the next meeting. This process saves a tremendous amount of time, emotional strain, and often money, for the parties.

The Conflict Resolution Center offers these services, as well as training sessions, a landlord/tenant hotline, and information and referral, as a corollary to the services provided by the Alaska legal community. This organization is here to serve you. Make use of it. Call for more information. Better yet, get involved. Offer to be a Board member, or an arbitrator or mediator. Your involvement is what makes it work.

By the way, now would be an excellent time to make a tax-free donation to the Center. The author is executive director of the Conflict Resolution Center.

Hi-tech journal debuts

U.S. Congressman and Senatorial candidate Ed Zschau criticizes current U.S. export trade policy in a recent article published in the *High Tehnology Law Journal.* Zschau blamed the high "protectionist fences" erected by Congress, the Department of Defense (DOD) and Department of Commerce for harming American economic prosperity and industrial competitiveness.

"Protectionist solutions . . . cause far more harm than good to our economy," Zschau emphasized. " We must treat the real problem, and the problem is a lack of both domestic sales and exports for American companies when compared to foreign competitors."

Zschau writes that the proper role for government in the effort to increase the competitiveness of industry is to remove disincentives to innovation and productivity. This can be achieved, Zschau states, by loosening export controls on American technology and restructuring the export control system.

"Export controls impose significant costs because they limit the ability of American firms to compete on a wide variety of controlled items and they also push up the price of legal American exports. These costs take the form of both the actual outlay (in manpower and fees) for procuring export licenses, and the more subtle but perhaps more significant costs of uncertainty and delay," writes Zschau.

Zschau recommends three revisions to the export control process. First, the role of the Department of Defense (DOD) in approving export licenses should be limited. Currently, the Export Administration Act, which Congress reauthorized in July of 1986, allows both the

Continued on page 18

New Life Insurance Plan Announced

Premiums Slashed

The Alaska Bar Association has successfully negotiated a new life insurance program for Bar members with Continental Insurance Company and its subsidiary, Loyalty Life. The premium schedule has been significantly reduced; savings in some age categories are 60% over the previous plan. Other improvements include:

- All members of the Association and employees of their firms are now eligible.
- Spouses of Bar members are now rated on their own age and may designate any beneficiary.
- The policy may be converted at any time to any permanent life product offered by Loyalty. Such plans include universal life (currently paying 10% interest tax deferred) and single premium life (currently paying 10.3% interest tax deferred). These products provide both a permanent death benefit and tax sheltered growth and income.
- Waiver of premium payment in the event of disability is included without any additional charges.
- Coverage is now available through age 74, instead of age 70.
- Guaranteed issue of $20,000 has been negotiated for newly admitted members of the Bar. This is available only when applied for within 90 days of the date of admission.
- In most cases, no physical exam is required for members to participate or to increase their amount of coverage. The simplified application for coverage has only eight questions.
- The Bar Association has been relieved of administration of the plan.

Insurance age is determined on January 1st each year. A person born in 1930 is rated as being age 56 throughout all of 1986; the actual day of birth does not affect the age category for insurance purposes.

Premiums will continue to be billed quarterly, with Bayly, Martin and Fay of Alaska, Inc. providing invoices and full plan administration. Contact Bob Hagen or Denise Smith at 276-5617 for further information.

Q. These premiums are much lower than my present individual policy. Should I cancel it?

A. Perhaps. This is a complex question; you should discuss it with an insurance agent. In any event, you should not cancel until you are accepted by the Association plan.

Q. These premiums are also lower than the group term our firm has; can we use the Bar plan instead?

A. In most cases, employee group term is guaranteed issue and is looked upon as providing an employee benefit rather than as providing for a specific need. Because a health questionnaire is required for the Bar plan, an employee may be excluded, thus it does not lend itself to this use. However, a firm with only a few employees may still wish to use the Bar plan. By complying with IRS non-discrimination rules, the premiums paid by the firm can still be excluded from income taxation.

Q. How often may I change my beneficiary or apply for additional insurance coverage?

A. You may now apply for additional coverage whenever you wish. To review your coverage or change your beneficiary, contact Bob Hagen or Denise Smith at Bayly, Martin and Fay, P.O. Box 7501, Anchorage, AK 99510-7071, or call (907)276-5617.

New Premium Schedule

Age	Rate Per $1,000 Per Month	Premium at $100,00 Quarterly
Under 30	.08	$ 24
30 - 34	.09	27
35 - 39	.10	30
40 - 44	.17	51
45 - 49	.26	78
50 - 54	.46	138
55 - 59	.86	258
60 - 64	1.49	447
65 - 69	1.86	558
70 - 74	2.61	783

Amounts from $50,000 to $150,000 in coverage are currently available in increments of $10,000.

Universal Life, or One of the Last Tax Loopholes

One of the programs' best features is its allowance for conversion to universal life at any time. Very few group term programs provide for conversion to a competitive permanent policy-Loyalty's is one of the very best.

Properly written, universal life is permanent insurance. A portion of the premium pays for current mortality and expense. The remainder builds a cash reserve at competitive tax-deferred interest.

The reserve may be used to pay mortality charges in future years, when they are higher. It may also be borrowed without tax consequence, or withdrawn.

The policy is flexible. Depending on the size of the reserve, premium payments may be discontinued or suspended. The death benefit may be decreased or, with evidence of insurability, increased. Large deposits may be made in some years and no deposits in others.

Four factors comprise the worth of a universal life contract: Current interest paid by the company, the guaranteed minimum interest paid, expense charges, and mortality charges. Loyalty scores high in all these areas.

- — Current interest for the first policy year is 10%.
- — The contractual minimum is 5%.
- — Expenses are low and taken in the form of early surrender charges.
- — Mortality charges are computed by one of the lowest tables available.

Loyalty's universal policy may also be used for a deferred compensation or split-dollar plan. A split-dollar plan can allow a corporation to pay for the cash reserve portion of an employee policy. If the plan is properly set-up, the payment is not treated as taxable income to the employee.

BMF

Bayly, Martin & Fay of Alaska, Inc.

SINGLE PREMIUM LIFE

10.3% Current Return Tax-Deferred

Single premium life probably is the hottest investment to have survived tax reform. It takes advantage of the tax treatment given all life insurance policies to create substantial tax-deferred growth or income. Here's how it works:

A single premium is deposited with the insurance company. A policy is issued with the lowest death benefit which, in relation to the size of the deposit, qualifies the contract as life insurance under IRS guidelines.

A portion of the deposit goes to mortality charges on the life insurance and company expense. Because the death benefit is minimal and commissions low, this amount is relatively small.

The remainder of the deposit earns interest. The current rate is 10.3% and is guaranteed for the first policy year. Future rates are determined at the end of each policy year based on an average of Five Year Treasury Notes. The rate will never go lower than 5.5%.

The growth in the deposit is not taxable until the policy is surrendered. For this reason, the accumulation of interest is usually withdrawn by borrowing from the policy rather than a surrender. Loyalty pays 6% interest on the amount borrowed while charging the same 6% for the loan. This nets out to zero, so the non-borrowed portion remains intact and continues to be credited current interest.

For example: A $10,000 deposit at age 30 provides an initial death benefit of $89,715. In 10 years the deposit will have a value of $22,784 at current rates or $15,093 at guaranteed rates, and the death benefit will have grown to $129,963 at current rates.

Rather than let the cash simply accumulate, policy loans can be systematically taken. In this example, at current rates $4,757 could be borrowed without tax consequences and without any cost at the end of the fifth year. The original $10,000 would remain intact and continue to grow. The deposit is always liquid and is guaranteed by the full faith and credit of Loyalty Life. In most cases the deposit is immune to attachment.

As a member of the Bar's group program, your ability to convert from term to single premium life may be the most important investment option you own.

THE MOVIE MOUTHPIECE

Edward Reasor

Not every movie has to be an Oscar winner before it merits your attention. Centainly, not every case tried in the Superior Court results in $1 million verdict, yet one can always learn something from a few hour's observation.

What does one learn from watching "Legal Eagles," starring Robert Redford and Debra Winger?

How well, have other male lawyer v. female lawyer movies been made, i.e., "Adam's Rib" starring Spencer Tracy and Kathryn Hepburn, which is 10 times the film "Legal Eagles".

In "Legal Eagles" Redford stars as assistant district attorney Tom Logan, a man who quits the prosecution of Chelsea Deardon (Darryl Hannah), spends the night with her, and then join her defense attorney Laura Kelly (Debra Winger) in a vigorous defense. Never mind conflict of interest, disciplinary rules, or any bar association — this is the Big Apple and how it's done in the world of law and art.

"Legal Eagles" will soon be released in VHS videocassette format. Check it and "Adam's Rib" out at the same time. There is only one similarity; in "Adam's Rib" Tracy and Hepburn are man and wife and in "Legal Eagles" the movie closes on a law office window lettered "Kelly and Logan," leaving quite open the possibility of a sequel, whether husband and wife or lawpartner - lovers.

I confess I'm madly in in love with Kathryn Hepburn (have been for years) and treasure the few letters and notes we've exchanged over the past quarter of a century. Still, I appreciated Winger in "An Officer and A Gentlemen" and generally find her to be an exciting actress. But in "Legal Eagles" she's a bit much. Would you practice law with a woman who puts a dog on the witness stand? Or worse, one who constantly cross-examines you as to whether you're going to sleep with the mutual client again?

"Legal Eagles" was shot in Manhattan last year just before Christmas. It had a short, eight week shooting schedule and was both produced and directed by Ivan Reitman ("Ghostbusters").

Terence Stamp plays gallery owner Victor Taft and Brian Dennehy (B.A., history, Columbia) portrays police detective Cavanaugh. Both are superb character actors and add immeasurably to this comedy-thriller of art fraud and murder. Cinematographer Laszlo Kovacs ("New York, New York") adequately captures the New York City world of fashion, art, dance club, and music.

Debra Winger and Robert Redford star as defense attorney Laura Kelly and assistant D.A. Tom Logan in "Legal Eagles" from Universal Studios.

Where the film is weak is in the story line, especially the dialogue. "Legal Eagles" was based on a original story by Reitman, but was changed by Jim Cash and Jack Epps, Jr. into an alleged sophisticated screenplay. Reitman doesn't like lawyers, who he calls "good protagonists — the hired guns of our time." It shows, but I recommend the film anyway as a vehicle to observe society's present attitude toward the bar in general.

●

Summer's second movie, a-made-for-TV special, "L.A. Law" was so successful as a premiere that it now finds a regular shot at 9 P.M. on Fridays. We should all own a copy of the original two-hour introduction. Not only because it was well-filmed, extremely well-written, and contained hilarious but true dialogue, but also because on our worst day we can rerun it in the quiet of our office den and appreciate how lucky we are to be in Alaska (even as an associate) rather than in L.A. as a partner. At least if you die in your own office on a long weekend, your associates do not grapple for first refusal rights on the vacant space.

"L.A. Law" revolves around a high-powered, socially connected, esteemed law firm. It has the typical ingredients of a Steven Bochco ("Hill Street Blues") production: a small, recognizable main cast, mane sub-plots, and character development both on the professional and personal level.

This firm handles everything from contested divorces, personal injuries, plaintiff, to business reorganization and complicated tax planning. It requires all of its associates to bill at least 1,600 hours annually, for which it pays an annual salary of $50,000. All associates strive to be partners and the firm encourages inter-office competition.

Corbin Bersen is the divorce lawyer who complicates non-contested divorces for more money, Jill Eikenberry is the feminist who loves to give male insurance adjusters a tough time without bothering, however, to communicate even a million-dollar offer to her client; Michele Greene is the young associate married to a non-working bun who loves to drink and Harry Hamlin is the middle-class single heart throb looking for the right woman.

Best of all, however, is Richard Dysort, a fatherly senior partner who knows how to run a money-making law practice. This is the man with no judicial aspirations. He's happy doing what he's doing. If there is such a firm in Alaska, no one has ever invited me in behind the closed velvet doors, but that's alright — I'm going to watch "L.A. Law" anyway this Friday. Please join me.

WANTED:

Attorneys in Ketchikan, Sitka, Kodiak, Nome, Barrow, and other smaller Alaska communities.

We often get requests for referrals on the Lawyer Referral Service from people in the smaller cities for attorneys who are located in those communities. If you are interested in being listed on the Lawyer Referral Service, please contact the Bar office for more information.

INTERN POSITIONS

The Municipality of Anchorage Department of Law has six positions for interns open for 1987. The experience is strongly endorsed by past interns.

The Interns serve for six months (January through June, or July through December). We use two interns in our prosecution office, and one in our civil division. Interns must be certifiable as interns under Bar Rule 44. This generally means people who are either in the last half of law school, have graduated from law school but have not failed a bar exam, or have been admitted to practice elsewhere but have not yet been admitted to the Alaska bar. Interns function as nearly as possible as if they were new attorneys on the staff.

We pay a subsistence stipend of $1,825.00 per month, and a full benefits package. Some law schools offer credit toward a law degree based on the internship.

In the past we have hired some interns locally, but have not actively recruited locally. We are now actively recruiting locally as well as at selected law schools. Interested persons should submit a resume and writing sample to Donald W. Edwards, Deputy Municipal Attorney, 632 W. 6th Avenue, 7th floor, or call 264-4545 for further information. Appointments will be scheduled based on the resume and writing sample of each applicant. We expect to make hiring decisions by November or mid-December at the latest.

For Mr. Kay

Ketchikan
July 1, 1986
Peel Trial
Notes at Dinner Upon Reading
of Wendell Kay's Death

By Phillip Paul Weidner

Drink a toast to Wendell.
Drink a toast to Justice.
Strike a blow for peace and freedom
As he lived to do.
Feel him here beside us.
Next to Mr. Peel and all
Those targets of the prosecution's wrath,
Helpless and accused.

Some men live for riches.
Monuments and power.
Feed that hunger they can't sate.
Forelorn and confused.
Bank accounts and armies.
Balance sheets and ticker tapes.
Crushing life's sweet flowers
With the need to have, consume,
Dominate, abuse.

Some men live for people.
Scorn the miser's lust.
Face their final hour
Not with ledgers, silks, or treasures
But with legacy of what
They strove for.
What was just.

Wendell was.
Wendell is.
Wendell will not pass.

Wherever Tyrants meet their Davids.
Wherever bias meets its bane.
There lives Wendell.
There is Wendell.
Wendell's love and touch will last.
What a blessing to have known him.
What a joy to breath his presence.
Teaching by his very being.
Living, thinking, feeling, caring.
Simply knowing.
Simply doing.
That which heart and mind ordain.

Good bye Wendell.
Hello Wendell.
God we loved you.
Love you.
Felt you.
Knew you for the giant you were
And we always will.

God speed on your journey, comrade.
New beginning.
Start. Not end.
Somewhere. Sometime. Some how. For certain.
We will laugh with you at sin.
Toast you man to man.

For now. Take solace.
Know til then.
We are doing what we can.

Like you did.
Like you taught us.
Speak the truth.
Take a stand.

Care for life.
Live for caring.
Scurry not from toil and strife.
Shrink not from hatred's flame.

Restraint and calmness.
Love and sharing.
Forgiveness for the ignorant.
Stolid to the pain.

Know the fallen on the road.
Take time. Take note.
Extend yourself.
A word. A smile. A hand.

Yes. You're with us.
Yes. We're with you.
We treasure what you've been.

Gentleman.
Lawyer.
Scholar.
Defender of the masses.
Father.
Trial attorney.
Ally.
Lover.
Teacher.
Brother.
Friend.

Of ours
And of
All mankind.

Wendell Kay.
What more to say?
Inspiration.
Essence of all men.

You move along.
But not away.
Thanks for being
You.
For being

Leaving us with memories.
Not sad or mourning at your passing.
But joyful as we struggle here.
And eagerly await the day
We join with you again.

Heart to heart.
Mind to mind.
Soul to soul.
Hand in hand.

Mystery secretary Misses Wendell

By Frances Frazer

Now, we've heard about the judicial, political and legal side of Wendell, what about the humorous, friend-in-need side?

Yes, I'm the lady who was supposed to stand in the back of the courtroom at the murder trial. But, I'm afraid I wasn't much of a "lady" when approached by the Silver Fox to pose as a possible accessory to murder. My first reaction was that Mary Ann would charge me right on the spot, but Wendell said not to worry, "you'll have a good lawyer." I didn't know whether he meant Bill Fuld or Wendell Kay, as they were working on the case together.

I'll never forget the first day I started working for Wendell. I knew him by reputation only, and I was shaking in my shoes to think that I was going to work for the "great one." After all, prior to coming to Anchorage, along with working for attorneys, I had also faced third and fifth graders as their teacher in spelling and English — so how could Wendell be any worse than that?? He wasn't. He was the kindest, most considerate, caring, lovable person I have ever encountered. (There are so many more adjectives in the dictionary we could apply to him).

His humor brightened the office every summer — we hit it off from the first day.

At the "party" in his honor, Mr. Coffey mentioned a colleague who worked with Wendell on some difficult cases — Mark Topel.

I probably will never forget the first time I met Mark. To hear Wendell speak of Mark, I thought he was speaking of God. Wendell once asked me to come back to work in the evening after office hours, because Mark was coming in on the 7 p.m. plane, and we would have some work to do.

Returning at about 8 p.m., Mark and Wendell were in the conference room, facing me, when Wendell introduced me. Mark stood up from the conference table and — he didn't have any pants on. Just his shirt and tie, shoes and socks, and the cutest pair of boxer shorts with little red teddy bears all over them.

"Excuse my underwear — I just can't work with pants on," Mark said. Wendell's retort: "Don't be embarrassed — at my age, I can't work with my pants off."

That was OUR Wendell, the secretary's Wendell. I was lucky — I came into the firm when it was Wendell, Bill, Sandi, Dan, Greg and Jim, and we were all "one big, happy family," with Wendell being the father. It was the kind of environment where you achieved a loyalty to each and every member and employee — where you shared each one's joy over their wedding, worried with their pregnancies, and cried with their sorrows. You didn't even mind working overtime, coming in early or staying late because you just felt good about doing it. Not for money, not for time off — but, well, just because. We knew Wendell as the Silver Fox, and Bill as "Whiplash Willie," although Judge Fuld doesn't like to remember that. But there it is, Bill. Along with Wendell, I was also privileged to work for Bill Fuld and Greg Oczkus, three of the greatest "guys" I've ever been associated with, and who are not only remembered as "bosses", but as friends.

I remember so many things about Wendell, I probably could write a book about him — when my daughter was in the accident at Carrs when the lady drove through the window — Wendell was there to handle her claim for her and managed a nice settlement for it. When my sons were going to military school, Wendell was there to write the letters of recommendation. When my daughter wanted to buy a new car, but her dividend check hadn't come, Wendell was there to lend her the money. When my husband had a heart attack, Wendell was there (by phone, he was in Mesa) boosting my morale.

I can still remember his laughter the morning when I came to work, had to rush to get a Brief out, shoved the card in my Mag A typewriter and went to get a cup of coffee. When I came back to the typewriter, I couldn't figure out what in the hell was on the paper. So, I started it again. And it started jiggling type again — of course, everyone was standing in the coffee room behind me laughing — our runner had inserted a ball in my typewriter with Japanese type instead of good old English. And Wendell stuffed a donut in my mouth to keep the air from turning blue. (Come to think of it, maybe I should have filed that Brief instead of the right one. Then maybe the judge would have decided for our side.)

When you worked for Wendell, you met all of the murderers, rapists, molesters, prostitutes, thieves, pimps — name it, they come to Wendell. The "lady" in the photograph was our birthday present to him, I think on his 70th birthday. We disguised her as one of his clients, a madam, and put her in his chair. And he loved it. And the alleged murderer (with whom was supposed to pose as the accomplice) is now a good friend of mine.

But, depression sometimes sets in because "there has to be a better caliber of people out there somewhere."

And from Wendell, "Sure there does, baby, but who wants to deal with politicians, and somebody arguing about the burnt toast — no excitement."

THAT was Wendell — excitement with a capital "E". His 'off-color' humor kept us going — his encouragement made working worthwhile, and his friendship gave purpose to a career.

I respected Wendell. I loved Wendell, and I miss Wendell, with a Capital "M".

THE JUDGES' CORNER

Ross sworn as bankruptcy judge

By Chuck W. Ray

On October 1, 1986, the investiture of Herb Ross as the new bankruptcy judge for the District of Alaska took place in a ceremony presided over by Chief Judge James Fitzgerald. Judge Fitzgerald noted that Ross' appointment to a 14 year term is the first bankruptcy judge appointment for Alaska under the new merit selection process administered by the Ninth Circuit Judicial Council.

Jeff Feldman welcomed Judge Ross on behalf of the Alaska Bar Association, commenting on the enormous popularity and affection that Judge Ross enjoys among his professional colleagues. Speaking on behalf of the Anchorage Bar Association, Stan Ditus expressed confidence in Judge Ross' ability to discharge his duties with integrity and compassion. Bankruptcy law section chairman Bruce Bookman then took a turn at the podium, requesting that Judge Ross keep in touch with those lawyers particularly interested in bankruptcy matters. Paul Kelly, Judge Ross' former "roommate" at the Spenard offices occupied by them, bestowed upon Judge Ross a golden elephant bearing one tusk with which to grace his new chambers (and upgrade Kelly's office).

Federal judges assemble at swearing in of new Bankruptcy Judge Herb Ross. From left are Senior Judge James A. von der Heydt, Judge Andrew Kleinfeld, Judge Herbert A. Ross, Chief Judge James M. Fitzgerald, and Judge H. Russel Holland.

Mr. and Mrs. Herb Ross.

Judge Lucky, bankruptcy judge for the District of Oregon and a frequent visiting judge in Alaska who assisted former bankruptcy Judge Williams in administering the burgeoning case load for the district of Alaska, offered some cautionary words to Judge Ross about the frustrations of bankruptcy administration.

Judge Ross then had the opportunity to address the packed federal court room. Following the obligatory responses to the anecdotes of Feldman, Ditus and Kelly, Judge Ross thanked his wife Donna for her support during his years of practice in Alaska, and Judge Lucky and the local bankruptcy court staff for their assistance in making the transition from private practice to the bench. Judge Ross' comments were followed by a reception in the federal building that provided an opportunity to those in attendance to offer Judge Ross personal congratulations.

Judge Ross' appointment comes after a seven month selection process that began last December when Judge Ross filed an application for the judgeship with the Ninth Circuit Judicial Council. In an informal Alaska Bar Association poll on the qualifications of the conducted applicants, Judge Ross received the highest rating of the five applicants. Based on the poll results and the high marks that Judge Ross received from the Bar's merit selection committee, Judge Ross was interviewed by judicial council members Boochever, Noonan, and Hug, all of whom are Ninth Circuit Judges.

In mid-June, Judge Ross received word from Ninth Circuit Judicial Council Executive Director Greg Walter that he would be appointed to the bankruptcy judgeship subject to a background check to be conducted by the FBI. That check was substantially concluded by early July, the final step in the investigation taking place with local FBI agent Roger Lee's interview of Judge Ross.

Judge Ross received his undergraduate degree in psychology from Case Western Reserve University in Cleveland, Ohio. His J.D. was received from the University of San Francisco, followed by years of service in the Army Reserve. Judge Ross came to Anchorage, Alaska in the fall of 1964 where he clerked for John Connolly and Pete Walton. Jim Hornaday, now a state district court judge in Homer, clerked with Judge Ross for Connolly and Walton. Following his admission to the Alaska Bar in 1966, Judge Ross went to work as an associate for former Superior Court Judge Peter Kalamarides before forming a partnership with his former Universi-

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THE JUDGES' CORNER

JUDICIAL COUNCIL UPDATE

. . . continued from p. 1

GRAND JURY STUDY: The Council is about to conclude its year-long study of the grand jury process in Alaska. The Council's final report will recommend adoption by the Supreme Court of a new criminal rule concerning grand jury reports, including the following elements:

(1) The grand jury's authority to issue reports concerning matters of the public welfare and safety, even where a crime may have been committed;
(2) The obligation of the court to review the report prior to publication to assure that publication would not unlawfully interfere with protected rights and liberties of persons, organizations or agencies;
(3) Where the report reflects adversely on a person named or otherwise identified, the court's further obligation to confirm that the allegations are supported by substantial evidence on the record, as well as the requirement that a person, organization or agency determined to be adversely affected be provided an opportunity for an in camera, due process hearing on the matter, and a determination that the allegation is supported by clear and convincing evidence;
(4) A procedure whereby any person aggrieved by any decision of the court to release the report or to return the report to the grand jury may seek Supreme Court review of such decision; and
(5) Provision for court control over release and dissemination of the report throughout the report publication process.

The Supreme Court's Standing Committee on Criminal Rules, chaired by Jeff Feldman, worked closely with Bill Council and a committee of the Judicial Council in the development of the proposed draft Rule. Following the Supreme Court's review of the Council's report, it is anticipated that the proposed rule will be again submitted for review to the Criminal Rules Committee and that it will subsequently be disseminated in draft form for general comment by the bar.

JUDICIAL APPLICANT'S PROFILE: The Council recently began an analysis of the characteristics of applicants, nominees and appointees for judicial vacancies during the past three years. Preliminary findings include the following:

- One out of every two persons who applied for a judgeship was nominated; one out of every five applicants was appointed.
- While slightly less than half of all applicants (46%) were from the public sector, more than two-thirds (69%) of all persons appointed during the period studied were from the public sector. Of these, most were assistant attorneys-general or assistant district attorneys.
- Women constituted 15% of the applicant pool, 12% of all nominees and 23% of those appointed during the study, as compared to 17% of the bar.
- The majority of persons appointed (54%) had previously applied for a judgeship; nearly a third had previously been nominated (31%); and 8% had previously been appointed to another judicial vacancy.
- The average score of all applicants on the bar survey was 3.29 (3.0 = "Acceptable" and 4.0 = "Good"); the average score of persons nominated was 3.84, and the average score of persons appointed was 3.91.

A more detailed analysis of these and other factors will be published by the Council in the next few months.

PRO-TEM RETIRED JUDGE PERFORMANCE EVALUATION: The Council is serving as staff to a special committee appointed by Chief Justice Rabinowitz to develop procedures for evaluating the performance of retired judges serving pro-tem. The evaluation procedures will utilize the American Bar Association's (ABA) Guidelines for Evaluation of Judicial Performance as the basis for its work. The ABA has designated Alaska as one of five pilot projects to test the use of the model guidelines. The committee responsible for this project includes: Judge Thomas B. Stewart, Chairman; Judge Douglas J. Serdahely; Judge Glen C. Anderson; R. Stanley Ditus (Alaska Bar Association representative); James D. Gilmore (Judicial Council representative); and Francis L. Bremson (Reporter). The committee began work in early October and expects to complete its efforts by early 1987.

JUDICIAL RETENTION

The Council recommended that all eighteen judges standing for retention this year be retained. The Judicial Council's evaluations were based on surveys of all attorneys and peace and probation officers throughout the state; individual judge questionnaires; and public hearings held in Sitka, Homer and Barrow.

Readers interested in further details regarding any of the above activities should call the Judicial Council offices at 279-2526, or write to the Alaska Judicial Council, 1031 W. 4th Avenue, Suite 301, Anchorage, Alaska 99501.

NJC asks Alaska help

BAR COMMENT SOLICITED

The Board of Governors has received a request for a donation from the National Judicial College. Bar comment on the requested donation is solicited.

The National Judicial College is located in Nevada and is an entirely private organization which provides continuing education and training programs for judges. A significant number of Alaska judges have attended over the years, and they report that the quality of training and programs provided by the college is extremely high.

The college is conducting a fund-raising program in an attempt to enhance its facilities and programs. The college is eligible for a matching grant program by which private donations will be matched dollar for dollar. A number of state and local bar associations have already committed to provide donations to the college. The Anchorage Bar Association has made a commitment for a donation and a significant number of Alaska judges have made donations individually.

The resolution favoring a contribution was submitted to the Board of Governors at the last meeting and the board decided to solicit bar comment before deciding on the matter. If you have a view on whether or not the bar association should make a contribution to this program, please send your comments to the Alaska Bar Association, P.O. Box 100279, Anchorage, Alaska 99510.

A LETTER FROM THE DEAN

We at the National Judicial College send our most sincere thanks to Alaska's lawyers and judges for your generous response to the College's endowment fund drive. I ask for your continuing support during our final effort to match the $2.5 million fund created for this purpose by the Nevada legislature.

In this Bar Rag edition (above) is a request from the Board of Governors for your comment as to whether the Alaska Bar Association should join with the Alaska Bar Foundation ($500.00), the Anchorage Bar Association ($1,000.00), the Alaska Judges Association ($2,00.00), and 53 other similar associations across the country in contributing to this effort. We urge you to respond to the solicitation and hope that your response will favor the pending resolution.

Should you wish further information about the National College or the endowment fund drive in aid of your decision may I suggest you contact one of the judicial contributors in your area. As of this writing the list includes Justices Compton and Moore, Judges Anderson, Bosshard, Buckalew, Carlson, Crutchfield, Hunt, Jahnke, Keene, Lewis, Madsen, Pegues, Ripley and T. Stewart, Magistrates Dennis and K. Stewart, and Department of Labor Administrative Law Judge Carr.

John W. Kern III, Dean
National Judicial College

Restoring judicial independence

Justice Joseph R. Weisberger of the Supreme Court of Rhode Island, speaking at the National Judicial College (NJC) in Reno, Nev., Friday, October 3, urged state trial judges to encourage congressional legislation to restore judicial immunity.

"Judicial independence the ability of a judge to decide cases without fear or favor is fundamental to due process and forms the cornerstone of individual liberties," said Weisberger. "Two years ago, the U.S. Supreme Court made an abrupt departure from four centuries of unbroken precedent in support of complete judicial immunity."

By a five to four majority, the Court held in the case of Pulliam v. Allen, 546 U.S. 522 (1984), that a judicial officer may be enjoined pursuant to 42 U.S.C. Sec. 1983 from conduct perceived to be violation of a defendant's federal constitutional rights and that such injunction might be accompanied by an award of counsel fees pursuant to 42 U.S.C. Sec. 1988.

In the Pulliam case, the injunction was issued because of the practice of a Virginia magistrate to set bail in non-incarcerable offenses. A counsel fee of $40,000 was ultimately awarded along with costs in excess of $3,000.

"There is no aspect of judicial service which poses more difficulties and has less defined standards than the setting of bail," said Weisberger. "One can imagine that a state judge who has been enjoined from certain practices in the setting of bail would no longer be of significant use in participating in arraignment proceedings. He or she would be reduced to an inevitable timidity for fear of being held in contempt by another court for real or perceived violation of the injunction."

The Pulliam case may well signal the twilight of judicial independence in our country," said Weisberger. "The Pulliam case could well be extended to federal judicial officers under the constitutional tort doctrine established in the cases of Butz and Bivens." [Butz v. Economu, 438 U.S. 478 (1978) and Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).] Weisberger also warned of the possibility that the Supreme Court in a future case could extend the Pulliam decision to cases for money damages as well as injunctive relief.

"The purpose of the doctrine of judicial independence," said Weisberger, "is not to protect the corrupt judge but to protect the system of justice. I feel a sense of alarm and outrage at this threat to judicial independence."

As chair of the Appellate Judges Conference of the American Bar Association (ABA) this past year, Weisberger introduced a resolution before the ABA House of Delegates urging Congress to amend sections 1983 and 1988 to restore judicial immunity by prohibiting the award of injunctive relief and/or counsel fees against any judicial officer for an act committed in his or her capacity as a judicial officer, and not clearly in excess of his or her jurisdiction. The resolution will be on the agenda of the House of Delegates at the midwinter meeting of the ABA in February in New Orleans.

Weisberger, in addressing 99 judges graduating from courses in general jurisdiction and advanced computers and technology in the courts, urged members of the state judiciary throughout the country to contact their state representatives to the ABA's House of Delegates to support the resolution and ultimately to contact their congressional representatives to enact legislation to restore judicial independence.

Weisberger, a noted scholar in the area of criminal law history and NJC faculty member for 21 years, was the 61st Jackson Lecturer at the National Judicial College. Weisberger is also author of a 1985 Suffolk University Law Review on this topic (Vol. XIX:537).

Located at the University of Nevada-Reno, the College trains more than 1,500 judges each year. Affiliated with the American Bar Association, NJC is the leading judicial education and training institution in the nation. Since its establishment in 1963, the College has issued more than 20,000 certificates of completion to judges of all 50 states.

HERB ROSS SWORN AS NEW BANKRUPTCY JUDGE

[continued from page 8]

Judge Ross and family at ceremonies.

ty of San Francisco Law School classmate Charlie Tumley.

That partnership continued, with the addition of Ed Reasor, until 1976 when Judge Ross established a solo practice. Judge Ross' practice focused on real estate matters, but he gradually developed an interest in bankruptcy matters in response to the needs of his real estate clients. Prior to moving onto the bench, Judge Ross' busy private practice was about evenly split between real estate and bankruptcy cases. However, Judge Ross, as with many of today's real estate practitioners, has noted the steady increase in the number of his bankruptcy cases.

Judge Ross believes that his experience in real estate transactions will compliment his bankruptcy experience. He noted that the two areas often are flip sides of the same cases, real estate transactions increasing with good economic times, and bankruptcy matters involving real estate transactions increasing with downturns in the economy.

The tremendous increase in bankruptcy filings, largely flowing from the downturn in profitability of real estate and construction businesses, is Judge Ross' primary concern as he moves onto the bench. Administration of the bankruptcy case load poses great difficulties, some of which Judge Ross hopes to cure by application of his knowledge of computers. He also plans on making greater use of his staff for administrative matters not necessarily requiring a judge's attention, such as calendaring and disposition of prehearing matters, Judge Ross expects to experiment with teleconferences and telephonic hearings in an attempt to reduce demands on his time by travel, as well as reduce the expenses of his office. Judge Ross does not believe that he brings either a pro-creditor or pro-debtor philosophy to the bench, noting that he anticipates ruling on matters before him only in accordance with his understanding of the Code and applicable decisions. He expects the most significant changes that practitioners will notice will result from changes in case management and court administration.

No whining allowed

by J.B. Dell

IN THE INFERIOR COURT FOR THE STATE OF MISCONDUCT

THIRD JUDICIAL DISTRICT

Sylvia Poorbottom,
Plaintiff,
v.
Nicholas "Nick" Chesterfield,
Defendant.

Case No. 2UN-USu-al

COMPLAINT

COMES NOW the plaintiff, by, around, through, and in counsel, by way of complaint against the defendant, and whines as follows:

1. Plaintiff is a resident of the State of Alaska and at all times hereto lived herein.

2. On or about May 6, 1986, the plaintiff was proceeding in a westerly direction on Spenard Road in a 1974 Chevy pickup with two large dice suspended from the rear view mirror.

3. At about that same time, the defendant Nicholas "Nick" Chesterfield was proceeding at an easterly direction, and was driving in a careless, reckless, and stupid manner.

4. Due to the carelessness, recklessness, and stupidity of defendant Nicholas "Nick" Chesterfield, the two motor vehicles were caused to come into collision on Spenard Road in the vicinity of the Hot Stuff Escort Service.

5. Due to the aforesaid and previously mentioned and referenced herein carelessness, negligence, and stupidity, the plaintiff Sylvia Poorbottom suffered bruises on or about her back, head, face, lip, thigh, arms, toes, hair, eyes, and naval.

6. Due to the aforesaid carelessness, stupidity, and recklessness forementioned herein, the plaintiff Sylvia Poorbottom has suffered and will continue to suffer medical bills, pain and suffering, miserable life, soreness, marital difficulties, laundry bills, chiropractic bills, neck braces, ringing in the ears, hearing funny noises, failure to enjoy television, inability to enjoy cheese, and other damages that shall be proven at trial herewith.

WHEREFORE, the plaintiff Sylvia Poorbottom, prays, begs, and insists upon the following relief:

1. Judgment against the defendant Nicholas "Nick" Chesterfield for $1,000,000.

2. Punitive damages.

3. Tongue lashing and scolding.

4. Interest and attorney's fees.

5. Anything else the judge can think of.

DATED this _____ day of _____, 1986.

By:_____
William V. Solitaire
Attorney for Plaintiff

WILLIAM V. SOLITARE
ATTORNEY & COUNSELOR OF LAW
807 ALLEYWAY STREET, SUITE 109 (LEFT HALF)
ANCHORAGE, ALASKA 99701

WILLIAM V. SOLITARE
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Case No. 2UN-USu-al

ANSWER

COMES NOW the defendant, Nicholas "Nick" Chesterfield, by and through his attorneys, Nasty, Vile, Brutish & Short, and answers the plaintiff's complaint as follows:

1-6. Defendant denies EACH AND EVERY ONE OF THE PLAINTIFF'S ALLEGATIONS in spades.

First Affirmative Defense

Plaintiff's complaint fails to state a cause of action.

Second Affirmative Defense

Plaintiff's injuries are due to her own stupidity and misconduct.

Third Affirmative Defense

Plaintiff's injuries are due to acts of God or gods.

Fourth Affirmative Defense

Plaintiff has failed to mitigate damages.

Fifth Affirmative Defense

Plaintiff's complaint is barred by the doctrines of waiver, estoppel, laches, and the rule in Shelly's case.

Sixth Affirmative Defense

The plaintiff has large feet.

Seventh Affirmative Defense

The plaintiff had eggs for breakfast.

NASTY, VILE, BRUTISH, & SHORT
ATTORNEYS AT LAW
(A MULTINATIONAL CORPORATION)
2604 PINSTRIPE ROAD, FLOORS 8 AND 9
ANCHORAGE, ALASKA 99512
CABLE ADDRESS: MEGABUCKS

NASTY, VILE, BRUTISH, & SHORT
ATTORNEYS AT LAW
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2604 PINSTRIPE ROAD, FLOORS 8 AND 9
ANCHORAGE, ALASKA 99512
CABLE ADDRESS: MEGABUCKS

Eighth Affirmative Defense

The plaintiff got poor grades in high school.

Ninth Affirmative Defense

The plaintiff assumed risk by driving on the public highways without a crash helmet and air bag.

WHEREFORE the defendant prays for the following relief.

1. Dismissal of plaintiff's with extreme prejudice.

2. For judgment against the plaintiff for attorney's fees, interest, costs, emotional distress, and insurance fraud.

3. For an order requesting that the plaintiff's medical file be published in the Municipal telephone directory for five consequetive years.

4. Such other relief as the court may deem equitable.

DATED this _____ day of October, 1986.

NASTY, VILE, BRUTISH & SHORT
Attorneys for Defendant

By:_____
George S. Trueblood

THE LUNCH CIRCUIT

By Philip Matricardi

You can find a decent lunch within walking distance of the courts in Juneau at pretty near a dozen places. One of the best, The Fiddlehead, requires you to stretch your legs a bit far, but not too far. The Fiddlehead Restaurant & Bakery provides three meals a day every day of the week.

At lunch, fiddlehead fans feast on hamburgers, salads, soups, and fresh bread and desserts. The atmosphere there glows with an upscale don't-panic-it's-still-okay-to-be-organic luster. Glows from the furniture, the fresh cut flowers, the crockery, the friendly folks, and especially from the food.

Debbie Marshall, who owned the Bread Factory in Anchorage about ten years ago, opened the Fiddlehead in Juneau in 1979. For the burgers she selects grain-fed beef raised in the Pacific Northwest. An exception is the bean burger, made meatless with lentils, rice and beans. For one dollar extra you can top your bean burger with your choice of Swiss, cheddar, mozzarella, or blue cheese. Nitrate-free bacon, ham and pork sausage also from grain-fed critters, are available to accompany the burgers.

Even more intriguing are the salads. Alas, the Fiddlehead Salad does not contain any fiddlehead fern, but this large green salad does contain tomato, cucumbers, avocado, cheddar, egg, sprouts, seeds, croutons and more. Served with the Fiddlehead's fine wholesome fresh baked bread.

The brown rice salad features the rice fried hot with veggies and tofu, then served on chilled romaine with vinaigrette dressing, cheddar cheese and sprouts. Nice contrasting combinations of flavors, textures, and temperatures.

My favorite salad combines smoked turkey with fettucine tossed with red peppers, green peas, and chutney. The Fiddlehead serves Greek salad in two sizes and uses real bermuda onion to boot.

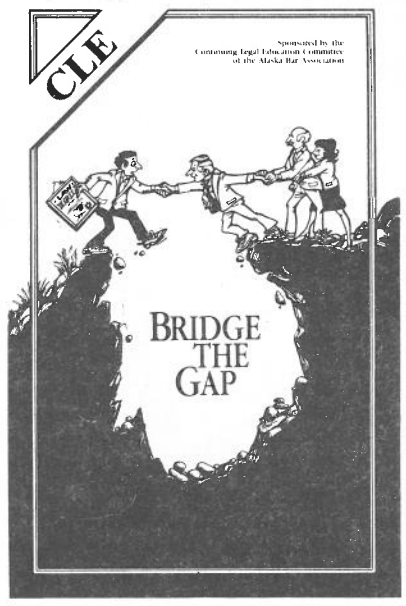
Fresh French onion soup is an everyday item, topped with toasted bread and melted mozzarella and Swiss cheese. Then there's a second soup, the soup of the day, which changes close to daily.

If you go back for dinner, you'll find some creative surprises. Freshly caught Alaskan seafood varies the dinner menu from fresh King Salmon Siciliano to seafood fettucine. My favorite dinnertime dish was a surprise item — pasta and bean stew with fennel flavored Italian sausage. The Light Supper menu includes spicy black beans and rice served with sour cream and tomatoes.

After lunch at the Fiddlehead you might want a cab back to court, but the walk uphill from 429 West Willoughby Avenue will do you good. I know I enjoyed it, despite the rain.

Food Critic Philip Matricardi can be heard Saturday mornings at KSKA FM 91.1, Public Radio for Southcentral Alaska.

BRIDGE-THE GAP MANUALS NOW AVAILABLE!

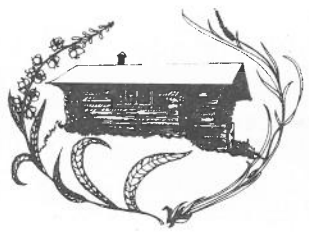


By the time the *Bar Rag* goes to press, the long-awaited Bridge-The-Gap seminar, held November 14 and 15, will be history. The day and a half program covered basic "how to" procedures in a number of areas: Administrative Procedures, Real Estate Law, Professional Responsibility, Clerk to Court, Law Office Economics, Inner Workings of the Law Office, Business Organizations, Family Law, Bankruptcy and Probate.

The BIG news is the manual. An imprinted, three-ring, vinyl-clad notebook, complete with laminated tabbing, holds 500 pages worth of topic outlines covered in the course plus a comprehensive Guide to Legal Resources. The manual will be updated on a regular basis and new sections may be added.

Cost of the manual is $60. To order a copy send a check, payable to the Alaska Bar Association, for $60.00 to Alaska Bar Association, P.O. Box 100279, Anchorage, Alaska 99510.

HISTORICAL BAR



Leroy Barker condemns Ketchikan and documents love affair

By Leroy Barker

When I first came to Alaska in December of 1961, I worked for the Attorney General's office in Juneau. Unfortunately, we were a small group who generally hung around together and were not active in the local Bar Association. However, I think the story of the first civil case that I ever tried might be of some historical interest. Normally, I would not tell this story, but I think I have been admitted long enough and made enough mistakes, that I can candidly report on my first civil jury trial.

I went to work for the Attorney General's office directly out of law school with no practical experience. Due to the inexperience of State Government in those formative years, I was put in charge of all of the pending condemnation actions of North Tongass Avenue in Ketchikan, Alaska, a task that would be difficult even for an experienced lawyer. I was asked to manage and try litigation in a community I was not familiar with and a subject matter I had never heard of. I know I had read something in the Constitution about just compensation but I had no idea what it meant. My constitutional law class was heavy into due process and first amendment rights and rather skipped over some of the other constitutional provisions.

In the summer of 1962, I was assigned as the Acting District Attorney of Ketchikan for three months and also put in charge of all pending condemnation Master's Hearings. I do not recall how many parcels were in contest, but there were probably about forty. I was not then a member of the Alaska Bar, but had been admitted to the California Bar in January of 1962, and was practicing under the waiver that was allowed to Assistant Attorney Generals at that time. I went to a series of Commissioner's hearings at which I represented the State of Alaska. A gentleman named Robert Zeigler, of some local prominence represented all of the property owners. There was a piece of property that the State was condemning which contained the Log Cabin Bakery. It was an operating business and we were cutting it in half. Only many years later was I to learn that the most difficult appraisal problem in eminent domain is the partial taking of an operating business. Fortunately, I was armed in the summer of 1962 with only youthful ignorance and a willingness to give anything a try.

In July of 1962, at the Commissioner's hearing, we put on our appraisor who determined estimated just compensation to be $24,000. I do not recall what the property owners' position was, but the Commissioner's award was $33,000. The property owners were satisfied, but the State was not, so it appealed. In November of 1962, I again returned to Ketchikan for the jury trial of this condemnation case. I think you will appreciate the setting as I arrived on Friday night for a trial that was to start Monday morning. I had undertaken no discovery. There had been no depositions of the experts and no interrogatories asked and no appraisal reports obtained. I did not know what discovery was! When I arrived on Friday night, I met with my in-house State appraisor, who frankly did not know a partial take of a bakery business from a sinking gilnetter in a boat harbor.

The case was set before State Superior Court Judge Walter E. Walsh, a man who was both kindly and understanding of my plight, although he could not try the case for me. I knew that I was in deep trouble. From my room in the Ingersoll Hotel on Sunday night, I called my boss, the Attorney General, George Hayes. I expressed to him my anxiety. He said in a reassuring tone: "Leroy, you are the State's expert on condemnation. Good luck tomorrow morning!" With those words of encouragement, I charged forward. Armed with my ignorance and my less than competent expert, I faced my adversaries. They included local counsel, Robert Zeigler, who knew all of the jurors, Jeremiah Long, a Seattle attorney with 15 years experience in eminent domain, and Hugh Thompson, their appraisor. In 1956, Mr. Thompson had been in charge of the appraisal of the entire city of Ketchikan for tax assessment purposes. He testified many times at trials, both in Alaska and Seattle. Notwithstanding the fact that I had only tried two magistrate criminal trials, I felt secure in the knowledge that George Hayes had assured me that I was the State's expert in the field. I had tried two magistrate jury trials in the summer of 1962, in Ketchikan. Unfortunately, as you recall in the old magistrate's courts, the lawyers argued the law and the juries were not given formal instructions by the judge. Therefore, on Monday morning when I was served with the property owner's jury instructions, I was surprised. After I read them over, I had some suspicion that maybe I ought to have a set of my own. They discussed such novel concepts as severance damages, highest and best use, special benefits and partial taking. They also discussed fixtures versus personalty. Well, I plowed ahead, trying the case in the daytime and doing research at night. There were no computers and Lord knows, no law clerks to help me out. I kept calling George Hayes everyday on a panic basis, probably twice a day. Finally, he had the then District Attorney, Marrs Craddick, come sit beside me one afternoon in trial. Marrs knew less about condemnation than I did, but he had more experience as a trial lawyer. I think he was totally embarrassed by my conduct and never came back after that afternoon. He may not have known how to try a condemnation case, but I am sure he knew that I did not know how to try any type of a case.

To make a long story short, after a week of trial, the jury returned a verdict of $83,000. I suppose this was a victory, since the owners had sought $102,000.

I probably learned more in the trial of this Log Cabin Bakery case then I have learned since in any of my trials. We all continue to learn and hopefully get better as we get older, but there is nothing like the first baptism under fire. Such artful efforts as jury selection, opening statement, marking exhibits and cross-examination were skills that I was to develop long after this trial was completed. Enough of that.

In the meantime, I thought I would enclose a couple bits of memorabilia, which you might find of interest. One set of documents is the Complaint and Answer in *Carmen DeMaurant v Frank Estes*. I can add nothing to the legal writings of Paul Robison and Harold Butcher in their Complaint and Answer. Also, I am including a letter Judge von der Heydt wrote Dave Ruskin on June 26, 1973, and Dave Ruskin's reply the next day. I do not know who Mr. Ruskin is referring to when he mentions "Don Wendell's family." Have you some thoughts on this?

(This is the second in a series of historical reminiscing by the Bar's Historians' Committee, chaired by the late Wendell Kay. The title is Mr. Kay's).

AS OTHERS SEE US

Lawyers diversify in complementary services

By Chris Wright Ibanez

Three trends that reflect a new competitive era for American law firms during an economic slowdown are diversified business ventures outside of the legal arena, hiring of professional non-legals to work alongside lawyers, and more aggressive marketing of the legal profession.

A growing number of law firms across the country are moving beyond the traditional lexicon of the legal trade and engaging in a variety of business ventures, from investment banking to environmental consulting, to real estate development.

Such ventures include:

Pechner, Dorfman, Wolffe, Rounick and Cabot, a Philadelphia firm that specializes in labor law, started a personnel consulting company to advise its corporate clients on how to handle problems with employees.

Van O'Steen and Partners, run by a Phoenix lawyer who was one of the pioneers in legal advertising, formed the Van O'Steen Lawyer Marketing Group. The company helps personal injury lawyers sell themselves by providing services ranging from personalized television spots to three years' worth of newspaper columns on legal topics.

A Pittsburgh firm, Thorp, Reed and Armstrong, operates an office supply, printing and messenger company that started as a way of sharing administrative costs with other companies in its building but has branched out to serve other law firms in the city.

The D.C. office of Sutherland, Asbill and Brennan joined with William A. Vaughan, who left his post as an assistant secretary at the Department of Energy, to form Energy and Environmental Consultants. Vaughan, who holds degrees in both law and engineering, heads the consulting firm and is of counsel to the law firm.

The partners of an Atlanta firm—Asbill, Porter, Churchill and Nellis established an investment banking company last year. Rather than be on the peripheral of investment opportunities, the firm decided it could be of service to its clients and also make money.

The businesses provide the opportunity for lawyers to broaden the firm's economic base during a slowdown in business activity. It has proven to be an ideal situation for this kind of synergistic practice.

The firms involved in these ventures say that most of the businesses were born out of client demand. Clients are interested in finding one entity who will take the responsibility for dealing with the whole problem, not just a particular aspect of the problem.

All the firms had to deal with ethical issues, including conflict-of-interest, but have found ways to work out most of the issues.

Law firms are also experimenting with hiring non-legal professionals. Productivity improvements are often cited by proponents of the fledgling trend. Better utilization of resources in a firm is one advantage. Non-legal professionals can often be billed out at a lower rate saving the client some money. The business-getting potential of some non-lawyers attracts many law firms.

Some examples include:

Washington's Beveridge and Diamond hired economist Jim Tozzi. Tozzi was deputy administrator of the Office of Management and Budget and did development consulting for some of the provinces of China. His work has brought in legal business involving American investments in China.

Linda Gosden of Washington's Heron, Burchette, Ruckert and Rothwell, former public relations director at the Transportation Department recently put together a campaign to line up newspaper editorial support on behalf of an oil-tanker owner who wanted a change in Transportation regulations. The firm subsequently ended up doing legal work for the tanker owner.

At Morrison Mahoney and Miller, a Boston firm that handles medical malpractice defense work for insurance companies, a staff physician now assists in the preparation of cases and acts as liaison with expert witnesses.

Finally lawyers are beginning to market themselves. They are not only advertising, but sending out brochures and newsletters, holding seminars—adopting all the promotional staples that management consultants and other service firms use to hype their practice.

These new strategies are designed to increase market share but with emphasis on repeat businesses as well. Greater emphasis on customer service means client satisfaction and client satisfaction is the bottom line.

Chris Wright Ibanez is a free-lance management consultant with an MBA in Human Resource Management. Most of her clients have been involved in legal issues around employment and labor law which they have worked out with their attorneys. Chris then builds the personnel systems that support a well planned Employee Relations program.

New Organization Formed

Lawyers for Alternative Work Schedules (LAWS), a national non-profit organization devoted to the issue of part-time work for attorneys, has recently been incorporated and is currently conducting a membership campaign.

The purpose of LAWS is to educate the legal community about the benefits of adopting various work time options such as part-time, flex-time and job sharing.

LAWS will conduct research on these topics, will produce a portfolio and other materials documenting the benefits to employers of implementing alternative work schedules and will offer conferences, workshops and a national newsletter.

Tutors Commended by Board of Governors

The Board of Governors passed a resolution at its September meeting publicly recognizing the bar exam tutors for their time and effort in assisting applicants. The members of the Bar who have volunteered their time as tutors are:

James S. Crane
Roger W. DuBrock
Dana Fabe
Averil Lerman
Sen K. Tan
Susan L. Urig
Clay A. Young

The tutoring program for applicants who have failed the bar exam was established by the Board of Governors last summer. Five applicants were provided with tutors in preparing for the July, 1986 bar exam.

The tutors attended an orientation and training session conducted by Cheri Jacobus, who, with her husband Ken, runs the bar review course, and who has had years of tutoring experience. The tutors were provided with past exams for the student to use as practice exams, which are then reviewed and evaluated by the tutor.

Each tutor was assigned one applicant. The amount of time spent on tutoring varied widely, depending on the tutor and applicant.

Tutors Wanted

The Bar office was able to assign a tutor to every applicant who requested assistance for the July exam. However, the Board would like to establish a larger pool of tutors so we can always meet the need for assistance. If you have done tutoring on an informal basis, or know someone who would be a good tutor, please help us out and contact the Bar office to volunteer. Remember what it was like when you were taking the bar exam!

SPECIAL REPORT: ETHICS & THE BAR

Discipline counsel discuss process

The following is a summary of a recent interview of Bar Discipline Counsel Stephen J. Van Goor and Susan L. Daniels by Mickale Carter.

By Mickale Carter

One of the responsibilities of the Discipline Counsel is enforcement of the Disciplinary Rules (DR) of the Code of Professional Responsibilities. This Code sets the standards for conduct of members of the Alaska Bar. Stephen J. Van Goor and Susan L. Daniels are the Discipline Counsel for the Alaska Bar Association. Van Goor and Daniels represent the Alaska Bar Association in bringing disciplinary action against members of the Alaska Bar. Although both Van Goor and Daniels handle discipline cases, only Daniels is involved with Fee Arbitration. Van Goor handles the admission related matters which is outside the scope of this article.

The following is a summary of my recent interview of Van Goor and Daniels. My purpose in interviewing the Discipline Counsel was twofold. I wanted to find out about the nuts and bolts procedures for bringing a disciplinary action including the various sanctions which may be imposed. I also wanted to get a sense of the kind of DR violations which are most frequently the subject of complaints in Alaska. The discipline discussion is followed by a discussion of fee arbitration.

Q: When is an attorney subject to discipline?

A: All attorneys who practice law in the State of Alaska are governed by rules of ethics known as the Code of Professional Responsibility. An attorney is subject to discipline if he violates a Disciplinary Rule of that code. The Code is divided into two sections, Ethical Considerations (EC) and Disciplinary Rules (DR). The Discipline Counsel enforces the DR's. An attorney may be disciplined for violating a disciplinary rule, an ethics opinion or for any other conduct set forth in Bar Rule 15.

The Code was adopted by the Alaska Supreme Court in May 1971. It can be found at Volume III of the Rules of Court. The Model Rules of Professional Conduct, approved by the American Bar Association, are presently under review. Upon completion of that review the Board of Governors will make a recommendation to the Alaska Supreme Court as to whether the Model Rules should govern members of the Alaska Bar.

Q: Who can complain about an attorney?

A: Any person can file a complaint. Although complaints against attorneys are most often filed by clients, opposing parties, attorneys and even judges can initiate the disciplinary procedure. Also, the Discipline Counsel can begin an action sua sponte if either becomes aware of activities which are questionable.

Q: What entity is responsible for processing complaints?

A: The Disciplinary Board of the Alaska Bar Association is responsible for processing ethical grievances against attorneys. The Disciplinary Board is made up of the members of the Board of Governors. The Disciplinary Board employs the Discipline Counsel and staff who investigate and prosecute ethical grievances.

Q: How does one file a complaint?

A: The Discipline Counsel have prepared an attorney grievance form. The person making the grievance, as indicated on the form, must identify himself and the attorney about whom he is complaining. The grievant must then make a written signed statement explaining the details of the alleged misconduct, including the approximate time and place. Any documents which support the claim of misconduct should be attached to the attorney grievance form. The form should be sent to the Discipline Counsel in care of the Alaska Bar Association.

Q: What happens once the complaint is filed?

A: All grievances are reviewed by the Discipline paralegal and discussed with Discipline Counsel. If the Discipline Counsel decide to proceed, the case is assigned to either Van Goor or Daniels. The assigned counsel reviews the attorney grievance form seeking to determine whether the allegations, if true, would constitute grounds for discipline. If the claim is inadequate, Discipline Counsel declines to open an investigation. If the investigation is declined because the grievant failed to set forth adequate details of the alleged occurrence, the assigned Discipline Counsel will inform the grievant so that he may further clarify his claim.

If a grievance is accepted, an investigation is begun. The attorney about whom the grievance is made is sent a copy of the complaint. The attorney is required to respond in writing. The attorney's response, of course, should be accompanied by evidence which supports the attorney's position.

If Discipline Counsel is convinced after reviewing the attorney's response that there is no probable cause to believe that misconduct has occurred the case is dismissed.

Q: When does the aggrieved attorney have the right to counsel?

A: The attorney has the right to consult counsel at any time during the disciplinary process. Approximately 25% of Alaskan attorneys charged with a disciplinary violation retain counsel. Those who do are frequently represented by a partner or co-owner in a multi-lawyer law firm.

Q: What is the standard of proof?

A: It must be shown that the attorney committed on act constituting grounds for discipline by clear and convincing evidence. Discipline Counsel have determined that "clear and convincing" is somewhere midway between preponderance and beyond a reasonable doubt.

Q: What are the possible sanctions which may be imposed upon the attorney?

A: There are seven types of disciplinary sanctions, two which are private and five which are public. The least severe sanction is written private admonition by a Discipline Counsel. The next level is a private reprimand by the Disciplinary Board. The most severe sanctions are public sanctions. Public sanctions involve public reprimands by the Discipline Board and public censure, probation, suspension for up to five years and disbariment by the Alaska Supreme Court.

Q: What does a private admonition entail?

A: A private admonition is given for minor types of ethical violations. These include: minor neglect of a client's case, minor conflicts of interest, and conduct which results in minor interferences with the administration of justice. For these minor violations, a Discipline Counsel, with the approval of one member of the Area Hearing Committee, may write a letter to the offending attorney. The letter advises the attorney of the conduct which violates the disciplinary rules. The attorney is advised to correct this conduct.

Q: What does a private reprimand entail?

A: A private reprimand is given by the President of the Disciplinary Board. Usually a private reprimand is the result of a stipulation between the disciplinary counsel and the attorney.

The Disciplinary Board, however, can disapprove of this stipulation. If the Disciplinary Board is in agreement, the President of the Board will write a letter to the attorney indicating the attorney's misconduct and advising that the attorney should refrain from such conduct in the future.

Q: What are the procedures required before an attorney can be publicly disciplined?

A: Generally, public discipline succeeds the formal hearing process. Discipline Counsel recommends the formal proceeding. Before the petition for formal proceeding can be filed it must be approved by one member of the Area Hearing Committee. The petition is a statement of the alleged violation. The proceedings become public when the petition for formal proceeding is filed.

The Area Hearing Committee is comparable to a hearing master for a trial court. It hears the evidence presented by both the Bar and the attorney. The Area Hearing Committee is made up of three members, two attorneys and one lay person. The Executive Director of the Alaska Bar Association in her capacity as clerk of the Disciplinary Board selects from the members of the Area Hearing committee those who will sit for each formal hearing.

The proceedings before the Committee are like a trial. The Bar Association has the burden of proof. The attorney has the right of cross-examination, right to counsel, right to present witnesses and right of subpoena. After hearing the evidence, a majority of the Area Hearing Committee issues its findings of facts and conclusions of law along with its recommendation to the Disciplinary Board.

The Disciplinary Board which is the Board of Governors has 12 members: nine attorneys and three non-attorneys. The nine attorneys are elected by the members of the Alaska Bar. The non-attorneys are appointed by the Governor of the State of Alaska.

The recommendation of the Area Hearing Committee is comparable to a Master's recommendation. The Disciplinary Board adopts the Area Hearing Committee s recommendation or reviews it de novo. If either the Discipline Counsel or the attorney appeals the Area Hearing Committee s findings, conclusions, and recommendations, it is more likely that the Disciplinary Board will hear oral arguments and request briefing from both sides.

Continued on page 14

Jury's still out on attorney ads

ABA, justice differ on ads

By Steven W. Colford

Lawyer advertising has helped many consumers overcome fears or uncertainties about obtaining legal advice, according to an American Bar Assn. committee report.

The ABA's Commission on Professionalism, in a report issued last week after two years of study, called for "good sense and high standards" as guideposts for lawyer ads. "The advertising of legal services is not the same as the marketing of home lawn care or underarm deodorant," the commission observed.

But it also said it "heard testimony that many people with relatively simple legal problems, who could not otherwise afford legal advice, have had their problems competently handled by entities that employ advertising and rely on volume to compensate for their lower charges."

In an address to the ABA convention in New York last week, outgoing U.S. Chief Justice Warren Burger delivered a less moderate view of the issue, castigating "advertising lawyers [who] have lost sight of the traditional values of our profession."

"The public interest does not need — indeed no lawyer needs — colorful, self-touting or deceptive advertising in order to give people access to the courts," Justice Burger said, reiterating a theme he has voiced in the past.

"Responsible persons will agree that just because the Constitution permits an act (*i.e.*, advertising), that does not make it ethically acceptable for the privileged profession of the law."

—From Advertising Age, Aug. 18, 1986

No Alaska Complaints

There have been very few complaints about lawyer advertising in Alaska according to the Bar's Discipline Section. The Bar has two primary concerns in this area: one, that lawyer ads do not use the words "specializing, specialist, speciality" since there is no accrediting organization in Alaska at the present time; and, two, that the ads are not false, deceptive or misleading. The Model Rules Committee, chaired by Robert Bundy, is currently considering proposed advertising rules along with other ethical rules found in the ABA's Model Rules of Professional Conduct for presentation to the Board of Governors and the Supreme Court. Anyone with questions concerning the propriety of an advertisement should contact the Bar's Discipline Counsel.

Bar issues 27 findings

By Donna C. Willard

After eighteen months of meetings and hearings, the ABA's Commission on Professionalism transmitted its report to the House of Delegates together with a recommendation that it receive nationwide circulation for comment and that a committee be appointed for implementation.

The report makes 27 specific recommendations for law schools, the organized bar, judges and lawyers to follow, including:

(1) that lawyers abide by higher standards of conduct than the minimums required by the Code;

(2) that new lawyers be consciously aided by their firms and bar associations in recognizing and addressing the practical aspects of the practice of law and of ethical issues;

(3) that continuing legal education programs should be strengthened and made mandatory;

(4) that the ABA should prepare films or video tapes on ethical and professional issues and make them available to CLE programs;

(5) that the bar should emphasize the role of lawyers as officers of the court;

(6) that lawyers and judges should report serious misconduct to disciplinary authorities;

(7) that lawyers should devote increased time to pro bono work and should develop simple, less expensive ways to deliver legal services; and

(8) that lawyers should not make acquisition of wealth a primary goal.

With respect to judges it was recommended that:

(1) state supreme courts should provide adequate funding for the disciplinary process;

(2) that sanctions for litigation abuses, similar to those embodied in Federal Civil Rule 11, should be imposed by state court judges; and

(3) judges should assume a more active role in the conduct of litigation.

The report is currently in the hands of all concerned groups, including state and local bars, for comment.

In other action, the House of Delegates at its annual meeting in New York, approved a revised recommendation that supports the concept of mandatory continuing legal education and urges the state bars to seriously consider implementation. Also approved were Standards For Providers of Civil Legal Services to the Poor and the Federal Provisional Remedy Enabling Act which would have the effect of allowing attachment, garnishment and sequestration orders to be effective wherever property is found rather than being limited to the district of the issuing court.

After hot debate the House adopted a resolution supporting the provisions of the Age Discrimination in Employment Act which would eliminate the 70-year mandatory retirement age for non-federal workers.

The next meeting of the House of Delegates will be held February 16 and 17, 1987 in New Orleans. For more information contact either Keith Brown or Donna Willard, Alaska's delegates.

Discipline counsel . . . continued from p. 14

The Disciplinary Board then makes findings of fact and conclusions of law as well as recommendations with regard to sanctions. If the Board's recommendation is for sanctions and the recommended sanction is disbarment, suspension, probation or public censure the disciplinary matter is forwarded for consideration by the Alaska Supreme Court.

Q: What does each type of public discipline entail?

A: The most severe of the sanctions of course, is disbarment. Since 1955 there have been seven Alaska attorneys who have been disbarred, most for criminal convictions or for stealing from client's trust accounts. If an attorney is disbarred he can re-apply for admission to the Bar after five years. Before being allowed back into the Bar, he must convince the Supreme Court that he has rehabilitated himself. The attorney must show by clear and convincing evidence that he is no longer a danger to the public.

With a suspension an attorney is not allowed to practice law for the period of the suspension. If the attorney is suspended for less than one year he is automatically reinstated unless such is opposed by a Discipline Counsel. Otherwise the reinstatement procedure is the same as for disbarment.

When the attorney is placed on probation he must be supervised in the practice of law by another attorney. The disciplined attorney must pay for the services of the supervising attorney. He can be placed on probation for up to two years. There are presently two attorneys on probation; one in Southeast and one out-of-State attorney due to the reciprocal discipline rule.

A public censure differs from a private reprimand in that it is public.

Q: What do you recommend that attorneys do in order to avoid ethical complaints?

A: Most complaints about attorneys involve failure of the attorney to communicate with his client. Attorneys can avoid many complaints simply by copying their clients with documents, including correspondence, which they have prepared and by returning their client's phone calls. See Table 1.

Q: Is there any way an attorney can get advice if he is confronted with an ethical question?

A: Any attorney can call and ask for informal advice from either of the Disciplinary Counsel. Also, any member of the Ethics Committee will give informal advice. If a formal opinion is sought a question can be presented to the Board of Governors by written proposal of the Ethics Committee which may then issue a formal ethics opinion. However, it may take several months to render a formal opinion.

FEE ARBITRATION

Q: Who may petition for fee arbitration?

A: A client with a fee dispute with his attorney may petition for arbitration. The attorney must be licensed to practice law in the State of Alaska and the services must have involved a legal matter conducted in Alaska before Bar Counsel will arrange for arbitration of the fee dispute. In addition, the client must have made efforts to resolve the dispute directly with the attorney.

Q: How does a client request fee arbitration?

A: Bar Counsel has prepared a form which the client may complete to make his petition to arbitrate a fee dispute. In making the petition the client must describe the dispute as specifically as possible and state the remedy that he seeks from the attorney.

Q: What happens once the petition is filed?

A: After the petition is filed the Bar Counsel reviews it to determine whether the client has made reasonable efforts to resolve the dispute with the attorney prior to filing the petition and as to whether the petition is otherwise complete. When the client has satisfactorily completed the petition, the Bar counsel notifies both the client and the attorney that the petition has been accepted. Each party is notified that if the matter is not settled within ten days it will be referred to a hearing panel.

At the end of the ten day period, if Bar Counsel has not been informed that the matter has been settled, she selects a Hearing Panel from the members of the appropriate standing subcommittee. The panel consists of three members, two attorneys and one non-attorney. There are four standing subcommittees; one in Anchorage, Fairbanks, Juneau and Ketchikan. There are twenty four attorney members and eight non-attorney members in Anchorage, twelve attorney members and four non-attorney members in Fairbanks, and six attorney members and two non-attorney members in both Juneau and Ketchikan.

Twenty days in advance of the hearing the Bar Counsel will give written notice to the client and the attorney of the time and place of the hearing. Each will also be advised of the right to present witnesses and to submit documentary evidence. The client will also be notified that he can be represented by an attorney.

The decision of the Hearing Panel includes inter alia, the panel's findings of fact. The hearing panel also makes a recommendation as to whether the matter should be referred to the Bar Counsel for appropriate disciplinary proceedings. See Table 2. The panel of course, also makes its decision with regard to the fee dispute.

Q: Can either party appeal the decision of the Hearing Panel?

A: Yes. Should either party appeal the decision of the panel, the appeal should be filed with the clerk of the Superior Court and also must be filed with Bar Counsel. If the award is against the attorney, the award is final and binding unless appealed within 30 days of its issuance. The Panel s decision is final and binding upon being affirmed by the Superior Court. Failure to pay a final and binding award subjects the attorney to suspension for nonpayment.

From the type of complaints lodged with the Discipline Counsel it would appear that the most common ethical violation of the Alaska Bar is client neglect which includes the failure to adequately communicate with clients. This problem seems to be a result of poor management rather than the outgrowth of an ethical dilemma. The Alaska Bar could go a long way in preventing this type of violation by gathering information about workable office procedures and time management systems and disseminating that information to the members of the Bar.

Montana attorney James E. Murphy uses a whimsical cartoon on his personal stationery in a low-key "ad".

Western Justice - do it yourself kit

TABLE 1

Discipline Status Report As of October 2, 1986

Open Cases by Nature of Grievance

Code No.	Code Description	No. of Cases
01	Trust violations (embezzlement conversion, withholding client's property)	12
02	Conflict of interest	9
03	Neglect (failure to perform, delay)	43
04	Relationship with client (disclosing confidential information, improper withdrawal, abandonment, failure to protect interest of client)	15
05	Misrepresentation/Fraud	8
06	Excesssive fees	3
07	Interference with justice	33
08	Improper advertising and solicitation	5
09	Criminal conviction	0
10	Personal behavior	0
11	Wilful failure to cooperate with discipline authorities	1
12	Medical incapacity	0
13	Incompetence	0
14	No jurisdiction or referred to other agency	0
15	Other	1
	TOTAL	130

TABLE 2

Fee Related Conduct Resulting in Discipline Referrals

Arbitration Decision 83-84 (11-1-85). Failure to adequately represent; possible solicitation of retention; and questions about veracity of attorney's testimony at hearing.

Arbitration Decision 83-27 (9-13-85). Reasonableness of premium rate of 250% of normal rate; billing non-bankruptcy related matters as part of billings submitted to BankruPtcy Court for approval; and charging excessive fees in bankruptcy which would adverselY affect creditor and client.

Arbitration Decision 83-39 (12-5-84). No prior discussion of contingency fee with client.

Arbitration Decision 83-6 (4-25-84). Falsification of billing records.

Arbitration Decision 83-04 (3-19-84). Abandonment of client matter.

Arbitration Decision 83-24 (1-31-84). Failure to adequately represent client.

Arbitration Decision 83-13 (11-21-82). Attorney had client sign blank financial declaration.

Arbitration Decision 82-2 (9-9-82). Collection of advance fee in worker's compensation case without approval of Workers Compensation Board.

Arbitration Decision 82-2 (8-11-81). Attorney unilaterally applied trust funds to disputed fee claim.

Arbitration Decision 81-16 (7-30-81). Attorney quoted and subsequently departed from flat fee on three occasions. Questioned whether attorney enticed clients.

Arbitration Decision 80-16 (1-12-81). Failure to explain contingency fee and alternatives to client in violation of Ethics Opinion 74-3.

Arbitration Decision 80-7 (7-20-81). Fee agreement for excessive nonrefundable retainer and allowing attorney in his sole discretion to set total fee within $15,000.00 range.

The view from another bar

By Keith J. Kaap

Ideally, all lawyers are fully conversant with the rules and standards which govern their conduct and subject them to possible professional sanctions and civil liability for their infraction. But, because of minimal formal education regarding these rules and standards, the varied nature of our practices, the expansive and rapidly evolving law of lawyering and other factors, many of us would confess to having not yet attained that ideal.

As we work toward that goal, however, we might try what I would call a commonsense approach to practicing ethically. Although many professional ethics issues and fact situations can be complex, simply keeping in mind a few basic questions as we practice law can serve as an "ethics detector" to cause us to pause and research before breaching any professional standard.

Begin with the Golden Rule: *Do unto others what you would have them do unto you.* The initial question is, then, if I were "that" person, would I want a lawyer to be doing "this" to me? For example: Would I tell a client what the fee will be only the day before trial? Not disclose to clients factors that have or may be perceived as having an effect on my representation of their interests? Not carefully explain whose interests I am representing in transactions involvoing parties on amicable terms? Not disclose any personal interest that I may have in a transaction?

The Golden Rule litmus test does not mean that you impermissibly dilute your representation of your client. It simply means that — with perhaps minimal knowledge of th Code of Professional Responsibility and other standards of conduct — you may be treading on interests of a client, a tribunal, a party or someone else which the standards of lawyer conduct also protect in various ways. The red flag goes up and you proceed as professional would to resarch possible disciplinary or civil liability risks.

As you apply the Golden Rule, you must always be fully aware of *who may be affected by your representation* or advice — who stands to gain or lose something from it? Are any of those interests *unrepresented?* If so, have you clearly communicated the limits of your representation and identity of your client? Is it reasonably possible that anyone involved could be misled regarding your role? These are very basic questions which are applicable to much of lawyering and are indicative of potentially serious ethical and civil liability issues involved in your undertaking.

These basic guidelines to practicing preventive ethics and legal malpractice also could be summarized by another question: *If I were that client, would I hire me,* knowing what I do about my expertise, fee practices and interest in this kind of case? If we are obligated not to damage or prejudice a client (as we are), what should an honest but negative answer to this question suggest? It should suggest that we possibly are entering a disciplinary and professional liability minefield if we accept the client. And it also may suggest that we should get into another line of work if we frequently accept such matters.

Obviously, the applicability of all standards of conduct may not be detected by the commonsense approach. But most should be. Before experimenting with this approach to practicing ethically, take a few minutes to read and reflect upon several fundamental *Code* provisons: SCR 20.04(4); SCR 20.22; SCR 20.24(1); SCR 20.28; SCR 20.35 and 20.36. These provisions substantially codify what I have termed the commonsense approach and underscore its significance with disciplinary teeth.

Reprinted from the Wisconsin Bar Bulletin.

Judges disciplined by Commission

by Frank Flavin

What is yellow and black, has four wheels, costs $22,000 and has roots in Art IV, §10 of the Alaska Constitution? If you answered the Alaska Commission on Judicial Conduct's supplemental appropriation request for fiscal year 1986, which is presently a Hydaberg School District van, qo to the head of your trivial pursuit group. If not, your knowledge of the Commission parallels that of most legislators and many of your colleaques.

Except for judges who have been subject to judicial conduct inquiries, and the few attorneys who have represented them, the Commission's role and function is not widely understood.

Background

Over fifty years ago the American Bar Association (ABA) formulated the original Canons of Judicial Ethics. In 1969, these Canons were revised, resulting in the Code of Judicial Conduct, which has been adopted by the Alaska Supreme Court, as well as the highest courts of most other states.

Impeachment, recall and legislative redress, the traditional methods of judicial discipline, have proven too cumbersome and costly to hold judges accountable to the high standards set forth in the Code of Judicial Conduct. Consequently, in 1978, the Joint Committee on Professional Discipline of the ABA designed a system of judicial discipline to enforce the Code while protecting the rights of individual judges.

The ABA model recommended that a single tier disciplinary commission be established in the constitution of each state. This proposed commission should receive complaints, investigate, determine probable cause, conduct formal hearings, make findings of fact and recommended discipline to the state supreme court, which would retain ultimate authority to discipline judicial officials. Alaska, as well as most other states, has adopted this "single-tier" commission plan. Nine states have adopted "two-tier" plans in which a board or commission receives and investigates complaints, and, upon a determination of probable cause, presents charges to a separate permanent board or court for adjudication.

The constitutionality of a "single-tier" organization, which combines both investigative and adjudicative functions in a single body, has been tested, and upheld in Withrow v. Larkin, 421 U.S. 35, 95 S. Ct 1456, 43 L.E.D.2d 712 (1975).

Structure & Membership

Alaska's Commission on Judicial Conduct is established in Art. IV, §10 of the Alaska Constitution. The Commission consists of three judges elected by the members of the judiciary, three attorneys, with 10 or more years experience, appointed by the governor upon nomination from the Bar Association, and three public members, who cannot be attorneys or judges, who are also appointed by the governor. Attorney and public member appointments are subject to legislative confirmation.

Ground for Discipline

The role and function of the Commission are established in AS 22.30.011 et. seq., which provides for disciplinary sanctions upon a determination that a judge has committed conduct prejudicial to the administration of justice, which brings the judicial office into disrepute or violates the Code of Judicial Conduct. The standards set forth in the statute and the Canons are quite general and have largely been defined through various commission interpretations and court opinions, both in Alaska and other jurisdictions. One of the more difficult duties in serving as staff for the Commission is explaining to a complainant, that a decision that he or she feels is wrong, is not, on that basis, "prejudicial to the administration of justice". Or for that matter, that "law" is determinable, but that "justice" is largely in the eye of the beholder.

Procedure

Procedurally, the Commission first screens complaints to insure that they are jurisdictional, both as to the accused judge and the subject matter of the accusation. (The Alaska Commission falls short of the ABA model, as it does not have jurisdiction over all officials exercising judicial powers and performing judicial functions. The Alaska Commission has no jurisdiction over magistrates and masters.) If the Commission does have jurisdiction over the judge or justice accused, a determination is made as to whether the accusation concerns a matter of judicial conduct and is not a misdirected appeal of a case ruling or decision.

Once an accusation is determined to be jurisdictional, the judge is advised of the accusation and of his or her opportunity to present a written or oral statement. An investigation is then undertaken. By statute, both the accusation and investigation are confidential and not subject to public disclosure or discovery. Once an investigation is concluded, the executive director may dismiss the accusation, subject to review of the dismissal by the full Commission, or may present the matter to the Commission for their consideration. The executive director makes no recommendation in regard to formal Commission determinations, and has no vote.

Upon the receipt of the results of an investigation, the Commission, by a majority vote of the Commissioners holding office, may dismiss the complaint, determine that probable cause exists, or order that further investigation be undertaken. If the Commission determines that there is probable cause, it may issue formal charges, or offer the accused judge the option of accepting a private admonishment (no copy to supreme court) or private reprimand (copy to supreme court). If the judge rejects a proposed offer of private sanctions, a formal disciplinary hearing will be held after the issuance of formal charges. Where such an option is offered, the Commission may not impose a greater sanction, after hearing, than initially proposed, unless substantial new evidence is produced at the hearing.

By statute, formal charges based upon a probable cause determination by the Commission are subject to public disclosure. The Commission does not normally publicize formal charges, but at least one diligent journalist periodically requests a copy of all such charges that have been issued.

Upon the issuance of a formal complaint, the respondent judge is afforded full discovery rights, and if the accusation concerns an act done within the judge's official duties, the judge will receive attorney's fees from the state through the risk management office. The Commission contracts with private attorneys to act as "special counsel", in a "quasi" prosecutorial role. The hearing itself takes place in front of the full Commission or a fact finder appointed by the Commission. Formal hearings are, by statute, confidential.

Upon a determination by "clear and convincing" evidence that misconduct has occurred, the Commission may issue a private admonishment, a public or private reprimand (subject to appeal to the Supreme Court), or recommend to the Supreme Court that the judge be censured, either privately or publicly, retired, suspended or removed from office.

Caseload Experience

In those rare years that the Commission receives 12 months funding (albeit on a part-time 3 mornings a week basis), approximately 100 accusations are filed. Most complaints are filed by litigants and very few, generally less than five, are filed by attorneys. However, what an attorney tells a disappointed litigant often has a large impact on whether or not an accusation is filed, particularly in those matters where the central issue concerns decision on the merits of the case.

Not infrequently a complainant will say "my attorney told me that this judge always finds against the man, or against the woman," etc. This may be as "prejudicial to the administration of justice" as an occasional minor breach of the Code of Conduct by judicial officials. In essence the attorney is saying — "Based upon my experience I know this person to be a bad judge, and I, as an attorney, am not willing to do anything about it!" Consequently, the public's perception of the judicial process is gradually eroded.

In the last four years, the Commission has not imposed or recommended a sanction more severe than censure by the Supreme Court.

In 1983 the Commission privately admonished (no copy to Supreme Court) one judge for an improper ex parte contact and issued a private reprimand (copy to the Supreme Court) to another judge for improper use of cultural criteria in a court proceeding.

In 1984 a judge was censured by the Supreme Court upon the recommendation of the Commission, for off the bench conduct consisting of offensive statements and injudicious conduct involving attorneys and witnesses in a pending proceeding. Formal charges were brought against another judge, but dismissed subsequent to formal discovery, upon the recommendation of the special counsel appointed by the Commission.

In 1985, a judge was reprimanded for unnecessary racially oriented comments from the bench, and another judge was reprimanded for an "off the bench" racially offensive statement.

In 1986, a judge has received a private reprimand and formal charges are outstanding involving off the bench conduct of another judge.

Even in cases in which no misconduct is found the investigation may have a salutary effect on a judge's conduct, where his or her actions may not constitute misconduct, but fall short of that of the ideal judicial officer. A judge can, after being alerted to a potential problem, on his or her own, make needed adjustments. In more serious cases, the Commission may indicate to a judge that they have not found misconduct, but that a problems exists that should be addressed before more serious problems occur. Two such "counselling" letters have been issued in 1986: one dealing with a judge's temperment and demeanor and another with a judge's attention to administrative duties. In 1985 a judge was verbally counselled concerning an unintentional ex parte contact.

Finally, the investigative process is beneficial to the administration of justice because dissatisfied, and possibly misinformed citizens, are able to receive a review and explanation from an impartial third party. Obviously some complainants will never be satisfied. However, most people are reasonable, and if they are treated fairly, are afforded the right information, and an explanation, they will he satisfied that judges are functioning honestly and fairly.

Fiscal Problems

It is ironic that the voter approved constitutional amendment in 1982, that attempted to improve the Commission's accountability by increasing public and attorney membership and decreasing judicial membership on the Commission, has resulted in financially crippling the reconstituted body. Following voter approval the attorney and public member appointments were delayed due to a nonrelated appointment dispute between the Governor and the Legislature. Consequently, the Commission only operated six months in 1983.

Unfortunately, the Commission's budgets, for every year since 1983, have been based upon a six month operation. In light of the fact that the Commission has always operated on a part time basis (Commission offices are open three mornings a week) the seasonal closure of the Commission office each spring, due to exhaustion of funds, places the Commission in a untenable position. It is virtually impossible to maintain public confidence, and resolve cases in an expeditious and comprehensive manner, under existing funding limitations.

Statutory Problems

In addition to the lack of Commission jurisdiction over magistrates, there are a number of other statutory problems concerning the Commission. AS 22.30.011 provides that the Commission has jurisdiction over the acts of judges that occur not more than six years before the start of the judge's current term. The Alaska Supreme Court has held that the "term" of a judge was not the period between retention elections, but the entire period that the judge is entitled to hold office. Under this rationale the statute of limitations for judicial conduct matters could extend for decades. A definite statute of limitations period should be statutorily established.

AS 22.30.060 provides that formal charges against a judge are public but the subsequent hearing and the resulting determinations are confidential unless public sanctions are imposed. In effect, the public is afforded a window of disclosure for which the shade is quickly drawn. This provision provides for little public confidence in the disciplinary process.

AS 22.30.011(f) provides that a copy of a private reprimand of a judge be sent to the Chief Justice of the Supreme Court. The existence of this provision indicates that reprimands have a bearing on a judge's performance requiring reporting and documentation. Therefore, the Judicial Council, charged with evaluating judicial performance, should, arquably, also receive a copy of any reprimand sent to the Supreme Court.

Finally, neither the Constitution nor the statute provide a mechanism for judges to receive advisory opinions on judicial conduct matters. The ABA model act recommends that advisory opinions be handled by an organization other than the disciplinary Commission.

Need for Bar Support

Alaska has as fine a judiciary as exists anywhere in the U.S. Nevertheless, the Commission on Judicial Conduct performs a vital role in maintaining respect for the law through constant vigilance over the conduct of the judiciary.

In order to continue its role the Commission needs the support of the Bar and its members. First, the three attorney positions on the Commission become open in April of 1987. These offices are currently held by Michael Holmes of Juneau, Bruce Bookman of Anchorage and Randy Clapp of Fairbanks. These individuals have been diligent and effective in conducting Commission affairs. The Commission needs such continued dedication from the Bar membership.

Secondly, legislators must be educated as to the importance of this constitutionally established agency to the justice system. The best method of achieving this goal is through contact by the Association and individual members of the Bar with legislators. Even at a full year funding level of $90,000 the Commission on Judicial Conduct is a bargain in relation to the multitude of programs and agencies created in the last two decades which lack any constitutional foundation. Like other constitutionally established agencies, the Commission on Judicial Conduct does not have established constituencies that provide political leverage. The Commission must appeal to the "rule of riqht reason"! It needs more advocates.

The attorney's oath

I do affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any proceedings which shall appear to me to be taken in bad faith or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

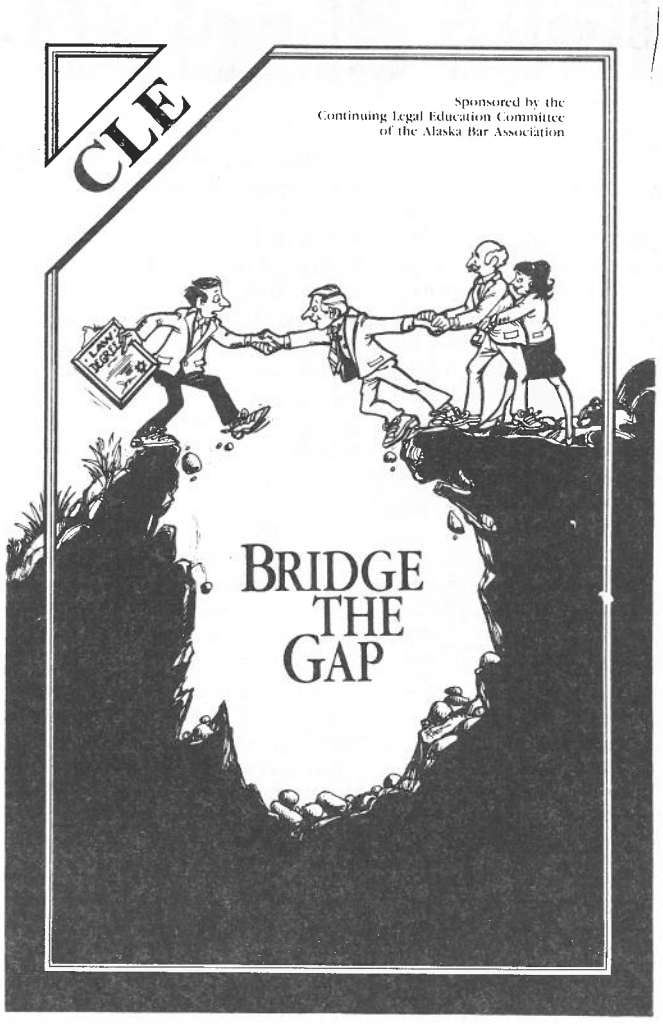
I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will strive to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

THANK YOU!!!

The Continuing Legal Education Committee of the Alaska Bar Association would like to thank the following individuals whose time, effort and knowledge made the Bridge-the-Gap program and manual possible.



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Portraits of lawyers at work

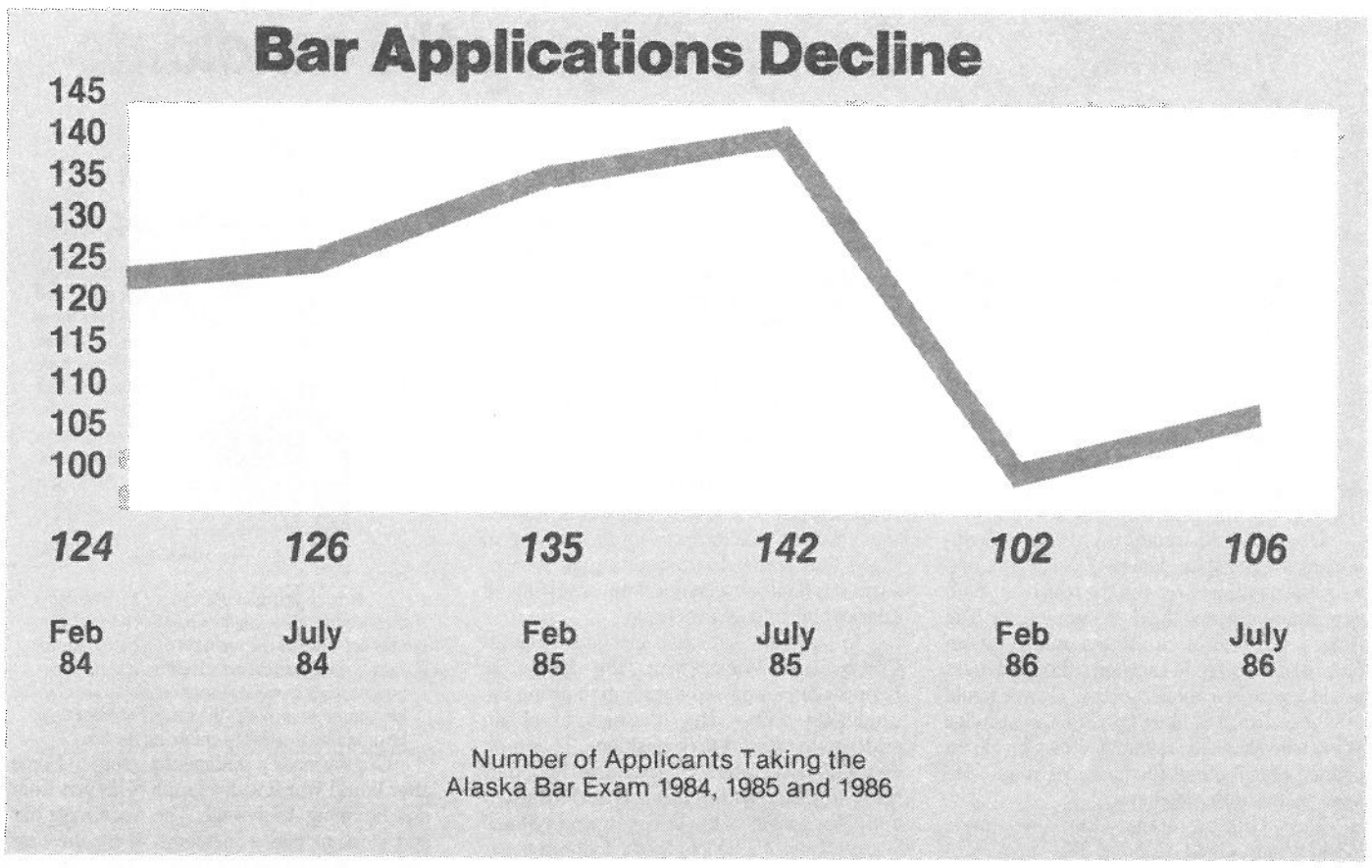
The U.S. Legal Profession in 1985

In the period from 1980 to 1985, the legal profession in the United States grew by 21%, increasing from 542,205 in 1980 to 655,191 by the start of 1985. The national population/lawyer ratio increased from 418/1 in 1980 to 360/1 in just five years. In 1985 the population/lawyer ratio ranged from a high of 22/1 in the District of Columbia to a low of 689/1 in West Virginia (at 244/1 New York has the highest state population/lawyer ratio). The median age for lawyers in 1985 was 40, compared to the median age of 39 in 1980; however, the median age for women lawyers in 1985 was just 33 while for males it was 41.

Eighty-seven percent of the 1985 lawyer population were men and 13 percent were women. Because of the increased number of women entering the legal profession during the 1970s and the 1980s, women continue to have greater representation among young lawyers than older lawyers. As of 1985, 24% of all lawyers under the age of 35 were women, and 28% of all lawyers under 30 were women. On the other hand, fewer than 2% of all lawyers 45 years of age or older were women.

In 1985, 459,944 lawyers (70%) were engaged in private practice, and less than 4% were employed in the judiciary. Almost 10% of all lawyers were working in private industry and slightly more than 8% were in government. Three percent were public defenders, employees of educational institutions, legal aid organizations, private associations (unions, trade associations, etc.), or special interest groups. The remaining five and a half percent of the lawyer population was retired or otherwise inactive.

Of those lawyers engaged in private practice, 216,297 (47%) were solo practitioners. Only 12% (51,543) worked for firms employing more than 50 lawyers; however this is a substantial increase when compared to the 7% (27,200) who worked in firms comprised of over 50 lawyers in 1980. While only 62% of female lawyers were private practitioners, 71% of male lawyers were engaged in private practice. Substantially greater proportions of women were engaged in government employment (14%) and in legal aid and defender work (3%) than was the case for male lawyers. Only 7% of male lawyers were employed in government work and 1% were working for legal aid or as public defenders.



The number of law firms in the United States grew from 38,482 in 1980 to 42,318 in 1985. The number of law firms employing more than 50 lawyers grew from 269 in 1980 to 508 in 1985. The percentage of small law firms, 2 to 5 lawyer firms, has remained about the same — 81% of all firms in 1980 and 79% in 1985.

These statistics are only a small sample of the current data available in the just published The Supplement to the Lawyer Statistical Report: The U.S. Legal Profession in 1985. This supplement provides 1985 statistics on the national lawyer population and the lawyer population of each state and the District of Columbia. The format and coverage of the supplement are the same as used in part II of the Lawyer Statistical Report, which was published by the American Bar Foundation in 1985, thus facilitating comparisons of lawyer population figures for 1980 and 1985.

As with the earlier report, ABF Project Director and Associate Executive Director, Barbara A. Curran, with the assistance of Katherine J. Rosich, Clara N. Carson, and Mark C. Puccetti converted the information provided by Martindale-Hubbell, Inc. of Summit, New Jersey, publishers of the annual Martindale-Hubbell Law Directory to a data base from which the statistics were derived.

Copies of the Supplement to the Lawyer Statistical Report: The U.S. Legal Profession in 1985 may be ordered from the ABF Dissemination Department for $27.50 postpaid. The cost of the original Lawyer Statistical Report is $78.50 postpaid. Both books can be purchased for the special price of $92.50 postpaid.

Survey Shows Lawyers Work 46.5 Hours a Week

A majority of lawyers (70.8 percent) questioned in a recent LawPoll survey indicated that they work more than 40 hours a week, and on average work 46.5 hours a week and bill 31.1 hours a week. Almost 60 percent (59.4) would choose a legal career again, and 42.4 percent would encourage their children to become lawyers. These are some of the findings of a LawPoll survey conducted for the American Bar Association Journal by Don Bowdren Associates, a marketing research firm in Connecticut, in a mail survey in March 1986.

When asked why they studied law, 58.4 percent of the lawyers surveyed said because the subject interested them, and more than half did so in the expectation that their work as lawyers would be interesting.

Over 45 percent (46.3) of the lawyers surveyed chose law because its income potential appealed to them. Another large group (43.1 percent) revealed that the prestige of a legal career helped draw them to the profession.

About a third (34 percent) of the lawyers surveyed said they had no complaints about what they do. Those who had complaints most frequently mentioned their incomes and long hours. Almost 40 percent (38.7) feel they don't make enough money for what they do, 33.7 percent responded that there was not enough time to spend with family, 33.3 percent indicated that there was not enough time for exercise, and 20.2 percent answered that their income was not equal to their worth.

Complete survey results are published in the September issue of the ABA Journal, the Lawyer's Magazine.

Note: In some instances percentages add up to more than 110% due to multiple answers.

In Memoriam

Robert A. Cox
Oct. 11, 1986

Intern Positions

The Municipality of Anchorage Department of Law has six positions for interns open for 1987. The experience is strongly endorsed by past interns.

The interns serve for six months (January through June, or July through December). We use two interns in our prosecution office, and one in our civil division. Interns must be certifiable as interns under Bar Rule 44. This generally means people who are either in the last half of law school, have graduated from law school but have not failed a bar exam, or have been admitted to practice elsewhere but have not yet been admitted to the Alaska bar. Interns function as nearly as possible as if they were new attorneys on the staff.

We pay a subsistence stipend of $1,825.00 per month, and a full benefits package. Some law schools offer credit toward a law degree based on the internship.

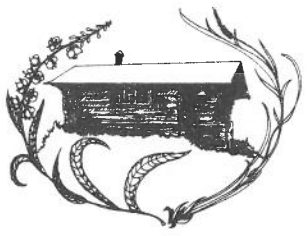
In the past we have hired some interns locally, but have not actively recruited locally. We are now actively recruiting locally as well as at selected law schools. Interested persons should submit a resume and writing sample to Donald W. Edwards, Deputy Municipal Attorney, 632 W. 6th Avenue, 7th floor, or call 264-4545 for further information. Appointments will be scheduled based on the resume and writing sample of each applicant. We expect to make hiring decisions by November or mid-December at the latest.

Upcoming CLE Programs

Date	Topic
December 6	Taking and Defending Depositions (Fairbanks)
December 13	Effective Discovery Techniques (Fairbanks)
January 21 & 22	Administrative Law Procedures
January 29, February 5*	The Family in Crisis: The Legal Response
February 27*	Subsistence Issues
March 9-15	Appellate Advocacy (Hawaii)

*Tentative dates. Brochures are mailed to members approximately six weeks prior to program.

HISTORICAL BAR



George Grigsby the candidate

By Russ Arnett

George Grigsby's career as Alaska's greatest trial lawyer began in Nome during the Gold Rush and the time of the spoilers. He later practiced law in Juneau and Ketchikan. He concluded his career in Anchorage during the military buildup of the Cold War.

He served in the first Territorial Legislature in 1913. Later he was elected Territorial Attorney General. Less successful were his campaigns for Delegate to Congress. He lost eight times.

George would accompany his frequent opponent for Delegate, James Wickersham, between the maritime towns on the mail boat. Both were strong men and the rivalry was intense. The rugged inhabitants of Alaska made for an unusual campaign. In each town the candidates would appear at a public meeting. George would ask the audience whether they knew what Judge Wickersham's middle initial "A" stood for. He explained that it stood for "ambidextrous." "He takes money with both hands."

Now Grigsby drank. Everyone knew. Wickersham would respond that a man of Grigsby's personal habits was unworthy to represent Alaska in Congress. "Grigsby was drunk in Ketchikan, he was drunk in Sitka, and he was drunk in Juneau."

At this point Grigsby would arise, stand to his full height, pause and sternly declaim:

"Mr. Chairman, I object to this calumny. Wickersham says I was drunk in Ketchikan, that I was drunk in Sitka, that I was drunk in Juneau. What about Wrangell? I was drunk in Wrangell, too."

The rough audience would erupt in laughter, hoots, and whistles.

Frank Wasky was elected the first Delegate to Congress from Alaska in 1906. In the next couple decades the process of electing Delegates was angry and tumultuous. In one of the several contested elections both Grigsby and Wickersham claimed victory and went to Washington where they reposed for about a year. Wickersham was finally seated but both were paid full salaries and mileage expenses.

In another disputed election between Grigsby and Wickersham, the House of Representatives passed a resolution giving the candidates ninety days in which to obtain evidence to support their positions. They took depositions of voters to determine how they voted. In Valdez Wickersham was cold-cocked by one of the owners of the Valdez Prospect-Miner. Wickersham's diary includes the following:

> After the hearings were ended I started to my rooms — two blocks away. As I came to the S.E. corner of McKinley and Reservation St., I saw some men there, and when I got close enough, I recognized Dimond, Grigsby's lawyer, as one of them. He moved away as one of the men blocked my way and said to me: "You insulted my sister in your examination — she is over there crying."
>
> I answered as soon as my surprise would permit, "Who, no I did not insult your sister," and he answered, "Yes, you did and she is over there crying now, and I am going to beat you up." I am not sure about this last expression — it may have been "smash your face," or some such form, but it meant assault.
>
> Immediately he struck at me but as I have a square view with my good eye, I parried it, but he kept coming. The man by his side, at my right and blind side, said to him, "Hit him — kill him" and as the fight progressed, repeated, "kill the son of a bitch" and the young pugilist did his best....
>
> My friends urged me to have my assailants arrested but after a night of painful consideration I think I can use the incident to a better advantage, for every official here is either a partisan opponent ready to violate the law of homicide to injure me, or so far under the control of those as to be unwilling to assist in enforcing the law.

Grigsby made a sentimental return to Nome after World War II with a group of lawyers from now booming Anchorage. The Anchorage bar had close to twelve members. Were the best times gone by or yet to come?

Hi Tech

[continued from page 4]

Departments of Defense and Commerce to review applications for the export of American technology products. The goal behind the extensive review process is to protect national security, advance foreign policy goals and restrict the sales of exports in short domestic supply.

Zschau rejects the "zero sum" premise behind current policy, which states that if export controls are eased the economy will be helped but national security will be harmed. Zschau argues that the inefficiencies in the export control system can be removed without harming national security. According to Zschau, duplicate review by the Department of Commerece and DOD should remain only for proposed exports to Soviet Bloc countries.

Second, Zschau states export controls should be removed from products which are freely available from foreign sources. According to Zschau, such restrictions merely transfer economic opportunities from the US to other countries.

Third, Zschau proposes relaxing controls on exports within the western free-trade community along with tightening controls on exports out of the community. This would allow the western community to share technology and would prevent unscrupulous buyers from selling to the Eastern Bloc.

Zschau, who represents much of Silicon Valley, and is Chairman of the Congressional Task Force of High Techology Initiatives, has been especially concerned with the plight of California's high technology industry. Zschau's article appears in the first edition of *High Technology Law Journal*, which was created by the law students of Boalt Hall, at the University of California, to focus on the legal issues spawned by the high technology boom in computers, telecommunications, biotechnology and related areas.

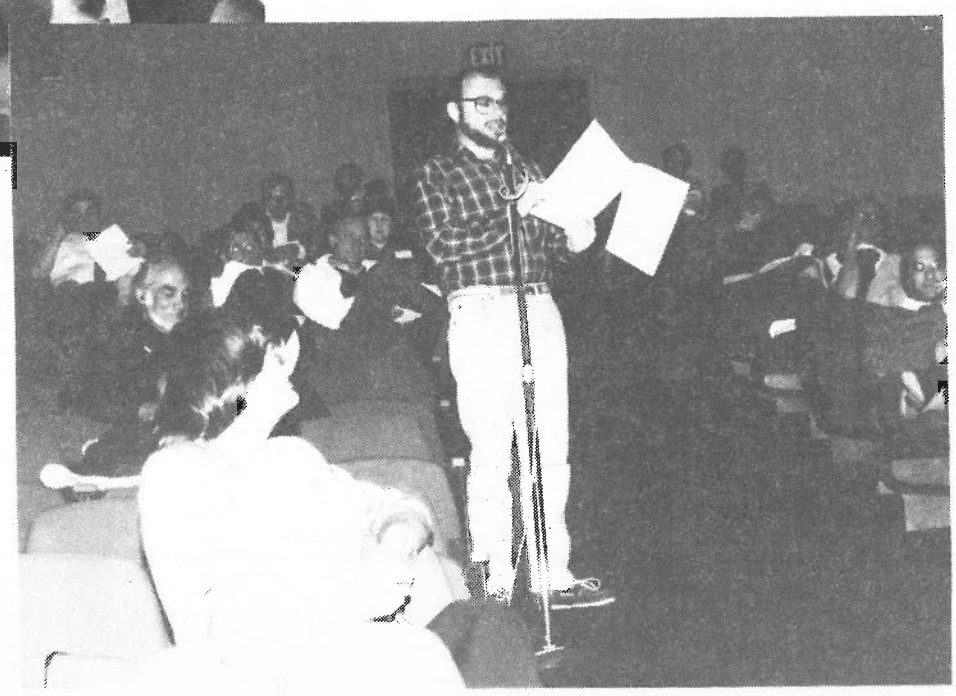
Other articles published in the premier issue of the journal include an evaluation of the legal ramifications of the commercialization of university-generated biotechnology research by well-known patent attorney Bertram I. Rowland and a critical evaluation of the computerized legal data bases, "Lexis" and "Westlaw," presented by Boalt Hall Professor and Law Librarian Robert Berring.

Copies of the article or general subscripton information, editorial guidelines and other information can be received by contacting Bill Manheim, *High Technology Law Journal*, Boalt Hall School of Law, Room 182, University of California, Berkeley, California. 94720. (415) 643- 6454.

Portrait of Power

Tanana Valley Bar Association goes to Valdez convention.

TVBA members enjoy summer's ABA convention.



A tribute to TVBA President Richard Savell

It was the 15th of August - in the year '86
when the TVBA met
For its weekly fix.

But the room was not ready when
they all arrived and
Without President Savell, they would not have survived.

You see—they looked up to this MAN to
guide them all through and
Whatever he'd say, is whatever they'd do . . .

Then Savell took his feet and dawned his new sable
and his head could be seen
Just over the table.

Well - he screamed and he yelled, and he cried
"What's this crud,
We'll not take this treatment, we'd rather eat mud."

The chandeliers shook as his voice raised the roof
and the waiters all knew
This wasn't a spoof.

Then into a room, for accountants prepared,
Savell took his flock,
They knew that he cared.

"Call the cops" cried Savell in a defiant voice
and its likely they'd done it If they'd had a choice.

But before they could speak, or even unbunch,
Savell and his crew were
Half-way through lunch.

Now the food wasn't bad, and the meeting not either,
but thanks to Savell,
We were all fed saltpeter.

Ralph Beistline

In the Mail

. . . continued from p. 3

Now we get songs

Dear Editor:

Find enclosed a song which I have written honoring the retirement of Judge Cooke from the bench in Bethel. I would be happy to forego my usual copyright fees and royalties in order to allow you to publish the song in the next issue of "Bar Rag."

I, for one, feel the Alaska Bar lost one of its best and most dedicated Bush judges with Chris Cooke's retirement.

Thank you,
Pete Ehrhardt
Attorney at Law

SINGING JUDGE

By Pete Ehrhardt

(To the tune of "THE KUSKOKWIM 300 SONG" by Chris Cooke)

Well, he got to Bethel one fine day,
When he saw it he wasn't sure he'd stay.
But when he did he made history,
He was the singing Judge, you see.

He was born in Springfield but his name wasn't Abe,
And though he became a lawyer one day,
He didn't split rails, the city was for him,
It was Cincinnati not the Kuskokwim.

CHORUS: Well, gee and gosh, we wish he'd stay,
But he's off of the bench as of today.
Hang up the robe and lay the gavel down,
The singing Judge is stepping down.
The singing Judge is stepping down.

About his youth we don't know much,
Chris gave no sign that he would be a judge.
But he loved to sing, and that's the truth,
You know he was a Whiffenpoof.
At Yale he was a Whiffenpoof.

At Michigan he studied law,
And when he graduated, duty called.
Alaska needed his skills and craft,
And VISTA was a good way to dodge the draft.
VISTA was a good way to dodge the draft.

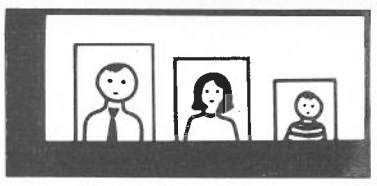
CHORUS: Well, gee and gosh, we wish he'd stay,
But he goes on unemployment as of today.
Hang up the robe and lay the gavel down,
The singing Judge is stepping down.
The singing Judge is stepping down.

He went to Kotzebue and then to Nome,
But it was in Bethel that he made his home.
He married Margaret and settled in,
He was the singing Judge on the Kuskokwim,
And a commercial fisherman.

He was Bethel's first lawyer and its first Judge,
To that little Bush town he gave so much.
And the songs he wrote told of his love,
For the flower of the tundra.
The flower of the tundra.

CHORUS: Well, gee and haw, and a yippie ti yay,
He's out of the chute and he's on his way.
Hang up the robe and lay the gavel down,
The singing Judge is stepping down.
The singing Judge is stepping down.

(An editor's note: Now, if we could find someone to enlighten us as to the tune of this "Kuskokwim 300" song, maybe we'd have a contender as the New Alaska Man. We won't pay a royalty for the tune, either.)



BAR PEOPLE

Clapp Admitted To American College Of Trial Lawyers

Marcus R. (Randy) Clapp has become a Fellow of the American College of Trial Lawyers. Membership, which is a position of honor, is by invitation of the Board of Regents. The College is a national association of 4,200 Fellows in the United States and Canada. Its purpose is to improve the standards of trial practice, the administration of justice and the ethics of the trial branch of the profession.

The induction ceremony took place during the recent Annual Banquet of the American College of Trial Lawyers. More than 1,100 persons in attendance at this meeting of the Fellows in New York, New York.

Clapp is a partner in the firm of Hughes, Thorsness, Gantz, Powell & Brundin, and has been practicing in Fairbanks for eleven years prior to that he practiced in Anchorage. He is an alumnus of the University of Arizona School of Law.

Clapp joins nine other Alaskans who have previously received this honor, Donald A. Burr, James J. Delaney, Richard 0. Gantz, George N. Hayes, Wendell P. Kay, David H. Thorsness, Joseph L. Young, James B. Bradley and the Honorable Robert Boochever.

Michael J. Schneider and Ann Gorton were married on October 4, in a ceremony performed by Justice Allen Compton. The Schneiders honeymooned in Seattle and Victoria ... **William C. Royce** has moved from Sitka to Anchorage and is a member of the firm Stafford, Frey, Martel and Royce ... **Erin B. Marston** has opened his own law office ... **John G. Gissberg** is now with the firm of Baxter and Marks ... **John M. Eberhart** is now residing in Sydney, Australia ... **James E. Fisher** is now doing pro bono work, half time, for the Alaska Legal Services office in Juneau.

Douglas J. Marston has moved from Colorado to Fairbanks ... **Roger W. Dubrock** has opened the law Offices of Roger W. Dubrock ... Kristine S. Knudsen has relocated to Portland, Oregon ... **Michael W. Dundy** is now with Hartig, Rhodes, Norman, Mahoney and Edwards ... **Joseph E. Crnich** is now affiliated with the Law Offices of Walter H. Garretson ... **Penelope W. Horter** has moved from Eugene, Oregon to Douglas . . . **Joseph R. Skrha** has opened his own law office in Kenai ... **Stephen Gajewski** has moved to Kent, Washington ... **David A. Devine** is now with the firm of Robinson, Devine and Holliday.

The firm of Hedland, Fleischer and Friedman has changed its name to **Hedland, Fleischer, Friedman Brennan and Cooke** and retired Judge **Christopher R. Cooke** has become a member of the firm ... **Joanne M. Grace** has relocated from Fairbanks to Washington D. C. ... **Pamela J. Cravez** is a partner in the firm of Cravez and Weber ... **Ronald E. Cummings, Sarah J. Tugman,** and **David D. Clark** have formed the firm of Cummings, Clark and Tugman

Donald E. Clocksin has become associated with Wagstaff, Pope, Rogers and Clocksin ... **James T. Dinneen** has relocated from Kenai to Cheyanne, Wyoming ... **Dan Branch,** formerly of Bethel, is currently the magistrate of Aniak ... **Thomas P. Blanton** has moved from Haines to Juneau ... **Deborah Behr** has become associated with the firm of Faulkner, Banfield, Doogan and Holmes ... **Richard S. Thwaites, Gregory Motyka** and **Kristen M. Whitlock** are now with the firm of Thwaites and Motyka.

Marion Yoder has moved to Laramie, Wyoming ... **Mark Andrews,** formerly of Bethel, is now with the Fairbanks North Star Borough ... **Sharyn G. Campbell** is a partner in the firm of Campbell, Brinker, Beardsley and Copeland ... **James D. DeWitt** has become a partner in the firm of Guess and Rudd and S. Joshua Berger has become an associate.

J. Douglas Williams II has become a member of the firm of Artus, Choquette and Williams ... **Jan Ostrovsky** has joined the firm of Bogle and Gates ... **Sally Tugman** and **Doug Burke** were married on August 16 in a ceremony presided over by **Judge Carl Johnstone** ... **Dan A. Hensley** is associating with The Law Offices of L. Ames Luce ... **Deborah O'Regan** and her husband, **Ron Kahlenbeck,** are currently trekking around Annapurna in Nepal. **J. Richard Crockett, Robert H. Madden, Bonita L. Olson** and **Charles M. Davis** have become members of Bradbury, Bliss & Riordan, and **Steven T. Russell, Carol J. Molchior, Robert J. Bocko** and **David E. Lindeman** have become associated with that firm. All the new lawyers will be working in the Seattle office of Bradbury, Bliss & Riordan ...

Among those interested in rock music is retired Superior Court Judge Henry C. Keene Jr. He is interested because his nephew has hit the big time. The nephew is Tommy Keene, a rock star from Washington, D.C. Tommy Keene has entertained on MTV several times in programs shown in Ketchikan on cable TV.

Judge Keene says that it really isn't his type of music.

Tommy must be his kind of rock musician. *People* magazine says of Tommy Keene:

"His pale blue eyes on the album cover, his white button-down shirt, his short haircut and even his name make Tommy Keene seem like a clean-cut, all-American boy. . . Keene suffers from the dreaded nice guy's disease. . . . Keene comes across as someone who would be an ideal addition to any dinner party."

Maybe our older generation has been missing something on MTV aside from the on-off button.

Lynda Batchelor.

The Alaska Shorthand Reporters Association has recently elected officers for the 1986-88 term. Officers elected are:

President — Lynda Batchelor of Juneau, principal in the firm of Taku Reporters. Vice-President — Rocky D. Jones (Ketchikan). Secretary — Marianne Lindley Girten (Anchorage). Treasurer — Rick D. McWilliams (Anchorage).

The ASRA is the newest state affiliate of the National Shorthand Reporters, a 19,000-member association established in 1899. Members include both official and free-lance shorthand reporters who are responsible for making accurate records of court proceedings, legislative proceedings, depositions, artibration, business and union conventions, board and stockholders meetings, and other events requiring exact records of what is said.

Through its certification and continuing education programs, NSRA promotes continued growth and development of its members in service to the legal system and other clients.

Thank you for the opportunity to relay this information to your subscribers.

Marianne Lindley, Girten, RPR

Continued on page 27

Tap into biggest law library

The Alaska Bar Association is now sponsoring a group program to provide members with personal access to the world's largest electronic law library with LEXIS. The bar association's organizational strength and size of membership allows us to offer members access to LEXIS at a lower monthly commitment.

Q What is LEXIS?

A LEXIS is the world's most widely used computer-assisted legal research service including:

- State, federal, and foreign caselaw. Includes Alaska Supreme Court and Court of Appeals.
- State and federal administrative decisions and regulations. Includes Alaska Attorney General Opinions and decisions of the Alaska Department of Revenue.
- Comprehensive libraries for research in specialty areas including tax, labor, admiralty, energy, securities, insurance, trade regulation, banking, bankruptcy, environmental, International trade, communications law and many more.
- American Law Reports (A.L.R.) Second, Third, Fourth, and Federal.
- The full text of more than thirty-five law reviews.
- Supreme Court briefs, legislative histories, the Federal Register.
- AutoCite® [1] providing the full case name, parallel cities, prior and subsequent case history and reference to ALR annotations.
- Shepard's® [2] Citations Service, combining the thoroughness of Shepard's with the speed and convenience of LEXIS.
- LEXSEE® , giving you instant access to the full text of a LEXIS case simply by typing its citation.
- The NEXIS® Service, with more than 150 leading newspapers, magazines, wire services and newsletters. NEXIS now includes the *Los Angeles Times*. Lawyers use NEXIS to learn settlement terms, get background information on prospective clients and witnesses, or track legislation.

A.L.R. 2d, 3d, 4th and FED. Over 12,000 annotations on legal topics important to your practice available in seconds on LEXIS.

- The EXCHANGE® Service, providing company and industry reports from respected investment banking, brokerage, and research firms, plus 10-K, 10-Q and other SEC filings. It can be a valuable source of information about opposing parties or to use in advising clients about proposed business ventures.
- The MEDIS™ Service, a full text library of medical texts and journals that help lawyers explore medical care standards, find expert medical witnesses, and understand medical issues better.
- LEXPAT® , providing instant access to the full text of U.S. patents.

Q How does the LEXIS Membership Group Program work?

A The Alaska Bar Association pays the $125 monthly subscription charge for access to LEXIS. Instead of paying $125 each month themselves, bar members will pay a one time sign-up fee of $100 to join the program.

ALASKA BAR ASSOCIATION HAS THE WORLD'S LARGEST LAW LIBRARY ...WITH LEXIS®

The Bar Association is billed by LEXIS for the use by all participating members. The Bar then invoices the members for reimbursement for their use, adding a $20. administrative service charge to the bill. In a month of no use, a member does not receive an invoice and, thus pays nothing. In this way, members pay for LEXIS only when used and will not have to absorb a regular fixed charge. Additionally, *all* members' use of LEXIS will aggregate to take advantage of volume discounts.

LEXIS provides the Bar Association with a detailed billing for each law firm using the service, including volume discounts. Firms can receive a billing detailed by client codes, for ease in billing back the charges to each client.

Q Why should I use LEXIS?

A Your colleagues do. LEXIS is used by most major law firms, federal and state agencies, and corporate legal departments. LEXIS training is mandatory in the majority of U.S. law schools. LEXIS can help you keep that competitive edge.

LEXIS gives you access to a greatly expanded library right in your own office. LEXIS contains more caselaw than any other source.

LEXIS is affrdable. You pay only for what you use. A typical LEXIS search costs $15 - $25. This can easily include a search of all fifty states or all levels of federal caselaw that would take days to accomplish manually. And, you can usually bill LEXIS charges to your clients as you would any other disbursement.

Q Can I gain access to LEXIS on my firm's computers?

A Members can use LEXIS at their office or home. To utilize the service, members need a personal computer and a modem. LEXIS is accessible through most of the major personal computers now on the market including.:

TERMINALS SUPPORTED (SOFTWARE REQUIRED)

AT&T PC6300
APPLE IIC
APPLE IIE
APPLE III
APPLE MACINTOSH
COMPAQ PORTABLE
DIGITAL RAINBOW II
GRIDCASE III
IBM PC
IBM PC Jr.
IBM XT
IBM AT
IBM PORTABLE
IBM 3270-PC
ITT XTRA
LEADING EDGE MODEL M
NBI 64
NBI 4100 A
NCR PC 4
TANDY 1000
TANDY 1200
TEXAS INSTRUMENTS PC
VISUAL COMMUTER PORTABLE
XEROX 820-II

(NO SOFTWARE REQUIRED)

BARRISTER
CPT PHOENIX JR. (.tty01)
DATA GENERAL ECLIPSE (.datgen)
DIGITAL VT100 or VT200 (.vc100)
HEWLETT PACKARD 150, 150-II or 2622 (.hp2622)
IBM 3101 (.ibm3101)
LANIER EZ-1, LBP 1000 OR CONCEPT 1200 (.vt100)
ROLM CYPRESS (.rolm)
SYNTREX AQUARIUS (.vt100)
TELEVIDEO 950 OR 924 (.telv950)

Even if your firm's computers are not on the list above, chances are good that we have a LEXIS software package for your firm's personal computers. LEXIS communications software packages are available for $25. LEXIS can also provide its customized equipment, as well.

Q Can I get help with my LEXIS research?

A Personal instruction, provided by LEXIS' representative in Anchorage, is available for $75. Each person receiving instruction is entitled to one free hour of LEXIS use within 14 days of the class.

LEXIS's 24-hour-a-day Customer Service is available to you, as well, and we can supply you with a full range of literature on using the service. LEXIS also provides online help and tutorials to keep your skills polished.

LEXSEE® .Instant access to cases, tax materials, attorney general opinions, and more . . . in one step.

Q How does LEXIS save me time?

A In several ways. First, of course, LEXIS can find cases in minutes that might take hours to find by manual research. A Legal Services Corporation study found that computer-assisted legal research is generally six times as fast as traditional methods. Second, LEXIS has many more cases online than you are likely to have in your library. Every time you retrieve a case in seconds on LEXIS, you save yourself the hours you would have spent going to an outside law library. Third, using Shepard's on LEXIS is many times faster and more powerful than using Shepard's in "hard copy."

Q How can I sign up?

A Call Gerry Downes at the Alaska Bar Association, (907)272-7469, for complete details.

1 AutoCite is a service of VERACORP and its associated companies, The Lawyers Co-Operative Publishing Company, Bancroft-Whitney Company and The Research Institute of America.

2 Shepard's is a publication of Shepard's McGraw-Hill, Inc.

PRACTICAL POINTERS

Tax law

You should know about GSTT

By Stephen E. Greer

The Tax Reform Act of 1986 has for the most part left estate planning intact. However one area that was dramatically changed was the generation skipping transfer tax (GSTT). This little known tax is of concern to any practitioner who has drawn a will for a wealthy client where the client wanted to devise part of his estate to his grandchildren or descendants of his grandchildren or any non-relative substantially younger than himself. The tax, enacted in 1976, prohibits an individual from transferring his estate from one generation to the next without the imposition of a transfer tax.

Previous to 1976, an individual could create a trust and give successive generations the right to income without a tax falling due when the property passed from one generation to the next. The only real concern was that the trust not violate the rule against perpetuities. The generation skipping transfer tax imposed a tax which was equivalent to the estate tax that would have been paid had the property passed from a "first generation beneficiary" (a child) to a "second generation beneficiary" (a grandchild). Typically the tax was imposed whenever there was a "taxable distribution" or "taxable termination" of corpus of a trust to a "second generation beneficiary." The law exempted taxable distributions or taxable terminations to grandchildren provided the property did not exceed $250,000 per child and vested immediately in the grandchildren when the child's interest ended. For example, a grantor with two children could create a testamentary trust which would give each child the right to income with a distribution of the corpus to his grandchildren. There would be no GSTT, provided the corpus distribution to the grandchildren did not exceed $500,000 or $250,000 for each child. The generation skipping transfer tax was not imposed on "direct skips" subject to estate or gift tax. For example, a grantor could transfer property directly to his grandchildren without being concerned about the generation skipping transfer tax but he would have to pay an estate or gift tax.

The new generation skipping transfer tax expands the list of taxable transfers to include "direct skips" to second generation or even more remote beneficiaries, even if the transfer of the property is subject to estate or gift tax. However the new GSTT allows a $2,000,000 exemption per transferor for direct skips to grandchildren provided the transfer is completed prior to January 1, 1990. In addition, the new tax provided a $1,000,000 exemption per transferor for transfer occurring during lifetime or at death. Also the transferor can elect to have the $1,000,000 exemption apply to any QTIP trust established for a spouse. As will be explained shortly, this election will change estate planning strategies.

The amount of the tax is equivalent to the top rate for the estate or gift tax. This is 55% through December, 1987 and 50% starting January 1, 1988.

Under the new law, a generation skipping transfer tax will occur whenever there is a "taxable distribution," "taxable termination," or "direct skip," whether the transfer is in trust or outright. Common factual settings for imposition of the generation skipping transfer tax are:

(a) an individual establishes a trust in his will, leaving assets in trust with income for life to his children and a subsequent distribution of principal to his grandchildren. A "taxable termination" will occur when the separable and identifiable interest of a child's corpus passes to the grandchildren of the testator. A sine qua non of a taxable termination is the grandchildren must hold all the "interest" of the trust property or a separate and identifiable portion of the trust property and the interest held by the grandchildren must be a present (not a future) right to receive either the income or corpus of the trust. Additionally the termination must not be subject to estate or gift tax. In our example, an estate tax would not be paid on the child's death because he holds only a life estate in the property. The taxable amount of a "taxable termination" is the fair market value of the property at the time of the termination. It includes the GSTT itself and is therefore tax inclusive. For instance, if all the available exemptions were used, and a taxable termination resulted in $1,000,000 being transferred to the grandchildren, the generation skipping transfer tax would be $550,000 with $450,000 remaining for the grandchildren. The responsibility for paying the tax, in the case of a taxable termination lies with the trustee.

(b) an individual creates a trust for the benefit of his children and grandchildren. The trustee has the right to distribute income or corpus to any of the children or grandchildren as he sees fit. A distribution of income is made to a grandchild. This is a "taxable distribution." The distribution must not be subject to estate or gift tax. The taxable amount of a "taxable distribution" is the fair market value of the property at the time of the distribution. It includes the GSTT itself and is therefore tax inclusive. For instance, if all the available exemptions were used, and a taxable distribution resulted in $100,000 being transferred to the grandchildren, the generation skipping transfer tax would be $55,000 with $45,000 remaining for the grandchildren. The responsibility for paying the tax, in the case of a taxable distribution, lies with the grandchildren.

(c) an individual gives property to his grandchild either as a specific bequest in a will or as a result of a gift. This is a "direct skip." A sine qua non of a "direct skip" is the transfer of property must be "subject" to either estate or gift tax, regardless that it may not ultimately be taxed as a result of the transferor using his unified credit. This means gifts which are exempt from gift tax because of the donor's 2503(b) $10,000 annual exemption or because they are for a donee's medical or tuition expenses are not subject to a generation skipping transfer tax. Therefore, a grandparent can pay a grandchild's tuition expense without worrying about the imposition of the generation skipping transfer tax. The taxable amount of a "direct skip" is the fair market value of the property at the time of the transfer. It does not include the GSTT itself and is therefore tax exclusive. The responsibility for paying the tax, in the case of a direct skip from an estate or trust, lies with the transferor or the fiduciary. For instance, if all the available exemptions were used, and a taxable "direct skip" resulted in $1,000,000 being transferred to the grandchildren, the generation skipping transfer tax would be $550,000 and would be paid by the grandparent.

As previously mentioned, there is a $2,000,000 exemption per transferor for direct skips to grandchildren provided the transfer vests in the grandchildren prior to January 1, 1990. Thus a grandparent must decide if he really wants to part with the property before that date. If the direct skip is in the form of a specific bequest contained in a will, he must die prior to that date.

The new $1,000,000 exemption per transferor for transfers occurring during lifetime or at death is not scheduled to terminate on December 31, 1988. As previously mentioned, an election is provided to have the $1,000,000 exemption apply to any QTIP trust established for a spouse. What does this mean for estate planning? If your client had a $2,000,000 estate, a common estate planning technique would be to have the client equalize the estate with his spouse, leaving $1,000,000 in each estate. The estate of the first to die (let us assume it is the husband) would be split into two trusts (the QTIP trust and the credit shelter trust). The credit shelter trust would be funded with property equal in value to the maximum credit allowed against the estate tax which is equivalent to a $600,000 exemption. This trust would provide income to the wife for life and remainder to the children. The property in this trust is considered to have passed directly from the decedent to the children for estate tax purposes and the credit offsets any tax. The QTIP trust is funded with the remaining $400,000 and also provides income to the wife for life and remainder to the children. However, the donor or deceased's fiduciary can make a QTIP election which will make the property held in this trust to be considered as belonging to the surviving spouse. As a result, when the property passes from the husband to the wife, there will be no estate tax because of the unlimited marital deduction. When the wife dies the property will be considered part of her estate and taxed when the property passes to the children. Thus, at the wife's death, her estate will consist of the assets in the QTIP trust, $400,000, and her separate estate of $1,000,000. $600,000 will pass tax free by virtue of the credit and the remaining amount will be taxed. This technique essentially saves estate tax on $600,000, which would have otherwise been included in the survivor's estate if all the property been transferred to the surviving spouse.

Now let's go one step further and assume the decedent wants to leave an income interest in the property to his children with a remainder to his grandchildren. If both the family trust and QTIP trust provide an income interest to his wife and children, with a remainder to the grandchildren, no estate tax would be paid by the children when the property descends to the grandchildren. This is a generation skipping transfer. However, each person is allowed a $1,000,000 GSTT exemption. As a result the husband can allocate $600,000 of this amount to the family trust which is considered passing from himself to his grandchildren, leaving $400,000 of the exemption unused.

The new law comes to the rescue by allowing the donor or the decedent's fiduciary to make an election in regard to the QTIP trust which would treat him as the transferor for generation skipping transfer tax purposes although not for estate tax purposes. He would then allocate $400,000 to the QTIP trust. In this manner, the descendant can be assured of utilizing the full exemption. Assume the wife had a similar plan, i.e. her separate estate of $1,000,000 being transferred in trust with income to the children and remainder to the grandchildren. This would also be a generation skipping transfer, but would be fully exempt from GSTT because of the $1,000,000 exemption. The end result is that the parents are able to transfer their entire estate to the grandchildren with a minimum estate tax and no generation skipping tax. The children's estates would be completely bypassed for federal estate tax purposes. It is unclear whether a surviving spouse can use her exemption against that portion of the QTIP trust not being utilized by the husband's exemption. As a result, the suggested method is to create two QTIP trusts and fund one with property which utilizes the husband's remaining GSTT exemption. The second QTIP trust would contain the excess property transferred from husband to wife for federal estate tax purposes.

The $1,000,000 exemption is available at the time the transfer of property is made, even though the generation skipping transfer might come much later. If the property later appreciates in value, the entire amount passing to the grandchildren is exempt if the original amount was exempt. This very fact makes an early allocation important and property with high appreciation potential an ideal subject to transfer. Estate freezing techniques such as recapitalizations of closely held corporations should become more popular.

The old generation skipping transfer tax was repealed retroactive to its initial effective date and the new law would apply to inter vivos transfers occurring after September 25, 1985. Generally, irrevocable trusts created before September 25, 1985, are exempt from this tax. Therefore if you paid a tax on a previous generation skipping transfer, you can file a claim for a refund.

It has always been sage advice to run the figures. The GSTT is at the top marginal estate and gift tax rates. If you see a transfer of property being subject to the generation skipping transfer tax and not offset by an allowable exemption, it might be wiser to pass the property directly through a child's estate. This is because the child cna make use of his unified credit and furthermore the child's estate tax rates might not be at the top marginal rates as would be the case with the GSTT.

The generation skipping transfer tax has always been extremely complicated and continues to remain so. There are many significant items of concern which have not been discussed here. These include the situation where there is no intervening generation between a grandparent and the grandchildren because of the parent's death. There is also the possibility of using a 303 stock redemption to pay the GSTT. Also, does Alaska have a law to take advantage of the 5% credit for the GSTT imposed by the state? These are just a few issues not raised here. As you might already guess, if you are confronted with a generation skipping transfer tax, additional work needs to be done.

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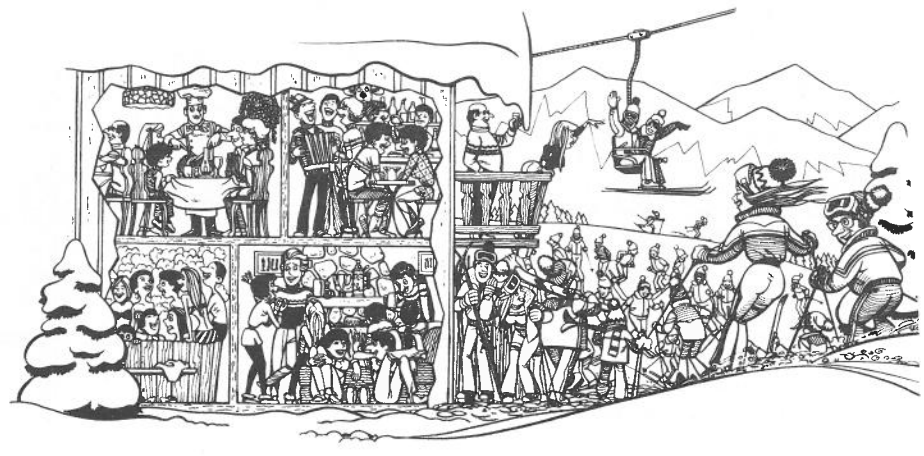
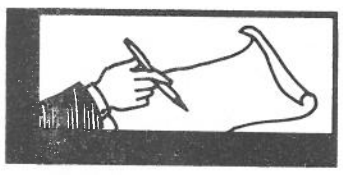


PRACTICAL POINTERS



Tax law

Tax opportunities in foreclosures

By

Jan Samuel Ostrovsky
and
Brian W. Durrell

The Tax Reform Act of 1986 (TRA86), was signed into law on October 22, 1986. An unintended by-product is a unique but short-lived opportunity for debtors faced with foreclosure of real estate to convince their creditors to take deeds in lieu of foreclosure. In fact, a debtor with true chutzpah may even get away with charging the creditor for the deed in lieu.

This peculiar turn of events is possible because TRA86 changes the method by which real property placed in service during 1987 may be depreciated. Basically if the property is placed in service after December 31, 1986, it must be depreciated on a straight-line method over 27.5 years for residential rental property or 31.5 years for nonresidential real property. If it is placed in service on or before December 31, 1986, then it may be depreciated on an accelerated method (accelerated cost recovery system) over 19 years.

The tax difference for the creditor in the first few years can be very substantial.

For example, suppose that real property with a depreciable value of $200,000 is placed in service by the creditor in December of 1986. In 1987, the creditor has a tax deduction of 9.2% of the value, or $18,400. (Note that the percentage deduction will decline as the years go on. It drops to 4.2% by the tenth year, where it remains until the twentieth year, when it is 4%.)

If that same property is placed in service by the creditor on January 1, 1987, the creditor will be able to obtain an annual deduction of only 3.65% of its value in the case of residential rental property ($7,300), or 3.17% in the case of nonresidential ($6,340).

Obtaining this moderately valued property this year as opposed to next increases the creditor's 1987 deduction by $11,000 to $12,000. Obviously the higher the value of the property, the greater the creditor's incentive to obtain that property during 1986.

The rub is that the creditor does not control the timing. Unless a nonjudicial foreclosure was commenced prior to this past October, a creditor has no way of obtaining property this year without the debtor's agreement to provide a deed in lieu of foreclosure. The debtor, therefore, has considerable leverage.

There are, of course, many practical limitations on this scheme.

First and foremost, institutional creditors generally are not concerned with the tax aspects of obtaining property and are probably indifferent to the year in which the property is received.

Second, the creditor must intend to hold the property and place it in service (rent it or occupy it as business property) rather than merely holding it pending liquidation.

Third, the entire value of real estate is not depreciable, only the value of the improvements.

Finally, depreciation only gives rise to a deduction. Therefore, because of the new passive loss limitations, the foreclosing creditor must anticipate having taxable income from the property or from other passive sources against which the deduction could be offset.

Another TRA86 motivated incentive for an individual debtor to give a deed in lieu in 1986 surrounds the repeal of the capital gains deduction. Right now in Alaska, it is very common for debt to exceed the fair market value of the property securing it, making it desirable for the debtor to give up the property. If that same property has a low adjusted basis (due to depreciation), despite the depressed value, the debtor could incur a substantial gain by giving a deed in lieu. If a deed in lieu is given, to the extent that the forgiven debt exceeds the adjusted basis of the property, there is generally capital gain (ignoring possible depreciation recapture). If the deed is given in 1986, the individual debtor can at least take advantage of the capital gain deduction. Effective January 1, 1987, that deduction will be gone. The tax savings will generally be about 8% of the gain since the current maximum effective capital gains tax is 20% as compared to a new maximum tax rate of 28% beginning in 1988. In 1987 when the maximum tax rate is 38.5%, an even greater tax savings would result, generally about 18.5% of the gain.

There is another window of opportunity that debtors and individual creditors should consider. If an individual creditor previously sold appreciated property secured by a long-term note, reporting the gain on the installment method, accepting a payoff (even if discounted) of the note in 1986 takes advantage of the current capital gains deduction. The debtor would have the incentives of negotiating for a discounted payoff and, possibly, refinancing the property at a lower interest rate. Again, this strategy works when the individual creditor would save taxes by realizing the gain in 1986, taking the 60% capital gains deduction and paying tax at the current rates as opposed to paying tax on the entire gain over the remaining life of the note at the new rates.

Obviously before employing any one of these ideas, an individual must get competent tax advice regarding his or her particular situation. Being sensitive to these tax issues will, however, afford many of us an opportunity to perform a real service for clients. It may also prevent costs that result from, for example, postponing foreclosures until the new year.

Students view their peers

Students throughout Anchorage competed in May in a Young Lawyer's Essay Contest sponsored by the Anchorage Bar's Young Lawyers Section.

The first place and honorable mention essays printed here were among 24 submitted by students from five of seven Anchorage high schools.

The topic students were to address was: "Should juveniles charged with serious crimes be tried as adults?"

These thought-provoking essays were judged by Attorney John Murtaugh, Esq.; the Hon. Karen Hunt, Third Judicial District Superior Court Judge; and Maria Downey, KTUU-TV co-anchor.

—Submitted by Shelley M. Ditus, Young Lawyers Section vice-chairperson.

'Already they are men'

Thirteen-year-old Nicolosa kidnapped, stabbed, robbed, and killed a paraplegic Vietnam veteran. Fourteen-year-old Shirley Wolf and fifteen-year-old Cindy Collier in what police describe as a "thrill killing" brutally stabbed 85-year-old Anne Brackett to death. Seventeen-year-old Charles Tyberg donned his stepfather's police uniform, drove his father's police vehicle, and shot and killed a police officer with his stepfather's service revolver.[1]

Shocked and outraged, America must determine how to prosecute these chilling juvenile crimes. Without question juveniles who commit serious crimes such as arson, forcible rape, murder, armed robbery, burglary, and larceny should be tried as adults in our adult criminal courts.

First, one has to consider the nature of the juvenile court system. Juvenile courts are limited in the scope of their jurisdiction. These courts are not given the authority to punish adolescents. Instead, as established in Lindsay vs Lindsay, it is the purpose of the juvenile court:

> to establish special tribunals having jurisdiction, within prescribed limits, of cases relating to the moral, physical, and mental well being of children to the end that they may be directed away from paths of crime.

This court nurtures and protects children and is preventative in nature. Historically, in the creation of the juvenile court system there was no intention of creating new courts for the punishment of crime. The statutes clearly point out:

> It is not the purpose of the statutes creating juvenile courts to provide additional courts for the punishment of crime.[2]

From this we can clearly see that it is the nature of the juvenile court to be protective. When a delinquent commits a serious offense that requires punishment, this action cannot be provided by the juvenile court.

Thus, the question arises: How do we punish serious juvenile offenders? Without serious punishment accruing from the necessary juvenile court process, it becomes essential for juveniles who commit serious crimes to then be tried in adult courts. These violent crimes include arson, forcible rape, murder, armed robbery, burglary, and larceny.

Although such an assertion sounds harsh, there is no better alternative. Establishment of new juvenile courts that would result in punishment would duplicate criminal courts that have already been established. Changing the focus of the juvenile courts to include punishment would weaken an already overburdened system. Our nation not only needs to keep the juvenile court system but it also needs to strengthen it. The Honorable Seymour Gelber, Circuit Court Judge states:

> Criminals rarely begin their law breaking at a mature age. The cycle can be likened to a cone-shaped funnel, with hoards of juveniles entering at the large end and a smaller number of adults emerging at the other end. Unless we attack the problem at the juvenile end, there will always be a continuous, massive supply of potential criminals coming down the horn, even if we intercept a few on the way out.[3]

This tells us clearly that unless we take care of the problem when it first emerges, it continually gets worse. The juvenile court system processes minor juvenile crimes, such as fraud, drinking, driving, carrying weapons, prostitution, and many others. Thus we can see that not only does the juvenile court process minor criminal acts by juveniles on a non-punitive basis, it also protects and cares for abused children. We not only need to keep the juvenile court system but we also need to strengthen its capabilities.

With serious reasons to neither duplicate nor change the intent of our juvenile court system, only one alternative continues to emerge. Juveniles who commit serious crimes should be tried in adult criminal courts. Yes, they are children, children who have serious problems. But are they children who need to be nurtured and protected or do they now warrant punishment? French essayist and moralist, Jean De Le Bruyere wrote:

> Children are overwhelming, supercilious, passionate, envious, inquisitive, egotistical, idle, fickle, timid, intemperate, liars, and dissemblers; they laugh and weep easily, are excessive in their joys and sorrows, and that about the most trifling subjects; they bear no pain, but like to inflict it on others; already they are men.[4]

Culturally many societies consider their adolescents to be intellectually competent at a very early age. In Spanish cultures families celebrate the Quinciniera. This party is in celebration of a girl turning fifteen and with the celebration comes the message from her parents, "My daughter is now fifteen. I have given her what I can; raised her to be the best that she can be; and now, I am presenting her to the world." In Spanish cultures young men and women are considered intellectually competent at age fifteen. In our own society we consider an eighteen-year-old boy to be old enough to be drafted into the military. We expect him to protect and defend our nation. At sixteen we expect a juvenile to drive, to observe all traffic laws, and to pass a test that guarantees safety to others on the highway. Certainly then society has every right to consider this juvenile capable of standing trial for serious criminal behavior in adult criminal courts.

Hopefully, from early childhood, adolescents have been taught the difference between right and wrong by their parents, friends, and our educational process. However, there is a serious problem with our youth in America that has become a growing concern. Juvenile crime in the U.S.A. has risen and 19% of all violent crimes are committed adolescents. Not only do we need to preserve and protect our juvenile courts, we must preserve, protect, and nourish our whole legal and court system. Without question, America must prosecute serious juvenile crimes in adult criminal courts.

Cheryl Graves
First Place
Service High School

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[1] "Experts Search for Reasons Why Juveniles Have Become So Violent," *Los Angeles Herald-Examiner*, October 23, 1983, pp. A10+.

[2] "Juvenile Courts," *American Jurisprudence* Vol. 47, 2d, p. 987.

[3] "Treating Juvenile Crime," *U.S.A. Today*, January, 1983, pp. 25–26.

[4] Seldes, George. *The Great Thoughts*, p. 233.

Serious consequences for serious crimes

Juveniles charged with criminal acts are ordinarily dealt with under special juvenile proceedings. The assumption is that, due to their youth, juvenile offenders are not treated as criminals, but instead as candidates for rehabilitation. They are not held totally responsible for their acts and are given a second chance in life.

This approach may well be suitable for petty crimes and for property offenses. For serious crimes of violence, however, such as murder or anything that endangers lives or inflicts serious physical harm, juveniles should be tried as adults because the degree of harm is the same and as irreparable as if an adult committed the crime, because serious crimes of violence cannot be excused by youth or inexperience and because the trial of a juvenile offender serves as retribution for the crime and as a deterrent to other juveniles.

Regardless of the maturity of the offender, serious crimes of violence cause the same degree of irreparable harm. Whether a murder is committed by a juvenile or an adult, someone

Continued on page 24

Students view peers ... continued from p. 23

always dies. Juveniles have been known to kill many people at once, and these murders are just as serious as if they were committed by adults. There is, thus, no reason, for a juvenile not to be judged in the same way as an adult, since the results of their acts are equally harmful, serious and irreparable.

Youth and inexperience are not valid excuses for serious crimes, as they might be for petty thefts or property damage. Juveniles should be able to recognize the consequences of crimes such as murder or arson. If the youth is unable to understand this, it is more than likely that he or she is a sociopath who will always be a threat to the community. The system of justice has a responsibility to protect society from people like these. The legal system is capable of distinguishing the children who are not yet at a age of understanding and reasoning, such as a preschool child who pulls a trigger or sets a fire without understanding the consequences, from the juveniles who knowingly and willingly commit a serious crime of violence. It is the latter group which pose a threat that the legal system must address.

Trial as an adult, in itself, is a protection to society. Not only does the trial insure justice by protecting the innocent and convicting the guilty, it also serves as a deterrent to others who might have otherwise contemplated and perhaps committed crimes. The peers of the juvenile delinquent would see the publicity surrounding the trial and would be deterred from crime. They would feel glad that they did not have to endure the humiliation of being tried; further, they would realize that they would have to suffer the consequences of an adult trial, which usually means a worse sentence, if they followed the offending juveniles' example.

Juveniles charged with serious crimes of violence should be tried as adults. If they have committed serious crimes of violence, they should face the consequences of their actions, and not be excused because of their age. It is the only means of retribution for the victims and protection for society. Society can be further protected if other juveniles can learn from example that the community will not tolerate or excuse serious crime. Young people and older people will both be safer if everyone understands that crime does not pay.

Anne Gagnon
Honorable Mention
Service High School

Kids out of control

Teenage Crime—A rush to judgement? Society complex as it is, has identified yet another problem that must be dealt with immediately. Juveniles are committing serious crimes, felony crimes, at an alarming rate. The debate rages amongst professionals, concerned citizens, parent groups, businessmen, police officers, legislators and even teenagers themselves on how to address this problem. Historically juvenile courts, a twentieth-century addition to the criminal justice system, have attempted to rehabilitate the youthful offenders rather than exacting punishment. However, juvenile delinquency is not a simple problem. It is a series of complex patterns of behavior, each of which has to be tackled somewhat differently. The issue, behind the debate, is whether our society should continue the attempt to rehabilitate adolescent offenders who commit felony crimes or hold them accountable to an adult standard of behavior and try them as adults and punish them for their actions. It is my contention that the attitude is the parent of the action and when the action is a felony crime, adolescents must be held accountable to an adult standard of behavior.

Human beings do not fall into any simple classification scheme. When adolescent behavior is observed and analyzed, we quickly discover individual differences. When character traits and personality strengths and weaknesses are identified, the concept of a social conscience is apparent. Teenagers are equipped today with the academic and social skills required to make responsible decisions and to judge right from wrong mentally, socially and legally. Accordingly they must be prepared to live with the consequences.

Young people today are educated in the laws of our country. They are given an opportunity to express their viewpoints and to be a participating member of their community. Adolescents are well prepared at an early age to make appropriate choices to manage their lives. As teenagers reach adolescence they are given ascending levels of rights and privileges. For instance, at the age of fourteen youth are allowed to begin employment, drive motorized vehicles and are encouraged to serve on commissions and advisory boards for legislators and politicians. When youth are eighteen they are eligible to join the Armed Forces and vote.

A society stands or falls according to its values. A value that this country has cherished is the right to be safe from the exploitation of those who have chosen to display anti-social or criminal behavior. If the perpetrators of crime against people or their property are identified and apprehended, they should be prosecuted to the fullest extent of the law whether they are an adolescent or an adult.

Kellie Rehmann
Honorable Mention
Service High School

Remember the student bar

By Stephan Collins

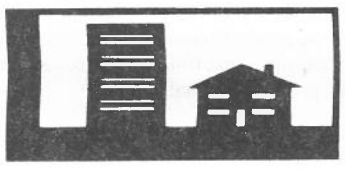
We all know there's an Alaska Bar Association, but have you heard of the Alaska *Student* Bar Association (ASBA)? the University of Puget Sound School of Law in Tacoma, Washington, is home of an active organization of law students who are either from Alaska or who hope to practise law in Alaska. The ASBA was formed in 1982 and provides its members with timely information concerning financial aid, Bar admissions, absentee voting, and other such mundane matters. It also provides a means of getting to know fellow Alaskans, and exchanging tales and tidbits (war stories?) of Alaskan life. In the fall of each year, the ASBA sponsors a luncheon for whichever Alaska Supreme Court Justice is interviewing at UPS, and in the spring, a reception is hosted by the Alaskan members of the Law School's Board of Visitors.

An important goal for this school year is to establish contact between the ASBA and the 70-plus UPS Law School alumns who are currently practising and/or residing in Alaska. Among other things, the ASBA hopes to provide a forum for those alums who travel to or through the Sea-Tac area, to share their experiences and expertise concerning the practise of law in Alaska. In addition, alums in the Juneau, Anchorage and Fairbanks areas will be invited to attend "recruitment parties" which will be cosponsored by the ASBA and the Office of Admissions during the holidays in December.

This year's ASBA membership includes 27 dues-paying students and boasts four of the 30 *UPS Law Review* staff: 3rd year students Lisa Beldon and Paul Milan, and 2nd year students Greg Olsen and Melissa Verginia. Winners of the 1985-86 regional Client Counseling competition are also ASBA members: Gene Miller and Wayne Watson. The 1986-87 officers are: President, Aleen Smith (Anchorage); Vice President, Wayne Watson (Anchorage); Secretary, Melissa Verginia (Fairbanks); and Treasurer, J. Loughlin Smith (a Texas oil man, believe it or not!).

Attorneys travelling to the Evergreen State who are interested in getting to know a group of future colleagues are urged to contact the ASBA by writing: Alaska Student Bar Association, University of Puget Sound School of Law, 950 Broadway Plaza, Tacoma, WA 98402. A warm Alaskan welcome is guaranteed -- Camai!

PRACTICAL POINTERS



Problems with payroll taxes

Commercial law

By Rodney Kleedehn

Declining economies such as the one we are experiencing in Alaska present cash poor businesses with difficult questions about cost-cutting. Nobody likes to admit failure, and prosperity may be just around the corner in the eyes of hard pressed business owners, so they are inclined to keep the doors open well past the time when all bills can be paid. The landlord, utilities and suppliers are paid first because they are necessary for the continued existence of the business. What about payroll taxes owed to the federal government? Should the employer deduct the employees' portion of the payroll taxes and use it to keep the business afloat instead of paying the government? The federal government may be slower to react to a missed payment than other creditors and easier to string along after discovering the missed payment. Does this mean the government is the creditor to put on the back burner?

Absolutely not, as once aroused the government is one of the more persistent creditors and has the strongest collection tools. This article examines pitfalls of failing to pay payroll taxes.

Payroll taxes are divided into two categories. Withholding tax is income earned by employees but deducted from their checks to be forwarded to the government. Employment tax is the employer's tax liability for paid wages, salaries and commissions. Consider the plight of the bankrupt sole proprietor and the general partner who along with his partnership goes bankrupt. Withholding taxes are never dischargeable in bankruptcy, and employment taxes are dischargeable only if the return was due more than three years before the filing of the bankruptcy petition. (Bankruptcy Code § 523(a)(1), 507(a)(7)(C) and 507(a)(7)(D).) As a result, the sole proprietor and general partner have burdens which can remain for years after bankruptcy discharges debts owed to private sector creditors.

People conducting business in corporate form may be little if any better off than the sole proprietor and general partner. Section 6672(a) of the Internal Revenue Code (hereafter IRC) provides:

> Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

This statute extends liability for misapplied withholding taxes (as opposed to employment taxes) penalty beyond the employer to "responsible persons" in the guise of the 100 percent. IRC § 6671(b) provides:

> The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Note that this statute does not specifically include or exclude employees of a sole proprietor. For partnerships and corporations, the liability of any person fitting IRC S 6672(a) is clear, and the 100 percent penalty is not dischargeable in bankruptcy. Bankruptcy Code § 507(a)(b) and 523(a)(1). To add insult to injury, payment of the 100 percent penalty does not result in an income tax deduction. Smith v. Commissioner, 34 T.C. 1100 (1960); aff md, 294 F.2d 957 (5th Cir. 1961).

There are two elements to the imposition of the 100 percent penalty. The offender must be a "responsible person," and the failure to collect, truthfully account for and pay over must be "willful." The assessment is presumed correct, so the taxpayer has the burden of proving that at least one element is lacking. Liddon v. United States, 448 F.2d 509 (5th Cir. 1971).

A person (or persons) who is required to either collect, truthfully account for or payover is a responsible person although the statute uses the conjunction "and." Slodov v. United States, 436 U.S. 238 (1978). The IRS examines numerous factors to determine whether or not someone is a responsible person. Factors indicating responsible person status include but are not limited to:

a. Check signing authority;
b. Actual signing of checks;
c. Signing of employment tax returns;
d. Position as an officer, director or employee;
e. Control of financial matters;
f. Authority to hire and fire employees;
g. Authority to determine priority of creditors;
h. Designations of authority included in minutes, bylaws and other documents; and
i. Presence at the business's financial headquarters during the quarters for which a violation occurred.

The taxpayer's goal is to prove that these factors do not exist.

Payment of other creditors in preference to the government constitutes willfullness. Willfulness also includes reckless disregard of a known or obvious risk that the funds will not be paid to the government. Brown v. United States, 591 F.2d 1136 (5th Cir. 1979). However, unencumbered funds must exist before willfulness can exist. Arnason v. United States, 68-1 USTC ¶ 9419 (D. N. Dak. 1968).

Liability arises at the time the taxes are withheld, not when payment to the government is due. Long v. Commissioner, 239 F. Supp. 911 (S. D. Iowa 1965). Termination of responsible person status through resignation during the quarter prevents liability for later withholdings within the quarter. Sinclair v. United States, 70-2 USTC ¶9668 (C. D. Cal. 1970). Resignation should be in writing since the burden of proof is on the taxpayer.

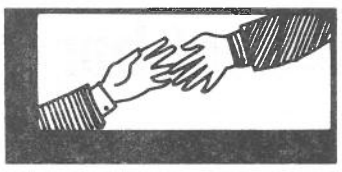
IRC § 7501 provides that the withholding taxes are trust funds. The trust funds, therefore, are the problem for the responsible person who has willfully failed to collect, truthfully account for and payover. The responsible person can pay less than the entire payroll taxes (employer's share (employment) plus employee's share (trust fund)) and designate the payment to be the trust fund portion. This will reduce or eliminate the personal exposure of the responsible person if the payments are voluntary. The check should include a note to the effect that it is in payment of trust funds, and a cover letter should so provide. The problem is establishing that a payment is voluntary. The IRS takes a narrow view on the issue of voluntary versus involuntary payments, but in Muntwyler v. United States, 703 F.2d 1030 (7th cir. 1983), the court held that in the absence of enforced collection through administrative action actually resulting in seizure of property or money, the payments are voluntary.

Numerous problems arise upon assessment of the penalty. Although the taxpayer can file a claim for refund upon making a payment sufficient to cover only one employee's taxes, the government can engage in collection activity during the administrative and litigation stages unless, among other things, a bond is posted pursuant to IRC § 6672(b).

Although the government never obtains more than one complete recovery the 100 percent penalty can be assessed against more than one person for the same liability. The liability is joint and several, and the government can collect the entire tax from any one of the jointly liable persons. Brown v. United States 591 F.2d 1136 (5th Cir. 1979). While there is authority to the contrary, it has been held that there is no right to contribution, Rebelle v. United States, 84-2 USTC ¶9717 (D. La 1984), so he or she who suffers collection first may provide a free ride for other responsible persons.

The 100 percent penalty is assessed against persons whom the government deems to have converted other people's money to their employer's use. In many cases the responsible person has an equity interest in the business, so the conversion smacks of theft to IRS collection personnel. They in turn are less inclined to be charitable in negotiations regarding payment of the penalty and interest. Every lawyer should inquire periodically about the status of his or her clients' payroll taxes.

PRACTICAL POINTERS



Torts

Civil Rule 82: Points, authorities & approaches

By: Michael J. Schneider

It was 1962 when our legislature blessed us with AS 9.60.010. It provided that "the Supreme Court shall determine by rule or order what costs, if any, including attorneys' fees, shall be allowed the prevailing party in any case." The Supreme Court responded to this legislative mandate by adopting Civil Rule 82 in the form that has graced our rules books for over a decade. Only recently (effective September 15, 1986) has the Supreme Court adopted a new fee schedule for Civil Rule 82. While the same "contested with trial, contested without trial, and non-contested" schedules appear in the Rule, the percentage and dollar break-downs are considerably different.

To make things somewhat more complicated, the 1986 legislature amended AS 9.60.010 to read as follows:

> The Supreme Court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by Statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death or property damage related to or arising out of fault, as defined by AS 9.17.900, unless a civil action is contested without trial, or fully contested as determined by the Court.

This amendment is effective June 11, 1986 and applies to all causes of action "accruing" after that date (Section 9, ch. 139, SLA 1986).

AS 9.60.010 is of critical importance in that it defines attorneys' fees awarded to the prevailing party as "costs." Most automobile insurance policies, under the liability section, have a "additional payments" or a "supplemental payments" section that provided for the payment of "costs". A clause from a typical policy is quoted below:

> Under the additional payments portion of this policy the company will pay, under the liability coverages, all court costs charged to an insured in a covered lawsuit.

Our Supreme Court on many occasions has concluded that the "all costs" provision of a liability insurance policy means what it says. The "all costs" provision thus compels an insurance carrier to pay a Civil Rule 82 award of costs and fees even if the award of Civil Rule 82 attorneys' fees alone exceeds the basic limits of the policy. See Liberty National Insurance Co. v. Eberhart, 398 P.2d 997, 999 (Alaska 1965), McDonouoh v. Lee, 420 P.2d 459, 463 (Alaska 1966), Weckman v. Houoer, 464 P.2d 528, 529, 530 (Alaska 1970) and Continental Ins. Co. v. Bavless & Roberts, Inc., 608 P.2d 281, 285 fn. 5, 6, 291 fn. 15 (Alaska. 1980)/ and Salmine v. Kanagin, 645 P.2d 148, 150 fn. 8 (Alaska 1982).

What can be done with this information? Consider that you represent a young paralyzed wage earner who, for all intents and purposes, was as healthy as a mule prior to being rear ended by defendant drunk driver. Assume that defendant drunk driver in this clear liability situation had an insurance policy with a per person limit of $50,000.00. Assume that the accident occurred sometime prior to June 11, 1986. What are your options?

One option is to pick up the phone and say "yes." It is no doubt ringing off the hook with an insurance adjuster at the other end ready, willing, and able to pay the full $50,000.00 limits of the policy and the Rule 82 attorneys' fees available under the "non-contested" schedule of the rule. The gross recovery will thus be $53,175.00.

Another approach is to pick up the telephone and advise the adjuster that you would much prefer to try this case and see what damages the judge or jury awards. Under this approach, and presuming that the finder of fact awards one million dollars in damages, the award for attorneys' fees alone under Civil Rule 82 would be $100,850.00. Under this second approach your client's gross recovery from insurance proceeds alone should be $150,850.00 plus taxable costs.

Based on my experience and that of some of my friends you can expect that a carrier will pay considerably more than its policy limits under circumstances like those described above. Where the defendant's coverage is questionable, or where liability is questionable, or where damages are considerably less clear than in the hypothetical above, the carrier is likely to take the position that it owes the enhanced Rule 82 figure only upon entry of judgment. In the meantime the carrier will defend and will decline to pay more than the policy limits and a Rule 82 attorneys' fee based on those limits.

What is the proper demand to make? The following steps should be taken in order to assess your position with reference to Civil Rule 82 and a possible settlement of the case.

First of all, your initial research and investigation should place you in position to document your theories of liability and the extent of your client's injuries and damages. Secondly, your initial contact with the defense lawyer or the insurance adjuster should seek to elicit a copy of all declaration sheets and insurance policies with reference to the driver and vehicle (or other instrumentality) in question. Be sure that this information is certified to you as accurate by the carrier. Once the certified information is received, be sure and compare the policy form number on the declaration sheet with the policy form number on the policy that you have been given. If the two don't match up then you have not yet received the information that you have requested. I have received policies and declarations sheets that did not match even though certified to me as accurate. Most adjusters and defense attorneys will provide this information voluntarily because they realize that you can obtain it by formal request and after filing suit under Civil Rule 26(b)(2). Generally, they wish to avoid the expense incurred in answering the complaint and request for production and are willing to cooperate, in the early stages, in an attempt to see if the case can be settled.

Once you have assured yourself that you have received the correct policy form then it must be examined to determine whether or not it has an "all costs" provision that would subject the carrier to unlimited Civil Rule 82 attorney fee exposure under the cases cited above. If it does, then you must determine whether or not it contains a limiting or amendatory endorsement reducing that exposure. An example of the language contained in such a limitation follows:

> The additional payments the company will make under the liability coverage is amended to read as follows: All court costs charged to an insured in a covered lawsuit, except that attorney fee payments shall in no case exceed the amount that could be awarded in accordance with the percentage schedule specified in Alaska Civil Rules of Procedure 82(a)(1) in a case in which a judgment equal to the liability policy limit or limits applicable to the loss is rendered.

If such a limiting endorsement is made a part of the policy before the date of the loss, and if the policy complies with 3AAC 29.010 regarding disclosure of the effect of the limitation, then it will be effective in limiting the carrier's Civil Rule 82 exposure. If the endorsement is not made part of the policy until after the date of the loss, if the policy fails to comply with 3AAC 29.010, or if no such endorsement exists, then you are free to take the defendant to judgment and recover the limits of the policy plus the amount awarded by the Court under Civil Rule 82. The wisdom of this approach obviously depends upon your assessment of the liability of the defendant and the extent of your client's damages.

Our Supreme Court has not had the opportunity to pass upon AS 9.60.010 in its amended form. The new Statute raises a number of issues. While I doubt that everyone will agree with me, I would argue that the new Statute does not preclude the approach taken immediately above. If the damages are clearly within the policy limits and if the defendant is willing to pay them and concedes liability then there can be little doubt that the matter is "uncontested" and thus not subject to an award of attorneys' fees under the new version of AS 9.60.010. But, where the damages exceed those limits, then the extent of those damages is likely to be contested. Once the case, or any important part of it, becomes contested, the restriction in the new version of AS 9.60.010 could be argued not to apply and plaintiff would again be entitled to a Civil Rule 82 award of costs and fees.

Could the carrier avoid its Civil Rule 82 exposure by conceding liability and any damages claimed by the plaintiff under circumstances where liability is clear, no coverage issue exists, and plaintiff's damages are far in excess of the policy limits? Probably not:

> an insurer, defending an action against the insured, is bound to exercise that degree of care which a man of ordinary prudence would exercise in the management of his own affairs, and if the insurer fails to meet that standard it is liable to the insured for the excess of the judgment over the policy limits, irrespective of fraud or bad faith. That is to say, an insurer undertaking a defense must exercise not only good faith, but also ordinary care and reasonable diligence and caution. Continental, supra at 293.

An insurance company electing to settle such a case conceding both liability and all of plaintiff's claimed damages could be accused by its insured of abrogating its unconditional duty to defend and breaching its duty of good faith and fair dealing to its insured. The duty of good faith and fair dealing includes the obligation to treat the interests of its insured (in this case, the insured's interest in avoiding an excess judgment and/or minimizing that judgment) with the same care and concern that it protects its own interests. See, generally, Continental Ins. Co. v. Bavless & Roberts, Inc., 608 P.2d 281, 288 fn. 10, 293 (Alaska 1980); Neal v. Farmers Ins. Exchanoe. 582 P.2d 980 (Cal. 1978); H. Levine, W. Shernoff, G. Kornglum, G. Olson, BAD FAITH 1986, Section I, Chapter III.

SUMMARY AND CONCLUSION

1986 has seen substantive changes in Civil Rule 82 and its statutory counterpart, AS 9.60.010. Despite these changes, and under the correct circumstances, plaintiff's counsel can use this Rule to vastly increase the compensation available to the seriously injured client in a low policy limits situation.

SURVEY RESULTS: All Alaskan P.I. Jury Verdict and Settlement Reporting Service

The Executive Committee of the Tort Section recently sent a survey to Alaska Bar Association members to determine the desirability and feasibility of an all Alaskan Jury Verdict and Settlement Reporting Service. 209 attorneys responded of which 123 practice primarily plaintiff's personal injury work, 63 practice primarily personal injury defense, 4 practice an equal amount of plaintiff and defense work, 16 practice no personal injury work. One Superior Court Judge also responded.

The survey generally sought Bar Association member views on three subjects:

First was whether or not there was a perceived need for an exclusively Alaskan Jury Verdict and Settlement Reporting Service;

Second, whether the individual practitioner would use such a service in his or her practice were it available; and

Third, would the individual member be willing to provide jury verdict and settlement information if a form were provided which could be completed in five minutes or less.

The responses to the questionnaire were very strongly in favor of the reporting service. The results are reported below.

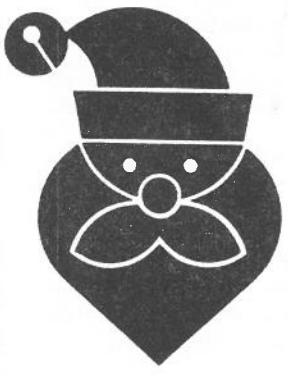
	Yes	No	No Response
1. Is there a need?	185	18	6
2. Would you use?	189	17	3
3. Would you contribute?	190	10	9

A slightly higher percentage of plaintiff's attorneys perceived a need for the service over defense counsel although a roughly equal percentage of the plaintiffs and defense Bar said that they would use the service if available. While the percentage of defense counsel who would not contribute to the service was roughly double that of plaintiff's, the total number of lawyers who responded which would not contribute was surprisingly low — approximately 5%.

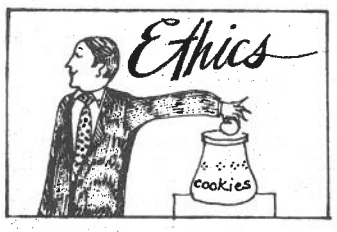
The Executive Committee of the Tort Section has designed a verdict and settlement reporting form which will be mailed to members of the Bar Association in the immediate future. Obviously, the value of the service to practitioners will depend on the representational value of reported cases. Therefore, we encourage everyone to participate in reporting results of their P.I. cases.

The exact details of the indexing and publication of reports are still under consideration but will hopefully be reported in the next Bar Rag.

For more information or forms please contact the bar office.



YULETIDE GREETINGS



Ethics opinion issued

ALASKA BAR ASSOCIATION ETHICS OPINION NO. 86-3

Re: Legal Ethics In Interstate Child Custody And Parental Kidnapping Cases — Attorney Disclosure Of The Whereabouts Of Client And/Or Child

A. INTRODUCTION

Inquiry has been made to this Committee concerning the ethical obligations of an attorney when a parent conceals a child from the other parent, yet communicates his or her whereabouts to counsel, following which the attorney is called upon to reveal this vital information. It is the opinion of this Committee that while the attorney's first instinct may be to protect the confidences of his or her client by asserting Canon 4 of the Code of Professional Responsibility (A Lawyer Should Preserve the Confidences and Secrets of A Client), a line of cases, several disciplinary rules, some specific rules of civil procedure and the Uniform Child Custody Jurisdiction Act (UCCJA) command the contrary result, namely, disclosure of the client's address and/or the address of the client's child.

B. CHILD SNATCHING TORT SUITS — ATTORNEYS AS DEFENDANTS

A significant number of state and federal courts have recently recognized actions in tort against parents who wrongfully abduct, retain, or conceal their children, as well as against persons who either aid in the initial wrongful act or assist in the effectuation of a concealment scheme which frustrates the right of access between the left-behind parent and child. If parents and their accomplices can be sued for custodial interference, it stands to reason that a lawyer who counsels a client to abduct or retain a child, or otherwise aids or abets in the misconduct, may also be held liable. In *McEnvoy v. Hekikson*, 56Z P.2d 540 (Or. 1977), the Supreme Court of Oregon recognized the right of a father to sue his former wife's attorney for malpractice and negligence for conduct which allegedly resulted in the removal of plaintiff's daughter from the country in violation of his custody rights. *See also Wasserman v. Wasserman*, 671 F.2d 832 (4th. Cir. 1982) (defendant-father's lawyers are named as defendants in this custodial interference tort case).

The Committee strongly advises against counseling a client to snatch a child or condoning a client's defiance of a court order. Indeed, it seems wise to specifically counsel a client not to violate custody or visitation rights. Further, lawyers should avoid engaging in activities that could in any way contribute to a continuing infringement of custody or visitation rights. The ethical issues inherent in representing a client who abducts, retains and/or conceals a child are discussed below. It should suffice to say at this point that an attorney who participates in a willful obstruction of justice may find himself or herself embroiled in disciplinary proceedings in addition to civil actions. *See Attorney Grievance Commission of Maryland v. Leonard J. Kerpelman, 420* A.2d 940 (Md. 1980) (attorney suspended from the practice of law for two years for suggesting, planning and helping to carry out an illegal child snatch in knowing violation of a decree).

C. ETHICAL OBLIGATIONS - ATTORNEY REVEALING LOCATION OF CLIENT

The national tragedy of parental child kidnapping has increasingly placed members of the Bar in controversy when they have knowledge of, but have been asked by their client not to disclose the whereabouts of, the abducting parent/
client. The aggrieved left-behind parent may fashion an action in law or equity to require such attorney to divulge the desired information, or a court may compel such disclosure to further the administration of justice, with the threat of contempt as a rod. For reasons of ethics, procedure and statute, it is the opinion of this Committee that the attorney's best course of action is to disclose the client's location or that of the child.

1. UCCJA: statutory duty to disclose

Section 9(a) of the UCCJA imposes an affirmative duty on "every party in a custody proceeding" to provide particularized information to the court. Specifically, section 9(a) of the UCCJA requires every party in a custody proceeding in the first pleading, or affidavit attached thereto, to give information under oath as to the child's past and present addresses.

While the statutory obligation applies expressly to "parties", it is the responsibility of the attorney to obtain the required information from his or her client and to supply it to the court in the initial pleading or accompanying affidavits. Moreover, in order to comply with the section 9(a) duties, the attorney should ask to be informed on a continuing basis of any information the client acquires relative to other custody proceedings concerning the subject child.

In most parental kidnapping cases, the UCCJA's pleading requirements present more serious ethical problems for the defendant's counsel, whose client has abducted and/or is concealing the child, than for the Plaintiff's counsel, whose client is generally in the forum state. In any event, both attorneys for defendant and plaintiff must bear in mind that intentional omissions of information regarding the child's address, or the filing of misinformation with the court, can prejudice the court's ability to determine the custody issues at bar, and could subject the attorney to judicial sanction or disciplinary action for obstruction of justice or fraud.

2. Attorney-client privilege and exceptions thereto

The United States Supreme Court has stated that the attorney-client privilege should only where necessary to achieve its purpose, since the privilege has the effect of withholding relevant information from the finder of fact. *See Fisher v. United States*, 425 U.S. 391, 403 (1976). As a general proposition, the attorney-client privilege will only be applied where the administration of justice will only be preserved (not frustrated) by its exercise. The privilege will not be applied where advice of counsel is sought to aid in the commission or continuation of a crime.

Applying these (and other) exceptions to the attorney-client privilege, courts in various states have ordered lawyers to dis- close the location of a child in custody dispute involving concealment of the child. Some examples follow:

(1) In *Jafarian-Kerman v. Jafarian-Kerman*, 424 S.W.2d 333 (Mo. APP. 1968), a father, in violation of court order, took his child to Germany to an address unknown to the mother and to the court. Labelling the father's conduct "malicious and wanton infraction of the court's orders and a brazen obstruction of the administration of justice," the appellate court held that the address of the defendant-father in letters to his counsel was not a privileged communication, and thus the lower court had erred in declining to require defendant's attorney to disclose by his testimony information as to the defendant's precise whereabouts. 424 S.W.2d at 339-340.

(2) The question on appeal in the case of *Matter of Jacqueline F.*, 47 N.Y.2d 215, 391 N.E.ed 967 (N.Y. 1979) involved the "circumstances under which an attorney may be compelled on pain of contempt to disclose the address of his client notwithstanding a claim that such information was the subject of a privileged communication. 391 N.E.2d at 968. The highest court of New York held that the attorney-client privilege must yield to the best interests of the child. The court stated that the client apparently kept her address secret for one purpose—"to thwart the mandate of the court's judgment awarding custody of Jacqueline." 391 N.E. 2d at 972. The court found that during the very litigation in which she and her attorney have participated, since this would impede the proper administration of justice and subject the child to an ordeal contrary to the court's judgment rendered in the best interests of the child. ID. at 972.

(3) In the case of *Falkenhainer v. Falkenhainer*, 97 N.Y.S.2d 467 (N.Y. Sup. Ct. 1950). the court granted plaintiff's motion for an order directing the attorneys representing the defendant to disclose the whereabouts and present address of the defendant and child. The court reasoned that to deny the desired relief would aid and abet in the frustration of the court's order. Further, the court found that the statutory attorney-client privilege did not protect defense counsel from divulging his client's address, since concealment of client's place of abode was not a confidential communication essential to the attorney's counsel or advice.

(4) In *Waldmann v. Waldmann*, 358 N.E.2d 521 (Ohio 1976), the court held that the attorney-client privilege did not shield the address of a client's child. It was ruled that the child's address was not a privileged communication, because there was nothing in the record to indicate that appellant represented appellee's son.

(5) In *Dike v. Dike*, 448 P.2d 490 (Wash. 1968), a mother deliberately violated a court's temporary custody order by forcibly removing her child from the child's custodial home. The appellate court held that the client's address was not protected by the attorney-client privilege, based upon a determination that. the benefits of the privilege were outweighed by "society's interest in protecting the present and future victims of the client." 442 P.2d at 498.

3. American Bar Association's Code

The American Bar Association's MODEL CODE OF PROFESSIONAL RESPONSIBILITY recognizes the attorney-client privilege in Canon 4, "A Lawyer Should Preserve Confidences and Secrets of a Client." However, the exceptions to the attorney-client privilege, discussed above, are reflected in an Ethical Consideration and in the Disciplinary Rules accompanying Canon 4, which should be reviewed by every lawyer involved in any child custody/ concealment/disclosure case. The applicable provisions are as follows:

Ethical Consideration 4-2

The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information...when permitted by Disciplinary Rule or when required by law...

Disciplinary Rule 4-101(c)

A lawyer may reveal:

* * *

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent a crime.

The attorney who represents a parent in a custody/concealment case should also be attentive to various other provisions in the Model Code of Professional Responsibility and analogous provisions in his or her state professional code and/or Supreme Court Rules. *See e.g.*, Canon I (A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession) and accompanying Disciplinary Rule 1-102(A) (A lawyer shall not: (1) violate a disciplinary rule; (4) engage in conduct involving dishonesty, fraud deceit, or misrepresentation; (5) engage in conduct that is prejudicial to the administration of justice; or (6) engage in any other conduct that adversely reflects on fitness to practice law).

A Maryland attorney was suspended from practicing law because of violations of these disciplinary rules, as well as Disciplinary Rule 7-102(A)(7) (A lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent), and Disciplinary Rule 7-106(A) (A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding...). *See Attorney Grievance Commission of Maryland v. Leonard Kerpelman*, supra. In addition, the attorney should read Disciplinary Rules 7-102(A)(3), (5) and (7) (A lawyer shall not: conceal or knowingly fall to disclose that which he is required by law to reveal; assist his client in conduct that the lawyer knows to be illegal or fraudulent). It should also be recalled that Disciplinary Rule 2-110(B)(1)(b) provides for permissive withdrawal from a case when a client personally seeks to pursue an illegal course of conduct.

D. CONCLUDING REMARKS

This Committee has taken this opportunity to address the present issue of the legal ethics of an attorney in disclosure of the whereabouts of a client in recognition of the significance of the attorney-client privilege and the tragedy of child kidnapping in which it can be involved. It is the opinion of this Committee that the privilege must yield to the best interest of the child and that any privilege must not shield a litigant s whereabouts, since to do so would impede the proper administration of justice and submit the child to a painful experience contrary to the court's ruling rendered in the best interests of the child.

Adopted by the Alaska Bar Association Ethics Committee on August 26, 1986.

SOLID FOUNDATIONS

The Alaska Legal Network's Zenith line celebrated its first anniversary on September 1. The lawyers' helpline (800 478-7878) has aided many attorneys in receiving copies of cases, treaties, law review articles, briefs, periodicals, and other information which the lawyer is unable to obtain in the locale in which he or she practices. The toll call is FREE and the service is FREE. Linda Chamberlain is presently staffing the line. Donations to support the services provided through the Zenith line may be sent to the Alaska Bar Foundation, 310 K Street, Ste. 602, Anchorage, AK 99501.

The Alaska Bar Foundation is continuing to receive generous contributions to both the Dimond and Kay Endowments. The Conference of Alaska Judges donated $1000 to the Dimond Endowment to perpetuate the memory of the late justice, a member of the original Supreme Court of the State of Alaska. Monies so donated will be utilized to assist in promoting access to justice for all Alaskans. Donations may be made to either endowment fund in care of the Foundation.

The IOLTA rule is in its final revisions. The voluntary program rule will begin implementation by the Foundation immedately upon promulgation.

The Trustees of the Foundation welcome your suggestions. Bart Rozell, Winston Burbank, John Conway, Sandra Saville and Mary Hughes may be contacted at their offices.

BAR PEOPLE

The Alaska Bar Association would be pleased to include members' submissions of material for a "people" column each issue. If you or your colleagues are changing jobs, getting married, having children, or taking exotic vacations, we'd like to know.

Information for this column may be sent to the bar office or given to any member of our editorial staff.

Taylor is Boss of Year

Gregory C. Taylor Named 1986 "Boss of the Year" In Anchorage Legal Secretaries Association 13th Annual Competition

At the November 6th meeting of Anchorage Legal Secretaries Association, Gregory C. Taylor, Esq., of the firm of Jermain, Dunnagan and Owens, was presented with the 1986 Boss of the Year gold pan and a specially designed mug bearing the design which has become associated with ALSA's Boss of the Year competition and Bosses' Lunch. His secretary, Julie Verrett, received a $50 gift certificate from Nordstrom's for submitting the winning entry. Julie, who has worked with Greg Taylor for almost three years, described her boss as patient, courteous, kind, and helpful. She said he took the time to teach her new things, rather than tell her to "find out for yourself." She said he was her friend as well as her boss.

Mr. Taylor made a gracious acceptance speech, telling the audience a story about his first secretary, a wizened little white-haired woman who told him that a lawyer "isn't worth a damn without his secretary." He said he believed it then because she intimidated him; he still believes it, he said.

Mr. Taylor will be one of the three judges of the 1987 competition conducted next fall, with the winner being introduced at the October 16, 1987 "Bosses' Lunch."

"I have never experienced nor have I seen a boss treat his secretary with such respect and let her know her job is so important."
— Julie Verrett

Conflict center helps

How the Conflict Resolution Center Can Help You . . . And Vice Versa

An alternative for dispute resolution, the Conflict Resolution Center (CRC) offers concilliation, mediation, arbitration and divorce mediation services at relatively low to no cost, depending on income. Additionally, we staff a Landlord/Tenant Hotline, offer information and referrals, and provide training to community groups on related issues. All of this (except divorce mediation) is done by a pool of highly committed volunteers who have had at least 25 hours of training.

Why do people use CRC? Our services are quick, hearings are usually held within two weeks; informal; convenient, hearings are scheduled at parties' convenience — including nights and weekends; and, inexpensive. Our clients tell us they are pleased with both the process and the outcome; we offer an alternative to costly litigation, particularly when the amounts involved are small (generally under $5,000).

Some examples of the kinds of disputes brought to the Conflict Resolution Center include landlord/tenant disputes over repairs, security deposit returns and damages, unpaid debts, earnest money disputes, workplace and organizational disputes, and neighborhood problems such as barking dogs, noise, and disputes involving money.

How can the Conflict Resolution Center help you? You can refer cases similar to the ones mentioned above to us — cases that would take you more time and energy than they're worth to you financially. Some cases deal more with parties' feelings than specific legal issues. In these instances, CRC is more appropriate arena for resolving these types of conflicts.

How can you help the Conflict Resolution Center? Think of us the next time you get a phone call requesting assistance on a small claims case, become a volunteer at the Center (call me at 272-5922), or send a tax-free donation before December 31 (519 W. 8th Ave., Ste. 201, Anchorage, 99501) and help out a worthwhile community-based agency.

Submitted by: Sharon Zandman-Zeman,
Executive Director

ABA President Names Committee To Coordinate Professionalism Activities

President Eugene C. Thomas of the American Bar Association has appointed John C. Deacon as chairman of the new ABA Special Coordinating Committee on Professionalism.

Creation of the coordinating committee fulfills one of the recommendations in a comprehensive report by the former ABA Commission on Professionalism. The report, disseminated in late July, developed a series of specific recommendations to further "an elastic concept of professionalism" that places the client's interests and the public good above the practitioner's self-interest. Among the commission's goals was to "assure the public and the courts that (the legal profession's) members are competent, do not violate their client's trust, and transcend their own self-interest."

Deacon, of Jonesboro, Arkansas, is a partner in the firm of Barrett, Wheatley, Smith and Deacon. He already serves as chairman of the ABA's Public Education Division Steering Committee. He is a former member of the ABA Board of Governors, and currently is a member of the Board of Governors of the American Bar Foundation. He is a past president of the foundation as well, and has held other leadership posts in the ABA, the National Conference of Commissioners on Uniform State Laws, the International Academy of Trial Lawyers, the National Institute for Trial Advocacy, the American College of Trial Lawyers, the Arkansas Bar Association and other professional groups.

Other members of the new committee are Benjamin R. Civiletti, Washington, D.C., former Attorney General of the U.S. and now chairman-elect of the ABA Section of Litigation; T. Richard Kennedy of New York City, last retiring chairman of the ABA Section of Tort and Insurance Practice; William G. Paul, Bartlesville, OK, a member of the ABA House of Delegates representing the Oklahoma County Bar Association, a member of the ABA Standing Committee on Bar Activities and Services, chairman of the ABA Litigation Section Committee on Professional Responsibility and immediate past president of the National Conference of Bar Presidents, Inc.; and W. David Watkins, Jackson, MS, a member of the ABA Standing Committee on Lawyer Referral and Information Service and the delegate from the ABA Young Lawyers Division to the House of Delegates.

THE WHOLE TRUTH . .

Being a collection of unusual legal trivia from around the state and around the world

Beware of the Dwarf. Steve Roth, accused in the facial slashing of model Marla Hanson, will plead not guilty by reason of insanity. His lawyer argues that Roth, who is five feet tall, suffered "traumatic effects" from being short.
From Nov. 7, National Review Magazine.

The majority of the Board erred by favoring crime and homosexuality and punishing the injured worker for trying to do his job and not submitting to homosexuality nor condoning crime.
From a compensation appeal to the Alaska Supreme Court."

Halloween Mishap Results in Denial of Coverage. A homeowner shot a teenaged trick-or-treater after the trick-or-treater showed up at the homeowner's doorstep dressed in military fatigues and holding a plastic sub-machine gun. The homeowner returned to the door and shot the trick-or-treater with a .357 magnum, killing him. Thereafter, the homeowner sued the insurers of the three boys for alleged negligence causing the homeowner to be indicted and tried for second degree murder, thereby incurring substantial attorney's fees, losing his job, and suffering unfavorable publicity. The Court of Appeals for the First Circuit in Louisiana affirmed the lower court ruling denying coverage stating, among other things, "our society encourages children to transform themselves into witches, demons, and ghosts, and play a game of threatening neighbors into giving them candy." The Court further noted that the Louisiana Legislature had explicitly recognized Halloween as a special occasion by exempting that day from the statute which prohibits the wearing of masks in public. *Bouton v. Allstate Insurance Company*, 491 S.2d 56 (La. App. 1986).

A Penny Saved

When it comes to paying his lawyer, Byron Helgeson is no penny pincher. The St. Louis Park, Minn., businessman ordered more than $11,000 in pennies — more than 1.1 million of them — from the Federal Reserve Bank in Minneapolis and had armed guards pile them in a mound outside the office door of St. Paul attorney Warren Peterson. "I didn't have any problem with my bill," Helgeson said. "I just figured when the bill gets into five figures you should make the lawyers work a little bit."

—From Ross & Gingras, as found in the press.

66 pass the bar exam

Kevin J. Anderson
Michelle L. Boutin
M. Katheryn Bradley
Timothy R. Brownlee
Harold F. Cahill
James E. Cantor
Louis N. Chernak
Joseph M. Cooper
Todd L. Cossman
Julia Coster
Kenneth L. Covell
Jon M. DeVore
Steven D. DeVries
Susan E. Downie
Jonathan B. Ealy
Bryan M. Emmal
Sean F. Faircloth
Daniel P. Fay
David C. Fleurant
Karlee A. Gaskill
Bradley N. Gater
Michael A. Gershel
Eric P. Gillett
Blaine D. Gilman
Mary A. Gilson
Andrew H. Haas
Michael J. Hanson
Marlis Heinemann
John J. Hill, Jr.
Nancy J. Honhorst
Christine E. Johnson
Barry J. Kell
Jo A. Kuchle
Russell C. Love
Cheryl R. Manes
Brian F. McNally
Michael J. McTighe
Bruce A. Moore
Ronald P. Moroni
Lawrence Z. Moser
Colleen J. Murphy
John R. Neeleman
Douglas C. Perkins
Steven Pradell
Robert K. Reges, Jr.
Gregg D. Renkes
Matthew G. Reynolds
Michael C. Roebuck
Vance A. Sanders
Jane E. Sauer
Kevin M. Saxby
Nancy S. Schierhorn
Stanley J. Seymour
Susan R. Sherwood
Thomas J. Slagle
Christine L. Smith
William C. Smith
William J. Soule
Robert A. Sparks
Michael J. Stancampiano
John M. Starkey
Diane Smith Tweten
Alexander K.M. Vasauskas
William W. Whitaker
Michael D. White
Rene L. Wright

Lawyer Parents

Do you have trouble finding babysitters for the evenings or weekends?

LawyerParents Network presents

"CARE SHARE"

If you are interested in forming a cooperative of LawyerParents in your area who want to swap child care services, please complete the survey below. Each respondent will receive a packet with guidelines for the formation of a CARE SHARE cooperative and a copy of each completed survey organized by geographic area. PLEASE SUBMIT $3.00 WITH YOUR SURVEY TO HELP DEFRAY THE COST OF COPYING AND MAILING. Make checks payable to : "LawyerParents Network."

CARE SHARE SURVEY

Attorney Name(s):_____

Mailing Address: _____

Phone Numbers: Work _____ Home _____

Please list children by age and gender (e.g., boy, 18 mos.; girl 3 yrs.): _____

Physical location of residence: _____

Anchorage area, please refer to the "Locator Maps" between the white and yellow pages of the ATU Anchorage phone book and check appropriate boxes below.

Locator Map No.		Street Index Letter			Street Index No.		
__ 1	__ 5	__ A	__ B	__ I	__ 1	__ 5	__ 9
__ 2	__ 6	__ B	__ F		__ 2	__ 6	__ 10
__ 3	__ 7	__ C	__ G		__ 3	__ 7	__ 11
__ 4	__ 8	__ D	__ H		__ 4	__ 8	__ 12

Juneau, Fairbanks and other areas (Please dscribe residence location): _____

_____

Are you interested in forming an after-school "buddy support system"? ____ Yes ____ No

Usual times babysitting is needed:

Weekdays: __ Days __ Nights __ Varies

__ Days __ Nights __ Varies

Time: __ 1-2 hours __ 3-4 hours __ 5-6 hours

__ Occasional overnight __ Varies

__ Other _____

Family interests:

__ Camping __ Hiking __ Skiing

__ Skating __ Library __ Boating

__ Theater __ Bowling __ Movies

__ Swimming __ Crafts __ Sports

__ Other _____

If you are interested in serving as a co-op coordinator, please list the telephone number and times when other LawyerParents can reach you _____

Would you like your name added to the LaywerParents Network mailing list? ____ Yes ____ No

THE INFORMATION PROVIDED IN THESE SURVEYS WILL BE DISTRIBUTED ONLY TO OTHER SURVEY RESPONDENTS AND WILL OTHERWISE REMAIN CONFIDENTIAL. Mail surveys to FRANCINE HARBOUR, 1031 W. 4th Avenue, Suite 401, Anchorage, Alaska 99501.

If you have any questions, comments or suggestions, call FRANCINE HARBOUR at 279-6591 between noon and 1 p.m. on weekdays or at 345-6267 after work hours.