Meet Bee Beard
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Comments on Bylaws due December 31
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Monogamous Bond is Back
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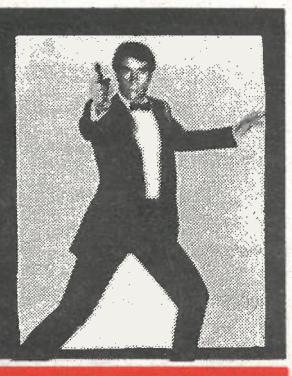

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The Alaska BAR RAG

November, 1987

Dignitas, Semper Dignitas

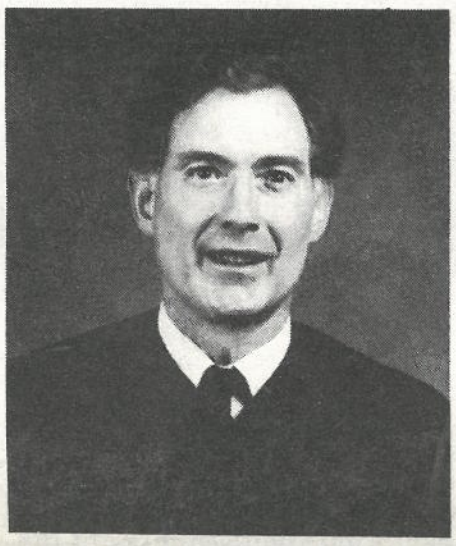
Volume 11, Number 4

Matthews to head High Court

By Judith Bazeley

The Supreme Court has had a new Chief Justice since October 1 of this year—Justice Warren Matthews who has served on the Alaska Supreme Court for 10 years. The Chief Justice is chosen by a majority vote of his fellow Supreme Court Justices and holds the position of Chief Justice for a three-year period. In addition, under the Alaska Constitution, the Chief Justice becomes the seventh member and chairman of the Alaska Judicial Council.

One of Justice Matthew's first tasks as Chief Justice has been the designation of new presiding judges for each of the state's four judicial districts. Justice Matthews has named Judge Brian Shortell as presiding judge of the Third Judicial District, Judge Jay Hodges as presiding judge of the Fourth Judicial District, and Judges Charles Tunley and Thomas Schulz as presiding judges of the Second and First Judicial Districts, respectively. With the exception of Judge Shortell, each of the judges designated has already been serving as presiding judge of his judicial district. Justice Matthews indicated the qualities he looked for in a presiding judge were: general acceptance of that judge by other judges in the district; overall judicial experience; ability to get along with other judges and, of course, willingness to serve in that position. Justice Matthews complimented the present presiding judge of the Third Judicial District, Judge Douglas Serdahely, saying that he has worked hard and done a good job. But, he also agreed that the new presiding judge of the Third Judicial District faces a task of considerable dimensions in taking over administration of the Trial Courts.



Chief Justice Warren Matthews

Over the next three years, Justice Matthews will be spending a significant portion of his time on the new Anchorage courthouse. Negotiations are presently underway with the Municipality of Anchorage, which will be selling the bonds necessary to finance construction of the new building. Actual construction should start shortly thereafter.

Currently it appears that the building will be almost completely occupied either by courts or other legal agencies such as the District Attorneys and the Public Defenders offices. Because it will be a public building, Justice Matthews must appoint a committee to make decisions about artwork in the building. He is hoping to find people knowledgeable about art to serve on this committee.

Justice Warren Matthews
Continued on Page 17

Court to lenders: drop dead

By Brian W. Durrell & Jan Samuel Ostrovsky

The Alaska Supreme Court recently issued a decision severely restricting the enforceability of dragnet clauses. The opinion was a consolidation of two cases *Lundgren v. National Bank of Alaska* and *Mogg v. National Bank of Alaska*, (No. 3222-Sept. 11, 1987). For simplicity, we will refer to the case only as *Lundgren*.

What are dragnet clauses and why should we be concerned with them? We see dragnet clauses used everyday in our business lives and in our client dealings. For instance, you may have purchased your office equipment and furnishings through a loan funded by the same bank which holds the mortgage on your investment real estate. Typically, the deed of trust covering the real estate and the security agreement covering your office equipment would each include a dragnet clause.

That clause states that the collateral serves as security not only for the loan taken out at the time the security document was executed, but also for all other debts of the borrower to the lender. In effect, all the borrower's debts to the lender are "dragged" within the scope of the security created by the security document.

This creates a trap for the unwary borrower, especially in today's economy. For example, if the rents from the investment property fall resulting in an inability to meet the mortgage payments, the lender may invoke the dragnet clause and foreclose on the office equipment to partially satisfy the investment property debt, even if the equipment loan is current.

The use of dragnet clauses is common among lenders in commercial situations, while truth-in-lending requirements restrict the use of dragnet clauses in consumer situations. Treasury Regulation Z requires that all collateral for consumer loans must be clearly set forth in the loan documents.

However, in commercial loans, at least prior to *Lundgren*, the local apocrypha generally held dragnet clauses to be easily enforceable. In fact, some of us came to view them as sacred. That view seemed orthodox, as the Supreme Court appeared to bless dragnets, albeit with a sideways glance, in *Alaska Statebank v. Kirschbaum*, 662 P.2d 939 (1983).

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Gender Bias
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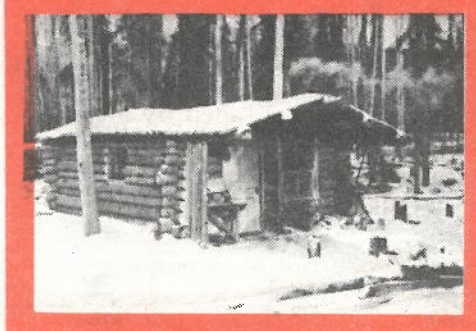

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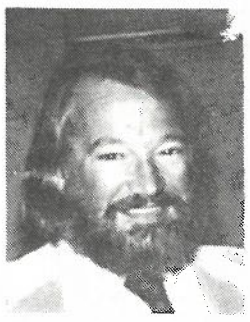

FROM THE PRESIDENT

Bob Wagstaff

While the principal activities of the Board of Governors relate to discipline and admissions, basic issues of the profession are frequently addressed. Indeed, the Board of Governors deals with many primal questions that affect the practice of law. In my last column, I described some of the problems surrounding the efforts to define the practice of law. This issue has provoked healthy controversy in the community which has required the defenders of the faith to articulate their true beliefs with some cogency.

An issue now before the Board that has the same potential for comment is the question of whether a lawyer may ethically have sexual relations with a client.

The psychiatric and psychological communities have very strict prohibitions against having sexual relations with a patient. Those professions feel that a person who comes to one of their members for help may be particulary vulnerable and in any event doesn't need a new sexual relationship to inventory with their existing problems. There is the therapeutic phenomenon of transference wherein the patient often see their therapist as a love object. The potential for abuse is high and the harm can be great. Juries apparently agree, having awarded large judgments against psychiatrists and psychologists who have had sexual relations with their patients.

A lawyer does many things. This is one of the problems that we have had to address in attempting to define the practice of law. One does not need to have practiced law very long to realize that clients seek many things from their lawyers. A lawyer counsels and advises as well as represents. In some matters, particularly those involving domestic relations, wrongful death, and catastrophic injury, a client is often seeking therapeutic as well as legal advice and lawyers often give it to the best of their ability. Not unlike a psychotherapist, a lawyer is sometimes viewed by a client as a person upon whom they can transfer emotional identity.

One view is that the Board of Governors should not tread in the area of personal morality. Another view is that under no circumstances may a lawyer ethically have sexual relations with a client. Some believe that a choice must be made by the lawyer as to whether he or she wants to have a client or a lover. It may be impossible to be both. If you have views on this subject, please write the Bar Association and your letter will be circulated in preparation for continuing debate at its next meeting January 8 and 9, 1988. All meetings are open to the public.

•

The Court system has agreed to supply the Alaska Bar Association with office space in the new courthouse in Anchorage, without charge for rent, as long as that space is not needed for court purposes. This will significantly contribute to the ability of the Bar Association to control its budget. As there are significantly fewer applicants for admission to the Alaska Bar Association, overall revenues are declining and this offer is very timely. The Board has approved a budget of $1,171,050 for income and $1,214,078 for expenses for 1988. The Bar Association currently has 12 employees including 2 discipline counsel. It is without exception blessed with an excellent staff.

•

The Bar Convention this year will be a very good one. Watergate prosecutor and former Solicitor General, Archibald Cox, has agreed to be the keynote speaker. In addition to his status as a historical figure, he has personally argued over ninety cases before the United States Supreme Court. The Appellate Law CLE he gave last spring in Hawaii was both useful and inspirational, an unusual combination. He speaks frankly and candidly of his many experiences and will be present during the majority of the convention. I hope that many members take advantage of this unique opportunity. Continuing Legal Education seminars of the first order are planned, for which there will be announcements shortly. There will also be tasteful social opportunities. The Bar Association has been working hard to have the Bar Convention in conjunction with a statewide judicial conference. Lawyers and judges do not often have the opportunity to meet out of court, and if we are successful, this would be a good forum to enable that to occur.

Approved 1988 Association Budget

Revenues

Dues	$697,980
Bar Exam Fees	75,500
Reciprocity Fees	8,000
CLE	111,000
Sections	10,220
Addressing & Copying	11,000
Rule 81 Participation	17,000
Dues Installment Service Fees	11,250
Interest	50,000
Lexis Fees	6,500
Lexis Use	48,000
Lawyer Referral Service	50,000
Bar Rag	24,000
Annual Convention	40,000
Miscellaneous	4,000
Penalties-Late Dues	6,600
	1,171,050

Expenses

Administration	$264,847
Admissions	143,673
Board of Governors	63,339
CLE	178,790
Discipline	306,488
Fee Arbitration	43,275
Lawyer Referral	1,34,239
Lexis	63,429
Miscellaneous Departments	74,450
Sections	8,400
Bar Rag	33,148
	1,214,078

The Alaska Bar Rag

President Wagstaff 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.

January 8 and 9, 1988
March 11 and 12, 1988
June 6-8, 1988 (Kodiak)

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

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THE EDITOR'S DESK

James M. Bendell

As evidenced by letters to the editors of this state's newspapers, a significant number of citizens are outraged at proposed rules designed to limit non-attorneys from engaging in activities viewed as the practice of law. Apparently some members of the public see these proposals as self-serving attempts by lawyers to further buttress their monopoly.

Of course, lawyer bashing is always a popular activity. I don't believe I have ever seen a bumper sticker that said "Have you hugged your lawyer today?" and I fear that such a vehicle may face a strong prospect of rear-end collision. Lawyer jokes (especially involving sharks) have become as ubiquitous as jokes about used car salesmen. I suppose that attorneys who have used car salesmen as clients are the most loathsome of creatures and may feel the need to go to court with a bag over their head.

Given the assumptions about lawyers' avarice and greedy self-promotion, the question we must ask is why lawyers don't seem willing to defend themselves against this public wrath. Why are lawyers so hesitant to point out the following:

1) Unlike other members of the commercial world, lawyers do not have the right to sue clients and demand a jury trial, but instead may have their cases transferred to an arbitration committee.

2) Unlike other members of the public, lawyers are forbidden from calling themselves specialists.

3) Unlike other members of the commercial world, lawyers are prohibited from actively soliciting new clients.

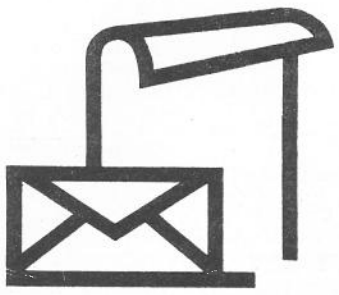
4) Unlike other members of the commercial world, the law imposes a fiduciary duty on lawyers with respect to their clients.

5) Unlike other members of the commercial world, lawyers' conduct is governed and restricted by a code of ethics over and above the prohibitions of the criminal and civil law.

That is, one response the legal profession could make to the recent outcry from the public is as follows:

"We all agree to give up the monopoly over the practice of law in exchange for our being treated as equal commercial parties with no additional obligations or burdens beyond those faced by a salesman, plumber, or clerk."

Would this be a good thing? Of course not. However, the question would at least give pause for reflection and remind everyone that the Supreme Court's and the Bar Association's attempt to govern the practice of law is ultimately done to protect the public.



IN THE MAIL

The Alaska Bar Rag welcomes letters from readers. To be printed, letters must be signed by their authors.

Tort retort

Mike Schneider has been and I think still is, a friend of mine. Clearly, we have differing views as to the subject of tort reform or as he put its tort deform. A recent case may serve to illustrate the point. A child was born in Southeast with a nuchal cord; as a result of which, the child sustained significant brain injury. The nurse practioner and obstetrician in question were each insured for $1,000,000 by MICA.

MICA is the insurance company established in 1977 to provide liability insurance for doctors and hospitals in the State of Alaska. It has little if anything to do with foreign insurance and trusts.

The doctor and the nurse in question directed the insurance company to settle the case for policy limits. Because of our own peculiar Alaska Civil Rule 82, instead of $2,000,000, the plantiffs were paid $2.2 million dollars. This case never went to trial. There have been various estimates as to the time spent on the part of the plantiff's attorneys, but it seems that two months is a good estimate, and we would be happy to revise that estimation if we could be provided the information by the plantiff's attorney in question.

Our best estimate is that the contingency was one third of the settlement. A rough calculation shows that that is on the order of +$720,000. Judging from what we know about *contingency cases, that one third* would be a percentage of the gross recovery. The plantiff—in other words the cerebral palsied child—would be left to pay the expenses from the residual.

The case apparently doesn't end there as the hospital, pediatrician and sundry others are being sued as well. Presumably there will be defense costs if not some sort of settlement or verdict cost. The bottom line is that at a very minimum this one child's birth is a $2.2 million burden for society. It appears that this one child's birth will be in excess of $2.2 million.

Notwithstanding the fact that there may well have been malpractice committed (I don't know), we need to ask ourselves if this kind of activity is really in the best interest of society as a whole. It doesn't make sense that one individual, no matter how noble, how skilled, how worldly, how experienced, can possibly be worth $720,000 for less than two months of work. Does the money provided for this child really do what it's intended to do or does it make some individuals wealthy at an inappropriate and perhaps unsustainable cost to society.

During the tort reform debate in 1986, there was a great deal of input from the plaintiff's attorney that suggested that we had insufficient information with which to make judgments relative to tort law. What I find very interesting is that this case and others like it are immediately sealed by the court and interested parties are unable to determine precisely where the money went.

During the 1986 debates, it was alleged that there were no million dollar Alaskan cases. Since then, a cursory glance would confirm that there has been this case, the case of the injured worker at the airport, the case of the victims in the Soldotna aircrash, etc. Most of these cases are settled out of court. They are in excess of $1,000,000. There is very little question that the system is exceedinqly costly. There is great question that the system is effective.

Michael makes a call to action to protect the present tort system. He should rest assured that there are many of us who will make a call to similar action to change the tort system.

Perhaps our experience will have to be like that of California, in which we pummel each other until sufficiently bloodied, we elect to sit down and in a reasonable fashion correct the glaring ills of the tort reform system ard correct the glaring examples of negligence, malpractice, etc. My contention is, and has been, that the tort system is not doing what it was designed to do and that, therefore, it needs change.

Sincerely,
David A. McGuire, M.D.
Orthopedic surgery

More Letters

Fish talk back
Ninth Circuit hearing dates

In response to the President's column in the August edition of the Bar Rag, the Commercial Fisheries Entry Commission agrees that the definition of the practice of law is a critical issue to be addressed by the Alaska Bar Association. However, we strongly disagree with his characterization of the position taken by our agency.

Last February, we were asked by Attorney General Grace Berg Schaible to submit comments on the definition of the practice of law as proposed by the Bar's Board of Governors. The Attorney General called to our attention the fact that the definition as first proposed by the Ethics Committee had been reworked by the Board of Governors and that various exceptions, including an exception allowing non-attorneys to represent others before administrative agencies, had been eliminated. We submitted comments generally supporting the Ethics Committee's version and expressing our concern over the elimination of exceptions. President Wagstaff correctly quoted a portion of those comments as follows:

> Ours is a unique niche of the law, and most attorneys have never practiced limited entry law. As a result, to hire a typical attorney to appear before us will require extra legal fees for research while the attorney becomes familiar with our statute, regulations and body of law. Additionally, since many of our cases are heard at remote locations with no attorneys available, applicants would be forced to either incur substantial costs to transport themselves and their witnesses to the lawyer's location for investigation, preparation and hearing or incur additional legal fees and costs for traveling time, overnight stays, etc. if the lawyer were brought to them. Because many of the rural people who appear before us cannot afford an attorney, they would be forced to represent themselves if they can't have a relative, friend or other non-attorney represent them. If left to their own devices, many would face insurmountable difficulties due to a lack of language skills, education, and familiarity with our procedures.

President Wagstaff characterized our statement as one motivated by our own administrative convenience and as an attempt to duck responsibility for proper supervision of our own agency employees. This is a clear misreading of our statement, which goes exclusively to the protection of private individuals with claims before our agency.

As we stated, what our agency hopes to ensure is that individuals appearing before it have reasonable access to qualified advocates familiar with our agency's practice. More often than not, applicants are represented by qualified attorneys, which is the situation we prefer. However, not every applicant can afford or otherwise has reasonable access to a qualified attorney. Additionally, there have been occasions where we have observed licensed members of the Alaska Bar Association do harm to their clients' claims before the Commission. At the same time, we have seen some unlicensed advocates familiar with the fishing industry and our agency consistently advance the claims of individuals.

Apart from the fact that a qualified advocate makes everyone's work easier, our statement was not prompted by our administrative convenience. What we wish to ensure is that those individuals whose entitlements turn on decisions of our Commission have reasonable access to qualified advocates. To the extent that the Bar Association's position advances the same goal, we have no quarrel whatsoever.

Yours truly,
COMMERCIAL FISHERIES ENTRY COMMISSION
Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner
David A. Ingram, Managing Hearing Officer

Ninth Circuit Hearing Dates

The Ninth Circuit Court of Appeals sits in Anchorage once a year, usually in August. While the judges attending the August, 1987 arguments were in Anchorage, several Alaska Bar members asked the judges whether the Court would consider adding a second argument session in Anchorage in mid winter.

The clerk of the Ninth Circuit recently gave me the following response to that request:

> Judges Goodwin and Anderson relayed this request to the Court. The staff was directed to see if there was a sufficient caseload to justify a second sitting in Alaska. The answer is that there is not. However, the Court did ask me to clarify our procedures for setting Alaska cases on calendar. Cases arising in Alaska will be scheduled for argument in Seattle unless the case becomes ready within two to three months of the August Alaska sitting. If counsel wishes to have a case heard in Alaska, a letter should be addressed to me, to that effect. If at all possible, we will try to honor that request. The only exception to this is in criminal cases, in which the Court's policy is to expedite these appeals, particularly if the defendant is in custody.

Sincerely,
Robert L. Eastbaugh
Delaney, Wiles, Hayes,
Reitman & Brubaker, Inc.

The Best of the Tanana Valley Bar

From the minutes ...

Randy Olsen called for new business. Dave Call inquired if there is any truth to the rumor that Lord Snowden wanted to increase the salary of state judges. Ralph Beistline, always in the know, stated that yes indeed that was true, and the number proposed by Lord Snowden was about $12,000.00 per year. That sparked a lively debate as to whether or not state judges were worth it. Since Judge Kleinfeld was present, Ralph Beistline was quick to point out that Federal judges were not only worth every cent they were paid, they were entitled to it as well.

Paul Cragan moved that we take a position on the proposed increase in judicial salaries. Dick Madson, among others, seconded the motion. On voice vote it was unanimous that the TVBA take a position on the proposed increase in judicial salaries. The missionary position was discussed, but the position was dismissed as appealing to the prurient interests.

Dick Madson, to spark debate, moved that the Tanana Valley Bar Association be opposed to any increase in judicial salaries at this time. The motion was seconded by Dick Burke. Madson then spoke to the motion. He pointed out that Judge Savell had wanted the job so bad that he would have taken it if it didn't pay a nickle. Judge Blair, in Madson's view, doesn't need the money, and Judge Green doesn't either because her cost of living was so low (she lives in a log cabin up on Hagelbarger, which cabin is heated with wood). He noted that Judge Hodges would probably take more time off for duck hunting in lieu of an increase in pay.

Tom Fenton was asked for his input and he too spoke in favor of the motion because in his view, the request by Lord Snowden suffered from "bad timing." This provoked a series of calls and shouts from the members, the most printable of which were that the timing was tacky, insensitive, lacking in forethought, and smacked of an attitude once displayed by Marie Antoinette.

Valerie Therrien, pointing out that she was "into cutting," argued that since other state workers were taking cuts the judges should take cuts in their salaries as well.

Judge Kleinfeld noted he had eagerly sought his appointment at $76,000.00 and that the increase he received to $89,500.00 was a gift. Judge Kleinfeld's comments were sought as, allegedly, Lord Snowden had attempted to justify the proposed increase in state judicial officers' salaries so their salaries would be comparable to federal judicial officers', but Judge Kleinfeld refused to take a position.

David Call moved to invite the judges and let them speak to the issue. This was promptly shouted down, and Dick Burke made an impassioned speech against such an invitation as well.

Dick Madson, not to be outdone by Dick Burke, made an impassioned speech in favor of the State District Court judges. The essence of his plea was the the District Court judges are swell folks and they do a lot of scut work. They are generally people who work pretty hard and handle a large number of distasteful matters which the Superior Court judges won't touch. He also opined that the Superior Court judges really have a pretty good lot in life as they don't have to exercise a great deal of legal knowledge or scholarship.

An anonymous member of the TVBA inquired as to whether or not there was any truth to the rumor that Lord Snowden's salary was tied to that of the Superior Court judges'. Another anonymous member stated that the rumor was founded in fact, but somehow it still sounded like a rumor.

The question was called and in a very close voice vote the motion was carried. The only identifiable negatives were cast by Mac Gibson and Dick Madson.

Jim DeWitt moved to reconsider

Continued on page 22

• Drop Dead

Continued from Page 1

As we now know, that reading of *Kirschbaum* was wishful fundamentalist exegesis. *Kirschbaum* was only the distant herald of a reformation.

In *Lundgren*, the court indicated that it would consider dragnet clauses as an issue of first impression. *Lundgren* involved a complex set of facts arising from a series of commercial loans partially secured by real estate. Some of the loans were existing at the time the borrowers delivered deeds of trust to the bank; some of the loans were extended subsequent to the delivery of the deeds of trust. The court distinguished between the two types of loans—antecedent debts and future advances—in reaching its decision.

The court ruled that dragnet clauses are enforceable with respect to antecedent debts only where those debts are specifically identified in the security agreement.

With respect to future advances, the court ruled that dragnet clauses are effective only where the parties intended that the future advance be secured by the dragnet clause. The court set down three guidelines to be adhered to in determining whether the requisite intent exists:

> First, the burden of proof is upon the proponent of the dragnet clause to demonstrate the parties' intent;
>
> Second, the fact that the future advance is not of the same type or character as the debt identified in the deed of trust containing the dragnet clause is evidence that the parties did not intend the dragnet clause to cover it; and
>
> Third, the fact that the future advance is separately secured and does not refer to the deed of trust which contains the dragnet clause is also evidence that the parties did not intend the dragnet clause to cover that debt.

Lundgren certainly gives us a bright-line test for the application of dragnets to antecedent debts. It also gives some guidance regarding future advances. But, *Lundgren* raises many new questions.

Will the holding in *Lundgren* be applied retroactively to existing deeds of trust containing dragnet clauses? One should assume so since the court stated that it was addressing an issue of first impression and therefore probably did not view its decision as changing the existing law.

If so, what actions should lenders take with respect to loans in which they are relying upon dragnet clauses? With regard to antecedent debts, the prospects of fixing a defective dragnet clause are bleak. However, it may be possible to firm up the collateralization of advances made subsequent to the security agreement with a later acquired (perhaps at the time of work out) statement of intent.

Note that this poses a particular danger to junior lienholder, since a statement of intent perhaps can be made long after a junior interest is obtained, thus further subordinating the junior interest.

However, the court indicated that a major policy reason for its decision was to allow a junior lienor to rely upon the record in advancing credit to a borrower. Is a junior lienholder in any better position to rely upon a review of the recorded senior deed of trust after the *Lundgren* decision? The answer is unclear; a prudent junior lienholder will still probably want some sort of estoppel certificate from the senior lienholder.

Although the *Lundgren* decision dealt with real estate secured by deeds of trust, the court's holding with respect to antecedent debts referred to a "security agreement." Did the court intend that its holding not be limited to deeds of trust, but that, as a policy matter, it could extend to security agreements covering personal property?

What will be the interplay between the Lundgren decision and the summary foreclosure anti-deficiency statute (AS 34.20.100)? Since lenders now will usually identify all of the borrower's loans in each of the security documents, can a borrower claim that a summary foreclosure against one of the secured properties forgives all debts secured by that property?

We suspect that the issues in *Kirschbaum* and *Hull v. Alaska Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 2605 (File No. 6346), 658 P.2d 122 (1983), which dealt with a creditor's rights against other security following a summary foreclosure, will be revisited.

We do not yet have answers to most of the issues presented by *Lundgren*. Our awful economy should speed consideration, although we suspect that many issues will be resolved in unpublished bankruptcy court decisions.

Until the area is further flushed out, dragnetted transactions must be thought through carefully.

Bork defeated by Anchorage Bar

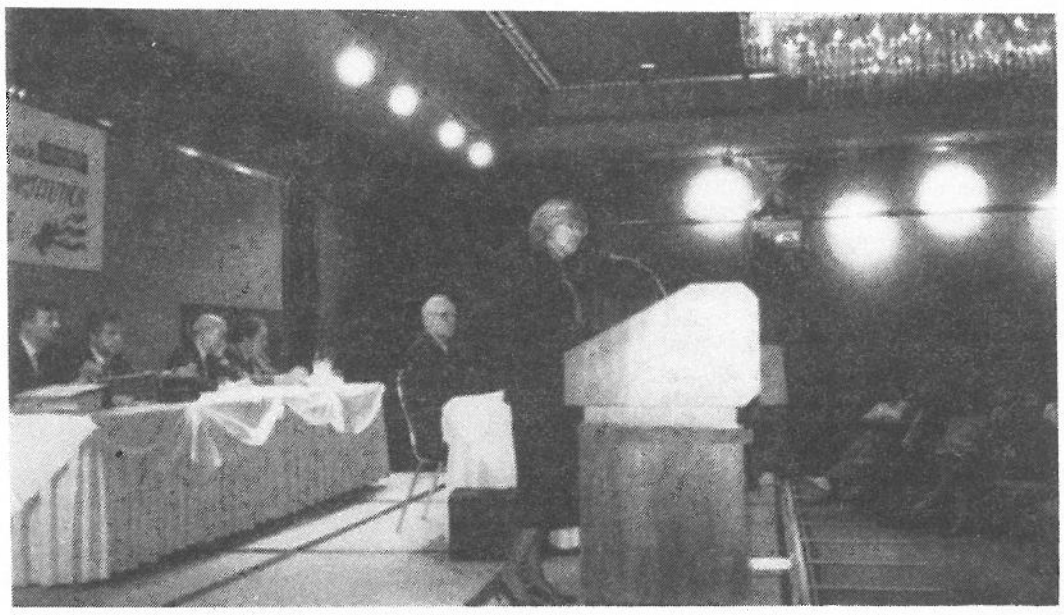
On Wednesday, Sept. 16, 1987, between the hours of 5 and 7:30 p.m. at the Anchorage Hilton Hotel, the Anchorage Bar Association hosted a debate among Wayne Ross, Cheri Jacobus and Neil Kennelly on the issue of Judge Robert H. Bork's confirmation as Justice of the U.S. Supreme Court.

The debate, billed "The Fight of the Century," featured Wayne Ross and Cheri Jacobus speaking for confirmation and Neil Kennelly speaking against. Judge Ralph E. Moody presided as referee. The event was organized by Anchorage attorney Jim Wanamaker, who served as Master of Ceremonies.

After a brief and hilarious opening statement, Wayne Ross turned the podium over to his associate, Cheri Jacobus, who presented the case for confirmation of Judge Bork. Citing a plethora of cases in which Bork participated which were affirmed by the U.S. Supreme Court Jacobus noted he is a "mainstream" judge who supports free speech, women's rights, and civil rights generally. Jacobus argued that Bork, in his capacity as a jurist, has been careful not to substitute his own opinions and philosophy for the Constitution.

Kennelly's analysis of Bork's record focused narrowly on those decisions in which he had the swing vote. Kennelly's conclusion from those cases was that Bork had no judicial philosophy and that the only thing consistent about him is that he tends to favor the most powerful litigant.

Kennelly noted in those decisions where Bork's vote was critical, he consistently came down "against the individual, against the little man, *and against the people the court is* there to protect." In cases which one side possessed the economic power Bork came down on that side. When he was looking at disputes between the government and the individual, he favored the government.



If you'd attended the Anchorage Bar's Bork debate in September, the U.S. Senate's rejection of the Supreme Court nominee would have been no surprise. On the "losing" side was Cheri Jacobus (top). At lower left are the participants for the debate: (from left) Jacobus, Wayne Ross, Fritz Pettijohn, Millard Ingraham and Neil Kennelly. Master of ceremonies Jim Wanamaker warms up the crowd at lower left. Photos by Harry Branson and Jim Wanamaker.

Jacobus and Kennelly presented markedly contrasting styles as each vigorously argued their position. Employing a prize-fighting analogy, several members of the audience compared Kennelly's style to a slugger and Jacobus' to a boxer. Jacobus scored points in the early rounds of the fight with her obvious command of the case materials. She was able to cite, analyze, and discuss at length a number of critical cases in support of her position that Bork was a "mainstream" judge. Kennelly on the other hand, avoided specifics and hammered on the theme that Bork did not have any solid constitutional philosophy and instead simply favored the powerful in his decisions.

Kennelly's closing remarks resembled the final argument to a jury, not at all unworthy of a man whom Jim Wanamaker introduced to the audience as "the Clarence Darrow of the North." Jacobus' closing remarks illustrated her considerable skill as a debator.

It was clear to everyone in the audience that they had just witnessed a great match.

During an intermission, the audience feasted on steamship rounds of roast beef and silver dollar rolls and crowded the bar where the early comers had already had one free drink. Intermission entertainment was provided by the Lawyer's Briefcase Brigade, a crack local drill team suited in three-piece dark flannel and carrying briefcases which they rapped smartly in synchronization with their marching steps and chanted slogans.

After the break, attorneys Fritz Pettijohn, Mitch Shapiro, Ron Zobel and Russ Arnett, among others in the audience, voiced their comments, questions and concerns to the debators. Following this discussion the members of the Anchorage Bar Association voted 32-11 to reject a resolution supporting confirmation of Robert H. Bork as a United States Supreme Court Justice.

—Submitted by Harry Branson

THE MOVIE MOUTHPIECE

Edward Reasor

Holy Cow! Now the feminists have really done it!

It didn't bother me that one-third of the Anchorage District Attorney's staff suddenly became aggressive females, nor that one of the criteria under the present Administration for becoming the Attorney General or a Supreme Court Justice is to be a woman, but now they have gone too far — they made James Bond monogamous. Holy cow! Humbug!

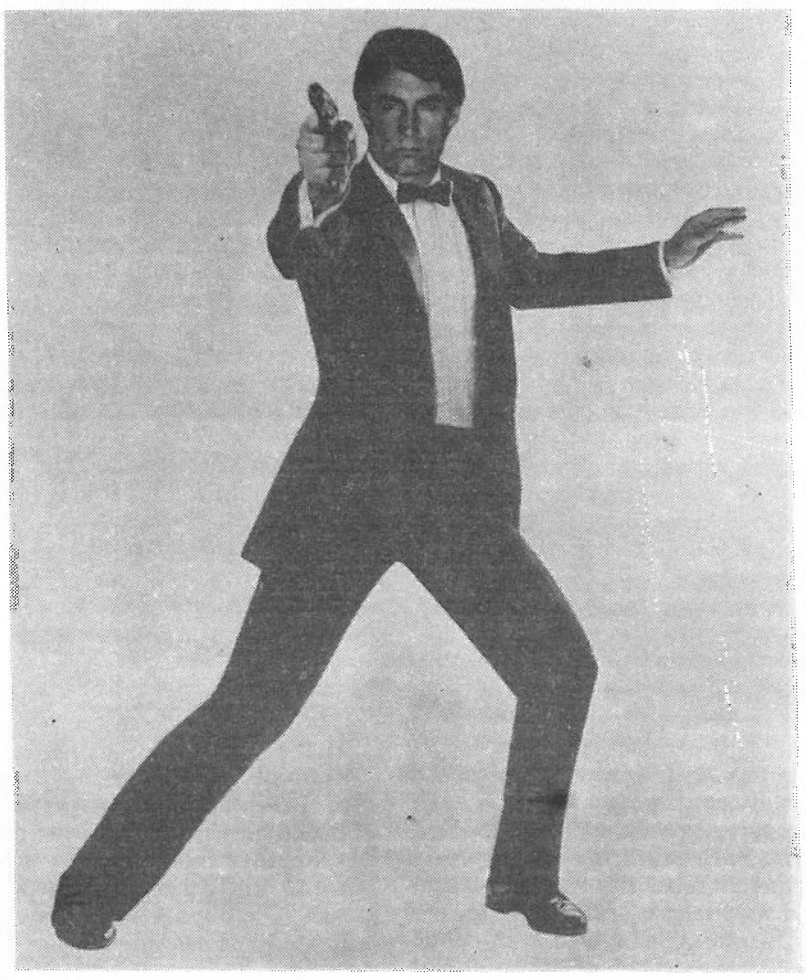
For years old men, burnt-out dentists, and struggling would-be-actors envisioned the great life lived by the fictional James Bond. One of Mr. Bond's attributes was always being surrounded by beautiful, willing females. This 17th Bond film starring (the fourth James Bond), Timothy Dalton, grossed $11 million in the first week of its release. It beat the previous Bond extravaganza—Roger Moore's *"A View to a Kill,"* which grossed a mere $10 million its first week in 1985. Those who know say more women are attending the present Bond thriller, *"The Living Daylights,"* than attended earlier Bond entries. Why?

Why not? Dalton, as the new dashing 007, is attractive to women. He's young, handsome and athletic, but he also practices monogamy and thus safe sex. In a world turned topsy turvy by the spread of AIDS, Producer Albert Broccoli has toned down the lust and the sexual adventures of Agent 007. In fact, in this film Bond does such unheroic deeds as buying his love a dress, taking her to the opera, showing her the joys of a normal ferris wheel ride and a bumper car encounter. Oh, the shame of it!

True, *"The Living Daylights,"* is exotically filmed in locations in Gilbraltar, Austria, Morocco, the U.S., Italy and, of course, Pinewood Studios in England, the resident sound stage factory for all of the Bond films. Dalton is directed by three-time veteran John Glenn in a screenplay written by Richard Maibaum and Michael Wilson, based on Ian Fleming's original short story of the same title.

The now familiar logo with the shot through the bloody eye remains, as does Bond's Aston Martin with some original options such as a rocket drive and the ability to sprout ice outriggers at exactly the critical time. And, of course, there exists a bevy of would-be assassins and tricky gadgets to keep the free world free.

So who's the only woman Bond wants? Kara Milvoy is a Czech cello player, who first attempts to assassinate 007 and then falls in love with him. She is a soft-voiced, reasonably attractive, short-haired, thin blonde who appears to be mild-mannered and at times lost, especially when it comes to reacting to violence. She does charge a Soviet Air Base in Afghanistan with camelback guerilla supporters. But just barely.



Timothy Dalton is the newest James Bond heartthrob.

In real life, Maryan d'Abo was born in London of a Dutch father, a Russian (Georgian) mother. She left England at age five and was brought up and educated in Paris and Geneva.

D'Abo returned in 1980 to study acting at the Drama Centre, and has since appeared in such films as Taylor Hackford's *"White Nights"* and Clive Donner's *"Merlin and the Sword."* On the French stage she has played the leading female role in *"Spartacus"* and the role of Roxanne in a production of *"Cyrano de Bergerac."*

Although French is d'Abo's mother tongue, she speaks English fluently without any trace of an accent. Her one saving grace is that she has been watching Bond movies since she was 11 years old.

Some things never change, the ubiquitous "Q" (Desmond Llewelyn) is back in this Bond, but he seems older and tired. He continues to invent ingenious devices to kill, including a large hand-held musical recorder called a Ghetto Blaster, ("something we are making for the Americans"), as well as milk bottles that explode. Certain other gadgets include a key chain that releases nerve gas when it hears the tune "Rule Brittania." The villains are as maniacal as any other Bond villain, including a West Point dropout American arms dealer (excellently done by Joe Don Baker), a shifty head of the KGB (John Rhys-Davies), a menacing Soviet General (Jeroen Krabbe). None wants to take over the entire world. This is simply a Russian effort by a KGB general to defraud his own government of millions of dollars earmarked for arms purchases. Sound familiar, Colonel North?

There are excellent action set pieces in addition to the opening Gilbraltar parachute shot, including a lengthy but not overdone car chase through the snows of Czechoslovakia (filmed in the Austrian Alps). Producer Broccoli, who has made over $2 billion (yes, I did say billion) for producing all of the Bond films except the 1967 *"Casino Royale,"* has even worked into *"The Living Daylights"* the present attitude of the Russian regime. The KGB Russian General is not interested in conquering the world or even blowing it up. In fact he wants exactly what the old James Bond had—girls, money, diamonds, and more girls. As Bond becomes more conservative, the Russians become more lustful.

The camera work on *"The Living Daylights"* is impeccable. This is because producer Broccoli had three camera crews shooting simultaneously every foot of the picture. One, the main unit, was shot for a look of the entire picture, and the second unit dealt more with special effects and stunt work, and the third camera crew hopefully picked up something either the first or second crew missed. For example, in the film there are some delightful love scenes between Bond and Kara. Some of the most lovely filmed are those where they are riding around Vienna in a horse-drawn carriage, a romantic adventure for anyone. This sequence was supervised closely by Alec Mills, who worked on five previous Bond films. He has said publicly a camera man can't work on a Bond film unless he's been in the business for at least 15 years. (Cameramen rate higher contractual wages the longer they have been in the game.)

European actress Maryam d'Abo portrays a Czechoslovakian cellist caught up in espionage intrigue (and Bond) in the 25th anniversary bond film. United Artists photo

Vienna was a long stop for a location camera crew. On the Bond film the first shooting unit spent 10 long days shooting both exteriors and interiors of the Hotel Im Palais Schwarzenberg, a palace that was constructed in 1697. Interestingly enough, Johann Strauss used to play his favorite music at gala balls in here. Films of Wiener Prater, Vienna's large amusement park, show the ferris wheel scene (the same one utilized by Joseph Cotton confronting Orson Welles in *"The Third Man"*). The close-up shots of the ferris

Continued on page 21

Tort deform, 1986: The new rules

BY MICHAEL J. SCHNEIDER

I. Scope

In the waning moments of the 1986 legislative session, our legislature, in its wisdom, passed Conference Committee Substitute for Senate Bill 377. This new law added Chapter 17, Limitations on Civil Liability, to A.S. 09 and had the additional effect of amending Alaska Rules of Civil Procedure 49, 52, 58, and 82. As will be discussed below, it further provided for an effective date. In the paragraphs that follow, I will attempt to keep my editorial comment to a minimum and simply describe the new law.

II. The New Rules

A. Applicability.

The act applies to all causes of action accruing after June 11, 1986. See§ 9, Ch. 139, SLA 1986.

B. Limitations on Non-Economic Damages.

Non-economic damages, *in personal injury cases only*, are limited to $500,000.00 per separate incident or injury *unless* your client has suffered "disfigurement or severe physical impairment." See A.S. 09.17.010.

C. Punitive Damages.

"Clear and convincing evidence" is the new standard of proof required for an award of punitive damages. See 9.17.020.

D. Damages Resulting From Commission of a Crime.

Except for actions under 42 U.S.C. 1983, a plaintiff is barred from recovery if committing a felony at the time of the injury. Plaintiff must, however, be convicted of the felony, and there must be a substantial relationship between the crime and the injury or death complained of. See A.S. 09.17.030.

E. Itemization, Computation, and Award of Damages.

A.S. 09.17.040 addresses these topics. Subsection (a) commands the itemization of punitive damages, economic damages, and non-economic damages, and requires a further breakdown as to whether such damages are past damages or to be incurred in the future.

Subsection (c) allows the damage approach set forth in *Beaulieu v. Elliott*, 434 P.2d 665 (Alaska 1967) *if* the parties can agree to use it. *Beaulieu* has been empirically demonstrated to be reasonable and, as to plaintiffs, claims, a slightly conservative approach to the competing problems of establishing future rates of inflation and appropriate discount rates. See Parks, *The Evaluation of Earnings Loss in Alaska Courts: The Implications of Beaulieu and Guinn*, Vol. II, No. II, Alaska L. Rev. 311 (1985). Under *Beaulieu*, it is simply assumed that future rates of inflation (that would tend to expand plaintiffs, damages) are equal to, and thus offset by, the most appropriate discount rate (that would be used to reduce plaintiffs, future damages to their present dollar value). 434 P.2d at 671-2.

Assuming that you cannot get the other litigants to accept the wisdom of *Beaulieu*, you are compelled by Subsection (b) to retain such economists, witch doctors, and soothsayers as might be required to establish before the jury exactly what inflationary and discount values should be applied in a particular case. If you happen to believe that this approach is likely to be terribly tedious, terribly expensive, and certainly bound to generate more heat than light, then you, (1) are probably right, and (2) should run for the legislature ...

Subsection (d) allows, at the *option of plaintiff*, for judgment to be entered such that amounts awarded for future damages are satisfied by periodic future payments from the defendant. For the plaintiff stupid enough to elect this option, Subsections (e) through (g) discuss security and enforcement.

F. Limited Liability of Certain Directors and Officers.

"Unless the act or omission constituted gross negligence ... in the course and scope of official duties," you can no longer tag directors or officers of nonprofit corporations, public or nonprofit hospitals, members of citizen advisory boards of any hospital, members of school boards, or members of governing bodies, commissions, or citizens, advisory committees of a municipality.

Note that this limitation does not apply to duties owed to shareholders by corporate officers and directors. See A.S. 09.17.050(b).

G. Effect of Contributory Fault.

"[C]ontributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recovery." A.S. 09.17.060 does not appear to be a change in the law.

H. Collateral Benefits.

A reading of A.S. 09.17.070 suggests that the collateral-source rule, as we now know it, is unchanged as to the trial of the case and any proceedings before verdict. Following the verdict and after the court has awarded costs and attorney's fees, a defendant may introduce evidence of collateral benefits received by the plaintiff. This evidence *cannot* include evidence of benefits that under federal law cannot be reduced or offset, evidence regarding a decedent's life insurance policy, or evidence of gratuitous benefits provided to the plaintiff. Most importantly, evidence of collateral benefits from sources *that do not have a right of subrogation by law or contract* are the only such benefits that the defense may place in evidence.

Plaintiff is entitled to counter with evidence of the cost of securing the collateral benefits in question and *net actual attorney's fees*. The court may reduce the plaintiff's total award *only* if the amount of collateral benefits exceeds the total of attorney's fees and the cost of securing the collateral benefits.

This section does not apply to medical malpractice actions filed under A.S. 09.55.

The approach set forth in A.S. 09.17.070 is logical in that plaintiff's recovery will be reduced only when plaintiff has, in fact, received some sort of a windfall or potential double recovery.

J. Settlement With Less Than All Defendants/Apportionment of Damages.

As to causes of action occurring after June 11, 1986, you had best read A.S. 09.17.080 with considerable care before settling with less than all defendants. This unfortunate statute will make it very difficult for a defendant in a civil action to escape any significant part of the litigation process, or trial of the case itself, absent a settlement of the action as to all parties.

The court must make findings, or, in the case of a jury trial, submit special interrogatories to (1) determine the total damages that plaintiff would be entitled to recover if contributory default is disregarded and (2) what percentage of total fault is attributable to *all* parties, *including those that have been oreviously released from liability*. The trier of fact has the option of determining that two or more actors may be treated as a single party if their conduct was such that separate acts or omissions cannot be distinguished.

Naturally, the defense will endeavor to make any previously released party appear to be *the most liable*. If that party is not at the trial to counter such suggestions, the empty-chair defense may have the effect of substantially lessening the amounts ultimately paid by those remaining in the case.

Subsection (c) requires that the court, after reducing the ultimate judgment by the amount previously received from settling parties, must indicate in the judgment each party's equitable share of the obligation according to the respective percentages of fault found by the court or the jury. While judgment is then entered against each party jointly and severally, *no party may be compelled to pay more than twice its assessed percentage of fault.*

This statute is bound to make certain otherwise meritorious cases look less appealing. Cases involving toxic torts and dram shop actions are a couple of categories that come immediately to mind. It is also very likely that this statute will promote litigation by fostering the defense tactic of third-partying in every conceivable defendant (and the more impecunious the better) to spread, and thus reduce, the remaining defendants' assessed percentages of fault.

K. Effect of Release/Contribution Among Joint Tort-Feasors.

Under A.S. 09.17.090, the release of one joint tort-feasor does not release any other tort-feasor, unless the release so indicates. Plaintiff's claim is ultimately reduced to the extent of amounts paid to plaintiff by released parties. Released tort-feasors are discharged, by way of the release, from all liability for contribution to tort-feasors remaining in the litigation.

L. Definition of Fault.

Read A.S. 09.17.900. It defines fault. It's rather unenlightening.

M. Offers of Judgment.

A.S. 09.30.065 is amended to allow any party in the action access to the offer-of-judgment procedure. The offer must be made more than ten (10) days before the trial begins. The party prevailing gets a five-percent-per year prejudgment interest kicker. But, note that A.S. 09.30.070 changes the rules for prejudgment interest. See the next heading.

N. Prejudgment Interest.

A.S. 09.30.070 is amended by adding a subsection that begins the accrual of prejudgment interest (absent a prior agreement between the parties) on:

> "the day process is served on the defendant or the day the defendant received written notification that an injury has occurred and that a claim may be brought against the defendant for that injury, whichever is earlier. The written notification must be of a nature that would lead a prudent person to believe that a claim will be made against the person receiving the notification, for personal injury, death, or damage to property."

O. Civil Rule 82 Costs and Attorney's Fees.

A.S. 09.60.010 eliminates the claimant's right to receive Civil Rule 82 attorney's fees where a personal injury, death, or property damage action is uncontested. Disputes about whether or not a matter is uncontested, contested without trial, or fully contested are apparently to be determined by the court.

P. Severability.

Section 10, Ch. 139, SLA 1986 is a severability clause that purports to preserve the balance of the act in the event that a portion thereof is held to be invalid.

III. Comments

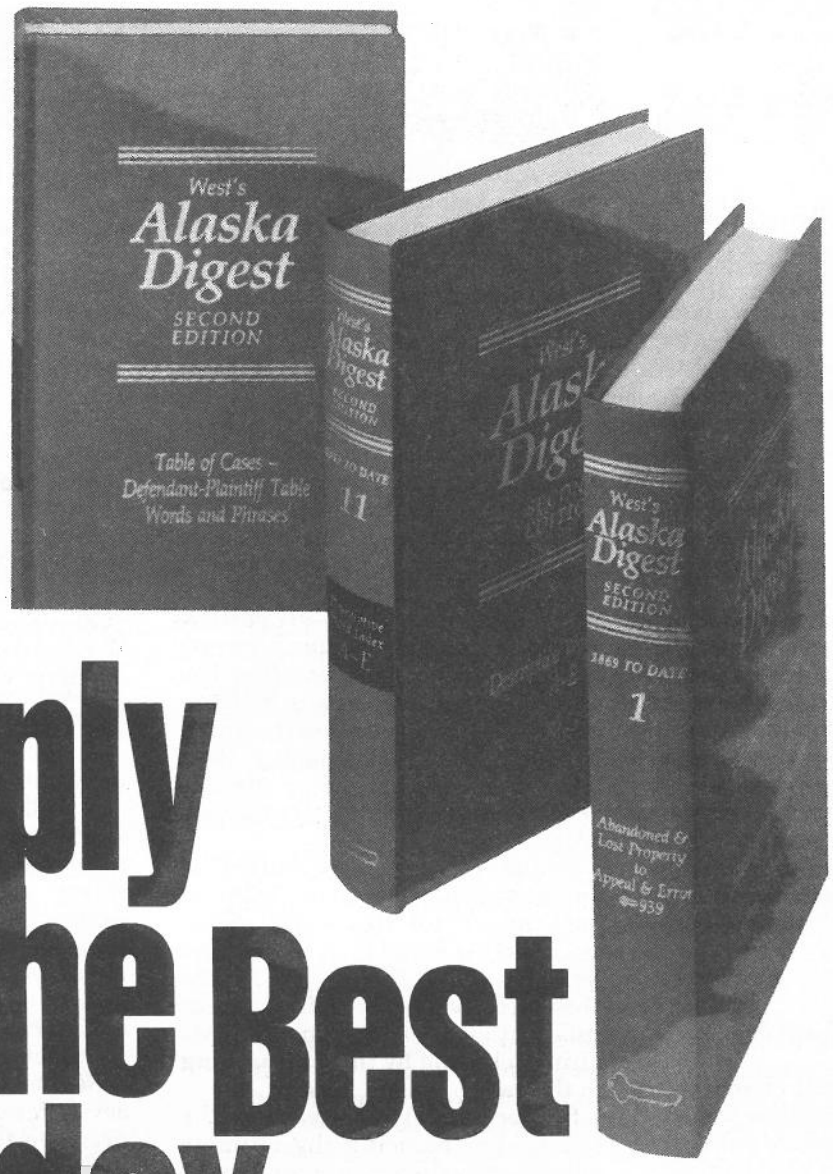
Since claimant's right to prejudgment interest begins, not with the occurrence of the event, but with written notice of the claim, early investigation and case development are more important than ever.

The good news in this act (for plaintiffs) is the offer-of-judgment provision. If the defendants do not immediately meet reasonable settlement proposals put forward by the plaintiff, they will end up paying prejudgment interest on any award at the rate of 15.5 percent per annum.

IV. The Past/The Future.

If CCS for SB 377 leaves you less than impressed, you should take a look at SB 377 in its original form. This misguided piece of legislation would have all but wiped out injured peoples' right to be fairly compensated. Before anyone breathes a sigh of relief, I would recommend that you review SB 211. That bill is presently pending before the Senate Judiciary Committee. It will no doubt pass the Senate, seeing as how more than half of the Senate membership co-sponsored the measure ... It is just as bad as SB 377 started out to be. The fight is not over.

If you wish to undertake a challenge to the legislation described in this article, or if you wish to join with many of us who oppose further erosion of plantiffs' rights to the benefit of no one (other than the foreign reinsurance industry), you are solicited and encouraged to contact either the Alaska Academy of Trial Lawyers or the Alaska Action Trust, c/o Terrie Gottstein, Executive Director, 604 West 2nd Avenue, Anchorage, Alaska 99501. Phone 276-1130. We can use your help.



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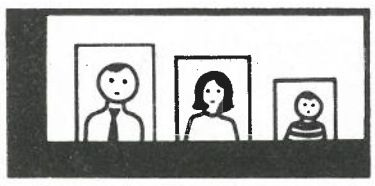
Attorneys receive discipline action



BAR PEOPLE

Attorney A received a written private admonition for neglecting a legal matter entrusted to him. Attorney A's failure to correct errors in escrow instructions A had prepared caused unnecessary delay, confusion and expense to the client.

Attorney B received a written private admonition for a violation of DR 6-101(A)(3) (Neglect). The Attorney was retained in 1976 to represent an estate. Notwithstanding a certain amount of complexity, including an appeal to the Supreme Court, the matter was not resolved in a timely manner.

Attorney C received a written private admonition for stipulating to the dismissal of a civil action with prejudice without the client's actual consent. In a letter to the client, Attorney C suggested that the client dismiss the case to avoid the expense of trial and stated "If we do not hear from you in two weeks I will assume that you agree to the proposal." The client did receive the letter and attempted to contact Attorney C by phone, but his calls were not returned. It was determined that the stipulation to dismiss was a major decision which should have been entered into with the actual authorization of the client.

Attorney D received a written private admonition for failing to return inquiries from his client and for neglecting his client's case. Attorney D's failure to communicate prevented the client from conveying his desires about the action to be taken on the case.

Attorney E received a written private admonition for advising his client that as long as the client was not served with a restraining order the client could leave the state with his child on vacation. Attorney E had been notified by a state trooper of the restraining order before he advised his client that he could leave if he was not served. Attorney E's conduct appeared to be the result of inexperience.

Attorney F received a written private admonition for communicating with a party known to be represented by a lawyer without the consent of the lawyer. Attorney F had contacted the opposing party out of a concern expressed by Attorney F's client that the opposing party was improperly disposing of property. It was apparent that Attorney F could have contacted the opposing party's attorney to convey the concerns.

Attorney G received a written private admonition for conduct prejudicial to the administration of justice. A father was required to provide monthly affidavits concerning contact with his child. Attorney G notarized five blank affidavits by the father on one date so that he could fill them in and file them at his convenience without coming into the office. Attorney G made no attempt to disguise the date upon which the affidavits were notarized and apparently notarized them in the mistaken belief that such conduct was permissible.

Jim Cannon and **Ardith Lynch** have a new daughter, Caitlin Lynch Cannon ... **William G. Azar** has opened his own law office ... **Ted Burton** and family are living in Boise, Idaho, and **Debra Brandwein** is now working for Standard Alaska Production Company.

Ray Brown is now working for the Public Defender Agency in Ketchikan, **Billy Berrier** is living in Carlsbad, Calif., ... **Paul Cragan**, formerly with the Fairbanks North Star Borough, is now with Hughes, Thorsness, et al ... **Scott Finley** has relocated to San Mateo, California.

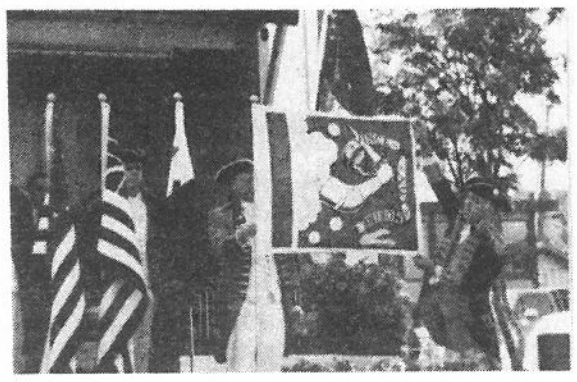
In other news, **Richard Friedman** has moved from Sitka to Anchorage ... **Mary Geddes** is working for the Committee for Public Counsel Services in Roxbury, Mass., ... **Heather Grahame** is now working for Bogle & Gates ... **Carla Grosch** is with Advocacy Services of Alaska, and **Kay Gouwen** is with the Office of the Governor in Washington, D.C.

And Burr, Pease & Kurtz announced that **Peter Gruenstein** and **Michael Sewright** are now associated with the firm ... **James Hanley** has relocated from Juneau to Kenai ... **Gayle Horetski** is the Deputy Commissioner for the Department of Public Safety ... **Ken Legacki** has now opened his own law office in Anchorage ... **Dennis Nelson** has moved from Kodiak to Tacoma, Wash., ... **Terri Ann Pollock** has relocated from Anchorage to Seattle and **Rhonda Butterfield Roberson** has moved from Anchorage to Kenai.

Other Bar members also are on the move: **Mark Roye**, formerly of Cordova, is now in Anchorage ... **Alice Rafferty Robertson** is the City Attorney for the City of Barrow ... **Margaret Restucher** has moved from Kenai to New Orleans ... **David Stebing**, formerly of Homer, is with the Law Department of Lincoln National Corporation, Fort Wayne, Ind., ... **Chuck Stirling**, formerly of the D.A.'s office in Anchorage, is now in Santa Barbara, Calif., ... **Marie Sansone** has relocated to Colorado ... **Patrick Travers** is working full-time for the D.C. office of the Dukakis presidential campaign ... **Thomas Wardell** has retired from his position as District Attorney in Kenai ... **Herbert Soll** is the new District Attorney in Bethel.

Judge Harris R. Bullerwell of Rockland, Maine, celebrated his 80th birthday Oct. 22, with 50 friends and associates. Two years ago he was in a Tax Program at the University of Florida Graduate School and is currently building a deluxe two-family house along with his limited law practice. He looks forward and enjoys every *Bar Rag* publication.

How the Anchorage Bar spent the long summer

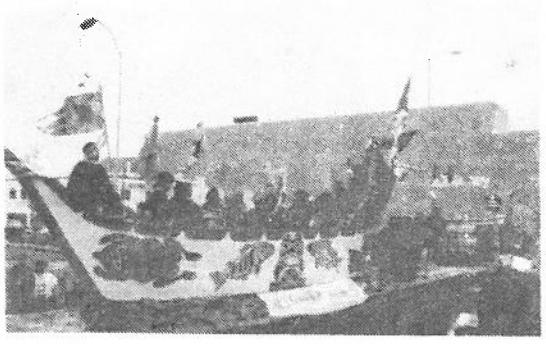


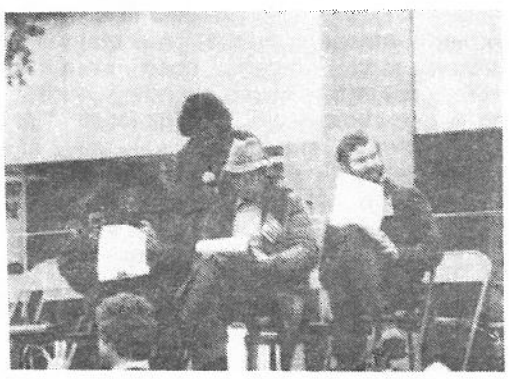
What better way to celebrate the Bicentennial of the United States Constitution than with a parade and reaffirmation of our founding document? Superior Court Judge Karen Hunt (one of the Anchorage Bar Association parade organizers) and Anchorage Bar President Paul Kelly sign the Constitution at left, as Colonialists help present the colors (top).

The Anchorage Bar worked with Greater Anchorage, Inc. to find floats and entertainment for the parade event.

At left, an Army drill team leads a procession of the states' flags, as the Tlingit-Haida Indians from Southeastern display Native symbolism on their float.

The Anchorage Bar's famous Briefcase Brigade struts its stuff during the Bicentennial parade. Parade judges (at bottom, from left) Ayse Gilbert, Mary Ann Foley, Gene DeVeaux and Richard Crabtree agonize over their notes. Photos provided by Karen Hunt.

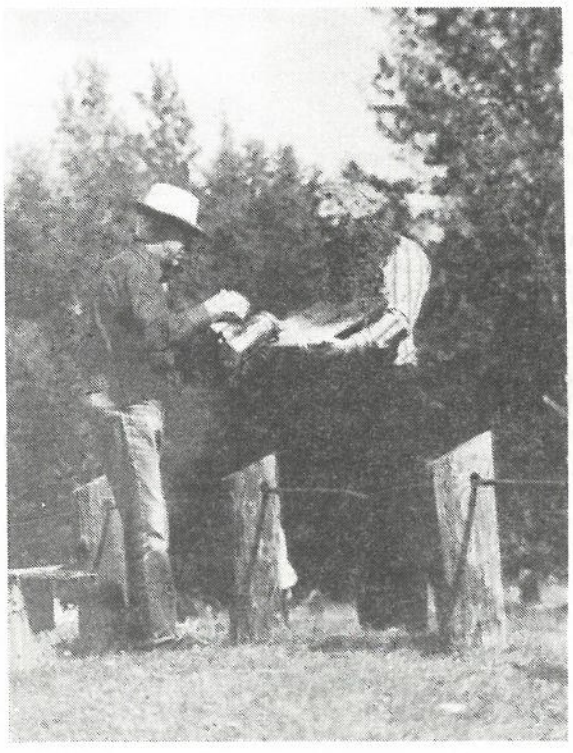


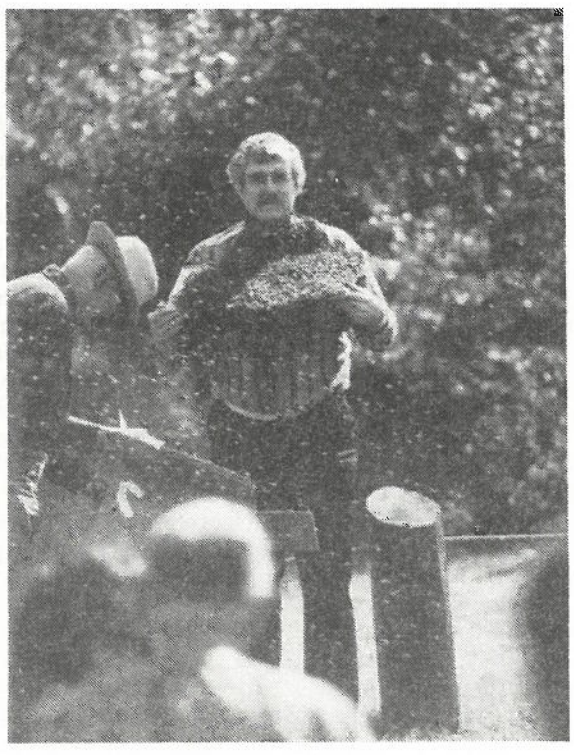


Meanwhile ... the Anchorage Bar had a busy of other summer in pursuitstress-relieving activity. At right, the chef carves the spring lamb for the association's annual picnic, while lawyers and friends warm up their appetites with a game of volleyball. Attendees at the Wasilla feed didn't report a significant invasion of ants for the affair, but a large rodent (escaped from Chuck E. Cheese Pizza Parlor) showed up with his handler to entertain the kids. Photos provided by Harry Branson

In what might be the most bizarre special event entertainment in the Alaska Bar Association for 1987, the Anchorage Bar played host to a swarm of lethargic bees, subdued by the infamous Bee Beard. What, you may ask, is going on here?

At left, Bee Beard arrives with his loyal handler, who coaxes the insects from a plain cardboard carton. The queen bee is concealed in a flat box under Bee Beard's chin (lower left) as the handler anesthesizes the critters with a smokepot. The bees mill around on the box aimlessly until the queen tells them to get lost and climb up Bee Beard's face. By the time the act is over, the worker bees dutifully earn their day's honey by perching on their leader in the shape of a beard. (No one at the picnic stayed within 100 feet of the act). Exclusive photos obtained by Harry Branson.





WOMEN AND THE LAW: AN ALASKA REPORT

Schaible: Women treated differently

BY JAMES T. STANLEY

Grace Berg Schaible, Attorney General for the State of Alaska, arrived in the Territory of Alaska at the age of two months. Her father came to Alaska in 1912 and her mother in 1915. Gov. Steve Cowper's appointment of Ms. Schaible as the Attorney General marked a pleasant return to Juneau, the place of her family's origin in Alaska.

Ms. Schaible was not always based in Juneau, having moving to Fairbanks in 1945, and remaining there almost consistently since that year. She has a continuing interest in the progress of women in various career fields, and despite her busy schedule, agreed to answer a few questions related to the topic of women in the law and the issue of gender bias in the legal system.

Ms. Schaible received her undergraduate degree from the University of Alaska. At the time that she received her degree, Fairbanks was the only undergraduate campus. She received her law degree from Yale University. She also holds a Masters Degree from George Washington University. Ms. Schaible was admitted to the Alaska Bar in 1960.

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Q: *Is there a single factor in your opinion which affects women's entry into professional careers and their advancement within those careers?*

A: I think that it depends principally on the women's family attitudes, expressed and demonstrated to her as she was growing up. My mother did not carve the roasts in the house, even though she cooked them. She believed that was a task for my father. At the same time, my father did not perform certain tasks that were, in his opinion, part of a woman's role. Still, there was no expressed bias on the part of my parents as to occupation and gender. The fact that I was a female was not connected to my decision or aspirations to do anything that I wanted. From a very early age, I simply assumed that I could do anything or enter into any profession that I wanted.

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Q: *Do practicing law and motherhood successfully mix?*

A: I think the answer to that question is a very individual matter. Many women have successfully combined careers and motherhood. Others seem to have guilt if they pursue their careers when they feel that they should be principally responsible to their young children. I don't believe that it is fair to create a norm for women in this area. I personally think it would be very difficult to pursue a career diligently while also doing your very best to fulfill your role as a mother. I have no doubt that it requires a great deal of energy to pursue a demanding career, such as the law, while meeting the important demands of motherhood.

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Q: *Are women accepted as equals of men in the practice of law?*

A: My experience is that Alaska is unique. I believe in Alaska that women can and are accepted as equals, by and large. It's really quite a relative matter, and by that I mean, it would depend where you are practicing and the local attitudes. As a woman lawyer, I have suffered very little unequal treatment in the legal environment even though it has been until recent years a mostly male environment. At the same time, my female classmates graduating from Yale Law School, depending upon where they have settled and practice, have suffered from unequal treatment and lack of acceptance, despite their abilities and accomplishments.

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Q: *As a partner in a private law firm of your own, were there any special policies that applied to women lawyers which did not apply to men lawyers?*

A: No. None at all and none was required. Women were always accepted as equals and were always considered on an equal basis with men for achieving partner status. In fact, at one time, three of the 11 partners were women, and that's not a bad ratio.

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Q: *Do you believe there is gender bias in the legal system as a whole?*

A: In the world taken as a whole, I believe that the answer is yes, although it is decreasing. There are fewer women on the bench than the percentage of women lawyers would suggest there should be. How many deans of law schools are women? How many women are full professors in law schools? How many partners in law firms are women? The answers to these questions are that it is not yet in proportion to the number that it should be. Women will achieve the appropriate percentages on their own merits, I believe, and I don't want to suggest that the ratio of men to women in these various career positions should be determined by mechanical means or formulas.

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Q: *Do you believe there is a failure to recognize gender bias in the legal profession?*

A: Yes, I believe there is, but again not much in Alaska as compared to the rest of the United States or the rest of the world.

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Q: *Do you believe a presumption exists that women lawyers are less competent than male lawyers?*

A: Again, yes, I do believe that there is such a presumption in very general terms, but I don't think that the perception is true in Alaska or exists here to the same extent that it does in other parts of the United States. As the number of women lawyers increases, and as their competence is demonstrated, the presumption will necessarily fade.

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Q: *Do you believe male and female attorneys receive equal treatment in the court room?*

A: That's a difficult question for me to answer because I probably have less court room experience than other women lawyers concentrating on litigation. Accordingly, I've probably spent less time in the court room than many women trial lawyers. While practicing in Fairbanks and spending time in the court room, I was acquainted with the judges. I knew them sometimes socially and they knew me. Fairbanks is a friendly town and we generally know all of the other attorneys in town as well. In short, I believe that I received the same treatment and respect as men in the court room. At the same time, I realize that other women lawyers' experience may be quite different.

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Q: *Do you believe that women in other professions besides the law have similar experiences and observations regarding gender bias?*

A: Yes, I think they do. I recently attended the National Convention of Women Executives in State Government. This is an association for elected women, such as governors, cabinet officers, or cabinet level women in government. It is not principally for legislators. Attending WESG conferences and functions has taught me that women in executive and professional positions are treated differently than men. The extent of the different treatment varies. At the WESG conferences and meetings, we share our experiences and perceptions with other executive and professional women. We have discussed and learned how to anticipate the different treatment that we as women will receive. We are well aware that the press treats women differently than men, and also views the role of woman in a profession or as an executive in state government as different from a man. Discussing these issues and being exposed to the experiences of others has been extremely useful to me for the most part, and I believe it has been very useful for many professional and executive women. Perhaps it has been slightly less useful for me because in Alaska I believe that the difference in treatment between men and women in the law and in executive positions in Alaska state government is less than in other areas of the country.

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WOMEN AND THE LAW: AN ALASKA REPORT

Bias: 'peculiar secretarial interaction'

BY MICKALE C. CARTER

When I was first asked to write an article dealing with the general topic of the problems that women attorneys have in the practice of law, I was pleased because being a woman, it was a topic with which I am personally quite familiar.

Although the focus of this article will be on women who have children and the special kinds of adjustments they have had to make in order to be both a parent and a lawyer, I think that it is appropriate to briefly discuss problems which typically confront women attorneys.

I discuss this first problem only because I believe it not readily apparent to our male counterparts. One of the most common problems faced by women attorneys, especially when they first begin to practice, is what I label (for lack of a better reference) *peculiar secretarial interaction*. Some secretaries, apparently, as part of their job satisfaction, seek male approval.

At the same time, there can exist either alone or in conjunction with the seeking of male approval, a sense of female competitiveness. The woman secretary may feel that she is somehow competing with the woman attorney.

The net result of either of these two phenomena is that the woman attorney receives substandard secretarial services. If the woman attorney is in a law firm which has a typing pool with a "first come, first served" policy, the woman attorney's work is somehow always "served" last. If she is in a law firm where the secretary is assigned to an individual attorney, the woman attorney may be met with a situation where her secretary does work for a man attorney to whom she is not assigned before completing even rush projects of the woman attorney to whom she is assigned.

Additionally, the secretary may not take the woman attorney's requests seriously. She may even resent providing for the needs of another woman. This inadequate secretarial support can be devastating not only to one's job satisfaction, but also to one's general mental state.

I must say before leaving this topic that this of course is not the case with all secretaries. There are many secretaries who are very professional and who do an excellent job no matter who the boss may be.

A topic which is among the most frequently analyzed by women attorneys is sexual bias: Is there sexual bias? How is it manifested? Women's views on this topic are as varied as the women who have chosen to become attorneys. Many, as one might expect, express various subtle and some not so subtle discriminatory treatments. Others believe that women's concerns are imaginary—imaginary in the sense that what a woman may label as sexual bias would be labeled maneuvering for the upper hand if similar tactics were employed against a man.

A woman attorney may also mistakenly conclude that a male attorney or judge is displaying sexual bias when, in fact, he is merely uncomfortable around woman attorneys. He may not know how to deal with professional women. His clumsy attempts may be misinterpreted.

Some women attorneys, especially younger women, have experienced difficulty in gaining the respect and confidence of people with whom they must deal regularly, i.e., experts and witnesses. Many people, when they think "attorney" envision a man. To be taken seriously, the woman attorney must convince these people of her competence. This situation, or perhaps in anticipation thereof, causes some women attorneys to be more formal and officious than they would like to be. It is little wonder that some women attorneys have been accused of lacking a sense of humor.

One thing against which women must be ever vigilant is the tendency to use sexual bias as a catch-all excuse. I am fortunate because my husband dutifully reminds me if I should blame sexual bias too frequently. His usual comment goes something like this: "You're fortunate you're a woman and can blame losing the motion (or whatever is relevant) on sexual bias. Men don't have such a convenient rationalization." This comment always causes me to reassess the situation, applying a heavy dose of introspection. Sometimes, I am able to find another reason which explains the turn of events. Sometimes, I stick with my original conclusion.

Finally, there are those among us who believe that the ultimate form of sexual discrimination is motherhood. Obvious from this comment is the fact that motherhood is not for every woman. I am among those women not blessed with children. The following women who are so blessed can thus better explain the special challenges of practicing law in conjunction with being a mother.

Donna Walker

Donna Walker came to Alaska in 1977. Before going to law school, Walker was the Public Relations Director for Alyeska Pipeline Service

Donna Walker at home.

Co. in Valdez. Walker is presently an associate at the law firm of Hughes, Thorsness, Gantz, Powell & Brundin, where she has worked as an associate since May, 1983. Walker worked in the firm's Valdez and Juneau offices before transferring to the Anchorage office. She says she has been treated with respect by the bar wherever she has practiced and

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Environment for females improving

BY PATRICK RUMLEY

If the law school that you attended was like mine, graduating class photos prior to the mid-1970s were unmistakably devoid or nearly devoid of the feminine gender. In fact, those photos probably closely resembled an "end of boot camp" photo of a Marine Corps platoon (complete with Spartan "buzz cuts"). Until only recently the law has been almost exclusively dominated by men.

This condition is quickly changing. Many women have joined the legions of lawyers trained since the 1970s. And in so doing they have confronted and are largely overcoming various obstacles while defining their place in the profession.

The influx of women into the law profession has certainly improved it and will continue to do so. In an earlier age women with lawyerly skills were not encouraged to pursue professional goals beyond the level of talented office staff, i.e., secretaries, office managers, file clerks, court reporters and the like.

With the changing of societal norms, the talent pool available to the profession has vastly increased. Though I do not subscribe to the view that there is a monolithic "woman's perspective," it is at least arguable that women bring to the law a range of perspectives that are different to some extent from those of their brethern (as distinguished from sistren). This can't help but make both the law profession and the substance of the law itself reflect more accurately the society it serves.

In preparing this essay I asked several women of the lawerly persuasian to share some of their experiences in becoming and practicing as lawyers, how they find their professional relationships with peers, subordinates and seniors, clients and how they juggle demands of family, job and community.

Deborah Randall, an associate with the firm of Davis and Goerig, graduated from University of Utah Law School in 1985, and bears witness to the degendering of the profession. She estimates that women made up 30 percent of her class. She did not feel that she was "trailblazing" her way into the profession. On the other hand, she senses that some clients and witnesses initially do not take a woman lawyer so seriously as their male counterpart. "That resistance is eventually neutralized by good counsel and work product," she said. "Women have to overcome this with certain clients by **proving** more," she added (my emphasis). All three women interviewed agreed with this conclusion.

Hiring and promotion practices present a challenge according to Ms. Randall and Joan Rohlf (Northwestern 1985, 48 percent women), an associate with the Anchorage office of Guess and Rudd. Ms. Randall perceives that some older male attorneys would hesitate to hire a woman as an associate because of a sense that the law is a man's job. Ms. Rohlf adds that some law firms are apt to think that women are only interested in the practice of law pending the start of a family, at which time women would become less willing to meet the demands of the profession. She considers this an unfortunate stereotype According to Rohlf, some women, or men for that matter, may reduce their commitment to practice in their "family years," but there are many who do not fit this mold.

Shelby Neunke-Davison (Thomas M. Cooley Law School, 1982, 30 percent women) sole practitioner, certainly breaks the mold when she began her sole practice in the area of Workmen's Compensation Law. Within six months of opening her practice she gave birth to her son. Ms. Nuenke-Davison feels strongly that it is possible to balance a very busy and demanding practice with a healthy family life. "The initial year was the toughest," she said, "because of the child's special demands upon the mother, but we weathered it. Both my husband Bruce and I are committed to giving 100 percent to our individual careers without sacrificing our child's best interests."

But what about treatment of women by opposing lawyers and by judges? Ms. Nuenke-Davison finds that some counsel underestimate her because of her age and her sex. She uses this to maximum advantage, she said, and she "is not often underestimated twice." Certain judges haven't been able to resist making some off-hand reference to her gender. She cited instances of judges casting aspersions upon her alleged overly emotional representation, her hyphenated name or making some offhand remark about her "pretty" appearance. She'd forgotten about these situations until the interview. She noted that she has seen less and less of this kind of behavior as time goes on.

With reference to the general issue of zealous representation, Ms. Nuenke-Davison also described a double standard which many of us have experienced from one perspective or another, i.e., what might be called the "tough bitch/tough guy" dichotomy. She hints that male lawyers are respected for being hard-nosed, while women lawyers are denigrated for putting on their battle armor. For many male lawyers this is an attitude probably cemented early in law school because of lack of or minimal prior experience with overly competitive females.

Randall, Rohlf and Nuenke-Davison are optimistic that the environment for the woman lawyer will steadily improve, especially as the ratio of women to men in the practice approaches parity. Their views vary to a degree as to the types and seriousness of obstacles women lawyers face in thier practice. There are certainly a million different stories to be told by women who have ventured into this field, each of which would reflect an aspect of old norms giving way to new. Those of us who share the profession should join in to hasten the change — to everyone's benefit.

WOMEN AND THE LAW: AN ALASKA REPORT

• Walker, Sutliff

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has never felt that she has been discriminated against because she is a woman.

Walker has three children: a girl, five; a girl, three; and, a boy, two. Two of her children were born while she was working for Hughes, Thorsness, Gantz, Powell & Brundin. Her first child was born over Thanksgiving break while she was in law school. Walker returned to law school in December to take her finals.

Walker is the only woman attorney at her firm who has children. Consequently, she has been somewhat of a pioneer in working out that firm's policies with regard to maternity leave, etc. Walker used her accumulated sick leave as maternity leave. She took a month off without pay after each child was born. After the birth of her third child, she began working half time, until her youngest was a year old and then returned to work full time. She now has a nanny who comes to her home five days a week from 7:30 a.m. to 6:00 p.m. The nanny not only takes care of her children but does housework and cooks the meals. When Walker returns home from work, she is able to spend quality time with her children.

Walker's life consists mostly of work and her children. She has little time for herself. She feels, however, that being a mother has had little impact on her work. With the nanny, Walker does not have to miss work when her children have the sniffles. She does however, take time off for school programs and for taking the children to the doctor.

Mary Jane Sutliff

Mary Jane Sutliff

Sutliff has no children. She was chosen to be interviewed because she is presently great with child. She is working in the welfare fraud section of the Attorney's General Office. After she became pregnant, she requested a transfer from the Prosecutor's office to the welfare fraud division, thinking that there would be less pressure. Between now and when she delivers around Thanksgiving, she has a trial, a grand jury and an appeal.

Sutliff graduated from law school in the mid 1970s, moving to Alaska in the late 1970s. Her husband, Richard Sutliff, also an attorney in Anchorage, is a native of Kodiak.

Although they had been married over seven years before they decided to have a child, Sutliff indicates that their reasons for not having a child were not related to Sutliff's career. They didn't have a child because the Sutliffs felt that until recently did not have a sufficient support group for a child; her family lives in California, while Richard Sutliff's family lives in Kodiak. There are no aunts and uncles living here in Alaska. Once the couple felt that they had enough friends who would be good role models for a child and they knew enough people with children who could be friends with their child, they were ready to have a baby.

Sutliff plans to take some time off from her job. After that time off, she plans to go back to work in the District Attorney's office full time.

They plan for the first year to have someone come to their home on a full-time basis. When the child is two, a day care center is in their plans. They have made this decision consciously so that the child can learn to develop in a social group. They think this is especially important since they plan to have only one child. Sutliff feels she and her husband will work out whatever problems they may have with regard to child care in the future. "We have a traditional marriage."

Sutliff feels that she has some work-related problems due to her pregnancy. For instance, she can't put in overtime, so she doesn't have the flexibility she once had before she was pregnant. She can't stay late because it is too physically exhausting. However, Sutliff says she has experienced no prejudice in the Courts due to her pregnancy.

ALASKA BAR ASSOCIATION STATISTICS

Current Membership

Total:	2,565
Total Women:	550 or 21%
Active in Alaska:	1,952
Women Active in Alaska:	420 or 22%

Third Judicial District

Total:	1,437
Women:	329 or 23%

BAR EXAMINATIONS

Test	Total Takers	Women Takers	% Women Takers	Overall Pass Rate	Women's Pass Rate	Men's Pass Rate
2-84	124	34	27%	65%	62%	66%
7-84	126	48	38%	63%	65%	62%
2-85	135	48	36%	71%	56%	79%
7-85	142	58	41%	69%	67%	70%
2-86	102	37	36%	71%	59%	77%
7-86	106	41	43%	62%	44%	74%
2-87	78	43	55%	74%	74%	74%

Seminar reveals Alaska bias

By Sally J. Suddock

When the Alaska Bar Association opted to sponsor a Continuing Legal Education seminar on sexual bias in the courtroom, few of the organizers knew what to expect.

Is gender bias a problem in Alaska? Does it occur with frequency? Do female (and male) attorneys confront incidents of such prejudice in their daily practice of the law? What of the bench? Do judges treat women differently in the courtroom?

What began as a seminar of uncertainty Oct. 30 ended with the conclusion that Alaska may be more bias-free than most states, but the liabilities of bias nonetheless face most women attorneys who take the bar and enter the profession.

Take some judicial numbers, for example. Of some 50 judges statewide, only four women have been appointed to the Superior Court and another four are seated on the District Court. (None are seated on federal courts here).

As the "Women in the Courts" CLE progressed through morning presentations, group sessions and reports, and messages from the bench, increasing evidence emerged that the quest for professional equality is far from over.

U.S. District Court Judge (California) Marilyn Hall Patel told attendees that "my impression from all the studies is that Alaska looks very much like the case in other jurisdictions." Judge Patel, chair for the National Task Force on Gender Bias in the Courts, had led efforts nationwide for educating the judiciary onattitudes toward women in the courts. In many cases, she said, perceptions of women's role continue to inhibit equality.

Women, said Patel, are seen as vindictive, overly emotional, too "abrasive," and chained to their kids.

In reality, said Patel and other faculty, women's ranks are growing in law schools; women are more likely than men to have received honors in law school; women tend to be better prepared for their cases; fewer women than men are married (54 percent of women versus 85 percent of men); women are paid less (a $33,000 mean income versus $53,000 for men); and practice their profession notwithstanding parental status (87 percent of women attorneys return to practice after maternal leaves of absences).

Discussion groups during the CLE sessions cited cases of bias that ranged from being called "honey" in the courtroom to extreme cases in one region where one of the few attorneys available (a woman) has seen nearly every case go against her female clients. Participants generally agreed that Alaska has only a few of judges so biased. Full partnership in law firms also appear to be eluding the woman attorney.

For most of the approximately 50 women (and a few men) who attended the CLE program, however, gender bias was seen as much more subtle than outright discrimination from judges. Often cited was the example of the Pretrial Conference, in which male attorneys and male judges bond with each other through discussions of duck hunting, football games and other traditonally male conversation (leaving the women attorney the odd man out). One attorney noted she was always asked whether she was standing in for other counsel (the bench presuming that a women would not be sent by the firm to represent a client in court). Superior Court Judge Karen Hunt related a tendency of judges during her attorney days to address her as "Mrs. Hunt," while addressing opposing (and male) lawyers as "counsel."

Significantly, the lawyers present said they find bias far more pernicious among their male colleagues than among judges.

Also participating as faculty for the CLE were John Reese, Brant McGee, Dana Fabe, Sandra Wicks, Judge James Fitzgerald, Justice Allen Compton, Elizabeth Johnson, Sandra K. Saville, Nan Thompson, Lynn Allingham, Russellyn Carruth, Maryann E. Foley, Suzan Olson, Scott Purden and Julie Werner-Simon.

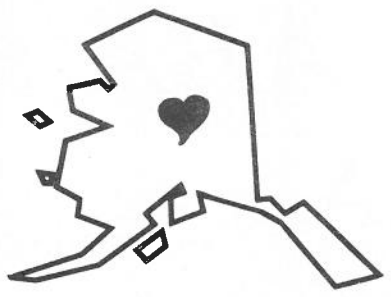
Is there advice to women attorneys who are trying to serve their clients well and are faced with gender bias? Yes. For one thing, said Patel and others, women may have to continue to work harder and behave better to get the edge. In male-dominated conferences, it may be possible to shift friendly conversation to politics and other public affairs discussion (careful, you might tip your attitudinal hand). Don't apologize for the female perspective (eg. so-called "emotionalism"). Instead, turn this valuable perspective to your advantage by sensitizing the jury, judge and opposing counsel. Make an effort to learn from and support other female attorneys. Ask to speak to the judge privately if you suspect he (or she) is inadvertantly projecting bias. (If the judge's behavior is very obvious, seek help from his or her colleague on the bench in extreme cases). Judges in a panel discussion also advised increased self-examination of your behavior. And, when you're serving as co-counsel, make sure you're not the "secretary" on the case.

And sometimes, said Judge Patel, the more direct route may be the alternative. Like her Alaska colleagues, she found herself as an attorney in a male-dominated, lengthy, settlement conference that droned on with war stories of duck hunting. "Gentlemen," she said to the judge and her colleagues, "just how many ducks are we going to have to kill to settle this case?"

"No one should accept overt discrimination in the courtroom without doing something about it," said Judge Fitzgerald.

The author is editor of the Alaska Journal of Commerce and managing editor of the Alaska Bar Rag and was among faculty in the Women in the Courts seminar.

FROM THE GOLDEN HEART



Ralph Beistline

As my plane touched down at the Fairbanks International Airport, after a whirlwind trip to China, the thought raced through my mind, "There's no place like home."

My wife and I had been fortunate enough to join a delegation of American lawyers, led by Attorney General Edwin Meese, on a trip to Beijing, China where we took part in a joint session on trade and economic law.

In recent years China has recognized the need, not only to open its doors to the West, but to reassess the value of lawyers in Chinese society. In 1954 lawyers were outlawed in China as being "parasites on society." Coincidently, prostitution in China was outlawed the same year. In 1978 the Chinese reassessed their position on lawyers, and in the early 1980's the Chinese Bar Association was formed. Prostitutes did not receive similar recognition; thus, finally establishing a distinct dissimilarity between the two professions.

Although we had a number of interesting experiences on this trip, one comes to mind as being particularly relevant to this article.

On our return flight I found myself seated across from China's Minister of Justice, who serves also as president of the Chinese Bar Association. His name appropriately was Zou Yu.

Minister Yu spoke English as well as I spoke Chinese, and his skills with a knife and fork were comparable to my skills with chopsticks. Consequently, sign language, napkins and washcloths were the order of the day.

Midway through the flight I exchanged business cards with Minister Yu and some brief conversation. Unfortunately, I can only speculate as to what precisely he said. He appeared to be impressed, though, by the fact that I was from Alaska and asked whether I had heard of the Tanana Valley Bar Association. He seemed especially interested in the Tanana Valley Bar Association's Foreign Relations Committee and apparently had heard of its extensive diplomatic successes. I, of course, proudly answered in the affirmative and bragged that I knew Committee members Dick Burke and Dave Call personally. This naturally impressed him immensely, and he proceeded to ask what specifically it was that made attorneys practicing in Alaska's Golden Heart so exceptional, so compassionate and so extremely competent. This, of course, is a question asked by people throughout the world and I was naturally reluctant to reveal the secret. I knew that in the hands of a nation as large as China, such knowledge could significantly tip the balance of power. I, therefore, politely informed the Minister of Justice that I would pass this question on to the Foreign Relations Committee of the Tanana Valley Bar Association and that it would respond appropriately.

As we departed the plane, after nearly 14 hours of travel, Minister Yu acknowledged that the answer to his query concerning the Tanana Valley Bar Association could revolutionize the practice of law in China and possibly change the world.

I knew that.

INTERN POSITION

The Municipality of Anchorage, Department of Law, has two openings for interns in its Prosecutor's Office. The experience is strongly endorsed by past interns.

The positions are for six months (January through December, 1988). An intern must be certifiable as an intern under Bar Rule 44. This generally means someone who is either in his/her last half of law school, has graduated from law school but has not failed a bar exam, or has been admitted to practice elsewhere but has not yet been admitted to the Alaska Bar. The intern would function as nearly as possible as if he/she were a new attorney on the staff.

The Municipality of Anchorage pays a subsistence stipend of $842.40 bi-weekly, 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, in person, to:

Donald W. Edwards, Deputy Municipal Attorney
632 W. 6th Avenue, Suite 705
or by mail to:
P.O. Box 196650,
Anchorage, Alaska 99519-6650
or call:
(907) 343-4545

for further information. Appointments will be scheduled based on the resume and writing sample of each applicant. We expect to make a hiring decision as soon as possible.

ABA acts on torts, other matters

By Donna C. Willard

American attorneys from across the nation attended the American Bar Association's annual meeting (held in San Francisco in August) in record numbers, with more than 15,000 lawyers and their families registered. Some 12 came from Alaska to participate in the multitude of programs offered at the annual event.

Unfortunately, it also turned out to be one of the less exciting meetings of the House of Delegates, the ABA's policy-making body and hence, there is very little of interest to report. To illustrate the point, the most vigorous debate occurred with respect to whether the newly added liaison member from the Sections to the Standing Committee on Scope and Correlation of Work would be allowed to vote.

A trend which is developing nationwide, the imposition of sales or use taxes on professional services rendered, was the subject of a Florida Bar resolution. The House unanimously passed the measure which expresses ABA opposition to the levy of such taxes.

Once again revisited was the subject of the Declaration of Cooperation between the ABA and the Association of Soviet Lawyers. Although sponsored by the State Bar of Arizona, and supported orally by former Soviet citizens, attempts were defeated to eliminate the provisions which declare shared objectives, to provide that the document is an "Agreement" rather than a "Declaration of Cooperation" and to include a provision for the discussion of human rights issues.

As the result of other House action, support will be given for the creation of a study group to address a change in status of the Court of Military Appeals to an Article III court.

Legal Assistant and paralegals are now eligible for associate membership in the American Bar Association. Although opposed by some paralegal organizations, including one from Alaska, the resolution passed overwhelmingly on the theory that such membership is strictly voluntary. Also, law enforcement officers, criminal investigators, and parole, probation, pretrial and correction officials are all eligible for associate membership in the Section of Criminal Justice.

The Section of Tort and Insurance Practice sponsored a resolution calling for amendments to the Federal Rules of Civil Procedure which would have the effect of banning any claim for punitive damages in an original pleading and allowing such a claim by amendment of the complaint only after a prima facie showing at an evidentiary hearing. Discovery of the net worth of any defendant against which punitives are sought would be permitted only after approval of the amended complaint and would be kept confidential unless and until the court directed otherwise. The resolution passed.

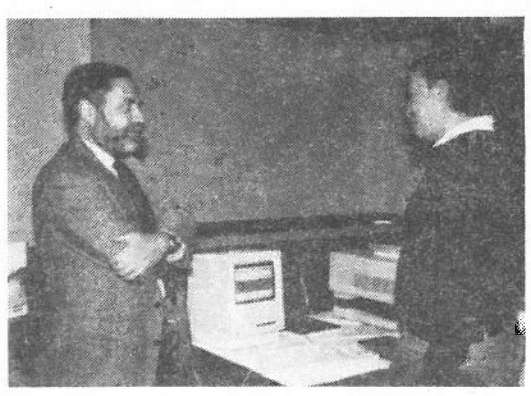
In other action, the House of Delegates approved the following:

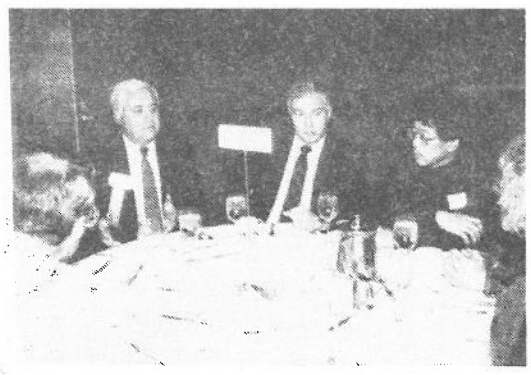
- a fistful of constitutional amendments and other housekeeping matters;
- a resolution condemning crimes of violence based on bias or prejudice against a victim's race, religion, sexual orientation or minority status;
- support for amendments to federal fair housing legislation to enhance the ability of the Department of Housing and Urban Development to resolve housing discrimination complaints through conciliation and to extend the protection of fair housing legislation to the handicapped and to families with children;
- recommendations for judicial practices concerning guardianship and implementation for the elderly at the state level;
- urged corporations disinvesting in South Africa and Nambia to attempt to include all racial groups of those countries among the potential purchasers;
- support for home health care and home help care standards for the elderly and disabled and for enactment of state and federal regulation and legislation in the area;
- a resolution approving the steps taken by the USSR in the areas of legal reform and democratization of Soviet society, and ABA participation in programs of reciprocal, free and open observation of trials and other proceedings;
- encouragement of a bar dues waiver, or reduction, for persons on active duty in the armed forces and the formation of a special category of military membership;
- the addition of the black letter Criminal Justice Mental Health Standards entitled "Competence and Capital Punishment" to the ABA Standards For Criminal Justice;
- adoption of Grand Jury Principle No. 32 which provides that the defendant is entitled to pretrial discovery of all matters occuring before the grand jury unless good cause is shown for issuance of a protective order;
- support for reauthorization of the independent counsel provisions of the Ethics in Government Act of 1978 without a sunset provision and with amendments to provide limited judicial review of any decision not to make such an appointment and to expand the scope of independent counsel's jurisdiction;
- a resolution urging Congress to take prompt action to authorize significant salary increases for bankruptcy judges and magistrates; and
- support for amendments to the Civil Service Reform Act to strengthen protections for federal civil servants who disclose information on mismanagement, gross waste, violations of law and abuse of authority.

Other topics addressed included the resolution of disputes between the legislative and executive branches of government, the International Convention For Unification of Certain Rules Relating to Bills of Lading, suits by armed service members against the U.S. Government for non-combat related injuries, amendments to the Code of Recommended Standards For Bar Examiners, and disqualification of federal judges.

For further information about any of the foregoing, or any other subject which the House of Delegates addressed, please contact either Keith Brown or Donna Willard, Alaska's representatives in the House.

Lawyers meet computers





Attorneys got crash courses in computer use in the law office in September for a CLE seminar sponsored by the Economics of Law Practice Section. Above, Kevin Dolan, Marianne Lindley Girten and Keith Brown view the Discovery ZX, a litigation support system. At right, faculty member Ed Noonan and Mike Dundy discuss the merits of Macintosh systems as the Pictures, Inc. exhibit.

Above, former executive director of the American Bar Association, Thomas Gonser, Keith Brown and Tom Mui (of Hawaii) discuss ABA Net. At left, the faculty takes a break. Standing from left to right are John Wunsch, Ed Noonan, and Leroy Cook. seated from left are Keith Brown, Rudy Engholm, Cynthia Fellows, Phil Shuey, and Steve Horn. Tom Gonser and Merrianne Hansen sat out the photo.

Law review contract up

The Board of Governors is considering whether to renew the contract with Duke Law School to publish the Alaska Law Review at the expiration of the contract. The Board is concerned that the Alaska Law Review meet the needs of its members.

The Law Review is published twice a year (2,500 copies each time). The total cost for two issues in 1988 will be $26,500; in 1989 the cost for two issues will be $28,000.

The Board is soliciting input from members as to whether they wish to continue publication of the Alaska Law Review; whether members feel the Law Review is focusing on articles of general interest and relevancy to the practicing Bar in Alaska; and what suggestions members might have for future articles or other improvements.

Please send your written comments to your Board representative or to the Bar office.

If you or an attorney you know has a problem with substance abuse, you may want to talk with a member of the Substance Abuse Committee. All inquiries are confidential. You may call the Bar Association for the names of committee members, or call a member of the steering committee directly. The steering committee members are:

John Abbott	**346-1039**
Clifford J. Groh, Sr.	**272-6474**
Michael J. Lindeman	**563-3657**
Brant McGee	**274-1684**
John Reese	**276-5231**
Judge Douglas J. Serdahely	**264-0401**
Nancy Shaw	**271-2277**

Computers change the practice of law

By Thomas H. Gonser

A lawyer is steeped in the notion that legal advice is subjective and unquantifiable; that it's the product of the finest education, reasoning processes, experience, and judgment that can be brought to bear on a given set of facts. It is almost heretical to suggest that some of the standard terminology of the lawyer—"likely," "probable," and "very likely"—can be quantified, or that the outcome of a lawsuit can be subjected to a probabilistic assessment.

When the majority of lawyers received their formal legal training, computers in the context of legal applications were scarcely known. Fear of the unknown is a formidable barrier. Lawyers who do not understand fundamental data processing concepts are quick to suspect that proposed computer uses must be intended to *replace* their judgment, rather than *assist* them in reaching legal conclusions. Finally, if lawyers can be accused of having a language of their own, certainly data processing personnel deserve at least equal condemnation.

Notwithstanding these obstacles, the computer has made substantial inroads into law practice recently. The first computer applications were for accounting and billing purposes. These data processing systems had already existed in other business organizations and could easily be adapted and operated in a law office by office managers, accountants, and other nonlawyers. Lawyers themselves did not have to develop any "hands on" expertise with the computer terminal nor entertain the foggiest notion about the software packages that supported these systems.

The next development was computer-assisted legal research, offered by the LEXIS and WESTLAW systems. A degree of lawyer involvement was required here. To be used effectively, attorneys had to make direct contact with computer terminals. Although both systems would be considered "user friendly" by almost any standard, the underlying fear of having to deal with a computer terminal continues to limit the number of potential subscribers.

Finally, an increasing number of lawyers, particularly in government agencies, larger law firms, and corporate legal departments, have discovered the efficiency that computer-assisted litigation support systems provide. These systems are helpful in controlling and managing the large volume of documents that often attends complex litigation. They not only require a lawyer to deal with computer hardware, but also to develop a basic understanding of various software options. Computerized litigation support systems, however, must be designed to meet the unique needs of a particular piece of litigation. To make a rational choice, the attorney responsible for the lawsuit must participate in the selection and design of the appropriate software package. He must also have a working knowledge of the computer terminal that will be used to call up the documents or categories of documents that will be required for discovery and trial.

Each of these three "levels," while progressively more complex, really only utilize the computer's speed and efficient administrative skills. The most exciting uses for the technology, many of which are only in experimental forms, are those that are directed toward assisting with the actual solution of legal problems. While the bulk of these novel applications have not even been conceived as yet, their first products are already in use.

Moreover, research and development is currently in progress involving other potential computerized legal methodologies, providing further evidence of this extraordinary new dimension to the practice of law. The new applications, which may invite the misleading label of "artificial intelligence," could hold the key to some of the greatest challenges to the legal profession in the future. These uses are variously referred to as "Computer Assisted Legal Analysis," or "expert systems." Let's look at some of these applications.

The first such application is the INVALUE model, developed by Boise Cascade Corporation's Legal Department. It opens a new dimension to litigation risk analysis by computing the investment value ("INVALUE") of any lawsuit to which a company may be a party defendant.

The INVALUE analysis starts with the assumptions that the client's ultimate strategic decisions in a lawsuit will be determined not only the traditional yardstick of "exposure," but rather by the net of all economic impacts which defense of the action through trial will entail. Because it is an accumulation of all dollar impacts, the resulting INVALUE calculation is not responsive to the more traditional question of "what is this case worth?"

It is also not intended to reflect the settlement value of a lawsuit, except to the extent that it would never be economically practicable to settle a case for an amount greater than the INVALUE amount. And, while the INVALUE model is designed to support the corporate legal department's litigation manager, it can easily be adapted to the law firm's counterpart.

The INVALUE model is an online, interactive and self-instructing program. Stated less technically, the only "computer skill" that the attorney needs is the ability to sit down before a CRT screen

Continued on Page 23

• Matthews: good relationship

Continued from Page 1

When asked about the Supreme Court relationship with the Alaska Bar Association, Justice Matthews responded it is essentially a symbolic relationship and then elaborated by saying that he believes the court and the bar have a good working relationship. He explained that his decision not to hold the annual judicial conference in Kodiak in 1988 concurrently with the bar association convention resulted from a desire to avoid added expense, and said that he hopes that in the future when the bar association convention is in Anchorage, the judiciary and the bar association could participate in a joint program.

Justice Matthews said that, in his opinion, the Supreme Court depends on the bar association to administer both discipline and admissions. He perceives that for the past several years, discipline cases have been resolved more rapidly and admissions have been proceeding very smoothly. He feels the bar association's Continuing Legal Education programs are a real bright spot and indicated the court is always willing to help out with CLE.

Justice Matthews' work day has grown longer since he became Chief Justice. He estimates that he spends about three hours a day in meetings or on correspondence related to administration of the court system. He is still carrying a full judicial load and finds that he is taking judicial work home with him at night. He commented that even though he has been on the Supreme Court for 10 years, he now finds that he knew little about the day-to-day administration of the court system. Although overall Superior Court filings have decreased by seven percent this year (from 11,169 for the year ending June 30, 1986 to 10,422 for the year ending June 30, 1987), the Supreme Court's workload has remained constant.

Justice Matthews, who is originally from California, graduated from Stanford University and attended Harvard University School of Law. He came to Alaska in 1964 and went to work for the law firm of Burr, Boney and Pease. In 1969 he formed his own practice with Russ Dunn, Matthews & Dunn, which subsequently became Matthews, Dunn & Bailey. In 1977 he was appointed to the Supreme Court by Gov. Jay Hammond. He is the father of two girls who are 13 and nine. His response to a query about his hobbies was to say that he didn't see how people who are involved with raising their children could have much time for hobbies, but he added that he liked playing tennis, skiing, trout fishing and, occasionally, hunting. He also plays sociable bridge and reads a lot, mainly novels.

When asked if the perception many lawyers hold of him as being aloof and cold was accurate, he responded that he is a person who likes people but that the position of Supreme Court Justice makes a certain amount of aloofness necessary, or perhaps inevitable. He feels a justice's natural group of friends are other members of the bar. But in his position, he said, it is necessary for him to restrict his social contacts with members of the bar so he doesn't have to disqualify himself from hearing large numbers of appeals. Also, he said, he is somewhat personally reserved.

Ethics opinions issued by Bar

ALASKA BAR ASSOCIATION ETHICS OPINION Ethics Opinion No. 87-1

Re: Appropriate Use of Non-Refundable Fee Deposits for Retainers and Necessary Disclosure to Client.

The committee has been asked to provide guidelines to attorneys on the appropriate use of non-refundable fee deposit or retainer agreements and what necessary disclosures must be made to clients. This opinion only addresses non-refundable fee retainers charged by an attorney in a specific matter, rather than general retainers charged by an attorney to make him or herself available over a period of time to consult with a client on general legal matters. The committee determines that non-refundable fee deposit or fee agreenents are only acceptable under the limitations outlined in this opinion.

Historically, retainers were taken by attorneys as an engagement fee, separately from the fee for actual services rendered. The purpose for this engagement fee was to pay the attorney to take the case and make him or herself available to the client, thereby causing the attorney to refuse other employment and to be precluded from representing the opposing side. The reasonableness of this retainer was based on a number of factors: 1) the ability and reputation of the attorney, 2) the extent of the demand for his or her services, 3) the probability of the retainer's interfering with his professional relations with others who might become his or her clients, and 4) the magnitude of the business for which the attorney was retained. *Blair v. Columbian Fireproofing Company*, 77 N.E. 762 (Mass. 1906). Over time, the American Bar Association has come to view retainers as closely related to fees for services actually performed. Canon 44 of the Canons for Professional Ethics, adopted by the American Bar Association in 1908, stated that "upon withdrawing from a case after a retainer has been paid, the attorney should refund such part of the retainer as has not been clearly earned." The Code of Professional Responsibility currently in effect does not specifically address the issue of legal retainers, but does prohibit the charging of excessive fees. The Code stresses the necessity of fully explaining to prospective clients the structure and rationale of any fee arrangements that are contemplated. See Canon 2, Ethical Consideration 2-17, 2-19, and DR 2-106(A) (1974). In 1967, the American Bar Association Committee on Ethics and Professional Responsibility issued Informal Opinion 998 in response to an inquiry about a proposed procedure for a law firm to request non-refundable retainers which might or might not be applied against the hourly fee. The committee expressed strong disapproval of the proposed procedure. It observed that a retainer is "an advance payment in connection with fees and not a payment unrelated to fees" and stated that it would be improper for a lawyer to require a client to agree that a lawyer should keep the retainer "under all circumstance and regardless of services performed."

The commentary to Rule 1.5 of the proposed Model Rules of Professional Conduct indicates "a lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d)." The commentary does not make clear whether it is disapproving non-refundable retainers, or only disapproving the retention of a retainer when the attorney withdraws from representation of the client.

In current practice, non-refundable retainers are generally deposits against which a certain number of hours are charged. Hours in excess of the stated amount are generally charged against the client at a stated rate. Occasionally, non-refundable retainers are flat fees which are kept whether or not the matter is taken to completion by the attorney.

Alaska fee arbitration decisions have addressed the question of non-refundable retainers. In FA 86-31 and FA 83-22, the arbitration committees held that non-refundable retainers could not be assessed when the lawyer had failed to make clear to the client his or her intent to keep the retainer notwithstanding any events, that would terminate the attorney-client relationship prior to providing a certain number of hours of service. In FA 81-7, the fee committee found that a non-refundable $5,000 retainer in a domestic case was unconscionable. In that case, the form contract provided that a client would pay a non-refundable retainer of $5,000 to secure a divorce. The contract also stated that the client would be required to pay $850 for every day of trial, plus trial costs and expenses. The contract provided that in the event the client terminated the attorneys' services, the fee paid to the attorneys would be deemed earned, and no part would be returned. The contract stated that if the attorney terminated the contract, the attorney would return the portion of the fee that exceeded the services rendered by the attorney valued on the basis of $125 per hour. The committee found that because of the stress of the domestic dispute, as well as other crises in the client's life, that she did not understand the fee to be non-refundable. Very little work was performed by the attorney firm before the client requested it to dismiss the pending litigation because she had reconciled with her husband. The committee found that use of a $5,000 non-refundable retainer and employment contract of an attorney in a divorce case is unconscionable. The committee found that it would be unfair and excessive as that term is used in DR 2-106. The committee noted that clients in divorce cases are notorious for changing their minds on whether they want to go through with the divorce. Thus, a non-refundable retainer takes advantage of a weakness that clients have in divorce cases.

Although a small non-refundable retainer perhaps could be justified, the non-refundable amount of $5,000 was simply too much to 'retain a firm.' This provision creates the likelihood that substantial amounts of the client's money could be forfeited to the attorney without regard for the amount or value of attorney services performed. The committee is also concerned that the amount of the retainer might unduly influence the client's decision regarding whether to attempt reconciliation since the forfeiture of the retainer would result.

This committee finds that a non-refundable retainer may be charged to a client if the nature of the retainer as non-refundable is fully and clearly explained to the client, orally and in the written fee agreement, and if the fee is not excessive, considering the factors of DR 2-106:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

As noted by the fee committee in FA 81-7, the amount of the retainer should not be so great to unduly influence a client to pursue litigation contrary to public policy or the best interests of the client.

In making a disclosure to the client of the nature of the retainer, the attorney must take into consideration the state of mind of the client and the ability of the client to understand the fee arrangement. The attorney must give examples of the kinds of circumstances under which the fee would not be returned, although the legal matter had not been pursued to completion. Special care needs to be taken in a divorce case or the like to make sure that the attorney is not taking advantage of the circumstances of the client in those kinds of matters, nor creating a negative incentive to reconciliation or amicable settlement.

The attorney must refund the non-earned portion of a non-refundable retainer if the attorney withdraws from representation of the client. The attorney must also refund a portion of the non-refundable retainer if, at the cessation of representation, the retainer would be excessive under the circumstances of the particular matter.

Adopted by the Board of Governors on September 3, 1987.

SUCCESSFUL BAR EXAMINEES JULY 1987

Allen, Carol J.
Alt, Konrad S.
Ambarian, Bradley E.
Balen, Alison A.
Brewster, Daniel L.
Burgess, Timothy M.
Cantor, Clifford A.
Cartledge, Cynthia L.
Chenhall, Teresa R.
Cieutat, Loretta G.
Davenport, George B.
Dozier, Jr., George J.
Duame, Daniel M.
Edmiston, Gregory A.
Ewers, Paul J.
Faithful, Carlene M.
Feuer, Wendy S.
Fitzgerald, John R.
Fitzgerald, Kevin T.
Gasper, James A.
George, Jamilia A.
Gilman, Bradley D.
Green, Steven K.
Kang Ravicz, Martina H.
Keck, Richard C.
Kirk, Kenneth C.
Lichtenberg, Kurt
Lindemann, Frances C.
Longenbaugh, Leslie C.
Meade, Nancy B.
Milan, Paul
Miller, Gregory A.
Moberly, Philip J.
Murkowski, Lisa A.
Murphy, Kathleen A.
Murphy, Sheila C.
Nordstrand, Scott J.
Parnell, Sean R.
Paskvan, Bonnie J.
Poulson, Jack G.
Roberts, Richard B.
Seyferth, Paul D.
Shoup, David H.
Smith, Aleen M.
Steiner, John L.
Stepovich, Ted J.
Valkavich, Helen D.
Zadra, Gina M.

Ethics opinions issued by Bar

ALASKA BAR ASSOCIATION
Ethics Opinion No. 87-2

RE: Conflict of Interest Relating to Representation of Person Under Disability

The Committee has been asked three questions, based on the following facts:

Elderly is a wealthy older gentleman suffering from senility. Trust Company has been appointed by the court as conservator of Elderly's sizeable assets. Elderly is represented in his personal affairs by Personal Lawyer.

One of Elderly's contingent assets is a claim against Lawyer Able arising out of Able's representation of Elderly in a fairly simple real estate transaction several years ago. As a result of that transaction Lawyer Able received a "fee" in excess of $200,000.

Trust Company determined that there was sufficient basis to attack the validity of the fee. Trust Company hired Lawyer Baker to file suit against Lawyer Able seeking a refund of the fee. Lawyer Baker is paid from funds of the conservatorship. The suit was filed. Lawyer Able defended, in part, by asserting that he had a substantial claim of his own against Bank arising out of this same transaction. Bank is a sister entity to Trust Company, as both are owned by a common parent and both are represented by a single lawyer, General Counsel.

Lawyer Able inferred strongly that if Trust Company would drop Elderly's claim against him, he would drop his claim against Bank.

The claim by Lawyer Able against Bank was turned over to General Counsel for response on Bank's behalf. General Counsel also undertook to review Trust Company's and Lawyer Baker's handling of Elderly's claim against Able. General Counsel instructed Lawyer Baker to "avoid being aggressive" in the prosecution of Elderly's claim. General Counsel gave additional instructions to Lawyer Baker regarding the handling of Elderly's claim which instructions Baker felt were not in Elderly's best interests.

Lawyer Baker perceived that Trust Company and General Counsel had conflicts of interest and Baker further perceived that these conflicts were adversely interfering with the proper prosecution of Elderly's suit against Able. Baker suggested that Trust Company withdraw as Elderly's conservator and obtain appointment of a substitute conservator. Trust Company refused, and subsequently fired Lawyer Baker.

Based on the foregoing fact situation, the Committee answers the questions posed to it as follows:

(1) Should Lawyer Baker advise Elderly through personal Lawyer Of Trust Company's and General Counsel's possible conflict of interest?

Lawyer Baker has ethical responsibilities to both Trust Company and Elderly. In this situation, however, attorney Baker's principal responsibility is to protect the interests of Elderly. If it appears that Elderly's interests are being compromised by Trust Company, Lawyer Baker is ethically obligated to insure that Eldlerly's interests are protected. Under this fact situation, disclosure to personal attorney appears to be a satisfactory solution.

Michigan Ethics Opinion CI-805 (9/3/82) is analogous. There, a lawyer representing the guardian of a minor's estate received information clearly establishing that the guardian had misappropriated the estate funds. The Michigan opinion held that the attorney must disclose that fact to the probate court if the guardian refuses or is unable to correct the wrong. Such an act by the guardian constituted perpetration of a fraud upon the ward, and the guardian's refusal to make a fair and full accounting constituted perpetuation of a fraud upon the probate court. Such information is not protected as a confidence or secret of the client. (DR4-101(C)(2), 5-105, 7-102(B)).

(2) If Lawyer Baker does disclose this to personal Lawyer, has Baker breached an ethical duty to Trust Company?

No.

(3)Is General Counsel acting properly by actively representing both Bank and Trust Company in this matter?

In a situation of this type, the Committee would not ordinarily anticipate problems arising from the General Counsel representing both the Bank and the Trust Company. Ordinarily, an independent attorney for the conservatorship estate would be appointed, and would act on behalf of the ward, without interference from the Trust Company in the Trust Company's own interests. In other words, the Committee would not normally expect the Trust Company to breach its fiduciary duty with respect to management of the conservatorship estate, for the Trust Company's own benefit.

The conflict of interest arises from the breach of the fiduciary relationship, and not from the dual representation. In the ordinary case, absent other factors, Lawyer Baker would be exercising an independent professional judgment on behalf of Elderly, and there would be no conflict in General Counsel representing both the Bank and Trust Company. Here, however, the representation of the Bank by General Counsel appears to be interfering with the Trust Company's fiduciary relationship to Elderly. Since a conflict of interest is actually occurring, the Bank and Trust Companies should retain separate counsel.

The Ethics Committee is seriously concerned regarding the ethical violations that appear in this particular situation. The committee requests that the discipline counsel of the Bar Association investigate, and take whatever action is appropriate, with respect to both (a) charging a guardianship estate a fee in excess of $200,000 in a fairly simple real estate transaction, and (b) the actions of the attorney for the bank-trust company regarding the breach of fiduciary relationship by compromising the claim of the conservatorship to benefit the bank. The situation presented by this inquiry appears potentially quite serious, since it deals with substantial sums of money representing the life time efforts of an elderly gentlemen who is no longer able to tend to his own affairs.

Adopted by the Board of Governors on Sept. 3, 1987.

Bylaws: Comments Due Dec. 31

The bylaws of the Alaska Bar Association were extensively revised and are being published here to provide notice and opportunity to comment by the membership. The Board will be voting upon the adoption of these bylaws at its next meeting on January 8 and 9, 1988. Comments should be directed by Dec. 31, 1987 to Deborah O'Regan, Executive Director, at the Bar office.

Bylaws of the Alaska Bar Association

Adopted by the Board of Governors May 15, 1974

As amended through September 3, 1987

ARTICLE I
Name and Organization

1. NAME. The name of this organization is the Alaska Bar Association.

Sec. 2. POWERS. The powers, duties, responsibilities, and organization of the Alaska Bar Association are established by the Alaska Integrated Bar Act and by the Alaska Bar Rules, which together shall be considered the charter of the Alaska Bar Association.

Sec. 3. PURPOSES. The purposes of the Alaska Bar are to:

(1) cultivate and advance the science of jurisprudence;

(2) promote reform in the law and in judicial procedure;

(3)facilitate the administration of justice;

(4) encourage continuing legal education for the membership; and

(5) increase the public service and efficiency of the Bar.

Sec. 4. OFFICE. The office of the Alaska Bar Association is in the Municipality of Anchorage, Alaska.

Sec. 5. SERVICE AND FILING. All petitions, notices or other writings required to be filed with the Alaska Bar Association or served upon the Board of Governors shall be filed in the Association's office.

Sec. 6. ADMINISTRATIVE DISTRICTS. For the purpose of the administration of the Act, these Bylaws, the Rules, and the Policies and Regulations promulgated under them, four administrative districts, based in part upon the judicial districts existing in 1973, are created as follows:

(1)The First Judicial District of Alaska;

(2) The Second and Fourth Judicial Districts of Alaska combined;

(3)The Third Judicial District of Alaska; and

(4) Any jurisdiction or geographical area outside the State.

ARTICLE II
Membership

Section 1. CLASSIFICATION AND ROSTER OF MEMBERS. (a) *Classes of Membership.* There are four classes of membership in the Alaska Bar Association:

(1) Active Members. Any person now or hereafter admitted to the practice of law in Alaska and membership in the Alaska Bar Association is an active member and shall maintain active membership status unless the member:

(A) transfers, or is transferred, to inactive or retired status;

(B) resigns from Association membership;

(C) is placed on interim disability or disability inactive status; or

(D) is suspended or disbarred.

(2) Inactive Members. Inactive membership in the Alaska Bar is limited to members who no longer engage in the practice of law or hold judicial office or any other legal position in the State of Alaska.

(3) Retired Members. Retired membership in the Alaska Bar is limited to former active or inactive members of the Alaska Bar who are 65 years of age or older and who no longer engage in the practice of law or hold judicial office or any other legal position in the State of Alaska or any other jurisdiction.

(4) Honorary Members. Deserving Alaskan citizens, any district court judge not already a member of the Bar, and distinquished visitors who have contributed to the purposes of the Alaska Bar Association may be accorded honorary membership in the Association upon a vote of the members of the Board or a majority of the members in attendance at an annual business meeting of the Bar.

(b) *Roster of Members.* The Association shall keep a roster for the enrollment of all members of the Alaska Bar. The roster shall contain such information as the Board may determine to be proper and desirable.

Sec. 2. TRANSFER FROM ACTIVE MEMBERSHIP TO INACTIVE OR RETIRED STATUS. (a) *Methods of Transfer.* Only the following methods are effective to transfer from active status to inactive or retired membership:

(1) Written request by the member to, and permission to transfer granted by, the Executive Director, pursuant to transfer request procedures set forth in the Board's Standing Policies;

(2) Transfer by the Board of Governors, after notice and an opportunity to be heard has been afforded the member; or

(3) Transfer to interim disability or disability inactive status by the Supreme Court of Alaska, pursuant to Bar Rule 30.

(b) *Member Transfer Requests.* Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than February 1 of the applicable year.

Sec. 3. PRIVILEGES OF INACTIVE, RETIRED, OR HONORARY MEMBERS. An inactive, retired, or honorary member may participate in Bar and Board meetings, may be appointed to any standing or special committee, and may join any Bar section, but he or she may not hold office or vote.

Sec. 4. TRANSFER FROM INACTIVE OR RETIRED MEMBERSHIP TO ACTIVE STATUS. (a) *Transfer if Inactive or Retired for One Year or More.* Upon written request to the Board, a member who has been inactive or retired for one year or more may be transferred to active status if

(1) the Board finds the requesting member is of good moral character, pursuant to procedures set forth in the Board's Standing Policies; and

(2) full, annual active membership fees are paid for the current year, less any inactive fees previously remitted for that year.

(b) *Transfer if Inactive or Retired for Less Than One Year.* Upon written request to the Executive Director, a member who has been inactive or retired for less than one year may be granted transfer to active status by the Executive Director, pursuant to Board policy, if full annual active membership fees are paid for the current year, less any inactive fees previously remitted for that year.

(c) *Board Eligibility Determination.* The Board, after notice and an opportunity to be heard has been afforded the member, may transfer a member from inactive or retired status to active membership status if the Board determines that the member is no longer eligible for inactive or retired status. Upon transfer by the Board, the member shall pay full annual active membership fees for the current year, less any inactive fees previously remitted for that year.

Sec. 5. MEMBER IN GOOD STANDING. Any active or inactive member of the Alaska Bar Association who has paid the requisite membership fees for the current calendar year and who has not been transferred to interim disability or disability inactive status, or been suspended or disbarred, is a member in good standing and entitled to all of the privileges and benefits accorded Bar members.

Sec. 6. MEMBERSHIP CARD. *(a) Certification of Good Standing.* Each member of the Alaska Bar Association who is currently a member in good standing of the Alaska Bar annually shall be issued an official membership card which shall contain the member's name, current membership status, the seven-digit membership number assigned to the member upon admission to the Bar, and other information the Board determines appropriate for inclusion on the card.

(b) *Revocation of Certification.* A member's card shall be surrendered to the Bar when a member:

(1) has been suspended for the nonpayment of his or her membership fees;

(2) pursuant to Bar Rule 28(j), has been suspended or disbarred;

(3) pursuant to Bar Rule 30, has been transferred to inactive status;

(4) after notice and an opportunity to be heard has been afforded the member, the Board determines that the member should be required to surrender his or her membership card.

Sec. 7. RESIGNATION. (a) *Affidavit of Resignation.* A member may resign from membership in the Association. A resignation is subject to acceptance by the Board, must be in affidavit form, and, as of the date of the affidavit, affirmatively must state the:

(1) the member does not now, and will not in the future, engage in the practice of law in Alaska;

(2) the member has no cases pending before the courts of this State;

(3) the member's clients have been given proper notice of his or her intent to resign and that they have had sufficient opportunity to find substitute counsel without prejudice to their cases;

(4) the member has no discipline, fee arbitration, or client security fund matters pending;

(5) the member is current on all membership fee payments, applicable insurance premiums, and other financial commitments to the Bar; and

(6) the member understands that his or her resignation is permanent and irrevocable and, should he or she at any time in the future desire to return to the practice of law in Alaska, that he or she would have to make application as a new admittee, subject to the provisions of Part I of the Alaska Bar Rules, including, if applicable, the requirement that he or she take and pass the Alaska Bar Examination.

(b) *Jurisdiction Retained.* The Association shall retain jurisdiction to investigate and take action with respect to matters involving the conduct of a member during the time he or she was a member of the Alaska Bar.

(c) *Board Action.* Upon receipt of an affidavit of resignation, and if no information is received which bears unfavorably upon the member, the Board shall formally accept the resignation at its next regularly scheduled meeting. Resignations received 20 days prior to a Board meeting will be placed on the agenda of the next subsequent regularly scheduled meeting.

(d) Notice to the Courts. Upon formal acceptance of a member's resignation, the Board shall notify the Alaska Supreme Court and the clerks of court that the member has resigned from the Association and state the effective date.

ARTICLE III
Membership Fees and Penalties

Section 1. ANNUAL DUES. (a) *Active Members.* The annual membership fee for an active member is $310.00, $10.00 of which is allocated to the Client Security Fund. The annual membership fee for an active member, who is 70 years of age and more and who has practiced law in Alaska for a total of 25 years or more, is $160.00, $10.00 of which is allocated to the Client Security Fund.

(b) *Inactive Members.* The annual membership fee for an inactive member is $75.00.

(c) *Retired and Honorary Members.* There is no membership fee for a retired or honorary member.

(d) *Notice.* Failure to receive notice of the annual membership fees does not relieve any active or inactive member of the duty to timely comply with the requirements of this Article.

(e) *Waiver.* The Board of Governors, for good cause, may waive the payment of a member's annual membership fee.

Sec. 2. PAYMENT OF FEES; DUE DATES. Annual membership fees are due and payable on or before February 1 of each year; however, an active member, who does not qualify for reduced dues under section 1(a), may pay his or her annual membership fees in two installments. The first installment is due and payable on or before February 1 and the second installment is due and payable on or before July 1. A $15.00 charge shall be assessed against the active member for the installment service and shall be included in the amount of the first payment.

Sec. 3. DELINQUENT AND SUSPENDED MEMBERS. (a) *Delinquent Payment Penalties.* Any member failing to pay his or her membership fees when due shall, during the period of time in which the fees remain unpaid, be subject to a penalty of $5.00 per week of delinquency. For purposes of determining the appropriate penalty assessment, each fraction of a week shall be considered a whole week. In no instance may the penalty assessed for delinquent payment exceed $160.00.

(b) *Suspension for Nonpayment.* Thirty days after the due date of the membership fees, the delinquent member shall be notified in writing, by certified or registered mail, that the Executive Director will, in 30 additional days, petition the Alaska Supreme Court for an order suspending the delinquent member from membership in the Alaska Bar for nonpayment of the appropriate membership fees and any late payment penalties due and owing. The notice is sufficient if mailed to the address last furnished to the Association by the delinquent member. Following notice by the Bar to the delinquent member of his or her suspension by the Supreme Court, the Executive Director shall immediately notify the clerks of court of the member's name and the date of his or her suspension for nonpayment of the appropriate membership fees and penalties. Members suspended for nonpayment may not engage in the practice of law while suspended, nor are they entitled to any of the privileges and benefits otherwise accorded to active or inactive members of the Alaska Bar in good standing. Suspended members who engage in the practice of law are subject to appropriate discipline under Part II of the Bar Rules.

(c) *Reinstatement.* Any suspended member whose suspension for nonpayment has been in effect for less than one year, upon payment of all accrued fees and late payment penalties, shall be reinstated as a member of the Alaska Bar upon certification by the Executive Director to the Alaska Supreme Court and the clerks of court that the fees and penalties have been paid. Any member who has been suspended for one year or more, upon a determination of good moral character by the Board, in accordance with Board Policy, and upon payment of all accrued membership fees, in addition to a penalty of $160.00, shall be reinstated as a member of the Alaska Bar upon certification by the Executive Director to the Alaska Supreme Court and the clerks of court that the member is of good moral character and that the requisite dues and penalties have been paid.

ARTICLE IV
Board of Governors

Section 1. DUTIES AND RESPONSIBILITIES. The Board of Governors is the governing body of the Alaska Bar Association and is vested with power and authority including, but not limited to, adopting regulations and policies concerning the activities, affairs, and organization of the Alaska Bar, and collecting and disbursing all monies of the organization, subject only to any limitation imposed by the Act and the Bar Rules.

Sec. 2. MEMBERSHIP. The Board of Governors of the Alaska Bar Association consists of 12 governors. Nine governors shall be active members of the Bar elected by the active membership or the Association in accordance with provisions of the Act and these Bylaws. Three governors shall be non-attorneys appointed by the Governor of the State, subject to legislative confirmation in accordance with provisions of the Act.

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• Bylaws to be enacted Jan. 8

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Sec. 3. TERM OF OFFICE AND SUCCESSION. Elected members of the Board shall take office at the close of the annual business meeting of the Association held immediately following their election. The term of office is three years. The terms of appointed members shall be as provided by the Act. Governors may succeed themselves in office.

Sec. 4. OATH OF OFFICE. Prior to assuming the duties and responsibilities of a Board member, the newly elected or appointed governor must complete an Oath of Office. Each governor's Oath of Office, or a copy of it, shall be maintained in a file in the Association's office during that governor's term.

Sec. 5. REMOVAL. Upon a petition signed by 25 percent of the members of any District for the recall of any governor elected from that District, or in the case of the governor-at-large, a petition signed by 25 percent of the members of the Association, the Executive Director shall immediately serve notice on the governor of the filing of the petition, and if he or she does not resign within 10 days from the date of service, the Executive Director shall mail ballots to each member of the Alaska Bar entitled to vote, submitting the question of whether the elected governor shall be recalled. Any recall vote shall be conducted in accordance with Article VI of these Bylaws.

Sec. 6. RESIGNATION. A governor may resign from his or her position. The resignation shall be in writing to the Presioent or, if an appointed member of the Board, to the governor of the State and the Bar President.

Sec. 7. VACANCY. As provided in AS 08.08.070, a vacancy on the Board of Governors from among the elected members shall be filled by appointment by a majority vote of the Board, and a vacancy from among the appointed members shall be filled by the governor of the State.

Sec. 8. BOARD MEETINGS. (a) *Regular Meetings.* The regular meetings of the Board shall be held within the State at the times and places designated by the President. Upon assumption of office, the President shall promptly schedule at least four regular meetings during the year of his or her term. These meeting dates may be changed as circumstances require. The schedule of the Board's regular meetings shall be published in each edition of the official publication of the Alaska Bar Association and in the public press at least 30 days prior to each regularly scheduled meeting. Timely notice and the tentative agenda of each Board meeting shall be mailed to the officers of the Alaska Bar Association, to the members of the Board of Governors, and to the presidents of all local bar associations.

(b) *Special Meetings.* The President, may, or upon the written request of three governors filed with the Secretary shall, call special meetings of the Board of Governors. If the President, for any reason, fails or refuses to call a special meeting for a period of five days after receipt of the request for the special meeting, the Secretary, or some other person designated by the three governors joining in the request, may call the special meeting. The date fixed for that meeting shall not be less than five days nor more than ten days from the date of the call. Notice of a special meeting shall be signed by the Secretary or by the person designated by the three governors in their call. The notice shall set forth the day and hour of the special meeting, the place within the State where the meeting shall be held, and the purpose for holding it. Special meetings may consider only those matters that are specifically set forth in the call of the meeting. Written notice of the special meeting call shall be given to each governor unless waived by him or her. Notice shall be in writing and may be communicated by telegraph or by mail, addressed to each governor at his or her law office or business address. Notice by telegraph shall be sent to the governor at least three days, and notice by mail shall be deposited with the United States Post Office at least five days before the date fixed for the special meeting.

(c) *Minutes and Public Attendance.* All meetings of the Board shall be open to the public, except that the Board shall meet in executive session when considering the following matters: personnel matters of the Association; litigation or other proceedings in which the Association is interested or a party; the admission of applicants to membership in the Association; Board deliberations on disciplinary and disability matters of the Association; and those other matters that are considered confidential under Part III of the Rules. After approval by the Board, minutes of all public meetings shall be available to members of the Association and to the public.

Sec. 9. QUORUM. Seven members of the Board constitutes a quorum at any meeting.

Sec. 10. ACTION OF BOARD WITHOUT ASSEMBLING. The President, or Secretary by direction of the President, may submit any matter to the Board for action, decision, approval, or authorization, either by mail, telegraph, or simultaneous communication by telephone. The vote on any propositions so submitted may be either by mail, telegraph, or telephone, and the results shall be filed with the minutes of the Board meetings. Any proposition receiving a majority of affirmative votes in such matters shall be considered adopted by the Board the same as if the action were taken at a meeting of the Board.

Sec. 11. FINANCES. (a) *Disbursement Authority.* Any member of the Board so designated, or the Executive Director, shall sign checks for disbursements by the Alaska Bar from its funds. The Executive Director's authority to sign checks is limited by the Board's Standing Policies.

(b) *Line-Item Budget.* The Board annually shall adopt a line-item budget. The budget shall be published and made available to all members of the Association no later than 30 days before the beginning of the new fiscal year. The Association's fiscl year is the calendar year.

(c) *Regular Financial Statements.* The Executive Director shall submit a financial statement at each regular meeting of the Board.

Sec. 12. AUDITS. The books and accounts of the Association shall be maintained and audited in accordance with generally accepted standards of accounting. An audit by an independent audit firm shall take place at the close of each fiscal year, and the report shall be made available to the membership no fewer than ten days prior to each annual business meeting.

Sec. 13. REFERENDUM TO MEMBERSHIP. Whenever the Board of Governors is required to take a referendum, or whenever the Board orders a question referred to a vote of the active membership of the Alaska Bar in good standing, a questionnaire shall be prepared containing the matters upon which the vote is to be taken. The questionnaire shall be submitted to each active member in a form that allows the member to vote on it and return it to the Board. Whenever any referendum is taken, the question so referred shall not again be referred before the next annual business meeting of the Alaska Bar. Any question submitted to the members shall be prepared in accordance with the forms and procedures set forth in the Board's Standing Policies.

Sec. 14. PROXY VOTES. A Board member may not vote by proxy.

ARTICLE V
Board Elections

Section 1. NOMINATIONS. A nominating petition shall be mailed to each active Bar member entitled to hold office at least 75 days prior to the date of the election. Nominations for the election of the governors from each District and for the Board's at-large position shall be by petition signed by at least three members entitled to vote for the nominee.

Sec. 2. VOTING RIGHTS. Each active in-state Bar member in good standing may vote in and be a candidate from the District in which he or she resides at the time of election, or he or she may be a candidate for the at-large position. Active Bar members in good standing who reside out-of-state may only vote in and be a candidate for the Board's at-large position.

Sec. 3. ELECTION ROSTER. The Executive Director shall create a special election roster which shall contain an alphabetical listing of the active members of the Bar in good standing eligible to vote in each election.

Sec. 4. BALLOTS AND BALLOTING. (a) *Ballots.* Elections shall be conducted by secret ballot. Official election ballots shall be prepared in a form and manner approved by the Board. The ballots shall contain space for the voting member's printed name, written signature, and District. However, to ensure the preservation of the secret ballot, the ballot shall be so arranged that the member-voter identification information will be removed prior to tabulation of the ballot.

(b) *Replacement Ballots.* If a member entitled to vote in an election does not receive a ballot, or if the ballot received is lost or destroyed, a second official ballot may be supplied to that member, or the member may submit a facsimile of the official ballot, provided that the member has not previously voted in the election.

(c) *Balloting.* Ballots shall be mailed to each active member eligible to vote at least 21 days prior to the date of the election. To be counted, voted ballots must be received in the office of the Bar Association on or before 5:00 p.m. on the day of the election. The Executive Director shall have the custody of all ballots after they have been received and until the ballots are counted.

(d) *Invalid or Questioned Ballots.* Should any ballot be returned without both the printed name and written signature of the voting member on the spaces provided on the ballot, the ballot shall not be counted. Should it be determined in the cross-check against the election roster that a second ballot has been received from an eligible voter, that second and any subsequent ballots received from that member shall not be counted. Invalid ballots shall be kept by the Executive Director until after certification of the election. A ballot received which causes the Executive Director to question its validity shall be held by the Executive Director for a determination as to its validity by the members of the Bar Polls and Elections Committee responsible for counting the vote in that election.

Sec. 5. BALLOT COUNTING. The Executive Director and at least two members of the Association's Bar Polls and Elections Committee shall count the votes cast and record and certify, in writing, the results of the election to the membership.

Sec. 6. ELECTION RESULTS AND RUN-OFF PROCEDURES. The gubernatorial candidate in each District and from the at-large position receiving a majority of the votes cast shall be declared elected. If no candidate receives a majority, a run-off election shall be conducted between the two candidates receiving the highest number of votes. The candidate receiving the highest number of votes in the run-off election shall be declared elected. If only one candidate has been nominated for a vacancy on the Board, that candidate shall be declared elected. When more than one vacancy on the Board occurs in the Third District in an election, the candidates shall run on one slate and each active member entitled to vote shall cast a vote for no more than two of the candidates on the ballot. If no candidate receives votes equal in number to a majority of the number of eligible ballots cast, a run-off election shall be conducted between the three candidates receiving the highest number of votes. The two candidates receiving the highest number of votes in the run-off election shall be declared elected. If only one candidate receives votes equal to a majority of the eligible ballots cast, there shall be a run-off election between the next two candidates receiving the highest number of votes for the remaining seat.

Sec. 7. CHANGING ELECTION DISTRICTS DURING AN ELECTION. If a member changes residence between the time the election ballots are mailed and the date of the election, upon providing notice, proof of change of residence, and the invalid ballot previously mailed to the member, if any, on or before the date of the election, the member shall be entitled to vote for the candidate(s) from his or her new District of residence.

Sec. 8. BALLOT ELECTION ROSTER RETENTION; OFFICIAL RECORD. Upon completion of the ballot count, the Executive Director shall retain all ballots, the official tally sheets, and the special election roster until the close of the first annual business meeting held following the election, at which time the ballots and roster may be destroyed. The official tally sheets, containing certification of the vote count by the Bar Polls ano Election Committee, shall be retained for a period of two years, after which they may be destroyed in accordance with Board policy.

ARTICLE VI
Officers; Staff

Section 1. OFFICERS. The officers of the Association are a President, President-elect, Vice President, Secretary and Treasurer. The President-Elect, Vice President, Secretary, and Treasurer shall be elected from among the members of the Board by a majority vote of the active members of the Alaska Bar in attendance at the Association's annual business meeting. Nothing in this Article prohibits an appointed non-attorney governor from being elected an officer of the Association. Newly elected officers of the Association shall take office at the close of the annual business meeting at which they have been elected and shall serve a one-year term.

Sec. 2. PRESIDENT. The President shall conduct and preside at all meetings of the Alaska Bar and the Board of Governors. He or she shall be the official spokesperson for the Board and for the Association. The President shall furnish leadership in the accomplishment of the aims and purposes of the Alaska Bar. The President has those other duties which the Board of Governors directs.

Sec. 3. PRESIDENT-ELECT. The President-Elect shall assist the President. If the president resigns or is unable to act, the President-Elect shall fulfill the duties of President. The President-Elect shall succeed to the Presidency when the term for which the President was elected expires, or when there is a vacancy in the office of President, whichever first occurs. The President-Elect shall be the Board liaison to all local bar associations. At least thirty days before each annual Association business meeting, the President-Elect shall furnish the Executive Director with a list of the members of each Bar Rule and Standing Committee of the Association whose terms begin on the next first day of July. The President-Elect has those other duties which the Board of Governors directs.

Sec. 4. VICE PRESIDENT. The Vice President shall fulfill the duties of the President in the absence of the President and President-Elect. The Vice President shall be responsible for the operation of all executive committees of the substantive law sections. The Vice President has those other duties which the Board of Governors directs.

Sec. 5. SECRETARY. The Secretary, or his or her designee, shall record the proceedings of all Board and Bar meetings. The Secretary shall be responsible for the operation of all Association standing committees. The Secretary has those other duties which the Board of Governors directs.

Sec. 6. TREASURER. The Treasurer shall be responsible for the financial records of the Association. The Treasurer, or his or her designee, shall prepare a report on the status of the financial affairs of the Association at each meeting of the Board of Governors and shall give a written report on the Bar's financial position to the membership at the annual business meeting. The Treasurer has those other duties which the Board of Governors directs.

Sec. 7. EXECUTIVE DIRECTOR: STAFF. The Board may employ an Executive Director to serve at its pleasure and assist it in carrying out its functions. The Executive Director is the staff director of the Association. He or she shall shall have the qualifications, duties and responsibilities, prescribed by the Board. With the approval of the Board, the Executive Director may employ other staff required for the efficient functioning of the Association.

ARTICLE VII
Committees and Sections

Section 1. COMMITTEES. (a) *Standing Committees.* The Board shall define the powers, duties, functions, and scope of each standing committee in its Standing Policies. The President, subject to Board approval, shall appoint eligible Bar members to fill all vacancies or expired terms on standing committees and shall name and designate the chair of each committee. Committee members shall serve staggered, three year terms. Committee members may be reappointed for successive terms. The Board may appoint additional members to a committee, remove members from a committee for good cause, or dissolve a committee when it considers the work of a committee has been completed or when it considers that a committee is no longer necessary. Each committee may select such other officers as it considers advisable and may designate subcommittees from among its membership.

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• Bylaws to be revised

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Each committee shall meet at such times and places as may be designated by its chair. The Association's standing committees are:

(1) the Bar Polls and Elections Committee, a nine member committee responsible for polling the membership on subjects submitted to the Association membership by the Board and for the tabulation of the results of all elections and advisory opinion polls conducted by the Association;

(2) the Continuing Legal Education Committee, a 12 member committee responsible for presenting legal education seminars to the membership;

(3) the Ethics Committee, a nine member committee responsible for the issuance of opinions providing guidance to Association members in complying with the Code of Professional Responsibility;

(4) the Historians Committee, a 12 member committee responsible for preserving the unique history of the Alaska Bar;

(5) the Law-Related Education Committee, a 15 member committee responsible for presenting programs and producing publications to aid the public in understanding of the law and the legal system;

(6) the Legal Educational Opportunities Committee, a 10 member committee responsible for the oversight of State funds for legal education, tutoring assistance to failing bar examinees, and oversight of the impact of Bar admission standards on minority applicants; and

(7) the Statutes, Bylaws and Rules Committee, a 12 member committee responsible for drafting proposed revisions of the statutes, bylaws and rules which govern the activities of the Alaska Bar Association.

(b) *Special Committees.* The President may appoint special committees with limited purposes and of limited duration. The terms of membership on such committees shall be established by the President at the time the committees are appointed.

(c) *Committee Actions Endorsed.* No action, report, or recommendation of any standing or special committee is binding upon the Association unless first approved by the Board.

Sec. 2. REPORTS OF COMMITTEES. All standing and special committees shall render to the Board those reports as from time to time that are requested by the President or the Board. Written annual reports shall be delivered to the Board at least 30 days before the annual business meeting, and a written or oral report shall be presented to the membership at the annual business meeting.

Sec. 3. SUBSTANTIVE LAW SECTIONS. The Board shall establish substantive law sections in areas pertinent to the practice of law and shall define the powers, duties, functions and scope of each section in its Standing Policies.

(a) Membership and fees requirements are as follows:

(1) *Attorney Membership and Fees.* Attorney membership in each section is open to all active members of the Alaska Bar Association in good standing. $5.00 of a member's annual membership fee will be allocated to the budget of the first section joined by that member. A member may join additional sections at a registration fee to the member of $5.00 per additional section joined per year.

(2) *Informational Membership and Fees.* Non-voting section membership is available at the discretion of each section to any person who is not a member of the Association, but who subscribes to the informational and educational objectives of the section. Informational section members may not serve on the executive committee of any section. There is an annual $10.00 membership fee assessed for each section joined by an Informational Member.

(b) *Section Executive Committees.* Each section shall be administered by an executive committee of at least five members elected from the section's attorney membership to serve staggered three year terms. The executive committee shall annually elect, by June 30, a chair, and may elect such other officers as it deems advisable from the membership of the executive committee. Each executive committee shall meet at such times and places as may be designated by the chair of the section. All executive committees shall file with the Board such reports as from time to time shall be requested by the President or the Board. A written annual report shall be delivered to the Board at least thirty (30) days before the annual business meeting.

(c) *Annual Section Meeting.* Each section's executive committee will schedule an annual meeting of the section membership to hear the annual report of its executive committee and discuss issues and developments pertinent to the section's area of law. The annual meeting will be held at a time and location determined by the executive committee.

(d) *Continuing Legal Education Commitment.* At least as frequently as is required by the Bar's Continuing Legal Education Committee, each substantive law section in conjunction with the Bar shall be responsible for sponsoring a continuing legal education seminar.

(e) *Annual Section Chair/Board Meeting.* At each annual convention of the Association, the chairs of each section, or their designees, shall meet with the President-Elect or the Board to discuss section activities and evaluate section needs.

(f) *Section Actions Endorsed.* No action, report, or recommendation of any section is binding upon the Association unless adopted and approved by the Board.

ARTICLE VIII
Association Meetings

Section 1. ANNUAL BUSINESS MEETING. The annual business meeting of the Alaska Bar Association shall be held in conjunction with the Bar's annual convention and shall be held within the State at the time during the months of May or June of each year and at the place that is selected by the Board of Governors. Notice of the annual business meeting shall state the time and place scheduled for holding the meeting, and shall be provided to the members of the Alaska Bar Association at least six months before the meeting.

Sec. 2. SPECIAL MEETINGS. Special meetings of the Alaska Bar Association shall be called by the Secretary upon a majority vote of the Board of Governors, or upon the receipt of a written application signed by not less than 25 percent of the active members of the Alaska Bar Association. The secretary shall issue the call for the meeting to be held not more than 20 days following the receipt of the written application. Special meetings may consider only those matters that are specifically set forth in the call of the meeting. Notice of a special meeting shall state the time and the place within the State where the meeting will be held and shall be given to the public press at least five days prior to that meeting. Each notice shall state specifically the matters to be considered at the special meeting and shall be issued over the name of the Secretary, or in case of his or her failure or refusal to act, the President of the Alaska Bar Association.

Sec. 3. PARLIAMENTARY RULES. Proceedings at any meeting of the Alaska Bar Association shall be governed by the most recent edition of "Robert's Rules of Order, Revised."

Sec. 4. RESOLUTIONS. Resolutions may be introduced for consideration at the annual business meeting if signed by at least 10 active members of the Association, or sponsored by a local bar association or substantive law section. Proposed resolutions shall be received in the office of the Association at least 45 days prior to the date of the annual business meeting and shall, upon receipt, be promptly submitted to each local bar association for its consideration. Resolutions also shall be considered at the annual business meeting if 35 members in attendance at that business meeting sign a petition requesting consideration of the resolution.

Sec. 5. VOTES. Each active member in good standing in attendance at the annual business meeting shall be entitled to cast one vote on each matter presented for consideration. Proxy votes are not permitted.

ARTICLE IX
Election of Alaska's Delegate to the American Bar Association's House of Delegates

Section 1. NOMINATION AND ELECTION. In each even numbered year, the active membership of the Alaska Bar Association shall elect one delegate from its membership to be its delegate to the House of Delegates of the American Bar Association (ABA). Nominations for the Alaska Bar's delegate shall be made in the same manner as provided for the nomination of the candidates for the Board of Governors in Article V of these Bylaws and the election shall be held at the same time and in the same manner as provided for the election of the Board of Governors, except that Alaska's ABA delegate shall be elected from the State-at-large and the term of office shall be two years. No delegate may be elected who is not an active member in good standing of the Alaska Bar Association. The candidate receiving the highest number of votes shall be declared the elected delegate. The elected delegate shall be responsible for all expenses incurred by him or her as the Alaska Bar's delegate to the American Bar Association's House of Delegates.

Sec. 2. ALTERNATE DELEGATE. In case of the refusal or inability of the duly elected delegate to attend the meetings of the American Bar Association's House of Delegates, an alternate delegate shall be appointed by the Board of Governors. The appointed delegate shall take his or her place as the delegate at the meeting or meetings that the elected delegate is unable to attend with all the rights and privileges of the elected delegate.

ARTICLE X
Lobbying and Publicity

Section 1. LOBBYING. No member of the Association may lobby or otherwise attempt to influence legislative or administrative action in the name of the Association, except with the consent of the Board of Governors.

Sec. 2. PUBLICITY. Public statements or press releases purporting to set forth the Association's position on pending or proposed legislation, on issues of public importance, or on Association matters in general shall be made only by the President or his or her designee.

ARTICLE XI
The Official Publication

Section 1. PURPOSE. The Alaska Bar Association, on a quarterly basis, shall issue a publication which shall be distributed to the members of the Association at no charge. Its purpose shall be to inform Bar members of Association activities, to report trends and developments in the profession, and to entertain. Cost per issue to non-members shall be established by the Board of Governors.

Sec. 2. EDITORIAL BOARD. Responsibility for the publication shall reside in an Editorial Board of five persons, consisting of the President of the Association, the Executive Director and three members appointed for one year terms by the President with the advice and consent of the Board of Governors. One of the three members shall be appointed as the editor-in-chief by the President and the other two shall be designated as associate editors.

Sec. 3. POWERS OF THE BOARD. The Editorial Board shall exercise overall supervisory control of the publication. The editor-in-chief in conjunction with the Executive Director shall be responsible for the day-to-day operations of the publication. The editor-in-chief shall further establish and maintain an independent editorial policy. The editor-in-chief and the the associate editors may serve additional one year terms.

ARTICLE XII
Amendments

Section 1. AMENDMENTS BY THE BOARD OF GOVERNORS. In accordance with the provisions of Bar Rule 62, these Bylaws may be amended by the Board of Governors at any regular meeting of the Board or at any special meeting called for that purpose.

Sec. 2. AMENDMENTS BY THE MEMBERS. In accordance with the provisions of Bar Rule 62, any Bylaw adopted or amended by the Board of Governors may be modified or rescinded, or a new Bylaw adopted by a vote of the active members of the Association at any annual business or special meeting.

ARTICLE XIII
Definitions

Section 1. DEFINITIONS. As used in these Bylaws, unless the context or subject matter otherwise requires:

(1) "The Act" means the Alaska Integrated Bar Act contained in Title 8, Chapter 8, Alaska Statutes (AS 8.08);

(2) "Alaska Bar." "Association." or "the Bar" mean the Alaska Bar Association created by the above mentioned Act;

(3) "Bar Rules" or "Rules" mean the Alaska Bar Rules promulgated by the Supreme Court of Alaska;

(4) "Board" and "Board of Governors" mean the Board of Governors of the Alaska Bar Association;

(5) "District" means an administrative district of Alaska, as defined in Article I, sec. 6.;

(6) "Executive Director" means the principal member of the Alaska Bar Association staff;

(7) "Governor" means a member of the Board;

(8) "Member" means a member of the Alaska Bar;

(9) "President," "President Elect," "Vice President," "Secretary," and "Treasurer" mean the respective officers of the Board of Governors and of the Association;

(10) "Regulations" mean the regulations promulgated by the Board to implement the Act or the Rules;

(11) "Standing Policies." "Policies." or "Policy" mean the various written Standing Policies of the Board; and

(12) "State" means the State of Alaska.

• *Schaible*

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Q: *When will the differing treatment between men and women professionals, particularly lawyers, cease?*

A: I can only give you my best guess for an answer to that question. I believe that when the women who have recently entered the practice of law reach the age of 40 to 50 years, the more latent differences as far as unequal treatment or gender bias will have disappeared. I certainly hope that this is the case. Alaska is more progressive in this sense than many other states and I expect that unequal treatment of professional women, compared to professional men, will disappear in Alaska before it will in other states.

• *Tanana Valley Bar*

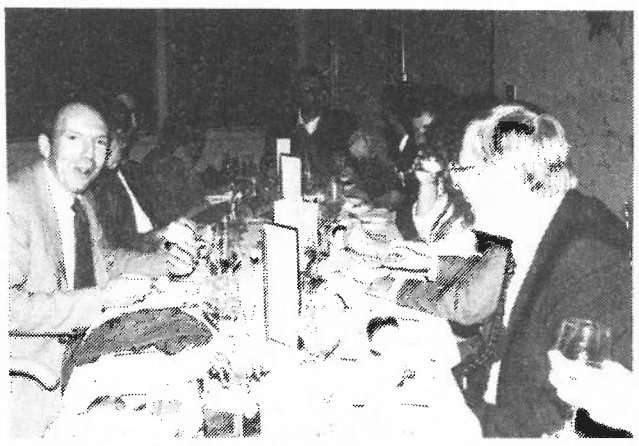
Continued from Page 3

and Alan Schon seconded the motion. Dick Madson interrupted the proceedings to shout at DeWitt "You voted no!" DeWitt replied "No I didn't." And, while all the hollering was going on Randy ruled the motion to reconsider failed. Ralph Beistline jumped in and assumed the role of parliamentarian and recommended there be two sets of minutes of these meetings; one for the record and one to go to people not present at the meeting in an attempt to hide the identities of persons making motions and taking positions. This of course was a facetious statement on the part of Ralph as the minutes of the TVBA have always meticulously recorded the events of the meetings as they were thought to have occurred. Randy directed the secretary to write a letter to somebody telling him about the TVBA's position on judicial salary increases whereupon the secretary retorted he does minutes not letters. After much cajoling and some threatening, the secretary agreed to write a letter to the editor of the Fairbanks Daily News Miner for Dan Callahan to sign letting him know what we thought about proposed increases in judicial salaries.

Dick Burke interrupted to state that if Callahan doesn't want to sign the letter, Burke will sign the letter as Chairman of the Foreign Policy Committee.

—Oct. 23, 1987

Bar-School partner ship launched



The Alaska Bar Association's Bar-School Partnership program was launched in three regional seminars in the fall. At upper left is the training seminar in the Matanuska Valley. In Kenai, lawyers, school administrators and teachers meet over dinner (top right).

Bottom left, Anchorage lawyers and educator meet for lunch. From left are teacher Royce Page; Phil Volland, chairman of the Law Related Education Committee; Alaska Bar President Bob Wagstaff; and American Bar Association's Mabel McKinney-Browning.

Above, steering committee members Dave Zwink, Phil Volland and Deborah O'Regan attempt negotiating for a candy bar during training. At left, classes begin for 32 lawyers and 50 educators in Anchorage.

• Computers increase scope

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and call up the INVALUE program. The program begins with a brief explanation to the attorney of the investment value concept. The attorney is then requested to answer a series of approximately 40 questions concerning the lawsuit. His answers are recorded in the computer's memory so that all of the information provided by the attorney can be accumulated into a form that will permit a bottom-line calculation of the lawsuit's investment value.

The questions concern not only considerations of liability and potential damage findings, but also other cost factors, both direct and indirect. Also included within the analysis are "subjective factors," such as the possible effect of adverse publicity or the significance of precedential value.

At the end of the final question, the model instantly aggregates all of the dollar impacts that are reflected in the answers given by the user, and provides the attorney with the investment value calculation. In addition, the attorney is also advised of three other calculations: the total cost of litigation, the overhead costs attributable to the suit; and the net effect of the subjective factors on the final INVALUE calculation.

A number of advantages in using the investment value analysis have already become apparent. By looking at the overall economic effect of defending the case through trial, the attorney has another tool for advising the client on alternative case strategies. A determination to defend "at all costs" might well be tempered when confronted with the full spectrum of real costs associated with that decision. Furthermore, the checklist of questions generated by the program ensures that no significant consideration will be overlooked and that case appraisal is accomplished in a consistent manner.

A model to evaluate the plaintiff's side of a lawsuit, BRKEVEN, utilizes a similar process. The BRKEVEN model again concerns itself with total economic impact of a proposed lawsuit. It computes the lowest dollar amount which the client must reasonably be assured of recovering in order to justify economically bringing the action.

COMPROWISE, another computer-assisted legal settlement model, is available on ABA/net, the legal profession's communication and legal information services network. It is intended to assist the lawyer in evaluating litigation from the perspective of a defendant against whom a claim for money damages has been made by identifying and weighing all factors relevant to an economically justified settlement amount.

Like INVALUE, COMPROWISE asks the user to respond to a series of questions regarding the case, such as "What is the percent probability that your client will lose on the issue of liability?" and "What is your estimate of the dollar amount of damages which will be assessed if your client is found liable by the trial court?" When the lawyer completes the questions, the computer responds with a calculation of the optimal settlement value for the case.

Reduced to its simplest, COMPROWISE is nothing more than a checklist, supported with powerful mathematical capability.

However, it is a very useful checklist because it serves to remind the user of all the things to remember to consider in evaluating the client's case. The results obtained are not "better" than the attorney's current appraisal of the facts and law pertaining to the client's situation. They simply reflect a comprehensive and consistent analysis of all the relevant factors.

The degree of importance that the model automatically assigns to the attorney's responses reflects experienced litigation judgment. It gives the user the opportunity to take advantage of the litigation experience of others, as well as their own, in evaluating the settlement potential of a case.

Because of the breadth of factors considered, the attorney can also be confident that it is unlikely he would neglect to take account of some factor that might materially affect the settlement value of the case.

For example, several of the questions are intended to identify the fully allocated cost of handling the case through trial. When one of the responses reflects a twenty per cent chance the case would be appealed regardless of who wins, a small portion of the computer program adds an appropriate estimate of additional potential cost to account for this anticipated real life result.

At the heart of COMPROWISE, therefore, is a blueprint—a blueprint made up of all factors possibly relevant to the analysis; plus a relative weighing or valuation of those factors. The "blueprint" thus becomes a simulation of the lawyer's thought processes. It doesn't replace lawyer judgment; rather, it captures it and makes it available for later use—or for the use of others.

The users of these road maps, in turn, add their own legal assessments when responding to the questions the model will ask. The result produced by computer assisted legal analysis models will not supplant the lawyer's appraisal; rather it will supplement his subjective judgment and provide the lawyer with an additional, objective yardstick to use in making legal decisions.

Like INVALUE, COMPROWISE does not create "artificial intelligence." It merely "applies" legal experience in a systematic way, and makes it available for future reference and use. Though it provides only an additional practice tool for lawyers, its advantage will become increasingly apparent as the profession begins to understand this new practice related technology.

Mr. Gonser is the former executive director and chief operating officer of the American Bar Association. This article comes from a CLE seminar on computers and law practice.

• James Bond is Back

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wheel cars, however, were done in Pinewood Studios, where the set was reconstructed exactly to dimensions and coloring of the ferris wheels in Wiener Prater Park.

"The Living Daylights" contains one of the best aerial shots in film history. Bond and villain Necros fall out of a rear ramp of a Russian plane (actually an American C-130) clinging onto a net of opium bales. They fight on the net 6,500 feet above the mountains. How to shoot it? Simple: use two stuntmen accustomed to defying death and shoot in four general camera positions: air to air from another plane, inside the cargo plane itself, and from cameras attached to the wing and tail. Even then both stuntmen must parachute to safety (not filmed) because in the film Necros falls to his death and no one — not even James Bond — can crawl back into a flying cargo plane from a bouncing net.

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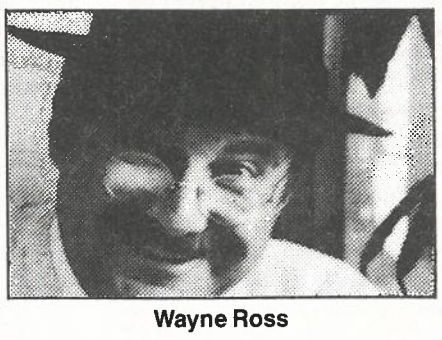

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