Inside:

- The Internet decision & electronic discovery
- Rights of immigrants & ALSC status
- New tort idea & client referrals
- Bar rule changes & discipline

More:

TVBA is back; parochial bars; historical characters; ravens on the court house; and "Rolly."

$2.00

The Alaska BAR RAG

VOLUME 20, NO. 5 — *Dignitas, semper dignitas* — SEPTEMBER-OCTOBER, 1996

Joint state-federal courts gender equality task force finds gender bias in Alaska

Education urged

By Pamela Cravez

In nearly all aspects of Alaska's state and federal court systems women are more likely than men to experience and perceive gender bias. However, men also recognize sex-related bias, particularly in domestic violence and domestic relations cases.

The Joint State-Federal Courts Gender Equality Task Force, co-chaired by Federal District Court Chief Judge James Singleton and Anchorage Superior Court Judge Karen Hunt, reported the findings of its three-year investigation of gender fairness in Alaska courts this month. The Task Force recommended that courts emphasize education, and added that materials about gender fairness be sent to judges, state and federal court staff, and Bar members.

The findings, based on statewide surveys and subcommittee evaluations, mirrored those of other task forces across the country: Women, more than men, experience and perceive gender bias.

Alaska's Task Force received reports of gender-biased differential treatment between attorneys, and between attorneys or judges and other persons in the courtroom, including jurors, witnesses, security personnel and other court staff. Incidents of gender bias appeared obvious to some and nonexistent to others.

Comments from women on Task Force surveys reported biased behavior that took the form of sexist humor; the practice of informally addressing women by their first names, and men by their surnames; actions based upon sex-related stereotypes; and the use of gender-biased language.

Women also reported a lack of job opportunities based on merit, favoring of male attorneys in the courtroom and out, and economic and other disparities in the treatment of women in civil and domestic litigation.

Although the Task Force received reports of gender-biased behavior within Alaska's courtrooms, biased interactions occurred between attorneys outside the courtroom more frequently.

The Task Force defined gender bias as any unjustified differential treatment of a woman or a man based on that person's gender, including but not limited to such things as use of language, humor, manners or etiquette, conditions of employment, and sexual harassment.

More than 100 lawyers, judges and citizens throughout Alaska supported the Task Force's work. Subcommittees investigated gender fairness issues; the federal and state courts; the legal profession; and the general public experience with the courts. Each subcommittee conducted surveys, issued a report, and made recommendations for improving gender fairness in its particular area. Across the board, participants in the investigation found that just the process of inquiry raised the level of gender-issue awareness in Alaska's courts.

The Task Force report includes subcommittee recommendations and reports.

The Task Force, recognizing that education is one of the key factors in eliminating gender bias, has already begun supporting statewide workshops and seminars on gender equality, but it cautions there is still more work to be done.

As part of its work, the Task Force adopted six general recommendations:

1. Provide gender equality education and materials to private law firms, state and federal court personnel, and the judiciary.

The Task Force recommends the development of training seminars and materials on ethics and gender for people involved with the courts. Materials should include a pamphlet about gender issues to complement the existing state court leaflet. These materials could be used by new admittees to the bar, jurors, witnesses, litigants, and other participants in court proceedings.

2. Revise and update the Women's Legal Rights Handbook.

The former Alaska Women's Commission wrote the original version of this handbook, which was last revised in 1990.

3. Publicize information on gender issues and progress toward equality.

4. Adopt state and federal court rules and a state bar ethics rule that prohibit gender discrimination.

5. Integrate gender bias education into all relevant substantive and procedural courses offered by the Alaska Bar Association and the state and federal court systems.

6. Maintain an ongoing group that can systematically monitor gender bias and implement recommendations.

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Tourists flock to the Christ The Redeemer statue in Rio.

BRAZIL

By James C. Hornaday

My first trip to South America was filled with activity: three weeks in a Methodist Community Center in a Rio Slum; two days at the magnificent Iguazu Falls: a week at the world Methodist Conference; and a week on the Amazon River.

Rocinha Community Center

Rocinha is the largest slum in Rio. The Methodist Community Center includes a church, daycare center and kindergarten, a very active gymnasium, youth and adult soccer, music programs, hygiene programs and adult education. Two hundred fifty thousand people live in the Favela (slum) that winds up a steep hill next to more prosperous housing and shopping developments. The streets teem with people, open fish markets, produce stands, stores, cars, bikes and pedestrians.

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Alaska Bar Association
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President's Column

A new look at bar conventions

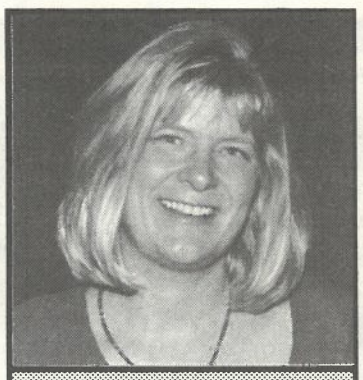
When I went to my first Bar Convention I wasn't sure what to expect.

I am fairly certain that I never would have gone to one if I hadn't been elected to the Board of Governors and decided that I *had* to go. Now, having attended the last four, I have a much better idea about what a Bar Convention entails, but I still have mixed feelings about the event.

I know that we could do things better (I wanted to kill one professor who spoke a couple years ago; he seemed to think that the way to be a good lawyer was to call your clients on weekends to show them that you worked all the time), but whether it's worth the time and money isn't clear. And, some things about the conference are excellent as they are. For instance, I laughed really hard at Judge von der Heydt's stories about Nome at the 1996 convention. In fact, the entire convention was wonderful this year — the historical perspective was well worth hearing.

My greatest concern is that not many of us go to the conventions. Those of us who do attend, usually go to them all. Is there something we could do that wouldn't be too costly, but would encourage broader participation? Is broader participation all that important? After all — you either participate or you don't.

But, I believe that the more involvement you get the better, and I



Beth Kerttula

have a strong feeling that the reason most people don't go to the convention is simple: money. But, hey, prove me wrong (or validate me, whichever): answer our fax poll and tell the Board of Governors what you think about the convention.

Coming from a political family I don't care for polls, and I've certainly seen them proven wrong, but we will read your thoughts, and this poll is (hopefully) an easy way to get your input. The board is in the process of trying to figure out the future of the convention right now. I've even appointed a convention feasibility committee, which is why I've written this article and am pestering you to answer our poll. And we've also put together some convention information stats which may be of interest to you as you think about bar conventions.

First, here's our estimate of what it costs YOU to attend the convention:

If the convention is in your home town:

Registration fees:	**$175** two days (**$ 90** one day, **$ 50** half day)
Social events:	**$100** for everything (two lunches, one reception, and one banquet)
TOTAL:	**$275**

If the convention is out of town:

Registration & all Social events	**$275**
Hotel (3 nights x average $125 nt.)	**$375**
Ground transport	**$ 30**
Misc- tips, other meals	**$ 75**
TOTAL:	**$755**

NOT counting airfare

Those are the basic costs, but of course what they don't show is your lost business time.

Besides the costs to you, I also thought it would be interesting to list what it cost all of us as part of our Bar dues for the conventions, and some other statistics, since 1988. I'm only including a few of the statistics in this article. If you would like a more complete breakdown, let me or the Bar staff know and we would be happy to provide it.

Bar Convention Statistics since 1988

Average cost of an annual convention including income and loss:

$6,481 Net Cost

I've arrived at this figure by adding all of the gains and losses for the 1988-1996 conventions and dividing by nine. The actual cost for the convention has averaged about $51,000 per year, but some years we make money and most years we lose money. On balance, it costs us around $6,500 a year to do a convention. However, this figure does not include staff time, nor the Bar president's time, so the cost is not all inclusive.

Average attendance at convention: 270 people

This number is difficult to figure. It includes judges, since one of the things we do that helps monetarily is to combine our conventions with the judicial conference, but it also includes non-bar members and people who attend only part of the convention. There are approximately 50 judges registered for the bar conference each year.

Most expensive conference: Net Loss $25,282

Expense:	$139,556
Income:	$114,274
Loss:	$ 25,282

This was for the 1990 Northern Justice Conference. The Board of Governors planned for this expense, which included translators and travel expenses for people from other countries.

Least expensive conference: Net Gain $14,590

Expense:	$58,825
Income:	$73,415
Gain:	$14,590

No, Dan Winfree, this was not your convention; it was the 1988 Anchorage convention.

Conventions make up about 2% of the Bar's total budget. I was surprised to see that they don't cost more than they do overall, but time and energy-wise they seem to take a lot. I have had a lot of comments about conventions in the last year, and would like to know more about what you think.

Please fax or mail us back the poll. We are trying to decide the future of the convention, and your information will help. If you don't want to do the poll, but have suggestions, give me a call — 907-463-5440. Thanks for your effort. We will keep you posted on the results.

FUTURE OF THE ALASKA BAR CONVENTION

FAX

Please fax this form to the Alaska Bar Association. Fax 907/272-2932

MAIL

Or, you can mail this to the Alaska Bar Association. PO Box 100279 Anchorage, AK 99510-0279

Thank you for taking the time to complete this survey.

Where do you practice? _____

Year of admission in Alaska: _____

Have you ever attended an Alaska Bar convention? ☐ Yes ☐ No

If yes, how many conventions have you attended?

☐ 1-2 ☐ 3-4 ☐ 5-7 ☐ 7 or more

If no, was it because of (check all that apply)

☐ Loss of billable hours? ☐ Travel?
☐ Costs too much? ☐ Time of year?
☐ Not interesting enough? ☐ Other (please explain below)?

Other: _____

What could be done to improve the Bar convention? Please check all that apply.

☐ Make it shorter
☐ Only have it in Anchorage
☐ Only have it outside of Anchorage
☐ Make it less expensive
☐ Have more concurrent CLEs
☐ Have more non-substantive law programs (e.g., stress management, quality of life, etc.)
☐ Have more family-related functions (e.g., picnics, fun-runs, sailing, fishing)
☐ Other: _____

What types of CLEs would you like to see offered at the convention?

_____
_____
_____

Should we keep having a convention? ☐ Yes ☐ No

If yes, should the Bar convention be held yearly or every other year?

☐ Yearly ☐ Every other year

Do you think it is valuable to have interaction between the judiciary and the Bar at the convention? ☐ Yes ☐ No

Comment: _____
_____

Should we continue to schedule the convention at the same time as the judicial conference? ☐ Yes ☐ No

What do you like best about the convention?

_____
_____

If you never attend the convention, what is the one thing (or more) that would get you to go (besides it being absolutely free)?

_____
_____

The Alaska BAR RAG

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

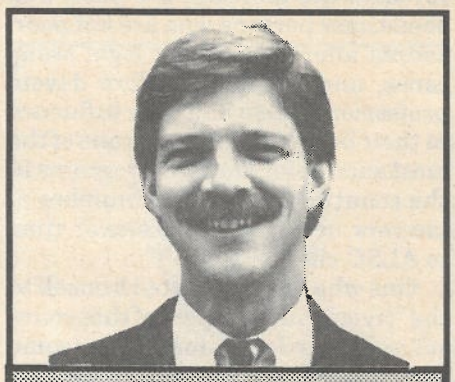
Editor's Column

Distant bar associations diss Anchorage — We don't care.

Like a ferret that periodically pops out of hibernation to sully the pristine snow around its den, the TVBA (the Tanana Valley Bar Association, for you newly anointed) makes its reappearance in this issue of the *Bar Rag*. (See p. 19).

The TVBA was noted in the past for its utter disregard for decency and decorum, not to mention grammar and punctuation, and its revivified corpse exhibits many of the same symptoms. The *Bar Bag* staff suspects that the TVBA was shamed into reappearing by the emergence in these pages of a competitor: The Juneau Bar Association, whose minutes under Mie Chintzi were a study in the varieties of literary form, with a sonnet one week and a rip-off of Mickey Spillane the next. Mie was recently succeeded by Lach (rhymes, I am told, with "flash") Zemp (rhymes with "hemp"), who exhibits no less of an ear for the absurd, of which Juneau appears to have an overabundance even when the Legislature is out of session.

Scrivening in the TVBA corner is John (rhymes with "John") Tiemessen (rhymes with "Tiemessen"). As portrayed by his pen, the TVBA is a gaggle of wise-cracking cynics whose lunchtime conversation invariably



Peter Maassen

dives toward the nether parts, in terms of both taste and human anatomy. In other words, same old TVBA.

Since these local associations meet more or less weekly and the *Bar Rag* appears only semi-monthly, the bulk of their output is lost to the *Bar Rag's* state-wide audience. That may be all to the good. Readers wanting more of the stuff, however, may ask at their local bookstores for the hardcover compilation, which Random House will be publishing as soon as it has exhausted the market for O.J. paperbacks.

Both the JBA and the TVBA, in their more serious moments, have converged on a common issue. With Justice Rabinowitz's seat on the Supreme Court up for grabs in the fall, both Juneau and Fairbanks have taken up the noble mission of seeing that it doesn't go to an Anchoraginian. The two associations have drafted joint and several resolutions to that effect and have made noises about exchanging them with each other and forwarding them to the Bar, for whatever good they think that will do them.

Now, by my extremely rough reckoning (*i.e.* counting the pages in the lawyers' directory), the Third Judicial District is home to 78% of Alaska's practicing lawyers. On a strictly proportional basis, the Third Judicial District should be called upon to produce 3.9 justices (let's call it four, prevailing views of elective amputation being what they are). If I recall my judicial history correctly, Justice Compton was appointed from the superior court bench in Juneau. The Outback thus has all the representation it's entitled to.

To back up the statistics, I submit as proof the minutes of the TVBA and the JBA. Do we really want these people making the law of the land? Compare their lunchtime conversations with those of the Anchorage Bar Association. I'll admit that I haven't been to an ABA meeting in a long time, but when I did go, the conversation went something like this:

M.E. It seems to me that footnote 17 in Justice Brennan's concurrence implicitly acknowledges the Ninth Circuit's adoption of the doctrine of *in pedis futuris*, at least for cases brought between the 4th and 6th, inclusive, of June 1984. Pass the Sweet-N-Low, please.

B.G.: I must dissent from the interpretation of my learned colleague. The textual incorporation of the Rule in Queen Anne's Case is meant to remind us that any *ex post facto* law is void *ab initio* unless conjoined with correlative metatarsals inserted *ex officio*.

M.E. Bunk.

B.G. Then give me back my spoon!

Chair: Order!

As you can see, the legal-intellectual life in Anchorage is conducted at an altitude far too rarified for most provincials, at least as indicated by their local Bar minutes. I make a one-time exception for Juneau lawyers Tom Waldo, Vance Sanders, Phil Pallenberg, and the other members of their running team, who picked me up last weekend while I was hitchhiking in the Yukon (no more details, since I'm peddling the story to *Soldier of Fortune*). I'll back any one of those guys for the High Court.

Otherwise, it's got to be an Anchoraginian. This is Our Moment; let us grasp it firmly.

P.S. Please don't write to inform me that ferrets don't hibernate. I'll bet they could if they wanted to.

Letters from the Bar

Chuuk courts paralyzed

Courthouse blackout prompts chief justice to shut down judicial branch

By FLOYD WHALEY
Daily News Staff

Chuuk's chief justice closed down the state's judicial system on Thursday due to the capitol's electricity crisis. Criminal suspects will be released and cases pending before the court will be dismissed, according to a court order.

"Due to a directive of the Chuuk Public Utilities Commission, the electrical power to the Chuuk State Supreme Court has been terminated," the order said.

"As a result, the judicial branch of government shall cease to function until power is restored," ordered Chuuk Supreme Court Justice Soukichi Fritz.

Most of Chuuk's main island has been without electricity for several months due to lack of maintenance of the state's power system.

The capitol, where a third of Chuuk's 50,000 people live, is now being supplied by a single generator.

Court clerk Kolbert Angel said power from the last generator appears to be distributed to a select group of individuals and government agencies.

"The governor's office, which is located really close to the courthouse, has power" Angel said. "The legislature building has power, but the other branch of the government (the judiciary) has no power."

Chief Justice Fritz July 4 court order said that until power is restored to the court house, "all arrestees shall be released from custody if they cannot have a prompt initial appearance pursuant to criminal rules.

"No initial appearances, or arraignments, will be held by the Chuuk State Supreme Court until power is restored," the order said.

In addition, the chief justice said in his order that he will allow no court documents to be filed while power is out, and extends to dismiss cases, reschedule items due to the power crisis.

"No trial or hearings shall be held in the Chuuk State Supreme Court until electrical power is restored," Fritz wrote. He added: "No extensions shall be granted for the filing of documents or hearings in any civil or criminal cases.

"Any documents not timely filed or hearings not timely held due to the suspension of public functions of the judiciary, shall result in dismissal of applicable action unless otherwise notified," the order said.

Birth certificates, notary seals and other documents will not be issued until power is restored, and the police will not be able to criminal investigation documents.

"No arrest warrants, search warrants or other documents in criminal matters shall be issued by the Chuuk State Supreme Court until electrical power is restored," the order said.

The court order went into effect on Thursday and will continue to remain in force until the court amends or repeals it, or it is changed by statute, the order said.

See CHUUK, Page 4

Continued from Page 1

No arrest warrants

News from Chuuk, Micronesia

I'm writing by light of Coleman lantern, so excuse the penmanship. Power is still out here. It's a month now. They do have one island generator going, though.

They were supplying power only to the Chuuk governor and legislature and to hospital and power company execs. So I convinced the Chief Justice to close the court and order release of all arrestees until power was turned on.

The same day the A.G. came wanting an arrest warrant for a guy who took a machete to someone's head.

We said, "Sorry, no warrants till we get power."

The A.G. told the Judge, "The guy lives near you."

(The) Judge said, "I got my long-range shotgun."

The power came on the next morning.

All the ... families in our complex have sent their wives and kids back to their (home) country....so we're a pretty weird mix of married international bachelors.

This week the supreme court is suing the new governor and legislature because they cut the judges' salaries and mandated a four-day work week. I'm representing the Court .... It's a different ball-game here. Interesting.

The parties and picnics on the islands are great. Still spend lots of time sitting on the beach drinking coconut water.

Mark Sokkappa
As written to Shelley K. Owens

Micronesia message II

News for the Bar Rag. I was appointed Chief Justice for the High Court of the Republic of the Marshall Islands in April, 1996. Although I miss Alaska I am enjoying this tropical paradise. It also seems every other person I meet is from Alaska. There are quite a few attorneys in Micronesia who have come from Alaska. It may be worthwhile to organize a Micronesia subchapter of the Alaska Bar Association!

Daniel Cadra

TVBA returns

The TVBA has been absent from your publication for some time now. We apologize to your publication and to your readers for the lack of TBVA minutes and the attendant lack of quality. I am certain that you have noticed a drop in your subscriptions since our minutes quit appearing in the Bar Ragg [sic].

John J. Tiemessen, TVBA Sec.

ALSC President's Report

Life with legal services

Bipartisan action in the U.S. House of Representatives on July 23, 1996 rejected the House Appropriations Committee's recommended funding level for the Legal Services Corporation (LSC) by adding $109 million, bringing the House version of the appropriation to $250 million. This action upset the House leadership.

Fifty-six Republicans joined 190 Democrats and one Independent to approve an amendment to H.R. 3814 offered by Reps. Alan Mollohan (D/WV) and Jon Pox (R/PA), for a vote of 247 to 179. 1 don't have the exact figure, but this increase will provide a substantial amount for Alaska. Our Representative Don Young voted *against* the increase!

Meanwhile, the U.S. Senate Appropriations Committee has reported out its version of H.R. 3814 to include $288 million for LSC, still far short of the requested $340 million but obviously an improvement over the House version.

As of this writing (early September), Congress has returned from its recess and will address several appropriations bills, including H.R. 3814, but a specific schedule has not been set. The differences between the House and Senate versions will have to be worked out. It is possible, however, that the work on the bills will not be completed by September 30 — the end of the federal fiscal year — and that a "continuing resolution" will be passed to maintain the current funding level (for six months or some other stated period).

Arthur H. Peterson

•

In August, the LSC published two sets of regulations, which became effective as interim regulations, dealing with the various Congressional restrictions on legal services enacted last spring. They cover recipients use of non-LSC funds, class actions, redistricting, lobbying, priorities in the use of resources, etc. The LSC board will consider comments and take final action on these regulations at its September 29 and 30 meeting.

•

Despite federal funding decreases and federal restrictions on the services that LSC grant recipients may provide, the LSC and the basic legal services system survive. But the battle continues.

The preamble to Alaska's Rules of Professional Conduct includes the following: "A lawyer should be mindful of..... the fact that the poor, and sometimes persons who are not poor, cannot afford competent legal assistance, and should therefore devote professional time and civic influence in their behalf." Alaska has one of the most successful pro bono programs in the country, with a great number of lawyers devoting professional time to ALSC clients.

One who has committed himself to the "civic influence" part of that counsel is former legislator Jamie (some know him as Jim) Fisher. In connection with his recent years, work with the Alaska Legislature, Jamie has developed a written set of "vignettes" about Alaskans helped by the day-to-day efforts of ALSC with and without litigation. Here are a few of them, paraphrased by me.

• A single mother was locked out of her apartment by her landlord, in violation of the law. She and her daughter were prevented from removing any of their possessions from the apartment, including the child's school books. ALSC notified the landlord of his legal obligations, and convinced him to remove the lock to allow the woman access to her possessions.

• A senior citizen commercial fisherman suffered some health problems, which, combined with several poor fishing seasons, caused him to default on his fishing vessel loan. ALSC negotiated a settlement with the lending institution to allow the man to retain use of his boat and, thereby continue to earn a living.

• A young mother of four children had separated from her husband, who had physically and emotionally abused her throughout their marriage. He filed for divorce and sought custody of the children. ALSC cooperated with several social service providers, enabling the woman to get counseling and educational services. At trial, ALSC obtained a satisfactory joint custody arrangement.

The compilation of vignettes continues with examples of people with health problems, employment problems, family problems, landlord problems, and a variety of life-disturbing difficulties the intensity of which are lost in a simple list such as this.

...the LSC and the basic legal services system survive. But the battle continues.

• A woman confined to a wheelchair due to multiple sclerosis applied for, and was denied, Supplemental Security income benefits. Without the SSI benefits, she was unable to obtain adequate housing. ALSC convinced the Social Security Administration to reconsider its initial decision, avoid the lengthy appeal process, and provide assistance enabling the woman to improve her housing and increase her level of security and independence.

The Congressional and legislative assaults on the legal services delivery system may be motivated in part by an element of "lawyer bashing." But it is people like the ones just described who are hurt most by those attacks.

How to discover computerized records

By Joseph L. Kashi

In the July-August 1996 edition of The Alaska Bar Rag, we discussed general legal questions affecting the discovery of computerized records. Now, we'll suggest how you might approach actually discovering computerized records.

Before you begin on-premises electronic media discovery (EMD), you must establish enough technical information about your opponent's computer systems and record systems so that you can ensure your on-premises inspection is thorough and complete. You may only have one Rule 34 premises inspection, so you had better be thorough.

An electronic media discovery battle plan

As computer records become increasingly central to business documentation, it's become crucial that both your client and the opposing party preserve the original state of easily mutable data files as soon as you become aware of the potential for litigation. Courts have become quite irritated with parties that fail to promptly make immediate and reliable archival copies of any data possibly related to imminent litigation. Put your opponent upon notice that you insist that two complete and verified copies of all possibly related data be archivally preserved on backup tape or other suitable media as soon as litigation threatens. Be sure that you inform your own client to do the same or you and your client will likely be sanctioned under Rule 37.

Plan computerized discovery very early in litigation. Before you enter the premises, establish through prior interrogatories and depositions of the MIS director or person maintaining the computer system at least the technical information suggested below. Not all of the suggestions made here are applicable to each and every case. I've provided a list of technical questions to answer before you start EMD. These same suggestions apply in the reverse where your client must comply with electronic discovery, preserve data records and yet protect itself.

Consider requesting EMD as soon as the case has begun or at least put your opponents upon notice of possible spoliation concerns prior to beginning litigation. Otherwise, those crucial documents and backup tapes may be irretrievably overwritten during the ordinary course of information system operation.

Agree to computer discovery ground rules

Because of concerns about the admissability of easily altered computerized records, it's necessary during discovery to lay a careful foundation for the authenticity and prior protection from alteration of any computerized records that are discovered from your opponent. Due to increasing limitations upon the number of initial interrogatories and depositions allowed as a matter of right, foundational questions and discovery of technical specifications deserve careful attention when first planning your discovery if you believe that EMD will become important.

Request opposing counsel to ensure that the respondent's initial dis-

continued on page 12

SOLICITATION OF VOLUNTEER ATTORNEYS

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

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

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

Second District:
Tom Mize
604 Barnette St. Rm 210
Fairbanks, AK 99701-4576
(907) 451-9251

Third District:
Al Szal
825 W. 4th Ave.
Anchorage, AK 99501-2083
(907) 264-0415

Fourth District:
Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701-4547
(907) 452-9201

Juris Prudence

Internet decision

"Any content-based regulation of the Internet, no matter how benign the purpose, could burn the global village to roast the pig." So wrote federal Judge Dalzell last month in a decision rejecting congressional legislation designed to regulate "indecent" material on the global computer network.

The three-judge panel of the U.S. District Court in Philadelphia unanimously issued a preliminary injunction blocking the federal government from enforcing the Communications Decency Act provisions of the 1996 federal telecommunications reform law. A group of approximately fifty corporations, public interest organizations and trade associations (including the American Library Association) brought the combined lawsuit challenging the legislation.

The stated purpose of the law is to protect children from sexually explicit content on the Internet. One provision of the Decency Act criminalized the transmission to minors of "indecent" or "patently offensive" material, without expressly defining those terms. Another provision sought to limit on-line discussion of abortion. The federal district court found the law both overreaching and unconstitutionally vague in its approach.

The Internet was judicially characterized as a "never-ending, worldwide conversation" and "the most participatory form of mass speech yet developed." Consequently, in a 200 page decision, the federal district court declared that the Internet deserved the highest First Amendment protection from government intrusion and censorship.

The Clinton Justice Department reportedly will appeal the ruling to the U.S. Supreme Court. If upheld, the decision offers sweeping protection to Internet communication (and on-line businesses) from government regulation — perhaps greater than that afforded the press. On-line users may ultimately enjoy greater protection against libel suits than newspapers or magazines.

The lower federal court noted that, unlike radio or TV, communication over the Internet doesn't invade one's home or computer screen but must be sought out. Internet content is seldom encountered by accident. For that matter, indecent or patently offensive speech is not necessarily "obscene". Both categories are much broader than the U.S. Supreme Court's legal definition of prohibited obscenity. Indecent material, on the other hand, receives some First Amendment protection.

In an unrelated, yet relevant, case, the U.S. Supreme Court has recently ruled on a question of regulation of commercial speech in the form of cable

Daniel Patrick O'Tierney

television programming. The high court confronted provisions of the 1992 federal Cable Act intended to protect children from indecent programming on cable channels leased to local groups or set aside for public access for educational and governmental use. The three provisions of the law at issue are known collectively as the Helms Amendment (after Sen. Jesse Helms, R/NC).

Six different opinions were written by Supreme Court Justices and none of them commanded a majority. In multiple, splintered decisions, the Court upheld a provision that encouraged (but did not require) cable operators to prohibit indecent (read: pornographic) programming on leased access channels.

However, the Court struck down a provision that requires operators who choose to allow indecent programming to block it for all but those viewers who request it in writing because less intrusive alternatives exist, e.g. individual viewer use of the v-chip screening device. Similarly, a provision that encourages cable operators to ban indecent material on public access stations was also rejected because it threatened to cause censorship of controversial shows on health, politics and art.

Unlike the Internet case outlined above, the Supreme Court plurality opinion by Justice Breyer did not endorse a categorical legal analysis skeptical of any restriction on speech such as cable programming content. There was not the sort of sweeping language used by lower court Judge Dalzell in declaring the anti-cybersmut law "repugnant to First Amendment principles". Nevertheless, the Supreme Court's cable decision sheds minimal light on how the high court will rule on Internet speech when that matter inevitably comes before them.

Meanwhile, welcome to the developing law of cyberspace. Because the Internet doesn't exist in any fixed place or jurisdiction, it is also raising new legal issues concerning privacy, copyright and trademark laws that are stretching existing analysis and structures. More on all that in another column. For now, let it be known that the Cyberspace Law Institute has been founded, a kind of virtual legal think tank, dedicated to explore legal issues on the Internet (http://vmag.law.vill.edu:8080). Check it out.

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Estate Planning Corner

Direct skips *vs.* taxable distributions & terminations

There are three types of transfers subject to the generation-skipping transfer ("GST") tax—the direct skip, the taxable distribution, and the taxable termination. They differ not only in form but also substantively in terms of tax payable.

The direct skip is a transfer subject to gift or estate tax by an individual to another who is two or more generations younger (IRC Sec. 2612(c)(1)). The transferee, the individual two or more generations younger than the transferor, is known as a "skip person" (IRC Sec. 2613(a)(1)). A trust may also be considered a skip person if, in general, all interests in the trust are held by skip persons (IRC Sec. 2613(a)(2)).

The most common example of a direct skip is a transfer by a grandparent to a grandchild. For example, consider a child in need of financial assistance. Both her parents are alive but are unable to assist, so her grandmother helps by paying the grandchild's rent and other, non-medical expenses in excess of $10,000 per year (IRC Sec. 2503(b) and 2642(c)). Here the payments would be considered direct skips for purposes of the GST tax.

The second type of transfer is the taxable distribution (IRC Sec. 2612(b)). This transfer is made by way of a trust to a skip person—that is, to a beneficiary two or more generations younger than the person who contributed the property to the trust (Treas. Reg. Sec. 26.2654-1(a)(2)). For

Steven T. O'Hara

example, suppose the grandmother in the above example creates and funds an irrevocable trust that includes her children and grandchildren as beneficiaries. Suppose the trust then begins paying the grandchild's rent. Here the rent payments would be considered taxable distributions for purposes of the GST tax.

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

Although the assignment of generations for GST tax purposes is not limited to relations by blood or law, an exception to the definition of a direct skip is limited to family relationships. This exception provides, in general, that if a grandparent makes what would otherwise be considered a direct skip to a grandchild, and that grandchild's parent (who is the child of the grandparent) is then deceased, the transfer will not be considered a direct skip for GST tax purposes (IRC Sec. 2612(c)(2)). In other words, under this predeceased-parent exception, the grandchild is bumped up into his parent's generation, but only under direct skips.

An advantage of direct skips over taxable distributions and terminations is the predeceased-parent exception. Thus in drafting wills and trusts, the drafter should consider designing the documents so that grandchildren take by way of direct skips (See generally Treas. Reg. Sec. 26-2612-1(f)(examples 6 and 7)). In addition, consideration should be given to providing in the documents that any descendant who dies within 90 days after the transferor's death shall be deemed to have predeceased the transferor. Under the GST tax regulations, if a child dies up to 90 days after his parent's death, the child's children will be bumped up to the child's generation for direct skips if either the governing instrument or applicable law provides that the child is treated as predeceasing his parent (Treas. Reg. Sec. 26.2612-1(a)(2)(i)).

Another advantage of direct skips over taxable distributions and terminations is that like the gift tax, the GST tax on direct skips is determined on a tax-exclusive basis—that is, the amount subject to tax is the value of the property received by the skip person (IRC Sec. 2623). Just as the donor of a taxable gift is obligated to pay the gift tax, so the transferor of a direct skip (other than a direct skip from a trust) is obligated to pay the GST tax (IRC Sec. 2603(a)(3)). Even though the transferor of a direct skip is personally liable for the GST tax, and thus his payment of the GST tax satisfies no one's obligation other than his own, any taxable gift that is a direct skip is increased, for gift-tax purposes, by the amount of the GST tax paid (IRC Sec. 2515).

In the case of a taxable distribution, the skip person is liable for the GST tax, and the tax base for determining that tax is, in general, the value of the property received by the skip person without any reduction for the GST tax payable (IRC Sec. 2603(a)(1) and 2621(a)). An income tax deduction is provided, however, to the extent GST tax is imposed on a distribution of income (IRC Sec. 164(a)(5)). Since the transferee of a taxable distribution is personally liable for the GST tax, payment of that tax by the trustee is considered an additional taxable distribution (IRC Sec. 2621(b)).

In the case of a taxable termination, the tax is also determined on a tax-inclusive basis, with the amount subject to tax being, in general, the value of all property with respect to which the taxable termination occurs (IRC Sec. 2622). In the case of a taxable termination, as well as in the case of a direct skip from a trust, the trustee is liable to pay the GST tax (IRC Sec. 2603(a)(2)). An example of a direct skip from a trust is where a decedent gives his property to his surviving spouse through a so-called QTIP trust and, on her death, the property goes to a grandchild. Here the property is included in the surviving spouse's gross estate on her death and then a direct skip is considered to have occurred (Treas. Reg. Sec. 26.2612- (1)(f)(example 5)).

Clients may wish to use direct skips in their plans in order to use the predeceased-parent exception and a tax base that excludes the GST tax payable. On the other hand, in the case of a direct skip the GST tax is incurred immediately. By contrast, with a future taxable distribution or termination, the GST tax is deferred until either of those events occurs. Moreover, as discussed in previous issues of this column, the GST tax may be avoided altogether if the distribution from the trust pays a skip person's uninsured medical expenses or tuition at an educational organization, since such payments are not considered transfers for GST tax purposes (IRC Sec. 2611(b)(1)).

Lecture scheduled September 19

The Cook Inlet Historical Society presents a public lecture on "the Historical Significance of the Sheffield Impeachment," at 7:30 p.m. on Thursday, Sepember 19 at the Anchorage Museum of History and Art. Panelists include Dan Hickey, Chief Prosecutor of the case; John Conway, Governor Sheffield's personal attorney; Tim Begich, author and political commentator; and John Havelock, former Alaska Attorney General, acting as moderator. There is no charge for this program. Call the Anchorage Museum at 343-4326 for more information.

Getting Together

Field guide to mediation

At the 1992 conference of The Academy of Family Mediators, I went to a workshop on forgiveness, presented by mediator Barbara Ashley Phillips, It was about as touchy-feely a workshop as they get, in a field that is noted for its touchy- feeliness. Although I enjoyed the workshop enough to order Phillips's new book, I must admit to having been amazed that (rather than being the New Age tract that I expected), it is a straightforward and well-written guide to mediation, especially in commercial mediation settings.

Phillips is a Yale Law grad and experienced commercial mediator. She was an early pioneer in the application of mediation to business disputes. She founded American Intermediation Service in San Francisco in the early 1980s. She has taught law school, teaches negotiation and mediation skills, and does consultations on settlement negotiation strategy and design. She currently resides in Halfway, Oregon. Her book is titled *Finding Common Ground - A Field Guide to Mediation,* Hells Canyon Publishing, 1994.

Phillips begins by giving away "the big secret" of the practice of law: No matter what the dispute is, it is very likely to settle. Ninety percent of cases never reach the courtroom. Phillips asserts that this fact demonstrates that Americans are passionately determined to resolve their own disputes, despite the largest and most expensive lawsuit industry in the world. Litigation is not trial; litigation is preparing for a trial that 90 percent of the time will not happen.

And litigation is not working for us any more, Phillips asserts. Litigation turns lawyers into "legal gladiators," it leads to "lit-think", which escalates rather than resolves disputes. It is much better to think of litigation as a tool, Phillips asserts, one of several ways by which disputes can be resolved. Another tool which is available, and one that is often faster, less expensive, and more satisfactory to the parties, is mediation.

Phillips then tells two stories about the transformative power of mediation. The first involved class action racial and ethnic discrimination suit that was pending for 13 years. Two experienced and respected litigators came into the mediation sessions convinced of the rightness of their cause and that settlement was impossible because of the unreasonableness and intransigence of the other side. During three days of mediation, over a month-long period, the mood shifted from hopelessness to bare civility to cautious optimism, The case did settle, a fact which the mediator attributed in large part to the fact that she was able to touch both lead counsel on a personal level.

Drew Peterson

The second story involved a mediation between a foster mother and a 17-year-old foster son. All the substantive issues of establishing ground rules dissolved when the mediation allowed the two individuals to connect with each other at the level of mutual respect. What appeared to be issues in dispute turned out to be nothing more than symptoms of a much larger need to transform a personal relationship.

The book goes on to discuss specific strategies for facilitating peaceful resolution to disputes. Phillips asserts that the cornerstone to mediation is the awareness of the fact than in all likelihood the matter will settle. The focus should thus be to generate a discussion about how to manage the dispute to get the fairest possible resolution at the earliest possible stage. Techniques for bringing an unruly lawsuit to a negotiated resolution include:

• *Do the most critical discovery first.* The discovery materials needed to reach a fair negotiated resolution of a dispute are much less extensive than what is necessary to bring the case to trial.

• *Be passionate in pursuing a negotiated resolution.* You can be passionate in pursuing settlement without ever needing to stoop to compromise. Negotiate to obtain the information that you need to enter into a wise and fair settlement.

• *Avoid a battle of the experts.* Nothing exacerbates more litigation than two so-called experts, paid by the hour. Negotiate for a neutral expert who will provide a fair hearing to both points of view of the dispute.

• *Manage the case strategically.* Affirmatively manage the case in the best interests of your side, without letting the case manage you.

Phillips also notes some of the more common attitudes which can impede resolution, like:

— Asking for more than satisfaction.

— Loss aversion. Focusing so intently on something that we underestimate our gains.

— Believing our own puff.

— Knee-jerk reactivity.

Accepting personal responsibility for being part of the problem is a first step in securing a resolution of that problem.

Phillips next discusses the impact of lawyers on the dispute resolution. She distinguishes between lawyers as soldiers, lawyers as counselors-at-law, and lawyers as storytellers. Phillips delineates a number of ways by which lawyers can make mediation productive, by leveling the playing field between the parties. An entire chapter is devoted to the selection of a lawyer to assist in the mediation process.

Phillips then looks at evaluating mediation from an advocate's perspective. There are many advantages to the mediation process. Mediation is personal; it is safer in making close calls, and it can be used to showcase important evidence that you want the other side to know about your case. Almost anything is mediable, and while early mediation usually works best, late mediation also can be successful.

In a chapter about selecting a mediator, Phillips asserts that one of the most overlooked roles of a mediator is that of convening the parties. She asserts that the best conveners are successful 80 percent of the time in getting parties to the bargaining table.

Good mediators have several things in common. They are good information gatherers, impartial, empathetic, persuasive, good at managing distraction in the mediation setting, and good at helping the parties to generate options.

They need to be adept both at managing the information coming out in the mediation and at strategically directing the mediation process. Phillips imparts two critical pieces of advice to mediators, to "first, do no harm," and to "never work beyond the parties' level of trust."

Phillips then provides practical tips on mediation, in separate chapters to the mediator, and to the client or attorney of the client engaged in a mediation process. She also has separate chapters focused on mediation of employment matters, including wrongful discharge and sexual harassment issues; contract disputes; and community and public policy disputes.

Phillips concludes her book with a general discussion of peacemaking. She asserts that there are three fundamental strategies for making peace on a day-to-day basis, whether between nations, in commerce, or within families. These strategies are to 1.) keep talking, 2.) speak from the heart; and 3.) be respectful of others. Only by walking mindfully in the path of peace in our personal and business lives can we hope to restore peace and harmony to the planet. Barbara Phillips has written a wonderful book to help us find such a path in our roles as advocates as well as in our personal lives.

Becoming Alaskan

Becoming Alaskan I: First Gun

I have bought a gun:
I will hang heads of animals
On one room's walls
And call it a den.
I will try to shoot straight
At vital organs
And not let maimed game
Escape into brush.
I will keep the gun hidden
From my young son,
But someday teach him
How to shoot, someday
Give him the gun.
Meanwhile we will eat lean meat
From young bull moose
Killed in early fall
Under yellow leaves
Without pain.

—Fairbanks Anonymous

Becoming Alaskan II: Used Snowmachine

So we bought the snowmachine
Finally, after much debate
Over life-style, long-term plans.
We looked it over carefully,
As if we would recognize
A worthy snowmachine, as if
We knew just what we were looking for;
Then haggled some, in the summer heat,
Slapping mosquitoes, quoting bluebook,
Shaving an edge off a fair price.
In Massachusetts I remember
Farmers strung up waist-high wire
Across gaps in their stone walls.
Some drivers didn't slow, and died.
A skier, I understood the wires,
And approved the lines they drew
Against trespass, speed, and noise.
Now we will be making noise
And leaving tracks, but we will still
Approach our old walls slowly.

— Anonymous Interior Bard

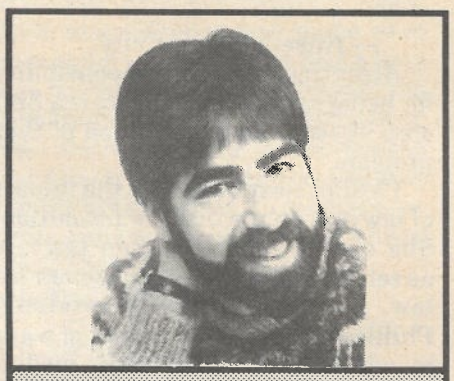
Family Law

Survival skills for family law practitioners

Attorneys who practice in the area of domestic law face a challenge. Most family law lawyers work in small firms with few lawyers, and the ability to retain clients who pay their bills is crucial to the firm's survival.

This article explores strategies to aid the family law practitioner in balancing the desire for legal work with the need to meet overhead, assure cash flow, and maintain a thriving practice.

A named partner in one of Alaska's largest law firms once told me that he would rather be flying than working for clients who don't pay their legal fees. When I left that firm and started my own practice, I was eager to perform legal work, and I believed that if I kept busy practicing law it meant that I was a success.



Steve Pradell

The role of a lawyer is to help people, and it is hard to turn down anyone who asks for help. An entire accounting department at my prior firm had made bill collection someone else's responsibility. I soon learned that despite my good intentions, as a solo practitioner I would need to have cash up front to pay my overhead and a means of collecting from existing clients so that I would stay afloat. I also learned the hard way. My most demanding client during the first year on my own ended up filing bankruptcy after owing many thousands of dollars in legal fees and costs. Since that time, I have developed habits designed to maximize my chances of recovering costs and fees for legal work performed.

I'll share some of them with you.

• *Finding good clients starts before a consultation begins.* If you charge a nominal consultation fee and the client balks when your secretary mentions it on the phone, this may be a good indicator that your client will have problems paying your bill. If a potential client has already hired and fired other lawyers, you should find out why this occurred. Call your colleagues and determine whether a fee is owed and to determine if the former lawyer is now involved in litigation against your potential client to collect the bill.

• *Training a client to pay your bill begins with the first contact with your secretary*, and continues during the initial consultation. Inform the client at the first meeting of the importance of paying the bill on time. Requiring a retainer prior to the start of representation is almost a necessity. Clients who promise to turn over their dividends to you down the road or who want to make small payments from the start can cause problems. It is much easier to file an entry of appearance than to ask to withdraw in a heated custody case once you have become counsel of record in the case and your client owes you a great deal of money.

• *Make certain that all clients sign a detailed retainer agreement* which clearly puts the fee and the retainer amount in writing. This agreement is required if you later find yourself before the fee arbitration committee or in a lawsuit against your client for fees. Send out a bill regularly on a monthly basis, and monitor your bills to insure that clients are not failing far behind in their payments. If you don't act like your bill is important, the client will assume that you don't care if payment is made, and your invoice will sit at the back of the stack of bills.

• *Be careful how you approach clients who owe you fees.* Lawyers are subject to the Fair Debt Collection Practice Act, found within Title XV of the US. Code, Subchapter V, Sections 1692. *See Heintz v. Jenkins,* 115 S.Ct. 1489. Lawyers have fewer rights than others in collection of debts. For example, it may be an ethical violation for you to have a collection company place your unpaid fee on a client's credit report. A look at the disciplinary rules, fee arbitration provisions and the ethics opinions of the Bar Association should occur before your first client walks in the door. Many problems may be eliminated if the client knows in advance through a well drafted fee agreement what will be required regarding the payment of costs and fees.

• *Follow up on unpaid bills with phone calls and letters to remind clients that fees are due.* Some practitioners now take credit cards to allow clients to pay their bill to third parties in small amounts. The downside of this is that credit card companies routinely charge large fees for their services, normally a percentage of the amount charged. If a client gives a retainer on a credit card and later changes her mind about representation, it is possible that you will pay a fee on charges which you have refunded fully to the client.

Some experienced attorneys will hold onto the initial retainer and bill the client monthly, separate and apart from this up front fee. If the client does not pay the monthly statements, the attorney will attempt to withdraw from the case and use the funds from the retainer to pay the final bill. This method may insure payment; however, some clients may be unable to come up with large sums of cash up front and leave them in your trust account indefinitely.

This article only touches the tip of the iceberg in discussing these issues. But attorneys have the best chance of staying in business if they:

• require retainers in advance;

• fully describe the fee agreement both at the initial consultation and in a detailed, signed fee agreement;

• and continue to monitor the payments of their clients and follow up with invoicing, phone calls and letters.

Immigrant violence victims: The untold story

On May 7, 1996, Mariella Batista, a Cuban immigrant, was shot to death by Felipe Mirabel, the estranged father of her 9-year-old son. According to newspaper articles, Batista was murdered on the steps of the Riverside County family law court building. She was with her son and on her way to a custody hearing involving him when Mirabel grabbed the boy, kissed him, then shot Batista as she tried to run away. Sheriff's deputies ran out of the court building and shot and killed Mirabel.

The murder of Mariella Batista has focused national attention on the plight of immigrants who are married to a United States citizen or a lawful permanent resident and are the victims of domestic violence.

In 1994, Congress enacted the Violence Against Women Act to comprehensively respond to the epidemic of violence that women face in their homes, their places of employment, and in the streets.

One of the issues addressed by the legislation is the remedies available to immigrant victims of domestic violence.

In the spring of 1996, the Immigration and Naturalization Service adopted administrative regulations to comply with the federal statute. The regulations radically change the options available for immigrant victims of domestic violence who are married to a United States citizen or a lawful permanent resident. Such victims no longer need to rely on the support or assistance stance of their spouses in order to receive certain immigration benefits, such as permanent residency in the United States.

One of the most powerful tools that abusers can use to control their immigrant spouses, and prevent them from leaving an abusive relationship, is the threat of deportation.

The murder of Mariella Batista has focused national attention on the plight of immigrants who are married to a United States citizen or a lawful permanent resident and are the victims of domestic violence.

It is imperative that attorneys know the immigration remedies available to immigrant victims of domestic violence so that victims have the most options available to them. For instance, the issuance of a divorce decree can make it more difficult for an immigrant battered spouse to remain in the United States, even if she or he has United States citizen children.

It is also imperative that the legal community be willing to provide pro bono representation to immigrant victims of domestic violence. Often, immigrants who are married to United States citizens or lawful permanent residents rely exclusively on their spouses for financial support. If they leave the abusive relationship, they not only lose access to that financial support, but they are also unable to receive public benefits and may be prohibited from working due to their immigration status.

Legal services programs are currently prohibited from providing assistance to most immigrants because of recently enacted federal legislation. A week prior to her death, Batista had requested legal assistance from Inland County Legal Services Corp. She was denied representation because of her immigration status, even though she was lawfully in the United States and less than a month away from an interview with immigration authorities for lawful permanent resident status.

The legislation, which not only cut the legal services' budget but also restricted the type of clients that legal services programs can represent, was an amendment to the 1996 budget bill that President Clinton signed on April 26. All federally funded agencies are barred from providing any kind of legal assistance to most immigrants.

In Alaska, Catholic Social Services, an umbrella organization that provides a variety of crisis intervention services, is the only agency that provides immigration assistance to low-income immigrants. Edward Cordova has been the director of the Immigration and Refugee Services Program for the last eight years. He, along with the assistance of Margaret Perez, provides legal assistance to approximately 700 immigrants per year. More than 80% of the clients are involved in administrative or judicial immigration proceedings, including requests for asylum and for suspension of deportation. In September, Robin Bronen, a former staff attorney at Alaska Legal Services, will begin work at Catholic Social Services as the new Director of the Immigration and Refugee Services Program. She and Mr. Cordova will be working together until Mr. Cordova retires in December 1996.

To inform interested individuals of the recent and radical changes to the immigration regulations, Catholic Social Services and the Immigration Section of the Alaska Bar Association are organizing an Immigration CLE on October 24, 1996.

The CLE will provide information about the immigration remedies available to immigrant victims of domestic violence as well as information regarding the changes in immigration law that impact immigrants in the midst of criminal proceedings.

Faculty members are Ann Benson, a former immigration attorney in Alaska who currently works at the Northwest Immigrant Rights Project in Seattle; Judge Kenneth Josephson, the only immigration judge who presides over hearings in Alaska; and Leslye Orloff, the Program Director of AYUDA, a Washington, D.C. legal and social service program for low-income Latina victims of domestic violence.

Immigrant victims of domestic violence face a number of challenges which are often compounded by the fact that they speak little or no English and are far away from friends and family. To ensure that they have the most options, it is critical that they know the immigration remedies available to them.

—Robin Bronen

First Annual Immigration Law Seminar

Recent & Radical Immigration Law Changes:
What Every Criminal Law & Family Law Lawyer Needs to Know

Thursday, October 24, 1996
8:30 a.m. - 12 noon
Hotel Captain Cook, Endeavour Room
3.75 CLE Credits

Faculty: **Judge Kenneth Josephson**, Immigration Judge
Executive Office for Immigration Review, Seattle, Washington
Ann Benson, Staff Attorney
Northwest Immigrant Rights Project, Seattle, Washington
Leslye Orloff, Director of Program Development
AYUDA, INC., Washington, D.C.
Margaret Stock, Moderator
Atkinson, Conway & Gagnon

Who Shoud Attend:
- Family Law/Criminal Law/Immigration Law Practitioners
- Shelter Advocates
- Any person who provides assistance to victims of domestic violence
- Judges who deal with criminal immigration issues and divorce, idssolution and child custody issues

If you represent non-citizens, you need to attend this CLE. Learn how to comprehensively represent your client by knowing all the ways litigation can impact their status. Just because your client has a green card doesn't mean they may not be deported or lose their rights.

TOPICS:
- Radical Changes in Immigration Remedies for Criminal Aliens
- Discussion of AEDPA Changes
- View from the Bench
- Immigration Remedies for Victims of Domestic Violence

Registration Fee: $50
Call the Alaska Bar Office at 907-272-7469/fax 907-272-2932 to register.

NEWS FROM THE BAR

Board approves young lawyer project, dues reduction, and '97 convention site

At the Board of Governors meeting on August 22 & 23, 1996, the Board took the following action:

Adopted a new lawyer liaison pilot program at the request of the Young Lawyer Section of the Anchorage Bar Association and appointed Rob Stone as the first New Lawyer (nonvoting) Liaison.

Amended the bylaws to allow a 70% dues reduction for lawyers who provide 400 hours or more of pro bono service annually.

Voted to publish an amendment to the bylaws which would change the name of Substance Abuse Committee to the Lawyer Assistance Committee

Voted to propose to the supreme court an amendment to Bar Rule 26(h) regarding appeals from recommendations of the Substance Abuse Committee.

Adopted the ethics opinion entitled "Ethical Issues, If Any, Raised by the Use of an 'Attorney's Representation' Form in Conjunction with the Executive of Release Agreements."

Voted to reject the ethics opinion entitled "Ethical Considerations Regarding Time Barred Claims and Disclosure to Opposing Party and Court that Statute of Limitations Has Run."

Voted to certify for admission the reciprocity applicant James Decker.

Voted that an applicant from a non-ABA approved law school was eligible to take the February bar exam based on her five years of practice.

Voted to hold the 1998 convention at the Alyeska Prince Hotel in Girdwood, and that the board meeting immediately preceding that convention will be held in Anchorage.

Voted to continue to hold conventions through at least 1998, and requested that the special committee on the future of Bar Conventions report to Board at the January meeting

Rejected a stipulation for discipline and indicated that the stipulation did not provide for enough suspension time and that some Board members felt the attorney should be disbarred.

Dismissed a stipulation for discipline.

Adopted the recommendations of the Lawyers' Fund for Client Protection committee.

Voted to publish an amendment to Bar Rule 48(a) which would provide for at least 6 members on the Lawyers' Fund for Client Protection committee.

Suggested that the Standing Policies of the Board of Governors be amended to encourage the President to appoint new lawyers to Bar committees.

Directed the Executive Director to write to Karen Jennings that Board appreciates her comments regarding the Lawyer Referral Service, but that they took no action.

Asked the Executive Director for information at the October meeting on how many people have dropped off the Lawyer Referral Service since the fee increase and in particular, the number who have dropped the SSI panel.

Approved the May minutes as corrected.

Referreded ARPC 1.4 to the Alaska Rules of Professional Conduct committee with directions to draft a rule providing for notification of clients if the attorney does not have malpractice insurance, including procedures to implement 1.4, (how made, when made, contents of notification required), and to notify the Small Firm committee members of the proposal.

Approved a Stipulation for a reprimand, publicly imposed, and included as conditions that the attorney take the Mandatory Ethics course, watch an ALPS video on ethics, and continue treatment with her counselor for 6 months.

Proposed an amendment to Bar Rule 28(g) to allow public reprimands and public censures to be published in a newspaper of general circulation.

Approved a Stipulation for discipline by majority vote.

Voted to send Bar Rules 11, 13, 15, 39 &, 40 relating to mediation of disputes between attorneys and clients to the supreme court .

Voted to publish ARPC 1.7(a) & 1.8(e) in the Bar Rag.

Denied a member's request for a dues waiver.

Approved the requests to go back on active status of Kevin Carey, Paul Cossman, Mary Kancewick, Jim Kentch, Don Logan and Christine Smith.

Comments sought concerning proposed amendments

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

The recommended change to **ARPC 1.7(a)** would change the general conflict of interest rule for current clients from its present form back to the form originally suggested by the American Bar Association in the Model Rules of Professional Conduct.

As presently worded, the Alaska version of ARPC 1.7(a) would technically permit a lawyer who represents Institutional Landlord in an rent dispute with Tenant to also represent Client Jones in a slip and fall case against Institutional Landlord because the two actions are not the same or substantially related.

The ARPC Committee feels that the language of the rule should be tightened back to the original version to prevent situations, such as this, where a lawyer's loyalties would be clearly divided.

ARPC 1.7(a)
PROPOSED AMENDMENT TO CONFLICT OF INTEREST: GENERAL RULE

(Additions italicized; deletions bracketed and capitalized)

Rule 1.7. Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client [IN THE SAME OR A SUBSTANTIALLY RELATED MATTER], unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and,

(2) each client consents after consultation.

The recommended change to **ARPC 1.8(e)** is a response to a referral from the Ethics Committee in response to a request from a member of the Bar. That member advised of his firm's preference to deduct the costs and expenses of litigation on behalf of a client as a business expense of the firm rather than having it treated as a nondeductible loan by the IRS.

As presently worded, the Alaska version ARPC 1.8(e) permits a lawyer to make the repayment of advanced costs and litigation expenses contingent on a recovery for a client and to pay such costs and expenses *outright* for an indigent client. The current rule does not permit the outright payment of costs and litigation expenses for a *non-indigent* client.

The ARPC Committee believes that lawyers should have the business option of paying these expenses outright if they so chose. The change is not intended to prohibit the current practice of advancing costs and expenses in contingent fee cases, but simply to give the attorney flexibility in the attorney's financial arrangements with the client. Whether paid outright or made contingent on recovery, the Committee believes that the terms for paying costs and expenses must be clearly stated in the fee agreement with the client.

ARPC 1.8(e)
PROPOSED AMENDMENT TO CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(Additions italicized; deletions bracketed and capitalized)

Rule 1.8. Conflict of Interest: Prohibited Transactions

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that[:

(1) A LAWYER MAY ADVANCE COURT COSTS AND EXPENSES OF LITIGATION, THE REPAYMENT OF WHICH MAY BE CONTINGENT ON THE OUTCOME OF THE MATTER; AND

(2)] a lawyer [REPRESENTING AN INDIGENT CLIENT] may pay court costs and expenses of litigation on behalf of the client.

The Board of Governors invites member comments concerning the following proposed amendments to the Alaska Bar Rules & Bylaws.

The Lawyers' Fund for Client Protection Committee has recommended a change to Bar Rule 48(a) to permit more than six persons to serve on the Committee.

As presently worded, Bar Rule 48(a) sets the size of the LFCP Committee at six members, no more—no less. The Committee believes that a better approach would be to provide for a Committee size of *at least* six members to give the President flexibility to add more members if warranted by the size of the caseload.

Finally, as a housekeeping matter, the proposal deletes transition language inserted for a change in the rule in the early 1980s.

BAR RULE 48(a)
PROPOSED AMENDMENT CHANGING SIZE OF COMMITTEE TO AT LEAST SIX MEMBERS AND HOUSEKEEPING CHANGE

(Additions italicized; deletions bracketed and capitalized)

Rule 48. The Committee.

. . .

(a) The Committee shall consist of *at least* six members of the Alaska Bar Association, appointed by the President, subject to ratification by the Board[, THE TERMS OF ALL PERSONS WHO ARE MEMBERS OF THE COMMITTEE ON JANUARY 1, 1980 SHALL EXPIRE ON JUNE 30, 1980, AND THE TERMS OF ALL SUCCEEDING MEMBERS OF THE COMMITTEE SHALL COMMENCE ON JULY 1, 1980. ON THAT DATE, THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A ONE YEAR TERM, THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A TWO YEAR TERM, AND THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A THREE YEAR TERM. THEREAFTER,] *E*ach appointment shall be for a three year term.

BAR RULE 26(i)
PROPOSED AMENDMENT CHANGING THE NAME OF THE SUBSTANCE ABUSE COMMITTEE TO THE LAWYERS' ASSISTANCE COMMITTEE

(Additions italicized; deletions bracketed and capitalized)

Rule 26. Criminal Conviction; Interim Suspension.

. . .

(i) Proceedings Following Conviction of a Crime Relating to Alcohol or Drug Abuse; Interim Suspension for Noncompliance.

(1) Upon receipt of a certificate of conviction of a crime relating to alcohol or drug abuse, other than a crime described in Section (b) of this Rule, the Court may, in its discretion, refer the matter to the [SUBSTANCE ABUSE] *Lawyers' Assistance* Committee of the Alaska Bar Association.

PROPOSED AMENDMENT TO BYLAWS, ARTICLE VII, SEC. 1 (A) (10) REGARDING NAME CHANGE OF SUBSTANCE ABUSE COMMITTEE TO THE LAWYERS' ASSISTANCE COMMITTEE

continued on page 11

NEWS FROM THE BAR

continued from page 10

(Additions italicized; deletions bracketed and capitalized)

Article VII. Committees and Sections

Section 1. Committees.

(a) Standing Committees.

(10) the [SUBSTANCE ABUSE] Lawyers' Assistance Committee whose members provide services to members of the Bar, their families or business associates when it appears a Bar member is suffering from substance abuse.

PROPOSED AMENDMENTS TO BAR RULE 37(c) & (e) RELATING TO PANEL SIZE BASED ON AMOUNT IN DISPUTE

(Additions italicized; deletions bracketed and capitalized)

Rule 37. Area Fee Dispute Resolution Divisions; Arbitration Panels; Single Arbitrators.

. . .

(c) Assignment of Arbitration Panel Members for Disputes in Excess of [$2000.00] *$5000.00*.

Bar Counsel will select and assign members of an area division to an arbitration panel (hereinafter "panel") of not less than two attorney members and one public member when the amount in dispute exceeds [TWO] *five* thousand dollars. In addition, Bar Counsel will appoint an attorney member as chair of the panel.

. . .

(e) Assignment of Single Arbitrator for Disputes of [$2000.00] *$5000.00* or less.

Bar Counsel will select and assign an attorney member of an area division to sit as a single arbitrator when the amount in dispute is [TWO] *five* thousand dollars or less.

ALASKA BAR ASSOCIATION ETHICS OPINION NO. 96-5
Ethical Issues, If Any, Raised By The Use Of An "Attorney's Representation" Form In Conjunction With The Execution Of Release Agreements

The Committee has been asked whether an attorney is ethically prohibited from signing an affirmation or representation concerning an attorney's advice to a client in conjunction with the execution of a release agreement. For purposes of this opinion, the Committee will assume the affirmation or representation reads as follows:

> I, [attorney], of Anchorage, Alaska declare that I am the attorney representing Releasor in the above-matter, and that I have carefully and fully explained the terms, provisions and effects of this release to Releasor, and that Releasor has represented to me that he/she believes they understand the terms thereof and significance of said terms.
>
> _____
> [Attorney]

In the Committee's view, there is no ethical prohibition to using this type of affirmation or representation. However, the Committee's opinion is confined solely to the form of affirmation cited above. There are, or may be, serious ethical issues raised if an attorney affirms, or is asked to confirm, matters which go beyond the scope of the sample form. Further, the use of these forms is a matter of negotiation between the parties and/or contract formation. The Committee does not express any view as to whether such forms are necessary or appropriate; its observations are limited solely to the ethical issues, if any.

DISCUSSION

At the outset, it is important to emphasize that an attorney representing a client called upon to execute a release agreement as part of a settlement has an ethical duty and obligation to do what is spelled out in the affirmation. *See* ARPC 1.1, 1.2, 1.3, and 1.4.

For instance, many releases incorporate by reference the decisions by the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) (release agreement is enforceable unless, at time of signing of release, releasor did not intend to discharge disabilities which were subsequently discovered) and *Young v. State,* 455 P.2d 889 (Alaska 1969) (release of one tortfeasor does not release other joint tortfeasors unless such tortfeasors are specifically named in the release.) A client reading the release agreement would have no knowledge or understanding of the import of these decisions, and although the client may understand the other terms and conditions of the release, there are matters addressed in the release which are simply beyond the ken of a lay person and which require an attorney to explain.

While a lawyer is not permitted to reveal information relating to representation of a client unless the client consents after consultation, ARPC 1.6 does allow "disclosures that are impliedly authorized in order to carry out the representation . . . ." In the Committee's view, an attorney signing an affirmation along the lines outlined above is "impliedly authorized" to make that representation. For instance, in the comment to the Rule, it points out that "a lawyer may disclose information . . . in negotiations by making a disclosure that facilitates a satisfactory conclusion."

However, an attorney cannot make a warranty regarding the client's state of mind when he or she signs a release, nor can the attorney categorically state that the client understands the terms and effects of a release. The attorney can carefully and fully explain the terms and effects of the release to the client, and the attorney can acknowledge the client's belief that he or she understands those terms and effects. Any affirmation or statement which purports to be a warranty by the attorney regarding the client's state of mind, or the client's understanding of the release, is inappropriate and does create a potential conflict between the attorney and the client which is unnecessary and probably violates the attorney's duties to the client under ARPC Rule 1.6 and 1.7(b).

If an attorney has fulfilled his or her ethical obligations to the client in advising the client about the execution of a release, that attorney will almost certainly be a witness in the event the client attempts to revive the subject matter of the release. In that event, the attorney who represented that client is necessarily implicated in the client's effort to overturn the release and, pursuant to ARPC 1.7(b), the lawyer could not ethically represent the client in that instance because his representation "may be materially limited . . . by the lawyer's own interests. . . ." The rule prohibits the attorney from going forward with the representation unless "the lawyer reasonably believes the representation will not be adversely affected." However that belief is very doubtful under the circumstance where the client is attempting to set aside the release because the lawyer has a strong interest in protecting himself or herself by proving that he or she gave proper advice to the client, and this testimony would not inure to the benefit of the client under any circumstance.

In conclusion, as long as the attorney representation merely acknowledges fulfillment of the attorney's obligation to explain the terms and effects of a release agreement, and an acknowledgment that the client "believes" he or she understands the terms and provisions of that agreement, the Committee believes there is no ethical constraint which would prevent the attorney from signing that limited statement. However, to the extent the attorney is asked to somehow warrant the client's state of mind, or the client's understanding of the release agreement, the attorney is being asked to potentially create a conflict situation with the client which is neither necessary nor desirable. It would be unethical for an attorney to make such a warranty under the circumstances, and it would be unethical to ask the attorney to make such a representation. *See* ARPC Rule 8.4(a). The Committee takes no view on whether the use of the form, as outlined above, is necessary or appropriate. This is a matter of contract negotiation between the parties. As long as the form is limited in its scope, the Committee believes there are no ethical constraints which would prevent the attorney from signing the statement.

Approved by the Alaska Bar Association Ethics Committee on June 6, 1996.

Adopted by the Board of Governors on August 22, 1996.

Clarification concerning Robert T. Price, disbarred lawyer

The July/August 1996 issue of the Bar Rag contained an article announcing that Robert Price was disbarred for misappropriating client funds from his law firm trust account. The disbarred lawyer is Robert T. Price, ABA Member Number 7504002, formerly of the Anchorage law firm of Groh, Eggers &, Price. The disbarred lawyer should not be confused with Anchorage lawyer Robert E. Price, ABA Member Number 6711032, who is a vice-president and general counsel of Bristol Bay Native Corporation.

•

Private discipline for lawyer who missed deadlines

Attorney X received a written private admonition for neglect. The case had already been delayed when Attorney X took it over from another lawyer. Attorney X compounded the problem by repeatedly asking for extensions of time. The court became increasingly frustrated with the extensions and discovery motions, and ultimately ordered the lawyer to file a witness list by a certain date. Attorney X missed the deadline by one day, and the court ordered that the name of any witness not on prior witness lists be stricken. Despite this clear warning that the court's tolerance was exhausted, Attorney X then filed an expert witness list weeks late, and the court precluded the testimony of any expert not on prior lists. Private discipline was appropriate because Attorney X had no prior disciplinary record, and because other circumstances indicated that the client was not harmed by the lawyer's conduct.

CLE Calendar
September - December, 1996

#12 September 23 3.0 cles	ALPS Professional Responsibility & Video Vignettes	Juneau Centennial Hall
#88 September 23 3.0 cles	**Mandatory Ethics for Applicants (NV)**	**Juneau Centennial Hall**
#88 September 25 3.0 cles	Mandatory Ethics for Applicants	Anchorage Hotel Captain Cook
#12 September 25 3.0 cles	**ALPS Professional Responsibility & Video Vignettes**	**Anchorage Hotel Captain Cook**
#48 September 26-7 10.0 cles	Art of Winning Before Trial (NV)	Las Vegas, Nevada
#12 September 27 3.0 cles	**ALPS Professional Responsibility & Video Vignettes**	**Fairbanks Westmark Hotel**
#88 September 27 3.0 cles	Mandatory Ethics for Applicants (NV)	Fairbanks Westmark Hotel
#20 October 31 4.5 cles	**Clients & Mediation: Who's Guarding the Henhouse? Representing Your Client Through Divorce Mediation**	**Anchorage Hotel Captain Cook**
#52 November 08 0.0 cles	Coffee with the Jury	Anchorage Hotel Captain Cook
#40 November 20 cles tba	**Non Profit Issues Part II**	**Anchorage Hotel Captain Cook**
#51 December 4 cles tba	Legal Research Skills/Technology	Anchorage Hotel Captain Cook
#10 December 13 cles tba	**Off the Record (NV)**	**Anchorage Hotel Captain Cook**

How to discover computerized records

continued from page 4

closure documents specify all pertinent electronic file names and locations. Further, you might agree with opposing counsel for reciprocal early disclosure of this information or move the court to allow additional interrogatories and depositions so that you'll have the technical information needed for your on-site visit. Alternatively, you can agree in writing to comprehensive ground rules disclosing the pertinent data files and application programs, specifying technical information, and delineating the means and methods of discovering computerized records before ever entering the premises. Such discovery ground rules might reasonably be done as part of the discovery plan in the pretrial conference and provide for the voluntary exchange of the information set out below, saving limited interrogatories and depositions to more substantive matters. Involve your computer expert heavily in drafting these ground rules. He or she will be the one who'll know what's needed and who will be limited by any lack of information. You might later do requests for admission regarding the authenticity of the discovered records.

USE A NEUTRAL EXPERT TO CONDUCT DISCOVERY

Unlike traditional paper-based discovery where we just examine the files, I believe that the best approach is to hire a neutral third-party computer expert to perform the on-premises electronic media discovery. This can either be a technically competent local computer store, a well-regarded systems integrator, or a major national consulting firm such as Arthur Anderson or Price Waterhouse. You need an experienced, credible expert: don't rely on your 20-year-old nephew who sells computers part time. Also, make sure that your proposed expert signs a non-disclosure agreement and has no other conflicts of interest with your opponent, such as working with the opponent's competitor, that might result in any suspicion that your retained expert misappropriated or redisclosed the data that they're collecting and analyzing for you.

CHOOSING AND USING A TECHNICAL EXPERT

Having established basic information about the responding party's computer system and how data is stored and used, we would then engage a third party general computer expert and, if necessary, a second person more deeply familiar with the particular operating system used by the computers where the data is actually stored. Be sure that your intended expert really can qualify as an expert at trial and is sufficiently competent that he or she will be a strong and credible witness. Get some prior references.

As a result of prior written discovery, we should already know what data and electronic mail files might be pertinent and what scheduled archival backup tapes could be used to track the evolution of, and changes to, any documents, data and electronic mail pertaining to the case.

Any retained computer experts should not physically touch the respondent's computer systems. Rather, they should direct the respondent's own employees to search for data, to restore and search older file versions, to observe any displayed results, and to obtain, protect and preserve authenticated copies of computer format data files and, where pertinent, printouts of any results.

By not directly accessing the system ourselves, we avoid any potential claims of evidence spoliation or of tampering and damage to systems or data. It is the responsibility of the respondent's technical employees and representatives to actually undertake the discovery operations requested by our experts, to protect their own systems and data, and to advise our experts if any requested operation is not safe or infeasible, and why.

When entering the opponent's premises, your computer expert should first confer with the opponent's resident or consulting computer expert in order to set ground rules about how to safely backup and examine the data in a comprehensible way and learn about any quirks or safeguards in the system that could possibly cause data damage. These should be reduced to signed, written operational procedures. Then, your expert can begin examining the data files one by one.

NEXT: Detecting fraud and an EMD checklist.

GHS announces new hire

The law firm of Gruenstein, Hickey & Stewart has announced the addition of a new member to its staff as assistant receptionist. The new hire, Ivy, will have principal responsibility for greeting clients, potential clients and other visitors to the office.

Ivy and her colleagues

"We believe that Ivy is uniquely qualified to greet all visitors," partner Peter Gruenstein said. "There is nothing quite like a wag, a lick and a look of utter servility to make a client feel at home."

"We believe that the retention of Ivy as assistant receptionist puts GH&S right at the cutting edge of modern law firm service. We expect other progressive law firms to follow Ivy's lead," Gruenstein added.

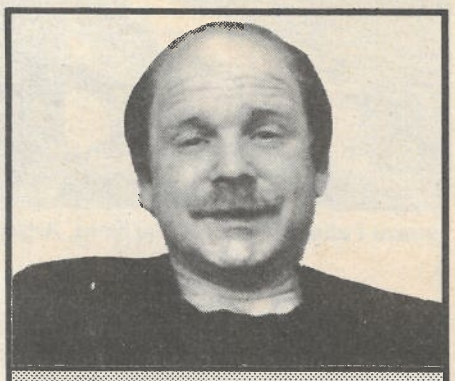
"One of Ivy's principal strengths," Gruenstein said, "is that she is completely indiscriminate in her affection." She even enthusiastically greets insurance defense lawyers, although he was quick to point out that she had not yet met Joe Huddleston.

Gruenstein also emphasized that Ivy would participate in the new client screening process. "Any potential client who does not respond to Ivy's by providing with a tummy rub, or at least a scratch behind an ear, will be scrutinized with particular care," he said.

Gruenstein said that Ivy would be working on upgrading her telephone answering and stamp-licking skills. He categorically denied reports that she was seeking a wage and hour attorney.

Tales from the Interior

Rolly



William Satterburg

It seems like every law office has its recurrent visitor, much like a warm fuzzy puppy, who has taken a liking to the firm. Mine is no different. I will call him Rolly (not his real name.)

Several years ago, I had the honor of meeting Rolly. As I recall, Rolly was in a somewhat inebriated state when he walked into the path of an oncoming vehicle. Recognizing that Marc Grober and I had once recovered a settlement in a case where a moose walked off the side of the road into a car and injured the driver, Rolly's case looked like a cake-walk. Of course, walking was somewhat difficult.

Eventually, we settled the claim, and our office took its standard third, with Rolly taking his standard fifth and then some. It was then that our relationship was born, similar to one drunk's love for another.

During the representation of Rolly, various events would develop. Perhaps the most memorable event pertains to a date during one warm Fairbanks summer, when all of us are prone to snooze a bit.

A client entered my office, in a rather concerned and agitated state. According to the client, in walking up the walkway to our office, he had to step over an individual who was sleeping peacefully on the pathway. Initially, the client thought that the other individual was dead. Examination by me, however, indicated that the adjective, "dead," pertained rather to the individual's state of intoxication, rather than state of life. True to form, it was Rolly, and he was simply enjoying a warm Fairbanks day at a period of time where I had taken inordinately too long to meet with a client and the effects of Rolly's anesthesia for the accident had taken over.

I returned to the office, and announced to my client that he had nothing to fear, that it was only Rolly, and that our office generally took no steps to interfere with our clients' constitutional freedoms of expression. Rolly didn't make his appointment that day, although he was present through the better part of the afternoon. I understand that the oak banister law firm from across the street chuckled more than once at my lawn ornament, which even imitated the little Roman boy in the fountain at one point.

After Rolly's case settled, he went his way for several months. Just about when I was growing to miss Rolly, he once again showed. Fond memories and old pennies have a strange way of doing that.

In this case, Rolly, recognizing that I had obviously a need for additional business and continued referrals, returned with many of his friends. In rather colorful language, first within my office and later on the lawn outside, Rolly explained to his friends my qualities as an attorney, waving his arms wildly and extolling my many successes, and indicating to them that if they ever had a problem, my office was the place to turn. Finishing his sermon, Rolly then turned to me and asked for ten dollars.

I explained to Rolly that the Bar Association ran a free lawyer referral service, and, although I appreciated his confidence in my abilities, I would prefer to rely upon the Bar Association's system. (In retrospect, maybe I should pay the ten dollars.)

Not to be undaunted, Rolly since has taken to visiting my office approximately once every week, where he finds comfort in a particular waiting chair.

Initially, I thought that he was

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The way we were

Edited by Russ Arnett

The following is a portion of a speech by John Hellenthal given September 26, 1979. John grew up in Juneau, the son of Simon Hellenthal who served as Territorial District Judge in Valdez and later, after the court was moved, in Anchorage. Simon's brother, Jack Hellenthal entered law practice in Juneau in the office of Judge Delaney in 1900. John entered practice in his uncle's law office in Juneau in November 1940. During World War II he served in the Army Infantry in the Pacific.

We had some great lawyers in Alaska. Great. Probably the most esteemed lawyer who was ever in Alaska was a fellow named John McGnn of Fairbanks. He was a brilliant little Irishman who spent his summers in Fairbanks, his winters in San Mateo. He made a great deal of money in law and in mining. He owned several mines in the Fairbanks area and he was wealthy, very wealthy. He had a mind like a steel trap. Everyone spoke of John McGinn as though he was the last word among lawyers.

We had another great lawyer, W.C. Arnold. He was appointed Commissioner—justice of the peace, and that is all that a Commissioner really was— in Hyder near Ketchikan and later he became a lawyer. He was the articulate spokesman for the canned salmon people and the mines. He and Faulkner controlled Alaska for a period of 20 years and there is just no question about it, but they did it subtly through Congressional committees and contacts in Washington. No Alaska control was exercised in Alaska. It all came out of Washington. Back room stuff always, and he was a master of it. I do not want to detract from him, but I often thought we probably would have had statehood 15 years earlier if he had devoted his talents to the statehood cause because he was a very brilliant man.

Of course young lawyers were different. I know my family, especially my uncle, was glad when I decided not to come home during the summers to Juneau when I was in law school. It must have been embarrassing to him because he represented the Alaska Juneau mine and I joined the union which he secretly supported. It had to be secret because in those days if you disagreed with the established interests you were through, because they would boycott you. It was strictly company towns throughout Alaska.

We had lawyers who were absolutely home grown. One in particular was a salesman in a liquor store. He studied law at night with Henry Wilson who was a very famous figure in Alaska history and a very brilliant man, dedicated, and he was no clown. He could talk up to the mining lawyers and make them listen. Finally he was admitted one afternoon. I can recall it vividly. The judge was drunk. He was a carpet-bagger from Portland. Everyone else was half drunk. He must have seen that something was wrong because he never practiced a day of law after that. He just became a lawyer and that was about it.

We had one fellow who was born in Juneau. His name was Grover Wooden. He came from the old Wooden family in Juneau. He was a nice fellow. Grover Wooden said something about being a cheerleader at the University of Washington, and he never got over it, either.

We even had a black fellow, Wadley. Very few people knew that he was black. He always wore a Prince Albert coat and he would parade around town in his Prince Albert. He very seldom took a case, but I am sure he gave a lot of advice and was a decent guy.

We had Ralph Albertson on the school board for years and years. He was a respected man, a very fine man, but strictly under the control of the "interests" as we used to call them in those days. It was an unhealthy thing.

When I first came to Anchorage in 1945 and opened a law office, the population was 6000. We had a fellow named Arthur Thompson who was a Harvard graduate, a very skilled lawyer but he had completely gone to seed. Although he was a lawyer here for many years, he never left his cabin but was a very knowledgeable lawyer regardless.

George Grigsby was another interesting lawyer. He had been an assistant United States Attorney in Nome when that fellow Noyes got into trouble and they removed him from his judgeship. He used to be the president of the Anchorage Bar Association. We would meet in strange places. We used to meet at Marie Cox's restaurant and poor Judge Dimond had to attend. He was uncomfortable because he had sent Marie to the Federal penitentiary for some morals charge. The "restaurant" had eight waitresses and no stove.

When Bill Renfrew organized the Bar Association convention most of the events took place at the Oasis nightclub. The lawyers were always kind of strange people and interesting. Most of them had their occupational hazard. They drank too much.

Another interesting character was an attorney general, a fellow by the name of Westgard. He came up here in the 20's and I can remember him well too. He launched an unsuccessful trust-busting enterprise in Alaska aimed at Alaska Steamship Company and whatnot. He was a loner. He was a Norwegian man, a very fine man. He used to play the violin in Juneau on Christmas eve and go all over town with his wife playing the violin around the houses. He was a very nice man.

Brazil

continued from page 1

Ruth De Silva, an African-Brazilian woman, is the pastor. The day care center serves more than 100 children, ages 2 to 6, primarily of unwed mothers. With children of all different colors, the classrooms are rainbows of humanity. Each child receives three meals a day with school and health activities. Church meetings include at least two on Sunday, and Tuesday and Thursday evenings. The gym is the only level playing area in the neighborhood and is heavily used late into the night. I gave them one of Ginny Espenshade's soccer balls and they gave me a standing ovation and a present. Watching the Olympics from the Brazilian perspective provided new insights.

Community Center in Rio Slum: Church, day care, kindergarten, gym-soccer, adult education.

Jose Luiz, the financial administrator, interpreted. He was attracted initially to the center by the soccer program...Over 250,000 live in Rocinha with only two public elementary schools. Missionaries Rev. Ed and Nancy Tims arranged my stay.

Also while in Rocinha, I made the mandatory trips to Sugar Loaf and the statue of Christ the Redeemer that dominates Rio and the Copacabana beach. Rio is a beautiful city with problems that come with a population of 6 million.

The Falls

Several hundred miles south of Rio, the Iguazu Falls dominate the border with Brazil, Argentina and Paraguay. We saw the falls from the Brazilian and Argentinean sides. Their magnificence was made even more so by walking trails and a boat ride up to the falls. I enjoyed the Brazilian coffee and Argentine beef. Just down the river is the largest hydroelectric project in the world at 12,600,000 kilowatts. In comparison, the Kenai Peninsula's Bradley Lake is a 120,000 kilowatt plant.

World Methodist Conference

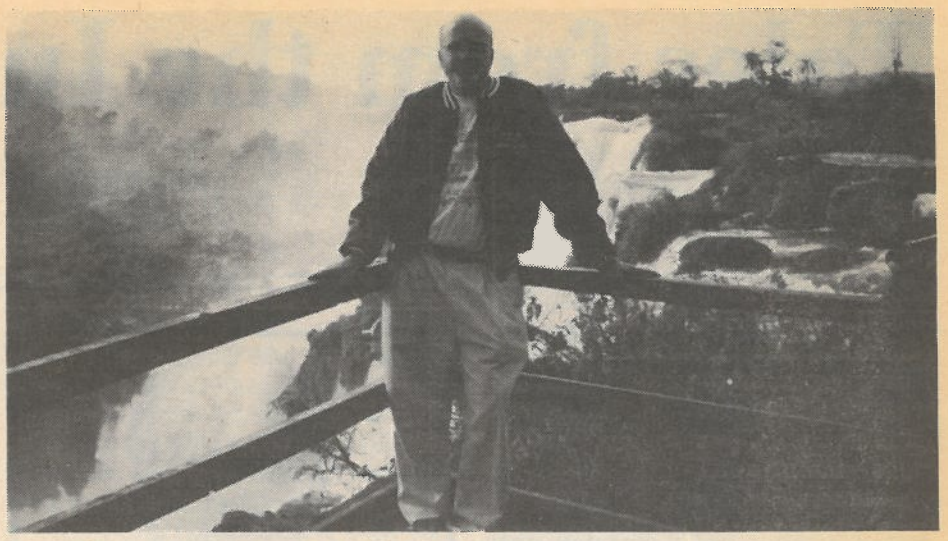
The World Methodist Conference developed over the years in response to John Wesley's declaration: "The World is my parish." Seventy-one member churches with 30 million members from more than 100 countries participate. Nearly 3,000 Methodists from all over the world attended the conference in Rio. The conference meets every five years. The 1996 meeting was the first held in South America, held at the Rio Center which was the location of the 1992 Rio Earth Summit.

World-view speakers were featured, from the secretary general of the Salvation Army, a Palestinian Arab bringing Jews, Arabs and Christians together in Galilee, and a South African Bishop who had been imprisoned with Nelson Mandela, to a Marxist, anarchist, economist from Argentina.

I attended a two-day seminar on social justice with emphasis on bridging the gap between the rich and poor. Small discussion groups provided very different views. Our group included representatives from India, Scotland, Australia, South Africa, Ghana and the United States.

A discussion highlight was over dinner one evening with two women, a labor party member from Scotland and the economist from Argentina. I was hard-pressed to defend private property and they absolutely refused to believe that I like Ronald Reagan.

Reports on the Reconciliation Commissions in South Africa and Argentina were presented. In summary, those who committed terrible crimes under the prior regimes are granted criminal and civil amnesty if they admit their transgressions to the commissions. Some in attendance who had witnessed their family members tortured and murdered advised the gathering emotionally that this was a very difficult approach, in spite of the biblical concept of turning the other cheek and forgiveness. Over $200,000 was collected for the street children of Brazil. On tour day, we visited a women's senior home, an ecological project and an orphanage and daycare center. I do wish the conference could have seen more of the Brazilian children.



Iquazu Falls, Border of Braziland, Argentina.

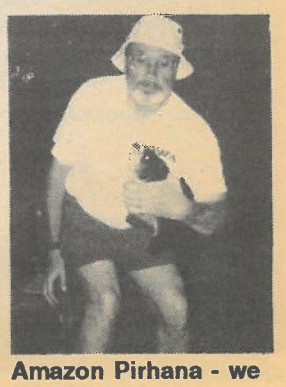
The Amazon

The Amazon River is 4,000 miles long, the largest river system in the world. It throws 20 percent of all the flowing fresh water into the Atlantic Ocean. The rainforest is the largest in the world and is the richest and most diverse ecosystem on the planet, with over 70 percent of the world's plant and animal species.

The Amazon dwarfs both the Mississippi and Missouri together, and more than 80 percent of the Amazon jungle is in Brazil.

A five-hour plane trip from Rio landed us at Manus, a city of over one million people, on the river. Manus prospered in the rubber boom of the late 19th Century and is a major port and industrial center. A thousand miles up the river, ships came from all over the world, serving refineries, cereal plants, sawmills and tourism. We spent one day in Manus, and were off on the river.

The Amazon is about 6 miles across at Manus and reaches over 24 miles downriver. The "meeting of the waters" — the confluence of the black Rio Negros and the yellow Solimoes Rivers — is the official start of the river. Numerous jungle walks started with the January Ecological Park, a protected preserve of rain forest that had been cut down four or five times by the local inhabitants for fuel and building materials. There are those who claim poor people living a subsistence lifestyle are cutting down more trees than the timber companies. (Over 3 million children die annually from bad air, largely caused by burning wood.) We also toured a park for monkeys endangered by the flooding.



Amazon Pirhana - we ate him.

Two days followed in an isolated lodge on the Anavilhanas Archipelago (the largest in the world), another protected preserve. We caught Pirhana fish (big teeth), cayman (like a crocodile) and saw numerous birds and animals. We visited a Caboclo (a mix of European and Indian) village whose inhabitants were forcibly removed from the forest preserve where they had lived for centuries. Their agrarian method is to slash and burn their allotted gardens. Manioc is the primary crop and is rotated every two years with the land replanted every five years. We were told the burning is good for the land and the timber companies were criticized for not burning. We were advised that only four percent of the rain forest was lost in the area.

Intermittent thunder storms literally shook the ground. Boating at night under the tropical sky full of stars and planets reminded me of the immensity of creation. The Methodists on board sang hymns in the evening.

We also saw snakes, huge mice, numerous butterflies, insects and arachnids (tarantulas). The river is life. In response to international concern, Brazil is constructing a $600-million radar system in the forest to monitor flights, burning and clearing. Brazil recently sent up a satellite to watch for unauthorized clearing in the forest.

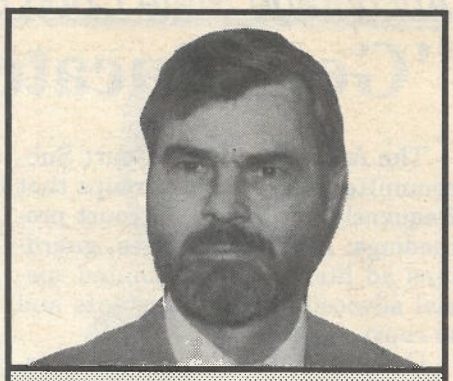
Wishing for more time on the river, we headed back to Rio and prepared for the 36-hour journey home to Homer.

Some Brazilian Basics

Largest country in South America, fifth in the world in area and sixth in population; largest rain forest; language — Portuguese; form of government — Federal Republic; population — 150,000,000, with 75% in urban areas; annual population increase — 1.7 percent; chief products — coffee, bananas, beans, cattle, soybeans, automobiles, chemicals, forest products; literacy -80 percent; life expectancy — 57 for males, 67 for females; and soccer, soccer, soccer!

Bankruptcy Briefs

Trustee's avoidance powers - limitations



Thomas Yerbich

The Bankruptcy Code grants the trustee broad powers to avoid certain prepetition transactions entered into by the debtor. These include (1) certain statutory liens [§ 545]; (2) transfers that prefer one creditor over others [§ 547]; and (3) fraudulent transfers under either the Bankruptcy Code [§ 545] or Alaska law [§ 544(b); AS 34.401. The trustee may also avoid unauthorized postpetition transfers [§ 549]. Once the transfer is avoided, the trustee may recover the transferred property (or interest therein), or its value, from the transferee [§ 550].

The Bankruptcy Code treats the trustee as a judicial lien creditor, holder of an unsatisfied execution, or bona fide purchaser irrespective of whether such creditor exists and without regard to any knowledge on the part of the trustee or any creditor [§ 544(a)]. Thus, the trustee has a right, independent of the existence or nonexistence of the right of any creditor, to bring avoidance actions under the applicable provisions of the Bankruptcy Code. However, when the trustee seeks to avoid a transfer under otherwise applicable law, independent of avoidability of the transaction under the Bankruptcy Code, a creditor with such right holding an allowable unsecured claim must actually exist at the time the petition is filed § 544(b); 4 King, *Collier on Bankruptcy.* ¶ 544.03 (1] (15th ed)] .

When the trustee exercises the avoidance power, the trustee recovers property (or an interest in property) that has been transferred by the debtor to a third-party for the estate and its beneficiaries (the creditors). Consequently, it is usually the third-party transferee who is the "goree" in those situations, not the debtor. The avoidance and recovery powers, as broad as they may be, are not unlimited. This article discusses some of the common limitations on avoidance powers, other than whether the action was timely brought.

First, is the transfer one specifically excepted from the avoidance powers? There are two such exceptions of general application: (1) perfection of an unperfected lien that relates back in time or the continuation of perfection of a lien [§ 546(b)]; and (2) reclamation rights [§ 546(c)].

Section 546(b) protects the holders of certain liens unperfected as of the date the bankruptcy petition is filed, *e.g.*, material and labor liens on real property or the holder of a PMSI, the subsequent perfection of which relates back in time, as well as the action necessary to continue perfection of a lien that might otherwise expires, *e.g.*, the filing of a UCC-3 continuation statement. The critical issue is whether perfection relates back in time to defeat the intervening rights of the trustee that arise at the time the bankruptcy petition is filed. If the subsequent perfection, under otherwise applicable law, does relate back, the transaction is neither avoidable [*see e.g., In re Glasply,* 971 F2d 391 (CA9 1991); *In re Parr Meadows,* 880 F2d 1540 (CA 2 1989) *cert. den.* 493 US 1058 (1990); *In re Maryland Glass Corp.*, 723 F2d 1138 (CA4 1983)], nor does postpetition perfection violate the automatic stay [§ 362(b)(3)]. If perfection requires seizure or the commencement of an action, perfection may be accomplished postpetition by the giving of notice [§ 546(b)(2); *Matter of Fullop,* 6 F3d 422 (CA7 1993)].

Section 546(c) preserves in the bankruptcy arena common law or statutory reclamation rights of creditors. However, the reclamation provision of § 546(c) is the exclusive remedy for creditors and failure to meet its requirements, even where all requirements of state law have been met, is fatal [*In re Julien Co.*, 44 F3d 426 (CA6 1995)]. To establish a reclamation right under § 546(c), the claimant must show: (1) a sale of goods on credit in the ordinary course of business; (2) delivery was made at a time when the debtor was insolvent; (3) written demand was made on the debtor within ten days of delivery, or twenty days if the petition was filed within ten days of delivery; and (4) debtor had possession of the goods or the goods were not in the hands of a good faith purchaser or a buyer in the ordinary course of business at the time of the reclamation demand [*In re Pester Refining Co.,* 964 F2d 842 (CA8 1992)]. Moreover, the existence of a superior secured interest may extinguish a seller's reclamation claim [*Id.*]

The bankruptcy court may deny reclamation, but if it does so, it must grant an administrative claim priority or grant a security interest to the creditor [§ 546(c)(2)]. However, this is an alternative remedy to reclamation, and is only available if the creditor otherwise has a valid reclamation claim [*In re Coast Trading Co., Inc.,* 744 F2d 686 (CA9 1984)]. Nor is the creditor entitled to substitute a claim to the proceeds realized from the sale of the goods for reclamation of the goods themselves; if the goods have been sold, the creditor comes up empty [*Id*].

Second, is the transferee protected? In general, the trustee may recover the transferred property, or its value, from either the initial transferee or any immediate or mediate transferee of the initial transferee, or the entity for whose benefit the transfer was made [§ 550(a)]. Although the trustee has the option of which transferee from which recovery may be had, the trustee is limited to a single satisfaction [§ 550(d)]. There are, however three significant exceptions that may protect a particular transferee.

First, if the transferee, other than the original transferee, takes for value, including satisfaction of or securing an antecedent debt in good faith, and without knowledge of the voidableness of the transfer, the trustee may not recover from that transferee or any subsequent good faith transferee [§ 550(b)]. For example, assume Jones is a good faith transferee for value and without knowledge from Smith, the initial transferee from the debtor: the trustee may recover the value of the property transferred from Smith, but may not recover either the property or its value from either Jones or a subsequent good faith transferee from Jones.

Second, if the avoidance is based upon a transfer made for the benefit of an insider more than 90 days before the petition was filed, the trustee may not recover from a transferee that is not an insider [§ 550(c)]. This provision, added by BRA 94, effectively overrules the *DePrizio* line of cases, including *In re Sufolla, Inc.*, 2 F3d 977 (CA9 1993)]. Thus, a payment made to a bank on a loan to the debtor guaranteed by an insider or made to an insider and guaranteed by the debtor, during the 90-day to one-year period preceding the petition can not be recovered from the transferee bank. However, the trustee may recover from the entity for whose benefit the transfer was made., *i.e.*, the "insider," the value of the property transferred [§ 550(a)(1)]

Third, while "innocence" of the transferee is irrelevant to determining whether the trustee is entitled to avoid the transfer, there are protections for the "good faith transferee." A good faith transferee who makes improvements on or to the property recovered is granted a lien on the property recovered to the extent of the lesser of either (1) the cost of the improvement to the transferee or (2) the increase in value to the property as a result of the transferee's improvement [§ 550(e)(1)]. Improvements include physical improvements, repairs, payment of property taxes, reduction in debt superior or equal to the rights of the trustee, and preservation of the property [§ 550(e)(2)]. In a fraudulent transfer situation, a "good faith transferee" is granted a lien on the recovered property to the extent of the value given [§ 548(c)].

The purpose of these provisions is to essentially restore an "innocent" transferee to his/her original position, thus, the extent of the lien is reduced by any net profit/income realized by the transferee while he/she has the property recovered [*see In re Burke,* 60 BR 665 (Bank.D.Conn. 1986)], and, theoretically, the transferee should be required to disgorge any "excess" profits/income. If the recovery is the value of the property, not the property itself, the Code suggests that the value may be determined either as of the time of the transfer, without regard for the lien rights or recovery, or at the time of recovery less the amount of the lien a good faith purchaser would have if the property itself were recovered [*see In re Southeast Community Media, Inc.,* 27 BR 834 (Bank.ED.Tenn 1983)].

Case law defining "good faith" is incredibly sparse. As with other areas involving "subjective intent," the entirety of the facts and circumstances must be examined. Courts will generally look to what the transferee objectively knew or should have known regarding the avoidability of a particular transfer [*In re Agricultural Research & Technology Group, Inc.*, 916 F2d 528 (CA9 1990)]. There must, however, be some evidence of subjective bad faith on the part of the transferee, the fact the transfer is fraudulent or otherwise avoidable is insufficient standing alone [*In re Black & White Cattle Co.,* 783 F2d 1454 (CA9 1986)]. Good faith may also be indicated if the transferee has a reasonable belief that his/her actions- were justified [*In re Orsa Associates, Inc.*, 106 BR 418 (Bank.ED.Pa 1989)].

Third, if the action is asserted under § 544(b), will the avoidance benefit the unsecured creditors as a whole? Recovery by the trustee must be for the benefit the bankruptcy estate and creditors ratably. The trustee lacks standing under 544(b) to assert a claim that does not belong to the estate but to a single creditor or group of creditors [*Williams v. California lst Bank,* 859 F2d 664 (CA9 1988)]. Moreover, the trustee can not use § 544(b) to act upon the rights of the holders of secured claims [*In re Ozark Restaurant Equipment Co.*, 816 F2d 1222 (CA8 1987)].

Gender Equality Task Force

Report of the Subcommittees

Anchorage Legal Profession Subcommittee:

"Get People Talking"

The Anchorage Legal Profession Subcommittee found Alaskan attorneys experienced many of the same problems that attorneys outside Alaska report. But Alaska attorneys were unaware of forums in which people could talk about the problem.

Women tended to be excluded from certain areas of legal practice or their roles minimized because of the beliefs or behaviors of attorneys, the subcommittee reported. It also found cases of unequal compensation, promotion and work assignments. and the use or acceptance of gender-biased language denigrating women.

Focused discussions helped this subcommittee sort through the issues and crystallize solutions. It recommended structured workshops to get more people involved in identifying issues and coming up with effective solutions and recommended that Alaska's program be based upon a popular series conducted in Washington state. In addition, the subcommittee recommended:

- Publish information that highlights progress in increasing gender fairness;
- Promote use of gender neutral language;
- Include gender-affirming references and presentations in Bar conference materials; and
- Conduct yearly surveys to evaluate progress.

Anchorage Legal Profession Subcommittee members: Frances Purdy, Teri Carns, Russelyn S. Carruth, Mickale C. Carter, Suzanne Cherot, Louise Driscoll, Carlene M. Faithful, Kevin T. Fitzgerald, Jacquelyn R. Luke, Sen K. Tan, John B. Thorsness, Randall J. Weddle, and Teresa E. Williams.

Federal Courts Subcommittee:

"Address bias as it happens"

The Federal Courts Subcommittee distributed several thousand surveys, one specifically aimed at attorneys, and another for anyone coming in contact with Alaska's federal court. Nearly three hundred attorneys from private practice firms and government agencies returned the surveys. A smaller group of federal employees that included probation officers, marshals, and clerks also responded.

More than half the women attorneys in private practice and more than one- third of the women attorneys in government practice reported bias between attorneys as a problem.

Respondents also saw gender bias between attorneys and parties, witnesses, and jurors; and 44 percent of women attorneys working for government agencies saw bias from judges to attorneys.

The Subcommittee concluded that gender bias existed throughout the legal profession and occasionally in federal courts. In addition, it found that when gender bias occurred in the courtroom, the judge did not address it.

The Subcommittee suggested that those with authority to "control actions within their own arenas" needed to recognize bias as it occurred and take steps to eliminate and address it as quickly as possible.

It further recommended:

- Adopt and develop local court rules that promote gender fairness;
- Conduct training in gender equity issues;
- Conduct on-going formal study of gender equity issues; and
- Develop policies to support gender fairness in the federal system.

Federal Court Subcommittee members: Ida Romack (chair), Hon. James K. Singleton, Nora Barlow, Ardel Burritt, Cindy Carlson, Linda Christensen, Cate Davidson, Lorraine Davis, Laura Des Jarlais, Carlene Faithful, Jamila George, Lou Ann Henderson, Susan Lindquist, Denise Morris, Norman Mugleston, Tom Owens, John Roberts, Nancy Shaw, Wiley Thompson, Wayne Wolfe, and Joshua Wyne.

Anchorage State Court Subcommittee:

"Get Educated"

The Anchorage State Court Subcommittee surveyed six groups that frequently participate in court proceedings: Attorneys, judges, guardians ad litem, court-appointed special advocates, legal assistants and in-court clerks.

Generally, of the 107 respondents, attorneys, GALs and in-court clerks were more likely to report witnessing gender bias in the courtroom than others surveyed. Although women were more likely than men to report bias, some respondents did report differential treatment of men.

Among Anchorage attorneys and judges, more than 75 percent of the women had witnessed bias between lawyers. Well over half the women had witnessed bias from judge to lawyer and also from lawyer to party.

Some examples of gender-biased behavior reported included the use of patronizing and condescending remarks such as, "I'm sure this is above your head," and comments about the "mommy track." Physical appearance was referred to in comments such as, "I'm not used to having such good-looking lawyers in my chambers," or you must be having a "bad hair day." Many respondents reported being addressed by diminutive, unprofessional names such as, "babe," "honey," "bitch," "young lady," "dearie," and "sunshine."

The Subcommittee also found that counsel, judges, parties and witnesses used first names when addressing women and surnames when addressing men.

In domestic cases respondents reported such gender-based assumptions as: women should receive "extra" because they make less money than men; female lawyers will be better at domestic cases than men; and child custody investigations are based on gender stereotypes.

The Subcommittee concluded that some gender bias existed in Anchorage courtrooms among all participants in the legal process: Lawyers, judges, other court personnel, parties, witnesses, and jurors. The Subcommittee made the following recommendations:

- Increase education and awareness for judges, attorneys, jurors and other court-related personnel;
- Establish rules of courtroom decorum and use gender- neutral language in jury instructions, court rules and the Code of Judicial Conduct; and
- Further study and action, including the appointment of women to the bench in proportion to their numbers in the Bar Association. Women currently make up approximately 33 percent of the Alaska Bar.

Anchorage State Court Subcommittee members: Susanne Di Pietro (chair), Lana Anthony, Carol Butler, Stephanie Cole, Hon. Dana Fabe, Lonzo Henderson, Vernita Herdman, Hon. Stephanie Joannides, Bonnie Lembo, Cindy Marshall, Kimberly Martus, John McKay, Margie Mock, Karl Thoennes, Hon. Michael Wolverton.

Public User Subcommittee:

"Domestic Relations Cases Hotbed of Perceived Gender-Bias"

More than 300 people statewide responded to the Public User Subconmittee survey. The least amount of gender bias was reported among those having experience in criminal cases, while the most gender bias reported was in domestic cases.

While women reported gender bias more frequently in divorce and custody and men more often reported bias in domestic violence cases, both men and women found sexual stereotyping in many domestic cases.

Women noted that magistrates were "disrespectful of women who have experienced domestic violence;" men said that they were treated "disrespectfully ... because the judge really believes the female."

In divorce and custody cases, women believed that they were ,ignored, dismissed, mistreated, "primarily because they lacked resources to hire competent counsel. Men thought that they were seen as "nothing but a cash cow, and that the only value placed on fatherhood by the court is that of child support."

Survey results showed little gender bias among people in criminal cases but subcommittee members identified areas of differential treatment, citing lighter sentences for women than men in drug and property cases and heavier sentences for women than men for more violent crimes. The subcommittee found that juvenile girls were locked up more frequently than boys under the assumption that they were more vulnerable and needed to be protected.

The subcommittee made the following recommendations:

- Collect more data on women in the criminal justice system;
- Review domestic violence cases to identify incidents of gender bias and develop neutral standards;
- Encourage more thorough custody investigations and train investigators in gender neutral communication;
- Encourage alternate dispute resolution in divorce and custody cases taking into account particular concerns in the areas of child custody, child abuse and neglect and domestic violence;
- Involve parties in divorce and custody settlement process; and
- Offer training seminars on the differences in women's and men's communication styles.

Public User Subcommittee members: Norman Borg, Teri Carns, Pamela Cravez, Mary Geddes, Kenneth Kirk, Ellen Lash, Susan Lindquist, Diana McCormick, Candy Miller, Patricia Miller, Elizabeth O'Leary, Frances Purdy, Debra Scheirman, and Colleen Tafs.

Gender Task Force report

continued from page 1

The Task Force recommends that state and federal courts continue to support the work of this group, or if needed, create a group that carries on the work of the Task Force. It further recommends that the state and local bar associations, and state and federal courts continue to cooperate with this group to sponsor and implement specific programs to end gender bias.

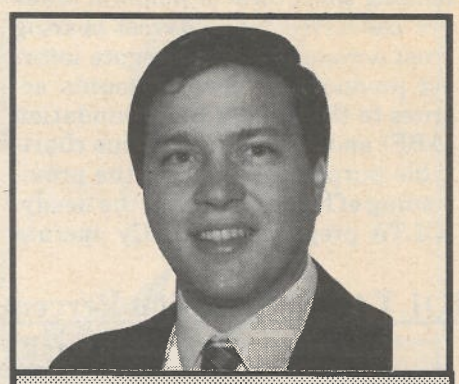
Alaska Joint State-Federal Courts Gender Equality Task Force members:

Chief Judge James K. Singleton (Co-chair), Judge Karen L. Hunt (Co-chair), Teri Carns (Vice-chair), Barbara Armstrong, Daniel Callahan, Stephanie Cole, Susan Cox, Suzy Erlich, Justice Dana Fabe, Nancy Groszek, Mary Guss, Jacquelyn Luke, Deborah O'Regan, Judge Niesje Steinkruger, Judge Larry Weeks and past members Collin Middleton, Phillip Volland, Susan Lindquist.

For a copy of the Final Report call Task Force Reporter Pamela Cravez, 243-5010.

The Public Laws

Incremental tort reform or don't bite off more than you can chew



Scott Brandt-Erichsen

By the time Governor Knowles finally got around to vetoing the Tort Reform Bill (Senate CS for CS for House Bill No. 158 (RLS) am S(ct rls fld S), known as "HB 158"), I had come to firmly envision it as a foregone conclusion.

The pronouncement by the Attorney General's Office a few weeks before that the provisions of the bill could jeopardize the punitive damages award in the *Exxon Valdez* case sealed BB 158's fate in my mind (one wonders whether the *Exxon Valdez* award would have this same "permanent fundesque" untouchability if it were to a single plaintiff for a scalding with hot coffee). It gave the Governor a justification which allowed him to veto the bill while maintaining, with complete honesty, that he did so out of concern for the public, not the plaintiff's bar who contributed heavily to his campaign.

Even if it were not for the potential impact on the *Exxon Valdez* award, the bill suffers from a common weakness: The smorgasbord approach to legislation.

All too often, good ideas and important legislation become weighted down with extras which various interests try to fit onto the plate. With HB 158, those extras came in the form of expert witness qualification, mandatory arbitration, limitation on hospital liabilities, and the retroactivity provision which raised red flags in relation to the *Exxon Valdez* case. A more narrow approach could have yielded better results.

I submit that an appropriate narrow target is punitive damages.

Punitive damages are a "bonus" for an individual plaintiff and plaintiff's attorney which is unjustified by the purpose it is intended to serve. The intent of punitive damage awards is to punish the wrongdoer and deter similar conduct in the future. Neither of these apparently is served by enriching the injured party or their attorney beyond the amount of their compensatory damages. For this reason, the reversion of 75% of a punitive damage award to the State under Section 7 of HB 158 would be an appropriate step. Additionally, some form of cap or limitation on punitive damages could be appropriate.

Limitations of this type are popular legislatively. As pointed out by the dissent of Justice Ginsburg in *BMW of North America, Inc. v. Gore*, 134 L.Ed.2d 809 (1996), 16 states have adopted or are considering statutes which place a cap on punitive damage awards. Thirteen states have adopted or are considering provisions for payment of sums to state agencies rather than to plaintiffs in the event of punitive damages awards, and 13 states have or are considering provisions for mandatory bifurcation of liability and punitive damages determinations. *See BMW v. Gore,* Appendix to dissenting opinion of Ginsburg, 134 L.Ed.2d 851-854.

The better path for Alaska to take in its tort reform efforts would be to approach significant issues such as punitive damages or the issue of civil liability for commercial recreational activities as separate issues standing on their own merits.

The smorgasbord approach causes the issues to get mixed up, and results in rejection of the whole. A good analogy is my 4-year-old daughter's corn coming in contact with the mashed potatoes. In her eyes, they contaminate each other and both become inedible. When the table is cleared, they end up in the compost. However, when I am patient and make sure that the two remain separate, she enjoys them both, the whole meal is finished in due time, and she gets her "just desserts."

Bar People

Leon Vance

Leon Vance, a shareholder in the law firm of Faulkner, Banfield, Doogan & Holmes, has returned from a one-year sabbatical, which he spent at home with his children. Vance will resume his practice in the firm's Juneau office with an emphasis on litigation, oil and gas law, and natural resources law. Faulkner, Banfield, Doogan & Holmes was founded in Juneau and also has offices in Anchorage and Seattle.

Valli Goss Fisher has joined the law firm of Lane Powell Spears Lubersky LLP in Anchorage as an associate. She will concentrate her practice in employment, trademark, and copyright law. Fisher received her law degree from the University of Notre Dame in South Bend, Indiana.

Valli Fisher

Based in the Pacific Northwest, Lane Powell Spears Lubersky is a law firm with over 270 attorneys. Offices are in Anchorage, Fairbanks, Seattle, Olympia, Mount Vernon, Portland, Los Angeles, San Francisco, and London.

John Aschenbrenner, formerly with the Palmer P.D. office, is now with the Mat-Su Borough Attorney's Office.....**Robin Bronen**, formerly with ALSC, is now with Catholic Social Services as the Director of Immigration and Refugee Services Program.....**Dan Cooper**, formerly with OSPA, is now an Assistant U.S. Attorney in Anchorage.....**Paul Cossman** has returned from his "sailing sabbatical" and is now practicing law in Anchorage.....**James Forbes**, formerly with Ingaldson Maassen, has opened his own law office in Anchorage.

Barbara Fullmer is now with Guess & Rudd.....**Mike Gershel** has opened his own law office in Anchorage, while continuing his work at ALSC on a part-time basis .....**Hughes, Thorsness, Gantz, Powell & Brundin** has changed its firm name to Hughes, Thorsness, Powell, Huddleston & Bauman .....**John Holmes**, formerly with the Kotzebue P.D. Agency, has relocated to Duluth, Minnesota.....**Richard Illgen** has relocated from Anchorage to Berkeley, CA.....**Tim Jannott** is relocating to Thailand to help open a Mexican restaurant.

Steven Jones has relocated to Plano, TX, as a general attorney with the ARCO legal department.....**Kathryn Kurtz**, former Superior Court law clerk in Juneau, is now with Simpson, Tillinghast, et.al. in Juneau.....**Thomas Klinker**, formerly with Wohlforth, Argetsinger, et.al., is now with Birch, Horton, et.al.....**William LaBahn** has relocated from Anchorage to Eugene, Oregon.....**Mikel Miller** has relocated from Anchorage to Bend, Oregon.....**R. Bruce Roberts**, formerly with the D.A.'s office in Anchorage, is now with Faulkner, Banfield, etal. in Anchorage.....**Jerald Reichlin** is now with the office of Fortier & Mikko.

Nancy & Steven Bainbridge Rogers have relocated to Edmonds, Washington.....**Scott Sterling**, formerly with Jensen, Harris & Roth, has opened the Law Offices of Scott A. Sterling in Wasilla.....Effective August 1, 1996, **Sanford M. Gibbs** has resigned as a shareholder of Stone, Waller, Jenicek, Brown & Gibbs, a P.C. Mr. Gibbs will continue to practice law and remain associated with the firm in an "of counsel" capacity. The firm's name has been changed to Stone, Waller, Jenicek, Brown & Budzinski, a P.C.

Tim Troll has relocated from Anchorage to Dillingham.....**Dan Winfree**, formerly with Hompesch & Winfree, has now opened Winfree Law Office .

"On March 15, 1996, we began practicing as the firm of **Walker Walker Wendlandt & Osowski, LLC**, with offices in Anchorage and Valdez. Members of the firm include **William M. Walker** and **Donna P. Walker**, both formerly of Walker & Walker, P.C., and **John C. Wendlandt** and **Shane J. Osowski**, both formerly with Hughes Thorsness Gantz Powell & Brundin, LLC. The new Anchorage offices are at the Bank of America Center."

Jim Shine reports that he is back from a wonderful 18-month sabbatical in the south of France with his three children. He has re-opened his law office in Juneau to practice law full time. He says that he is certainly rested, refreshed and now actively back to practice. While in France, his children went to school, and they all traveled, went to the beaches and read 15-20 books a month.

Law Firm of Hughes Thorsness changes name

One of the oldest and largest law firms in Alaska announced today that it will change its name to Hughes Thorsness Powell Huddleston & Bauman LLC. The firm was most recently known as Hughes Thorsness Gantz Powell & Brundin LLC.

The name change reflects the continuing evolution of the firm, which began in 1939 as Davis & Renfrew and has since undergone a number of name changes. **John C. Hughes** and **David H. Thorsness** were added to the firm name in 1951 and 1957, respectively. In 1959, the firm became known simply as Hughes & Thorsness. The name of **Richard O. Gantz** was added in 1968, and **James M. Powell** and **Brian J. Brundin** were added in 1975.

In 1995, the firm became a limited liability company, under the provisions of recently enacted Alaska legislation. The current change is in recognition of the professional prominence of **Joe M. Huddleston** and **Carl J.D. Bauman** and their continuing contributions to the firm. It also reflects the retirement of Brundin, on August 15, 1996, upon the completion of 30 years of active practice with the firm. Gantz retired many years ago.

Huddleston and Bauman have been with the firm since 1972 and 1973, respectively. Huddleston received his J.D. from Hastings College of Law at the University of California in 1972. He is an experienced trial lawyer whose practice is focused in the area of insurance defense, including personal injury and coverage issues. Bauman received his J.D. from the University of Oregon in 1973. He is an experienced litigator whose practice focuses in the area of oil and gas law and also includes environmental, tax, maritime, mining, and general litigation.

The firm will continue to serve its clients in the areas of oil and gas law; insurance defense; banking and finance; corporate, tax and real estate; labor and employment; general litigation; natural resources, mining and environmental; probate and estate planning; and public utilities.

Solid Foundations

The IOLTA program seeks more participants

This November will mark the 9th anniversary of Alaska's IOLTA ("Interest on Lawyers' I Trust Accounts) program. Over these past nine years, the number of participating law firms and solo practitioners has grown to over 350. As a result, the IOLTA program has generated upwards of $1.1 million over the past six years alone. The bulk of these funds have been used to support the provisioning of legal services to the needy.

Despite the program's past success, however, there is still much room for growth. Only about 27 percent of the Alaska Bar currently participates in the IOLTA program. This low participation rate stems in large part from the wide confusion over what the IOLTA program is all about and the process through which attorneys come to participate.

The concept of IOLTA is an ingenious one. As every bar member well knows, attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long period of time, the attorney places the funds at interest for the benefit of the client. However, in the case of amounts that are small or are to be held for a short period of time, it is financially impractical for attorneys to establish separate interest-bearing accounts for individual clients. In situations such as these, attorneys

Mary Hughes

typically place client deposits into combined, or pooled, non- interest bearing trust accounts that contain other nominal or short-term client funds. Traditionally, these pooled trust accounts earned no interest because it is (and remains) illegal and unethical for attorneys to derive any financial benefit from funds that belong to their clients. Alaska Rules of Professional Conduct 1.15 and 12 U.S.C. 1832(a)(2) (1982) (discussing eligible depositors for NOW accounts).

In an effort to put these idle trust funds to law-related public use, the Alaska Supreme Court in November of 1986 adopted amendments to the Rules of Professional Conduct that established the Alaska IOLTA program. Under this program, non-interest bearing attorney trust accounts holding short term or nominal funds are converted into interest-bearing trust accounts. The aggregate interest produced by these accounts accrues to the Alaska Bar Foundation (ABF) and is used for various charitable purposes, primarily the provisioning of legal services to the needy. IOLTA programs currently operate in 49 states and the District of Columbia.

To join the program, attorneys need only (1) contact their bank, and (2) notify the Alaska Bar Foundation of their intent to join the program. It's that easy. Nevertheless, about 40 percent of potentially eligible Alaskan attorneys do not participate in the IOLTA program.

As the 10th anniversary of the IOLTA program approaches, the Foundation remains confident that more and more Alaskan attorneys will join the IOLTA ranks. With legal services funding on the wane in Juneau and Washington, the Alaska IOLTA program will be playing a critical role in ensuring adequate legal services funding for many years to come.

IOLTA Participation Percentages, Among Active Members of the Alaska Bar (Rounded)

Percentage of attorneys electing to Participate in the IOLTA program	Percentage of attorneys electing not to participate because of ineligibility	Percentage of attorneys electing to opt-out of the program	Percent of attorneys who have not filed a valid Notice of Election and who do not maintain an IOLTA account
27%	31%	18%	23%

Source: IOLTA Notices of Election on file with the ABF as of August 9, 1996.

Rolly

continued from page 13

smitten with one of my secretaries. But this does not seem to be the case. Instead, it appears that Rolly has found my place to be a convenient stopover point on his travels to and from town. A docile creature, he is always willing to leave when asked by myself, although he does insist upon seeing "the attorney" before his departure. Moreover, the requests for funds generally remain the same, in the ten to twenty dollar range, and I have begun to wonder whether or not I am instead dealing with some sort of a reverse referral system, whereby ten dollars will buy my peace of mind and office protocol.

My problem, unfortunately, is I don't have the money to give Rolly. Expert witness fees, however, are a different matter, and we have thought seriously in the recent past of using Roily as a control for various cases which we try on a regular basis, to demonstrate first hand to the jury what "intoxication" and "under the influence" really means. As always, an attorney should be open to expanding the horizons of the law. Besides, this one expert comes cheaply.

TANANA VALLEY BAR

Excerpts

May 24, 1996

Guests: Ed Noonan, formerly of Alaska, formerly of Michigan, currently at [HTTP//WWW.VOYAGER.NET/TAILWINDS] appeared. He is planning on biking from Alaska to Florida by way of Michigan as a fund raiser for the Williamson Michigan Library. Ed expects to leave Fairbanks next week. What is left of him will arrive in Michigan on approximately August 10.

There were a number of bar convention reports. Ken Covell reported that he traveled to Anchorage to waive the TVBA flag. His request that the bar convention be held somewhere besides Anchorage was ignored. Due to a piece of parliamentary trickery, our well drafted and considered amendments were not heard at the convention but, we are first on the list for 1997.

Judge Steinkruger reported that the hospitality suite has changed over the years. Where before the suite was known as a den of smoking, hard drinking and high stakes poker, it is now filled with old men wearing nicotine patches, popping anabuse, and playing for pretzels.

Judge Savell reported that the mediators association is taking over showing the dissolution video. This video contains such helpful hints as do not pin the child support check to your child's sweater and do not cash the child support check in a bar just so your ex-spouse gets ticked off when he sees the endorsement. Some members wanted to know why anyone would willingly attend such a video. The answer of course is that no one willingly would attend such a video. They are coerced into it because if they don't watch it, they can't get rid of their spouse.

June 7, 1996

The Christmas party is still scheduled for July 12. This gives Robson's wife and secretary five weeks to plan an event that he hasn't told them about. Anyone having a cot or spare room for Art to stay in for the next three weeks should raise their hand.

Judge Beistline is in charge of the kids' games for the Christmas party. A motion was passed unanimously that Judge Beistline would be subject to the Taylor clause in that he is in charge of the kids' games until they make a profit. However, it was agreed that we will spend the money if requested on "Alaska Magnum Pepper Spray" to control the kids' games. Rather than the pepper spray, a better solution might be to avoid giving all the kids raw eggs.

The meeting ended with Madson's comment on the status of the Big Lake fire which included speculation as to the result if all 2,000 of the fire personnel simultaneously urinated on the remaining hot spots. The final count for the meeting was two urination and one testicular reference for Madson. Although this is certainly not a record, it is the best combination in recent memory.

July 19, 1996

The general consensus was that the X-mas picnic was a success...especially now that Judge Beistline's BBQ has been returned.

Dave Call wanted to know why we had "insipid beer." (Insipid — Lacking flavor or zest; tasteless. *American Heritage Dictionary*). After everyone knew what he was talking about, we decided that the keg did have a bit too much beechwood aging (or was it plywood aging?).

There were lots o' leftovers from the picnic. Our donation of extra wine, a half keg and some questionable meat was not appreciated by the Rescue Mission. This prompted a discussion of E. coli poisoning symptoms experienced by Mr. Robson from eating some of the meat. Dick Madson finally had to stop the discussion because it was too graphic and he felt it was invading his turf. For those keeping score at home that is 22 times this year that bathroom humor has entered the minutes.

It was suggested that the "Keep it in Fairbanks" committee send a letter to Southeast regarding the upcoming vacancy in the Supreme Court. After our success lobbying Gov. Knowles about the tort reform bill the committee was authorized to use Ken Covell's code word "so-called." Thus calling the seat the "So-called Southeast seat," the motion passed.

July 26, 1996

The new ethics opinion on double billing caused considerable discussion. Some were disappointed their copier and Briefbank divisions would no longer be the profit center they once were. Others were upset that up until now you could bill more hours in the day and they missed out on the gravy train. We should petition the ethics committee to see if a lawyer can send out an amended bill that pre-dates the opinion to take full advantage of the practice.

August 3, 1996

Seth Eames had more bad news to report about ALS and Pro Bono. They no longer have the money to screen out the truly bizarre referrals — the ones where it is a toss-up between ALS and API. Apparently there was some screening going on in the past (all of those nuts we got must have just slipped through). The bonus is that now we will have even more referrals. It gets better — no reimbursement for costs and you are forbidden from asking for Rule 82 or statutory attorney fees.

—John Tiemessen

In the Kingdom of Juneau

Royal Bar Association of Juneau

Excerpts

July 26, 1996
& Annual Bar Picnic

Despite a spectacularly sunny, hot, summer day, a group of about 15 gathered at the Westmark to discuss the recent request from the Tanana Bar. They have asked the Juneau Bar to support them in their request to the Governor that the person appointed to fill Justice Rabinowitz's seat be from Fairbanks.

There was a great deal of discussion on the Tanana Bar's request, despite Justice Rabinowitz's declaration that he was there "to chill the debate." Justice Rabinowitz indicated that he was not comfortable with trying to articulate a single position from the Tanana Bar.

The Bar Picnic:

What a day at Auke Rec.!!!! For those of you out justifying your boat payment, you missed a great picnic. The sun was hot, the children were many, the beer was cold, and the lamb was out this world. Bill Ruddy has provided me with yet another reason to maintain my status as a carnivore. James Crawford and Jerry Davis, apparently having had too much free time on their hands, engineered a treasure hunt that made Indiana Jones look like a cub scout. Many thanks to Mie and her committee for a job well done. Also, a special thanks to Rosie Slotnik, who watched, followed, comforted and entertained our children, so that we adults could do what we adults like to do (whatever that is). Jeers to the local bench and all other unrepresented offices. We'll gladly take your dues but we would also enjoy your company.

•

August 2, 1996

All seats were taken in the back room of the Second Course. (Food before business: Heidi offered a change-up from her standard Friday fare of scallops: Sockeye salmon steamed in a ginger and clove sauce. This was accompanied with a tasty corn and egg drop soup and the standard complement of mushrooms, broccoli, carrots and cauliflower. For nine bucks, you won't find better.)

The Juneau public defender's office is hiring a full time attorney to do misdemeanor work. Julia Moody is leaving Juneau for felony defense work in the Kenai P.D.'s office.

The Youth Court at J.D.H.S. hopefully will be up and running by the time the school year begins. Contact me if you are interested in organizing this.

Old Business: After some additional discussion on the Tanana Bar Association's request concerning the filling of Justice Rabinowitz's seat, the body agreed that the following language should be considered for a joint statement/letter to the Governor and/or Judicial Council:

The Juneau Bar Association and the Tanana Bar Association agree that meaningful geographic diversity is a critical element in the composition of the Alaska Supreme Court. Accordingly, these two associations agree that, at a minimum, one justice should maintain a chambers in southeast Alaska and another should maintain a chambers in Fairbanks.

•

August 23, 1996

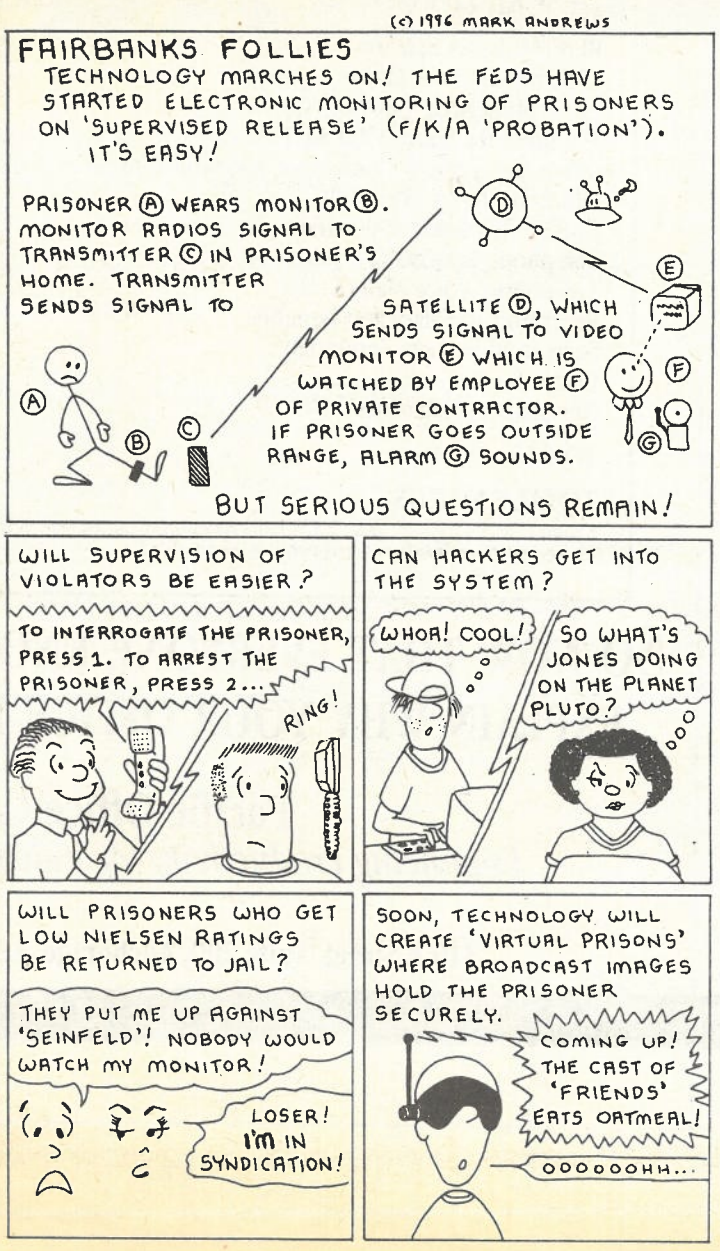
At one end of the table, general consensus was that Joe Sonnemann (who was not present) was the definite front-runner on the Democratic ticket for the U.S. Senate race after the debate on Wednesday night. For those of you who missed the debate, it was like watching a hybrid of The Gong Show and The X-Files. Theresa Obermeyer and her conspiracy theories were in splendid form. (Where is Betty Belle Blue when we really need her?)

No news on the status of Sherri Hazeltine's impending delivery). Any day now.

JBA Resolution 96-1, which is the proposed joint resolution with the Tanana Bar concerning the need to maintain geographical diversity on the Alaska Supreme Court, delivered to the Tanana Bar for their consideration and approval. JBA Resolution 96-2, which is a second individual resolution on the same issue, was delivered to the Governor and the Judicial Council and copied to all of the local bar associations in the state.

Movie Reviews: Mixed reactions to "Phenomenon." On "Strip Tease," Bart Rozell offered, in a somewhat authoritative and knowledgeable tone: "No one's tried Demi Moore." We left well enough alone.

—Lach Zemp, Secretary



STATE COURT NEWS

Snowden retires; IBEW steps in; customer service grows; Fairbanks, Palmer remodels

By Jeneane Moore

If you can remember an Alaska Supreme Court without Jay Rabinowitz, you can probably remember an Alaska Court System without Administrative Director Arthur Snowden, but you are not likely to be a spring chicken anymore. Art's oversight of the growth and development of Alaska's judicial branch during the past 24 years could be the subject of its own news article. For now let's just say that the announcement of his retirement in February of next year sent many of his staff scurrying to update resumes and wondering what the future could possibly bring.

It was with an audible sigh of relief that this same staff received the news that the supreme court, in its collective wisdom, had appointed Deputy Director Stephanie Cole to the position.

Legislation

The passage of CSSB 1003, relating to public employee compensation, benefits, and labor relations, ushered in a new era in labor relations for many court system employees statewide who are now represented by the International Brotherhood of Electrical Workers. The contract between IBEW and the court system was finalized in February and became effective July 1. Deputy Director Stephanie Cole, as lead negotiator for the court system, was assisted by Personnel Director Cindy Chase, retired Personnel Director Karrold Jackson, Rural Court Training Assistant Linda Harding of Fairbanks and Parry Grover, an Anchorage attorney in private practice. The contract has a term of three years.

Customer Service Project

The court system began a Customer Service Project in 1991, as a follow-up to a court system senior staff workshop on total quality management. With a commitment from Administrative Director Art Snowden that court employees would make a strong, positive effort to improve customer service, a court employee committee, chaired by Charlene Dolphin, was formed to develop Customer Service Standards. The employees invited to participate on this committee were identified by their supervisors as employees who delivered exemplary customer service. They were "line" employees who had interactions with members of the public on a continuing basis. Court employees' compliance with the standards developed by this group are now part of the employees' annual evaluations. The statement: "The policy of the Alaska Court System is to provide courteous and efficient service to the public" was added as a new provision in the court system personnel rules, to reinforce the court's position.

In 1993, with a grant from the State Justice Institute, the court system developed a package of materials entitled "You Are the Court System: A Focus on Customer Service" which includes a 30 minute video, employee workbook, supervisor's guide and reminder cards. The supervisor's guide offers many ideas for training activities to reinforce customer service skills. All new employees receive the training within the first three months of hire, and yearly "brush-ups" are required.

The court has also developed a leaflet titled "We Value Your Opinion" which is available in all courts in a place easily accessible to members of the public. The leaflet invites customers to comment about the service they receive at court offices. Filled-out leaflets are sent to a central location in the administrative office, where they are recorded and analyzed, forwarded to the appropriate area court administrator and then returned to the office about which the comment was made. It is the court's policy to write back to the customer who has commented, if that customer provides an address.

We consider our Customer Service Project a "work in progress" and intend to continue our efforts to demonstrate our commitment to the project. We encourage members of the Bar Association to let us know how we are doing and to offer suggestions for improvement.

Facility News

The June 6, 1996 Anchorage Daily News carried an article on the fascination the raven population had developed with the newly opened Nesbett Courthouse. For the latest chapter in this tale of the *People vs. the Ravens*, we have this news brief from George Seanor, the assistant project manager of the courthouse expansion program.

"The raven-damaged sealant at the top of the building has been repaired and a raven shield flashing has been added in an attempt to foil the ravens' dietary peculiarities. If any upper floor occupants observe ravens falling past their windows next winter before regaining air speed, it means the added flashing is working to prohibit ravens perching on the parapet and reaching over to dine. There should be no damage to the birds, and few repeat offenders since ravens tend to be quite clever and are not likely to repeat the precarious perch to partake in a meal of sealant." The remodel of the Boney Building is on schedule and the move date is currently planned for the second or third week in September. Upon completion of the move, the Boney Building will house the supreme court, court of appeals and law library as well the following trial court functions: traffic court, committing magistrate, probate court, children's court, divorce master, standing master, and Municipal Warrants, Anchorage Alcohol Safety Action Program and Vital Statistics offices.

Work continues on the new home for the administrative offices. Signs identifying this building as "The Anchorage Times" have been removed, but for nostalgia buff s, rest assured that the map of Alaska will remain (with Kodiak and the Aleutian chain restored) on the front of the building. The administrative staff should be moving out of the "railroad yards" and into the new offices by the end of October.

Preliminary work on a new and/or remodeled Fairbanks courthouse will begin in earnest later this fall. Last year funds were appropriated to prepare a site evaluation document. This year the legislature approved funding for design and other initial work.

The remodel of the Palmer courthouse to accommodate newly appointed Superior Court Judge Eric Smith was recently completed. He is a welcome addition to a court that has experienced a substantial increase in case filings.

IOLTA Overview

Attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long time, the attorney places the funds at interest for the benefit of the client. However, in the case of amounts that are small or are to be held for a short time, it is financially impractical to establish separate interest-bearing accounts for individual clients.

Under the Alaska IOLTA program, attorneys' non-interest bearing trust accounts holding short-term or nominal funds are converted into interest-bearing trust accounts. The aggregate interest produced by these accounts is transferred to the Alaska Bar Foundation. Funds generated from this program have been designated solely for the following purposes:

- **The Provisioning of Legal Services to the Needy**

  The Alaska Bar Foundation is committed to improving access to legal services. Particular consideration is given to projects and organizations that provide legal services to the poor.

- **Improving the Administration of Justice**

  The Alaska Bar Foundation supports projects and organizations that seek to improve the legal system and the administration of justice. Special emphasis is given to projects that contribute to the substantive understanding of the legal system and to organizations that advocate improvement.

The Alaska Supreme Court established the Alaska IOLTA program with the adoption of amendments to Rule 1.15 of the Alaska Rules of Professional Conduct in November of 1986 (then DR 9-102).

IOLTA Grant Recipients

The Alaska Pro Bono Program

The Alaska Pro Bono Program (APBP) involves private and public sector attorneys in the delivery of free legal services to Alaskans. It is jointly sponsored by the Alaska Legal Services Corporation and the Alaska Bar Association.

In 1995, a $150,000 grant was provided from IOLTA funds for several purposes. In addition to providing the poor with free legal representation, the APBP offers the following services statewide: Chapter 7 bankruptcy classes; free monthly *pro se* classes that provide information and assistance regarding uncontested custody, divorce, and support orders for single parents; sponsorship of advice-only question and answer clinics called "Tuesday Night Bar" sessions; a special landlord/tenant law *pro se* and advice-only educational clinic; assistance in the area of wills, estate planning, housing, and consumer matters through the Elderlaw project for low-income clients over sixty years of age; and appointments for low-income *pro se* plaintiffs filing U.S. District Court civil cases.

Anchorage Youth Court

Anchorage Youth Court (AYC) is a nonprofit organization that supports an alternative adjudicatory system for Anchorage juvenile delinquents. Through this program, minors accused of breaking the law are allowed to submit their case to AYC, where they are represented and judged by their peers. Those convicted within this system are required to perform community service instead of receiving a criminal record. This allows young deviants to atone for their wrongdoings while at the same time lessening the traffic of juvenile cases in our courts.

This program also benefits the junior and senior high school students who staff the adjudicatory process. AYC puts select students through a rigorous training program and then provides them hands-on trial experience as attorneys, judges, bailiffs, clerks, and jurors.

In 1995, $5,000 in IOLTA funds were donated to AYC to help maintain operation and for expansion of the program to involve more students.

CASAs for Children

In an effort to improve advocacy services for abused and neglected children, the CASAs for Children program trains volunteer community members to represent the best interests of children in court. The volunteer CASAs (Court Appointed Special Advocates) research information on children's background in order to help the court system make more informed decisions about their future.

In 1995, $3,000 in IOLTA funds were provided for the training of, and emergency and direct services from, CASA volunteers.

Catholic Social Services

Catholic Social Services (CSS) was provided $6,000 in 1995 for its Immigration/Refugee Program. CSS provides legalization assistance to Alaskan immigrants. The program provides several services, including: immigration litigation; small claims court filings; translation services; preparation of legalization and asylum appeals; traffic court appearances; and intervention in workers' compensation cases.

Kenai High School Mock Trial Team

Part of the mission of the Alaska Bar Foundation is to further understanding and respect for our legal system. In 1995, Kenai High School's State Champion Mock Trial Team was provided $8,000 to travel to Pittsburgh, Pennsylvania for participation in the National Championships. The Kenai team finished strong, placing 34th in the Nation. Kenai's competitive force at the National Mock Trial Championship spoke well for the entire Alaska legal community. It also served the valiant end of sparking interest in the process of administering justice among Alaskan youth.

IOLTA Law Firms & Attorneys

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Law Offices of Theodora Accinelli
Law Offices of Louis E. Agi
Alaska Legal Services Corporation
Lawrence V. Albert, Attorney at Law
Daniel W. Allan
Law Offices of Lynn M. Allingham
Patrick M. Anderson
Artus & Choquette, P.C.
Ashburn & Mason
Ashton & Dewey
Atkinson, Conway & Gagnon, Inc.
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Baker, Brattain, & Huguelet
Elizabeth A. Baker
Law Office of C.R. Baldwin
Thomas A. Ballantine III
Law Office of Joyce Bamberger
Bankston & McCollum, P.C.
Barker & Hellén
Law Offices of Maria M. Barnes
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Law Office of John Bernitz
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Sidney K. Billingslea
Birch, Horton, Bittner & Cherot
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Bliss & Wilkins
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Cohen & Associates
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Cook, Schuhmann & Groseclose, Inc.
Council & Sanders
Craig A. Cook
Gregory F. Cook
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Cowan, Gerry & Aaronson
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Alaska Bar Foundation

1995 Annual Report

President's Report

The Alaska Bar Foundation's revenue increased in fiscal year 1995-1996, marking another successful year for the IOLTA (Interest on Lawyers' Trust Accounts) program. The increase in IOLTA revenues resulted from a rise in interest rates, increased participation by Alaska Bar members and law firms, and the continued generosity of First Bank, Bank of America Alaska, National Bank of Alaska, and Denali State Bank in waiving all fees.

Beyond the financial success, 1995 was also a year of funding crisis for the Alaska Pro Bono Program. Federal and state political realities placed legal services funding in serious jeopardy. Consequently, the Trustees are pleased and encouraged that they were able to use IOLTA resources to help counteract this funding dilemma. It is the mission of the Foundation to improve access to legal services for the poor. The fact that over 87% percent of last year's IOLTA funds were appropriated to the Alaska Pro Bono Program reflects the Trustee's dedication to fulfilling that end.

Other recipients in fiscal year 1995-1996 include CASAs for Children, Catholic Social Services, Anchorage Youth Court, and the Kenai High School Mock Trial Team.

The Trustees continue to be thankful for the support of the members of the Alaska Bar Association and hope to continue to support programs that are important to Alaskans.

Mary K. Hughes

IOLTA Grant Procedures

The Trustees defer to the following guidelines and procedures for reviewing applications and awarding IOLTA grants:

1. An applicant shall submit its request for an IOLTA grant by supplying the information and documents requested in the IOLTA application supplied by the Alaska Bar Foundation.
2. All applications for IOLTA grants shall be submitted to the Alaska Bar Foundation by April 15 of each year.
3. The Trustees of the Alaska Bar Foundation shall review each IOLTA grant application to determine the application's appropriateness for IOLTA funding.
4. If the application can be funded, the Trustees of the Alaska Bar Foundation shall meet as a committee of the whole for consideration and approval of IOLTA grant applications. The Trustees' meeting shall be prior to June 30.
5. Funding shall be available to successful IOLTA applicants on a fiscal year basis (July 1 through June 30).
6. The President of the Alaska Bar Foundation shall communicate to each applicant the action taken by the Trustees.
7. An approved IOLTA applicant shall submit such evaluation reports as requested by the Alaska Bar Foundation.
8. Grant applications are the property of the Alaska Bar Foundation.
9. Applications for emergency IOLTA funds shall be made to the Alaska Bar Foundation through its President. The request will be forwarded to the Trustees who may call a special meeting to consider the same.

Alaska Bar Foundation Trustees

Leroy J. Barker
Winston S. Burbank
Mary K. Hughes
William B. Rozell
Eric T. Sanders

Participating Banks

The IOLTA program is made possible by the cooperation of these banks serving Alaska's law firms throughout the state:

Bank of America Alaska
Denali State Bank
First Bank
First Interstate Bank
First National Bank of Anchorage
Key Bank of Alaska
National Bank of Alaska
Northrim Bank

Financial Statements

Alaska Bar Foundation

Financial Position as of December 31, 1995

Assets:			
Cash and Investments:			
Operating Account	10,858		
Investments	24,963		
Ready Assets	37,802		
Total Cash and Investments:		73,623	
Accounts Receivable:			
Interest	410		
Alaska Bar Association	7,934		
Total Accounts Receivable:		8,344	
Fixed Assets:			
Donated Property (Art)	4,500		
Total Fixed Assets:		4,500	
Total Assets:			**86,467**
Liabilities and Fund Balance:			
Liabilities:			
Accounts Payable	154		
Total Liabilities:		154	
Fund Balance:			
George F. Boney Endowment	5,000		
Justice Dimond Endowment	3,600		
Wendell P. Kay Endowment	490		
Scholarship Fund	(6,000)		
Gender Equality Fund	7,887		
Undesignated Capital	69,244		
Gain/Loss	6,092		
Total Fund Balance:		86,313	
Total Liabilities and Fund Balance			**86,467**

Alaska Bar Foundation

Income Summary for the Twelve-Month Period Ending December 31, 1995

Income:			
General Donations	7,934		
Gender Equality Fund	3,440		
Investment Interest	3,602		
Total Income:		**14,976**	
Expenses:			
Gender Equality	6,263		
Alaska Legal Net	601		
Accounting Services	1,854		
Supplies and Miscellaneous	(185)		
Federal 990 Information Return	351		
Total Expenses:		**8,884**	
Net Gain:			**6,092**

Financial Statements

Alaska Bar Foundation IOLTA Program

Financial Position as of December 31, 1995

Assets:			
Cash and Investments		256,107	
Total Assets:			**256,107**
Liabilities and Capital:			
Current Liabilities:			
Accounts Payable	617		
Payroll Taxes Payable	0		
Total Liabilities:		617	
Capital:			
Funded Capital	300		
Fund Balance	176,195		
Gain	78,995		
Total Capital:		255,490	
Total Liabilities and Capital:			**256,107**

Alaska Bar Foundation IOLTA Program

Income Summary for the Twelve Month Period Ending December 31, 1995

Income:				
Interest on IOLTA Accounts	242,458			
Interest on Investments	7,766			
Total Income:			**250,224**	
Expenses:				
IOLTA Grants:				
Alaska Pro Bono Program	140,000			
Anchorage Youth Court	5,000			
Catholic Social Services	3,000			
CASAs for Children	2,250			
Total Grants:		**150,250**		
Administration:				
Staff Expense	909			
Bank Fees	10,358			
Accounting Services	7,414			
Annual Report	1,901			
Miscellaneous	397			
Total Administration Costs		**20,979**		
Total Expenses:			**171,229**	
Net Gain:				**78,995**