The Alaska BAR RAG

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Inside:

Tea with the Chief II

The Court confronts votarian mechanics in election of 2000

By Peter Aschenbrenner II

Alert readers will remem-ber from my article in the November-December issue that the British had come to America for do's and don't's in setting up a British Supreme Court.

From the tight little islands, the British had found in our Supreme Court a continental Fenwick, a Grand Duchy of self-sufficiency, a Pimlico into which a passport was demanded at the frontier.

So the British asked their *how to* questions, with *whys* left begging an audience.

The historic practice of the appellate committee of the Law Lords isn't all there is to the cat's meow if you've got to redo things so that not every issue goes on to Strasbourg. Americans assume that their national dignity is immune from such insult; so we can revel in *whys and wherefores.* And when the nation's Chief Justice says we reconsider no decision at the behest of partisans, and losers to boot, the luxury is ours to enjoy.

In his September interview, Chief Justice William Rehnquist told me and my two British colleagues that, if there was a significant disagreement with a court decision across the board — truly across the board in society — that the justices would listen and consider rethinking their decision, but he also told us that this hardly ever happened. "It's not the royal perogative," remarked one of our trans-Atlantic visitors, in the bright sunlit plaza after our tea with the Chief.

That's the nice thing about history; they're making it fresh every day. By December the Supreme Court had an opportunity to do what the Chief Justice told us that they try to do, which is to persuade.

The events of December also tested the condition subsequent that the Chief Justice added. Any "significant disagreement against an opinion" would have to be "nonpartisan" before the justices would have "cause to rethink their position." *Bush v. Gore*, or *Bush II*, put the negative side of the equation into play. If a majority of the court decides an issue in favor of one party, such as an election, the losers are partisans because that's who's in elections in the first place; these partisans are losers, because the court makes them so.

Bush's case enlightened Americans on these points: there is no federal constitutional right to vote for presidential electors; there is only such right as may be granted by a state legislature. If the state legislature messes up votarian mechanics so that a loser asks for too few or too many recounts, then whoever has the most votes wins without judicial review. And since the loser is a partisan, the loser would have no standing to ask the court to rethink its position.

Jefferson announced "this sacred principle, that ... the will of the majority is in all cases to prevail." He was speaking of the election of 1800 and the follow-on election contest that extended for weeks into the next year. The occasion was his First Inaugural Address and it is commonly supposed that his remarks were directed to votarianism yielding power in the legislative and executive branches to the majority. But then, Jefferson didn't live through the contested election of 1876 in which the judicial branch added its weight to the electoral scales for Tilden to lose and Hayes to win.

The British academics have yet to weigh in on this one; but, to hazard a guess, it is doubtful that their Supreme Court will decide closely run elections, since

Continued on page 32

WHO'S GOT THE COLLISION INSURANCE? —PAGE 21

Survey says most lawyers are online

A statewide Alaska Bar Association survey on the use of Internet technology by Alaska's legal community has shown that a significant percentage of respondents are online and actively using the Web in their practices.

The mail survey was conducted in November as part of a Bar program to provide CLE information online. The "30-second Technology Survey" was distributed to determine connection speed, browsers used, and other capabilities attorneys have for accessing CLE materials online. The Bar also has launched a three-month pilot project to test response for Internet-delivered courses (see related article on page 24).

A total of 518 attorneys returned the survey, with all but four reporting that they are connected to the Internet. Here are the results:

TECHNOLOGY SURVEY RESULTS

Are you connected to the Internet?	
No	4
Yes	514
Are you connected (check all that apply):	
Both	427
Home	20
Work	68

Continued on page 32

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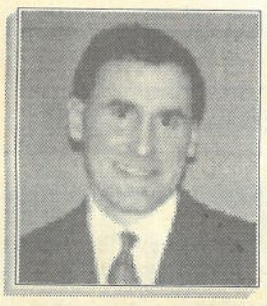
President's Column

Strategic thinking or long term planning?

☐ Bruce B. Weyhrauch



Your organization has a plan for where it is going. If you work for a law firm, it has a strategic plan that you have received as part of your orientation. You have business plan for your sole practice. Your client agency has a mission statement that guides your representation of that agency.

Right. What's the point?

It is important to turn strategies into action in our business and in our profession. This process involves creative thinking, a review of traditional strengths and weaknesses, an assessment of historic trends, a determination of the opportunities that lie ahead, and an identification of possible threats to the organization.

In order to successfully meet your own business goals, and your client's or constituent's needs, these elements of the strategic process need to be articulated and analyzed realistically.

Strategic thinking creates partnerships, develops resources to make the most of opportunities, and provides a method for reaching goals. The long term planning part of the strategic process is setting forth goals and objectives, and reviewing them realistically in a strategic context.

Both the strategic thinking and long term planning processes are as important for the Bar Association as they are to the organization you work with.

WHY? ONE EXAMPLE.

If you want Continuing Legal Education credits, you probably would prefer to attend programs that are relevant to your practice. If you have access to excellent programs, you will probably pay more to see those, rather than numbing out in front of a badly produced video replay. Should the Bar help you do that? Probably. Can providing these services to its members justify the Bar? In part, perhaps. Has the Bar always delivered the CLE program service? Yes. Can the CLE program be enhanced so that you and the Bar both benefit? Definitely.

How can members and the Bar both benefit from this? You get smarter, happily pay (for once) for something the bar offers, the bar gains income, and the dues go down.

CRAZY DREAMING? IT SHOULDN'T BE.

High quality services at an affordable cost designed to service the public and the profession should be the reason for the Bar's existence. It should be the cornerstone of the Bar's strategic thinking.

In fact, the purposes of the Alaska Bar are to cultivate and advance the science of jurisprudence, promote reform in the law and in judicial procedure, facilitate the administration of justice, encourage continuing legal education for the membership, and increase the public service and efficiency of the Bar.

A strategic plan, and long term planning, should go hand in hand to accomplish these purposes. If they are good enough for your business and organization, they should be good enough for the Bar Association. I hope that the Bar Association prepares, and implements Strategic Plan and long term planning now.

Editor's Column

Law and politics: you can vote again

☐ Thomas Van Flein

By now you have probably digested commentaries and editorials about the U.S. Supreme Court's decision in Bush v. Gore. Contrary to its reputation (perhaps created years ago when the official Bar Rag motto was "We Don't Care What You Think" which was replaced with "Shut Up And Pay Your Dues"), we at the Bar Rag are curious about your opinion. We are setting forth a sampling of columnists who have already published their opinions. At the end of this column we provide a ballot for you to fax to us for the Bar Rag survey. We hired a consultant to help us prepare a simple ballot that we hope will allow us to count every vote. In this regard, we rejected punch cards, butterfly ballots, moth ballots and grasshopper ballots. We are sticking with the "puzzle master" ballot.

To those of us trained in the law, it came as no surprise that ultimately lawyers, nine of whom got to vote twice for president, decided the presidential election. The real question is whether the Court damaged its reputation for impartiality or, depending on your philosophical background, whether it took the shroud off the myth of judicial neutrality and exposed a fundamentally political institution masquerading as a non-partisan entity. The question has substantial import when viewed from the perspective that the Court is supposed to be above politics ensuring a government of laws, not people. For many, a finding of political partisanship is heavy condemnation.

We know that Vice President Gore said that he "strongly disagree[d] with" the court's decision, but would "accept it." Do others accept it as well? A sampling of both legal and lay press commentary suggests that the Court has exposed its soft white underbelly and put to rest any claim that it is above pure partisanship when deciding issues.

Newsweek reported in its December 25, 2000 issue that Sandra Day O'Connor was at a party on election night and, when watching election returns that had Gore winning, stated "this is terrible" and left the room "with an air of obvious disgust." Her husband then told partygoers that a Gore victory meant a four-year delay in their retirement plans.

Columnist Stuart Taylor, Jr. wrote "[l]ong after George W. Bush takes office, the 2000 election will continue to cast a shadow over the Supreme Court." He further noted that "all" of the current justices are "activists who boldly use federal judicial power to displace decisions by elected officials and state courts that offend their personal, philosophical or political values." Professor Lawrence Tribe stated to Newsweek that the decision was "peculiar and bizarre." Does the fact that the majority refused to sign their own opinion reflect even their own misgivings about their reasoning? What shall we make of the fact that the most ardent defenders of state's rights rushed into a decision completely eviscerating a state's highest court ruling on state law? We know the Court was rushed when viewed in the context of how decisions are normally made. We know that Justice Clarence Thomas pulled his first "all nighter" since law school. Can anything good come from five bleary-eyed judges worried about their retirement plans?

What about the reasoning itself? Could the Court majority truly expect the country to accept its rationale that there was not enough time left to properly count the questioned ballots when (1) it was the one responsible for stopping a timely count in the first place and (2) the real deadline for properly counting votes was weeks away? What about the majority's painfully inept equal protection analysis? Prior to this decision, had a first year law student concluded that principles of equal protection precluded an accurate recount because it might upset the nominal winner, that student, besides not passing constitutional law, might be advised to switch disciplines. Yet, five members of the Court signed off on that logic—or actually didn't sign off, but bought it anyway. That is just the type of reasoning that may sound appealing at 4:00 a.m. when someone wants a quick resolution.

Columbia Professor Michael Dorf wrote in a column for Findlaw's "Writ" that academic radicals historically claimed that there is "no distinction between law and politics." Recognition of the "widespread perception that the Supreme Court acted politically in *Bush v. Gore* appears to be an important victory for the radical position."

Professor Dorf notes further that "the Court's most conservative Justices announced an interpretation of the Equal Protection Clause so broad that if generally applied, it would sweep aside election procedures for nearly every office in a majority of American states. At the same time, the Justices refused to consider the consequences of their sweeping decision for any other circumstances, thereby suggesting that the principle announced would *not* be generally applied, but would be arbitrarily limited to the facts of the Bush-Gore election." Professor Dorf further reasoned that "[t]he inconsistencies go on. Most of the conservative Justices' opinions attacked the Florida Supreme Court's interpretation of Florida law, refusing to defer to it. But on the crucial question of whether a recount could proceed beyond December 12, these Justices suddenly, arbitrarily chose to defer to the Florida Supreme Court."

Attorney Edward Lazarus explained, in a another Findlaw column, that the Rehnquist legacy is well demonstrated by the decision in

Continued on page 3

The Alaska BAR RAG

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Bar Letters

Let's start a mentoring program

I am a member of the Alaska Bar and have been since 1991. I would like to ask your opinion of a matter that I brought before the Board of Governors at the January 19th meeting.

The matter that I brought before the Board of Governors was the idea of starting a mentoring program within the Alaska Bar. This is not a new idea. Many states have a mentoring program, including the Missouri Bar, of which I am a member. In such states, mentoring is available for any attorney who wishes to be paired with a mentor, including associates of firms, solo practitioners or attorneys striking out into a new practice area. It is especially helpful for new attorneys or sole practitioners who need a bit of advice from time to time or a willing ear. Even associates of larger firms may find that sometimes they do not want to appear ignorant to a senior partner and may find a mentor more approachable.

I think that this type of a program could tremendously help the profession of law. It is not an especially friendly profession. There are no periods of apprenticeship whereby one gains experience under a senior member of the profession before wearing the title of "attorney". A mentoring program could give the mentored attorneys a real chance to benefit from the knowledge of an experienced attorney and give the mentors a chance to help mold our profession into the noble occupation that it once was.

If there are any of you who think that this type of a mentoring program would be a worthwhile endeavor, either for the mentored attorneys or the mentoring attorneys, please take the time to register your assent with myself or the Bar Association. You may email the Bar Association at oregand@alaskabar.org or email myself at HRobersonHill@cs.com.

Thank you in advance for your participation.

—Holly Roberson Hill

Editor's Note: In Anchorage, a mentoring program exists through the Anchorage Inn of Court. Interested people can call Diane Vallentine at 563-8844.

Law and politics: you can vote again

Continued from page 2

Bush v. Gore: "Having assured the election of George W. Bush, Rehnquist can now retire — as he has wanted to do — knowing his legacy will be in the safe hands of a conservative successor."

Lazarus further contends that the "most lasting legacy of Rehnquist's tenure, however, may not be these dubious changes in the law. Rather, it may be the poisoning of the Court's decisional culture and the tarnishing of its reputation." Additionally, Lazarus reasons that "the Rehnquist Court routinely breaks this pledge [of political neutrality]. It was bad enough that the Justices split 5-4 along predictable ideological lines to guarantee Bush the presidency. Such 5-4 splits, which occur on the Rehnquist Court in almost every case with political overtones, reduce the meaning of our Constitution to a single vote by a Justice who, unlike actors in the other branches, had no accountability to the American people. "

Another author is particularly critical of Justice Scalia as intellectually inconsistent. Professor and former Supreme Court law clerk Sherry Colb writes that the " Supreme Court's actions, of course, have not only failed to remove any clouds over the legitimacy of the coming Bush administration, but they have succeeded in marring the legitimacy of the Supreme Court itself."

In the final analysis, *Bush v. Gore* may take its rightful place next to *Dred Scott, Plessy v. Ferguson* and *U.S. v. Korematsu*: decisions generally regarded as eminently flawed, politically influenced, and just plain wrong.

Here is your chance to vote again, however. Justice John Paul Stevens wrote in his dissent that the real winner of the election will remain unknown, but "the identity of the loser is perfectly clear. It is the nation's confidence in the judge [guarding] the rule of law." Do you agree or disagree? Fill out this ballot, and fax it to us at 272-9586 or e-mail your vote (1,2,3, or 4 and yes or no) to oregand@alaskabar.org. Results will be published in the next Bar Rag.

The *Bush v. Gore* decision was:

___ (1) Decided correctly for the reasons stated in the opinion

___ (2) Decided correctly, but because of the result only, not the reasoning

___ (3) Decided incorrectly as a matter of constitutional law_

___ (4) Decided incorrectly as a result of unfortunate political partisanship

Has the U.S. Supreme Court damaged its public perception?

___ YES

___ NO

CLIP AND FAX TO 272-9586 or
e-mail your vote (1,2,3, or 4 and yes or no)
to oregand@alaskabar.org

Kodiak wants the convention (But can it seat 300?)

Despite the interesting program slated for the 2001 Annual Bar Association Convention in Ketchikan, I won't be attending in protest over the Bar's unilateral decision to cancel the Kodiak Bar Convention 12 years ago.

Kodiak is the 5th largest city in Alaska and only a few hundred more people live in Ketchikan. Yet despite Ketchikan's obvious further distance and cost of transportation for the bulk of our membership, Ketchikan has managed to land a Bar convention (as have Fairbanks and Juneau). No other city outside of Anchorage is considered—except Kodiak in 1988! But Kodiak was cancelled as the date approached due to (we were told) the cost—in large part coming from the judicial members who had scheduled their conference for Anchorage.

Particularly in light of the push for mandatory CLE in Alaska, isn't it about time this parochial attitude comes to an end (stemming from the Territorial days when Ketchikan, as well as Anchorage, Fairbanks, Juneau, and Nome were the only seats of the U.S. District courts)?

This provincialism still results in the U.S. District Court maintaining a courthouse in Nome, despite the fact that developments in Alaska have passed Nome by.

Kodiak, which is the largest fishing port in the nation, is a community that has a population of many alien workers of Filipino, Mexican and Vietnamese origin. (Due to the largely maritime and immigration nature of its litigation, Kodiak also could sorely use a U.S. District Court seat.)

A convention in Kodiak could serve as a highly educational opportunity for our Bench and Bar to see what is happening in other parts of our state, and to understand better the history of Alaska and its development.

Kodiak is one of our state's most historic locations. It was Alaska's first capital and a major internationally recognized seaport, at a time before an upstart George Washington crossed the Delaware. Captain James Cook noted the central location of Kodiak as a hub of Pacific Northwest ocean commerce (including Hawaii) in the course of his third and last voyage of discovery in 1789. He noted on this voyage as well that Kodiak's importance as a center of trade had not been lost on the Russians who had been industriously improving their facilities for nearly 50 years.

All this was incidentally before the Russian America Company decided to expand its empire by establishing yet another "outpost" in New Archangel (now Sitka). This "outpost" would later come to be Alaska's second capital, when Kodiak appeared to be more susceptible to invasion in light of the British raid on Washington D.C. during the War of 1812 and Russia's impending disputes with Britain that led to the Crimean War in the 1820's.

Russia could never thereafter feel secure from British designs for expansion (from Canada) and so sold all of its interests in Alaska to the U.S. in 1867 (Seward's Folly). Seward appeared clairvoyant only after the unexpected discovery of gold in the Klondike and Nome awoke a sleeping Alaska (outside of Kodiak) and set the stage for American development in Fairbanks, Southeastern and Nome. Much later, a very poor transit site in a place called "anchorage" was to become Alaska's largest city—for a variety of factors, not the least of which was WW II, which also resulted in the building of a Naval and Army base of 20,000 soldiers and sailors at Kodiak.

And then there is the anthropological history of Kodiak's great Native seafaring people. But that's another story.

My point is this: If our membership allows a bunch of armchair lawyers to run our Bar, those of us who practice our profession by getting off our behinds and going to court day in and day out are going to be attending conventions to hear lectures by U.S. Supreme Court justices and law professors. While these lectures are perhaps very intellectually interesting, they have very little relevance to the "justice" being administered in our courtrooms.

These conferences will moreover be held in the "urban" cities of our state, which are far removed from those "rural" areas that our bar should be devoting at least some significant portion of its time studying.

While Ketchikan is lovely relatively "rural," it is also a site that has been fairly stagnant since the 1950s, compared to many other cities, such as Kenai, Palmer, Wasilla, Homer and, yes, Alaska's 5th largest city of Kodiak, that also are deserving of a convention.

OK, despite my displeasure (and what I predict will be a soggy bar convention), I'm not urging lawyers to boycott the Ketchikan bar convention. On the contrary, I'm going to urge you get out from behind your desks and go plunk down those extra bucks and go to Ketchikan.

But I also ask that while you're there, get out of the lecture hall and off the tour boats and take a walk through some of the less tourist-oriented areas of Ketchikan—the commercial boat harbor, the pulp mills, the fish processing plants and the working persons' bars and rub elbows.

No, you won't get any CLE credit for this, but you might leave Ketchikan with a feeling for the practice of law in other diverse areas of "rural Alaska." You might be able to receive a continuing education lesson on the subject if you recognize that your Ketchikan experience wasn't all that bad and suggest that we might have our convention at a "different," new location (that is even more convenient to Anchorage) next year.

Say, how about Kodiak?

Jerry Markham

Ed Note: Ketchikan last hosted a Bar convention in 1977.

Cruise through a national monument

☐ Scott Brandt-Erichsen

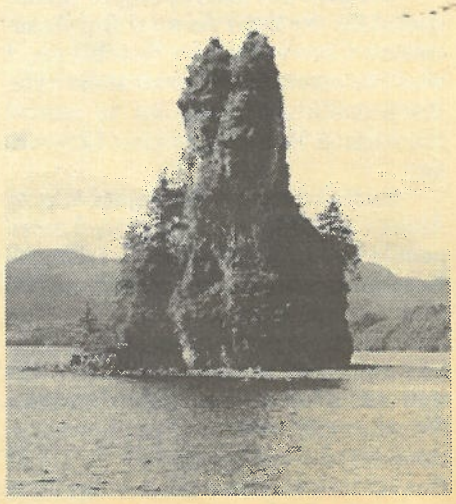
Each year in the fall, at the end of the busy season, the Alaska Marine Highway schedules a 12-hour day cruise around Revillagigedo Island. This cruise passes through Misty Fjords National Monument, one of the most frequently visited tourist attractions in Southern Southeast Alaska.

Attractions like Misty Fjords are among the many opportunities Bar members can enjoy during the annual convention in May.

Last October (1999), my family joined 500 of our closest friends and spent twelve hours relaxing and enjoying the scenery from our vantage point on the marine highway's flagship *MV Columbia*. (In October 2000, the Columbia was out of commission so the *MV Kennicott* did the deed).

The marine life was somewhat limited. Although we saw a number of dolphins, we didn't happen to see any humpback whales or orcas this trip. We do occasionally see them traversing Tongass Narrows from our house. Our luck with terrestrials was better. In one of the narrow passageways between Walker Cove and Rudyard Bay, we saw a black bear on the beach.

The most dramatic scenery was the smooth-faced, waterfall-shrouded cliffs of Rudyard Bay, a majestic fjord in the middle of Misty Fjords National Monument. The *Columbia* idled in Punch Bowl Cove for about an hour while the crew launched one of the lifeboats and shot footage of the Columbia against the backdrop of the sheer face on the east wall of Punch Bowl Cove. There was mist, sunlight and a light dusting of snow at the top of the ridges. The proximity to the water of this dramatic landscape has an "other worldly" air to it which awes tourists from around the world.



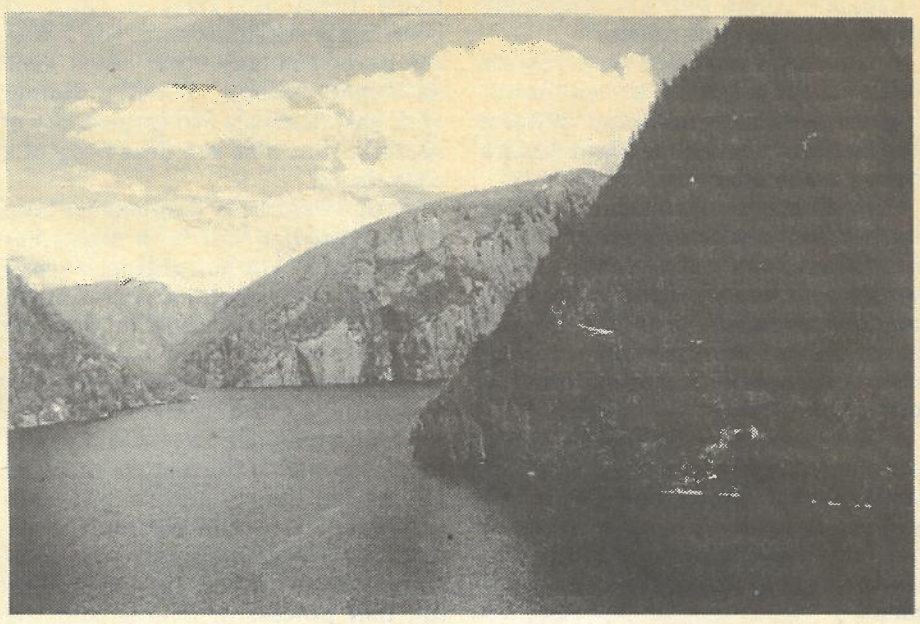
A couple of hours later, we passed the spire of new Eddystone Rock, the core of an ancient volcano which rises to 167 feet in the middle of Behm Canal.

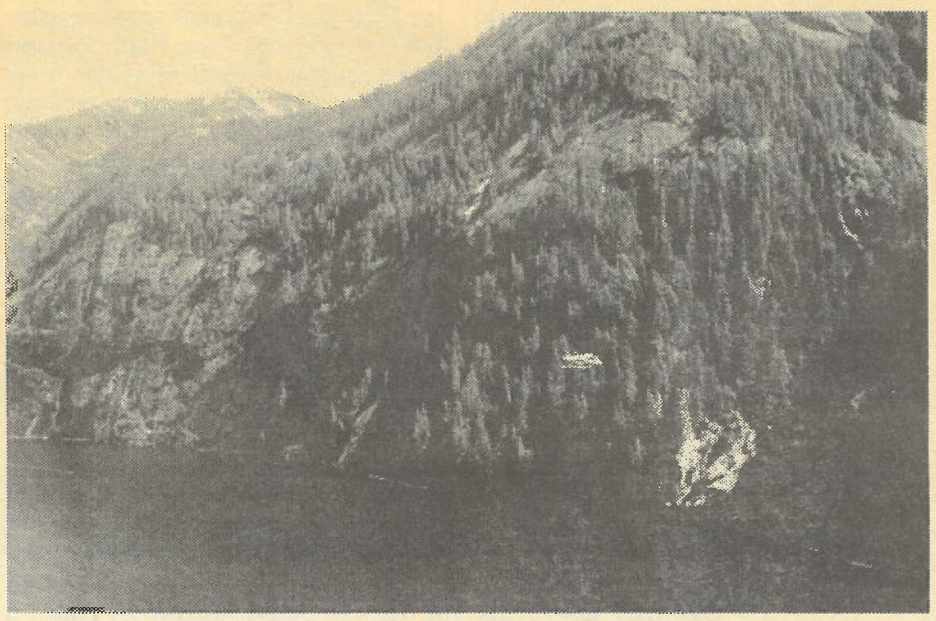
One lesson we learned after spending all day in either the forward viewing lounge or the restaurant was that many of the passengers rented berths and brought coolers for a day-long tailgate party, taking in some of the scenery from the cabin windows.

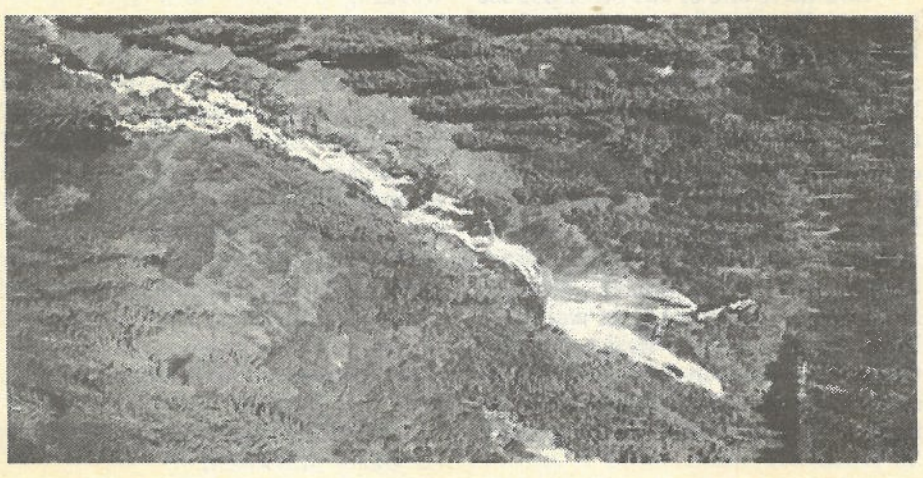
We definitely felt rejuvenated after our 12 hours of beautiful scenery without telephones or fax machines or any other interruptions from the "real world." A Misty Fjords cruise is just one of the tourism options available out of Ketchikan. If you have the time and opportunity, I would strongly recommend it.

WHILE THERE IS NOT A CRUISE TO MISTY FJORDS ON THE SCHEDULE, THE BAR IS PLANNING AN OPPORTUNITY FOR A SHORT JET BOAT TOUR OF MOESER BAY AND THE AREA AROUND HISTORIC LORING JUST PRIOR TO THE DINNER ON THURSDAY NIGHT AT SALMON FALLS RESORT.

The thousands of tourists who flock to Ketchikan in the summer must either take a charter cruise or flight seeing charter and hope for good weather. While there is not a cruise to Misty Fjords on the schedule, the Bar is planning an opportunity for a short jet boat tour of Moeser Bay and the area around historic Loring just prior to the dinner on Thursday night at Salmon Falls Resort. This short cruise should highlight some of the natural attractions which Southeast has to offer.







Photos by Scott Brandt-Erichsen

Alaska Bar Association and Taecan.com partner to provide online CLE

The Alaska State Bar Association has contracted with Taecan.com, an industry leader in online CLE, to be its partner in making the Alaska Bar Association Continuing Legal Education (CLE) courses available to all Alaska attorneys over the internet. The Alaska Bar CLE content will be added to the expanding Taecan.com CLE online library and will be accessible to Alaska attorneys wherever they may be.

THE ALASKA BAR/TAECAN.COM PROGRAM IS DESIGNATED AS A PILOT PROJECT FOR THE FIRST THREE MONTHS, AND DURING THIS TIME ALASKA ATTORNEYS MAY TAKE THE FIRST TWO ALASKA BAR ONLINE CLE COURSES

The Alaska Bar/Taecan.com program is designated as a pilot project for the first three months, and during this time Alaska attorneys may take the first two Alaska Bar Online CLE courses—Risk Management and Ethics—without charge. Thereafter, assuming the program is accomplishing its goals, the term of the Alaska Bar-Taecan.com agreement converts to three years, more content will be added, and there will be a charge to take the courses.

The organizations said partnership will greatly assist Alaska attorneys in meeting Voluntary CLE requirements established in 1999 by the Alaska Supreme Court. The Alaska Bar-Taecan.com Online CLE Program is designed to assist Alaska lawyers in meeting annual VCLE deadlines by making the Alaska Bar's courses available over the internet, and thus accessible to attorneys 24 hours a day, 7 days a week.

"By part-nering with Taecan.com for this pilot project, the Alaska Bar Association is providing its member lawyers with a convenient, cost-effective way to satisfy their CLE requirements and meet the new deadlines. It will particularly benefit the many attorneys who practice in outlying areas—they can satisfy their CLE requirements without traveling. We are committed to serving our members, wherever they may be," said Barbara Armstrong, CLE Director.

"Taecan.com is extremely pleased to be part of the Alaska Bar's innovative Voluntary Continuing Legal Education Project. We are confident that by working together we can show Alaska's attorneys that online CLE is not only a great way to meet their CLE requirements, but an excellent reference tool as well," said Patrick Vane, Taecan.com CEO.

Effective September 2, 1999, the Alaska Supreme Court approved the Voluntary Continuing Legal Education Rule (VCLE) which suggested minimum recommended hours of approved Continuing Legal Education (CLE) for all active Alaska Bar members. Members are encouraged to complete at least 12 hours of CLE per calendar year, including one hour of ethics coursework.

Alaska is the first state to adopt a voluntary CLE rule that includes incentives for compliance, which include

- a reduction in Bar dues (determined annually by the Board of Governors);
- inclusion in a published listing of Alaska Bar members who have completed the minimum recommended hours of approved CLE;
- eligibility to participate in the Bar's Lawyer Referral Service;
- non-compliance may be taken into account in any Bar disciplinary matter involving Alaska Rule of Professional Conduct 1.1 dealing with competency.

Taecan.com is a Seattle-based Internet company that offers an alternative to seminar style "fixed time and place" CLE seminars. The company, founded by an attorney and educator, said it has aggregated the largest online library of approved CLE titles in the world by partnering with bar organizations and other course providers to deploy their content over the Internet. Taecan.com has similar contracts with bar organizations that include the State Bar of California, the Florida Bar, the New York City Bar, the Ohio Bar, the Los Angeles County Bar Association, the Orange County Bar Association, and the Houston Bar. The company takes its name from "taecan," the Old English word for "to teach."

Free Ethics CLEs online

"Risk Management for the Millennium" and **"Ethics for the Millennium"** *without charge* through February.

Each course is approved for one hour of ethics credit under the Alaska VCLE Rule.

To take an online course:

1. Go to the Alaska Bar website at www.alaskabar.org
2. Click on the option "CLE and Convention" in left-hand column
3. Under the page heading *CLE and Convention Information*, click on the selection "Online CLE Pilot Project."
4. The next page will give you the option of clicking on "Online CLE Course Description" and/or "To Take CLE Courses Online – Click Here."
5. You will be taken to the Taecan.com site for Alaska Bar courses. Follow the instructions.

If you have any questions, please contact Barbara Armstrong, CLE Director or Rachel Batres, CLE Coordinator at armstrongb@alaskabar.org and batresr@alaskabar.org or call 907-272-7469.

If you do take a course online, we would appreciate your feedback, please e-mail us!

GETTING TOGETHER

Mediating

☐ Drew Peterson

In the late 1980's, after my first formal mediation training, I took a Family Therapy course at UAA. It was a fascinating course, describing theories and practices that were at the cutting edge of the worlds of psychology and psychiatry.

One of the therapies that struck my attention was called family network therapy; the therapist serves as a sort of facilitator and convenor of a network of family, friends and other individuals concerned about the behavior of a certain individual (the "identified patient").

As the process was described, the therapist would literally rent a hall or locate a large conference space. An invitation was sent to everyone who could be identified in the patient's life who was interested in his or her well-being. Family, near and far, friends, and even employers and co-workers were invited to come and participate. Participants were invited to a conference to figure out what to do to help the patient with his or her problems

At the beginning of the conference, the therapist would greet the participants and explain the goal: to assist the identified patient with certain life problems. The problem was usually something which the invitees were aware already (e.g. addictions, impulse control, schizophrenia, other mental illness, etc.)

After the introduction, the participants were left to their own devices. Typically a number of participants would decide that the issues were none of their business, or out of their control, and they would leave and go home.

But many of the group would have ideas, especially those who cared most deeply about the patient. A dialog would then begin. While network therapy was in its infancy when I read about it, and I don't recall statistics, there were reports of great success at handling previously intractable issues.

DURING THE PAST YEAR A NUMBER OF MEDIATIONS HAVE TAKEN PLACE UNDER THE CINA MEDIATION PROGRAM, WITH CONSIDERABLE SUCCESS.

MEDIATION IN CHILD IN NEED OF MEDIATION CASES

In January of 2000, I was one of a number of individuals trained in Anchorage under the auspices of the Alaska Court System for mediation of child-in-need-of-aid (CINA) cases. The program, which remains in effect throughout Alaska, was designed to use mediation to deal with some of the stickiest issues involved in such cases, particularly for reunification of the children with their parents. During the past year a number of mediations have taken place under the CINA Mediation program, with considerable success.

MEDIATION OF TERMINATION AND PERMANENCY PLANNING ISSUES

One of the things learned in the early days of the CINA Mediation project was that while reunification issues lent themselves well to mediation, there was a particular need for mediation in other areas as well. Particularly under the terms of the Adoption and Safe Family Act of 1997, there was a need in many if not most cases to also consider permanency planning for children, including termination of parental rights, adoption, permanent guardianships, long-term foster care, and other long-term options, when reunification was not possible within the certain relatively short time periods mandated by the new federal law.

In the light of such experience, a second CINA Mediation training was scheduled by the court system in November of 2000, to deal with such issues of permanency. The trainer chosen was Anita Stuckey, Director of the Fourth Judicial District Office of Dispute Resolution, located in Colorado Springs, Colorado, which has had considerable experience in dealing with such issues in a court mediation setting.

FAMILY GROUP CONFERENCING

One of the primary techniques taught by Anita and used by her program in Colorado, is called Family Group Conferencing.

Essentially, it consists of convening all of the normal experts involved in a CINA permanency planning context (i.e. the social worker, GAL, therapists, and attorneys for all the parties) in a meeting with all of the family and friends involved in caring for the identified children (including all parents and past parental figures, interested family from all sides, foster parents, and tribal representatives in Indian Child Welfare Act cases).

SIGNIFICANTLY, AFTER IDENTIFYING THE LEGAL AND CARE ISSUES WHICH THEY BELIEVE ARE CRITICAL TO RESOLVING THE MATTER, THE EXPERTS *LEAVE THE ROOM*, TO LET THE INVOLVED FAMILY NETWORK COME UP WITH AN APPROPRIATE PLAN TO PROVIDE FOR THE PERMANENT CARE OF THE CHILDREN.

Significantly, after identifying the legal and care issues which they believe are critical to resolving the matter, the experts *leave the room*, to let the involved family network come up with an appropriate plan to provide for the permanent care of the children. In short, the family conference works the same as the family network conference described above, to let the family determine what is in the child's best interest, within those limits created by the CINA court proceeding.

The mediator may remain, to facilitate the family conference, or may leave the conference, in whole or in part, when the family so requests or seems reluctant to discuss things with a stranger present. Any final agreement reached is, of course, subject to review by the various experts and attorneys, and may be vetoed or need to return to the family conference to be renegotiated if all of the experts' concerns are not met. Even with such restrictions, however, family group conferences result in satisfactory resolutions in the great majority of cases.

VALUES. BELIEFS AND ASSUMPTIONS ABOUT FAMILY GROUP CONFERENCING

Perhaps most interesting to me are the values, beliefs, and assumptions that go into the family group conferencing process. According to Anita, they are as follows:

- Those who care the most about a case of child abuse are parents and relatives of the abused.
- The parents and the relatives are those who have invested the most in protecting the child.
- The members of the family are the ones who understand structure and how decisions get made.
- The family has information that you can never know or find out.
- Controlling the power of the family can never be done through the legal system.
- There is a hierarchy within the family that social workers and other professionals associated with a case may never know about.
- There are myths, stories, and legends within families that you will never learn.
- Families will make decisions in private no matter what professionals do or fail to do.
- Children return home eventually if they so choose.

The concepts and practices of family group conferences were initially developed in New Zealand, among the Maori people, who have a strong extended family and tribal social structure. They quickly spread and have been just as successful among non-native people. According to an article by Mark Hardin in the May, 1994 *ABA Juvenile and Child Welfare Reporter*, the family group conferences have been a recognized success in New Zealand. They have resulted in extended family members remaining more actively involved in decisions concerning the children, they have reduced transracial and transethnic placements, and they have been used in child delinquency proceedings as well as child dependency proceedings, with the enthusiastic support of the judges of the New Zealand Children's Courts.

CONCLUSION

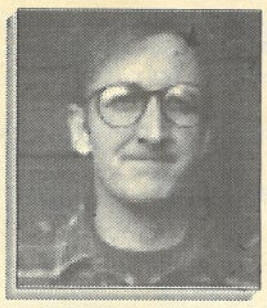
The CINA Mediation project in Alaska is new, and it remains to be seen how well the family group conferencing model will work here. I predict that it will work very well. In any event it is exciting to be involved with a courageous and innovative effort to deal with such issues of importance to our children. My compliments to the Alaska Court System administration and its mediation coordinator, Karen Largent, for promoting the use of family group conferencing in CINA cases in Alaska.

Celebrate Our History Reception

Friday, Feb. 16 • 3 - 4:30 p.m. • Nesbit Courthouse Jury Assembly Room, 2nd Floor

The Class of '76

☐ Dan Branch



During the 70's, North Slope oil created a vacuum that sucked folks North to Alaska. There were wells to drill and a pipeline to build. Many of the workers came North, built, and left, paychecks in hand.

Just before the oil reached Valdez, a different migration started. They were young, newly emerging with liberal arts degrees from colleges in the Lower 48. No one down there wanted to hire them, even if they had teaching degrees.

Tired of fry cook and waitress jobs, they looked for something better. Some ended up in the Peace Corps. Others, wanting a third world experience while being paid in dollars, looked to Alaska.

Alaska was more than willing to bring them up. The oil rush had intensified the state's social problems and put a strain on the infrastructure. A flood of money would soon hit. We could afford to spend some of it on teachers, social workers and bureaucrats.

Thanks in part to those liberal arts graduates, Alaska survived the oil boom. With the Permanent Fund and budget reserve to act as money sponges, things evened out. We came out of the boom with a growing population and only a few temples of excess.

Many of the 20-year immigrants are still here, building a life and raising families. They run your public radio stations, forecast the weather, write your newspaper articles, and test the quality of your water. Some are our artists.

They came before there was a Permanent Fund, at a time when the state collected personal income tax. While other immigrants have moved south after a few years, many of these folks have made their life in Alaska. They have made more of an impact on modern Alaska than the sourdoughs but no one uses them as archetypes for fiction.

I'll give you an example of a 70's migrant. Last Friday morning I was listening to a federal weather forecaster say it was going to rain all weekend and once again there would be no skiing. It's been a mild and snow-free winter so far and the radio host wanted to know if we are in the middle of a weather sea change. Relying on knowledge gained since moving to Alaska in the late 70's, the forecaster answered the question.

THEY DO THEIR JOB, RAISE FAMILIES, AND HELP OUT AT THEIR KIDS' SCHOOLS. FOR SOME REASON, THEY DON'T GET CREDIT FOR BEING "REAL ALASKANS."

So, for over 20 years, this guy has been divining the weather in Southeast Alaska. He also hosts a country music show on the radio and helps out with the Juneau Folk Festival. You probably run into folks like him every day. Maybe there's a well-respected teacher at your local school—the one everyone wants for their second graders. If he can sing all the words to "Sargent Pepper's Lonely Hearts Club Band," he probably showed in in Alaska in the 70's.

These people are everywhere. They came quietly to the state about that time, probably looking for adventure, and stayed. They do their job, raise families, and help out at their kids' schools. For some reason, they don't get credit for being "real Alaskans."

They are real citizens of the new Alaska. Our reality has changed since statehood in '59. In those 40-some years, we've become urban. Most Alaskans live in railbelt cities. For half of Alaska's life as a state in the Union, members of the 70's migration have been pushing the paper that makes that life possible. Maybe they should get some credit.

Bartering reduces costs, brings clients

By Ken Vercammen

BUSINESS SHOULD JOIN BARTER GROUPS

My office received many new cases in 2000 by becoming active in three professional barter organizations. We recommend other service providers and businesses join a barter group.

The barter group refers us business clients and we negotiate legal fees directly with the potential clients. After performing legal work, we earn "barter dollars" in lieu of actual cash payments. We then use our Barter dollars for different services. We hired a moving company to move our house. The moving company also helped us when we moved our office space in 1997 down the hall to a larger suite. Other services we received through barter groups included facials for my wife and sport massage for me while I was training for the marathon.

According to the owner of the New Jersey based Barter Depot, Joe Prince, bartering is an association of professional business owners who buy and sell their goods or services with trade drafts. Trade drafts are similar to checks you now use to do your cash banking. Members trade in and out of the barter bank acquiring new customers, and buying the things they need most.

ALL ON BARTER

Barter also helps your cashflow by spending trade dollars instead of cash dollars. You must pay federal income tax and state income tax on all fees charged, but, it is a source of new clients.

We have provided the following services to new clients through the barter groups:

1. Collection
2. Litigation
3. Buy and sale of business
4. Bulk sale
5. Update contracts of business with their clients
6. Traffic tickets/criminal defense for business owners or their employees
7. Wills for business owners or their employees
8. Probate and estate administration
9. Estate planning
10. Bankruptcy chapter 7

Prince says that if every business person truly understood the countless values of bartering, the billion-dollar explosion in America would be even bigger than it already is. It is thus imperative to further explain this wonderful business tool. Webster's Dictionary defines barter: " To trade (e.g., goods) without the exchange of money." Think of the inner workings of barter as follows:

Suppose you're a dentist and join a barter group. You want to have some work done on your office, specifically painting and carpentry. The barter group's memberships include painters and carpenters, so they refer a painter and carpenter to you, and you get them to do the job. They complete the work to your satisfaction and instead of paying them cash, they do the job on barter. In lieu of cash or check, the painter and carpenter receive payment in full for their work through trade dollars. These trade dollars are equal to the amount of money they charged for their work. In our example, if the painter charged the dentist $500 for his work, then the painter would receive $500 in trade dollars from the barter group. He could spend that money with anyone else in the barter group. For instance, the painter might need a new brochure made so he uses his dollars to get a brochure done. If the amount for the brochure is less than $500 then he retains more trade dollars. If it exceeds $500 he is minus trade dollars.

Bartering is a valuable tool for business and pleasure. The trade dollars accumulated for your work can be used for either. It's like having a cash-less credit card available to purchase almost anything one would need, from hundreds of members in a diverse cross-section of business and services that are eager to trade products and services on barter. Simply put, barter combines the use of smart business people that remain faithful to one another.

AS A BUSINESS PERSON, TO GET THE MOST FOR YOUR DOLLAR YOU MUST CONSTANTLY THINK BARTER.

From an economic standpoint, barter serves many important needs of these smart business people. Here are a few of them.

1) Barter brings new business to your business (Increasing cash flow, while saving you cash);

2) Barter is a great tool to cut any business's overhead by at least 10 percent:

3) Barter markets your business (or services) to new businesses;

4) Barter can move excess inventory (without having to have a big sale at reduced profits).

As a business person, to get the most for your dollar you must constantly think barter. Each day, each of us has so many small needs that we take them for granted. Add these needs up cumulatively and the cost can be substantial. If however, you used your barter cash-less credit card, think of all the savings you would enjoy. Here's just a partial list of monthly potential savings:

1) When the clothes stack up, use bartering for dry cleaning

2) If it's time for that yearly dental checkup, try one of the barter group's fine dentists;

3) If the muffler is hanging, fix it on barter;

4) If you need your dog groomed, do you and your dog a favor and think barter.

5) Legal services also available on barter.

Barter services we recommend include Barter Depot, BarterPays and ITEX.

The author is editor of the New Jersey Laws bar newsletter.

Time standards for Alaska Court System

Alaska Court System Trial Courts

Adopted by the Alaska Supreme Court on February 17, 2000

On February 17, 2000, the Alaska Supreme Court approved and adopted the Time Standards for Alaska's trial courts as recommended by the Time Standards Committee:

CASE TYPE		75TH PERCENTILE	90TH PERCENTILE	98TH PERCENTILE
1.	Felonies*	120 days	210 days	270 days
2.	Misdemeanors	75 days	120 days	180 days
3.	Civil	365 days	540 days	720 days
4.	Civil post-trial motions: period from motion ripe to ruling			30 days
5.	Small Claims	75 days	90 days	120 days
6.	Dissolution	60 days	90 days	180 days
7.	Divorce	270 days	365 days	540 days
8.	Post-judgment motion for custody/ child support	90 days	120 days	180 days
9.	Juvenile Delinquency	75 days	120 days	180 days
10.	CINA adjudication			120 days
11.	CINA Termination: ➢ Petition through hearing ➢ hearing to ruling			180 days 30 days

* Excludes time from judgment to sentencing

Report and recommendations to the Alaska Supreme Court

November 1999

In February 1999, Chief Justice Warren Matthews formed a committee of judges, lawyers and court professionals to develop recommendations to the Alaska Supreme Court about case processing time standards for cases brought in Alaska's trial courts. The committee held its first meeting on May 11, 1999, and divided the initial work among four subcommittees, for civil, criminal, domestic relations and children's cases. The committee reconvened on October 20, 1999 to review the work of the subcommittees and to adopt a final set of recommendations to be forwarded to the Alaska Supreme Court.

WHAT ARE TIME STANDARDS?

A case processing time standard is a quantified length of time which is established as a goal for the delivery of court services to litigants. Different time standards are established for different kinds of cases. The great majority of cases should proceed from filing to closing within the established time standards.

The American Bar Association and the Conference of State Court Administrators (COSCA) have developed recommended time standards at the national level. As of 1995, 36 states and the District of Columbia have adopted time standards for trial courts.

A set of established time standards is an important element in an effective case management system. If case processing times significantly exceed established goals, these deviations will alert court managers to focus attention on case processing procedures and the adequacy of resources.

HISTORY OF TIME STANDARDS IN ALASKA

A set of Time Standards was adopted for Alaska's trial courts in the 1980's. Although these trial standards are still reflected in some of the statistical reports prepared by the court, the standards fell into disuse and have not been factored into any recent case management efforts.

In 1991-1992, the Alaska Court System undertook a project to review and update the original Time Standards. This update project was never completed, although some recommendations were formulated by some of the committees pursuing this effort.

Information about the original Time Standards and materials available from the 1991-1992 effort were provided to the 1999 committee. Members of the 1999 committee also received copies of the ABA standards, the COSCA standards, and charts of standards adopted by other states.

THE 1999 COMMITTEE

The Time Standards Committee is composed of the following members. (Bar members from the private sector were selected by the president of the Alaska Bar Association)

Anchorage Superior Court Judge Elaine Andrews, co-chair (Presiding judge, third judicial district)
Alaska Supreme Court Justice Alex Bryner, co-chair
Juneau Superior Court Judge Larry R. Weeks (Presiding judge, first judicial district)
Barrow Superior Court Judge Michael Jeffery (Presiding judge, second judicial district)
Fairbanks Superior Court Judge Ralph R. Beistline (Presiding judge, fourth judicial district)
Anchorage Superior Court Judge Peter A. Michalski
Palmer Superior Court Judge Beverly Cutler
Anchorage District Court Judge John R. Lohff
Fairbanks District Court Judge Jane F. Kauvar
Stephanie Cole, Administrative Director
Stephen A. Bouch, Deputy Administrative Director
Robert G. Fisher, Fiscal Officer
Richard E. Vollertsen, Attorney, Anchorage
Joseph Paskvan, Attorney, Fairbanks
Donna McCready, Attorney, Anchorage
Sidney Billingslea, Attorney, Anchorage
Keith Levy, Attorney, Juneau
Sharon Gleason, Attorney, Anchorage
Barbara Brink, Public Defender
John Novak, Chief Assistant District Attorney
Kristen Carlisle, Area Court Administrator, first judicial district
Tom Mize, Area Court Administrator, second judicial district
Wendy Lyford, Area Court Administrator, third judicial district
Ron Woods, Area Court Administrator, fourth judicial district

COMMITTEE RECOMMENDATIONS

The committee's recommendations, adopted on October 20, 1999 follow.[1] Because some of the recommendations were not unanimous, a brief commentary on each of the recommendations follows the chart. (The commentary is available from the Court. Please call Bobbie Heym at 907-264-0548.)

General comment: At the October 20 meeting, several participants expressed concern about the court's ability to meet the articulated standards. The group discussed whether the standards should be "reality-based" or "aspirationally-based." Some attorney members worried that the adoption of tight standards would encourage judges to punish or push practitioners unfairly, even if their cases fell outside of the standards for a good reason. The majority of the committee appeared to support aspirational goals which were likely to be achievable, even though in some cases doubt was expressed whether the articulated goals could be reached without an infusion of additional resources.

1. Felonies: John Novak voted no.
2. Misdemeanors: John Novak voted no.
3. Civil: Much of the time at the October 20 meeting was devoted to a discussion of this time standard. The subcommittee forwarded a recommendation with different standards for complex and non-complex cases. Practitioners expressed the opinion that complex cases should not be subject to ordinary pressures to move quickly. The opposing view (in favor of one civil goal, not two) reasoned that complex cases constitute an extremely small number of the total civil caseload, and as such they can be easily accommodated by the goal structure which only sets standards for up to 98 percentile of the total caseload. Voting in favor of one civil category (motion carried): Judge Weeks, Judge Beistline, Judge Michalski, Judge Cutler, Judge Lohff, Stephanie Cole, Steve Bouch, Kris Carlisle, Tom Mize, Wendy Lyford, Ron Woods and John Novak. Voting in favor of two civil categories (civil and complex civil): Justice Bryner, Judge Andrews, Judge Jeffery, Judge Kauvar, Donna McCready, Sharon Gleason, Joe Paskvan, Keith Levy and Rick Vollertsen.
4. Civil post trial motions–period from "motion ripe" to ruling. This was a special category created at the end of the October 20 meeting. Unanimous.
5. Small claims: Unanimous
6. Dissolutions: Judge Michalski voted no.
7. Divorce. Unanimous
8. Post-judgment motion for custody/child support: Judge Weeks voted no.
9. Juvenile delinquency: Unanimous
10. CINA adjudication: Unanimous
11. Termination of parental rights: Unanimous

STATUS REPORT

These recommendations were forwarded from the Time Standards Committee to the Alaska Supreme Court and were adopted February 17, 2000.

[1]Participants at the October 20 meeting (either in person or by phone): Judge Andrews, Justice Bryner, Judge Weeks, Judge Jeffery, Judge Beistline, Judge Michalski, Judge Cutler, Judge Lohff, Judge Kauvar, Stephanie Cole, Steve Bouch, Rick Vollertsen, Joe Paskvan, Donna McCready, Keith Levy, Sharon Gleason, John Novak, Kris Carlisle, Tom Mize, Wendy Lyford, and Ron Woods.

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(e)(1)-(e)(2). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(e)(5).

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

First District:
Neil Nesheim
PO Box 114100
Juneau, AK 99811-4100
(907) 463-4753

Second District:
Tom Mize
604 Barnette St. Rm 228
Fairbanks, AK 99701-4576
(907) 451-9251

Third District:
Wendy Lyford
825 W. 4th Ave.
Anchorage, AK 99501-2004
(907) 264-0415

Fourth District:
Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701-4576
(907) 452-9201

SOLID FOUNDATIONS

IOLTA grant applications due by April 2, 2001

☐ Kenneth P. Eggers

The Alaska Bar Foundation IOLTA program funds have been designated to be used for the following purposes: Support of legal services to the economically disadvantaged and programs to improve the administration of justice.

The Foundation is soliciting proposals for fiscal year 2002 (July 1, 2001 to June 30, 2002) to supplement legal services programs for the economically disadvantaged and programs to enhance the administration of justice. The Foundation asks lawyers who are involved with organizations which meet the Foundation's grant guidelines set forth below to encourage those organizations to submit a grant application. As previously reported in the Bar Rag, the IOLTA grants for fiscal year 2001 totaled $367,000.

The Foundation will consider making grants to organizations under the following grant guidelines. The Foundation will not make grants to: individual persons; religious organizations; political campaigns; organizations that are designed primarily for lobbying; organizations for the sole purpose of funding litigation; governmental entities; endowment scholarship or fellowship programs; continuing legal education programs for lawyers; lawyers in the private practice of law; law enforcement or correctional organizations; or law schools.

The following grant guidelines will be utilized by the Foundation.

1. The Foundation does not intend to use its limited IOLTA resources to replace existing funding.

2. A primary function of an agency seeking a grant must be consistent with the guidelines of the Foundation for IOLTA program monies.

3. Grant requests must be consistent with the tax exempt public purposes prescribed by the Foundation and with applicable Internal Revenue Code regulations and rulings relative to Section 501(c)(3) organizations.

4. Generally, the Foundation will not be the primary source of financial support for a sustained period of time for programs to improve the administration of justice. The applicant should demonstrate an ability to function eventually without the assistance of the Foundation.

5. The Foundation may require matching funds as a condition of the grant in order to broaden the base of community support.

6. The majority of the available grant funds will be awarded in June of each year. Each grant recipient shall be entitled to only one (1) grant in each granting year unless the grantee can show special circumstances necessitating a second grant.

7. The grant funding cycle will normally be a 12-month period. Recipients must reapply each year if additional funding is desired.

8. The Foundation will use a significant portion of available funding for programs delivering legal services to the economically disadvantaged and will give highest funding priority to those programs.

9. Significant weight will be given to a history or a clear ability of an applicant to provide a successful program.

10. Consideration will be given to the proportion of clients to be served within a geographic area and the breadth of services proposed to be offered.

11. The Foundation will rely on the written demonstration submitted by the applicant, thus the applicant must present the Foundation with complete, thorough and accurate information.

Grant applications for the July 2001 through June 2002 funding cycle must be received by the Alaska Bar Foundation, 510 L Street, Suite 602, (P. O. Box 100279), Anchorage, Alaska 99510 no later than 5:00 p.m., April 2, 2001. Upon submission all proposals become the property of the Alaska Bar Foundation which has the right to use any or all ideas presented in any proposal submitted, whether or not the proposal is accepted.

For grant applications or further information, contact Kenneth P. Eggers, president, Alaska Bar Foundation, (907) 562-6474.

Judicial applicant guidelines published

A year of cooperative work between the Commission on Judicial Conduct, the Alaska Judicial Council, and the Alaska Bar Association has resulted in a comprehensive set of ethical guidelines for applicants for judgeships in our state. Highlighting problem areas and offering cautionary notes, the Guidelines are designed to increase awareness of preferred conduct, by both the applicant and the applicant's supporters while the judicial application is pending.

The Guidelines not only address behavior directly by the applicant but also suggest guidance for attorneys supporting the applicant's efforts before the Judicial Council and the Governor. Friends and colleagues wishing to support a judicial applicant should ensure that their efforts reflect dignity in form, tone, and content. There are certain forms of communication that are typically viewed as undignified. These communications may include form-letter mass mailings, phone calls to those without any pre-existing relationship to the caller or applicant, and mass e-mail communications. Communications that attack the qualifications of other contenders, even if true, can often be viewed as undignified and the use of prominent clients or newsworthy cases to promote an applicant's candidacy is questionable. In short, the tone of all communications should reflect the tone of judicial decisions: fact-based, without emotional content, and with substance.

Under a merit selection plan, like Alaska's, campaigns that appear political in nature are strongly discouraged. Applicants and their supporters should not run newspaper advertisements endorsing the applicant or send letters to organizations to urge their support. Throughout the application process, quality communications clearly outweigh quantity. Large volumes of endorsement letters imply that the letters were solicited and that the applicant is relying more on personal relationships than qualifications for the position.

While the Guidelines do not create any new ethical requirements, they apply existing standards to sample situations that any judicial applicant may face. The Guidelines address: truthfulness and accuracy, preserving independent decision-making, organizations that may not be contacted by an applicant, statements that may be made by applicants, maintaining the dignity of judicial office, permissible communications, applying standards to family members and to other supporters, and contact with the judicial council and the governor. In addition to the text there are supporting articles, legal provisions, and ethics opinions included in a lengthy appendix.

Copies of Alaska Judicial Applicant Guidelines are available through the Alaska Judicial Council, the Alaska Commission on Judicial Conduct and the Alaska Bar Association. Please write or call to receive your copy.

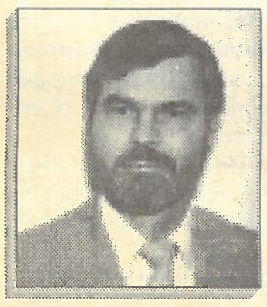
FEDERAL RULE NOTICE

The United States District Court has adopted Local Rule D.AK. LR 16.2 Alternative Dispute Resolution. A copy of this rule can be found at the USDC Web site www.akd.uscourts.gov/. To get to the United States District Court for the District of Alaska home page, select U.S. District Court, at the top of the USDC home page click on "New - Check out the Local Rules in Documents." The New ADR Rules are available under the Local Rules category.

Also, attorneys are reminded that the Dismissal of Action by Stipulation of the Parties [Fed.R. Civ.P 41(a)(1)] does not require a separate order signed by the court. The stipulation to dismiss filed by the plaintiff is sufficient to close both the case and all pending motions filed before the stipulation to dismiss.

Denial of discharge: 727(a)(5), (6), (7)

☐ Thomas Yerbich



Discharge may be denied under § 727(a)(5) where the debtor fails to satisfactorily explain the loss of assets and under § 727(a)(6) if the debtor fails to obey a lawful order of the court. Section 727(a)(7) covers those situations where the debtor commits certain acts in connection with a bankruptcy proceeding of an insider of the debtor.

SECTION 725(A)(5)

As with any action seeking to bar discharge, the plaintiff bears the burden of proof of establishing the elements of the cause of action under § 727(a)(5). However, once the party objecting to discharge has established a *prima facie* case, *i.e.*, a showing assets the debtor once owned or claimed to own are now missing, the burden shifts to the debtor to explain the "disappearance." [*In re Hawley*, 51 F3d 246 (CA11 1995); *Farouki v. Emirates Bank International, Inc.*, 14 F3d 244 (CA4 1994)] As with similar cases, whether the debtor has satisfactorily explained a loss of assets is a question of fact that frequently turns on credibility. Consequently, it is imperative from the debtor's standpoint that the best and strongest evidence be presented at trial.

Section 727(a)(5) requires a "satisfactory explanation" for whereabouts of the debtor's assets, which must consist of more than vague, indefinite, and uncorroborated assertions by debtor. Vague and indefinite statements about assets, admission that the debtor does not know what happened to some of the assets and lack of documentation or other evidence corroborating claims that assets had been transferred to others will not suffice. [*Matter of D'Agmese*, 86 F3d 732 (CA7 1996); *In re Stuerke*, 61 BR 623 (BAP9 1986)] However, a debtor should not be denied discharge simply because she could not account for all of the money coming into her possession, or because she had no receipts for many of her expenditures, where debtor accounted for most of money spent and amounts not accounted for were relatively small in relation to the total. [*In re Buck*, 75 BR 417 (Bank. ND CA 1987)] On the other hand, substantially uncorroborated testimony of loss of more than $39,000 in year prior to bankruptcy through use of alcohol, drugs, and prostitutes was held insufficient to satisfactorily explain a loss of assets. [*In re Johnson*, 68 BR 193 (Bank. OR 1986); *see also In re Dolin*, 799 F.2d 251 (CA6 1986) (holding that fact debtor would not want to keep records of illegal drug purchases did not excuse failure to provide corroboration for testimony that he used the assets for that purpose)]

SECTION 727(A)(6)

The court may bar a discharge where the debtor refuses to obey a lawful order of the court, other than an order to testify where a claim of self-incrimination is properly raised and the debtor is not granted immunity. It is a refusal to comply with lawful orders of the court that result in a debtor to running a foul of § 727(a)(6), not the requests or "orders" of others, *e.g.*, the trustee or U.S. trustee. [*See In re Johnson*, 250 BR 321 (Bank. ED PA 2000) (request of trustee that debtor amend schedules not an order of the court)]

THE COURT MAY BAR A DISCHARGE WHERE THE DEBTOR REFUSES TO OBEY A LAWFUL ORDER OF THE COURT, OTHER THAN AN ORDER TO TESTIFY WHERE A CLAIM OF SELF-INCRIMINATION IS PROPERLY RAISED AND THE DEBTOR IS NOT GRANTED IMMUNITY.

Not every refusal to obey an order will necessarily result in a denial of discharge. It is within discretion of bankruptcy court to find whether a particular violation of court's order is so serious as to require denial of discharge. [*In re Devers*, 759 F2d 751 (CA9 1985)] In exercising its discretion, the court should consider whether denial of discharge is appropriate under all the facts and circumstances of case. A court should not deny discharge where denial is disproportionate to the transgression or renders the remedy impracticable. [*In re Weir*, 173 BR 682 (Bank. ED CA 1994) (refusing to deny discharge where debtor failed to file a statement of intention to reaffirm, redeem, or surrender collateral).] Moreover, in exercising its discretion, the bankruptcy court balances the policy in favor of liberally applying the Bankruptcy Code to grant discharge to the honest debtor against the policy of denying relief to debtors who intentionally violate Bankruptcy Code provision. Factors considered in deciding whether to deny the discharge based on a refusal to obey a court order are: the existence or absence of a justifiable excuse; the injury resulting to creditors; the ability of the debtor to make amends; the detriment to the bankruptcy's proceedings and the court's dignity; and the potential injury to the debtor in the event of denial of discharge. [*In re Barman*, 237 BR 342 (Bank. ED MI 1999)]

Mere noncompliance with a court order is insufficient in itself to warrant revoking a debtor's bankruptcy discharge. Congress has provided a bankruptcy discharge may be denied when the debtor has "refused" to obey a lawful order of the court, not just "failed." The exact circumstances under which a debtor is deemed to have "refused" to obey an order of the court have not been clearly established. For example, some bankruptcy courts have held that the word "refused" connotes a willful or intentional act, as opposed to merely an inability to comply or a mistake in compliance. The majority of courts have, in substance, applied the same standard as is applied in a civil contempt proceeding: 1) knowledge of the order, (2) actual refusal to obey, and (3) the order violated must have been specific and definite. [*See In re Magack*, 247 BR 406 (Bank. ND OH 1999)] In addition, courts have recognized two defenses: (1) that the debtor lacked the ability to comply and (2) the debtor reasonably misinterpreted the order. [*In re Richardson*, 78 BR 960 (WD Mo 1987); *In re Murphy*, 244 BR 418 (Bank. ND OH 2000)]

In addition, the court order must be with respect to a matter that goes to the essence of administration of the estate. Several examples of refusals considered sufficient to warrant a denial of discharge are found in reported decisions. Refusal to testify at the creditors' meeting without a proper invocation of the right against self-incrimination, even where that refusal is based on advice of counsel and no prejudice to the creditors occurs. [*In re Wood*, 123 BR 881 (BAP9 1991)] Failure to turn over books and records to the trustee. [*In re Ross*, 156 BR 272 (Bank. D.Id. 1993)] Disregard of an order not to use insurance proceeds without further order of the court. [*In re Jones*, 966 F2d 169 (CA5 1992)] However, failure to obey a subpoena issued by the clerk to attend a Rule 2004 examination that was not preceded by a court order under Rule 2004 has been held not to be a violation of a court order. [*In re Hickman*, 151 BR 125 (Bank. ND OH 1993)] A failure to consummate a confirmed chapter 11 plan is not within the scope of § 727(a)(6). [*In re Curry*, 99 BR 409 (Bank. CD Ill 1989)]

SECTION 727(A)(7)

Under § 727(a)(7), a debtor may be denied a discharge even if he commits no wrongful act in his own bankruptcy proceeding. If a debtor, in connection with a bankruptcy proceeding involving an insider, commits an act described in § 727(a)(2) [fraudulent transfer of property], 727 (a)(3) [concealed, falsified, destroyed, *etc.* books and records], 727(a(4) [made a false oath or account], 727(a)(5) [fail to satisfactory explain missing assets], or 727(a)(6) [refused to obey a court order], his discharge may be denied. The transgression must occur with one year of the date the debtor files his bankruptcy petition or while his bankruptcy proceeding is pending. The filing by the insider need not be within one year. [*In re Krehl*, 86 F3d 737 (CA7 1996)]

An "insider" is a relative of the debtor or of the general partner of the debtor, partnership in which the debtor is a general partner, or a corporation of which the debtor is a director, officer, or person in control. [11 USC § 101(31(A)] A "relative" is an individual related by blood, marriage, adoption within the third degree, including a step relationship.

Attorney Discipline

LAWYER ADMONISHED FOR VIOLATION OF AGENCY ORDER

Attorney X represented a losing bidder on a government contract. The client filed a bid protest. As part of the protest, Attorney X applied to review the winning bid. The government agency granted the request subject to an order specifying that the attorney would not disclose "protected material" to competitors including his client. After reviewing the winning bid Attorney X discussed it, including confidential elements, with his client. Attorney X contended that this was necessary in order to evaluate the fairness of the contract award process.

Special Bar Counsel decided that notwithstanding Attorney X's duty to communicate information needed by his client to make informed decisions, the lawyer had a higher duty to honor the protective order. Special Bar Counsel found that Attorney X violated Alaska Rule of Professional Conduct 3.4(c), which in pertinent part prohibits a lawyer from knowingly violating or disobeying an order of a tribunal or the rules of a tribunal. Special Bar Counsel's conclusions were reviewed by an Area Division member, who approved discipline by written private admonition. In determining that private discipline was appropriate, Special Bar Counsel took into account that the government agency had denied Attorney X access to protected bid information for a specific period, and for a period after that will require him to disclose the sanction in applications for access to protected information.

In the Supreme Court of the State of Alaska

Disciplinary Maner Involving:)
)
)
Samuel R. Peterson, Jr.,)
Respondent.)
)

Supreme Court No. S-09848

Order

Date of order: **12/8/00**

ABA Number 1998D246

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices

The Alaska Bar Association requested an emergency interim suspension after Samuel Peterson, Jr. was arrested for refusing a police order to drop a handgun when police responded to a disturbance at Peterson's home. Peterson was impaired at the time of his confrontation with the police, and a search of his home revealed cocaine, marijuana, and methamphetamine, as well as brass knuckles. Upon the Bar Association's request, we entered an order of interim suspension on January 12, 1999.

The disciplinary board of the Bar Association adopted the area committee's recommendation to suspend Samuel Peterson, Jr. for a period of three-and-one-half years, retroactive to the date of interim suspension, January 12, 1999 The area committee alternatively proposed that "if the suspension is not imposed retroactively, the committee would recommend a shorter period of suspension, which would also terminate June 12,2002."

On October 4, 2000, we notified the Bar Association and Peterson of our determination that a more severe sanction may be appropriate and invited response. The Bar Association responded, and Mr. Peterson did not.

Because Peterson has exhibited troubling, and in some instances criminal, behavior since the time of his interim suspension, we reject the proposed discipline as too lenient. A brief chronology of Peterson's problems beginning with the incident with the handgun follows:

- Oct. 30, 1998: Police were called to a disturbance at Peterson's home. Peterson was impaired and refused a police command to drop a 45 semi-automatic handgun that he is carrying. A search of his home revealed drugs, including cocaine and methamphetamine.
- Dec. 1, 1998: Peterson left his third-party custodian and had a fracas with airport police again, his airline ticket was refused. Once again, he appeared to be under the influence of alcohol or drugs.
- Jan. 7, 1999: Peterson failed a urinalysis and tested positive for cocaine,
- Jan. 8, 1999: Peterson's psychologist reported to the judge hearing his bail matter that when Peterson "has recourse to alcohol or psychoactive drugs, he is liable to become destructive" to himself or others. That psychologist also stated that Peterson needed residential care in a drug abuse center.
- Jan. 12, 1999: This court entered its interim suspension.
- Feb. 4,1999: Peterson completed a court-ordered, three-week drug treatment program in Washington.
- March 12,1999: Peterson pleaded to one Class C felony count of Misconduct Involving a Controlled Substance in the Fourth Degree. He was sentenced to 18 months with all but 114 days suspended. His probation was to last until March 12, 2001.
- Mid-April 1999: On the day that Peterson was released from jail, he started drinking in violation of his probation conditions. He was arrested in a store in Soldotna and charged with disorderly conduct. He pleaded guilty to the charge.
- Aug. 1999: Peterson was arrested for driving with a suspended license. He also tested positive for alcohol consumption. His probation was revoked and he was sentenced to an additional seventy-five days in jail.
- May 23, 2000: A week prior to his disciplinary hearing before the area hearing committee, Peterson tested positive for methamphetamine. Peterson claimed that the urinalysis test was a mistake or suggested that one of his friends may have spiked his food with methamphetamine.

  The same week in May, 2000, Peterson attended his stepfather's funeral in California, drank a third of a bottle of vodka, and became involved in a heated argument with his mother and others. Police were called and Peterson was arrested for disorderly conduct.

  Peterson was to have completed his community work service by May 2000; he had not completed it by the date of the hearing but indicated that he had obtained a thirty-day extension for completion.

Peterson's poor performance on probation and his imprisonment for probation violations belie his argument "that he is well on the way to rehabilitation." Indeed, a week before the sanctions hearing, Peterson admittedly violated his probation by drinking and being arrested for disorderly conduct. Given Peterson's proven inability to function with the supervision of his probation officer, it is unlikely that the recommended discipline is sufficient to protect the public.

We therefore suspend Samuel Peterson, Jr. for five years, retroactive to the date of interim suspension, January 12, 1999. Reinstatement is conditioned on successful completion of the probation imposed in the criminal proceedings; moreover, Mr. Peterson must refrain from the use of any illegal substances and must maintain sobriety from the date of this order until the end of the suspension period. Entered at the direction of the court.

Clerk of the Appellate Courts
/s/Marilyn May

Alaska Bar Association 2001 CLE Calendar

Date	Time	Title	Location
January 18 NV	9:00 a.m.	Nonprofits in the New Millennium - Video Replay with Live Facilitation for United Way members CLE #2001-010 6.75 General CLEs	Fairbanks Westmark Hotel
January 25	8:30 - 10:30 a.m.	Ethics for the 21st Century: Highlights of the American Bar Ethics 2000 Commission Recommendations CLE #2001-011 2.0 Ethics CLEs	Anchorage Hotel Captain Cook
January 31 NV	7:30 – 9:30 a.m.	Off the Record – 3rd Judicial District – in cooperation with the Anchorage Bar Assn. CLE #2001-012 2.0 General CLEs	Anchorage Hotel Captain Cook
February 15	8:30 a.m. – 11:00 a.m.	Navigating for Success in Your Law Practice CLE #2001-002 2.25 General CLEs	Anchorage Hotel Captain Cook
March 12 NV	1:00 – 3:00 p.m.	Federal Off the Record – Juneau CLE #2001-015 2.0 General CLEs	Juneau Federal Court
March 13 NV	1:00 – 3:00 p.m.	Federal Off the Record – Ketchikan CLE #2001-015 2.0 General CLEs	Ketchikan Federal Court
March 14	9:00 a.m. – 12:15 p.m.	Ethics Is Not A Multiple-Choice Question: A Mandatory Program For New Lawyers In Alaska CLE #2001-888 3.0 Ethics CLEs	Anchorage Downtown Marriott
March 14 NV	9:00 a.m .- 4:30 p.m.	Basic Document Retrieval, Key Cite, Key Number Searches (2 sessions: 9-12 or 1:30 - 4:30) CLE #2001-013 2.75 General CLEs	Anchorage Snowden Bldg.
March 15 NV	9:00 a.m. - 4:30 p.m.	Advanced Caselaw Research (2 sessions: 9-12 or 1:30 - 4:30) CLE #2001-014 2.75 General CLEs	Anchorage Snowden Bldg.
March 22 NV	1:30 p.m.– 4:45 p.m.	Ethics Is Not A Multiple-Choice Question: A Mandatory Program For New Lawyers In Alaska CLE #2001-888 3.0 Ethics CLEs	Juneau – Centennial Hall
March 23 NV	1:30 p.m.– 4:45 p.m.	Ethics Is Not A Multiple-Choice Question: A Mandatory Program For New Lawyers In Alaska CLE #2001-888 3.0 Ethics CLEs	Fairbanks – Westmark Hotel
April 6	9:00 a.m. – 4:30 p.m.	Depositions: Mastering Technique & Strategy through Control – with Paul Lisnek CLE #2001-003 6.00 General CLEs	Anchorage - Hotel Captain Cook
April 11	9:00 a.m. – 12:00 noon	The Sinfully Simple Will CLE #2001-004 2.75 General CLEs	Anchorage Hotel Captain Cook
May 31	9:00 a.m. – 12:00 noon	Estate Planning - with Natalie Choate CLE #2001-005 2.75 General CLEs	Anchorage Hotel Captain Cook
Fall	TBA Full Day	Intellectual Property & E-Commerce Issues CLE #2001-007	Anchorage Hotel Captain Cook

Free electronic access to legal resources coming soon to your local law library! Watch for the CLE!

Alaska's State Law Library system faces a daunting challenge: 15 of its 17 branches are full to capacity, and 6 of its libraries have been, or soon will be, reduced to half of their original size. In an effort to continue to provide legal research resources to attorneys statewide, State Law Librarian Cynthia Fellows has designed a unique online service in cooperation with West Group.

This new service has been tailored specifically to the needs of Alaska attorneys and will provide document retrieval, KeyCite - West's citator service, and digest searching, using a modified version of Westlaw. This program will actually increase the resources available to attorneys in smaller communities with limited libraries, and will provide equal access to important legal resources to attorneys statewide. The program is being offered to Alaskan attorneys at no charge.

This new program is easy to use because it is limited to selected functions. You don't need to know sophisticated Westlaw search techniques. This program will appeal to attorneys comfortable with traditional print research methods as well as those with advanced electronic research training.

DOCUMENT RETRIEVAL

The FIND feature allows attorneys in their local law library to view, browse and print, download, fax or e-mail the following resources:

- All state and federal case law
- All state and federal current statutory and regulatory law (and limited coverage of superseded statues and regulations)
- Law reviews and journals (with coverage beginning in 1985)
- Selected legal reference material and texts (including ALR, AmJur2nd, Restatements, and Uniform Laws Annotated)

You will need a specific citation to obtain documents using the FIND feature. While this program does not allow you to use Westlaw to search the text of these documents, you can use the hypertext links to look at any document cited within the document you are viewing.

KEYCITE

KeyCite is a citator service that replaces the traditional print Shepard's Citations. KeyCite lets you check the current status of cases and statutes, find and view all the citing references to cases and statues, and limit a list of citing references to specific headnotes, jurisdictions and dates.

DIGEST SEARCHING

The Digest and Key Number feature of this new program allows you to pull up all the cases indexed under specific West Digest topic and key numbers in the jurisdiction(s) of your choice. You can also use natural language or the more sophisticated terms, connectors, and field search strategies to search the text of the digest topics and headnotes only.

COMING SOON TO A LIBRARY NEAR YOU

This program is currently available in the Barrow, Bethel, Fairbanks, Kenai, Ketchikan, Kodiak, Palmer and Sitka law libraries. Computers will be installed in the Anchorage, Dillingham, Homer, Juneau, Kotzebue, Nome, Petersburg, Valdez, and Wrangell law libraries by the end of March.

TRAINING OPPORTUNITIES

If you'd like to learn more about this program and how to use if effectively, the Alaska Bar Association is offering CLE sessions March 14th and 15th in Anchorage. Training sessions are tentatively planned for Fairbanks and Juneau in April. Training sessions will also be offered at the Alaska Bar Convention in Ketchikan May 10th and 11th.

If you have any questions about this new program contact State Law Librarian Cynthia S. Fellows at (907) 264-0583 or cfellows@courts.state.ak.us.

2000-2001 CLE Seminar Video Replay Schedule

EASEMENTS — WRITTEN & UNWRITTEN: HOW TO GET THERE FROM HERE
CLE #2000-029; 3.0 General CLE Credits; Live: Anchorage, October 12
Barrow, 1/20/2001, 10:00 AM, Law Library
Nome, 1/12/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 1/12/2001, 9:00 AM, Pearson & Hanson

13TH ANNUAL ALASKA NATIVE LAW CONFERENCE
CLE #2000-013; CLE Credits TBA; Live: Anchorage, October 18
Morning Session:
Barrow, 2/24/2001, 10:00 AM, Law Library
Dillingham, 1/26/2001, 10:00 AM, Jury Room
Fairbanks, 1/19/2001, 9:00 AM, Cook Schuhmann et al.
Juneau, 1/19/2001, 9:00 AM, Dillon & Findley
Kenai, 1/26/2001, 1:00 PM, Cowan, Gerry & Aaronson
Ketchikan, 2/3/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 2/3/2001, 10:00 AM, Jamin, Ebell et al.

Afternoon Session:
Barrow, 3/3/2001, 10:00 AM, Law Library
Dillingham, 2/2/2001, 10:00 AM, Jury Room
Fairbanks, 1/26/2001, 9:00 AM, Cook Schuhmann et al.
Juneau, 1/26/2001, 9:00 AM, Dillon & Findley
Kenai, 2/2/2001, 1:00 PM, Cowan, Gerry & Aaronson
Ketchikan, 2/10/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 2/10/2001, 10:00 AM, Jamin, Ebell et al.

7TH ANNUAL WORKERS' COMP UPDATE: THROWING OUT A FEW NEW BONES TO GNAW ON
CLE #2000-027; 3.75 CLE Credits; Live — Anchorage, October 27
Barrow, 1/13/2001, 10:00 AM, Law Library
Nome, 2/2/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 2/2/2001 9:00 AM, Pearson & Hanson

3RD BIENNIAL LEGAL & TAX ISSUES FOR NONPROFITS
CLE #2000-028; 6.75 CLE credits; Live — Anchorage, November 1
Barrow, 1/27/2001, 10:00 AM, Law Library
Dillingham, 1/12/2001, 10:00 AM, Jury Room
Kenai, 1/12/2001, 1:00 PM, Cowan, Gerry & Aaronson
Nome, 1/19/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 1/19/2001 9:00 AM, Pearson & Hanson

ADMIRALTY LAW ESSENTIALS: KEEPING YOUR HEAD ABOVE WATER
CLE #2000-014; 3.75 CLE Credits; Live — Anchorage, November 7
Barrow, 2/3/2001, 10:00 AM, Law Library
Ketchikan, 1/13/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 1/13/2001, 10:00 AM, Jamin, Ebell et al.
Nome, 1/26/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 1/26/2001 9:00 AM, Pearson & Hanson

INTEGRATED ADVOCACY
CLE #2000-034; CLE Credits TBA; Live — Anchorage, November 15
Barrow, 2/10/2001, 10:00 AM, Law Library
Dillingham, 3/9/2001, 10:00 AM, Jury Room
Fairbanks, 2/16/2001, 9:00 AM, Cook Schuhmann et al.
Juneau, 2/16/2001, 9:00 AM, Dillon & Findley
Kenai, 3/9/2001, 1:00 PM, Cowan, Gerry & Aaronson
Ketchikan, 2/24/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 2/24/2001, 10:00 AM, Jamin, Ebell et al.

WORKING SMARTER, NOT HARDER
CLE #2000-035; 5.5 CLE Credits; Live — Anchorage, December 1
Barrow, 2/17/2001, 10:00 AM, Law Library
Dillingham, 1/19/2001, 10:00 AM, Jury Room
Fairbanks, 1/12/2001, 9:00 AM, Cook Schuhmann et al.
Juneau, 1/12/2001, 9:00 AM, Dillon & Findley
Kenai, 1/19/2001, 1:00 PM, Cowan, Gerry & Aaronson
Ketchikan, 1/27/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 1/27/2001, 10:00 AM, Jamin, Ebell et al.
Nome, 2/9/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 2/9/2001, 9:00 AM, Pearson & Hanson

ETHICS UPDATE WITH BAR COUNSEL
CLE #2000-036; 2.0 Ethics CLE Credits, Live — Anchorage, December 7
Barrow, 3/17/2001, 10:00 AM, Law Library
Dillingham, 2/16/2001, 10:00 AM, Jury Room
Fairbanks, 2/9/2001, 9:00 AM, Cook Schuhmann et al.
Juneau, 2/9/2001, 9:00 AM, Dillon & Findley
Kenai, 2/16/2001, 1:00 PM, Cowan, Gerry & Aaronson
Ketchikan, 3/3/2001, 9:30 AM, Borough Attorney's Conference Room
Kodiak, 3/3/2001, 10:00 AM, Jamin, Ebell et al.
Nome, 2/23/2001, 9:00 AM, Larson, Timbers et al.
Sitka, 2/23/2001 9:00 AM, Pearson & Hanson

ETHICS FOR THE 21ST CENTURY: HIGHLIGHTS OF RECOMMENDATIONS
CLE #2001-011; 2.0 Ethics CLE Credits, Live — Anchorage, January 25
Barrow, 3/10/2001, 10:00 am, Law Library
Dillingham, 3/10/2001, 10:00 am, Jury Room
Fairbanks, 3/2/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 3/2/2001, 9:00 am, Dillon & Findley
Kenai, 2/23/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 2/23/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 3/17/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 3/17/2001, 10:00 am, Jamin, Ebell et al.
Nome, 3/30/2001, 9:00 am, Larson, Timbers et al.
Sitka, 3/30/2001, 9:00 am, Pearson & Hanson

NAVIGATING FOR SUCCESS IN YOUR LAW OFFICE
CLE #2001-002; CLE Credits TBA, Live — Anchorage, February 15
Barrow, 4/20/2001, 10:00 am, Law Library
Dillingham, 4/20/2001, 10:00 am, Jury Room
Fairbanks, 3/23/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 3/23/2001, 9:00 am, Dillon & Findley
Kenai, 3/16/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 3/16/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 3/31/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 3/31/2001, 10:00 am, Jamin, Ebell et al.
Nome, 4/13/2001, 9:00 am, Larson, Timbers et al.
Sitka, 4/13/2001, 9:00 am, Pearson & Hanson

DEPOSITIONS: MASTERING TECHNIQUE & STRATEGY THROUGH CONTROL
CLE #2001-003; CLE Credits TBA, Live — Anchorage, April 6
Barrow, 6/29/2001, 10:00 am, Law Library
Dillingham, 6/29/2001, 10:00 am, Jury Room
Fairbanks, 6/1/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 6/1/2001, 9:00 am, Dillon & Findley
Kenai, 6/8/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 6/8/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 6/16/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 6/16/2001, 10:00 am, Jamin, Ebell et al.
Nome, 6/22/2001, 9:00 am, Larson, Timbers et al.
Sitka, 6/22/2001, 9:00 am, Pearson & Hanson

THE SINFULLY SIMPLE WILL
CLE #2001-004; CLE Credits TBA, Live — Anchorage, April 11
Barrow, 7/13/2001, 10:00 am, Law Library
Dillingham, 7/13/2001, 10:00 am, Jury Room
Fairbanks, 6/8/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 6/8/2001, 9:00 am, Dillon & Findley
Kenai, 6/1/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 6/1/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 6/23/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 6/23/2001, 10:00 am, Jamin, Ebell et al.
Nome, 6/15/2001, 9:00 am, Larson, Timbers et al.
Sitka, 6/15/2001, 9:00 am, Pearson & Hanson

ESTATE PLANNING WITH NATALIE CHOATE
CLE #2001-005; CLE Credits TBA, Live — Anchorage, May 31
Barrow, 8/3/2001, 10:00 am, Law Library
Dillingham, 8/3/2001, 10:00 am, Jury Room
Fairbanks, 6/29/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 6/29/2001, 9:00 am, Dillon & Findley
Kenai, 7/13/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 7/13/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 7/28/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 7/28/2001, 10:00 am, Jamin, Ebell et al.
Nome, 7/20/2001, 9:00 am, Larson, Timbers et al.
Sitka, 7/20/2001, 9:00 am, Pearson & Hanson

2000-2001 CLE Seminar Video Replay Sites

Barrow	**Barrow Courthouse** CLE Replay Coordinator: Karen Hegyi Telephone: 907/852-4800 Fax: 907/852-4804
Dillingham	**Jury Room, Courthouse** CLE Replay Coordinator: Joe Faith Telephone: 907/842-1200 Fax: 907/842-1201
Fairbanks	**Cook Schuhmann & Groseclose Conference Room** CLE Replay Coordinator: JoAnna Claxton/Barbara Schuhmann Telephone: 907/452-1855 Fax: 907/452-8154
Homer	**Homer City Hall Conference Room** CLE Replay Coordinator: Ron Drathman Telephone: 907-235-8121 ext. 2222 Fax: Call 907-235-7207 and get faxing instructions
Juneau	**Dillon & Findley Conference Room** CLE Replay Coordinator: Tom Findley Telephone: 907/586-4000 Fax: 907/586-3777
Kenai	**Courthouse Jury Assembly Room** CLE Replay Coordinator: Bob Cowan Telephone: 907/283-7187 Fax: 907/283-4753
Ketchikan	**Borough Attorney's Conference Room** CLE Replay Coordinator: Scott Brandt-Erichsen Telephone: 907/228-6635 Fax: 907/228-6625
Kodiak	**Law Office of Jamin, Ebell, Schmitt & Mason** CLE Replay Coordinator: Matt Jamin/Linda Brown Telephone: 907/486-6024 Fax: 907/486-6112
Kotzebue	**Kotzebue Courthouse** CLE Replay Coordinator: Judge Richard H. Erlich Telephone: 907/442-3664 Fax: 907/442-3974
Nome	**Larson, Timbers & Thomas.** CLE Replay Coordinator: Conner Thomas Telephone: 907/443-5226 Fax: 907/443-5098
Sitka	**Pearson & Hanson** CLE Replay Coordinator: Brian Hanson Telephone: 907/747-3257 Fax: 907/747-4977

NEWS FROM THE BAR

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

The amendments to Bar Rules 10 and 12 would codify procedures relating to the appointment of Special Bar Counsel. The amendment to Bar Rule 10(c)(3) would allow the Board to authorize the Executive Director to appoint Special Bar Counsel thereby relieving the President of the Board from the responsibility to do so. The amendment to Bar Rule 10(e) recognizes that grievances or disability proceedings involving an attorney member of the Board should be investigated by Special Bar Counsel because of the conflict of interest posed to Bar Counsel. Finally, the amendment to Bar Rule 12(b)(7) would permit a member of an area division to act as Special Bar Counsel upon selection and assignment by the Executive Director.

The amendment to **Bar Rule 31** would increase from $5000 to $10,000 the maximum amount which can be paid by the Board for trustee counsel fees and expenses. These appointments can be very time-consuming and expensive for trustee counsel to perform particularly where the unavailable attorney has a practice in a Bush area or a large number of clients. While the trustee counsel appointment is undoubtedly considered a public service to the Bar (and some appointments have been performed without compensation), it should not be an unreasonable financial burden to the volunteer who agrees to act in that capacity.

The amendments to **Bar Rule 45** would eliminate the Alaska domicile requirement for an active member of the Bar Association against whom a Lawyers' Fund for Client Protection claim is made and would add the failure to pay a fee arbitration award to the definition of "dishonest conduct."

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by March 16, 2001.

BAR RULES 10 & 12

PROPOSED AMENDMENTS RELATING TO THE APPOINTMENT OF SPECIAL BAR COUNSEL

(Additions are underscored; deletions have strikethroughs)

Rule 10. The Disciplinary Board of the Alaska Bar Association

(a) **Definition.** The Board of Governors of the Bar, when meeting to consider grievance and disability matters, will be known as the Disciplinary Board of the Alaska Bar Association (hereinafter the "Board"). The President of the Board (hereinafter "President"), or a Board member at the President's direction, may direct the submission of any matter to the Board by mail, telegraph or telephone. The votes on any matter may be taken in person at a Board meeting, or by conference telephone call.

(b) **Quorum.** A majority of the appointed and elected members of the Board will constitute a quorum. A quorum being present, the Board will act only with the agreement of a majority of the members sitting.

(c) **Powers and Duties.** The Board will have the powers and duties to

(1) appoint and supervise Bar Counsel and his or her staff;

(2) supervise the investigation of all complaints against attorneys;

(3) retain legal counsel and <u>authorize the Executive Director of the Bar (hereinafter "Director") to</u> appoint Special Bar Counsel;

(4) hear appeals from the recommendations of Hearing Committees;

(5) review and modify the findings of fact, conclusions of law, and recommendations of Hearing Committees regardless of whether there has been an appeal to the Board, and without regard to the discipline recommended by the Hearing Committees;

(6) recommend discipline to the Court as provided in Rule 16(a)(1), (2), (3) or (4); order discipline as provided in Rule 16(a)(5); or order the grievance dismissed;

(7) in cases where the Board has recommended discipline as provided in Rule 16(a)(1), (2), (3), or (4), forward to the Court its findings of fact, conclusions of law, recommendation, and record of proceedings;

(8) impose reprimand as a Board upon a respondent attorney (hereinafter "Respondent") upon referral by Bar Counsel under Rule 22(d);

(9) maintain complete records of all discipline matters in which the Board or any of its members may participate, and furnish complete records to the Bar Counsel upon final disposition; these records are subject to the provisions of Rule 21 concerning public access and confidentiality;

(10) issue subpoenas requested by disciplinary authorities of other jurisdictions;

(11) adopt regulations not inconsistent with these Rules; and

(12) after reasonable notice and an opportunity to show cause to the contrary, impose monetary sanctions of not more than $500.00 on any attorney appearing before the Board in a discipline or disability matter, whether the attorney is appearing as a respondent or in a representative capacity, for the attorney's failure to comply with the Rules of Disciplinary Enforcement or orders issued by or on behalf of the Board.

(d) **Judicial Members.** The Board will have the authority to recommend to the Commission on Judicial Conduct discipline for judicial members of the Bar.

(e) **Proceedings Against Board Members.** Investigations of grievances or disability proceedings against attorney members of the Board will be conducted <u>by Special Bar Counsel</u> in the same manner as investigations and proceedings against other Respondents, except that in the event a formal petition is filed, the Court will perform the duties and have the powers of the Board, as provided in these Rules.

(f) **Board Discipline Liaison.** The president will appoint on an annual basis a member of the Board to serve as the Board Discipline Liaison to Bar Counsel and Bar Counsel's staff. The Board Discipline Liaison will

(1) provide guidance and assistance to Bar Counsel and Bar Counsel's staff in implementing the Board's policies;

(2) have the duties provided in these Rules and as assigned by the President;

(3) be excused from sitting on any grievance or disability matter in which the Liaison has knowledge of the matter arising from the performance of the Liaison's duties;

(4) not be considered a member of the Disciplinary Board for the purposes of establishing a quorum when excused from sitting on a grievance or disability matter;

(5) have access to any grievance or disability matter necessary to perform the Liaison's duties or to assist Bar Counsel in making a decision on a grievance or disability matter;

(6) maintain the confidentiality of Bar Counsel's files as required by Rule 21(c).

Rule 12. Area Discipline Divisions and Hearing Committee.

...

(b) **Powers and Duties of Area Division members.**

Upon selection and assignment by the ~~Executive~~ Director ~~of the Bar (hereinafter "Director")~~, Area Division members will have the powers and duties to:

(1) sit on Hearing Committees;

(2) review requests from Bar Counsel to impose private admonitions upon Respondents pursuant to Rule 22(d);

(3) hear appeals from complainants from dismissals of grievances pursuant to Rule 25(c);

(4) review Bar Counsel's decision to file a formal petition pursuant to Rule 25(e);

(5) review challenges to Hearing Committee members pursuant to Section (h) of this Rule; ~~and~~

(6) issue subpoenas and hear challenges to their validity pursuant to Rule 24(a); <u>and</u>

<u>(7) serve as Special Bar Counsel</u>.

...

BAR RULE 31(g)(3)

PROPOSED AMENDMENT TO INCREASE BOARD COMPENSATION TO TRUSTEE COUNSEL

(Additions are underscored; deletions have strikethroughs)

Rule 31. Appointment of Trustee Counsel to Protect Client's Interests.

...

(g) **Compensation.**

(1) Any attorney serving as trustee counsel shall be entitled to compensation for reasonable fees and costs incurred in the performance of duties set forth in this Rule. Trustee counsel may seek payment of fees and costs from the estate of the unavailable attorney. Such a bill for fees and costs must be approved by the court as reasonable.

(2) An attorney who serves as trustee counsel may substitute as counsel for a client of the unavailable attorney after disclosure to the client that the client is free to select any attorney to substitute as counsel for the unavailable attorney and after obtaining the client's consent to substitution.

(3) In the event that the estate of the unavailable attorney is insufficient to compensate trustee counsel, an attorney appointed to serve as trustee counsel may submit a claim to the Board of Governors of the Alaska Bar Association. Reasonable compensation shall be determined by the Board and will not exceed ~~$5,000~~ <u>10,000</u>.

BAR RULE 45

PROPOSED AMENDMENT DELETING REQUIREMENT OF DOMICILE IN ALASKA

PROPOSED AMENDMENT ADDING FAILURE TO PAY A FEE ARBITRATION AWARD TO THE DEFINTION OF "DISHONEST CONDUCT"

(Additions are underscored; deletions have strikethroughs)

RULE 45. Definitions.

(a) The "Board" is the Board of Governors of the Alaska Bar Association.

(b) The "Fund" is the Lawyers' Fund for Client Protection of the Alaska Bar Association.

(c) The "Committee" is the Lawyers' Fund for Client Protection Committee.

(d) The term "lawyer" as used in this part and the rules contained therein means an active member of the Alaska Bar Association ~~domiciled in Alaska~~ at the time of the act or omission which is the basis of the application of the fund. The act or omission complained of need not have taken place within the State of Alaska in order for an application to the fund to be made or granted.

(e) The words "dishonest conduct" or "dishonest act" as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value<u>, or the failure to pay a fee arbitration award</u>.

(f) "Reimbursable losses" are only those losses of money, property or other things of value which meet all of the following tests:

(1) The loss was caused by the dishonest conduct of a lawyer when

(i) acting as a lawyer, or

(ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.

(2) The loss was that of money, property, or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph (f)(1) of this rule.

(3) The dishonest conduct occurred on or after the effective date of this part.

(4) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(5) The following shall not be an applicant:

(i) The spouse or other close relative, partner, associate or employee of the lawyer, or

Continued on page 15

NEWS FROM THE BAR

Board of Governors takes action on 19 items Jan. 19

• Adopted a stipulation for a private reprimand.

• Heard a report on the status of the 9th Circuit case in an IOLTA matter, and decided to write a letter in the Bar Rag to alert Bar members to this issue.

• Adopted a stipulation for a private reprimand in a discipline matter.

• Approved the Alaska Pro Bono Program's request for an $8,000 grant to hold pro bono clinics in remote locations and train local attorneys to do clinics ("The Flying Pro Bono Program.")

• Heard a request from a Bar member to form a mentoring program; asked the member to draft a letter for the Bar Rag soliciting interest for a mentoring program.

• Heard a report that as of mid-January, 41% of the active members who have paid their bar dues have taken the VCLE discount (but less than half of the active members have paid their dues so far); decided to wait until the March meeting to set the VCLE discount for 2002.

• Approved the request by Catholic Social Services' Immigration Law Project for a $3,500 grant to travel to Dutch Harbor and Bethel to provide pro bono services.

• Heard from Bar members who were active in Judicial retention campaigns about their interest in serving on a continuing Bar committee to promote judicial independence; appointed a subcommittee of the Board and asked the group was asked to write up a charge for the committee and bring it back to the Board at the next meeting.

• Unanimously voted to accept the Area Hearing Committee's findings and recommendation for disbarment in a discipline matter; set stipulations for readmission and assessed $958 in costs and $1,000 in fees.

• Appointed a Board subcommittee to make recommendations for the Distinguished Service, Professionalism and Layperson Service awards to be presented at the convention.

• The CLE Director reported that 25 Bar members took the on-line ethics CLE course.

• Voted to approve $2,265 to videotape the CLE by the Alaska Network on Domestic Violence & Sexual Assault so that the tapes can be viewed by Bar members.

• Voted to give a total of $500 for the swearing-in receptions for the two Magistrate Judges in southeast.

• Voted to adjust the salary ranges for the professional staff.

• Voted to publish amendments to Bar Rules 10 & 12, which would allow the Executive Director to appoint special bar counsel and for area hearing committee members to serve as special bar counsel.

• Voted to publish an amendment to Bar Rule 31 which increases the amount which may be reimbursed to Trustee Counsel from $5,000 to $10,000.

• Voted to publish an amendment to Bar Rule 45 to define dishonest conduct as failure to pay a Bar Association fee arbitration award.

• Voted to reimburse Bob Lewis an additional $1,525 for his work as Trustee Counsel.

• Voted to allow Bar Counsel to process certain matters as Lawyers Fund for Client Protection matters rather than requiring the clients to go through Fee Arbitration first.

SINCE 1896
ALASKA BAR ASSOCIATION

Did You Know?

The Alaska Bar Association offers mediation as an alternative way to work out a fee dispute or, in some instances, a grievance? Anyone can participate in mediation; however, it does require the agreement of both parties, as well as the referral of Bar Counsel in the case of a grievance.

If a petition for arbitration of a fee dispute is filed against you, mediation may be right if:

- there are only a small number of issues involved such as explaining some of the billings to a client; or
- the client is having trouble working out a payment plan, and
- both parties are willing to talk out their differences with a mediator.

For grievances, Bar Counsel may refer a matter to mediation under Bar Rule 13. Mediation is a good alternative for resolving problems such as

- breakdown in communication,
- neglect of a matter, or
- minor misunderstandings.

However, a grievance can't be mediated if it involves issues of a very serious nature.

If you have questions about mediation or fee arbitration, contact JoAnne Baker or Ingrid Varenbrink at 272-7469
e-mail: bakerj@alaskabar.org and varenbrinki@alaskabar.org
fax: 272-2932

The Board of Governors invites member comments

Continued from page 14

(ii) An insurer, surety or bonding agency or company, or

(iii) Any business entity controlled by (1) the lawyer, (2) any person described in paragraph (i) hereof, or (3) any entity described either in paragraph (ii) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (i) or (ii) hereof, or

(iv) A governmental entity or agency, or

(v) A collection agency.

(6) The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or surety bond fund, whether of the lawyer or the applicant or otherwise.

(7) Either

(i) the lawyer

(aa) has died or has been adjudicated mentally incompetent;

(bb) has been disciplined, or has voluntarily resigned from the practice of law in Alaska;

(cc) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (f)(1) of this rule and which judgment or judgments remain unsatisfied in whole or in part; or

(ii) the Board has determined it to be an appropriate case for consideration under these rules.

(8) Reimbursable losses do not include interest on such losses or attorney fees incurred in attempts to recover them.

(g) "Notice" means the delivery of a written notice personally to the addressee or by mail to the most recent address which the addressee has provided to the Alaska Bar Association. Written notice shall be presumed to be received by the addressee five (5) days after the postmark date of certified or registered mail sent to the most current address which the addressee has provided to the Alaska Bar Association.

2001 Bar Convention & Judicial Conference

SINCE 1896
ALASKA BAR ASSOCIATION

Ketchikan, Alaska
Thursday, Friday, and Saturday
May, 10, 11 and 12, 2001

Don't Miss this Convention in Beautiful Southeast Alaska!

Agenda Highlights

Thursday, May 10

CLEs

- Trial Advocacy Skills, Part 5: Jury Innovations with Judge Judith Chirlin
- Section Updates -- ADR -- Jamilia George, Program Chair
- Estate Litigation -- BethAnn Chapman, Bob Manley, Jo Kuchle
- Ethics Issues for Public Sector Attorneys with Peter Jarvis
- Ethics Update with Peter Jarvis and Bar Counsel(fulfills VCLE recommended minimum)

Lunch: Alaska Bar Business Meeting and Awards

Evening: Jetboat Tours and Dinner at Salmon Falls Resort

Friday, May 11

CLEs

U.S. Supreme Court Opinions Update -- Professors Arenella and Chemerinsky

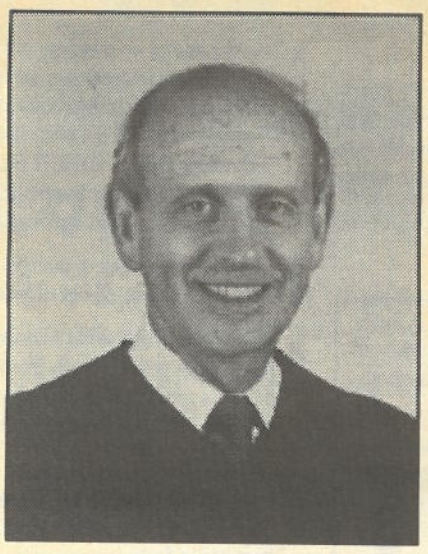
Alaska Appellate Update: 1) Insurance -- Judge Eric Sanders, Moderator and
2) Employment -- Tom Daniel, Moderator

History of the Alaska Court -- Senior Judge Tom Stewart, Chair

State-Tribal Relations -- Geoff Curral and Mike Holman, Co-chairs

Lunch: State of the Judiciaries -- Chief Judge James Singleton and Chief Justice Dana Fabe

Evening: Bench/Bar Reception and Banquet -- Keynote by U.S. Supreme Court Justice Stephen Breyer



Justice Stephen Breyer

Professor Erwin Chemerinsky

Professor Peter Arenella

Saturday, May 12

CLEs

Appellate Off the Record -- U.S. Supreme Court Justice Stephen Breyer, 9th Circuit Senior Judge Robert Boochever, 9th Circuit Judge Andrew Kleinfeld, Alaska Supreme Court Justice Alex Bryner and Senior Justice Jay Rabinowitz -- Moderator, Bruce Weyhrauch

Ethics Update with Bar Counsel -- repeat of Thursday, May 10 program (fulfills VCLE recommended minimum)

12 noon Adjourn

Watch for your full brochure in early February!

Convention Information

Registration and Exhibitors
Registration and exhibitors will be at the Ted Ferry Civic Center.

Program Locations
Convention events will be held at the Ted Ferry Civic Center and at the State Courthouse.

Transportation from Hotel to Program Locations
The Bar is arranging for shuttle buses that will run on a published schedule to take attendees to and from hotels and the program locations. Taxis are also available.

Sleeping Room Accommodations
The Alaska Bar has a block of rooms at the **The Landing/ Best Western**, 3434 Tongass Avenue, Ketchikan 99901. **Call 1-800-428-8304 or 907-225-5166 for reservations.** *Be sure to state you are with the Alaska Bar Association group*. Rates are $112 single and $122 double plus 11.5% tax. Suites are available at higher rate. **Make your reservations by MARCH 20, 2001.**

Air Reservations
Alaska Airlines is offering a special rate to the Alaska Bar and the Alaska Court System for this event. **Call the official convention travel agent, Jay Moffet, of World Express travel at 907-786-3274. Or call the Alaska Airlines Group Department at 1-800-445-4435. The booking code is CMA0261.**

Car Rental
Call Jay Moffet, the official convention travel agent, at 907-786-3274 or contact the following agencies directly: **Alaska Car Rental** at 1-800-662-0007 -- **ask for the Alaska Car Rental's special Alaska Bar Convention/ Alaska Judicial Conference rate** -- or call **Payless Car Rental** at 1-800-729-5377.

Ketchikan Convention & Visitors Bureau
For additional information on sightseeing and lodging, call 1-800-770-3300. For B&B reservations, call Alaska Travelers Accommodations at 1-800-928-3308.

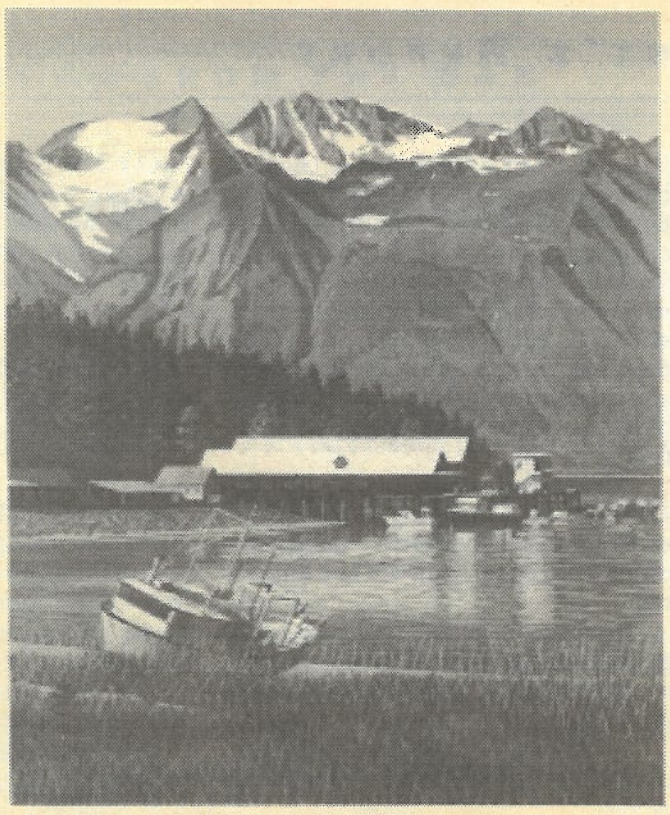
Hospitality Suite
The Ketchikan Bar Association and the Anchorage Bar Association will be hosting a hospitality suite during the convention.

Registration Fees
CLEs
Early Bird Registration Before April 10
All 3 days: $175
Any one full day of CLE: $90
Any half day CLE (morning OR afternoon): $50

Registration After April 10
All 3 days: $195
Any one full day of CLE: $110
Any half day CLE (morning OR afternoon): $70

Special Events
Lunches: $20
Jetboat Tours at Salmon Falls Resort: $30
Salmon Falls Resort Dinner: $40
Awards Reception and Banquet: $40

Call the Alaska Bar office 907-272-7469/fax907-272-2932 or e-mail alaskabar@alaskabar.org for more information.



Convention Highlights

Attend all 3 days of the convention and fulfill ALL your VCLE Rule recommended minimum hours of approved CLE for the reporting period January 1 December 31, 2001.

Appellate Off the Record with U.S. Supreme Court Justice Stephen Breyer

Supreme Court Justice Stephen Breyer joins a panel of 9th Circuit and Alaska Supreme Court judges to discuss appellate practice issues including appellate judges' expectations regarding briefs, oral argument, and motion practice. 9th Circuit Senior Judge Robert Boochever, 9th Circuit Judge Andrew Kleinfeld, Alaska Supreme Court Justice Alex Bryner and Senior Justice Jay Rabinowitz, and Bruce Weyhrauch, Moderator, round out the panel. Don't miss this rare opportunity to hear a U.S. Supreme Court Justice!

U.S. Supreme Court Opinions Update

Yes, they're coming to Ketchikan! Join us for our 10th annual review of U.S. Supreme Court decisions with nationally recognized constitutional law experts, UCLA School of Law Professor Peter Arenella and USC Law Center Professor Erwin Chemerinsky. This year we will also have U.S. Supreme Court Justice Stephen Breyer in the audience as the professors give us their take on what the Supreme Court has ruled.

Trial Advocacy Skills, Part 5 -- Jury Innovations

Presented as a joint prosecution and defense practitioners program in cooperation with the Alaska Academy of Trial Lawyers, the Federal Defender's Office, the Alaska Public Defender Agency, and the Office of Public Advocacy

Join Los Angeles Superior Court Judge Judith Chirlin and a panel of Alaska judges and lawyers for a look at how the jury system is changing in many jurisdictions and how this will impact trial practice. Learn about the latest techniques to help jurors do a better job and what might be in the future for Alaska.

Ethics Issues for Public Sector Attorneys

Public sector attorneys often face unique ethical issues and challenges in their practice. Peter Jarvis, Washington State Special Attorney General for the A.G.'s Ethics Committee and the Stoel Rives LLP Professional Responsibility Practice Group Chair, focuses in this session on helping public sector attorneys identify and deal with ethical problems.

Ethics Update

Learn about the newest trends in professional responsibility and how to navigate through an ever more complex world of ethical issues. Bar Counsel Steve Van Goor and Peter Jarvis, Stoel Rives LLP, Portland lead this discussion on Thursday. The program repeats on Saturday with Bar Counsel Steve Van Goor.

Estate Litigation: What To Do With Contested Wills

A panel of experienced probate practitioners, BethAnn Chapman, Jo Kuchle and Robert Manley, look at recent cases of contested wills and trust litigation, and discuss how to deal with estate and trust litigation, including the attorney-client privilege.

Alaska Appellate Update in Employment Law and Insurance Law

This year's update focuses on the issues of employment law and insurance law. A panel of Alaska judges and lawyers provides an analysis of recent appellate decisions. Judge Eric Sanders and Tom Daniel are moderators.

History of the Alaska Court

The remarkable development of the Alaska Court system is a story that is still unfolding. Members of the bench and bar who witnessed the beginnings of the Alaska Court discuss key issues and events that shaped and continue to shape our system. Senior Judge Tom Stewart is Chair.

State-Tribal Relations

A panel of Alaska judges and lawyers looks at state-tribal jurisdiction and the issues that our state and the court will be facing in light of *Baker v. John*. Geoffrey Currall and Michael Holman co-chair this program.

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LEXIS
Legal Research with Lexis
Lexis will offer complimentary hands-on legal research training to familiarize lawyers and judges with the latest techniques, strategies and products. The training will be ongoing during the convention. To register, call Marcus Wiener at 907-688-3198. Advance registration is recommended, but not required. Visit the Bar convention registration area for information on times and location of training..

WESTLAW
Legal Research with WESTLAW
WESTLAW will offer complimentary hands-on legal research training to familiarize lawyers and judges with the latest techniques, strategies and products. The training will be ongoing during the convention. To register, call Allan Milloy at 907-277-0914, Keith Beeler at 907-258-3891 or Chris Jalbert at 1-800-762-5272. Advance registration is recommended, but not required. Visit the Bar convention registration area for information on times and location of training..

Don't Forget to File Your VCLE Reporting Form with Your Bar Dues!

Deadline is February 1, 2001

Remember to Keep Track of Your CLE Credits!

The minimum recommended guidelines are at least 12 credit hours of approved CLE, including 1 credit hour of ethics, each year.

VCLE Reporting Year
The first VCLE Reporting Period is September 2, 1999 - December 31, 2000.

Return the VCLE Reporting Form with your Bar Dues Statement and Dues Payment to qualify for the Bar Dues Discount of $45 and to be included on a list of attorneys who have voluntarily complied with the VCLE Rule minimum recommended hours of approved CLE as set forth by the Alaska Supreme Court. Only attorneys who voluntarily comply with the VCLE Rule may register for the Lawyer Referral Service.

Contact
Barbara Armstrong, CLE Director or Rachel Batres, CLE Coordinator for more information:
907-272-7469/fax 907-272-2932
armstrongb@alaskabar.org
batresr@alaskabar.org

ALSC PRESIDENT'S REPORT

ALSC/APBP . . . and justice for all

☐ Loni Levy

According to the *Anchorage Daily News*, "legal aid for the poor falls far short of the need in Alaska." (ADN at B-6, Jan. 6, 2001). The editorial acknowledges that while the poverty population and the attendant costs of litigation have grown over the years, the level of financial support for legal services has dropped by 2/3 in the last two decades. It calls for implementation of the May 2000 Supreme Court Access to Civil Justice Task Force report which, inter alia, urges the establishment of an ALSC office staffed by at least one attorney in every location in the state which has a Superior Court. The ALSC Board and staff look forward to working together with the court system to make this a reality.

As we have said time and time again, the provision of legal services for our less fortunate citizens is the responsibility not just of ALSC, but also of the entire bench and bar and the statewide citizenry. We hope that the state legislature is listening. We know that Senator Stevens is.

Our Senator appeared at a reception hosted by Heller Ehrman last month for major contributors to the current Partners in Justice campaign to voice his support for increased federal funding for ALSC and to emphasize the individual responsibility of each and every attorney to participate in the campaign. We were delighted to have this hearty endorsement from him.

And we are delighted to announce that through the efforts of local grantors, the Kotzebue ALSC office is up and running and that we have secured sufficient funds to keep the Barrow office open for the next six months. The ALSC Board will be addressing other funding priorities at its next quarterly meeting in March.

PRO BONO ON THE GROUND AND ON THE FLY

The need for pro bono attorney participation is finally attracting the attention of the American Bar Association whose Ethics 2000 Commission recently released a set of proposed changes to the ABA Model Rules of Professional Conduct. If those proposals are approved by the ABA House of Delegates this summer, states will be encouraged to adopt a requirement that lawyers have a professional responsibility to take on pro bono work.

For many of you, doing beats giving. The opportunity for private attorneys to represent disadvantaged members of their own community can be an unprecedented enrichment of their personal and professional lives. One more real estate deal or commercial dispute is not very likely to add much to one's perspective. Think of how much more empowering it would be to prevent an eviction or secure essential services to a care giver. The gratitude of deserving people who often have little else in their lives to cheer about is far more rewarding than you could ever imagine.

The Alaska Pro Bono Program continues to augment the various opportunities available to members of the bar who recognize their individual responsibility to assist low income individuals. While close to 60% of the Alaska Bar's membership has agreed to participate in the pro bono program, APBP sees the need to develop additional possibilities for attorneys who want to offer assistance in its program in order to maximize the quality and quantity of its statewide service opportunities. The new attorney of the day/morning/afternoon and Alaska Flying Pro Bono panel projects were designed with this in mind.

A volunteer attorney may donate an entire day, morning or afternoon at the APBP's midtown Anchorage office to do one or more of the following:

- conduct intake of applicants who have already been screened for income eligibility, case priorities and conflicts;
- respond to phone calls from applicants by giving brief counsel and advice;
- review APBP documentation to determine whether intakes conducted by non-attorney staff or other referral agencies present issues with legal merit;
- "sell" pro bono cases to panel members;
- handle pro bono matters themselves;
- review materials developed by APBP staff for program development and implementation;
- assist in writing or reviewing grant requests; and
- assist in establishing statewide legal clinics and/or workshops.

In addition, a volunteer attorney may be asked to visit referral agencies such as the VA Homeless Shelter, Brother Francis or Bean's Café to conduct intake, meet with residents and give brief counsel and advice.

Or the attorney may be asked to meet with referral agencies to develop or revise their intake questionnaires to gather basic information for individual case referral to APBP. (Keep in mind that APBP provides malpractice insurance for those volunteer attorneys while working on any of these projects.)

If you would prefer to visit outlying areas of the state, you can join the Flying Pro Bono panel. Volunteers in this project can select the timeframe and site to visit. APBP will pay for airfare and lodging expenses. A flying pro bono attorney may do one or more of the following:

- travel to a remote area to assess local needs. APBP will co-ordinate all travel arrangements and schedule the volunteer attorney to meet with the site's court system staff, local attorneys, if any, and with representatives of the local community's social service agencies. The volunteer will be provided with all pertinent background information. Upon return to her/his office, the attorney will prepare a report for APBP which will be used to schedule legal workshops and clinics in the remote site;
- conduct legal clinics/workshops in remote areas;
- conduct intake of potential APBP clients and give one-time consultations, where appropriate;
- mentor young lawyers in remote areas who accept APBP cases outside of their regular areas of practice;
- meet with rural social service providers to develop or revise their intake questionnaires; or
- meet with potential clients to assess their legal needs before APBP accepts their case.

If you do not see a volunteer opportunity that fits your interests or your speciality, please contact APBP to discuss other ways in which you can participate in the pro bono program. And for those who also want to have a night on the town while supporting pro bono...

HOLD MAY 19 FOR THE BARRISTER'S BALL

The first annual Barrister's Ball fund raiser for APBP will be held on Saturday, May 19, 2001 at the Anchorage Museum of History and Art. The auction and dinner dance with a fabulous band is certain to become the star event of the social season for the entire legal community. Finally, a really fun way to support pro bono and have a wonderful evening at the Museum.

Circuit Judge Mary M. Schroeder becomes Chief Judge of the Ninth Circuit

Arizona Judge Mary M. Schroeder on Nov. 30 became the first woman chief judge of the nation's largest judicial circuit. She succeeds Judge Procter Hug. Jr. of Reno, Nevada, who has held tile post since March 1996. She serves a seven-year term as chief judge. The ceremony was held at 3 p.m. on December 1 in Courtroom 1 at the court of appeals at Seventh and Mission streets in San Francisco. An Arizona ceremony will take place in Phoenix, her city of residence, on March 23, 2001. By becoming chief judge of the United States Court of Appeals for the Ninth Circuit, Judge Schroeder will preside over a circuit that encompasses Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and the islands of Guam and the Northern Marinas.

Another distinguished female jurist from Arizona, United Stares Supreme Court Justice Sandra Day O'Connor, recently called Judge Schroeder's new position "a new chapter of Arizona leadership on the Ninth Circuit." Speaking at the dedication ceremony for the new federal courthouse in Phoenix, Justice O'Connor praised Judge Schroeder's "accomplished career" and "record of excellence.' "I look forward to Judge Schroeder's leadership of the largest circuit in the country," said Justice O'Connor.

Like Justice O'Connor, Judge Schroeder, 59,15 no stranger to forging new pathways for women:

- In the 1960s, she was one of only six women in her law school class at die University of Chicago In the summers, she was unable to find a position as a law clerk because it was an era when female law clerks were not being hired.
- When she began to look for her first job as a lawyer, she but no offers. Moving with her husband to Arizona, where he had a teaching job judge Schroeder came to a state where no woman lawyer had ever before been employed at a major law firm. However, she soon became a partner at Lewis and Roca, one of the largest firms in Arizona.
- As a lawyer in Arizona, she chaired the committee that drafted and secured passage of Arizona's first civil rights law.

Judge Schroeder is joining two current women chief judges of federal appellate court-Carolyn King of the Fifth Circuit, based in New Orleans, and Stephanie Seymour of the Tenth Circuit, based in Denver. Judge Schroeder said she has come to realize that the role of women is "not to feminize the courts, but to humanize them."

As chief judge, Judge Schroeder will assume the administrative responsibilities of both the court of appeals and the Judicial Council of the Ninth Circuit, a board of judges governing tie region She will also sit on all 11-judge en banc panels, helping to set the direction of Ninth Circuit law. She already has announced the formation of two new programs-confidential hotline for judges in need of crisis counseling for issues such a, bereavement and substance abase and a pilot program that will allow the citation of unpublished opinions in petitions for rehearing or requests for publication.

As a member of the Ninth Circuit Court, Judge Schroeder has established a record as a prolific writer and scholar who also has acquired considered administrative experience under chief Judge Hug's tutelage. Among her noteworthy cases is Hirabayashi vs. United States, 8282 F.2d591 (9th Circuit 1987), which held 50 years after World War II that the Japanese internment was unconstitutional. Judge Schroeder wrote in her opinion that the order to intern "caused needless suffering and shame for thousands of American citizens." She currently is a member of the three-judge panel considering *A&M Records er al v. Napster,* a case that has captured the attention of the Internet world.

Judge Schroeder joined the Court of Appeals for the Ninth Circuit in 1979. Before that, she served on the Arizona Court of appeals for four years arid was the youngest woman appellate judge in America at the time. She previously was in private practice in Phoenix and worked as a trial attorney with the Civil Division of the United States Department of Justice. She has been president of the National Association of Women Judges and is a member of the Council of the American Law Institute.

— Press Release

Survey profiles jury of the future

Today's juries are more balanced than ever before, according to a survey of juror questionnaires, community attitude polls, focus groups and post-verdict interviews spanning a five-year period.

The survey, which looks back at changes in jury behavior at the close of the century, suggests that jurors are less likely to identify themselves as liberal or conservative, opting instead for some middle ground. The research was conducted and compiled by Howard Varinsky Associates, an Emeryville, Calif.-based trial consulting firm with more than 10 years of national experience in jury selection and preparation.

"While major jury trends typically take many years to surface, this particular shift is very distinct and quite marked in recent years. Jurors are increasingly politically middle-of-the-road. Fewer people consider themselves staunch conservatives or ardent liberals," said Varinsky, founder and president of the firm. "This middle ground makes the trial attorney's job of selecting a favorable jury tougher than ever, since political beliefs have always been an indicator of jurors' social and economic philosophies. It requires litigators to look beyond the labels and stereotypes and into the individual and his or her personal experiences and beliefs."

As the jury pool-at-large shifts, the survey found, many of the common ethnicity-based stereotypes or regional assumptions on which attorneys rely when selecting jurors are evolving as well. For example:

• Asian-Americans are stereotypically thought to be defense jurors in civil cases; however, the stereotype is based on first and second generation Asian-Americans. As Asian-Americans assimilate, litigators must observe them more closely. Third and fourth generation Asian-Americans are proving to be less predictable, says the study.

• African-Americans, particularly men, are stereotypically believed to be strong plaintiff jurors in civil cases; however, there are a growing percentage of more conservative, defense-oriented African-American male jurors.

• In the Silicon Valley and other technology-dominated economies, jurors are increasingly socially liberal; however, these same "liberals" are quite fiscally conservative.

Some of the most notable shifts in jury attitudes are seen in employment cases. Gone are the days when an employee expected to join a company and stay until retirement. The survey found that increased mobility, job-hopping and "down-sizing" have become a way of life for many in the nation's jury pool.

• Jurors no longer feel that companies have a "duty" of lifetime employment to their employees.

• Jurors, particularly those 35 and younger, are increasingly defense-oriented in their views – a shift from the heavy plaintiff-focus prevalent in the early 1990s.

• The 35 and younger set also tend to be less hostile toward large corporations than in years past.

"The higher the salary, the more defense-oriented a juror becomes. In this age of self-made wealth and prosperity, we're finding that juries lean toward principles of personal responsibility first and foremost," Varinsky says. "People tend to be feeling less victimized, and while there are still plenty of large plaintiff awards, the jury pool has generally become more defense-oriented in most venues."

Changing juror profiles also are reshaping the practice of law. According to the Varinsky survey, since the early 1990s, jurors are:

• Less likely to note that there is "too much litigation," a regular complaint lodged against the legal system during the last 10 – 15 years.

• More respectful of attorneys, with an increasing number of jurors ranking lawyers and doctors equally in terms of the high-level professions.

TODAY'S JURORS ARE INUNDATED WITH SOPHISTICATED GRAPHICS VIA TELEVISION, MAGAZINES, BILLBOARDS, COMPUTERS, AND OTHER MEDIA. THE INFORMATION TECHNOLOGY REVOLUTION HAS TRANSFORMED THE WAY THAT INFORMATION IS COMMUNICATED TO JURIES AT TRIAL.

Other major changes in juror attitudes revealed by the survey significantly impact attorneys' trial preparation. Among the highlights:

• Today's jurors are inundated with sophisticated graphics via television, magazines, billboards, computers, and other media. The information technology revolution has transformed the way that information is communicated to juries at trial. All visuals or demonstrative evidence must be well thought out and professional in appearance. No trial presentation on a complex matter should be without demonstrative evidence, as jurors expect it. To omit this important tool could be detrimental to the case.

• Similarly, jurors expect to see a "team" at the counsel table. While the population has always been fascinated by the legal system, the televised trial of O.J. Simpson, courtroom dramas and legal best sellers have popularized the roles of counsel, expert witnesses and trial consultants. The introduction of various specialists to handle information technology, graphics, and jury selection is accepted, and in many cases, even expected by jurors.

"The nature of trying cases is totally different today than even 10 short years ago. Generalists or the lone litigator who ran the show from *voir dire* through closing arguments regardless of the subject matter are nearly extinct. Litigators with distinct specialties, as well as a team of sub-specialists from the jury consultant to the technology pro, are commonplace and expected by jurors as part of the process," notes Varinsky.

Howard Varinsky is a trial consultant, recognized for his expertise in developing trial strategies, voir dire, jury selection, witness preparation and courtroom communication. Varinsky has consulted on many types of litigation, including business, securities, intellectual property and employment cases. During his 20-year career, he has advised on many unusual and high-profile cases, including the prosecution of Linda Tripp, the criminal case against Timothy McVeigh for the Oklahoma City bombing, and the Regents of the University of California v. Genentech regarding a patent infringement case involving human growth hormone.

Selecting a new telephone system?

Get big system performance for small system dollars

By Ellen Freedman

In my capacity as Law Practice Management Coordinator, I am always cognizant of the fact that I must be able to provide assistance to firms of *all* sizes and practice configurations. Nonetheless, I confess that I spend a rather large percentage of my time "fretting" about ways for the solo, small and mid-size firm to remain competitive.

From a business perspective, I see that as the legal industry continues to mature, it is getting harder and harder for firms to maintain the same level of profitability. The small and mid-size firms—particularly those which offer a broad, general practice—are getting squeezed tightly between the boutiques, the mega-firms, and in-house counsel's capabilities. So when I come across something which I feel can assist small and mid-size firms to "level the playing field," I can't wait to get the information out.

It used to be that only those buying the large PBX digital telephone switches—the likes of Rolm, NEC or Northern Telecom, at hefty price tags at or over six figures—got lots of features. Next in line were the small digital and "key" systems—such as Merlin, Toshiba, or Intertel, which could be had for anywhere from $18,000 - $35,000 depending on memory capacity, number of trunks, and features purchased—which provide reliability and a decent feature set. Unfortunately, these systems are typically very expensive to expand or upgrade. And sometimes these systems are discontinued and "no longer supported" and the firm must bear the expense of an upgrade to another system, even though the present one is still working adequately.

I CONFESS THAT I SPEND A RATHER LARGE PERCENTAGE OF MY TIME "FRETTING" ABOUT WAYS FOR THE SOLO, SMALL AND MID-SIZE FIRM TO REMAIN COMPETITIVE.

If your firm has experienced significant growth, chances are pretty good that you've purchased, and subsequently discarded, more than one telephone system enroute. And of those you purchased, it is likely that many lacked features you wanted, and most were difficult to make changes to without paying an outside contractor through the nose.

One thing both the large PBX and the key systems—even those for small firms—have in common is that they require what is called proprietary hardware, meaning that the manufacturer's hardware and software must be used. Typically, the hardware is very expensive, because there are no choices.

There is now a new generation of telephone system. It is based on a non-proprietary hardware platform, meaning that any souped-up "server class" PC can serve as the telephone/voicemail server. Becoming brand-independent means savings in a big way. The trunk cards and telephone handset port cards go into slots in the PC just like additional memory or a CD drive would occupy slots. That means you can install additional cards yourself, without paying an outside contractor. And it means the system is highly expandable; you can upgrade incrementally at low cost as your needs grow, without having to purchase a new system.

Any brand of analog telephone (which is far cheaper than a digital phone) can be plugged into the system and will work, so you can buy cheaper phones, and have a wider choice of brands. The system is software driven, usually using the Windows NT operating system, and hangs off your network like any other device. Most integrate fully with Microsoft Outlook, which means that you can have integrated messaging, e.g. your voicemails in your inbox along with your emails. That means you can sort them, save them, append them with voice or text, and forward them anywhere in the world. It also means if you are out of the office you can check in only *one* place for all your messages. And you can make outgoing calls just by clicking on the telephone number in your Outlook address book.

Voicemails are saved in Outlook as .wav ("wave") voice files. Since disk space is now cheap, and getting cheaper, you can afford to save important voicemails indefinitely, and organize them into folders in your inbox. No more having your secretary transcribe your messages, with possible debate later about the accuracy of the transcription. You can save the actual message, without clogging up your voicemail system.

The features available on this PC-based system are simply incredible. I have had the pleasure of working with both Rolm and Northern Telecom switches, and have programmed both, so I know first-hand how rich their feature sets are. It takes a lot to impress me, and I admit I'm very impressed with this new generation of telephone software. I am in the process of assisting a medical research firm in Philadelphia with the installation of the Alti-Gen system. Everything you can imagine wanting a telephone and voicemail system to do, this system can and does do—and more.

As an example of just one feature on the Alti-Gen system, it allows you to program up to four different numbers at which the system can attempt to locate you. So you can put in your cell phone, car phone, home phone or even pager number, and let the system know in what order, and even during what time slots, it can attempt to find you at those numbers if you don't answer your telephone. In addition, you can specify the call tracking feature *only* for calls from certain telephone numbers (like your most important client or your spouse) or specify it for all *except* certain numbers (like the investment or insurance broker who won't stop calling.) It lets the caller have the option of trying to track you, or leaving a voicemail, and keeps the caller informed as to progress so they do not sit on hold for too long. The caller can choose not to wait any longer and leave a voicemail at any time in the tracking process. Clearly, this is a very powerful feature for the many instances when you don't want to miss an important call.

For the same or less than you would pay for a "conventional" key system at a small or mid-sized firm, which would offer very limited features, limited growth capability, and probably no voicemail capability, you can get all the functionality of the systems used by the largest firms, including voicemail, with inexpensive growth capability built in. The systems are designed to go up to approximately 150 users.

Interested? Who wouldn't be. For additional information visit http://www.altigen.com/ or http://www.artisoft.com/, which are just two of the numerous choices available today. For more information on Alti-Gen, contact Tom Martin, Regional Sales Manager of National Office Equipment at (215) 934-7500 x350 if your firm is located in Eastern PA, or contact Richard Sokol, Sales Manager of Threshold Technologies at (724) 746-2600 x108 if your firm is located in Western PA.

If you've never had to purchase and install a telephone system before, you may want to consider reading "Telephone and Peripheral Systems for Law Firms" by Mary R. Westhoff (item #ISB8582N - available from the Association of Legal Administrators at www.alanet.org). This article is not an endorsement of any particular product or vendor, and the reader is encouraged to thoroughly check features and references. The author holds no equity interest in any vendors referenced.

— The author is the Law Practice Management Coordinator
Pennsylvania Bar Association

Judges wanted

Help our youth learn the law

The Anchorage Bar Association's Young Lawyers Division is looking for volunteer law professionals to serve as judges in the statewide mock trial competition.

"Not only did we learn about the law, but we learned a great deal about ourselves and our ability to cope with difficult situations."
—Mock trial participant.
1997

The competition will be held February 23-24 in Anchorage.

200 high school students will team up in four rounds of competition during the 2 days of mock trials.

If you can spare two hours on February 23 or 24 to judge one round of competition, your help will be greatly appreciated.

If you can contribute your time for this inspiring event, contact Mike Shaffer, 276-6015 or Tom McDermott 263-7258 tmcdermott@bhb.com

Senator recounts origins of Alaska mandatory auto insurance statute

By Sen. Dave Donley

Part I

In 1979 when I returned to Alaska from law school at the University of Washington, I worked for law firms that did both personal injury and insurance defense work. Back then Alaska was one of only a few states that did not have mandatory auto insurance. Alaska's uninsured driver rate then was estimated to be between 20 and 40 percent. Instead of mandatory automobile insurance, since 1959 Alaska did have the Safety Responsibility Act. That law required uninsured drivers who were in accidents, and had judgements against them, to pay before getting their driving privileges back and subsequently show proof of insurance when registering automobiles. I personally strongly supported the adoption of a mandatory auto insurance law and as a private citizen lobbied legislators to do so.

I went to work for the State Senate in 1983 as a Finance Committee Aide. Because of my insurance expertise, I was also assigned to help then Speaker of the House Joe Hayes draft mandatory automobile insurance legislation. Many such bills had been introduced before but were always blocked by the insurance industry and their lobbyists who strongly opposed mandatory insurance.

This industry opposition is puzzling to many people. I am frequently asked, won't insurance companies make more money if people are forced to buy insurance and they have more customers? After participating in dozens of legislative hearings and meetings on this subject, here is my take on why insurance companies oppose mandatory auto insurance.

First, at that time, according to the National Association of Insurance Commissioners, Alaska was the most profitable auto insurance market per capita for the industry in the entire United States. The insurance companies were making lots of money, so why change such a good thing. In the opinion of many people the state had an industry oriented Division of Insurance that seldom truly challenged the industry or denied rate increases. National consumer advocate Bob Hunter once told me about a meeting where he confronted a former Insurance Division Director saying the division had never denied a rate filing. According to Mr. Hunter's story, the Director responded that the allegation was false and that the division had in fact denied a recent filing. Mr. Hunter asked what filing that was and the Director answered that one of the larger companies had filed a rate decrease and it was denied. He explained that reduced rates would make that company too competitive and increase their market share too much, which would eventually be bad for consumers. Although other rate increases were if fact questioned by the Division, the perception of many people was that they were not aggressive enough.

I have also been told by some people in the insurance industry that they oppose mandatory auto insurance because they do not want to have to insure all drivers. They apparently fear it reduces their profitability and bad drivers are difficult and more expensive to deal with. This argument really does not make sense as the assigned risk poll for high risk drivers in Alaska is actually making money and is not subsidized.

Finally, I have heard the insurance industry also complain that it is a public relations problem for them because, in a mandatory system, drivers blame them for having to buy insurance and also blame them when they are injured by uninsured drivers.

A recent State Farm flyer sent to me opposing mandatory auto insurance claimed other reasons, including it's ineffective, costly and it raises premiums. A close reading of their arguments though found each to not be applicable to Alaska.

For many years rural legislators also opposed mandatory auto insurance as unnecessary in the bush. Working with Speaker Hayes' staff, I devised the system of exempting most bush communities that is still in statute today. I wanted to find a way to exempt small bush communities that were not connected to the main state highway system. Accordingly, I crafted a dual test exemption – the area could not be linked to the main highway system and could not have a road with a daily average traffic volume over 499. I picked that number because, at the time, it excluded Kotzebue from the mandatory requirement and thus neutralized opposition from Senator Frank Ferguson, who had helped block earlier proposals.

I also drew from my private practice experiences to add a provision requiring the offer of not just uninsured coverage, but both insured and underinsured coverage. Prior to 1983, only uninsured coverage was available in Alaska because that was all the statutes required to be offered and no insurance company wanted to offer underinsured because of the excess liability it would create for them if it wasn't required of all companies. Without underinsured coverage, uninsured coverage was worthless if the tortfeasor had even the slightest amount of insurance.

The insurance industry also strongly opposed requiring up front proof of insurance to register automobiles or get a driver's license. They also opposed requiring insurers to notify the state when a policy was discontinued; claiming it would raise premium costs significantly. Additionally, the Division of Motor Vehicles claimed such a system would cost over a million dollars to implement.

To reduce industry opposition and costs to the state, the final legislation, while requiring insurance, did not require up front proof of insurance to register an automobile. It also did not require insurers to notify the state when a typical policy was terminated. As a safeguard, it was decided to keep the Safety Responsibility Act as a parallel enforcement tool.

Speaker Hayes' bill passed the House but bogged down in the Senate Labor & Commerce Committee chaired by Sitka's Senator Dick Eliason. Senator Eliason had fought previous efforts to pass mandatory auto insurance, but this time it was a priority personal bill of the Speaker of the House. After a bitter fight, Senator Eliason agreed to allow the bill out of his committee only with a four-year sunset provision. Under that provision the law would terminate or "sunset" after four years if legislation did not pass to extend it. Speaker Hayes' bill passed the Senate and became law in May 1984. Thus Alaska's first mandatory auto insurance law was born and went into effect January 1, 1985. Without Joe Hayes' leadership, hard work and the fact he was House Speaker, the bill would never have passed.

EVEN IN STATES THAT SPEND MILLIONS ON UP FRONT PROOF, NOTICE TO THE STATE OF TERMINATION OF COVERAGE AND ACTIVE ENFORCEMENT, THE UNINSURED RATE IS STILL ABOUT 5%.

Within two years estimates were that Alaska's uninsured driver rate had dropped in half, to probably about 10-20%, with some estimates as low as 8.5%, which is excellent for a no proof up front system. Even in states that spend millions on up front proof, notice to the state of termination of coverage and active enforcement, the uninsured rate is still about 5%.

In 1986, I was elected to the State House and chosen to chair the House Labor and Commerce Committee. I immediately began to work to make the 1984 law permanent, but insurance industry opposition continued and Senator Eliason became the Rules Chairman of the Senate.

In Part Two of this series: Alaska's first mandatory auto insurance law sunsets.

DMV investigates exemptions

Following an inquiry from Sen. Dave Donley (R-Anchorage), the Alaska Department of Administration should be revising the list of communities exempt from the Mandatory Insurance Law, says the Office of the Senate Majority in the legislature.

Under Alaska Statute 28.22.011, motor vehicle owners are exempt from the insurance requirement if the roads in their community are not connected to the land-connected state highway system, and if the average daily traffic volume on all of the roads in the community is less than 499.

"When the Mandatory Insurance law was passed in 1993, an exemption to the law was added for isolated communities in Alaska with little vehicle traffic," said Donley. "The law requires that these communities be evaluated annually to determine if they are still eligible for exemption. This summer, while investigating a report of an uninsured automobile fatality in Kotzebue, my office discovered the last time this review was conducted was in 1994. Apparently, when the Division of Motor Vehicles moved from the Department of Public Safety to the Department of Administration, the statutorily required annual reports were discontinued."

The Statewide Coordinator of Data has compiled a list of exempt communities, indicating whether or not they still meet the conditions for exemption. 12 communities, including Barrow and Kotzebue, appear to no longer be exempt from insurance requirements under the current statutes because local traffic exceeds the average daily limit. These findings were forwarded to the Division of Motor Vehicles.

In a letter to Donley, Mary Marshburn, Director of the Division of Motor Vehicles, said that her office has requested current traffic counts for these areas from the Department of Transportation, as well as information on the methodology used to collect the data. The division will then notify any communities that lose their exempt status, and begin the process of educating local drivers on their new responsibilities under the Mandatory Insurance Law.

—Press release

Subnotebook computers: 2001 update

By Joseph L. Kashi

Full-function notebook computers have always commanded a strong following among lawyers but the bulk and weight of a full sized seven- or eight-pound notebook computer can be a real drag when you're on the go, especially when you throw in the carrying case. AC charger and spare batteries.

Over the past few years, full-sized notebook computers have crept upward in outside dimensions as larger screens became an important selling point. As a result, full-sized notebooks have become at least slightly less portable.

Enter subnotebook computer systems where full-featured portability traditionally ranked supreme. Yet, in contrast to the state of full-size notebook computers only two years ago, today's subnotebook system have advanced significantly.

YOU'LL UNDOUBTEDLY WANT TO CHECK THE LATEST REVIEWS. THE BEST OVERALL GUIDE WE'VE FOUND IS A PERIODICALLY PUBLISHED C OMPENDIUM CALLED *LAPTOP BUYER'S GUIDE*.

During the past 18 or so months, we've seen an explosion of subnotebook computers, basically compact but full capability computers weighing less than four pounds. Recently, the subnotebook genre further subdivided itself into the ultra light notebooks, basically computers that are about 8"x10", weighing about three pounds, and the more traditional subnotebook computers weighing about four pounds and measuring about 9" x11".

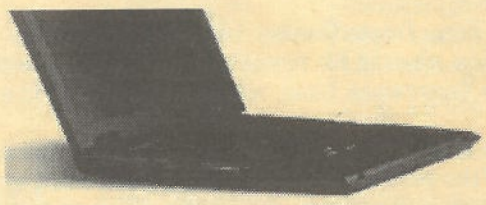
All of these systems have their place. An ultra light notebook computer, at around three pounds, is wonderful to carry when you're traveling and mostly need to do some word processing, run a litigation support program like CaseMap, make PowerPoint presentations, stay in touch with the office, or do some Internet research. A system that small can be thrown in an overnight bag, surrounded by other clothes, and travel almost inconspicuously.

Despite their small size, the newest generation ultra light notebooks, exemplified by the newest 500 MHz Compaq Armada M300, the 500 MHz Fujitsu B-2175 and the new 450 MHz IBM ThinkPad 240X, probably have more computing horsepower and hard

Continued on page 23

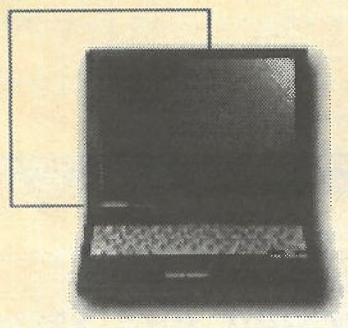
SUBNOTEBOOKS THAT CAUGHT MY ATTENTION

IBM's ThinkPad 240X is one of the top-rated subnotebook computer systems.

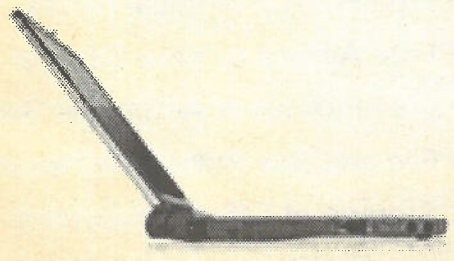


Sony's VAIO PCG-SR5K and SR7K series is highly regarded

Compaq's Armada M300 is a bit larger at 10.4"x 9"x 1" and 3.1 pounds



Another good choice is ***Toshiba's Portege 3440CT*** system



• ***IBM's ThinkPad 240X*** is one of the top-rated subnotebook computer systems. The most recent versions use 450 and 500 MHz Celeron processors, a faster 100 MHz memory bus, and typically sells for about $2,200. Plan on spending another $270 or so for the CD-ROM needed to load programs these days. The basic 450 MHz ThinkPad 240X has a good keyboard and is adequately fast. It includes 64 megabytes of somewhat slower PC66 SDRAM, a 6.4 gigabyte hard disk and a 10.4" TFT screen A somewhat faster version sporting a 500 MHz Pentium III, a 12 GB hard disk, and 64 MB of faster PC100 memory costs about $200 more, a relatively minimal difference that's well worth the extra cost.

• ***Sony's VAIO PCG-SR5K and SR7K*** series is highly regarded. Street prices top out at about $2,200 for a 600 MHz system with 128MB SDRAM and a 12 GB hard disk. Less expensive models use a 500 MHz processor and 64 MB SDRAM. Both systems use a 10.4 inch TFT screen and extended life lithium batteries. Both systems weigh about 3 pounds and include a 56K modem. Sony claims that the SR7 has a 6 hour battery life, which if true is certainly a record for notebook systems. The SR7 really attracts our attention and looks like an excellent system that's well worth considering.

• ***Compaq's Armada M300*** is a bit larger at 10.4"x 9"x 1" and 3.1 pounds. The Armada M300 comes in several different models with processor speeds ranging between 333 MHz and 500 Mhz, 64-128 MB installed memory and hard disk capacities between 6.4 and 12 GB. All but the most expensive system uses the 6.4 GB hard disk. Street prices seem to start at about $2,200 but vary widely. All versions use a relatively large 11.3" active matrix screen. The M300 now uses a magnesium chassis, a definite plus in such a light system. As usual, the CD-ROM drive, which is necessary to load almost any programs, is an extra cost item. Compared to last year's model, the new M300 is a better system but still suffers from relatively short battery life. The less expensive Sony PCG-SR series seems to be a better buy.

• Another good choice is ***Toshiba's Portege 3440CT*** system. With street prices starting around $1,800 for the 500 MHz, 6.0 GB, 64 MB system, and with a larger 11.3" TFT screen, this system is also a top pick. At 3.4 pounds and 10.3" by 9.1", it's slightly heavier and larger than some of the other subnotebook computers mentioned here, but is a solid system whose major drawback is the high cost of its optional peripherals, such as the DVD drive. Toshiba's literature represents that a networking adapter is included with the base system but we haven't been able to confirm this. Models up to 600 MHz with a 12 GB hard disk are available. Toshiba also used a magnesium case. The Portege 3440CT is one of our top choices and users seem to like it as well.

• One of my favorite subnotebook systems is ***Fujitsu's B Series***, which I liked so much that I bought another one for my wife! The current B2175 comes with either Windows SE/ME or Windows 2000, a 500 MHz Celeron processor, a very good 10.4 inch TFT screen, a 10 GB hard disk, magnesium case, plus built-in 56K modem, two PC card slots, all desirable input/output ports and 100 Base-TX Fast Ethernet networking. Despite its light 2.95 pound weight and small 8" by 10" slim size, I've found the B series to be surprisingly rugged and pretty eye-catching. I've probably had 10 people ask me for the phone number for the distributor of his slightly older B2131 system (Global Computers, 800-650-4006). A slightly more capable system includes 128 MB installed PC100 SDRAM and a 15 gigabyte hard disk. The Fujitsu B series is a good buy for a system that has just about every conceivably necessary peripheral port. Adding additional memory is inexpensive and easy: the B series uses standard PC100 notebook memory available at any Circuit City and installing that extra SDRAM takes about 2 minutes using a small screwdriver.

• Budget subnotebook systems: ***Sharp's Actius A280*** is about the size of the Fujitsu B series and, using a 366 MHz processor, is about as fast as one of the slower Compaq M300 models. Still, with a 11.3 inch TFT screen and a street price of about $1,500, the Actius A280 may prove to be a real bargain if the terrible 1 hour battery life doesn't turn you off. ***Mitac*** plans to introduce its M722 ultralight system over the next few months. The M722 is slightly larger and heavier than the Fujitsu B2175 but includes many of the same features including built-in Fast Ethernet networking. Other features and specifications have not year been announced, but Mitac's inclusion of a 12.1 inch TFT screen is the largest in the subnotebook class.

• Among the mid-size notebooks, those weighing around 4 pounds with larger external dimensions, the ***IBM ThinkPad*** series are usually editor's choice systems, but are rather more expensive. The ***Fujitsu S4510 and HP Omnibook 900*** are probably better choices. The S450 in particular has excellent battery life, particular in comparison to the subnotebook systems. These systems really aren't that much faster than comparable subnotebook systems. They're larger and thus can incorporate a bigger, longer-lived battery and a better keyboard.

-- Joe Kashi

HI-TECH IN THE LAW OFFICE

Subnotebook computers: 2001 update

Continued from page 22

disk capacity than the desktop computer in many of your offices. Hard disk capacities of ultra light subnotebook systems are typically 10-15 gigabytes, more than enough for any realistic portable computing.

DO THE RESEARCH

Over the past year, literally dozens of ultra light subnotebook computers have hit the market. Most models last about six months before being replaced by a similar but upgraded model, so the products discussed here may have changed somewhat by the time that you're about to buy a system.

You'll undoubtedly want to check the latest reviews. The best overall guide we've found is a periodically published compendium called *LapTop Buyer's Guide*. The most recent issue had excellent comparisons and a wealth of tables illustrating the performance difference among various options, processors and the like. On-line, you can find subnotebook reviews at www.deja.com, www.cnet.com, www.cdw.com/shop and www.zdnet.com.

When you're looking for a subnotebook computer, it's important to remember that portable systems tend to be more fragile and easily damaged. As a result, reliability is crucial. Also critical are construction quality, good warranty policies and long-term vendor continuity. Established brand names do matter in this market niche. The top sub-notebook brands, in our opinion, are IBM, Toshiba, Sony, Compaq and Fujitsu.

HIDDEN EXTRAS?

When you're looking for a subnotebook system, check prices and features carefully. In most instances, there are expensive hidden extras that you really need such as port replicators, optional CD-ROM drives, and spare batteries.

WHICH OPERATING SYSTEM?

Windows SE/ME probably requires at least a 366 megahertz processor, or faster, for adequate performance, along not less than with 64 megabytes DRAM. Portable systems using Windows NT 4.0 and Windows 2000 should have at least a 400 megahertz processor, with not less than 128 megabytes DRAM. Double these amounts of DRAM for best performance. NT systems should have Service Pack 6a installed and Windows 2000 should have at least Service Pack 1 installed. Our preliminary results strongly suggest that Windows 2000 will be especially good on notebook computers, running faster than either Windows 98 or Windows NT, with improved battery life as well. Windows ME seems to have a few reliability problems at this point but is marginally faster than Windows 98 SE. Given the choice, we'd go for either Windows 98 SE or Windows 2000 until sometime in early to mid-2001. Overall, we like Windows 2000 a lot but are rather tepid about Windows ME.

SUBNOTEBOOK COMPUTERS TEND TO BE PRETTY IDIOSYNCRATIC: WHAT WORKS FOR ONE PERSON MAY BE TOTALLY USELESS, OR EVEN REPELLENT, TO ANOTHER.

PURCHASING CONSIDERATIONS

Subnotebook computers tend to be pretty idiosyncratic: what works for one person may be totally useless, or even repellent, to another. Thus, a prospective buyer really should consider personally examining, using and buying smaller portable computers locally, assuming that the price is not out of line. When you're looking at a subnotebook computer, check for these features:

• Good, usable keyboard that's big enough for your hands.

• Strong construction. Some better systems use a magnesium metal case which is both very strong and quite light. Magnesium cases are highly recommended.

• Size and weight suitable for your intended portable needs.

• Does the system have all of the peripheral and networking attachments that you reasonably might need? Major vendors are not really custom-configuring systems at this time despite earlier announcements that such services would be forthcoming. Be sure that you have a 56K modem (most systems now include an internal one), at least one PC Card expansion slot and the following external ports:

USB ports
external VGA monitor output
serial and parallel printer ports
external keyboard and PS/2 mouse ports
sound input and output
Infrared ports
An internal Fast Ethernet connection is very desirable.

• Are the floppy and CD ROM drives included? You would be surprised at how often they're not.

• Be sure that you like the pointing device used by that system. Why go with an ultra portable system if you end up carrying a mouse? Some people prefer touchpads while others, myself included, prefer the eraser pointing stick used by IBM, Toshiba and the Fujitsu B series.

The Web on the road: where to connect

By Robert Curley

From high-end business chains like Four Seasons to budget lodging brands like Travelodge and Howard Johnson, hotels are promising guests rooms equipped with high-speed Internet connections. But hotels have a long way to go to accommodate lawyers accustomed to blazing Internet speeds at home and in the office.

The Marriott chain (www.marriott.com; 888-236-2427) is a leader in providing Internet high-speed access; it expects to have 500 of its 2,000 hotels fully wired by the end of this year. But most hotel chains lag much further behind in helping guests avoid dial-up-connection hell.

For many lawyers, the slow connection speeds on the road are annoying but not disabling. Others are less understanding. Bruce Dorner, a solo practitioner in Londonderry, New Hampshire, exchanges documents with clients, accesses files on his office network, and conducts research at such sites as Westlaw, LOIS, and Lexis-Nexis. "You can't do that with a 16K connection," he says.

So what are your best bets for finding a high-speed connection on the road? W Hotels (www.whotels.com; 877-946-6837), a luxury chain launched in December 1998 by Starwood Hotels & Resorts Worldwide, offers high-speed Internet access in all 13 of its properties, including Atlanta, New York, San Francisco, and Seattle. All 90 hotels in the new Wingate Inns chain (motto: Built for Business) are wired for high-speed access (www.wingateinns.com; 800-228-1000).

Besides Marriott, Hilton (www.hilton.com; 800-774-1500) also is a leader among the larger chains. It has installed a high-speed Internet system in 130 of its hotels, but not in every room. The luxury Four Seasons (www.fourseasons.com; 800-819-5053) chain has announced plans to wire all of its hotels worldwide by early 2001. Locations in Los Angeles, Las Vegas, Philadelphia, New York, and Austin already are offering high-speed access.

The race to go high-speed has gone decidedly middle-market. A trio of solidly mainstream chains — Ramada (www.ramada.com; 888-298-2054), Howard Johnson (www.hojo.com; 800-406-1411) and Travelodge (www.travelodge.com; 800-819-5053) — recently announced plans to wire all of their properties for high-speed access. Like most hotels that offer fast connections, these chains will charge about $10 a day for the service.

A number of hotels are creating a wave by offering wireless connectivity for users of laptops, handheld computers, and other devices. Usually the service reaches only into meeting rooms and other common areas but eventually will be available in individual rooms, too. Guests, beware: You still need a wireless PC card.

Hotels like the new W Suites in Newark, near San Jose, Calif., get around this problem by providing wireless PC cards to laptop users. Guests can be relaxing in the living room-like W Cafe and Bar and even the outer pool and Zen-influenced garden and receive e-mail or surf the Web.

On the other end of the hotel industry food chain, Houston's modest Shoney's Inn and Suites (www.shoneysinn.com; 800-552-4667) also is providing wireless connectivity. Other hotels, like New York's boutique Avalon (www.theavalonny.com; 888-442-8256) and the Hawthorn Suites chain (www.hawthorn.com; 800-527-1133), go one step beyond and offer guests the use of laptops or in-room PCs that they can use to go online. This comes in handy if you can retrieve your messages from any of a number of Web-based e-mail services offered by Yahoo, Hotmail, and others.

Meanwhile, Hilton is working on a system to allow guests to use wireless devices such as Palm Pilots and pagers to make reservations, get directions, and access phone numbers and other hotel information. Soon the chain will unveil a Web site accessible to wireless users, tailored to individual guests' needs and occupations. There is even a site planned for the legal profession.

—Excerpted from American Lawyer Media and Law.com with permission

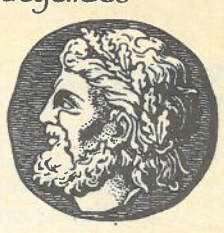
WIRED FOR SPEED

Hotel chains offering high speeds in at least some of their rooms:

Four Seasons	(www.fourseasons.com; 800-819-5053)
Hilton	(www.hilton.com; 800-774-1500)
Howard Johnson	(www.hojo.com; 800-406-1411)
Marriott	(www.marriott.com; 888-236-2427)
Ramada	(www.ramada.com; 888-298-2054)
Shoney's	(www.shoneysinn.com; 800-552-4667)
Travelodge	(www.travelodge.com; 800-819-5053)
W Hotels	(www.whotels.com; 877-946-6837)
Wingate Inns	(www.wingateinns.com; 800-228-1000)

"Those who really deserve praise are the people who, while human enough to enjoy power, nevertheless pay more attention to JUSTICE than they are compelled to do by their situation." Thucyclides

It's not Greek to us!



We couldn't agree more. The staff and board of Alaska Legal Services would like to take this opportunity to send our sincere appreciation to the firms, individuals and leadership committee members who have supported us so far in the third annual

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You can also make a secure, on-line contribution at
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Refugees win asylum

Three years of concentrated work on the part of the staff of the Alaska Immigration and Refugee Services Program was culminated in late September when 25 Alaskan asylum seekers were granted special hearings by the Immigration and Naturalization Service (INS). Twenty-four were granted legal permanent resident status as a result of the interviews in Alaska.

The occasion marked a first for Alaska and a first for the INS.

San Francisco, Calif.-based INS officers had never before conducted hearings in another state for asylum applicants who come under the Nicaraguan and Central American Relief Act (NACARA). The legislation, enacted by Congress in November 1997, provided a one-time opportunity for certain nationals from war-torn El Salvador, Guatemala, former Soviet Republics and Eastern European countries to attain legal residency through suspension of deportation — if they applied for asylum when they first entered the United States by 1990.

Kathy Galvin, supervisory asylum officer at INS's San Francisco office, credited the Alaska program and pro bono Alaska attorneys for persuading INS to conduct hearings in Anchorage.

The Catholic Social Services' Pro Bono Asylum Project has been possible through generous grants from the Alaska Bar Association. That money was used to train and mentor the *pro bono* volunteers, including 40 attorneys, 30 psychologists and 12 translators.

Anchorage volunteer attorney Bill Saupe, whose usual practice involves corporations, said working with a NACARA asylum seeker has been a very positive experience. "This is a way to admit to the country hard-working people who otherwise would be sent home and subjected to severe hardship, he said."

While many clients fled to the United States seeking refuge from the terrors of civil wars, the INS had denied asylum to more than 98 percent (nearly 100,000) of applicants. A class action discrimination lawsuit followed and was won in 1991.

Most of the Alaskan applicants live and work on Kodiak Island, and many suffer from post-traumatic stress disorder symptoms, says Anchorage-based psychologist Karen Ferguson said.

Although Sen. Ted Stevens' office says there are 268 eligible NACARA applicants in Alaska, CSS's Immigration and Refugee Service is only aware of 60 of them, says Robin Bronin, director of the CSS program.

ESTATE PLANNING CORNER

Family limited partnerships

☐ Steven T. O'Hara

Norman Rockwell painted a great picture around the theme of a parent giving his child a financial education. The painting depicts a father and son sitting before the living room fireplace, with the family dog looking on. The family lock box is on the floor with papers hanging out of its half-open cover. The father is holding up a stock certificate and explaining it to his son, who with hands folded is watching his father intently. Time will only tell whether the child will learn to use money usefully and prudently and to assume the responsibilities of adult life and self-support.

THERE IS NO QUESTION THAT CLIENTS STRUGGLE WITH THE ISSUE OF HOW TO PASS ON THEIR FINANCIAL SKILLS TO THEIR DESCENDANTS.

There is no question that clients struggle with the issue of how to pass on their financial skills to their descendants. They often look for a bridge that will bring them and their descendants together to discuss personal economic matters without the discussion turning to conflict.

Many clients have found Family Limited Partnerships (or other entities, such as Family Limited Liability Companies) as vehicles through which they can pass on financial skills.

Consider a client 65 years of age. She is single and has substantial wealth. She resides in Alaska. All her assets are located in Alaska. She has never made a taxable gift.

The client has children and grandchildren. Not all her descendants have learned to use money wisely. The client believes that if she could get her descendants interested in investments and asset-management, then they may learn to focus on long-term goals and, perhaps, achieve some economic stability.

So the client forms a Family Limited Partnership under Alaska law and funds it with substantial assets. One of her wholly-owned corporations, an S Corporation for tax purposes, is the initial General Partner. The client initially owns substantially all of the limited partner interests. Over time the client gifts limited partner interests to her descendants. The client encourages each of her descendants to attend partnership meetings.

More and more, her descendants are becoming interested in the partnership's investments. Through the structure of the Family Limited Partnership, the client is now consulting each of her descendants about the partnership's investments.

The client has found that she is having fewer and fewer arguments with her descendants over money and asset-management issues. She has found the Family Limited Partnership to be a bridge that brings her and her descendants together to discuss economic matters. The client believes that through these discussions, her financial skills are being passed on to her descendants.

The client has also found that there appears to be less conflict among her descendants since they have been attending partnership meetings and have developed a common goal concerning the partnership's investments. Where there is conflict, the partnership serves more or less as a forum within which disputes about the partnership's assets are resolved.

Thus for this client, the Family Limited Partnership has been a success.

THE FAMILY LIMITED PARTNERSHIP CAN ALSO BE ADVANTAGEOUS FROM AN ASSET-PROTECTION STANDPOINT.

The Family Limited Partnership can also be advantageous from an asset-protection standpoint. The sole remedy of a creditor seeking collection against the interest of a limited partner, such as a child in a high-risk business, is to obtain a charging order against that interest (AS 32.11.340(b)). Even where a charging order is granted, payment of the debt may be uncertain because distributions from the Limited Partnership are generally within the discretion of the General Partner. Any possible delay in satisfaction of the debt could encourage compromise on the part of the creditor.

A disadvantage of partnership ownership of an asset, as compared with outright ownership of the entire asset, is that devaluation occurs. For example, if the client gives $10,000 in cash to a descendant, the value of the gift is $10,000. But suppose the client instead funds a Family Limited Partnership with $100,000 in cash. Suppose the client then gives a ten percent limited partner interest to one of her descendants. Here the value of the gift is less than $10,000.

The value is less than $10,000 because the donee is not receiving part of the assets owned by the partnership. Rather, the donee is receiving the limited partner interest, and the value of that interest is based on what it would sell for in the marketplace. In the real world, any buyer would take into consideration that the limited partner interest carries with it no control over the partnership or the partnership's assets. The buyer would also consider that there is no market where the owner of a limited partner interest can go and sell the interest.

In other words, if a Family Limited Partnership owns $100,000 in cash as its sole asset, a 10 percent limited partner interest is not worth 10 percent of $100,000 (or $10,000). Rather, the limited partner interest — which lacks control and is unmarketable — is worth less than $10,000. The exact value may not be clear, but what is clear is there is no way a limited partner could sell his partnership interest in the marketplace based on a proportionate share of the partnership's assets and without any discount.

The Internal Revenue Service has been attacking Family Limited Partnerships because of this devaluation. The IRS would like to value gifts of partnership interests, and the client's remaining partnership interests at her death, on the basis of a proportionate share of the value of the assets of the partnership without any discount. The IRS would like to ignore the existence of the entity holding the assets. It would like to ignore the devaluation because with higher values more tax would be payable.

Alternatively, the IRS would like to treat the client as having made a gift when she created the Family Limited Partnership. Here the IRS acknowledges that devaluation has occurred, and it argues that the amount of devaluation is the measure of a "transfer" subject to gift taxation.

In general, the IRS has not been successful in attacking Family Limited Partnerships. But where the parties have ignored the existence of the Family Limited Partnership in their day-to-day affairs, the IRS has been successful.

Family Limited Partnerships (or other entities, such as Family Limited Liability Companies) are important tools for clients to consider in their estate planning. Through a family business entity, clients can pass on their financial skills and achieve other benefits, such as less conflict among their descendants and perhaps asset protection. Devaluation does occur, however, and this ramification needs to be closely examined by the client before creating a Family Limited Partnership or other entity.

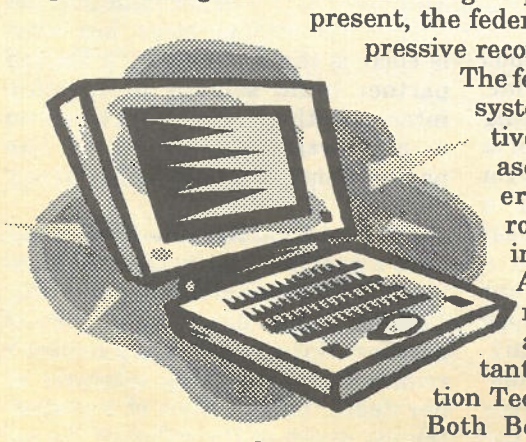
A status report

Electronic filing in the federal courts

BY SHARON D. NELSON & JOHN W. SIMEK

When was the last time you saw the words "federal government" and "trailblazer" in the same sentence?

Nonetheless, "trailblazer" is the appropriate word to describe the role that our federal judiciary has played in the development of electronic filing of court pleadings. Beginning in January 1996, when the first federal court began allowing the electronic filing of pleadings and continuing to the present, the federal judiciary has compiled an impressive record of successes.



The federal ECF (Electronic Case Files) system is overseen by the Administrative Office of the U.S. Courts. To ascertain the current status of federal e-filing and the probable roadmap for its future, the authors interviewed Gary Bockweg, the AO's Manager of Case Management and Electronic Case Files and Mel Bryson, the AO's Assistant Director of the Office of Information Technology.

Both Bockweg and Bryson pronounce themselves pleased with the reaction of the courts, judges and attorneys to ECF. They believe the federal judiciary, from the onset, made two key fundamental decisions correctly — to use the Internet and to require that documents be in Adobe's PDF (Portable Document Format) to maintain formatting across all platforms.

ECF has been a triumph from the beginning. As the states struggle with varying private solutions and experience varying degrees of success and failure, the federal courts continue to roll out ECF software upgrades and expand the number of courts using the system. Have they hit a few potholes in the road? Sure. More on that later, but here is the impressive record thus far.

As of November 2000, the following federal courts have implemented the ECF system:

- District Courts – the Western District of Missouri, the Eastern District of New York, the Northern District of Ohio, and Oregon
- Bankruptcy Courts – Arizona, the Southern District of California, the Northern District of Georgia, the Southern District of New York, and the Eastern District of Virginia

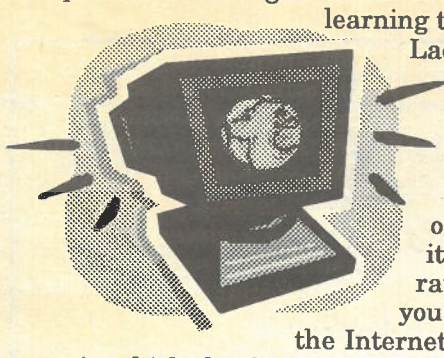
The Court of Appeals for the District of Columbia and the Fourth Circuit Court of Appeals have laboratory experiments operative.

Six more courts are scheduled to implement ECF by the end of the year with an additional 40 joining the system by the end of 2001, and 50 more coming on board in each subsequent year. Currently, it is projected that all federal courts will have ECF in place by the end of 2004 or the beginning of 2005.

The statistics bear witness to the high degree of acceptance electronic filing has received. Over 10,000 lawyers have registered with the federal system, over 4,300 have actually filed, and more than 600 members of federal court staff have received training. Excluding the asbestos cases from the Northern District of Ohio, more than 108,000 cases have been filed electronically thus far, an average of 7,000 per month. Saving trees? You bet. More than 1.2 million documents have been filed to date.

WHY HAS THE FEDERAL SYSTEM BEEN SO SUCCESSFUL?

The AO has carefully followed the KISS principle: Keep It Simple Stupid. The learning curve for ECF isn't steep. Did you have any trouble learning the rules for Candyland and Chutes and Ladders? If not, you won't have any problem mastering federal electronic filing.



WHAT ARE THE ESSENTIAL STEPS IN E-FILING?

Lawyers (or staff) create a document on their word processing software, "print" it as a PDF file (it doesn't really print, but rather creates a file in PDF format which you then save to your hard drive), connect to the Internet, log on to the ECF system, specify the case in which the document is to be filed, select a docket entry, select the parties, and append the PDF document. At training sessions, lawyers easily master the process in just a few minutes. The entire process (minus the original document creation) takes about two minutes and concludes with an electronic receipt.

WHAT TECHNOLOGY MUST A LAWYER HAVE TO PARTICIPATE?

- A PC with Windows, or a Mac
- A word processing program (Word, WordPerfect, etc.)
- Internet access and a browser
- Adobe Acrobat (or other PDF writer)

Most attorneys have everything except Acrobat (cost to practicing attorneys: $120 by calling 1-888-502-5275 – have your Bar number available). Why is Acrobat necessary? To preserve formatting. The Adobe Acrobat Writer produces documents in PDF (portable document format), which is now a de facto standard in the federal government and private industry. Producing files in this format means that documents you send the court will have their fonts, spacing, pagination, footnotes, tables, indices, etc. preserved exactly as you created them.

ARE ALL FEDERAL SYSTEMS EXACTLY THE SAME?

No, but the variations thus far are minor. Courts may have a different "look and feel" to their home page, and they produce their own training and newsletters, etc., but the core of the system remains the same. Bockweg indicated that the AO is currently studying the degree of flexibility that is desirable from court to court. More and more courts are developing custom "add-ons" which work with the federal system to enhance their own workflow methodologies. This, naturally, creates problems when AO enhancements "step on" the local applications and the local court has to retool its prior work to integrate with the new version of the ECF product. The AO has even considered giving courts the source code and allowing individual modifications, but there are serious implications (chiefly the potential loss of uniformity, the danger that recoding will have unforeseen repercussions and the significant maintenance costs as each application becomes more and more customized.) and no decision in that arena has yet been made.

IS E-FILING MANDATORY?

That is a local court decision. In the Bankruptcy Court for the Eastern District of Virginia, Chapter 7 filings ***must*** be electronic. Each court is making its own determination, but as the comfort level with ECF increases, more courts will certainly choose to forego paper entirely.

WHEN IS A DOCUMENT CONSIDERED FILED?

A critical question, but you need to check local court rules. The ECF system itself is open for business on a 24 X 7 basis, but local courts may determine whether 11:59 p.m. means "filed that day" or "filed first thing in the morning on the next business day." The majority of courts use the "day clock" – if a document is filed before midnight, it is filed that day. For those attorneys who rely on procrastination as a business method, this is a godsend. But if your Internet connection goes down at 11:55 p.m. and doesn't come up for 15 minutes, the attorney is SOL (this is a technical term meaning "Sorta out of luck"). If you file at the last minute, the risk of a technical failure falls on the attorney.

MISHAPS?

A few, but Bockweg and Bryson say they have been very limited. There have been infrequent technical glitches, but no disasters. Thus far, there have been no hacking incidents or penetration of the system by viruses or worms, though security remains a constant concern. Unlike the average law firm, of course, the federal courts are religious in updating their virus signatures to ward off the latest and greatest creation of the virus and worm writers. How is security effected? In simplest terms, the federal system employs a "clean" server behind a firewall and a "dirty" server in front of it. Normal users of the system have no access to the clean server, and therein lies the system security.

CURRENT STATUS IN ALASKA

There is a Case Management/Electronic Filing Project currently underway in the Administrative Office of the Federal Courts in Alaska.

The results of this project will be made available to all the District Courts when completed.

The District Court of Alaska hopes to implement electronic case filing for both civil and criminal cases by calendar year 2004.

The Alaska Bankruptcy Court hopes to implement electronic case filing by year-end 2001.

WHAT'S WRONG WITH ECF?

Nothing new debuts without criticism. The chief complaint has been that the ECF system isn't as fast as it could be. The original technology used, unsurprisingly, became "clunky" as all technologies do in an appallingly short time. The AO continues to target "speed of download" as the most desired improvement of its system. The second most frequent complaint involves communication about the ECF system, which is primarily a local issue. Courts need to provide ECF users with frequent training, a lot of hand holding, and constant notification about enhancements and changes.

DO ALL INTERNET USERS HAVE ACCESS TO FEDERAL COURT FILINGS?

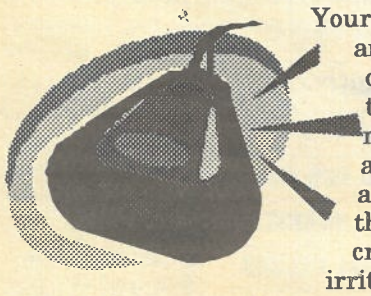
At the moment, the answer in federal court is yes. But the courts are rethinking their earlier decision. The #1 hot topic in the entire e-filing world,

Continued on page 27

Electronic filing in the federal courts

Continued from page 27

in both state and federal courts, is the tension between the right of public access and privacy rights. Do the details of your divorce belong on the Net? Your medical history? Your credit card numbers? Your child's juvenile scrapes with the law? While anxious to keep the process of government open to the public, the courts are examining their obligation to protect the private information of individuals. Technology itself creates mischief, as malefactors create web bots and other devices to collect and sift data for their own ends, sometimes using the data for criminal purposes and sometimes using it for irritating marketing efforts by phone, fax and e-mail. As Bryson wryly noted, "we're going to wrestle with this issue for a long, long time."



The Judicial Conference has appointed a Committee on Court Administration and Case Management that meets twice a year and is intently studying this controversy. One proposal involves creating an electronic "holding area" in which documents are officially filed, but not publicly viewable until some period of time has passed in which either party may request that the document be sealed. While the Committee is deliberating, the AO is putting together a matrix of all current state approaches to this problem, which should be posted on its web site by spring of 2001.

ARE DIGITAL SIGNATURES REQUIRED?

Though digital signatures have been validated by federal law, federal courts will continue to use a password/ID system to constitute a legal signature for the foreseeable future. Thus far, this simple system has performed admirably, and Bockweg and Bryson say the federal courts will wait until digital signature technology standardizes before embracing it.

What about pro se filers? The AO has not yet fully addressed the problem of pro se filings but currently handles those filings through court imaging of documents and courthouse kiosks which can be easily utilized by pro se filers.

WHAT ABOUT XML?

XML, the trendy byword of the e-filing world, is on the AO's radar screen, but thus far the AO remains content to be a spectator. XML (Extensible Markup Language) is a tagging system which may ultimately allow a great deal of useful information to be parsed from legal documents, and, as an example, used to channel documents and information through the case management workflow process. So far, there is no adopted, enforceable XML standard, and private companies have developed many XML "flavors." Should Adobe, the maker of Acrobat software, integrate XML with its product as planned, Bockweg and Bryson think it likely that the federal courts will utilize their brand of XML.

WHAT HAVE WE GAINED THUS FAR?

While paper won't disappear from courts in the short term, ECF has already proven its worth. Lost files are a thing of the past. The time consumed in transferring files from place to place has evaporated. Judges and counsel need not carry bulky files to their homes or pack extra suitcases while traveling. When used in conjunction with case management, ECF speeds workflow and provides real time docket entries. The expenses of couriers, postage, and runners have diminished. Service of process is simpler and cheaper. Last but certainly not least, in the end, we will vastly reduce the number of sacrificial trees required to indulge our litigious society.

WHAT CAN THE STATES LEARN FROM THE FEDERAL SYSTEM?

First, that the federal system works and that they may not need to reinvent the wheel. Second, that it may be very desirable to have state systems which more or less follow the federal methodology so that users of the state system and the federal system are not confused as they move back and forth between the two. Third . . .be careful.

A CAUTION FOR STATES UNDERTAKING E-FILING.

Beware of companies that say they have e-filing contracts with federal courts. While several may have limited contracts, e.g., on a single case basis, no private company has a generic e-filing contract with an entire federal court, though there are a number of companies making that claim or suggesting it in their promotional materials. *Caveat emptor*. They are more likely to have an imaging contract, or some other technical contract. In general, federal courts use the AO ECF system and that will continue for the foreseeable future.

Another caution for states: In the beginning, the AO was the "trusted third party" who held the data for participating ECF courts. Even within the federal system, courts have ultimately decided that they wish to hold their own data, and plans are in place to move data from the AO's servers to those of each federal court. One aspect of this move is that performance of the ECF system will improve. Another is that federal courts have shown a strong preference for maintaining control of their own databases, which will probably be amplified in state courts. The inherent risks of having court records (with no paper backup) in the hands of a private party have not been enthusiastically greeted by many state court officials entrusted with safeguarding these records.

WILL THE AO EVER ENTER INTO AN E-FILING RELATIONSHIP WITH PRIVATE COMPANIES?

It is true that the AO has considered the possibility of ultimately hooking up with private firms to exchange resources and hasten the development of e-filing upgrades by sharing information and utilizing the vaster programming resources of the private sector. So far, no decision has been made to do so, but stay tuned. Both Bockweg and Bryson emphasized that any such decision would involve multiple companies and that no exclusive arrangements would be considered.

SO WHERE ARE THE FEDERAL COURTS GOING NOW THAT THEY HAVE A BEACHHEAD?

The AO itself is continuing to debate internally and with feedback from participating courts. Nothing is static – and in the technological world, what you roll out today is obsolete on the day it is introduced. One prominent change in the ECF system is that it is now CM/ECF – case management and electronic case filing. The AO is emphasizing to the courts that ECF includes case management to expedite cases through the normal workflow process. However, the two systems remain divisible so that paper cases can be scanned into the system and then moved through the new case management system. As previously indicated, more local flexibility may be allowed, and more interplay with private companies. The AO remains committed, in part, to evolving with the changing nature of technology, and to watching, studying, and incorporating new technology as it proves its worth.

THE FINAL PREDICTION?

The remarkable pioneering efforts of the federal courts will be hard to maintain. The AO, having done a first class job to date, is going to be stretched thin by having to support so many courts across the nation and by the demands of keeping up with the technology blitzkrieg. However, the AO has recognized its limitations, and Bockweg and Bryson are clearly looking to a changing role for the AO as e-filing evolves, perhaps involving a higher tier support role, public policy making, public/private alliances, and other innovative approaches to supplying federal courts with technological advances and guidance for using them. As the federal courts approach technological warp speed, the AO deserves high marks for its trailblazing work.

The authors represent Sensei Enterprises, Inc., a legal information technology firm that developed the electronic filing system for Fairfax County, VA Circuit Court.

FINDING AND CHOOSING LAWYERS

Your clients are not yours alone

Competition to increase business by cross-selling to existing clients is intense.

40	The typical corporation surveyed uses 40 law firms;
66	Larger corporations (more than $1 billion in sales (average 66 firms;
15	Smaller corporations use 15 firms, on average.

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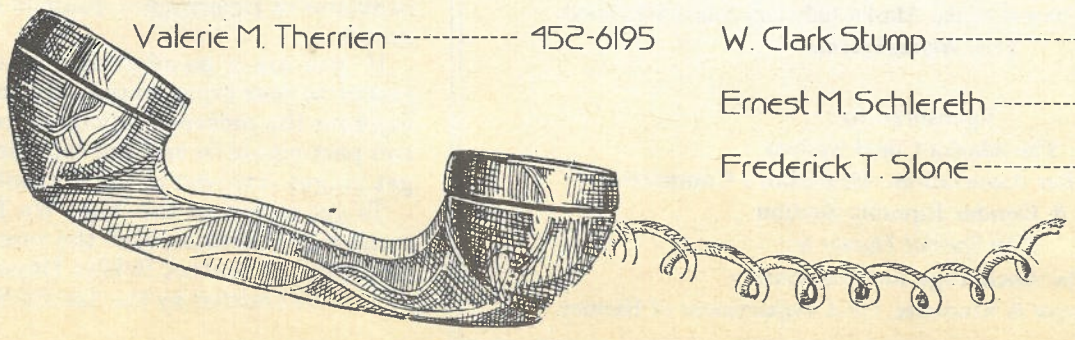

Trust gifts parkland to city

The Great Land Trust, a local nonprofit land conservation organization, has purchased a 41 acre parcel of land and donated it to the Municipality of Anchorage for residents to enjoy as a permanent park. The trust's board of directors includes a number of members of the Alaska Bar including Doug Baily, John Baker, Michael Smith and Alex Swiderski. Peter Bartlett served as pro bono legal counsel for the transaction. Don McClintock also provides pro bono assistance to the trust.

This project permanently preserves the largest single tract of privately owned wetland property in the Anchorage Bowl that is home to many types of wildlife, including eagles, owls, many types of songbirds and shorebirds, and moose and their calves. During the spring and fall migrations, many different species of birds use the property. Neighbors have also seen wolves and brown and black bear. The purchase will also protect the headwaters of Furrow Creek.

"This is a very exciting land conservation project in particular because it provides an adjacent elementary school, Willard Bowman Elementary, with a wonderful wild place to teach Anchorage schoolchildren about nature. This property is literally at the school's backdoor," according to Beth Silverberg, Executive Director of the trust.

"In addition to its educational values, this lovely spot is one of the special places that the public told us that they wanted to see preserved when the Great Land Trust asked the public to identify important natural areas for Anchorage 2020, the draft Anchorage Comprehensive Plan,". Silverberg says. The Anchorage Assembly is currently reviewing the Comprehensive Plan for adoption. The trust placed a high priority on conserving this property because it has significant value for people and for wildlife. It is a unique resource for the neighboring school and Anchorage residents use it for walking and cross-country skiing. "We are responding to what the community told us they wanted in the public hearings on Anchorage 2020: more preserved natural areas and open space in Anchorage, greater connectivity for recreational trails and more opportunities to see wildlife where they live." Ms. Silverberg continued.

THIS PROJECT PROVIDES AN EXAMPLE OF A WIN-WIN PRIVATE-PUBLIC PARTNERSHIP BETWEEN A PRIVATE NON-PROFIT ORGANIZATION AND THE MUNICIPALITY OF ANCHORAGE.

This project provides an example of a win-win private-public partnership between a private non-profit organization and the Municipality of Anchorage. "At a time when government is tightening its belt, the trust worked with the Municipality, Heritage Land Bank and the neighborhood to step in and create and protect a neighborhood park at virtually no cost to the taxpayer." said John Baker, chair of the trust's board of directors. "This is an entirely voluntary deal between willing sellers and the trust. The Municipality of Anchorage will hold title to the land subject to a conservation easement (a legally recorded development restriction) held by the trust. The Municipality has pledged to manage the land as a park and the trust will also monitor the property to ensure that its natural values are protected. The Great Land Trust is grateful to the Mayor and the Heritage Land Bank for their cooperation in creating and protecting this special natural place close to home," said Baker.

LAND TRUSTS ARE NONPROFIT LAND CONSERVATION ORGANIZATIONS THAT DIRECTLY PROTECT LAND FOR ITS NATURAL, RECREATIONAL, SCENIC, HISTORICAL, OR PRODUCTIVE VALUES.

The trust purchased the property from parties with a long history in Anchorage and the Alaskan real estate business. Win Faulkner, son of Sewall "Stumpy" Faulkner, the late real estate developer, completed the transaction on behalf of Jack White Equities #18, a limited partnership corporation, and Faulkner, Inc., a corporation. "Voluntary conservation partnerships like this work," said Silverberg. "We are thrilled to complete this project to promote quality of life in Anchorage's neighborhoods, cooperation between private organizations and the Municipality, and to preserve one of the best natural areas remaining in Anchorage for future generations of Anchorage children."

The trust used a revolving fund to purchase the land and is seeking members and donations to support this acquisition and others like it in Anchorage.

For more information about this transaction and the trust, contact Executive Director Beth Silverberg at 907-278-4998 or write to The Great Land Trust, P.O. Box 101272, Anchorage, AK 99510 (or online at http://communitynews.adn.com/200).

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FACTS ABOUT THE GREAT LAND TRUST:

- A local private nonprofit land conservation organization
- Serving the Southcentral region
- Founded by local residents in 1995 and governed by a local, volunteer board of directors
- Permanently protecting important natural lands and open space through voluntary action
- Dedicated to collaborative efforts with willing landowners
- As an innovative nonpartisan organization, we build bridges between all diverse interested parties including landowners, business, and conservationists.

THE GREAT LAND TRUST'S MISSION:

The trust is dedicated to conserving special natural places close to home that Southcentral Alaskans hold dear. The trust focuses on permanently protecting lands critical to the long term ecological and economic health of the South-central region including natural open space in and around cities and towns, recreational lands, fish and wildlife habitat, healthy ecological systems, and farms and working forest land.

WHAT IS A LAND TRUST?

Land trusts are nonprofit land conservation organizations that directly protect land for its natural, recreational, scenic, historical, or productive values. This direct protection takes many forms:

- Acquisition or donation of conservation easements or land.
- Acquisition or donation of mineral, grazing, or timber harvesting rights

The trust accepts donations of conservation easements, and land including lands without conservation values that could be resold to support land conservation efforts.

WHAT IS A CONSERVATION EASEMENT? AND WHAT ARE ITS BENEFITS FOR LANDOWNERS?

- A conservation easement is a voluntary legal agreement between a landowner and a land trust that permanently limits the development and use of the property to protect its conservation values.
- Each easement's restrictions are tailored to the particular piece of property, the interests of the individual owner, and the resource being protected.
- Conservation easements may result in an income tax deduction and reduced property and estate taxes.

ARE THERE OTHER LAND TRUSTS IN THE UNITED STATES?

Nationally, a total of nearly 1,200 land trusts have protected more than 4.04 million acres of land with the help of approximately 900,000 members. The first land trust in the United States was established in Massachusetts in 1891. Land trusts currently operate in all 50 states as well as Puerto Rico.

— Press Release

You're invited to the

CELEBRATING OUR HISTORY

Reception

Commemorating the Completion of Four New Historical Displays at the Nesbett Courthouse in Anchorage.

Friday, February 16, 2001
3:00-4:30 PM
Nesbett Courthouse, Jury Assembly Room, 2nd Floor

Main Lobby:
"Hon. Buell A. Nesbett:
'Architect' of the Alaska Court System"

Jury Assembly Room:
"Pioneering Woman Lawyers of Alaska"
Featuring: Mildred Hermann, Dorothy Tyner, Dorothy Awes Haaland, Juliana "Jan" Wilson, M. Ashley Dickerson, Grace Berg Schaible, & Esther Wunnicke

"Serving Justice Since Statehood:
Honoring Two Judges from Alaska's First Court"
Featuring: Hon. James M. Fitzgerald & Hon. James A. von der Heydt

"The Alaska Court System: Then & Now"
Featuring: An Overview of the Alaska Judiciary Since Statehood
Free Refreshments

Sponsored by:
The Alaska Court System
The Alaska Bar Association—Historian's Committee & Gender Equality Section
With Special Thanks to:
The Anchorage Bar Association
Prof. Steven Haycox & Students, UAA Department of History

Judges reach out statewide

Since publishing its report on fairness and access, the Alaska Supreme Court has taken concerted efforts to reach out to communities. During his term as Chief Justice, Warren Matthews visited every community in the state in which the court had a judge or magistrate. At the local level judges have volunteered to go out into communities in their districts and talk to people about court processes.

Some judicial officers do mock trials, such as the Goldilocks criminal trespass and malicious mischief trial. This is a fun exercise for elementary-age students. Other judges do moot court presentations in the high schools. There are talks on sentencing, domestic relations the three branches of government, judicial independence and other subjects on demand.

If you are a member of a group that would like to invite a judge or justice to your organization, the court has a "Can We Talk?" pamphlet that explains the process. Judicial officers are limited in the organizations they can participate in and the court invites lawyers to help the organizations get judges involved in the outreach programs.

To get a copy of the "Can We Talk" pamphlet, contact your local area court administrator, visit the court's web site at www.alaska.net/-akctlib/akct.htm, or contact Bobbie Heym in administration at (907) 264-0548.

—Submitted by the Alaska Supreme Court's Fairness & Access Subcommittee on Public Education

Bar People

The law firm of Russell, Tesche, Wagg, Cooper & Gabbert has added three attorneys to its firm. **Michael A. Budzinski,** formerly of Stone, Jenicek & Budzinski, has joined the firm as a shareholder.....**Chip McElhany,** formerly in private practice, has joined the firm as an associate and **Jill E. Farrell** has left her position as Hearing Officer at the Alaska Workers' Compensation Board to join the firm as an associate. The firm specializes in workers' compensation defense and other insurance defense and coverage matters.

Preston Gates Ellis LLP has announced that **Douglas S. Parker** has joined the firm as a partner and will be resident in our Anchorage office. Doug's practice focuses on management labor relations. He represents private and public employers in defense of a broad range of employment claims, claims avoidance, and promulgation of personnel policies and employee handbooks. Additionally, Doug handles complex litigation involving construction, insurance and environmental claims.

Kristen Richmond and **Christine Lee French** also have joined the firm as associates in the Anchorage office. Kristen is a graduate of the University of Oregon School of Law. She clerked for the Alaska Court of Appeals and worked in the office of Senator Ted Stevens. Kristen will practice in the areas of employment law and general litigation.

Christine licensed in Washington, is a graduate of the University of Washington School of Law. She is a certified public accountant with experience in taxation and insurance issues. Christine will practice in the area of municipal law, litigation, and commercial transactions.

Colleen Moore joined the law firm of Marston & Cole, Anchorage, in November.

Sheri Hazeltine has been selected as the new Indian Child Welfare Act (ICWA) attorney for the Central Council of Tlingit and Haida Indian Tribes of Alaska. She will be representing the Central Council in child protection cases involving Southeast Alaska Native children. The Central Council is a federally-recognized tribal government representing over 22,000 Tlingit and Haida Indians worldwide. It provides a wide range of services to tribal members including job training, business and economic development services, emergency financial assistance to tribal elders, Head Start programs, childcare assistance, housing, services to Native landholders, Indian child protection, emergency medical assistance, and tribal enrollment. To find out more, see its web site at www.tlingit-haida.org.

Ron Lorensen, of the Juneau law firm of Simpson, Tillinghast, Sorensen, Lorensen & Longenbaugh, has moved to a part-time affiliation with the firm as of January 1. Mr. Lorensen served ten years as Deputy Attorney General before reentering private practice in 1991. He will continue in practice as "of counsel" to the firm, serving clients in litigation and general civil practice. With Mr. Lorensen's shift to of-counsel status, the law firm that he helped found in 1995 has changed its name to Simpson, Tillinghast, Sorensen & Longenbaugh. Mr. Lorensen can be contacted through the firm.

Steve Mahoney, formerly vice president and general tax officer of ARCO Alaska, Inc., has joined Alaska's largest locally owned multi-service law firm, Hughes Thorsness Powell Huddleston & Bauman LLC in Anchorage. Mahoney assists clients with a broad range of tax related issues, including domestic and international tax aspects of partnerships, joint ventures and corporate transactions and financings as well as associated general commercial issues. He has represented taxpayers before the Alaska Supreme Court and the U.S. Tax Court. Mahoney has testified before U.S. Treasury Department, the Alaska Legislature and the Department of Reveneus in Alaska and other states. He has lectured on a broad variety of topics, including corporate and partnership transactions and the evaluation and implementation of tax advantaged investments. Mahoney is a member of the American Bar Association's Tax Section, is the past Chairman of the Alaska Oil and Gas Association's Tax Subcommittee, and is admitted to the bar in Alaska, California and Texas.

Ken Friedman, of Friedman, Rubin & White, has moved to the firm's new offices in Tacoma, WA..... **James E. Gorton** and **Michael Logue** (formerly of James E. Gorton & Associates) have formed the firm of Gorton & Logue.....Recent personnel changes at the Alaska Court System include the following new positions: **Chris Christensen** - Deputy Director, Legal; **Christine Johnson** - Deputy Director, Operations; and **Barbara Hood** - Court Rules Attorney.

Glen Price has left the firm of Foster Pepper Rubini & Reeves and opened his own firm, Law Office of Glen Price, in Palmer, Alaska.

As of January 1, 2001, the law office of Gray, Cole & Razo, P.C. in Kodiak is dividing into two new law firms.

Steve Cole and **Gregory P. Razo** will be moving their office to 104 Center Avenue, Ste. 205, Kodiak 99615, and will be doing business as Cole and Razo, LLC. The telephone number at the new office will be 486-8250. Steven P. Gray will be doing business as the Law Offices of Steven P. Gray, A Professional Corporation. The office will continue to be located at 326 Center Avenue, Ste. 203, Kodiak, and will continue to have 486-8505 as its phone number.

Michael D. White, formerly with Hartig, Rhodes, et.al., is now "of counsel" with Patton Boggs.....**Robert Auth**, formerly with Lane Powell et.al., is now with the A.G.'s office, Civil Division, in Anchorage.....**Katheryn Bradley**, formerly with Tindall, Bennett & Shoup, is now Of Counsel to Jackson Lewis in Seattle.

Elliott Dennis, formerly with Pletcher, Weinig, Fisher & Dennis, has opened the Law Office of Elliott Dennis.....**Nancy Driscoll**, formerly with William Tull & Associates, is now with Sterling & DeArmond in Wasilla.....**James E. Douglas** has closed his law office, and is now an Assistant City Attorney at the Juneau City Attorney's Office.....**Cindy Drinkwater**, formerly with the Disability Law Center, is now with the Fair Business Practices Section at the A.G.'s office.....**Brent Edwards**, former law clerk to Judge Reese, is now with Hicks, Boyd, et.al.

Sabrina Fernandez, formerly with Price & Price, is now with the Natural Resources Section of the A.G.'s office.....**Amy Gurton**, formerly with Robertson, Monagle & Eastaugh, is now with the A.G.'s office in Juneau.....**Sara Gehrig** has relocated from Idaho, and is now with the Municipal Prosecutor's Office in Anchorage.

Jill Jensen, formerly with Fortier & Mikko, is now with Groh Eggers.....**Jerry Melcher** has relocated to Bellingham, WA.....The law firm of **Jensen, Garretson, Verrett & Morford** has changed its name to Verrett & Morford.....**Patricia Bailie** has married and is now Patricia Shake, and she has left Russell Tesche, et.al. and is now with the A.G.'s office.

Parker elected partner at Patton Boggs

Patton Boggs announced on Jan. 2 the election of 10 attorneys including one from Alaska **Kyle W. Parker.**

Parker is a member of the public policy practice group and concentrates his practice in environmental law and litigation. He has represented corporate clients in environmental and natural resources litigation concerning a broad range of issues and has worked with the oil industry on various environmental and public lands matters for over 10 years. Mr. Parker is a former Assistant Attorney General, Oil, Gas and Mining Section, for the State of Alaska. He also held an interim six-month appointment as Special Assistant for Legal Affairs, office of the Governor, serving as principal staff advisor to the governor on resource development issues, where he coordinated legislation revising the state's oil and gas leasing program, and created an exploration licensing and tax incentive program designed to encourage development of state oil and gas resources.

Patton Boggs LLP is a 345-attorney firm with a diverse business, dispute resolution, and public policy practice. The firm has offices in Washington, DC; Anchorage, Alaska; Dallas, Texas; Denver, Colorado; and northern Virginia. www.pattonboggs.om.

Two new associates announced

Landye Bennett Blumstein LLP has announced the addition of two new associates to the law firm, **Kevin J. Anderson and Nicholas L. Dazer** and the promotion of **Christine L. Parker** to business manager. Anderson joins the Anchorage office with Dazer and Parker working in the firm's Portland office.

Kevin Anderson

Anderson brings more than 14 years of experience to Landye Bennett Blumstein. In his practice, he focuses on business formations and transactions; real estate acquisition and development; and bankruptcy, collections and foreclosures. Since beginning his career, he has worked for other law firms in Anchorage and spent five years as an attorney with the Federal Deposit Insurance Corporation in San Francisco and Washington, D.C. Anderson is a frequent lecturer at the University of Alaska Small Business Development Center. He is a member of the American Bar, Alaska Bar and Anchorage Bar Association and the Anchorage East Rotary Club. He graduated from Whitman College with a degree in political science and received his J.D. from the University of Washington Law School.

Founded in 1955, Landye Bennett Blumstein LLP provides legal services for individuals and businesses in Alaska, Oregon and Washington. The firm emphasizes Alaska Native, real estate, environmental law, mergers and acquisitions, high technology, intellectual property, tax and estate planning, litigation and administrative law.

Founded in 1955, Landye Bennett Blumstein LLP provides legal services for individuals and business in Alaska, Oregon and Washington. The firm emphasizes Alaska Native, real estate, environmental law, mergers and acquisitions, high technology, intellectual property, tax and estate planning, litigation and administrative law.

Earnhart elected as new partner

William Earnhart

William Earnhart has been elected partner at the law firm of Lane Powell Spears Lubersky LLP, in the Anchorage office. He concentrates his practice in commercial litigation.

Earnhart is admitted to practice in Alaska, Washington, Oregon, and the Ninth Circuit Court of Appeals. He received his J.D. from the University of Washington and his B.A. from Willamette University. Earnhart resides in Anchorage, Alaska where he has lived since 1974.

Lane Powell Spears Lubersky LLP is a leading Pacific Northwest multispecialty law firm. Founded 125 years ago, we provide a wide range of legal services in business, employment, and litigation for emerging and established businesses, and individuals.

— Press Releases

TALES FROM THE INTERIOR

The mayor of Chatanika

☐ William Satterberg

I did some legal research recently. I learned that one cannot slander the dead. Not that this article would necessarily slander the dead, but only to indicate that some of my articles, in the past, have brought complaints from the subjects of those articles, but only if they appear to be living. So far, fortunately, I have heard no complaints from the dead, or the judiciary, except for those voices in my head. So I will write about David Lambert. As one may suspect, David is dead.

Every lawyer has had a client who is truly memorable. It is the type of client you can tell stories about for years to come. The stories are so good that people who did not even know the client can identify with the stories. David Lambert was just such a client. David was not my first client. Nor was David even originally my client. I stole him.

I first met him when I worked with the prestigious law firm of Birch, Horton (and a whole bunch of other names) in Fairbanks. At the time, I was a young future criminal defense attorney. Bill Bryson, another firm member and an attorney to whom I have always looked up, (and probably always will, since he stands a good six inches taller than I), handled the major criminal defense actions for the firm. One of the regulars was David Lambert. To his credit, Bill Bryson had done a remarkable job defending David in a case where David was accused of allegedly intimidating someone in conjunction with collecting a debt. David's clients were reputed to be some unnamed individuals living outside of Alaska. When questioned about these "connections," David used to allude that he only worked for the "Lower 48 Collection Agency." Despite thorough inquiry, I could never locate such an agency registered to the State of Alaska. Nevertheless, David insisted that many individuals knew his client base, but would provide no further clarification. At trial, Bill did a tremendous job defending David. Surprisingly, David was ultimately acquitted.

OVER THE YEARS, BILL BRYSON TAUGHT ME MANY TRICKS OF THE TRADE, INCLUDING CERTAIN RULES OF CRIMINAL DEFENSE.

I found David's acquittal to be amazing. I personally suspected that David's employers may have had something to do with the drug industry, but there was never any proof of that. Besides, David was a good client who always paid in cash, and never requested a receipt. Certainly, someone like that would never be involved in the drug trade.

Over the years, Bill Bryson taught me many tricks of the trade, including certain rules of criminal defense. In time, a mentoring relationship developed between myself and Bill Bryson, which, hopefully, continues to this day, even if Bill steadfastly denies it.

To the same degree, a mentoring relationship also arose between David and myself, but on a different level. Perhaps Bill had something to do with it. Maybe Bill was trying to lose me, like my younger sister, Julie, always tried to do. I suspect, on balance, that Bill might even have suggested to David that David could best break in this young recruit into the rigors of complex criminal defense law.

David and I first became cordial when I was at the Chatanika Lodge with my wife having dinner one winter. In passing, David asked me if I would be interested in coming over to his house to "blow up the Chatanika River." Eyebrows immediately went up: my old addiction was resurfacing. Still, the proposition was intriguing and unable to be resisted. It had a distinct public service aspect, as well, for which lawyers are encouraged to become active. An ice jam had allegedly built up outside of David's house. The pressure ridge was blocking the river's flow and jeopardized nearby homes. David had a large cache of dynamite which he wanted to use to open up the blockage. It all made perfect sense.

In short order, Brenda and I arrived at David's residence. Using an electric drill, David and I soon had punched numerous holes deep into the ice jam. Into those holes, we stuffed several sticks of dynamite. After connecting the charges into a series, we were ready to set off the explosion. It would be the blast to end all blasts. (Eat your heart out yet again, Saddam!)

Truly a gentleman, David let my wife do the honors. Much to our surprise, the charges blew as planned. The resultant concussion was truly rewarding. The entire world seemed to shake. Even, for once, my wife claimed the earth moved. It was a religious experience, of sorts. We all stood around in awe with hands on our hips. I remember looking straight up in the air as the ice appeared to fly almost into orbit. It was like we had rewritten the laws of nature. After allowing a reasonable period for introspection, David casually remarked that there was still the law of gravity. The reverie broken, it clearly was time to panic and dive underneath the nearest overhang. David's warning was none too soon. As the ice crashed down around us, I truly began to admire David. We obviously seemed to have certain things in common beyond merely legal issues, including two wives left standing outside who were loudly expressing similar attitudes toward us as we cowered under the porch.

David stood a good six foot, three inches tall or better. He had been a decorated Marine Corps Long Range Reconnaissance Patrol veteran (LRRPS) from Vietnam. David was not bashful about bragging that he was good at killing people. In fact, he considered killing to be a profession. Perhaps that explained David's ties with the nebulous collection agency. Whatever David's background, David was always fair by me. He paid in cash, and always did what he said he was going to do. David always stressed that, in his line of work, a person's word was their bond. In his business, courts of law did not have a "major impact" except after the fact, and only if he got caught. David tended to refer to "major impact" synonymously with the term "stopping power."

I only ever represented David on one case. It was a DWI case which went all the way to the Alaska Supreme Court. It is cited as *Lambert v. State*, 694 P.2d 791 (Alaska 1985). It was a remarkable case - the type of case that will cure insomnia. It was a case involving *Nyquil*, the nighttime cough medicine from Vicks, from the same company that brought us that Vaporub we all loved so much in our youth.

It was a time long ago, but not so far away. It began near an overlook on the Steese Highway. A skinny, very young state trooper pulled over David's vehicle for allegedly driving erratically.

David was on his way from Chatanika to Fairbanks. At trial, David testified that he was desperate to pick up more cough syrup to alleviate his terrible cold. I personally suspected that the cold was caught while he was attempting to clear ice from the Chatanika River, after his wife locked him out of the house.

According to the trooper, David failed field sobriety tests. David, of course, disagreed. David blamed the alleged failure, if any, upon his age and his terrible illness. To this end, David's protests were in vain. Sick or not, David was arrested and taken to the Alaska State Troopers in Fairbanks for DWI processing.

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SCENE I - VIDEO ROOM
LOCATION: - ALASKA STATE TROOPERS - FAIRBANKS
TIME OF DAY: - UNKNOWN, AS IF ANYONE CARES

CHARACTERS PRESENT: SKINNY, NERVOUS, YOUNG STATE TROOPER AND DAVID LAMBERT, BUFF EX-MARINE, VIETNAM KILLER

Trooper: Okay, Mr. Lambert, I need to ask you if you would perform some field sobriety tests for me again.

(Editor's Note: This offense occurred in the days when field sobriety tests were still recorded on videotape for later home viewing, and the fifteen minute watching period was non-existent.)

David: It depends. What do you want me to do?

Trooper: The first test I want you to do is to walk the line. There is a line in the carpet here. You go nine steps out and nine steps back, touching heel to toe, and without using your arms for balance.

David: Do you think you could demonstrate it for me?

Trooper: You do it like this.

(The trooper then walks heel to toe, nine steps up, turns around smartly and walks nine steps back, in true military fashion.)

David: Very good.

Trooper: Care to try?

David: No, I don't think so.

Trooper: Okay, let's try another test. Tilt your head back, close your eyes, and press your finger to your nose upon my command like this: Left, right, left, left, right. Care to try?

David: You did good

Trooper: Care to try?

David: No, I don't think so.

Trooper: Let's try one more, then. This is called the flashlight test. I put my flashlight on the ground like this. You point your finger at it, and you walk around it in a circle three times and then stand up again.

David: Could you demonstrate that for me, please?

Trooper: Certainly. (The young trooper competently demonstrates test by walking around the flashlight three times with finger pointed. The task apparently effortlessly completed, he then stands upright. By then, he is obviously quite proud of himself.)

David: *Very* good. But I don't think I'll try it for you.

Trooper: (Obviously frustrated and exasperated.) Maybe you would like to do some verbal tests? Do you know English?

David: Actually, trooper, English is a second language to me. I prefer Spanish. I go to Belize a lot.

Trooper: Let's do the alphabet. Say your ABCs from beginning to end without singing them.

David: Would you demonstrate them to me, please?

Trooper: Demonstrate them? You mean to tell me you don't know your ABCs?

David: Sure I do, but you've demonstrated all of the other tests so far. Why won't you demonstrate the ABCs for me?

Trooper: Why do I have to demonstrate the ABCs for you? (Trooper becoming increasingly incredulous.)

David: (Calm and collected.) Trooper, it's not a question of whether or not I know the ABCs. Like I told you, I know my ABCs. I can assure you of that. The real question here is whether or not you can grade the exam.

Trooper: You've got to be kidding!

David: I tell you what. Let's compromise. You start out and I'll be right behind you all the way through.

Trooper: You've really got to be kidding! (Now beyond exasperation.)

David: I'm serious.

Trooper: What's the matter with you? Can't you do any of these tests?

David: Trooper, I really thought you would have figured it out long before now. I don't do tricks for cops. But I still must compliment you on your own performance for me.

At that point, the trooper recognized that he would receive no field test performances from David. The only thing left was to do the Intoximeter test. He fired up the equipment.

After the obligatory pre-test crunching, clacking, and grinding of the now obsolete Intoximeter was completed, the trooper announced that the test was ready. But, the show wasn't over. Another exchange followed:

Trooper: Mr. Lambert, we're ready to take the Intoximeter test.

David: No we're not.

Trooper: What do you mean we're not? I told you we're ready.

David: Don't you remember when we were out in the field you had me drink that foul tasting green Listerine stuff in your car? You told me to drink it so I could pass the Intoximeter exam. It has been too long. My mouth is fresh again. You told me if I drank it I'd do well on the test. Remember?

Trooper: I did nothing of the sort! I didn't give you anything to drink at all.

David: Yes you did! Why are you changing your story now?

Trooper: I am not changing my story!

Continued on page 31

The mayor of Chatanika

Continued from page 30

David: Come on now! Is there somebody watching us. Lambert looks around as if trying to locate somebody, then whispers to the trooper: Just between us two, come on, give me another swig of that stuff. I really want to pass the test. I hope I didn't upset you about that tricks for cops thing. I was just joking, honest.

Trooper: I did nothing of the sort!

David: Yes, you did!

●

That "'Did so! 'Did not!" Listerine exchange went on for approximately another minute. In the end, however, the trooper again did wise up and realized that David was pulling his leg. David, much to his credit, despite his alleged intoxification, never let on anything. Instead, David insisted until the time of the test that he was still supposed to take his swig of "that green Listerine stuff."

David's Intoximeter test results were in excess of a .150. The trooper, following procedures in effect at the time, next proceeded to disconnect the potassium perchlorate tube to be saved for later testing at the defendant's request. He next read David the *Miranda* rights, but received no answers to any substantive questions. The processing completed, the trooper finally took David to jail, probably figuring that it was an open and shut case with a .150 Intoximeter result.

If the trooper really thought he had an easy lock on a conviction, he couldn't have been more wrong. In fact, it was David Lambert's case which gave rise to the subsequent procedures which required that independent chemical testing be offered after an Intoximeter examination, ultimately giving rise to my earlier *Bar Rag* article on urine testing.

To my surprise, David asked that I have the potassium perchlorate tube analyzed to see if his breath alcohol was really that high, as if the point could be realistically disputed by anyone who knew David. According to David, he had only been drinking *Nyquil* that night. Admittedly, he had neglected to tell the trooper of that important aspect of the case, which was merely an oversight, he assured me. David could not imagine that he had the equivalent of seven drinks in his system, even if all of his friends claimed it was quite possible. After all, the bottles of *Nyquil* were not that large.

I eventually found a laboratory to analyze the potassium perchlorate tube. Remarkably, the certified result came back as barely a .05. DWI history was being made. Maybe David wasn't drunk after all.

No one could logically explain the wide divergence between a reading which was clearly above the legal limit of intoxication and a reading which was borderline sober. In later months, it was determined that the "O"-rings on the potassium perchlorate tube had malfunctioned. In later years, I wondered who had been responsible for the manufacture of the "O"- rings.

Regardless, once it became apparent that the Intoximeter reading was not reliable, the state voluntarily dismissed the .10 theory. Because David had done such a good job with public relations with the trooper, however, the State still decided to try David upon the remaining "under the influence" theory.

All in all, the trial, which was before Judge Crutchfield, went rather well. I might have even won it, if it had not been for David's answers on the stand. The videotape, alone, provided over an hour of amusement for the jury. Later, we could all hear them guffawing from the jury room during deliberations.

My primary trial argument, upon David's later appeal, was that David had not been drinking alcoholic beverages at all. My theory was that, because *Nyquil* could be bought as an over the counter medicine by children in neighborhood Safeway Stores throughout the country, *Nyquil* could not legally be classified as an alcoholic beverage. It was the thrust of my legal defense since, factually, David was doomed. Still, David, (under my wise and capable examination), had done rather well in explaining to the jury how he had gotten schnockered on *Nyquil*.

When the district attorney asked David the amount of *Nyquil* which David had to drink, David quickly replied that he really did not check the doses. Rather, as a cabin-dweller without lights, David would simply pour it into his mouth, "up to the bottom of my false teeth."

The D.A. was not convinced that only *Nyquil* was the culprit. Repeated inquiry was made as to whether or not David was certain that it was only *Nyquil*. Could there have been other products involved, also?

David appeared to reflect upon the question. It obviously had merit, and deserved a better answer. Apparently planning to spice up the trial a bit, David gave a wink and added, "I also might have possibly had some leftover Terpen Hydrate, now that I think about it." Had the DA's questions continued, we might have implicated an entire pharmacy before the case closed.

The jury retired. Eventually, a note came out stating that they were deliberating over the alcoholic contents of *Nyquil*. In response, Judge Crutchfield instructed the jury that *Nyquil* had the same alcohol as any alcoholic beverage. Shortly after that highly-opposed clarification, the jury convicted David.

I figured the case was over. *Nyquil* had now joined the ranks of Jack Daniels, rubbing alcohol, and Sterno.

David, however, was not easily defeated. He required that I appeal the case. Because David always paid cash, I complied, although I probably would have complied even if the appeal was demanded *pro bono*, under the circumstances and especially given the client.

So ended the famous *Nyquil* defense and, equally importantly, another chapter in the growing legend of David Lambert.

And, as for the young trooper? He is now a full rank, bulky sergeant. Surprisingly, the last time I saw him, he still had a squeaky voice when stressed out. He also had a number of rather complex arrests to his credit.

In retrospect, little did the trooper probably know on the day that he was arresting David Lambert that he was doing business directly with the chief representative of "The Lower 48 Collection Agency." Not that it necessarily would have mattered. In fact, David later told me that he found the entire affair most entertaining.

Known about Fairbanks as the "Mayor of Chatanika," who regularly rode in an open car sporting a black top hat and wearing formal tails during the annual Golden Days Parade, David peacefully passed away in 1998, a tragic victim of cancer, as opposed to the lead poisoning that many of us expected would occur.

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Tea with the Chief

Continued from page 1

the British have wisely kept a monarch and functioning monarchy in the wings for close ones with murky results. The Queen asks a party leader to *try to* form a government. Americans were hell-bent on getting rid of their monarch in 1776, without thinking through an obvious fact of votarian life: There will be many close ones. Votarianism — purified of a head of state – has not achieved its promise if it only works in landslides.

Americans have never explained to the world how we lose so many leaders to gunfire. But the denial extends also to the mechanics of voting. If properly credited, Richard Nixon refused to ask for a recount on the grounds that the Illinois machinery was not up to the task, or that the votes from Cairo would smell as bad as those from the River Wards. Nobody seems to have taken that lesson to heart, as if Watergate excused us all from getting voting done right.

And when the creaky and mostly bypassed machinery of constitutional amendment was cranked up to guarantee the right to vote in federal elections in 1964 ("The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax") *Bush II* tells us that only a state right to vote in federal elections was protected via the Twenty Fourth Amendment.

Isn't a constitution to make the "motion of the machinery" work? The phrase is Jefferson's. He was consoling Adams on a November evening in 1800, when Adams' loss (not Jefferson's win) became clear. But there is no codewriting that dedicates machinery to straightening out an election mess, much less, as the majority in *Bush II* noted for "orderly judicial review of any disputed matters that might arise."

The United Kingdom had no written constitution; the European Convention on Human Rights is now carried into effect by the Human Rights Act of 1998 and it does include constitutionally familiar phrases, like "Everyone's right to life shall be protected by law."

While the United Kingdom now has a codewriting that looks constitutional to us, the British lack a top court in our mold to make the words work in their national legal system. Panels of law lords are the last arbiters as to these words before appeals go to the continent and the courts of the European Union. Sorting out the design of a top court for the United Kingdom is driven, in part, by the worthy goal of summoning as much prestige and power into the last British court before continental judges resolve human rights issues for those isles and their peoples.

The United States offers, at first glance, a dazzling vision of a top court at the top of its form, into the third century of operations. But the United States enjoys its own strange amalgam of codelaw and caselaw with such venerable doctrines as judicial review and separation of powers asserted by judges asserting that they have the power to declare doctrine because they also declare the power to declare.

And then there is the matter of those darned elections. We decide them in the House of Representatives; we decide them with *ad hoc* electoral commissions (1800, 1824, 1876). Elections can be decided by the House and the Senate in joint session under the current regime, enacted in 1948 in Title 3. Elections have been decided by state and county election officials as well as undecided, as the elections of 1960 and 2000 instruct us. Presidential elections have been appealed to state legislatures in 1860 and to the Supreme Court in 2000, which decided that the state legislatures did, indeed, have the last word, although presumably not to the point of secession. The electoral machinery is so befuddled that Americans almost elected a vice presidential candidate to the presidency in 1800, and 200 years later the Supreme Court had to explain that the Twelfth Amendment, designed as corrective, still didn't confer a federal right to vote on voters.

In general, Americans don't know where they stand in relation to the machinery. The selection of popular losers as electoral winners is excused because "that's the way it works."

But the machine also explicitly secures to rotten boroughs multiplied voting power, based on equality of senatorial representation. This guarantee of Article V is so quintessentially American that this guarantee is explicitly unamendable. These transMississippi superelectors have been well aware of their power throughout American history. The unpleasantness of '76 launched a tradition of power ceded westward to secure the allegiance of these empty regions, sea to sea. Alaskans extract as much leverage as anyone from their senatorial electors. Until America secedes from us, we're safe up here in our three-vote borough, which was December's winning margin, by the way.

Perhaps the problem is exactly what the majority of the court in *Bush II* says it is. Americans have to sort out their attitudes towards votarianism, express and implied, including "adequate statewide standards for determining what is a legal vote" as a matter of federal or state constitution or statute. Americans could then assign duties to the Supreme Court that complement or support the votarian machinery. Americans could also, however, in our own strange amalgam, leave the Supreme Court to declare the power to declare its power, which may be, as history favors, where we got into our present fix. The Supreme Court understands its relation to us even if we don't know whether we want to be persuaded by the Supreme Court.

It could be an interesting century. The British would get a brand new Supreme Court and a place to put their statues and portraits of judges from a glorious past; Americans could get modern electoral machinery that, like the trains in Italy, "runs on time."

And if we mess up the next election, we can always ask the Queen to sort it all out with an invitation to the Palace. It's a solution that's always there, in case we tire of sorting out the winning from the losing partisans on this side of the pond.

TECHNOLOGY SURVEY RESULTS

Continued from page 1

How are you connected?		
28.8K Modem		20
33.6K Modem		14
56K Modem		198
Cable		44
Don't Know		106
DSL		116
T-1		17
Do you use the Internet?		
No		4
Yes		514
If yes, for what purpose?		
All of the Above		78
E-mail		1
email		28
Research		404
Other (please list):		
applications		1
Banking		1
ecommerce		16
email		213
email & ecommerce		161
email & news		2
email & online CLE		4
email,ecommerce		1
general information		2
Intend to use stock		1
investigations		1
Investments		1
just learning		1
music		1
News		4
News & Information		1
Online CLE		1
personal		1
Website hosting		1
Does you computer have a sound card?		
Don't Know		31
No		66
Yes		417
What web browsing program and version do you use?		
AOL	5.0-5.9	4
AOL	6.0-6.9	1
Compuserve	Don't know	1
Microsoft IE	3.0-3.9	1
Microsoft IE	4.0-4.9	37
Microsoft IE	5.0-5.9	116
Microsoft IE	6.0-6.9	7
Microsoft IE	7.0-7.9	4
Microsoft IE	Don't know	126
Netscape	2.0-2.9	1
Netscape	3.0-3.9	2
Netscape	4.0-4.9	111
Netscape	5.0-5.9	5
Netscape	6.0-6.9	6
Netscape	7.0-7.9	4
Netscape	Don't know	65
Netscape Navigator	4.7	1
Netscaper	4.0-4.9	2
Opera	3.0-3.9	1
Don't know	Don't know	18