The Alaska BAR RAG

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Inside:

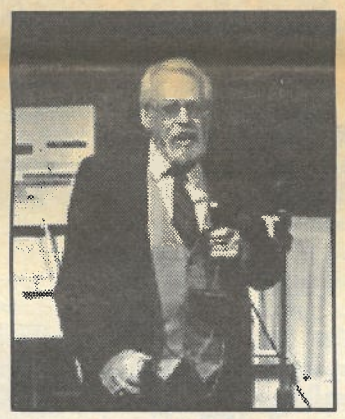
Boyko dies at 83

'Snow Tiger' was part of Alaska history

Edgar Paul Boyko is one of those Alaska attorneys who will be remembered as a legend of the bar. His death in Washington State on New Year's day left behind friends, foes, and family who will not soon forget their encounters with the Anchorage attorney who left his mark since Territorial days.

Boyko died in Des Moines, WA after several years of ill health. He'd left Alaska courts, politics and the law in 1999 following a series of strokes. He was 83.

As many in his generation, Boyko didn't come up the easy way. He was born in Vienna on Oct. 19, 1918. An only child, Boyko's father was an eye doctor, and his mother was an opera singer, who he called "a dramatic soprano" in an interview with the *Anchorage Daily News* in 1995. "I was a spoiled brat," he commented. Nevertheless, his family endured two world wars; Boyko and his Jewish wife-to-be fled the Nazis in 1938 while at the University of Vienna, and landed in Scotland. There, he finished school at St. Andrews University with a degree in chemistry, and the young couple emigrated to New York in 1940 with $100 in their pockets.



The Depression found Boyko working whatever jobs he could find—selling hot dogs at baseball games, working at a rubber-manufacturing plant, cleaning up labs at Johns Hopkins University, and delivering chemicals for a match company. It was as close to using his education in chemistry as he'd ever come.

By 1945, Boyko had graduated from the University of Maryland with a degree in law, and remembers one of his first cases in Baltimore as one that nearly drove him out of the profession. He was defending a man charged with robbery and murder, who faced the death penalty if convicted. He won the case, but has said he didn't much like having someone's life in his hands. "If I had lost that case, I would have hung it up," he said in the 1995 interview.

Boyko came into the Alaska Territory in 1953, as a solicitor for the federal Bureau of Land Management. A year later, he was in private practice, and was appointed Alaska attorney general during Walter J. Hickel's first administration in 1967-68. During his tenure as the state's top lawyer, it was Boyko who initiated a statewide task force that would lead to the passage of the Alaska Native Claims Settlement Act. He suggested that such a group—represented by Willie Hensley, Emil Notti, John Borbridge Jr., Alice Brown, Richard Frank, Charles Franz, Byron Mallott, Hugh Nicholls, Harvey Samuelsen and Don Wright—would help the state and Alaska Natives find common ground. The Governor's Task Force on Native Land Claims unveiled its proposal for settling Native claims at an historic hearing of the U.S. Senate Committee on Interior and Insular Affairs in Anchorage in 1968, three years before the passage of ANCSA in December of 1971.

Never entirely divorced from politics, Boyko built an

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THE LAW FIRM PICNIC EVOLVES *Pg. 22*

Legal automation technologies and computer hardware picks

By Joe Kashi

During the past year, some established legal automation technologies and computer hardware have developed to the point that they've become finally quite attractive and cost-effective. Here are my picks for 2002.

VOICE RECOGNITION

Voice recognition technology has always seemed to be a technology whose easy application is just around the corner, a corner that previously seems to be always just beyond reach. With the introduction of IBM and ViaVoice professional version 8, the early promise of voice recognition technology as a means to increase productivity and to decrease office overhead has finally reached fruition.

IBM ViaVoice Professional Version 8 is a significant improvement upon earlier releases of this program and, to me, seems to be more accurate than its main competitor, Dragon Dictate. Correction with ViaVoice is finally easy and swift and the program's language model continues to constantly readjust itself not only to your pronunciation but also to your writing style. Although no voice recognition program is perfect-indeed, we find that

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President's Column

New Year's resolutions for you and me

☐ Mauri Long

1) **Attend the Convention in Anchorage May 15 - 18**

One of the most exciting challenges of the presidency is in planning the annual convention. I am very excited about this year's conference scheduled for Anchorage between May 15th and 18th. We will be offering a veritable smorgasboard of courses, with something for (hopefully) everyone. The theme is scientific evidence. We have the honor of hosting Edward Imwinkelried, UC Davis Professor, and author/co-author of many volumes on evidence. Like me, you probably learned evidence in law school from one of his books. And like me, you have probably looked to those books to answer questions on a regular basis throughout your practice.

Professor Imwinkelried is also recognized as a wonderful speaker. He will open the conference with a discussion of the past, present and future of **scientific evidence** in the courtroom.

Join Gary Kinder for a little **Power Editing** and to learn to punch up your motion practice. Larry Cohen and Ray Brown are doing a presentation on **emotional damages**. A panel will discuss **State/Tribal Court Relations**. A program for new lawyers is still in the works.

We have programs on **Therapeutic Justice** and the **Family Law Self-Help Center**. Our public lawyers will be treated to a dose of **Public Attorney Ethics** with Peter Jarvis. And everyone can enjoy "**Bar Lunch With a Side of Ethics.**" We will also have a **Legislative Update**.

Professors Arenella and Chemerinsky will be back to keep us up to date on **U.S. Constitutional Law**. And for a real treat – a double dip – Professor Chermerinsky is going to update us on **Alaska Constitutional Law**.

To close the conference we get back to scientific evidence with ***The Science Guys*** from Seton Hall University School of Law coming to teach us the scientific method and its application in the context of presentation of evidence and expert witnesses. We will follow that up with concurrent sessions on specific topics (I'm still working on this part!)

Of course we also have planned **social events** and **activities**. A 5 K run/walk, lunch meetings, exhibitors, a cocktail party, poetry reading, and the banquet. You won't believe how many of your friends and colleagues have **25-year pins** coming in May! Finally, weather permitting – we will host our first ever **golf tournament** on Saturday, May 18.

2) **File your Information About the Resolution of Civil Cases Form**

If you resolve a civil case or resolve a civil claim against one or more parties in a civil case, with several exceptions, you are required by law to file with the judicial counsel a form located on the internet at www.ajc.state.ak.us. Exceptions are listed on the form itself, but include family cases, adoptions, estates, small claims, FED's, administrative appeals and motor vehicle impounds.

Filing the form is mandated by legislation, AS 09.68.130. Nevertheless, apparently less than 50% of the required filings are made each year. Make sure you are filing those forms whenever you are required by statute or rule to do so.

3) **Return your Judge Survey**

The survey results are used to let voters know how we (lawyers, police officers, corrections officers and a few others) feel about the quality of our judiciary. They also help judges evaluate their performance. And it gives many of us something to grouse about when they come out. Ever heard yourself or a colleague say "who rated that guy." Return rates of surveys are low. That means not many of us are rating the judges, especially at retention time. Resolve to fill it out when it first arrives, send it off, and congratulate yourself on another resolution accomplished.

4) **Nominate Someone for the Board of Governors**

Resolve to help get good people on the board. Three seats are up this year, Kirsten Tinglum's Third District seat and Bruce Weyhrauch's First District seat. Both of these exceptional members are completing 6 years on the board. A Fourth dis-

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Editor's Column

Living large and getting paid to shower

☐ Thomas Van Flein

Most of you know that I receive a substantial stipend as the *Bar Rag* editor, in addition to a 20 x 20 office, a leased Ford Excursion and a fully stocked wet bar for the many social occasions we host at the *Bar Rag*.

You may not know, however, that I am often plied with gifts from various publishing companies, all seeking a kind word and a good review of their latest book. Marketing wise, a favorable *Bar Rag* review can make or break a newly released book. According to a National Publishers' evaluation and ranking survey completed last year, the *Bar Rag* ranks fifth nationally in prestige and influence for book reviews, right after the *New York Times, The Atlantic Monthly, Harper's* and the *New Yorker*.

Because I have accepted a variety of gifts from publishers, including a golf tour of Ireland, a "Walking Tour of Hemingway's Cuba," and two oak barrels of wine from Bordeaux, France, I feel a little guilty not having reviewed the many books submitted to us. So, to relieve this guilt, and to accept any future offerings with an open heart, here are my thoughts.

The first book is called "Teach Me to Solo . . . The Nuts and Bolts of Law Practice," written by Hal Davis (Anchovy Press). Mr. Davis starts us off with a dose of reality: "Law practice is not a get-rich-quick scheme. Anyone who decides to start and run a law practice must expect to invest a lot of time and effort into it." Now he tells us. Where was he when we were filling out law school applications?

Chapter two discusses the benefits of multi-level marketing instead of practicing law, for those who want to try a "get rich quick scheme." Actually, Mr. Davis has put together a fine resource for anyone considering a solo practice. Everything from where to practice, to staffing, to computerization is discussed. He notes that "at no time in history has it been as easy to practice law without a secretary as it is now," and I think he has a good point. For anyone willing to learn to use voice mail and type (or use voice recognition software), the need for a secretary is greatly reduced, thus allowing one to practice law with substantially lower overhead. Mr. Davis includes some very practical tips and I believe this book would be helpful to anyone who wants to go solo but who has not practiced law at least five years. His chapters on computers and software are particularly well done.

This book received four and ½ stars on Amazon.com and at the time of this writing, ranks 35,496th in sales through Amazon.com. Because of the power of the *Bar Rag*, I expect the ranking will increase to 35,493 after this review. We will keep you posted.

The next book is called "The Moral Compass of the American Lawyer: Truth, Justice, Power and Greed." (Ballantine). This may sound like a primer to obtain power and be greedy, but authors Richard Zitrin and Carol Langford, both law professors and practicing attorneys, take issue with unethical practices, unjust billings and dishonesty veiled as zealous client representation. This is an interesting read. In case the publisher wants to quote me, let me say it this way: "Powerful. Moving. If you think you can't handle the truth, don't read this damning exposé."

These authors have taken the time to illustrate their points with cases, for example, laying heavy criticism against a large Seattle firm for the discovery abuse exposed in *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 858 P.2d 1054 (1993), where firm lawyers allegedly withheld two incriminating documents. After the firm paid $325,000 and issued a public apology, the authors point out that just two years later lawyers at the same firm were again sanctioned for engaging in "lawyer hokum" (Judge Bryan's words) for not responding forthrightly to document requests. These authors posit that the "repeat performance" occurred because the firm "almost got away with it" and they ask how many other times such

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The Alaska BAR RAG

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Scott Brandt-Erichsen
Steven T. O'Hara
Thomas J. Yerbich

Contributing Cartoonists
Mark Andrews
Bud Root

Design & Production:
Sue Bybee & Joy Powell

Advertising Agent:
Details, Inc.
507 E. St., Suite 211-212
Anchorage, Alaska 99501
(907) 276-0353 • Fax 279-1037

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Mentoring program benefits new attorneys

"Practicing law without a mentor sometime in your career is like riding a bicycle without handlebars- you have momentum, but no direction."

What was it like when you began the practice? Did you have someone to show you the ropes? Introduce you to the judges and clerks? Answer questions when you didn't know who to ask?

If you didn't, did you wish you had?

For four years The Missouri Bar's Mentoring Program has filled that role for many lawyers. The mentors and protégés involved in the program give it rave reviews. Over 120 matches have taken advantage of the program and nearly all report successful matches and appreciate the program.

Many years ago these types of mentor relationships occurred frequently, without a structured program. However, with today's larger firms, the significant increase in new lawyers being admitted every year, and intensified competition for clients, these informal learning opportunities do not happen as readily.

Recognizing this, The Missouri Bar adopted a Mentoring Program. It started as a pilot project in Springfield, expanded into Kansas City and St. Louis and is now statewide in scope. Mentors and protégés are matched by the staff of The Missouri Bar based on their practice areas, backgrounds, interests, and geographic location. Every effort is made to pair lawyers whose practices and interests would make a successful match. Often women lawyers are matched to share insights on gender issues of practice. And not all protégés are fresh from law school. Many are experienced attorneys who wish to change employment or type of practice.

Matches last for one year and may continue informally if both sides are willing. During the year both mentors and protégés evaluate the program and the match. As stated earlier, most praise the program. Some of the comments from protégés include:

"Good program for lawyers just beginning private practice"

"He has been a good source of information for some of the "unwritten" local rules of practice."

"I have found this worthwhile and I will continue to be active in the program and indeed will be available as a mentor when the time comes that I am experienced enough to provide this valuable service."

Comments from mentors show the benefits are a two way street.

"Mentoring is a great thing. I would have benefited from a mentor in my earlier years of practice."

"Talking to my protégé about the practice makes me think about things that I often just do without reflection. It makes me a better attorney and a better person."

"It gave me an awareness that the problems of today's new lawyers are different from my own but the governing principles in solving the problems are the same."

If this program is not available where you practice, contact your state or local bar association. On the other hand, why wait? If you are an experienced lawyer, there is someone out there who could use your expertise. If you are new to practice, there are many fine lawyers who would be flattered to be asked for advice about practicing law.

The profession will be the better for the asking.

—Lois M. Zerrer

Chair of the Mentoring Committee of The Missouri Bar.

(Editor's Note: The Anchorage Inn of Court provides mentoring programs to new attorneys).

New Year's resolutions

Continued from page 2

trict Seat is also up. Lori Bodwell, our President-Elect, has graciously agreed to run again. It can't be that bad if they stuck it out that long!

You may not be able to commit the time for five meetings a year and the Convention, but if you know someone you think would be great at running this organization, resolve to encourage them to allow you to nominate them when the forms show up next week. Deadlines for nominations are February 15.

5) **Come to the Convention**

Did I mention: I am really excited about the convention. I promise that if you resolve to **attend the convention**, and you keep your resolution, **you will have a great time**, learn lots of new and exciting stuff, remind yourself of things you knew but forgot, renew acquaintances, and go back to your practice with a renewed enthusiasm for the fabulous profession in which we are engaged.

Living large

Continued from page 2

abuse occurred that were never uncovered.

The authors request more stringent court involvement and more frequent use of issue sanctions rather than monetary sanctions since "monetary sanctions even in the hundreds of thousands of dollars are too often seen by powerful firms and their clients as simply the cost of doing business, even when that business is shady and unethical." The book does not focus on just that firm, but it discusses many other firms and lawyers whom the authors criticize, and tactics such as SLAPP suits.

The book takes issue with how one firm trained its associates to bill. The authors write that a senior associate at one firm instructed the new associate to bill when "standing in the shower thinking about" the case and record it as "evaluating trial tactics." The authors question whether lawyers should necessarily accept representation of companies that may have acted reprehensibly, and they praised one D.C. firm for refusing to represent a European insurer that had refused to pay policy claims to Holocaust victims.

The authors note that a firm develops a culture that permeates its decisions. They write that "a firm shows its culture and values by how it behaves both in public and behind closed doors. What the firm's partner's say, and how they act . . . how the partners approach their clientele, whom they are willing to accept as clients when a lot of money is at stake, and how far they are willing to go to zealously represent their client" define the firm culture.

You may not, of course, agree with all of their points, but the authors stimulate thought and you may reflect more closely on our profession after reading this. Their goal is to elevate our profession to do what is right and go beyond a simple ethics analysis. [Perhaps their next effort will be directed at large accounting firms who "consult" with energy trading companies]. For that reason alone this is worth reading. It certainly made me think as I filled out the questionnaire for another publisher who was sponsoring a Caribbean cruise for legal journal editors entitled "The Ethics of Book Reviews: Five Days In The Sun."

A Mentoring program for young and old

I have been an informal mentor several times in my career to younger attorneys, who needed an ear to bounce ideas off and make sure they saw the forest for the trees. The transition from law school to practice can be daunting.

When I first heard about The Missouri Bar program, I assumed it was a traditional program where an older attorney took a younger one under his or her wing.

The stories that were related to me showed that was part of the program, but that younger technologically proficient attorneys were mentoring older attorneys on how technology could work for them. It is a true mentoring program without stereotypes. The only thing that counts is experience in the area you are mentoring.

It is really a simple program. Just help being provided to other attorneys. No stupid questions! No threatening situations! Just lawyer helping lawyer.

If your bar association wishes to start such a program, you don't have to reinvent the wheel. At The Missouri Bar's website, you can find an Application to Obtain a Mentor and Application to Become a Mentor, along with the Necessary Appropriate Protégé Disclaimer and Release to help you get started. Visit them at www.mobar.org/feature/featurem.htm

—William Schwab

Schwab is editor of the GPLink. These commentaries on the value of mentoring appeared in the American Bar Association's winter 2002 issue of the GPLink newsletter.

Did You File Your Civil Case Reporting Form? Avoid A Possible Ethics Violation

The Bar office has recently been advised that some members have not been filing civil case resolution forms with the Alaska Judicial Council as required by the Alaska Statutes and the Alaska Court Rules. The failure to follow a court rule raises an ethics issue under Alaska Rule of Professional Conduct 3.4(c) which essentially provides that a lawyer shall not knowingly violate or disobey the rules of a tribunal. Members are highly encouraged to file the required reports since compliance avoids the possibility of a disciplinary complaint.

ALSC President's Report

ALSC/APBP . . . and justice for all

☐ Vance Sanders

2001 was a year of events that saddened and challenged us personally, professionally, and as a nation. ALSC was not spared. Our program was shaken by the June 9 death of its beloved executive director, Robert Hickerson, who died at the age of 50 following a courageous and long-fought battle with a recurrent brain tumor. Robert's legacy lives on in the strength of the organization and in the talent and dedication of its staff and board members who gave so much during the past year.

In memory of Robert, and in honor of his 20-year career with Alaska Legal Services Corporation, Governor Knowles has issued an executive proclamation declaring 27 January 2002 as Robert Hickerson Day and encouraging all Alaskans to recognize the great contributions Robert Hickerson made to Alaska in ensuring equality for all the people of the state. A copy of the proclamation can be viewed at ALSC's web site (www.alsc-law.org).

When Robert became ill in February, ALSC's board called on five stalwarts to cooperatively manage our program. Although we all hoped Robert would soon return to the helm, and that this would be a short-term endeavor, it turned out to be almost a year of dedicated service. In that time, Beth Heuer (who nominally is employed as our Administrative and Technology Coordinator, but is really the backbone of our program), Michael Sturm (who has ably served as our controller since 1981), William Caldwell (who has been a star program attorney since 1984, and now is a star in our statewide litigation efforts), Andy Harrington (more about him below) and, in Andy's absence, Mark Regan (who has also been a star staff and supervising attorney for all but a few years since 1984) literally kept our program going. Their selfless work on behalf of Alaska's poor is an example to which each of us should aspire. Without their efforts, delivery of our services would have been seriously jeopardized, and our clientele would have needlessly suffered. With their efforts, ALSC has emerged an even stronger organization.

IN MEMORY OF ROBERT, AND IN HONOR OF HIS 20-YEAR CAREER WITH ALASKA LEGAL SERVICES CORPORATION, GOVERNOR KNOWLES HAS ISSUED AN EXECUTIVE PROCLAMATION DECLARING 27 JANUARY 2002 AS ROBERT HICKERSON DAY

ALSC SELECTS A NEW EXECUTIVE DIRECTOR

Following an extensive executive director recruitment and search process, on December 8 the ALSC board of directors unanimously selected Fairbanks Supervising Attorney Andrew R. Harrington to serve as the new executive director. Andy joined ALSC in 1982 as a staff attorney in Fairbanks and became supervising attorney in 1996. Andy began his public service career while in law school, serving as a law clerk for South Mississippi Legal Services in 1977-78. His career in Alaska began in Fairbanks with a clerkship for Chief Justice Jay Rabinowitz in 1980-81. Andy then served as an associate attorney with the Law Offices of Charles E. Cole in 1981-82 prior to joining the ALSC staff.

It is with great pride in Andy's accomplishments and talents, and in recognition of the high regard in which Andy is held by staff, board, and members of the legal community at large, that I announce the selection of ALSC's incoming executive director. Andy will begin his new position around February 1 and will be based in Fairbanks, where he and his family have many ties with the community.

PARTNERS IN JUSTICE CAMPAIGN

ALSC's annual fundraising campaign is in full swing for 2001-02. The campaign was re-named Robert Hickerson Partners in Justice and began with a mail solicitation in December. Local chairs for this year's campaign are Janine Reep and Keith Levy in the First Judicial District; Robert Bundy in the Third Judicial District; and Charlie Cole in the Second and Fourth Judicial Districts.

As in previous years, the campaign targets attorney members of the legal community and encourages attorneys to donate the dollar equivalent of at least two billable hours. This year, we are also reaching out to non-attorneys and support businesses with ties to the legal community. Gifts may be designated as individual gifts, firm gifts, or anonymous donations. Unless otherwise designated by the donor, 10 percent of each donation is placed in a long-term endowment fund established to provide a secure source of funding for ALSC operations in future years. (As of December 2001, our endowment totaled just over $100,000. We encourage attorneys representing clients in estate matters seeking charities to which to contribute to meaningfully consider recommending ALSC as such a program.) Information on regular or endowment donations to Robert Hickerson Partners in Justice can be obtained by sending an e-mail to donor@alsc-law.org or by visiting the campaign web site, which is www.partnersinjustice.org.

NEW LAWHELP WEB SITE PROJECT

ALSC recently received a $50,000 Legal Services Corporation technology initiative grant that is being used to develop a statewide web portal (www.alaskalawhelp.org). The Legal Services Corporation, which is the source of federal funding for ALSC, has set a goal of establishing one comprehensive web portal per state through which low-income and modest-means clients, and the attorneys and advocates who serve them, can find self-help, referral, and advocacy information on a variety of legal content areas. A nine-member stakeholder committee has been established to provide advice and guidance in the development of the site, which will provide content posted not only by ALSC but also by other advocacy organizations, social services providers, health care providers, housing groups, disability advocates, and immigration service providers. The client-oriented resource section of the site will be developed first, followed by an advocate-oriented resource section that will be launched late this spring.

CHANGES AT APBP, INC.

The Alaska Pro Bono Program, Inc.'s Executive Committee recently hired Madeleine R. (Loni) Levy to act as executive director through May 2002, subject to an earlier expiration date at the discretion of the board. In the meantime, the executive committee will search for a permanent executive director. As you may know, Loni has a long history of service to ALSC and to APBP, notably as the chair of the APBP Barristers Ball in May 2001 and, until May, had served as a member of the boards of both ALSC (where she ably served as our president) and APBP.

CONCLUSION

A recent article in the *Juneau Empire* documented and discussed Alaska's growing poverty population. Even in the wake of unprecedented national and local wealth, many tens of thousands of Alaskans lack basics we take for granted, such as food, clothing, shelter, and access to health care, education, or the courts. It is not coincidence that Robert Hickerson Day follows closely on the news of our expanding population of poor persons.

But you and I do not have to be Robert Hickerson to help. We can take pro bono cases when called. And we can contribute financially to the one program in Alaska with a proven track record of meaningful legal representation for all poor Alaskans: Alaska Legal Services Corporation. It is a great way to begin 2002. And it is an even better way to honor the memory of Robert Keith Hickerson.

QUOTE OF THE MONTH

There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.

— Mohandas K. Gandhi

In the Supreme Court of the State of Alaska

In the Disability Matter Involving Vincent P. Vitale, Respondent.

Supreme Court No. S-10386

Order

Date of Order: 12/3/01

ABA File No. 2001B003

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

On consideration of the joint motion by bar counsel and the respondent for respondent's transfer to disability inactive status under Alaska Bar Rule 30 dated October 26 and 29, 2001,

IT IS ORDERED:

1. The joint motion for transfer to disability inactive status under Rule 30 is **GRANTED**. Respondent Vincent P. Vitale is immediately transferred to disability inactive status due to a physical disability until further order of this Court. A disability hearing under Rule 30(b) is not required.

2. The Bar Association shall provide the notices required in Rule 30(e) and (f). The notices shall reflect that Mr. Vitale is being transferred to disability inactive status due to a physical disability. The respondent may not practice law until reinstated by order of this Court under Rule 30(g).

Entered at the direction of the court.

Clerk of the Appellate Courts
/s/ Marilyn May

In the Supreme Court of the State of Alaska

In the Disability Matter Involving Bonnie J. Coghlan, Respondent.

Supreme Court No. S-10366

Order

Date of Order: 11/15/01

Trial Court Case #3AN-00-00000 AB
ABA File No. 2000B002

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

On consideration of the joint motion by bar counsel and respondent for respondent's transfer to disability inactive status under Alaska Bar Rule 30(b) dated 10/12/01.

IT IS ORDERED:

1. The joint motion for transfer to disability inactive status under Rule 30(b) is **GRANTED**. Respondent Bonnie J. Coghlan is immediately transferred to disability inactive status until further order of this court. A disability hearing under Rule 30(b) is not required.

2. The Bar Association shall provide the notices required in Rule 30(e) and (f). The respondent may not practice law until reinstated by order of this court under Rule 30(g).

Entered at the direction of the court.

Clerk of the Appellate Courts
/s/ Marilyn May

Books of Note

First Among Equals, How to Manage a Professional Group, *by Patrick McKenna and David Maister.* ($26 US, $39.50 Canada, 288 pages, The Free Press/Simon & Schuster, release date – April 9, 2002.

Aimed at managers and leaders of peer-to-peer professional groups and professional firms (the fastest growing business sector in the US). A departure from the usual corporate hierarchy primers, First Among Equals promises to be one of the best selling business books of the 2002 spring season!

"This book is a unique combination of good business, understanding of people and applied wisdom." - Regis McKenna, author of Real Time, Relationship Marketing and The Regis Touch

First Among Equals is a practical guide that professionals and leaders will refer to often for ideas and action lists. The book contains real-world examples, self-evaluation materials, and expert advice on day-to-day professional leadership issues. This "play book" offers strategies and tip lists both the novice and experienced manager can use everyday. It includes colorful comments and "quotes of wisdom" from identified real-life professionals, who define the emerging role, "professional leader" – the first among equals.

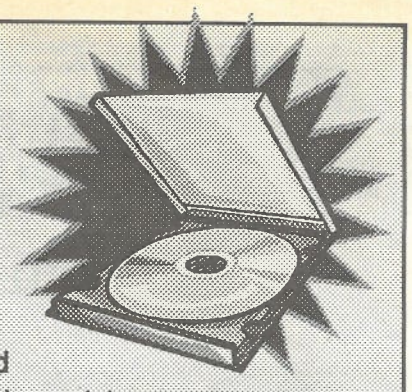
McKenna and Maister have written specifically for professionals who usually act independently and are self-motivated. Work styles of professionals differ significantly from those of corporate executives and line managers, for whom most management books are written! Professionals require this specialized knowledge and experience McKenna and Maister are recognized for.

About Patrick McKenna, co-author of Herding Cats, currently #4 among Canadian Management Bestsellers list - a widely recognized expert on managing professional service firms and a partner at Edge International in Edmonton, Canada, a consulting firm serving professional service firms throughout the world. The Financial Post described McKenna as "Canada's professional firm management and marketing guru, with a client base stretching from Britain to the United States." Professional marketing pioneer, Bruce Marcus said of him in Competing For Clients, "light years ahead of almost everybody else, his clientele is indeed worldwide."

About David Maister, author of Practice What you Preach - WSJ Business Best Seller list, Summer 2001 – one of the world's leading authorities of the management of professional service firms, he is the author of Managing the Professional Service Firm, True Professionalism, and Practice What You Preach, and coauthor of The Trusted Advisor

"The professional service firm is the best model for tomorrow's organization in any industry. When it comes to understanding these firms, David Maister has no peers. I am thrilled to see his work collected in one place." - Tom Peters, "In Search of Excellence"

Digital Audio Recording System (DARS) completed



The U.S. District Court has completed converting all the Anchorage, Fairbanks and Juneau courtrooms to digital audio recording. With the new recording system, a single CD can record up to 14 hours, whereas the analog cassette recorders only held 90 minutes. Requests for tapes will now be replaced with requests for CDs. New forms will be available in the Clerk's Office. CDs can be purchased with or without the player. The player may be downloaded free from: http://ftrgold.com. CDs purchased without the player are $20. For those without access to the Internet, copies may be purchased with the player already installed at a cost of $30 each. Numerous hearings may now be placed on one CD instead of several cassette tapes, thus saving the purchaser money. Other advantages to the digital audio recording system are 4 channel recording with channel isolation and volume control, an external playback that all parties can hear, fast accurate reproduction and superior audio quality.

Anchorage's small claims mediation program

☐ Drew Peterson

A recent mediate.com article about the benefits of small claims mediation programs made me realize that I have neglected to describe the current small claims mediation program in Anchorage. We do indeed have such a program, and it has been a smashing success.

The article, by Jessica Notini, found at www.mediate.com /articles/notini.cfn describes the benefits of small claims programs as observed by parties, administrators, and court personnel, as follows:

- Many cases settle, allowing judges to give more attention to difficult cases.
- When parties settle, they are often more satisfied with the result than with a court mandated solution.
- Mediated agreements result in a significantly higher compliance rate, and virtually no appeals.
- Parties feel that they have been heard and understood in mediation, even if the case does not settle.
- Venting in mediation often helps de-escalate emotions if the case continues to court.
- Rehearsal of information and documentation makes for more manageable and efficient hearings for those cases that do go on to the court.

As a participant in the Anchorage small claims project, I can vouch that our experience here has mirrored all of the findings from Notini's article. Particularly impressive has been the number of cases that do settle, often under circumstances less than ideal, and the number of parties who feel that the process has been useful even if they do not settle.

PARTICULARLY IMPRESSIVE HAS BEEN THE NUMBER OF CASES THAT DO SETTLE, OFTEN UNDER CIRCUMSTANCES LESS THAN IDEAL, AND THE NUMBER OF PARTIES WHO FEEL THAT THE PROCESS HAS BEEN USEFUL EVEN IF THEY DO NOT SETTLE.

"SAME-DAY" VERSUS "PRE-HEARING" MEDIATIONS

Notini's article goes on to discuss the different kinds of small claims mediation models in use around the country, with particular emphasis on the "same day" versus "pre-hearing" models of mediation. The same-day mediations happen shortly before trial, on the same day, whereas "pre-hearing" mediations happen on a day prior to that set for mediation, from as little as a day before trial to as much as months in advance of the trial. Both models are used extensively around the country, and both have been well received, although there do seem to be some noteworthy differences. Differences include the ability to get cases to the table, the quality of the process, and settlement rate.

The Anchorage program currently follows the same-day mediation model, though it has experimented with mediation sessions held one to three days before trial. These experiments were not particularly successful, due to the difficulty in getting mediators and parties matched up and appearing at the same time for mediation. The results of the current process seem comparable with those found in similar programs around the country using the same day model.

GETTING CASES TO THE TABLE

It is easier to generate a caseload if the mediators go to the parties rather than requesting the parties to come to them. Parties who might not otherwise choose mediation will do so if it is convenient and seems to be part of the process on the day of the court hearing. Anchorage follows such a philosophy in using the same-day model. In each case in which both parties are present, the parties are directed out of the courtroom by a law clerk prior to the start of trial to meet with a mediator and determine if mediation is a viable alternative. It is up to the mediator to complete the explanation of the benefits of mediation to the parties and to move them along into a mediation session.

QUALITY OF THE PROCESS

Many mediation purists, along with some program administrators, assert that the quality of the process is lower for same-day cases. Explanations for such lesser quality include:

Parties engaged in same-day mediation are under significant time pressures,

Physical facilities may be cramped,

Parties may be mentally prepared and disposed to see the judge, and,

Unskilled mediators may respond to such pressure by using more heavy-handed and evaluative tactics.

Some refer to such mediation cases as "shotgun mediation," in a pejorative sense. Nevertheless, statistical studies have shown settlement rates for same-day cases in excess of 50%, while party satisfaction with the mediation process remain high. In contrast, the settlement rate for "pre-hearing" mediation programs runs to 75% and even higher in some programs.

MOST SIGNIFICANT OF THE STATISTICS CONCERNING THE SMALL CLAIMS MEDIATION PROGRAMS AROUND THE COUNTRY HAS BEEN THE LEVEL OF SATISFACTION BY THE EFFECTED PARTIES, INCLUDING PARTIES, COURT ADMINISTRATORS, AND THE COURT ITSELF.

TRAINING, EXPERIENCE AND CONTINUITY OF THE MEDIATORS

All of the program administrators interviewed for Notini's article suggested that it is particularly important to use skilled mediators for "same-day" mediations. This is due especially to the pressures under which such mediators must operate. My own experience is that mediation experience is particularly important in surviving such a fast-paced mediation process.

Many of the mediators in the Anchorage mediation program are not highly experienced, and use the program as a good way of acquiring such mediation experience. One way of overcoming the experience problem is to use a co-mediation process to pair less experienced mediators with those with more experience. This is done in Anchorage in an ad hoc fashion, and has been quite successful.

One of the issues that arises quickly in the context of mediation quality is whether the mediators are paid or volunteers. Experienced mediators, not surprisingly, are less likely to want to work as unpaid volunteers, at least in the long run. This is a primary reason that I have not been more personally involved with the Anchorage program, at least recently. While I volunteered initially to help the program get going, since the program has been successful I have been more than happy to let the newer mediators in town use it as a source of gaining experience. Indeed, the Anchorage program has been a godsend to the many new mediators I have known who are always asking me where they can get more mediation experience.

With respect to training, it is common in programs around the country to require a minimum of 20-30 hours of mediation training. The Anchorage program does that average one better; it requires self-certification of at least 40 hours of mediation training to participate as a mediator in the program.

SATISFACTION

Most significant of the statistics concerning the small claims mediation programs around the country has been the level of satisfaction by the effected parties, including parties, court administrators, and the court itself. The rates reported for client satisfaction have consistently exceeded 90% in the few studies that have been done, including those parties whose cases did not settle. While I am unaware of any formal studies undertaken in Anchorage, the satisfaction level has been clear, most notably from the court itself, which has gone from lukewarm to enthusiastic support for the program during the approximately two years of its existence.

HOW TO GET FURTHER INFORMATION ABOUT THE ANCHORAGE SMALL CLAIMS PROGRAM

It is way too late in this article for me to be giving credit to the originator and guiding light of the Anchorage Small Claims Mediation project, Mr. Rick Barrier. Rick, who is not an attorney but who did previously work for the Alaska Court System and is aware of its strange ways, is the individual who practically single-handedly created and has managed the Anchorage program from its inception.

As noted above, the Anchorage program, under Rick's gentle supervision, has gone from a small experimental program tolerated by all but a few judges, to a program that is now enthusiastically accepted by all of the Anchorage District Court. The court has even dedicated a significant amount of its own resources to help coordinate the day-to-day management of the program, especially with the help of a few enthusiastic and dedicated District Court law clerks. For more information about the Anchorage program, or to volunteer as a mediator, contact Rick Barrier at 250-5698.

NERA survey of corporate legal spending finds outside counsel spending expected to slip in 2002

How will U.S. corporations adjust their spending on outside legal counsel in 2002? Will the recession rein in spending, or will economic factors be less of a concern, as businesses call on outside firms more to help navigate through a changing regulatory landscape and rising litigation?

It turns out that companies may be headed in both directions, according to a new survey on law department spending by National Economic Research Associates (NERA).

IT LOOKS AS IF THE CONTRACTION IN LEGAL SPENDING IN SOME AREAS BY THE COUNTRY'S LARGEST CORPORATIONS, WILL NOT BE AS MASSIVE AS SOME HAVE FEARED IN THE WAKE OF RECENT ECONOMIC AND GEOPOLITICAL EVENTS.

In its first-annual "Legal Leading Indicators" survey, NERA found that more than a third of the county's largest corporations (38 %) say they plan on decreasing their spending for outside lawyers, although the decrease is not expected to be dramatic. The percentage of spending on outside counsel, as a share of overall spending, is expected to slip from 53.5% in 2001 to 51.6% in 2002. At the same time, 23% of companies projected an increase in outside law firm spending.

Even the projected decrease is not across the board. For a few key specialties, notably labor & employment and regulation, the percentage of companies that anticipate increasing outside legal budgets was greater than those anticipating a decrease. The same pattern emerged for international work — more companies than not expect to increase spending for legal work outside the United States.

It looks as if the contraction in legal spending in some areas by the country's largest corporations, will not be as massive as some have feared in the wake of recent economic and geopolitical events.

Staffing changes and changes in regulation are the most important factors influencing outside counsel spending next year, ahead of changes in the economy, and far more important than "threats of terrorism," which was cited as an important factor by only 2% of companies surveyed. For some, staffing changes simply means more in-house hiring. "We will be bringing in higher-level in-house talent," said one respondent to the NERA study. "More in-house counsel," echoed another, with "more focus and closer review of outside billings."

THE SURVEY SUGGESTS THAT THIS PAST YEAR FOUND MANY CORPORATE LAW DEPARTMENTS AT A CROSSROADS.

The survey suggests that this past year found many corporate law departments at a crossroads. When asked to compare current legal budgets with 2000, 48% of companies reported there had been an increase, while only 18 % reported a decrease. Looking ahead to 2002, 39 % anticipated that outside legal spending would decrease "somewhat" or "a lot", while 38% said that their outside legal spending would remain flat in the coming year.

The NERA survey was based on interviews with 302 firms with annual revenues of $500 million or more. Sixty two percent reported sales of least $1 billion and sixty-two percent of respondents identified themselves as chief counsel. Interviews were conducted from October 31 through November 20, 2001 — far enough past the terrorist attacks and far enough into the recession mindset so that a measured projection of 2002 spending could reasonably be made.

NERA, the world's leading economic research firm and an affiliate of Marsh & McLennan, provides economic consulting services to both in-house legal departments as well as many of the country's leading law firms. The study was undertaken in an effort to help their clients with their 2002 business planning. The survey will be conducted on an annual basis.

"NERA is not in the business of legal market research. In uncertain times, with memories of earlier recessions in mind, our aim is to make a modest contribution to our clients' intuition about what 2002 will bring"," explained Dr. Richard Rapp, president of NERA. "I was relieved to see that our news, while sobering, would not be altogether grim."

Here are some key findings from the first NERA Legal Leading Indicators Survey:

1. OUTSIDE COUNSEL SPENDING EXPECTED TO SLIP, BUT NOT DRAMATICALLY, IN MOST AREAS

The percentage of companies that anticipate reduction in outside counsel spending is greater than the percentage anticipating an upturn for every practice area except regulatory law and labor & employment. The most pronounced spread is in corporate transactions, where 20 % project a decrease in spending, compared to 13% of companies projecting an increase. But the spread was notable in general litigation spending as well, where 18 % projected a decrease compared to 12 % projecting an increase.

"Our litigation philosophy has changed to one of litigation avoidance," said one corporate legal officer in a typical explanation of why law firm spending will slip Another noted, "Current litigation will be completed, and we will not have additional litigation at the same level coming up to take its place."

In litigation, of course, it takes two not-to-tango; thus, projections of reduced spending may be a hope as much as a projection.

2. REGULATORY CHANGES AND STAFFING CHANGES CITED AS KEY DRIVER BY COMPANIES EXPECTING TO SPEND MORE

Among the 23% of respondent companies that anticipated an increase in outside counsel spending next year, the two most important single factors — more important than changes in the economy or the impact of terrorism — is "changes in government regulation" and "changes in legal department staffing. Meanwhile, prospects for change in accounting and commodity-trading regulations may likely increase in importance — and therefore in spending — as the extent of Enron's problems began to emerge.

3. COUNSEL EXPRESS AN INTENTION TO CONTINUE THEIR USE OUTSIDE COUNSEL IN KEY AREAS: NOTABLY ANTITRUST AND MERGERS

When asked about their potential to use outside counsel in 2002 by practice area, chief counsel express an intention to increase the use of outside counsel in several key areas, notably, employment and labor and regulation, and an expectation to continue their use of outside counsel in the areas of antirust and mergers.

4. INCREASE IN OUTSIDE COUNSEL SPENDING IN LABOR AND EMPLOYMENT

During the 1990s there was no letup in the amount of employee-related disputes, from discrimination to harassment to wrongful termination, and respondents apparently believe that an economic slowdown is promising more of the same. Seventeen percent of companies surveyed said they expected to increase spending for labor and employment matters in 2002. Other than "regulation," this is the only area of law for which the number of companies projecting an increase in outside spending was greater than those projecting a decrease.

What will drive increased spending? "Litigation and threatened litigation, employee complaints or the likelihood of complaints," said one corporate respondent. Overall, 93% of companies surveyed said they used outside counsel for employment and labor matters in 2001, and they anticipate no appreciable reduction or increase for 2002.

5. MORE INTERNATIONAL LEGAL SPENDING PROJECTED

It was no surprise, given the increasing globalization of U.S. business, that just over half (54%) of those surveyed report using outside counsel for matters outside the U.S. in 2001. While 39% of companies overall projected a decrease in outside counsel budgets for next year, when spending on international matters is broken out, only 10 % projected a decrease; 13% project an increase. Changes in corporate strategy are seen as a key driver in spending in this area. Of companies projecting an increase in their use of international counsel, 74% said changes in the company was a reason. Only 11% cited economic conditions, while 13% cited changes in the legal department.

NERA (www.nera.com) is a global economic consulting firm under the auspices of its parent, Marsh & McLennan Companies, Inc.

Justice improvement projects jump since 1995

The American Bar Association said in late December that a new report suggests that numerous justice reform activity is occurring throughout the U.S., with increased involvement from the public at large.

"Extensive justice system improvement activities are ongoing nationwide, according to the Summary of State and Local Justice Improvement Activities-2001 published by the ABA Coalition for Justice," said the association. The 184-page indexed report is based on a survey of courts and state and local bar associations in the 50 states. It includes updates on 17 key topics, as well as detailed responses received from the states.

The report says more than 1,201 areas of justice system improvement activity by courts, bar associations or bar foundations exist across the country. Activities include improving access, combating bias, establishing drug courts, improving judicial selection, enhancing jury duty, preserving independence, and making courts more user-friendly.

Outreach to non-lawyers also is increasing, says the ABA. Such "justice initiatives" include activities to improve justice that involve non-lawyer community representatives in two-way communication with lawyers or judges in citizen conferences, ongoing commissions, and town hall meetings. More than 330 such projects were identified by the survey, up from 34 in 1995.

"This is a better way to do justice reform," said Coalition Chair Burnham "Hod" Greeley, of Honolulu. "Community involvement brings fresh ideas and generates broader support for reform implementation, and, by so doing, strengthens public trust and confidence in the system and in the profession."

Virtually all states are addressing public trust and confidence in the justice system. Activities, many involving community, business and civic leaders, include steps to correct the justice system's perceived weaknesses and better communicate its strengths.

The Coalition for Justice is part of the ABA Justice Center and includes lawyers, judges and members of non-legal organizations. Its mission is to promote confidence in the justice system by engaging the public as partners with the bench and bar in specific projects to improve the system. In addition to the December report, other Coalition activities include an annual conference (the Forum on Justice Improvements); encouraging community-level discussions on justice through the Kettering Foundation/National Issues Forum network; outreach to national non-legal organizations; modest grants for projects arising from justice initiatives; and plain-language "Roadmap" booklets on key justice reform topics.

The association said the recently published study arose from a 1999 national conference it hosted with the Conference of Chief Justices, the Conference of State Court Administrators, the League of Women Voters and the National Center for State Courts, with support from the State Justice Institute.

The Summary report was edited by Paula Nessel and Jack Sweeney of the ABA Office of Justice Initiatives and is available from the ABA Service Center at 800/285-2221 for $12 plus shipping and handling. Order product code 1590003. Quantity discounts are available. The full report also is posted at http://www.abanet.org/justice. For more information, contact Paula Nessel at 312/988-5450, or e-mail paulanessel@staff.abanet.org.

Judge Wickersham ☐ Dan Branch

James Wickersham moved to the Alaska Territory in 1900 after President William McKinley appointed him a district judge. Working out of Eagle City, he traveled his circuit, by dog team or boat, hearing cases from Unalaska to Nome. In his spare time he collected territorial mercantile and saloon fees and used the money to construct his courthouse and jails.

In 1903 Judge Wickersham attempted to summit Mt. McKinley. Earlier that year he had loaded his court records into a dogsled and moved his headquarters to a new mining town named Fairbanks.

While serving Northern Alaska, he published a respectable series of case decisions that dealt with the problems of his day. There was the case of the Catherine Sudden, where the parties fought over the salvage rights to a derelict ship, surrounded by ice in the Bering Sea. (1 Alaska 607). Another case, *United States v. Richards and Jourden,* involved a charge of jury packing. (1 Alaska 613). Other cases dealt with claim-jumping and shipping problems on the Yukon River.

Generally, Judge Wickersham wrote with a straightforward style. He got right to the issues. In the summer of 1904, he issued a remarkably different decision in *McGinley v. Cleary*, 2 Alaska 269——a case that decided the fates of a one-quarter interest in the Fairbanks Hotel.

McGinley stands for the proposition that equity will not assist a gambler to recover loses at his own game. It is also, as you shall see, an interesting read.

2 Alaska 269, *McGinley v. Cleary,* (D.Alaska 1904)
District Court, District of Alaska, Third Division.
No. 125.
August 8, 1904.

WICKERSHAM: On the 29th of last November the plaintiff was, and for some time previous thereto had been, one of the proprietors of that certain two-story log cabin described in the pleadings as the "Fairbanks Hotel," situate upon lot 1, Front street, in the town of Fairbanks, Alaska.

The opening scene discovers him drunk, but engaged on his regular night shift as barkeeper in dispensing whisky by leave of this court on a territorial license to those of his customers who had not been able, through undesire or the benumbing influence of the liquor, to retire to their cabins. The defendant was his present customer. After a social evening session, the evidence is that at about 3 o'clock in the morning of the 30th they were mutually enjoying the hardships of Alaska by pouring into their respective interiors unnumbered four-bit drinks, recklessly expending undug pokes, and blowing in the next spring cleanup.

While thus employed, between sticking tabs on the nail and catching their breath for the next glass, they began to tempt the fickle goddess of fortune by shaking plaintiff's dicebox. The defendant testifies that he had a $5 bill, that he laid it on the bar, and that it constituted the visible means of support to the game and transfer of property which followed. That defendant had a $5 bill so late in the evening may excite remark among his acquaintances.

Whether plaintiff and defendant then formed a mental design to gamble around the storm center of this bill is one of the matters in dispute in this case about which they do not agree. The proprietor is plaintively positive on his part that at that moment his brains were so benumbed by the fumes or the force of his own whisky that he was actually non compos mentis; that his mental faculties were so far paralyzed thereby that they utterly failed to register or record impressions. His customer, on the other hand, stoutly swears that the vigor and strength of his constitution enabled him to retain his memory, and he informed the court from the witness stand that while both were gazing at the bill, the proprietor produced his near-by dicebox, and they began to shake for its temporary ownership. Neither the memory which failed nor that which labored in spite of its load enabled either the proprietor or the customer to recall that any other money or its equivalent came upon the board. The usual custom of $500 millionaires grown from wild cat bonanzas was followed, and as aces and sixes alternated or blurringly trooped athwart their vision, the silent upthrust of the index finger served to mark the balance of trade.

MCGINLEY STANDS FOR THE PROPOSITION THAT QUITY WILL NOT ASSIST A GAMBLER TO RECOVER LOSES AT HIS OWN GAME. IT IS ALSO, AS YOU SHALL SEE, AN INTERESTING READ.

They were not alone. Tupper Thompson slept bibulously behind the oil tank stove. Whether his mental receiver was likewise so hardened by inebriation as to be incapable of catching impressions will never be certainly known to the court. He testified to a lingering remembrance of drinks which he enjoyed at this time upon the invitation of some one, and is authority for the statement that when he came to the proprietor was so drunk that he hung limply and vine-like to the bar, though he played dice with the defendant, and later signed a bill of sale of the premises in dispute, which Tupper witnessed. Tupper also testified that the defendant was drunk, but according to his standard of intoxication he was not so entirely paralyzed as the proprietor, since he could stand without holding to the bar. Not to be outdone either in memory or expert testimony, the defendant admitted that Tupper was present, that his resting place was behind the oil tank stove, where, defendant testifies, he remained on the puncheon floor in slumberous repose during the gaming festivities with the dicebox, and until called to drink and sign a bill of sale, both of which he did according to his own testimony. One O'Neil also saw the parties plaintiff and defendant about this hour in the saloon, with defendant's arm around plaintiff's neck in maudlin embrace.

After the dice-shaking had ceased, and the finger-tip bookkeeping had been reduced to round numbers, the defendant testifies that the plaintiff was found to be indebted to him in the sum of $1,800. Whether these dice, which belonged to the bar and seem to have been in frequent use by the proprietor, were in the habit of playing such pranks on the house may well be doubted; nor is it shown that they, too, were loaded. It is just possible that mistakes may have occurred pending lapses of memory by which, in the absence of a lookout, the usual numbers thrown for the house were counted for the defendant, and this without any fault of the dice. However this may be, the defendant swears that he won the score, and passed up the tabs for payment.

According to the defendant's testimony, the proprietor was also playing a confidence game, whereupon, in the absence of money, the defendant suggested that he make him a bill of sale of the premises. Two were written out by defendant. The second was signed by plaintiff and witnessed by Tupper, and for a short time the defendant became a tenant in common with an unnamed person and an equitable owner of an interest in the saloon. The plaintiff testifies that during all this time, and until the final act of signing the deed in controversy, he was drunk, and suffering from a total loss of memory and intelligence. The evidence in support of intelligence is vague and unsatisfactory, and the court is unable to base any satisfactory conclusion upon it.

Above the mists of inebriety which befogged the mental landscape of the principals in this case at that time rise a few jagged peaks of fact which must guide the court notwithstanding their temporary intellectual eclipse. After the dice-throwing had ceased, the score calculated, and the bills of sale written, and the last one conveying a half interest in the premises signed by the plaintiff, he accompanied the defendant to the cabin of Commissioner Cowles, about a block away, on the banks of the frozen Chena, and requested that official to affix his official acknowledgment to the document.

Owing to their hilarious condition and the early hour at which they so rudely broke the judicial slumbers, the commissioner refused to do business with them, and thrust them from his chamber. He does not testify as to the status of their respective memories at that time, but he does say that their bodies were excessively drunk; that of the defendant being, according to the judicial eye, the most wobbly. He testifies that the plaintiff was able to and did assist the defendant away from his office without any official acknowledgment being made to the bill of sale. The evidence then discloses that, in the light of the early morning, both principals retired to their bunks to rest; witness Sullivan going so far as to swear that the plaintiff's boots were removed before he got in bed.

The question of consideration is deemed to be an important one in this case. Defendant asserts that it consisted of the $1,800 won at the proprietor's own game of dice, but Tupper Thompson relapses into sobriety long enough to declare that the real consideration promised on the part of the defendant was to give a half interest in his Cleary creek placer mines for the half interest in the saloon; that defendant said the plaintiff could go out and run the mines while he remained in the saloon and sold hootch to the sour-doughs, or words to that effect. Tupper's evidence lacks some of the earmarks; it is quite evident that he had a rock in his sluice box. The plaintiff, on the other hand, would not deny the gambling consideration; he forgot; it is much safer to forget, and it stands a better cross-examination.

The evidence discloses that about 3 or 4 o'clock p.m. on the evening of the 30th the defendant went to the apartment of the proprietor, and renewed his demand for payment or a transfer of the property in consideration of the gambling debt. After a meal and a shave they again appeared, about 5 o'clock, before the commissioner; this time at his public office in the justice's court.

Here there was much halting and whispering. The bill of sale written by Cleary was presented to the proprietor, who refused to acknowledge it before the commissioner. The commissioner was then requested by Cleary to draw another document to carry out the purpose of their visit there. The reason given for refusing to acknowledge the document then before the commissioner was that it conveyed a half interest, whereas the plaintiff refused then to convey more than a quarter interest. The commissioner wrote the ducument now contained in the record, the plaintiff signed it; it was witnessed, acknowledged, filed for record, and recorded in the book of deeds, according to law.

The deed signed by McGinley purports to convey "an undivided one-fourth (1/4) interest in the Fairbanks Hotel, situate on lot No. one (1) Front street, in the town of Fairbanks." The consideration mentioned is one dollar, but, in accordance with the finger-tip custom, it was not paid; the real consideration was the $1,800 so miraculously won by the defendant the previous night by shaking the box. Plaintiff soon after brought this suit to set aside the conveyance upon the ground of fraud (1) because he was so drunk at the time he signed the deed as to be unable to comprehend the nature of the contract, and (2) for want of consideration.

It is currently believed that the Lord cares for and protects idiots and drunken men. A court of equity is supposed to have equal and concurrent jurisdiction, and this case seems to be brought under both branches. Before touching upon the law of the case, however, it is proper to decide the questions of fact upon which these principles must rest, and they will be considered in the order in which counsel for plaintiff has presented them.

Was McGinley so drunk when he signed the deed in controversy that he was not in his right mind, or capable of transacting any business, or entering into any contract? He was engaged, under the ægis of the law and the seal of this court, in selling whisky to the miners of the Tanana for four bits a drink, and more regularly in taking his own medicine and playing dice with customers for a consideration. Who shall guide the court in determining how drunk he

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Please send in retention election survey

By Larry Cohn,
Executive Director,
Alaska Judicial Council

The public votes on November 5, 2002, deciding whether to retain seventeen judges. Alaskan voters will have more information about their judges than voters in any other state. Alaskans will provide this information from surveys, internet comments, letters and public hearings.

The Alaska Judicial Council will survey about 10,000 Alaskans including attorneys, peace and probation officers, social workers, guardians ad litem, CASAs, jurors and court employees. The Council supplements the survey information with data about appellate affirmances, remands, reversals, peremptory challenges, conflicts of interest, discipline and judicial caseloads.

In the next few weeks, all active members of the Bar with a U.S. address and all in-state inactive Bar members will receive their surveys. Bar members will have space to give detailed assessments of the performance of the judges standing for retention in 2002, and can give more general evaluations of judges standing in 2004. Past results suggest that one-third of Alaskan attorneys will return the surveys without further prompting. The Council mails a second copy of the survey to all attorneys who did not respond within about one month; typically, about one-fifth of that mailing results in a completed survey. Taken together, fewer than half of all attorneys will return their judicial performance evaluations.

Based on past results, those who respond to the survey will, on average, rate the judges very highly. For many, this will confirm that our merit system of selecting judges is performing well. To be sure, there are many reasons to think that they would be correct. The bar survey is not the only measure that suggests that our judiciary is hardworking and abundantly competent.

Yet, the response rate and the survey results will surprise anyone who has spent any measurable time on a golf course or in a downtown bar listening to attorneys complain that this judge reminds them of the queen of hearts or grumble that another judge has been affected by too many years of people standing up every time he enters the room. Perhaps these attorneys do not respond to the bar survey because, like loyal Philadelphia sports fans, they enjoy having something to complain about. A more troubling conclusion might be that they feel that their complaints will find a more receptive audience on a golf course or in a bar than they will with the Judicial Council or with the public. As to this latter conclusion, they would be wrong.

The Judicial Council is listening and so is the public. A study conducted by the American Judicature Society tracked twenty years of retention elections in Alaska. The study found a direct correlation between each judge's performance evaluation results and his or her proportion of yes votes in the corresponding retention election. The study also found that Alaska voters appear to find ratings from attorneys more persuasive than ratings based on other surveys. An exit poll conducted by AJS in 1996 determined that voters familiar with the Council's evaluations were influenced by the evaluations, were more likely to vote in a judicial election because of the information supplied by the Council, and felt that the availability of the information made judges more accountable.[1] The Council's own data also show that survey scores and retention votes are closely correlated.

Our system depends on providing the public with as much information as possible. The accuracy and legitimacy of the information provided by the Council are substantially dependent on the number of attorneys who respond to the Council's bar survey. Attorneys observe judges firsthand and have the training to evaluate judges' legal abilities.

The bar survey is not only important because it educates the public. The survey is important because it helps to educate the judges. The survey provides valuable and relatively detailed feedback on how judges may improve their own performance. It is undoubtedly difficult for attorneys, court staff, or others to tell a judge directly that he or she has problems with temperament, legal reasoning, diligence, or any of the other criteria. Bar surveys provide this opportunity. Conversely, the bar survey can serve to positively reinforce the performance of judges who excel.

While those familiar with mail surveys might conclude that a forty-six per cent response rate is a good one, it suggests a level of indifference not well suited to our system of judicial retention. Council plans to make its bar survey available on the internet in the future might help those attorneys who do not respond because the survey ends up as the ground floor for a tower of files and more pressing correspondence. For those whose failure to respond is more knowing, the Council, on behalf of the public and the judges, urges you to reconsider.

The Council's first bar survey will be mailed on or about January 24th. The Council requests that bar members return the survey by February 15th. We look forward to hearing from you.

[1] *Judicial Retention Evaluation Programs in Four States: A Report with Recommendations*, Kathleen Sampson and Kevin Esterling, American Judicature Society (1999).

Judge Wickersham

Continued from page 8

was at 3 o'clock in the morning, when the transaction opened? Tupper or the defendant? How much credence must the court give to the testimony of one drunken man who testifies that another was also drunk? Is the court bound by the admission of the plaintiff that he was so paralized by his own whisky that he cannot remember the events of nearly 24 hours in which he seems to have generally followed his usual calling? Upon what fact in this evidence can the court plant the scales of justice that they may not stagger?

Probably the most satisfactory determination of the matter may be made by coming at once to that point of time where the deed in question was prepared, signed, and acknowledged. Did the plaintiff exhibit intelligence at that time? He refused to acknowledge a deed which conveyed a half interest, and caused his creditor to procure one to be made by the officer which conveyed only a quarter interest; he protected his property to that extent. Upon a presentation of the deed prepared by the officer, he refused to sign it until the words "and other valuable consideration" were striken out; thus leaving the deed to rest on a stated consideration of "one dollar." Upon procuring the paper to read as he desired, he signed it in a public office, before several persons, and acknowledged it to be his act and deed.

Defendant says that the deed was given to pay a gambling debt lost by the plaintiff at his own game, and his counsel argues that for this reason equity will not examine into the consideration and grant relief, but will leave both parties to the rules of their game, and not intermingle these with the rules of law. He argues that they stand in pari delicto, and that, being engaged in a violation of the law, equity ought not to assist the proprietor of the game to recover his bank roll. It may be incidently mentioned here, as it has been suggested to the court, that the phrase pari delicto does not mean a "delectable pair," and its use is not intended to reflect upon or characterize plaintiff and defendant.

The plaintiff prays judgment that the transfer made to the defendant, Cleary, be vacated as fraudulent and void (1) because he was intoxicated at the time it was made, signed, and delivered, and (2) because no consideration was paid therefor. Equity will grant relief where the transfer of a valuable property has been fraudulently extorted, for a grossly inadequate consideration, from a person in such a state of intoxication as not to be in his right mind, or capable of transacting any business or entering into any contract. *Thackrah v. Haas,* 119 U. S. 499, 7 Sup. Ct. 311, 30 L. Ed. 486.

* * *

The evidence in this case raises the single question, will a court of equity set aside a deed made by the keeper of a saloon in payment of a gambling debt contracted by him to one of his customers when no other fraud is shown?

There are cases where courts will assist in the recovery of money or property lost at gambling, but this is not one of them. The plaintiff was the proprietor of the saloon and the operator of the dice game in which he lost his property. He now asks a court of equity to assist him in recovering it, and this raises the question, may a gambler who runs a game and loses the bank roll come into a court of equity and recover it? He conducted the game in violation of law, conveyed his premises to pay the winner's score, and now demands that the court assist him to regain it. Equity will not become a gambler's insurance company, to stand by while the gamester secures the winnings of the drunken, unsuspecting, or weak-minded in violation of the law, ready to stretch forth its arm to recapture his losses when another as unscrupulous or more lucky than he wins his money or property. Nor will the court in this case aid the defendant.

The cause will be dismissed; each party to pay the costs incurred by him, and judgment accordingly.

Redistrict webcast trial first for Alaska court; among first in nation

The statewide political redistricting case being heard in Anchorage is Alaska's first webcasted trial and one of only a handful to date in the nation. Early in the case, the court and the attorneys for both the prosecution and defense decided to webcast the proceedings because of widespread interest around the state and interest from other areas where redistricting efforts are challenged.

For this redistricting case, Sandi Mierop was the "official reporter" at *Bar Rag* press time, captioning the trial to the Internet using realtime technology. The technology instantly converts her stenographic notes into readable English text.

The trial testimony was displayed as it happened on www.webscriptlive.com, as well as to computers on the judge's bench and attorneys' tables. Realtime reporting is the only current method for actual voice-to-text translation. The trial, *In Re: 2001 Redistricting Cases vs. the Redistricting Board*, is a consolidated case involving 47 plaintiffs as well as the State of Alaska.

For more information, contact Sandi Mierop (907) 337-2221, sandi514@alaska.com.

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SOLID FOUNDATIONS

IOLTA grant applications due not later than April 2, 2002

☐ 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 2003 (July 1, 2002 to June 30, 2003) 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 2002 totaled $344,000.

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 2002 through June 2003 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.

Comments on a Bar Rag article?

Write the editor,

or e-mail us at info@alaskabar.org

Jay Rabinowitz in Juneau

By Judge Larry Weeks

Jay Rabinowitz periodically worked for the court in Juneau before he retired in 1997. After retirement he and his wife moved here. Despite retirement he asked to be assigned all kinds of work.

He was, and he did it all. He did misdemeanor and felony jury trials, child custody disputes, high profile constitutional cases and emergency Child In Need of Aid hearings. In the meantime, of course, he kept up the *pro tem* appellate cases.

Jay Rabinowitz (center) with the local-league court basketball team he formed in Juneau.

Most dramatic was his settlement work. He did 80-odd settlement conferences before he had one that didn't settle. He was not an uncompetitive man. He adopted some of Justin Ripley's techniques in settlement. He called lawyers at home at night. He called from his hospital bed in Seattle. He would say that he couldn't tell parties what the Supreme Court would do with their case if that court got the case eventually, but his opinion was... Coming from the historic figure that he was, it was a fairly effective settlement tool.

Jay Rabinowitz wasn't perfect. The words, "I apologize for ..." and "I made a mistake about ..." did not fall easily from his lips. He was sometimes hardest on those closest to him. However, the side he showed to the Juneau court was a courageous man, living in pain with a constant specter of mortality without complaint. He was ever willing to do anything and did it with humor and spirit and class.

There were many incidents that made the courthouse staff here willing to throw themselves down in the middle of the street on his behalf. Once he was all day in a settlement conference. He went without lunch and made a settlement happen. He then went immediately into a moot court where he had agreed to play the role of judge for a University paralegal class. My wife was a French Woman called as a witness in the case and she said he was funnier and wittier than anyone else in the room and a paragon of patience. So patient that at 8:00 p.m. when he gave the class a bathroom break, it looked to me like he was going to fade away in front of me. I provided him with what was probably the only microwaved chicken pot pie he ever had in his life and he was gracious and social as he ate it with his robe on in the jury room.

One of Juneau's hot button issues was whether the public could tape record meetings held by an outside mediator to resolve noise issues in town. Justice Rabinowitz decided the case after oral argument. He was using a walker at the time and his perfect wife and a caring secretary got him into the chair behind the bench and draped a robe around him before we opened the courtroom doors. It was SRO and he was at his best, questioning lawyers, inserting the cogent comment and being the professional that he was. The city paper ran an editorial afterwards praising his decision and he cut the editorial out and made copies for his family.

His manner was always to talk about what the other person was interested in. And it was done with humor and intelligence. He always challenged his clerks with conundrums and provocative questions. He talked sports with the jocks and knew what happened in last night's NBA or NFL game. He spoke with staff about their families and his love for and pride in his own family was palpable. He talked about politics with persons interested in politics. He was academic with the scholarly and cultured with those who appreciated art and music. All remember him as the person who knew what they knew about.

He had mostly been a distant, sometimes, uh, imperious figure for me through earlier years. We had some encounters that did not always end the way that I would have liked and he was not always right. His life here however, was an inspiration about how lawyers should work and how people should live.

He attended monthly (early morning) teleconferences of the first district judges. He contributed generously to all our special projects and voted on arcane subjects like whether Tenakee Springs residents should be flown in for jury service. He participated in swearing in ceremonies for new lawyers and CLE's at any request. Jay went to lunches in the clerk's office and was always willing to try a little cake and ice cream for someone's birthday.

His technique as a trial judge sometimes differed from what he had required as a Supreme Court Justice. Once we were discussing the problem of jury instructions so arcane that when you read them all persons who have the legal right to leave the courtroom get up and go. He said something like, "When I see the jurors' eyes start to glaze over I just sort of paraphrase." His demeanor in one Child In Need of Aid case in Barrow where he took a parent back into chambers alone to talk about the case during an evidentiary hearing resulted in his having to do a monthly report to the Tanana Valley Bar Association on frequency of ex parte contacts.

Once when a criminal defense counsel approached the bench during a jury trial and asked to withdraw after the state rested. Jay was perplexed. The lawyer said he'd just been informed that his client was going to take the stand and perjure himself and he felt he had to withdraw. Jay came into chambers and had the grace to say, "This is a decision that normally takes two years to make, how can they expect me to make it in five minutes?" He did, of course, and did it correctly and wasn't unwilling to test other judges to see if they knew the name of the Alaska case that described the answer.

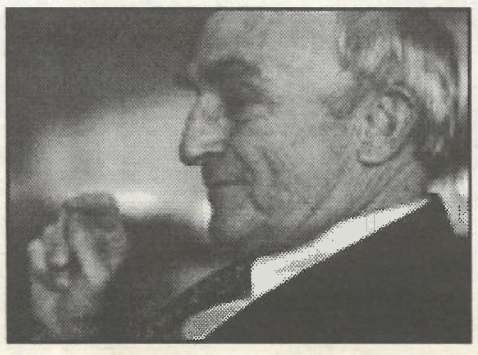
He wasn't as discreet in some ways after retirement as I had always considered him to be. His story of Governor Egan's appointing him to the Supreme Court was fascinating and explains some of the tension in that photo of the early Supreme Court. He told me who his smartest law clerk was (I'll never tell that competitive group) and of the clerk who plagiarized parts of a now famous opinion of his. He was willing to comment on Supreme Court opinions that came down each week that didn't measure up to expectations.

Justice Rabinowitz extended himself in personal ways for issues that he saw as important to the state or the court system. He sometimes testified before the legislature when he was so sick that that was all he was able to do on that day. He got out of bed to testify once when others hadn't come to Juneau to testify in person because he thought it important to say what he knew about election of judges. He manifested a deep commitment for the court system and the State of Alaska in everything he did.

Justice Carpeneti told of Jay's egalitarian approach to court ski races. He also fired up the court staff for a basketball team to compete(?) in the local league.

He had defeated the medical predictions so often that some people down here came to see him as invincible. On Labor Day week-end last year he had to have some surgery. He told the docs to just go ahead and take his appendix too while they were there. The next day he did a settlement conference. He had transfusions twice a week and the local doctor's staff was in awe of him. They begged for a photo of him in the Yoda mask that he was to wear for Kris Carlisle's retirement party. They wanted to make a poster of him for their wall. He called to cheer others who had serious medical diagnoses and encouraged the stricken who were only friends of friends, as well as those whom he'd known for years.

Jay talked about the last trip to Seattle, knowing that it was unlikely to produce a good outcome. It was the first time we'd seen him pessimistic. The last time I saw him was, appropriately enough, on a Saturday, in his office, just before he went down for the radiation treatment. He was gracious and kind and I went and got my wife so that we could all chat.



At his death the people in this building were numb. Not much work got done for a couple of days. And he would have been annoyed at that. We miss him. Not the judicial monument of 1200-plus opinions but the human being that was of the best of us.

His manner was always to talk about what the other person was interested in. And it was done with humor and intelligence.

In Memoriam

'Snow Tiger' was part of Alaska history

Edgar Paul Boyko and his wife Georgie (center) chat with Roger Cremo (right) at the Territorial Lawyer's Picnic in 1999.

Continued from page 1

active law practice, in a style all his own. He often said that a trial should be a performance for the jury, and his flair and flamboyance in the courtroom never left him. He was quick to use every advantage, from impeccable, pin-striped attire to working with consultants who used such esoteric "science" as body-mapping, astrology, and paranormal phenomena to screen juries. He used his failing eyesight to his theatric yet scholarly advantage, as he did his walking cane for dramatic punctuation in his elder years in the courtroom. Humor, however, was not one of his preferred tactics. "A laughing jury never convicts," he's said.

Wayne Anthony Ross first met Boyko in the courtroom more than two decades ago. "It was my first trial as a bright, young assistant A.G., one month out of law school, Ross remembers. Outraged by an adoption approved by the state under fraudulent circumstances ("a doctor with his 18-year-old mistress in who represented themselves as married to adopt the child...." Ross says), the young Ross entered the courtroom determined to set aside the adoption for the State of Alaska. And there was Boyko on the other side of the aisle. "He objected. He argued the 'best interest of the child.' He looked so distinguished. He won the case," says Ross. "By the time it was over, I felt 2 inches tall and was thoroughly convinced I didn't learn a thing in law school." It was the start of a long friendship.

"You could never intimidate Ed," said former Gov. Wally Hickel after Boyko's death. "I don't care if you were a judge, a jury, or what. He said what he believed."

Nor did he keep his opinions and advocacy in the courtroom. During the 1970s and 80s, he wrote an outspoken column of political and commentary in the former *All Alaska Weekly* newspaper in Fairbanks, dubbed "The Roar of the Snow Tiger." A long-time Democrat, that party's ideology didn't prevent him from supporting Republican candidates (like his old friend Hickel). And he joined the Alaskan Independence Party (AIP) in 1990, helping engineer one of the more bizarre gubernatorial elections, even by Alaska standards. When the Republicans chose a woman (Arliss Sturgulewski) during the primary election, the AIP found itself with candidates who had little name identification and little prospect of prevailing in November. They resigned, with Hickel and Jack Coghill replacing them on the ticket, winning the election by a whisker.

Boyko described himself as an "eclectic libertarian (with a small 'l')" in 1995, and in 1998 chaired a political group advocating for a ballot proposition requiring the state to use English only in its documents and dealings. Ballot Measure 6 was one of the more controversial propositions. "A common language is common sense," Boyko wrote in support of the measure in the election pamphlet that year. "As our state population is becoming more diverse, this bill will help keep Alaskans unified by a common language. Second, in the Alaska tradition of limited government, this bill will prevent the increased bureaucracy and costs due to offering documents and services in multiple languages.

"Opponents will try to scare you with misrepresentations and lies about what this bill does [but] you will see that it is a limit only on the government. Private citizens will still be able to use any language they want, anywhere, at any time. The bill also has commonsense exceptions for things like public health and safety, police work, international trade, and the teaching of foreign languages," he wrote, and would preserve Native languages.

"There are 105 languages spoken in Alaska homes. Our diversity can be a strength, but only if we have one common language so everyone can talk to everyone else. Learning English empowers people to get better jobs and to integrate into Alaskan society. Mastery of English helps immigrants increase their incomes by 30%. We need to help people learn English, not discourage them," he said, adding for good measure that "by making English the official language, we make sure that Alaska will not end up like California, where they offer driver's license exams in 33 languages. Other states may offer routine documents and services in dozens of languages, but that does not make sense for Alaska."

Boyko to be remembered March 1

Edgar Paul Boyko's colleagues are planning an evening in memory of the long-time attorney from 5 to 7 p.m. March 1 at the Captain Cook Hotel. "It will be an evening of a cash bar, story-telling, and snacks," says Wayne Anthony Ross. "Anyone from the bar is welcome."

Earlier that year, Boyko was given a special recognition career award by the Western Society of Criminology, the only individual to receive such recognition since the organization was formed in 1974.

The 1998 election was to be one of Boyko's last causes in law and politics. He'd been slowing down, even while recovering a law firm bankruptcy earlier in the decade after a firm partner embezzled funds. Money, though, was never what motivated him, said his old friend Ross. "He'd always take a case, no matter how poor the client was, if he liked the issue."

Boyko's last social event with the bar was in 1999, when he attended the annual Territorial Lawyers Picnic at the home of Roger Cremo in July. His colleagues from the old days knew the Snow Tiger was ailing, and awaited his arrival to mingle with others who have shared the Alaska's rich history over the decades. Soon after the convivial gathering, Boyko left for Seattle to be closer to specialized medical treatment and family. He was working on a book, but time ran out before its completion, said Ross, who talked with Boyko 10 days before he died. "The mind and spirit were sharp, but his flesh was weak," said Ross. "We've lost one of our most colorful lawyers."

Mitch Schapira, a Boyko friend of 26 years, said of his mentor, "A great Alaskan is now gone. Those who knew him are enriched by the fact that he walked among us." As for Boyko, he told the *Daily News* in 1995 that he hoped to be remembered "as the guy who usually represented the underdog."

He is survived by his wife of 35 years, Georgie Lee; 3 children, Colene Merbs, Georgena Newman, and David; seven grandchildren; and a great-grandson born Dec. 28. His son Steven was killed in a military accident in 1983.

— *Sally J. Suddock*

Clifford Harben Smith

Clifford Harben Smith, 59, died Jan. 17 at Swedish Hospital in Seattle.

Born to Clinton and Helen (Harben) Smith in Cathlamet, Washington, on Oct. 30, 1942, Smith grew up I the Skamakowa area of Washington State. He graduated from Western Washington University in Bellingham, and received his law degree from the Willamette University School of Law, Salem, OR.

Smith moved to Alaska after graduation from law school, and served as a policeman for a year in Juneau before passing the bar in 1968. He was a long-time attorney in Ketchikan, where he was one of the founders of the Ketchikan Bar Association, serving as secretary-treasurer.

The host of weekly convivial gatherings of the Ketchikan bar, Smith also enjoyed playing golf and fishing for halibut and salmon in Southeastern.

Clifford Smith is survived by his wife, Sally Ann Smith, of Port Ludlow, WA; his sons Brantley, of Portland, OR and Ethan, of Woodinville, WA; and his daughters Laura Lawrence, of Olympia WA and Elise Kertulla, of Poulsbo, WA. Also surviving him are his brother, Jack, of Naselle, WA; his sister, Joyce King, of Salem, OR; and grandchildren Alexander Lawrence and Natalie Smith.

Funeral services were held Jan. 21 at Skamakowa Methodist Church.

The family requests memorial donations to the Ketchikan Bar Association, 111 Stedman St., Ketchikan, AK 99901.

Herald E. Stringer

Former Anchorage Attorney Herald E. Stringer, 83, died December 12, 2001, at his home in Scottsdale, Arizona. He was a 50-year-member of the Alaska Bar Association and practiced law in Anchorage from 1946 to 1965. He was active in local political and civic affairs and was chairman of the Republican Central Committee in the early 1950's. He was elected to the Alaska Territorial Legislature as a representative from Anchorage in 1952. He was also active in the American Legion and was a Past Commander of Jack Henry Post #1 and a former National Executive Committeeman. In 1965 he accepted a position as National Legislative Director for the American Legion and moved to Washington D.C. He later served as Chief Administrative Judge for the Veterans Administration in Washington, D.C., until his retirement in 1983. He was predeceased by a son, Edward Stringer, in 1996. He is survived by his wife, Mary Ann Stringer of Scottsdale, Arizona, and a son, David H. Stringer, an attorney in Washington, D.C.

ESTATE PLANNING CORNER

Tax-free transfers in 2002 and beyond

☐ Steven T. O'Hara

This article summarizes various exclusions and credits that shelter gifts from transfer taxes. For purposes of this discussion, consider a client 80 years of age. He is single and a multimillionaire. He resides in Alaska. All his assets are located in Alaska. He has never made a taxable gift.

The client has four children and 10 grandchildren. One of the client's grandchildren is in college and has annual tuition of $20,000. Another is in medical school and has annual tuition of $30,000. Five of the client's grandchildren are in private elementary school. The annual tuition for each grandchild at the school is $5,000.

One of the client's children, and two of his grandchildren, do not have medical insurance. The annual cost of a good medical insurance plan for this family of three is $12,000. One of his uninsured grandchildren needs an operation that will cost $13,000.

The client would like to undertake an annual gifting program in order to reduce the size of his estate that could be subject to estate taxes. He wants to make the maximum amount of cash gifts that he can make for the benefit of his descendants without incurring any gift or generation-skipping tax. The client wants to keep things simple. He does not want to fund a family limited partnership and then gift interests in the partnership. He wants to make cash gifts only.

First, the client may use his gift-tax unified credit amount (known more recently as his gift-tax applicable exclusion amount). Effective January 1, 2002, this amount is $1,000,000 (IRC Sec. 2505(a)(1)).

This year the client could, for example, create a one-pot trust for the benefit of his descendants and immediately transfer $1,000,000 to the trust without incurring any gift tax.

The next transfer-tax shelter to discuss with the client is the gift-tax annual exclusion. Effective January 1, 2002, this exclusion is $11,000 per donee (*See* IRC Sec. 2503(b)(2)). In other words, this exclusion would allow our client to make annual gifts of up to $11,000 to each of his 14 descendants without incurring any gift tax.

The gift-tax annual exclusion is available only for gifts of "present interest." The exclusion does not shelter gifts of "future interest" (IRC Sec. 2503(b)(1)). Suppose in our example that the client does not want to give the $11,000 directly to each descendant. Rather, the client wants to transfer an additional $154,000 each year to the one-pot trust he has already funded this year with $1,000,000.

When creating the one-pot trust, the client could provide that the initial $1,000,000 is not subject to withdrawal by the beneficiaries. But he could provide that the $154,000 additional transfer to the trust in 2002 would be subject to each descendant having a $11,000 Crummey power. Recall that a Crummey power is a demand right with a limited life. Here each descendant is given the right to withdraw $11,000 by written demand made to the trustee within 30 days after the $154,000 transfer. If the descendant does not make the demand by that deadline, the Crummey power lapses and the cash relating to that power stays in the trust.

On a technical note, many Crummey trusts limit the beneficiary's Crummey power to $5,000 per year, for example, even though the gift-tax annual exclusion is currently $11,000. This restriction is often made in order to stay within the $5,000 *or five-percent* safe harbor that exists under the wealth-transfer tax system (O'Hara, *Estate Planning Corner*, Alaska Bar Rag p.18 (Sept.-Oct. 1999)). Here the $5,000 per year limit is not necessary because the trust has assets in excess of $220,000 (five percent times $220,000 equals $11,000).

Suppose under our example that we are now in July 2002 and the client has been able to transfer, on a gift-tax free basis, $1,154,000 in cash to a one-pot trust for the benefit of his descendants. Suppose the client wants to gift more, and he is not concerned about making equal gifts to each descendant.

The next transfer-tax shelter to discuss with the client is the exclusion for certain payments of medical expenses or tuition. Under this exclusion, *direct* payments of tuition or for *uninsured* medical care are not transfers for gift or generation-skipping tax purposes, regardless of the amount of the payments (IRC Sec. 2503(e) and 2611(b)(1)). Amounts paid for medical insurance on behalf of another are considered medical expenses for purposes of the exclusion (Treas. Reg. Sec. 25.2503-6(b)(3)).

CLIENTS HAVE A NUMBER OF OPTIONS IN UNDERTAKING ANNUAL GIFTING IN ORDER TO REDUCE THE SIZE OF THEIR ESTATES FOR TAX PURPOSES.

Two words in the preceding paragraph bear repeating. The first word is "direct." Direct payment to the educational organization or medical-care provider is required in order for the exclusion to apply (Treas. Reg. Sec. 25.2503-6(c)(Examples (2) and (4)). The second word is "uninsured." The exclusion does not apply to amounts paid for medical care that are reimbursed by medical insurance (Treas. Reg. Sec. 25.2503-6(b)(3)).

The educational organization must be qualified in order for the exclusion to apply. For these purposes, a qualifying educational organization is one that maintains a regular faculty and curriculum and has a regularly enrolled student body (Treas. Reg. Sec. 25.2503-6(b)(2)). The exclusion is not available for amounts paid for books, supplies, dormitory fees, board, or other similar expenses (*Id.*).

Therefore, under our facts, the client could directly pay each year — without incurring any gift or generation-skipping tax — the $75,000 in tuition that his family incurs each year. In addition, the client could directly pay each year the $12,000 needed for a good medical insurance plan for his three otherwise uninsured descendants. He could also directly pay for his grandchild's $13,000 operation without incurring any gift or generation-skipping tax.

Clients may wonder where qualified state tuition programs fit within the various transfer-tax shelters. Qualified state tuition programs are sponsored by various states, including Alaska. These programs allow clients to shelter transfers into managed funds, for the benefit of designated beneficiaries, through use of the $11,000 gift-tax annual exclusion (IRC Sec. 529(c)(2)(A)(i)). Indeed, it is possible for a client to transfer to a qualified state tuition program — in a single year — $55,000 per beneficiary, without incurring any gift or generation-skipping tax (Prop. Treas. Reg. Sec. 1.529-5(b)). In other words, a client may elect to treat transfers made in one year to a qualified state tuition program as made ratably over five years (IRC Sec. 529(c)(2)(B)). If a client makes this election and then dies within the five-year period, part of the transfers made to the program will be included in the client's estate for tax purposes (IRC Sec. 529(c)(4)(C)).

Thus the foundation of qualified state tuition programs is the $11,000 gift-tax annual exclusion. Unfortunately, transfers into qualified state tuition programs do *not* qualify for the tuition exclusion under the gift and generation-skipping tax (IRC Sec. 529(c)(2)(A)(ii)).

In our example, the client has decided not to use a qualified state tuition program. He has determined it is more efficient from a tax standpoint for him to pay tuition directly to all schools. Then the payments will qualify under the tuition exclusion, which is in addition to the $11,000 gift-tax annual exclusion.

The client intends to use his $11,000 gift-tax exclusion by making annual gifts of $154,000 to the one-pot trust he has created for his 14 descendants. The client has determined that if he is not alive someday when tuition payments are needed, those tuition payments can be made either out of the one-pot trust or another trust funded at his death. If the trust would otherwise be subject to generation-skipping tax, the trustee could avoid this tax by using the tuition exclusion and paying the tuition directly to the schools. The tuition exclusion is not only available to individuals; it is also available to trusts subject to generation-skipping tax (IRC Sec. 2611(b)(1)).

In other words, if the client participates in a qualified state tuition program, then the client is using part of all of his $11,000 gift-tax annual exclusion for each designated beneficiary. To that extent, the client will have less shelter to make annual gifts to his one-pot trust. Moreover, for each designated beneficiary in the qualified state tuition program, the client may be giving up the opportunity for him or a trust to make direct tuition payments and thus qualify transfers under the tuition exclusion.

Clients have a number of options in undertaking annual gifting in order to reduce the size of their estates for tax purposes. The sooner they start gifting the more effective their gifting plans will be, since generally all the accumulated income and appreciation from the gifted property (as well as the gifted property) will be out of their estates.

Attorney Discipline

Marcus Paine disbarred for multiple unethical acts

The Alaska Supreme Court has disbarred Anchorage lawyer Marcus B. Paine (ABA Membership #8811209). The court accepted the sanction recommendation of a hearing committee and the Disciplinary Board.

The hearing committee found disbarment appropriate for a wide range of misconduct by Paine. The committee found that he engaged in a pattern of neglect and failure to communicate with his clients. He failed to account to clients for money that they advanced but that he had not earned with legal services, and he failed to refund unearned fees. He also failed to account to the Bar Association for funds received from clients although he was obliged to do so under a Supreme Court order issued during disciplinary proceedings. Paine was involved in numerous fee arbitration cases but violated arbitrator orders. He also violated disciplinary procedure rules by failing to answer the charges against him of unethical conduct. Paine acted dishonestly by making false statements to the Bar Association and by attempting, despite the Supreme Court's interim order, to keep secret the fees he received from clients.

The hearing committee found that Paine's misconduct violated duties to clients, the public and the legal system. The Supreme Court issued its disbarment order on November 26, 2001. The order is effective December 26, 2001. A public file is available for inspection at the Bar Association office in Anchorage.

Interested in Running for the Board of Governors, the Alaska Judicial Council, the ALSC Board or the ABA Delegate?

Nominating Petitions will be mailed to all active Bar members at the end of January. Nominations must be signed by 3 active Bar members and returned to the Bar office by February 15.

Think about getting involved. For more information contact Deborah O'Regan at the Bar office, 272-7469 or oregand@alaskabar.org.

Bar People

The law firm of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation has announced that **Cheryl R. Brooking** has become a shareholder of the firm, effective as of January 1, 2002.

Ms. Brooking's practice will continue to emphasize municipal, public finance, environmental and maritime law. She was admitted to practice in Alaska in 1992 and has been with the firm since 1996.

The firm was founded in 1967, and its offices are located in Anchorage, Alaska. The firm continues its diverse and comprehensive practice in the areas of public finance, business, securities, banking, commercial, environmental, real estate, labor, employment, municipal and state agency law, and civil litigation.

The firm is nationally recognized for its public finance practice and has a deep grounding in Alaska. Its members have served as Commissioner of Revenue, Director of Banking and Securities, Chair of the Alaska Permanent Fund Corporation and in other Alaska government positions.

Don't Miss the

2002 Bar Convention

in Anchorage!
Wednesday – Friday, May 15, 16, and 17
Hotel Captain Cook

Come to the convention –

- ✓ take a break from the usual grind
- ✓ network with peers
- ✓ fulfill your VCLE recommended minimum CLE credits

Convention Highlights

The Latest in Scientific Evidence!

- **Scientific Evidence: The Past, Present and Future**
  with **Edward Imwinkelried** from UC Davis School of Law – nationally known expert on evidence
- **"The Science Guys": Learn the Scientific Method and How to Use It**
  with **Jake Barnes** of Seton Hall Law School and a panel of legal experts
- **Scientific Evidence: Focus on Special Topics**
  with **Jake Barnes** and panel

Power Editing
with **Gary Kinder**, lawyer; best selling author of *Victim: The Other Side of Murder, Ship of Gold in the Deep Blue Sea* and *Light Years*; and advanced legal writing instructor

U.S. Supreme Court Update
with those fabulous Professors from UCLA and USC - **Peter Arenella and Erwin Chemerinsky**

Professor Erwin Chemerinsky

Professor Peter Arenella

NEW! Alaska Constitutional Law Update
with **Professor Erwin Chemerinsky**

Family Law Self-Help Center: A Program Update
A look at how the Alaska Court System is addressing pro se litigant issues in family law
with Center Director **Katherine Alteneder**

Therapeutic Justice: Innovations in the Administration of Justice
co-chairs **Judge Stephanie Joannides,** Superior Court, and **Judge James Wanamaker,** District Court, 3rd Judicial District

Ethics for Public Attorneys
with **Peter Jarvis**, Washington State Special A.G. for A.G.'s Ethics Committee and Bar Counsel **Steve Van Goor**

Bar Lunch with a Side of Ethics – Satisfy Your Appetite and Get Your Ethics Credit!
with Bar Counsel **Steve Van Goor**

State/Tribal Court Relations: Where Are We Now, Where Are We Going?
co-chairs **Justice Walter Carpeneti,** Alaska Supreme Court and **Donna Goldsmith,** Governor's Special Assistant for Rural Affairs

Litigating Emotional Damages Cases
with **Larry Cohen**, national consultant on brain injury and emotion damages claims and national speaker on litigation, Phoenix, Arizona, and **Ray Brown** of Dillon & Findley, Anchorage.

Legislative Update
A bipartisan panel discusses recent legislation.

A Special Program for New Lawyers
Watch for details!

Plus State of the Judiciaries Address, Bar Business Meeting and Lunch, Cocktail Reception, Awards Banquet, Poetry Reading, Hospitality Suite, 5K Fun Run/Walk and a Golf Tournament Fundraiser!

Reserve these dates on your calendar now:

May 15-18, 2002!
CLE and social events – May 15-17
Golf Fundraiser – May 18

Watch for your full-color brochure in early March!

Call us at 907-272-7469 or e-mail us at info@alaskabar.org for more details.

Legal technologies and computer hardware picks

Continued from page 1

the voice recognition output requires the most careful editing-ViaVoice has reached a level of usefulness where it's suitable for everyday use in the law office. I find that dictating into ViaVoice is sufficiently straightforward that it seems to facilitate thinking for persons like myself whose first drafts consist of thinking out loud rather than keyboarding. ViaVoice is one of those few "enabling" technologies that can make a real dent upon law office overhead and I found that using ViaVoice for routine dictation, even without mastering its powerful macro capabilities, allowed me to reduce clerical staffing, with resultant savings. Expect to spend several hours training ViaVoice to correctly interpret your peculiar speech patterns and another day or two learning how to set up macros to automatically bring up preaddressed letters and case styles. One of ViaVoice's primary in advantages is its use of a relatively sophisticated language model that results in generally more accurate context-sensitive speech recognition and more accurate recognition of correct homonyms . Voice recognition finally works in real time, with the output visible on the screen almost immediately after you dictate each word - if you have a sufficiently fast computer.

SEE RELATED TRENDS. PAGE 18

COST-EFFECTIVE DESKTOP COMPUTERS

Effective real time voice recognition technology is processor-intensive and requires what would have been serious, essentially unobtainable desktop computing power only a year or two ago. With the recent rapid decline in hardware prices and a nearly unprecedented increase an entry level computing performance, new mid-level desktop computer systems are generally more than fast enough. If you're considering the purchase of a cost-effective and highly effective new system, then I suggest that you look for a system that meets these criteria. You may need to custom order such a system but it should not cost you more than $800 or so, not including video display.

Joe Kashi

a. AMD 1.4 gigahertz or faster processor with a matching system board and that includes the ability to use DDR memory. More advanced system boards readily available the retail level enable you to add to your own desktop computer a second matched hard disk as part of a RAID disk array, redundant data protection technology that previously was very expensive and complex to implement. With 40 GB IBM hard disks costing perhaps $140 retail, protecting your data against hard disk failure makes a lot of sense.

b. Not less than 256 MB of 266 MHz double data rate memory. If possible, upgrade any new computer to 512 MB of 266 MB DDR memory - voice recognition is very memory-intensive. It's amazingly inexpensive to add another 256 MB at this time. Despite its apparently slower clock rate, DDR memory works just as fast as the much more expensive RDRAM RAMBUS memory used in Pentium 4 computers.

c. A good 7200 rpm UDMA mode 5 hard disk with 100 MB per second data transfer rate. I prefer IBM's hard drives for their generally excellent reliability and good performance. If you use two hard disks as part of a RAID disk array, then mount at least one of these drives in an inexpensive removable disk carrier - you can take one home with you at night as an inexpensive means of protecting your data against computer theft or casualty loss.

d. A capability to use the USB 2 packaged with ViaVoice Professional. My experience is that microphones connected to ViaVoice Professional through the USB port are more significantly accurate than microphones connected through a traditional sound card. If you're using the USB microphone connection, then you'll not need an exceptionally expensive sound card.

e. Unless you're heavily into video games, then any 8 MB or better ATI or similar quality video card will be more than adequate.

f. Modems and networking cards are, at this point, essentially generic products, almost all which work more than adequately.

g. Good quality UDMA CD-ROM drives are inexpensive and ubiquitous. Spending another $80 or so by say CD ROM writer, a useful adjunct in this era of very large files.

h. Sadly, hard disk capacity has far exceeded the current copy of backup tape drives priced for use with individual desktop computers. Tape drives are necessary - they're the only realistic and secure way to back and archive data. CD writers simply don't have the capacity needed to back up today's high capacity hard disks. Most suitable tape drives may end up costing more than the desktop computer itself - you can, and must, use such a tape drive to backup network data but the price becomes prohibitive for most desktop users. Among the less expensive drives, Travan NS-20 drives have a 20 GB maximum theoretical capacity for highly compressible data (not the norm) but tend to be slow, somewhat unreliable, and often difficult to use with more advanced operating systems like Windows 2000.

NOTEBOOK COMPUTER SYSTEMS

Along with the general decline in desktop computer prices, notebook computers-long the most expensive segment of the general PC market - have similarly tumbled. You'll be able to get a first class system from any of the best notebook computer system vendors - IBM, Fujitsu, Dell or Sony- for $1,200 to $2,000. A 900 - 1000 MHz processor and a 20 GB hard disk, power computing hardware essentially unobtainable on even the best desktop system two years ago, are now entry level notebook computing hardware.

Recently, another attorney in my office decided to purchase a notebook computer system and we researched available options. IBM and Dell certainly had comparable contenders but we settled upon a Fujitsu C series system. $1,900 bought a 1,000 MHz processor, a 40 GB hard disk, 512 MB memory, a combination DVD reader with CD writing capabilities, an excellent 15" TFT color display, internal Ethernet networking and modem, an optional three year warranty, and a spare lithium battery (spare batteries are really needed but not cheap). Given my own excellent experience with smaller sub-notebook Fujitsu systems, we decided upon the Fujitsu C series. Although the easy portability of a sub-notebook system would have been nice, this system was intended both as a home computer and also for use in court. Under those circumstances, the larger display, longer battery life and built-in CD-ROM drive of the full-sized notebook system became the deciding criteria. Just a few months later, prices for similar systems from first tier manufacturers such as Dell and IBM had already declined even more.

There are many persons, though, who prefer the easy portability of sub-notebook systems, generally defined as systems weighing 3 pounds or less and measuring perhaps 8" by 10" by 1.2". Of the sub-notebook systems, the Fujitsu B Series and the Sony SRX77 seem to come closest to an ideal balance of features and easy portability. The Sony SRX77 includes not only standard 10/100 Ethernet but also the newly standardized 802.11b wireless Ethernet and includes a CD drive, previously a costly option.

There's now an even smaller class of full featured subnotebook computers that almost merge into Palm Pilot size. These typically use low powered Crusoe processors and a wide aspect ratio 1280X600 screen. The Fujitsu P series system, at an amazingly small 2.2 pounds recently took Best of Comdex and I am amazed that Fujitsu could pack a full blown DVD/CD drive into such a small form factor. With Windows 2000 Professional and 256 MB, the P series sells for $1,699. A similar model with Windows XP and 128 MB costs $1,499. Truly amazing. The Sony C1 uses a 733 MHz Crusoe chip and includes high speed IEEE-1394 Firewire peripherals, a 20 GB hard disk, 128-256 MB RAM, and an integrated digital camera.

Regardless of whether you buy a sub-notebook or a full size portable computer, be sure to research your purchase thoroughly on the various manufacturers' Internet sites. The general life span of portable computer models seems to be about 6 months and specific product recommendations are inevitably obsolete and unobtainable by the time that you're likely to purchase a new system. Generally, portable computers are not readily upgradable except to add more memory. I usually plan upon a three to four year replacement cycle although that's likely to shorten as notebook performance climbs and prices plummet.

SHORT TAKES

Flat panel displays - For years, flat panel video displays have been touted as the replacement for bulky CRT monitors, but prices always been a significant deterrent to who did not require the greatly reduced desktop footprint of a flat panel display. Recently, I've seen flat panel displays from Viewsonic, HP and others first tier manufacturers sell for as $330 retail. Quality seems to be generally excellent among the first tier manu-

Continued on page 17

ANCHORAGE YOUTH COURT

WHAT: Anchorage Youth Court class registration.

WHO: Youth in grades 7-12 who are interested in learning about the law, and participating in youth court throughout their junior high and high school years.

WHEN: January 7 through 16, 2002

WHERE: Anchorage Youth Court office, 838 W. 4th Ave.

OTHER: Classes will be held at Service, Chugiak & East high schools beginning the week of January 21 through March 11, 2002.

INFO: Registration is limited to the first 30 students to register for each class.
Parents need to accompany their students to sign consent forms.
You may register at the AYC office from 2:00 PM – 6:00 PM.
There is a $25 non-refundable registration fee, which may be paid by either cash or check.

CONTACT: AYC office/Sally Bradshaw

PHONE: 274-5986

Legal technologies and computer hardware picks

Continued from page 16

facturers and I believe that flat panel displays are now a cost-effective mature technology whose time has come. As a practical matter, there's a very good chance that I'll replace some of our monitors with flat panel displays in the foreseeable future. Again, highly recommended.

Visioneer 8650 scanner - I've used HP scanners for years, sometimes with mixed results. Recently, I acquired a Visioneer 8750 scanner that combines a flat bed scanner and an automatic document feeder for about 60 percent of the cost of a comparable H P unit. Not only was the Visioneer unit significantly less expensive, but it set up much more easily and worked more reliably. The unit that I received included an earlier version of PaperPort scanning software but an inexpensive upgrade to PaperPort 8 provides greatly expanded capabilities. However, the included software does provide enough options to make it very suitable for home our occasional business usage. Again, a highly recommended package that works well and easily.

thinkDOCS " Intelligent Document Assembly & Automation" by Data Tech Software, Harrisburg, PA is one of the new breed of document assembly programs designed specifically for Microsoft word. thinkDOCS provide some good starting templates and a practical and powerful document assembly engine. Although there are a number of good document assembly programs on the market, we like the strong capabilities of thinkDOCS. Generally speaking, any document assembly program requires a very substantial input, staff time and expense of developing content designed for your particular practice, state and working style. However, thinkDOCS goes a long way toward reducing the trauma if you are a Microsoft Word user. This program is recommended. You can contact Data Tech Software at www.thinkdocs.com, 1-800-556-7526, fax 717-652-3222, toll voice 1-717-652-4344.

Copernic Summarizer is a most interesting and rather accurate document summarizing program from Copernic, the purveyor of Copernic 2001, a very efficient means of searching the Web using many different search engines. You can download a free basic version of Copernic at www.copernic.com and purchase products on-line. It works well with MS Word and Web documents.

Much as I hate to admit it, having used WordPerfect since 1984, many of the more useful and powerful add-in programs such as thinkDOCS, ViaVoice and Copernic Summarizer, are primarily designed for Word. At a minimum, it makes sense for any practicing attorney to be comfortable using both Word and WordPerfect, even if you intend to continue using WordPerfect as your primary word processing program.

System suite 4.0 - we'd been fans of Ontrack's utility software for years but the most recent upgrade, System Suite 4, does not seem to add much functionality aside from a software Internet firewall while creating erratic but stubborn problems that sometimes require a complete reinstallation. In some systems, the firewall works unobtrusively and well while on other systems, it makes any Internet access a real problem. For some reason that I haven't fathomed, System Suite 4 precluded use of any Windows 3.1 programs, including billing programs and West Premise legal research software, on some systems until the utility suite was completely uninstalled and replaced by the earlier System Suite 3. If you're already using System Suite 3, I recommend avoiding the upgrade for now.

Windows XP: Similarly, I recommend against using Windows XP, at least for the next several months. XP is an entirely new operating system that attempts to combine Microsoft's prior Win9x DOS based operating systems and Windows 2000, which is based upon a totally different Windows NT core. There have been numerous reports from highly sophisticated users who have found upgrading to XP to be a terribly troublesome experience. Older hardware often doesn't work, driver software for XP is not always available, and there are widespread reports that many programs act strangely or don't run at all. Upgrading an existing computer to XP seems to be the more troublesome experience but I've seen problems with new XP systems reported in the trade press. Even though it's more expensive, you're probably better off using Windows 2000 Professional for the next year or so until Microsoft gets rid of the inevitable problems with XP.

Alaska Bar Association 2002 CLE Calendar

Date	Time	Title	Location
January 15	8:30 a.m. – 3:30 p.m.	CINA: Active & Reasonable Efforts to Achieve Permanency CLE #2002-004 5.0 General CLE Credits	Anchorage Anchorage Museum
January 18	9:00 – 12 noon or 1:30 – 4:30 p.m.	Kenai Law Library Computer Research CLE #2002-009 2.75 General CLE Credits	Soldotna Kenai Peninsula College, Ward Bldg.
January 24 (NV)	8:00 a.m. – 10:00 a.m.	Off the Record – Third Judicial District CLE #2002-001 2 General CLE Credits	Anchorage Hotel Captain Cook
February 8	8:30 a.m. –12:30 p.m.	Parliamentary Law & Procedure: A Short Course CLE #2002-002 3.75 General CLE Credits	Anchorage Marriott Downtown
February 12	1:00 – 5:30 p.m.	Tourism, Recreation & the Alaska Environment: Update on Current Issues CLE #2002-011 4 General CLE Credits	Juneau Centennial Hall
February 21	1:30 – 4:30 p.m.	Ketchikan Law Library Computer Research CLE # 2002-12 2.75 General CLE Credits	UAS Ketchikan Robertson Bldg.
February 21	9:00 a.m. – 12:00 noon	Ketchikan Law Library Computer Research CLE # 2002-12 2.75 General CLE Credits	UAS Ketchikan Robertson Bldg.
March 1	10:00 a.m. – 12 noon	Update on International & Domestic Criminal Issues with Speedy Rice of Gonzaga University CLE # 2002-013A 2 General CLE Credits	Anchorage Marriott Downtown
March 1	12 noon – 1:30 p.m.	International Law Section Lunch Keynote: Speedy Rice CLE # 2002-013B .75 General CLE Credits	Anchorage Marriott Downtown
March 7	12:15 – 1:15 p.m.	Unbundling Legal Services: Meeting Family Law Client's Specific Needs and Making Money in Your Practice CLE # 2002-010 1 General CLE Credit	Fairbanks Rabinowitz Courthouse Jury Assembly Room/Courtroom 305
March 14 – 15	8:30 a.m. – 12:30 p.m.	Administrative Law Update CLE #2002-005 3.5 General CLE Credits	Anchorage Egan Convention Center
September 24	AM – half day	Sanctions, Contempt, and How to Manage the Out of Control Judge CLE #2002-003 CLE Credits TBA	Anchorage Hotel Captain Cook
October 23	Full Day	15th Annual Alaska Native Law Conference CLE #2002-008 CLE Credits TBA	Anchorage Hotel Captain Cook
December 6	8:30 – 10:00 a.m.	Ethics at the 11th Hour CLE #2002-016 1.5 Ethics Credits	Anchorage Hotel Captain Cook

"The past has created the present and in today's information age, technology is allowing us to do things we've never thought of, in ways we've never dreamed of, at speeds we've never experienced, with unprecedented accuracy and detail."

— Stuart A. Forsyth,

The legal futurist

Forsyth, who was the keynote speaker at the ABA General Practice, Solo & Small Firm Section 16th Annual Leadership Conference in Santa Barbara, CA, spoke how the internet gives instant access to information from anywhere and at any time.

As such, we are seeing in the legal field a global digital marketplace, which is customer driven and instantaneous. Services are becoming commodities. Clients have become more knowledgeable, diverse, demanding and they want access, control and personalization. In short, Forsyth sees clients of the future becoming the kings and queens of their own legal needs.

Time and place are slowly becoming irrelevant. The change is increasing along with complexity exponentially. Our lives, our careers, our jobs are changing according to him. Forsyth sees the internet doing to the legal profession what the printing press did to priests and rabbis.

The law office of the future could be a lawyer, a computer and a dog. The computer is there to provide the legal advice, the dog is there to keep the lawyer away from the computer, and the lawyer is there to feed the dog. There is potential for the disappearance of lawyers.

Do-it-yourself, self-service may be the future of law. In short, we're going to have to look how can we serve our clients better, faster and cheaper and create new value. As such, lawyers have to adapt to technology effectively and learn to respond quickly and adapt readily.

One thing we must remember is that the most venerable may prove the most vulnerable. As such, Forsyth suggests that all attorneys review their stated mission and purpose, how they provide value, the character of the firm, each firm's unique position, and what does it take for your law firm to succeed.

No one can truly predict the future, says Forsyth. Uncertainties lead to alternatives and probable futures. An event or action today may encourage or discourage a result. Just remember one person's preferred future is another person's nightmare and we must remember what made you successful today may not guarantee success tomorrow.

Success is where you have to continuously add value, think differently, and act beyond your tenure. Most of what you will need to succeed in the future, probably hasn't been invented today, so you must be able to adapt to change.

More information on Stuart Forsyth can be obtained at his website at www.thelegalfuturist.com.

—William G. Schwab

William G. Schwab maintains a small town general practice in Lehighton, PA. He is the editor of the GP Link Carbon County Bar Advocate and the Middle District Bankruptcy Bar Adversary. He may be reached at 610-377-5200 or schwab@uslawcenter.com

This article appeared in GP Link, a newsletter of the ABA General Practice, Solo and Small Firm Section.

Legal technology predictions for 2002

By Dennis M. Kennedy
TechnoLawyerpñüü

It's once again time to dust off the old crystal ball and peer into the future of technology in the legal profession. I see 10 clear trends for 2002. To round out this survey of the future, I also invited a panel of legal technology experts to add their best insights for the year ahead.

The result is a highly useful list of ideas, forecasts and analysis for the year ahead, especially for firms struggling with what to do in a time of uncertainty and a slow economy. As you plan your technology strategy for this year, this list will help you identify and address some key issues and supplement your own technology to-do list.

PART I: 10 PREDICTIONS FOR 2002

1. LOOSE SECURITY SINKS SHIPS

Security issues vaulted to the top of our concerns in 2001. From hackers to script kiddies to denial of service attacks, everyone became aware of security issues. With terrorism experts predicting outbreaks of cyberterrorism, you can't afford to drop your guard in 2002. No one, especially anyone with a full-time Internet connection, should be lax in their security measures. Add to the mix a virtual blizzard of e-mail viruses and indications that some hackers see law firms as a point of access to otherwise secure corporate information and the conditions are ripe for serious security problems involving law firms. Expect to see at least one major story of a law firm being hacked in 2002.

2. RESPOND RESPONSIVELY

People are more circumspect about travel these days. The result will be a greater focus on using technological alternatives to travel. Perceived performance drawbacks with videoconferencing and other options began to seem more tolerable in late 2001 as people weighed their concerns about physical safety. The current psychological state will create a demand for developments in videoconferencing and related options in 2002, with significant improvements likely to come in these areas. Watch, too, for innovative uses of NetMeeting and other Internet tools, including old Internet standbys such as message boards. The big surprise may come in growing use of instant messaging by lawyers.

3. MICROSOFT -- ITS OWN WORST ENEMY?

Over the last few years, the legal profession has largely turned into a Microsoft shop. There are benefits of that shift, but there are also costs. Office XP, for example, showed that Microsoft was willing to listen to lawyers' needs. On the other hand, there are growing questions about just how high the price we pay to Microsoft really is. Microsoft's controversial changes to its licensing policies ruffled more than a few feathers in 2001. Stories of security holes in Microsoft programs became routine as hackers and virus writers used Microsoft programs for target practice. However, the warning issued by the FBI in December 2001 about security problems in Windows XP may have marked a critical turning point in the Microsoft era. In fact, the most important security site for all of us to know may well be http://windowsupdate.microsoft.com. As a result, much attention will be paid this year to Microsoft and reliance on an integrated Microsoft platform. The problem: The antitrust case aside, there are few practical alternatives for most law firms. Nonetheless, look for more firms to investigate Open Source alternatives, such as Linux, the Netscape browser, e-mail alternatives to Outlook, and, perhaps surprisingly, the Macintosh platform.

4. E-MANAGING THE E-MAIL MESS

An interesting survey indicated that whatever the number of e-mail messages people received, whether ten or several hundred a day, they all concluded it was simply too many messages. E-mail is truly the "killer app" on the Internet, but things have spun out of control to the point where the phrase "e-mail management" seems like a bad joke. From managing your inbox to waging war against spam to the plague of e-mail viruses, it's easy to feel overwhelmed by e-mail. Add to that the difficulty of finding old e-mails when you need them. E-mail has already created storage and bandwidth problems for many firms. But the biggest issue for many firms is simply finding ways to ensure that e-mails are made part of the with the client "file." Expect firms to devote considerable time and resources to this issue in 2002. Unfortunately, there is no easy solution out there now, but I've heard of several companies focusing on this issue.

5. PERSONAL KNOWLEDGE MANAGEMENT POSSIBILITIES

E-mail is just one component of the information tidal wave that washes over lawyers every day. Try remembering whether you saw a case mentioned on a Web site, an e-mail newsletter, a discussion list, a phone call or by a colleague. It's not a matter of digging

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Legal technology predictions for 2002

Continued from page 18

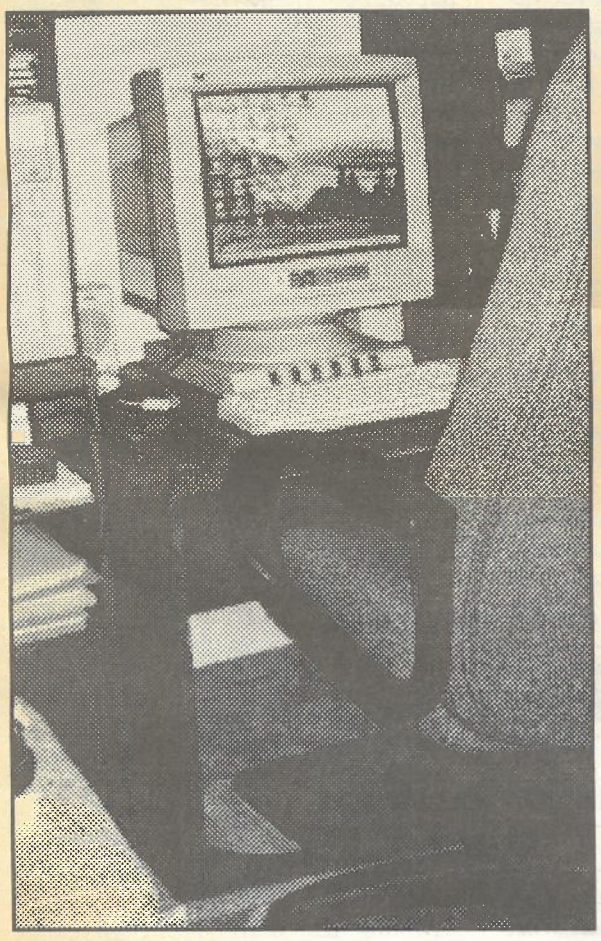
through a stack of papers on your desk or flipping through a legal pad any more. While many software companies are targeting the legal market with enterprise knowledge management tools, adoption of these enterprise tools in the practice at large is probably several years away. At the personal level, it's a different, and welcome, story. Look for new bookmark managers, personal search assistants and organization tools to appear throughout 2002. The dot-com collapse of 2001 took down some very promising tools in this category, but much interesting work is being done in this category.

6. WEB SITES THAT MATTER

Hey, I know, most firms and lawyers have a Web site by now. Here's a test: Go to your firm's site and try to use it just like you do any other site on the Internet. Then compare it to your favorite sites. See the problem? Take a look at the traffic statistics for your site. Are they what you hoped for? Is your Web site hurting you or helping you? People increasingly rely on the Internet for all kinds of information. The image your firm's web site creates for users speaks volumes about your firm. I expect to see by late 2002 a renewed emphasis on and evolution of law firm Web sites to be truly useful for both clients and the public at large and capture the benefits of being on the Web. Expect to see renewed emphasis on client services, delivery of professional services (as U.S. firms try to catch up with innovation in the United Kingdom and Australia in particular), extranets and, believe it or not, ways to generate revenue streams off Web sites through pay-for-content mechanisms and other innovations.

7. HOME COMPUTING DRIVES OFFICE UPGRADES

Lawyers who purchase home computers often find that, in addition to having a faster, more feature-laden machine at home than in the office, they are a generation of two ahead of their firms in software. If at home you are using Word XP and in the office you continue to use Word 97, you will at least feel a disconnect, if not outright frustration. Lawyers buying Palm and Power PC devices, e-mail pagers and wireless devices (or receiving them as gifts) put great pressure on firms to accommodate these devices on the office system. No technologically savvy lawyer likes to feels that technology tools hinder his or her practice. That feeling is likely to grow in 2002 and, from simple things like CD burners and scanners to handheld security issues and demand for new software versions, law firms will hear lawyers complaining about not being able to do the things they can do at home.



8. ECONOMY EMPHASIZES EXCELLENT DECISIONS

With a slow economy, law firms are faced with choices about technology spending. The natural tendency will be to pull back and reduce technology spending. This approach may be completely wrong for some firms and a wise choice for other firms, depending on how those decisions are actually implemented. How do you decide? That will be the big question in 2002. Much as in the stock market, a return to good fundamentals and a focus on return on investment is key. More important, however, is adopting a strategic approach that involves planning and equipping yourself with technology that will take your practice where you want to go. That will take time and effort, and probably a few disappointments, but there is definitely a cost of standing still. My best tip: Talk to your young lawyers and get them involved in technology decisions.

A law firm makes more money by increasing revenues or by reducing costs. E-mail can definitely make a contribution on the cost-cutting side. Keep your eyes open for opportunities to use e-mail in this fashion.

9. OUTSOURCING – A NECESSARY OPTION?

Many firms are lucky to find an IS staff that can maintain their network. To find and keep a staff that also keep up with security and other issues is extremely difficult. Expect to see many firms consider outsourcing network security and other traditional IS functions to third party vendors. Firms were rightfully wary of ASPs (application service providers) in 2001, but the trend for ASPs, software subscription models and outsourcing of certain functions has a certain inevitability to it. A tip: Firms probably do not want their IS departments signing standard outsourcing agreements without review by knowledgeable attorneys. It is not yet clear what the impact of storage of client data with or allowing potential access to client data by third party service providers will be on attorney-client privilege or confidentiality obligations.

10. WORKING THE WAY WE WORK

I've seen more signs that we are moving toward technology that works more the way we work. In the past year, I've used the excellent case management program, The MasterList, because it reflects in many ways the way I work. It has a project-oriented focus, a great way to "triage" to do lists and a good platform for dividing projects up into component tasks. Even better, a recent feature incorporates a mindmapping program that allows me to create the mindmaps (a form of visual outline) that I use for things like planning this article. Also, watch for continuing developments in handheld devices that reflect the ways that people actually work.

This article originated in The TechnoLawyer Community, a free online community in which legal professionals share information about business and technology issues, products, and services, often developing valuable business relationships in the process. To join the TechnoLawyer Community, visit http://www.technolawyer.com.

TWO TRENDS TO WATCH

1 AI: 2002 will see the beginning of some interesting artificial intelligence based applications moving into the legal profession. One of the most exciting developments in legal technology is based on technology developed by DolphinSearch and being implemented by Michael Kraft and his colleagues at New York-based Kraft, Kennedy & Lesser. This technology uses a pattern recognition approach that actually evolved out of years of research in dolphin communication. These applications have some fascinating possibilities, mainly at the large firm level at this point, and may address several of the issues discussed here.

2 Blogs: Some of the real energy on the Web can be found in the growing use of Weblogs or "blogs". Blogs are simple journals published, usually daily, on the Web. They can be used as mini-newsletters, places to collect thoughts and links and ways to provide news and other updates. Blogs are a true Web phenomenon and may have application in both internal knowledge management and external communication to clients and others. A great introductory resource on blogs can be found at www.well.com/user/ jd/weblog/roundup.html, or www.blogger.com

Paralegal Association News

The Alaska Association of Paralegals' web site is now on-line and 90 percent complete. Please visit us at www.alaskaparalegals.org. Our web site advertises monthly membership meetings and CLE opportunities. Our job bank has also gone on-line. Your best resource for filling a paralegal position at your firm is the AAP job bank. Contact Deb Jones at jonesd6@bp.com if your office has an opening for a paralegal.

At the present time, advertising your position opening through AAP is free of charge, and is a benefit to AAP members seeking new positions. Our statistics show that, on average, local employers used the AAP job bank 1.5 times per month during 2001. Our compiled data also shows that for the past several months, 10 percent of our membership is using the job bank when seeking new positions. This provides you, the employer, with an invaluable resource of experienced paralegals to fill your open positions.

VOLUNTEER SPEAKERS NEEDED

Do you have an hour or two that you would like to donate to educate local paralegals? AAP is looking for volunteer speakers for our monthly luncheons. Actual speaking time is approximately 30 minutes, with 10 minutes reserved for audience questions. Topics should be of relevance to the law, as AAP awards .5 CLE credits for attendance at our monthly luncheons. The luncheons are held the second Thursday of each month at noon at the Fourth Avenue Theater. Cost is $18 for non-members.

AAP also publishes a monthly newsletter. AAP welcomes the submission of any articles you may have written, if you would like to donate them for publication by our organization. Articles may be sent to Billie Johnston, newsletter chair, at djohnston@gci.net. We would also welcome any thoughts for CLE topics or volunteer attorneys to present CLEs. CLE topics should be related to and of interest to paralegals. For example, if your practice focuses on family law, you might volunteer to speak to our organization about how a paralegal can assist a family law attorney in preparing forms, a paralegal's role in divorce cases, etc. Our CLE committee chair is Julie Whitlock, jwhitlock-mendel@gci.net.

TechnoLawyer.com

The truth is out there: The growing importance of computer forensics

BY CHRIS SANTELLA

INTRODUCTION

Lawyers have sought traditional "paper" documents in the legal discovery process for hundreds of years. Yet lawyers 50 years ago, or five years ago for that matter, would have met with stiff resistance if they had requested Bill Gates' e-mail messages.

A by-product of our automated society is that many 21st century documents are not typed or handwritten. Instead, they are created using personal computers with word processing applications or e-mail programs. Most professionals rely upon personal computers to maintain journals and to create their written communications—and most computer users have become prolific writers because of the convenience that computers provide.

The result: more documentary evidence exists today than ever before, yet it exists only in electronically stored formats, and is read soley on a computer screen.

Modern technology has created new types of documentary evidence that previously did not exist. This is especially true for the creation of documents in a computer word processor. When electronic documents are created, bits and pieces of the drafts leading up to the creation of the final document are written in temporary computer files, the Windows swap file, and in file stack. The writer is usually not aware of this process.

Furthermore, when computer-created documents are updated or erased, remnants of the original version and drafts leading up to the creation of the original version often remain behind on the computer hard disk drive. Most of this data is beyond the reach or knowledge of the computer user who created the data. As a result, these forms of "ambient data" pose a valuable source of documentary evidence.

ACCEPTED PROCEDURE FOR INTELLIGENCE AND CRIME ENFORCEMENT EFFORTS

Electronic evidence discovery is essentially the mining of computer hard drives/servers for data, such as "deleted" files, temporary files, draft sequences, and other computer activity that might serve as discovery fodder. Litigators are beginning to understand the evidentiary value of this computer-related evidence in the document discovery process.

With this advance, it is becoming more common for lawyers to seek production of entire computer hard disk drives, floppy diskettes, zip disks and even cell phones and handheld computer devices. These new forms of documentary evidence have significantly broadened the potential for legal discovery, and have given birth to a new vocation: the computer forensics expert. These experts use sophisticated technology tools and investigative smarts to ferret out electronic smoking guns in a form that is acceptable for discovery purposes.

Government intelligence and law enforcement agencies have mined hidden computer storage areas for many years to uncover evidence. Computer forensics is regularly employed to root out tax evaders and child pornographers—and is being applied right now to track suspects and potential witnesses in the 9/11 attacks. The recent Microsoft trial, however, has helped bring computer forensics into the public eye in the context of civil litigation.

HOW ELECTRONIC DISCOVERY HAS MADE A DIFFERENCE

To give you a better sense of how electronic evidence discovery fits in to the discovery mix, I've compiled three case studies below, based on actual cases.

1. Disgruntled executive steals trade secrets. The board of directors of a technical research company demoted the company's founder and chief executive officer. Disgruntled because of the demotion, the executive was later fired, although it was subsequently determined that the executive had planned to quit about the same time he was fired and establish a competitive company.

ELECTRONIC EVIDENCE DISCOVERY IS ESSENTIALLY THE MINING OF COMPUTER HARD DRIVES/SERVERS FOR DATA, SUCH AS "DELETED" FILES, TEMPORARY FILES, DRAFT SEQUENCES, AND OTHER COMPUTER ACTIVITY THAT MIGHT SERVE AS DISCOVERY FODDER.

Upon his firing, the executive took home two computers and then returned them to the company four days later, along with the Company's computer he had previously used at home. Suspicious that critical information had been taken, the company's attorneys sent the computers to a computer forensics firm for examination.

Examining mirror image backups of the original hard drives, the computer forensics firm identified a file directory that had been deleted during the aforementioned four-day period that had the same name as the suspected competitive company the executive had established. A specific search of the deleted files in this directory identified the executive's "to do" list file, which indicated that the executive planned to copy the company's $100 million database for his personal use. Another "to do" item specified that the executive was to "learn how to destroy evidence on a computer." (He apparently was unsuccessful in doing so.)

The forensic firm's examination also proved that the executive had been communicating with other competing companies to establish alliances, in violation of the executive's nondisclosure agreement with the company. It also proved that numerous key company files were located on removable computer storage media that had not been turned over by the executive to the company. The company was able to settle with the executive for all that it had originally requested in its lawsuit.

2. Executive proved to have a history of sexually harassing employee. A woman employed by a large defense contractor accused her supervisor of sexually harassing her. She was fired from her job for "poor performance," and subsequently sued her ex-boss and the former employer. After making a mirror image backup of the ex-boss' hard drive, the computer forensics firm was able to recover deleted electronic messages that contained evidence that the ex-boss had a history of propositioning women under his supervision for "special favors." The woman got her job back, and the real culprit was terminated.

3. Doctor successfully defended in malpractice suit. Matt Catalano, an attorney with Wright and Kidwell in Midland, Texas, recently used the services of a computer forensics firm called New Technologies, Inc. (based in Gresham, Oregon) to successfully defend a medical malpractice suit. In the case, a physician was sued for wrongful death in connection with the installation of a stent to treat a patient's clogged artery. The hospital had a video apparatus that the physician used to conduct the procedure by taking full motion video x-rays of the patient's cardiac arteries. If the doctor saw something of interest, he/she could press a foot pedal to record brief segments of video or still images.

Images were recorded when the patient was initially assessed, when the stent was placed in the patient's artery, and while the patient was in cardiac arrest immediately prior to his death. When the suit was filed, the first and third series of pictures were recovered, but there was no record of the crucial second procedure—that of the installation of the stent. The plaintiffs alleged that someone (e.g., the physician) was hiding evidence.

"After running a number of tests on the video and image capture system (which included several PCs), we were able to show that due to the complexity of the apparatus, it would have been next to impossible for the physician to delete the images in question," Mr. Catalano said. "We were also able to show that it was the image capture hardware and software which were likely at fault. Had we not been able to illustrate that the physician had not tampered with evidence, we believe the jury would have been inclined to return a verdict against our client. NTI's investigation and testimony played a very significant role in our successful defense of this case."

AS COMPUTERS TAKE ON AN EVER-EXPANDING ROLE IN OUR LIVES, COMPUTER EVIDENCE -- AND ITS APPLICATION IN CIVIL LITIGATION-- WILL LIKEWISE INCREASE.

EVALUATING ELECTRONIC EVIDENCE DISCOVERY CONSULTANTS

As computers take on an ever-expanding role in our lives, computer evidence—and its application in civil litigation—will likewise increase. Computer forensics "experts" from a broad range of disciplines are springing up to meet this need. The experts best suited for your cases should meet the following four criteria:

1. They understand the technology and the discovery process. As implied above, the potential for computer forensics in civil litigation is tremendous, and the arena is attracting many new players. While discovery professionals and technology professionals both bring something to the party, you'll do best with experts who are facile with *both* disciplines, as they're closely entwined.

2. They should use the latest tools. The software tools computer forensics experts use to uncover electronic evidence are constantly being refined. Make sure that your experts are using the best available utilities.

3. They are investigators. Knowing how to find something is important. Knowing what to look for can be much more important. A computer forensics expert who can run a search and return to your office with a report indexing search results has some value. An expert with an investigative background who can partner with your firm to help define your electronic evidence strategies, and suggest alternative paths to isolating that electronic smoking gun, can be invaluable.

4. They work closely with counsel to control costs. While mega-cases may foster a "find the evidence at any cost" attitude, this is not the norm. Electronic evidence discovery costs are not insubstantial, and can escalate if not closely monitored. A reputable computer forensics consultant will work closely with lead counsel at the outset of a project to define the scope of the discovery effort, and will update counsel at regular intervals to provide reports on project status vis-a-vis initial estimates. This way, counsel can determine if further enquiries are merited...and there are no unhappy surprises when an invoice is submitted at the project's completion.

Among the many qualified computer forensics experts that exist are the following:

New Technologies, Inc. T: (503) 661-6912 W: http://www.forensics-intl.com

Electronic Evidence Discovery, Inc. T: (206) 353-0131 W: http://www.eedinc.com

OnTrack T: (952) 937-5161: http://www.ontrack.com

Electronic evidence is increasingly being used as documentary evidence in litigation. A powerful tool, it could be the key element in breaking open your next case—provided you retain the right computer forensics expert.

Chris Santella is a freelance writer and marketing consultant based in Portland, Oregon. He writes frequently on technology applications for the legal profession, on environmental topics, and on fly-fishing. (cdsantella@qwest.net) or at http://www.steelhead-communications.com.

This article originated in The TechnoLawyer Community, a free online community in which legal professionals share information about business and technology issues, products, and services, often developing valuable business relationships in the process. To join the TechnoLawyer Community, visit http://www.technolawyer.com.

Dividing the property of unmarried couples

☐ Steve Pradell

As more couples live together without the bond of marriage, the courts struggle to deal with the consequences of a break up. Although the emotional realities of these separating couples often mirror those going through a divorce, and custody rules normally are the same regardless of the marriage license, the court has adopted a separate test for dividing the property of unmarried couples.

On October 19, 2001, the Alaska Supreme Court issued its most recent analysis of this issue. In *Tolan v. Kimball*, Case No. 5490, the Court reviewed a relationship which began in 1989. Property was purchased with title in the name of Ms. Tolan only in 1990, and the unmarried couple resided there until 1997. During that time, the property value increased by $102,000. There were disputes by the parties about how funds were used to pay for certain expenses.

The Court affirmed the superior court's finding that the parties had made "an informal, express agreement under which Tolan considered [Kimball's] contributions of cash and labor as an 'investment' in the house equal to one-half its value."

Citing *Wood v. Collins*, 812 P. 2d 951 (Alaska 1991), the Court reaffirmed Alaska's analysis, taken originally from a prior Oregon ruling, holding that "courts, when dealing with the property disputes of a man and a woman who have been living together in a nonmarital domestic relationship, should distribute the property based upon the express or implied intent of those parties."

THE LINE OF CASES IN THESE MATTERS MAKES IT CLEAR THAT THE UNMARRIED OWNER OF REAL PROPERTY SHOULD NORMALLY TAKE STEPS IN ADVANCE IN ORDER TO PROTECT HIS OR HER INTERESTS.

The Court rejected a rule that title or possession equals ownership, but held that an express refusal to add an unmarried cohabitant's name to a title could be an indicator of intent not to share an interest of the property. The Court noted the unfairness of a rule, which held that a party who has title, or in some instances has possession, will enjoy the rights of ownership of the property concerned, as this tends to operate either purely by accident or perhaps "by reason of the cunning, anticipatory designs of just one of the parties." The court rejected a statute of frauds argument by Tolan, stating that this is a defense only to a contract cause of action, not to an analysis under *Wood*.

The line of cases in these matters makes it clear that the unmarried owner of real property should normally take steps in advance in order to protect his or her interests. Simply relying on the name in which property is titled may not be enough if a superior court later determines a different intent on the part of the parties.

©2001 by Steven Pradell. Steve's book, The Alaska Family Law Handbook, is available for family law attorneys to assist their clients in understanding domestic law issues. Orders can be placed through Todd Communication.

Emerging legal needs of Alaska's immigrant and refugee communities discussed at summit

By Robin Bronen, Director, Catholic Social Services' Immigration & Refugee Services Program

While Alaska is known as a place of extreme weather and stunning beauty, few people know of our growing immigrant and refugee community, whose members reside in some of the most remote areas of the 586,000-square-mile state. Thousands of refugees from El Salvador live in Kodiak, an island community dependent on commercial fishing about 45 minutes by jet south of Anchorage. Hundreds of refugees from the former Soviet Union live in Alaska's interior, and hundreds of immigrants from Mexico, Laos, Russia, Cambodia and Somalia work in fish canneries on the Aleutian Islands. Most of these communities are accessible only by air.

The Immigration & Refugee Services Program (IRSP) of Catholic Social Services (CSS) is the only nonprofit agency in the state providing immigration legal representation to these communities—and the need for the program's services—far outweighs its ability to meet the need. Among the immigrant population's most pressing needs are wage and hour issues for those working in canneries; legal representation in immigration proceedings; and certification and availability of interpreters when accessing the Alaska court system, legal service providers, medical care and social service agencies.

In an effort to better cope with the legal representation needs of Alaska's immigrants and refugees, the Immigration Law Section of the Alaska Bar Association and CSS's IRSP cosponsored a Pro Bono Summit for the bench and the bar on October 19, 2001, in Anchorage. The summit was a one-day conference devoted to a discussion of the emerging legal needs of Alaska's immigrant and refugee communities and to develop strategies to meet those needs. Forty participants attended, including law firm partners, members of the judiciary, the social service community and the Mexican consulate. Also attending were Christopher Nugent, director of the American Bar Association Pro Bono Development and Bar Activation Project, and Steven Lang, pro bono coordinator for the U.S. Department of Justice, Executive Office for Immigration Review.

The most important result of the summit was the establishment of an Immigrant Rights Coalition to address the social, legal and community needs of a growing number of immigrants throughout Alaska. The coalition held its first quarterly meeting December 4, 2001. "The coalition is an important vehicle," Nugent said. "You're starting at a place with a lot of credibility by bringing all the stakeholders together." Nugent said the Alaska coalition model is one that other states can emulate. To his knowledge, no other state in the union has brought all stakeholders together in a similar coalition.

THE SUMMIT AND THE RESULTING IMMIGRANT RIGHTS COALITION HAVE HAD AN ENERGIZING EFFECT ON MANY OF THE ATTORNEYS IN ATTENDANCE.

The summit and the resulting Immigrant Rights Coalition have had an energizing effect on many of the attorneys in attendance. "It was amazing to see all those people show up and say, 'This is an important issue'," said Jennifer Wagner, an attorney with Volland & Taylor, a general civil litigation firm with an emphasis on plaintiff litigation. Wagner said the gathering of members of the legal community—attorneys, judges, Public Defenders and Legal Services representatives—CLASE, a Latino community organization, and representatives from the Cambodian, Hmong, Thai and Dominican Republic communities, opened her eyes. "It's not just legal needs," she said. "It's about housing, access to the health care system, and much more." Wagner, who took her first pro bono case in 2000 and now serves on the IRSP Advisory Board, said Nugent gave the local pro bono attorneys several good pointers at a daylong retreat following the Pro Bono Summit. The discussion centered on what the IRSP Advisory Board can do to establish and maintain a bank of attorneys willing to volunteer at no charge. "It's a great area for new attorneys to get their feet wet with courtroom experience and actual client contact," Wagner said.

Another summit attendee, Bill Saupe, an Anchorage attorney with the firm of Ashburn & Mason specializing in regulatory and public utilities work, said the summit helped him understand better "the extent to which immigration issues cut through different disciplines." Although Saupe has been an IRSP *pro bono* volunteer for some time, he said the summit underscored IRSP's ability to assemble representatives from so many different areas and to recruit pro bono attorneys and other professionals. "The key thing is the leverage it gives IRSP," he explained. "There are just so many hours a day they (IRSP attorneys) can do this work."

Deborah O'Regan, executive director of the Alaska Bar Association, said hearing the stories told by private practitioners who have done pro bono immigration work greatly impressed her during the summit. "It was really interesting to hear them talk about their cases and how rewarding it was to them," O'Regan said. "Interesting and heartening that they put a lot into it—and got a lot out of it." The summit was educational as well, O'Regan said. She was surprised to find out that immigrants can be deported for merely being convicted with domestic violence. "It's such a draconian consequence," she noted.

Another result of the summit and coalition formation was the media exposure they drew in a state where little attention has been paid to the problems besetting immigrants and refugees. Many factors are to blame for the previous lack of media attention: Alaska's unique geography, isolated communities, lack of a road system and dependence on air travel all contribute to the invisibility of many of the state's pockets of immigrants and refugees. The state's three main cities (Anchorage, Fairbanks and Juneau) each have a daily newspaper, but elsewhere only a few weekly newspapers cover a few of the smaller communities. "The media in other states have woken up to the immigrant boom, but my sense is that with Alaska media, it's below the radar screen," Nugent said, reflecting on his visit to the state.

The creation of the Immigrant Rights Coalition is a critical first step for addressing the myriad of issues affecting immigrants and refugees residing in Alaska and to developing solutions, including the recruitment of pro bono attorneys. While the first meeting was devoted to those residing in Anchorage, future meetings will include immigrant and refugee communities throughout Alaska. It is imperative that these communities are linked so that statewide strategies for increasing pro bono legal representation are developed.

Office tradition

☐ William Satterberg

I am in my advancing professional years. My naivete has worn off. In fact, lately, I have found myself suspiciously looking back on those young pups that are lurking behind me, waiting to assume the position. I am also looking ahead to those who have gone on to the greener pastures of Florida and Arizona. So, it only makes sense that, as the last Christmas holidays passed, I considered an important aspect of my professional life - Office Tradition.

Over the years, the law firm has developed two primary traditions. One is the Annual Jim McLain Third of July Unlimited Watergun Fight, (or "brawl," for short). The McLain Affair actually started out as an impromptu Skillsaw Blade Throw. Following a barbecue and libations, intoxicated revelers would throw a sharpened Skillsaw blade at a five-dollar bill pinned to the outside of the office's garage. The stated goal was to split the bill in half and claim the prize.

Initially, the Skillsaw blade throw was my father's idea. My father had a well-known disdain for lawyers. This disdain developed shortly after I chose law as a career, which may explain why he selected such a hazardous game. After all, in retrospect, there was a certain degree of risk inherent in a bunch of lawyers playing catch with Skillsaw blades.

With time, the McLain Water Gun Fight evolved from the Skillsaw blade throw to a much more benign substitute, due to frivolous liability issues raised by my newest, yearly insurance carrier. Today, the Skillsaw blade throw is a thing of the distant past, although I think that Jim McLain, proud of his Scottish heritage, still misses the more gruesome risks of the contest.

In contrast, the McLain Unlimited Watergun Fight is a free for all. It is open for kids and adults alike. It always occurs in the office's backyard on the Third of July, which is still Jim's birthday. Stated simply, the battle involves everyone in the office trying to hose each other down. It is the one type of behavior that still makes me proud to say I'm a lawyer. After all, what could be more appropriate than hosing down clients, opposing counsel, and the occasional co-counsel?

Each year, the armament has improved, except, of course, for the last year of the Skillsaw blade throws. Originally, the watergun fight began with a cavalier toss of a cup of water, with a corresponding counterattack by me. The next year, with the advent of Super-Soakers, heavier artillery began to appear. Most recently, professional backpack forest fire fighting gear arrived on the scene. One summer, a young law clerk's father even had the audacity to drive up in his pick-up with a 500 gallon water tank and a gasoline-powered high-pressure pump. It marked the modern day equivalent of the evolution from medieval longbows to crossbows, and ushered in an entirely new era of office watergun combat.

EACH YEAR, THE ARMAMENT HAS IMPROVED, EXCEPT, OF COURSE, FOR THE LAST YEAR OF THE SKILLSAW BLADE THROWS. ORIGINALLY, THE WATERGUN FIGHT BEGAN WITH A CAVALIER TOSS OF A CUP OF WATER, WITH A CORRESPONDING COUNTERATTACK BY ME. THE NEXT YEAR, WITH THE ADVENT OF SUPER-SOAKERS, HEAVIER ARTILLERY BEGAN TO APPEAR.

Invariably, each year of the watergun fight, we invite some unsuspecting person to come to "Jim's Birthday Party." Usually, it is a lawyer. Usually, the lawyer comes directly from court and is appropriately dressed (for court, that is, and not a watergun fight). Such lack of preparation on the part of the victim, of course, makes the subsequent hosing down even more exciting. Next year, we plan to extend an invitation to the entire local judiciary. Maybe that will cause my staff to concentrate, instead, on someone other than myself. Not that I don't ordinarily enjoy their attention, of course.

A second tradition has also developed over the years. It is not as unique as the summertime tradition, but has its place. It is the office's Christmas party. It is not a single event. Rather, it is a continuation of events more like the New Orleans Mardi Gras. The festivities begin shortly after Thanksgiving, and take on a progressively crazier role as the New Year approaches. It usually ends about mid-April.

Without doubt, the most memorable office experiences have been the Christmas parties. They have run the gauntlet from a sit-down, formal affair, which, with wine and time, developed into something more akin to an organized encounter session, to the two, world-famous hot tub parties.

Yes, there have been two such hot tub parties: one at A Taste of Alaska Lodge, and one at Chena Hot Springs. Although I paid generously and even considered tipping the help at one point, neither location has ever invited us back. In between, we have had catered affairs at my family residence, which also threatened not to invite us back. We have also engineered diabolical takeovers of various restaurants, including Mexican, Korean, an exotic bar, and an establishment which I later discovered was the flagship of the Fairbanks gay rights community.

Ironically, our parties at the last two establishments were family affairs for the stated purpose of restoring respectability. The service at both was excellent. We actually held the party at the latter location on two consecutive years, until we were again politely asked to look elsewhere.

In retrospect, the hot tub parties were the best of the bunch. They are the parties about which people still talk to this day. Moreover, although there is an unwritten code that what takes place at the office Christmas party stays there, everybody likes to talk. I recently found myself being confronted by a local prosecuting attorney who told me grossly unfounded alleged rumors about alleged events which allegedly took place at allegedly one of our alleged parties which had me seriously considering the applicability of the Fifth Amendment.

Our first hot tub party was at the A Taste of Alaska lodge. Prior to then, A Taste of Alaska was a highly respected, secluded establishment situated on a serene hillside outside of Fairbanks. The lodge boasted of hosting such influential guests as the Boeing Aircraft Company, various once-famous rock bands, and other dignitaries. But, that was before The Satterberg Law Office.

Because there would be drinking that evening, and not wanting to be one to have friends, co-workers, and clientele busted for DWI's, unless they could pay in advance, the entire lodge was rented. Despite my protests, the lodge insisted on catering the meal, rather than allowing us to bring in take-out. There was to be our traditional Chinese gift exchange, followed by stylish dancing, quiet relaxation in the hot tubs, and pleasant conversation. At least, that was the plan.

The dinner went well, even though I would have preferred McDonalds, as in past years. Furthermore, there were no complaints with respect to the amount of available beverages, not that complaints would have changed anything. It was a BYOB, after all, but I did supply some limited beer. Everyone seemed to tolerate the Old Milwaukee well, even if it was left over from the previous year's party. The Chinese gift exchange also went off, as planned, again mainly with gifts left over from the previous years. Fortunately, because it was an adult party, the faces were not too red when the Chinese gift exchange began. Although the presents were quite unique and varied, very few were gifts that one would take home to grandmother. The gifts ranged from anatomically correct dolls, to obscure medical devices, to virtually anything, which one could imagine within certain greatly expanded realms of decency. About midnight, the weaker ones left, including my wife and children. The remaining revelers danced and "partied on." (One precocious staff member recently called the office "Bill's World.")

Eventually, the survivors crawled into the hot tub room where there were two bubbling hot tubs. Each was capable of seating six people. Despite the size of the tubs, when eighteen people occupied each of the tubs at the same time, certain space consuming features obviously had to go. In this regard, there is a law in hydraulic science that states that water is "practically incompressible." On that date, the law again won out. In short order, massive gallons of water were displaced from the tubs. By morning, there was scarcely one foot of liquid left in either of the tubs. Fortunately, one secretary's husband was left behind. Out of sheer dedication, he slept in the bottom of the shallowest tub to make sure that its pumps continued to operate. He clearly deserved a medal for his efforts. Still, to my surprise, the lodge owner was actually angry the next morning, despite the tub guard we prudently had left behind.

In retrospect, the party would have progressed well, except that the proprietress of the lodge had a previously undisclosed phobia against any types of smoking. In desperation, she appointed herself the "smoking police." In that capacity, she roamed the halls knocking loudly on everyone's doors that entire evening, like the ghost of a haunted castle. Throughout the night, she was heard through closed doors complaining that she could smell smoke coming from the various rooms, as the terrified occupants crouched together inside. Apparently, when confronted, some people quickly confessed that it

Continued on page 23

Writer's Guidelines

- Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- Format: Electronic files should be in text, Word, or Word Perfect format. Please use single spaces between sentences.
- Fax: 14-point type preferred, followed by hard copy or disk.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif or .jpg format.
- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.

Office tradition

Continued from page 22

was cigarette smoke, while others crowded into the bathrooms to take full advantage of the vent fans.

The next day it was clear that our concept of a party was not the same as the proprietress's. Bleary and red-eyed, herself, she had spent the entire night on patrol, only to discover in the morning that she did not have enough water left in the hot tubs to put out a fire in any event, once you removed the sleeping husband from Tub No. 1.

For the next several years, the office parties became much more refined. Again, the only predictable high point was the Chinese gift exchange. The exchange continued to run the gamut with the same gifts usually showing up each year.

Three years ago, everything reverted when the office took over a portion of the Chena Hot Springs Resort. The resort is owned by a client who cut us a good deal on several cabins, due to money allegedly saved on chlorine.

Once again, we planned a completely respectable, righteous party. And, as again unplanned, it turned into an adult free for all. As if on cue, those few late night survivors eventually found the resort's outdoor hot tub.

Some things are best left to the imagination, but I won't do that. That evening, there was a fourth-rate band playing in the lodge. The musicians were strategically silhouetted against the majestic backdrop of the moonlit hills of Chena Hot Springs, which were viewed through large, impressive picture windows. Although the office had claimed a substantial portion of the property for the annual party, we still could ill-afford to purchase the entire grounds. As such, we had to endure the presence of various other non-partiers. Because many of the non-guests acted as if they were staunch Republicans, we tried to avoid them.

The pools were scheduled to close at 12:00 a.m. that evening, long before our group had even found their swimsuits. Fortunately, a well placed financial tip to the lifeguard ensured that the tubs would remain open for an additional two hours. This was to provide entertainment for all. In retrospect, the lifeguard should have paid us for the privilege. As part of the agreement, I promised him that he could continue to sleep if he wanted.

At the end of the two hours, one giggling female party guest stumbled by the lounge's picture windows. The band was still playing for foreigners and locals alike, many of whom were enjoying the pristine Alaskan wilderness, the Northern Lights, and the stark seclusion of the Arctic. Still, there was a distinct lackluster in the band's performance. Buoyed by the advertised "Healing Waters of Chena Hot Springs," the attractive young lady faced her soon-to-be audience through the Lodge's majestic picture windows. Showing absolutely no shame at all, she then flashed the entire crowd. That a "flashing" occurred is an understatement. It was more of a spotlighting. The lady's performance was quickly applauded. Unaware of the impromptu show that had occurred outdoors, the band quickly took the credit.

There is no justice in the world. To my surprise, the pathetic band was invited back. Yet, for unexplained reasons, we were not. Fortunately, we usually only do hot tub parties once every three years. Although next year is the regular year for the hot tub party, I doubt if we will take over a remote lodge this time. Rather, we plan to use the local Fairbanks Athletic Club. After all, it regularly advertises availability for family Christmas parties. Of course, that policy could change in the future, as well.

Two other office Christmas traditions are the annual pre-Christmas/pre-New Year's Day closings. Various exotic wines are usually produced, along with delicious frozen hors d'oeuvres direct from Sam's Club. Socializing takes place. The events always occur on the pre-holiday afternoons, which invariably coincide with the usual, last-minute emergency injunctions, arraignments, police arrests, and stopped toilets. On more than one occasion, the quality of legal services rendered to clients on those dates has undoubtedly been somewhat less than our usual standard.

Ordinarily, the exotic wines are supplied by myself. Succumbing to my usual, well-discussed Christmas generosity, I always try to locate the best boxes of Fred Meyers' sale wine that money can buy. One year, however, I was unable to supply the wine. In a panic, our capable office staff recalled that local attorney and self-alleged wine connoisseur, Robert John, had stashed his growing rare wine collection in our basement storage room for safekeeping. Unused to bottled wine, the resourceful staff predictably had a heyday with Robert's vintages that were considerably less than cheap, once a corkscrew could be located. Had the staff known, it probably would have appreciated the quality more. When Robert discovered his involuntary contribution, he loudly impressed upon all of us the value of what had been consumed. Out of appreciation and respect, we decided not to invite him to the next year's party, but assured him that he could continue to use the office storage room, regardless.

One final comment about Christmas Traditions. A lawyer should never forget to reward to those who have sent referrals in the past. Several years ago, we recognized that one of the greatest sources of regular referrals were the local police. Not wanting to ignore those dedicated public servants who must protect our society even on the Christmas holidays, we instituted a policy of delivering donuts to the police agencies throughout Fairbanks on Christmas Eve. Usually, we use our newest office members, so that they can have their pictures taken and posted also, just like the rest of us. Each delivery is accompanied with a note thanking the agencies for "All of Your Kind Referrals".

ONE FINAL COMMENT ABOUT CHRISTMAS TRADITIONS. A LAWYER SHOULD NEVER FORGET TO REWARD TO THOSE WHO HAVE SENT REFERRALS IN THE PAST.

Initially, to our surprise, there was an uncalled-for suspicion in the agencies. This suspicion apparently developed when our load of donuts to the local drug unit was simply white sugared donuts. We did this to avoid any petty fights occurring over selection. Reportedly, the drug unit apparently did not see it that way, and thought that we had other, more nefarious intentions. The drug dog, however, was allegedly quite well-fed that night. Had we known of the unit's unfounded concern for powdered donuts and of the drug-dog's corresponding love for pastries, we likely would have sent chocolate donuts, instead.

Eventually, a truce was reached. As long as we agreed not to provide any "special brownies," the public safety agencies would look forward to their annual Christmas deliveries.

As the years pass, traditions come and go. Sometimes, a pattern develops before the first annual "whatever" becomes an expectation. As eclectic as the law firm reportedly is, it is my opinion that even our traditions have become boring and commonplace. Like those silly Christmas bonuses, for example. This year, I am of the firm opinion that it is time to eliminate wasteful traditions and to try something new. In fact, what better place to start than with the bonuses?

STATE OF ALASKA

Executive Proclamation by Tony Knowles, Governor

On January 27, 1981, Robert Keith Hickerson began what would become two decades of dedicated service to the people of Alaska and the Alaska Legal Services Corporation (ALSC).

Under Mr. Hickerson's tireless leadership, ALSC became one of the leading Native law practices in the nation, as well as one of the most successful law firms providing legal advice to and representation of low income people.

Despite drastic budget cuts, Robert Hickerson always ensured that Alaska maintained maximum service for Alaska's indigent people, especially those in rural Alaska.

In addition to his work in Alaska, Mr. Hickerson served on the board of directors of the National Legal Aid and Defender Association, where he worked to provide adequate funding for legal services for the poor.

The Alaska community joined other friends and family to mourn the death of Robert Hickerson on June 9, 2001. At the age of 50 he succumbed to a recurrent brain tumor.

Robert Hickerson was known as a terrific, compassionate, go-getter who always worked for the underdog. He was a fine lawyer and administrator, a loving husband and father, a wonderful friend, and a gifted athlete.

NOW, THEREFORE, I, Tony Knowles, Governor of the State of Alaska, do hereby proclaim January 27, 2002, as:

Robert Hickerson Day

in Alaska, and encourage all Alaskans to recognize the great contributions Robert Hickerson made to Alaska in ensuring equality for all the people of the state.

DATED: December 19, 2001

Tony Knowles, Governor
who has also authorized the seal of the State of Alaska to be affixed to this proclamation.

The History of the Anchorage Bar Association
From the Lido Bar to good deeds

By Pamela Cravez

Part 1

Before there was an "Anchorage Bar Association," there was just the Anchorage bar, a small group of lawyers who got together for lunch, drinks, poker, to exchange stories, arrange for weekend flying-fishing trips, and generally have a good time.

When Dorothy Tyner visited Anchorage in the summer of 1945 with thoughts of moving to the city to practice law, she met with the Anchorage bar. They wined and dined her, and offered to send cases her way. Afterwards, the eight men—about three quarters of the dozen or so lawyers in Anchorage—stood outside and memorialized their meeting with the attractive woman attorney by having a picture taken. Their easy camaraderie convinced Tyner to move and she became the first woman to open up a private practice in the city.

Tyner joined a diverse group of Anchorage lawyers. Some, like Ed Davis and Bill Renfrew, had law degrees. Others, like Stan McCutcheon, read law with a practicing attorney. Another, J.L. McCarrey, first came to Alaska in the 1930s selling silk stockings for the Utah Woolen Mills and later decided to become an attorney. He went back to law school in Utah and returned in the 1940s to open his practice.

Although backgrounds differed, most attorneys spent their days going to court, handling criminal work, domestic relations cases and small civil matters. Only a few, such as Davis and Renfrew, had a more business oriented practice. But not nearly enough to cause any great divisions in the small group of lawyers. Any professional adversarial relationships were easily tempered by a shared bottle of "Old GrandDad" or a good practical joke.

Where court rules and codes of conduct today define legal practice, in the 1940s lawyers depended upon a more personal approach. A phone call, a handshake, or a simple exchange of words often sufficed in legal transactions. Anchorage lawyers knew each other well enough to know how long it might take for one to get an agreement reduced to writing, or if another was going to have a hangover the next day in court. A contract between two parties did not need to be complicated by two attorneys when one would do.

The sole district court judge for the Third Judicial Division, Judge Anthony Dimond, had never been to law school. Like many who came to Alaska in territorial years, he began as a prospector. When an accident sidelined him, he took up the law, studying in a Valdez law office, practicing, and eventually gaining election to Alaska's voteless delegate seat in Washington, D.C. In 1944, Dimond received appointment to the Third Division bench. Judge Dimond presided over a casual courtroom, even refusing to wear a robe. His courtroom became even more casual when he traveled with the floating court.

Anchorage Bar Association, Inc.

FLOATING COURT

Every two years (in about May or June), the judge of the third division took a Coast Guard cutter from Seward to Kodiak and then all along the Aleutian chain, stopping periodically to hold court.

"They'd grant divorces in school houses, cabins. They held court in the weirdest places, any place that had a roof," said John Hellenthal, who traveled with Judge Dimond during at least one session of the floating court. The U.S. Attorney, or one of his assistants, private defense attorneys, a doctor and dentist often accompanied the court. At each stop people besieged court personnel with legal problems and papers accumulated since the court's last visit. Marriage certificates issued by the postmaster and validated with cigar coupons were replaced with more legally binding papers.

Trips on the floating court were not only an opportunity to do legal business and see a bit of Alaska but also time for socializing. That was the spirit in which the Anchorage bar did all its business. Weekly gatherings were as much drinking parties as business meetings or time for legal education. And no one exemplified the spirit of the Anchorage bar more than its leader, George Grigsby.

THE GRIGSBY ERA

When Cliff Groh, Sr. arrived in Anchorage in the fall of 1952 there was no "Anchorage Bar Association" with bylaws and a constitution. Still, lawyers met regularly at gatherings presided over by the "president" of the Anchorage bar, George Grigsby.

"He was a tyrant. If he didn't like you, you couldn't come to the bar," recalled Groh. "You sort of had to bring him a bottle of whiskey and set it on the table to cloak you with respectability."

Nearly every Anchorage lawyer met on Saturdays at the Lido Bar and Cafe. "Some of the troops would sit around and drink, go to Grigsby's office and play poker," Groh remembered. By 1952 Grigsby had been in Anchorage more than a decade and in Alaska more than five decades.

Grigsby first arrived in Nome in 1901 as an assistant to his father, Col. Melvin Grigsby, Nome's U.S. attorney. Although his father left the territory after less than a year, George remained and eventually served as Nome's district attorney and mayor. As Nome's gold rush wound down, Grigsby ran for political office, winning election in 1917 to become the territory's first attorney general. He relocated to Juneau and later moved to Ketchikan. Throughout the years, Grigsby became well known among Alaskans for his skill in the courtroom and gregarious nature.

Sensing Anchorage's growing importance, Grigsby moved to the city in the early 1940s. He arrived as the sleepy railroad town of 4,000 people transformed to a bustling construction site.

The building of the military base in Anchorage to support American involvement in World War II and post war developments nearly tripled Anchorage's population by the end of the decade. During the 1940s Anchorage also became the seat of the Third Division Federal Court, which had been located in Valdez until destroyed by fire in 1939.

The 60-ish Grigsby opened up his law office, taking court appointments and representing quite a few of the women conducting business in establishments with such quaint names as "Marie Cox's Chili Parlor."

Between his deft courtroom performances and a cutting wit, Grigsby quickly became the titular head of the small group of Anchorage lawyers. He regaled the Anchorage bar with stories from his four decades of practice in Alaska. In a city known for its transience, Grigsby embodied a sense of Alaskan permanence and color. Anchorage lawyers established a tradition of celebrating Grigsby's birthday at the same time they threw their Christmas party—not a family affair but one of generous toasts and long stories.

THE BAR DEBATES MCCARREY APPOINTMENT

Although the Anchorage bar continued its tradition of easy socializing into the 1950s, it also began to get more involved in professional matters. With nearly three dozen attorneys in town and a court docket noted for its multi-year backlog, attorneys began to want more control over the legal system and their business.

In 1952, when Dwight Eisenhower became president, all appointed positions in the territory—from postmaster to federal judge—were opened and Anchorage attorneys jockeyed for a say in who would be the next judge to decide their cases.

"The big argument in the bar was that they [might] appoint somebody from outside [of Alaska] to be the federal judge," remembered Groh.

Anchorage attorney Herald Stringer, who was also Republican national committeeman, searched for a suitable Alaskan candidate to recommend, but the search wasn't easy because most of the two dozen or so lawyers in Anchorage were Democrats. Former Anchorage mayor and fellow Republican John Manders seemed a likely first choice until Stringer learned of Manders' philosophical opposition to the income tax. Manders had refused to pay his income tax for years. Eventually Stringer settled upon J.L. McCarrey, Jr.

Stringer appealed to Anchorage lawyers to support McCarrey's nomination, but they refused. Groh remembered a secret ballot among attorneys at an Anchorage bar meeting that somehow made it into the *Anchorage Times* the under the headline, "Bar refuses to Endorse McCarrey."

A later vote of the bar, under Stringer's urging, provided a limp endorsement and McCarrey became judge.

The flap over McCarrey's endorsement—and his subsequent lackluster performance as judge—became an active topic of conversation among Anchorage bar members and at bar meetings. When Judge McCarrey began to publicly discipline members of the Anchorage bar, the bar decided to do more than talk.

Next issue: Discipline in the 1950s.

Did You File Your Civil Case Reporting Form? Avoid A Possible Ethics Violation

A reminder that civil case resolution forms must be filed with the Alaska Judicial Council as required by the Alaska Statutes and the Alaska Court Rules. The failure of an attorney to follow a court rule raises an ethics issue under Alaska Rule of Professional Conduct 3.4(c) which essentially provides that a lawyer shall not knowingly violate or disobey the rules of a tribunal. Members are highly encouraged to file the required reports since compliance avoids the possibility of a disciplinary complaint.