The Alaska BAR RAG

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Inside:

Court promulgates new pro bono rule

BY VANCE SANDERS & ANDY HARRINGTON

The Alaska Supreme Court, at the recommendation of the Board of Governors, has promulgated an updated version of Rule of Professional Conduct 6.1, on pro bono service.

The new rule tracks the version proposed by the ABA in 1993, and Alaska joins fourteen other states which have enacted that updated version of the rule (or a substantially similar version).

Q. Is the rule requiring pro bono work a radical change in the Code?

A. Not really. Both the former Code of Professional Responsibility and the prior version of Rule 6.1 in the Rules of Professional Conduct contained pro bono language.

The original Code of Professional Responsibility adopted by the ABA in 1969 included an "Ethical Consideration" 2-25 stating in pertinent part: "Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."

In 1983, the ABA promulgated Model Rule (of Professional Conduct) 6.1 which stated that a lawyer "should render public interest legal service," a responsibility which could be discharged "by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means." Alaska subsequently adopted this version of the Rule when it promulgated the Rules of Professional Conduct in 1993.

In 1993, the ABA revised Model Rule 6.1, and that is the version that Alaska has now adopted.

Q. What is different about the new rule?

A. Several things, which I'll summarize here and expound on below if you'll keep on asking such helpful questions. The new Rule quantifies the amount of pro bono work a lawyer should ordinarily plan to put in annually. It creates and prioritizes two categories of pro bono work. It clarifies the relationship between performing pro bono work and making financial contributions to organizations that serve the under-represented.

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Q. What is the amount of pro bono work specified under the new Rule?

A. Fifty hours per year.

Q. Isn't that a lot?

A. No. The majority of states that have enacted a particular quantity have used 50 hours. Some set less. Oregon uses 80 hours; D.C. uses 50 hours plus one court appointment.

Q. What are the two categories of pro bono work?

A: The highest priority, to which a "substantial majority" of the 50 hours should be devoted, requires that the work be done "without fee or expectation of fee" and be provided either directly to persons of limited means or to charitable, religious, civic, community, governmental or educational organizations in matters which are designed primarily to address the needs of persons of limited means.

Q. What is the second priority?

A. Well, I was just going to tell you. The second

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FINDING PEACE IN MEDITATION *— Page 14*

U.S. juries continue to award record verdicts in 2002

After a post-9/11/01 lull, jury awards skyrocketed nationally. Terrorist attacks may have impacted the size of awards in 2001, but not in 2002

Large jury verdict awards to individuals plaintiffs sagged considerably in the U.S. during the 12 months following the Sept. 11, 2001 terrorist attacks - but American juries' frugality disappeared, especially in the last part of 2002. Overall, jury awards surged in the latter part of last year.

Topping the list: a record-setting $28 billion award to a smoker in California. That verdict was nearly six times larger than the previous 2002 record verdict. A $225 million verdict against Ford that was one of the largest personal injury awards in history against an auto manufacturer, according to Lawyers Weekly USA, a legal newspaper that tracks large verdicts.

"There was an obvious change in U.S. courtrooms following Sept. 11 - big-money cases were either settled or their trials were delayed. But that impact was relatively short-lived, as the year ended with record setting jury awards last year. An unprecedented six verdicts of $80-million-plus came down in the last quarter of 2002," said atty. Paul Martinek, publisher and editor-in-chief of Lawyers Weekly USA.

The annual list of the Top Ten Jury Awards compiled by Lawyers Weekly USA was dominated by awards imposed against three groups that have traditionally been on the receiving end of large verdicts in recent years: tobacco companies, doctors and car makers. (The "Top Ten" list for 2002 actually included

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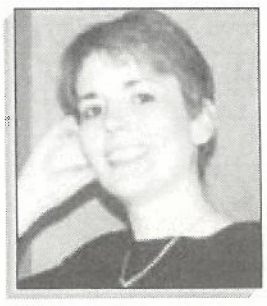
PRESIDENT'S COLUMN

Mark your calendar

☐ Lori M. Bodwell



Now that we are past the holidays and the 2003 calendar is prominently displayed, it is a perfect time to mark off May 7, 8, and 9, the dates of the 2003 annual convention.

Justice Antonin Scalia will be headlining this year's convention at the Fairbanks Princess Riverside Lodge. In addition to being the keynote speaker, Justice Scalia has agreed to participate in an appellate off the record moderated by Judge Ralph Beistline in a program that promises to be educational and entertaining.

The Bar has again worked hard to confirm a slate of nationally recognized speakers on topics applicable to a wide range of practice areas, including Dr. Gary Wells on eyewitness testimony, Dr. Peter Jaffe on how children's brain development is impacted by witnessing domestic violence, and of course, the ever popular federal and state appellate update with Professor Erwin Chemerinsky and new this year, Professor Lori Levenson of Loyola Law School.

You can also pick up your ethics CLE credit with an ethics update at "Lunch with Bar Counsel" or a rousing game of "Ethics Jeopardy" hosted by ALPS, or you can learn about the "Russian Rule of Law Project" or communicating with clients and other parties with FASD at "Fetal Alcohol Spectrum Disorders: How It Impacts Judges and Lawyers in Their Practice and In the Courtroom."

Without a doubt, the annual convention provides an inexpensive forum to fulfill the annual aspirational CLE goal. But the value of attending the annual convention goes well beyond the CLE credits. It provides the one time of year that judges and attorneys can get together in a social setting and foster the collegiality and camaraderie that that makes the Alaska Bar unique.

The value of the social interaction at the convention is often minimized or dismissed completely. This is unfortunate. The event brings together attorneys from all practice areas and geographic locations. It provides an opportunity for attorneys, young and old, to put faces to names and to develop relationships with other practitioners that can prove beneficial to your practice and your clients in the future.

Whether calling a colleague for advice on the personality of a judge from another part of the state, calling opposing counsel to resolve litigation issues or seeking advice from a more experienced attorney, these tasks are infinitely easier if you can turn to a familiar face. These personal connections are often overlooked by attorneys focused solely on the contentious relations in the courtroom – to the detriment of your clients.

This year's convention promises to offer a variety of social events to fit all tastes. Fairbanks attorneys will be sponsoring dinners at their homes for anyone in town Tuesday night. Once the convention begins, participants can let off some extra energy after sitting all day at CLEs in the annual fun run. You should prepare to laugh to the satiric tunes of Bob Noone and the Well Hung Jury who will be providing the entertainment at the Wednesday night barbeque. Bob is a lawyer by day and musician by night. Bob and his band have played for bar associations around the country and are visiting Fairbanks all the way from West Virginia. (Check him out at www.lawsongs.com).

The annual awards banquet on Thursday night will highlight Justice Scalia as the keynote speaker,

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EDITOR'S COLUMN

What Dress Code?

☐ Thomas Van Flein

As Alaskans, we take pride in the fact that we don't do things the way others do them in the Lower 48. This is true no matter how backward, antiquated and just plain goofy our methods remain. A respected legal consulting company, Altman Weil, publishes survey responses on how Outside law firms manage their practices. As you are no doubt aware, the Bar Rag also conducts regular surveys. We found a comparison between "our way" and "their way" to be revealing.

For example, Altman Weil asks the following: "Most law firms have a strategic plan, but many gather dust in the managing partner's desk drawer. Does your firm have a plan that works?" A strategic plan ...? In our Bar Rag survey, 94% of Alaskan lawyers did not know what that meant. About 3% of the Alaskan respondents stated that their strategic plan was "to hang on long enough for a Democratic majority to be restored in Juneau and ride the wave of new tort laws and consumer rights laws that are sure to be implemented." Another 2% of the Alaskan respondents said that their strategic plan was "kept in a small flask in the bottom drawer of my desk." And the remaining respondents stated, "Strategic plan? We don't need no stinkin' strategic plan" and then proceeded to wave a sidearm at the Bar Rag survey taker.

Apparently 72% of the Outside law firms had such a plan even if it gathered dust. Since real Alaskan firms never implemented, or even discussed a strategic plan, they are better off than having wasted a weekend at some retreat working up a plan that gathers dust. Backward we may be, but nevertheless crafty and efficient.

The Altman Weil survey also asked Outside law firms "Which of the following best describes your dress code policy?" Already, many real Alaskan firms are asking, "What dress code policy? We need a dress code policy?" Supposedly 12% of the Outside law firms require formal "business attire" every day. And 55% of the Outside firms have a "business casual" requirement everyday. In the Bar Rag survey, 43% of the Alaskan firms have a "No shoes, No shirt, No job" policy. An additional 20% require "employees to be showered twice weekly, or heavily perfumed if living without running water." The survey revealed that 14% of the Alaskan firms require "matching socks ... but only if socks are worn," and 16% of Alaskan firms have an "all Birkenstock Friday" twice a month. That leaves 7% of the Alaskan firms that prohibit "the use of duct tape to repair shoes" and one or two solo practitioners reported having a "clothing optional workplace." Presumably these lawyers work out of their home office.

For awhile, there was a gathering groundswell of opposition among managing partners of Alaskan firms to prohibit the use of bear grease as a pomade. This dream never became reality, however.

One court administrator anonymously reported that a dress code policy is in force for judges, apparently prohibiting anything other than a black robe since "black is so slimming." This administrator also noted that white terry cloth robes were banned "ever since the incident where a judge took the bench wearing a robe embossed with the Captain Cook Hotel logo." For courtroom attire, some judges ban "fedoras" and "fez's" or any other hat that starts with an "f." Some judges have posted rules prohibiting "loud and obnoxious ties" yet, oddly enough, there is no rule regarding loud and obnoxious lawyers. One court near Fairbanks (Tok I think) bans "imitation fur" in the courthouse.

Hairstyles used to be litigated in the 70's. Seriously. Before that turbulent decade known as the 80's, there were burning constitutional issues deciding whether some kid could wear long hair to school. Apparently times then were slower and more innocent. Alaska's most famous hairstyle case is not *Breese v. Smith,* 501 P.2d 159 (Alaska 1972), but *Kenny Wayne Smith v. State*. In Kenny's Case (as it is now known) the court declared unconstitutional the Palmer courthouse ban on "mullets" for men and "big hair" for women. To this day, one can see the obvious result of this ruling in any Palmer or Wasilla store.

But the court in Kenny's Case did not strike down all of the prohibitions. The Alaska Supreme Court upheld the ban on men wearing leather pants in court concluding that "notwithstanding the propensity for leather pants to be worn by various rock stars or poseurs thereof, we find nothing in our constitution protecting this deviant, unnatural, and probably uncomfortable and hard to clean aberration. In looking at the pictures of our constitutional convention

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The Alaska BAR RAG

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Publication Dates	Editorial Deadlines
January	December 20
March	February 20
May	April 20
July	June 20
September	August 20
November	October 20

*Note: Publication dates are mid-month

Board of Governors meeting dates

January 23 & 24, 2003
March 13 & 14, 2003
May 5 & 6, 2003
May 7 – 9, 2003 Annual Convention (Fairbanks)

Mark your calendar

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followed by the annual poetry reading where members will have the opportunity to showcase homegrown literary talent.

For those who don't want to venture far from the hotel, as is tradition, the Anchorage Bar will be hosting the hospitality suite. Even the TVBA has agreed to part with a portion of its treasury to sponsor a farewell reception on Friday afternoon.

Finally, the exhibitors will be in attendance to answer questions about their products and services and will provide the grab bag of prizes, including those sought after Nordstrom's gift certificates compliments of ALPS.

The bar has worked to keep the convention registration fee affordable. (And the convention fee has remained unchanged for almost 10 years!) The judges will be in attendance so court hearings are at an absolute minimum. Face it, there is no good reason not to come.

So mark the dates on your calendar now and sign up early to save your space.

See you in Fairbanks!

What Dress Code?

Continued from page 2

founding members, none wore leather pants—except for Dieter—who wore lederhosen. He doesn't count." *Smith v. State*, 555 P.2d at 555.

There is some debate as to whether Kenny's Case will someday be read to bar the courtroom use of fringed leather jackets—with many Fairbanksans shuddering at the thought. There is even rumored to be a draft anticipatory amicus brief circulating among the back rooms of some drinking establishments of that fair city asserting that the right to wear a fringe jacket comes under the constitutionally protected "penumbra" of some unspecified right. (This argument suffered after a pint of beer was spilled on the brief causing the mimeograph fluid to run.)

Additional surveys are now underway. If you see a person wearing leather pants, a mullet, duct tape on the shoes, real fur and/or a fedora, it's probably a Bar Rag employee coming to your office to get your answers. Please don't call security.

Bar Letters

The *Bar Rag*: Your dues in action

I read your 17 scenarios that might suggest that one is a legal dinosaur and found none of them to be unusual. I guess that means that I qualify. Not surprising since it has been nearly 10 years since I received my 25 year pen. In fact, way back in 1974 I was the president of the Alaska Bar Association and wrote the first president's column for what was either the first *Bar Rag* or the mimeographed paper that preceded the *Bar Rag*. Over the years I have written lots of letters to the editor and several articles. During the years that Harry Branson was the Editor, I held the esteemed title of "Spiritual Advisor" to the *Bar Rag*. I have carefully read every *Bar Rag* since inception so I guess I am as qualified as anyone to comment upon whether the Alaska Bar Association should continue publishing the *Bar Rag*.

The financial problems of the ABA are unknown to me. All I know is that I am an inactive member of the Association and pay $150.00 a year for the privilege. I called Deborah O'Regan last week and asked her what I had received for the $1200.00 I have paid to the Association during the eight years since I left Alaska. She said "Well, you have gotten the *Bar Rag*." The Association projects $1.9M+ income for 2003 and $16,084 is scheduled for the *Bar Rag*. If there are one hundred and ten inactive members of the association, they will pay for the *Bar Rag* because like Deborah says, that is all they will get for their dues. Cancel the *Bar Rag* and I guess the inactive members will get nothing for their dues.

I personally would be very upset if the *Bar Rag* is cancelled. I am an active member of the Colorado Bar Association and there is nothing like the *Bar Rag* in Colorado. I never hear anything from the Colorado Bar Association. Every year the Colorado Supreme Court sends me a bill for my bar dues and that is it. I spent thirty years in the Alaska Bar Association in Alaska and I suspect I knew as many bar members across the state as anyone. The only way I have of keeping tabs on what is happening in the Association and to Association members is by reading the *Rag*. Many of my friends have died in recent years and I probably wouldn't even know it but for the *Bar Rag*. The first law clerk I had as a judge was recently sworn in as a federal judge. I wouldn't have known but for the *Bar Rag*. This month in the Bar People section, I was pleased to see that Ana Cooke Hoffman is now a Magistrate in Bethel. I have to believe that this is the same Ana Cooke I watched grow from a baby to a young girl while I visiting with Chris Cooke in Bethel during my many trips there.

I knew Gail Fraties quite well and always enjoyed his column in the *Rag*. I have very much enjoyed reading Rick Friedman's continuation of All My Trials. There is a lot to learn from the *Bar Rag*. Those members of the Association who do not read it are simply failing to take advantage of a valuable resource. I hope the Alaska Bar Association continues to publish it.

—Jim Blair

(Editor's Note: We are thinking of re-hiring Judge Blair as our spiritual advisor. Ever since her arrest, Miss Cleo hasn't returned our calls.)

What about the Electoral College?

I saw the notice in the *Bar Rag* inviting comments on a proposal to eliminate run-offs in Board of Governors elections, and simply declare winners based on a plurality. The members of the Board of Governors should be elected by a majority. On the other hand, it is useful to avoid the trouble, cost and delay inherent in a run-off election. Instant Run-off Voting allows for majority choice without the need for a run-off election, and should be adopted by the Board of Governors. As you might recall, this was the system submitted to the voters of Alaska in August, 2002. The voters of Alaska were not ready for the change. However, it is ideal for elections involving a smaller number of voters, such as an election for the Board of Governors, and would be ideal for use by the Alaska Bar Association in electing the members of its Board of Governors.

Instant run-off voting simply requires a voter to rank choices between the candidates, first choice, second choice, third choice, etc. The first choices are counted. If no one receives a majority, the candidate with the fewest first choice votes is dropped, and that candidate's second choice votes are counted with the first choice votes for the remaining candidates. This process is repeated until a candidate receives a majority. The system is identical to holding a series of run-off elections, except that all the elections take place at one time where there is maximum voter participation. The system is as simple as one, two, three, and provides a majority winner without run-off elections.

As private organization examples. Instant Run-off voting is used by the American Association of Political Scientists and Mensa (the high I.Q. organization) to select their officers. It is also used in some cities in the United States, such as Cambridge MA, and was recently adopted in San Francisco CA. It has been used for many years in foreign common-law countries such as England and Australia. The Lord Mayor of London is selected by instant run-off voting. The system is actually recommended by Robert's Rules of Order for use by organizations using their rules.

Further information on the system may be obtained at www.fairvote.org. The Alaska website from the August election- www.alaskansforvoters rights.com - is also still up and running for the future.

If you have any particular questions, please let me know. If you so desire, I would be pleased to attend a meeting of the Board of Governors and make a brief presentation. I also have a short video to play which explains the whole system quite clearly.

In summary, plurality elections are not the way to proceed. Instant run-off voting, which gives a majority result without the necessity for a separate run-off election, should be adopted by the Alaska Bar Association for the election of the members of its Board of Governors.

— Kenneth P. Jacobus

(Editors Note: The Bar Rag hasn't had an open election since its inception. It believes strongly in autocracy. Elections, even with instant run-off voting, seem so proletarian.)

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ALSC PRESIDENT'S REPORT

Court promulgates new pro bono rule

☐ Vance Sanders & Andy Harrington

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priority is broader, and includes three types of activities: (1) delivering services either free or at a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; (2) participation in activities for improving the law, the legal system, or the legal profession; or (3) delivery of legal services at a substantially reduced fee to persons of limited means.

Q. What types of cases are contemplated by that first category?

A. The ABA Commentary notes that this first category of the second priority is not limited to persons of "limited means," and allows a "substantially reduced" fee. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

Q. What types of activities are contemplated by "improving the law"?

A. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

Q. What types of activities are contemplated by the "substantially reduced fee" component?

A. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this subhead of the second priority.

Q. When does this second priority come into play?

A. The Commentary notes that, for most lawyers, it should be possible to fulfill the commitment from activities that fall into the first priority; however, to the extent that such activities leave the 50-hour commitment unfulfilled, the remaining commitment can be fulfilled using activities from the second priority. Also, statutory, constitutional or regulatory restrictions may prohibit or impede government or public sector lawyers or judges from performing pro bono work in the higher priority, and thus where such restrictions apply, the entire pro bono component may need to fall in the second category.

Q. What is the significance of the term "without fee or expectation of fee" in the first priority?

A. The Commentary notes that the intent of the lawyer to render free legal services is essential to that first priority; being unable to collect an anticipated fee from the client does not suffice.

Q. Does a court-ordered attorney fee take a case out of the first priority?

A. No. The Commentary makes it clear that an award of attorney fees under a fee-shifting statute or rule would not disqualify the case from inclusion under this highest priority; lawyers who receive such fees are encouraged to donate an appropriate portion of such fees to organizations that benefit persons of limited means.

Q. What about attorney fees in the second priority?

A. Since the second priority includes cases with "significantly reduced fees," the "without fee or expectation of fee" requirement does not apply to the second priority.

Q. Does the Rule cover pro bono work in civil and criminal cases?

A. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

Q. What about attorneys who just cannot fulfill the commitment?

A. Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Q. So financial support is an alternative to pro bono work?

A. Not exactly. The Rule specifies that, in addition to performing pro bono work, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Such regular contributions need not equate to 50 hours; the Robert Hickerson Partners in Justice Campaign encourages each attorney to donate the equivalent of two billable hours. The thought underlying the option of substituting a financial contribution for pro bono work is that, in a year in which an attorney is unable to discharge the pro bono responsibility due to the press of other business, the press of other business might be lucrative enough to warrant an extraordinary contribution. But still, the personal rewards inherent in performing direct services for an indigent client make the direct pro bono effort preferable.

Q. OK, but if I just don't do it, will Steve Van Goor come after me?

A. No. The Commentary is quite clear that this is an aspirational rule, not intended to be enforced through the disciplinary process.

Q. Couldn't you have told me that a little earlier?

A. Well, then you might not have read this far.

Q. Doesn't that take all the teeth out of the rule?

A. This Rule speaks to what is best about our profession. It is designed, not to assure compliance through fear of discipline, but to set a standard to which we should all aspire to attain, for the good of our profession, for the good of the legal system overall, and for the good of our communities and society.

Q. Is there a reporting requirement?

A. No. Those of us who volunteer through one of the organized pro bono programs will report back to that program on the case(s) we take on, but there is no requirement to report hours to the Bar Association.

Q. What are the organized low-income pro bono programs in Alaska?

A. There are four in Alaska currently: the Alaska Legal Services pro bono "Volunteer Attorney Support" program; the Alaska Pro Bono Program Inc.; the Pro Bono Asylum Project of the Immigration & Refugee Services Project (IRSP); and the Pro Bono Mentoring Project of the Alaska Network on Domestic Violence and Sexual Assault (ANDSVA).

Q. Why all these different programs?

A. To try to meet as much of the client demand in as many subject matter areas as possible, and give Alaskan attorneys a choice among those subject matter areas.

Q. What types of cases does ALSC's pro bono program handle?

A. ALSC handles general civil cases for low-income clients. ALSC was founded in 1966, and established its pro bono program as a joint project with the Alaska Bar Association in 1983. For years, it was run by Seth Eames, prior to his departure from ALSC in 1999. Currently, ALSC's pro bono coordinator is Erick Cordero.

Q. What types of cases are handled by the Pro Bono Asylum Project of the IRSP?

A. Representation of immigrants eligible for legal residency under the provisions of the Nicaraguan Adjustment and Central American Relief Act (NACARA), representation of immigrants eligible to apply for political asylum, and presentation of immigration legal clinics. Attorneys work in conjunction with pro bono psychologists and translators. The IRSP has existed since 1987; the Pro Bono Asylum Project started in 1999.

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Special challenge

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IRSP Coordinator Robin Bronen of Anchorage heads the program.

Q. What types of cases are handled by the Pro Bono Mentoring Project of ANDSVA?

A. Representation of domestic violence victims in civil cases, primarily domestic relations cases. The Mentoring Project was started in 1999 through funding under the Violence Against Women Act. Currently, the project coordinator is Christine McLeod-Pate of Sitka.

Q. What types of cases are handled by APBP Inc.?

A. Those cases which ALSC's in-house pro bono program cannot accept due to restrictions placed on ALSC as a recipient of funding from the Legal Services Corporation (LSC). These include: representation of prisoners; representation of various categories of immigrants; and representation in class actions. Currently the executive director of APBP Inc. is Loni Levy of Anchorage, although she has announced her resignation as of January 31, 2003.

Q. Wouldn't it be better if there were just one pro bono program?

A. Maybe. However, Congress, while requiring ALSC to devote a certain amount to "private attorney involvement" activities, also prohibits ALSC from utilizing its in-house pro bono program for certain types of cases. The Pro Bono Asylum Project and APBP Inc. were created to make sure that attorneys willing to volunteer in those areas ALSC is prohibited from handling could be matched up with needy clients. The ANDSVA Pro Bono Mentoring Project was established because of the overwhelming demand for attorneys in domestic relations areas outstripped ALSC's ability to meet that demand.

Q. So do the programs compete with each other?

A. The programs cooperate with each other. They send out joint solicitations, work together on attorney recruitment, and coordinate case placements to the extent that they can. Christine McLeod-Pate and Robin Bronen are both ex-ALSC staff attorneys, and the ALSC and APBP share an overlapping Board. All four programs actively participate in the Bar Association's pro bono service committee.

NOTICE

The U.S. District Court Digital Evidence Presentation System [DEPS] has been upgraded to accommodate both DVD's and Video Tape presentations. The current Local Court practice requiring that an attorney file a Motion requesting approval to use the court's DEPS equipment has been rescinded. However, the Court does require that a Notice of Intent to use the DEPS equipment be filed at least two weeks before the scheduled date of use.

Also, Attorneys are encouraged to familiarize themselves with the use of the DEPS equipment. Call 677-6114 to arrange for a date and time for training in the courtroom on the equipment.

Fundraiser to benefit immigrant community

Mirror, Mirror on the wall, who is the smartest one of all? Test your smarts on March 13, 2003, at Snow City Cafe. The fundraising event, "Mind Games: Life, Liberty & the Pursuit of Trivia" will challenge your intelligence and your generosity. Proceeds will benefit the Immigration & Refugee Program of Catholic Social Services—the only no-/low-cost program in Alaska providing legal assistance to the immigrant community."

Put together a team of 4 of your best and brightest friends to compete for the coveted title & trophy of "Trivia Champions" as well as the grand prize (players will receive free food and two free drinks for the evening). Invite your own fan club to cheer you on. Don't miss out on the opportunity to dazzle your colleagues and friends with your smarts as well as your philantropist spirit by supporting this fun event. For more information contact Gene Faulk at CSS 277-2554 or Gene.Faulk@css-ak.org."

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.

ALASKA BAR FOUNDATION

IOLTA grant applications due no later than April 2, 2003

☐ Kenneth P. Eggers

The Alaska Bar Foundation IOLTA program funds are designated 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 2004 (July 1, 2003 to June 30, 2004) from organizations 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 that meet the Foundation's grant guidelines set forth below to make those organizations aware of this solicitation. However, please be advised that due to the low interest rates being paid on lawyers' trust accounts, the Foundation estimates that it will only have $84,000 available for grants for the fiscal year 2004. This compares to $121,000 for FY'03 and $344,000 for FY'02.

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 organization 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.

12. 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.

Grant applications for the July 2003 through June 2004 funding cycle must be received by the Alaska Bar Foundation, at 550 West Seventh Avenue, Suite 1900, Anchorage Alaska 99501, or P. O. Box 100279, Anchorage, Alaska 99510, no later than 5:00 p.m., April 2, 2003. 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. Applications will also be available on the Alaska Bar Association's web site – www.alaskabar.org.

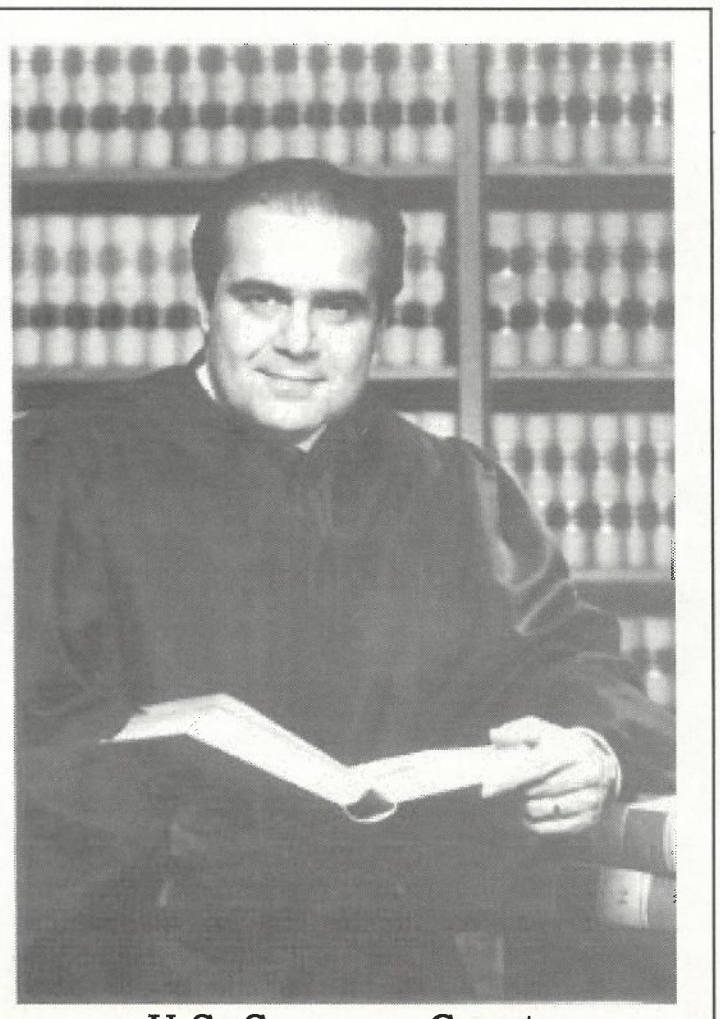
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

IN THE MATTER OF:	)	
NEW COURT CLOSING DATES	)	**MISCELLANEOUS**
GENERAL ORDER	)	
	)	**No. 874**

The State of Alaska observes two holidays not presently observed by this court--Alaska Day, which is in the autumn, and Seward's Day, which is the last Monday in March each year. It has been observed that the public conducts very little business in this court on the Friday following the autumn Thanksgiving holiday and that, especially when Seward's Day corresponds to the public schools' spring vacation, as it frequently does, the public conducts very little business in this court on Seward's Day. In recognition of these facts,

IT IS ORDERED that henceforth the District Court for the District of Alaska will be closed on the Friday after Thanksgiving and on Seward's Day.

Alaska Bar Association 2003 Convention in Fairbanks



U.S. Supreme Court Justice Antonin Scalia

Join us in Fairbanks for the Alaska Bar Association Annual Convention on May 7, 8 & 9, 2003 at the Fairbanks Princess Riverside Lodge with U.S. Supreme Court Justice Antonin Scalia!

(As past President Bruce Weyhrauch announced at the Ketchikan 2001 convention with Justice Stephen Breyer, "We're going for the complete set!")

ESTATE PLANNING CORNER

Equalize assets

☐ Steven T. O'Hara

When counseling a married client, my three rules are—where at all possible — equalize, equalize, and equalize. Here "equalize" means to arrange assets so each spouse owns separately approximately the same amount of property (or at least enough so that tax exemptions and credits are not wasted).

Equalizing can slash or even eliminate taxes.

Consider a married couple, domiciled in Alaska, both U.S. citizens. They have no debt and neither has ever made a taxable gift. Their sole asset is a $2,500,000 brokerage account, which they own as joint tenants with right of survivorship. The account is not an IRA or other tax-qualified account.

EQUALIZING CAN SLASH OR EVEN ELIMINATE TAXES.

Suppose the husband dies today and the wife dies tomorrow. Under these circumstances, the estate taxes by reason of the wife's death would, under current law, be approximately $680,000 (IRC Sec. 2001, 2010, 2011, and AS 43.31.011).

These taxes could have been slashed by nearly $500,000 had the couple (1) signed Wills that do not waste tax exemptions or credits and (2) separated their account by, for example, each owning a separate brokerage account in the amount of $1,250,000. If each spouse had separate property of $1,250,000, along with Wills that do not waste tax exemptions or credits, the combined estate taxes by reason of both deaths would have been approximately $205,000 instead of $680,000 (Id.).

As another example of how equalizing can save estate taxes, suppose the account balance in the above example is $2,000,000. Suppose again that the couple owns the account as joint tenants with right of survivorship. If the husband dies today and the wife dies tomorrow, the estate taxes by reason of the wife's death would, under current law, be approximately $435,000 (Id.).

These taxes could have been eliminated had the couple (1) signed Wills that do not waste tax exemptions or credits and (2) separated their account by, for example, each owning a separate brokerage account in the amount of $1,000,000. If each spouse had separate property of $1,000,000, along with Wills that do not waste tax exemptions or credits, no estate taxes would have been payable by reason of either death under current law (Id.). No taxes would mean a savings of $435,000 to the family in this case.

In the above examples, the couple could have equalized their single account by changing the ownership to equal tenants in common. If the couple owns a $2,000,000 account as equal tenants in common, with no right of survivorship, then each spouse would have separate property of $1,000,000. So one account as tenants in common can be an alternative to two separate accounts.

The couple could equalize the account by creating Alaska community property (AS 34.77.030, .090, and .100). Community property may also save income taxes. If a married couple owns community property, then on the death of the first spouse to die it may be possible for both halves of the community property to be sold free of any income tax (IRC Sec. 1014(a) and (b)(1) and (6)).

Equalizing often involves gifts between spouses. Gifts to spouses who are not U.S. citizens could trigger a gift tax because the gifts do not qualify for the gift tax marital deduction (IRC Sec. 2523(i)(1)). There is, however, a gift-tax exclusion for limited gifts to a spouse who is not a U.S. citizen. Here the federal government has increased the annual $11,000 gift-tax exclusion to an annual $110,000 exclusion in the case of present-interest gifts to a spouse who is not a U.S. citizen (IRC Sec. 2523(i)(2) and Rev. Proc. 2001-59, 2001-52 IRB 623).

Equalizing can cause other problems. Stories abound in the estate planning community about spouses who have departed the marriage after receiving a gift intended to minimize transfer taxes.

Equalizing does not need to occur, however, through outright gifts. Equalizing can be accomplished through trusts. For example, consider a married man who has substantial wealth in his separate name. His wife has little or no assets in her name. Both are U.S. citizens. The wealthy spouse realizes that if his wife predeceases him, future transfer taxes would be greater since his wife's tax exemptions and credits would be wasted. He realizes his wife must have property in her tax name in order for her tax exemptions and credits to have meaning.

The wealthy spouse does not want to make outright gifts to his wife. So in this case the wealthy spouse creates and funds a so-called QTIP trust under which his wife is entitled to all trust income for the rest of her life. He is careful to make a QTIP election on a timely-filed gift tax return for each year he makes a transfer to the trust (IRC Sec. 2523(f)(4)). With the QTIP election, gift taxes are avoided and the trust assets are considered to be owned by the wife for estate and generation-skipping transfer tax purposes (IRC Sec. 2044(c)). Thus, in the event of the wife's death, the assets in the trust would be available to "absorb" her exemptions and credits such that those assets might thereafter be sheltered from transfer taxes.

The client might want to fund the trust with sufficient assets not only to avoid wasting his wife's tax exemptions and credits, but also with enough assets to use her lower marginal estate tax brackets (IRC Sec. 2001(c)). Moreover, if estate taxes are generated on the death of the first spouse to die, more tax savings might be available on the surviving spouse's death due to the credit for the earlier-paid estate taxes. (See the May-June 1999 issue of this column entitled *Tax Deferral Can Be Costly*.)

Besides trusts, business entities can be used to equalize assets. For example, a newly-married client may wish to equalize her assets, but may be reluctant to give her new spouse control over half of the property. Suppose she also finds a trust undesirable. Under these circumstances, the client might create a limited partnership, naming herself as the sole general partner. She may then contribute the property (she wishes to equalize) to the partnership and arrange the ownership of interests between herself and her spouse so as to accomplish equalization. As a limited partner, the client's spouse would have no authority over the property and could be subject to transfer restrictions.

THE CLIENT AND ADVISORS NEED TO STAY FOCUSED ON THE TAXES THAT COULD BE SAVED IF THE EQUALIZATION PLANS ARE IMPLEMENTED.

Similarly, a limited liability company or a corporate arrangement could be utilized to equalize assets. Prenuptial and postnuptial agreements could be considered, along with carefully-tailored durable powers of attorney.

In reviewing all the planning tools that can be used in conjunction with equalizing assets, the client and advisors need to stay focused on the taxes that could be saved if the equalization plans are implemented.

Common stumbling blocks to resolving family problems

Regardless of what process you choose to resolve family disputes - be it litigation, mediation, family counseling or collaborative law - bear in mind the following stumbling blocks that will prevent success.

• ***"You're the one with the problem, not me."*** If you believe that the other side is the "one with the problem," and that you don't have to do any changing or compromising, then expect the conflict to continue. As retiring Judge Anne Kass often remarked, "Nothing changes if nothing changes," which means people make the same mistakes over and over unless they try something different.

• ***"Are you bringing that up again?"*** We all make mistakes. We all say and do things we wish we hadn't. When couples argue, an instant turn-off is having a 10-year old mistake thrown up in your face. If the other person made a mistake, genuinely apologized, and changed his/her behavior for the better, then don't keep rehashing the past.

• ***"If you don't give me [whatever], then the whole deal is off."*** All or nothing ultimatums are childish and unproductive. Most adults can find some common ground, some areas of agreement. Don't hold these positive areas hostage. List those issues you can agree on, and then move forward.

"NOTHING CHANGES IF NOTHING CHANGES," WHICH MEANS PEOPLE MAKE THE SAME MISTAKES OVER AND OVER UNLESS THEY TRY SOMETHING DIFFERENT.

• ***"You can go, but the kids stay."*** This is the proverbial minefield position. When couples break up, too often I hear one parent acknowledge that the marriage is in terrible shape, but that same parent uses the kids as a threat to force the unhappy person to stay in the household. The kids aren't stupid. When they hear statements like this, they begin to feel they're the only reason Mom and Dad are fighting, and they're the reason why one parent is "stuck" in a place he/she doesn't want to be. If the purpose of making this threat is to "keep the family together for the sake of the children," know that the threat almost always backfires.

• ***"I've gone to marriage counseling; what more do you want?"*** Counseling is not a magical solution to anyone's problems, especially if you go kicking and screaming. The point to counseling is to enable people to understand what's going on emotionally and psychologically, and then to find ways to improve the situation. Just paying a therapist and occupying a chair for an hour at a time will not restore the health of a relationship. If you genuinely do not want to go to counseling or if you don't participate meaningfully, then stop wasting everyone's time and money. Prepare yourself to repeat the same cycle of destruction.

• ***"If you want the divorce, then go get it. I'm not going to break up our family."*** This is a classic example of passive-aggressive behavior, compounded with denial. You may very well not want the divorce to happen, but in a no-fault state like New Mexico, the divorce will happen. Now is the time to step up to the plate, examine your own role in contributing to the problems, and find ways to get on with your life that are healthier for yourself and your children. Be practical about financial issues. Be flexible in co-parenting. You will gain nothing by playing the role of a martyr or burying your head in the sand. In fact, you will hurt yourself more by refusing to participate in the process of building a new, different kind of life, especially for your children.

By *Mary Ann Baker-Randall. The author practices family law in Phoenix, AZ.*

ALASKA'S RULE OF LAW PARTNERSHIP WELCOMES TRAINERS FROM KHABAROVSK

By Marla Greenstein

As you know from earlier publications, judges and lawyers in Alaska have launched a pioneering Rule of Law Partnership with their counterparts in the Khabarovsk region of the Russian Far East. To inaugurate Partnership activities, a delegation from Khabarovsk visited Alaska for a week last June. This delegation comprised twelve judges and lawyers, including several chief judges, a dean of the Khabarovsk law school, and a member of the provincial Duma (legislature). In September, our own delegation visited Khabarovsk to learn more about their system and meet many more individuals involved in this partnership. We found a vibrant legal community, a busy court, and enthusiastic law students and educators.

Our September visit covered typical hearings in both systems, the Rules of Civil Procedure, Judicial Independence and Ethics, Community Outreach, and Organizing the Legal Profession. Out of each of these subject areas, advocates and judges as well as students, identified projects that they will initiate and implement over the next year. The projects include: creating a list-serve to give informal advice to judges faced with ethical dilemmas, organizing a voluntary bar association that is not separated by type of legal practice, and creating a law-student run court observer program that would provide useful feedback to judges on how they handle the courtroom.

The Partnership will host facilitators from Khabarovsk for each of these areas March 7-15 in Anchorage. The facilitators will be trained not only in the specific project areas by being exposed to project directors who implement similar programs in Alaska, but will also receive general training in how to recruit and manage volunteers, special skills for educating legal professionals, and using computer technology. We also hope to have opening evening and concluding evening social events for all participants. The delegation of facilitators will include judges of the commercial and general jurisdiction courts, a law student, and a legal academic.

A final program schedule is being developed by a subcommittee of the project's steering committee and will be publicized when definite dates for the delegation's visit are determined. Once travel arrangements for the Khabarovsk trainers are confirmed we can provide more specific information about their visit.

The Rule of Law Partnership is designed to foster good relations between the legal communities in Alaska and Khabarovsk, to bolster legal reforms, and to encourage the growth of institutions that will strengthen democracy. It is made possible through a grant sponsored by the Foundation for Russian American Economic Cooperation (FRAEC) and the U.S. Agency for International Development (USAID).

Khabarovsk, one of the 89 provinces in the Russian Federation, formed a sister- state relationship with Alaska in 1988. The Khabarovsk - Alaska Rule of Law Partnership was begun with funding and staff assistance from the Russian American Rule of Law Consortium, a national organization headquartered in Vermont. The consortium currently comprises seven northeastern and mid-Atlantic states – Vermont, Maryland, Maine, Western New York (Rochester), New Hampshire, Massachusetts, and Connecticut – who are each paired with one of seven Western Russian provinces.

•••

Alaska Steering Committee: Khabarovsk-Alaska Rule of Law Partnership

A steering committee was formed to represent a cross-section of the Alaska legal community. It is drawn from the state and federal judiciaries; the public and private sectors; civil, commercial and criminal practitioners; administrators; legislators and executive branch officials and educators. Many of those involved already have experience in the Russian Far East. However, we are always interested in including new people in future events. Please contact Brenda Aiken or either of the co-chairs to express your interest.

Co-chairs: Judge David Mannheimer, Alaska Court of Appeals, and Marla Greenstein, Executive Director, Alaska Commission on Judicial Conduct.

Left to right: Marla Greenstein, Judge David Mannheimer, Judge John Lohff, Federal Public Defender Rich Curnter, front: Rita Hoffman depart for Russia.

The Khabarovsk Conference Center features an intricate tapestry. Left to right are Judge David Mannheimer, Rich Curtner, Marla Greenstein, Rita Hoffman, Russian delegation member Judge Michael Thompson, Judge John Lohff, Russian delegation member.

Luncheon hosted by Chief Prosecutor of Khabarovsk.

Quote of the month

"Laws control the lesser man. Right conduct controls the greater one."
— Chinese Proverb

THE PUBLIC LAWS

How is an attorney like a traveling salesman?

Scott Brandt-Erichsen

A few attorneys around this state may have noticed that economic pressures are causing some local governments to look more closely at whether commercial transaction are escaping sales tax charges. In Ketchikan, for example, up until about 18 months ago, the Ketchikan Gateway Borough did not routinely monitor whether attorneys who only practice in Ketchikan occasionally were current in their sales tax registration and quarterly sales tax filings. That is changing.

Part of the thanks for the additional attention may be attributed to an inquiry by Ketchikan attorney A. Fred Miller. Mr. Miller had a client who did not have services performed in Ketchikan. He inquired as to whether the Borough would have jurisdiction to impose sales taxes on services for the client rendered in another jurisdiction where neither the client nor the services took place in Ketchikan. The only connection with Ketchikan was the fact that Mr. Miller's regular office is located in Ketchikan.

Multi-jurisdictional services offer an opportunity to apply such lofty constitutional principles as due process, the commerce clause and equal protection to such mundane issues as sales tax. It seems that the ability to tax requires both a due process nexus with the activity subject to the tax as well as nondiscrimination against similarly situated service providers. Without getting into a detailed analysis the general rules go something like this: You can't tax somebody if they don't have any connection with the taxing jurisdiction (due process nexus); two different jurisdictions can't tax someone twice for the same thing (due process); and if two similarly situated transactions aren't classified and distinguished then they have to be treated the same (equal protection).

MULTI-JURISDICTIONAL SERVICES OFFER AN OPPORTUNITY TO APPLY SUCH LOFTY CONSTITUTIONAL PRINCIPLES AS DUE PROCESS, THE COMMERCE CLAUSE AND EQUAL PROTECTION TO SUCH MUNDANE ISSUES AS SALES TAX.

The KGB code provides in part that:

" Retail sale or sale at means any non-exempt sale of services, rental, or tangible personal property made to a buyer who intends to use, consume, or receive the item or services purchases for his own personal use as the ultimate consumer with not intention to sell the item again,...except as provided below or in section 45.20.013 and 45.20.055 of this title, a retail sale or sale at retail is subject to sales tax if the sales occurs within the Borough...(b) the delivery of property or services in the city and/or borough is considered subject to sales tax if the seller maintains any office, distribution or sales house within the city or borough....(d) Where a buyer receives a service within the corporation limits of the City of Ketchikan, and the said service begins and ends therein, or where the buyer receives an entire service therein,...the sale of the item is subject to both the city's and the boroughs's sales taxes."

Looking at legal services, let's say for example that attorney X who routinely practices in Ketchikan has a client who lives in Bethel hire her to appear in court in Bethel for an FED hearing. The attorney travels to Bethel, appears in court in Bethel on the matter, and returns to Ketchikan. The client, a Bethel resident, never sets foot in Ketchikan. The attorney does not bill for any time worked on the case in Ketchikan, and only provides services in Bethel. Under these circumstances the services provided in Bethel would not be taxable by Ketchikan tax on goods and services. If Bethel imposes a sales tax on legal services, however, the services would be subject to sales tax in Bethel. Both Bethel and Ketchikan couldn't tax for the same services, and as between Bethel and Ketchikan, Bethel would be the jurisdiction entitled to tax that transaction.

In another example, if an attorney represents a client in Craig in a criminal matter, and the arraignment is held telephonically with the client in Craig and the attorney present in the courtroom in Ketchikan, the attorney provides the service within the Borough, and that portion of the service would be subject to sales tax. If, however, when the case goes to trial, the trial takes place in Craig, those services provided outside of the Ketchikan Gateway Borough would not be subject to sales tax.

The riddle in the title asks "How is an Attorney like a traveling salesman?" As a practical matter, when it comes to sales taxes, itinerant attorney services are indistinguishable from sales by a traveling salesman when in Ketchikan.

THE OBLIGATION TO REGISTER FOR KETCHIKAN SALES TAXES AND FILE RETURNS APPLIES EVEN IF THE CLIENT IS AN EXEMPT ENTITY.

For example, Nordstrom's makes annual traveling trunk show for which many locals, my daughters included, are very grateful. Like any good itinerant merchant, Nordstrom's fills out the appropriate tax return and remits KGB sales taxes on their sales. Unfortunately this is not always the case for the traveling attorney who has a trial or deposition in Ketchikan periodically. Under the KGB sales tax code there is no distinction between these two purveyors of goods and services. So how is an attorney like a traveling salesman? Both are subject to the laws of the jurisdictions from which they choose to operate.

If you have read this far you may be thinking: "So what, Anchorage has no sales tax, most attorneys are in Anchorage, WHO Cares!" The "so what" is that the Finance department in Ketchikan started looking at the court docket (a secret KGB informant) about 6 months ago and picking out names of attorneys appearing in cases in Ketchikan as a method to identify people who may be providing legal services within the jurisdiction but who have not registered for services or filed sales tax returns for the Ketchikan Gateway Borough. The obligation to register for sales taxes and file returns applies even if the client is an exempt entity. You may get one of their letters. You may not like it. Some who have received the letters have said so.

Why write about it in the *Bar Rag* and invite abuse? Frankly I have received a couple inquiring letters already, and determined that it may be easier to explain it "en masse" and take the abuse all at once rather than in dribs and drabs. Also one of the attorneys who was surprised to learn of their sales tax obligations suggested that the Borough do a mailing to each individual attorney in the state. Rather than annoying folks who never practice in Ketchikan, I thought notice through the *Bar Rag* might be a less objectionable method. If you would like to register, forms are now available on the KGB website:www.borough.ketchikan.ak.us. Go to the finance department page and select KGB forms.

In the Supreme court of the State of Alaska

In the Disciplinary Matter Involving)
)
Charles F. Loyd, Jr.)
)
)
)
)
)
)

Supreme Court No. **S-1 0826**

Order

Alaska Bar Rule 27(a)

Date of Order: **01/02/2003**

ABA Membership #8606029
ABA File # 2002D120

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

Charles F. Loyd, Jr., has been disciplined by the Utah Supreme Court in an order dated March 8, 2002. Pursuant to Alaska Bar Rule 27(a), Loyd responded to a notice to show cause why identical discipline should not be issued in Alaska, stating that he knows of no reason why identical discipline should not be imposed.

IT IS ORDERED: Identical discipline, namely, a public reprimand, is GRANTED.

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 Disciplinary Matter Involving)
)
David E. Grashin.)
)
)
)
)
)

Supreme Court No. S-10817

Order

Alaska Bar Rule 27(a)

Date of Order: **01/02/2003**

ABA Membership #8011082
ABA File # 2002D122

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

David E. Grashin has been disciplined by the Supreme Court of Washington in an order dated March 4, 2002, suspending him from the practice of law from March 4, 2002, to March 3, 2003, and to engage in eight hours of Washington State Bar Association ethic credits before engaging in the practice of law. Pursuant to Alaska Bar Rule 27(a) Grashin responded to a notice asking him to show cause why identical discipline to that imposed in Washington should not be imposed in Alaska.

IT IS ORDERED: Identical discipline is **GRANTED**. Grashin has evidently not practiced in Alaska during the period of his Washington suspension. A concurrent one-year suspension is appropriate. Reinstatement in Alaska will be subject to Alaska Bar Rule 29 and conditioned upon satisfaction of the eight hours of WSBA ethics credits imposed by the Washington court.

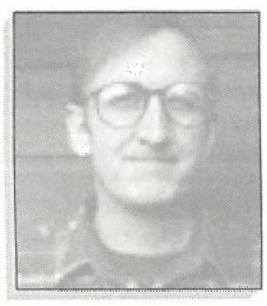
Entered at the direction of the court.

Clerk of the Appellate Courts
/s/Marilyn May

ECLECTIC BLUES

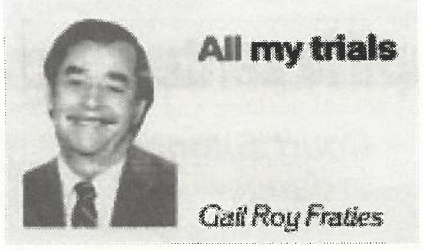
Gail Roy Fraties

Dan Branch



Gail Fraties ended his legal career in Bethel as a superior court judge. He quit that judgeship in the late 80's, after showing signs of the cancer that would end his life.

Before moving to Bethel, Fraties worked a state prosecutor, and as a member of a series of law firms in Anchorage and Juneau. Older members of the bar will remember columns he wrote the *Bar Rag* in which he describe the life and times of some chronic fumblers he represented in our criminal courts.



Fraties' "All My Trials" columns were read out loud in the state's law offices, usually in an incredulous voice. His readers couldn't believe the Bar Rag would print Fraties' words but we were all secretly glad that the publication gave Fraties a forum. His last column appeared in print just before he joined the superior court bench. There were some that said it was a condition of employment.

I first glimpsed Fraties on a late Spring afternoon in Bethel, He was standing on my neighbor's porch wearing a bathrobe and enjoying a whiskey and water. It was feeding time for my dog team and the pups were making their usual dinner time racket. I liked Fraties immediately, mainly because he didn't complain about the noise my dogs were making. He just tilted his face into the weak sun and smiled. You couldn't tell that he was on temporary assignment to the Bethel DA's office at the time and had just finished change-of-plea day.

OLDER MEMBERS OF THE BAR WILL REMEMBER COLUMNS HE WROTE THE *BAR RAG* IN WHICH HE DESCRIBES THE LIFE AND TIMES OF SOME CHRONIC FUMBLERS HE REPRESENTED IN OUR CRIMINAL COURTS.

A few months after that meeting, Fraties would be pulled over in Anchorage for driving while intoxicated. The arrest could have ended his career of state service. He spent a month at an inpatient alcohol treatment center where he became a believer in the 12-Step approach to controlling alcoholism. He tried to apply the lessons he learned in treatment when sentencing convicted felons in Bethel.

This is the portion of Fraties' life that I know best. I worked as a magistrate in Aniak during his tenure on the bench. My job was to act as relief for the Bethel Magistrate and for Judge Fraties when both were out of town. When in Bethel, I'd stay at the courthouse. If Judge Fraties was around, I'd always whistle or hum while approaching his office. He carried a small handgun in the waistband of his pants to protect himself from some of the folks that he put in jail while a prosecutor.

He had other unique qualities, like keeping the overhead lights in his office turned off. Once I found him in his office, which was semi-dark, dictating a description of the sunset into a tape recorder. He often tape-recorded his thoughts. I guessed he planned on someday writing a book about his life on the Kuskokwim.

The judge was serious about his wish to help alcoholics. He used his sentencing powers to do it. Judge Fraties handed down a similar sentence to anyone convicted of an alcohol-related felony for the first time. He'd order the person to serve a short jail sentence and a great deal of community service time. The community service component could be served setting up AA meetings in the person's community. The defendant had to abstain from consuming alcohol and attend AA meetings.

The judge seldom varied his sentencing remarks: "Mr. Smith," he'd begin, "the Court is an alcoholic and so, I suspect, are you. If you look at the faces of the district attorney and your attorney you will see 100-yard stares. That doesn't bother the court. It is not important that the attorneys listen. They have heard this all before. It is important for you to do so." I was standing near the judicial entry door to the courtroom when I first heard his sentencing remarks and couldn't help peaking out to search the prosecutor for a "100-yard stare." It was there, on his face, the look of a shell-shocked soldier.

Judge Fraties would carry on, shell-shocked attorneys or no, speaking only to the defendant. He expressed an understanding of alcoholism and a desire that the defendant take responsibility for it. He'd tell the defendant that he had the power to change, like the Court had changed. The sentence, he explained, was a tool he could use to change. Few of the defendants used it.

Each week the court section of Bethel's Tundra Drums newspaper would list those given a second chance by Judge Fraties. Each week the crime blotter section of the paper reported those who didn't take it. Judge Fraties' experiment was, for the most part, a failure. Bethel's criminal bar resented the judge's blanket approach to their clients. Eventually, the Court of Appeals reversed one of his AA sentences because the record showed no evidence that the defendant needed to participate in the ordered alcohol treatment.

Gail Fraties had a long legal career in Alaska, His name appears many times in reported appellant cases. He represented Sen. George Hohman in his famous criminal trial. He also represented defendants whose only fame came from mention in one of his "All My Trials" columns.

Such a long and successful career is worthy of admiration. I admired him most for his attempt to break the cycle of alcoholism in the Bush. His efforts didn't bring the changes he hoped for but he should still be honored for them.

Interested in Running for the Board of Governors, the Alaska Judicial Conduct Commission, the ALSC Board or the 9th Circuit Judical Conference Representative?

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.

Think about getting involved. For more information, look for the nominating petition in the mail or contact Deborah O'Regan at the Bar office, 272-7469 or oregan@alaskabar.org.

You are cordially invited by the
Supreme Court of the State of Alaska
to the installation of

John Suddock

as Judge of the
Superior Court of Alaska
on the seventh day of February
two thousand and three
at three-thirty o'clock p.m.
in the Supreme Courtroom
Boney Memorial Court Building
Anchorage , Alaska

Reception immediately following
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Hosted by the Anchorage Bar Association

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Philip R. Volland

as Judge of the
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Boney Memorial Court Building
Anchorage , Alaska

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820 West Fourth Avenue
Hosted by the Anchorage Bar Association

U.S. juries continue to award record verdicts in 2002

Continued from page 1

eleven verdicts since there was a tie for tenth place.)

The largest jury verdict of the year - indeed ever - was the $28 billion award from Los Angeles in a suit against Philip Morris. That blockbuster award from October, however, probably won't be the final outcome. Last month, the judge in the case reduced the verdict to $28 million, though the plaintiff is appealing the reduction.

"What's happened to the Philip Morris verdict is typical of what happens to these eye-popping awards. Usually the award is either reduced by the court or the parties settle for much less," Martinek said, noting that, of the Top Ten awards of 2001, four have since settled for considerably less than the jury awarded and the other six are either on appeal or awaiting a new trial.

In compiling its annual list of the Top Ten Jury Awards, Lawyers Weekly USA monitors cases from all 50 states and the District of Columbia. The list includes awards issued to individual plaintiffs, which is defined as a single person, family of group of individuals who were injured in a single incident and had their claims tried in one case before one jury. Business-against-business suits, class actions and suits that were the result of uncontested litigation are not included.

LAWYERS WEEKLY USA'S TOP TEN JURY AWARDS OF 2002

1 $28 Billion - *Bullock v. Philip Morris*
Los Angeles (Oct. 4, 2002)
The plaintiff, a 64 year-old woman who had started smoking when she was 17, claimed that the cigarette maker was responsible for her lung cancer that has since spread to her liver. The judge later reduced the award to $28 million, but the plaintiff is appealing that decision.

2 $2.2 Billion - *Hayes v. Courtney and Courtney Pharmacy Inc.*
Kansas City, Mo. (Oct. 10, 2002)
The plaintiff, a 43-year-old woman with ovarian cancer, sued a pharmacist and his pharmacy for diluting her cancer medication. The pharmacist, who is now serving a 30-year prison sentence, vigorously defended the civil suit, though it appears unlikely that much (if any) of the award will ever be collectable.

3 $270 Million - Johnson v. Equitable Resources Inc.
Pikeville, Ky. (Oct. 17, 2002)
The plaintiff, a 42-year-old coal miner who was severely burned on the face after a gas explosion at his home in 2000, had sued the gas company for his physical and emotional injuries. On Dec. 31, the parties announced that the case had been settled for an undisclosed sum.

4 $225 Million - *Benavides v. Ford Motor Co.*
San Diego, Tex. (Dec. 13, 2002)
The plaintiffs were two Texas families who sued Ford after a fatal rollover accident involving a pickup truck. The suit claimed that the 1999 vehicle didn't provide enough support for the roof and door latches. Ford has said it would appeal.

5 $150 Million - *Schwarz v. Philip Morris*
Portland, Ore. (March 22, 2002)
The plaintiffs in the case sued the cigarette maker on behalf of the estate of a woman who died at age 53 after smoking low-tar cigarettes for 23 years. The wrongful death suit alleged products liability, negligence and fraud - and resulted in the first major award over "light" cigarettes. A judge reduced the award to $100 million, but Philip Morris is still appealing.

6 $122 Million - *Jernigan v. General Motors*
Union Springs, Ala. (May 2, 2002)
The plaintiff was a boy who had been a straight-A 12-year-old student before he suffered permanent brain damage in a high-speed, head-on collision, when the passenger compartment of the Oldsmobile Delta 88 he was riding in collapsed on him.

7 $97.2 Million - *Hindelang v. BR Telephony, et al.*
Los Angeles (July 30, 2002)
The plaintiff in the case was a convicted felon who claimed that an investment firm co-founded by California's unsuccessful Republican gubernatorial candidate Bill Simon and another company drove the plaintiff's company into bankruptcy. The plaintiff is appealing the trial judge's decision to overrule the jury and enter a judgment for the defendants.

8 $94.5 Million - *Perez v. St. John's Episcopal Hospital*
Brooklyn, N.Y. (March 27, 2002)
The plaintiff, a pregnant woman who went into premature labor and gave birth to a baby with cerebral palsy, claimed that doctors were negligent for failing to administer corticosteroids to speed maturation of the baby's lungs. Post-trial motions in the case are pending.

9 $91 Million - *Wise v. McCalla*
Brooklyn, N.Y. (Dec. 3, 2002)
The plaintiff, a 5-year-old girl born with cerebral palsy, claimed in her medical malpractice suit that doctors failed to realize her mother was suffering a rare condition - and may not have been in labor - when the child was delivered by Caesarian section. The hospital settled the claim against it for $6 million pretrial and the doctors have said they will appeal.

10 $80 Million (tie) - *Brenner v. Spector, et al.*
Long Island, N.Y. (Oct. 4, 2002)
The defendants were obstetricians at a New York hospital who delivered a woman's twins 10 weeks prematurely. One of the babies was born with cerebral palsy, while the other was fine. The plaintiffs claimed that the doctors arrived late and didn't respond to complaints about uterine cramps. The suit was settled for a confidential amount sometime after the verdict.

10 $80 Million (tie) - *Peters v. General Motors*
Independence, Mo. (Dec. 19, 2002)
The plaintiff, a 60-year-old woman, was injured when her 1993 Oldsmobile Cutlass Supreme suddenly sped backward out of her driveway, striking a tree and landscaping timbers. The jury rejected GM's claim that the plaintiff had inadvertently hit the accelerator, thinking it was the brake. GM has vowed to appeal.

Lawyers Weekly USA and www.LawyersWeeklyUSA.com are the leading national sources for smaller law firms providing the latest legal news, trends, opinions, verdicts and settlements, analysis and more. Founded in 1972, Lawyers Weekly, Inc. publishes statewide newspapers in Massachusetts, Michigan, Missouri, North Carolina, Ohio, Rhode Island, South Carolina and Virginia, as well as Lawyers Weekly USA, the only national legal newspaper designed for smaller law firms.

Anchorage Inn of Court Update

At the January meeting of the Inn of Court, the members held a seminar on the "Top 10 Mistakes in Fee Agreements." The members learned about some pitfalls many lawyers are unaware of contained in the Alaska Statutes and the Bar Rules.

At the dinner, Keith Sanders, General Counsel for Cook Inlet Region, Inc., spoke on life as in house counsel and what in house counsel is looking for when hiring outside counsel.

Sam Cason, playing the naive client, goes over a mock fee agreement with Yale Metzger. The Inn of Court is preparing a model fee agreement to be available to all Alaska Bar members.

Fairbanks legal assistants reorganize

Area legal assistants, paralegals, students and educators are pleased to announce the reorganization of the Fairbanks Association of Legal Assistant (FALA) in its first meeting of the general membership September 13, 2002. FALA is an unincorporated professional membership association committed to the development and growth of the legal assistant/paralegal profession in the Interior.

FALA is in the process of affiliating with the National Association of Legal Assistants (NALA) headquartered in Tulsa, Oklahoma. The goals of FALA are to establish good fellowship among association members, the National Association of Legal Assistants, Inc., and members of the legal community; to encourage a high order of ethical and professional attainment; to further the education among members of the profession; to cooperate with bar associations; and to support and carry out the programs, purposes, aims and goals of the National Association of Legal Assistants. FALA members are bound by NALA's Code of Ethics and Professional Responsibility and are prohibited from the unauthorized practice of law.

The following officers were elected at the September meeting: Deana M. Waters of Cook Schuhmann & Groseclose, Inc., president; Jerry W. Troupe, of Winfree Law Office, vice president; Barbara Johnson, of Downes MacDonald & Levengood PC, NALA liaison; Rori Mattson of Valerie Therrien, Attorney At Law PC, secretary; and September Laakso, UAF Paralegal Program student, treasurer.

The Board of Directors includes Bernie Hall of Guess & Rudd PC; Terria Davis of Hoppner Law Office; Karon Strandberg of Hompesch & Evans; and Inez Wright of Alaska Legal Services Corporation in addition to the officers. FALA will sponsor educational seminars designed to cover topics in various areas of law and hopes to publish a quarterly newsletter which informs our members of upcoming seminars, guest speakers, educational courses, and news of current legal and professional developments.

The American Bar Association encouraged the formation of a professional legal assistant/paralegal organization after its approval of the University of Alaska Fairbanks paralegal education program. Efforts to do so began in May 2002.

Monthly luncheon meetings are held at noon on the third Friday of each month at the Westmark Hotel. FALA offers several classes of membership, including an individual and institutional sustaining category. Legal assistants/paralegals, attorneys, students or other organizations interested in joining may contact FALA by writing to PO Box 74771, Fairbanks, AK 99707-4771, or by telephoning Rori Mattson at 452-6195 or Deana Waters at 452-1855.

— Deana M. Waters

GETTING TOGETHER

Dinosaurs in our midst! — who is not "getting it" about mediation and collaborative dispute resolution?

☐ Drew Peterson

In the interest of being provocative, it seems appropriate in this New Year to point out that most of us still have not figured out what mediation and other forms of collaborative dispute resolution are really all about. As such, we are dinosaurs, who are in danger of being left behind in what is the most significant legal development of the late 20th century, and the harbinger of the law of the future. To say nothing of the peril we are creating for ourselves of being sued for malpractice by clients who do "get it" about the new legal paradigms that are coming into existence. Understandably, our clients expect nothing but the best cutting edge legal representation from their well-paid counsel.

Rather than the mild academic rantings of my past diatribes on the subject, let me attempt to be blunt in describing those of us who have not yet figured out the significance of these important changes in the law and society.

You are simply not getting it yet about the significance of mediation and appropriate dispute resolution if:

• You think that mediation and arbitration and fundamentally similar processes, merely substituting a private judge for a public one.

• You think that the most important evidence of a mediator's competence is his or her settlement rate.

• You think that an essential part of mediation is for the mediator to have caucus sessions separately with the parties in order to lean on them.

• You do not understand the differences between alternative dispute resolution, appropriate dispute resolution, and collaborative dispute resolution.

• You cannot explain to others the differences between and significance of avoidance-based, collaborative, right-based and power-based methods of conflict resolution.

• You are not intimately familiar with the concept of "active listening."

• You have not spent at least 25 actual hours in law school, CLEs, workshops, or elsewhere, actively engaged in role plays wherein you played the part of a bigot, patriarch, feminist, teenager, spousal abuser, senior citizen, person of color, or similar roles of individuals totally outside of your normal sphere of understanding.

• You believe, like Vince Lombardi (reputedly) that winning is not just the most important thing, it is the only thing.

• You believe that the law inherently requires winners and losers.

• You think that "win-win" is a new age concept that has no basis in reality.

As a judge, you remain mired in the early twentieth century if:

• You view mediation primarily as a method for controlling your burgeoning caseloads.

• You view mediation as appropriate primarily for domestic relations cases, thereby freeing you up to work on real cases.

• You view mediation as appropriate only where all counsel agree to it in advance.

• You find mediation most appropriate for pro-se cases.

• You believe mediation to only be appropriate where all sides are represented by counsel.

• You believe that retired judges are always the best mediators.

• You refer cases to others only when judge mediators are not available or are too expensive.

• You believe that mediators must at a minimum be attorneys, preferably with years of experience in the legal substantive area in dispute.

• You are looking forward to a lucrative private mediation business upon your retirement from the bench, without seeing the need for any further training.

As a practicing attorney, you are in danger of being sued for malpractice if:

• You fail to discuss appropriate dispute resolution options with your client while preparing your case.

• You believe that agreeing to mediate a case is an acknowledgment of weakness to the other side.

• You believe that mediation is only appropriate after formal discovery has been completed.

• You believe that only attorneys (or retired judges) can competently mediate a case.

• You believe that substantive legal or technical expertise is a requirement for all mediations.

• You do not have a clear understanding of the difference between facilitative, evaluative, and transformative mediation styles, and the appropriate and inappropriate use of each.

As a mediator, you will soon be unemployed, if:

• You believe that you have mastered the only "best practices" of mediation.

• You keep exacting records of the "success rate" of your mediations.

• You use caucus in all of your mediations, and view any practitioners who do not do so as Incompetent at their work.

• You never use caucus in your mediations, and view any practitioners who do so as Incompetent at their work.

• You label any practitioners who disagree with your views on mediation as incompetent or worse.

As a Law Professor, Legal Theorist or Social Activist, you will soon be humiliated in front of your peers if:

• You believe that mediation is never appropriate where there are power imbalances.

• You believe that power balancing is an inherent component of the mediation process and not a major cause for concern.

• You believe that cases involving domestic violence can never be mediated.

• You believe that everything is negotiable in mediation, even violence.

• You believe that mediation and other forms of ADR constitute a form of second-class justice.

• You believe that mediation always supports to current patriarchal system and is inherently dangerous to women and minorities.

• You believe that mediation is a new age liberal concept and a further step down the road to socialism.

In Conclusion: An Idea Whose Time Has Come

Mediation, and other forms of collaborative dispute resolution are an idea whose time has come. While fascinating debates about theoretical frameworks and best practices continue to abound, the field of mediation has evolved to the point where it is now a matter of professional legal competence to understand the most basic concepts of the field.

So let this be our New Year's Resolution for 2003! Let us come out of the dark ages and educate ourselves about this exciting new field. Only then can we be sure we are providing our clients with the state-of-the-art legal representation that they deserve. To fail to do so is to put ourselves, our firms, and our associations, as well as our clients at risk.

DID YOU KNOW...
that your call to any member of
THE LAWYER'S ASSISTANCE COMMITTEE
will be held in complete confidence?

SINCE 1896
ALASKA BAR ASSOCIATION

If you bring a question or concern about drug or alcohol use to any member of the Lawyer's Assistance Committee, that member will:

1. Provide advice and support;
2. Discuss treatment options, if appropriate; and
3. Protect the confidentiality of your communications.

That member will not identify the caller, or the person about whom the caller has concerns, to any other committee member or the Bar Association, or anyone else. In fact, you need not even identify yourself when you call.

Contact any member of the Lawyer's Assistance Committee for confidential, one-on-one help with any substance use or abuse problem.

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ATTENTION ALL U.S. DISTRICT COURT VISITORS:

Effective January 1, 2003, the Court Security Officers manning the security checkpoints leading to the U.S. District Court will no longer hold cellular phones while the owner is visiting the U.S. District Court or its environs.

Please make arrangements to store these items elsewhere.

Judges Protest in Venezuela and Suspend Work

CARACAS, Venezuela (December 10, 2002 3:06 p.m. AST) - Nearly half the judges on Venezuela's Supreme Court suspended work Tuesday to protest what they called political harassment from the government during a general strike against President Hugo Chavez.

Eight of 20 magistrates plan to work only on urgent cases of national interest, said Magistrate Alberto Martinez.

Alaska Judges Admire Venezuela Judiciary

Anchorage, Alaska (December 11, 2002)—At a hastily called meeting of Alaska judges, a resolution was passed supporting the concept of judicial work stoppages whenever the court senses political harassment. Said one judge, who requested anonymity, "I like this Venezuelan idea. The next time the governor says we 'cuddle' criminals, well damn it, I'm taking the day off. But the law clerks have to stay and work." Another judge, also requesting anonymity, stated "If I read the morning paper and see any criticism of the courts, I'm going fishing. It's just that simple." The resolution passed unanimously.

Because justice has a price.

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Our 2002-2003 Robert Hickerson Partners in Justice campaign began October 1. If you would like to join your colleagues in supporting this worthwhile cause, please send your tax-deductible contribution to:

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For information or to request a pledge form, e-mail us at donor@alsc-law.org. Check our campaign website at www.partnersinjustice.org.

NOTICE

Please note that effective 12/1/02, new Rule 7.1 F.R. Civ. R and 12.4, F.R.Cr.P. requires corporate disclosure statements by or for corporate defendants/victims.

Rule 7.1 Disclosure Statement
(a) Who Must File.
(1) Nongovernmental Corporate Party. A nongovernmental corporate party to a action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.
(b) Time for Filing; Supplemental Filing. A party must:
(1) file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and
(2) promptly file a supplemental statement upon any change in the information that the statement requires.

Rule 12.4. Disclosure Statement
(a) Who Must File.
(1) Nongovernmental Corporate Party. Any nongovernmental corporate party to a proceeding in a district court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.
(2) Organizational Victim. If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 12.4(a)(1) to the extent it can be obtained through due diligence.
(b) Time for Filing; Supplemental Filing. A party must:
(1) file the Rule 12.4(a) statement upon the defendant's initial appearance; and
(2) promptly file a supplemental statement upon any change in the information that the statement requires.

•

Please note that effective 10/01/02 the following Local Rules took effect.

Rule 4.1 Summons
Except for the date of issuance and signature, a summons presented to the clerk for issuance must be completed in all respects (name and address).

Rule 10.1 Form of Pleadings and Other Papers
(a)(c)(1) All exhibits to pleadings must be:
[A] identified by attached tabs in a manner that the tab identifying the exhibit is readily visible
(a)(c)(2) If more than five (5) exhibits are attached, the exhibits must be preceded by a table of contents identifying each exhibit by number and description.

Rule 11.1 Appearance by Attorney
(a) Entry of Appearance
Unless the context clearly indicates otherwise, the filing of a pleading, paper, or document by an attorney for or on behalf of a party constitutes an entry of appearance on behalf of the party by the attorney signing the pleading, document, or paper, and no separate entry of appearance need be filed.
(b) Notification of Change of Address
Not more than five (5) days after a change of address or telephone or facsimile number, an attorney who has entered an appearance in a matter must file and serve on all parties to the proceeding a notice of change of address and/or telephone and facsimile number.

Meditative practices improve your practice

Part II

By Dennis M. Warren

Meditation practices are a method of developing, and a process for maintaining, a calm and clear mind. They are about paying careful attention to our lives.

During these practices, our focus shifts from our usual busy outer world of commitments, concepts, and actions, to the moment-to-moment observation and investigation of the body and mind. This is done through calm, focused, and balanced awareness.

The experiential question is asked: "What is happening, now, in my breath, my body, my mind, and my emotions?" The answer arrives, not conceptually or intellectually, but through our direct experience of what is occurring in the present moment.

Instructions for two different meditation practices you can use at the office and at home appear at the end of this article. The first is a Conscious Body Scan, the second involves Conscious Breathing. Both are excellent methods of developing awareness, and relaxing the body and mind. They slowly help us develop a new understanding and perspective on how we relate to our experience.

If you use these practices regularly, particularly in conjunction with the Quality of Work and Life Questions (in Part I), you will begin to notice a larger sense of awareness starting to emerge during the day. As your skill develops, you can use these same practices before and during meetings, court appearances, and the day to become more aware, relaxed, and refocus your attention.

Similar meditation practices are currently being used in over 500 hospitals and medical clinics in the United States to help individuals enter into a new relationship with chronic pain and stress-induced conditions such as headaches, high blood pressure, sleep disorders, gastrointestinal problems, and anxiety.

These meditation practices are simple, short, easy to do, and pleasurable. There is an almost immediate payoff: you feel better and think more clearly. This is intentional.

GETTING STARTED

We frequently start some new project — an exercise program or diet — which is overly ambitious. It soon becomes burdensome, a chore. We abandon it as quickly as it was begun.

To avoid this common syndrome, we start simple and easy. The key is to do the practices regularly, every day, in the environment where you actually face the challenges of stress. The purpose of this approach is to systematically develop a new way of responding and relating to stress in our lives right where we live and work.

It's important to be realistic with your expectations. Remember that your current states of mind are the product of years of conditioning, reinforcement, and habituation. The process of developing a new perspective and a more conscious way of living in the world occurs gradually. It is based on making a realistic and consistent effort every day — day after day after day.

You will probably find it helpful to do a number of small, manageable sessions of these practices throughout the day. You can start with 5 to 15 minute sessions, depending on the time available.

After surveying a number of businesses who encourage their employees to meditate, *Business Week's* Geoffrey Smith concludes, "People who have the most success with meditation make a point of incorporating it into their daily routine, whether at home or on the job. That way, it becomes second nature. So if your boss blind sides you at 5:00 pm with a 20-page report that's due tomorrow, you have a better chance of staying calm and keeping your blood pressure down."

Doing these practices regularly acts as a reminder to pay attention to how you are doing what you are doing — your state of mind, your energy level, your level of bodily and mental relaxation, rather than merely being unconscious and lost in what you are doing. This tends to break the cycle of tension and stress that begins to take over our day and helps restore our perspective. It also reinforces your intention to practice.

Don't be surprised if you find your mind wandering, and if you have difficulty keeping your mind focused, when you begin these practices. It takes a while to develop your concentration and to begin stabilizing the mind. If your mind tends to wander or becomes resistant, don't struggle with it or become judgmental. Just relax and bring your attention back to the practice — over and over and over again. Use the same approach you would use with training a small puppy. Genuine care and kindness, rather than harsh reactions and criticism, produce the best results.

CHARTING A NEW COURSE

Meditation practices provide us with the possibility of living a conscious life. They offer us a new skill set to improve the quality and level of our work. All of the states of mind that are developed through these practices — concentration, quietness and calmness of mind, the ability to deeply listen, a more spacious approach to problem-solving and relationships, a less personalized and attached view of experience, greater understanding, kindness, and compassion, and more — can expand our capacity to deal more effectively with difficult professional and life situations.

They can also help us tap into deep resources within us. Mahatma Gandhi considered his early morning meditation practice the foundation of his day. It allowed him to access a deep source of inspiration, patience, courage, and resilience that sustained him in all of his activities.

Attorney Barbara Ashley Phillips describes the potential impact of these practices on our professional lives: "Do this now. Put your world aside for a moment. Imagine a calmer world. Take a deep breath, breathing out slowly. Notice the breath moving against your nostrils, the fresh air refreshing the various parts of your body. In this calmer world, there is always enough time. Rushing is inappropriate. Reflection and good judgment are highly valued. Clients receive the best of service and the closest attention. Less is done, more is accomplished. Conflicts are addressed in an orderly fashion and needed adjustments are made quietly and easily. There is such a world. It lies within us."

We have the capacity to remain at the center of the storms of our own thoughts and emotions allowing us to exercise sound judgment, wisdom, and compassion. There is a way to obtain a new sense of spaciousness, or breathing room, in the face of stressful situations. There is a safe refuge, a sanctuary we can visit to restore ourselves and to nourish our spirit and inspiration. But this does not just happen. Developing the meditation skills to access and maintain these states of mind is the result of consistent effort and a committed decision to live a conscious life.

MEDITATION INSTRUCTIONS

The following meditation practices involve bringing awareness to our experiences of the body and breath. Our objective is to experience whatever is present on a moment-to-moment basis. We're not trying to make something "special" happen, or to change, manipulate or control what we're experiencing. Just allow yourself to be fully present, and non-judgmentally experience what unfolds.

We'll maintain our attention primarily on the experiences in the body or breath, depending on which exercise is being done. Don't be surprised if your concentration seems weak or your mind unusually active. It takes awhile for concentration to develop and for the mind to quiet down. Give yourself the time, space, and permission to allow this to happen.

You'll find your attention pulled away many times, even during a short session, by sounds, smells, thoughts, emotions, or memories. When this happens, don't fight it. Notice that the attention has moved and gently refocus it back to the experience of the body or breath. Do this over and over again. Just relax into the rhythm of this process.

YOU MAY FIND THAT BRINGING CAREFUL ATTENTION TO THE BODY WILL RESULT IN IT SPONTANEOUSLY RELAXING.

If the attention keeps wandering repeatedly back to a particular thought or emotion, allow the attention to shift to how that thought or emotion feels in or affects the body or breath.

More advanced forms of these practices involve engaging thoughts and emotions in the meditative process. This is beyond the scope of this article.

Both the Conscious Body Scan and the Conscious Breathing practices initially begin the same way as follows:

Sit comfortably erect with your feet on the ground. Fold your hands softly in your lap with the hands together or place them on the knees. Find a position where your hips, shoulders, and back, and head and neck are aligned. Allow the shoulders to move back and down, and the chest to open. Feel the full weight of your body in the chair. Feel the weight of your feet connecting with the ground. Once you have settled into this position, take a few deep, comfortable, rhythmic breaths.

At this point, move next to the Conscious Body Scan or Conscious Breathing practices.

CONSCIOUS BODY SCAN

The Conscious Body Scan can be a rich and relaxing experience. It involves systematically brining awareness to different parts of the body; experiencing and feeling whatever sensations are present; and then allowing the area or region to fully, deeply relax. It differs from a simple relaxation exercise because it involves two steps, rather than one. First, sensations in a particular area of the body are fully experienced. Second, that area of the body is relaxed. There may be regions of the body where you won't experience any sensations at all. That's quite natural. Don't try to make something happen. Be patient. Your level of body awareness will increase with practice.

Bring the attention to your forehead. Calmly experience and investigate any sensations in this region. Is there a sense of tightness or constriction? Openness and relaxation? Vibration or tingle? Heaviness or lightness? Temperature?

Fully experience whatever is present. You may find that bringing this type of careful attention to the forehead will result in this area spontaneously relaxing. If not, intentionally allow any bracing, holding, or tension to be released and to relax fully. Systematically move through the body following this process: Forehead, eyes, nose, cheeks, jaw, neck, shoulders, all the way down to your toes.

JUST CALMLY INVESTIGATE AND EXPERIENCE THIS INCREDIBLE PROCESS OF BREATHING THAT SUSTAINS OUR LIFE AND IS USUALLY OUTSIDE THE RANGE OF OUR AWARENESS.

Depending on the time available, you may only do a portion of the body: the head and shoulders, or just those areas where holding and tension can be strongly felt. Experiment and see what works for you.

When you are ready to end the session, bring your awareness into your body. Feel the full weight of your body in the chair. Feel the weight and contact of your feet with the floor. Take several deep breaths. Experience a sense of stability and balance. Gently open your eyes.

CONSCIOUS BREATHING

Gently move the attention to the experience of breathing. Calmly investigate and determine where the experience of breathing is most clearly and strongly felt. In the rising and falling of the abdomen? In the expansion and contraction of the chest? At the tip of the nostrils as the air enters and is expelled? Select one of these areas and allow the attention to refocus here exclusively.

Allow the breath to settle into its own natural rhythm. Connect the attention with the earliest sensation of the in-breath. Sustain the connection until the end of the in-breath. There will be a small pause between the in-breath and the out-breath. Relax.

Connect the attention to the earliest sensation of the out-breath. Sustain the connection until the end of the out-breath. Relax. Maintain this process with each in-breath and with each out-breath.

As your ability to sustain the attention on the breath strengthens, explore what is experienced with each

Continued on page 15

Meditative practices

Continued from page 14

in-breath and each out-breath. What are the sensations? Is the breath deep or shallow? Smooth or rough? Heavy or light? Warm or cool? Is there vibration, stretching, tingling?

Just calmly investigate and experience this incredible process of breathing that sustains our life and is usually outside the range of our awareness.

When you are ready to end the session, bring your awareness into your body. Feel the full weight of your body in the chair. Feel the weight and contact of your feet with the floor. Take several deep breaths. Experience a sense of stability and balance. Gently open your eyes.

Dennis M. Warren is a Sacramento, CA healthcare attorney. warrenlaw@earfhlink.net. Reprinted with permission from the Hawaii State Bar Associaiton.©

A Trial Lawyer's Delight

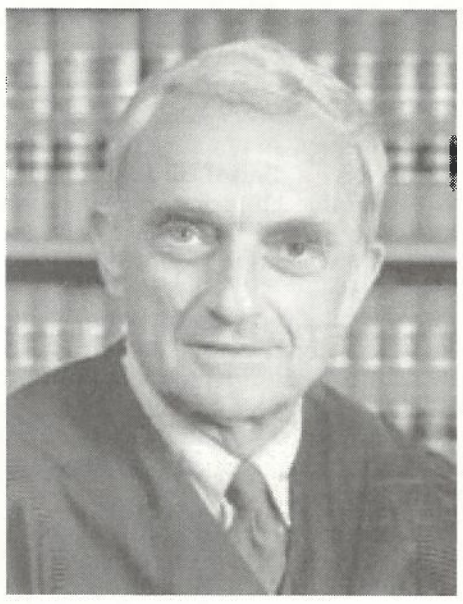
From "We, the Lawyers," a compelation of humorous anecdotes, compiled by William F. White, Oswego, OR. (We,the lawyers@webTV.net)

Last will cut-outs

As told by Lawyer W. Thomas Coffman of Tulsa, Oklahoma

My partner, having just obtained a divorce for one of our clients, advised the client to contact me about preparing a codicil to "cut your ex-wife out of your Will." Being a frugal individual, the client took matters into his own hands. After the client's death, an inventory of his safe deposit box revealed that his ex-wife had indeed been "cut-out" of his Will everywhere her name appeared. He even left the scissors behind.

ANNOUNCING THE JAY RABINOWITZ PUBLIC SERVICE AWARD



Jay Rabinowitz

Beginning in 2003, this award will be given each year by the Board of Trustees of the Alaska Bar Foundation to the individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Nominations for the award are presently being solicited. Nomination forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nomination forms must be returned to the office of the Alaska Bar Association by April 15. 2003. The award will be presented at the Annual Convention of the Alaska Bar Association in May, 2003.

SINCE 1896 ALASKA BAR ASSOCIATION

ALASKA BAR FOUNDATION

Alaska Bar Association 2003 CLE Calendar

Date	Time	Title	Location
January 28	8:00 – 10:00 a.m.	OTR – 3rd Judicial District CLE #2003-003 2.0 General CLE Credits	Anchorage Hotel Captain Cook
February 3 (NV)	9:00 a.m. – 12:15 p.m.	Legal Ethics: Name that Movie, Name that Rule CLE #2003-007 3.0 Ethics CLE Credits	Fairbanks Chena River Convention Center
February 3 (NV)	1:30 – 4:30 p.m.	Winning at Trial: Skills & Techniques CLE #2003-006 2.75 General CLE Credits	Fairbanks Chena River Convention Center
February 4	8:30 a.m. –4:30 p.m.	Winning at Trial: Skills & Techniques CLE #2003-005 6.0 General CLE Credits	Anchorage Downtown Marriott
February 21	8:30 a.m. – 12:30 p.m.	HIPAA CLE #2003-002 3.75 General Credits	Anchorage Hotel Captain Cook
~~February 27~~ Spring Date TBA	8:30 a.m. – 12:30 p.m.	Real Estate: Takings & Eminent Domain CLE #2003-008 3.75 General CLE Credits	Anchorage Hotel Captain Cook
March 11	8:30 a.m. – 5:00 p.m.	Wilderness & Outdoor Recreation: Managing Safety and Legal Risks CLE #2003-001 6.5 General CLE Credits	Anchorage Hotel Captain Cook
September 25	TBA (all day)	Masters at Trial (NV) Presented in cooperation with ABOTA CLE Credits TBA	Anchorae Hotel Captain Cook
October 3	8:30 a.m. – 5:15 p.m.	5th Biennial Nonprofits Program CLE #2003-011 CLE Credits TBA	Anchorage Hotel Captain Cook
October 15 Tentative	TBA	Issues in Disability Law CLE #2003-010 CLE Credits TBA	Anchorage Hotel Captain Cook
October 22	8:30 a.m. – 5:00 p.m.	15th Annual AK Native Law Conference CLE #2003-004 CLE Credits TBA	Anchorage Hilton Hotel

NV = no videotape

HI-TECH IN THE LAW OFFICE

Digital cameras: Diversion or useful tool?

BY CAROL L. SCHLEIN

INTRODUCTION

Sometimes, it's hard to think about serious issues like billing systems, litigation or case management. We'd rather spend time with our families, travel, relax, and reinvigorate ourselves. For me, the goal of automating my practice has always been to enable me to earn a good living with minimal stress from tight deadlines or work-related emergencies, and to spend more time with family and friends.

For me, a camera is a must for capturing special moments during my time away from work. Over the past two years, I've noticed more people shifting from traditional film-based cameras to digital models. After watching the prices fall and the number of models and brands proliferate, it was time for me to take the plunge. While my primary goal was to reduce the costs associated with buying film and reproducing photographs, I've already found some uses for the camera on the professional side of my life.

For a practicing lawyer, I see even more potential uses. Imagine, instead of being confused about who is on the phone, you could quickly access a photo of that person along with his or her contact record in your case management program. How about adding photos of your staff and office location to your firm's Web site? Need to document scenes from an auto accident? No problem!

GETTING STARTED

To use a digital camera, you need requisite accessories. Just choosing a camera can be overwhelming. Getting familiar with the terminology can be like learning a language. You have to understand megapixels, JPEG files, storage options such as SmartMedia cards, and battery options.

If you've been a serious photographer, you will want to steer toward the higher megapixel cameras (3 mp or more) with a faster lens. You also may want to hold different models to see if they are comfortable and easy to focus. Some brands like Nikon sell cameras that swivel so you can see your subject. Others like Olympus have both a viewfinder like a traditional camera as well as a preview screen to see a larger image of the photo before you take it.

The cameras come in many sizes. Having had a very small point-and-shoot camera for several years, I found that too often the pictures were blurry because it was too hard to hold the tiny camera still enough. So when I was choosing a digital camera, I spent a lot of time holding different models to see if they were large enough to hold steady, yet light enough to carry in a small bag for quick day trips without getting an aching neck.

THE RIGHT PRICE

Digital cameras come in a wide range of prices and models. Low end cameras sell between $200 and $300; high-end models can sell fore more than $1,000. My philosophy when purchasing a camera was to look between these two extremes for a "prosumer" model. I didn't want last year's model, but I also didn't want to overpay for unnecessary features. My decision was reinforced when I spoke with friends who bought both an expensive and an inexpensive camera and felt the extra money was not worth the difference.

I settled on the Olympus Camedia 3040, which cost approximately $500. It has a very fast, high-quality lens and uses four AA batteries. On friends' advice, I also purchased rechargeable AA batteries and a recharger. In addition, I was advised to purchase a higher capacity SmartMedia card. Unlike traditional film that allows up to 36 pictures on a roll, a single 256 MB SmartMedia card can hold 164 photos. Not having to worry about running out of film is a new freedom afforded by digital cameras. If a picture doesn't look good, I can delete it and take another.

There are some other notable differences between traditional and digital cameras. When you take your first picture, you'll notice a longer delay between the time you press the shutter and the time the photo is created. This can sometimes make catching the moment more difficult. Over the July 4th weekend, I practiced taking pictures of fireworks to see how well I could anticipate the shot I wanted.

ONLINE DEVELOPMENT

Even if you decide to stick with your 35-millimeter camera, you can have your photographs delivered online or on a CD-ROM. Any digital photograph can then be printed or shared electronically with friends, family, clients, colleagues, etc. Many local photo developing stores and drugstores now have affiliations with the leading online digital photo printing sites.

One of the largest and best known of these sites for sharing and printing digital images is http://www.ofoto.com, a subsidiary of Kodak operated in conjunction with Amazon.com. On this site, you can obtain free software to edit photos to remove red-eye, change the contrast or brightness, crop the image, etc. Once you have the photos the way you want, you can create different albums and share them free with selected recipients. If you have more than 200 photos in your albums, you will be asked to delete some or pay a small storage charge. You also can order various sized prints as well as photo cards, frames and other accessories.

The main competitors to Ofoto are snapfish.com, shutterfly.com, and photoworks.com. Several retail chains also have dot.com online processing sites. They include Costco, Wal-Mart, and RitzCamera.

Right now, Snapfish has the lowest prices closely followed by Ofoto. Most sites charge about 49 cents per reprint although some provide significant discounts for larger numbers of prints. There also are differences in postage charges. Even if using a traditional camera, you may want to compare these prices with the convenience of developing pictures locally, especially when sending holiday cards.

LAWYERLY USES

Okay, so it's easy to find reasons to buy a digital camera if you have adorable children or love to travel. How about finding ways to use a digital camera to better serve your clients?

Does your firm have a Web site? How about posting pictures of your office location, the lawyers, and staff? Avoid copyright issues and take photos of parts of your office to illustrate different pages on your site.

Jar Your Memory

If you're like me, I regularly confuse clients with similar names or those from similar towns who called me around the same time. If I took a photo of each during our initial meeting, I could connect it to the case record and look at it when they call or before I head to their office. All the leading case and practice management programs, as well as litigation support applications, allow users to connect digital images with case or contact records. I realize that taking pictures of your clients might be a sensitive issue for some lawyers and for some practice areas. But perhaps you could include those photos with a thank-you note at the end of their case.

Documentation

How you might use digital photos will largely depend on the nature of your practice. Lawyers tend to be more verbal than visual, but digital images could improve your case outcome. For example, it's easy to imagine taking photos of the property for sale during a real estate transaction. If there is a dispute over the condition of the property, a picture could be helpful in resolving the issue of who does the repair. Documenting the conditions of a tenant's apartment could improve the result on your client's behalf.

Immigration lawyers often have clients they haven't met because they were hired through a relative in an attempt to gain residency. A digital photo of the actual client may help the lawyer better match the file and circumstances to the person.

Evidence

Any sort of physical evidence can be documented with a digital camera. If you're an intellectual property lawyer trying to prove the new design of your client's product doesn't infringe on the plaintiff's product, incorporating digital photos of each product into a presentation might be more effective than using print photos. While you may have to take additional steps to prove the photos haven't been altered, you can easily enlarge digital photos to highlight details that might normally not be seen.

In a divorce hearing or custody case, you might be able to show the judge different views of the marital residence or show details from a child's room in connection with a custody hearing. In some instances, videotape may be more appropriate but often a photograph will suffice.

As the cliche goes, "A picture is worth a thousand words." A digital camera is now the best way to take that picture.

Carol L. Schlein is president of Law Office Systems in Montclair, a training and consulting firm specializing in law firm automation. She formerly chaired the Computer and Technology Division of the ABA Law Practice Management Section. She has organized Time Matters user groups in New Jersey and New York. You can find meeting information as well as copies of her previous technology columns at <http://www.losinc.com>. You can contact Carol via e-mail (carol@losinc.com).

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NOTICE OF PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO LOCAL CRIMINAL RULES U.S. DISTRICT COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local Criminal Rules

32.1, 32.2 (new), 32.1.1, and 32.1.2 (new).

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft rules are due no later than February 28, 2003

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Court Rules Attorney
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564
or
e-mail to AKD-Rules@akd.uscourts.gov

The preliminary draft of proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; or on the web at the U.S. District Court Home Page http://www.akd.uscourts.gov

5 ways to be more efficient at work

By Peter Balsino and Robin Baade

Take a fresh look at how you manage your law practice. Do you dread walking through the door and seeing what messages and faxes await? Do you spend the day putting out fires instead of doing the work you planned to do? Do you end your week wishing you had spent more time enjoying your personal life?

Consider how a few simple changes can free up more time in your work week, and make your hours in the office both more productive and more enjoyable:

1 Create "office hours" which are different from employee work hours. Even though you and your employees work from 8:00 to 5:00, that doesn't mean you have to keep your doors open and answer the telephone during those same hours. You probably don't receive many calls during the first and last hour of your workday anyway. More important, you don't need to begin or end your day with a crisis.

This alternative schedule creates a productive first hour for you and your employees, without interruptions. The receptionist can do other work (such as copying, filing, etc.), or your firm can reduce staffing so you don't need someone during those hours. The answering machine or service can alert your clients and others about your "office hours." It is up to you whether you want to schedule "emergency" appointments during the first hour as a special service to certain clients. You can be reached by family members or receive other important calls by keeping one direct line open that will always be answered when someone is in the office.

2 Create "Saturday hours." Why do you get more work done on Saturday? There are no phone calls, no employees asking questions, no interruptions. To create that atmosphere during the week, schedule the first two hours of some or most of your mornings as "do not disturb" hours. Have the receptionist take messages for you, and ask that your employees save administrative matters until later in the day. In our office, we have actually gone further by creating "Saturday hours" from 8:00 to 10:00 for the entire office. No employee takes calls or works on matters that require interaction with other employees. This allows everyone to tackle the work on their desks first thing in the morning without distraction.

The receptionist can tell callers that everyone is in a staff meeting. A good receptionist will be able to tell which calls can't wait. If you are waiting for a particular call, you can alert the receptionist. Everyone will need to be flexible - especially in the beginning when the policy is new - but eventually you will be able to tailor your own version of "Saturday hours."

3 Create "fax machine hours." Get into the habit of turning on the fax machine when you get to work, and turning it off when you leave. No, really. We know it is a form of blasphemy in today's technologically advanced office, but think about it.

The purpose of the fax machine, as with other technology, is to make your practice simpler and more efficient, not to control you. A fax machine is useful in many situations, but it can create a sense of false urgency. It can also allow opposing attorneys to accomplish untimely notifications. How many times have you received paperwork at the end of the day — or worse, during the night — before a morning hearing?

Attorneys who fax after or before work hours get to control your workday: There the papers are, waiting for you first thing in the morning, defining how you are going to spend the next few hours.

Not only do you not have a duty to keep your fax machine on, you do not even have a duty to own one. Radical, huh? We have a fax machine because it makes it easier and less expensive to communicate with others in certain situations. But we bought it, so we get to decide how to use it. We turn it on at 8:00 and off at 5:00.

4 Schedule your time off. If you've ever had the flu for a week or experienced a family emergency that required your immediate attention, you know that things at work aren't always as urgent as you think. Your experiences have probably shown you that when you need to get away from work, you can. But once the emergency disappears, we slip into the same old pattern of being overwhelmed with work.

You do have the time to take off, but you have to recognize it and protect it. We all waste time at work (surfing the internet, organizing and reorganizing our desks, and doing even less productive activities). We also labor under the misconception that there is a value to being in the office, even if you aren't working. Someone may call you, something may need to be done, so you'd better be there.

WRONG

If you scheduled yourself out of the office every Thursday afternoon for a networking meeting or a standing client appointment, your practice would survive without you — right? Test this. At the end of each day for a week, write down how much time you actually worked. You should notice at the end of the week a surplus of time. So why not use that time for something more satisfying? Pick up your children from school and go to a movie. Go home and garden. Take a class. Do something for yourself. But you have to plan it and do it.

THE PURPOSE OF THE FAX MACHINE, AS WITH OTHER TECHNOLOGY, IS TO MAKE YOUR PRACTICE SIMPLER AND MORE EFFICIENT, NOT TO CONTROL YOU.

Start slowly by picking one day a week to leave early or come in late. Or start even smaller: Do not work on the weekend for three weeks in a row. Train yourself to get all of your work done in five days, rather than in seven. If you are like us, you will discover that the more time you take off, the more productive you are at work, which in turn allows you to take more time off.

5 Create "summer hours" and "December hours." Summer and December are great times to reduce your work hours because most attorneys and courts are on vacation, and things slow down. Instituting reduced hours in summer and December would be a great benefit for you and your employees — and it doesn't cost anything.

In our office, summer hours run from Memorial Day to Labor Day. December hours run from Thanksgiving to New Year's Day. Normally, employees work from 8:00 to 5:00, with a one-hour lunch break. During the summer and December, we reduce the lunch break to one-half hour Tuesday through Friday. (The one-hour lunch on Mondays still allows employees one day during the week to run any personal errands that would take longer than half an hour.) This two- hour surplus allows employees to start their weekend on Fridays at 3:00 rather than 5:00.

Although Federal law does not regulate employee breaks or lunch hours, you need to consult your individual state law to make sure you tailor your summer and December hours programs to comply. However, even if your state prohibits you from reducing lunch hours, you can still let employees go early on Fridays. The two-hour loss will be more than offset by the gain in employee morale and loyalty.

The summer and December programs have several benefits. For one, it's great for morale. Employees tend to schedule their personal appointments on Friday afternoons, so there is less time away from work than during the rest of the year. [There is a feeling of teamwork in getting the work done earlier in the week and knowing that the weekend will begin) 7sooner and last longer.

Additionally, there is something magical about everyone else going home — it makes it easier (psychologically) for you as the boss to leave (even though you can really leave any time). If your practice is like ours, you probably don't get that many calls late Friday afternoon anyway. However, if you're worried about closing early, put a message on your answering machine or give your answering service a prepared message about your shortened hours. You'll be surprised how many of your clients are supportive of the idea. Just warn your clients ahead of time, and it actually retrains them to call you earlier in the week and earlier on Friday — so no more 4:30 Friday emergencies.

This article first appeared in the May, 2002 issue of California Lawyer Magazine. Reprinted with permission. Baade & Balsino.

NOTICE OF PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO LOCAL BANKRUPTCY RULES U.S. BANKRUPTCY COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local Bankruptcy Rules

9014.-1

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft are due no later than February 28, 2003

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Court Rules Attorney
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564
or
e-mail to AKD-Rules@akd.uscourts.gov

The preliminary draft of proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; or on the web at the U.S. District Court Home Page http://www.akd.uscourts.gov or U.S. Bankruptcy Court Home Page http://www.akb.uscourts.gov

Mr. Madison's motions: *M v M* at 200 years old

By Peter J. Aschenbrenner

For the 200th birthday of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) I interviewed Chief Justice John Marshall (1755 – 1835).

P.A.: How does it feel to be 247 years old?

J.M.: It feels great. I just beat out Mel Brooks for the title role in *The Chief and Me.* It's a made for TV movie.

P.A.: Congratulations.

J.M.: Can you believe that Brooks wanted to steal my best line? 'Badges, you don't need no stinkin' badges.'

P.A.: I'm duly impressed, Mr. Chief Justice. But that was his line.

J.M.: I was known for my sense of humor.

P.A.: Looking back at the bicentennial of Marbury v. Madison, what is there about the decision that is likely to give us the most trouble? When I say us, I mean we here in the 21st Century.

J.M.: The court heard the case and then decided it didn't have the power to hear the case. The court tried it the matter with motions, disputes over the availability of evidence, objections based on executive privilege. You noticed that the Jefferson administration never answered the show cause order?

P.A.: I believe that everyone has noticed that.

J.M.: Anything else?

P.A.: Nobody briefed or argued the constitutionality of Section 13 of the Judiciary Act of 1789, specifically, the grant of original mandamus jurisdiction to the Supreme Court.

J.M.: I suppose you think that the four would-be judges wanted to embarrass the administration by getting us to order that they were judges, with or without commissions.

P.A.: Mr. Chief Justice, they were appointed justice of the peace under an Act of Congress – adopted February 27, 1801, Sec. 11 – in which the President could appoint as many J.P.s as he wanted; they charged the parties by the case, so there was no salary. It wasn't really much of a job.

I always figured that Marbury and his friends thought the lawsuit was going to put Jefferson in a bad light. If he couldn't make an impeachment case against judges appointed by Adams, he'd just withhold their commissions. And more. Federalist pamphleteers could argue that – by accident or fraud –

J.M.: "Not only negligence, but accident or fraud, fire or theft, might deprive an individual of his office."[1]

P.A.: So the Federalist litigators were seeking to knock the legs out from any attempt by the Jeffersonians at decommissioning judges. This would force the anti-Federalists to take the more difficult road, impeachment. As for Marbury and the other would-be judges: They wouldn't be challenging Section 13, because – in taking that position – the appointees would be arguing the Supreme Court couldn't hear their case.

J.M.: Of course the challenge wouldn't come from that direction. But sooner or later the court was going hold an act of Congress unconstitutional. The scholarship has noted the precedents in play from the organization of the Supreme Court itself, indeed from colonial times.[2] Striking that pose in a case with no briefing by either party and targeting the Judiciary Act struck a good clean blow against the Republicans.

P.A.: I rather enjoyed the blow that the Republicans struck first, the session after The Marbury Four filed suit in December, 1801. I refer to the act of Congress which repealed their right to charge fees. (Act of May 3, 1802, Sec. 8.)

J.M.: Yes, and you'll remember that Charles Warren dug out the case in which Judge Cranch and I held that repeal unconstitutional. *United States v. Benjamin More*, decided August, 1803.[3] The Republicans were *indicting* one of the justices for taking fees. So please don't tell me I was paranoid.

P.A.: I wouldn't dream of it. But it does seem strange that William Marbury et al. were scrapping in the Supreme Court to do their J.P. service for free, or for a five year term that would be up before the litigation was over.

J.M.: Now it's my turn. Did you pay attention to what we said, about issuing those commissions? You have read those passages?[4]

P.A.: I've read them. They're not really germane to the constitutional issues. "[D]ictum," Haskins weighs the weight of opinion here in the Oliver Wendell Holmes Devise History of the Supreme Court: "[O]r as an expansive 'excursus' directed primarily at Jefferson."[5]

J.M.: But if I could show you they were, as you say, germane? Indeed, I will show you that the reasoning's the same, the same exertion, if you will, in its working clothes.

P.A.: You're saying that it's a literary puzzle? Being John Marshall?

J.M.: When Adams lost the election of 1800—it can take time to sort these things out – Jefferson consoled Adams with an observation to this effect: "Were we both to die to-day, to-morrow, two other names would be in the place of ours, without any change in the motion of the machinery." Jefferson continues: "Its motion is from its principle, not from you or myself."[6]

P.A.: That's an interesting insight, given the context, I should say.

J.M.: Of course. How is a judge made in America?

P.A.: May I rely on the opinion?

J.M.: Be my guest.

P.A.: I believe I can spell out six motions in the machinery of appointing judges. Let's take Candidate A. The president considers the candidates, decides, and nominates. The Senate advises and consents. The president's clerk prepares a commission; the president signs it—I'm way over six—the Secretary of State records it, seals it and delivers it. And the new justice of the peace takes the oath.

J.M.: By my count, 12 steps.

P.A.: Did I get it right? I mean, the oath is a part of getting vested as the statute provides: "such justices, having taken an oath … shall, in all matters civil and criminal, and in whatever relates to the conservation of the peace, have the powers vested in, and shall perform all the duties required of, justice of the peace … ."[7] *You skipped that part in Marbury.*

J.M.: Yes, there's one point at which the opinion lists three different ways in which judges can prove that they're judges. One is by having a commission, another is by substitute commission, and the third is by being able to locate a public record of the commission.[8]

P.A.: And did the court reach any particular conclusion?

J.M.: No, not at all. Or rather all three were accepted by the court. I may interject: Haven't we changed our focus from (1) a system by which presidents appoint judges to (2) the court system's involvement with the issues involved when a litigant challenges a judge to prove she's a judge? Would there be value in comparing what functionaries do in two systems?

P.A.: Well the discussion has certainly moved into the court system. "If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one; in consequence of which a suit had been instituted against him, in which his defence had depended on his being a magistrate, the validity of his appointment must have been determined by judicial authority."[9]

J.M.: "It is important to the citizens of this district that the justices should be independent," Marbury's counsel Lee argued. "[A]lmost all the authority immediately exercised over them is that of the justices. They wish to know whether the justices of this district are to hold their commissions at the will of a secretary of state."[10]

P.A.: Why can't a Republican who doesn't like a Federalist judge go into the judge's chambers or into the courtroom, and destroy his certificate? And our Republican could then say, You don't have a certificate. *And the Federalist judge could say – on your account –* Well, I can get another certificate. *But this judge goes around and discovers that people won't give him a certificate. Now what would you have? Unless a court had a method to sort back through the steps, to a point of no return, then that court couldn't protect the men and women who are on the bench; those thinking-they-are-judges can get un-appointed as soon as their certificates are destroyed.*

J.M.: Excellent. Now how many different ways could a judge show he's a judge?

P.A.: Judge A can show all twelve steps, less the delivered commission; that was Candidate A from above. Judge B can show that he got a substitute commission. Judge C can show that he can *get a substitute commission.*

J.M.: By pointing to the record of his commission being received by the Secretary of State for the purpose of recording it.

P.A.: Judge D can show he was nominated and confirmed and there is a record of his commission being signed by the President, but that's –

J.M.: As far as the paper trail goes. We'll skip the rest for now. So why not describe (describe is all I ask) *all* of these methods as *in* a works, a machinery.

P.A.: Newton's clock?

J.M.: More Madison than anyone else. He defaulted and I argued the clock works with or without him.

(The Chief Justice, post-interview, allowed that he didn't arrange for the delivery of the commissions on midnight March 3, 1801.[11]

"Now that would hardly have looked good," he told me, "Marbury v. Marshall, opinion for the court by Marshall, C.J."

I started to ask about his being a witness in the case, but the Chief Justice interrupted me.

"Madison didn't know anything about the commissions.[12] *He wasn't even back in the District until May, 1801. I was the only one who did know what happened, in the sense that my opinion made perfectly clear, since I was responsible for operations at the State department while getting up to speed at the Supreme Court, where I had just been sworn in. It was tough," he confided. "Working in the District has always been a hell of a commute.")*

P.A.: I would put it this way. As a would-be judge, I can speak of how I'm going to get to be a judge without having to talk about changing the system of making judges. There are different ways in which a grievant can get to where he wants to go without having to change the system, however one does that.

J.M.: If there are errors when functionaries in a system call functions, we may ask ourselves, *What are they going to do with error? It's their system.* The answer is this: functionaries who work in the system should ensure that their system has functions available to fix error. Or someone else will.

P.A.: Perhaps this is something like what you're driving at. Take a mistake that Congress could have made in prescribing the appointment process.[13]

J.M.: They can make mistakes in input. There is a bare possibility that Congress, in creating justices of the peace for the District of Columbia in 1801, might have made these at will functionaries.

One expects that most systems can correct their own input mistakes, or more precisely have functions available to be called if a system acts on non-conforming input. Such as an assumption that a judge of five years' term can also be at will functionary.

P.A.: I suppose Congress may be said to have, perhaps by funding the federal judiciary, made the judiciary a correcting system, adjoined to its own efforts.

Continued on page 19

Mr. Madison's motions: *M v M* at 200 years old

Continued from page 18

J.M.: You're beginning to sound like one of us.

P.A.: I might say with Jeremy Bentham: "There must be therefore, not one system only, but two parallel and connected systems, running on together, the one of legislative provisions, the other of political reasons, each affording to the other correction and support."[14]

J.M.: So in each system a person would be an observer of the other.

P.A.: He was speaking of how legislators, not judges, write better laws.

J.M.: But any two systems would provide an opportunity for the observer's effort.

P.A.: "Reasons," Bentham described his program, "must be marshalled – "[15]

J.M.: "And put under subordination … " and that is your poor excuse to quote Bentham on marshalling. Here's one for you. "From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well regulated republican government."[16]

P.A.: James Madison at the Virginia ratifying convention, 1788. So if law is made, but the legislators are under a misunderstanding or assumption that something is the case when it's not, and if some (other) system can take responsibility for fixing the situation, then there isn't a flaw in the design of the system under consideration. But what about the Supreme Court hearing a case and then deciding that it can't hear the case?

J.M.: One solution is to assign types to functions. For example, a worker using a rule would be at one level. Another level might be another functionary –

P.A.: Another kind of functionary would be one who designs functions. She says how functions are going to be used by the function user at the first level. On this account I can say, All Cretans are liars, *and be telling the truth, when I screen witnesses, lawyers –*

J.M.: or judges -

P.A.: to participate in trial.

J.M.: So the constitution is a law like any other; judges have to work a constitutional rule marshalling all of their lawyerly doctrine. And we also said the constitution may not make sense, no matter what effort is brought to bear. "It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible unless the words require it."[17]

P.A.: But the designers have made it higher law, that's what I thought. But it's not when it's used in a court system.

J.M.: "Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each."[18] And you'll remember we said the constitution was "superior" and "paramount" but we still said it was "law".[19]

P.A.: Certainly that's what judges do for a living, looking at one rule of law and another one, and working with two (or more) rules. If one body wrote code law in the past, some living judges – however they go about fixing the muffed, the clumsy and the inconsistent effort – will have the opportunity to fix these laws. And that's ordinary or first level effort.

J.M.: Design flaw or input mistake. There are only two choices. When the Judiciary Act of 1789 conferred too much original jurisdiction on the Supreme Court, was that a design flaw?

P.A.: From your perspective what looks like a design flaw is operator error. Hence your decision emphasizes the perspective we shouldn't be doing this in the first place. *That's you, the court. You are forced to retread the same path, the same assumption, as laid down by the first federal congress and repeated by the plaintiffs. And you're not ashamed to expose that mistaken assumption even if it takes an entire discourse on all the issues.*

J.M.: That's the one way to hammer the message at the reader. A system (here we may say constitutional in the largest sense) can baseline operator mistake. Such a system – or grouping of systems – takes responsibility for these errors by assuring us that what could be seen as a serious design flaw can be corrected by treating it as an operator reaching by mistake for the wrong input.

P.A.: And the dividing line between deciding cases for parties by applying rules and making law for nonparties? You underline in your passage: "Those who apply the rule to particular cases, must of necessity expound and interpret that rule."[20]

J.M.: Of course we can do more than one thing at the same time. Those plaintiffs make a mistake in forum choice – they stand before us as a party – and we use the opporutunity to correct the operations of a system. I am speaking of legislative activity that occurred more than thirteen years before our decision.

P.A.: Socialized justice?

J.M.: Exactly. The parties offer a particular case and we are obliged "to say what the law is." Even if the parties don't ask for it; we do it anyway. That's *M v.M.*

P.A.: But in performing your duty, how do you stand back from that effort? Surely it must be more than imagining in the future what functions might be available then *to correct any error which you make* now. *I suppose the best you can do is to hope that your mistake today is one that will be (to some future observer or court) your input mistake. Else, again on your account, your effort will have exposed a designed-in flaw requiring a rebuilding of the system(s), especially if it is a flaw that implicates the system's ability to fix itself.*

J.M.: Now isn't that what *M v. M* is all about? If you backed up far enough to get a good look at Newton's clock you'd have a quite a view, wouldn't you? And a turn of phrase to match. And in any event the business of higher and fundamental law is not the hierarchy that counts. Functions matter.

P.A.: You're referring to the Constitution being both "fundamental and paramount law".[21] *So which is it? The basement or the roof? I can see by your reaction that I've missed the point again. If the constitution is both "superior" and "paramount law"*[22] and *if legislative supremacy would subvert the "very foundation of all written constitutions"*[23] *then the architectural or static metaphor is of limited value.*

J.M.: Still less useful is "law of laws", a phrase actually in use in the 1790s.

P.A.: And you have your own explanation – or justification– for style?

J.M.: "This original and supreme will organizes the government, and assigns, to different department, their respective powers."[24] I rather like that. How you think it felt to be in touch with this "will"?

P.A.: Granting your out-of-system perspective of the constitution-at-work or one far enough from the center, your perspective would strike you with "so much reverence".[25] *I admit that you are compelling me to see that only systems are objects. I think. But what do you see when you are out there, looking at Madison's machine?*

J.M.: First, we know the systems we see. We are able to describe what it is that we observe. Second, we see how functions may be called in sequence. What you and I have called the critical path. Third, we see how systems institutionalize error correction; it happens and the system expects itself (or a follow on system) to fix operator mistake and design flaw.

P.A.: Fourth, I accept that a design flaw may be considered more serious than an operator mistake; after all, the operator may be expected to err. But the system may not be expected to anticipate all of its own flaws. A design flaw inhibiting error correction would be very troubling. The institution would have to take responsibility for its own failure to fix itself in a serious way.

J.M.: Applying a rule (as I said before) in a case is much less of a job than managing on-going error prevention. A hierarchy's worth of difference in types of effort, I would say. Not just seeing that mistakes are fixed, but more importantly seeing that systems are prepared to fix mistakes and redesign flaws; in short, to assure quality through error prevention rather than rely on error correction.

P.A.: But you can only do these four functions when taking a perspective outside the lawsuit-as-an-excuse-to-apply-a-rule-for-the-parties.

J.M.: *Marbury v. Madison* is justly famous for this. We are not just judging Marbury's entitlement and in doing more than that task, we can be self-conscious without our natural principles getting in the way.

P.A.: And perhaps we don't understand how the clock works, but it's more important that we know that there is a clock at work. You've graciously allowed me the last word.

J.M.: Only for today.

(Footnotes)

[1] At 160 (all citations are to Marbury, unless otherwise indicated).
[2] Charles Warren, The Supreme Court in United States History I, 65-84, 256-268.
[3] Warren at I, 255-56.
[4] At 153-167.
[5] Haskins at 203.
[6] Letter to Dr. Benjamin Rush, January 16, 1811; Jefferson, *Writings* 1234, at 1237.
[7] Act of February 27, 1801, sec. 11.
[8] From "After searching anxiously … " (at 159) to the paragraph beginning "Such a copy would, equally with the original .. ". (at 161)
[9] At 167.
[10] At 152.
[11] Haskins at 184.
[12] At 145.
[13] At 162 – 63.
[14] Jeremy Bentham, The Principles of Morals and Legislation (Prometheus Books, 1988)(1789).
[15] *Id.*
[16] James Madison, Writings 385, 386 (New York: Literary Classics, 1999)(addressing the Virginia ratifying convention in 1788).
[17] At 174.
[18] At 177.
[19] *Id.*
[20] At 177.
[21] At 177.
[22] At 178.
[23] *Id.*
[24] At 176.
[25] At 178.

In the Supreme court of the State of Alaska

) Supreme Court No. **S-10816**
In the Disciplinary Matter Involving)
J.D. Kimo Smith.)

Order
Alaska Bar Rule 27(a)

Date of Order: **01/02/2003**

ABA Membership #7811138
ABA File #2002D120

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

J.D. Kimo Smith has been disciplined by the Supreme Court of Colorado in an amended order dated December 19, 2001. Pursuant to Alaska Bar Rule 27(a) this court ordered a response from Smith indicating why identical discipline should not be entered in Alaska. No response was received.

IT Is ORDERED: Reciprocal discipline is **DENIED**. Smith currently is suspended from the practice of law in Alaska pursuant to an order effective May 18, 1989, and his period of suspension in Colorado for the recent offense has already been served. Smith remains suspended in Alaska and the 2001 discipline and the incident giving rise to it will be considered in any petition for reinstatement under Bar Rule 29 that Smith might file.

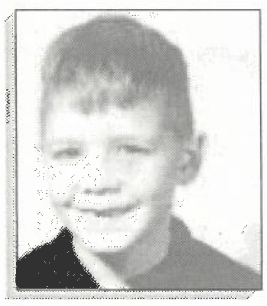
Entered at the direction of the

Clerk of the Appellate Courts
/s/ Marilyn May

TALES FROM THE INTERIOR

Busted (Part II)

☐ William Satterberg



As our readers may recall, our hapless, but heroic attorney, Bill Satterberg, had just been arrested in the Fairbanks Courthouse, following an evidentiary hearing before Judge Funk concerning whether or not Satterberg's pink thing was a dangerous weapon. Tightly handcuffed, the poor, defenseless Satterberg, was denied his rights to contact his lawyer, and was being led by heavily armed state troopers to an uncertain fate. For the past months, our readers have sat spellbound, waiting for the exciting conclusion to this thrilling nail-biter. Well, dedicated readers, wait no longer. The exciting outcome awaits...

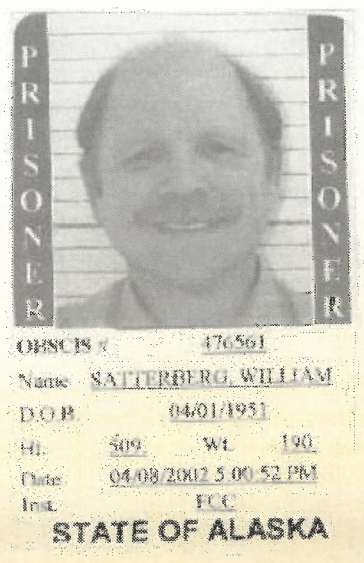
During the ride to jail, I gained a different life perspective. I had an interesting conversation with the trooper. To my surprise, he actually asked at one point whether I wanted to be questioned. I was about ready to ask him to read me my *Miranda* rights, when I wisely realized he probably would have to use his wallet card to remember them. I certainly did not want to risk an accident. As such, I told him that I refused to answer questions at the time without my lawyer - whoever that was. It was something I had learned from a Danny DeVito movie.

I relaxed when we arrived at the jail. My fears of a Rodney King remake were not to be realized. Before I had even entered booking, the jailers were in hysterics. They were all rudely pointing and laughing at me through the windowed door. Some were holding their hands over their mouths, and rushing away to tell the others. I realized this was going to be a unique experience.

The trooper handed me over to the head jailer, who uncuffed me. My dad used to say that "The nice thing about beating your head against the wall is that it feels so good when you stop." The same can be said for overly tight handcuffs. I was then searched a third time, although I was continually announcing that I would be bailing out. The trooper appeared skeptical. I suspect that the trooper had been told by his colleague who searched my wallet that I did not have enough money to bail out. What the trooper did not know was that I had my Alaska Airlines Visa card. (I never leave home without it.) To my captor's defense, the normal experience with inmates is that most inmates usually do not have sufficient resources to bail out. But, then again, that is because I normally have already seen these inmates and taken my retainer.

I offered my Visa card. To my delight, I could get some valuable Alaska Airlines miles, which could later be used for some swell prizes.

I was being charged with two misdemeanors involving weapons misconduct. One was for allegedly having my prohibited pink thing at all, which was weapons misconduct in the fourth degree. The second charge was for displaying my pink thing in the courthouse, which was weapons misconduct in the fifth degree. The total bail would be $1,000. I was pleased; 1,000 miles would definitely help me get to my next MVP status.



Unfortunately, before it was all over, the trooper had problems locating the legal basis for the proposed second charge. Although I initially offered to help the trooper read the statutes, he was too proud to accept my help. Instead, he told me that he was dropping the second, lesser charge. If he were inclined to drop charges, I asked the trooper if he could make it the "fifth" over the "fourth." I have always preferred fifths. The damage done, it was just a matter of degree, regardless. I also had concerns because I was now losing 500 miles on Alaska Airlines that would be difficult to recoup, absent another misdemeanor, or maybe a dicey felony. (I secretly envied Anchorage Public Defender Wally Tetlow for the mileage that he must have amassed for his Class A felony charge. In my mind, Wally should have been ecstatic when the state district attorney's office trumped his charges up from a misdemeanor to a Class A felony, despite the alleged implications of prosecutorial misconduct.)

MAKING BAIL

After the trooper left the jail, I went through the inspection, dejection, and rejection process recited by Arlo Guthrie in *Alice's Restaurant*. Although I was bailing out, my tie still was taken from me. I asked the jailer why I had to surrender my tie. He stated he did not want "any hangings." I then asked the jailer if he wanted to take my loafers as well. He told me that, because I was planning to bail out, he would not seize my shoes at that time. I asked him whether the concern was that I would take my shoes and beat myself over the head with them. A serious look told me that his concern was quite genuine.

My computerized mug shot and fingerprints were then taken. In an instant, I became a part of Big Brother's nationwide catalogue. I was no longer part of the mindless masses. I even got my very own OBSCIS number. Still, I was pleased when I noticed that they had gotten my weight 10 pounds too light. So much for dieting. I had never officially lost 10 pounds so fast.

When my picture was taken, I gave the camera a big, happy grin. I have always been a ham. Besides, everyone else, except the trooper, was having a jolly good time. Why shouldn't I? My kindly jailer even gave me a color copy of the photo as a cherished keepsake. It was then that I remembered that the same "mug shot" would be all over the local news the following day. As I expected, it was. The photo even made the statewide AP wire, along with a bold, attention-grabbing headline that dramatically read . . .

"Fairbanks lawyer arrested after carrying 'weapon' into court"

Eventually, I bailed out. Fortunately, I was able to get back to my office in time to meet my new client and to collect my retainer. All was not lost.

BACK ON THE STREET

I prepared for arraignments the following day. My indignation over, I fully expected that the newest district attorney would wisely screen the case and professionally reject it out of hand before the court proceedings ever began. Not only were the charges absurd, but the alleged offense had taken place in the courtroom in the context of the zealous representation of a criminal defendant. To my thinking, the Constitution had to figure into the equation—to at least a moderate degree.

Adding to the incentive not to prosecute was that Anchorage Public Defender, Wally Tetlow, had just had his own felony case resolved the preceding week. In Wally's case, an initially charged misdemeanor had been jacked up to a Class A felony by what was wildly rumored to be a zealous district attorney's office. For months, Wally had faced the professional terror of a presumptive five-year prison term coupled with the likely loss of his professional standing. Every defense lawyer's biggest fear is that they might have to share a cell with a former client.

Public opinion was that Wally was being vindictively prosecuted for the felony. Fortunately, judicial opinion was likewise. Judge Jonathan Link, in a scathing opinion openly critical of prosecutorial misconduct in response to an aggressive defense by Anchorage attorney, Jim McComas, made short work of the State. (On a short note, all Alaska attorneys would be well advised to review Judge Link's opinion, not only for the court's courageous stand in Wally's case, but also to realize that the fear of prosecutorial misconduct in Alaska is very real at even the highest levels. In my opinion, the case was humiliating for the Department of Law. Others apparently agreed.)

Given the timing of the Wally Tetlow debacle, I incorrectly figured that the Fairbanks district attorney's office would not be so foolish as to prosecute my case. Besides, my defenses were much stronger, being such the nice guy that I am.

As such, when I entered the arraignment courtroom, I fully expected to be told that the district attorney was not prosecuting the action. Once again, I was mistaken. The district attorney, instead, only announced that it had not decided "to prosecute me at *that* time." Even the magistrate appeared surprised, having initially announced that the charges were being dropped. The door was still open for what turned out to be another 30 days of the dreaded Damocles Sword.

I was confused, as were many others, when I realized that the charges were not declined. "How can anyone be so petty and stupid?" I thought. Although I admittedly have done certain antics over the years to possibly upset some of the more culturally sensitive district attorneys and law enforcement personnel, I found it inconceivable that they were actually taking the matter so seriously as to retaliate in the manner that they did. Even Assistant District Attorney Jeff O'Bryant eventually recovered from the tuft of moose hair that ended up on his desk in Delta during one of our legendary battles.

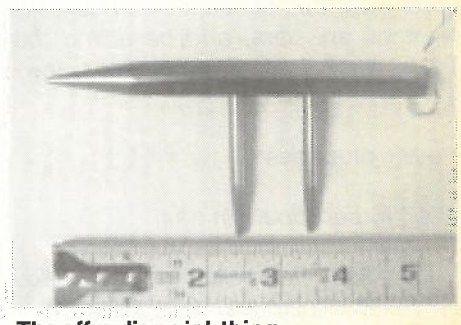
A GOOD OFFENSE...

The gauntlet had clearly been thrown. Rather than cower in submission before the local district attorney or beg the Attorney General for bureaucratic absolution, I chose to become proactive. Besides, a Tony Knowles Governor's pardon was out of the question. Other tactics were necessary.

Fortunately, I was not completely unarmed. It soon became evident that public opinion was largely on my side, although there were a couple of anonymous comments to the press that smelled a lot like there was a trooper's hand in the process. For example, a rumor quickly "leaked" to the press that I was "being disbarred." Although the reporter understandably refused to divulge the source, the motive was obvious. Still, even some more experienced law enforcement officers and Department of Law personnel privately told me that the entire matter was completely ridiculous. "Something has got to be done," I often was secretly told. "Just don't ever say that I told you," was the usual conclusion to the discussions. So much for free speech.

When news of my arrest hit the statewide press, with the exception of my close friends and family, whose support was widespread, more than one well-known attorney offered to assist in my defense, which was encouraging. Perhaps I was not a proverbial pariah.

Even more surprisingly, I received



The offending pink thing.

a phone call of support from the Barrow Police Department, through Sergeant Mike Donovan, an old friend of mine from college days. He told me that the police department had started a defense fund and that, as soon as they had enough money for postage, they planned on mailing it in. (I have yet to receive the funds.)

To combat the unprovoked attack upon my good name, I needed some sort of a catch. My plight called for something that the layperson could appreciate. One thing I had to do was overcome the prevalent public attitude that often exists that lawyers deserve what they get. I still blame misquoted Shakespeare for that first attack on the profession, although

Continued on page 21

Busted

Continued from page 20

my dear departed dad was no slouch in that department, either.

Fortunately, the public support was encouraging. In addition to the developing public opinion, I also had a rather handsome mug shot of movie star quality and a common name—William.

In fact, William is the most common first name in the world. "Even a famous killer whale has your name, Bill," an Icelandic pilot friend reminded me one evening after work as I bemoaned my fate. The thought quickly spawned an idea. Perhaps, it was not entirely original, but in less time than it took to order another beer, the Fairbanks "Free Willy" movement was born. The movement grew rapidly, even if it ever only had me as its sole member. Beer can do that to one's waistline.

LAUNCHING A PR CAMPAIGN!

The promotional phase immediately began. At first, a limited edition run of T-shirts was made, using a scanner to enlarge the booking photo and a local T-shirt shop to do the transfers. Attractive tax deductible coffee mugs next followed. The mugs were embossed with the office's address and my "mug shot." We soon learned that the mugs could double for either drinking containers or targets at the local police shooting range. Signed and numbered posters were also offered to special dignitaries.

The momentum quickly grew. We even considered selling a Free Willy Prisoners' Care Kit—with Vaseline and soap on a rope. Bumper stickers were commissioned. Over 200 bumper stickers were printed in three separate releases. The stickers soon appeared in some of the strangest places—even including certain public vehicles and allegedly on a certain State Trooper's metal desk.

There was no doubt about it anymore. It looked like a movement! It acted like a movement! And that's what it was, folks! The Fairbanks "Free Willy" movement! And you can join it, too! Just sing along with me the next time it comes around on the guitar . . . (Cue: Arlo Guthrie Guitar music.)

In retrospect, it was probably one of the only times in Alaska legal history where being busted was actually fun, if you set aside the riots of the Sixties. I was ecstatic. My product lines were up, and client intakes were active. I thought about publishing my fee schedule on the back of the T-shirts, and of offering discount coupons. I even briefly considered franchising the line. During a conversation one day, Judge Beistline wanted to know where I had found my advertising agent. And Judge Funk, my creator, later commented to a client at a settlement conference that "Only Satterberg could turn an arrest into a public relations coup."

The climax to my pink thing finally came on May 1, 2002. The Russians used to celebrate May Day with a parade in Red Square. The Americans, in protest, christened the date as "Law Day." American lawyers try to use the event to educate the public about law in America.

When Law Day, May 1, 2002, approached, a courthouse poster campaign was launched on a statewide basis. The chosen theme was of "The 'US' in Justice" was dedicated individuals working in various legal capacities as they contributed to Alaskan society. For several days, all courthouses throughout Alaska were festooned with foam-boarded posters extolling people's testimonials to their unique roles in the "Rule of Law," complete with warm, smiling photographs and impressive curricula vitae.

CASE CLOSED...BUT NOT FORGOTTEN

On or about May 1, 2002, two new posters of "yours truly" suspiciously appeared at the Fairbanks Courthouse, very closely mimicking the style of the inimitable Anchorage Police Chief Walt Monegan's own tribute to the law. Like the others, the two posters were tastefully done. They were even similarly "foam-boarded." And, like all the others, the two posters were conspicuously posted only in the general lobby areas of the courthouse. But, unlike all the others, the two posters soon mysteriously disappeared. Local rumor was that the disappearances occurred quite shortly after one strategically placed poster was noticed by the local district attorney. Apparently, it was no longer just a poster, but allegedly had become elevated to possible additional evidence of yet another, unspecified crime. I suspected that it shortly occupied a slot right next to my little pink thing in the local evidence locker.

My pink thing charge was outstanding for about 30 days. At one point, the district attorney compassionately offered to let me to plead no contest to the charge in exchange for an SIS. My answer was not profound. To the contrary, some said it was outright profane. Unfortunately, my counsel at the time exercised discretion and did not convey my message verbatim.

Eventually, during the week of the 2002 Alaska Bar Convention, the charges were magnanimously dropped. To commemorate the occasion, the local district attorney told the press in a prepared release on a Friday afternoon that, despite the serious nature of my "crime," the decision to decline prosecution had been made. The announcement claimed that I had no prior record and had simply exercised poor professional judgment. "How generous and kind," I mused.

Surprisingly, I later learned that there was precedent for the decision. A "little bird" told me that the same district attorney had taken a knife through security into the courthouse less than a year previously. After the trial had adjourned for the day, the attorney had been cautioned by the court about the serious risks and implications of such unchecked behavior. No action was taken in that case, either, although the weapon was a knife that had already been used in a crime. "So, why should I have been treated any differently?" I reasoned. Despite my subtle challenge in a television interview, the district attorney never did respond to my allegation of a similar type of deed. And then there was the time that Fran Ulmer brazenly wore guns into the Alaska Legislature to address other issues of public concern. Oh well . . .

After my case was dropped, I submitted a Public Records Act request. In time, I received my police report. I was dismayed to see how so many people (3 troopers and one assistant district attorney) claimed to have actually seen an event that never occurred. All four people claimed that they actually saw me reach into my pocket with my left hand and drag out my little pink thing. On my professional oath as counsel, I will state that my pink thing was *never* in any of my pockets. In addition, I am right-hand dominant and likely would not have used my left hand, regardless.

The truth is that my little pink thing was squished in an envelope in my client's file. The three troopers were sitting behind me and simply were not in any position to see where my pink thing came from. The assistant district attorney was looking down at her desk when I produced it. Neither the court clerk nor Judge Funk, when questioned by the investigating Alaska State Trooper could say where the item ever came from, although they actually were in a viewing position, but were doing other activities. Surprisingly, no one ever questioned my client, who fully observed the event, not that he would have been believed, of course, being a notorious Hells Angel and generally not inclined to cooperate with law enforcement authorities. Besides, he probably would have asserted some sort of privilege.

What was troubling, in also viewing the police report produced in response to my Public Records Act request, was that the district attorney had apparently referred the phantom Law Day poster for yet another criminal investigation. This time, no one could definitely say how the two posters had appeared, although I allegedly had been sighted by more than one person in the area at about the same time. I was not overly concerned, however, since people still see Elvis from time to time, and UFOs are not uncommon in Alaska. (Mere coincidence? Who knows? It's a Fifth Amendment thing. And self-ordained preeminent legal scholar Mike Walleri claims it is a First Amendment issue.)

In the end, the latest investigating trooper who had no axes to grind against me reported that no crime had ever been committed. Apparently, the concern was that whoever put those two phantom posters up next to all of the others was engaging in potential jury tampering. If so, why were all of the others immune? To be fair, all participants should have been investigated. Moreover, the last time I actually looked, which was admittedly some time ago, the posters were still adorning the walls of the jury room in Delta Junction (but, then again, that's Delta Junction).

The moral of the story? There is none, except that I now have an arrest record and a surplus of T-shirts, coffee mugs, posters, bumper stickers, and a prototype of a Prisoner Care Kit.

If there is any lesson to be learned, it is that the State of Alaska has yet to learn its lessons. The author of the quote on inconsistency, Ralph Waldo Emerson, would have had a heyday in Fairbanks.

The fact that the case ever went so far and that both supervisors and upper level management within the Department of Law and the Alaska State Troopers could actually countenance and encourage such unchecked behavior should be a warning to us all — citizens and public servants alike: "Beware the Jabberwock, my son, the jaws that bite and the claws that snatch. Beware the Jub Jub Bird, and the Frumious Bandersnatch." . . . *Lewis Carroll*

Posing after the day's work are (left to right) Roger Shaw (Marcia Davis' spouse); BP in-house counsel Rosy Jacobsen; retired BP/Alyeska executive David Pritchard; BP security Leo Brandlen; BP in-house counsel Jay Seymour; ERA general counsel Marcia Davis; BP in-house counsel Jeff Conrad; and ACS attorney Marty Beckwith.

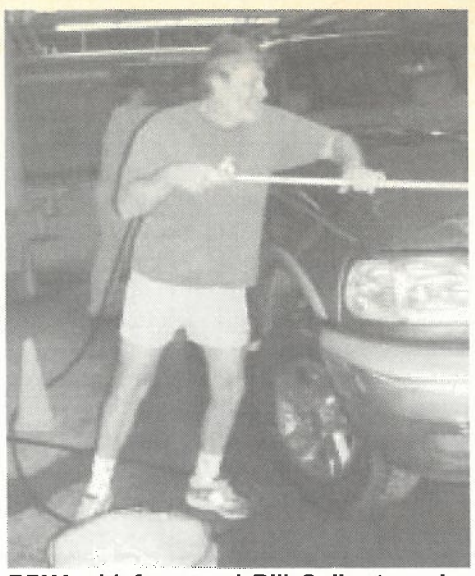
Attorneys Come Clean

Tired of the vicious rumors that lawyers don't support United Way to the same degree as other professions in town, the Corporate Counsel Section, spearheaded by Marcia Davis, general counsel for ERA Aviation, enlisted the assistance of the BP Exploration in-house lawyers (Bill Colbert, Jay Seymour, Rosie Jacobsen, and Jeff Conrad) and put on a car wash "By Lawyers for Lawyers" to raise funds for United Way. The group generated $4,400 in donations. The United Way staff were amazed at the results—not so much with the amount raised, but the fact that they could find enough lawyers willing to demean themselves by scrubbing cars in winter.

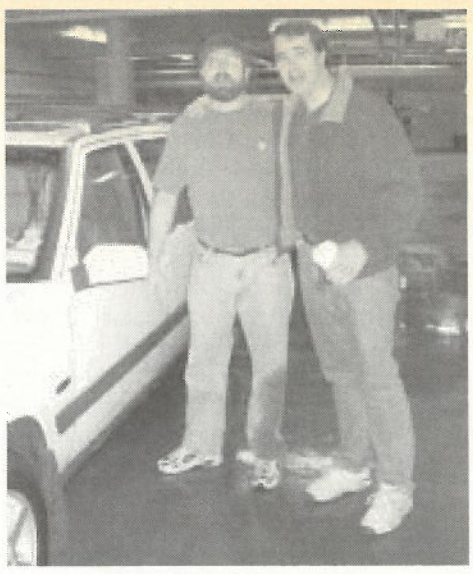
They obviously underestimated the section's resourcefulness and the generosity of the members of the Alaska Bar who supported the car wash! The group used the heated basement of BP's parking garage, and lots of warm water. Coffee and muffins were kindly provided by NANA Marriott through their general counsel, Jacquie Luke. Corporate counsel extend a big thanks to Atkinson Conway for their very large donation to wash the lawfirm van. They understand Bruce Gagnon took it off-road for some mud- bogging before bringing it to the car wash.

Who knows, this could replace golf as the next big networking craze!

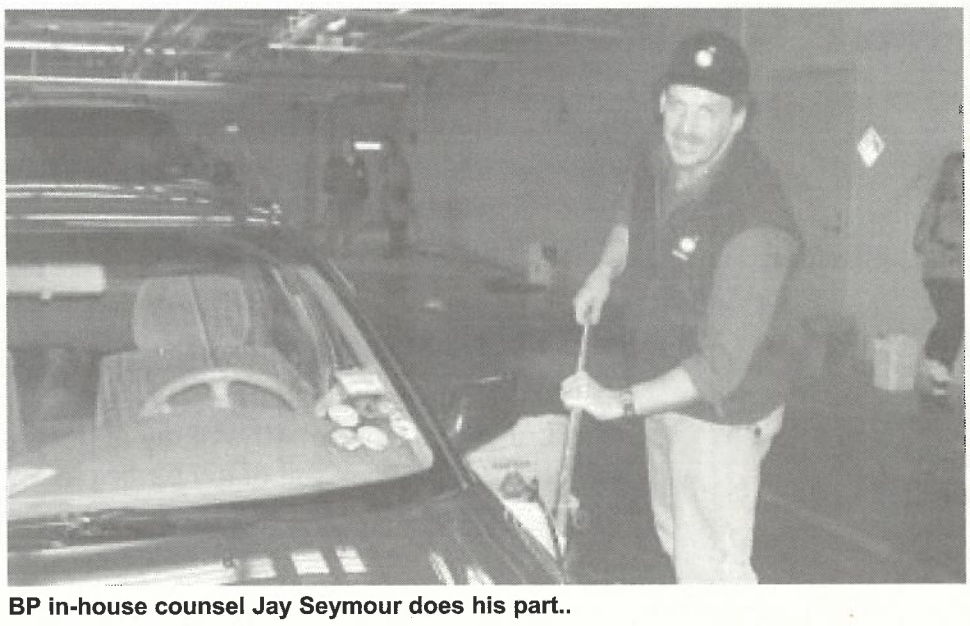
– Submitted by Marcia Davis & Rosy Jacobsen



BPXA chief counsel Bill Colbert swabs the hood. (He's since been promoted to BP's Houston office)



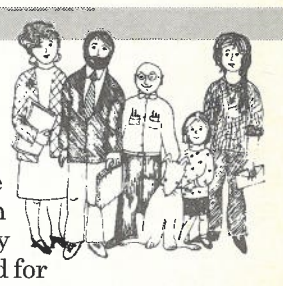
Left to right: CIRI general counsel Keith Sanders and Doug Parker (of Preston Gates & Ellis). Keith was a "car washer" and Doug's car was washed.



BP in-house counsel Jay Seymour does his part..

Corporate counsel car washers and ticket sellers not pictured, are Alma Upicksoun, general counsel for ASRC; Julia Duffy, AGs office; Carol Johnson, general counsel for Chugach Electric; Barbara Fulmer, senior counsel for ConocoPhillips, and Jacquie Luke, general counsel for NANA.

Bar People



David Bundy has opened his own law office in Anchorage.....The Fairbanks ALSC staff had a retirement party for **Bill Caldwell**. The staff brought food, and then, when they lost electricity due to heavy snow on the power lines, sat around for a few hours armed with flashlights and headlamps and had a great time.

Cabot Christianson, Michelle Boutin & Gary Spraker are now Christianson, Boutin & Spraker..... **Debra Brandwein** is now Of Counsel at Foster Pepper Rubini & Reeves.....**Dan Callahan** has moved and opened Callahan Law Office in Fairbanks.

Richard Folta has relocated from Saipan to Haines.....**Ryan Fortson**, former law clerk to Chief Justice Fabe, has joined the firm of Dorsey & Whitney.....**Sabrina Fernandez**, formerly with the A.G.'s office, is now Claims Counsel with Stewart Title Guaranty Company in Seattle.....**Sheri Hazeltine** has relocated from Juneau to Delray Beach, Florida.....**Joyce Weaver Johnson**, formerly with Richmond & Quinn, is now with the Municipality of Anchorage.

Carl Johnson, formerly with Landye, Bennett, Blumstein, is now working part-time with Anchorage Youth Court and as a contract attorney.....**Richard Monkman**, formerly with Dillon & Findley, is now with the AG's office in Juneau.....**Neil Slotnik**, former Deputy Commissioner of the Dept. of Revenue, is now with the Human Services Section of the AG's office in Juneau.

Gail Schubert, formerly with Foster Pepper Rubini & Reeves, is now with Southcentral Foundation in Anchorage.....**Will Schendel** is Of Counsel at Winfree Law Office in Fairbanks.....**Gordon Schadt**, of Stanley and Schadt P.C., was was awarded Affiliate of the Year 2002 by the Anchorage Board of Realtors on November 23, 2002.

Law firm moves

Walker Walker & Associates, LLC announces its new firm name and relocation effective Jan. 1, 2003 to: Walker & Levesque, LLC, 731 N Street, Anchorage, AK 99501. Ph: (907) 278-7000, Fax: (907) 278-7001. The firm is in general practice with emphasis in municipal law. Principals are William M. Walker, Donna P. Walker, and Joseph N. Levesque.

Law firm makes list

Perkins Coie LLP, a Seattle-headquartered law firm with a growing presence in Anchorage, has been named one of *Fortune* magazine's 100 best companies to work for. It is one of only three law firms nationwide, and the only company with Anchorage offices, to make the list.

"Our collegial work place is a key factor in our providing consistently superior legal services to our clients," said Robert E. Giles, Perkins Coie's Managing Partner. "Having a great work environment just feeds on itself. It helps you attract and keep great talent, which helps you bring in and retain great clients and interesting work."

Perkins Coie has grown to 14 lawyers in Anchorage, part of a plan of steady nationwide and international growth that has seen the firm grow to nearly 600 lawyers in 14 offices. It has grown primarily by attracting top-flight lateral hires from other firms.

"I joined Perkins Coie because of its reputation for having great clients, great lawyers and a supportive work environment," said Eric Fjelstad, a partner who joined the firm from the Ziegler Law Firm in Ketchikan. "Perkins is a large firm, but its culture is very people-oriented with a small firm feel."

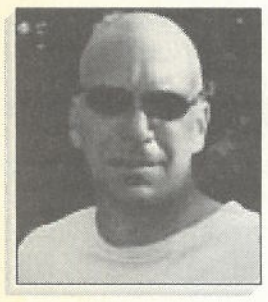
The *Fortune* "100 Best" companies are selected based on a survey of companies' employees and a review of the programs, benefits and general working environment that all contribute to the firm's culture. Two-thirds of the survey's weight is placed on employees' responses. Perkins Coie was rated highly for having flexible work schedules and a strong employee sabbatical program.

—Press release

ALL MY TRAILS

Logic and mandatory therapy for lawyers

☐ Rick Friedman



"The opposite of love is not hate, but the relentless pursuit of the rational mind." — *Josh Karton*, actor, philosopher, and the only trial consultant in America who declined an invitation to provide national television commentary on the O.J. Simpson case, purporting to quote Dostoyevsky.

"The relentless pursuit of the rational mind . . ." I know all about that. Most recently I thought about it as I prepared for oral argument on a summary judgment motion in an ERISA case. Briefly, ERISA is a federal statute which controls the rights and remedies available to insurance policyholders whose claims are denied. If your health insurance policy is covered by ERISA, for example, and your insurer wrongfully refuses to pay for treatment, and you die as a result, the remedy provided by ERISA is nothing. And, this ERISA remedy pre-empts all state remedies. E.g., Bast v. Prudential, 150 F.3d 1003 (9th Cir. 1998)(Insurer wrongfully refused to authorize treatment, plaintiff died as a result, state claims of husband and child preempted by ERISA, and ERISA provided no remedy; case dismissed.) Cannon v. Group Health Serv. Of Oklahoma, Inc., 77 F.3d 1270 (10th Cir.), cert denied, 519 U.S. 816 (1996)(same).

Judges' reactions to ERISA vary. Ten percent consider it the statutory poster-child for judicial economy. When the law provides no remedy, injured people sue less frequently. Or, as one federal judge put it, "We would need less judges if more statutes had ERISA's remedy provisions."

Eighty percent of judges have no strong feelings about ERISA. They apply the law to the facts like the good legal technicians they consider themselves to be. Their relentless pursuit of the rational mind continues uninterrupted.

The final ten percent of judges are horrified by this statute, and do what they can, within the bounds of the law, to achieve justice for the parties before them. E.g., Lewis v. Aetna U.S. Healthcare, Inc., 78 F.Supp.2d 1202 (N.D. Okla. 1999)(ERISA does not preempt Oklahoma state bad faith law.); Hill v. Blue Cross Blue Shield of Alabama, 117 F.Supp.2d 109 (N.D. Ala. 200)(ERISA does not preempt Alabama state bad faith law); Norman v. Paul Revere Life Ins. Co., 2000 WL 33316829 (W.D. Wash. 2000)(ERISA does not preempt Washington state bad faith law).

Not surprisingly, there is a great deal of litigation over whether particular policies fall within, or outside ERISA. My client died because his health insurer wrongfully denied his claim. I argued that his insurance policy was outside ERISA. I found myself shying away from arguments that pointed out the unfairness of the statute; the inequity of allowing a corporation to kill someone for profit, with no consequences.

We know an appeal to concepts like "fairness" or "justice" is suspect. It's a sure sign of a weak mind—or at least a weak argument. We were taught that in law school, weren't we? And, it's rude. Anyone who has seen the way judges bristle when words like "fairness" or "justice" are addressed to the bench knows what I'm talking about.

I am not opposed to logic and reason. I imagine primitive man, pulling himself up through the ooze of ignorance, superstition and fear, with only his rational mind to guide him. Emotion and idealism must have seemed like the enemy. In the Middle Ages, logic and rationalism must have seemed the only hope for the human race.

Law longed to be considered a "science," along with disciplines such as physics, or chemistry. Thus, over the last four hundred years, the preoccupation of many—not all—with eradicating human feeling and spirit from the law. Human feeling and spirit has no more place in deciding a dispute than it does in tracking a sub-atomic particle, right? A short parable is in order: Four children in a small Indian village spent the morning gathering walnuts and putting them into a single basket. They had agreed in advance they would share when they were finished. Noon came, and they counted their walnuts. They had 83, and could not agree how to fairly divide them. They decided to go to the village wise man and ask him to do the job. They found the wise man sitting in the shade by the river. After listening to their problem, he asked: "Do you want me to divide them according to Man's law, or according to God's law?" The children quickly conferred and agreed they wanted the nuts divided according to God's law. The wise man gave one child 43 nuts, the next child 25, the next 15 and the last none.

Law is not science, or even a pragmatic attempt at peaceful dispute resolution—although it embodies aspects of both. Law is nothing less than humankind's attempt to carve out a fair and just niche in a vast, incomprehensible universe—a pretty ambitious task, when you think about it.

Stated another way, justice is not about the way things are, but the way things should be. The search for justice is a search for the best within us, and the attempt to translate that "best" into practical, objective reality.

Logic is an important tool of justice, but not an end in itself. Logic gave us Dred Scott. Logic was the cornerstone of the Nazi "Final Solution." The law's greatest achievements have been achievements of the heart.

The Declaration of Independence is a document of the heart. "All men are created equal" is not a logical statement, but a statement of the heart. The Constitution is a complex, sometimes confusing, often illogical document, designed to achieve a level of political fairness and respect for individual rights never before seen on earth. For all its technical detail and pragmatic compromises, it is, at bottom, a document of the heart, not of logic. And therein lies its wisdom, strength and resiliency. The giants on the bench have always been those with the courage to trust their hearts. We admire the technical facility, the intellectual brilliance of a Holmes or a Posner. But the greatest contributions have been made by those who understand and trust the wisdom of the heart: judges like Brandeis, Marshall, or Brennan, or our own Jay Rabinowitz, or Alex Bryner—possessing as much intellectual firepower as anyone, but harnessed in service of the human spirit. These are our heroes, and rightly so. Why are they so hard to emulate?

Long before law school we lawyers were taught to keep a lid on our hearts and live in the controlled, logical world of the intellect. Let's face it, most of us were geeks. Our clothes didn't fit quite right, we were socially awkward, usually not athletic, often from dysfunctional families. (Is there any other kind?) Who wants to feel that? How much safer it felt to focus on what we were good at, to give control to our heads, and tell our hearts to shut the hell up. The better we were at it, the more we achieved. If we were really good at it, we became judges. What to do about it?

"The relentless pursuit of the rational mind . . ." I do know all about that. If you are good at it, it can be intoxicating. Actually, I consider myself something of an expert.

When my relentless pursuit of the rational mind finally drove my personal life aground on Dysfunctional Reef, a bonanza ensued for the mental health professionals of Alaska and Washington. Therapists I don't even know are sending cards thanking me for helping them buy sports cars, or fund their early retirement. The therapists I do know are naming their new office buildings after me.

But enough about me. What are we going to do about the rest of you?

Lawyers have jobs providing unique opportunities for personal weakness to come to the fore. I would be willing to bet that most well founded bar complaints stem not from a lack of technical knowledge, but from troubled psyches. Despite our discomfort with the concept, we operate in a very human system, dealing with very human problems. Much more helpful than mandatory CLE would be mandatory therapy. We all know we could all use it. Why not just admit it and get on with it? We know the Bar can require lawyers with drug or alcohol problems to enter therapy. Why not those with other problems? The bar could impose mandatory CLE, as some states have, why not mandatory therapy?

I know mandatory therapy will not be popular. To overcome initial resistance, I suggest a pilot program, targeting the group that needs it most, the group most vulnerable to the tyranny of the rational mind—judges. The program would be voluntary of course.

Rather than wait for the Board of Governors to implement this program, I thought I would kick it off here, as a public service. Next issue's column will contain a thoroughly researched, highly specialized test instrument, designed to evaluate the level of emotional stuntedness of trial and appellate judges. The test is designed to be self-administered and self-graded (much like those tests appearing in Cosmo). Any judge can determine his or her level of stuntedness in the privacy of his or her own chambers. The grade on the test will determine the level of therapy needed.

Oh yes, I lost the ERISA argument. As is so often the case, there was room in the law to go either way. But the court ruled ERISA preempted the state law claims, and ERISA provided no remedy—case dismissed. Turns out the insurance company made the rational decision—deny the claim, kill the patient, and thereby avoid the cost of treatment. How do you argue with that logic?

Post script: One of the Bar Rag's 44 readers noted that the gift certificate winner of Rick Friedman's first contest has not been revealed. ("Who is the fastest runner on the Alaska Supreme Court?" — July-August and September-October, 2002 Bar Rag). Friedman awarded the prize in October: "Watch for Sue Ellen Tatter in new lingerie. She gets a $50 gift certificate to The Look. Sue Ellen broke the conspiracy of silence and is our winner in the Supreme Court Fastest Runner Contest. Sue Ellen was the only one of you with enough guts to tell us that 'Alex Bryner is way faster than the other dudes.' Sue Ellen continues: 'Sometimes he [Bryner] may have a backache and then his performance would be compromised, but if you put him on a track with Eastaugh on a good day, Bryner will win. He also would win at distance too, like over 10 miles, because he has real lungs'."

A Trial Lawyer's Delight

From "We, the Lawyers," a compelation of humorous anecdotes, compiled by William F. White, Oswego, OR. (We,the lawyers@webTV.net)

I only got acquitted!

As told by Lawyer James Bayard Smith of Metuchen, New Jersey

This was related to me by the late Samuel Adler, a well respected criminal lawyer who practiced for many years in New Brunswick, New Jersey. Mr. Adler once defended a man accused of stealing a valuable watch. The case was tried in New Brunswick in the Middlesex County Court. Mr. Adler made an eloquent summation to the jury. After only a short time, the jury returned with a verdict of "not guilty." Upon hearing the foreman announce the verdict, the defendant turned to his attorney and said in a voice heard by all: "Mr. Adler, does that mean I get to keep the watch?"

PRO BONO CORNER

Volunteers recognized

☐ Katherine Alteneder

The Pro Bono Services Committee of the Alaska Bar Association is pleased to introduce a new feature to the Bar Rag: The Pro Bono Corner, in which we will recognize the work of Alaska's pro bono attorneys and identify ways you or your firm may be able to become involved.

On the client side, the need for pro bono services has never been greater in Alaska. This has come about because of deep state and federal funding cuts to Alaska Legal Services Corp., as well as the changing demographics of our state affecting the types of legal needs people have and the resources available to these people to pay for lawyers.

On the volunteer attorney side, this growing need for services has brought about all sorts of new and exciting opportunities for professional enrichment and personal satisfaction. You may now select from a growing number of pro bono programs to match your interests and to explore new areas of law. Each of these programs endeavors to provide you resources and support throughout your case, and can usually connect you with a mentor if you would like.

As you read about the achievements of your colleagues (and so much more could be written), please note that most of these people have only one pro bono case at a time — not an unmanageable stack of cases that compromises their regular client load. Rather their practices are energized by the experience, or as Dan Rodgers said, "representing these people has been one of most worthwhile experiences as a lawyer." Jim Kentch echoes that sentiment saying that the immigration cases he has handled are the most rewarding of his 23 years practicing law. But perhaps Bill Saupe summed up the unique experience of being a pro bono attorney best when he said, "most of my clients are large public utility companies who rarely hug me and cry when I win a case for them; it's a nice change to be so well appreciated."

Please join us in recognizing and thanking the following

PRO BONO ALLSTARS

1st Judicial District

Keith Levy, who is a tireless volunteer for both Alaska Legal Services Corporation (ALSC) & Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) in family law cases who represents clients, conducts classes and helps in any way he can.

Vance Sanders, who nearly always has a pro bono case on his desk, but is being recognized here by ANDVSA for his hours serving as a mentor to volunteer attorneys new to family law.

Bruce Bothelo, a dedicated volunteer for ANDVSA's project, who sets a terrific example of how government attorneys can do pro bono work.

James Shine & Daniel Bruce, who together handle the bulk of the pro bono bankruptcy work done in Southeast conjunction with ALSC.

2nd Judicial District

John Vacek, the District Attorney for Nome and regular volunteer for ANDVSA, who believes that rural government attorneys are particularly vital to pro bono service delivery.

H. Conner Thomas, also of Nome, who is always willing to lend a hand when he can for both ALSC & ANDVSA.

3rd Judicial District

Jessica Carey Graham of Perkins Coie, who has given hours of research, as well as client representation in protective order and divorce cases to ANDVSA clients.

Karla Huntington, who has been an outstanding mentor to ANDVSA volunteer attorneys.

Allan Schmitt of Kodiak & **Jonathon Katcher** of Anchorage, who almost always have one family law case on their desks for ALSC.

Tom Yerbich & Jane Pettigrew, who are tireless volunteers for ALSC's bankruptcy program donating time for clinics, cases, and staff training.

Dan Rodgers, Bill Saupe and **Jim Kentch** who have boldly ventured into a new area of law and provided enthusiastic and outstanding services to the clients of the Immigration and Refugee Services Pro Bono Asylum Project, including covering their own airfare so that they could meet with their clients on Kodiak Island.

4th Judicial District

Aisha Tinker Bray, of Guess & Rudd, who decided to brave a new area of law and is doing an excellent job with her first divorce case for ANDVSA.

Dan Callahan, for being an outstanding mentor to ANDVSA volunteer attorneys.

Rita Allee & Edward Niewohner who always seem willing to take another family law case for ALSC.

Michael McDonald and his paralegal **Julie Simmons**, who are the anchors for ALSC's bankruptcy program in Fairbanks.

CURRENT PRO BONO OPPORTUNITIES

Below, you will find a particular pro bono need with which you or your paralegal may be able to help. All of the programs are also always seeking attorney volunteers with whom to place cases. Please call any of the programs with which you think you might want to become involved, or call even if you simply want to find out more about what they do.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

We need one or more volunteer attorneys to fill dates for our Information and Referral Hotline. You can volunteer in 3 hour increments and the phone will be forwarded to a number of your choosing. Please call Christine Pate at (907) 747-7545 to sign-up.

IMMIGRATION AND REFUGEE SERVICES PRO BONO ASYLUM PROJECT

We have a client from El Salvador who needs representation as soon as possible. No previous experience in immigration law necessary – we'll train you! Please contact Robin Bronen or Mara Kimmel at (907) 276-5590 if you think you can help.

Volunteer Attorney Support at Alaska Legal Services Corp.

We need paralegals to assist in intake for people that want to participate in our Anchorage bankruptcy clinic. Please call Eric Cordero at (907) 222-4520.

WISH LIST

If you or your firm may be able help with any of these items, please contact the people listed below. Please remember that most programs operate with 3rd or 4th hand furniture and equipment, so 2nd hand items are almost like new to them!

• **Fax machine & some office chairs.** If you think you can help, please call Deatrich Sitchler of the Alaska Civil Liberties Union at (907) 258-0044.

• **Cash donations to ANDVSA's cost coverage fund** to pay airfare for urban pro bono attorneys to represent rural clients, depositions and other costs associated with litigation. Grant sources never quite understand how big Alaska really is, so this fund is perpetually under funded. Please contact Christine Pate of the Alaska Network on Domestic Violence and Sexual Assault at (907) 747-7545 for information about making a donation.

• **Computer**(s?) **& printer.** (Computer with XP operating system & 256 MB memory). Please contact Robin Bronen or Mara Kimmel of Immigration and Refugee Services Pro Bono Asylum Project at (907) 276-5590 if you think you can help.

• **Scanner.** If you think you could help with this, please call Eric Cordero of Volunteer Attorney Support at Alaska Legal Services Corp. at (907) 222-4520.

Thank you for your support and interest. If you have questions or concerns about pro bono services in Alaska, please feel free to call any of the members of the Bar Association's Pro Bono Service Committee:

Sabrina Fernandez (Chair), Katherine Alteneder, Robin Bronen, Jody Davis, Tom Dosik, Andy Harrington, Linda Kesterson, Mara Kimmel, Barbara Malchik, James McGowan, Christine Pate, Judge Mark Rindner, Mary Jane Sutliff, Bryan Timbers, Jim Valcarce, Judge John Reese (Ex Officio), Erick Cordero (Liaison), Loni Levy (Liaison).

FABE RECEIVES YWCA AWARD

Woman of Achievement. Chief Justice Dana Fabe was honored as a "Woman of Achievement" by the Alaska YWCA at a luncheon banquet held December 11, 2002, in Anchorage. Celebrating the award with her are, L-R: Justice Warren Matthews; Esther Wunnicke, Honorary Chair of the luncheon; Chief Justice Fabe; Justice Robert Eastaugh; and Justice Alexander Bryner.

LAW EDUCATION NETWORK PLANNED

Court Rules Attorney Barbara Hood, L, and Anchorage Middle School Teacher and "Project Citizen" coordinator Pam Collins, R, recently attended a conference entitled "Educating for Democracy" in Denver, Colorado, sponsored by the national Youth for Justice program. Youth for Justice promotes law-related education (LRE) initiatives across the country by bringing lawyers, judges, teachers, school administrators, law enforcement officers, civic leaders and others together to identify LRE needs and develop strategies for meeting them. The program is sponsored by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice. Pictured with Hood and Collins are: Center, Lee Arbetman, Director of U.S. programs for Street Law, Inc.; and Barbara Miller, Executive Director, Center for Education in Law and Democracy. Efforts to create a statewide LRE network, web presence, and resource center are currently underway in Alaska. Interested persons may contact Barbara Hood at 264-8230 for further information.