

# The Alaska BAR RAG

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— See page 15

VOLUME 29, NO. 1

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JANUARY - MARCH, 2005

## Committees make services, capital fund & dues recommendations

Two Alaska Bar Association special committees have submitted a series of recommendations aimed at improving the ABA's financial position and increasing services to members.

Ranging from increased young lawyer services to levying attorney discipline fees and reducing the frequency of the annual convention, the 22 recommendations emerged from 2 subcommittees of an ad hoc Bar Services & Funding Committee (aka BSFC) appointed by the Board of Governors in August, 2004.

(The committee work, in turn, was proposed

Read the full reports of the Bar Services & Funding Committee on the Bar website at [www.alaskabar.org](http://www.alaskabar.org).

by an Anchorage Bar Association resolution approved at the annual convention in May "to study and propose new ways to utilize bar dues and a portion of the

unappropriated capital fund to advance the profession of law in Alaska and to benefit the members of the Alaska Bar Association and the practice of law in general.")

In its 28-page report to the Board of Governors, the BSFC's finance subcommittee summarized its research, and made 10 recommendations related to bar revenues and expenses. A second subcommittee (see related story on page 13) focused on member services. Both were presented to the Board of Governors in January.

### Alaska vs. other states

The finance subcommittee compared Alaska fees and services with other states, relative to costs of living and population that affect the comparisons; it further examined the history and purpose of the Bar unappropriated capital fund, calling it a "misnomer" that implied that no specific plans or use are in place for the fund.

"Based upon the information available to the subcommittee regarding the finances of the Alaska Bar Association, it is obvious that the State Bar has done an excellent job at providing its membership a high level and wide spectrum of services. While Alaska may rank comparatively high (among states) for the total cost to members for the wealth of services provided, the recommendations in the report contain suggestions regarding a few actions that may be considered by the Alaska Bar to

*Continued on page 11*

## DON'T ARGUE WITH MATH-IMPAIRED JURIES

— PG. 24



## Court finds juvenile execution unconstitutional; a change from historic perspective

### From the International Law Section

Twelve years ago, two teenaged boys in Missouri, 15-year old Charlie Benjamin and 17-year old Chris Simmons, committed robbery, kidnap and murder. They were both arrested and prosecuted.

Under a 1988 US Supreme Court decision, Charlie Benjamin was too young to face the death penalty. But, Simmons, at 17, was old enough to be executed. In so deciding, the 1988 Court had canvassed the practice of other nations and found them consistent with a prohibition against the execution of those who had been 16 when committing a crime.

On March 1, 2005, the Supreme Court revisited that decision in *Roper v. Simmons* and upheld the Missouri Supreme Court's conclusion that the execution of anyone who is under 18 when they committed an offense must be cruel and unusual under the 8<sup>th</sup> Amendment.

What has happened since 1988? Medical research on the adolescent brain shows that a juvenile's character is likely to change and that their behavior is more susceptible to peer pressure. The law's duties and privileges are based upon age and maturity. The *Roper* Court noted that almost every state prohibits minors from voting,

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## New President Katcher orders members to participate in Rabinowitz cruise

By Jonathon Katcher

As his second official act as President of the Alaska Bar Association,<sup>1</sup> President Jonathon A. Katcher has ordered all members of the Bar to attend and participate in the 3<sup>rd</sup> Rabinowitz Ferry Cruise from Juneau to Whittier on June 7 to June 9, 2005.<sup>2</sup>

### Katcher & Tiemessen take new offices early

Jon Katcher is the new President of the Alaska Bar Association. Katcher is an Anchorage attorney and partner in the firm of Pope & Katcher. He succeeds Keith Levy, whose appointment to a Juneau District Court judgeship curtailed his bar president's term 2 months early. (Gov. Murkowski's appointment also caused Levy to resign from the board.)

John Tiemessen has been selected as the new president-elect of the Bar Association. Tiemessen is a partner in the Clapp, Peterson, Van Flein, Tiemessen and Thorsness firm in the Fairbanks office.

The Alaska State Ferry *Kennicott* will leave Juneau, pass by the mouth of Glacier Bay, sail into the North Pacific Ocean, stop at Yakutat, enter Prince William Sound near Cordova, and stop at Tatilek, Valdez and Whittier. President Katcher has ordered that the weather will be clear such that the sights of Glacier Bay, the Malaspina Glacier Complex and the Fairweather Range will be in spectacular view.

The *Kennicott* is a fine vessel commissioned in 1998. It has excellent accommodations including cabins, a bar, a movie theater, and full meal service. Highlights of the trip will include a tour of the engine room.

Arrangements will be made with the Icy Waves Surf Shop for transportation to the Yakutat surfing beach. Accompanying President Katcher on the journey will be at least one of his high school classmates who can discuss what the President was like when he had hair.

President Katcher orders that some member of the Bar come pre-



pared to lecture on some relevant legal topic so that we can deduct the costs of the journey from our taxes.

The *Kennicott* is scheduled to leave Juneau on Tuesday June 7<sup>th</sup> at 6:00 p.m., arrive Yakutat on Wednesday June 8<sup>th</sup> at 9:00 a.m., leave Yakutat on Wednesday June 8<sup>th</sup> at 10:30 a.m., arrive Tatilek on Thursday June 9<sup>th</sup> at 4:45 a.m., leave Tatilek on Thursday June 9<sup>th</sup> at 5:15 a.m., arrive Valdez on Thursday June 9<sup>th</sup> at 8:30 a.m., leave Valdez on Thursday June 9<sup>th</sup> at 11:30 a.m., and arrive Whittier on Thursday June 9 at 4:30 p.m.

For further information you can contact the marine highway system at [www.dot.state.ak.us/amhs/index.html](http://www.dot.state.ak.us/amhs/index.html), or President Katcher at 907-272-8577 or [jkatcher@alaska.net](mailto:jkatcher@alaska.net). Remember to stand when speaking to or e-mailing the President.

#### FOOTNOTES

1. President Katcher's first official act was to order that all members of the Bar address him as "President Katcher" and stand while speaking to the President.
2. For reports on the 1<sup>st</sup> and 2<sup>nd</sup> Rabinowitz Ferry Cruises see Katcher & Kentch, "Lawyers Launch Annual Rabinowitz Ferry Cruise," *Alaska Bar Rag* Vol. 25, No. 5, September-October 2001, and Burakoff, Katcher & Kentch, "A Journey to the Land of Wind & Ghosts," *Alaska Bar Rag* Vol. 27, No. 5, September-October 2003. President Katcher will provide

copies to those who are interested upon their submitting proof of having made a substantial contribution to an appropriate charity.

#### Editors' Notes

i. Pursuant to Directive No. 3 from The President for Life, His Esteemed Excellency, Directive No. 1 is hereafter modified to refer to Jon Katcher as "President for Life" or "His Esteemed Excellency" or both. To our former *Bar Rag* employee who jokingly referred to The President for Life as "The Alpha and Omega 3 Fatty Acid," our best wishes in his new position in Deadhorse as the human wind chill meter].

ii. Above-referenced reprints of Rabinowitz voyages #1 and #2 are also available on the Bar website.

iii. It is assumed that Hizzoner Esteemed Excellency President for Life will, as is customary, collaborate to provide the *Alaska Bar Rag* with a full report of Rabinowitz Cruise #3, complete with photographs and illustrative footnotes. (By Aug. 10, 2005.)

## EDITOR'S COLUMN

## Constitutional limbo: How low can you go?

By Thomas Van Flein

Senator Ralph Seekins has introduced Senate Bill 67, which, if enacted, would amend AS 09.55.549 and reduce the existing cap on non-economic damages against health care providers from \$400,000 to \$250,000. We can save for another time a discussion of the pros and cons of this effort at reform and whether it will solve a real problem or a perceived problem, or whether it will solve anything at all. I recognize there are strong advocates with cogent arguments on both sides. As an aside, however, if limits are to be enacted, I think they ought to apply to everyone, not just health care providers. Home builders, engineers, mechanics, lawyers, pilots . . . everyone should have the same protection under the law. But that, too, is a topic for another day.

Today's inquiry poses the question: "How low can you go?" We are not talking reality TV low, divorce proceedings low, or poisoning the soup of the opposition candidate low. Rather, this question is presented to those who come down on the side of

the constitutionality of damage caps. If caps are indeed constitutional at the level of \$400,000, is there a level at which they are too low to be constitutional? The plurality (Justices Fabe and Eastaugh joined by the ruling of the trial court) in *Evans v. State*, reasoned that the "jury has the power to determine the plaintiff's damages, but the Legislature may alter the permissible recovery available under the law by placing a cap on the award available to the plaintiff." This suggests there is no minimum level required by the Alaska Constitution, which then implies there is no constitutional right to have redress for damages at all. If the legislature saw fit, could it not simply eliminate civil claims altogether, or provide for economic or non-economic damage caps at \$500?

It would seem that if the legislature has the power to impose caps at any level, it has the constitutional power to reduce or eliminate damages.



**"If caps are indeed constitutional at the level of \$400,000, is there a level at which they are too low to be constitutional?"**

If that is not the case, then what is too low and what is constitutional is simply a matter of opinion of the reviewing court, the ultimate in substantive due process review and transformation from a court of review to a super-legislature.

Justices Bryner and Carpeneti disagreed with the plurality in *Evans* and reasoned that the caps are unconstitutional, explaining that "the better-reasoned cases support the conclusion that [Alaska's] cap on noneconomic damages violates the right to a jury trial under the Alaska Constitution." Under this rubric, any cap would be unconstitutional. This position has the symmetry of establishing a bold line in an absolutist sense and sidesteps the messiness of actually explaining why a cap at one level could be constitutional but a lower cap or elimination of damages would not be. What do you think?

### BAR POLL

The legislature has the constitutional power to reduce damages to any level it deems appropriate, including eliminating civil damages. \_\_\_\_\_

Any cap on civil damages violates the Alaska Constitution and the right to a jury trial. \_\_\_\_\_

Caps are ok, but any cap below \$\_\_\_\_\_ violates the Alaska Constitution and the right to a jury trial. \_\_\_\_\_

Comments: \_\_\_\_\_

Fax your response to 907-272-9586 or e-mail your response to [oregand@alaskabar.org](mailto:oregand@alaskabar.org).

### The Alaska BAR RAG

The *Alaska Bar Rag* is published bi-monthly by the Alaska Bar Association, 550 West 7th Avenue, Suite 1900, Anchorage, Alaska 99501 (272-7469).

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**Board of Governors meeting dates**  
 May 9 & 10, 2005  
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 May 11 - 13, 2005  
 (Wed. - Friday: Annual Convention - Juneau)

[Editor's Disclaimer: As with all *Bar Rag* articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (fka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].



## PRESIDENT'S COLUMN

## Old president cites top 10 reasons for coming to Juneau this year

By Keith Levy

For my last column as President of the Alaska Bar Association, I seriously considered responding to an article in the last issue of the *Bar Rag* that inaccurately labeled the recent dues increase the "Levy Levy." I thought about pointing out that the President of the Board of Governors doesn't even get to vote, except in the case of a tie. I even pondered putting the blame where it belongs and assigning the increase a far more apt alliteration: the Treasurer Tiemessen Tax.

But I'm above that sort of thing. Instead, I want to encourage you to attend the 2005 annual convention in Juneau on May 11, 12, and 13. In

no particular order, here are my top ten reasons for coming to Juneau this year:

1. You will have the opportunity to see United States Supreme Court Justice Sandra Day O'Connor in person.

2. Rain in Juneau in May is very, very rare.

3. The legislative session ends a day before the convention begins.

4. Professor Chemerinsky will be back to enlighten us on the most recent decisions of the Alaska Supreme Court as well as the United States Supreme Court.



"Thanks so much for the opportunity to serve as President. I look forward to seeing you in Juneau."

5. The three mile fun run will be held on the beautiful Perseverance Trail, where you might just see a black bear.

6. Social events include a whale watching tour and a trip up the Mt. Roberts Tram.

7. You will be able to hobnob with every justice on the Alaska Supreme Court and every judge on the Alaska Court of Appeals, Superior Court, and District Court.

8. The convention is one-stop shopping to get all of the CLE credits you need for

Alaska's VCLE as well as mandatory CLE in the other states in which you are admitted.

9. You will see in person your colleagues who have been around so long they are receiving their 25 or 50 year pins. This includes the opportunity to compare their aged smiling faces to the photographs they attached to their bar applications 25 or 50 years ago.

10. You can attend the annual membership meeting and let Treasurer Tiemessen know what you think the dues should be.

Thanks so much for the opportunity to serve as President. I look forward to seeing you in Juneau.



## Texan takes issue with Alaskan's pro bono work

Dear Mr. Feldman

I read with interest about your firm's attempts to dissuade the state of Texas from executing Elroy Chester, a man who brutally raped two teenage girls and then shot and killed their uncle, an upstanding citizen and fire fighter. I then read where he admitted that those were not his only murders and, if given a chance, he would do it again. Are you serious? Why don't you go about the business of protecting rapist/murderers in Alaska and not worry about how we take care of ours here in Texas (and take care of him we shall).

—Drew Cox  
Sonora Texas

"I humble myself before God and there the list ends." - Sam Houston

...

Dear Mr. Cox-

I received your email and will answer your question about why I went to Texas and took on Elroy Chester's case.

I'll say at the outset that I did not accept Mr. Chester's case because I favor violent crimes. I strongly believe in the rule of law, and that individuals who violate the law should be held accountable for their actions.

Nor did I accept Mr. Chester's case because I am insensitive to the pain and suffering that is born by victims of crimes and their families. I have practiced law for 30 years. While I've represented criminal defendants, I've also sought justice on behalf of victims of crime. I started my legal career working in a federal prosecutor's office. My own family and life have been touched by violent crime, and, during my time in Texas, I spent many days in close quarters with family members of several of Elroy Chester's victims. So, I think I have a good grasp of the effects of violent crime, generally, and, in particular, the ways in which Mr. Chester's crimes affected the lives of people in Port Arthur.

I accepted Mr. Chester's case because I believe that, because the death penalty is (1) the most extreme form of punishment that a state can impose, and (2) impossible to reverse, once taken, it is essential that it be imposed, if at all, only after a legal process that fully protects individual rights and in which the accused has been afforded representation by competent counsel. I don't believe that anyone, either here in Alaska or

in Texas, wants to live in a state in which the government has the ability to kill citizens in violation of their constitutional rights.

I went to Texas and took on Mr. Chester's case because (1) he was facing execution, (2) there exists a serious question about whether his death sentence is lawful, and (3) he needed counsel. He needed counsel because, for reasons that I do not understand, the State of Texas does a poor job providing legal representation to indigent individuals facing execution.

Several other states, but not very many, suffer the same problem and, as a result, there are a large number of individuals on death row in those states who do not have access to counsel. And, as a result, the risk that the state will illegally execute an individual is considerably higher there than in other states, such as California, which likewise imposes the death penalty but also does a good job providing access to legal representation.

Mr. Chester needed counsel because, after he was convicted and sentenced, the United States Supreme Court held that executing mentally retarded offenders violated the prohibition contained in the 8th Amendment to the U.S. Constitution on cruel and unusual punishment. That is a ruling that some people may agree with and some people may disagree with. But it is the law of the land, and, for what it's worth, the decision was rendered by a conservative court, comprised principally of conservative justices, appointed by Republican presidents, who favor the imposition of the death penalty, generally, but who believe that executing mentally handicapped individuals is wrong.

There is substantial evidence that Mr. Chester is mentally retarded and, therefore, in light of the Supreme Court's ruling, subjecting him to execution is illegal and in violation of the Constitution. I won't take the time to inventory all the evidence that establishes Mr. Chester's mental retardation, but I'll note that Texas schools always placed him in special education classes and, when he was incarcerated previously for several less serious offenses, the State of Texas always placed him in its Mentally Retarded Offender Program in the Texas Department of Corrections. So, it didn't take a lawyer from Alaska to figure out that the evidence indicated that Mr. Chester suffered from

mental retardation.

I got involved in Mr. Chester's case through a program run by the American Bar Association that provides legal representation, through volunteer lawyers, to death row inmates who lack lawyers. Some of us who choose to participate in the program are opposed to the death penalty, and some of us support the death penalty. What we share in common, though, is a strong belief that it's wrong for any state to execute an individual who lacks a lawyer and whose legal rights have not been protected, right down to the moment when the state pulls the switch or administers the drugs that end his or her life.

Believe me, Alaska is a great state (as is Texas) and traveling to Texas to represent Mr. Chester came at considerable cost to my law practice, my clients, my family, and my wallet. But I believed, and I still believe, that it was the right thing to do. That said, I also believe that it would be a better world if the State of Texas did a better job affording legal representation to individuals before it kills them, and if lawyers from other states did not have to take on that responsibility simply to ensure that the law and the Constitution are respected.

I understand your question and the point you attempted to make in your email. I will say, though, that in almost 2 years of representing Mr. Chester, and now having spent a good deal of time in Texas, you're the first person to express that view. During my time in Texas, I found people to

be friendly, perceptive, and understanding of my role and the reasons for it. At the conclusion of the trial court proceedings, Judge Charles D. Carver, who subsequently ordered Mr. Chester to be executed, commented that my partner and I had discharged our responsibilities as lawyers well, that Mr. Chester had received legal representation as good as any that he'd seen in a capital case, and that we were always welcome in his courtroom. He went on to note that strong representation in death penalty cases was vitally important, and that our taking the case without compensation reflected the highest service that a lawyer can perform. Based on his comments, and on my experiences in Texas over the past two years, my sense is that a lot of people in Texas have a different perception, and a more complete understanding, of my work as a lawyer on behalf of Mr. Chester.

This, I'm sure, is a longer reply to your email than you expected. But you raised a serious question and I thought it deserved a serious answer. While I don't expect to change your, or anyone else's, mind about such matters, my hope is that the information I've provided gives you a fuller understanding of why two lawyers from Alaska flew several thousand miles to take on a capital case in Texas. The short answer is: Because it was necessary and it was the right thing to do.

— Jeff Feldman

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## Family law's best kept secret: resources

By Christine McLeod-Pate

Fear the pro bono call no more. The Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) unveils its best kept secret: **Legal advocacy and mentoring resources.** Tasked with the challenge of finding volunteers for the especially snarly domestic violence and sexual assault family law case, the ANDVSA Pro Bono Program utilizes two methods of making this work, yes, fun and easy.

### Legal Advocates Are An Attorney's Best Resource

Legal advocates are advocates at domestic violence and sexual assault programs who are specially trained to help a victim navigate through the criminal and civil justice system. They are not paralegals or attorneys (generally), but they have both a close working relationship with the client and a general working knowledge of the law as it applies to domestic violence and sexual assault victims. They often accompany unrepresented women to court to help them obtain orders of protection. Above all, they are resourceful. They may not be able to represent a client in court, but they generally know who to call at the district attorney, public benefits or legal services office to help get their clients the help they need.

### How It Benefits A Pro Bono Attorney

A critical component of the ANDVSA Pro Bono Program is cultivating a three-way relationship between the client, the attorney, and the legal advocate. It is our experience at the Pro Bono Program that family law cases involving domestic violence and sexual assault are more successful approached "holistically" combining legal expertise and advocacy support services.

When a volunteer attorney accepts a case, the volunteer is given the name of the legal advocate at the member program that referred the case. The volunteer is encouraged to continue to utilize the advocate for a variety of issues such as safety planning, advocacy with non-legal client needs, and expertise on domestic violence issues. Legal advocates often already have strong trust relationships with the client. This three-way relationship helps the clients to better understand what to expect from the attorney and helps the attorney better understand the client. Furthermore, many non-legal needs, which are typically brought to attorneys, can be and are handled by the legal advocate.

### How An Advocate Can Help

The following is a short sample list of how a legal advocate could help an attorney in a divorce/custody case. It is by no means exhaustive.

- Draft affidavits from the client and others
- Connect the client and/or her children with supportive services at the shelter such as children's counseling programs
- Connect the client and/or her children with supportive services in the community such as housing resources or public benefits
- Find an expert who can testify

in court on domestic violence or sexual assault issues

- Help a client fill out paperwork for the child custody investigator
- Help the client to identify and gather evidence for court
- Help with the personal and emotional work that any family law case involves
- Help prepare a client to testify in court

### Mentoring Matters

The need for pro bono family law attorneys far exceeds the availability of family law attorneys available to handle these cases. Because of this, ANDVSA strives to provide as much legal support to our volunteers as possible. ANDVSA's staff, Jennifer King, Rachel Johnson and I, are available to assist with all facets of your pro bono case.

We provide mentors to any attorney who needs it. Mentors are especially helpful in developing case strategies, debriefing difficult issues, and overall practitioner support. Take it from David Newman of Maio & Newman, LLC and ANDVSA volunteer in Juneau: "The mentoring program at ANDVSA was extremely

## To Kill A Mockingbird: It's all about our duty

By Jon Katcher

In one of my favorite scenes from *To Kill A Mockingbird*, Atticus Finch is on his porch, having just put his children to bed. He listens as the children compare memories of their deceased mother. The local judge comes by and asks Atticus to represent Tom Robinson, the black sharecropper who has been falsely accused of raping a white woman. In a brief moment of repose on Gregory Peck's face, you can see how Atticus weighs the implications of what he is being asked to do. There is the very real danger to himself and his family for representing a black man accused of the ultimate crime in the Jim Crow South. There is the huge responsibility to his client and his client's family. There are the many hours of labor ahead at little or no compensation. But then he says "yes." The way he says "yes" tells us that he does so because he understands that it is his duty to perform this type of pro bono work.

### Duty Calls

As members of the Alaska Bar Association we, too, have the duty

straight forward and easy to learn. But the statutes impose expedited time lines in order to provide safety for the victim while protecting the due process rights of the perpetrator. Lawyers coming into such cases must be prepared to act quickly.

### Enter Stage Right: The Legal Advocate

This is where the legal advocate can be an attorney's best resource. I speak from personal experience that working with a domestic violence legal advocate made a huge difference in how I was able to serve my pro bono client. The legal advocate played two critical roles in a recent case and can do the same for you.

### Cue The Legal Advocate

First and foremost, the legal advocate can be a conduit and filter for communication with the client. This will render all communication with the client vastly more efficient. By having most attorney-client communications go through the legal advocate, the client will not burden you or your office staff with unnecessary phone calls. You will also be able to efficiently reach your client when you need them. Because the legal advocate is part of the team rendering legal services to the client, the attorney-client privilege applies to all such communications to which the legal advocate is a part, whether between you and the legal advocate, or between the legal advocate and the client. Alaska Evidence Rule 503(a) (4).

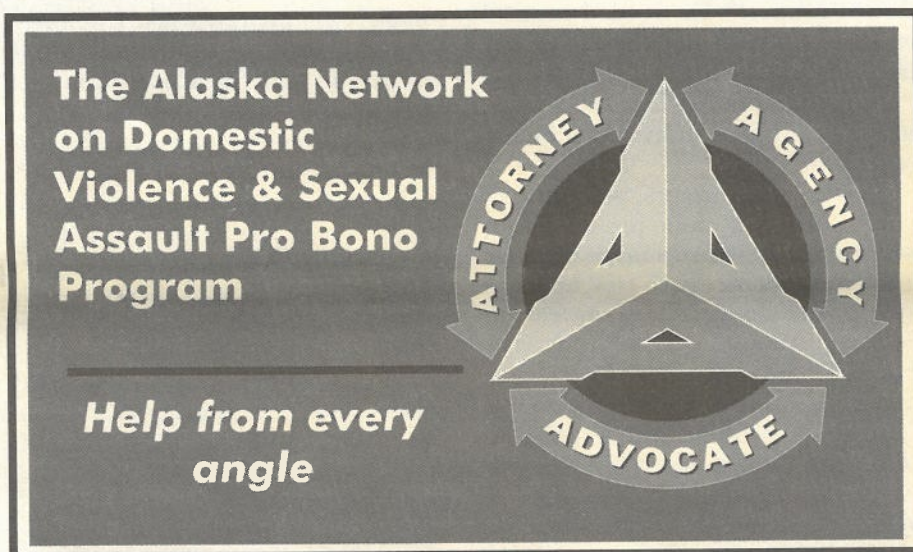
Second, the legal advocate can play a very important role in the development and presentation of the case at court. They are thoroughly trained in the issues surrounding domestic violence and able to educate the attorney on the family dynamics that can arise. The advocate can assist in the investigation and development of facts that are helpful at trial. The advocate can come to court with the client, not only to help manage the client but also to work with the lawyer and serve as a sounding board on theories and strategies. The legal advocate has likely been to domestic violence court more than the attorney and thus more familiar with the master or magistrate and able to offer guidance on what is more likely to be a successful approach.

### Final Scene: Agency + Attorney + Advocate Works

Thus, as Christine writes, fear not the pro bono call because such cases do come with the silver lining of a competent and motivated assistant - a legal advocate who can make life for you and your client much easier and your case more likely to be successful.

This has a very positive outcome. When you perform 50 hours per year of pro bono service, you will connect with two domestic violence advocates: The legal advocate and yourself as you grow and develop to become expert in this area of the law where your services are very much in demand and most likely to make the greatest impact.

So, be like Atticus. Do your duty. When the call comes, say "yes."



helpful when I began my family law practice. I was connected with experienced family law practitioners (thank you, Keith Levy) and given numerous resources—including free travel and CLE credits to attend the annual training offered by the Network—to supplement my professional library and expertise." Don't forget to ask if we don't offer it.

Additional legal support resources are a Volunteer Family Law Handbook including pleadings, access to the latest resource materials for litigating domestic violence and sexual assault cases. Free attendance at our annual CLE entitled "The Impact of Domestic Violence on Your Law Practice" (including free travel and per diem). We conduct teleconference trainings with volunteers on issues pertinent to their casework and author a quarterly newsletter that is current on critical issues.

Above all, we thank and appreciate volunteers as much as possible.

**The best kept secret?** It is all about legal advocacy and mentoring resources, but more importantly it's that family law pro bono service makes a profound positive impact in our communities. Please call Christine McLeod Pate at 1-888-520-2666 or email at christine.pate@worldnet.att.net to find out how ANDVSA can support your pro bono work.

to do pro bono work. Alaska Rule of Professional Conduct 6.1 provides that we each have the professional responsibility to provide legal services to those who are unable to pay. The most important and needed service in Alaska is for attorneys to represent clients in court—of which the greatest need is to serve the indigent in family law cases.

Family law cases are challenging. The substantive law is relatively simple when compared to other more sophisticated areas of practice. This is particularly true for the indigent because they are unlikely to have the types of assets that promote complex litigation over the value and distribution of property. But like other citizens, the poor have children. And while the legal doctrines regarding the custody of children are relatively straight forward and based on common sense, the manner in which people deal with such issues can be very intense. The clients, their families and their soon-to-be former spouses and partners can be very demanding. These are people in crisis and tend to not be at their best.

The most challenging cases involve domestic violence, an all too common factor of family law cases affecting people from all walks of life. Domestic violence law is relatively



## Pro Bono Corner

**Governor Murkowski calls upon Alaska's attorneys to do pro bono service.** In a recent letter to Alaska Legal Services Corporation's pro bono coordinator, Erick Cordero, Governor Murkowski said, "I encourage all Alaska lawyers to volunteer their services to your program, and I hope they will register now for this noble cause." We do too! Download your 2005 recruitment form at [www.alaskabar.org](http://www.alaskabar.org), click on Alaska's Attorneys Called to Action.

**Angling for Advocates.** Become a new pro bono volunteer in 2005 and receive a dozen hand-tied flies by your favorite Pro Bono Director, Krista Scully. Seriously folks -- fly boxes with flies to the first five responses.

### ¿Hablas español?

Comunícate con Erick Cordero de Alaska Legal Services Corporation llamando al 222-4521. Estamos creando un panel de voluntarios que hablan español.

### Fact:

Approximately 64.5 million people volunteered nationally in 2004, the median amount of hours volunteered was 52 — just two hours more than our legal community's goal of 50 hours from each practitioner. Even more impressive — Alaska ranks higher than the nation in its volunteer time — 62 hours per person, per year.

**The Alaska Pro Bono Program** has two cases needing placement immediately.

1. The Anchorage Spinners & Weavers Guild needs assistance obtaining non-profit status, creation of by-laws and necessary documents.

2. A non-profit church group needs assistance with a litigation matter involving a board member dispute.

3. An ongoing need for volunteer

## Announcements

attorneys willing to work on prisoner rights cases or review prisoners claims to determine claim validity.

Please contact Kara Nyquist, Executive Director, at [knyquist@alaskaprobono.org](mailto:knyquist@alaskaprobono.org) to volunteer.

### Thank you:

**Alaska Legal Services Corporation thanks Nicholas Kittleson, Jennifer Coughlin, Mendel & Associates and the law firm of Davis Wright Tremaine** for their hard work and continued efforts in helping pro bono clients in 2004. We deeply appreciate your contributions to pro bono in Alaska.

**Young Lawyers Section of the Anchorage Bar Association** for teaching six landlord/tenant clinics at Fairview Recreation Center. Volunteers provided over 12 hours of instruction to nearly 60 attendees in 2004. Good work!



**Good Deeds, Good Feeds** is a recognition effort launched in January to reward volunteers for their pro bono work in a fun way outside of the annual award arena. It also is meant to recognize an entire firm where secretaries, paralegals and other firm staff assist in pro bono case representation.

Dorsey & Whitney, LLP was the first recipient in late January. Chief Justice Bryner, Erick Cordero and Krista Scully toasted everyone with orange juice and warm cinnamon swirl bread fresh from Great Harvest Bread Company. Starbucks on 5<sup>th</sup> Avenue has joined as a community partner and will now donate their new two gallon travel coffee containers of both regular and decaf and condiments for each event.

Whenever you shop at Great Harvest or the Starbucks on 5<sup>th</sup> Avenue, be sure to thank them for their generosity and commitment to pro bono in Alaska!

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Spend an evening with great kids, great food and entertainment and the chance to win \$10,000 among other prizes. Don't miss out on Friday, April 29<sup>th</sup>, 2005 at the Rabinowitz Courthouse in Fairbanks from 5:30-8:00pm.

Raffle tickets are \$100 each with only 250 tickets to sell. Need not be present to win.

For more information, please contact the North Star Youth Court at 907-457-6792 or via email at [nsyc@mosquitonet.com](mailto:nsyc@mosquitonet.com).



# Lobbying Judges and Computer “Spyware”: A Connection

By Peter Aschenbrenner

We don't usually talk about customary law. In fact, customary law has posed a bit of a dilemma for a long time, because everybody (seems to) like their laws written down. Chief Justice John Marshall said we need to write our constitutions so that we can remember what they say. 5 U.S. 137, 176 (1803). Justinian's Institutes instruct us that Athenians observed “only what had been made permanent in written law” (I.2.10), but Thucydides has Pericles say the opposite in his funeral oration: Athenians have a “particular regard [for] those unwritten laws which bring upon the transgressor of them the reprobation of the general sentiment.” II.37.

Does custom play a role in today's legal system? Let's start with the lobbying of judges. Imagine you were told that a special interest group had special access to judges and that there were procedures specifically allowing them to urge judges to take positions favorable to them both individually and collectively. The average citizen might get a bit huffy about this. He might go right on huffing after he found out that these lobbyists are prisoners, who are provided with procedural levers to challenge judicial misconduct. In both state and federal systems, prisoners are given an avenue to bring to the attention of the judges their dissatisfaction with the legal system and the regulation of judicial misconduct, i.e., to complain about system through which they are able to lobby the court system.

I am perhaps abusing my authority here by saying that it's lobbying, but it *is* lobbying because the prisoners are talking to judges. True, there are panels of judges (federal system) and judges, public members and lawyers (state system) which actually hear what's said. But there is no adversarial system in place. It is simply one-sided. Some panel decides whether or not to act on the incoming speech, and it's treated as investigatory at the stage at which the complaint is dismissed. *Withrow v. Larkin*, 421 U.S. 35 (1975) [investigatory effort leading to probable cause finding, with follow-on adjudication, not violation of due process].

My guess is that the rest of us, the non-prisoners, don't lobby judges (and I'll get to exceptions of interest, later on): Why not? Take Mr. Pickwick's Buffs and Blues from Eat-and-swill, a borough of few voters but mighty electoral spunk. Write a letter to

the Chief Justice and it might look as follows:

“Dear Madam Chief Justice: We here on the Buffs side hear that you are taking up a case in which you might have occasion to rule in favor of the Blues. We want you to know that they are dastards and we Buffs are noble and honorable.”

You haven't ever written a letter like that. You have never heard of anybody writing a letter like that. But there isn't any reason why you *couldn't* do that. Why not? Because it's customary not to do it.

There's always (some) common sense behind custom. If judges were awash in letters from the Buffs and the Blues about what ought to be done, judges wouldn't pay any attention. They probably wouldn't even take any notice if the Buffs didn't write in, and all the incoming lobbying was 100% Blue; they probably wouldn't even notice if the Blues joined the Buffs in lobbying hard one way and nobody lobbied on the other side.

All of this not-lobbying has something to do with an understanding that the job of deciding cases has nothing to do with lobbying. You probably wouldn't want judges who thought that it was any more or less difficult to do their jobs, depending on the volume of Buff and Blue noise. At the bare minimum, you would want to allow judges to walk away from lobbying because it's completely irrelevant. The social fact that it's not (by custom) a thing that's done does weigh in the balance here.

There is some empirical evidence out there. Have prisoners had an impact by lobbying judges through judicial conduct regimes? I mean, are they getting what they want as a special interest group?

Now let's tilt the prism slightly: at your desktop you're awash in a full tide of spam and a helpful popup advertises spam protection, known as spyware. Of course, the alert reader knows that this spyware itself is a mole designed to let in spam and otherwise corrupt your system so that you have to see even more popups and ads, and these are the ones that the designers of the spyware want you to see. Now all of this is lobbying or, more precisely, lobbying plus; I did invite the spyware onto my system (rather stupidly) while spam is just like people coming to your door and you say ‘no thank you’ and turn them away. The invitation to dialogue seems to have significance here, at least to those folks thinking about the first amendment rights of spammers.

Khaldoun Shobaki, *Speech Restraints for Converged Media*, 52 UCLA L. Rev. 333 (October 2004). The platform-neutral model that he proposes appears at 351-358.

And Chief Justice Rehnquist dissented on this pivot in *Watchtower v. Stratton*, 536 U.S. 150, 172 (2002): the state (there a city council) can talk about the situation presented by strangers on your doorstep who may be sincere religious folk or they may be murderers. (His example, not mine.) Here is a rule-of-thumb that gives a pass on the functionalism/anti-functionalism of which academics are so enamored (116 Harv. L. Rev. 200,

272-283[“speech is an inherent good” at 277]), and focuses instead on the venue involved. Can outsiders, like a city council, talk about the context in which the speech is going to occur without necessarily talking about the content? The answer is “yes”. The keys to this analysis have to do with (1) who starts talking? and (2) is there, by custom or law, a rule regarding the talkee's right or duty to walk away from this lobbying?

We'll pick this up in a future near by, but you'll want to know that Slumkey beat Fizkin in the election at Eatanswill. There was no recount.

## Hornaday brings change to Homer

Former Alaska District Court Judge James Hornaday defeated three other candidates in October to become Homer's next mayor.

Hornaday received 838 votes of 1,425 cast, or 61 percent of the total, in a large turnout.

“I am both humbled and excited and want to thank all the candidates who ran,” Hornaday told a local newspaper. “I honor people who put their names on the line. It takes a lot of guts to stick your neck out there.”

“For some reason, the Citizens of Homer elected me their mayor in October,” Hornaday wrote the Bar Rag in January).

Local media commented that the “reason” for Hornaday's victory, along with changes to the city council, show voters were responding to the need for overdue economic growth in the community.

By February, the new leadership in Homer had approved new recreational development along the Homer Spit and, in a 4-3 vote (with a tie broken by Mayor Hornaday), approved a final zoning variance for construction of a new Fred Meyer superstore in town.

“I think he was just doing what the voters wanted him to do,” said Jane Pascall, publisher of the Homer Tribune, the alternative newspaper founded by Hornaday.

Meanwhile, another attorney was seeking change in his town, as well. Former Alaska Attorney General Bruce Botelho, serving his term as Juneau mayor, was on the stump in February statewide drumming up support for a new capital building-hosting



If the induction of the new mayor and Homer City Council Oct. 18, 2004 was a sample of things to come, city government promises to be a bit lighthearted under Jim Hornaday's gavel. Strumming his ukulele, Hornaday said of his “promise made” during the campaign, he launched into his version of “Spring Time in Homer,” for outgoing mayor Jack Cushing. Another former mayor, John Calhoun, presented Hornaday with a meat tenderizer mallet that, as judge, Hornaday had given to Calhoun when Calhoun found himself without a gavel at his induction. At the swearing in ceremony's end in front of the watercolor of Homer and its renowned spit and Kachemak Bay, outgoing Mayor Cushing handed Hornaday a hefty budget folder, saying “here's your first task.”

--Caption and photo courtesy the Homer Tribune.

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# The Public Defender Diaries: Law on the downhill slope

By Kenneth Kirk

## November 12

Dear Diary, I'm so excited! Tomorrow is my first day as a real lawyer. I'll be working in the public defender's office, helping defend poor people against injustice. This is exactly what I spent three years of law school getting ready for. I can hardly wait.

## November 15

Dear Diary, I'm exhausted! I can't believe how little time I get to prepare. Yesterday I had to do a trial when I'd gotten the file only the afternoon before. I asked my supervisor for permission to request a continuance, and he just laughed! Then he told me that if the client agreed, I could ask the judge. So I told the client, but he hadn't been able to make bail and he'd already been in jail for two months awaiting trial, so he's like, I want to go ahead. He said that if we lost, he'd be out in a few weeks anyway, but if we take a continuance it could be months until trial, and he'd still be stuck in jail. I worked half the night trying to line up witnesses, but I still don't have everything together. I hate to just wing it, but I guess that's what I'll have to do. This is so unfair.

## November 16

Dear Diary, this is unbelievable. I should have won that trial! I got the key witness to admit he wasn't sure he actually saw my client. Two of their corroborating witnesses didn't show up. They had practically nothing. And then after 15 minutes out, the jury came in and found him guilty anyway. I think they just ignored that burden of proof stuff and figured he must be guilty if he's here in trial. I went in the bathroom afterwards and threw up. I mean, he was guilty, he told me that himself, but what about the system? What if he had been innocent? Anyway, I'd sit around here feeling sorry for myself, but I have two bail hearings and some arraignments tomorrow, and a big trial next week, so I guess I'd better order a pizza delivered here to the office, and get back to work.

## December 17

Dear Diary, this case is horrible. I've just been through the file a third time, and my client is so obviously guilty that anyone could see it. They have him on video tape committing the crime, they have his DNA and fingerprints, three witnesses who can identify him, and a taped confession that he's now disavowing! I know the ethics rules say I can just insist that the prosecution prove guilt beyond a reasonable doubt, but what am I going to argue to the jury? I can't even come up with a plausible summation. The prosecutor won't cut a deal because she knows she has us dead to rights. What am I gonna do? This is hopeless.

## December 22

Dear Diary, I knew it would be bad, but it was even worse than ex-

pected. First my client got up at the beginning of trial and asked for a new attorney, which the judge denied but how embarrassing! Then he came up with a surprise witness just before we rested. I interviewed her and she was obviously not credible, but what the heck was I supposed to do? So I put her on, she got chewed up and spit out, and we lost anyway. Then on the way out of the courthouse, the victim got in my face and was bawling about how I knew none of what I said was true, and how could I live with myself? Which of course was true in the sense that I knew what I was saying wasn't true, but doesn't she understand I was just doing my job? That I'm a necessary part of the system? Anyway I just walked away from her, but then I went into the bathroom and threw up.

## January 5

Dear Diary, I just got an ineffective assistance claim! This is awful! This from a client I worked hard for, and actually got him off on two of the four counts. And this is how he repays me? This is the thanks I get? My supervisor says not to take it personally, that our clients file these all the time to try to get sentences overturned, but how can I not take it personally? It says I'm incompetent! It damages my reputation! Isn't there anything I can do about this?

## January 15

Dear Diary, I've been working my tail off pulling late nights again, but I really don't mind. This time at least I have a client who is truly innocent. He told me so himself. I know that sounds naive, but I believe him. Sure there's some evidence against him, but it's not airtight and I think the key witness is lying. I know it shouldn't make any difference, that I should work just as hard for any guilty client as I should for him, but what a horrible injustice if this innocent man goes to prison! I just have to win this trial.

## January 23

Dear Diary, I lost the trial. When they led him away, I felt like Gregory Peck in that movie, except without all those African-Americans standing up in the gallery. It was just disheartening. The worst thing is, I really don't have good grounds for appeal. Tomorrow I'll have to go down to the jail and talk to him about the sentencing hearing. I can barely stand to do it. How can I look him in the eye, knowing that the justice system, which I sort of represent, let him down so badly?

## January 24

Dear Diary, I am furious! And confused, and upset, and I don't know what else. We're there at the jail, and I'm telling him about the sentencing hearing, and I mentioned that most defendants tell the judge how sorry they are for what they did, but of course he can't do that because he's innocent. So then he says, will it

help if I do and I'm all, sure but you can't because you'd be saying you did something you didn't do. Then he says, well I guess I did it. And I almost puked. That SOB told me this big sob story about how he was innocent and he was at his cousin's trailer the whole time, and I worked my butt off for him. And he was guilty the whole time! Does he have any idea how many times I missed *Survivor* because I was trying to save his sorry butt? Unbelievable.

## February 18

Dear Diary, today was the sentencing hearing for my "innocent" client. I put him on the stand and he said how sorry he was to the victims and all. Right. He probably got the script from another jailbird. Other than that I didn't do much. I can honestly say this was the first time I've just mailed it in. Well not counting arraignments of course, but what can you do when you get thirty seconds with the client and then you have to go? And not counting some of the bail hearings because half the time you just know the judge is going to turn you down. And a lot of the suppression hearings, but those are usually crap, because they always believe the cops but you gotta try, right? Anyway, he got three years. Serves him right.

## February 29

Dear Diary, another successful day of copping pleas. One client didn't want to plead, even though I had it down to just six months when

he would have been looking at two years if he's convicted. I told him how much risk he had, and that he was almost certainly going to lose if we didn't plead. He finally gave in and took the deal. Thank goodness, I would have hated to take that one to trial. Besides, who has time for another trial? I have other cases. I kicked off work early and stopped for a brewski on the way home.

## March 17

Dear Diary, my latest slimebucket client didn't want to plead out. Insisted he was innocent and wanted his day in court. Have I heard that one before? So I told him he'd lose, and I wasn't gonna bust my butt on this trial if he turned down a deal that would turn a likely 5 year sentence into only 4 ½. He cried and everything but I said no, you have to take it. You have no choice. It's a done deal. Of course he insists he has witnesses who can exonerate him, but I know they'll be lying. What a loser.

## May 6

Dear Dairy, I just realized I haven't had to do an actual trial in more than three months. All my clients have been guilty (although a few tried to pretend they weren't) so I pled them out, got them better deals than they'd have gotten if they'd gone to trial, and left them to their punishments. I think I'm turning into a pretty good attorney.

And I haven't thrown up lately either.



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# A trial practice handbook for appearing in Bethel

By Rick Friedman

I have to admit, my first thought upon driving through Bethel was "when hell freezes over, this is what it will be like." After my co-counsel, Jim Valcarce, took me to "the best restaurant in town," I knew what Beelzebub would be serving.

I had always wanted a trial in Bethel. Ever since I started practicing, lawyers have returned from Bethel with epic tales of large verdicts, and strange and unusual behavior on the part of jurors, judges and lawyers. The daring of lawyers willing to venture out to Bethel has never been questioned. But their reports have been met with the same skepticism Marco Polo must have received when telling his Venetian brethren about elephants and gun powder. (Not that I would necessarily put Anchorage in the same category as Venice.) And just as there were not too many Europeans interested in following in Marco Polo's footsteps, not many trial lawyers are eager to venture out to Bethel.

Within a few days, I loved Bethel. The area has a stark, undeniable beauty. The people are among the warmest and kindest I have ever met. This, surprisingly, includes the lawyers and judges. They have a lot to teach the rest of us about what is important in life—but that is the subject for another column. By the end of the week, I was liking the food, and I was sad to leave.

Anyone expecting a lower standard of practice in Bethel is in for a surprise. Judge Curda is adept at routinely dealing with complex problems most other judges may never face in their entire careers. Jim Valcarce has to be the most naturally talented trial lawyer I have run across in years. And Myron Angstman, I painfully learned, can still teach anyone some things about cross-examination.

What follows is a short handbook on trial practice in Bethel, in hopes of encouraging others to make the journey. With a few simple tips, you should be as comfortable trying a case in Bethel as anywhere else.

## Voir Dire.

This is a small town. Everyone is connected to everyone else in a variety of ways. Forget about challenges for cause. **Illustration:**

Attorney: Mrs. Smith, do I correctly understand that you own

a business with the defendant, have been dating my client for six years, and have been sued by each of the attorneys in this case at least three times?

Juror: Yes.

Attorney: Challenge for cause Your Honor.

Court: Mrs. Smith, do you believe you can set all of that aside and render a fair and impartial verdict in this matter?

Juror: Yes.

Court: I find her bias is equally distributed and will deny the challenge for cause.

## Opening Statement

People in Bethel spend most of their time around loud engines. They are always in, on or around small planes, large snowmachines and fast boats. White people and Natives react very differently to this audio assault. White people TALK VERY LOUDLY as a result; native people talk very softly. If you are white and you don't talk loudly, you will mark yourself as an outsider. More importantly, your credibility increases in direct proportion to the decibels you emit. It is best to SHOUT YOUR OPENING STATEMENT. All the good white lawyers in Bethel do. (If you are a Native lawyer, and find yourself in Bethel, you don't need my advice.)

## Direct Exam

Here, the rules are simple. Rule #1: only ask leading questions.

**Illustration of a bad direct exam question:**

"What happened next?"

**Illustration of a good direct exam question:**

"And then you went to the AC store at around 10:00 in the morning, where you saw Mary Smith loading her shopping cart with flour, right?"

Rule #2: If you can, try to incorporate information in the question that only the examiner is likely to know.

**Illustration of a good direct exam question, incorporating Rules 1 & 2:**

"I talked to Mary Smith's sister Clara last night, and she told me that you then went to the AC store, around 10:00 in the morning, and saw her



"Ever since I started practicing, lawyers have returned from Bethel with epic tales of large verdicts, and strange and unusual behavior on the part of jurors, judges and lawyers."

sister Mary loading her shopping cart with flour; is Clara right about that?

Rule #3: If at all possible, try to get in a dig at opposing counsel with your question.

**Illustration of a good direct exam question, incorporating Rules 1, 2 & 3:**

"Now Mr. [insert name of opposing counsel] is too rich and effete to ever go to the AC store himself, but he claimed in opening statement that Mary was loading Pepsi in her cart at the AC store, but when I talked to Mary's sister Clara last night..."

## Cross-Exam

All of the rules discussed above apply equally to cross-examination. So, keep shouting.

In addition, it is best to include references to the questioner's manly activities. Women can do this too. Just refer to your own snowmachine, sled dogs or jet boat in the question.

**Example:** "When I go to the AC store to get oil for my snowmachine I've noticed that the flour is in aisle three..." For attorneys like Mike Schneider, who have lots of manly activities, this rule should be easy to follow. If you are like me, and engage in no manly activities, the best you can do is turn the tables on the witness and leave your own shortcomings unexposed. This, of course, is not a rule, but a tactic. Here is how it works:

Attorney: AS I UNDERSTAND IT DOCTOR [notice the shouting?] MR. [insert name of opposing counsel] WENT ALL THE WAY TO BEVERLY HILLS, CALIFORNIA TO HIRE A

NEUROPSYCHOLOGIST, AND I JUST WANT TO KNOW, WHEN YOU GET ON YOUR SNOWMACHINE IN THE MORNING TO DRIVE TO WORK --

Witness: I don't go to work on a snowmachine.

Attorney: YOU DON'T GO TO WORK ON A SNOWMACHINE? [Give a knowing look to the jury and pause, letting the point dramatically sink in.] ALL RIGHT THEN, WELL WHEN YOU GET ON YOUR SNOWMACHINE --

Witness: I don't own a snowmachine.

Attorney: YOU DON'T OWN A SNOWMACHINE!?!? I HAVE NO MORE QUESTIONS FOR THIS [now spit the out the word] **WITNESS.**

## Objections

The rule on objections is easy. Whoever says "this is Bethel" first wins. **Illustration:**

Defense Attorney: "Objection, hearsay."

Plaintiff's Attorney: "This is Bethel Your Honor."

Court: "Overruled."

**Or:**

Defense Attorney: "Objection, this is Bethel Your Honor."

Plaintiff's Attorney: "What does that mean?"

Court: "Sustained."

## Closing Argument

I cannot speak with authority about closing arguments in Bethel. My trial ended in mid-stream, and I never had a chance to make or watch a Bethel closing argument. We will start the re-trial in December, after which I hope to publish "The Bethel Trial Practice Handbook," which will be available through West Publishing. Advanced copies may be obtained at the offices of Jim Valcarce and Myron Angstman.

## In the Supreme Court of the State of Alaska

Disability Matter Involving	)	Supreme Court No. S-11746
Charlene A. Lichtmann,	)	
	)	
ABA Membership No. 8011096	)	<b>Order</b>
	)	
Respondent	)	Date of Order: 1/13/2005

ABA File No. 2004B001

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

On consideration of the joint motion by bar counsel and the respondent for the respondent's transfer to disability inactive status under Alaska Bar Rule 30, filed on 11/29/2004,

## IT IS ORDERED:

1. The joint motion for transfer to disability inactive status is Granted. Respondent Charlene A. Lichtmann is immediately transferred to disability inactive status for medical reasons until further order of this court. A disability hearing under Rule 30(b) is not required.

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

Entered by direction of the court.

Clerk of the Appellate Courts  
/s/ Amy L. Humphrey, Deputy Clerk

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# Alaska exports extend beyond oil & fish (can you say ‘IP’?)

By Dan Branch

Along with oil and fish Alaska exports legal concepts to the rest of the country. The Alaska Permanent Fund is the state's most well known intellectual export. Many in the Lower 48 envy the program now that its value has reached \$30 billion. Others take inspiration from it. Wyoming amended its constitution to create a Permanent Minerals Trust Fund into which portions of the state's severance taxes are diverted each year.

The legal decisions of Alaska appellate courts have also been exported – finding their way into law school textbooks. The written decision in *Aguchak v. Montgomery Ward* (520 P2d 1252) once appeared in a commonly used text on civil procedure. During a visit to California I ran into a law school professor who was hungry for background information about the case. Having no real knowledge about Alaska or its people, the professor and his students were stumbling over the facts in the case.

*Aguchak* concerns the trials of a Yupik family from Scammon Bay that bought a freezer from Montgomery Ward during a trip to Anchorage. The professor couldn't figure out why Eskimos would need a freezer and where, in their igloo of ice, they would plug it in. I did my best to clear up the mystery.

My exchange with the professor left me wondering whether the text book author included *Aguchak* to add exotic spice to the dull brew that must be consumed by first year civil procedure students. It would be too bad if the setting overshadowed Justice Boochever's holding in the case, which applied due process standards to a fact situation that could only be found in Alaska.

Montgomery Ward sold the freezer to the Aguchaks on credit on condition that they pay 18% per annum interest. When the Aguchaks defaulted, Montgomery Ward sued them in Anchorage Small Claims

## For the buzz, check on Blogs

Ever wonder what the lawyer community is thinking when breaking legal news occurs? Like Supreme Court decisions, celebrities going to court, tort reform, or election campaigns?

For local peer commentary, the annual convention is the place to be; but for national attorney opinion, the Blogs are the place to look.

A good start may be law.com's Blog Network at <http://blogs.law.com>, although there are many others out there to be found with a Google "law blog" or "legal blog" search. ("Blog" is shorthand for web log, or instantly-published web journals, with no HTML knowledge required.)

For a sampler of these blogs, the law.com site features a couple dozen legal commentators ranging from former *National Law Journal* editor Robert Ambrogi's tracking of legal websites (<http://www.legaline.com/lawsites.html>) to Eugene Volokh's The Volokh Conspiracy of 14 other blogging law professors (<http://volokh.com>).

Other legal bloggers on the site discuss trends and news in intellectual property, small/solo firm practice management, marketing, employment law, and criminal law.

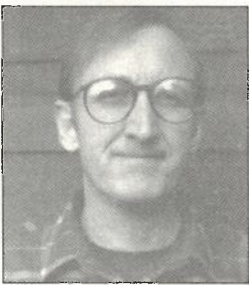
Beyond the sites to read are increasing numbers of services assisting journal-keepers to start their own online blogs, from sites such as [blogcatalog.com](http://blogcatalog.com), [blog-city.com](http://blog-city.com), [lexblog.com](http://lexblog.com), and the first of them all, [blogger.com](http://blogger.com).

Do you have a blog? Send your link to [info@alaskabar.org](mailto:info@alaskabar.org).

Court. The Aguchaks couldn't afford the trip to Anchorage to defend, so a default judgment was entered against them. Chris Cooke, then working for Alaska Legal Services Corporation, filed a Civil Rule 60(b) motion for relief.

In fashioning his decision, Justice Boochever balanced the hardship on Bush residents caused by having to defend a lawsuit in Anchorage with the need to provide urban retailers with a relatively inexpensive way of recovering from defaulters. He found that the summons served on the Aguchaks was unconstitutionally defective because it did not convey the information needed by the Aguchaks to defend against the suit. In a footnote Justice Boochever gave an example of a small claims summons designed to communicate with clear language the defendant's rights, including the right to ask for a change of venue to a court nearer the defendant's home.

Other case books contain descriptions of Alaska decisions. The



"The legal decisions of Alaska appellate courts have also been exported – finding their way into law school textbooks."

authors of the 10th edition of *Prosser on Torts* refer to the Alaska case of *Buoy v. ERA Helicopter Inc.*, which was brought by a man (and his wife) injured in a helicopter crash near Cold Bay. *Prosser* cites to the case for its holding that a tort plaintiff cannot seek damages for depression caused by the litigation they are pursuing. I found more interesting the court's holding on "loss of enjoyment of life" damages.

The Buoy's appealed to the Alaska Supreme Court, in part, because "under no conceivable circumstances could the jury fairly award Glen Buoy nothing for loss of enjoyment of life." (771 P.2d 439, 447)

At trial the Buoy's provided proof that Mr. Buoy was clinically depressed and asked the jury to find that no one suffering from clinical depression enjoys life. They also pointed out to the jury that Mr. Buoy didn't get out on the town much after the accident. The supreme court upheld

the jury's verdict after finding that there was no evidence in the record to indicate that the Buoy's did a lot of socializing before the accident.

Other Alaska cases have made their way into law school textbooks. *Bubbel v. Wein Air Alaska*, concerning the contract and estoppel rights of strike-breaking pilots appears in a Labor Law textbook. *Wood v. Alaska*, a case testing Alaska's rape shield law and *Davis v. Alaska*, concerning whether a witness may be impeached with his juvenile record, appear in a text on Criminal Law and Procedure.

Alaska's position as the United States' sole arctic presence and natural resources storehouse has lead to innovative laws concerning the Trans-Alaska Pipeline, Alaska Native Claims Settlement Act, and the Alaska Permanent Fund. Alaska's courts have struggled to apply the principles of American jurisprudence to uniquely Alaskan fact patterns. Lawyers need only read today's newspapers to see that Alaska's appellate courts will continue to be challenged to resolve the unique disputes that arise daily in America's newest state.

## Spring 2005 CLE Calendar

Date	Time	Title	Location
March 7	8:30 – 12 noon	Legal Ethics: Name that Movie -- -Name That Rule! with Larry Cohen and Steve Van Goor CLE #2005-005A 3.0 Ethics CLE Credits	Anchorage Hotel Captain Cook
March 7	1:15 p.m. – 4:45 p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen & Ray Brown CLE #2005-006A 3.0 General CLE Credits	Anchorage Hotel Captain Cook
March 8 (NV)	9:00 a.m. – 12:00 p.m.	Legal Ethics: Name that Movie -- -Name That Rule! with Larry Cohen and Steve Van Goor CLE #2005-005B 3.0 Ethics CLE Credits	Fairbanks Westmark Fairbanks Hotel
March 8 (NV)	1:15 – 4:45 p.m. p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen & Ray Brown CLE #2005-006B 3.0 General CLE Credits	Fairbanks Westmark Fairbanks Hotel
March 9 (NV)	1:15 – 4:45 p.m. p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen CLE #2005-006C 3.0 General CLE Credits	Juneau Westmark Baranof Hotel
March 17 (NV)	8:00 a.m. – 12 noon	Limited Liability Entities <u>ALI-ABA Live Satellite TV Broadcast</u> CLE #2005-023 3.75 General CLE Credits	Anchorage KAKM (APU campus)
April 5	Half-day	Cybersleuthing: A Guide to the Essentials of Computer Discovery with Joan Feldman, Computer Forensics, Inc., Seattle CLE #2005-009 3.25 CLE Credits	Anchorage Hotel Captain Cook



# Alaska's advance health care directive changes in 2005

By Steven T. O'Hara

Effective January 1, 2005, Alaskans need to use more paper to appoint an agent to make their health-care decisions.

Prior to January 1, 2005, Alaskans could appoint an agent to make all decisions, including those concerning health care, by completing a Statutory Power of Attorney (AS 13.26.332). The Statutory Power of Attorney, equipped with health-care powers, served as a tool to avoid the expense and delay of having to go into court to have a guardian or conservator appointed in the event of incapacity. Powers of attorney for these purposes are often called "durable" because they continue to be effective during the principal's incapacity.

Now, to appoint an agent to make health-care decisions as well as other decisions, Alaskans need to complete two documents. First, with respect to health care, there is the new Advance Health Care Directive (AS 13.52.010 & .300). Second, with regard to all other matters, there is the Statutory Power of Attorney which, under new law, may no longer include health-care powers (AS 13.26.332).

An individual's Advance Health Care Directive may address the individual's desires in circumstances where life-sustaining procedures, such as a respirator, are required (AS 13.52.045). Alaska's prior law on so-called Living Wills is repealed as of January 1, 2005.

The new law does not invalidate Statutory Powers of Attorney granting health-care powers or Living Wills authorized by Alaska law that were properly created before 2005. The new law grandfathers these documents until they are revoked (Sections 16(b) and (c), Chapter 83, SLA 2004).

My initial reaction to the new law was that there was no need for the additional paperwork. There was no need to carve out health-care decisions from the Statutory Power of Attorney. The Statutory Power of Attorney did fine in the health-care area as well as all other areas.

In preparing the new Advance Health Care Directive for clients, however, I have begun to appreciate that the document serves as a more effective tool for clients to consider health-care situations. Although clients will now have even more paperwork to consider at a typical Will signing, when related documents such as an Advance Health Care Directive are signed, I believe the net effect for clients will be beneficial.

Individuals may be as specific and detailed in their Advance Health Care Directives as they wish. As a practical matter, many will probably just name an agent and then leave it to the agent to make health-care decisions if the need for such an agent ever arises.

The following Advance Health Care Directive is offered as a possible short-form document. A longer version is possible under the form provided at Alaska Statute 13.52.300.

The following document is for il-

lustration purposes only; it must not be used without being tailored to the applicable law and circumstances and wishes of the client.

## Jane Client Advance Health Care Directive

### PART 1 Durable Power of At- torney for Health Care Decisions

(1) **DESIGNATION OF AGENT.** I designate the following individual as my agent to make health care decisions for me:

My spouse, Joe Client, currently of Anchorage, Alaska.

If I revoke my agent's authority

or if my agent is not willing, able, or reasonably available to make a health care decision for me, I design-

nate as my first alternate agent:

My brother John Smith, currently of the State of Minnesota.

If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

My sister Mary Smith, currently of the State of Hawaii.

For purposes of this document, if my spouse and I are divorced after the date of this document or if either of us files a complaint for dissolution of our marriage in any jurisdiction after the date of this document, then Joe Client shall be ineligible to serve under this document as my agent.

(2) **AGENT'S AUTHORITY.** My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making

all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive.

(3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE.** Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box

☐ my agent's authority to make health care decisions for me takes effect immediately.

(4) **AGENT'S OBLIGATION.**



"Now, to appoint an agent to make health-care decisions as well as other decisions, Alaskans need to complete two documents."

My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

### (5) **NOMINATION OF GUARDIAN.**

If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

### PART 2 Instructions for Health Care

(6) **END-OF-LIFE DECISIONS.** Except to the extent prohibited by law, I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

☐ (A) **Choice to Prolong Life.** I want my life to be prolonged as long as possible within the limits of generally accepted health care standards;

or

☐ (B) **Choice Not to Prolong Life.** I want comfort care only and I do not want my life to be prolonged with

medical treatment if, in the judgment of my physician, I have (check all choices that represent your wishes):

☐ (i) **A condition of permanent unconsciousness:** a condition that, to a high degree of medical certainty, will last permanently

without improvement; in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of myself and the environment are absent; and for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures for me, in light of my medical outcome, will provide only minimal medical benefit for me; or

☐ (ii) **A terminal condition:** an incurable or irreversible illness or injury that without the administration of life-sustaining procedures will result in my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit.

(C) **Artificial Nutrition and Hydration.** If I am unable to take safely nutrition or fluids or both nutrition and fluids (check your choices

or write your instructions):

☐ I wish to receive artificial nutrition and hydration indefinitely;

☐ I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

☐ I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve; or

☐ In accordance with my choices in (B) above, I do not wish to receive artificial nutrition and hydration.

☐ Other instructions: None.

(D) **Relief from Pain.**

☐ I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort.

### PART 3 Anatomical Gift at Death

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(7) **Upon my death** (mark applicable box):

☐ (A) I give any needed organs, tissues, or other body parts,

or

☐ (B) I give the following organs, tissues, or other body parts only:

☐ (C) My gift is for the following purposes (mark any of the following you want):

☐ (i) transplant;

☐ (ii) therapy;

☐ (iii) research;

☐ (iv) education.

☐ (D) I refuse to make an anatomical gift.

IN WITNESS WHEREOF, I have hereunto signed my name this \_\_\_\_ day of \_\_\_\_\_, 2005.

JANE CLIENT

1 Client Drive

Anchorage, Alaska

STATE OF ALASKA )

)ss.

THIRD JUDICIAL DISTRICT)

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned Notary Public, appeared Jane Client, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

(Seal)

Notary Public in and for Alaska

My Commission Expires: \_\_\_\_\_



# Committees make services, capital fund & dues recommendations

Continued from page 1

keep the cost of those services in check,” said the committee.

Among the factors examined in the committee’s analysis were:

- cost of living differences among the states (Alaska’s COLA index is 128%);
- the organizational status of bar associations (17 states have voluntary bars; the remainder are mandatory/unified);
- responsibilities of mandatory/unified bars in the states (just 13 state bars, including Alaska, have both discipline and admissions responsibilities.); and
- other core services provided by mandatory bars (Alaska and 9 other bars also provide lawyer referral; CLE; and client protection trust fund management.).

Committee research found that, while Alaska’s annual fees are the highest in the U.S. (\$550 per year in 2005, compared with 2004 rates in other states), the fees are comparable to a number of other states, some with similar services, when cost of living and dispersion of the population is considered.

### Alaska Bar revenue & expense trend

The subcommittee specifically noted that based upon the wording of the Anchorage Bar Association’s resolution, the ad hoc committee “had not been charged with determining whether the membership of the Bar pays too much in dues or even how best to cut services. Instead, the specific wording of the resolution asked the BSFC to figure out how to do more with what funding exists. Based upon these limitations, the subcommittee discussed and agreed that it was not empowered to look at the issue of whether the amount currently paid by members is appropriate, but instead, must focus on recommendations for the bar to provide better services with what funding it currently has or what it ultimately may achieve.”

The committee determined that the Bar’s revenue has remained relatively stagnant over the past three years, averaging approximately \$1,907,000 per year, against expenses averaging \$2,017,000. “The top five expenses of the Bar in

2004 in descending order are: 1) staff salaries, 2) staff insurance, 3) the annual convention, 4) continuing legal education, and 5) the pro bono program/ordinator,” the committee said.

**The unappropriated capital fund represents a philosophical crossroads faced by the BOG.**

### Unappropriated capital fund ‘dues dilemma’

“It is with regard to the recent annual operating losses that the unappropriated capital fund becomes significant,” said the committee. In its discussion of the use of the fund, the subcommittee cautioned that the fund belays annual dues increases:

“The unappropriated capital fund represents a philosophical crossroads faced by the BOG. Based upon the ever-changing nature of the Bar budget, the BOG was confronted with two alternatives for budgeting and funding the Bar. One approach adjusts bar dues on an annual basis to match the anticipated and budgeted needs of the bar for that upcoming year. The downside to this approach is that it creates a significant risk of the bar facing a budget shortfall. It also becomes a significant public relations issue with the membership, who complains about the seemingly ever-increasing dues, as each year we face incremental adjustments to meet the budget.

“The other alternative raises bar dues periodically, with the understanding that during the years immediately following dues increases, a budget surplus is created. That surplus is then invested and continues to grow until the Bar’s budget increases beyond annual revenues, thus generating a net loss. In those subsequent years, the unappropriated capital fund is relied upon to fill the budgetary gap. The unappropriated capital fund then continues to decline until it becomes too low or runs out. Then, the BOG increases fees beyond the amount needed for that year and the process repeats itself. Many years ago, the BOG

### Fees required for licensed professionals in Alaska, 2004

Occupation	Licensing Fees (annualized)
Architect	\$97.50
Audiologist	\$157.50
Certified Public Accountant	\$110
Chiropractor	\$242.50
Dentist	\$295
Engineer	\$97.50
Marine Pilot	\$1300
Marital and Family Therapist	\$387.50
Optometrist	\$210
Pharmacist	\$90
Physician and Surgeon	\$295
Psychologist	\$487.50
Real Estate Appraiser	\$375 \$25 (federal registry)
Real Estate Broker	\$172.50
Registered Nurse	\$107.50
Veterinarian	\$245

decided that it would be in the bar’s best interest to utilize the unappropriated capital fund method regarding budgeting.”

“Therefore, as noted above, the unappropriated capital fund is somewhat of a misnomer. The surplus does not represent monies that are truly unappropriated. Instead, it is recognized and intended that the fund be applied to compensate for future budget shortfalls that are certain to occur. In other words, the monies are specifically intended to be used to avoid the need to raise dues on an annual basis. Prior to the dues increase set for this coming year, the last two increases occurred in 1993 and 1981.

“One of the points raised by the Anchorage Bar Association is that perhaps the BSFC should look at new ways of utilizing a portion of the unappropriated capital fund. It is the subcommittee’s belief that this recommendation fails to take into consideration the true purpose of the unappropriated capital fund. The surplus is not a slush fund, which is dormant and untapped. Instead, the surplus is specifically designed to avoid frequent, future dues increases. If any amounts from the surplus were appropriated to other purposes, as has been suggested, dues increases would occur much more frequently than they do now.

“Considering that Alaska is at the forefront of bar dues currently paid, the subcommittee is uncertain if the intent of the Anchorage Bar Association is for dues to be increased at yet a quicker rate and in a greater amount than has previously occurred. If that is not the intent of the Anchorage Bar Association, then the subcommittee recommends against applying any portion of the unappropriated capital fund to anything other than the immediate budgetary needs of the Bar.

### Recommendations

“This being said, at a minimum, the subcommittee recognizes that there may be some confusion among the membership regarding the nature and purpose of the unappropriated capital fund. Consequently, at a minimum, the subcommittee recommends that a significant effort be made to inform and educate the membership of the history and purpose of the unappropriated capital fund and the role that it plays with regard to membership dues. The subcommittee believes that if such education and information were provided, the membership may not feel compelled to look for ways to spend the surplus.”

Other recommendations include:

1. **Provide Fiscal Notes for New Services or Programs.** As initially suggested by John Tiemessen, BOG liaison to the BSFC, any new recommended bar services or programs should have attached a fiscal note. The note should address the costs of such a program, the revenues generated from such a program, any new sources

### Cost to practice, by state

State	Total Cost to Practice
1. <b>Alaska</b> (2005 fees)	\$550
2. Connecticut	\$525
3. Tennessee	\$520
4. New Hampshire	\$495
5. <b>Oregon</b>	\$482
6. Delaware	\$465
7. Texas	\$435
8. Hawaii	\$430
9. Arizona	\$410
10. <b>California</b>	\$390
11. Washington	\$383
12. Wisconsin	\$370.05
13. <b>Utah</b>	\$360
14. <b>Idaho</b>	\$360
15. Rhode Island	\$350
16. <b>Nevada</b>	\$350
17. New Mexico	\$315
18. North Dakota	\$315
19. South Dakota	\$315
20. <b>Nebraska</b>	\$300
21. Montana	\$285
22. <b>Alabama</b>	\$275
23. Kentucky	\$270
24. Florida	\$265
25. Louisiana	\$265
26. South Carolina	\$260

State	Total Cost to Practice
27. Michigan	\$260
28. Wyoming	\$255
29. <b>Virginia</b>	\$250
30. Georgia	\$245
31. Illinois	\$229
32. Mississippi	\$225
33. Missouri	\$225
34. Massachusetts	\$220
35. Maine	\$212
36. Minnesota	\$200
37. Colorado	\$195
38. North Carolina	\$195
39. <b>West Virginia</b>	\$195
40. New Jersey	\$190
41. Arkansas	\$185
42. Oklahoma	\$175
43. Pennsylvania	\$175
44. District of Colombia	\$150
45. New York	\$150
46. Vermont	\$150
47. Ohio	\$125
48. Kansas	\$120
49. Iowa	\$95
50. Indiana	\$85
51. Maryland	\$85

#### Notes to Table

- **Mandatory-bar states providing extended services are in bold (admissions, discipline, lawyer referral, CLE programs, and Lawyers’ Fund for Client Protection.)**
- Fees cost as of 2004, not factored for cost of living variances.
- **Oregon fees exclude \$2,600 fee for mandatory professional liability insurance for attorneys in private practice; North Carolina attorneys also are required to join a district bar association.**

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# Committees make services, capital fund & dues recommendations

Continued from page 11

of revenue available to fund the program and any existing services or programs that should be cut or eliminated in light of the new program or service.

**2. Increase Rule 81, Alaska R.Civ.P., Fees.** Rule 81 fees currently comprise a significant source of income for the Bar. In 2004, Rule 81 fees accounted for over \$87,000 in revenue. Currently, attorneys making application to appear *pro hoc vice* in Alaska must pay an amount equal to active bar dues to the Bar, per case, per year. Many states charge non-residents significantly higher license fees than are charged for residents. As has been done in Montana and elsewhere, it seems that the Bar, if so desired, could potentially justify charging greater license fees to non-residents.

**3. Assess Costs of Discipline to the Attorneys Responsible.** Currently, costs and expenses associated with investigating and disciplining members of the Bar and others practicing law in Alaska comprise roughly 29% of the Bar's budget. In other words, in 2004, it is anticipated that the Bar will spend over \$604,561 on discipline and related activities. Nevertheless, currently, the Bar does not seek to recover costs and expenses of discipline from those attorneys involved. There are various reasons why the bar does not seek reimbursement of costs. Among others, it has been suggested that the costs of doing so would outweigh the amounts that would be received. Further, disciplined attorneys frequently discontinue practice, leave the state or otherwise become judgment proof. Finally, only a small percentage of discipline investigations warrant discipline being imposed and as such, the number of cases in which costs could be recovered would be low.

Despite the above considerations, the subcommittee would still recommend that the Bar seek to impose and recover the costs of discipline from the responsible parties whenever possible. First, it should be noted that there exist many collection agencies and collection attorneys within the State who, when such penalties are reduced to judgment, would gladly pursue recovery of such judgments on a contingency fee basis. Doing so would significantly reduce any concerns regarding

potential costs outweighing potential benefits of recovering costs.

Second, even if the Bar only recovered 5% to 10% of all fees and costs accrued on account of discipline each year, the savings to the Bar could be significant. Again, in 2004, this savings would have garnered the bar between \$30,000 and \$60,000...when Alaska leads the nation in the

cost to practice within the state, it is important for the Bar to take a close look at all potential sources of revenue.

Third, and finally, as attorneys practicing within this state, it sends an appropriate message to both the membership and to the public, that we are willing to be held fully accountable for our actions. Our current practice of not seeking costs of discipline from responsible parties simply does not do this.

**4. Maximize Use of Financial Auditors.** The subcommittee

has done its best to identify various issues that it believes are important with regard to the appropriate utilization of bar dues. However, it should also be recognized that the Bar has a full annual financial audit. The subcommittee would strongly recommend that the BOG and the Bar capitalize on the services provided during the audit.

**5. Utilize a Separate Entity to Apply for Certain Grants.** The Bar is an IRC §501(c)(6) organization and therefore cannot qualify for grants available to non-profit IRC §501(c)(3) organizations. First, the research needs to be done, to explore if there are grants that exist that would fit the legal profession's goals and mission. If the Bar finds that these types of grants exist, the Alaska Bar Foundation, a separate legal entity which is a IRC §501(c)(3), could apply for and administer such grants. The grants might be to support and encourage continuing legal education, the promotion of the profession, or public service, or specific areas of practice, e.g. Immigration Law Section.

**6. Abdicate Responsibility for Various Bar Functions.** In many other states, one or both of the discipline and admissions functions are undertaken by other entities or agencies within the state, frequently by the state's Supreme Court. As such, one potential source of savings for the Bar would be to attempt to shift the responsibility for either admissions, discipline or both, upon State

government and in this instance, most likely upon the Alaska Supreme Court.

By all accounts, the Bar has done a tremendous job regarding both discipline and admissions. Consequently, the subcommittee recognizes that while shifting responsibility for discipline or admissions to the Alaska Supreme Court or elsewhere may be an option, it is not likely to be looked favorably upon.

**7. Explore Non-Dues Sources of Revenues.** In addition to bar dues themselves, there exist many non-dues sources of income. Non-dues sources of income include such things as practice handbooks, legal forms, attorney directories, advertising, credit card and other entity affiliations, CLE programs and materials, and sale of membership lists, to name a few. It has been noted by staff personnel that when attentions are directed away from core activities, there may be a disruption in providing quality services and any such benefit derived from non-dues sources may be relatively insignificant. As such, while it is recommended that the Bar continue to explore non-dues sources of income, the potential in this regard likely remains low in relation to the costs of managing such programs.

**8. Consider Fees Associated with Continuing Legal Education.** There exist many different ways in which the Bar does and may continue to derive income from continuing legal education. Some of these methods are currently utilized, some are in the process of being implemented and others have not yet been employed to any great extent. One source of fees involves the Bar presenting live CLE programs and associating with others for doing the same. Currently the bar presents an average of 30-35 CLE programs and is currently partnering with the American Law Network for the delivery of programs via satellite. The bar also offers videotape replays in communities such as Fairbanks, Juneau and Kenai. Revenue is derived from all of these activities. Another new source of revenue this year will be from the Loislaw program. This program allows members to access CLE materials on line for a fee. Finally, the bar has also begun to accredit CLE providers and to charge fees for doing so. It is expected that the Bar can continue to derive revenue from the above CLE activities and to generate new fees from such activities.

**9. Create Flexible Investment Options.** Investment income from the unappropriated capital fund is a substantial source of revenue for the Bar. The subcommittee would encourage the BOG to work closely with money managers in order to remain flexible with regard to investment options to best capitalize on market trends.

**10. Convention Considerations.** The annual convention provides tremendous opportunities for members but it also imposes significant cost considerations as well. When the convention was held in Ketchikan and Fairbanks it lost money. This past year, when the convention was held in Anchorage, it netted approximately \$7,000. Historically, the convention has been held in Anchorage every other year and has alternated between Fairbanks and Southeast Alaska in the years it is not held in Anchorage. Alternating the convention has allowed participation of members and local bars from elsewhere in the State. Nevertheless, it is also recognized that holding the convention outside of Anchorage may not be as economical and may garner less overall participation.

An alternative to the present approach would be to consider holding the convention every other year. The Alaska Bar Association Bylaws, Article VIII, Section 1 states: "The annual meeting of the Alaska Bar Association shall be held in conjunction with the bar's annual convention..." There is no specific requirement for an annual convention in either the Bylaws or the Bar Act.

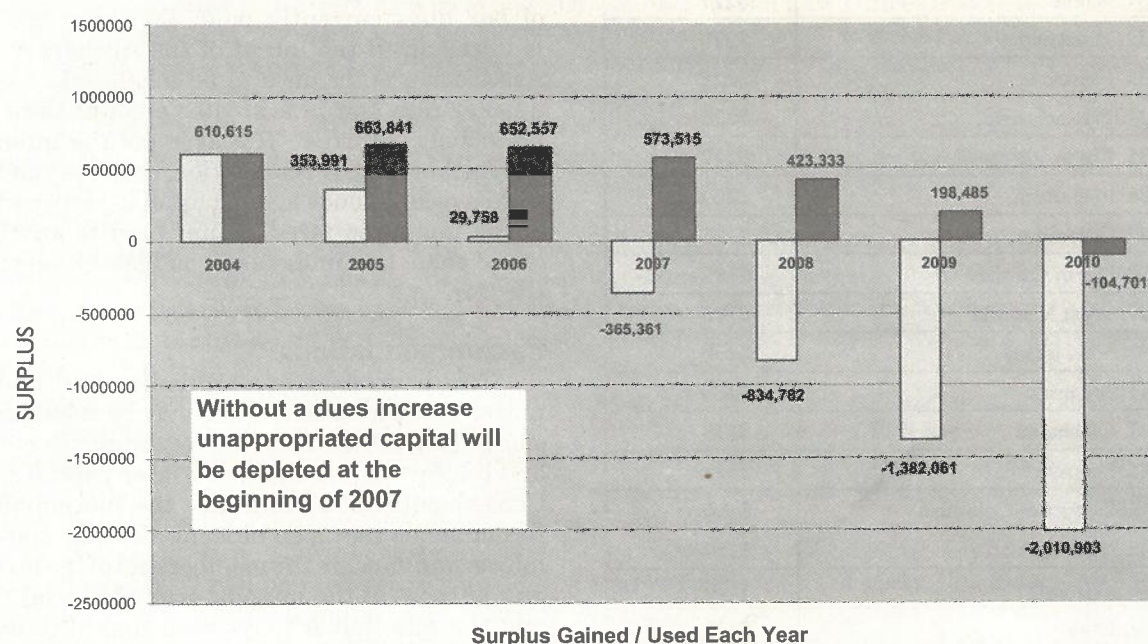
Doing so would accomplish several different purposes. First, it would significantly reduce the amount of time, money, energy and resources expended by the Bar administration and staff. Second, holding the convention every other year would likely have a positive impact on participation and interest. The subcommittee believes that this may be an idea worth exploring.

## Conclusion

Based upon the information available to the subcommittee regarding the finances of the Bar, it is obvious that the Bar has done an excellent

**Consequently, at a minimum, the subcommittee recommends that a significant effort be made to inform and educate the membership of the history and purpose of the unappropriated capital fund and the role that it plays with regard to membership dues.**

## UNAPPROPRIATED CAPITAL SURPLUS With and Without 2005 \$100 Dues



□ Without Dues Increase  
■ With \$100 Dues Increase

Projected Years 2005-2009  
1% Increase in Revenue  
4% Increase in Expenses

Continued on page 13



# Court finds juvenile execution unconstitutional

*Continued from page 1*

jury service and marrying without parental consent. Because they are a less culpable group, a juvenile's execution does not serve retribution. Nor does it serve deterrence. Both parties at oral argument conceded that no studies show that the death penalty deters juveniles.

Since 1958, the US Supreme Court has considered the 8<sup>th</sup> Amendment's prohibition against cruel and unusual punishment as containing an "evolving standard of decency that marked the progress of a maturing society." In *Trop v. Dulles*, the Court expressly reviewed international practice and

opinion to assess what constituted "evolving standards of decency" for Eighth Amendment purposes. So too, in the *Roper* decision, the Court examined both the national and international practice of juvenile executions.

When the Court in 1988 drew the line at 16, it noted that the majority of states still allow for the execution of those who were 16 and 17 when they committed the offense. Since then, a majority of states now prohibit the juvenile death penalty. In the past 10 years, only three states have executed prisoners who were juveniles at the time of their offense. The *Roper* Court further supported its decision by reviewing the international prac-

tice barring juvenile execution. The UN Convention on the Rights of the Child (adopted by every country other than the US and Somalia) expressly prohibits juvenile executions. Only nine countries other than the US have executed juveniles since 1990 (Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, Congo, and China)—all of which have subsequently abolished or publicly disavowed the practice. Since 1990, the US has executed more juvenile offenders than the rest of the world combined. For instance, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice prohibits the executions of juveniles. In relying upon international law standards, the

Court concluded, "It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom."

The Court's acknowledgment that international legal standards and the opinions of the world community matter in determining issues of an "evolving standard of decency" is a recognition of our common humanity and the importance of universal values.

— Submitted by Andy Haas

## Committees make services, capital fund & dues recommendations

*Continued from page 12*

job at providing its membership a high level and wide spectrum of services. While Alaska may rate comparatively high for the total cost to members for the wealth of services provided, the recommenda-

tions set forth above contain suggestions regarding a few actions that may be considered by the Bar to keep the cost of those services in check.

—Members: Sheila Doody Bishop, Pete Petersen, and Kent Sullivan

Minutes from the  
December 3, 2004  
TVBA lunch

Guests included law clerks looking for work and strap-hangers in from the cold looking for a good time during the holiday season.

Judge Steinkruger reported that help is on the way. Therapeutic Courts may make an appearance in Fairbanks. Therapy will now be available to judges hearing family law cases as well as magistrates handling the DVRO hearings.

Niesje also reported that Bob Noreen and Lori Bodwell were involved in a kidnapping case compounded by an assault with an axe or two. Judge Savell commented this must have been the "axes of evil" case everybody heard about. The case was handled in the new multi-defendant courtroom on the 5<sup>th</sup> floor where at least the acoustics are good. It was obvious the DA did not overcharge the defendants since the case resulted in a conviction for disorderly conduct. A clear message has been sent: Axe-wielding kidnappers won't be allowed to go unpunished in Fairbanks.

Niesje reported there have been 80 jury trials in Bethel so far this year. Unfortunately the trials involved the same 2 defendants. In an effort to placate jurors in Bethel who are dragged into trials that never seem to end, a new trailer with furniture is on order. Someone tried to make do with a bus but the jurors were not having any of that. To pass the time before they are summoned to the courtroom Judge Judy will be piped into the trailer in an effort to cut down on *voir dire* questioning.

Jason Weiner reported that the District Attorney's Office and law enforcement in general have issues with the three individuals charged with trying to break into the FCC to spring one of their friends. Apparently the culprits tried to come in through the roof when they should have come in through the wall. Some wise guy offered that a "drive through" window would be more appropriate at FCC because stealing front loaders is a serious offence during the construction season. The bottom line is that the movie "Break Out 2" will not be filmed anytime soon in Fairbanks but nominees for the "Dumbest Defendants" are being solicited.

## Committee recommends more young lawyer services

The Bar Services Committee met five times from September, 2004 to January, 2005. Committee members explored various ideas, but did not investigate the financial impact of its 11 suggestions for new or expanded member services.

Many of the suggestions had to do with increasing involvement by young lawyers. The committee noted the "graying" of the Bar members who are involved with sections, committees, the Bar Convention, and similar activity. They felt it was important to get newer members involved with the Bar, and to develop future leaders.

**Formation of a statewide Young Lawyer Section.** Currently the only Young Lawyer Section is a division of the Anchorage Bar Association.

**Invitations/encouragement to Young Lawyers to join Sections.** Young lawyers hear about sections at the swearing-in ceremonies, but often forget about it as they plunge into their daily work. They should be reminded and encouraged to join sections within the first year of their admission.

**Mentoring.** Provide some means for more experienced lawyers to provide a range of mentoring opportunities. This may be more of an issue in Anchorage than in smaller communities where mentoring may be done on an informal level.

**Continue other means of getting young lawyers involved,** such as the successful 2-for-1 registration fee for a lawyer registering for the Convention with a young lawyer. (50 pairs of lawyers took advantage of this in 2004.)

**Better communication with members.** Members need to be better informed about what is already available. For example, the Bar offers car rental discounts. Something like this is provided in the new-member packets, and not further publicized. This better communication holds true for information about things such as sections, group insurance, the new LoisLaw program, as well as Board actions.

**Publicize in E-News the meetings of other organizations,** such as Inn of Court or the Anchorage Association of Women Lawyers, in an attempt to make all lawyers, other than only their members, aware of these meetings and organizations.

**Make it beneficial to visit the Bar's website.** The Bar now has an employment page on its website, and will be adding on a calendar (in a calendar format) soon.

**Continue E-News.** The Bar has gotten more positive feedback on this than anything it has ever done. It is a timely, cheap way to communicate with members about Bar activities. Notices for the court have been included as well.

**Workshop for Section Chairs.** The committee liked the idea of a workshop for the Section Chairs on how to have more successful Section meetings, increase attendance, etc.

**Legislative Information Alerts.** Members could be advised via e-mail of proposed legislation, without the Bar taking a position on the legislation. This could be an alert in E-News, with a link to a website. Though the Bar does not have staff to track legislation, the Bar could collect and disseminate information from other sources, such as sections, attorney-legislators, the court system lobbyist, etc.

**Outreach to public attorneys.** Many public attorneys do not feel connected to the Bar. Often their CLE is provided in-house. There is a Municipal Law Section. The Criminal Law Section has disbanded. An attempt to form a Criminal Defense Section some years ago failed when the Board decided it couldn't restrict prosecutors from joining. The committee did not have specific suggestions at this time how to reach out to public attorneys, but expressed it as a concern.

This report should reflect the concern, especially by non-Anchorage communities, that new services could be concentrated in urban areas, and perceived as not providing as much benefit to Bar members in smaller communities. Terry Hall asked to go on record to state that any new services should not result in an increase in bar dues, the committee concluded.

Members: Terry Hall, Lisa Kirsch, Jennifer Stuart, Diane Vallentine (represented by Krista Stearns for 3 meetings)

## QUOTE OF THE MONTH

"Nothing in life is so exhilarating as to be shot at without result."

— Sir Winston Churchill, 1898



## Comments sought regarding Alaska Bar Rules

The Board of Governors invites member comments concerning the following proposals regarding the Alaska Bar Rules. Additions have underscores while deletions have strikethroughs.

**Alaska Bar Rule 16(e):** Following up on a resolution from the Juneau Bar Association at the annual meeting in April 2004, the Board proposes an addition to Rule 16 that would impose a disciplinary assessment on all respondents receiving discipline from the Disciplinary Board or the Supreme Court. Failure to pay the assessment within a time set by the Court or Board would be grounds for reconsideration of the matter by the Court or the Board and may be a basis for denying a petition for reinstatement by a suspended or disbarred attorney.

**Rule 16. Types of Discipline, Restitution, Reimbursement, and Costs, Conditions, and Assessments.**

(a) **Discipline Imposed by the Court or Board.** A finding of misconduct by the Court or Board will be grounds for

- (1) disbarment by the Court; or
- (2) suspension by the Court for a period not to exceed five years; or
- (3) probation imposed by the Court; or
- (4) public censure by the Court; or
- (5) reprimand by the Disciplinary Board.

(b) **Discipline Imposed by the Board or Bar Counsel.** When Bar Counsel has made a finding that misconduct has occurred, the following discipline may be imposed:

- (1) reprimand in person by the Board, pursuant to Rule 10(c)(8); or
- (2) written private admonition by Bar Counsel, pursuant to Rule 11(a) (12).

(c) **Restitution; Reimbursement; Costs.** When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

- (1) restitution to aggrieved persons or organizations;
- (2) reimbursement of the Lawyers' Fund for Client Protection; or
- (3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof. In imposing costs and fees, consider-

ation shall be given to the following factors:

- (A) the complexity of the disciplinary matter;
- (B) the duration of the case;
- (C) the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;
- (D) the reasonableness of the number of Bar Counsel used;
- (E) Bar Counsel's efforts to minimize fees;
- (F) the reasonableness of the defenses raised by the Respondent;
- (G) vexatious or bad faith conduct by the Respondent;
- (H) the relationship between the amount of work performed by Bar Counsel and the significance of the matters at stake;
- (I) the financial ability of the Respondent to pay attorney's fees; and
- (J) the existence of other equitable factors deemed relevant.

(d) **Conditions.** Written conditions may be attached to a reprimand or to a private admonition. Failure to comply with such conditions will be grounds for reconsideration of the matter by the Board or Bar Counsel.

(e) **Disciplinary Assessment.**

(1) When a finding of misconduct is made, in addition to any discipline, restitution, reimbursement, costs, and conditions listed above, the Court or the Board will impose a disciplinary assessment on the Respondent according to the following schedule:

- (A) reprimand by the Board, privately imposed, \$750.00;
- (B) reprimand by the Board, publicly imposed, \$750.00;
- (C) public censure by the Court, \$1000.00;
- (D) probation imposed by the Court, \$1000.00;
- (E) suspension by the Court, \$1500.00;
- (F) disbarment by the Court, \$1500.00.

(2) Failure to pay this assessment within the time set by the Court or the Board will be grounds for reconsideration of the matter by the Court or the Board and may be grounds for denying a petition for reinstatement filed by the Respondent.

**Alaska Bar Rule 43:** Rule 43 currently permits lawyers employed by Alaska Legal Services Corporation on a full-time basis, and who otherwise meet the requirements of the rule, to practice law without being admitted to the practice of law in Alaska. The Board proposes to expand the rule to include lawyers who are employed by Catholic Social Services Immigration and Refugee Services Program and the Disability Law Center. This amendment also clarifies that the lawyer must practice law exclusively for one of these organizations on a full-time or part-time basis to qualify for the exemption.

**Rule 43. Waivers to Practice Law for Alaska Legal Services Corporation, Catholic Social Services Immigration and Refugee Services Program, and the Disability Law Center.**

**Section 1. Eligibility.** A person not admitted to the practice of law in this state may receive permission to practice law in the state if such person meets all of the following conditions:

- (a) The person is a graduate of a

law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the person entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia;

(b) The person practices law exclusively for employed by or associated with Alaska Legal Services Corporation, Catholic Social Services Immigration and Refugee Services Program, or the Disability Law Center on a full-time or part-time basis;

(c) The person has not failed the bar exam of this state.

**Section 2. Application.** Application for such permission shall be made as follows:

(a) The executive director of the Alaska Legal Services Corporation, Catholic Social Services Immigration and Refugee Services Program, or the Disability Law Center shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors;

(c) Proof shall be submitted with the application that the applicant is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of the state, territory or the District of Columbia.

**Section 3. Approval.** The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before all courts of the state of Alaska. The Board of Governors may delegate the power to the executive director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

**Section 4. Conditions.** A person granted such permission may practice law only as required in the course of representing clients of Alaska Legal Services Corporation, Catholic Social Services Immigration and Refugee Services Program, or the Disability Law Center, and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

**Alaska Bar Rules 8(3) and 22(p):** Although the Bar Association had been previously been given an exemption to the excerpts requirement for briefs in admissions and disciplinary matters, the Court has now indicated that excerpts should be provided.

**Rule 8. Supreme Court Review.**

**Section 3.** To the extent practicable, the procedure governing an appeal by an applicant for admission to the practice of law from a final decision of the Board of Governors shall be governed by the rules of practice

in civil matters set forth in Parts II and V of the Alaska Rules of Appellate Procedure, except that for purposes of Appellate Rule 210(c)(2), excerpts of record must contain:

(a) the applicant's statement of appeal and any attachments;

(b) the Board's decision whether to grant a hearing on the applicant's appeal;

(c) the report, if any, of the master appointed to hear the applicant's appeal and any amended or supplemental reports;

(d) the Board's findings of fact, conclusions of law, and final decision and any amended or supplemental findings, conclusions, and final decisions;

(e) any master or Board orders or rulings sought to be reviewed;

(f) if the appeal is from the grant or denial of a motion, relevant portions of the transcript where the motion is discussed and relevant portions of briefs, memoranda, and documents filed in support or opposition to the motion; and

(g) specific portions of other documents in the record, including documentary exhibits, that are referred to in the brief and essential to the resolution of an issue on appeal.

**Rule 22. Procedure.**

(p) **Appeal From Board Order or Recommendation.** Bar Counsel or Respondent may appeal from an order or recommendation of the Board made under Section (n) of this Rule by filing a notice of appeal with the Court within 10 days of service of the Board's order or recommendation. Parts II and V of the Alaska Rules of Appellate Procedure will govern appeals filed under this Rule, except that for purposes of Appellate Rule 210(c)(2), excerpts of record must contain:

(1) the petition for formal hearing and answer and any amended petition or answer;

(2) the Hearing Committee report and any amended or supplemental report;

(3) the Board's findings of fact, conclusions of law, and recommendation and any amended or supplemental findings of fact, conclusions of law, and recommendation;

(4) any Hearing Committee or Board orders or rulings sought to be reviewed;

(5) if the appeal is from the grant or denial of a motion, relevant portions of the transcript where the motion is discussed and relevant portions of briefs, memoranda, and documents filed in support or opposition to the motion; and

(6) specific portions of other documents in the record, including documentary exhibits, that are referred to in the brief and essential to the resolution of an issue on appeal.

**Alaska Bar Rule 33.3:** As originally conceived in the Integrated Bar Act, the "practice of law" would be defined in two places: 1) under AS 08.08.210 for injunctive purposes, and 2) under AS 08.08.230 for the purposes of the misdemeanor prohibition against unauthorized practice.

Following a proposal by the Board, the Court adopted a practice of law definition in Bar Rule 63 in January 1989 for the purposes of the misde-

*Continued on page 15*



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## NEWS FROM THE BAR

# Comments sought regarding Alaska Bar Rules

Continued from page 14

meanor statute. That definition essentially prohibits individuals from misrepresenting themselves to be lawyers or, if admitted in another state or jurisdiction, misrepresenting themselves to be members of the Alaska Bar.

However, a companion definition for the purposes of AS 08.08.230 was not adopted. Since then, several committee studies have been undertaken in an effort to arrive at an acceptable definition. The most recent proposal was made in 1998, but was not adopted by the Court.

Two and a half years ago, a Board subcommittee reviewed a practice of law definition adopted by the Washington State Supreme Court. The subcommittee consensus at that time was that no further action be taken because there didn't appear to be a significant problem and the Court was reluctant to adopt a definition, at least in the form last proposed in 1998.

Since then a so-called "document preparation center" has gone into business in Alaska and refugees seeking immigration assistance have are apparently being preyed upon by nonlawyer "notarios" who claim to have the ability to assist refugees with their legal problems.

Borrowing extensively from the Washington State Supreme Court Rule, this latest draft incorporates appropriate references to Alaska practice concerns.

Rule 33.3. Definition of the Practice of Law--AS 08.08.210.

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practice authorized by the Adoption Rules, the Child In Need of Aid Rules, Civil Rule 81(a)(2), Bar Rules 43, 43.1, 44, and 44.1, District Court Civil Rule 15, and Rule of Professional Conduct 5.5.

(2) Serving as a court-appointed guardian, conservator, guardian ad litem, cultural navigator, or courthouse facilitator pursuant to court rule or participants in a Youth Court program.

(3) Acting as a lay representative authorized by administrative agen-

cies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection against domestic violence when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that

the Supreme Court has determined by published opinion or the Alaska Legislature has determined by statute do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

(g) Remedies for Unauthorized Practice of Law: The Attorney General, the Alaska Bar Association or any affected person or entity may maintain an action for injunctive relief in the superior court against any person or entity who performs any act constituting or which may constitute the unauthorized practice of law within the provisions of this rule. The superior court may issue temporary, preliminary or permanent orders and injunctions to prevent and restrain violations of this rule without bond.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to [info@alaskabar.org](mailto:info@alaskabar.org) by April 27, 2005.

Don't Miss the 2005

## Alaska Bar Convention in Juneau!

Wednesday - Friday, May 11, 12 & 13 • Centennial Hall

### Convention Highlights

#### WEDNESDAY, MAY 11

**404B Evidence: The Hottest Issue in Criminal Cases & The Coming Issue in Civil Cases**



Edward Imwinkelried

Professor Edward Imwinkelried, nationally recognized expert in evidence law, returns to Alaska to discuss 404(b) issues in both criminal and civil cases. **Professor Edward Imwinkelried, Edward L. Barrett, Jr.** Professor of Law, and Director of Trial Advocacy, University of California at Davis School of Law

**Beyond Blakely: Guideline and Presumptive Sentencing After Blakely v. Washington and United States v. Booker & Fanfan**

Panel: **Judge Ricardo Hinojosa**, Chair, U.S. Sentencing Commission; **Tom Hillier**, Washington Federal Public Defender; and a local judge and practitioner.

#### Evidence Cranium

The first annual Evidence Cranium challenge. Fabulous prizes will be awarded to the winning team...honest!

**Judge Morgan Christen** and **Judge Philip Volland**, Program Chairs

**Lunch: Alaska Court System Awards and the Rabinowitz Award.** Nick Jans, photographer, presents a slideshow.

**Evening:** Enjoy the view from atop **Mt. Roberts**, light appetizers, and entertainment by **The Millennium Bluescast!**

#### THURSDAY, MAY 12

#### Judging Judicial Applicants:

A Work Session on Judicial Council Selection Procedures



Chuck Bingaman

#### Getting Results!

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**Chuck Bingaman, J.D.**, consultant on strategic planning, marketing, and management challenges.

#### Evolution of Victims' Rights

The laws pertaining to victims' rights in Alaska have changed significantly over the past ten years, a trend which most recently has

included the creation and funding of the Office of Victims' Rights (OVR).

Panel: **Tamara de Lucia**, OVR; **Barbara Brink**, Public Defender Agency (invited), a local prosecutor, and a judicial moderator.



John Strait

#### Conflicts of Interest: "I Didn't See It Coming"

Conflicts of interest can seem like a hit-and-run nightmare. Learn the latest ethics views on this constant in today's law practice.

**Professor John Strait**, Seattle University School of Law and **Steve Van Goor**, Bar Counsel

**Lunch:** Bar Layperson Service Award. Presentation of 25 and 50-Year pins with slideshow and music!

**Evening:** Awards Banquet with **Justice Sandra Day O'Connor**, Keynote Speaker. Presentation to Outgoing Board Members, Pro Bono Awards, and Bar Distinguished Service.

#### FRIDAY, MAY 13

**U.S. Supreme Court Opinions Update & Alaska Appellate Update**

**Professor Erwin Chemerinsky**, Duke University School of Law  
**Professor Laurie Levenson**, Loyola Law School, Los Angeles  
Don't miss these two great legal minds as they review the decisions of the highest court in the land.



Erwin Chemerinsky



Laurie Levenson

**A Conversation with U.S. Supreme Court Justice Sandra Day O'Connor**  
Moderated by Alaska Supreme Court Justice **Dana Fabe**

**Lunch:** Alaska Bar Association Annual Business Meeting, Hickerson Award & Professionalism Award

**Evening:** Enjoy a Boat Tour and buffet with the Juneau Bar Association!



Justice Sandra Day O'Connor

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## Board of Governors Action Items -- January 27, 2005

- Elected John Tiemessen to be president-elect once Keith Levy resigns; decided to wait until after the Board election to appoint someone to Levy's vacant seat.
- Voted to recommend the admission of 8 reciprocity applicants.
- Voted to grant the requests of two applicants for special accommodations for the February bar exam.
- Voted to approve a Rule 43 (ALSC) waiver for Jamy Patterson.
- Reviewed the report of the Law-

yers Assistance Committee on an applicant, and voted to recommend the admission of the applicant.

- Reviewed the reports of the Bar Services and Finance Committee and decided to publish them both, with an excerpt of the Bar Finance Committee Report in the Bar Rag, with the entire report available on the Bar's website.
- Agreed that the Nominating Petition for the Judicial Conduct Commission should say that the

Board may conduct further review of the candidates as it deems appropriate, and that the Board of Governors may send more than one name to the Governor.

- Appointed Levy, Katcher & Faulhaber to a Subcommittee to recommend Board awards to be presented at the convention.
- Approved the 70% reduction in bar dues for Ruth Bauer Bohms for providing more than 400 hours of pro bono service in 2005.
- Voted to adopt, as aspirational goals for Board members, the four recommendations for leadership opportunities, especially in the pro bono area.
- Voted to adopt the recommendation of the Area Hearing Committee for the disbarment of Harland McElhaney, and to send this recommendation to the supreme court.

• Voted to publish a Bar Rule amendment which would provide for disciplinary assessments.

• Voted to publish an amendment to Bar Rule 43 to add a waiver for attorneys employed by the Immigration & Refugee Project and the Disability Law Center.

• Voted to publish amendments to Bar Rules 8(3) and 22(p) which would clarify contents of excerpts of records in admissions or disciplinary appeals.

• Voted to publish amendments to Bar Rule 33.3, defining the practice of law for civil injunctive purposes, as amended by the Board.

• Voted to pay Larry Moser for acting as Trustee Counsel in the matter involving Larry Caudle.

• Voted to table the discussions on VCLE and the balanced budget concept until the May meeting.



Judge John Wanamaker retired in March, and was wished well by friends and family at the courthouse. (L-R) Michael Krukar, Nalgro Facilitator for the Wellness Courts, Former Governor Wally Hickel, Former Attorney General John E. Havelock, Janet McCabe, Chair, Partners for Progress, Thomas McClenaghan, FBI, Anchorage Office, Former Law Partner of Judge Wanamaker, LeRoy E. (Gene) DeVeaux, John Wanamaker (Judge Wanamaker's son), and Caroline Wanamaker (Judge Wanamaker's daughter)

### Old Bar computers arrive in Africa

Julie Wilson, one of the bar's former information technology consultants, went to Africa in November with a mission and excess "bar baggage."

She was among seven women from Alaska, Texas, Washington, California and Oregon who went to Uganda on a Bless the Children humanitarian mission to a village near Kampala. Along with her, she took two of the bar's old computers to donate to an organization in the village. Working with the Gospel Messengers Orphanage they found a new home for the computers in a church for keeping financial information and in a school for use by children.

More will find their way to Africa, as well. The Bar computer donations came about when Karen Schmidtkofer, bar controller, upgraded the ABA's hardware last year. She contacted International Data Systems, Inc., where Wilson had worked, for suggestions on donating the older machines to a worthwhile organization.

Julie volunteered to take some on the mission in November. She plans on taking others on a later trip, or send them to the village with the African coordinator when he next comes to the U.S. In the meantime, she's also planning to send a container full of other donations-shoes, clothing, bedding, and other items-that also are needed in the village.

### In Memoriam: Ron Zobel

Ron Zobel, who arrived in Alaska in 1978 as a clerk to U.S. District Judge James von der Heydt, died Jan. 26, 2005 from complications of cancer. He was 60.

Following his clerkship with Judge von der Heydt, Mr. Zobel went into private practice in 1981 and became an assistant attorney general for the state in 1988, where he served until 2003.

He was born Dec. 13, 1944, in Pender, Neb., to Irene and Marvin Zobel. He served in the U.S. Army Special Forces (Green Berets) as a medic.

He met and married Patricia (Penny) in 1970, and the couple served in the Peace Corps in the Philippines soon thereafter. He worked as a seasonal ranger for the National Park Service in Olympic, North Cascades, Mount Rainier and Everglades National Parks.

Mr. Zobel attended undergraduate school in Iowa and finished his bachelor's degree at Western Washington University in Bellingham, Wash. Both he and Penny later graduated from the Gonzaga University School of Law in Spokane, where he graduated magna cum laude, and was editor-in-chief of the Law Review.

For much of his law career in Alaska, he served as an assistant attorney general for public utility matters. But he was perhaps best known to the public for the landmark Permanent Fund lawsuit he and his wife filed in 1980, arguing equal protection (or, in this case, compensation) under the Constitution for the distribution of dividend checks to Alaskans. Ultimately prevailing in the U.S. Supreme Court, the Zobel's lawsuit overturned the state's plan to distribute dividends based on length of residence.

Mr. Zobel had been fighting esophageal cancer since last summer, and died of pneumonia at Providence Alaska Medical Center, weakened from recent bouts of treatment, colleague Bill Parker told the Anchorage Daily News in January.

"Ron worked in private practice as a lawyer but was happiest working to serve the public as an assistant attorney general at the Alaska Department of Law," his family wrote. "While known for the Permanent Fund dividend case, Ron also dedicated his time to Democratic politics and local causes. He loved the national parks, music, art, history and travel. Everything he did was with passion and for the love of knowledge."

Last year, Zobel and Parker took off on a motor tour of 22 states, concentrating on national parks in the West. They slept in Zobel's new Toyota Highlander.

As they drove across Iowa, where both Parker and Zobel have relatives, Parker asked, "what if we'd just stayed here?" Parker recalled. "He said, 'If I'd stayed here, I'd probably have been a member of the Legislature, but I'd have been a Republican,'" Parker remembered.

He also said that a doctor had told Zobel in January that he had two weeks to two months to live. Zobel drank a glass of red wine with his friend and colleague at Providence "and talked about his life, saying he had a successful marriage and his son was completely raised," said Parker.

Mr. Zobel is survived by his wife of 34 years, Penny; their son, Wade; his father, Marvin Zobel of Oelwein, Iowa; and his brother, Dwight Zobel, of Plymouth, Minn.

A memorial service was held at the 4th Avenue Theatre; memorial bequests should be made to Safe Harbor Inn, a shelter for homeless families in Anchorage, at 1905 E. Fourth Ave.

1

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# Time management software saved his practice

By Herbert T. Wright, Jr.

When I began my practice I had never heard the term case management. I was much more concerned with case acquisition at that time. But as my practice grew, it seemed that things like filing, billing and keeping up with the ever changing Rolodex and calendar (both calendars, if anyone from my malpractice carrier is reading) were taking up a large part of my evenings.

After a couple of years I hired a part-time assistant and soon it took up all of her time and I still spent several hours a day on these tasks. As I went along, I watched how other attorneys handled these things and I learned ways to be more efficient. Soon my assistant was there full time and I delegated these tasks and concentrated on my cases. Then the inevitable happened, my assistant was out sick for a week and I had to fend for myself. I discovered that things weren't going as well as they seemed. The filing wasn't current, billing was not current and correspondence was not being timely sent. I discovered that correspondence had gone to the wrong address, because my assistant used the address contained on old correspondence and the party had moved. I discovered pleadings with the wrong case number, where an old pleading was used as the form on the computer.

After I recovered from the panic attack, I went to work to fix the problem. I spent that weekend, pulling all of my files and going through each one individually, catching up on filing, verifying deadlines and court dates and catching up on responding to pleadings and correspondence.

It was at that point that I vowed never to let myself get in that situation again. I got on the web and read as much as I could about managing my practice and my cases (The American Bar Association has some great resources). I read books on time management and then I sat down and started laying out the procedures and methods I wanted to use to manage my cases and verify what tasks had been completed.

## TimeMatters6

As I was drafting my system, I read an ad in the ABA Journal for a Case Management Program, I got on the web and there was a demonstration that I could watch. I reviewed several of these programs, until I found the one that was the best fit for me, LexisNexis' Time Matters®.

Time Matters solved most of my problems right out of the box (I did get two half days of training that helped too). There were still some things that I wanted done that were not standard with the program.

Time Matters is fully customizable with some changes made by me (no programmer required).

Time Matters combines my Rolodex (contacts), my calendar, my phone messages and my case files (matters) into one program. If a client moves, I simply change the address on his contact and that change is reflected in his matter and everywhere else his or her information is contained.

What's more is that everyone in the firm now has the new information and there is no confusion from having three different rolodexes and not knowing which is current.

When a client calls and I am not available, my assistant puts the information in Time Matters and when I return the call, the record of that call, along with my notes are automatically filed in the matter and a Time Matters prompts me to record my time, which is also filed in the matter.

I no longer have the problem of trying to return phone calls out of the office and not having the phone numbers that I need. Time Matters synchronizes with my PDA, so my

information is always up to date and available.

Perhaps the best feature is the document management. All documents that are generated in my office (we use Word, but it works with Word Perfect too) are saved in the matter and I no longer have to hunt for the file when a client or prosecutor calls to discuss something in the file. I simply go to the client's matter, click on the document tab and select the document that they have questions about and there it is. This feature also works on documents that I receive in the mail or from other parties. I run the document through the scanner, it saves it in a .PDF format and I save it in the matter that it goes with and it is available on the computer.

I still maintain my paper files, because they are still easier to refer to in short court appearances. But in addition to the time that I save hunting for files, when a client has a quick question on the phone, I also have a backup to my paper files if my office is destroyed by fire, flood

or other disaster. All the documents in my filing cabinet are contained in my laptop and if something were to happen to the office, I could operate with my cell phone and my laptop for as long as I have to.

The icing on the cake is that Time Matters prompts me to record my time for every action that I take. I am able to accurately track my time and - equally important - to bill for that time. Time Matters paid for itself and

the training I received within the first six months.

I now have a terrific assistant. She manages to take care of everything the office needs and she does it with

a smile. She also appreciates Time Matters as much as I do.

*The author is an attorney in Little Rock, Arkansas, and the District Judge for Pulaski County District Court, Wrightsville Division.*

**Members of the Alaska Bar Association receive a 10% discount for the use of Time Matters through 5/31/2005. For additional details, contact Peter Harkovitch at 907-240-8888.**

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## ARE YOU MISSING OUT? ALASKA BAR E-News

Alaska Bar E-News is a weekly e-mail update of Alaska Bar activities and upcoming events of interest to Bar members. E-News is an efficient way to disseminate important, time-sensitive information. If you do not receive E-News, then you are missing out!

### Recent editions contained information about:

- Rule changes
- Section meetings
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- Pro Bono opportunities
- Job openings
- CLE Seminars

Last minute event details or announcements are also included.

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or e-mail to: [info@alaskabar.org](mailto:info@alaskabar.org)





# Bar People



Tina Sellers

Hartig Rhodes Hoge & Lekisch, P.C. has recently hired **Tina M. Sellers** as an associate. Ms. Sellers graduated *magna cum laude* from Michigan State University College of Law and previously she worked as an environmental scientist. A member of the State Bars of Alaska and Michigan, Sellers' practice areas include environmental law, natural resources law, and commercial litigation.



**Julie R Wrigley** and **Cole M. Lindermann** recently joined Durrell Law Group, P.C. law office. Julie will practice in the areas of estate planning and probate. Cole will focus on real estate, business and tax law.

After 22 years with a mid-size Seattle litigation firm, **Steven J. Jager**, a 20 year Alaska bar member, announces the moving of his practice and the opening of Jager Law Office PLLC, a civil litigation firm specializing in tort, products and construction litigation. The firm opened its doors in mid November, 2004 with an initial crew of four attorneys and four staff (one of whom is very grateful for the other seven).

**Nancy Driscoll Stroup** writes, "After taking a year off to be with my new son (Joe, born December, 2003), I am starting a part-time law practice in Palmer. I plan to specialize in elder law and special needs law. I will also be accepting appointments as a *guardian ad litem* and child custody investigator. The law firm's website is MatsuElderLaw.com. I welcome referrals from members of the Alaska bar. I have been practicing law since 1992. Prior to my maternity leave, I was employed by Sterling & DeArmond (from 2000 through the fall of 2003) in Wasilla, a general practice law firm, where I handled a variety of types of cases, including family law and CINA cases as well as criminal defense. My background also includes working for the Alaska Public Defender Agency as an Assistant PD in both Barrow and Palmer. I have also worked for the Law Office of Eugene Cyrus in Eagle River and Legal Services in Massachusetts. I clerked for Superior Court Judge Thomas Jahnke in Ketchikan from 1991 - 1992."

After 22 years with a mid-size Seattle litigation firm, **Steven J. Jager**, a 20 year Alaska bar member, announces the moving of his practice and the opening of Jager Law Office PLLC, a civil litigation firm specializing in tort, products and construction litigation. The firm opened its doors in mid November, 2004 with an initial crew of four attorneys and four staff (one of whom is very grateful for the other seven).

After 30 years of municipal and federal practice in the public sector, **Mark Rosenbaum** is pleased to announce that the New Year will bring the opening of his private law offices, where he will continue to provide services to attorneys desiring support in federal cases, members of law enforcement, the medical & business communities and the public at large.

**Roger Belman**, formerly with Dorsey Whitney, is now with Conoco Phillips, Alaska.....**Randall Buckendorf**, formerly with Conoco Phillips, Alaska, is now with BP Exploration (Alaska).....**James Boardman** is now with Ingaldson, Maassen & Fitzgerald.....**Kevin Burke**, formerly with the Attorney General's Office, is now with the US Attorney's Office in Illinois (So. District).

**Kristen Bomengen**, formerly with the North Slope Borough in Barrow, has relocated to Juneau.....**Leroy Barker** has retired from the practice of law at Robertson, Monagle & Eastaugh, but is still active as Chair of the Bar's Historians Committee.....Clapp Peterson & Stowers firm name has been changed to **Clapp, Peterson, Van Flein, Tiemessen & Thorsness, LLC**.

**Judy Crowell**, formerly with the Municipal Prosecutor's office in Anchorage, is now with the Attorney General's Office, Labor & State Affairs Section.....**Vincent Curry**, formerly with Ross & Miner, has opened his own law office in Anchorage.....**Ralph Duerre**, formerly with Burr Pease & Kurtz, is now with the Municipal Attorney's Office, Anchorage.

**John Eberhart** has closed his law firm and has become In-House Counsel to the Fairbanks Native Association, Inc.....The firm fka Hicks, Boyd & Chandler is now **Boyd, Chandler & Falconer**.....**Robert Erwin** is now "Of Counsel" to the Law Offices of Joseph P. Palmier.....**Jon Goltz**, formerly with the Attorney General's Office, is now with Conoco Phillips Alaska, Inc.....**Wendy Feuer** has relocated from Anchorage to Gig Harbor, WA.

John Franich has retired from the Office of Public Advocacy in Fairbanks, and is opening a private practice.....**Elizabeth Friedman**, formerly with the Mat-Su Borough as an Assistant Borough Attorney, is now an Assistant District Attorney in the Palmer office.....**Theresa Hillhouse**, former Of Counsel at Preston Gates & Ellis, is now with the Municipality of Anchorage.

**Ruth Hamilton Heese**, formerly with Robertson Monagle & Eastaugh, is now with the Attorney General's Office in Juneau.....**Eric A. Johnson**, formerly with the DOL, and then New York has relocated to Laramie, WY.....**Linda Johnson**, formerly with the Municipality of Anchorage, is now with Clapp Peterson, et.al.....**Liam Moran**, formerly with Moran & Sarafin, is now with the Anchorage firm of Clapp, Peterson, et.al.

Gregg Olson has relocated from the District Attorney's Office in Bethel to the Sitka District Attorney's Office.....The firm of Owens & Mede is now **Turner & Mede, P.C.**.....**Christi Pavis**, formerly with the Attorney General's Office and then McNall & Associates, has opened Pavia Law Office in Anchorage.....**Ryan Roley** is now with Allen Dayan & Associates.....**Amy Shimek**, formerly with Preston Gates & Ellis, is now with Alutiiq, LLC.

Jean Sagan is now Special Assistant for Labor Relations, Municipal Light & Power.....**Timothy Troll** has relocated from Dillingham to Anchorage.....**Cindy Thomas**, formerly with Landye Bennett Blumstein is now with Ukpeagvik Inupiat Corporation.....**Scott Taylor**, formerly with Sonosky Chambers, is now with Feldman & Orlansky.....**Corinne Vorekamp**, formerly with Borgesen & Burns, is now with Winfree Law Office.

## Former Murkowski Chief of Staff joins Dorsey & Whitney

Dorsey & Whitney LLP announced Jan. 25 that attorney Justin Stiefel will join the firm's Washington, D.C., office. Mr. Stiefel will work in Dorsey's legislative group, assisting clients with legislative and administrative matters - especially in the energy and telecommunications industries.

Prior to joining Senator Murkowski's office, Justin also held several positions in the office of Senator Ted Stevens (R-Alaska), including deputy press secretary, legislative aide, and legislative counsel. He received his B.S. in chemical engineering in 1997 from the University of Idaho and his J.D. in 2001 from the Catholic University of America, Columbus School of Law.

## Brunner chosen as UA's top lawyer



Roger Brunner

University of Alaska President Mark Hamilton announced Dec. 22 that long-time Fairbanks attorney Roger Brunner has been appointed to serve as the university's general counsel, replacing Jamo Parrish who recently announced his decision to retire.

A search committee of faculty and administrators selected Brunner from among three finalists after conducting a national search. Hamilton said the position attracted a strong pool of candidates.

"Roger rose to the top because he is very intelligent, knows the Alaska legal climate, has a top-notch reputation across the state, and has had experience working with the university on a variety of cases over the years," Hamilton said.

Brunner said he is excited about the new post. He'll start March 1, 2005, allowing him time to wrap up business in his private practice.

"I'm very honored to be selected from a group of such strong candidates," Brunner said. "I've enjoyed being in private practice, representing and helping some great clients. However, I couldn't resist the opportunity to work at the University of Alaska. I'll be working with an outstanding group of attorneys at what's become known as one of the finest law firms in the state."

In this position, Brunner will advise the president, the Board of Regents and university officials across the 16-campus system statewide. He'll also manage an office of three attorneys.

Brunner has been in private practice in Fairbanks since 1976, after obtaining his law degree from Notre Dame University that same year. He earned his undergraduate degree in computer science and engineering from Michigan State University in 1972. He won the Alaska Bar Association's professionalism award in 1999. Readers of the Fairbanks Daily News-Miner voted Brunner "Best Attorney in Fairbanks" for 2003.

Brunner, 54, is active in Rotary and served as the president of the Fairbanks Rotary Club in 1997. He was born in Illinois and lived in Texas, California and Idaho before starting college. He is married and has two adult children.

## Perkins Coie "3Peats" on Fortune list

For the third year in a row, Perkins Coie LLP has been named one of the nation's 100 best companies to work for by FORTUNE magazine. It is one of only five law firms nationwide to make the list. The firm was ranked #47 overall, up from #87 a year ago.

"The only thing better than a repeat is a three-peat," said Anchorage Office Managing Partner Thomas M. Daniel, "and to jump 40 places in one year is really gratifying. We stress the importance of a collegial culture and it really helps us attract great talent and serve our clients effectively."

## Help Light the Way . . .

For many of the million-plus Americans who live with progressive neuromuscular diseases, tomorrow means increasing disability and a shortened life span. But thanks to MDA research — which has yielded more than two dozen major breakthroughs in less than a decade — their future looks brighter than ever.

Your clients can help light the way by remembering MDA in their estate planning. For information on gifts or bequests to MDA, contact David Schaeffer, director of Planned Giving.

For information on gifts or bequests to MDA, contact David Schaeffer, director of Planned Giving.

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The story of the suspension of attorney Maurice Johnson in the 1950s was the topic of an informal brown-bag luncheon sponsored by the Bar Historian's Committee in early March. Former Daily News editor Mike Carey detailed his research on the demise of the Fairbanks attorney. Among the 30 who attended the lunch were (l to r) Tim Lynch, Michael Carey, Deborah O'Regan, Leroy Barker, Victor Carlson and Jack Roderick.

## Old firm, new attorneys, new name

A long-time Anchorage law firm changed its name as of March 2 to include two partners.

It's now Wohlforth, Johnson, Brecht, Cartledge & Brooking. The name reflects the addition of Cynthia L. Cartledge and Cheryl R. Brooking to the firm's name. Both Ms. Cartledge and Ms. Brooking have established public finance and municipal law practices.

The law firm also announced that two attorneys, Michael Gatti and Eric A. Auten, are joining the firm in March.

Gatti has comprehensive experience in all aspects of municipal law and public policy. He has represented municipal clients before all levels of the Alaska court system, numerous administrative agencies and the U.S. District Court. He most recently served as counsel to the Anchorage Assembly, and served as borough attorney to the Matanuska-Susitna Borough for 15 years ending in 2002. He is a graduate of University of California Santa Barbara and received his law degree from California Western School of Law. He is admitted to practice in Alaska and Colorado. Gatti will join the firm on March 15, 2005. His practice will concentrate in municipal and public finance law.

Auten has private law practice experience and is a former assistant borough attorney for the Kenai Peninsula Borough. He is experienced in municipal law matters and has represented leading title insurance and real estate financial institutions in both transactional matters and litigation in the Alaska state and federal court systems. He is a graduate of Colorado College and received his law degree from the J. Reuben Clark Law School of Brigham Young University. He is admitted to practice in Alaska. Auten will join the firm on March 7, 2005. His practice will concentrate in public finance and municipal law.

The firm continues its diverse and comprehensive practice in the areas of public finance, municipal and state agency, business, securities, banking, commercial, real estate, labor and employment law, and civil litigation. The firm is nationally recognized for its public finance practice, established in 1967. Its attorneys have served as Alaska Commissioners of Revenue, Director of Banking, Securities and Corporations, Chair of the Permanent Fund Corporation and other Alaska government positions.

### 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

### Memory of Justice Dimond honored

By Kenneth P. Eggers

When Justice John H. Dimond died, many of his friends and colleagues donated money to the Alaska Bar Foundation in his memory. The Board of Trustees of the Alaska Bar Foundation recently solicited suggestions from the Juneau Bar Association as to how the balance of these donations, in the amount of \$3,600, might best be used to honor the memory of Justice Dimond. It was suggested that the balance be used to support the Juneau Office of the Alaska Legal Services Corporation.

On December 13, 2004, the Board of Trustees passed a resolution to donate the \$3,600 to the Juneau Office of the Alaska Legal Services Corporation.

The Alaska Bar Foundation Board of Trustees thanks all individuals and law firms who made contributions over the years in memory of Justice Dimond.

Justice Dimond was appointed in 1959 by Gov. Bill Egan, as one of the first three who served on the state's highest court after Statehood. Appointed with Dimond were Walter Hodge and Buell Nesbitt; 12 attorneys had applied for the 3 seats on the court then. Dimond served until 1971; he passed on in 1985.



John H. Dimond served on the new State of Alaska Court System. This photo from the University of Alaska Fairbanks Archives depicts the Supreme Court and Superior Court Justices: Seated, l. to r.: Walter Hodge; Buell A. Nesbitt; and John H. Dimond, Alaska Supreme Court. Standing, l. to r. Superior Court Justices Walter E. Walsh; Harry O. Arend; J. Earl Cooper; Everett W. Hepp; Hubert A. Gilbert; James A. von der Heydt; Edward V. Davis; and James M. Fitzgerald.

## Coming to the Juneau Convention in 2005!

### Justice Sandra Day O'Connor U.S. Supreme Court

Alaska Bar Association Annual Convention and  
Judicial Conference  
Juneau, Alaska  
May 11 - 13, 2005



Photo from the Collection of The Supreme Court Historical Society. Photographed by Richard Strauss, Smithsonian Institution



## The secret to making your goals stick

By Maureen F. Fitzgerald

Each year we set new goals, yet within a matter of weeks they have fallen by the wayside. Why don't they stick? The answer is often because they are too small. Many are really tasks that simply get added to a to-do list. Many do not fit within the larger objectives that you have set and some are inconsistent with your other goals.

In her new book **Mission Possible—Creating a Mission for Work and Life** (Quinn Publishing, 2003), Maureen Fitzgerald provides the following tips to guarantee your goals stick.

**Tip 1. Define your destination or personal vision.** Create a vision of where you want to be in the future. This is your ideal life or your personal definition of success. Describe your ideal day. See it as a wonderful place that is just on the horizon. Visualize how it would feel to be there. Smell it, taste it, hear it. What do you see yourself doing? Where are you living? How do you feel? From this write out a vision statement, share it with those close to you and read it every day. The more conscious you are of what you want, the more likely it will happen.

**Tip 2. Identify your unique capabilities and strengths.** Identify the way in which you are particularly unique. Do not simply list an inventory of skills and abilities. Look at your particular assets and approaches and allow your uniqueness to surface. Think about a metaphor that might describe you. Are you a tree? A boat? Tarzan in a jungle? What does this metaphor say about who you are and how you work? Is it rigid or flexible? Is it capable of growth and change? Draw it on a piece of paper and you will discover some hidden thoughts you have about yourself—both positive and negative.

**Tip 3. Develop your own mission statement.** Write your own mission statement that describes what you want to accomplish in order to achieve your vision. This will provide clarity and direction to your life and work. To develop your mission, ask yourself the following three questions: What action do I want to take? Who is my audience? and What change do I want to bring to my audience? For example, my mission is to empower leaders to bring about positive change. Write it down and tell others about it. Revise it over the following months.

**Tip 4. Set meaningful and measurable goals.** Goals bring life to your mission. They describe the specific way in which you will achieve your mission. In order to set your goals, first list all of the ways in which you could achieve your mission. These possibilities could include working at your current job, becoming a consultant, teaching, selling and so on. Then for each possibility do a SWOT analysis. This means assessing your strengths, weaknesses, opportunities and threats. This will result in a personal portfolio of goals.

**Tip 5. Take Action.** In order to take action, you must have confidence. You must make a conscious decision to be successful and begin living your vision and mission. Surround yourself with people who support you. Adopt positive attitudes and challenge any negative thoughts you might have that are preventing you from being successful. Have courage in the face of setbacks. Stay focused and live consciously toward the realization of your dreams.

The author is a lawyer, author and professional speaker. She is the author of four books including "Mission Possible—Creating a Mission for Work and Life" (Quinn) and "Hiring, Managing and Keeping the Best" (McGraw Hill). [www.TheFitzgeraldGroup.ca](http://www.TheFitzgeraldGroup.ca)

## Who'll be the next Supreme Court Justice? For big money, bet on Kozinski

The Recorder's Jeff Chorney discovered in December that Alaska's own Andy Kozinski is the long-shot for the next appointment to the U.S. Supreme Court—according to the online...line.

"When it comes to picking the next U.S. Supreme Court justice, the safe thing would be to put \$100 on 4th U.S. Circuit Court of Appeals Judge J. Michael Luttig. But if you really want to make some money, go with the long shot, the 9th Circuit's Alex Kozinski," reported Chorney Dec. 13. The story also appeared on law.com.

The odds haven't changed on (legally-challenged) online betting site betcom.com since then.

Kozinski and Luttig are among 14 candidates with odds listed on the Costa Rica-based website, where users (and likely losers) can bet on everything from baseball and other usual-suspect sports to celebrity divorces, news events, and political propositions.

"We have people that monitor what's happening in the world, what's newsworthy, so to speak," Betcom.com President Robert Evans told Chorney.

The site began taking wagers in November on who President Bush would appoint to the high court. Since then, Alberto Gonzalez has been added to the list, with no odds.

Kozinski's odds are expressed as "+1,500," which means a \$100 bet would return \$1,500 if he's picked. (Luttig's odds are "-350".) The odds in the site's "political props" section are set by Betcom.com and don't move with wagers.

There's also a political proposition on who will be the next chief justice. Antonin Scalia is the favorite; David Souter, the long shot.

Evans said Betcom.com came up with the candidates and odds by canvassing Internet and media sources, including Newsweek, Time and television stations, as well as personal opinion.

There's also an ulterior motive to the Supreme Court betting, Evans told Chorney: The U.S. Department of Justice argues that Internet gambling, which is unregulated, is illegal, and it has moved to block major media outlets from accepting advertisements from Betcom.com and its competitors—an issue that could ultimately arrive at the Supreme Court.

*Editor's Note: The Bar Rag condemns any gambling in which it does not get a piece of the action.*

## Anchorage Race Judicata An Equal Opportunity Run/Walk

We know all Alaska Bar Rag readers are fast-talkers, but are you fast runners? Here is the chance to prove that your legal speed matches your legal wit and hone your running skills for those last minutes sprints to the courthouse. To kick off Law Days the Young Lawyers Section of the Anchorage Bar Association is sponsoring a Race Judicata. We invite you, your colleagues, and your legal adversaries to participate in a 5 km race on **Sunday, April 24, 2005, 10:00 am at Westchester Lagoon**. All race proceeds will benefit Anchorage Youth Court.

Registration is available online at [www.active.com](http://www.active.com). For those who have not yet gone paperless, in-person registration will be available in the Boney Courthouse Lobby on Thursday and Friday, April 21-22, 2005 from 4:30 – 7:00 pm. Bib pick up for those who registered online will be available during the in-person registration and on race day from 8:30 – 9:30 am.

As an added incentive, the top three overall male and female competitors will receive the following awards:

1<sup>st</sup> Place: Be a judge for a day! Decide your own cases.

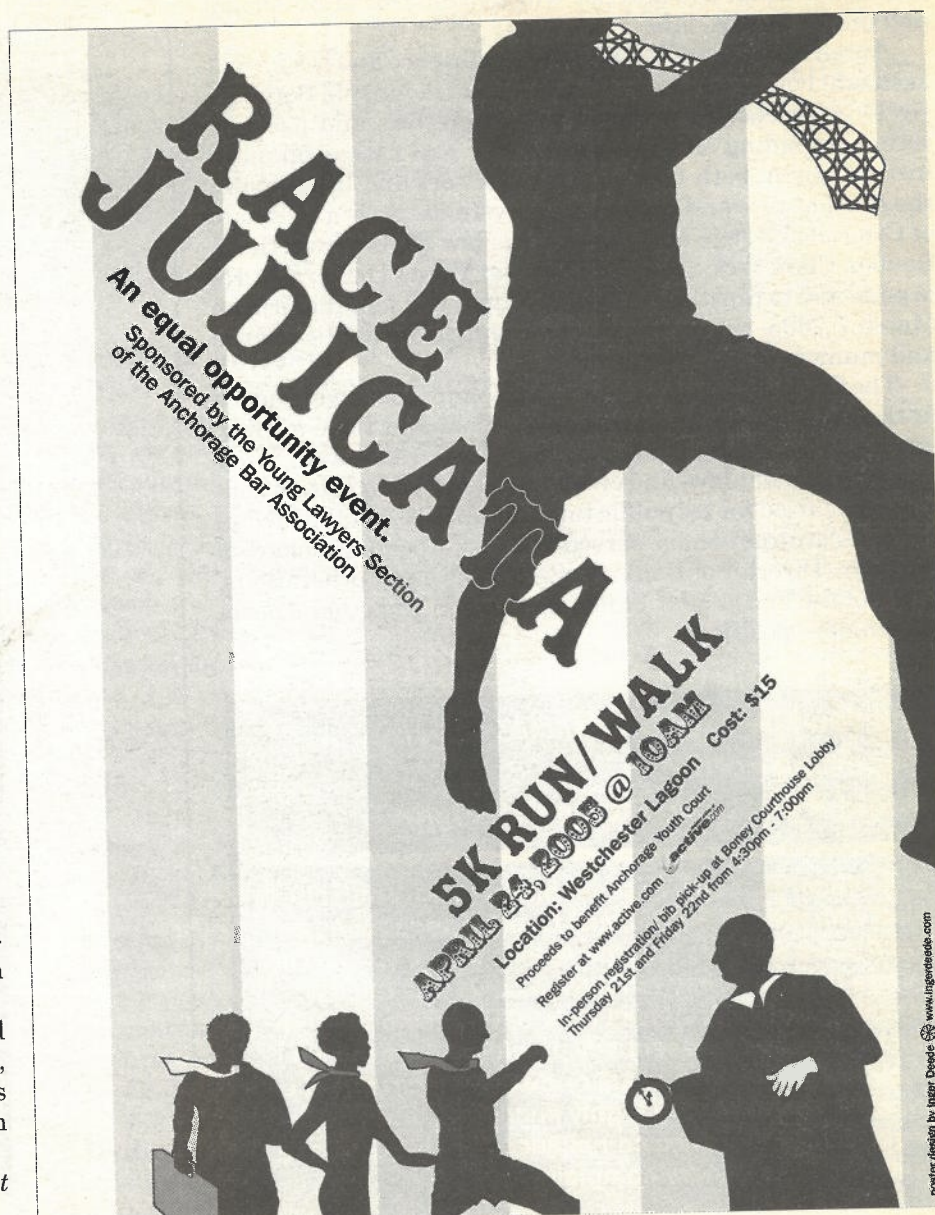
2<sup>nd</sup> Place: Be a pro se litigant for a day! Write briefs without citing authority.

3<sup>rd</sup> Place: Be a juror for a day! Reach the verdict you want (based on the evidence).

We'll see you at the Race Judicata!

(Prizes subject to change or be withdrawn at any time. Top three overall finishers may instead receive gavels. April Race conditions can vary. Race Judicata is not responsible for any hazards, known or unknown, including but not limited to other competitors, icy trail conditions, gale force winds, sub zero temperatures, aggressive urban moose, post hibernation bears, wandering wolves, acts of God, and/or force majeure events. Participating attorneys will be well regarded if they agree to defend, indemnify and hold harmless Race Judicata and its organizers, the Young Lawyers Section of the Anchorage Bar Association and Anchorage Youth Court. Competitive rivalries are welcome -- Rule 11 sanctions will not apply. Casual running gear is acceptable, but English Barrister costumes are encouraged.)

Co-sponsored by: 



**RACE JUDICATA**  
An equal opportunity event.  
Sponsored by the Young Lawyers Section of the Anchorage Bar Association

**5K RUN/WALK**  
APRIL 24, 2005 @ 10:00 AM  
Location: Westchester Lagoon  
Proceeds to benefit Anchorage Youth Court  
Register at [www.active.com](http://www.active.com)  
In-person registration/bib pick up at Boney Courthouse Lobby Thursday 21st and Friday 22nd from 4:30pm - 7:00pm  
Cost: \$15

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# Competence & professionalism go hand in hand

By Mark Bassingthwaighte

During my travels over the years, I have had numerous opportunities to watch attorneys and law firm staff interact with clients. I am surprised at the number of times that I have observed an unprofessional interaction with a client where the attorney or staff person failed to appreciate the significance of the misstep.

Let me provide an example. An attorney works in a small community and is viewed as a community leader. He has had long-lasting attorney/client relationships with a number of individuals in the community. These long-term relationships have resulted in a certain camaraderie and casual way of behaving with those clients. Now, imagine that a potential new client is sitting in the reception area, and one of the established clients steps into the reception area unannounced to ask a brief question. The attorney sees the established client enter. He walks right up to the client. With a warm "Hello!" and a pat on the back, he begins discussing the established client's legal matter -- right in the middle of the reception area. The attorney does this because he knows the established client is comfortable with such a public discussion.

Do you see the potential professionalism concerns with the described scenario? I believe there are at least

two areas of concern. Certainly, I am concerned about the potential breach of confidentiality, or at least an extreme casualness with client confidences. However, I would like to focus on something else.

The potential new client worries me. I have watched similar scenarios on several occasions, and every time the new client has a concerned look

on his or her face. Why? Everyone believes that attorneys can be relied upon to keep everything confidential. It is a pillar of our profession. Yet, the prospective

client just watched an attorney act in complete disregard of the established client's confidences. It really does not matter whether the conversation was confidential. The potential new client cannot easily discern what is confidential, and is likely to assume that everything should be confidential. The result is that you have no idea that your new client may have doubts about your professionalism. The client's concern about your professionalism can become a concern about your competence. These concerns make the client more likely to file a disciplinary complaint or malpractice claim.

Email is another place where being casual can be dangerous. You must check your spelling and your grammar, and make sure your email actually has a signature block

at the end.

Imagine a client for whom you are acting as divorce counsel. In all likelihood, given the nature of divorce proceedings, this client will reach the end of your professional relationship feeling emotionally beaten. If during your representation this client received emails that were poorly written and rather cryptic, this client will tend toward what all clients do when their case doesn't end quite as expected. The client simply will try to put everything in perspective. It may be natural for this client to ask himself, "What went wrong?" Unfortunately, the client received your unprofessional emails, and now is thinking, "Why didn't I see this before? My own fifth grader can write better than my attorney can. She's incompetent and my loss is her fault!" Again, unprofessional behavior leads to the client questioning your competence.

Finally, you should consider the effect created by poor housekeeping. Some of us in the legal profession view a messy and cluttered office almost as a badge of honor, to be worn proudly. These messy attorneys seem to believe that clients view the stacks of files as reflecting the attorney's workload, which implies the attorney is in demand. The reasoning extends to the desired conclusion that the client was lucky to have this particularly busy

attorney agree to handle the client's matter. While this may not be true, what is the client's likely response when the matter takes an unexpected turn for the worse? The client is likely to conclude that the unexpected turn resulted from the attorney not devoting adequate time to representing the client. The attorney's messy office only serves to confirm the belief.

Certainly, it will take extra effort to keep offices clean, to enforce a rule concerning appropriate dress, to continue emphasizing the importance of confidentiality, and to insist upon courteous and civil behavior from everyone in the office at all times. In short, it takes a real effort to emphasize professional behaviors and at-

titudes on a daily basis. Nevertheless, I strongly want to suggest that the effort is worth it. Professionalism really is about making an implied statement about your

competence. In short, professionalism reflects competence. The two necessarily go hand in hand.

Mr. Bassingthwaighte holds a J.D. degree and is the Risk Management Coordinator for Attorneys Liability Protection Society (ALPS) and spends most of his time visiting ALPS insured law firms and conducting RISC (Reduce Insured's Susceptibility to Claims) visits. He can be reached at mbass@alpsnet.com, or through the ALPS website, www.alpsnet.com.

**I am surprised at the number of times that I have observed an unprofessional interaction with a client where the attorney or staff person failed to appreciate the significance of the misstep.**

**Finally, you should consider the effect created by poor housekeeping. Some of us in the legal profession view a messy and cluttered office almost as a badge of honor, to be worn proudly.**

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Overlooked computer maintenance

By Joseph Kashi

We've been spoiled by computer hardware and operating systems that are far more capable and reliable than those of even five years ago. However, there's one drawback - complacency. Now, we're more likely to overlook mundane computer system maintenance that remains critical to long-term reliability and performance. Here's my short list of fourteen useful upgrades and critical maintenance items.

1. Backup Your Data Every Day

Tape drives are inexpensive and Windows 2000 and XP professional both include back up programs that are usable for both local and network drives. Do a total backup, not an incremental backup, each evening as you leave for home. Now that most recording keeping is computerized, major data loss is the equivalent of a fire. Take your tapes off-premises. They'll do you no good if they're destroyed in a fire, and fire resistant safes will not protect fragile tape media from heat damage.

2. Run An Antivirus Program

Run an antivirus program that scans every incoming and outgoing E-mail and every Internet download. E-mail viruses and self-propagating destructive worms are nearly an everyday occurrence anymore. With that, make sure your antivirus software scans every file that you access from your computer or from your office network. Not everyone is careful about virus protection, so you should be.

3. System Diagnostics

Buy a comprehensive utility suite like Norton SystemWorks 2003, which

costs about \$70. Periodically run the disk and operating system diagnostic and repair programs, Disk Doctor for your local hard disks and WinDoctor to check and repair latent operating system errors that can eventually result in an unbootable or unworkable system.

4. Optimize Your Hard Drive

Periodically run a disk optimization utility such as Norton SpeedDisk or Windows Disk DeFragmenter found in your system accessories menu. Hard disk file fragmentation (remember that?) still causes major degradation of system performance over time, no matter how fast your processor.

5. Clean Up Old Files

Cleaning up old files on your hard disk also helps. An amazing number of junk files accumulate on your hard disk, particularly old temporary Internet and cache files. When I recently cleaned up my own hard disk, I found hundreds of unnecessary Internet cookies, and other clutter, and thousands of cache files.

6. Run a Firewall Program

Most comprehensive utility program suites now ship with workable firewall programs and they're relatively easy to use once properly configured.

7. Enable Address Translation and Access Controls on Any Internet Routers

Most law offices now access the Internet through an office network



"Now, we're more likely to overlook mundane computer system maintenance that remains critical to long-term reliability and performance."

that connects in turn to DSL or another broadband method of Internet access. Connecting a network to the Internet requires hardware called a router, which may be supplied by your Internet Service Provider or which you might purchase on your own. In either case, almost all routers, even the least expensive, now provide for address translation and access controls. Address translation is a method of hiding your actual Internet address from prying eyes and greatly reducing your vulnerability to hacking. Contact your Internet Service Provider's technical support for assistance in configuring your router to provide the best balance of security and ease of use.

8. Add More RAM to Your System

RAM is incredibly cheap and adding more RAM is the single best way to improve Windows performance. Windows 2000 and XP should have at least 256 MB - 512 MB is preferable and only costs about \$70 more. Adding RAM allows your computer to avoid the slow swapping of large application programs and data to and from your hard disk during operation.

9. Download Windows and Program Updates

Use Windows Update to get the latest Service Pack for your operating system. Service Packs, which are periodic comprehensive updates and corrective software, tend to solve a lot of annoying Windows problems. Download improved versions of Internet Explorer and Outlook Express. Many computers are still running version 5 of these programs. Upgrading is free, easy and worthwhile.

10. Install Critical Security Fixes

Use Windows Update to install critical security fixes to your operating system. Windows contains many vulnerabilities, most of which are exploited by hackers from time to time. This is not a routine problem for the average law office, but the fix is free and easy.

11. Get a Modern Printer

You'd be surprised how many law offices are still using slow inkjet printers whose cost per page is more than you might imagine. An modern entry level laser printer costs perhaps \$400-\$500 and prints both standard output and Postscript at up to 12 pages per minute at a relatively low cost per page.

12. Surge Protectors

Add industrial grade surge protection for every piece of hardware connected in any way to your network. Modern processors are so fast in part because the processor's transistors are built to extremely small dimensions. It doesn't take much of a static jolt to bridge a .13 micron gap and ruin the processor. Also protect telephone lines and network cables connected to every computer on your network.

13. Uninterrupted Power Supplies

Use uninterruptible power supplies on every network file server, without question, and on every desktop computer that accesses a database program such as your accounting, time and billing, and litigation support applications. Even a momentarily power blip that causes the reboot of a network file server or desktop computer running a database or a small power surge can result in major data loss and enough data damage to render a database unusable. And, be sure that the UPS battery is still working. They deteriorate over time.

14. Update Drivers and BIOS

Consider updating the chipset drivers and BIOS of your computer system. Many computer systems use chipsets made by VIA. Some of the VIA chipsets have a disconcerting habit of suddenly causing Windows 2000 and XP to seemingly lockup, a condition arising from an 'infinite loop' caused by some chipset and BIOS problems. Updating the BIOS and chipset driver can sometimes reduce or eliminate these highly annoying problems. Be aware, though, that only a technically skilled and experienced person should undertake this sort of work. If you make a mistake, your computer won't boot until the BIOS update is done correctly. If the problem persists, you may need to change to a system board using the newest nVidia BIOS.

Actual holiday motion in Texas

NO. 04-05855-I

JENKENS & GILCHRIST,  
A PROFESSIONAL CORPORATION,  
and L. STEVEN LESHIN

Plaintiffs,

v.

STUART D. DWORK and  
ROGER MAXWELL

Defendants.

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§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

162nd JUDICIAL DISTRICT

HOW THE GRINCH STOLE CHRISTMAS VACATION

-OF-  
RESPONSE TO REQUEST TO IGNORE VACATION LETTER



Every Lynn  
Down in Lynn-ville  
Liked Christmas a lot...  
But the Grinch,  
Who lived at Akin Gump,  
Did NOT!

The Grinch hated Christmas!  
The whole Christmas season!  
Now, please don't ask why. No one quite knows the reason.  
It could be that his arguments weren't going quite right.  
It could be, perhaps, that his clients' wallets were too light.  
But I think that the most likely reason of all  
May have been that his briefs were two sizes too small.

Submitted by Joe Kashi from his geeky friends.

Copy deadlines and publication dates for the 2005 issues of the

The Alaska BAR RAG

Copy Deadline

Publication Date

May 10 ..... June 1  
August 10 ..... September 1  
November 10 ..... December 1

Articles should be double spaced. (Five pages double spaced is about a half page in the Bar Rag.) We prefer that you e-mail your article to me at oregon@alaskabar.org. You can also send us an original, as faxes cannot be reliably scanned. Articles on disk are welcome as long as they are IBM compatible.

Articles can also be turned in either to Editor Tom Van Flein at 711 H Street, Ste. 620, or to me at the Bar office, at 550 W. 7<sup>th</sup> Avenue, Ste. 1900. Thank you for your contribution.



Stop the world — I want to get off!

# Practicing law in the 21st Century: Sanity tips

By Sharon D. Nelson

It spins ever faster, does it not? Much like the infamous merry-go-round in Alfred Hitchcock's "Strangers on a Train" and with the same sense of mania and frenzy.

To bastardize one of Tolstoy's famous lines, each of us is unhappily juggling balls in our own way. It really doesn't matter what the balls consist of — we all have too many of them in the air and keeping them all up there (well, perhaps dropping as few as possible) is a daunting and daily exercise.

What we do for living is intense. Our stakes are high and the consequences of our errors profound. According to a John Hopkins study, lawyers are considerably more affected by drug and alcohol problems than the public at large — and three and a half times more likely to suffer from depression. The statistics themselves are depressing!

Even when we think we're coping, most of us admit to feeling stressed and torn between too many responsibilities. Wherever there are lawyers gathered, they bemoan their hectic schedules and the unrelentingly furious pace of their lives. Every time you hear someone talk about "quality of life" issues, do you want to put your fist through a pane of glass? Do you think to yourself, *It would be nice to simply have a life, never mind its quality?*

Recently, I spoke a number of members of our bar's Young Lawyer Section. Family obligations and long hours at the office conspire against them to deprive them of time to engage in social activities with their colleagues and some of the philanthropic activities that many of them took part in regularly until they graduated from law school, went to work and had families. Several of them asked, "How do you balance everything?" as though I might have some sage answer. Hah!

Would that there were a canned answer and a cure for what troubles them. Unfortunately, this is real life, not Dr. Phil. But their question stayed with me all the same, and I reflected on what the merciless juggernaut of life had taught me over the years. For what it is worth (two cents might be overpayment), here are some hard-won lessons:

**1. You'll never do anything more important or rewarding than raising kids.** It's the hardest, best job there is, even when it drives you crazy. I wouldn't give up a single PTA meeting, excruciatingly bad band concert, all those soccer games in the rain and cold, or any of the basketball games in those hot, reeking-of-sweat gyms. I don't regret transporting the girls and their hordes of friends to endless practices and games in a beat-up van cluttered with sports equipment and remnants of too many visits to McDonalds. They really are "the times of your life," though you may or may not know it when living through them — life is just so busy. Cherish them above all things for those times will remain with you long after your children have left home. You won't necessarily want them back, but you will savor the memories!

**2. Find time for yourself, wherever you have to carve it from.** For me, I read at night when my

husband is sound asleep — he's happy and I'm happy. Of all the things I love to do for myself, I love reading most of all, and there simply is no other time. Sleep is far less important, no matter what the medical profession might say. So find time for yourself doing what you love to do and protect it religiously.

**3. Find time for your spouse/partner/significant other.** Because our workdays stretch from 6 a.m. to 6:30 p.m., and frequently beyond, we have established an **almost** inviolable rule that there is no working after dinner. Instead, we generally watch a movie together, until one of us falls asleep which, in our advanced state of exhaustion, makes watching most movies a three-night exercise. It doesn't really matter — we're together, and that time is special. On weekends, we try to reserve pre-prandial "cribbage time," a ritual replete with amiably hurled insults and challenges — and a "mommy martini," which may refer to the fact that mommy is drinking it or to the generous size of the libation my devoted bartender has prepared. Rituals of togetherness are important — if two people live together without **being** together, they may not be together long. Whatever your own mutual pleasures are, make some time for them sacrosanct.

**4. Give back to your community and colleagues.** No matter how frenzied your life, nothing will give it meaning as much as helping those in need. Long ago, I recall hearing a story of a therapist treating a severely depressed man who simply didn't know if he could go on. The therapist told his patient to go to the train station and to find an individual who was clearly down-and-out, in truly dire straits, and work on helping that individual with his life. The patient took the advice and several months later, reported himself cured and once again actively engaged in life. There are so many people in need of help that there is a world of volunteer opportunities for all of us — our churches, schools, and communities all have places for willing hands and hearts.

**5. Get unwired.** Peculiar advice from a lawyer/technologist? A few years ago, such advice might have seemed silly, but no more. Now, I steadfastly refuse to give my cell phone number to anyone outside of work and my family, knowing that clients would simply never leave me alone. After all, there's a phone at work, I check my e-mail several times daily, and there's a pager for emergencies. Barring exigent circumstances, I don't check my e-mail after work. You know what? It will all be there in the morning. Though I love electronic communication and the manifold opportunities of the Internet, I control my technology — it does not control my life. Well, that's **mostly** true. These days, it seems as if too many of us are shackled to the machines that are supposed to help us, and imprisoned by the notion that we need to be constantly accessible. Who said? Draw the lines and keep your private life private — that alone will make your life more tranquil.

**6. Take time off.** It doesn't matter whether you can afford to take time off. You really can't afford not to. Time off does not constitute "giving your laptop a view." Unplug and unwind. Whether you enjoy the steel drums of the Caribbean poolside

or want to hike the whole Appalachian Trail, cut the professional cord completely. The entire disaster will await you on your return, but you will hopefully be replenished, refreshed and reenergized.

**7. Have a pet, or two, or three.** Personally, I like dogs, but the choice is yours. Dogs are nothing more than pure love encased in fur. They do not care what you look like, how scruffy your clothes are, or if you are grumpy when you get up in the morning. You are the center of their universe and all they want is to love you ad infinitum. Belle and Josie, our black labs, are my constant shadows. *Doing the dishes? We'll help lick them clean, mom. Want to work on your computer? We'll sleep at your feet. The ball, you want to play ball? Mom, that's such a great idea! (thump, thump, thump go the tails).* There's no way to repay the love of these faithful creatures who want nothing more than to be beside you and love you — and there is a world of zen tranquility in their undemanding companionship.

**8. Remember that all things pass.** The trial that seems like the end of the world will be over, one way or another. The kids will get over the flu. The car that sucks money like a vacuum cleaner can be traded in. Just like Annie said, "The sun will come out tomorrow."

**9. Be gentle.** In spite of the "road warriors" that make commuting a challenge and frazzle your already frayed nerves. In spite of your secretary forgetting to notify your most important client about a court date. In spite of your children's dramatic and vocal rebellion in the face of your guidance and rules. Lawyers are often regarded as having the people skills of an enraged porcupine. Anger will shorten your life and make those around you miserable. Smiles will lengthen it and make those around you happy to be around you. Create a balmy climate — you'll enjoy it yourself.

**10. Forgive yourself.** We all screw up. We say dumb things, insensitive things, and rude things. We foul up at work and at home. We are grouchy or unkind or insensitive. That was yesterday. Let it go. Resolve to be better tomorrow — and then — be better tomorrow. And while you're at it, do the right thing and "forgive those who have trespassed against you." Few things are quite as redeeming and gratifying as forgiveness.

**11. Put things in perspective.** As Shakespeare knew full well, we are "merely players who strut and fret our hour upon the stage." In twenty years, it will matter how you've raised your kids, and the outcome of your trial will be long forgotten. Would you rather have amassed a fleet of luxury cars and expensive homes or have the respect and affection of your friends, neighbors and colleagues? Will your wealth or fame impress St. Peter? In the hurly burly of daily life, it is easy to forget that we have a lifetime to become our best possible selves if we can only keep from chasing the temptresses of wealth, fame, and status that vanish like mirages as we come to the end of our lives.

**12. Keep some stardust in your pocket.** As busy as we are, it's no wonder that we let the magic that surrounds us daily elude us. Childlike wonder can be a major part of coping skills. I can be in mid-conversation and be struck dumb by the beauty of a rainbow. I clap my hands in sheer delight when one of our children unexpectedly shows up for dinner. And Christmas, do I love Christmas. There are snowmen, reindeer, and elves everywhere in our home. On a recent visit, my daughter Sara announced good-naturedly, "It looks like a Christmas store threw up in here." Obviously, we need to get Sara some stardust for Christmas! Whatever delights you, take time to savor it. There is magic all around us, all the time, if we will only slow our pace long enough to enjoy it.

If there were a panacea for the pace of modern life, we'd all partake of it. Perhaps the best we can do is look for some of the things that might help, as indeed some of the suggestions above have helped me over the years. So, for the young lawyers who asked me, the above is the best I have to offer you. The flat-out running approach to life simply doesn't seem to work, as the Pennsylvania Dutch attested to with their famous epithet: "The hurrier I go, the behinder I get."

Relax and enjoy. In spite of everything, it's a beautiful world. If you need to borrow a cup of stardust, stop by — I always keep a goodly supply on hand.

*The author is the president of the Fairfax Bar Association in Virginia and president of Sensei Enterprises, Inc., a legal technology firm based in Fairfax. <http://www.senseient.com>*

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## Rarified error: Don't argue with a math-impaired jury

By William Satterberg

The jury clearly was a dumb one. Even more than normal.

"Ever try to give a cat a bath?" was my opening question on *voir dire*. I had rehearsed the question for hours before the bathroom mirror. I wanted my initial approach to be humorous. To my surprise, several jurors raised their hands in serious acknowledgment. It was then that I realized that it would not be an easy trial.

It was to be one of those unique cases. The kind of case every trial attorney welcomes. A case which has intrigue, miscommunication on the part of all parties, and a surprise ending — at least for myself. It certainly was not going to be one of your ordinary DUI actions. Rather, it involved a game of cat and mouse that had evolved since July of the previous year, when my client was stopped on his way home during the DUI "witching hour" of 2:00 to 3:00 a.m.

It had been a hot weekend. My client, a long time Fairbanks resident, was the sole proprietor of a business which was keenly feeling the impact of the large chain stores that had invaded Fairbanks. In short, his business was in ruins. More than one girlfriend had left him, and the others were planning to break away, even if they did not know it yet. To conserve his dwindling revenues, he had discharged all of his employees. He was thus left to run his business alone, save for the help of a solitary, stray cat that had wandered into the warehouse the previous week, in search of meager morsels. They were meant for each other.

Sensing a kinship with the stray cat, my client soon befriended the animal and, that Sunday, decided to take the bedraggled orphan home.

In a sense, they were both strays, in search of a better life on this lonely planet called Earth.

Collecting a tattered cardboard beer box of business papers and the cat, who he chose to name "Isabelle" after some lost love, my client climbed into his dilapidated pickup truck and began the long drive home. It was a tortuous route. Following several stops, at about 2:00 a.m., my client inadvertently entered the feared DUI gauntlet along University Avenue to the Farmer's Loop Road in the dreaded vicinity of the University of Alaska.

That was one of his first mistakes. Police cadets, who, for whatever reason, do not become troopers, often find respite with the University of Alaska Police Department. At that venue, possibly bored by simply patrolling a campus which has as its most serious crime, according to some officers, the random sexual assault, university police officers regularly venture into the adjacent community to detect the early-morning vehicle which might be exhibiting an expired registration tag or some other equally serious violation.

Then, having located such a target, the overhead beacons are activated and the chase is on. Usually, the stop occurs soon afterwards during which the officers, in their best practiced John Wayne style, enjoy valuable citizen contact and thereby

promote the University's budget seeking process, while spreading politically valuable good will and cheer throughout the community at the same time. Personally, I still prefer the days when university police officers did not carry guns, wear black S.W.A.T. uniforms, or consider themselves to be the equals of the organized police forces. Then again, on the other hand, I still have to give credit to the university police. They invariably are a ready source of referrals, and often a source of my few courtroom victories. Perhaps, one should not try to kill the goose with the golden egg, after all.

Like many other drivers, my client was not destined to escape the snare. As my client neared the university, he passed a university police officer driving in the opposite direction. My client's headlight was out, even though it had just been replaced. As expected, the officer did an immediate U-turn, and, under red lights, stopped my client to warn him of this most grievous equipment offense. That is when the fun began.

As the officer approached the vehicle, my client rolled down the window to chat. At that same time, the stray cat, Isabelle, deciding that she did not like riding in the vehicle with my allegedly intoxicated client, sensed a chance to make her break. She promptly did so — right out the open window and past both my client

and the officer. Landing on her feet, Isabelle next shot across five lanes of traffic and into the woods on the opposite side of the road.

As the District Attorney would later suggest at trial, perhaps it was the old "cat got away" defense of simply trying to avoid a DUI investigation. If so, it worked.

Briefly having a moment of uncharacteristic compassion borne out of years of experience, the kindly officer told my client that he could catch the cat. Sensing his own escape, my client departed the vehicle, crossed the road, and for several minutes, attempted to entice Isabelle into surrender. Eventually, a truce was reached, and Isabelle reluctantly returned to the truck, cradled lovingly in my client's arms.

However, as soon as Isabelle entered the cab, and even before my client could close the door, she once again leaped out of the vehicle and made her second determined break for freedom. Clearly, this truly was the old "cat got away" trick, second only to the now illegal but well-known "big gulp" DUI defense. Fortunately, however, the officer must have missed this portion of his training at the Public Safety Academy. Once again, my client took off after his cat, with the officer watching from a safe distance while responsibly radioing progress reports in to his headquarters. Following yet another extended escapade, my client was again able to catch Isabelle and return her safely to the truck.

This time, my client was confident that there would be no escape. Isa-



"It was to be one of those unique cases. The kind of case every trial attorney welcomes."

belle was properly scolded and placed firmly into the truck. The driver's door window was rolled up significantly. My client then walked to the back of his vehicle to speak to the officer at a closer distance, to discuss equipment violations at that early time of the morning and to demonstrate his sobriety. However, the drama was not yet over.

Somehow, the nefarious kitty was able to pry open the driver's window just enough to once again bound for freedom. And, once again, both the officer and my client let out loud whoops of surprise. As repeated twice before, my client took off after his cat. This time, the officer was apparently satisfied that my client did not pose any threat to the community with his broken headlight. My client was told to capture Isabelle and to leave the scene before things got worse. Recognizing that Isabelle obviously was becoming wiser with each of her leaps for freedom, and furthermore recognizing that the officer did not want to spend any more time at the scene, the officer called for student police backup to assist with the cat hunt. Fortunately, just as backup arrived, my client was able to catch Isabelle one final time, and the student S.W.A.T. team was called off of what was probably to be their biggest operation of the year.

As instructed, my client departed the scene, fully intending to drive the five remaining miles to his residence along Farmer's Loop Road. Unfortunately, life was not to be that kind to him that night. Three miles down the road, my client's truck blew up. Literally. No, it was not a planned sort of thing. Nor was it the old "blow up your truck to escape a DUI charge" ploy. In fact, there were no police officers around whatsoever. Rather, my client's previous electrical work had been less than standard when he had replaced the headlight the previous day. Maybe he had been drunk.

Nor was it was a smoldering event, with little wisps of smoke. To the contrary, it truly was a genuine fire and explosion. According to my client's testimony, as he was driving down the road, he saw sparks shooting out from beneath his vehicle. He pulled over to the side of the road and jumped from his vehicle. Immediately, he saw flames erupting from beneath the driver's side wheel well. In a panic, he grabbed the nearest fire suppression device which, unfortunately, was a straw broom. (Due to his financial plight, he could not afford a chemical fire extinguisher.) Predictably, beating at the fire with the broom only fanned the flames. In short order, he recognized that the smartest thing that he could do would be to abandon the vehicle, and move quickly away.

Bravely opening the door, my client rescued Isabelle and the beer box of papers, which also allegedly just happened to have an old pint of brandy in it, and fled the scene. Proceeding several hundreds of yards down the

road, my client drifted off into the woods to sit and watch his vehicle perform its impromptu imitation of a Buddhist monk.

During the rapidly developing inferno, a vagrant on a bicycle rode by, and went to a nearby house to knock on the door. The Good Samaritan asked the homeowner for a fire extinguisher, intending to exercise his forestry fire training to extinguish the now roaring conflagration. The owner of the house looked out of the front window, and immediately realized that a fire extinguisher would have little, if any, effect on saving the neighborhood. A 911 call was quickly placed to the University of Alaska Fire Department, during which the homeowner could be

heard telling the dispatcher that the vehicle had already exploded twice, and that it looked like things were definitely getting worse.

In short order, the University of Alaska Fire Department re-

sponded and bravely extinguished the blaze. At about the same time, a rookie Alaska State Trooper was dispatched to provide traffic control. By then, it was past 2:30 a.m.

My client, wanting to exercise his civic duty to ensure that his vehicle was properly discarded, and also subjectively hoping to get a ride home, providently returned to the scene of the fire. Arriving at the now smoldering wreckage, he made contact with the young trooper, which clearly was another mistake. According to the trooper, my approaching client looked as if he were walking down a winding path with one leg stepping in a pothole with each step. The trooper also claimed that my client almost toppled over several times. In the trooper's opinion, intoxication was readily apparent. As such, the trooper arrested my client even before the standard field sobriety tests were performed.

It was not that the trooper did not first try to administer field sobriety tests. The problem was that my client had a beer box full of papers under one arm and a very yowley cat under the other. Admittedly, field sobriety tests are difficult to perform even when sober. Moreover, the divided attention and balance tests were even more complex when wrestling with a stray cat that wanted nothing to do with an exploding vehicle and an allegedly drunken driver. Clearly, the cat justifiably felt safer dashing repeatedly across an active highway.

During the course of my client's arrest, Isabelle again escaped at least two other times. However, this time, the proven "cat got away" ploy did not work. It was obvious that the rookie trooper was quite intent upon effecting his arrest. Remarkably, my client still was actually able to catch Isabelle twice while shackled in handcuffs. At one time, he could be heard in the distance ordering the trooper to stay away because the cat "does not like guns." The trooper's vain response was "But you're under arrest!" My client answered that he obviously knew that he was under arrest, and

*Continued on page 25*



## TALES FROM THE INTERIOR

## Rarified error...

*Continued from page 24*

that he would return to the trooper as soon as he caught Isabelle. It was a reasonable answer, especially given the unique circumstances. The trooper complied with the order.

My client was true to his word. After finally catching Isabelle, he dutifully returned to again be arrested and transported for Datamaster testing. Moreover, much to the young trooper's credit, the trooper first drove my client and Isabelle to my client's house, so Isabelle could be deposited at home along with my client's beer box of papers. (Despite the breach of protocol, it made common sense for the trooper to first take my client home to drop off the cat. After all, on a late Sunday night/early Monday morning, all of the known cat houses in Fairbanks were closed.) The detour completed, the trooper then took my client to the State Trooper headquarters where he blew a Datamaster reading in excess of .10.

During my client's field processing of the DUI, he had been asked to take a preliminary breath test, which also had revealed a reading in excess of .10. Despite this reading, on more than three occasions, he had defiantly insisted to the trooper that he had consumed absolutely no alcohol. As such, his credibility was somewhat in question, especially considering that he could not walk, had often incomprehensible speech, watery bloodshot eyes, a most garrulous attitude, and a blown-up truck.

At the trooper station, when asked to take the Datamaster, my client valiantly tried to blow on two occasions. Gasping, he claimed that he simply did not have enough breath to perform the test. The trooper responded that, if my client could not continue to blow, he

would graciously support my client until he passed out. Eventually, my client delivered a suitable breath sample. The sample registered clearly over the legal limit on the Datamaster. When confronted with the abnormally high reading, my client retorted "Then, that machine's broke, too!" The trooper did not agree with my client's assessment of the Datamaster. Despite his protests, my client was taken to FCC and subsequently arraigned on DUI charges.

When I first met with the client, I was informed that he had previously been stopped that evening by a university police officer. Admittedly, I had a hard time accepting his version of the facts. I naturally figured that, if he had been stopped only 10 to 15 minutes earlier, he undoubtedly either was not intoxicated, or the officer had definitely made a mistake. This was assuming, of course, that he was even stopped at all and not just simply conjuring up a story. In my opinion, University of Alaska police, known around Fairbanks to bust just about anybody for anything, would likely have not erred with respect to this type of situation. The other option, of course, was that my client, in a drunken stupor, had his dates mixed up and had actually been stopped two or three days earlier.

Nevertheless, I contacted the university police. After finally push-

ing the issue, I surprisingly learned that there was, in fact, a videotape made of my client's traffic stop earlier that day. To say that it took a lot of effort to get the videotape would be an understatement. In my opinion, no one wanted to cooperate on the issue. Eventually, however, I did secure a copy of the tape and was able to view it. To my surprise, it completely backed up my client's version of the events, replete with the serially escaping cat, the three frantic chase downs, and the eventual release of my client by the University of Alaska police officer less than 15 minutes before my client's vehicle exploded. For once, I was ecstatic. The ingredients for a potentially successful DUI trial were all there.

Nine months later, the case proceeded to trial. Although I was confident in my strength of the case, and figured that a videotape of my client chasing a stray cat down three times was as good as gold, I failed to appreciate the dreaded Fairbanks jury factor when assessing the case. Fortunately, the State of Alaska had made no offer for a reduced charge. Rather, my client was simply left with a "take it or leave it" choice. Had the State offered a lesser charge, the deliberative process would have been much more difficult.

Following several false starts, including a last minute attempt by the State of Alaska to preempt a judge (as an apparent internal policy matter) who had previously been assigned and had presided over the matter for quite some time, the case proceeded to jury selection. It was during the jury selection process that I began to recognize that we had not been given an intelligent panel of jurors.

Not only had many of the jurors readily admitted to trying to bathe their own cats, but any concept of reasonable doubt seemed to be totally lost upon them. Even a paralegal and a longtime court clerk seemed to be starting from the assumption that the burden was upon the defendant to prove they did not commit the crime. ("Hey, Jed! Sucker looks guilty to me! Whaddya think? Let's get this over with quickly. It's almost Miller time!")

Eventually, a panel was selected — even if it took two days. The delay was because only 20 out of 35 called jurors actually showed up for the jury selection process on the first day. Predictably, the panel was exhausted even before questions for cause began. It was the first time in both Judge Burbank's and my own experience where there were not even enough jurors to begin the selection process. That phenomenon, alone, should have been a dire warning of things to come.

After the panel was selected, trial began. Wanting to put its worst foot forward, the State of Alaska understandably called the university police officer who had released my client. As expected, the chastised officer sat on the stand, hung his head in apparent shame and embarrassment, and kept claiming that it was the worst day of his professional career. He courageously confessed to all that he had made a most terrible mistake in not

busting my client. He readily admitted that he had let civilized society down. Moreover, if he had had to do it all over again, he would let the cat run away and face the deadly future existing for it on the high speed highways of Fairbanks. Moreover, the officer, when on the stand, began to remember those important things that he had failed to place in any of his police reports, such as the obvious smell of alcohol emitting from my client, and other potential indicators of intoxication. I felt like I was watching the Benny Hinn Show. (Praise be! He is healed! His memory is back! Smack him smartly on the forehead and count him out!)

As expected, I soon learned that the evil forces of the world were silently at work. The officer's miraculous mental recovery was still far from complete, despite the encouraging signs of remission. It soon became tragically apparent that, in other areas of questioning from the dastardly defense attorney, the officer simply had no recollection of events whatsoever. (Then again, from my perspective, the areas where his recollection failed miserably were those areas where an accurate recollection would have significantly hurt the State's case.)

The next witness was the trooper who busted my client. Either a literal thinker or not too smart, it soon became apparent this trooper and I were barely communicating. To his credit, however, the jury seemed to identify with him.

After describing my client's lost cat, truck fire, and DUI arrest, I asked the trooper whether or not he felt that, in his opinion, my client was having the proverbial "bad hair day." For myself, I was referring to my client's bad luck. In addition to the evening's recent events, my client's business was in shambles, one of his friends was in rehabilitation, and he was now being busted for DUI. The trooper's deadpan response was that my client's "hair did not appear to

be singed." So much for conceptual thought. Shortly thereafter, I had another bout with the trooper, which clearly indicated to me that the case was rapidly deteriorating.

During direct examination, the trooper had testified that he had seen my client walk out of a driveway "two-tenths of a mile down the road — about 100 yards." In cross-examination, I asked the trooper to make a choice with respect to his estimate of distance. "Was it 100 yards or two-tenths of a mile?" I inquired. Once again, the trooper maintained that the two distances were essentially identical. Rather than argue the point, I decided to perform some simple courtroom mathematics for him. In retrospect, that decision was another mistake.

Approaching the courtroom writing pad, I asked the trooper how many feet were in a mile. It was a simple foundational question. To my surprise, the trooper did not know the

answer. I was stymied until Judge Burbank took judicial notice that 5,280 feet are in a mile. After some further debate, the trooper

suspiciously agreed that one-tenth of a mile could be arrived at by dividing 5,280 by 10.

I then slowly explained to the trooper that, if one-tenth of a mile were 528 feet, multiplying the figure by two would mean that two-tenths of a mile logically would be 1,056 feet! I was relieved when he accepted my mathematics on its face, "If you say so." I then asked the trooper how many feet were in a yard. After some more delay, he cautiously responded that there were three feet in a yard. The end in sight, I began to turn the corner. We were finally getting somewhere.

I then patiently explained to the trooper that we would now both divide 1,056 feet by three feet to mathematically arrive at the correct number of yards in two-tenths of a mile. Voila!

*Continued on page 26*

## ATTORNEY DISCIPLINE

## Mitch Schapira suspended for neglect

The Alaska Supreme Court on December 27, 2004 suspended Anchorage lawyer Mitchel J. Schapira (Bar Member No. 7610127) for three years. The discipline resulted from Mr. Schapira's neglect, failure to communicate with clients, and violation of court orders.

In one case Mr. Schapira took no action in a lawsuit, failed to advise the client when the court dismissed the case, and failed to take any steps to reinstate the claim. The client filed a malpractice claim against him, which he settled for \$30,000. In a second case Mr. Schapira failed to take action on a client's claim, failed to appear at calendar call, and failed to advise his client when the court dismissed the complaint. In a third case Mr. Schapira did not file an appeal brief then failed to respond to Supreme Court orders to explain himself. In a fourth case Mr. Schapira agreed to pursue three collection claims and accepted the client's payment for filing fees, but took no action on the claims.

Mr. Schapira had a prior record of discipline: two Supreme Court censures in 1994 and a six-month suspension (stayed pending probation) in 1995 for similar misconduct, plus a 30-day suspension in 2004 for not complying with conditions of discipline imposed in California because of his 1995 Alaska suspension. In the present case he entered a stipulation for discipline by suspension for five years with two years stayed, the latter to be served as probation if he is reinstated to practice after three years. As part of his discipline he agreed to pay, and has paid, the balance of the malpractice settlement. A public file in this case may be inspected at the Bar Association office in Anchorage.

**Not only had many of the jurors readily admitted to trying to bathe their own cats, but any concept of reasonable doubt seemed to be totally lost upon them.**

**Just as I was about to gloat in well-deserved triumph, two of the jurors behind me loudly announced that my mathematics were wrong.**



## Rarified error...

Continued from page 25

The correct answer was 352 yards, not 100 yards!

Just as I was about to gloat in well-deserved triumph, two of the jurors behind me loudly announced that my mathematics were wrong. They openly insisted that I had arrived at a wrong answer. Obviously, I was trying to play some sleazy defense lawyer's tricks on the defenseless young recruit.

In retrospect, maybe I should have added the two 528 foot increments together rather than resorting to the higher mathematics of multiplication. However, wanting to redeem my rapidly eroding credibility, I responded that this time, we would all do the mathematics together again. I felt like my old second grade teacher—the one with the ping-pong paddle who was always writing notes home to my parents about me. But, like it or not, the exercise had to be repeated. By then, my honor was at stake, not to mention

some absolute presuppositions.

To the jurors' astonishment, once again, I arrived at the same answer. And, to my astonishment, once again, two different jurors protested that my mathematics were still all wrong. Moreover, at that point, perhaps sensing a tactical advantage, the District Attorney also objected to the accuracy of my answer.

I fell into crisis and did the only logical thing that I could do. I immediately asked for an anteroom conference. The entire law of mathematics was being challenged. Sensing courtroom fatigue, Judge Burbank compassionately dismissed the jury for the day.

Once alone in anteroom, the District Attorney argued to the court that, in her considered opinion, my mathematics were obviously wrong, as well. The implication was that I clearly was misleading the jury. I was a proven trickster. To my relief, Judge Burbank finally rallied to my support and ruled as a matter of law that my

mathematics were entirely accurate. For once, I had won an argument.

To solve the dilemma, Judge Burbank agreed to instruct the jury the following morning that, as a matter of law, there are 352 yards in two-tenths of a mile. The debate was over. Whether or not the District Attorney or the other jurors ever really got the message may never be known. Furthermore, when I later tried to rescue the situation, and to redeem myself by asking the trooper how many yards were in a football field in order to add some perspective to the distances, he could not answer that question, either. Later on, one of my attorney friends humorously suggested that I really should have been doing my courtroom computations by using such Fairbanks common denominators as bottles of beer in a six-pack, six-packs in a half case, and half cases in a case. Complex mathematics were obviously lost on most Fairbanksans.

My concern that arose at the time, however, was that I had inadvertently incurred the wrath of several jurors. They had been proven wrong not only by that conniving defense lawyer, but also by that guy in the black robe. Only the District Attorney had been brave enough to champion their cause. (Who says the jury cannot decide the law, too?) In retaliation, I feared that the jurors would express their ultimate revenge through their verdict, recognizing that they could not do it through simple mathematics. Jury nullification was once again entering the courtroom in Fairbanks.

After the State rested, my client took the stand. In his defense, he offered his own excuse for his DUI, indicating that he had consumed the dusty bottle of abandoned brandy after his truck had exploded. In many respects, his explanation made sense, especially when recognizing that he had already left the scene and could have conceivably stayed hidden in the woods. But, then again, the contrary argument could have also been made that he was drunk and had thus made a drunken decision to return to the scene of the crime.

For closing argument, I decided upon performing some courtroom dramatics. After the State's presentation, Judge Burbank announced that it was now time for me to commence my closing. Exemplifying visual effect, I slowly rotated the courtroom's digital clock to directly face the jury. Holding my hands patiently in front of me, I loudly proclaimed, "Your Honor, I will start in exactly one minute!" The delay was intentional. I wanted the jury to appreciate what one full minute of time was like in the silence to follow. During that solemn minute, I expected the jury to begin to appreciate all the time that my client had to drink his small bottle of brandy while sitting in the woods and waiting for his rescuers. It was to be that same contemplative "Minute of Silence" thing that they always do at those Chamber of Commerce lunches for dead people, which usually really take only about 30 seconds.

True to form, my well thought out plan belly-flopped. Judge Burbank's response to my unilateral declaration of silence was much more direct. "Counselor, you'll start now," was the order. So much for my dramatics. Moreover, it took almost 15 seconds to get that issue resolved. It was clear that Judge Burbank, as well, had fallen victim to whatever spectre haunted the courtroom that day. The impact of my opening was gutted. Then again, given the way the case had progressed, the psychological effect on the jury probably would have been lost, regardless.

Eventually, the jury retired to deliberate. At 4:30 p.m., Judge Burbank announced to the attorneys that he was going to deliver the usual sealed verdict form to the jury. However, before the form could arrive, and even though we were still pondering a fresh jury question, we suddenly received word that the jury had reached a verdict, instead.

Right then, I knew that the worst had happened. Over the years, it has been my experience that criminal case verdicts which are

delivered at or about 4:30 p.m. are almost always convictions. This is because the obligatory hold-out juror suddenly recognizes that the work day is over and it is time to rush down to the local tavern for a beer. Ordinarily, nobody wants to return the next day to continue their job. Usually, the situation is simply that somebody has felt that they needed to hold out until the end of the day in order to morally justify a conviction if ever challenged later about the verdict. ("I tried to acquit your client — I really did!")

Once again, I was correct about my theory. Upon entering the courtroom, the jurors quickly announced that my client was guilty of DUI and promptly fled the building. Maybe it was the implied threat of another courthouse meal that broke the deadlock. Either way, the case was over.

Later, as I licked my wounds, I asked myself, "Was there any lesson to be learned?" In quiet reflection, I realized that, in fact, there actually were several important lessons in the case.

The first lesson was that there is no longer anything to be gained by carrying a stray cat around in the inside of a pickup truck in order to take advantage of the old "cat got

away" defense to a DUI. It simply will no longer work. A second lesson was that blowing up the vehicle is also a disfavored defense. It engenders no sympathy from Fairbanks jurors. As such, I decided to stop giving such advice in the future.

The final and possibly the most important lesson was not to practice higher mathematics on Fairbanks jurors. It simply is lost on them. Furthermore, by all means, never argue over the result, even if the judge supports the obvious conclusion. After all, if you do argue with a Fairbanks jury, it simply will get even with you in the end. Never forget that jury nullification is still quite alive and well in Interior Alaska.

**The final and possibly the most important lesson was not to practice higher mathematics on Fairbanks jurors.**

**The final and possibly the most important lesson was not to practice higher mathematics on Fairbanks jurors. It simply is lost on them.**



## DID YOU KNOW...

That the members of the Lawyer's Assistance Committee work independently?

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, nor the person about whom the caller has concerns, to any other committee member, 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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LEONIDAS RALPH MECHAM  
Director

CLARENCE A. LEE, JR.  
Associate Director

## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

January 4, 2005

MEMORANDUM TO: JUDGES, UNITED STATES DISTRICT COURTS  
DISTRICT COURT EXECUTIVES  
CLERKS, UNITED STATES DISTRICT COURTS

SUBJECT: Increase to the Civil Filing Fee Effective February 7, 2005

On December 8, 2004, the President signed into law the Consolidated Appropriations Act of 2005, which included a provision increasing the civil filing fee by \$100, to \$250. This change in the civil filing fee will become effective February 7, 2005, 60 days from the date the bill was signed into law by the President. I would ask that your court provide appropriate notice of this change to the local bar within your jurisdiction.

The Act increased the filing fee for civil actions prescribed by 28 U.S.C. § 1914(a) from \$150 to \$250. The civil filing fee was last increased in 1996 when it was adjusted from \$120 to \$150. The filing fee for a writ of habeas corpus will continue to be \$5. Based on other actions of the Judicial Conference, the fee for filing a motion to lift stay and the fee for filing an adversary proceeding under the Bankruptcy Court Miscellaneous Fee Schedule will not be impacted by the change to the civil filing fee.

The new District Court civil filing fee should be distributed as follows: the first \$190 of the fee to Fund 510000, Filing Fees-the Judiciary, and the remaining \$60 of the fee to Fund 086900, Filing Fees.

Should you have any questions on the change to the civil filing fee, please contact the District Court Administration Division on (202) 502-1570. Should you have questions concerning accounting for and disposition of the fee, please contact the Accounting and Financial Systems Division on (202) 502-2200.

Leonidas Ralph Mecham

cc: Chief Judges, United States Courts of Appeals  
Chief Judges, United States Bankruptcy Courts  
Circuit Executives  
Clerks, United States Bankruptcy Courts

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

## Lawyer jokes not funny in NYC

Two founders of Americans for Legal Reform were cited for telling one too many lawyer jokes. They were waiting in line to get into a Long Island courthouse on Jan. 12.

"How do you tell when a lawyer is lying?" Harvey Kash reportedly asked Carl Lanzisera.

"His lips are moving!" they said in unison.

While some waiting to get into the courthouse giggled, a lawyer farther up the line Monday was not laughing.

He reported the pair to court personnel, who charged them with disorderly conduct, a misdemeanor.

"They just can't take it," Kash said of lawyers in general. "This violates our First Amendment rights."

Dan Bagnuola, a spokesman for the Nassau County courts, said the men were "being abusive and they were causing a disturbance."

Americans for Legal Reform monitors the courts and uses confrontational tactics to push for greater access for the public. The pair said that for years they have stood outside courthouses and mocked lawyers.

*Associated Press, CNN reports*

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## INTERESTED IN SUBMITTING AN ARTICLE TO THE ALASKA BAR RAG?

The Bar Rag welcomes articles from attorneys and associated professionals in the legal community. Priority is given to articles and newsworthy items submitted by Alaska-based individuals; items from other regions are used on a space-available basis. We recommend that you follow the writers' guidelines below:

- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Editorial copy deadlines: Friday closest to Feb. 15, May 15, August 15, and Nov. 15.
- Author information: Make certain the author's byline or identity is on the top or bottom of the manuscript.
- Ideal manuscript length: No more than 3 single-spaced or 5 double-spaced pages, non-justified.
- Format: Electronic files should be in text, Word, or Word Perfect format.
- Fax: 14-point type preferred, followed by hard copy, disk, or e-mail attachment.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.

- Digital Photos: If digital photos are submitted via e-mail, please reduce to 70 percent of size if possible and provide at medium-resolution or better. (Low-resolution .jpg format photos do not reproduce well in print.)

A Special Note on File Nomenclature (i.e. filenames): Use descriptive filenames, such as "author\_name.doc." Generic file names such as "Bar Rag September" or "Bar Rag article" or "Bar article 09-03-01" are non-topic or -author descriptive and are likely to get lost or confused among the many submissions the Bar Rag receives with similar names such as these. Use, instead, filenames such as "Smith letter" or "Smith column" or "immigration\_law."

### Submission Information:

By e-mail: Subject line: "Bar Rag submission." Send to [info@alaskabar.org](mailto:info@alaskabar.org)

By fax: 907-272-2932.

By mail: Bar Rag Editor, c/o Alaska Bar Association, 550 W. 7th Avenue, Suite 1900, Anchorage, AK 99501



Law Day 2005 focus

“The American Jury: We the People in Action”

Law Day, sponsored by the American Bar Association, is an annual event held on May 1st of each year to celebrate our legal system.

Once again, the Alaska Court System and the Alaska Bar Association have joined forces to promote this year’s theme: “The American Jury: We the People in Action.”

Judges and lawyers across the state will be visiting schools and community groups to speak about the importance of our jury system. Special curricula, entitled “Dialogue on the American Jury: We the People in Action,” has been developed by the ABA for use in high schools, and teams of judges and lawyers will be invited to present the dialogue together.

Courts across the state and nation will also dedicate the week following Law Day—May 2-6, 2005—as “Juror Appreciation Week,” to honor the contributions of jurors to America’s system of justice.

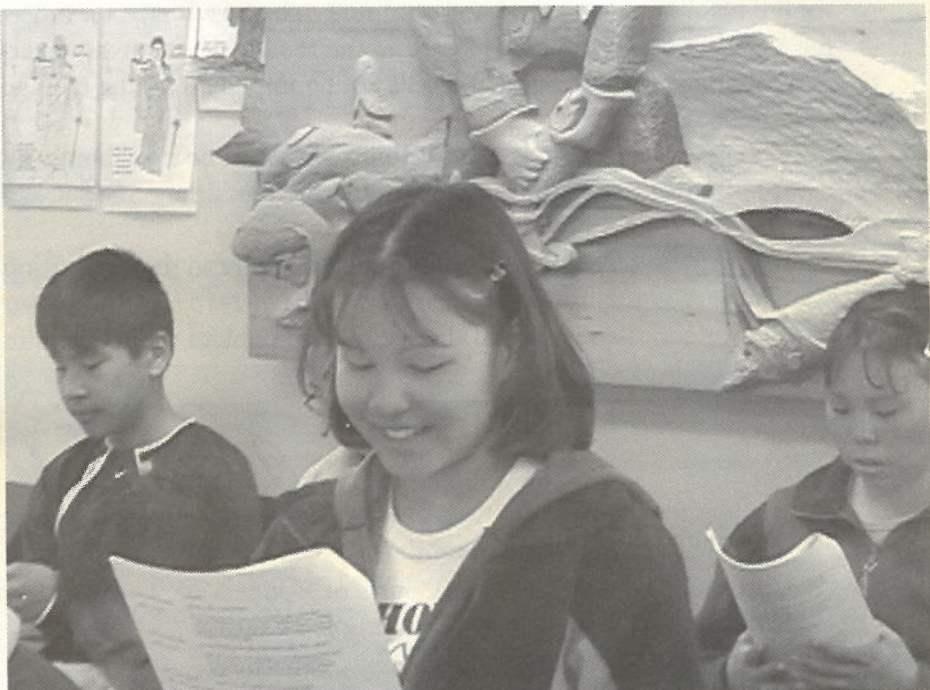
If you would like to participate in Law Day or Juror Appreciation activities in your community and would like help linking up with a school or community group, please complete the information below and FAX it back to the Alaska Bar Association (FAX 272-2932) before April 1st. We will then send you a copy of the ABA’s Dialogue on the American Jury and the ABA’s 2005 Law Day Planning Guide, which is full of helpful information and teaching strategies on the theme of jury service. We will also invite you



A panel of student jurors is sworn in at the Sitka courthouse to preside over the trial of Cinderella’s wicked step-mother. (Law Day 2003.)

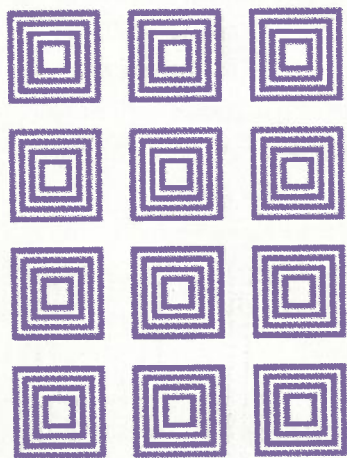
to attend a workshop on presenting the Dialogue, which will take place in Anchorage in late April. If you already plan to participate in Law Day 2005 activities but do not need help with arrangements, we’d still like to hear from you. Please complete the information below and let us know what you’re planning so we can share your ideas with others and acknowledge your efforts.

For further information about Law Day 2005 and how you can participate, please contact Krista Scully at the Alaska Bar Association (907-272-7469; scullyk@alaskabar.org) or Barbara Hood at the Alaska Court System (907-264-8230; bhood@courts.state.ak.us).



A student juror studies during a Kotzebue mock trial of Goldilocks. (Law Day 2003.)

The American Jury  
WE THE PEOPLE IN ACTION



LAW DAY: MAY 1, 2005

Sign Up to participate in Law Day!

Name: \_\_\_\_\_  
Agency or Firm (if applicable): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

☐ YES, I would like to participate in Law Day.  
☐ I would like to help present the Dialogue on the American Jury in my community.  
☐ I would be interested in attending the April training in Anchorage on how to present the Dialogue.  
☐ I have made my own plans for Law Day 2005, as follows (please describe):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please FAX this form to the Bar office at 272-2932 by April 1, 2005.  
Thank you for helping make Law Day 2005 a success!!