The Alaska BAR RAG

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Inside:

Supreme Court revises CLE rule

As the *Bar Rag* was going to press, the Alaska Bar Association received from the Alaska Supreme Court a revised proposal on the MCLE Rule which had previously been sent to the Supreme Court. This revised proposal by the court has not yet been reviewed by the Alaska Bar Association Board of Governors.

This proposal uses incentives to encourage voluntary participation in CLE, rather than sanctions to penalize non-compliance with a mandatory rule. It encourages all active members to complete at least 12 hours of approved CLE, including one hour of ethics each year. There are no sanctions for non-compliance.

Proposed incentives include:

- a reduction in bar dues (to be determined annually by the Board of Governors);
- eligibility to participate in the Bar's Lawyer Referral Service;
- compliance may be taken into account in any Bar disciplinary matter;
- the Bar will annually publish a list of attorneys who have complied with the minimum recommended hours of approved CLE.

The Bar may devise other incentives to encourage compliance. This rule would be adopted as a three-year pilot project. At the end of the pilot project, the Supreme Court will assess the project's results and determine whether a sanction-based mandatory CLE program is necessary.

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U.S. Supreme Court issues significant ADA decisions

BY TERRY A. VENNEBERG

In several recent decisions, the U.S. Supreme Court has provided additional guidance to both employers and employees concerning the rights given and requirements imposed under the Americans with Disabilities Act. In one opinion, the Court handed employee advocates a significant victory; in a series of decisions that followed, the scope of coverage under the ADA was defined and narrowed in favor of employers.

A longstanding dispute in cases brought under the ADA has concerned whether representations made in an application for Social Security Disability Insurance (SSDI) could serve to estop the applicant from bringing an ADA claim. Employers have argued that if an employee states in an SSDI application that they are "unable to do their previous work" and that they "cannot ... engage in any other kind of substantial gainful work which exists in the national economy," that employee should not be allowed to claim in an ADA action that they can perform the "essential functions" of their position. Under the ADA, a plaintiff must prove that he or she can perform the "essential functions" of their position, with or without reasonable accommodation. If an employee could be estopped, on the basis of their SSDI application, from claiming that they could per-

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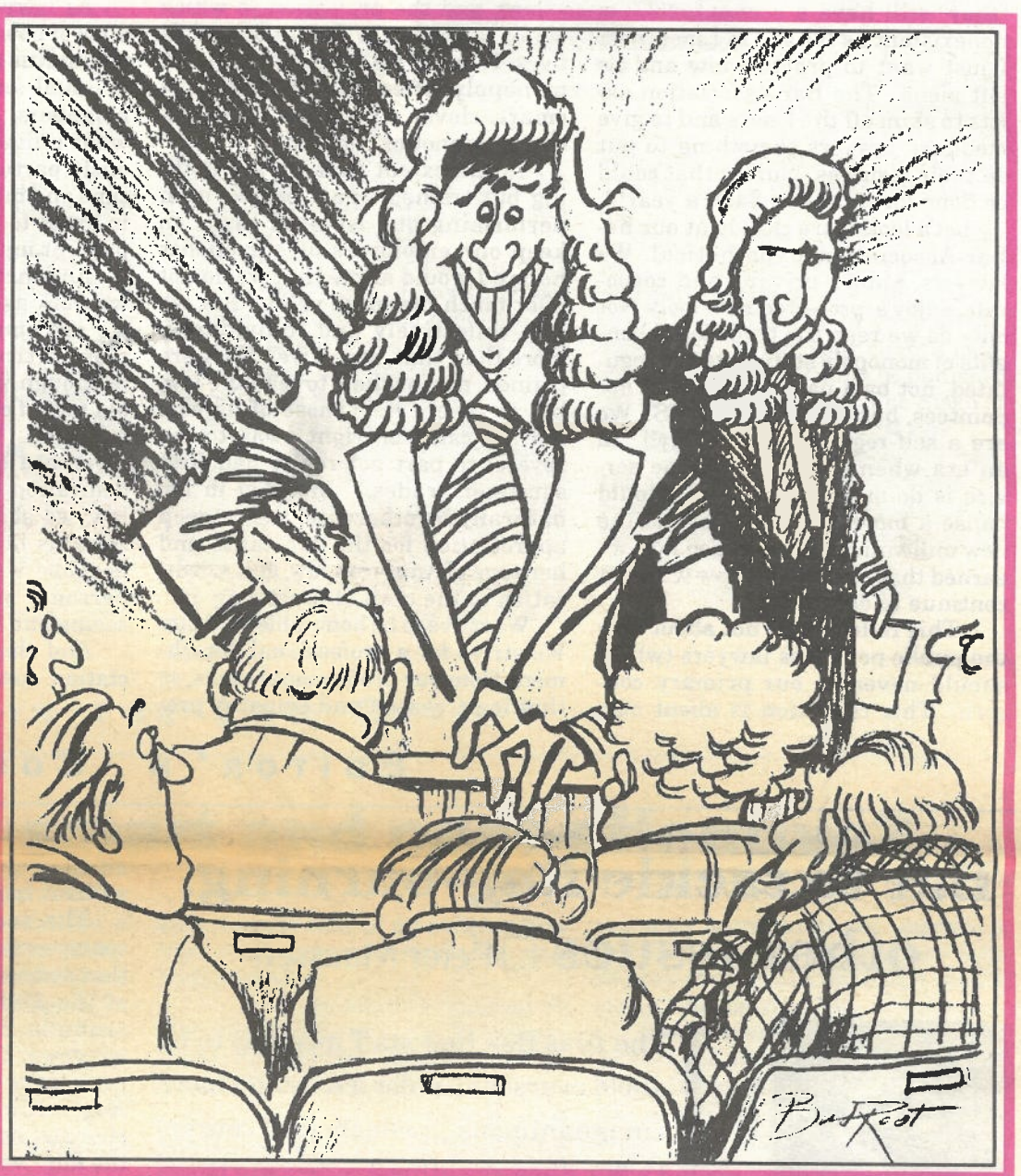

SOLUTION FOR THE FOLLICLY CHALLENGED

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Territorial lawyers gather for 2nd annual potluck event

BY PAMELA CRAVEZ

No bears crashed the party at Roger and Ghislaine Cremo's home high in the Chugach Mountains off Campbell Airstrip Road July 9, which is good since there were enough stories circulating at the second annual gathering of territorial lawyers without a bear story.

More than 40 people attended the potluck at the invitation of the Cremos, Russ and Betty Arnett, Dave and Priscilla Thorsness, Gene and Helen Williams and Lucy Groh. Although croquet, tennis and horseshoes were available guests were content to sit at the tables and reminisce about the "good old days" and catch up with colleagues and their spouses.

Jack Stern, who passed the bar in 1959 and retired to the Seattle area in 1986, sat at a table with Dave Thorsness. He told Thorsness about a lot in Homer he received for $362 worth of legal fees in 1962. Stern held onto the lot, thinking he'd build his dream house and retire there. Instead, he sold it in 1987 for $14,500.

"If I took that $362 and put it in the stock market..." Stern thought out loud.

"You'd have lost it,"

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President's Column

Why the bar ☐ Kirsten Tinglum

I IMAGINE there's no Bar Association ... it's easy if you try .... WAY easy, in fact. So what? The Bar Association is irrelevant to my life. I don't read the *Bar Rag*, I don't get disciplined, I've never been in fee arbitration, I hate CLEs, the convention (do "they" still have a convention??) is nonexistent as far as I'm concerned. I just want to practice law and be left alone. The Bar Association exists to skim off the losers and to give mediocre lawyers something to put on their resumes. Surely that could be done for less than $450 a year!!!

Let's look more closely at our no-Bar-Association hypothetical. We lawyers, public, private, and corporate, enjoy a protected monopoly. Not only do we reap the traditional benefits of monopoly status, we are regulated, not by a panel of political appointees, but BY OURSELVES! We are a self-regulated monopoly!! In an era when even local phone service is de-monopolizing, we should pause a moment, on the eve of the new millennium, to reflect on how we earned that status, and how we must continue to earn it.

This reflection is not about how the public perceives lawyers (which should never be our primary concern). This reflection is about ourselves, and the profession to which we have chosen to devote our adult lives. What do we, as a self-regulated monopoly, offer, that a bunch of smart, clever, articulate entrepreneurs, cannot or would not?

To the extent that we are nothing but trained smart people, each performing our isolated tasks to keep our employers or our clients happy, I would argue that we do not offer much marginal value. But we are, collectively and individually more than that, aren't we? We were trained, not just how to read the law, but to revere it. (Those of us who did not catch on right away to the reverence part got really bad first semester grades.) Instilled in us, naturally or otherwise, was a deep appreciation for the substance and heritage of American law, and a dedication to the craft of practicing it.

We strive to be honorable, and fair. We strive for a professional detachment from our professional tasks, so that logic, reason and empathy prevail over ego, greed or fear. We strive to exhibit civility and to achieve clarity (incoming and outgoing) under psychological, mental and physical stress. We strive to place the principles of fairness and justice before the personalities and desires of our clients and our adversaries. We have faith that in doing so, we will have acted in our clients' best interests. We trust and believe that by acting in our clients' best interests in that manner, we have also acted in society's best interests.

As lawyers, we have a bird's-eye view of how money, politics and societal status affect the law and the individual and collective lives of our neighbors. As a result of our somewhat unique perspective, we generously participate in and donate our time and money to people and causes in order to promote fairness, and to prevent injustice.

And that's, broadly speaking, why we work as a monopoly. Not because we are smarter, or more clever or more articulate than other people (although we have passed a threshold test of one or all of those characteristics). But because we share a reverence for American law, we share dedication to the craft of practicing law, we share a code of honor that rewards honesty and fair play, and because we are committed in our personal and professional lives to seeing and living a more just society.

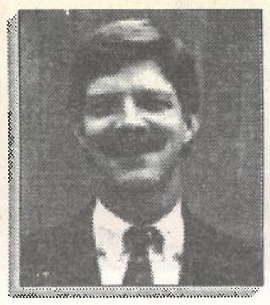
And that's where our Bar Association comes in. Because we are also human. Because the practice of law can be exhausting and isolating. Because the pressures of making a living can pull a lawyer into unhealthy lockstep with a client or an employer, whether private or public. Because we can become discouraged, and even cynical. Because we can lose faith. Because we can start acting like isolated, disconnected players with no goal in mind larger than winning the game. And then we lose as individuals. And justice is diminished.

It is human, and natural, to resist and even resent an overseer, especially when it has an office, letterhead and a staff. But we cannot afford to do that to our Bar. Our Bar Association exists to nurture our collective professionalism and our service to justice—to pull us out of isolation—to celebrate and honor those among us who have mastered our craft and who exhibit the finest qualities of honor, decency and civility. It exists to promote and develop those qualities which give meaning to our professional lives and that justify our existence as a professional monopoly. We are certainly free to resist and resent— but we do so at our collective peril.

So during this last year of the century, ask not what "the Bar Association" is doing for you—ask what you will do for our Bar. You may ask your section chair, you may ask me directly, or you may look to future columns for suggestions.

Editor's Column

Bar to tackle *Rag*-burning, other issues ☐ Peter Maassen



The first Bar Rag staff meeting to be held overseas (under a new and more magnanimous presidency, of course) ended a few days ago after a rollicking three weeks in Zurich. As the plane touched down at Anchorage International Airport, I explained to the tourist sitting next to me, as any friendly Alaskan would, that the pretty pink flowers lining the runway were cow parsnip, and that the petals would soon fade to white and scatter across the ground in a seasonal phenomenon called "termination dust," letting us know that winter is almost here.

But my mind was elsewhere. The *Bar Rag* meeting had been no boondoggle, the food and fun no antidote to the struggle. It should come as no surprise that the *Bar Rag* staff, mirror that it is of the body politic, is grappling with the same issues that wrack the nation: posting the Ten Commandments, outlawing the desecration of our most sacred symbols, trying to choose between Gary Bauer and Pat Buchanan in the straw poll. Our debate, often rancorous but more often remarkable in the healing power of catharsis and group hugs, produced several *Bar Rag* proposals that are being forwarded to the Board of Governors for further action.

The first proposal addresses lawyer civility, or rather the much-lamented lack thereof; much-lamented, that is, by everybody except the lawyers themselves, who mostly seem to think that the other lawyers they deal with on a daily basis are fundamentally decent human beings who treat their fellows no better or worse than fishmongers, Volkswagen mechanics, and reference librarians treat each other every day in like circumstances.

But somewhere out there, apparently, are lawyers who greet each other thusly: "You lookin' at me? Why you lookin' at me? Hey, I'm talkin' to you! You lookin' at me?" It is with a chastening eye on these mystery colleagues that we propose the mandatory posting of the Ten Commandments near the door of every law office. Only minor amendments will be necessary, as most of the Commandments, improbably enough, are not all that inconsistent with the Code of Professional Responsibility. (The Beatitudes are another matter.) A voice vote nearly deleted the injunction of the Fourth Commandment — "Six days shalt thou labour, and do all thy work" — which, it was argued, should not apply during trial, or when a brief is coming due. The sentence was retained, however, with the understanding that, at least for billing purposes, the six days of labour would be viewed as containing 28 hours apiece, thus allowing a full week's billable time without impinging on the Sabbath.

The second proposal was less controversial. *Bar Rag* staff reported that some subscribers use old copies of the *Rag* to line bird cages and crumple them up to polish car windows. They reported instances of persons unknown setting fire to the *Rag* while trying to light their charcoal briquettes. Yes, I speak of the *Rag*: watch-tower on the frontier of ideas, publisher of the unprintable, platform for the unpalatable, brazen mouthpiece of idiosyncracy and scholarship.

Naturally, there was clamor among the staff for a *Rag*-desecration law, or rather, an anti-*Rag*-desecration law. To allow a symbol of free, even reckless, speech to be sullied by parakeets or burned in a barbecue is to dishonor those who have struggled for the *Rag*, who have posted it in hostile doorways, hawked it for a penny on icy street-corners, actually read the thing from cover to cover.

A few dissenters argued that these *Rag* pioneers were more likely to have been struggling for the ideals of freedom on which the *Rag* was founded than they were for the 20-odd pieces of paper that constitute its corpus, and that it would actually cheapen their struggle, and undermine those ideals, to punish people who burn the *Rag* in order to diss our endeavor. This line of "reasoning" was hooted down, of course, and when a dissenter put match to masthead in an obvious and pathetic cry for further attention, we had her hustled off to a Swiss prison for the duration.

And now our Zurich meeting is history, and you should watch your mailbox for the upcoming *Bar* ballots. With the help of your vote, we lawyers may never covet our neighbor's ox again; and the days of *Rag* desecration may end just as the cow parsnip sheds its last purple petal across the runways of Alaska, and the chill sets in.

The Alaska BAR RAG

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Bar Letters

Appellate delay

As a follow-up to 'Timid Critic's" letter concerning the problem of appellate delay, I have a modest suggestion. The bar has been the subject of various trial court-level rules and experiments over the past decade designed to reduce litigation delay. Now, in connection with "Tort Reform," the court system is compiling various statistics concerning resolution of civil cases, including the length of time from filing to disposition.

I think it would be helpful for the bar, litigants, the public and the legislature for the Alaska Supreme Court to publish with each opinion the number of days that has elapsed from (1) filing the notice of appeal, (2) completion of briefing, and (3) oral argument.

Simply having to publish the length of time it takes to issue the opinion may have a salutary effect on the length of appeals. If not, it would at least provide important information to the bar, litigants and the public at essentially no cost. I am likewise not brave enough to sign this letter.

— *Anonymous*

Glad to be host

The Ketchikan Bar Association is genuinely proud to have been selected to host the Alaska Bar Association for the 2001 convention.

We wish to assure the ABA and those members attending that we will spare no effort to present the best programs and curriculum available.

As the KBA is widely known for its hospitality, we also promise other activities that will appeal to quests and members, alike.

Our aim is to rejuvenate the membership towards a more enthusiastic response to the pride we have in our Alaska Bar Association, and as members of the legal fraternity of Alaska.

To this end, we intend keeping the ABA and members aware of our efforts by continuing updates of expected activities while in Ketchikan and promotion of the legal seminars and business of the ABA during the 2001 Convention. See you there.

— *C.L. "Chuck" Cloudy*
President / KBA

Mediation & divorce

This letter is in response to the article "On the Mediation Line in the 1st District" in the January-February 1999 *Alaska Bar Rag*. Writing as an attorney with five years of family law practice experience (and 15 years of law practice in general), I am very skeptical about the concept and practice of mandatory mediation in divorce cases, which I see as a knee-jerk remedy for a complex process, similar to "welfare reform."

In my experience, people who are motivated to settle will do so, with or without the help of their lawyers or mediators. For those people, mediation can be very helpful. Most lawyers, including myself, include early settlement of divorce cases as an integral part of the litigation plan. In the right combination of circumstances, settlement can be accomplished. However, in the absence of that combination of circumstances, honest people can disagree about property, children and support, and only a judge can decide the dispute.

Other barriers to settlement may occur. Divorce litigants should not be labeled as "out of control" just because they need a judge to resolve their disputes — especially when the vague language used in the Alaska divorce statutes (or lack of language) requires judicial intervention on virtually every issue.

In my experience, these are the most common barriers to timely, fair and inexpensive resolution of divorce cases: (1) ambiguity and lack of "bright line" rules in Alaska divorce and dissolution statutes, case law, civil rules and pretrial orders; particularly the lack of rules to govern the interim between separation and trial; (2) use of expensive and time-consuming assistance of third parties such as custody investigators and guardians *ad litem;* (3) the Alaska Court System civil case process, where divorce cases have low priority; (4) burdensome (and often conflicting) paperwork requirements of pretrial orders and the civil rules that govern divorce cases; and (5) the reluctance of judges to make the hard decisions required in these cases — Judge Weeks' comments as reported in the *Bar Rag* are an example.

Other important factors in some cases: (1) a party's mental illness or personality disorder, and (2) the presence of antisocial "syndromes" (such as domestic violence), because lawyers and the court system are generally poorly equipped to handle either of these.

Instead of pursuing mandatory mediation as the panacea for all problems in divorce cases, or blaming parties or attorneys when divorce cases won't settle, legislators, lawyers and judges should be working to make the legal system more "user-friendly" to parties in divorces. After all, only the court system can dissolve this partnership. The way it works now, the legislature either won't take a stand (shared custody or not?), or leaves many decisions to the judges, who don't want to make them. That leaves the parties frustrated, waiting for ever longer periods to get on with their lives.

In addition, I would like to see the Alaska Court System practice case management as in federal district court. Rather than mandatory mediation, the Alaska Court System should have mandatory pretrial conferences, where the judge really acts as a leader in assisting the parties to narrow issues, and with discovery plans. Getting some direction from the judge in divorce cases, or any civil case, would be so much more helpful than putting another barrier in front of parties.

— *Kristine A. Schmidt*

Justice Roger Connor passes in Virginia

My father, Roger G. Connor, passed away July 4 after a two-year bout with cancer. He was living in Richmond Virginia at the time, to be near me and his 2 year old grandson, Daniel Roger Giorello.

A former president of the Alaska Bar Association, he was a justice on the Alaska Supreme Court from 1966-1983, and held previous legal positions in the state before that, along with a private practice in Juneau, where he grew up.

We are planning a memorial service for next summer in Anchorage or Juneau.

As per his wishes, my father was cremated and wants his ashes scattered in Sitka Sound.

—*Sibella Connor Giorello*

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Uniform laws wrap-up

One small step - but a lot of money

☐ Arthur H. Peterson

Recognizing the need to try to keep Alaska in the commercial main stream, our legislature passed and the governor signed HB 79, enacting the amendments to Uniform Commercial Code, Article 5 (letters of credit). It's now ch. 75, SLA 1999.

The bill is just an 18-pager, and was passed unanimously in both houses, with all members voting.

Nationally, as of 1989, use of letters of credit comprises a $200 billion-a-year industry. (I could not dig up a more current figure for this article, but it no doubt has increased astronomically in the past decade.)

So, one more product of the National Conference of Commissioners on Uniform State Laws (Uniform Laws Conference, for short) has become law in Alaska. Our state has been an active participant in the conference since 1912 and a major beneficiary of its work product, with something like 76 uniform laws enacted.

The conference's motto, "Diversity of Thought — Uniformity of Law," adopted at its centennial in 1992, signifies the national, philosophical, and legal diversity of the NCCUSL's membership and thinking, along with the desirability of uniformity among the states in certain areas of the law.

Here's a synopsis of recent uniform laws activity in Alaska:

LETTERS OF CREDIT

This bill, one of the two Uniform Act bills that inexplicably got stuck last year in the Senate Judiciary Committee, addresses numerous issues confronting the letter-of-credit industry.

The basic purpose of the revision is to update the law governing letters of credit. All 50 states and Puerto Rico, the U.S. Virgin Islands, and the District of Columbia have enacted Article 5. Ch. 75, SLA 1999 recognizes changes in technology and in commercial practices, so as to avoid litigation over the increasing number of issues that are no longer adequately dealt with in the decades-old original Article 5. As of last April 21, 40 states had already enacted this revision, and it was pending in four others (including Alaska).

One of its main features is the simplification of Article 5. Another is its express recognition of the Uniform Customs and Practices for Documentary Credits, a body of material that is used in connection with most international letters of credit. The revised article continues to provide rules that can be waived or modified by agreement between the parties.

As the NCCUSL points out, since the 1950's, when this article was originally promulgated (enacted in Alaska in 1962), "the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies."

"THE PRACTICES AND TECHNOLOGIES EMPLOYED WITH LETTERS OF CREDIT HAVE CHANGED SUBSTANTIALLY, INCLUDING THE USE OF ELECTRONIC AND COMPUTER TECHNOLOGY. LITIGATION HAS INCREASED AS THE VOLUME OF CREDITS AND THE UNCERTAINTIES OF THE LAW HAVE STIMULATED CONTROVERSIES."

The Alaska version tracks the national version very closely.

SECURED TRANSACTIONS

Toward the end of the session, Representative Lisa Murkowski introduced HB 239, a 134-page bill revising UCC Article 9, on secured transactions. The plan is for the House Labor and Commerce Committee to hold at least one hearing on it during the legislative interim.

This bill, too, is a product of the NCCUSL, promulgated in 1995. As its length suggests, the bill proposes a comprehensive revision.

It expands Article 9's scope to include deposit accounts as original collateral (except in consumer transactions), most sales of "payment intangibles," and certain receivables, liens, etc. It also expands on the duties of secured parties, expands the definition of "proceeds," re-defines "good faith" to include not only "honesty in fact" but also "the observance of reasonable commercial standards of fair dealing," and deals with perfection, priority, filing, default, and enforcement, along with other matters. The bill includes conforming amendments in other UCC articles.

UNIFORM PARTNERSHIP ACT

The NCCUSL's 1994 Uniform Partnership Act, with its 1996 amendments, is being considered by the legislature for introduction. Alaska still has the 1914 version, and it is time to update it.

The 1994 Act is a comprehensive revision. The 1996 amendments to the 1994 version include the NCCUSL's limited liability partnership provisions.

The major change that the 1994 revision provides is the shift from the "aggregate" concept of a partnership to the "entity" concept. It establishes the partnership as a separate legal entity, not merely an aggregate of partners.

The 1994 version also recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. It explicitly address the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. With the 1996 amendments, the Act provides limited liability for partners in a limited liability partnership.

In 1992, Alaska enacted the revision of the Uniform Limited Partnership Act (repealing the old AS 32.10 and enacting AS 32.11). In 1994, we enacted AS 10.50, on limited liability *companies*. And, in 1996, ch. 52, SLA 1996 enacted a set of amendments (primarily AS 32.05.405 — 32.05.760) on limited liability partnerships.

Only that third item, the 1996 enactment of limited liability partnership statutes, dealt with part of the subject of the bill that should be introduced next year. We need to retain the Uniform Act's provisions on limited liability partnerships in order to achieve the interstate benefits of the national version. Partnership activities do not rely on state boundaries.

"A VOTE OF THE STATES IS TAKEN BEFORE AN ACT BECOMES AN OFFICIAL PRODUCT OF THE NCCUSL."

UP FOR DEBATE AT ANNUAL MEETING

Without going into detail, I'll just mention the proposed Acts that will be up for discussion and debate at this year's annual NCCUSL meeting (Denver, July 23 – 30). The most controversial item is the proposed Uniform Computer Information Transactions Act (originally drafted as Article 2B of the UCC).

Also on the agenda, either for revision of a prior version or adoption of a new Act, and either for a discussion "reading" or final reading, are the Uniform Parentage Act (revising the 1973 version), Uniform Trust Act, Uniform Electronic Transactions Act, Uniform Arbitration Act (revising the 1956 version), UCC Article 2 (sales), UCC Article 2A (leases), Uniform Consumer Leases Act, Uniform Disclaimer of Property Interests Act, Uniform Money-Services Business Act, Uniform Mediation Act, and Uniform Rules of Evidence.

THE CONFERENCE AND ITS METHOD

The NCCUSL is a nonprofit, unincorporated association, comprised of some 300 commissioners who represent the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands. The commissioners are state and federal judges and justices, law professors, public and private law practitioners, and legislators who are lawyers.

The NCCUSL does not own the label "Uniform . . . Act." Nevertheless, the legal profession has properly come to assume that an Act bearing that label is a product of the NCCUSL – as are those discussed here.

In conjunction with the American Law Institute and the American Bar Association and various scholars and advisers, the NCCUSL does the research and drafting — *at least* a two-year process. It does this work by means of drafting committees that are a cross-section of the country's legal profession. Drafts, then, are subjected to the scrutiny of and debate by the full membership at the annual meetings. A vote of the states is taken before an Act becomes an official product of the NCCUSL. Enactment is then up to the states.

MORE DETAIL

As with my previous reports, this synopsis does not do justice to any of the Uniform Acts mentioned – neither the one that passed nor the others. And, of course, the 1999/2000 proposals in Alaska are just a small percentage of the product of the NCCUSL.

Anyone wanting to read either of the two Alaska bills should contact the nearest Legislative Information Office. Those wanting to see the official NCCUSL version, including the explanatory section-by-section commentary, could look it up in *Uniform Laws Annotated*. Those wanting their very own pamphlet copy of a Uniform Act, or an information packet, should contact: John M. McCabe, Legal Counsel & Legislative Director, NCCUSL, 211 E. Ontario Street, Suite 1300, Chicago, Illinois 60611.

When it doesn't pay to be a flexible parent

☐ Steve Pradell

Custodial parents in Alaska have in the past enjoyed the ability to allow a non-custodial parent additional visitation to see how the children would adjust to the extra time. In the past, custodial parents did not have to fear retaliation by the other parent for being flexible and allowing some additional visitation to occur. In *Gaston v. Gaston*, 954 P. 2d 572, 574 n. 4 (Alaska 1998) the Alaska Supreme Court provided what seemed to be the go ahead for parental flexibility without fear when it stated that "Alaska's family law encourages custodial parents to be flexible in experimenting with visitation schedules, and in most cases parents should feel free to end such experiments if they conclude that they are not working."

In order to reopen a custody proceeding, a moving party must first demonstrate at the outset that there has been a substantial change of circumstances. A hearing concerning the best interests of the child is allowed only after the movant has met this threshold showing. A reading of *Gaston* appeared to imply that the Court would not be inclined to allow a movant to have an evidentiary hearing solely because there has been a temporary modification of a visitation schedule.

However, a recently divided Alaska Supreme Court has pulled the rug out from under any protection offered in the *Gaston* case and has allowed a non-custodial spouse an evidentiary hearing to determine whether such a temporary change constitutes a substantial change of circumstances. In *Morino v. Swayman*, Opinion No. S-8331 (January 15, 1999) the trial court initially denied Mr. Morino's request for an evidentiary hearing, holding that Morino failed to show a change in circumstances, and denied his motion for reconsideration by emphasizing that an informal accommodation in visitation is not a change circumstance, because such a result would discourage custodial parents from allowing favorable deviations from visitation agreements. A divided Alaska Supreme Court concluded that the trial court should have held an evidentiary hearing on Mr. Morino's request, stating "at some point, informal or de facto modifications of custodial or visitation arrangements should be formalized". The court did not define this threshold, except to say that "experimental changes lasting only a few months should not qualify as a change in circumstances," whereas changes of a "lengthy duration, especially when they are such as to change child support payments when given de jure status should qualify."

Justice Fabe, joined by Justice Bryner, wrote a dissenting opinion, noting that "the *Gaston* decision clearly suggested that a minor visitation change of one day per week, in place for ten months, is *not* a substantial change of circumstances that would entitle a movant to a hearing." She stated her objection to the court's implication that changes lasting for more than "a few months" should automatically be considered of sufficient duration to trigger a modification hearing.

I must confess that I unsuccessfully defended my client, Mrs. Swayman, on appeal, and we are awaiting the evidentiary hearing ordered by the court. The Supreme Court appeal and the subsequent evidentiary hearing carry high emotional and financial costs to a family. The unfortunate result of the *Morino* case is that family law lawyers will be reluctant to advise their clients to be the "nice guy" and allow their children to try new arrangements for fear that litigation will rear its ugly head again as a result. Once the word gets out that temporary minor changes to visitation schedules could result in attempts to modify custody, a chilling effect may occur, as custodial parents realize that they are rewarded by rigidity, and not flexibility. The Alaska legislature's found, when codifying the change in circumstances doctrine that "it is in the best interests of a child to encourage parents to implement their own child care agreements outside of the court setting." Unfortunately, the *Morino* case takes a step in the opposite direction.

> . . . "IT IS IN THE BEST INTERESTS OF A CHILD TO ENCOURAGE PARENTS TO IMPLEMENT THEIR OWN CHILD CARE AGREEMENTS OUTSIDE OF THE COURT SETTING."

Steve's recent book, The Alaska Family Law Handbook, (1998) is available for family law attorneys to assist their clients in understanding domestic law issues.

ESTATE PLANNING CORNER

Life insurance trusts

Part I

☐ Steven T. O'Hara

In the income tax area, there is an exclusion from income for life insurance proceeds (IRC Sec. 101). No exclusion from the tax base exists for life insurance under the gift tax, the estate tax, or the generation-skipping tax.

As a result, if the ownership of life insurance is not carefully structured, as much as 55% of the life insurance proceeds could benefit the federal government in the form of estate tax (IRC Sec. 2001(c) and AS 43.31.011). If the family depending on the life insurance is in a generation-skipping tax situation, the life insurance could be subject to *an additional* 55% generation-skipping tax (IRC Sec. 2641). So the aggregate transfer taxes could deprive the family of the bulk of the life insurance proceeds.

OUR EXAMPLE HERE IS THE TYPICAL CASE WHERE THE CLIENT OWNS THE INSURANCE BEFORE LEARNING ABOUT ALL THE TRANSFER TAXES THAT WILL REDUCE THE NET PROCEEDS OF THE POLICY.

Consider a client who has decided to transfer the insurance he owns on his life to an irrevocable trust. The client's goal is to keep the life insurance proceeds out of his tax base for wealth-transfer tax purposes.

A technical rule that applies here is that the client must live three years and a day after transferring the insurance in order for the proceeds to be excluded from his gross estate for estate tax purposes (IRC Sec. 2035(a) and 2042). Thus it is better planning for the irrevocable trust to be established before the insurance is issued. Then the trust may apply for and own the insurance from the inception of the policy and avoid the three-year rule. Our example here is the typical case where the client owns the insurance before learning about all the transfer taxes that will reduce the net proceeds of the policy.

The client has decided against transferring the policy to his spouse because of the likelihood that the insurance proceeds would then be included in her gross estate, and thus subject to estate tax, at her death. The client has also decided against transferring the policy to his adult children because then his spouse would not have any beneficial interest in the policy's cash value or death benefit. Moreover, if a child predeceases the client, the policy could then be owned by the child's spouse, the child's minor children, or the client and his spouse as heirs, none of which may be intended or desirable. The bankruptcy or divorce of a child could also disrupt the client's plan for the life insurance.

PLANNING FOR THE LAPSE OF THE CRUMMEY POWER IS WHAT MAKES "CRUMMEY TRUSTS" VERY COMPLICATED.

Having settled on an irrevocable trust as the best owner of the insurance on his life, the client now needs to decide what type of irrevocable trust he wants to create and fund. There is no one type of irrevocable life insurance trust.

In selecting the type of irrevocable life insurance trust, the client must consider the funding that will be required. Not only will the client be transferring the insurance policy to the trust, but also he generally must transfer sufficient funds to enable the trust to pay future premiums on the policy.

The transfer of funds to the trust is often done on an annual basis. Alternatively, the client could make a large lump-sum transfer of funds when the trust is created. The client also could transfer other assets to the trust, besides insurance and cash, such as income-producing real estate or stock. The income produced from the real estate or stock could then be used to pay the premiums on the insurance policy.

Each transfer to the irrevocable life insurance trust is subject to gift-tax rules. Recall that the gift tax currently provides an exclusion from taxability for the first $10,000 given to any donee in any year. The gift-tax exclusion enables an individual to make annual gifts of up to $10,000 to each of any number of individuals, without any gift tax on the transfers. Beginning in 1999, this $10,000 amount will be adjusted for inflation (IRC Sec. 2503(b)).

But recall further that the gift-tax annual exclusion is available only for gifts of "present interest." The exclusion does not shelter gifts of "future interest" (*Id.*). As the name implies, a future interest is generally where enjoyment of the property is postponed and not currently available to the donee. With a future interest, the donee does not have an immediate and unrestricted right to the use and enjoyment of the property or its income.

The funding of an irrevocable life insurance trust may or may not qualify for part or all of the gift-tax annual exclusion. Gifts in trust are often future interests. The trustee is typically empowered with the discretion to withhold distributions until needed or until the beneficiary attains a certain age.

IRREVOCABLE LIFE INSURANCE TRUSTS ARE COMPLICATED, ESPECIALLY THOSE CONTAINING CRUMMEY POWERS.

A common way of rendering a gift made in trust a present interest is to give the trust beneficiary or beneficiaries a so-called Crummey power. The Crummey power is named after the case that affirms its effectiveness, *Crummey v. C.I.R.*, 397 F.2d 82 (9th Cir. 1968).

A Crummey power is a demand right with a limited life. For example, client transfers $10,000 to trustee to hold for the benefit of beneficiary, giving beneficiary the right to withdraw that $10,000 by written demand made to trustee within 30 days after the transfer. If beneficiary does not make the demand by that deadline, the Crummey power lapses and the property stays in trust.

Planning for the lapse of the Crummey power is what makes "Crummey trusts" very complicated. By allowing the Crummey power to lapse, the beneficiary may be deemed for tax purposes to have received the property and then, in effect, given it back to the trust. So the beneficiary may become the "transferor" of the property for income, gift, estate and generation-skipping transfer tax purposes (IRC Sec. 678(a)(2), 2511, 2514(e), 2033, 2041(b)(2), and 2652(a)). This subject will be discussed in the next issue of this column.

Another way to qualify transfers in trust for the gift-tax annual exclusion appears in the Internal Revenue Code under Section 2503(c), from which the name "Section 2503(c) trust" derives. If a transfer by gift is made to a Section 2503(c) trust, the transfer will be deemed to be a gift of a present interest.

To qualify as a Section 2503(c) trust, there can be only one current beneficiary. The trust beneficiary must be under 21 years of age on the date of the transfer. The trustee must have the discretion to distribute the trust income and principal to or for the beneficiary while the beneficiary is under age 21. To the extent not expended while the beneficiary is under age 21, trust principal and accumulated income must pass or be immediately available to the beneficiary when he or she reaches age 21. This requirement often stops clients from considering the Section 2503(c) trust any further, at least where the long-term ownership of life insurance is desired.

The foregoing is a brief summary of the gift-tax aspects of irrevocable life insurance trusts. The next issue of this column will discuss these trusts from a trust-law standpoint. Suffice it to say at this juncture that there are two categories of irrevocable life insurance trusts. One category is where the trust is a one-pot trust for many current beneficiaries, such as the client's spouse and descendants. The trusts under this category can be Crummey trusts, but not Section 2503(c) trusts. The other category is where there is one trust instrument, but the trust instrument contains a separate trust for each current beneficiary. Here the trusts may be Crummey trusts or Section 2503(c) trusts.

Irrevocable life insurance trusts are complicated, especially those containing Crummey powers. But they serve a valuable function of sheltering life insurance proceeds from wealth-transfer taxes.

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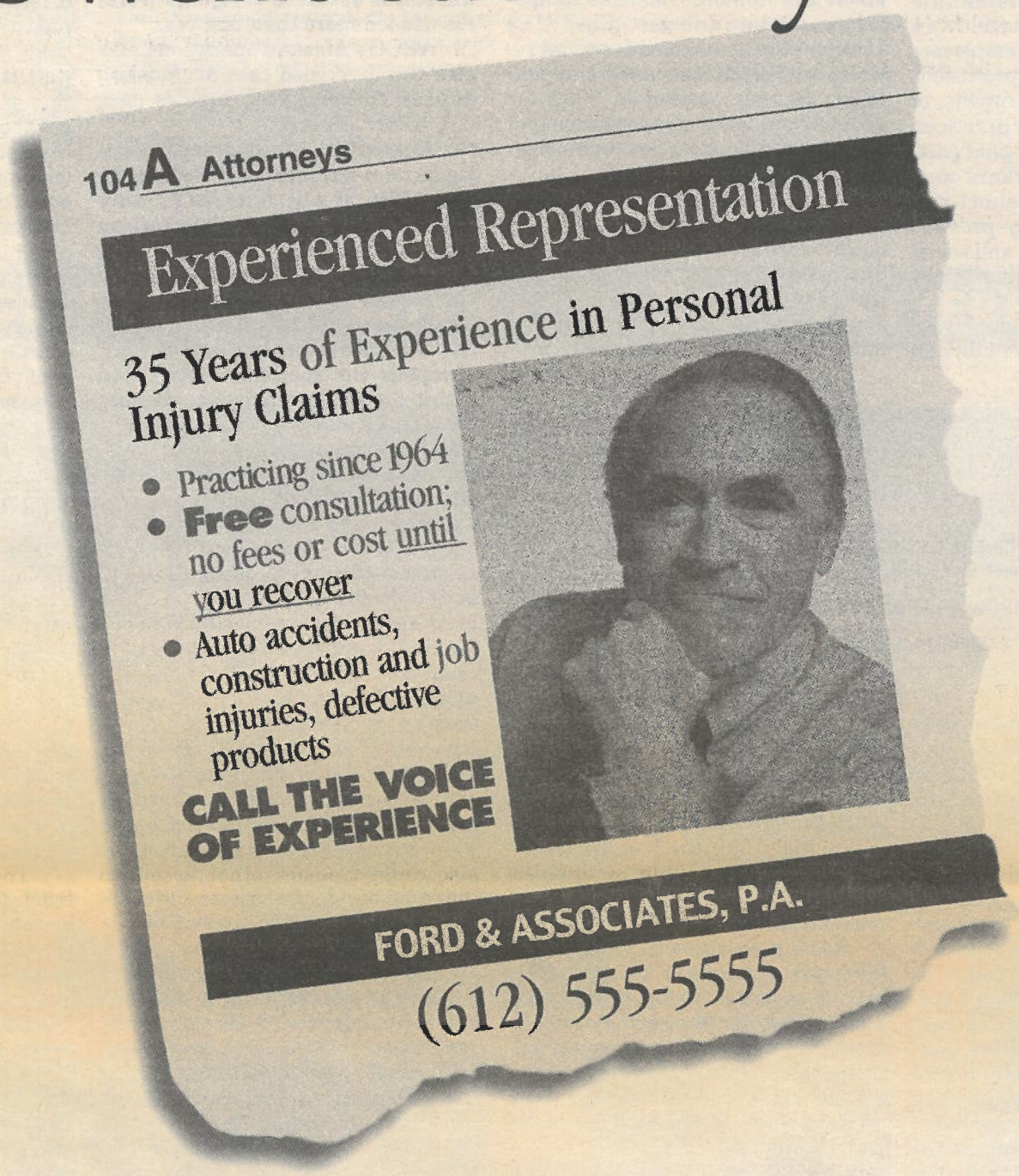

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WEST GROUP

Equal pay & benefits for temps & part-timers?

By Joe Sonneman[1]

Do part-time, temporary, contract, free-lance, substitute, "payrolled" and "permatemp" workers hold the same rights to pay and benefits as full-time permanent workers? The cases differ.

Employers do not always pay part-timers and temps the same hourly wages and benefits as full-time employees. Child labor, slavery, and low-wage Third-World employees each proved temporarily profitable, until laws, public feeling, unions, or other forces changed those practices. Today, increased use of low-paid part-time and temporary workers may similarly help improve short-run profits, but may similarly provoke tomorrow's legal, political, and social change. First, though, some terms need defining.

"Permatemp" refers to employees classified as "temporary" even though they actually work at regular jobs—perhaps for years, perhaps doing the same work as "regular" employees. Employers classify some workers as temporary, contract, or part-time perhaps to gain flexibility in workforce size and perhaps to save money. [One unconfirmed report said some employers even make their managers compete for the highest percentage of part-time workers].

TODAY, INCREASED USE OF LOW-PAID PART-TIME AND TEMPORARY WORKERS MAY SIMILARLY HELP IMPROVE SHORT-RUN PROFITS, BUT MAY SIMILARLY PROVOKE TOMORROW'S LEGAL, POLITICAL, AND SOCIAL CHANGE.

In "payrolling," a company may hire a worker and then force that worker to sign up with a payroll service or temp agency which then processes the employee's paycheck.[2] Sometimes a payrolling agency or staffing firm will be the alleged employer of an employee who in fact works for a single corporation, perhaps for years. This permanent relationship of supposedly temporary employees with a single employer-in-fact differs from that of a traditional temporary-employment service which sends the employee to different employers for short jobs. The payrolling agency or staffing firm may fill out employer paperwork and pay payroll taxes, but may have little contact and control of the employee and job performance.[3]

I adopt the term "permatemp" also for employees in payrolling agency relationships. I also use "PTC" here as a generic term for part-time, temporary, contract, substitute, freelance, payrolled and permatemp workers.

The UAW's "Solidarity" webpage (Sept. 1997)[4] reports that the U.S. Bureau of Labor Statistics [BLS] found that part-timers as a percentage of the workforce rose from the late 1960s until about 1975. The growth *rate* stayed flat since then, the UAW reports; if accurate, that report would mean the percentage continued to increase at a steady rate. The UAW called 23% of part-timers "involuntary," meaning workers really wanted full-time work.

The UAW also reported a BLS survey of 7 million part-timers at companies with at least 100 employees. That survey found that 50% of PTC workers got paid vacations, 44% got paid holidays, 37% earned retirement, only 19% received health insurance, and under 1% could participate in employee stock purchase plans.[5]

A Seattle law firm thinks PTC workers deserve equal pay and benefits for equal work. According to their website,[6] Bendick, Stobaugh and Strong, P.C., filed several such cases.

Seattle's "intermittent" employees brought a class action suit for pension, vacation, and other benefits, which Seattle settled in 1989 for about $10 million.[7] Seattle's temporary, substitute and part-time (PTC) Library employees sued for equal retirement, health insurance, and paid leave; Seattle settled in 1992 for about $2 million in compensation and benefits and "prospective regularization of the workforce."[8]

Thousands of long-term "temporary" King County employees sought equal career service protection, health insurance, vacation, and other leave benefits. The court in late 1997 approved a settlement of about $24 million in back pay, roughly $18 million in future benefits, and moved nearly 500 "temporaries" to jobs with full benefits while setting up procedures for future employee classifications.[9]

In 1995, King County's so-called "independent contractors" and "agency employees" sought both compensation to equalize their pay and benefits (health, pension, leave) with other employees and an injunction to stop future distinctions. In late May 1998, the County agreed to settle, but the court still needs to determine damages, remedies, and class membership.[10]

Some governments settled, but Microsoft apparently would rather fight than switch. Pension aspects of a case involving Microsoft's contract or permatemp employees might yet be appealed to the Supreme Court,[11] but the Ninth Circuit agreed with employees that Microsoft's "common-law employees" *may* participate in the company's stock purchase plan.[12]

Roughly 35% of Microsoft's Seattle-area employees work through employee agencies, but a Spring 1999 survey showed that more than 50% worked there more than one year, more than 33% more than two years, and nearly 60% "involuntary part-timers" wanted full-time permanent jobs instead. The Washington Alliance of Technology Workers took the survey and reports that most of the 500+ respondents want the right to choose their own contract agency, most think they earn less than regular employees doing the same work, and most want to know how much their agencies charge Microsoft for the employee's work.[13]

TWO CASES MAY HOLD PARTICULAR INTEREST FOR ALASKAN ATTORNEYS: ONE CONCERNS ARCO EMPLOYEES AND THE OTHER SEEKS EQUAL PAY FOR "PERMATEMP" ATTORNEYS, PARALEGALS, AND LEGAL SUPPORT STAFF.

Two cases may hold particular interest for Alaskan attorneys: one concerns ARCO employees and the other seeks equal pay for "permatemp" attorneys, paralegals, and legal support staff.

On June 24, 1999, nine Atlantic Richfield (ARCO) workers filed a class action lawsuit alleging misclassification of at least one thousand employees as "leased employees" or contractors. Plaintiff attorneys Bendick, Stobaugh and Strong [BSS] (Seattle) and Kalish, Cotugno & Rust (Los Angeles) filed in Los Angeles, but ARCO's operations extend into Alaska, too. A BSS press release reported that a 1994 ARCO Employment Classification Policy said the company should reconsider the status of leased or agency workers needed more than one year.[14]

ARCO's Alaskan operations may give this L.A.-filed case an Alaskan impact. Another Los Angeles case may affect lawyers.

Allegedly some attorneys, paralegals, and support staff working in the Office of Los Angeles County Counsel are paid through Auxiliary Legal Services, Inc. [ALS]. Plaintiffs claim ALS pays its employees lower rates than those who work directly for the County Counsel, even though the two types of employees may work alongside one another. So BSS filed a suit for ALS employees, alleging violations of equal protection, California law, and Los Angeles County Charter.[15]

. . . THOSE PROBLEMS MAY HAVE THEIR ROOT IN THE INCREASING NUMBERS OF WORKERS WHO MUST WORK TEMPORARY OR PART-TIME JOBS AT LOW WAGES WITHOUT PENSION, HEALTH CARE, AND OTHER BENEFITS.

Lawsuits usually have at least two sides. The L.A. County Counsel's Office said they've contracted the defense of this case to Bergman & Wedner's Mark Kitabayashi in nearby Beverly Hills. Kitabayashi was in deposition Friday, in a meeting Monday. A legal representative of Microsoft gave some background for this report. ARCO's Dawn Patience (in Anchorage) presented ARCO's three main points:

First, no plaintiffs were ARCO employees; instead, they voluntarily became employees of oilfield service companies—which companies have responsibility for personnel decisions and "alternate supervision and control." Second, unlike the *Microsoft* case [where the IRS reclassified some of the the employer's pre-1990 individual contractors as employees—JS], ARCO contracted with companies, not with individuals. Finally, ARCO has confidence in its benefit plans and thinks this case similar to other cases[16] in which, Patience said, courts found for the company.

The part-time and temporary work phenomenon is global, not just local. While 18% of North Americans are thought to work part-time, the International Labor Organization [ILO] reports recent increases in part-time and temporary employment in Argentina, Brazil, Mexico, and Chile.[17]

Market liberalization parallels and perhaps causes the replacement of full-time workers with temporary and part-time workers. Daniel Martinez, a regional ILO consultant, said "employers think it is a good deal to hire part-time workers." Estaban Hinostroza, manager of a Lima business consultancy, notes that employers like part-time workers in part because "they reduce labor costs through low salaries and minimal benefits," but he cautions that using part-timers may lower productivity as well. He adds that "part-time workers enjoy practically none of the benefits given to full-time employees."[18]

At least in Latin America, more women than men work part-time, suggesting that lower wages and lower benefits for part-time employment may have a gender-based difference. In Latin America, women part-timers tend to get paid more than male part-timers, but women part-time workers hold rights neither to maternity leave nor to prenatal or post-operative medical care. Still, some unemployed workers prefer part-time income to none at all, even if temporary work is menial, low-paid, and erodes widely recognized labor rights.[19]

Nations—including the United States—experience difficulties with aging populations, seniors with inadequate retirement incomes, and expensive but inefficient health care systems. Those problems may have their root in the increasing numbers of workers who must work temporary or part-time jobs at low wages without pension, health care, and other benefits.

Courts and case law provide only partial answers to this growing problem. New national labor laws mandating equality of pay and pro-rata benefits of part-time temps and full-time regular employees could do much more than court cases can to end hidden gender discrimination, to promote equal pay for equal work, and to solve health care, pension, and senior problems.

[1]Joe Sonneman operates Alaska Legal Research; as the Democratic candidate for U.S. Senate in 1998, he urged equal pay and benefits for part-timers and temps.

[2]www.washtech.org/roundup/courts/ruling_071698.html

[3]See webpage of Bendich, Stobaugh & Strong: http://www.bs-s.com/perm.htm

[4]http://uaw.com/solidarity/9706/06_1.html

[5]Id.

[6]www.bs-s.com/prev.htm

[7]Scannell v. City of Seattle, 97 Wn.2d 701 (WA 1982). Ihere start the convention of using two-letter postal abbreviations to refer to states, for example, WA instead of Wash.

[8]Hughes v. City of Seattle, 90-2-23160-7 (King County Sup. Ct.).

[9]Logan v. King County, 92-2-20233-3 SEA (King County Sup. Ct.).

[10]Clark v. King County, 95-2-29890-7 (King County Sup. Ct.). This case, and those preceding it, are summarized at www.bs-s.com/prev.htm.

[11]Vizcaino v. Microsoft, 97 F.3d 1187 (9th Cir. 1996) (Vizcaino I), modified, 120 F.3d 1006 (9th Cir. 1997) (en banc) (Vizcaino II), cert.den. 118 S.Ct. 899 (1998).

[12]Federal District Court Judge Dimmick in July 1998 removed some employees from Vizcaino v. Microsoft. The removed employees also sued, in Hughes v. Microsoft. Both cases allegedly concern "common-law" Microsoft employees variously termed temporary, freelance, independent contractors, or employees of staffing firms. www.bs-s.com/msoft.htm

[13]www.washtech.org/roundup/contract/ms_survey.summary.html :"More than 500 Microsoft Contractors Respond to WashTech Survey" (March 23, 1999)

[14]www.bs-s.com/inspressj.htm

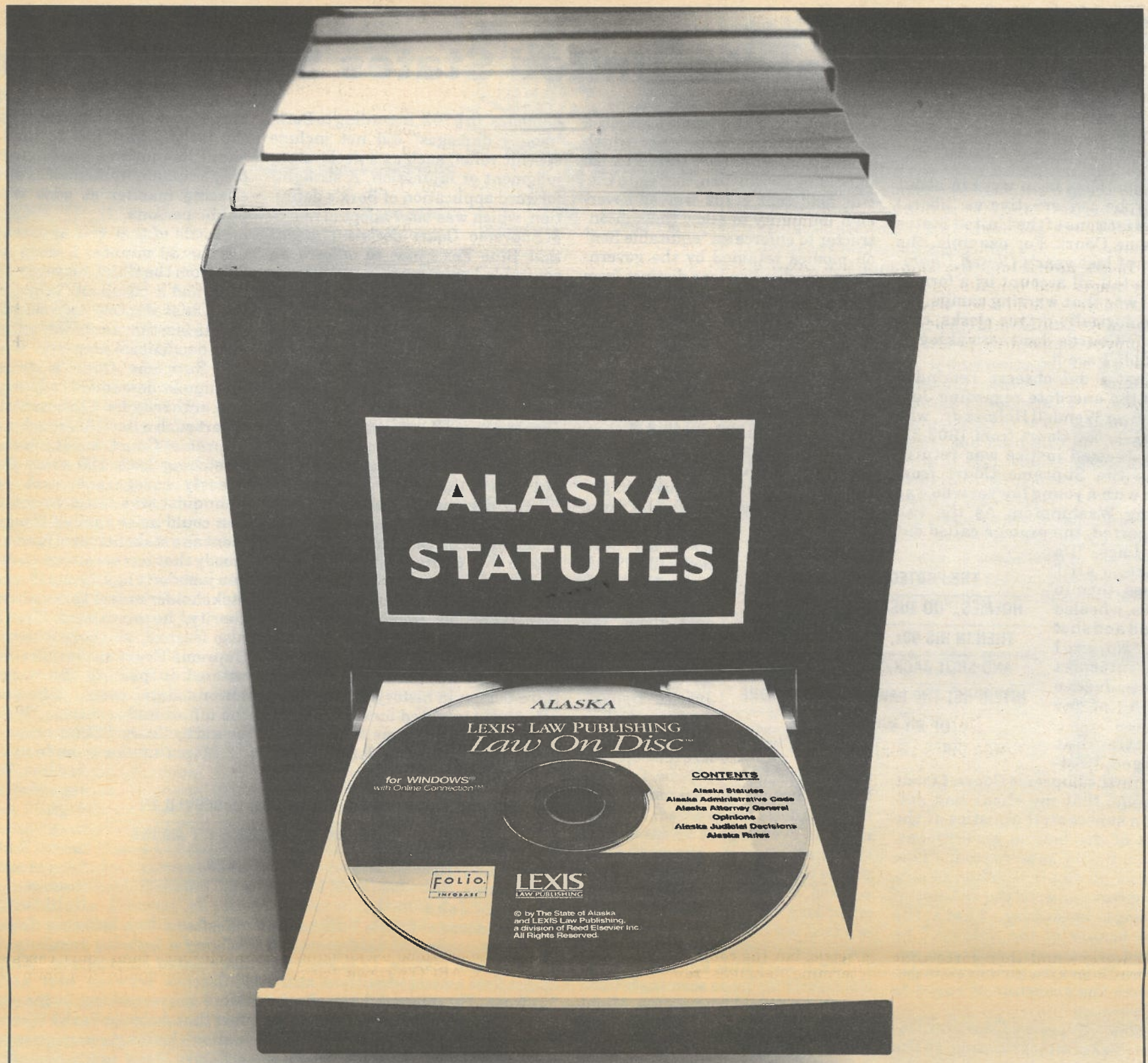
[15]Shiell v. Los Angeles County. www.bs-s.com/lacc.htm BSS also filed another case, Hall v. Los Angeles County, alleging that the County assigned most of its female attorneys to the lower-paid, lower-benefit ALS jobs.

[16]Capital Cities, ABC, Exxon, Mountain States Telephone & Telegraph, Southwestern Bell, according to Patience.

[17]www.tbwt.com/articles/lamer/latan10.htm (Aug. 26, Lima, IPS)

[18]Id.

[19]Id.



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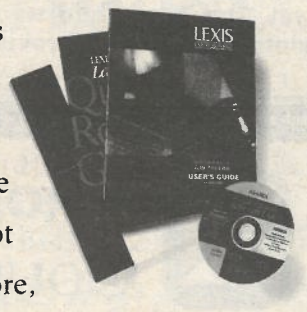

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Appeal from the 9th Circuit:

A lawyer's day at the United States Supreme Court

BY THOMAS F. SPAULDING

Much has been written about the conservative vs. liberal factions of the United States Supreme Court. For example, the thesis of last year's *Closed Chambers* (a tell-all account by a former clerk) was that warring camps, led by ideologically-driven clerks, control the Court's decisionmaking.

I didn't see it.

What I did observe reminded me of the anecdote regarding Justice Oliver Wendell Holmes Jr., who served on the Court from 1902-32. The esteemed justice was returning to the Supreme Court from lunch with a young lawyer who was visiting Washington. As the two men parted, the protege called out to Holmes, "Do justice, sir." Holmes, then in his 90s, wheeled around and shot back, "No, sir. I shall interpret the law. Justice is none of my business."

. . . THE PROTEGE CALLED OUT TO HOLMES, "DO JUSTICE, SIR." HOLMES, THEN IN HIS 90s, WHEELED AROUND AND SHOT BACK, "NO, SIR. I SHALL INTERPRET THE LAW. JUSTICE IS NONE OF MY BUSINESS."

Little has changed. Addressing the Supreme Court, I made the point that my client had suffered a substantial injustice at the hands of the federal government. Justice Scalia interrupted: "This happens all the time when people are confronted with the defense of sovereign immunity. That's the whole beauty of the defense," he intoned to amused courtroom observers. "*It lets the government get off when the government ought to pay.*"

Today's Supreme Court continues to make interpretation of the law paramount. In my ease, the law to be interpreted was the 1976 amendment to the Administrative Procedure Act, 5 USC 702. That statute waives the federal government's sovereign immunity whenever a claimant seeks relief "other than money damages."

A year earlier, the Ninth Circuit had upheld my client's suit against the Army. *Blue Fox Inc. v. Small Business Admin.,* 121 F.3d 1357 (1997). Blue Fox, a subcontractor on a federal construction project, had notified the Army that the prime contractor was not paying it. Nevertheless, the Army continued paying the defaulting prime. Worse yet, the Army had wrongfully deleted a contract provision requiring that the prime furnish a bond under the Miller Act which would have protected Blue Fox. In upholding jurisdiction, the Ninth Circuit held that § 702 waived sovereign immunity to allow the subcontractor to enforce an "equitable lien" on monies retained by the government. Such a lien was distinct from "money damages," the Ninth Circuit concluded, and fell within the § 702 waiver. Although suits by subcontractors against the government traditionally have been barred by sovereign immunity, the Ninth Circuit stated that the enactment of the 1976 amendment to § 702 changed all that.

Calling this decision "unprecedented," the Army sought further review. Ordinarily, a request for Supreme Court review might not cause undue concern. From thousands of *certiorari* petitions filed each year, the high Court selects only about 120 cases. However, when the Solicitor General (the Justice Department Office which argues before the Supreme Court) petitions on behalf of the United States, approximately 70% of its requests are granted. That average is even higher in cases from the Ninth Circuit, where the Supreme Court has had a propensity to reverse. It thus was only somewhat surprising to learn that the Court selected my case to be heard during the October 1998 term.

What were Blue Fox's chances at the Court? My issue seemingly transcended political boundaries. Might conservatives on the Court side with a small business whose rights were infringed by the government? Or would the Court be more interested in curbing a perceived judicial excess by the Ninth Circuit?

Support (of the non-financial variety) came from such diverse quarters as Ralph Nader and Judge Robert Bork. Nader founded the Public Citizen Litigation Group, a public interest law firm devoted to advancing progressive causes. Reasoning that an expansive interpretation of § 702 would facilitate citizen suits against the government, Public Citizen offered the services of its Supreme Court specialists in reviewing briefs and preparing for oral argument. Judge Bork, while on the D.C. Circuit, had written an influential opinion defining the term "money damages" in § 702. According to Bork, "money damages" did not include specific relief, such as a declaratory judgment or injunction. A straightforward application of Bork's definition, which was later adopted in a 6-3 Supreme Court decision, meant that Blue Fox's suit to enforce an equitable lien was *not* a request for money damages, and that sovereign immunity had been waived.

After completing the briefing, but prior to oral argument, I traveled to Washington to observe the Court in session A large number of special seats, located immediately behind arguing counsel, are reserved for in members of the Supreme Court bar, giving attorney observers a birds-eye view of the action.

The arguments I observed over two days ranged from excellent to disappointing. One impressive advocate was Georgetown law professor David Cole, representing clients singled-out for deportation for their political beliefs. *(Reno v. American-Arab Anti-Discrimination Committee).* In one exchange, Cole mentioned that his client was but the third person in history to have been selectively targeted for deportation. Justice Ginsburg (true to her reputation as a stickler for detail) asked: "Who were the other two?" Without missing a beat, Cole furnished the names and circumstances, including "John Lennon, former Beatle." Although the issue concerned interpretation of an arcane statute, Cole kept the larger first amendment issue at the forefront. He compared his clients' situation to a hypothetical IRS audit of the *Washington Post* as a reprisal for running a pro-Republican editorial. Exhibiting a marked regret, Justice Scalia chimed in: "No sir, the *Washington Post* can't be deported."

SURPRISINGLY, I OBSERVED AN APPARENT COLLEGIALITY AMONG THE JUSTICES.

Surprisingly, I observed an apparent collegiality among the Justices. Justices Breyer and Thomas, sitting to the far right, frequently shared a humorous thought. Justices Souter and Scalia, sitting to the left, also conversed comfortably. This came as somewhat of a surprise since I recalled that Justice Souter was the recipient of one of the most vitriolic of Justice Scalia's famed dissents.

This past summer, I by chance came across a C-SPAN interview with Chief Justice Rehnquist from 6 years ago. I reached for the "record" button as interviewer Brian Lamb began to ask about oral argument. "Does it make a difference?" "Yes," the Chief replied, "in a substantial minority of cases."

"Can you tell if a lawyer is nervous?" asked Lamb. "They're all nervous," he replied, likening the process to an athletic contest. Rehnquist added that he himself had once argued before the Supreme Court while a Justice Department attorney, admitting that he was "bathed in sweat" when the ordeal was over. Throughout the discussion, Rehnquist showed empathy for the lawyers appearing at the Court. Each justice must find his or her own level of comfort in deciding how far to push a lawyer, he said, observing that the process was inherently unequal. Basically, he said, the lawyer "just has to take it." I found Rehnquist's interview to display a humor, humaneness and self-effacing manner at odds with his public persona.

I FOUND REHNQUIST'S INTERVIEW TO DISPLAY A HUMOR, HUMANENESS AND SELF-EFFACING MANNER AT ODDS WITH HIS PUBLIC PERSONA.

Little of that was apparent during the 30 minutes I stood just 10 feet from the Chief, however. In fact, I learned a bit about "taking it," as the Chief Justice expressed deep skepticism that a subcontractor could ever lien federal property. Where in the Supreme Court's decisions, Rehnquist demanded to know, did I find authority for a subcontractor to assert such a lien? Although a line of Supreme Court suretyship cases stretching back 100 years had expressly recognized such rights, Rehnquist was unconvinced that a lien could arise against the government as a stakeholder of funds: "With a body that has sovereign immunity, you just don't lightly say they were a stakeholder unless there is some authority," he proclaimed. The Chief, I also learned, was only interested in Supreme Court authorities. When I uttered in passing the name of a lower federal court, Rehnquist cut me off in mid-sentence: "We're not bound by Court of Claims cases here."

More thunder came from Justice Scalia. Widely regarded as the high court's toughest questioner, Scalia has been known to come out of left field with his questions. In a business dispute involving a brewing company, Scalia once asked an attorney: "What's the difference between beer and ale?" More nerve-racking to me was the fact that Antonin Scalia is one of the nation's leading sovereign immunity scholars. Prior to his ascendance to the bench, Scalia published numerous articles, mostly concerning administrative law. However, his most comprehensive work was a thorough analysis of federal sovereign immunity law, contained in a 70-page law review article written while a law professor at the University of Virginia.

Justice Scalia also has personal familiarity with the statute in question. As an Assistant Attorney General, Scalia himself had written a portion of the legislative history to the 1976 amendment, the very statute at issue my case. No one seemingly had a better understanding of what the statute was intended to mean.

But Justice Scalia *hates* legislative history. So much so that he recently authored a book entitled *A Matter of Interpretation,* the theme of which is that legislative history has no place in statutory construction. Every Supreme Court practitioner knows *never* to quote legislative history to Justice Scalia. Might he make an exception for legislative history from his own hand?

As it tuned out, my legislative history worries were for naught. Justice Scalia had more immediate concerns. He believed that no money existed on which to place a lien (since the government continued paying the defaulting prime contractor, thus dis-

Continued on page 11

Supreme Court revises CLE rule

Continued from page 1

Check the Bar website at *www.alaskabar.org* for a copy of the court's revised proposal or call the Bar office for a copy at 272-7469. (A copy of the rules also is included in this issue of the *Bar Rag*.)

The Board of Governors will be meeting August 19 & 20 in Anchorage, and will review the proposal at that meeting. Members are encouraged to submit comments to the Board before that meeting. Comments may be submitted to

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The proposed Supreme Court rule follows.

■

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(a) In order to promote competence and professionalism in members of the Association, the Alaska Supreme Court and the Association encourage all members to engage in Continuing Legal Education (CLE). This rule is intended to set minimum standards for Continuing Legal Education.

(b) Every active member of the Alaska Bar Association should complete at least 12 credit hours of approved CLE, including 1 credit hour of ethics CLE, each year.

Commentary: The Alaska Supreme Court and the Association are convinced that CLE contributes to lawyer competence and benefits the public and the profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. But the Supreme Court is not convinced that a mandatory rule is necessary and believes that a CLE program can become successful by using incentives to encourage voluntary participation in CLE rather than sanctions to penalize non-compliance with a mandatory rule. Accordingly, the Supreme Court and the Association have adopted this rule as a three-year pilot project. At the end of this pilot project, the Supreme Court will assess the project's results, including recommendations and statistics provided by the Association, and will determine whether a sanction-based mandatory CLE program is necessary.

(c) At the end of each year, each member will certify on a form, prescribed by the CLE Director and distributed with the invoice for bar dues, the member's approved CLE hours earned during the preceding year. The Board of Governors will appoint a person to be CLE Director of the Alaska Bar Association who will serve at the pleasure of the Board. The CLE Director will supervise the CLE program and perform the duties and responsibilities contained in these rules.

(d) Members who comply with this rule by completing the minimum recommended hours of approved CLE provided in section (b) of this rule will receive a reduction in their bar dues, in an amount to be determined each year by the Board. Only members who complete the minimum recommended hours of approved CLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service. If a member does not comply with this rule by completing the minimum recommended hours of approved CLE, that fact may be taken into account in any Bar disciplinary matter relating to the requirements of Alaska Rule of Professional Conduct 1.1. The Association shall publish annually, and make available to members of the public, a list of attorneys who have complied with this rule's minimum recommended hours of approved CLE. The Association may devise other incentives to encourage compliance with this rule.

Commentary: This rule contemplates a modest reduction in bar dues, to be determined annually at the Board's discretion, that will serve as an incentive for members who have voluntarily complied with the CLE standard; the reduction is not intended as reimbursement for CLE costs actually incurred by members.

(e) A member may file a written request for an extension of time for compliance with this rule. A request for extension shall be reviewed and determined by the CLE Director. A member who is granted an extension and completes the minimum CLE requirements after the end of the reporting period is not entitled to the discount on bar dues.

(f) The CLE requirement of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. The following activities may be considered for credit when they meet the conditions set forth in this rule:

i) Preparing for and teaching approved CLE courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

ii) Studying audio or video tapes or technology-delivered approved CLE courses;

iii) Writing published legal texts or articles in law reviews or specialized professional journals;

iv) Attendance at substantive Section or Inn of Court meetings;

v) Participation as a faculty member in Youth Court;

vi) Attendance at approved in-house continuing legal education courses;

vii) Attendance at approved continuing judicial education courses;

viii) Attendance at approved continuing legal education courses.

(g) The CLE director shall approve or disapprove all education activities for credit. CLE activities sponsored by the Association are deemed approved. Forms for approval may be submitted electronically.

i) An entity or association must apply to the Board for accreditation as a CLE provider. Accreditation shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Board.

ii) The Board shall establish by regulation the procedures, minimum standards, and any fees for accreditation of providers, in-house continuing legal education courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(h) This rule will be effective October 15, 1999. The reporting period will be the calendar year, from January 1st to December 31st, and the first calendar year to be reported will be the year 2000. Any CLE credits earned from October 15, 1999 to December 31, 1999 may be held over and applied to the reporting period for the year 2000.

A lawyer's day at the United States Supreme Court

Continued from page 10

sipating the money). "Where does this liened fund exist?," he asked. Having anticipated the question, I began my carefully prepared answer. Scalia pressed me that there was nothing left to lien. I had been warned to *never* interrupt a justice; *always* stop talking when a justice is addressing you. But as I answered this series of questions, I noted that Justice Scalia "speaks" through expressions, as well as words. "Don't even think about going to that line of reasoning" his glance told me. But his voice was silent, so I continued my response. A roll of the eyes and reddening of the face all but said: "It pains me beyond words to even imagine what I'm going to hear from you next." Still, no words. As I continued, the intensity of expression escalated: a frank facial realization that the horror of horrors was at hand: this lawyer was repeating an argument from his brief with which the justice disagreed. "No" he bellowed, "It is not. It's -- I mean no."

Justice Souter quickly changed the tone. In contrast to Scalia's staccato-like bursts Souter's practice is to provide a slow and reasoned exposition of the issue as it stands in his mind. His careful elaboration provided welcome break from the preceding fireworks. Indeed, I took comfort that the countless re-writes of my brief had paid off: Souter obviously understood my theory and argument.

But I was far from off the hook, as Justice Ginsburg awaited. Although she had earlier complemented my "artful pleading," Justice Ginsburg was about to ensnare me with her legendary fascination with detail.

A valuable source in preparing for argument was the *Almanac of the Federal Judiciary,* which collects information about the justices from articles, speeches, cases and interviews. Most observers commented on Justice Ginsburg's concern with detail and procedure. One attorney went so far as to describe her as "picky, demanding, academic and schoolmarmish." I saw what she meant when Justice Ginsburg asked me to recite a detail from the contract between the Army and the prime contractor: "How would you find out if this was typed a construction contract or a service contract'?" she asked. Since the question reflected an apparent misapprehension on Justice Ginsburg's part, I pointed out that a Miller Act bond was required, no matter how the contract had been classified by the contracting agency. Justice Ginsburg stopped me in my tracks. In her slow and deliberate manner, she stated: "I'm asking you a question:" "How would I find that out if I wanted just that information?" I quickly furnished the detail and the questioning moved on.

THE QUESTIONING HAD BEEN SHARP AND PERSISTENT.

It was now Justice Breyer's turn. The *Almanac* warns: "Get ready for Breyer's deceptively tricky, summing-up sort of question at the end of your half hour. 'Here is what I hear you saying. Let me know if I've got it wrong.'" True to form, late in my argument, Justice Breyer began to "sum-up" my case. Displaying a playful skepticism, Breyer's comments (like Souter's earlier) reflected a perfect understanding of the nature of my legal theory. Frequently smiling, Breyer plays the law professor he once was, having great fun in the process.

Before I knew it, the red light on the lectern had illuminated, and Chief Justice Rehnquist was saying "Thank you Mr. Spaulding." The questioning had been sharp and persistent. Every justice (except Stevens and Thomas) had asked something. Although the justices as a whole appeared skeptical of my case, I took solace from the fact that both Souter and Breyer clearly understood my legal argument.

Alas, the result was disappointing. In an opinion by Chief Justice Rehnquist, the Court held that sovereign immunity prevented Blue Fox's suit for an equitable lien, which constitutes a request for "money damages" within § 702's meaning. *Dep't of the Anny v. Blue Fox, Inc.,* 119 S.Ct. 687 (1999).

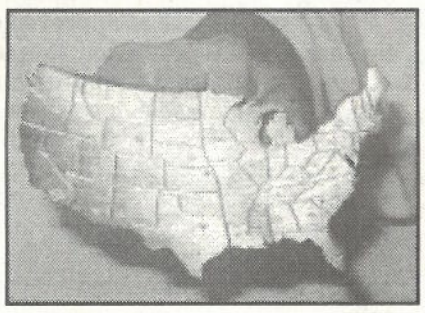
Was the experience worth all I had been through? The countless hours of uncompensated time, the lost time from my practice, the Thanksgiving "vacation" spent in the law library, the sleepless nights awaiting oral argument?

I'd jump at the chance to do it again.

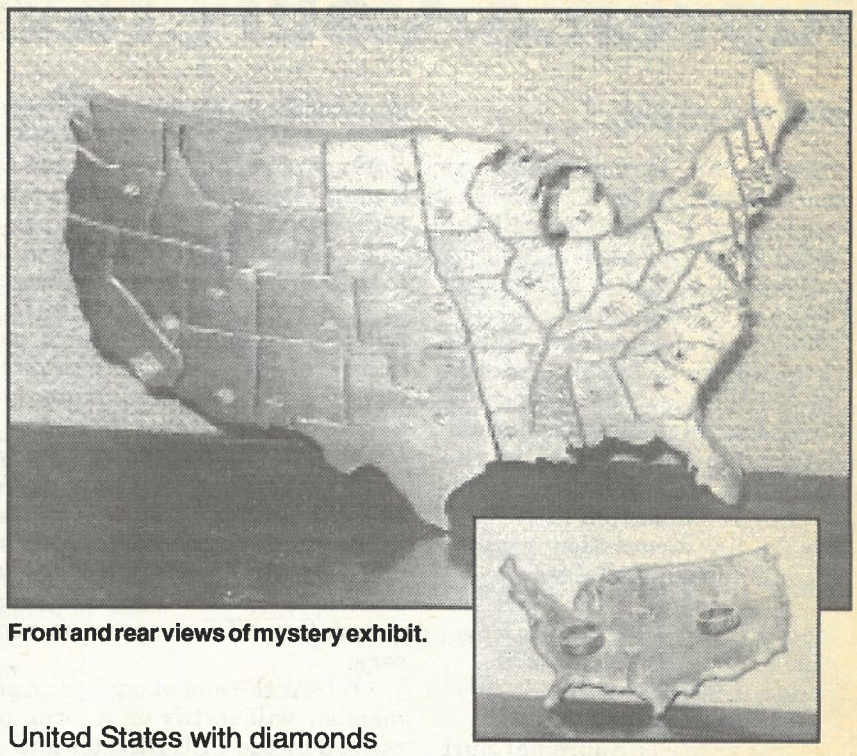
The author is a Portland, OR. attorney.

Solve the mystery: COURT SYSTEM NEEDS YOUR HELP

Is it a pipeliner's or miner's piece of memorabilia for all the fields he's worked? A hit man's commemoration of victims' locations? A gang member's map of local chapters? A self-defense tool for a traveling salesman? An expensive bauble won in a poker game? A reminder of all the girls he's loved before? Why is the California diamond in the gold map of the Lower 48 bigger than all the rest? Why are there many diamonds in Louisiana? What's the significance of the two holes with no diamonds yet mounted in them? How did this piece of "knuckle jewelry" end up at the Nesbett Courthouse's evidence vault, and when? What's the story behind this mysterious exhibit without a home?



The Court System is seeking your help in trying to identify the case that may be connected to this unidentified exhibit. The description of the exhibit is "a gold knuckle plate in the shape of the Continental United States with diamonds mounted in various states." This piece of evidence was discovered in the Anchorage evidence vault with no associated case number.



Front and rear views of mystery exhibit.

If anyone has an idea of a case which might possibly be associated with this piece of evidence, please contact: Jo Hall, Records Supervisor, Anchorage Trial Courts, 825 W. Fourth Avenue, Anchorage, AK 99501. (907) 264-0490

1999 CLE CALENDAR

(NV) denotes No Video

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#32 August 4 2 CLE Credits 4:30 - 6:30 p.m.	Off the Record with the 9th Circuit Court of Appeals	Museum of History & Art Anchorage	US District Court	
#88 September 16 3.0 CLE Credits 1:30 - 4:45 p.m.	Mandatory Ethics: A Basic Program for New Lawyers in Alaska	Hotel Captain Cook Anchorage		
#88 September 17 3.0 CLE Credits 9:00 a.m. - 12:15 p.m.	Mandatory Ethics: A Basic Program for New Lawyers in Alaska (NV)	Westmark Hotel Fairbanks		
#88 September 24 3.0 CLE Credits 9:00 a.m. - 12:15 p.m.	Mandatory Ethics: A Basic Program for New Lawyers in Alaska (NV)	Centennial Hall Juneau		
#58 September 27 3.5 CLE Credits 8 a.m. - 12 noon	Wisdom in Sentencing	Hotel Captain Cook	Anchorage Bar Assn. and Anchorage Downtown Partnership	
#25 October 7 CLE Credits TBA Half Day	6th Annual Workers' Comp Update	Hotel Captain Cook Anchorage		Employment Law
#19 October 14 6.5 CLE Credits 8:30 a.m. - 5 p.m.	2n Annual Intellectual Property CLE The Legal Side of Doing Business on the Internet	Hotel Captain Cook Anchorage		Intellectual Property
#04 October 20 CLE Credits TBA 8:30 a.m. - 5 p.m.	12th Annual Alaska Native Law Conference	Hotel Captain Cook Anchorage		Alaska Native Law Section
#10 November 4 CLE Credits TBA 8:30 a.m. - 12 noon	Technology in the Courtroom Part 2		US District Court	
#12 December 10 2.0 CLE Credits Morning	Off the Record - Third Judicial District	Hotel Captain Cook Anchorage	Anchorage Bar Association	G:\CLE\STANDARD\CALENDAR\clecal99.doc

Articles Welcome: Guidelines

- ▲ Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- ▲ E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- ▲ E-mail attachments & disks: Use 8.3 descriptive filenames (such as author's name). May be in Word Perfect or Word.
- ▲ Fax: 14-point type preferred, followed by hard copy or disk.
- ▲ Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
- ▲ Editors reserve the option to edit copy for length, clarity, taste and libel.
- ▲ Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.

FINDING AND CHOOSING LAWYERS

Greenfield Belser ltd and Market Intelligence

Expertise and cost remain top criteria, but firm reputation plays a deciding role.

Corporate counsel named these factors most important in their search for law firms.

At start of search
1 Expertise
2 Cost/Value
3 Lawyer Reputation
4 Innovative Thinking

In final selection
1 Expertise
2 Cost/Value
3 Personal Chemistry
4 Firm Reputation

Legal leaders to discuss future of profession

Second ABA Seize the Future Conference to Focus on Changing Legal Profession

Battles are brewing over changing the way American lawyers will conduct business in the next century. Rules that prevent law, accounting and consulting firms from mingling their businesses are being challenged.

Stiff competition, demands of the global economy and fast-paced technologies are requiring new approaches to business strategies and law firm management to better serve clients around the world.

To address these challenges to the law firm of the future, the American Bar Association will bring together leaders of the legal profession for the second Seize the Future conference, to be held Nov. 4-6 at the Arizona Biltmore in Phoenix. The conference, sponsored by the ABA Law Practice Management Section and Lotus Development Corp., will provide an interactive forum for leaders of the community to understand the future of their profession, sort through the impact of current developments and trends, and develop the tools to move into the 21st century.

Speakers scheduled for Seize the Future include:

* Tom Peters, best-selling author of "In Search of Excellence," "A Passion for Excellence," "Thriving on Chaos," "Liberation Management," and most recently, "The Circle of Innovation" will keynote the conference.* Dr. Gary Hamel, chairman of Strategos and author of "Competing for the Future," will talk about the creation of new rules, new businesses, and new industries that will define the industrial landscape of the future.
* Roberta Katz, CEO of Technology Network, and author of "Justice Matters," will discuss the system of justice in the 21st century.
* John Landry, strategic technology consultant for IBM; Melinda Brown, vice president and general counsel for Lotus Development Corp., and Seth Earley, president of Earley & Associates, Inc., will focus on the increasing importance of technology to enhance business activities.
* Barry Melancon, president of the American Institute of Certified Public Accountants, will discuss the Visioning 2000 project the AICPA created to chart the future of the accounting profession. He'll also provide his perspective on the controversy surrounding the legal profession and incursion by accounting firms and other professional service providers.Additional information on Seize the Future is available online at www.futurelaw.com or by calling 800/871-0993. (www.abanet.org/lpm).

Why we practice law in Alaska

Demand for demonstration of authority to practice law in Alaska

Enclosed is a "Demand" filed with the City of Wasilla Clerk's Office. I thought it would be an interesting and amusing piece under the topic of "Are You Republican Enough to be a Public Official in Alaska?" or "Why We Practice Law in Alaska."

— Kenneth W. Legacki

It has come to my express attention that the City of Wasilla's Attorney at Law is wholly incompetent, and is engaged in the practice of law without the qualifications set forth and mandated by the Legislature of the State of Alaska. I, David Clair Bartels, hereby *EXPRESSLY DEMAND* from Ken Jacobus, (true name unknown) purported Attorney at Law;

1. An express demonstration under Public Seal of an exact copy of your original Professional (occupational) License to practice Law in Alaska, issued by "the state", certified as true, correct, complete & not misleading, in compliance with the mandates set forth in Sections 4,9, 10, 12, and 13, of ch 196 SLA 1955, as good faith, in an effort against intrusion of legally incompetent Attorneys, and proving the initial steps towards worthy legal advice is being administered unto the People and City of Wasilla, through the lawful authority of "the state" to practice the Law of Alaska, in the *de jure* Courts of Alaska.

2. Also demonstrate under Public Seal an exact copy of the original of your "court issued" license of "this State" to practice law in the private Bar member courts, which still "must" emanate and be issued from the state, the supreme sovereign authority of Alaska in order to have the full force and effect of the law.

3. Also demonstrate under Public Seal an exact copy of your original "Oath of Office" as mandated by "Constitution of the State of Alaska" Art. XII, Sec. V, certified as true, correct, complete & not misleading if you are a Public Officer.

Notice! Failure to properly comply with all (3) of the above aforesaid simple demands within five (5) days shall be deemed conclusive proof you are in violation of the Laws of Alaska, and intentionally engaged in criminal activity as set forth by the Legislature of the State of Alaska by engaging in practice of law without a bona fide license issued by "the state", henceforth you are knowingly and willingly acting in bad faith "against" the People of Alaska. I am very close to City Hall so I would prefer to come in personally to receive these documents by hand. I will pay for all reasonable costs. Thank you in advance for your full and expedited cooperation.

— David Clair Bartels

Attorney Discipline

Former Juneau Lawyer Suspended for One Year

The Alaska Supreme Court on June 24, 1999, suspended former Juneau lawyer Joe Micheal Cox (ABA Membership No. 9011089) for one year. The suspension from practice followed Mr. Cox's conviction of the misdemeanor crimes of attempted misconduct involving a controlled substance in the 4th degree and attempted tampering with evidence.

On May 31, 1998, Mr. Cox and a former client smoked marijuana and drank a tea made with mushrooms during an evening together. Mr. Cox left his friend's house to buy some cigarettes. When he returned, his friend was in medical distress, possibly in response to a substance in the mushroom tea. The friend called 911 and an emergency medical response team and police arrived. Prior to the arrival of the police, neighbors saw Mr. Cox throw the marijuana pipe into the apartment complex dumpster. Neighbors told the police what they had seen.

Mr. Cox admitted that it was his pipe and that it had been used to smoke marijuana. He also told the police that he had purchased and prepared the mushroom tea.

An original charge of felony misconduct with a controlled substance was reduced to a misdemeanor count after laboratory testing revealed no controlled substances were present in the residue from which the tea was made.

Mr. Cox entered a plea of nolo contendere to attempted tampering with physical evidence and was found guilty of attempted misconduct involving a controlled substance in the fourth degree. On October 1, 1998, Mr. Cox was sentenced to a one-year probation subject to certain conditions. The Alaska Supreme Court placed Mr. Cox on interim suspension from the practice of law effective November 16, 1998, pursuant to Alaska Bar Rule 26(a).

Mr. Cox and Bar Counsel entered a stipulation for discipline by suspension for one year, retroactive to the date of his interim suspension. The Disciplinary Board and the Supreme Court approved the agreement. The stipulation is available for review at the Bar Association office in Anchorage.

ANCHORAGE YOUTH COURT SEEKS VOLUNTEERS

Anchorage Youth Court has relied on the strong support of local attorneys since its inception in 1989 to create and maintain a successful law education program.

To continue this tradition, Anchorage Youth Court needs civil and criminal attorneys who will volunteer to teach its eight week, 16-hour curriculum. The volunteers will teach seventh to twelfth grade students about Anchorage Youth Court and the criminal justice system.

Prior teaching experience or familiarity with Anchorage Youth Court or the criminal justice system is not necessary. Classes begin the week of September 20, 1999 and end November 20, 1999. If you are interested or would like more information, please call Anchorage Youth Court at 274-5986.

How many attorneys does it take to end domestic violence?

By Christine McLeod Pate

Mary is a 35 year-old Yupik woman who has lived in a small village outside of Bethel all of her life. Fifteen years ago she married Peter. They have had four children together.

Initially their marriage was happy; however, Mary described how Peter increasingly became "meaner." He became jealous of her actions, routinely degraded her in front of the children and assaulted her on several occasions, sometimes with sticks and other objects. Often the children witnessed the abuse, and, on occasion, they were caught in the crossfire.

These episodes routinely ended with Peter sobbing and apologetic. Mary finally decided to leave Peter and has moved to live with family in Bethel. She is low-income, but Alaska Legal Services cannot take her case as they helped Peter on a related matter two years ago. Peter is threatening to come and take the children, and threatening Mary that if she does not come back he will kill her and then himself. She is beginning to think that she might just return to him, as she doesn't see any options for safely leaving him.

FACED WITH LIMITED OPTIONS AND FEW OR NO RESOURCES, VICTIMS OFTEN REMAIN TRAPPED IN ABUSIVE SITUATIONS.

This scenario is one that is, all too frequently, played out across Alaska. Faced with limited options and few or no resources, victims often remain trapped in abusive situations. The effects for the family and for society at large are devastating. Every year, domestic violence causes approximately 100,000 days of hospitalization; 50% of all homeless women and children in this country are fleeing domestic violence; and a recent review conducted by Alaska's Division of Family and Youth Services showed that 60% of its cases of reported child abuse also involved domestic violence.

Children are always injured by the domestic violence. Batterers may intentionally injure children in an effort to intimidate and control their adult partners. Children may be unintentionally injured by violence aimed at someone else or while trying to protect their assaulted parent. Experts estimate that between 3.3 and 10 million children annually witness domestic violence. Children who witness violence exhibit a range of problem behaviors including depression, anxiety and violence toward peers.

One crucial element for helping abused women to remain safe and leave abusive relationships is representation in custody and divorce cases. Representation by attorneys trained in the dynamics of domestic violence is essential to ensure that victims and their children are protected. Domestic violence almost always escalates when the batterer discovers or believes that the victim is about to or has actually left him. Divorced or separated men, as opposed to husbands living with their wives, commit 79 percent of all spousal violence. (U.S. Department of Justice, Domestic Violence Statistics 12 (1989)).

Unfortunately, significant state and federal cuts to Alaska Legal Services Corporation (ALSC) over the last several years have made accessing an attorney even more difficult for victims. "In Fairbanks our agency alone refers more than 100 victims to Alaska Legal Services per month," says Kimberlee Vanderhoof, a legal advocate with Women in Crisis-Counseling and Assistance, a domestic violence and sexual assault program in Fairbanks. "Alaska Legal Services can only accept 8 to 10 of our referrals each month. This leaves a huge gap in services to women whose abusers have discovered a very powerful and dangerous weapon to use against them: their children." To help fill this gap, the Alaska Network on Domestic Violence and Sexual Assault's Legal Advocacy Project (ANDVSA) has a new pro bono program designed to increase women's access to the legal system in divorce and custody proceedings.

The ANDVSA Pro Bono Program is implementing two projects which we hope will increase private bar involvement with victims of domestic abuse. The first is an information and referral line (I&R) which will be a hotline that people can call with questions about legal issues. There are many people who do not necessarily have a "case" for which they need representation, but just need some guidance or answers about legal options. We will have an 800 number that can be call-forwarded to different parts of the state. This project will require a small donation of time, three to four hours a month, on the part of the volunteer attorney. Attorneys may volunteer as frequently as their schedules allow. We hope to pilot test this project by the end of July.

THE ANDVSA PRO BONO PROGRAM IS IMPLEMENTING TWO PROJECTS WHICH WE HOPE WILL INCREASE PRIVATE BAR INVOLVEMENT WITH VICTIMS OF DOMESTIC ABUSE.

We are also starting a mentoring project, whereby attorneys agree to take cases at no cost in exchange for guidance by an experienced family law mentor, training, malpractice coverage, and resources including a forms and practice manual. In late March ANDVSA co-sponsored a Continuing Legal Education (CLE) program with the Alaska Bar Association entitled "The Impact of Domestic Violence on Your Legal Practice: Current Issues and Federal/State Laws" as a training vehicle for prospective volunteer attorneys. ANDVSA paid the travel, registration and per diem costs for attorneys who agreed to volunteer 24 hours of time to our program. We will be repeating and expanding this CLE next March, and again paying costs for our volunteer attorneys. For this project, we are recruiting for both mentor attorneys – experienced family law attorneys who agree to share their expertise with a less experienced attorney – and for the attorneys who will be actually representing the client.

The mentoring project is an excellent training opportunity for attorneys. As many attorneys know, family law cases entail extensive client contact, courtroom advocacy and frequently, appellate work. This project will allow you to hone these skills alongside an experienced family law mentor. It will also provide you with access to the latest resource materials available for litigating a case involving domestic violence. Through the mentor/mentee project you can learn how to litigate a family law case in the Alaska courts, while also helping to increase access to justice.

We also anticipate that we will need other types of attorneys besides family law attorneys to help victims. Domestic violence victims often face a range of legal problems when they attempt to leave abusive relationships. A property attorney can help a victim who is being evicted because of the violence, a tax attorney can help a victim who has been coerced to sign fraudulent tax returns, and a probate attorney can help a victim provide for her loved ones in the event of future violence. Attorneys trained in theses specialties will be needed for both the I & R line and our mentor project.

The ANDVSA Pro Bono Program has been working cooperatively with ALSC's Pro Bono Program to avoid competition and duplication of services. The grant that the ANDVSA Pro Bono Program is funded under was in cooperation with ALSC. In September 1998, ANDVSA received a Civil Legal Assistance Grant from the Department of Justice. This grant created four attorney positions across the state to increase representation for victims of domestic violence in civil cases. Two staff attorneys have been placed with ALSC in Anchorage and Juneau. These attorneys are providing direct services to victims of domestic violence in custody and divorce litigation. A third attorney has been placed with the Immigration and Refugee Services Program in Anchorage to represent immigrant women at protective order hearings. A fourth attorney has been placed with ANDVSA to create the pro bono program. All attorneys are working closely with legal advocates at the domestic violence and sexual assault programs to ensure comprehensive services for victims.

A 1994 Report published by members of the American Bar Association stated that, "[a]ttorneys and the organized bar should do more to *make assistance of legal counsel* more readily available and affordable to victims of domestic violence and their children." Howard Davidson, *The Impact of Domestic Violence on Children – A Report to the President of the American Bar Association*, (emphasis in original). ANDVSA's new Pro Bono Program is an important step to realizing this goal in Alaska.

So how many attorneys does it take to end domestic violence? As many as we can get! We are looking for attorneys, paralegals, court reporters, and any other professionals who are interested in donating time or resources. If you would like to help out with either of our Pro Bono Program projects or want more information, please contact Christine McLeod Pate, Pro Bono Mentoring Attorney, at ANDVSA at (907)747-7545 or email christine.pate@worldnet.att.net. You can also complete and fax or mail the attached form to us at (907)747-7547 or P.O. Box 6631, Sitka, AK 99835.

YES! I am interested in participating in the ANDVSA Legal Advocacy Project's Pro Bono Program!

Name: _____

Address: _____

Phone number: _____ Fax: _____

Email address: _____

Please indicate the areas in which you are willing to volunteer time:

_____ Pro Bono attorney for the mentor/mentee program mentee

_____ Pro Bono attorney for the mentor/mentee program - mentor

_____ Pro Bono attorney for information and referral line

_____ Other please specify _____

Fax to 907-747-7547 or Mail to P.O. Box 6631, Sitka, AK 99835

and

We also anticipate that, from time to time, we will need Pro Bono attorneys to handle cases for clients in areas other than family law. We anticipate that the other areas will primarily be probate, landlord/tenant and bankruptcy. Are you interested in helping out on one of these cases?_____yes

Bar People


Peterson

Drew Peterson, formerly program head of Legal Studies at Charter College, announces that he has resumed his private practice of law in Anchorage. He is currently accepting a limited number of new cases in the areas of family law, negligence, small business representation, and appeals, in addition to his ongoing practice of alternate dispute resolution and mediation.

Mr. Peterson's offices are located at 4325 Laurel, Suite 235, Anchorage; phone number 561-1518. He has been a practicing attorney since 1972, admitted to the Alaska bar in 1977, and engaged in private practice in Anchorage since 1980. Courts to which he has been admitted include (in order of admission): Minnesota Supreme Court, United States District Court for the District of Minnesota, United States Court of Claims, Alaska Supreme Court, United States District Court for the District of Alaska, Ninth Circuit United States Court of Appeals, United States Supreme Court.

Ann Bruner whose practice will focus on business law and estate planning recently joined the Brian W. Durrell, P.C. law office. Ms. Bruner previously practiced commercial and civil litigation at Bogle & Gates, P.L.L.C.....**Jim Farr** formerly with the Alaska Court System, has opened his own law office in Anchorage.....Copeland, Landye, Bennett and Wolf, LLP announces the retirement of senior partner **Mark G. Copeland** effective May 31 1999. Mr. Copeland is retiring from the practice of law and plans to pursue business and investment opportunities in Alaska and on the West Coast. He will be leasing space in the firm's Anchorage office, where he will base his business and investment ventures.

Born in Seattle, Washington and raised in Portland Mr. Copeland attended Yale University where he received a bachelor's degree in 1964 and a law degree in 1967. After practicing in Alaska for one year he moved to Portland and joined the firm in 1968 (then Keane, Haessler, Bauman and Harper). He moved back to Anchorage in 1978 after Copeland, Landye, Bennett and Wolf opened an Alaska office with **David P. Wolf**. Mr. Wolf retired in 1997 to pursue his own business interests.

Mr. Copeland has been active in business and community organizations in Anchorage. He is a director of Northrim Bank; he is also

the chairman of the Endowment Investment Review Committee and a director of the Western Region Boy Scouts of America.

David S. Case will succeed Mr. Copeland as the senior partner in the Alaska office. Thomas Landye said, "We will miss our partner, his legal skills, guidance and good judgment. However, we will not miss our friend. Mr. Copeland and his wife Gigi will continue to live in Anchorage. He will have an office with us in Anchorage and will continue to maintain a home in Portland, just four blocks from our office. We thank him for his inestimable contribution to our firm and his 31 years of leadership."

Mr. Copeland and Mr. Wolf have both consented to the continued use of their names, and the firm accordingly will continue to be known as Copeland, Landye, Bennett and Wolf, LLP.

Ronald Wm. Drathman was sworn in as the City Manager of the City of Homer on July 2, 1999.....The last issue of the *Bar Rag* said **Karl Johnstone** relocated to Prescott, AZ. The Johnstones actually spend only 3-4 months in the winter there. His permanent address remains in Anchorage.

Patton Boggs LLP announcements

Community service award

Patton Boggs LLP has established a community service award, to be presented annually to the firm employee volunteer who provides the most outstanding contributions to the community through public service. Employees in all of Patton Boggs' five offices are eligible.

Stuart M. Pape, the firm's managing partner said "Our employees have enthusiastically embraced our Firm's commitment to community service.

Patton Boggs LLP is a 277-attorney firm with its principal office located in Washington, DC. The firm maintains additional offices in Anchorage, Alaska; Dallas, Texas; Denver, Colorado; Greensboro, North Carolina; and Seattle, Washington. Patton Boggs represents clients throughout the United States and around the world in federal and state regulatory and legislative matters and before various courts and other tribunals.

1999-2000 executive and management committee members

The partnership approved one Alaskan as a member of the 1999-2000 executive committee at Patton Boggs' annual meeting of the partnership on May 20-21. Douglas J. Serdahely was selected as an ex-officio member of the 19 member committee.

Patton Boggs LLP is a 276-attorney firm with its principal office located in Washington, DC. The firm maintains additional offices in Anchorage, Alaska; Dallas, Texas; Denver, Colorado; Greensboro, North Carolina; and Seattle, Washington. Patton Boggs represents clients throughout the United States and around the world in federal and state regulatory and legislative matters and before various courts and other tribunals.

—Press release items submitted by firms

Bar People


Wilcox

Paul S. Wilcox, Chair of the labor and employment practice at Hughes Thorsness Powell Huddleston & Bauman LLC, successfully completed an intensive training in mediation at one of the country's leading mediation centers in Boulder, Colorado. He provides mediation and early neutral evaluation services to parties seeking alternative resolution to litigation and disputes. For additional information call 263-8248 or e-mail psw@htlaw.com.


Vallentine

Diane F. Vallentine, with Jermain, Dunnagan & Owens, P.C. since 1993, has recently become a shareholder. Vallentine received her J.D. with distinction in 1977 from the University of Arizona. She is a member of the Alaska Bar Association, and licensed to practice before the Alaska state courts and the U. S. District Courts for Alaska. She has served as past president of the Alaska Bar Association, the Anchorage Bar Association and the Alaska Trial Lawyers Association. With more than 22 years of experience in the field of law, she practices in the areas of complex commercial litigation, commercial transactions, business law and bankruptcy law..


Norsworthy

Kenneth A. Norsworthy recently joined the law firm of Wade & De Young as of-counsel. Mr. Norsworthy, a graduate of Baylor University School of Law, was admitted to the Bar in Texas in 1974, in Alaska in 1977 and served in the Air Force JAG Corps from 1974 to 1978. Since then he has been continuously in private practice in Anchorage, both in association with other firms and for 15 years as owner of his own firm. Prior to joining Wade & De Young, Mr. Norsworthy was most recently affiliated with Edgar Paul Boyko and Associates. Mr. Norsworthy will continue to emphasize trial practice in the areas of tort law, civil litigation and military law as well as representing the firm's construction, employment, aviation, and general corporate clients.

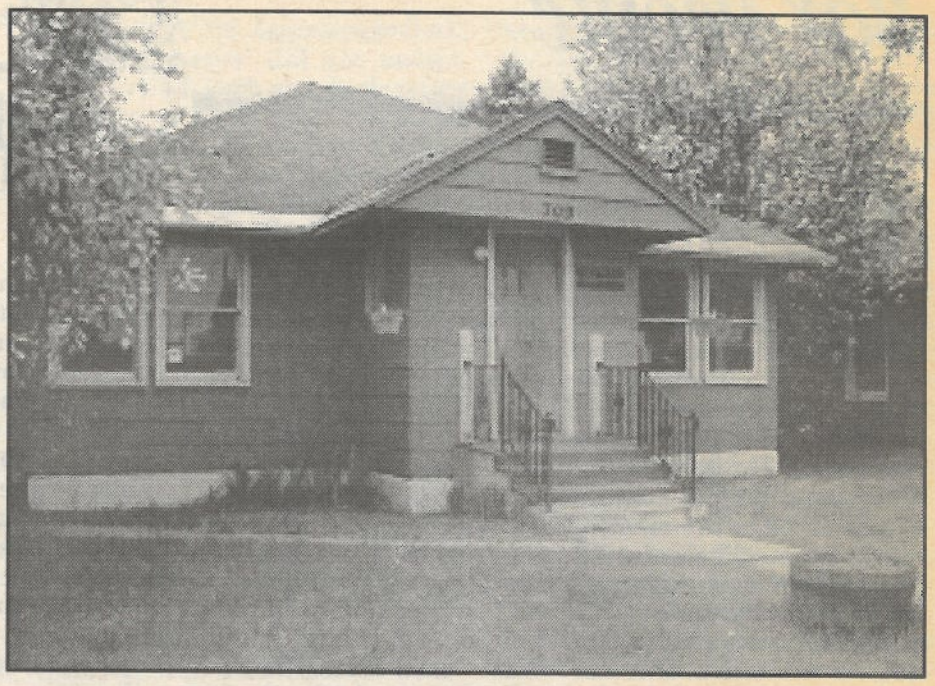

Bredesen

Robert J. Bredesen has recently joined the law firm Holmes Weddle & Barcott P.C., as an associate. A 1998 graduate of the University of North Dakota School of Law, Bredesen was admitted to the Alaska Bar in 1999. Prior to earning his law degree, Bredesen joined the United States Peace Corps serving in the Republic of Ghana, West Africa. Bredesen practices in the firm's Anchorage office in the areas of workers' compensation defense and general civil litigation. Holmes Weddle & Barcott has offices in Anchorage and Seattle, Washington.

"Mascots"

☐ William Satterberg

Some of you have visited my office. Some have not. Some care to. Some care not. Without boastful gesture, let me just say that the office arguably is not a standard law office. It is more a hybrid of the Howling Dog, Reflections, and Seattle's Old Curiosity Shop.



Law offices of William R. Satterberg, Jr. on 4th Avenue in Fairbanks.

It could take hours to describe the interior of the building, with its springtime floods, clogged sewer pipes, and faulty electrical wiring. The ventilation fan in the bathroom works only part of the time. The building is overly hot in the summer. It can be miserably cold in the winter. Assorted memorabilia dangle haphazardly from the walls. In short, it reminds us of home.

The furnishings tend to be threadbare. We want to give our clients a feeling of comfort. The office décor is "early Salvation Army." Yet, despite all of this, the firm seems to survive, even if against all odds.

THE FURNISHINGS TEND TO BE THREADBARE. WE WANT TO GIVE OUR CLIENTS A FEELING OF COMFORT.

Part of the reason for the uncanny survival is because we practice the "team concept" of law. Not a "Dream Team," mind you. In actuality, it is more like a "Nightmare Team."

Several years ago, we decided that we needed to have something of a law office identity. An "espirit de corpse." We quickly recognized there was no way whatsoever that we could share the fate of such other successful Fairbanks firms as Hughes Thorness; Birch Horton; Lane Powell; or Bliss Riordan. The coffee cups were just too expensive. Nor could we afford the exhaustive, embossed letterhead, let alone the artificial plants, knit golf shirts, or numbered prints.

SEVERAL YEARS AGO, WE DECIDED THAT WE NEEDED TO HAVE SOMETHING OF A LAW OFFICE IDENTITY. AN "ESPIRIT DE CORPSE."

In time, we adopted a unique style that I prefer to call the "boutique" practice of law. In short, it is eclectic, low-end stuff. But it fits, and matches my clientele's philosophies of life. Predictably, my clientele is truly representative of Fairbanks, ranging from those whom you would kill to keep, to those whom you would simply kill. Over time, I've learned that some of the clients are certainly allegedly capable of performing the latter act for a relatively nominal sum.

Recognizing that we had to develop not only a team concept, but the team identity, as well, we decided to decorate the office one year. We agreed to furnish it with a plethora of living plants. We wanted to display our more politically acceptable, sensitive side. Sort of the "jungle- to-jungle" effect. Moreover, our clients, we felt, probably would be more comfortable with plants. By then, most of our clients had quite a bit of experience with what the Troopers call "grows." If nothing else, the bills could be paid with trade-outs.

All went well for a number of years, until somebody forgot to do the watering. Not that I actually forgot. I still maintain that no one reminded me. Predictably, my green little friends eventually died and turned brown. Still, I kept them around until Forestry declared them a fire hazard.

I discovered, upon further investigation, that one of the reasons for the plants' early demise was because everybody seemed to be emptying their coffee into the planters, as part of my water conservation plan. Further scientific investigation also revealed that it was not the normally high acidic content of our coffee which killed the plants. Rather, it was the widely acknowledged corrosive effect of the brew. Enough for the "sensitive image," I concluded. Time to move up the food chain.

Several years ago, I purchased a hexagonal aquarium from attorney Gary Vancil. When Gary owned it, it was truly a delightful exhibit. The aquarium was a microcosm, with colorful little fish drifting elegantly throughout the gooey globs of seaweed, serenaded by the peaceful, bubbling tunes of the aerator. All this concentrated peace often promoted sleep. This collateral benefit was something that Gary had proven to me more than once as I struggled to keep up with him as his legal apprentice while working for the State of Alaska.

Although I purchased Gary's aquarium, I was unable to buy the fish. Despite my inquiries, Gary never did satisfactorily explain the loss. It did not take me long, however, to realize that the aquarium needed to be stocked with something other than stagnant water. After all, the empty aquarium proved boring after only a few months.

When our funds allowed, I opted for a relatively cheap brand of junk fish known as Ciclids. In fact, the pet store actually gave them to me. Perhaps I should have suspected something then. All the clerks were giving each other "high fives" when I skipped out the door. Still, by all appearances, Ciclids should have been a relatively tame fish. When I asked about temperament, I was assured by the giggling pet storeowner that Ciclids could provide hours of family entertainment.

I soon learned that Ciclids are cannibalistic. I also learned that the hours of promised family entertainment were to be hours spent watching the fish playfully gnaw each other's tails off. As an added delight, every so often, a group of the occupants would actually succeed in completely "detailing" the smallest or weakest one in the aquarium. In celebration, all survivors would then feast to their heart's content.

In many respects, I felt that Ciclids were an appropriate fish for a law office. Moreover, as promised, I ultimately found the fish to be truly intriguing. When I finally grew to recognize them based upon their bite marks, I would name them after various judges. I intentionally and carefully selected each fish to coincide with a judge's particular personality, size, temperament, or appearance.

About the time I was really growing to like my dwindling population of Ciclids, two of my well-meaning friends, Don Logan and Jane Pierson, decided that Ciclids were not aggressive enough. We needed a much more symbolic fish in the aquarium. To solve the problem, Don and Jane plunked in two Piranhas. These Piranhas were aptly named "Don" and "Jane." On balance, they truly epitomized the practice of law – unless, of course, one could afford a salt-water aquarium.

At the time, I still had six fully developed, voracious Ciclids. Mathematically, Don and Jane were outnumbered three to one. I readily figured that, when battle took place, the Ciclids predictably would gang up on the Piranha.

I INTENTIONALLY AND CAREFULLY SELECTED EACH FISH TO COINCIDE WITH A JUDGE'S PARTICULAR PERSONALITY, SIZE, TEMPERAMENT, OR APPEARANCE.

For the next four weeks, I was surprised. Contrary to my expectations, life in the tank continued in peaceful coexistence, provided I kept my aquatic friends well fed.

Admittedly, from time to time, I would return to work after the weekend only to wonder where one of my favorite judges had gone. As usual, I chalked the disappearances up to early vested retirement – a common occurrence in Fairbanks. I thought nothing else of it. Coincidentally, at the same time, Don and Jane would gain weight. Otherwise, all appeared to be normal.

After two more weeks, it became apparent that the tide decidedly had turned. Despite my denial, it was clear that the Ciclids population had dwindled from the original team of six to ultimately just two, then one, and then, sadly, no more. Stated simply, my court had been entirely preempted.

Correspondingly, Don and Jane had grown to remarkable size. Moreover, both fish seemed to be enjoying the aquarium entirely to themselves, luxuriating in their newfound space. Occasionally, they would nip at each other, but there was nothing openly egregious about their behavior, nor uncharacteristic, given the personalities.

It was at the same time that I noted that the cost of the practice of law was beginning to rise. I had to cut overhead. An obvious area to cut overhead was in fish food. It was either fish food or the office doughnuts. Since Don and Jane seemed to be getting along well, I reduced their diet.

At first, Don and Jane did not express any open heartburn with my decision. Nor did I really expect any. (By way of background, when I lived in the University of Alaska Fire Department, I once adopted a Billygoat we affectionately named "Buck," after our Chief, Buck Whitaker. "Buck" had survived well by eating the stuffed upholstery out of the seat of my old International Scout four-by-four. I learned at that time that animals were rather resourceful, if left alone. I expected no less from Don and Jane.)

Eventually, I realized that I was mistaken about the self-sufficiency of Piranhas. Apparently, Don and Jane were not well schooled. One day, I came to work only to discover Jane happily swimming around the tank. Don initially was unable to be found. Closer inspection soon found the top half of Don floating inverted near the surface. Don's bottom half was nowhere to be seen. It was a sad day, indeed. The remainder of Don went down the office toilet, to join my pet turtles from long ago.

After Don's demise, grief-stricken Jane lived on for several more weeks. By then, I was mindful to keep her well fed. But, eventually, that, too, changed.

Every summer I employ student

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"Mascots"

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help. I figure it is one of the best ways of keeping people from entering law. As part of the summer duties, I asked my young employee to clean Jane's fish tank. All that had to be done was to put Jane in a separate bucket of room temperature water, scrub out the aquarium, and then refill the aquarium with fresh water. Once room temperature was reached in the aquarium, Jane could return to her tank. I reasoned it was a simple task, even for a prospective law student.

After a few hours, my summer employee finally located a bucket in the janitor's closet. He next filled the bucket with water. He then obediently placed Jane into the bucket. Rather than swimming, however, Jane rudely chose to kick the bucket.

Horrified, I asked my student what had happened to Jane. He told me that Jane had rolled almost immediately onto her back. Upon rigorous cross-examination, my summer helper tearfully explained that he had verified that the water was at room temperature. He also had made sure that the bucket was quite clean. In fact, he had personally scrubbed it out with full-strength Clorox just before transferring Jane. There was no way, he reasoned, that any type of infectious materials could have hurt Jane.

Parenthetically, Jane had led a clean, although short life. In memoriam, the aquarium no longer holds water. Instead, it now contains a stuffed Cobra and an alligator's head.

Needless to say, I was devastated over the loss of Don and Jane, not to mention all of the judges who earlier had died. Sensing my depression, the collective decision was made by the office team to acquire yet another mascot.

If I had known of the staff's plans, I might have voted otherwise. Unfortunately, it was not until boss's day four years ago when I realized that a new addition had joined the office. The newest member consisted of a small, four-inch long, green iguana. We named him (or her) "Zeegar."

One of the unanticipated things was that Zeegar would not always remain a cute, little iguana. In time, Zeegar would become an ugly, large iguana, with a personality to match.

Fortunately, during his first year

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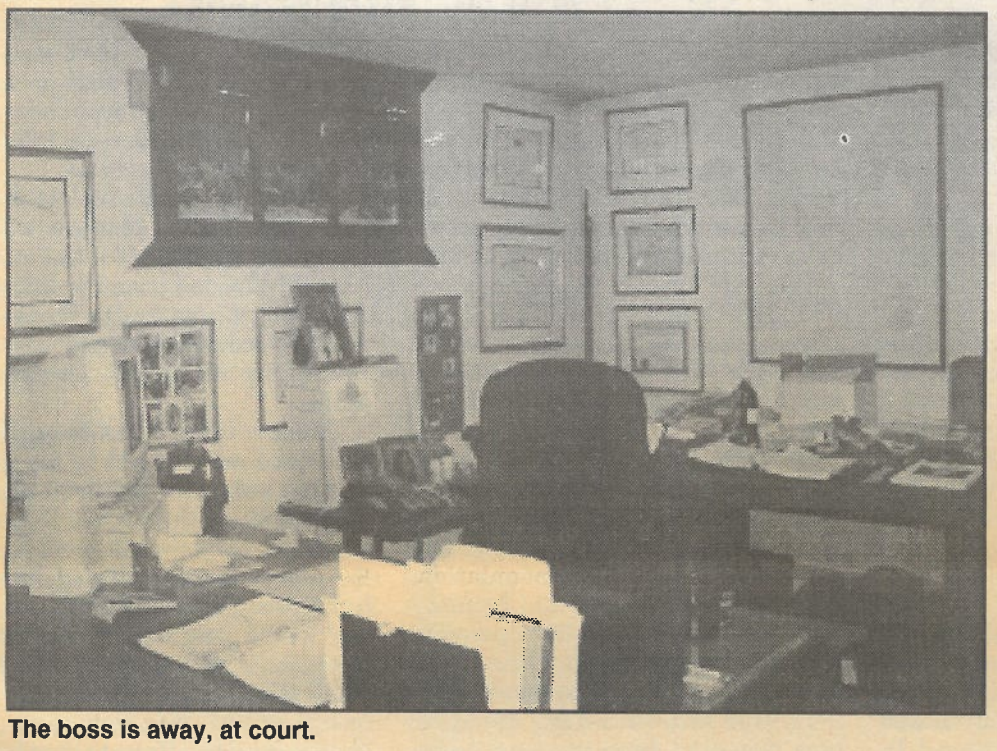
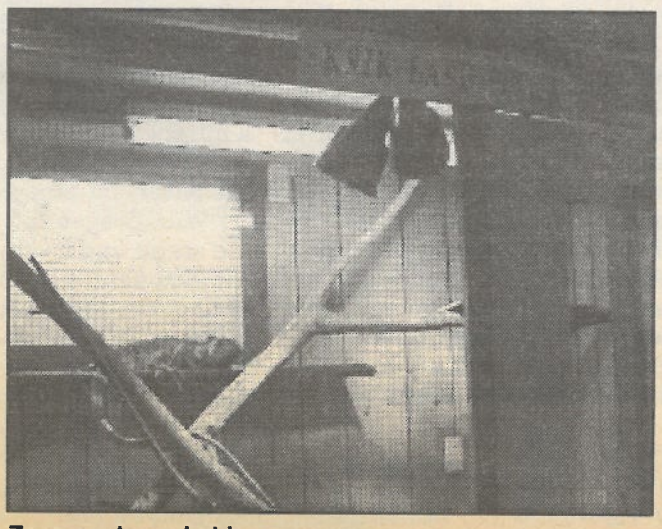
INSIDE THE LAW OFFICE OF BILL SATTERBERG



The boss is away, at court.

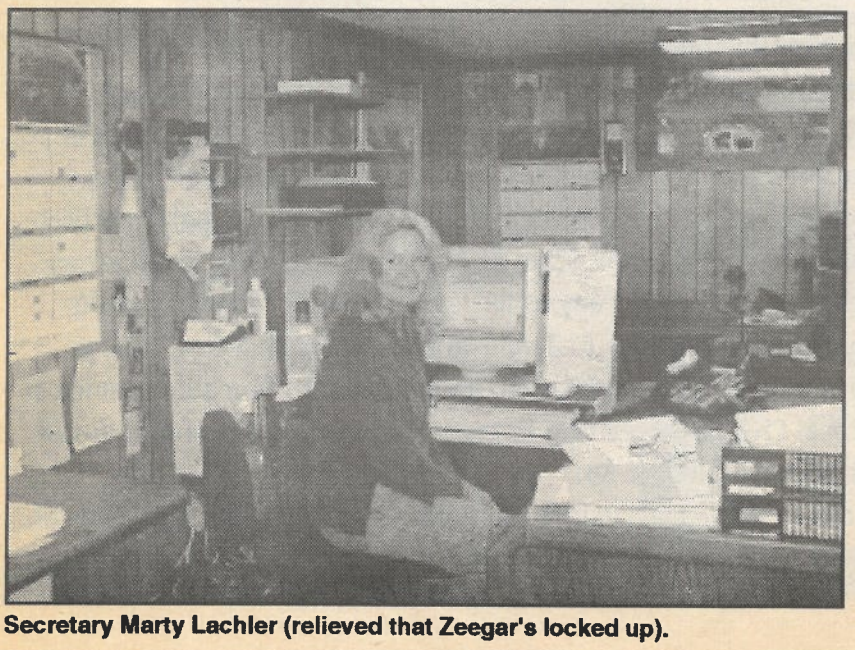


Zeegar relaxes in his new cage.

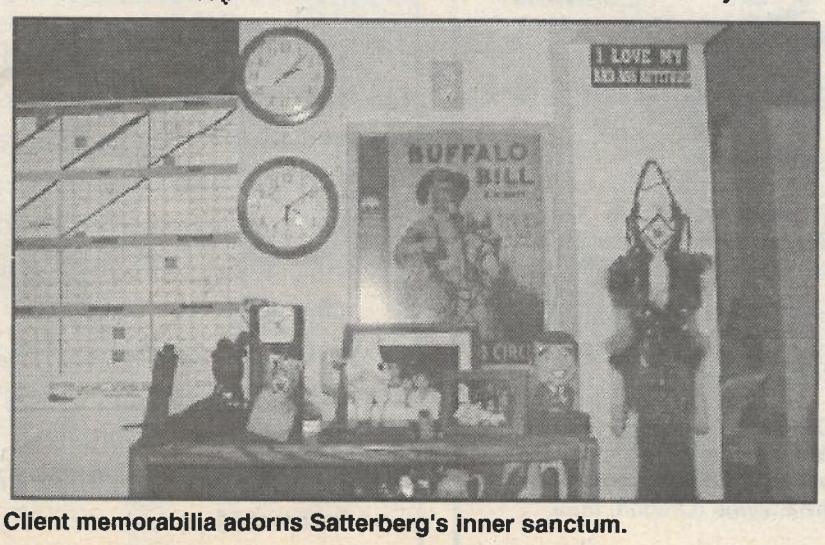
Associate Jim McLain.

No mountain goat is complete without his cap.

Satterberg's baseball caps collected over the years.



Secretary Marty Lachler (relieved that Zeegar's locked up).



Client memorabilia adorns Satterberg's inner sanctum.

– Photos by an anonymous Bar Rag operative.

"Mascots"

Continued from page 17

of life, Zeegar remained cute and lovable, if iguanas can be lovable. An inquisitive little toddler, he daily would run around the office visiting the secretaries. Only one secretary was ever worried about being around Zeegar. She came from the deep South, and apparently knew more about reptiles than the rest of us Yankees. It was relatively easy to take measures to keep the two separated.

EVERY SUMMER I EMPLOY STUDENT HELP. I FIGURE IT IS ONE OF THE BEST WAYS OF KEEPING PEOPLE FROM ENTERING LAW.

For the rest of us, young Zeegar would provide hours of delight. During the day, he would spend hours scampering around the office when not basking on top of the computer screen monitors. But, the monitors clearly were his favorite perch. From the monitors, Zeegar often could play peek-a-boo with the secretaries, while enjoying the forced heat from the exhaust vents. At first, Zeegar was small and unobtrusive, and his visits were amusing to all. As Zeegar began to grow, however, the problem of housing Zeegar grew with him. Eventually, we had to build a cage. According to our vet, Zeegar was not going to stop growing until some restrictions were placed upon him.

Perhaps the time it became most evident that Zeegar's antics needed to be caged was one day when he was playing his favorite game of computer monitor peek-a-boo. I should add that Zeegar had yet to be toilet trained. On this day, when the urge struck him, Zeegar simply took care of nature's call. In the process, Zeegar killed a full-sized monitor. In retrospect, this was truly a feat for any iguana. Iguanas are vegetarian by nature. Although most naturalists will tell you that an iguana is no match for a monitor, Zeegar had proved his worth. As a reward, he was immediately located to a cage for virtually the remainder of his life, except for controlled walks.

DURING THE DAY, HE WOULD SPEND HOURS SCAMPERING AROUND THE OFFICE WHEN NOT BASKING ON TOP OF THE COMPUTER SCREEN MONITORS.

This does not mean that Zeegar did not and does not occasionally get out on his own from time to time. When that happens, everything else stops and the office goes into a classic Keystone Cops routine, trying vainly to herd an irate iguana bent solely upon freedom.

For example, about a year ago, Zeegar either escaped or was released from his upstairs cage. To this date, the team has exercised its Fifth Amendment rights on the issue. A free lizard at last, Zeegar bounded down the stairs full speed towards the one secretary who did not want to have anything to do with him. Alerted to the escape, she could hear him coming. Perhaps it was the calls which were taking place upstairs, as people raced frantically to and fro, trying desperately to tackle a 10-pound, panicked lizard. (Why people think that a lizard will come to you when you call its name still escapes me.)

For whatever reason, Zeegar was having nothing of the new game. With the upstairs staff in close pursuit, Zeegar turned the hallway corner in a full speed, wigwag, lizard scramble. Seeing an opening, he bolted down the basement stairs.

With Zeegar about halfway down the stairs and closing rapidly, it became apparent to my now terrified staffer that this certainly was not going to be a pleasant experience. Nor did it have much attraction as a good worker's comp claim, either. Someone yelled at her to remain calm. In response, she stood up and screamed.

By then, Zeegar had reached the bottom of the stairs. Sensing his route of escape blocked, he defiantly looked at the secretary and loudly hissed. In reaction, the secretary jumped upon her chair. Someone again yelled at her to remain calm. In response, she screamed again. Sensing victory, Zeegar next leaped up upon the credenza. Doing what he does best, Zeegar hissed again.

A Fairbanks standoff was quickly developing. For a second, we thought the secretary might win. But, we were wrong. Instead, seeing her own escape route, she broke into a full-speed run and barged out of the back of the office, without even signing out. She would not return for over three hours. Fortunately, the delay gave us just enough time to catch Zeegar, who eventually grew tired of the game.

It was clearly pointed out to me, however, that definite steps had to be taken to keep Zeegar under better control – office mascot or not, when the issue was discussed at our next annual office meeting.

In time, Zeegar outgrew the upstairs cage. This was pointed out to me one day when Judge James Hanson, who would occasionally drop by the office, visited cordially with Zeegar. After the discussion, Judge Hanson quietly told me out of earshot of Zeegar that Zeegar needed better surroundings. Always wanting to please a retired judge, especially after having lost so many in my fish tank earlier that year, I turned to convict labor to build a new cage. This one was in my downstairs office.

It was an architect's dream. It was not only a large caged in area complete with a sliding glass door, but also had various perches, Astroturf and trees upon which Zeegar could climb to his heart's content. In addition, it was color-coordinated. We even had a veterinarian certify it as "iguana-friendly." Upon inspection, Judge Hanson quickly gave his approval. The judge was obviously pleased to see that I was giving Zeegar a happy place to live.

THE JUDGE WAS OBVIOUSLY PLEASED TO SEE THAT I WAS GIVING ZEEGAR A HAPPY PLACE TO LIVE.

Zeegar has lived in my office space ever since that date. He is now well over five feet in length. Although generally docile, Zeegar still poses a perceived threat to at least one of the secretaries. As a precaution, upon initial client interviews, I take care to introduce Zeegar to my clients, so that they are not surprised when they hear him thrashing about his cage, jumping from one end to another, or falling off his perch. As for personality, Zeegar is far more captivating than the judges I used to own.

Although Zeegar and I now have a close relationship, recently, my attitude towards Zeegar began to deteriorate, although, again, through no direct fault of the reptilian rascal. Instead, it seems that Zeegar's cage cleaning fell into arrears. (A "Not my job, man" type of thing that the latest new summer student expressed.) Moreover, our regular janitorial staff, which hails from overseas, clearly viewed the work as an "extra." To my surprise, they will not negotiate. To add to this, despite the fact that we maybe have not been quite as diligent as usual in cleaning Zeegar's cage, Zeegar has nevertheless continued onward full speed with respect to his own job of using it. Finally, Fairbanks, usually known for its hot summers, also has been no different. In short, given the limited circulation in the office, Zeegar's proclivity for high-volume food processing, and my inability to find a janitor willing to coinhabit the cage with Zeegar on a regular basis, the office environment recently became eye-watering.

Only drastic measures on an emergency basis averted what otherwise could have been a combined ecological and personnel management disaster. Without elaborating on the solution, I will just state that we now seem to have the problem under control. However, I still recommend that guests not visit for at least another week, absent emergencies, especially if they are sensitive individuals.

I suspect, with this latest disclosure, that Judge Hanson will once again call upon me to make sure that his cold-blooded friend is doing okay. After all, it was Judge Hanson who politely ordered a bigger cage, thus prompting me to put Zeegar in my office.

Incidentally, it was Judge Hanson who once pointed out to me that he and his wife have artificial plants in their condo so that, when they take a vacation, they do not need to water the plants. In that respect, he clearly has a point. Unfortunately, an artificial lizard just would not have the personality as Zeegar. As such, I guess I will stick to the real thing – lizard breath and all. But, then again, when Zeegar does finally go to that big cage in the sky, at least I will be able to have a green leather belt with my name on it and a matching pair of cowboy boots, not to mention a South-of-the-Border dinner. What better way to impress the residents of North Pole?

Certainly, that is more than I can say for you fancy-pants, Anchorage lawyers with your artificial plants, embossed coffee cups, and embroidered golf shirts.

VOLUNTEERS SOUGHT FOR FEDERAL LOCAL CIVIL RULES REVISION COMMITTEE

Chief Judge James K. Singleton recently announced the reconstitution of a committee to review the Local Civil Rules of the United States District Court for the District of Alaska. The committee's charge is to review whether changes are necessary to the Local Civil Rules as a result of recent modifications to the Federal Rules of Civil Procedure and the United States Code; to review whether additional changes to the Local Civil Rules may be advisable so that they might conform to practice in the courts of the State of Alaska; and to consider whether changes to the Local Civil Rules are indicated for any other reason. Judge Singleton designated part-time Federal Magistrate Judge Matthew D. Jamin to chair the committee. Judge Jamin envisions that the group working on the project will be divided into four subcommittees who will work respectively on Local Civil Rules relating to matters covered by Federal Rules of Civil Procedure 1-25; 26-37, 38-53, and rules 54-86.

Interested parties are invited to contact Judge Jamin on or before May 22, 1998, by U.S. mail, at 323 Carolyn St. Kodiak, AK 99615; by e-mail at Matt@jesmkod.com; by phone, 486-6024; or by fax, 486-6112.

The revenge effect ☐ Drew Peterson

Robert D. Benjamin is a former president of the Academy of Family Mediators. Controversial throughout his time of the board of directors of the academy, he is one of those people who you either hate or you love. Few people seem to have a neutral opinion about him.

I have attended some of Benjamin's presentations at national mediation conferences, and had other brief social interactions with him. I found him abrupt and arrogant; not real good at "walking his talk." Nevertheless, I am fascinated by his provocative and often brilliant insights into the mediation process and movement.

Since leaving the presidency, Benjamin has continued to write a regular column for the Academy of Family Mediators' newsletter, setting forth his views in a relatively informal forum. He also submits frequent scholarly articles to the *Mediation Quarterly* and other professional journals, but I find his more informal newsletter articles to be particularly fascinating.

ACCORDING TO BENJAMIN, WE LIVE IN A TECHNO-RATIONALIST CULTURE, WHICH HAS A NEED TO RATIONALLY UNDERSTAND EVERYTHING, TO ESTABLISH THE CAUSE AND PLACE RESPONSIBILITY.

In his most recent column, Benjamin takes on the tragedy of Littleton, Colorado, in the further context of Edward Tenner's book: *Why Things Bite Back: Technology and the Revenge of Unintended Consequences* (Knopf, 1996).

According to Benjamin, we live in a techno-rationalist culture, which has a need to rationally understand everything, to establish the cause and place responsibility. In the well-intentioned desire to see that tragedies not repeat themselves, we have a need to believe that with sufficient analysis and planning, risks can be reduced to zero.

This belief in rational analysis is often coupled with a preference for action over inaction. We want to do something in a crisis, even if we don't know what. If "we are not part of the solution," we tell ourselves, then "we are part of the problem." Doing nothing is not allowed. Instead, experts proliferate, with ready made explanations for all of our problems.

With causes fixed in mind (although admittedly the experts often don't agree), remedies, cures, and preventive measures abound. Our faith in science and technology encourages us to believe that problems can be eradicated. And even it the answers seem simplistic, we rationalize to ourselves, "at least we are doing something."

The problem, according to Benjamin, is that for every action, law, policy, or program adopted to solve a problem, no matter how well intended, there is the very real risk of unintended consequences — the "revenge effect." Benjamin quotes Tenner to the effect that "[...r]evenge effects happen because new structures, devices and organisms react with real people in real situations in ways we could not foresee." Our society is a complex, tightly interlocked system, with components that have multiple links that can affect each other unexpectedly.

THE PROBLEM, ACCORDING TO BENJAMIN, IS THAT FOR EVERY ACTION, LAW, POLICY, OR PROGRAM ADOPTED TO SOLVE A PROBLEM, NO MATTER HOW WELL INTENDED, THERE IS THE VERY REAL RISK OF UNINTENDED CONSEQUENCES -- THE "REVENGE EFFECT."

Thus efforts to make things safer may actually result in making them more dangerous. Benjamin uses some of the measures proposed since the Littleton massacre as an example.

Speaking then to mediators, Benjamin concludes that the revenge effect holds a special potency and poignancy. If a mediator presumes to teach nonviolence and purports to seek peace, Benjamin asserts, and if peace and nonviolence do not come about, the result may be an intensified sense of despair and more conflict than ever.

In our rationalist culture there is an underlying belief that every problem has a solution, Benjamin asserts. That can too easily lead to the utopian notion that there can be peace, nonviolence and justice in the world. These notions are seductive and risky, especially for mediators. They are really nothing more than myths about the nature of reality. Mediators can not afford the luxury of such utopian visions

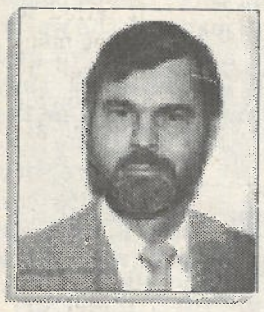
Benjamin asserts that if mediators are to be effective at all, then they have a responsibility to recognize the limits of rationality and to understand that there are no clear answers to many questions. The mediator's job is to help parties manage conflict and not to succumb to the lure of seeking impossible solutions.

As lawyers (interestingly Benjamin is a lawyer himself), we are often the very seekers of rational planning and cause and effect relationships that Benjamin says do not exist. We have a similar duty, Benjamin would assert, to help our clients surmount their rationalistic tunnel vision, and obtain realistic and manageable resolutions to conflict.

I am not quite sure that I am totally convinced of Benjamin's thesis. Yet it offers a fascinating perspective of our approach to conflict resolution and problem solving, not just for mediators, but for practicing attorneys, as well.

Divorce and discharge

☐ Thomas Yerbich



It has been over 4 years since the last article on discharge of obligations arising out of a divorce. [*Discharge of Property Settlements*, 19 *Alaska Bar Rag* No. 1 (Jan/Feb 1995) and *Protection of Support Payments*, 19 *Alaska Bar Rag* No. 2 (Mar/Apr 1995)] Based on the number of queries received in the past few months it is perhaps time to revisit the subject.

Section 523(a)(5) excepts from discharge debts owed for alimony, maintenance, or support, provided a three-prong test is met. (1) It is actually in the nature of support or alimony; (2) owed to a spouse, ex-spouse, or child of the debtor; and (3) arises out of or is in connection with a divorce, property settlement or separation agreement. As with several exceptions to discharge, jurisdiction to determine dischargeability of a support obligation lies with either the bankruptcy court or the state courts. Either the payor or the payee may bring an action in the bankruptcy court to determine whether the obligation is discharged, and a bankruptcy case may be reopened for this purpose without paying a fee to reopen the case. Alternatively, the payor can wait until the payee seeks to enforce the support award in the state courts and raise the issue of discharge as an affirmative defense. However, whether brought in the bankruptcy court or as an affirmative defense in the state court, discharge is determined by reference to federal law. Counsel for the recipient of support payments should be aware of the test applied to determine dischargeability.

Two of the prongs of the test are fairly easy. The claimant is either a spouse, ex-spouse, or child, or is not. There will either be, or not be, a divorce decree, property settlement, or separation agreement. The more difficult prong is determining if the obligation is "actually in nature of . . . support." In determining whether a debtor's obligation is in the nature of support, the intent of the parties at the time the settlement agreement is reached, or the court at the time it enters the order, is dispositive. [*In re Sternberg*, 85 F3d 1400 (CA9 1996), *overruled on other grounds*, *In re Brammer*, 131 F3d 788 (CA9 1997)]

Several factors are considered in determining intent. Foremost, the court should consider whether the recipient actually needed support at the time of the divorce. [*In re Shaver*, 736 F2d 1314 (CA9 1984)] [Note: In *Sternberg*, the court held whether or not the recipient is self-sufficient at the time the dischargeability issue is determined is irrelevant. Contrast this with the dischargeability of property settlements under § 523(a)(15) in which the current self-sufficiency of the payee is not only relevant but may be dispositive.]

Factors considered include: (1) presence of minor children; (2) imbalance in the relative income of the parties; (3) whether the obligation terminates on death or remarriage of the recipient; (4) nature and duration of the obligation, *e.g.*, monthly payments over a substantial period of time; (5) relative business opportunities; (6) physical condition; (7) educational background; (8) probable future financial needs; and (9) benefits each would have received had the marriage continued. [*In re Shaver*, 736 F2d 1314 (CA 9 1984); *Matter of Dennis*, 25 F3d 274 (CA 5 1994), *cert. denied* 513 US 1081 (1995)] As the court in *Sternberg* noted, the weight to be given each factor is generally committed to the broad discretion of the trial court and will be over turned on appeal only for an abuse of that discretion. Notable in *Sternberg* is the fact the Court of Appeals affirmed the decision of the bankruptcy court that the payments constituted support notwithstanding the fact that the payments survived the remarriage of and were not taxable to the recipient. [*See also In re Kritt*, 190 BR 382 (BAP 9 1995)]

From *Sternberg* and other cases, it is apparent that courts look to the needs of the recipient and the relative relationship of the income of the parties at the time of the divorce as being the paramount factor. If there is a demonstrated need and a significant imbalance in relative income and/or earning potential, the other factors tend to be treated as subservient or nondispositive. On the other hand, if, at the time of the divorce, the evidence of need and imbalance are marginal, other factors could tip the scales one way or the other depending on whether they are indicative of support or not.

Support or property settlement is a matter that should concern family law and bankruptcy lawyers alike. For the family law practitioner, two things are paramount. First, always label the payments as alimony, maintenance or support. This serves two purposes: (1) meets the "designated as" requirement of § 523(a)(5) and (2) serves of evidence of the parties intent. While one might think from the language of § 523(a)(5) that if the designation is missing there is no need to look further. However, the courts have tended to ignore this provision. [*E.g. In re Williams*, 703 F2d 1055 (CA 8 1983) (upholding a finding of support notwithstanding the fact the parties labeled it a "property settlement")] This position, although the majority position and followed in the Ninth Circuit [*In re Shaver*, *supra*], is directly contrary to the express language of the Code: "designated as."

Second, establish a record and structure any agreement to create a strong basis for holding the payments are actually in the nature of support should be a major consideration. One should weigh the competing interests and consider the potential risks involved. For example, for the recipient, treating the payments as a property settlement has significant tax advantages. On the other hand, for the payor, treating the payments as alimony has significant tax advantages. These, of course, bear on negotiations, as well they should. However, only too frequently, the structure of divorce settlements becomes "tax driven" to the economic detriment of the parties.

From the standpoint of the practitioner representing a recipient in a bankruptcy case, whether as a debtor or creditor, there are serious differences as well. From the perspective of the debtor-recipient, if it is alimony (support), it is exempt to the extent reasonably necessary for support if not wholly. On the other hand, if it is a property settlement payment it is property of the bankruptcy estate and "gone with the wind."

If the recipient is a creditor, both counsel are faced with a tactical decision very early in the game, to wit: should an adversary action to determine dischargeability be initiated? The answer to this requires an understanding of dischargeability of property settlements. [BC § 523(a)(15)] There are two significant differences between the two in determining dischargeability that must be considered. First, unlike the alimony/support situation where concurrent jurisdiction exists between the bankruptcy and state courts, sole jurisdiction to determine dischargeability of other obligations arising out of the termination of a marriage is vested in the bankruptcy court. [BC § 523(c)] Moreover, actions to determine dischargeability of property settlement obligations must be initiated within 60 days after the first date set for the creditors meeting. [FRBP 4007(c)] If the action is not initiated (or an extension obtained from the court) within that time, obligations arising out of a divorce settlement or decree, other than for alimony/support are discharged!

The second significant factor is that while the determination of alimony/support under § 523(a)(5) is based on conditions that existed at the time of the divorce, the determination of dischargeability under § 523(a)(15) is based on conditions that exist as of the date of the bankruptcy. (1) Does the debtor have the present ability to pay [not a consideration under § 523(a)(5)]? (2) If the debtor has the ability to pay, would the benefit of the discharge to the debtor outweigh the detriment to the recipient?

If representing a creditor-recipient, serious consideration should be given to initiating an adversary action to determine dischargeability using alternative theories: nondischargeable alimony or, alternatively, if not alimony, a nondischargeable property settlement. Section 523(a)(15) picks up *all* obligations arising out of a divorce that are not of a kind described in § 523(a)(5). Thus, if you lose on § 523(a)(5), § 523(a)(15) may very well be your safety net. However, missing the FRBP 4007(c) deadline removes this safety net! If representing the debtor-payor, do not be too quick to initiate the process, you may just trigger a timely counteraction under § 523(a)(15)! If you intend to adjudicate the issue in the bankruptcy court, at least wait until the 61st day after the first date scheduled for the creditors' meeting.

A practice tip for those representing creditor-recipients whose Alaska decree does not specifically provide for alimony (following the Alaska approach that support comes from a property division). Read *Matter of Dennis*, *supra* [discussed in more detail in *Protection of Support Payments*, 19 *Alaska Bar Rag* No. 2 (Mar/Apr. 1995)]. Applying the *Dennis* approach even if under state law the payments constitute part of the property division, they may still meet the definition of alimony under Federal standards. This is a viable approach, at least until such time as the courts read and apply the literal meaning of the "designated as" language of § 523(a)(5). Better yet, family lawyers, get the Superior Court to include in the findings or decree specific language that payments made as part of a property division are intended to provide support for the recipient. This should meet the "designated as" requirement (why take a chance the court will not read the Code literally) and be indicative of the intent.

U.S. Supreme Court issues significant ADA decisions

Continued from page 1

form the "essential functions" of their position, any person who had received SSDI benefits would essentially be prevented from making a claim for discrimination under the ADA.

In *Cleveland v. Policy Management Systems Corporation*, 119 S.Ct. 1597 (1999), the Court held that an employee's claim under the ADA could not be automatically barred based on statements made in an SSDI application. In a unanimous opinion written by Justice Breyer, the Court found that estoppel could not be applied in that "there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side." For example, the Court noted that a determination of disability made by the Social Security Administration does not take into account whether the employee could perform in his or her position with a "reasonable accommodation." The Court also recognized that, while an employee may meet the general test used for determining entitlement to disability benefits, an examination of the individual case may reveal that the employee can in fact perform the "essential functions" of their position.

The Court did find, however, that an employee would be required to provide an explanation of statements made in an SSDI application concerning their disability in responding to an employer's summary judgment motion. "When faced with a plaintiff's previous sworn statement asserting 'total disability' or the like, the court should require an explanation of any apparent inconsistency with the necessary elements of an ADA claim."

The question of who may be considered "disabled" under the ADA was also recently considered by the Court. In *Sutton v. United Airlines*, 1999 WL 407488, the Court held that, if a medical condition is a correctable one, such as in this case myopia, the condition may not be considered a "disability" under the Act. A "disability" is defined as a "physical or mental impairment that substantially limits one or more of the life activities of such individual." The Court reasoned that, when a condition is fully correctable, it cannot be considered a "disability" in that the person is not then actually limited in their ability to perform any life activity. "A 'disability' exists only where an impairment 'substantially limits' a major life activity, not where is 'might,' 'could,' or 'would' be substantially limiting if mitigating measures were not taken." The Court also noted that, if correcting or mitigating measures could not be taken into account in determining whether a person may be considered "disabled," the ADA would be applicable to far more than the 43,000,000 Americans described by Congress as covered under the law. According to the Court, the Act could have applied to four times as many Americans if uncorrected physical limitations were considered to be "disabilities." "Had Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number of disabled persons in the findings (set out in the Act)."

The Court also rejected the plaintiffs' claim that they should be considered disabled because they were "regarded as having" a disability by the employer. Under the ADA, individuals who are "regarded as" disabled receive the same protection from discrimination as those who are actually disabled. The employer United Airlines had a vision requirement that effectively excluded the plaintiffs from the pilot positions to which they had applied, and the plaintiffs claimed that the vision requirement constituted an ADA violation. The Court disagreed. "By its terms, the ADA allows employers to prefer some physical attributes over others and to establish physical criteria. An employer runs afoul of the ADA when it makes an employment decision based on a physical or mental impairment, real or imagined, that is regarded as substantially limiting a major life activity." Although it was agreed by the parties that work does constitute a "major life activity," the Court held that the plaintiffs had not shown that their condition, poor eyesight, "is regarded as an impairment that substantially limits them in the major life activity of working" because there are plenty of jobs that they could have sought that do not have such a vision requirement.

The upshot of the discussion by the Court in *Sutton* concerning "regarded as" disabled claims is this: It is not enough to allege, in such a claim, that the employee or applicant was discriminated against based simply on a medical or physical condition. The medical condition at issue must be one that is regarded as substantially limiting a major life activity.

The Court applied similar reasoning to *Sutton* to its decisions issued the same day in *Albertson's Inc. v. Kirkingburg*, 1999 WL 407456, and *Murphy v. United Parcel Service*, 1999 WL 407472. In *Kirkingburg*, the Court held that the employer had not violated the ADA when it failed to hire an applicant who did not meet the vision requirement imposed by the Department of Transportation for truckdrivers. The applicant had argued that, because the DOT had a waiver program that would have allowed him to drive trucks in spite of his vision problem, Albertson's had discriminated against him when it refused to seek a waiver under the DOT program. The Court rejected that claim, finding that Albertson's had not violated the Act by failing to seek a waiver for the applicant. "It is simply not credible that Congress enacted the ADA ... with the understanding that employers choosing to respect the Government's sole substantive visual acuity regulation in the face of an experimental waiver might be burdened with an obligation to defend the regulation's application according to its own terms."

In *Murphy*, the Court held that the employer had not violated the ADA when it terminated the employee for failing to meet blood pressure standards imposed by the government for his position. As was the case in *Sutton*, the Court found that the employee had not shown that he was "substantially limited" in the major life activity of working based on his inability to perform in one specific position. As was the case in *Kirkingburg*, the employer successfully relied upon a government regulation as a basis for making a health-related employment decision.

NOTICE OF PROPOSED RULES

U.S. BANKRUPTCY COURT, DISTRICT OF ALASKA

The Advisory Committee on Bankruptcy Rules has proposed amendments to the local Bankruptcy Rules and Forms. [LBR 2003-1; 2016-1; 3022-1; 4001-2 (new); 4003-1 (new); 9013-2: LBF 5; LBF 29; LBF 34 (new); LBF 35 (new); and LBF 36 (new)]

Written comments on the proposed rules are due no later than September 10, 1999

Address all communications on rules to:

Clerk, U.S. Bankruptcy Court
Attention: Local Bankruptcy Rules Committee
Historic Courthouse, Room 138
605 West Fourth Avenue
Anchorage, Alaska 99501-2296

The proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan: U.S Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; U.S. Bankruptcy Court Clerk's office in Anchorage; or on the web at the Alaska Bankruptcy Law Information page http://www.touchngo/lglcntr/usdc/bnkrptcy/bnkrptcy.htm and the U.S. Bankruptcy Court Home Page http://www.akb.uscourts.gov

Upgrading your hardware:

What's new, needed, smart and cost-effective?

BY JOSEPH KASHI

Periodically upgrading your computer hardware is, for some, a delight: you can buy neat new toys, try to convince yourself, your firm or your spouse that you really do have a good business reason for the purchases, and you can later write off the costs either to your firm or your taxes. For others, computer hardware upgrades are about as enticing as a root canal operation and probably just as costly. For practical attorneys and business persons, the truth is somewhere in between. Here's my experience, reflecting upon my own money well spent and ill-spent.

WHEN DO YOU NEED TO UPGRADE YOUR HARDWARE?

Before you binge on computer hardware upgrades, remember that the hardware itself is totally useless without appropriate productivity software. If your current hardware and software work well together and perform every desired task reasonably quickly, then there's no objectively good reason to upgrade either the hardware or the software. In fact, upgrading under those circumstances probably costs you more lost productivity than you'll gain from the upgrade. For example, a three year old networked 166 MHz Pentium computer runs Windows 95 fast enough to be suitable for a secretary who does nothing but word processing, calendaring and Email. At most, you might want to incrementally upgrade DRAM, network interface card, system board speed, video card or monitor and, in this article, we'll tell you how to do that. But, beyond these relatively inexpensive changes, there's little objective reason to further upgrade this computer or to purchase a completely new system.

BEFORE YOU BINGE ON COMPUTER HARDWARE UPGRADES, REMEMBER THAT THE HARDWARE ITSELF IS TOTALLY USELESS WITHOUT APPROPRIATE PRODUCTIVITY SOFTWARE.

On the other hand, when you're adopting new operating systems or more capable software, you'll frequently need to substantially upgrade or totally replace affected computers. For example, anyone planning to use Windows NT (a real hardware resource hog), optical imaging, voice dictation or OCR really does need the fastest possible computer along with ancillary hardware like high speed scanners, SCSI cards to connect those fast scanners, massive networked disk storage and the best possible sound cards to accurately recognize those sound waves. Clerical staff working with scanned documents throughout the day need the biggest, sharpest monitor that you can afford with those savings from reduced Workman's Comp claims. From time to time, you'll need to upgrade or replace computer hardware because of actual hardware failures but such failures have become mercifully less frequent.

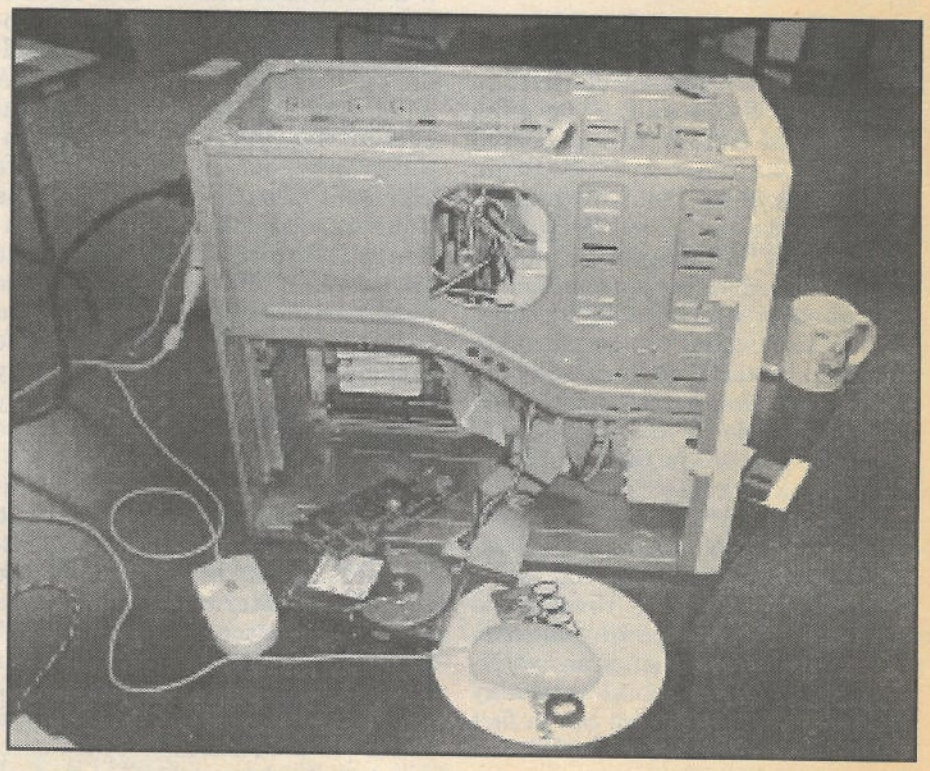
Perhaps every three to six years, you'll need to upgrade or replace most of your hardware or software simply in order to avoid critical data becoming orphaned in the future and we discuss that sort of mandatory upgrade elsewhere in this section.

Not too long ago, reasonably fast computers systems were quite expensive and selectively upgrading the slowest portions of your personal computers had obvious economic advantages, particularly with generic computers that used inexpensive industry-standard system boards, DRAM and cases. Generally, generic computers are relatively easy and economical to upgrade using third party components while brand name computer systems frequently use proprietary hardware whose unique mechanical layout requires you to buy that vendor's typically more expensive parts. Recently, though, the advent of high performance computers costing under $1,000 without monitor and tape drive have radically changed the decision to replace rather than selectively upgrade an existing computer system. By the time that you take into account a technician's hourly rate plus the cost of purchasing numerous computer parts at retail, those $999 systems look pretty enticing. And, the entire system is brand new, with a higher probability of trouble-free compatibility and a good warranty.

Major upgrades usually don't make a lot of economic sense: Balanced performance is crucial and a partial upgrade may not, due to remaining bottlenecks, provide the noticeable real world improvement performance that you expect. Speeding up only one critical subsystem, for example installing a faster CPU and system board, may not provide any additional benefit unless you also add faster SDRAM and a faster hard disk. Upgrading is an exercise in identifying and economically remedying multiple bottlenecks within your computer system.

Still, there are many circumstances when a partial upgrade of an existing computer makes a lot of sense and we've discussed many of these upgrade components in detail later in this series. Cost-effective partial upgrades include:

1. Adding more or faster DRAM. This partial upgrade almost always makes sense if your CPU and system board are otherwise fast enough. At least for Windows, more is always better. Higher performance PC100 SDRAM memory has recently become quite inexpensive. Replacing older 66 MHz SDRAM modules with high performance PC100 SDRAM greatly improves the performance of some recent computers that can handle the faster PC100 SDRAM modules. You'll need to check your system board manual on this one. Simply replacing older 66 MHz SDRAM with PC100 memory won't upgrade your system's performance unless the system board can run this memory at full speed.



2. Adding an SCSI card, a tape drive, a Zip drive or a scanner. Most entry and mid-level computer systems don't include these highly desirable devices. Adding them is almost always an after-market upgrade. Just be sure that the computer you're upgrading is otherwise economically worth these additions. Under some circumstances, replacing an older system and then adding these upgrades makes more sense.

3. Substituting a faster video card. You'll probably not need to change video cards unless you're doing high end graphics or animation, or unless your existing PCI video doesn't work properly with your operating system. New high performance video cards frequently cost less than $50 and an experienced technician can usually make the substitution in 15 minutes or so, assuming that you have a computer that can use PCI or AGP video cards.

4. Adding a 100Base-TX network card. Again, adding or changing network cards is an after-market upgrade that can substantially improve the performance of a networked computer. It shouldn't cost any more than a video card upgrade if you have a computer with a PCI expansion bus.

5. Installing a larger hard disk. You'll need to proceed more cautiously here. Some older 486 computers can't use hard disks larger than a mere 528 MB, an obsolete size that you can't even buy new today. Be sure that your system board's hard disk controller is carefully matched to the new hard disk's capabilities; otherwise, you may lose the extra performance and size that you've just purchased. The current hard disk and controller interface standard is UDMA, which is supported only by relatively recent Pentium/Pentium II/AMD K6 systems. If you're replacing your existing hard disk, then use a disk duplicating program like PowerQuest's Drive Image and Partition Magic to make an exact copy of the old hard disk on to a larger partition on the new hard disk. Otherwise, you'll waste many hours reinstalling the operating system, programs, and data. In fact, don't even try to change hard disks without using these programs or comparable products like Ghost.

PERHAPS EVERY THREE TO SIX YEARS, YOU'LL NEED TO UPGRADE OR REPLACE MOST OF YOUR HARDWARE OR SOFTWARE SIMPLY IN ORDER TO AVOID CRITICAL DATA BECOMING ORPHANED IN THE FUTURE

6. Installing a faster system board with a faster CPU and faster PC100 memory. Many system boards can use faster processors of the same family. Often, that's just a two minute plug-in upgrade because the system automatically detects the faster processor and adjusts itself accordingly. Other system boards require you to set some jumper switches in accordance with the setting diagrams contained in your system board manual. Be very cautious here. You can do a lot of damage if you don't know what you're doing and sometimes even when you do. Unless you also upgrade your DRAM to faster PC100 memory, there's little benefit in simply running a faster CPU.

7. Often, you may not even need to physically change the system board. Check the system board's manual and see whether you can change the BIOS settings in a way that will make your computer run faster. Often, changing memory access and CPU caching settings makes a noticeable improvement in performance without affecting reliability if your DRAM is fast enough. Write down every setting before you change them in case you need to revert to a known good configuration. Even if the system later becomes unreliable or refuses to boot the operating system, you should be able to get a stable system by reverting to old settings or default setting. Many system board BIOS chips, in fact, have a maximum performance setting option that's usually safe.

8. Often, system boards can reliability handle SDRAM and CPU processors that are faster than originally installed in the system. Until recently, vendors tended to use the same high performance system board in most of their systems while installing slower, less expensive memory and processors to keep costs down. Your system board manual will tell you the maximum supported CPU and memory speeds. Sometimes, you can noticeably upgrade

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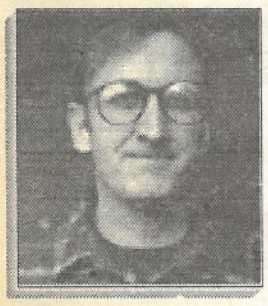
Eclectic Blues

Horse hair equalizers

☐ Dan Branch



I seldom use this forum to change the legal profession. In fact, I rarely write about the legal profession, leaving that job to the other deep thinkers who decorate the pages of the *Bar Rag* with their thoughts. There is an issue about which I can no longer remain silent—hair and its impact on the outcome of court cases.

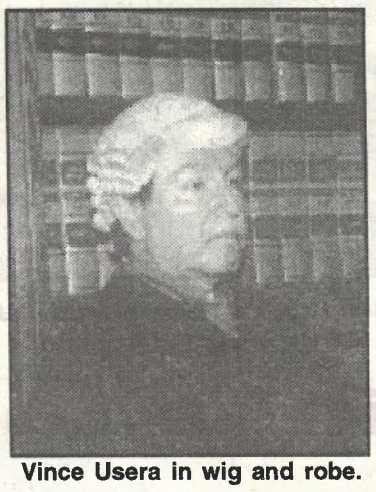
It's time that the bar association recognize the truth. Guys with hair have an advantage in court over those less blessed with thatching.

Think about it. You're doing a jury trial in Tok against an insurance defense attorney who spends more money on hair cuts than you did on your car. At stake is your million-dollar emotional distress claim for the loss of daily access to Star Trek reruns on cable TV. By using *voir dire* to eliminate anyone young enough to prefer MTV to the History Channel, you give yourself a good chance to make hay with the jury. Then, during opening argument, your case blows apart like a comb-over hair cut in the wind.

In the bright courthouse lights, the jurors begin to squint and squirm while you lay out your causation analysis. Juror number 3 slips on a pair of sunglasses. Soon, jurors 5, 6 and 7 follow her example. Those without shades look away from your chrome dome which is now reflecting intense light into the jury's eyes.

The sunglasses come off when your big-haired colleague presents his case. The jurors visibly relax and look like they're walking through Monet's flower garden. Soon they are nodding yes to every point made by opposing counsel. You return home with nothing to show for your work but a big attorney's fees bill. It's not fair. Something should be done.

"But what about Michael Jordan?" a gentle reader might ask. True, we see his broad shoulders and shining head all the time on TV selling expensive sports equipment and bargain long distance companies. He actually shaves his head. If male pattern baldness hasn't stopped him from selling shoes, why should it diminish the success rate of trial lawyers? The answer is easy. Michael Jordan can fly, lawyers cannot.



Vince Usera in wig and robe.
Photo by Bill Cummings

Those of you still reading this may wonder, what, if anything can be done to corrrect the problem. After all, Some guys go bald. It's nature's way of helping out the hat industry. They should adapt.

As one who discovers more and more of his scalp each year, I am not ready to accept the unfairness of this situation. Steps must be taken by the bar association to help. There are many possible solutions.

Balding barristers could be given a dues rebate to cover the cost of buying Rogaine. Unfortunately, the drug doesn't grow hair on every head. All attorneys could be required to shave their heads. Blow-drying hair could be banned within two days of trial. These solutions could reduce courtroom decorum.

The answer lies in England, birthplace of our common law, where barristers must don horse hair wigs before entering court. With a horse hair wig, you never have a bad hair day. The size of your hair means nothing.

Take yourself back to that courtroom in Tok. This time, you wear a wig during opening. The sensible jurors listen carefully to your points. They begin to feel your client's pain. The cable company must be punished for cutting her off from The Sisko or Captain Picard. They must pay.

When your wigged opponent rises, the jury is yours. His personal responsibility speech is seen as so much fluff. Later, justice will prevail and the cash will flow.

Yes, wigs are the answer.

Hi-Tech in the Law Office

What's new, needed, smart and cost-effective?

Continued from page 22

your system's performance merely by substituting a faster CPU and SDRAM after making the appropriate BIOS and jumper switch changes.

9. If all else fails and if your computer system is otherwise up to current standards, then consider installing a complete upgrade package including a new system board, faster CPU, PC100 SDRAM and faster video card. The economics of an upgrade of this magnitude become marginal, though.

10. If you're really adventurous, knowledgeable and own a very late model Intel Celeron computer with a CPU running at 366 MHz or faster, you MAY get a useful performance improvement by running the CPU at faster than its rated speed, particularly with system boards using Intel's 440BX chipset. It's legal but risky for an end user to try overclocking and it's been traditionally frowned upon because of serious reliability problems with older 386 and 486 processors. Intel's Celeron, though, is reputedly very tolerant of overclocking and MAY give a useful performance increase because of its full speed L1 cache. Adjust the BIOS clock multiplier slowly upward until you've found the fastest speed at which the system runs reliably. Install only PC100 memory and set the memory's front side bus at 100MHz. Get and use the biggest and best CPU cooling fan available. I prefer PC Power and Cooling. Finally, be sure that the PCI bus runs no faster than its rated 33 MHZ speed. Many PCI cards, particularly expensive SCSI cards, are susceptible to fatal damage if they exceed the regular 33 MHZ PCI speed limit. If you try this no-cost upgrade approach, be VERY careful and recognize that there's a real potential for unreliable performance and/or component failure if you over do it. This trick is potentially workable ONLY for Celerons and not any other CPU. Remember, don't try this one at home if you're not really knowledge about system board setup. This trick is strictly at your own risk and there are no warranties or representations by us on this one.

GENERAL HARDWARE UPGRADE CONSIDERATIONS

Remember that you'll be dealing with the same hardware considerations regardless of whether you upgrade existing computers or replace them with new systems. Engineering from brand to brand tends not to vary widely anymore. Performance now is largely dictated by generic features such as the CPU, DRAM memory, video card and network cards, system board chipset and hard disk interface. As a result, careful investigation and purchasing can get you really fast, well balanced hardware at a very affordable price.

Major manufacturers including IBM, HP, Dell and Compaq use many of the third party brand name components that we'll discuss here. Of the major manufacturers, only IBM makes some of its own Intel-compatible PC processors and hard disks, extremely good ones at that. Most of the top brand names basically assemble the same third party components that you can buy retail if you're upgrading an existing computer. In fact, custom configuration and assembly using quality third party components is fast becoming the norm for business computers. As a result, system purchase decisions have become mostly a matter of choosing a brand name or custom built computer system with a good warranty and that uses the best possible components in a configuration that meets your performance and budget needs.

1. Cutting edge technology is typically over-priced and immature while it's still hot. Many manufacturers try to sell you their higher margin, top of the line systems and fastest components by promising that purchasing marginally more computing power ostensibly avoids the need to upgrade hardware as often. That's false economy at best; it's probably not true.

2. Buying good quality hardware components that are compatible with either existing systems to be upgraded or with newly assembled computer systems seems to make the most sense when you purchase mature technology that's about ½ generation behind today's top of the line. That saves you a lot of money while providing reliable technology with more than enough performance. For example, a 400 MHz Intel Celeron CPU cost about $100 in June, 1999 while a 466 MHz version cost nearly $190. And, both of these "consumer" Celerons perform on par with their more expensive Pentium II and Pentium III counterparts.

3. Be sure that any new components will physically fit in your computer system case and are mechanically and electronically compatible. Mechanical compatibility is often overlooked.

4. Given recent hardware price declines, I recommend a two year replacement cycle although you might want to make partial upgrades more frequently given today's very low component prices. Two years is just about the time that your warranty runs out and you'll want a substantially faster system to keep up with demanding new software. It's false economy to retain or not upgrade a too-slow system until it's been fully depreciated based upon an artificially long depreciation schedule.

5. Current Intel Pentium II and AMD K6-2 processors work up to 10 times faster than early Pentium 60/66/75 and 486-100 computers. At today's low prices, there's little reason to hold on to older computers until they reach the end of an arbitrarily assigned depreciation cycle and these obsolescent computers may be excellent candidates for disposal to staff members, schools or charities.

6. New CPUs and advanced system boards are improving so rapidly and prices are dropping so quickly that there's little or no economic benefit to purchasing significantly more expensive systems that promise "upgrade" capability a few years down the road. These "upgradeable" systems tend to be more expensive, more compromised, often have some compatibility problems, and usually don't perform as well as a complete system replacement a few years down the road.

7. It is sensible, though, to buy a high quality 17" or 19" monitor and to retain it as long as it works well. Monitor capabilities do not change nearly as rapidly as processor and hard disk technologies and a high quality, large screen monitor should be quite adequate for five or six years. In fact, I'm using a seven year old 17" ViewSonic monitor with a really fast, high-powered NT system and the older monitor is entirely adequate. Realistically, there's a practical limit to increasingly fine video resolutions: human eyesight. Thus, investing a little more in a good monitor is usually money well spent and may, in itself, be a suitable upgrade.

L to R: Judge Seaborn Buckalew, Jim Delaney, Jamie Fisher, Russ Arnett

Judge James and Verna von der Heydt

Front: Marge Cottis; back L to R: Russ Arnett, George Sharrock, M. Ashley Dickerson.

Territorial lawyers gather for 2nd annual potluck

Continued from page 1

Thorsness quipped.

Thorsness then told Stern about the Alaska bar exam he'd taken in 1954 along with Neil MacKay, Bob Opland, Ken Atkinson, Bob LaFollette, Russ Arnett and a woman court reporter, Gara Lyons. After they'd written the first day's worth of answers, territorial attorney general J. Gerald Williams — who administered the exam — leaned over and said something to Lyons. She didn't come back to finish the exam, Thorsness recalled. He added that when Williams picked up Thorsness' exam papers he scratched his head over some of the answers. Apparently Thorsness had a better understanding of the law than Williams who'd devised the test.

Now, 45 years later, Thorsness began explaining the doctrine of law that stumped the old territorial attorney general.

"What do you do, sit around and read legal books all day long?" Stern interrupted.

At another table Karin Fitzgerald told the von der Heydts, June Robison, Barbara Nesbett, and Ken Atkinson how she has survived in a family of lawyers. Both of her sons-in-law are lawyers, as are a daughter and son, and of course, her husband, Federal District Court Judge James Fitzgerald. Her advice: "Learn to never shut up and keep arguing."

She added a story of her own from when the Fitzgeralds had lived in Anchorage's Nunaka Valley many years ago. When people left town, they'd leave their dogs behind and a number of stray dogs wandered through their neighborhood. Although the city manager had a phobia about dogs running loose in the city, this phobia did not extend to the outskirts of Nunaka Valley. When Fitzgerald called the state troopers they told her they could only do something about the dogs if they hurt someone. So, her husband took matters into his own hands.

"He put tasty little bits of something in the back of his car," Fitzgerald said, and lured the dogs in. Once they were trapped inside he drove them to downtown. "He let the dogs out in front of city hall where they were picked up."

Warren Christianson, who began practicing in 1951, sat in a comfortable cushioned chair and recalled how he'd sailed up to Sitka in 1951. He'd spent the better part of a year going down the Mississippi from law school in Minnesota, then through the Panama Canal and after wintering in San Diego came up to become the only attorney in Sitka.

"After I passed the bar I went to see the head man of the only bank in town," Christianson recalled. The local bank manager asked Christianson to handle the bank's legal business and then added, "We'll recommend you to all our clients.

"All of a sudden I had all of the business I could possibly handle," Christianson said.

In 1964 Christianson brought his newest vehicle to the Fairbanks bar convention. As conventioneers looked on he drove the vehicle straight into the Chena River...and then out the other side. The amphicar was a great hit and he ferried lawyers to and fro showing off its amphibious features.

While most of the lawyers who practiced before statehood are now retired from the active practice of law, some are still going to work every day.

"I haven't had a day off in 40 years," said Charles Tulin, who was admitted in 1956. "I'm the oldest by date of admission still practicing."

"He's greedy," joked Charlie Cole, who when he found out Tulin passed the bar in '56 realized he had him beat by a year. Cole has been practicing since 1955.

"He was attorney general," Tulin shot back. "I had to work."

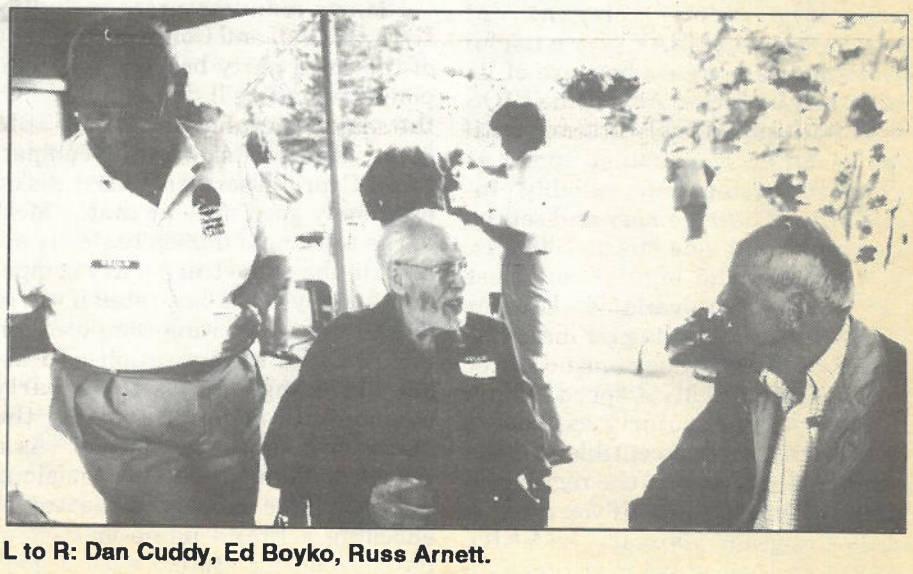
L to R: Dave Talbot, George Hayes.

Betty Arnett and Roger Cremo.

Front row L to R: Betty Arnett, Charlie Cole, George Hayes, John Rader, Carolyn Rader, Pricilla Thorsness, Helen Williams, Lorna Stern, Ghislaine Cremo, and Verona Gentry. Back row L to R: Roger Cremo (host), Charlie Tulin, Judge Seaborn Buckalew, Dan Cuddy, Gene Williams, Ken Atkinson, Ev Harris, Jerry Wade, Dave Pree, Jamie Fisher, Verna von der Heydt, Judge James von der Heydt, Judge James Fitzgerald, La Rue Hellenthal, Dave Thorsness, Bob Opland, Barbara Nesbitt, Mildred Opland, Betty Cuddy, M. Ashley Dickerson, Jim Delaney, Jack Stern, Marge Cottis, Ruth Robison, Dave Talbot, Pauline Sharrock, George Sharrock, Russ Arnett.

Photos by Sally J. Suddock

Front L to R: Warren Christianson, Cabot Christianson, Russ Arnett; Back L to R: Ev Harris, Helen Williams.



L to R: Dan Cuddy, Ed Boyko, Russ Arnett.