

The Alaska BAR RAG

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- Summer Pastimes
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- ADR & the Fortune 1000

VOLUME 25, NO. 4

Dignitas, semper dignitas

\$3.00 JULY - AUGUST, 2001

Farewell to the Chief Justice

Rabinowitz: A legacy of law . . . and justice

This issue of the Bar Rag contains excerpted memorials for several long-time Alaskan attorneys who reached the end of the trail over the summer, beginning below with remarks at Jay Rabinowitz' July memorial service in Anchorage by his brother.

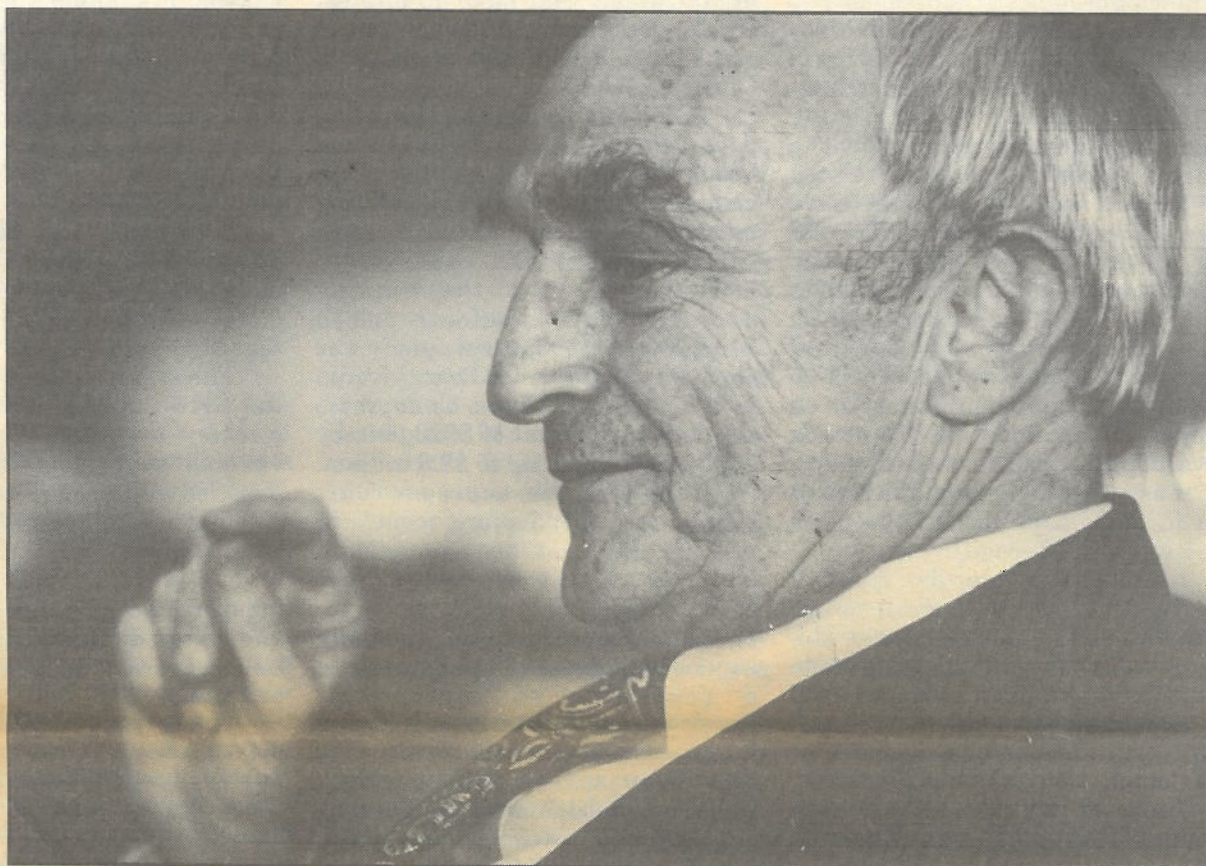
My name is Robert Rabinowitz. I am Jay's younger brother. It is with humility and gratitude that Jay's sister Judith Gerard and her children, my wife Kathleen and I, and our children and all the Rabinowitz relatives unable to be here today wish to express our deepest, heartfelt thanks to the State of Alaska.

To its Governors, present and past, to its Senators, to its entire Judiciary, to its legal profession; our profound appreciation for the recognition and respect accorded Jay for his contributions to the Law and to the cause of Justice in the State of Alaska.

He served long and conscientiously.

To Alaska's citizens — brave, wondrous, caring, individualistic citizens, those in all walks of life, who in their interaction with Jay, recognized and responded to the depth of his humanity and the purity of his friendship, with a warmth and love of their own (which I'm positive helped to overcome the long minus 40 degree winters in Fairbanks). For all you gave to Jay, in opportunity, in encouragement, in that shared vision, that truly helped him to bring into focus and to fruition his dazzling intellectual skills, and expand his creative energies; our indebtedness.

To Alaska itself, its overwhelming,



Justice Rabinowitz upon his retirement, 1997.

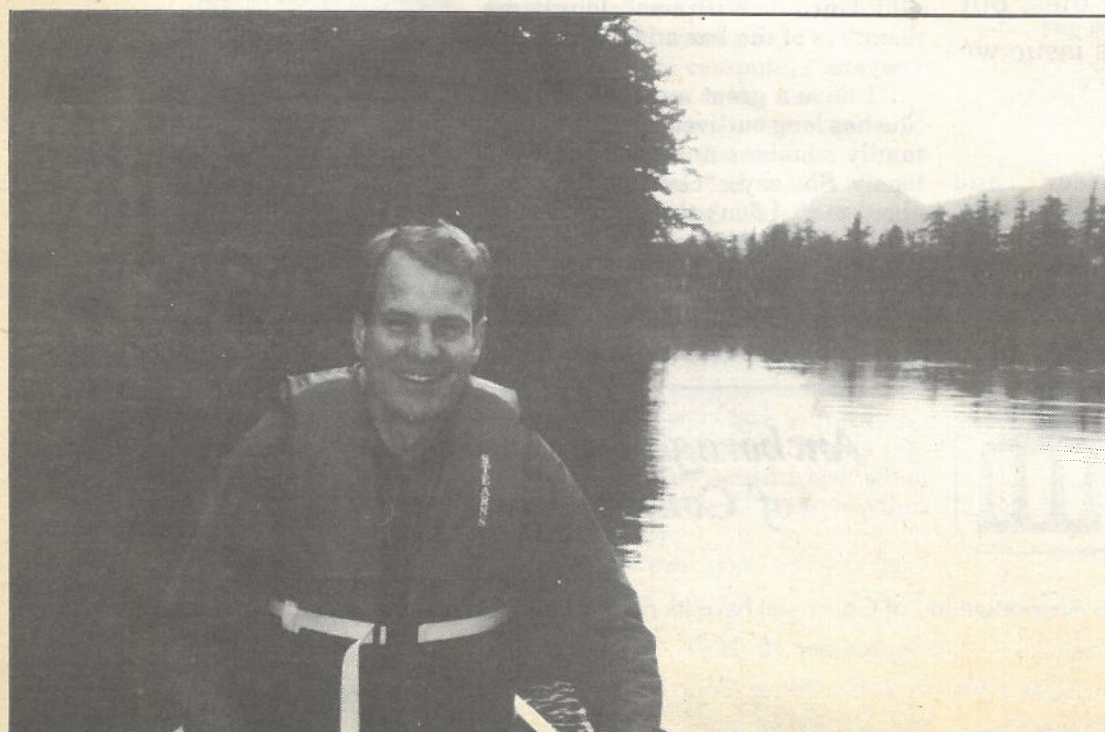
immense, primal physical scope and beauty. Humbling and awe-inspiring... that touches on the unknowable... where earth, water, and sky take on meanings predating recorded history... where the contemplation of the nature of nature has a way of deflating most human egos. You were the seducer of Jay's imagination, of his dreams (along, I suppose, with one of the earliest motion pictures we ever saw, *Nanook of the North*.)

And to Alaska, our begrudging respect — begrudging because your lure and appeal pulled Jay physically far from our family's day-to-day life back in New York. Our loss was to be your most fortuitous gain.

Coming to Alaska was the second best decision Jay ever made. The best was to ask

Continued on page 14

Robert Hickerson, Alaska Legal Services director, dies at 50



Near Fox Island, 1995

By PETER MAASSEN

The Alaska legal community joined other friends and family to mourn the death on June 9, 2001, of Robert Keith Hickerson, who had served since 1984 as Executive Director of Alaska Legal Services Corporation. Hickerson, 50, succumbed to a recurrent brain tumor, having combated

Continued on page 18

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American Bar group urges public financing of judicial campaigns

Citing increasing public cynicism about the influence of campaign donors and issue advertising on the independence and integrity of state judges, an American Bar Association commission on July 23 urged states with judicial elections to finance their campaigns with public funds.

"There has been an alarming increase in attempts by special interests to influence judicial elections through financial contributions and attack campaigning," said ABA President Martha Barnett, releasing the report of the ABA Commission on Public Financing of Judicial Campaigns. The report recognizes that issue advocacy triggers unsettled constitutional issues that still must be addressed.

"The public sees the same patterns of financial contributions to judges, and issue advertising related to judicial campaigns, that have created cynicism about elections for our political leaders. That cynicism is transferred to our courts and taints the concept of judicial independence. We cannot afford to allow our legal system to be perceived as for sale to the highest campaign donor, or as subject to intimidation by attack advertising by special interest groups. We must stem this tide before it rises any further," said Barnett at a news conference in Chicago.

Alfred P. Carlton, Jr., chair of the ABA Standing Committee on Judicial Independence, said the report "offers another stepping stone in our journey to fashion a new model of judicial selection in the states." Carlton is an ex-officio member of the Commission on Public Financing of Judicial Campaigns, which produced the report, and will become

ABA president-elect in August. He commended Commission Chair D. Dudley Oldham for leading the commission to what he termed an enormous contribution to public trust.

"It is an affront to the American justice system that electioneering gives the impression justice is for sale. Public funding is one method by which we can restore public trust and confidence in a system that is truly independent and impartial. It can reverse the corrosion that taints all our courts when judicial candidates must turn for campaign resources to the very individuals and organizations that have an interest in the outcomes of cases those candidates may decide as judges," Carlton said.

Carolyn Jefferson-Jenkins, president of the U.S. League of Women Voters and a member of the commission, pointed to escalating campaign costs in judicial races in some parts of the country. In Michigan in 1994, the winning supreme court candidate raised \$180,000; by 1998, the winner's war chest was \$1 million. In Pennsylvania in 1987, two candidates for supreme court raised a total of \$523,000; by 1995 the tab was up to \$2.8 million. In Illinois, three supreme court candidates raised more money in primary elections than any candidate had ever raised previously in their entire campaign.

"Limited resources for suddenly expensive judicial campaigns create a perception of impropriety. Regardless of the merits of a case, a judge who decides in favor of a contributor appears to be paying a political debt," said Jefferson-Jenkins.

The report cites examples: In the late 1990s, nine of 10 voters surveyed in Pennsylvania and Ohio believed judicial decisions were influenced by large campaign contributions. The newsletter of the Michigan Manufacturers Association boasted that its contributions "swayed the Supreme Court election to a conservative viewpoint, ensuring a pro-manufacturing agenda." In 1998, 79 percent of Texas lawyers told a survey that campaign contributions influence judicial decisions.

Jefferson-Jenkins said that while the appearance of impropriety in any election is troubling, it is especially so in judicial elections. While 14 states have created public financing systems for financing campaigns of political offices, only one, Wisconsin, includes judges in the mix, she said, despite the fact that 39 states elect some or all of their judges.

"Governors and legislators are supposed to respond to politics. Judges are supposed to apply the facts of the case to the law without regard to politics," she said.

The report notes that ever since the 1976 Supreme Court ruling in *Buckley v. Valeo*, Congress and various state legislatures have wrestled with free speech issues while attempting to regulate campaign contributions and expenditures. It urges states to address the impact of independent campaign expenditures and recognize the impact of general issue advocacy on public financing programs.

The report also incorporates principles to guide the transition to publicly funded judicial elections:

- States must be sensitive to

constitutional limitations on their power to regulate judicial campaign finance.

- One size does not fit all—interstate variation in the method of judicial selection and legal culture affect the viability of public financing.

- Public financing should generally start with the highest court seats.

- Public financing programs should provide candidates with funding sufficient to cover the full cost of campaigning.

- States should limit participation to serious candidates.

- Funding should be conditioned on commitments to spend it only on legitimate campaign expenses and not raise money from private sources.

- Public financing must be funded from a stable and sufficient revenue source.

The draft report is scheduled for presentation to the ABA House of Delegates in February 2002. No report represents association policy until and unless the ABA House of Delegates or Board of Governors approves it, said the association.

The ABA Standing Committee on Judicial Independence <http://www.abanet.org/judind/home.html> was created in 1997 to counter ideological attacks on the judiciary, act as a clearinghouse for information on the judiciary and help raise public awareness of the need for an independent judiciary, said the association. The committee created the Commission on Public Financing of Judicial Elections last year.

—American Bar Assn. press release, July 23, 2001

EDITOR'S COLUMN

Good-bye for now

□ Thomas Van Flein



"So we beat on, boats against the current, borne back ceaselessly into the past." F. Scott Fitzgerald.

It's been said that everyone dies, but not everyone truly lives. In this issue we say good-bye to several fine lawyers,

including three judges, each of whom truly lived. We have devoted considerable space to Justice Rabinowitz, and quite honestly, we wish we had more space to devote to

his life, his career and accomplishments. His achievements, his wisdom and his words will remain for generations. All of us are blessed for having known Jay Rabinowitz

and he has shaped our laws and our system of justice as much or more than anyone. Mr. Hickerson is likewise well remembered, and his contributions to our state will be thought of for years to come. We are publishing a tribute to Mr. Hickerson in honor of his work and accomplishments, and a life truly lived. We also say good-bye to Lester Miller, Joe Kroninger, Joseph Brewer and Gerald Williams, long-time members of the bar and remarkable lawyers.

I have a great aunt who is 101. She has long outlived her immediate family members and friends. She is lonely. She says, "God has forgotten about me." I don't think this is true, but I know God has remembered Jay Rabinowitz and Robert Hickerson, and we shall too.

The Alaska Court System Invites you to the dedication of the new

Rabinowitz Courthouse

*Friday, September 21, 2001 • 3:00 p.m.
101 Lacey Street • Fairbanks, Alaska*



**Anchorage Inn
of Court**

The Anchorage Inn of Court will have its next meeting on September 10, 2001

at 5:30 p.m. at the Boney Courthouse.

Mayor George Weurch will be the guest speaker.

Call Gene DeVeaux at 279-6591 for more information.

The Alaska BAR RAG

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Perspectives from the Chief Justice

This issue of the Bar Rag contains many commentaries on the legacy of Jay A. Rabinowitz to Alaska's law history. The following are some of his observations during his career on the bench.

“The privacy amendment to the Alaska Constitution was intended to give recognition and protection to the home. Such a reading is consonant with the character of life in Alaska. Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states.”

Writing for the majority in
Ravin v. State, 501 P.2d 159, 174 (Alaska 1974).

“Our fates are intertwined and we must arrive at a solution that is devoid of racism and race-hatred...(W)e are one people we should do it without hatred toward each other, without a concept that there is a dominate race or dominate people.”

Calling on Alaskans to join together to help battle
the problems facing Alaska's Native people.
1992 State of the Judiciary Address
to the Alaska Legislature

“(Alaska's judicial system) really changed in 1955 through the wisdom of the...delegates to the Constitutional Convention. They rejected the concept of straight partisan election of judges, and they rejected the federal appointment scheme which is executive appointment, confirmation by the legislature and life-time tenure on good behavior. So they came up at that time this was quite radical with the “Missouri Plan,” which is merit-selection, merit-retention. This is probably one of the great things that the Constitutional Convention did because, in my view, the judiciary article is a splendid example of foresight and incredibly skillful drafting...Now there are about 35 states that have some form of our system, and there isn't a single state that wouldn't want our system in full.”

April 2000 Interview with Ron Inouye
UAF Oral History Program, Alaska & Polar Regions Department
Elmer E. Rasmuson Library, University of Alaska-Fairbanks

The Family of Justice Jay A. Rabinowitz

extends its deep appreciation to the many members of the
Alaskan legal community who,
through their kind words and deeds,
have made his recent passing easier to bear.

We extend special thanks to his colleagues at the
Alaska Court System, for helping him flourish
for over forty years in a career he loved.
Special thanks also to the justices of the
Alaska Supreme Court,
for their years of steady support.
Jay admired all of you greatly.

Finally, we thank the many people who helped make his recent
Memorial Tribute in Anchorage such a warm and wonderful event:

Speakers:

Steve Williams
Justice Warren W. Matthews
Andrew R. Harrington
Charles E. Cole
Governor Tony Knowles
Arthur H. Snowden II
Kim & Myer Hutchinson
Justice Walter L. Carpeneti
Heather Kendall-Miller

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Les Gara
Marilyn Heiman
Teresa High
Cheryl Jones
David Landry
Connie Peterson
Veronica Slajer
Jessica Van Buren

With Our Gratitude,
Ann, Judy, Mara, Max & Sarah

Bar Letters

Weeks comments on REF: Distinguished Service Award

The Alaska Bar Association has given me more, personally and professionally than I have given the Bar. Deborah O'Regan and Barbara Armstrong have remained friends despite the many provocations they've had. Members of the Board have been inspiring and funny and conscientious and invariably well-prepared and hard working. Sitting between John Murtaugh and Mike Thompson at Board meetings was a job any straightman would relish.

It is an honor to be included amongst Donna Willard, Ken Jacobus, Bart Rozell, Keith Brown and others who have given so much to make our profession better.

I wish I had been more articulate and gracious at the Convention when the award was presented. I was totally surprised and though not speechless should have been. I thank you and look forward to the day when the Board gives that award to some of you who already deserve it. Sincerely,

— Larry Weeks

West Group seeking material for publications

I am an attorney duly licensed to practice law in the state of New York, and am the former publication editor of *Am. Jur. Proof of Facts*. I have been retained by West Group to seek material for two of its national publications—GOLDSTEIN'S LITIGATION FORMS and OPENING STATEMENTS—from practicing attorneys.

These publications are subscribed to by law schools, law firms, and litigation attorneys across the country. Although pecuniary compensation is not offered for litigation forms and/or opening statements that are accepted for publication, those who submit forms and/or statements will be acknowledged in the publication for their contributions.

If you wish to contribute, or have any questions about potential contributions, please feel free to contact me via e-mail (mgleary@rochester.rr.com) or by phone (716-392-3152 10 am to 5 pm EST). You may also submit forms to me by e-mail for my review.

Thank you. I look forward to hearing from you.

— Mary G. Leary, Esq.

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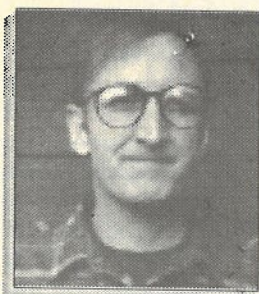
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Cat caper □ Dan Branch



It was late winter when the cats disappeared. Three big house cats that had divided up the neighborhood into hunting grounds just went missing. One day they were here. The next day missing cat posters showed up on all the Chicken

Ridge telephone poles.

A week before, eagles had started hanging around 7th Street. A big immature bald eagle took over our spruce tree. Someone said a set of mature birds started building a nest across the street. This was a treat.

We live in Northern Crow territory, where usually even bold ravens refuse to visit. The crows just chase them and the eagles away. Crows can usually hold the best ground but somehow the eagles had slipped in before the feisty ones returned from their winter grounds. We looked forward to waking up to eagle cries instead of crow complaints.

Late winter must be tough on eagles. The crows can still make a living on the tidelands and ravens get by raiding dumpsters and pickup truck beds in the Fred Meyer's parking lot. Eagles have to fight gulls for bait fish, a fight, whenever I witness it, they lose. The big birds aren't designed to get wet, so they fish like World War II torpedo planes. After spotting a school of fry, an eagle dives toward the water at a steep angle and at the last minute throws out its wings to break. If everything goes perfectly, only its talons hit the water, where they lift a juicy juvenile fish airborne.

Something usually goes wrong. I've seen more than one eagle go too deep in the water and then have to wing-paddle to shore. Most of the time they come up empty. If one does catch something, gulls or other eagles will try to force a drop.

A couple of weeks ago, I watched two eagles lock talons and spin over the water while fighting over a scrap of herring. When they broke free, both birds flew full speed into some thick alder brush. Another time I watched a mature bird try to pull a steelhead from a shallow river. He got wet, gave up, and skulked over to shore.

Eagles are at their best during the dog salmon run, gorging on chum carrion. Last winter, the salmon were still feeding at sea when the cats disappeared. That's probably why eagles were hanging out in our backyard. In the days after the last cat vanished, the eagles moved on.

Most of our neighbors blame the birds for the loss. Someone said someone told them that someone saw cat skeletons in an eagle's nest somewhere. I am having a hard time accepting this charge. A couple of the missing cats weighed more than 14 pounds. They all had claws and had pretty much eliminated the neighborhood squirrel population.

I've seen one of our ex-neighbors, the immature bald eagle, down at the hatchery, picking over the king salmon offal. "Cat murderer?" I wonder aloud, while passing him on the beach. The eagle looked up with discomfort in his eye. He didn't seem capable of the task. If eagles hunted like Peregrine falcons, it would be easier to credit them for the cat caper. Last winter a pair of falcons terrorized the downtown pigeons. You could see them work from the courthouse



building, climbing above the pigeons, and plummeting at high speed into one of their victims. The marked pigeon would fall without grace or life to the sidewalk in front of the Sealaska building.

Eagles seem to prefer their food small or dead. Of course, there is that story from Valdez of an eagle carrying off a poodle pup from the porch of their Winnebago. The dog belonged to a retired couple. A witness saw the woman cry out in alarm. On the other side of the motorhome, the husband pumped his arm in manly celebration.

The wonder of all this is not that an eagle could carry off the neighbor's cats. It's in the presence of eagles in the neighborhood at all. I have a friend who says it's a privilege to live where bears wander the streets. In Ketchikan and Fairbanks, wolves have broken their late winter famines on a quickly snatched dog. Even in Anchorage, bears and moose move through neighborhoods.

Sometimes there is a price to pay. Tonight, I read two more missing-cat ads in the Juneau paper.

Books of Note

Two new audio-video products help lawyers win at work and home

The American Bar Association has published two new guides for lawyers. *The Lawyer's Guide to Balancing Life and Work* and *73 Ways to Win*,

are now available from the American Bar Association Center for Continuing Legal Education.

The Lawyer's Guide to Balancing

Life and Work: Taking Stress Out of Success is a three-part audio program that offers remedies for a life out of balance. The program, based on a book of the same name by lawyer George Kaufman, is designed to help lawyers find ways that the law can fit inside their lives - rather than trying to fit their lives inside the law. Kaufman lays out a series of steps that can help lawyers make choices about both professional responsibilities and personal needs. The guide was produced by the ABA Section of Law Practice Management and the Center for CLE in cooperation with the Career Resources Center.

73 Ways to Win: A Treasury of Litigation Tactics and Strategies, is a three-part program, available on video or audio, in which veteran trial advocates provide advice based on litigation experiences. The program shows 73 ways to improve trial practice and gives suggestions, including do's and don'ts, that can be used from the beginning of a case through an appeal. It includes tips on depositions, settlements and strategic is-

sues. The program was produced by the ABA Section of Litigation and the Center for CLE.

The cost of *The Lawyer's Guide to Balancing Life and Work* audiobook, which includes a soft bound book, is \$99, or \$89 for members of the ABA Section of Law Practice Management. A CD program, including the soft bound book, costs \$129, or \$119 for section members. Purchased individually, the book costs \$49.95, or \$39.95 for section members.

The cost of the *73 Ways to Win* videotape package, which includes a soft bound book, is \$125, or \$75 for members of the ABA Section of Litigation. The audiobook package, including the soft bound book, costs \$75, or \$45 for section members. Purchased individually, the book costs \$35, or \$30 for section members.

To order *The Lawyer's Guide to Balancing Life and Work* or *73 Ways to Win*, contact the ABA Service Center at 800/285-2221, or visit the ABA Center for CLE Web site at www.abanet.org/cle.

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Of roses & summer: A break from the law

By STEPHEN M. TERRELL

I just finished with my spring work on my roses. Well, that's not exactly right. With roses, you're never really finished. But the major work of spring is now done – the first feeding, spraying for insects and fungus, mulching. Ready for Summer. It will all have to be done again, but at least it is done for now.

Roses are a delight – and sometimes a headache. But they are not nearly as much trouble as some people seem to think. And to behold the beauty of a delicately formed first rose of spring is one of life's delights.

I started working on my roses two or three weeks ago. In early spring, you wonder if any rose survived the winter. They sit stark and barren – like so many miniature dead thorn trees. But one day you notice a little sprig of green. A few days later, many of the once seemingly-dead branches are now turning green. Within a week or so, you see new growth sprouting from those now-green canes. Then it's time to trim out the dead canes that didn't make it through the winter.

That's where I started this spring. Of course, I couldn't find my gloves (lost somewhere in the garage among old Christmas decorations and fishing lures). But undaunted, I went forward. Innumerable scratches, scrapes and punctures later (yes, rose thorns are sharp!), I had all of the dead branches cut out. That done, I put my pruning shears down, and went to the hardware store to buy that pair of gloves. And yes, I really did it in that order.

After my wounds healed, weeding was next. It's back-straining, tiring work. One weed at a time. A half hour here. Another half hour there. It's not something you do all at once. Just a step at a time. Then you look around, and the weeds are gone (most of them, anyway). But despite the sweat, strain, and sore muscles, there is something relaxing about sitting in your rose garden, reaching into the soil, and delicately tracing the spreading roots of a stray vine, making sure to get all of it so that it won't grow back. And when after those hours of pulling, picking and coaxing the weeds out, with dirt on your clothes and imprints on your knees, you look and the job is done – you smile. Not a big smile. But a contented smile.

Feeding, spraying and watering is next. You have to be careful to spray both sides of the leaves, as fungus can do as much damage from the bottom of a leaf as from the top. And take your time. With a low pressure hose, water just the base of each rose. Water on the leaves encourages fungus. Fungus is bad enough in the heat of the Summer without getting it started in the Spring. But all this is just temporary. You understand that when you do it. A week later you have to water again. Two weeks later – or maybe sooner – you're going to need to spray again. Life's that way. Oh, well.

Then comes the mulch. That's what I finished just before coming in to the computer to write this. There is something exhilarating in the earthiness of shoveling mulch into the rose bed. It raises a sweat. The bits of bark stick to your sweaty arms and legs. Afterwards, you take a long cold drink of ice water. It has a sweetness you don't notice when taking a sip from the office water cooler.



And when the last of the mulch is spread, you look out across the rose bed. Across a fresh blanket of red mulch stand the green rose bushes – some a new light green, others a rich dark green, yet others sprouting new-growth purple leaves that will soon turn green. And here and there, the first buds are gently opening. Double Delights with their red/white two-tone petals, Rio Sambas with their bright yellow that will later turn orange then red, Angel Faces with their fragile lavender blooms, the deep red of a Mr. Lincoln.

Ahead is the summer. Who knows what lies ahead. Japanese beetles and aphids must be fought. A hot humid summer means battling fungus, too. But if you keep fighting, the sparse blossoms during the heat of Summer will give way to a radiant display of blooms in September, and a final burst of color before the first hard freeze.

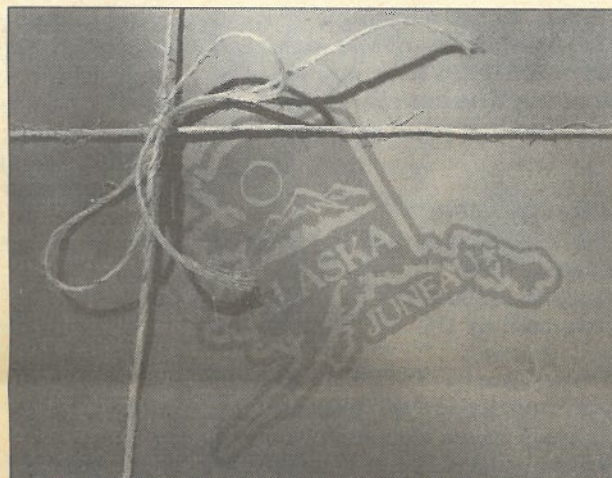
I think this is my 11th summer growing roses. I started with half a dozen, and quickly went up to my current 20 bushes. I still remember

kneeling with peat moss and cow manure to plant the first of those roses – a Chrysler Imperial which still grows on a trellis on the east side of my garden. Some years I'm very meticulous with their care. In busier years my roses have shown they can survive with minimal care.

When I started growing roses my oldest daughter, April, was about 10. Shortly after writing this, I left for Philadelphia to attend her graduation from Bryn Mawr College. My youngest daughter, Emily, is now 10, the same age as April when I planted my first rose bush.

Now what does all this have to do with practicing law? Nothing really. I think that's the point. The summers of our lives are so very short, and the beauty of rose blossoms are so delicate and fleeting. Enjoy the summer.

The author is an attorney in Indiana. terrells@iquest.net



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New privacy act catches firms by surprise

TAX, TRUST AND REAL ESTATE COUNSEL AFFECTED

By RUTH BRYNA COHEN
THE LEGAL INTELLIGENCER

If you've ever cursed the powers that be which have lately flooded mailboxes everywhere with privacy notices, brace yourself. Your firm may soon become one of the organizations keeping the post office busy.

Love them or hate them, those little pamphlets are the mandate of the Financial Services Modernization Act of 1999 — also called the Gramm-Leach-Bliley Act — which in Title V, "Privacy," requires that financial institutions provide a clear disclosure to all their clients of their privacy policy and explain how they share nonpublic, personal information with their affiliates and third parties.

To the unpleasant surprise of lawyers in certain practice areas, a regulatory deadline is quickly approaching for them to send out similar notices to their clients. Although it was released more than a year ago, 16 CFR Part 313 — a Federal Trade Commission regulation designed to accompany Gramm-Leach-Bliley — went largely undiscovered until last month. The regulation requires law firms to send notice of their privacy policies to any individual with whom they have a "customer relationship" by July 1, 2001.

Although Gramm-Leach-Bliley was drafted to apply to financial institutions, the act considers tax preparers to fall into that category, which includes law firms that provide tax-related services. Real estate settlement transactions for individuals also are covered by the FTC regulation. The notice requirement does not apply to tax preparation or acting as a settlement agent for trusts, foundations or other non-individual entities.

"That this could apply to lawyers was a surprise," said Wendi L. Kotzen, a partner in Ballard Spahr Andrews & Ingersoll's tax group and chairwoman of the tax section of the Philadelphia Bar Association. "I don't think that was clear until now."

Joan C. Arnold, who heads Pepper Hamilton's tax group, also said word of the Gramm-Leach-Bliley requirements was slow to travel through

the legal community. "The first time I heard about it was from the American College of Trusts and Estates Counsel. Three or four weeks ago, estate planning counsel from all over the country started contacting the FTC," she said.

"When you see an act that says it pertains to 'finance companies,' you tend to think law firms aren't bound by it."

IMPACT

Kotzen said that small and solo firms could likely bear the brunt of the act. "Tax- and estate-planning boutiques will potentially be affected,"

she said. "People who do estate planning, or even real estate closings for individuals, would be required to disclose."

Arnold said she wonders how firms will comply with the rule. "The question is, really, how to identify which clients the notices need to go to," she said. "Once you take on an

engagement for a covered event — like a real estate closing — you give the person a privacy notice and then, once the event is done, they become a former client." (There are different definitions for a "former customer," depending on whether the transaction is for real estate or tax preparation at Section 313.5 of 16 CFR Part 313.)

"[But] it is the annual notice requirement [for current clients] that is more troublesome," Arnold said. "It's the maintenance of the list, and identifying which clients need to be notified. The question is whether the firm has clients coded for this purpose or not, and that could vary from firm to firm."

LOBBYING EFFORT

The Philadelphia Bar's tax section had planned to submit a petition to the FTC, requesting that lawyers be exempted from the notice requirement, but found itself stymied by the FTC rule at the section's last meeting.

"We wanted to petition the FTC, but we found that the section that allows for you to show why the law shouldn't apply to you can only be used if you can show you are subject to state rules that preclude you from complying with the law," Arnold said. "Pennsylvania rules would not preclude us from compliance. They would only be duplicative."

According to Kotzen, the Philadelphia Bar's tax section had planned to take the position that lawyers should not be bound by the regulation, once they are already bound from disclosing private information about clients by professional

responsibility rules.

"The American Bar Association was going to petition also, but it looks like they won't be able to for the same reason," Arnold said.

Since the FTC regulation has been out for more than a year, the period for public comment on the regulation has long passed. Still, Arnold said there hadn't been any finger-pointing in the legal community that lobbyists missed the boat.

"At this point, we are just trying to communicate with each other and decide what we are going to do to comply and to see what other firms are doing," she said.

To that end, the ABA section of taxation held a one-hour teleconference Tuesday, with four speakers and a moderator discussing Gramm-Leach-Bliley, its implications and what required notices to clients should say.

MARKETING TOOL?

Although some firms are bristling at the notion of having to draft, print and mail the privacy notices, some have floated the idea that the requirement could be used to a firm's advantage.

"In some of the discussions I've heard, it was mentioned that this could be a good way to get in touch with clients we haven't been in touch with in awhile," said David Shechtman, chairman of the tax department at Montgomery McCracken Walker & Rhoads.

"Yeah, that's what the FTC said," said Arnold. "They said we should be happy at how wonderful it was we could use this for marketing. My reaction is that I would prefer to handle marketing my own way."

Kotzen said that so far, she had not heard any practitioners say they planned to use the notices for marketing.

Still, Shechtman said the act had left lawyers uncertain, and that firms were understandably trying to err on the side of caution. "My take is that it's silly to extend this requirement to law firms. No one thinks that's what Congress intended," he said.

"In discussions of the tax section of the Philadelphia Bar, people are pretty much up in the air about whether they need to do it, but it sounded like people were going to do it anyway," he said.

"Our initial read of the rules is that we probably don't need to send out notices except to clients for whom we prepare tax returns. We are still studying the matter, but like the TV show says, we don't have a final answer."

The FTC documents are available online at <http://www.ftc.gov/os/2000/05/65fr33645.pdf>. (Research access to Westlaw including Dow Jones Interactive courtesy of West Group and Factiva.)

PROMOTING ACCESS TO JUSTICE FOR ALL OF ALASKA'S PEOPLE

The Immigration Law Section of the Alaska Bar Association and Catholic Social Services invites you to attend a Pro Bono Summit on September 20, 2001

Special guests include Christopher Nugent of the American Bar Association and Steven Lang, Pro Bono Coordinator for the U.S. Department of Justice, Executive Office for Immigration Review

The goal of the Summit is to develop ways to address the unmet legal needs of Alaska's indigent immigrants

Time: 9:00 am to 5:00 pm

Date: Thursday, September 20, 2001

Place: Wells Fargo Bank Conference Room (former NBA Building) 301 W. Northern Lights Blvd. Anchorage, Alaska

Who should come: all attorneys interested in insuring that legal services are provided to all Alaskans

This will be a working conference. We need your help to determine how to best serve the legal needs of Alaska's immigrants.

For more information, call Mara Kimmel at 276-5590



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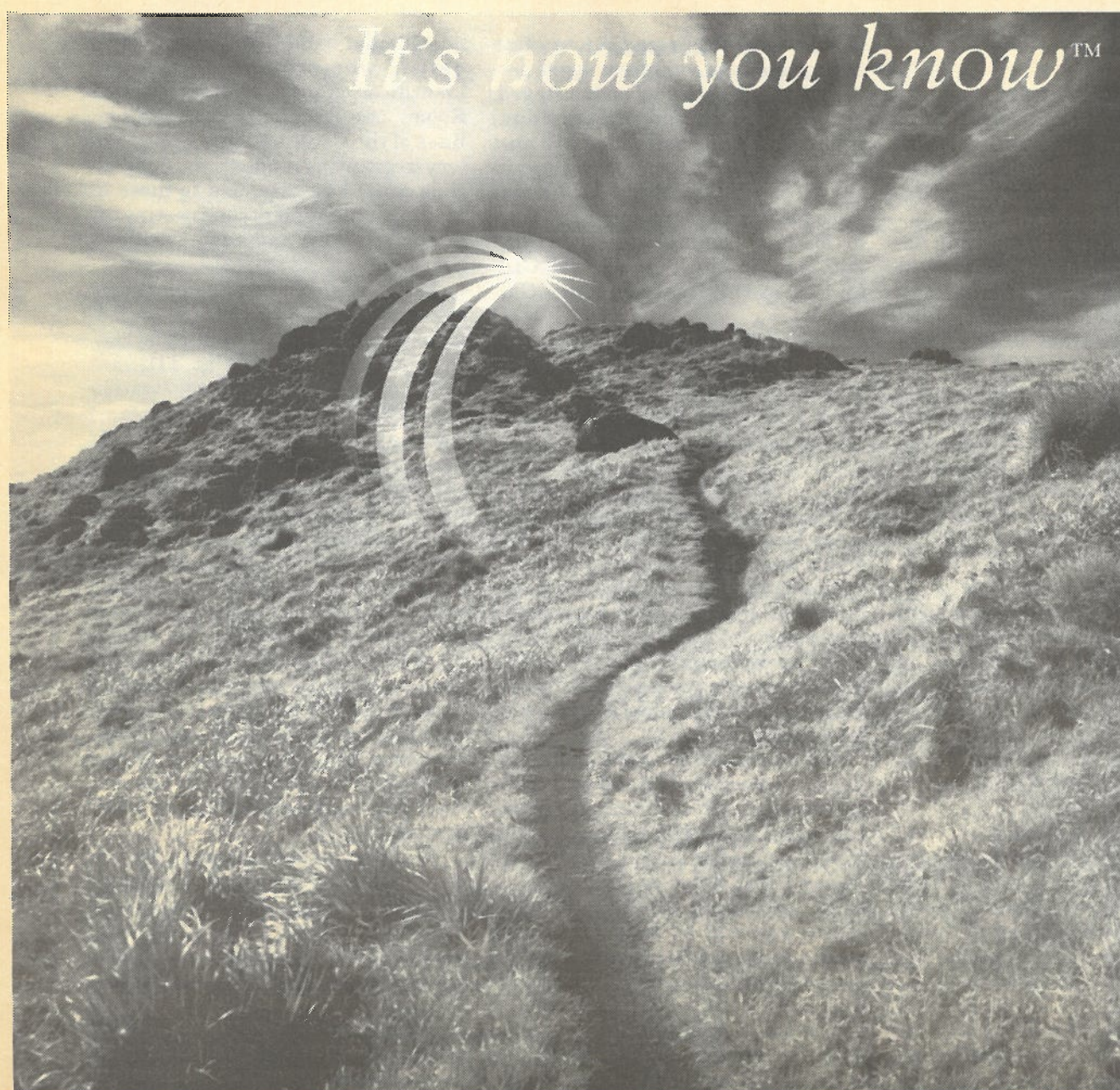
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American Bar Assn. schedules annual meeting

Justice Stephen Breyer of the Supreme Court of the United States, U.S. Secretary of Labor Elaine L. Chao, and Harvard Law School Professor Charles Ogletree Jr. will be among featured speakers at the American Bar Association's 123rd Annual Meeting Aug. 2-8 in Chicago.

Breyer will give the keynote address at the Annual Meeting Opening Assembly at 5:30 p.m. Saturday, Aug. 4, at the newly renovated Orchestra Hall at the Symphony Center.

Chao will speak at the ABA Section of Labor and Employment Law's annual meeting luncheon at 12:15 p.m. Tuesday, Aug. 7, at the Fairmont Hotel.

Ogletree will be the keynote speaker at the Thurgood Marshall Awards Dinner at 8 p.m. Saturday, Aug. 4, in the Crystal Ballroom of the Hyatt Regency Chicago. He also will moderate the ABA Section of Individual Rights and Responsibilities program, "From Illusion to Disillusionment: A Crisis of Confidence in Fairness And Accuracy in Capital Punishment" Sunday, Aug. 6.

Headquartered at the Hyatt Regency Chicago, major events and programs include:

THURSDAY AND FRIDAY, AUG 2 AND 3

The ABA Board of Governors will meet to consider, among other items, recommendations on policy matters to be determined by the House of Delegates.

Annual Meeting Registration and the ABA EXPO will open at 8 a.m.

Aug. 2, at the Hotel.

SATURDAY, AUG. 4

The ABA Central and East European Law Initiative Luncheon will be held at noon in the Grand Ballroom, East Tower, at the Hyatt Regency.

The Annual Meeting Opening Assembly will be held at 5:30 p.m. at the Chicago Symphony Center and will be followed by the ABA President's Reception at The Field Museum.

Judge William Wayne Justice, senior judge of the U.S. District Court for the Eastern District of Texas, will receive this year's Thurgood Marshall Award at an 8 p.m. dinner in the Crystal Ballroom at the Hyatt Regency.

SUNDAY, AUG. 5

The Margaret Brent Women Lawyers of Achievement Awards Luncheon will be held at 11:30 a.m. in the Grand Ballroom, East Tower, in the hotel.

The Annual Dinner in Honor of the Judiciary will be held at 6:45 p.m. at the John G. Shedd Aquarium.

MONDAY, AUG. 6

The ABA Commission on Mental Health and Physical Disability Law will hold a program titled "Expert Mental Health Witnesses: A Jurisprudent Therapy Perspective," at 10:30 a.m. at the Fairmont Hotel.

The Annual Pro Bono Publico Awards Luncheon will be held at noon in the Hyatt Regency Ballroom, West Tower, at the Hyatt Regency Chicago. The awards honor those

who have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged.

The ABA Section of Individual Rights and Responsibilities will host a session titled "Racial Profiling in the New Millennium: The Use of Race in Law Enforcement Decisions to Conduct Criminal Investigations," at 2 p.m. in the Presidential CLE Center, in the Hyatt Regency Chicago.

The ABA House of Delegates will meet at the Grand Ballroom, East Tower, at the Hyatt Regency Chicago, from 2 to 5 p.m. to consider policy recommendations.

TUESDAY, AUG 7

The ABA House of Delegates will meet from 9 a.m. to 5 p.m. at the Hyatt Regency Chicago.

The ABA Silver Gavel Awards Luncheon will be held at noon in the Hyatt Regency Ballroom, West Tower. The Gavel Awards are the ABA's highest awards presented to the media for increasing public understanding of the law.

Representatives of the news media are welcome to attend and cover all sessions. A Press Room for working journalists will be located in the Riverside center, Lower Level, East Tower, Hyatt Regency Chicago in an area designated for ABA meeting offices and will be open for on-site media registration beginning at noon on Wednesday, Aug. 5. The Press Room will remain open daily from 8 a.m. to 6 p.m., and will close one hour after the adjournment of the House of Delegates on Tuesday, Aug. 7.

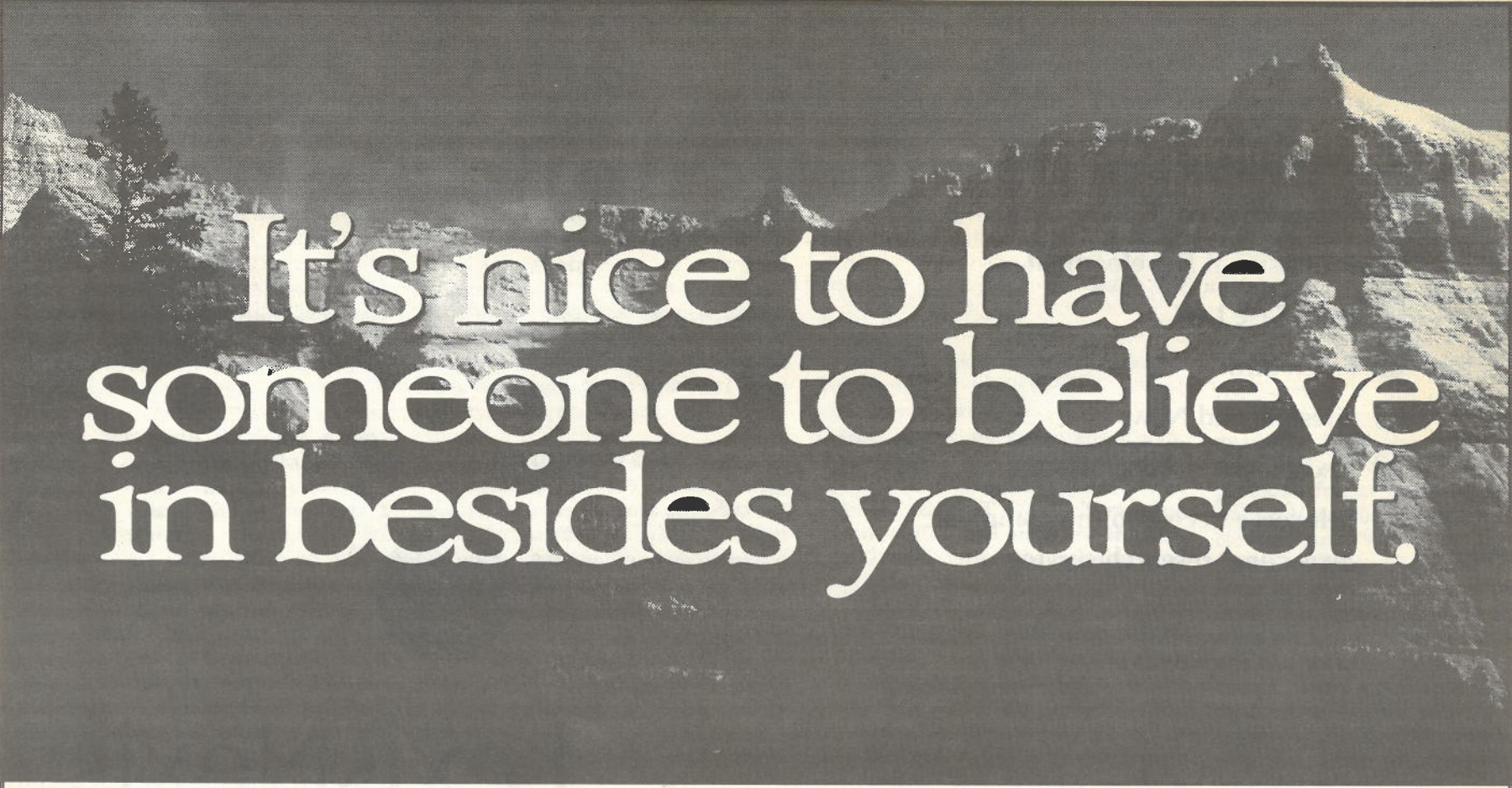
ABA media credentials are re-

quired, and will be provided to journalists who present appropriate identification to the staff of the Press Room. The ABA follows the guidelines of the Congressional Press Gallery in granting credentials. Credentials cannot be extended to those in media management, marketing or public relations and advertising departments.

Media wishing housing and early registration should contact the Division for Media Relations and Communications Services at 312/988-6134 to obtain a media registration form. The form is also available at www.abanet.org/annual/2001/news.html. Reporters must return the completed form to the division by fax or mail, *along with a copy of their official press credentials*. Freelance writers also must send a letter from their publisher outlining their assignment. The fax number for the division is 312/988-5865. For hotel accommodations, a housing deposit by check or credit card in the amount of \$200 per room is required, payable to ABA/I.T.S. Chicago 2001. Requests will be forwarded to the ABA's travel agency, I.T.S. Do not send the registration form to I.T.S. directly.

Registrants may arrange for air and ground transportation through I.T.S. ABA airline discounts are available on American, Delta and Southwest Airlines. I.T.S. the ABA's travel agency, can be reached at 800/621-1083.

Information on the meeting can be obtained at 312-988-5000 or www.abanet.org.



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South to the future: An Alaska lawyer in Africa

The Bar Rag's African Correspondent had the opportunity to interview Alaska attorney Terry Fleischer.

BR: How did an Alaska lawyer end up at the University of Cape Town Medical School in South Africa?

TF: The closer I got to 60, the more ambiguous I felt about "retirement." After some inconclusive discussions, my wife put it to me directly: "Look, you've always enjoyed an academic setting. Why not go back to school? You might even find a new career."

Within several months I'd applied and been accepted as a graduate student in bioethics at McGill University in Canada. In September 1995, after 27 years of practice at

medical ethical dilemmas that arise in a clinical setting. Units within the public medical system have asked us to assist the public sector to draft policies that will set criteria for allocating scarce medical resources, when the demand for services outstrips the supply. We provide educational presentations to medical and other groups on bioethical issues. In an exciting development, I'm co-teaching the first law and bioethics course taught at the UCT Law School. The Centre hopes to snag some additional funding from a major US foundation in the next year. Though no scholar, several of my articles have been published in professional journals.

BR: How would you compare practising bioethics in South Africa and in the US?

A few statistics shows the dramatic difference between what medicine offers in Africa and in Western countries. Although SA is not among the poorest

of the poor, it spends about \$400 per citizen on medical care, while the US spends over \$4,000. As in the US, medical care is skewed in favor of the rich. Economically advantaged, mostly whites who are less than 10% of the population, have access to private health insurance; the poor, mostly Black Africans, must make use of an inadequate, underfunded public health system. Crime victims clog ER's on weekends. TB and malaria, diseases defeated or contained in developed countries, are major killers here. Clean water isn't available in many rural communities, leading to outbreaks of cholera. Poverty is endemic: over 50% (mostly Black Africans) are unemployed, and many others employed at the very lowest end of the earning scale. SA has the greatest number of HIV/AIDS victims of any country. Over 10% of its population are infected, and in hard hit areas up to 30% of women are victims. Soon the country will have millions of AIDS orphans. The public medical sector has to fight, borrow, and sometimes beg—literally—to keep a nation-wide health system functioning for the benefit of the poor, particularly in rural areas. Despite enormous problems, the nation's public teaching hospitals—such as Groote Schuur Hospital where our Bioethics Centre is located—continue to offer world class medicine and to produce doctors who are highly valued around the world.

BR: Sounds pretty dismal. Yet you've agreed to stay another year?

These grim statistics don't convey the whole picture. In many ways, SA is the one success story in Sub-Saharan Africa. In 1994 it dramatically achieved transition to democracy without a violent revolution. We have experienced over 6 years of majority-controlled government, with a peaceful transition by free election from Nelson Mandela to his successor. SA has a free and vigorous press. The government respects court decisions, even those contrary to its

I LIKE TO THINK THAT LIVING IN ALASKA FOR
ALMOST 30 YEARS HELPED SHAPE US AS
PEOPLE WHO COULD LIVE IN ALMOST ANY
CIRCUMSTANCE!

Guess & Rudd, we left Alaska and moved to Montreal, one of the most vibrant metropolitan areas in North America. I spent two challenging years as part of an interdisciplinary program that encompassed law, medicine, philosophy, and theology. I had a long-standing though latent interest in theology, which I had studied as an undergraduate and at seminary, and had also crunched through some philosophy. (Regrettably, my medical knowledge was limited to what I gleaned from doctors' depositions!) I left McGill with an LLM in bioethics, and accepted a post-graduate fellowship at the MacLean Bioethics Center at the University of Chicago. I spent two years as an ethics fellow gaining experience and building my skills in medical ethical consultation at the university hospitals.

BR: OK—but how did you end up in South Africa?

A mentor at McGill fatefully suggested that I contact the director of a bioethics institute at the University of Cape Town Medical School in South Africa. We met during one of his frequent lecture trips to North America. I was excited by the prospect of working in a country where there are few professionals with any formal training in bioethics, and yet a great need for this expertise. Here was another "frontier"—something like the Alaska we remembered from the mid-1960's. (An added attraction: one of our 5 daughters is married to a South African and was practising law in Durban.) Our initial one-year term has now stretched to a second year.

BR: So what do you actually do?

I'm a member of a Bioethics Centre that provides ethical consultation, research, advice and education primarily to doctors, nurses, and health care administrators. We respond to requests for assistance in resolving



Terry Fleischer in front of door of old hotel in Montague, South Africa.

policies. You will hunt in vain to find these features in other Sub-Saharan countries. The problem that faces the government is to deliver on its promises to increase employment and improve the conditions of the poor. In a country with limited resources, this is no easy task. Fortunately, South Africans are amazingly resilient and remarkably resourceful. While their history catalogues one catastrophe after another, they have largely maintained their sense of dignity and good will, their culture, and their incredible zest for life. Not insignificant virtues. It's this positive side of the equation that keeps us engaged here, along with the chance to help meet some of the challenges facing this fledgling democracy.

BR: Any advice to fellow lawyers thinking about a second career?

First, what's your dream? Once you've pinned that down, plan carefully; set deadlines; be ready to take risks; act decisively. If we hadn't done these things in quick succession, I might easily have talked myself out of our decision. It's much easier to allow inertia to act, to keep one foot in the office, and to fade out of law practice over a long period of time. Recognise there may be disadvantages to a second career

involving graduate study: the pay is minimal. You have to be prepared to live the grad student life-style, e.g., for the last 6 years we've been nomads, living in 6 rented houses/flats, and using public transportation. As it turns out, we've thoroughly enjoyed the experience, but it might not be the one for you.

BR: A last word on what the future holds?

In 1995 as we embarked on this new career we decided to live our lives in two year segments. In 2002 we'll have completed 2 years here, and will decide on our next step. If we stay, it will be to meet the continued professional challenges, and frankly because we very much like the people and the country. If we leave, we'll look for another "frontier." Oddly, the uncertainty doesn't bother us. I like to think that living in Alaska for almost 30 years helped shape us as people who could live in almost any circumstance!



"Repeal" of estate taxes

□ Steven T. O'Hara



The U.S. government recently passed the *Economic Growth and Tax Relief Reconciliation Act of 2001*. This new law repeals estate and generation-skipping taxes beginning in the year 2010. Unfortunately, the law contains a "sunset" provision that

provides, in effect, that the repeal will last one year only.

Section 901 of the new law unabashedly provides:

All provisions of . . . this Act shall not apply. . . to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010.*** The Internal Revenue Code. . . shall be applied and administered to years, estates, gifts, and transfers [after December 31, 2010] as if [this Act] had never been enacted.

In other words, the U.S. government has scheduled one year — the year 2010 — for there to be a moratorium on estate and generation-skipping taxes.

During the year 2010, however, clients could owe substantial tax if they gift any of their property because the new law does not purport to repeal the federal gift tax.

The bad news for clients, assuming the law stays the same, is that they generally must die in the year 2010 in order to avoid federal transfer taxes. As a result, be on the lookout for greedy children to plan potentially dangerous vacations for their wealthy parents to take in the year 2010.

All cynicism aside, the Act does significantly reduce transfer taxes between now and 2011. Recall that the amount that may pass free of federal estate tax is generally known

as the unified credit equivalent amount or, more recently, the applicable exclusion amount. From 1987 through 1998, this amount was \$600,000. Beginning January 1, 2000, the applicable exclusion amount was increased to \$675,000. This exclusion was scheduled to increase to \$1,000,000 in 2006.

Under the new law, the applicable exclusion amount will increase to \$1,000,000 in 2002, four years earlier than the existing schedule.

Moreover, the new law is scheduled to increase the applicable exclusion amount to \$1,500,000 in 2004, \$2,000,000 in 2006, and \$3,500,000 in 2009.

In addition, the Act is scheduled to reduce the top estate and gift tax rate from the current 55% to 50% in 2002, 49% in 2003, 48% in 2004, 47% in 2005, 46% in 2006, and 45% in 2007.

Under the "sunset" provision discussed above, the Act is scheduled to go out of existence in 2011 as if the law had never been enacted. Here

the effect of this sunset provision is that, in 2011, the top estate and gift tax rate will increase back to 55% and the applicable exclusion amount will decrease back to \$1,000,000.

Consider a client, an Alaskan domiciliary, who is unmarried. She has never made a taxable gift, and all her assets are located within Alaska. Her assets consist of her home, various bank accounts, and marketable securities. She has no debt. The total value of her assets is \$1,500,000.

If the client dies this year, the total federal and state estate taxes would be \$335,250. By contrast, if the client dies next year when the applicable exclusion amount is \$1,000,000, the taxes would be \$210,000 — a reduction of \$125,250.

So the new law contains good news, but the news could be better. What the U.S. government gives, the U.S. government can take away, even before the year 2011.

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National Court Reporting & Captioning Day

U.S. Senate Designates August 3rd as National Court Reporting & Captioning Day In Recognition of the Growing Need for Court Reporting and Captioning Services in the United States

The U.S. Senate has designated August 3, 2001, as "National Court Reporting and Captioning Day" in honor of the individuals who preserve our Nation's history as the true guardians of the record. By passing this resolution, the Senate also recognizes the pressing need for more closed captioners to fulfill the requirements of the 1996 Telecommunications Act and provide communication access to hard-of-hearing people.

"We are very proud that court reporters and captioners are seen by Congress as key to the well-being of our society," said Michael Brentano, president of the National Court Reporters Association (NCRA). "We have been making the record in America since the signing of the Declaration of Independence. And now reporters today also provide captioning services as well as recording laws and proceedings."

The first National Court Reporting and Captioning Day will take place as NCRA celebrates its 102nd anniversary at its annual convention in New Orleans.

Court reporters are most commonly known for the responsibility of creating a verbatim account of business, government, court and other legal proceedings. In addition to court-related responsibilities, the skills of the court reporter prove useful in a variety of other environments. For example, over 28 million hard-of-hearing Americans heavily depend on closed captioners to help ensure their access to public information broadcast over

the nation's airwaves.

Federal law requires captioned television hours to double by January 2002, from 1,800 to 3,600 hours. Although almost all programming from major networks may be captioned, only 25 percent of local programming is caption-ready. By 2006, 100 percent of new television programming must be captioned.

This increasing need for court reporters specially trained as captioners is creating a critical shortage. As a future solution, legislation pending in Congress would allocate \$100 million over five years to expand closed-captioning programs and recruit more students.

The National Court Reporters Association, based in Vienna, Virginia, is the 28,000-member professional association for the court reporting industry. Its members include captioners, official court reporters and freelance reporters who are responsible for making verbatim transcripts of legal, business, government and educational proceedings. These proceedings include court trials and hearings, federal and state legislative sessions, depositions, arbitrations, business and union conventions, and numerous other meetings and events that require an accurate record of what takes place. NCRA's membership extends from the United States into Europe, Australia, Asia, South America and U.S. government/military bases abroad. Additional information on NCRA is available by calling 800-272-6272 or visiting their Web site at www.NCRAonline.org.

Paralegal Association News

Job Bank. Searching for a paralegal? The Alaska Association of Legal Assistants (AALA) offers a job bank service. AALA will advertise for free your posted job opening to its members and also maintains resumes on file of association members seeking employment. Contact Job Bank Chair Deb Jones at 770-8094 for more information.

Name Change. AALA recently voted to change its name to the Alaska Association of Paralegals (AAP). The name change will be implemented over the next several months and aligns the local association with NFPA and its member associations. AALA is one of the few member associations of the National Federation of Paralegal Associations (NFPA) still using the term "legal assistants" in its name. The term "legal assistants" is not clearly defined in today's world and frequently refers to non-paralegal office staff. This practice minimizes the professional status of paralegals and makes it difficult to distinguish professional paralegals from other law office staff that do not have the education or experience of professional paralegals. The resulting confusion regarding what constitutes a paralegal is fueling the fires nationwide for regulation and/or registration of paralegals in order for them to retain their professional status.

New Officers and Board of Directors. The association held its annual meeting in May and elected officers and a new board of directors. Serving his second term as President is BJ Baker. Also elected were: Deb Jones - Vice President; Yvonne Robinson - Secretary, and Paula Zawodny, serving a second term as Treasurer. The Board of Directors consists of new members Julie Whitlock, Billie Johnston, Kim Pinkerton, and Tom Jodwalis. Returning board members are Cheri Foote, Kim Lamoureux and Karen Burns.

POSITION OPENING Immigration Staff Attorney

The Immigration & Refugee Services Program at Catholic Social Services seeks a full-time staff attorney to provide legal representation on behalf of immigrants who are involved in legal proceedings in front of the Executive Office of Immigration Review, the Immigration & Naturalization Service, and the Federal Court of Appeals.

Requirements : J.D. degree and license to practice law. Work experience with culturally diverse clients required. Excellent written and oral communication skills. Must be willing to travel to remote communities in Alaska. Bilingual in English and Spanish preferred.

Preferences: Previous work experience with non-profit legal services program and minimum two years legal experience.

Salary depends on experience. Benefits include paid leave and holidays, generous health insurance package, TDA option and defined contribution plan.

Must complete CSS application (p/u or call for fax), and submit resume and writing sample to Kelly Fehrman, CSS,
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907-277-2554/907-272-7370(f) or e-mail rbronen@css.ak.org. EOE.

2001 Barrister's Ball a Grand Success

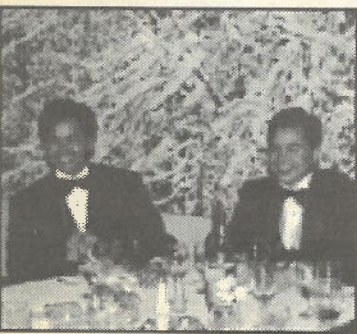
More than 150 members of the legal community gathered at the Anchorage Museum of History and Art on May 19 to celebrate the work of the Alaska Pro Bono Program. Attired in everything from ball gowns to a formal kilt, lawyers, judges, pro bono supporters, bar association luminaries and their friends enjoyed a wonderful dinner, catered by the Marx Bros., dancing to the tunes of the Valley band and furiously outbidding each other in a spirited live and silent auction.

The organizers were overwhelmed by the spirit of generosity which characterized this first pro bono fund raiser: We netted over \$20,000, a sum far in excess of what we had expected. And we were humbled by the Governor's proclamation of May 19th as Barrister's Day, the thoughtful words of Judge Rindner describing the desperate need for pro bono services, the generous and innovative donations of "gifts of time" as auction items from members of both the legal and non legal community, and most of all, by the enthusiasm expressed by everyone in attendance for having the opportunity to participate in this event.

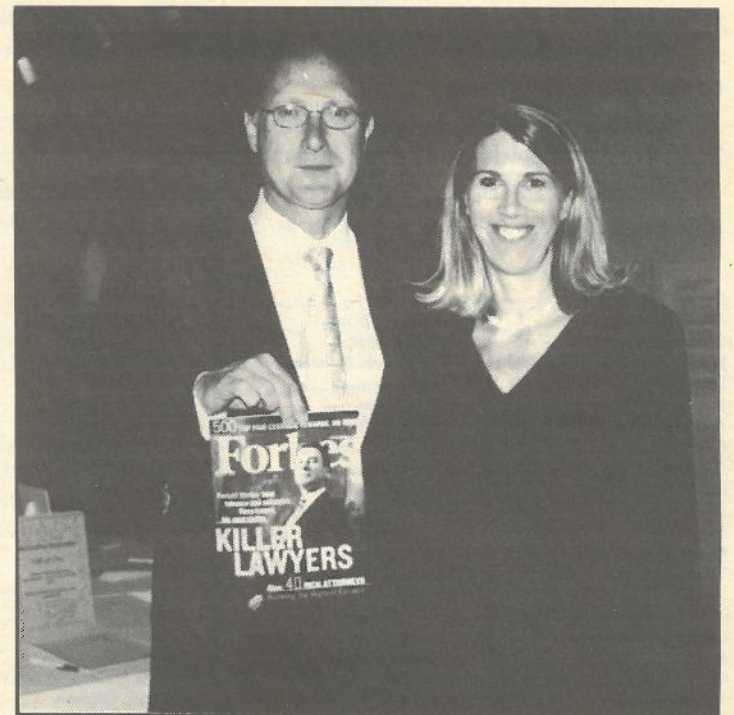
Special gratitude is due to our sponsors, Benefactors, BP Exploration, CIRI, Heller Ehrman, the Anchorage Bar Association and Richmond and Quinn; Patron, Foster Pepper; and Friends, Chugach Native Corporation, Dillon and Findley, Hedland Brennan and the law offices of Allison Mendel. Kudos to our auction donors, who contributed everything from a weekend of babysitting by a very experienced grand-mom (Maria Elena Walsh), an afternoon of yard work and six months of homemade cookies baked to order (Mary Ann Foley), a mystery dinner party with gourmet fare (Mike White), a catered dinner for eight (Lisa Rieger and Matt Claman), a wilderness cabin weekend (Susan Orlansky and Jim Kentch) and many other fabulous items too numerous to mention. Tributes also to our dedicated and hard-working committee co-chairs Deborah O'Regan (publicity), Debbie Brollini and Barb Hood (auction items), Janel Wright, Ethan Schutt and Jan Deering (program committee) and to auctioneers Mike White and Janel Wright. Ovarions for the Alaska Bar Association staff who mailed out flyers, handled the reservations, greeted our guests, manned the auction tables and settled up with the successful bidders. Much praise to Maria Elena Walsh, executive director of the pro bono program, without whom this fundraiser would have been stillborn, and to the Disability Law Center which provided office space, staff and other essential support. Plans are already underway for the 2002 Barrister's Ball to be held next spring and "gift of time" donation forms are available from Maria Elena Walsh.

And last, but most certainly not least, thanks to all who attended and gave generously and with great satisfaction to this most worthy cause. For those unable to show up, here's a glimpse of what you missed. Be there next year!

— Loni Levy



Aaron Schutt (L) and Ethan Schutt (R)



Bill Bittner and Michelle Stone Bittner.



The Richmond and Quinn group.



Paul Wilcox and Pro Bono Director Maria-Elena Walsh and Dawn Wilcox

Photos by Barbara Hood



(L-R) Christine Schleuss, Judge Eric Sanders, Judge Mark Rindner.



Suzanne and Leroy Barker and Deborah O'Regan (conducting the centerpiece auction)

Voluntary Continuing Legal Education (VCLE) Rule Pilot Project

First Reporting Period 9/2/1999-12/31/2000

Following is a list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 of ethics) of continuing legal education per year.

This list reflects Bar members who completed 12 or more hours and submitted the VCLE Reporting Form to the Alaska Bar office.

Alaska Bar members may have completed 12 or more hours of CLE and have chosen not to send in a form. Their names would not be reflected on this list.

We regret any omissions or errors. If your name has been omitted from this list, please contact the Bar office at 907-272-7469 or e-mail us at cle@alaskabar.org. We will publish a revised list as needed.



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Wev Shea
Brenda G. Sheehan

Cherie L. Shelley
Phyllis A. Shepherd
Todd K. Sherwood
Tracy C. Shikles
David B. Shoemaker
Anthony M. Sholty
Kevin M. Shores
Gregory G. Silvey
Nancy R. Simel
John E. Simmons
Margaret Simonian
Randall G. Simpson
Edward B. Simpson, III
Steve Sims
Matthew Singer
Rod R. Sisson
John W. Sivertsen, Jr.
John B. Skidmore
George Wayne Skladal
Thomas J. Slagle
Eugenia G. Sleeper
Gary Sleeper
Stephen C. Slotnick
Joseph S. Slusser
Christine L. Smith
Colby J. Smith
Diane A. Smith
Elizabeth-Ann Smith
Eric B. Smith
Jack W. Smith
Marlin D. Smith
Steven D. Smith
Clyde E. Sniffen, Jr.
John R. Snodgrass, Jr.
D. Rebecca Snow
Harold E. Snow, Jr.
Joseph A. Sonneman
Stephen F. Sorensen
H. Peter Sorg
Mary Southard
Bethany P. Spalding
William A. Spiers
Terri K. Spigelmyer
Nicholas Spiropoulos
Robert S. Spitzfaden
Anselm C. H. Staack
Joseph S. Stacey
Michael R. Stahl
Loren K. Stanton
Gary L. Stapp
Michael J. Stark
Krista S. Stearns
David G. Stebing
Stacy K. Steinberg
Toby N. Steinberger
John L. Steiner
Quinlan G. Steiner
Niesje J. Steinkruger
Donald R. Stemp
W. Michael Stephenson
Jack K. Sterne, Jr.
Rebecca Wright Stevens
David Stewart
Robert B. Stewart
Margaret D. Stock
Paul D. Stockler
Kimberly Stohr
Ann K. Stokes
Andrena L. Stone
Robert D. Stone
Timothy M. Stone
John R. Strachan
Kathleen Strasbaugh
W. Clark Stump
Daniel S. Sullivan
Kevin J. Sullivan
Richard P. Sullivan, Jr.
Benjamin C. Summit
Natasha M. Summit
John L. Sund
Earl M. Sutherland
Richard N. Sutliff
Richard A. Svobodny
Kirsten Swanson
Lester K. Syren
James W. Talbot
Sen K. Tan
J. P. Tangen
Gordon J. Tans
Laurel K. Tatsuda
Gregory C. Taylor
Kneeland L. Taylor
R. Scott Taylor
Karla Taylor-Welch
Gilbert Earle Teal II
Janet K. Tempel
Steven S. Tervoooren
Valerie M. Therrien
H. Conner Thomas
Linda S. Thomas
Michael A. Thompson
Terry L. Thurbon
Craig J. Tillery
Tracey A. Tillion
Cassandra J. Tilly
Kirsten Tinglum
Richard J. Todd
Ellen Toll
G. Val Tollefson
James E. Torgerson
Mark R. Torgerson
Frederick Torrisi
Breck C. Tostevin
David R. Trachtenberg
Patrick J. Travers
Joan Travostino
Mary P. Treiber
Irene S. Tresser
Frederick W. Triem
Ruth D. Tronnes
Lanning M. Trueb
Jay W. Trumble
Julia S. Tucker
William F. Tull
Wm. Randolph Turnbow
Kurt C. Twitty
Richard N. Ullstrom
Susan L. Urig

Vincent L. Usera
James J. Ustasiewski
George E. Utermohle, III
John R. Vacek
Fred H. Valdez
Diane F. Valentine
Thomas Van Flein
Stephen J. Van Goor
Charles H. VanGorder
Calvin P. Vance
Leon T. Vance
Marjorie L. Vandom
Alexander K.M. Vasasukas
Robert L. Vasquez
Amy L. Vaudreuil
Elizabeth Vazquez
Louis R. Veerman
Terry A. Venneberg
Maarten Vermaat
Jeremy T. Vermilyea
Venable Vermont, Jr.
Timothy C. Verrett
Herbert A. Viergutz
Virgil D. Vochoska
Gail T. Voigtlander
Philip R. Volland
Richard E. Vollertsen
David Voluck
Frank J. Vondersaar
Brent M. Wadsworth
Richard L. Wagg
James P. Wagner
Jennifer Wagner
Thomas E. Wagner
Robert H. Wagstaff
Brian J. Waid
Paula J. Walashek
William K. Walker
Clayton H. Walker, Jr.
John F. Wallace
Jayne Wallingford
Byron D. Walther
Caroline P. Wanamaker
Heidi C. Wanner
Thomas M. Wardell
Vincent E. Watson
Wayne Watson
Daniel C. Wayne
Steven C. Weaver
Julie L. Webb
Daniel J. Weber
David R. Weber
Vincent T. Weber
W. David Weed
Kathleen A. Weeks
Larry R. Weeks
Karen V. Weimer
R. Leonard Weiner
Lisa Ann Weissler
Ted Wellman
Steven M. Wells
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James Wendt
Stephen R. West
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Randall W. Westbrook
Bruce B. Weyhrauch
Paul K. Wharton
Benjamin I. Whipple
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Marshall T. White
Michael D. White
Michael N. White
Stephen M. White
Sandra J. Wicks
Paul S. Wilcox
Patricia C. Wilder
Marc G. Wilhelm
Daniel Wilkerson
Joan M. Wilkerson
Donna C. Willard
Andrew Williams
D. Kevin Williams
Janis C. Williams
Roy V. Williams
Thomas E. Williams
J. Douglas Williams II
Juliana D. Wilson
Linda K. Wilson
Lisa M. F. Wilson
Charles A. Winegarden
Daniel E. Winfree
Russell L. Winner
Taylor Elizabeth Winston
Sheldon E. Winters
Jill C. Wittenbrader
Mark H. Wittow
Mark Woelber
Tonja J. Woelber
Eric E. Wohlforth
John W. Wolfe
Michael L. Wolverton
Donn T. Wonnell
Thomas Burke Wonnell
Mark I. Wood
Jonathan A. Woodman
Fronza C. Woods
Glen E. Woodworth
Larry R. Woolford
Douglas A. Wooliver
Janel L. Wright
Julie Ann Binder Wrigley
Glen E.M. Yaguchi
Georges Henri G. Yates
Thomas J. Yerbich, LL.M.
David Young
Sharon L. Young
Gregory L. Youngmun
A. Michael Zahare
Michael J. Zelensky
F. Lachicotte Zemp, Jr.
Larry C. Zervos
Christopher E. Zimmerman
Gary A. Zipkin
Patricia Zobel
Ronald M. Zobel
Edith Ann Zukauskas

SOLID FOUNDATIONS

IOLTA grants for fiscal year

2002 total \$344,000 □ Kenneth P. Eggers

The Board of Trustees of the Alaska Bar Foundation held its annual meeting on June 21, 2001. Applications for grants from the IOLTA (Interest On Lawyers' Trust Accounts) funds for the fiscal year 2002 were considered. The following grants totaling \$344,000 were made: Alaska Legal Services Corporation (\$250,000); Alaska Native Justice Center, Inc. (\$10,000); Alaska Women's Resource Center (\$5,500); Anchorage Center for Families (\$5,000); Catholic Social Services (\$30,000); Courtwatch (\$10,000); High School Mock Trial Competition Committee sponsored by the Young Lawyer Section of the Anchorage Bar Association (\$3,500); HRC, Inc. Adult Education Center (\$5,000); and United Youth Courts of Alaska (\$25,000). The Board thanks all lawyers and law firms for their participation in the IOLTA program.

Anchorage attorney Leroy J. Barker and the Honorable Eric T. Sanders, Anchorage Superior Court Judge, retired from the Board of Trustees. The Board thanks both of them for their many, many years of dedicated service to the Alaska Bar Foundation. They have been replaced by Anchorage attorney Dani R. Crosby and former Bar Foundation trustee, Mary K. Hughes. Mary was instrumental in setting up the IOLTA program in Alaska. Other Board members and officers for the upcoming year are Juneau attorney, William T. Council (who will serve as Vice-President); Fairbanks attorney, Barbara L. Schuhmann (who will serve as Secretary); Juneau Certified Public Accountant, Karen L. Smith; Senior Vice President of the Wells Fargo Bank Alaska, N.A., William A. Granger (who will serve as Treasurer); and Anchorage attorney, Kenneth P. Eggers (who will serve as President).

Alaska Bar Association Fall 2001 CLE Calendar

Date	Time	Title	Location
August 9	4:30 – 6:30 p.m.	An Informal Discussion with the 9th Circuit Court of Appeals CLE #2001-019 2.0 General CLE Credits	Anchorage Downtown Marriott
August 10 (NV)	1:30 – 2:30 p.m.	An Informal Discussion with the 9 th Circuit Court of Appeals CLE #2001-019 1.0 General CLE Credits	Fairbanks Westmark Hotel
August 13 (NV)	1:15 – 2:15 p.m.	An Informal Discussion with the 9 th Circuit Court of Appeals CLE #2001-019 1.0 General CLE Credits	Juneau Baranof Hotel
September 6	9:00 a.m. – 12 noon	Mandatory Ethics for New Lawyers in Alaska CLE #2001-888 3.0 Ethics CLE Credits	Anchorage Hotel Captain Cook
September 6	1:30 – 4:45 p.m.	ALPS Professional Responsibility: Representing the Corporate Client CLE #2001-027 3.0 Ethics CLE Credits	Anchorage Hotel Captain Cook
September 7 (NV)	1:30 – 4:45 p.m.	ALPS Professional Responsibility: Representing the Corporate Client CLE #2001-027 3.0 Ethics CLE Credits	Fairbanks Westmark Hotel
September 12 (NV)	TBA – Half Day	PowerPoint for Lawyers CLE #2001-025 General CLE Credits	Anchorage Snowden Training Center
FALL Dates TBA	Half-day	The Sinfully Simple Will CLE #2001-004 2.75 General CLE Credits	Fairbanks and Juneau – locations tba
September 13 POSTPONED TO 2002	TBA – Half Day Morning	Sanctions, Contempt, and the Out-of-Control Judge CLE #2001-008	Anchorage – Hotel Captain Cook
September 14 (NV)	1:30 – 4:45 p.m.	ALPS Professional Responsibility: Representing the Corporate Client CLE #2001-027 3.0 Ethics CLE Credits	Juneau Centennial Hall
September 20	TBA – Half Day Morning	Using the Internet for Discovery CLE #2001-026 CLE Credits TBA	Anchorage Downtown Marriott
October 11	TBA Full Day	Recent Developments in Intellectual Property & E-Commerce on the Internet CLE #2001-007 CLE Credits TBA	Anchorage Hotel Captain Cook
October 17 (tentative)	8:00 a.m. – 12 noon	Pre-Trial Orders: Civil and Domestic Relations CLE #2001-032 CLE Credits TBA	Anchorage Hotel Captain Cook
October 19	Half Day Morning	Environmental Law Issues CLE #2001-016 CLE Credits TBA	Anchorage -Hotel Captain Cook
October 24	Full Day 8:30 a.m. – 5 p.m.	14th Annual Alaska Native Law Conference CLE #2001-006 CLE Credits TBA	Anchorage Hilton
October 24 (tentative) (NV)	TBA	Therapeutic Courts CLE #2001-028 CLE Credits TBA	TBA
November 2	8:30 a.m. – 12:30 p.m.	8 th Annual Workers' Comp Update CLE #2001-029 CLE Credits TBA	Anchorage Hotel Captain Cook
November 7	TBA Half Day Morning	Consumer Law & Your Practice CLE #2001-009 CLE Credits TBA	Anchorage Hotel Captain Cook
November 30 (tentative)	TBA Half Day Morning	Federal Court Rules Update CLE #2001-020 CLE Credits TBA	Anchorage Hotel Captain Cook
December 4	8:30 a.m. – 12:30 p.m.	Ethics at the 11 th Hour CLE #2001-024 CLE Credits TBA	Anchorage Downtown Marriott
December 6 (tentative)	TBA Morning	CINA Issues CLE #2001-030 CLE Credits TBA	TBA

In Memoriam

Rabinowitz: A legacy of law . . . and justice

Continued from page 1

Annie Nesbit to marry him once he was here.

I think Annie made a good decision, too, when she said, "yes."

For Jay, and his parents back in New York, who lived proudly and vicariously every step of the journey, what a surprising, rewarding, loving adventure it has been.

Loving being the operative word.

Loving imbued as it is with the connotations of passion, dedication, responsibility and daring. Those of you in law may attest to the veracity of his ability to bring those qualities to bear upon his work.

Those of us in family may testify to his application of those qualities to life.

Contrary to published reports, we grew up in Brooklyn, not affluent Riverdale. We were born in Philadelphia in the late 20's. In 1933 our mother, Rose, was able to take the 3 kids and come to New York to rejoin our father, Milton, who for 2 years had lived and worked there at the only position he could obtain during the Depression, bookkeeper for a firm in the wholesale fish market.

It was a good time to be poor. Everyone was.

Growing up, Jay was probably the one who felt most deeply, but was more reticent than bellicose in his responses to real and perceived injustices of the world, not aware then that there was to be a journey that would carry him physically and intellectually far afield from our daily daydreams of the pursuit of justice for our beloved but incompetent Brooklyn Dodgers ("Dem Bums" as they were known) the perennial doormat of baseball during the 30s but beloved by us. I think Jay learned patience then, and (despite the suffering) the ability to remain optimistic in the face of the overwhelming probability that our day of reckoning was far off.

Early in our family history our Grandfather Rabinowitz escaped the pogroms of eastern Europe and arrived in America in the 1890s with a dollar and a dream. He was 14 years old. If coming to Alaska in 1957 was an adventure for Jay, Grandpa leaving his family behind in Riga and traveling to a country where he didn't speak the language and knew no one, seems almost



Justice Rabinowitz as a boy at his father's New York fish business.

Although Jay's intellect and analytical skills are superb, his extraordinary memory is even more impressive, if sometimes daunting. Jay's recollection of the relevant facts in any given case is often superior to everyone's... (he can) recall exactly what (a case is) about factually and legally and... gently say enough to refresh everyone's memory.

Jay always offers these insights and recollections with the same grace and good humor that he might note the score of the last Bulls-Celtics game, commenting not just on the obvious (that Jordan and Pippen had combined for 52 points), but that the backup point guard had seven assists and three rebounds."

Justice Robert Eastaugh, in *Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997*

unimaginable to me. Jay had a bit of tradition on his side to make the leap to Alaska.

Eventually my grandfather prospered in the town of Woodbine, N.J., a town established by the Baron de Hirsh fund for escaping immigrant Jews. He was the town's largest employer, its first elected mayor ("no vote for me, no job for you" was his slogan, I think). He was able to send most of his six children to college. Our father, Milton, was an outstanding student at the University of Pennsylvania's Wharton School and the captain of the university's debating team.

Jay did not arrive at his intellectual crispness, his acumen for nuances and his intellectual honesty by accident, but by carefully listening to and absorbing the splendor of his

father's debating skills as he discussed and debated with all those who visited our home and who were concerned and confounded by the horrendous economic times and even more disturbed by the reports of the unfolding events in Europe.

Almost everyone who visited, from Trotskyite, to Stalinist, to Democratic Capitalist (we knew no Republicans in those days), held an absolute opinion as to the way to solve the problems. They got the problems right, if not the solutions.

Milton's soft-spoken, minutely analyzed, informed, intensely reasoned arguments dazzled all, and if he didn't change any of these committed to the "isms" he shook them, upset their beliefs and demonstrated for us kids, especially Jay, what a great tool in the defense

of humanity and to the defeat of injustice a well educated, deeply rational mind could be. Jay didn't arrive in Alaska without that appreciation.

The Depression changed the course of my father's life and he put the realities of family first. This too left a mark on Jay.

There were other marks on Jay... literally. The anti-Semites on a neighboring block in Brooklyn challenged the recently arrived Jewish kids to a fight on the railroad embankments that passed near our house. Jay took a rock square in the middle of the forehead in the defense of Jews. (I was a coward and hid out at home.) Our mother was horrified at the sight of her bloody and wounded warrior.

Jay took piano lessons and loved it, especially jazz. Music opened his eyes and feelings to other injustices and prejudices involving race and the cause of minorities became his.

At our Public School #193, the social science teachers hated Franklin Roosevelt, were American-Firsters, and glowed with a near-fascistic passion over Hitler and Mussolini. How well we learned that those in a position of influence and power didn't necessarily have right on their side. As Jay's own influence rose, I think he remembered the humbling responsibility that accompanied it.

We had great times, too. Times of small triumphs. We attended the first Duke Ellington concert at Carnegie Hall. And positively glowed with pride when Branch Rickey signed Jackie Robinson to a minor league contract that broke the color barrier of baseball's major leagues. We were Brooklynites and reflected in the glory.

Summers in Brooklyn we collected discarded Coke bottles after the games at Ebbetts Field, distributing them to candy stores along the 3-mile walk home in order to collect the 2-cent deposit so we could return another day. Bleacher seats cost 55 cents then. Once in a while we raked the sands late in the afternoon at Brighton Beach searching for loose change that might have been lost in the sands by the umbrella set, also to pay for our

Continued on page 15

Working for Jay Rabinowitz, and later litigating in his court, spoiled me. He taught me that judges were supposed to be independent and courageous and conscientious and work hard and reason rigorously. He also taught me that bosses are supposed to expect much of their employees, and expect even more of themselves. Alaska is a better place because of his decades of public service."

Bob Bacon

The Rabinowitz era . . . the early years



Justice Rabinowitz with his 1960's Law Clerks, March 1997



Justice Rabinowitz with his 1970's Law Clerks, March 1997

Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997

In Memoriam

Rabinowitz: A legacy of law . . . and justice

Continued from page 14

ballpark seats.

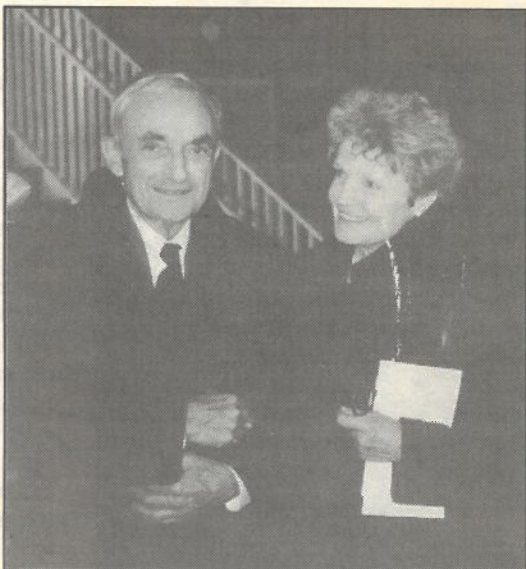
We played stickball and roller skate hockey in the streets, body checking into parked cars; we played tackle football on a rock hard surface in the school yard; Jay batted clean-up on our super softball team, the only one with power to pull the ball over the schoolyard fence. He also had star power. We were a bad black and white film.

World War II changed everything. Jay grew up. Started college. Enlisted in the Air Force — he was going to make a difference.

But it was the Holocaust and what it meant to our family that affected Jay so strongly.

Of the more than 100 family members we knew of in Europe, only our great uncle, Chaim, survived. Jay did heroic service in finding him in a Displaced Persons camp in Germany and with the advice of the American Council there, procured forged documents that allowed Chaim to eventually come to America, live with us in Brooklyn and be reunited with his brother, our grandfather, whom he had not seen since the 1890's. It was a monumental humanitarian achievement; Chaim loved Jay.

Most all the Rabinowitzes possessed a healthy skepticism along



Hon. Jay and Ann Rabinowitz at his 1997 retirement.

with an ironic and sardonic sense of humor that exposes the surrealness of life at the same time affirming its wondrousness. How could Chaim have survived otherwise? Sometimes you look into the abyss and it looks back.

The 20th Century Swiss artist Paul Klee's metaphor for the nature of the artist was that of a tree: The gnarled roots of which spread out unseen, seeking every sort of experience in the real and imagined world, curious of all and devouring all they could gather.

So all of you have been the

beneficiaries of the "fruit," the mature art created by Jay. You have enjoyed and will continue to enjoy the splendor of the ripeness of his mind and his unending desire for justice and the solid contributions he made towards those goals.

He was an artist in his own right. That art was not just formed in law school or sitting on the bench, but in family — with its history, its sacrifices, its ultimate idealistic aims, and its reliance on an educated, informed mind to obliterate ignorance and inequality. Jay took pride in that.

Jay took most pride in the family he and Annie created here in Alaska.

He was pleased by and enhanced by all four of his children: In their different but fine minds; in their caring for one another and for others.

The family was his ultimate achievement.

I know he saw it in the context of

our family history.

Our regret: Jay left too soon. Way too soon. He had unfinished challenges. We had unresolved sibling rivalries, and narratives to tell and sort out.

But life and death are not neat. Jay left an indelible legacy on the law of Alaska. He sired four remarkable children, all of whom are both burdened and liberated by precedents their father set, as Jay was by his father.

The children have sown their roots deep into the culture of Alaska, where their journeys may take them, and the beauty and shape of their fruit, their art, may yet be Jay's greatest legacy.

Jay was a Supreme Justice.

He was an extraordinary man.

To all of you here today, our gratitude, and our love.

Chief Justice Fabe learned from example

The twinkle in Jay's eye and the humor behind the twinkle often provided a graceful way out of a tense situation when we debated an issue, and this was a skill I first observed when I interviewed with the judicial council for the position of public defender. I was only 29 and a bit intimidated by the process. My age was considered fair game in those days, and someone asked me if I wasn't awfully young for the position. When I earnestly responded that I would be turning thirty at the end of the month, Jay leaned forward, raised an eyebrow, and asked, 'Does this mean we won't be able to trust you anymore?' Everyone laughed, I relaxed, and began to enjoy the rest of the interview. Jay conveyed the sense that he was laughing with me, not at me, and I will always remember his kindness on this occasion. . .

I learned during my time with Jay on the Supreme Court that he knows how to work with a group. He was diligent in his search for common ground and a route down which all of us could travel to reach agreement. When he disagreed, it was always respectfully. In a manner almost courtly, he would depersonalize the debate, focusing always on the analysis of the issue. I never had the feeling that he was thinking that my contribution was unworthy, even if he thought it was wrong. And there was never a sense that any stance he took was based on ego. Jay was always willing to reexamine his views and change his mind, even after stating his position in the most definite manner."

Chief Justice Dana Fabe, in *Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997*

The Justice Jay A. Rabinowitz Memorial Public Service Fund

Justice Rabinowitz was devoted to public service, and loved working for the people of Alaska during his four decades on the bench. To honor his memory and his enduring vision of justice for all, the Rabinowitz family has established a fund with the Alaska Bar Foundation to support public service legal work in the state. Memorial donations are welcome, and may be sent to:

The Alaska Bar Foundation
Justice Rabinowitz Memorial Fund
 510 L Street, Suite 602
 Anchorage, AK 99501

The Rabinowitz era . . . Autumn of his career



Justice Rabinowitz with his 1980's law clerks, March 1997



Justice Rabinowitz with his 1990's law clerks, March 1997

Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997

I came to Fairbanks from Berkeley with some fairly vague ideas about law, politics, morality, and judicial activism; by the time I finished my clerkship those ideas had coalesced into firm convictions about craftsmanship, hard work, and careful analysis. Most of us started our clerkships with some half-formed idealistic notion about changing the world; most of us finished with a strong sense that the process of adjudicating is much more difficult, and much more important, than the vindication of any particular political or moral agenda."

Judge Charles Pengilly

In Memoriam

Matthews comments on Rabinowitz legacies

Remarks by Justice

Warren Matthews

Justice Jay Rabinowitz was a leading figure in Alaska justice for each of the four decades of Alaska statehood. He became the dominant figure in the state court system in the early 70's and remained as such until his retirement in 1997. On the Alaska Supreme Court the Chief Justice is elected by the members of the court, terms are three years, and the Chief cannot succeed himself. It is one measure of the respect in which Jay was held by the changing faces of his colleagues on the court that Jay was elected to serve as Chief Justice as often as he was constitutionally entitled to serve.

Although Jay Rabinowitz has left us, Justice Rabinowitz has not. His professional life goes on in the cases that he decided.

When he first came to the court there were four volumes of the Alaska Pacific Reporter. Upon his departure there were 106 volumes. Justice Rabinowitz was responsible, either as the signed author or as a significant contributor for much of the work in these volumes.

The cases he wrote cover every conceivable subject of importance and his opinions were written in the grand style. He was not a fan of memorandum or unpublished opinions.

If you as a lawyer or a judge have a case involving the constitutional right to privacy, you will find that your starting point is two opinions by Justice Rabinowitz; when your subject is the due process right of individuals to a hearing, the starting point again is a series of opinions by Justice Rabinowitz. This is true also in many other areas. In still others, the logic of his concurring or dissenting opinions continues to present a challenge. My purpose is not to attempt a précis of Justice Rabinowitz's work. My point is that we in the legal community are not saying goodbye to Justice Rabinowitz. We will be living with him, through his work for a long time.

But Jay Rabinowitz as a friend has left us and each of us must come to terms with his departure. He was such a wonderful friend. He treated his friends like family members, and he had a large family. I think that no great figure in our time has ever been more accessible to personal contact or casual conversation. He missed few opportunities to talk with his friends. His conversations were almost always about the things that most interested you: your spouse, your children, developments in your career. You all remember how it was to talk with Jay.

And so it was with me. We never lived in the same city. But when we would meet we would almost always have a personal talk. He'd draw me out on subjects that were important to me. And we would talk of other things as well. Our conversations about cases were conducted in a remarkable shorthand. Jay would usually state the proposition that he thought governed a case and then explain its application with an occasional key word set off by lots of ellipses for the legal boilerplate. He would state the key proposition and then say "and you know, tah dah, tah



The Fairbanks judiciary, circa 1960. L-R: Superior Court Judge Everett Hepp, Supreme Court Justice Harry Avcud, and Superior Court Judge Jay Rabinowitz. Courtesy of Dorothy Hepp.

dah, tah dah." And I did know. We spoke the same language.

Soon after I came to the court — 24 years ago — Jay told me that he thought I would help make the Supreme Court of Alaska a great court. Unsurprisingly, I found this to be an irresistibly endearing statement — I was hooked for life, even though I knew the personal implications of the statement were not true. He had other similar ways of reinforcement and encouragement. He would privately compliment me on a series of detailed voting memos or praise an opinion as great, or a classic. Again, while I know that Jay's compliments were not always

deserved, they were always nice to hear.

Encouragement helps us keep trying, and I always felt enriched by being in Jay's presence. I know that

"His children have a lasting image of him spending his evenings sitting up in bed, his head propped up against a pillow, reading, sometimes writing with a pen and yellow pad, with briefs and transcripts and pieces of record scattered all over the bed, and spilling off onto the floor. I think this is not a publicly appreciated quality of Jay's: this dogged diligence, this willingness to work a case, and stay at it until it yields understanding. And this, I think, when combined with Jay's natural talents, is what made him the best of us."

Justice Warren W. Matthews,
Speaking at Justice Rabinowitz's retirement concert, Feb. 28, 1997.

Gov. Tony Knowles remarks

It is with both honor and sadness that I speak here today of Justice Jay Rabinowitz. There are few people who have contributed as much to our state and its people. A kind and brilliant man with unyielding integrity, Alaska will miss Jay dearly. I miss Jay dearly.

As I noted at Jay's retirement four years ago, I have been privileged in this office to make three appointments to our state's highest court.

As I considered my own appointments to the Supreme Court in that quiet corner office in the state Capitol, I thought of the circumstances facing Gov. Bill Egan nearly four decades ago. The state of Alaska was barely six years old; our government was still in its infancy, our court system largely unformed.

On a late February day in 1965, Governor Egan turned to a young Fairbanksan barely seven years a member of the Alaska Bar for service on the highest court in our land. For that appointment, generations of Alaskans are indebted to Bill Egan — and to Jay Rabinowitz. I am indebted to them both.

Numerous times in this office I turned to Jay for advice and wisdom. His counsel — whether on a potential judicial appointee or on the perplexing public policy issues facing Alaskans — was always practical, visionary and compassionate. That is the legacy of his more than 30 years of public service.

Each day on the bench, he set the standard for Alaska's judiciary through fairness, impartiality and intellectual honesty. Jay staunchly defended that notion about which Alaskans feel so strongly — freedom.

As a visionary, Jay worked to unite the disparate Alaskan family, helping lay the foundation for better urban-rural relations and expanding the court system into village Alaska.

Hundreds of young law students, clerks and attorneys benefited from Jay's compassion. Working them hard during the day, he brought them home to his family at night — or more likely drug them along on the ski trails. Sharing Jay's love for Alaska, many remained in Alaska and today occupy leadership positions across our state.

Certainly this is all part of Jay's legacy. But there is no greater lasting contribution than the family he and Annie, a public school teacher, raised here in Alaska. Brilliant and balanced, they are leaving their own mark.

- Judy, a former Olympic skier, is now a renowned Indian law attorney in public service.
- Mara, an avid runner and skier who won Fairbanks' Equinox Marathon at age of 12, works to protect the health, education and safety of Alaska's children.
- Max, also a world class skier, is finishing his medical school residency.
- And Sarah, who skied and ran cross-country for Middleberry College, just completed her masters and plans to continue her work with troubled adolescents.

Like thousands of other Alaskans, I will miss Jay Rabinowitz. His unique and powerful voice; his infectious love of Alaska; most of all, his friendship. We honor him best, I think, by making sure that his voice and the wisdom he shared with us for so many years remain a vital and vibrant part of Alaska.

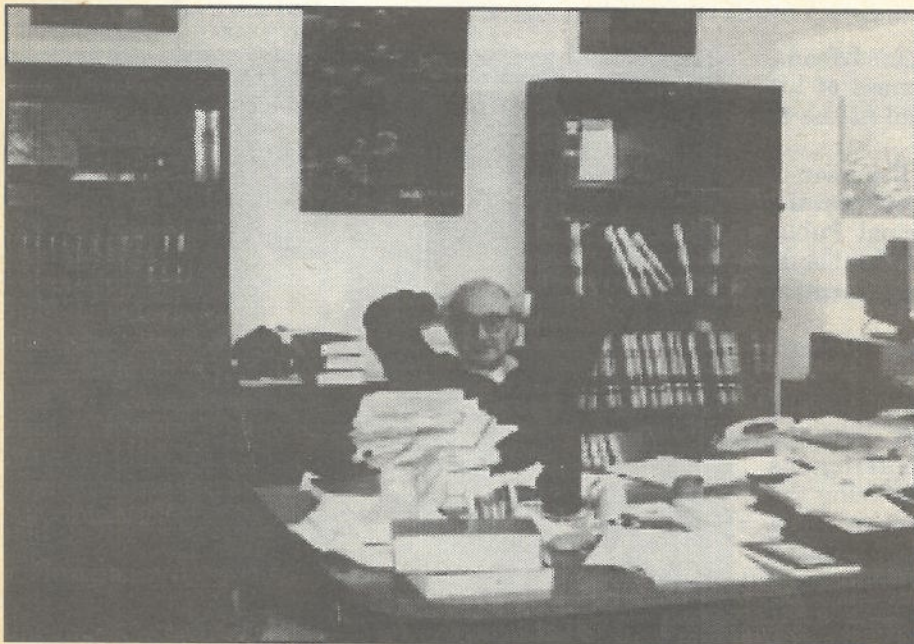
As the Alaska flag rests at half-staff today in Jay's honor, if you look closely I think you'll see the eight stars of gold shining a bit more brightly in memory of Jay Rabinowitz.

"Distinguished court watchers and scholars say Justice Rabinowitz's influence on Alaska and its legal system is 'immeasurable.' I respectfully disagree. The black, red and tan volumes of the Alaska Reporter bearing decisions in which Justice Rabinowitz played a role occupy a full 15 feet of shelf space. Jay wrote 1,213 of those opinions himself. As I understand it, the Rabinowitz opinions alone will fill 30 volumes."

Governor Tony Knowles, in *Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997*

In Memoriam

Rabinowitz remembered by the Bar



"Retirement, Rabinowitz style" Senior Justice Rabinowitz in his Juneau office, January 1998.

Walter L. Carpeneti's remarks at Jay Rabinowitz' memorial service in Anchorage in July.

This is a daunting prospect, to talk about Jay Rabinowitz, this incredible judge and magnificent man, to a group composed of so many who have known him longer and been more intimately involved with him, professionally and socially, than I have. By way of a few examples:

- As a *pro tem* justice, I sat with the court for two months in 1995; Warren Matthews was Jay's colleague for over two decades.

- I sat in for two or three administrative conferences with Jay; Art Snowden worked day in and day out with him for years to make Alaska courts a paragon of administrative excellence.

- And while I have known him as a friend for some years, Charlie Cole's friendship goes back almost 50 years.

- And, of course, his family knows him so much better than any of us. I asked what could I possibly say to shed some light, give some insight, add some perspective? Maybe nothing . . .

But then I thought, there's really not that much heavy lifting here: I was not required to assess — in five minutes no less! — a judicial career that spanned over 40 years! I was not called upon to capture a legacy that will be analyzed by scholars for years to come (and that will contain volumes more than the *New York Times* and the *Los Angeles Times* limited themselves to in their fascination with *Ravin*, as important as that case was). All I have to do is talk about friendship, and that should be easy. Because Jay Rabinowitz wrote the book on friendship.

"Friendship." Didn't it just seem that *everyone* was his friend? Why was that?

First, I think it was because he cared about people. When you saw Jay, he asked about you, and your spouse, and your kids, and your dog. And it wasn't just polite chatter — he really wanted to know. And when he found out, he took steps to accommodate the needs of others that he had learned about. For example, there was a standing offer from Jay to the Carpeneti kids (and to me, too, come to think of it), deprived as we were of cable TV by an autocratic dictate from somewhere in our house, to come over any time and watch NBA and college hoops on the Rabinowitz TV. (And we took him up on it.)

I mentioned our dog; when he escaped from our house, which he too frequently did, he always ended his escapes at the Rabinowitz house, always between 2:00 am and 4:00 am, and Jay would always walk him over to our house. It drove me crazy. "Jay!" I'd say, "you don't have to do that — just give me a call and I'll come get him." But he almost never did, so we just had an extra key to our house made and gave it to him. (No need for all of us to have to get up!)

Second, he had an unbounded delight and joy in life. To everyone this was readily apparent. And people responded to this, and to his warmth and

Jay never gave in, not an inch, to the pain or the fatigue or the misery of (his) illness. He was brilliantly prepared for every argument, his opinions handwritten by him on lined paper, as ever were as clear and insightful as always, and he showed the same humor and compassion which had always marked him.

I do not know how Jay Rabinowitz had the courage to persevere in the face of such adversity, nor how his devotion to duty has come to be as deep as it is. But I do know that he is extraordinarily courageous and devoted. And I know that these wonderful qualities have played a large part in his achievements, and that they explain to some extent the universal respect and love he enjoys among people who have known him."

Justice Walter Carpeneti, in *Collected Opinions of Chief Justice Jay A. Rabinowitz, 1965-1997*

concern. We all did. (As an example, when my wife and I tried to find someone to care for our dog because our family would be in Anchorage today for this memorial, we had no luck because everyone we called was planning to be here.)

But perhaps most of all, it was his sparkling humor that made Jay Rabinowitz such a friend. And I believe I am particularly well-qualified to discuss *this*. After careful analysis, I have come to understand that I was his unwitting straight man. So, for example, when I earnestly asked him to administer the oath of office at my induction, I really did not expect that Jay, knowing my love of all things Italian and perhaps making his own editorial comment on the recently-approved "English only" ballot initiative for governmental actions — which would go into effect the month after my induction — would conspire with my wife to obtain an Italian translation and administer the entire oath of office to me in Italian! (As a P.S., Annie Rabinowitz later divulged that she had — thankfully I say this — vetoed several of his more outlandish plans for that day, although I think most folks in the audience were happy that she allowed him to wear the robes with the three silver stripes on each arm, no doubt his silent tribute to Chief Justice Rehnquist.)

At least with the oath in Italian, Jay had the courtesy to say quite clearly before the oath that I had no inkling of what he was going to do.

I was not so lucky with regard to the "2000 Juneau Ski Challenge." As some of you may know, the Supreme Court in Anchorage sponsors a yearly ski race at Alyeska. Jay apparently noticed that it was open only to appellate judges and their current clerks, and apparently decided to do something about this perceived violation of his sense of openness and equal opportunity. (I say "apparently" to emphasize I had no prior knowledge of any of what I am about to tell you.) One day I arrived at work to find a notice posted on the door of the supreme court offices in Juneau. It advertised something called "*The Carpeneti Challenge*," a ski race, and said it was open to, quote, "all court system employees, former employees, their spouses/partners, children and grandchildren."

This concerned me, because I thought it might be construed by my colleagues on the court as an implied criticism of the Anchorage event. That greatly worried me. As the new kid on the block, I certainly did not want to give any offense or be seen as criticizing my colleagues.

Gathering my courage, I knocked on Jay's door, explained my concern, and asked that he change the notice. His eyes grew wide as saucers: "Do you really think anybody will take it that way?"

I was starting to doubt myself when I noticed the footnote (a footnote on a public notice of a ski race!) placed after the title "*The Carpeneti Challenge*." The footnote read: "Also known as the 'You don't need a J.D. to Ski' Race." !!! I flipped out. Jay immediately assured me: "I can see you are concerned, so I'll have them cross out 'Carpeneti' and write in 'Rabinowitz.'" I was grateful, felt warm and fuzzy about his kindness in resolving my distress, and went off to work.

The next day I found this notice posted on the door (and learned that Jay had already had Rone' Tromble, who allegedly works for me, send it off to court offices in Anchorage!): It said "*The Carpeneti*" — and "*Carpeneti*" has a strikeout line through it, with "*Rabinowitz*" written in above it — "*Challenge*." And every other word on the original notice — including the footnote — is still there. And if that weren't enough, Barb Hood came down from Anchorage and, with the Rabinowitz daughters helping with the lettering, made a sign about 30 feet long and three or four feet high, that hung up at Eaglecrest during the race, that said the same thing: "*The Carpeneti Rabinowitz Challenge*."

So I was called upon to explain, innumerable times, a story that I had only tried *not* to be associated with. I'd like to take this public moment to address my colleagues and finally set the record straight. This is the truth and the whole truth: I had *nothing* to do with the planning for that event, other than to try to disassociate myself from it. I should add, however, that it was a great day of fun racing, and everybody who participated got a medal (which, of course, Jay supplied).

And so, despite my initial misgivings, I conclude that talking about Jay Rabinowitz and friendship is very easy, because he made friendship so very easy. And we were all so lucky to have known this wonderful man and his magical family. And we are all so honored to say that they were, and they are, our friends.



The banner for the "Rabinowitz - Carpeneti Challenge" downhill ski race at Eagle Crest in Juneau, March 2000.



Justice Rabinowitz in the infamous "Rabinowitz-Carpeneti Challenge," Juneau, March 2000.

In Memoriam

Robert Hickerson, Alaska Legal Services director, dies at 50

Continued from page 1

the illness successfully in 1994 to devote over six more good years to his family, his friends, and the legal needs of Alaska's Natives and indigent people. The uniqueness of his contribution to the public good was recognized last year by a special 2000 "Equal Access to Justice" award from the Alaska Civil Liberties Union.

Hickerson was born the third of seven children to Harold and Katherine Hickerson of Altus, Oklahoma, on October 12, 1950. He received his college and law degrees from the University of Oklahoma and in 1976 began his legal career in the Municipal Public Defender's Office in Oklahoma City. He next served with Legal Aid of Western Oklahoma, where he was chief attorney of the senior citizens' division, before becoming executive director of Oklahoma Legal Services Center in 1979.

Hickerson moved to Alaska in 1981 to take up the position of Chief Counsel of ALSC. He became its Executive Director in 1984.

According to his long-time friend and colleague Robert Anderson, Hickerson's vision for ALSC was driven in part by his experiences with Indian land issues in Oklahoma. With the Alaska Native Claims Settlement Act entering its second decade, Alaska Natives were recognizing the importance of preparing to maintain the cohesion of Native life and culture even as the restrictions lapsed on the alienation of Native corporation stock. Hickerson early on recognized the importance of ALSC's role not only in traditional legal services issues such as domestic relations, governmental benefits, and tenants' rights, but also in the broader issues of tribal sovereignty, subsistence, and Native self-determination. Under his leadership, ALSC developed one of the leading Native law practices in the nation.

Hickerson had a knack for hiring the talented lawyers ALSC needed to pursue class-action and other litigation with state-wide repercussions. He was instrumental in attracting the Native American Rights Fund to Alaska in 1984, convincing ALSC's administration to provide NARF with free office space for nine months while NARF established itself in what has since become a very important venue for its specialized advocacy.

The '80s and '90s were difficult years despite ALSC's litigation successes, as the loss of both state and federal support resulted in a shrinking of ALSC's annual budget from over \$5 million to

barely half that. Many legal services offices throughout the country were undergoing similar constrictions, withdrawing personnel from rural offices and concentrating their resources in urban areas. Hickerson fought this trend with everything at his disposal; according to Carol Daniel, a friend and former ALSC attorney, he "didn't succumb to the temptation of giving up on rural Alaska" but "kept scrambling to get money to keep offices open in the Bush." Still, ALSC lost five of its rural offices, and Hickerson had to devote more and more of his time to politicking and fund-raising to protect those remaining.

Fortunately, politicking and fund-raising were roles for which Hickerson's conversational gift and gentlemanly manner made him ideally suited. According to Daniel, Hickerson "enjoyed insulating his lawyers from having to deal with the paper-pushing aspect" of the practice of law, and he gained the respect of even those legislators and policy-makers in Juneau who disagreed with his long-term goals. At the same time, he kept his hand in the substantive legal work, supervising all the major litigation at ALSC and carrying a few criminal cases of his own.

Although Hickerson was well known throughout the state for his leadership at ALSC, there were personal aspects of his life in which his absence will be felt as much and even more deeply. He had been married to his wife Elizabeth, an Assistant Attorney General in the Anchorage office, for 29 years. Their son John Aleksandr is now five years old. While remaining close to their families Outside, the Hickersons made the most of their life in Alaska, enjoying the outdoors and accumulating friendships.

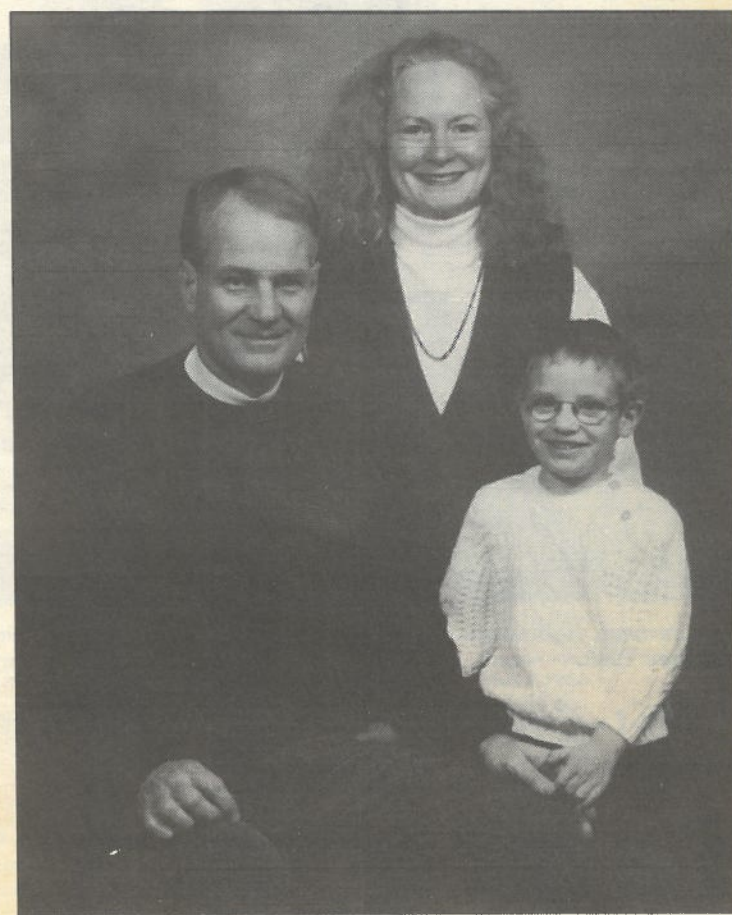
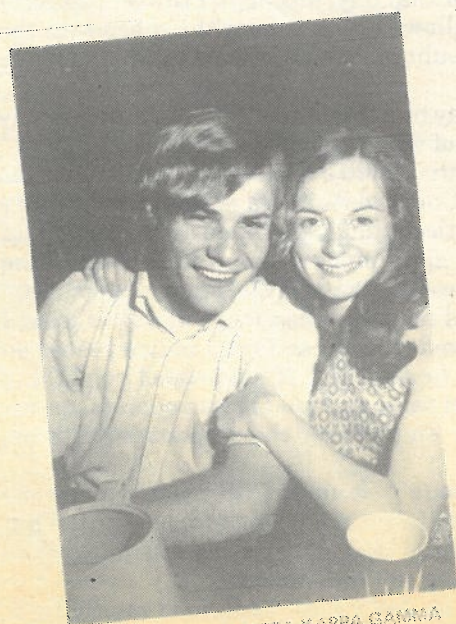
Hickerson was an avid runner and cross-country skier, played hockey, golf, and Lawyers' League softball, and officiated Oklahoma football games from his living room. He thrived on the competition and camaraderie of sports. He organized a ten-person relay team, the Thunderbolts, that competed in the Klondike road relay from Skagway to Whitehorse every year since 1986. He put in solid performances in many running and skiing races from 5Ks to marathons and doggedly continued to run even as his illness and treatment took their toll on his body.

Vance Sanders, a former ALSC attorney who later served on the ALSC board of directors, described the determined look on his friend's face as he rounded the final turn at a footrace, a look that Sanders said also characterized Hickerson's devotion to the causes of Alaska's indigent and Native people:

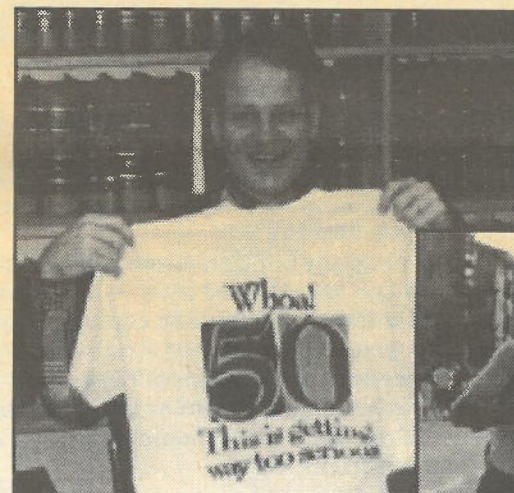
When there was any issue that dealt with equal access to justice, or treating people fairly, or treating people as they should be treated, or loving other people as God or whomever you believe in meant for other people to be loved, that's the look he had on his face. And those of us who knew him well know that when Robert got his jaw set to help people, there was a lot of helping coming down.

Hickerson's commitment to helping others was affirmed again and again at a memorial service in Anchorage on June 11, both by anecdotes from many and by the respectful attendance of hundreds of other friends, colleagues, and clients from throughout the state.

As summed up by Anchorage lawyer and friend Tom Daniel, "Robert was one of the good ones, and we're going to miss him."



The Hickerson's in 2000 — happier times.



Robert celebrates his 50th.



Father (Harold) and son (Robert) enjoyed fishing together

In Memoriam

Joseph J. Brewer

Retired District Judge Joseph J. Brewer, 74, died March 14, 2001 at Providence Extended Care Center in Anchorage.

Born on Oct. 31, 1926, in Fife Lake, Mich., Judge Brewer served in the U.S. Army from June 1944 until November 1946 and was stationed in the Philippine Islands and Korea. He graduated from Michigan State University with a bachelor of arts degree in journalism and received a master's degree in Spanish. He earned his law degree from the Washington College of Law, American University, in Washington, D.C. in 1963 and was a member of the District of Columbia Bar Association.

He came to Alaska in 1955 and worked at the Anchorage Times newspaper.

Brewer also worked in public relations for Federal Electric Corp. in Anchorage during construction of the White Alice project early warning project during the Cold War. He was a staff member for Sen. Ernest Gruening in Washington, D.C., from 1959 to 1963; an Alaska Legislature staff member for Rep. Charlie Bussell in Juneau from 1983 to 1984; and served as the counsel to the House Judiciary Committee.

Judge Brewer began his law career in the Alaska court system as a clerk to a superior court judge in 1963 and also worked as assistant to the administrative director. He was appointed as a magistrate on Dec. 31, 1965 and became a district court judge on June 2, 1969, serving on the bench until he retired on Dec. 31, 1982. "He had many interesting experiences as a judge, traveling to many parts of the state before there were permanent judges in those locations in the 1970s," said his wife Alice.

Judge Brewer was a former member of Tundra Arts and Crafts and a current member of United Alaska Artists. He was a member of the First Congregational Church, the Alaska Bar Association, and the American Judges Association Board of Directors, hosting the AJA's national conference in Anchorage in 1980.

He also was a member of the Woodcarvers Association and Veterans of Foreign Wars in Eagle River. "After his retirement from the District Court, he pursued his interest in arts and crafts. Very visually oriented, he was constantly looking for new ideas. From hand-painted saw blade clocks to figurines of loons from cottonwood bark, he was constantly working. His joy was increased with five granddaughters," said his family.

Judge Brewer is survived by his wife of 47 years, Alice Ewing Brewer of Anchorage; son, Dean Brewer of Anchorage; son and daughter-in-law, Jonathan and Shelley Brewer of Anchorage; daughter and son-in-law, Mary and Dan Riordan of Anchorage; grandchildren, Torrie Brewer, Jessie Brewer, Stephanie Riordan, Lindsay Riordan and Hailey Riordan, all of Anchorage; and sisters, Alice Clark of South Boardman, Mich., and Marie Hutchinson of Lake City, Mich. Funeral services were held at the First Congregational Church, with The Rev. Rick and Mary Koch officiating. Pallbearers were Jonathan Brewer, Dean Brewer, Dan Riordan and Chris Devlin. He was to be buried at Fort Richardson National Cemetery.

The family requested that no flowers be sent and that memorial donations be made to the charity

Joe Kroninger

John M. "Joe" Kroninger passed away at age 90, on May 13 at his home in Laguna Woods, California. Joe will be remembered with affection by many older members of the Alaska Bar. He was Clerk of the U.S. District Court following statehood, appointed by Judge Walter H. Hodge, the first Article III judge for the state. Court records indicate that Joe was named Clerk by Judge Hodge on February 20, 1960, and that he retired on December 5, 1976. Joe was a superb and capable clerk, entering office at a difficult and transitional time, the day President Eisenhower signed the proclamation activating the State court system and ending the terms of the Territorial district judges.

Joe was a wonderful font of information, always ready to help new and inexperienced attorneys. "If you have a problem, ask Joe," was a familiar saying among the Bar members. Many recall him standing at the counter of the Clerk's office, papers in hand, explaining to some confused but grateful lawyer, how some simple or complex form was to be completed. There never was a time he was not willing to help.

Joe is survived by his wife, Marie. Those who may wish to contact her can write to 774 Via Los Altos, #0, Laguna Woods, CA. 92653-4814.

—Submitted by the judges of the U.S. District Court, Alaska



John M. "Joe" Kroninger
First Clerk, U.S. District Court
Feb. 20, 1960 - Dec. 5, 1976

Gerald O. Williams

Long-time Alaskan Gerald O'Neil Williams, 73, died July 11, 2001, in Portland, Oregon. Mr. Williams was born May 30, 1928, in Seattle and remained there until graduating from the University of Washington.

In 1953, he moved to Alaska and joined the territorial police. From 1955 to 1963, he served as territorial and state police administrative officer and Anchorage detachment commander. From 1963 to 1966, he was assigned to Africa as a U.S. Department of State representative and police adviser in Rwanda, Burundi, Republic of Congo and Nigeria, where he supervised police training, internal security and refugee relief. As trooper training officer, he was instrumental in establishing the Academy at Sitka and was its first academy commander.

Mr. Williams graduated from Willamette University in Salem, Ore., in 1972 with a degree in law. He then returned to Juneau and worked as assistant attorney general until his appointment as Juneau district judge and U.S. magistrate from 1975 to 1984. It was then that he retired and returned to Oregon, where he earned a master's degree in history from the University of Oregon.

In 1987, he returned to Palmer to teach history and law in the University of Alaska system and was a frequent *Bar Rag* contributor of historical articles on early Alaska law and justice. He returned to Salem in 1992 and lived there until his death.

He met his wife, Betty, while attending Willamette University. With her, he shared his enthusiasm for traveling, his love for animals and his joy in entertaining family and friends. He shared his love of reading and learning with his grandchildren, who all loved him dearly, said his family. "He will be greatly missed by his family and friends. Peace be to his memory."

As well as his wife, Betty, Mr. Williams is survived by his daughter and son-in-law, Melody and Allen Cooper of Palmer; stepdaughter and her husband, Toni and Gordon Kaufman of Colorado Springs, CO; and four grandchildren.

In lieu of flowers, donations may be made to the Humane Society Shelter, 4246 Turner Road S.E., Salem, OR 97301.



Gerald O'Neil Williams
May 30, 1928 - July 11, 2001

Charles William Hagans

Former Alaskan attorney Charles W. Hagans, 79, died July 21 at his home in Newberg, Ore.

Mr. Hagans was born November 10, 1921, in Denison, Texas. He was a decorated Navy fighter pilot during World War II, serving in the Aleutians and the Solomon Islands. After the war, he earned his law degree at the University of Texas and became an oil lease lawyer for Standard Oil in Mississippi, the Caribbean and then in Alaska in 1961. He opened a law firm in Anchorage in 1964 and practiced law until his retirement in 1993 to his Newberg farm. Mr. Hagans enjoyed sailboat racing, hunting and fishing, woodworking, breeding cattle, raising horses and growing things on his farm in Oregon. His family said: "He was a loving husband and father and a poised and brilliant trial lawyer. He will be remembered for his substantive discussions of the law, history and politics."

Mr. Hagans is survived by his wife, Sally Hagans; son, David Hagans of Anchorage; daughter and son-in-law, Karen and Victor Miglioretto, of Tualatin, Ore.; stepdaughter, Lynn Mayo of Portland, Ore.; stepson and daughter-in-law, Jim and Lori Weber of Newberg; and grandchildren, Brianna and Kelsey Miglioretto and Lea and Clark Weber.

Lester W. Miller, Jr.



Lester W. Miller, Jr.
Sept. 3, 1932 - June 16, 2001

Lester W. Miller Jr., 68, former Anchorage attorney from 1960 until 1992, died in Seattle on June 16, 2001, from complications related to strokes and disability.

Mr. Miller was born September 3, 1932 in Pelican Rapids, Minnesota, to Lester Miller Sr., a railroad conductor and farmer, and Myrtle Nelson, a teacher and homemaker. He attended the University of North Dakota as a member of Sigma Chi, graduating with a Bachelor of Philosophy in 1957. From August 1954 to June 1956, he served in the U.S. Army, Quartermaster Corps. In 1955, after a whirlwind eight-day romance in Salzburg, Austria, where he was serving with the Army, he married a New Yorker, the late Jip Miller, Anchorage interior designer, from whom he was divorced in about 1976. When courting, he told her "I want to be a writer, but I'll probably be a lawyer." He received his J.D. from Cornell Law School in 1960, and was admitted the same year to the North Dakota bar. Mr. Miller moved to Anchorage in 1960, joined the practice of the late Wendell Kay, and was admitted to the Alaska bar in 1962. Early on, he showed a gift for negotiation, contributing to his later effectiveness as a plaintiff's side trial attorney. Mr. Miller was President of the Alaska State Bar in 1968/69, a member of the Bar's Board of Governors, and an influential member of the Judicial Council during the period when George Boney and Roger Connor joined the Alaska Supreme Court. Mr. Miller showed passion for David over Goliath. Through his aggressive pursuit of remedies for the injured, he opened up new areas of law. He championed continuing education for lawyers at the State Bar, and was an activist and strong proponent of moving the state capital to a more accessible location. He took particular pride in his work representing various Alaska Native organizations up through, and continuing past, the land claims

settlement, although in later years he became concerned about the subtle role of the settlement structure in eroding indigenous values. In the mid-80's, he partially retired, living for a time in Klipsan Beach, Washington, and for a time in the Seattle area. Mr. Miller had been disabled, but relatively happy, for the prior nine years, in the care of a remarkable Phillipina nurse, Tina Calabria, and her family, who cared for him lovingly, virtually adopting him, sometimes as "Uncle" Les and other times as "Grandpa" Les.

Mr. Miller is survived by his children: Lester W. "Terry" Miller III of San Francisco, Dr. Jennifer L. Miller of Menlo Park, California, and Mark Nelson Miller of Portland, Oregon. No services are planned, but the family plans a wake in Anchorage, as directed in Mr. Miller's will; a date has not been determined but is likely to be in the fall. Interested friends may contact son Terry at 70611.165@compuserve.com.

UNTITLED

There is a swallow
singing somewhere--
if swallows sing.
There is a quiet moon
moving morning
toward hollow
song--
And a day filled with
silent swallow songs
--and with night.

—Les Miller

Poem contributed by
Harry Branson

Insurance wars in Alaska

By SENATOR DAVE DONLEY

Part III - Stacking and Increased Mandatory Offers of Uninsured and Underinsured Coverage



HB 429 (1990) LABOR & COMMERCE

I was re-elected to the State House in 1990. After four years of chairing the Labor and Commerce committee, my colleagues chose me to now chair the Judiciary Committee. I was still in a good position to push insurance reform ideas, as most insurance legislation was referred to Judiciary as well as Labor and Commerce. Even better, I was also a member of the Labor and Commerce Committee.

During my work to reinstate mandatory automobile insurance, Attorney Mike Schnieder had mentioned to me that insurers in Alaska were not stacking underinsured coverage. In other words, they were paying claims only up to the amount of the underinsured coverage whether or not there was other coverage available. For example, consider if the insured had the mandatory minimum automobile policy in Alaska of 25/50/10, and an injured party with \$30,000 in damages had the typical underinsured coverage of \$25,000. In such cases the underinsured carriers were refusing to pay anything, claiming that underinsurance coverage was not in addition to what other coverage was available, but rather only for damages up to the underinsurance limit (in this case \$25,000). This insurance company distortion of my intent in crafting the original requirement of offering underinsured coverage effectively made underinsured coverage frequently worthless for the typical automobile policyholder.

Even worse, many companies were refusing to sell higher levels of uninsured/underinsured coverage so there was no way for many consumers to even buy meaningful coverage.

To address this problem, as Chairman of the Judiciary Committee in 1990, I sponsored HB 429. This legislation provided that coverages such as uninsured and underinsured would stack and that all automobile insurers in Alaska had to offer uninsured and underinsured coverage up to \$1 million for a single injured person and \$2 million for more than one.

The insurance industry simply hated these ideas. However, as Judiciary Chair, I was in a position to make it happen. In addition, after the embarrassing one-year gap in having a mandatory automobile insurance law and the resulting increase in uninsured drivers, the industry was not very popular. It was a tough battle, but HB 429 became law in 1990 and went into effect January 1, 1991.

Many insurance companies at first simply ignored the new requirements. Even worse, one company in a bizarre example of forum shopping challenged the meaning of the new stacking requirement in U.S. District Court. In an even more bizarre twist, despite clear legislative intent, the federal court ruled the state law did not mean what it said and that there was no stacking.

In a subsequent case, another U.S. District Court judge disagreed and found the state law did require stacking. As state cases on the subject worked their way up to the Alaska Supreme Court, I set out to do a legislative fix.

By now, I was in the State Senate, but in the minority. Once again, a bitter and long battle ensued with the insurance lobby. It took several legislative sessions to finally pass a statutory fix. In 1997 I added a clarification to an Omnibus Insurance Reform bill, SB 104 that took effect July 1, 1997. It clarified once and for all that stacking was required under state law. Toward the end of the process, some industry lobbyists, after concessions to assure no stacking of multiple policies owned by one insured and believing the State Supreme Court was about to rule in favor of stacking anyway (thus overturning the bizarre Federal District Court ruling in *Tumbleson*), removed their opposition.

Unfortunately, in the meantime many injured Alaskans were denied appropriate compensation for their injuries. I've been informed some insurance companies just ignored the law and never made the mandatory offers of higher UM/UI levels to their insureds.

Once, when my own insurer refused to sell me higher limits as they were mandated to do by the law, I contacted the Division of Insurance and the company subsequently agreed to sell me the higher coverage. I believe we haven't heard the end of the legal questions stemming from this period of insurance companies' non-compliance with 1990's HB 429. This ends my three part series on "Insurance Wars In Alaska".

To shred your files, or not

By ELLEN FREEDMAN

These statements may sound strange, but the right time to think about the destruction of a client's file is before you create the file or begin work for the client. And the right time to notify the client as to your policy of disposition of client files is upon engagement, and within the engagement agreement.

Among the many law office management problems faced by attorneys is the thorny issue of what to do with client's files for matters that have been concluded and closed.

Storage space has become prohibitively expensive. Attorneys are looking for ways to minimize storage requirements while at the same time protecting their client's confidential documents, and preserving information for any malpractice defense.

Without forethought and planning, the retiring attorney may be faced with a responsibility to store a large number of client files indefinitely. The problem of file retention is stated succinctly, for example, by the American Bar Association Committee on Ethics and Professional Responsibility: "A lawyer does not have a general duty to preserve all of his files permanently."

Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the costs of legal services. But clients and former clients reasonably expect that valuable and useful information in the lawyer's files and not otherwise readily available to the clients will not be prematurely and carelessly destroyed. To ensure that the firm does not become a permanent repository for client files, each firm should develop and scrupulously follow a file retention policy.

Essentially, there are three (3) broad categories of property to be considered:

1. *Documents and other property which belong to, or would be of some intrinsic value to, the client and subject to rules pertaining to the safekeeping of property.* This category would include such documents as original wills, original deeds, photographs, original birth certificates, and so forth. Category 1 documents need to be returned to the client. If a file is going to be placed into storage, the attorney should return category 1 items before storing the file. Of course, the better approach would be to find a way to avoid having any original documents in the file at all. To accomplish this, photocopy all original documents upon receipt and return the originals to the client as soon as possible thereafter.

2. *Documents or property which the client might expect to be returned.* This category would include items such as the client's only copy of tax returns, bank statements or other business records. These can usually be retrieved again from an agency or business.

3. *Non-client-owned documents or property that belong to the attorney or a third party.* This category would include the attorney's draft of pleadings, briefs, file copies of correspondence and generally documents that would be for the attorney's use in representing the client. These are most necessary when defending a malpractice claim. This property is recognized to be part of what the client has purchased when they retain legal counsel. Accordingly, category 3 property does not need to be turned over to the client prior to destruction of the file, but commonly must be provided to the client upon request, under the American Bar Association Rule 1.15(b), for example.

ESTABLISHING A RETENTION POLICY

Although it does not answer the question of specifically WHEN an attorney may dispose of a file, Rule 1.15 does provide retention program guidelines. Generally speaking, Rules of Professional Responsibility require that a client's property be preserved for 5 years after termination of the representation. State Bars may also have applicable rules.

However, even where a sound file-retention policy is established, there may be occasions when it is advisable to retain the documents for a longer period of time: For example, if the Statute of Limitations has not run on a potential malpractice action. There are reasons that may prevent a legal malpractice claim from being time-barred, such as a delay until the client knows or should know that damage has been caused by malpractice. In cases where the client has expressed dissatisfaction with a matter's conclusion, it may be prudent to retain the file documents longer. The length of time a document should be retained also depends on the document and the type of law involved.

It is clear that it is not possible to simply establish a flat period of time after which all contents of all files should be destroyed.

A base period of 5 to 7 years of file retention from the conclusion of a particular matter is adequate, with longer periods established for specific, narrowly-defined areas of practice. (A retention policy should include a statement that exceptions will occur only when the facts dictate. Exceptions should never shorten the life cycle of the file.) To insulate the firm from allegations of failing to surrender documents, or worse, of purposely destroying documents to keep them from discovery, it is important that a retention policy be uniformly implemented, and that any exceptions be carefully recorded as to facts which necessitated the exception.

A detailed and accurate index should be maintained regarding all files destroyed or returned to clients. The firm must permanently retain the index, as well as copies of the engagement agreement, (signed by the client to signify written consent), which notifies the client of the records retention policy, and subsequent letters notifying clients of file destruction dates. For clients who engaged the firm prior to establishment of the file retention policy, separate notice must be provided, and the client's written acknowledgement and consent should be obtained.

NOTIFYING THE CLIENT

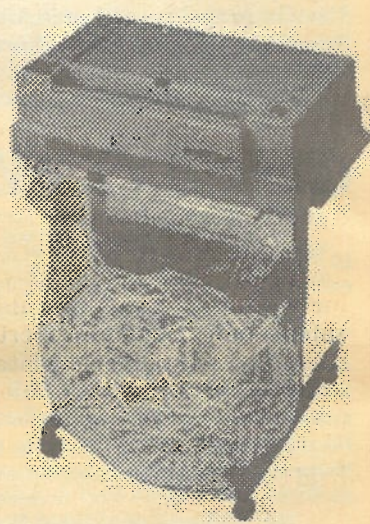
Whatever the time required to keep the documents, the question next becomes how and when must the client be notified.

The firm's engagement letter or fee agreement should include provisions with regard to disposition of property after a certain length of time, and the client's responsibility to retrieve the file if desired. This practice establishes the client's expectations correctly at the onset of the relationship. However, in the author's opinion, stating the records retention policy in the engagement agreement is not sufficient notice prior to actual destruction, to ensure the client has the option of exercising their right to have the contents of the file returned to them. I recommend that the attorney notify the client and allow 30 days to respond.

However, even if the client cannot be located, all Category 1 documents must be kept indefinitely unless the firm has obtained the advanced written consent of the client to destroy these documents in accordance with the firm's records retention policy. This is another reason why it is best to include the policy in the engagement agreement and get a signed copy back as an agreement, as well as photocopy and then return all Category 1 documents to the client as soon as possible.

The decision on how and when to destroy part or all of a file must be made by the attorney; thus, attorneys may not divorce themselves from the execution of the policy.

The author is the law practice management coordinator for the Pennsylvania Bar Association. Reprinted with permission from the GPLink newsletter, American Bar Association.



Attorney Discipline

KODIAK ATTORNEY DISBARRED

On June 7, 2001, the Alaska Supreme Court granted a stipulation for discipline, disbarring Kodiak attorney Michael J. Wall. Mr. Wall accepted the discipline of disbarment for misconduct committed during a period that he struggled with alcoholism and depression.

Three clients of Mr. Wall filed complaints against him in 1995 and 1996 alleging that Mr. Wall neglected their cases and failed to communicate with them about their legal matters. Two of the clients complained that Mr. Wall had not earned his fees, yet he refused to refund money that he hadn't earned.

In addition to client complaints of neglect, Mr. Wall was charged with the unauthorized practice of law. The Alaska Supreme Court had suspended Mr. Wall on September 7, 1993, for non-payment of his Alaska Bar dues. Despite being on an administrative suspension, Mr. Wall continued to represent clients in court in Kodiak.

After an investigation of the complaints, bar counsel filed a Petition for Formal Hearing. Mr. Wall did not answer the petition, and based on that default, allegations in the petition were deemed admitted. Prior to a disciplinary sanctions hearing, Mr. Wall and bar counsel stipulated to discipline by consent. Mr. Wall agreed that his mishandling of client funds warranted disbarment. Additionally, Mr. Wall violated professional rules of conduct governing neglect, failure to communicate, and failure to withdraw from representation of clients when alcohol abuse and bouts of depression were harming his ability to practice law. Moreover, Mr. Wall practiced law during a period that he was unauthorized to do so.

In 1996, Mr. Wall began treatment for alcoholism and addressed other issues that led to his professional lapses. In acknowledgement of these efforts and due to delay in disciplinary proceedings, bar counsel and Mr. Wall requested that the effective date of disbarment be retroactive. The Supreme Court disbarred Mr. Wall, effective December 15, 1999. If Mr. Wall applies for reinstatement, he must fulfill requirements that include training in setting up and handling client trust accounts, attending a legal ethics CLE, passing the Multi-State Professional Responsibility Exam, and compliance with an alcoholism recovery program.

SUPREME COURT DISBARS ATTORNEY

On May 24, 2001, the Alaska Supreme Court, accepting recommendations of an area hearing committee and the Disciplinary Board, disbarred attorney Mark L. Nunn for wide-ranging misconduct. Under the Order, the effective date of the disbarment was June 25, 2001.

Bar counsel filed two petitions for formal hearing that involved 18 disciplinary grievances against Mr. Nunn and alleged 62 separate violations of the rules of professional conduct. Mr. Nunn did not answer the petitions. At a sanctions hearing Mr. Nunn admitted that he neglected and mismanaged his law practice.

The hearing committee found that Mr. Nunn's misconduct was persistent, repeated and continued over a four-year period. Mr. Nunn violated duties owed to his clients, including violations of rules governing competency, diligence, communication, and safekeeping of client property, including advanced fee payments. The committee found that Mr. Nunn also violated duties owed to the public, the legal system, and the profession by violating rules governing fairness to opposing party and counsel, and failure to answer bar grievances.

While noting that certain of the grievances merited a lesser discipline, the committee held that three cases on their own justified disbarment. The committee found that lesser sanctions for the lesser violations are subsumed in the sanction of disbarment.

The committee found several aggravating factors that justified an increase in the discipline to be imposed, but it found only one mitigating factor (no prior disciplinary record). Mr. Nunn had argued in mitigation that he had substantial personal and emotional problems, including being the victim of repeated and multiple acts of domestic violence by a domestic partner, but he acknowledged that these problems did not excuse his misconduct.

On January 19, 2001, the Disciplinary Board voted unanimously to adopt the Area Hearing Committee's Report and to forward the recommendation of disbarment to the Supreme Court. The Disciplinary Board made recommendations that in the event Mr. Nunn seeks reinstatement, he must obtain training in setting up and handling client trust accounts and client funds, that he retain an independent auditor or accountant to oversee his financial and trust accounting practices, and that he undergo counseling for any psychological problems that at the time negatively affect his ability to practice law. The Supreme Court approved the Disciplinary Board recommendations.

ELLIOTT FRIEDMAN SUSPENDED FOR TRUST ACCOUNT VIOLATIONS

The Alaska Supreme Court on May 8, 2001 suspended attorney Elliott Friedman (Bar Membership No. 8404008) for three years because of trust account violations.

Friedman represented the estate of a crewman killed when a fishing boat sank. He negotiated a settlement for his client and the estates of other crewmen. One of the defendants made an early payment of \$81,000. Friedman held this money in trust for all plaintiffs till other defendants paid their share and the plaintiffs could allocate proceeds. This did not occur till a year after the first payment. Meanwhile, without the knowledge of the other plaintiffs, Friedman paid himself attorney fees and advanced his client money from the \$81,000. Also, in five cases that Friedman settled for other clients, he paid himself attorney fees before receiving settlement checks. As a result, although his trust account always had some money in it, at one point it was more than \$72,000 underfunded or "out of trust."

The Supreme Court ruled that Friedman intentionally misapplied funds held in trust for others. This was unethical even though all settlement funds eventually arrived as expected and clients received all the money they were entitled to.

A disciplinary hearing committee heard the case and recommended that Friedman be suspended for six months. The Bar Association appealed. The Disciplinary Board recommended that Friedman be suspended for four years. Friedman appealed to the Supreme Court. Three justices decided that he should be suspended for three years; one justice would have imposed a four year suspension and another would have remanded the case for additional mental state findings. Friedman moved for rehearing and for a stay of the discipline order pending a petition to the United States Supreme Court for a writ of certiorari. The Alaska Supreme Court denied both the rehearing and the stay.

In addition to the Supreme Court record there is a public file available for inspection at the Bar Association office in Anchorage.

Bar People



John G. Davies, has, effective July 1, 2001, turned over his valley law practice to Chris Canterbury of the law firm Kelley & Kelley, effective July 1. John will be taking a one-year sabbatical from the practice of law for health and personal reasons. He anticipates doing some

coastal cruising in the Florida Keys and volunteer work with the international hospital ship Organization, Mercy Ships.

Awards to be presented at ABA Solo and Small Firm Day 2001

Several awards honoring solo and small firm practitioners will be presented during the Solo & Small Firm Day 2001 Luncheon and Awards Ceremony on Aug. 2, held in conjunction with the 2001 American Bar Association Annual Meeting in Chicago. The annual awards, sponsored by the ABA Sole Practitioners and Small Firms Committee of the General Practice, Solo & Small Firm Section, recognize solo and small firm practitioners for their leadership and service to the legal community.

Bruce B. Weyhrauch, a solo practitioner from Juneau, Alaska, will be awarded the 2001 Solo Practitioner of the Year Award. Weyhrauch is past president of the Juneau Bar Association and immediate past president of the Alaska Bar Association Board of Governors, where he was dedicated to increasing pro bono services by lawyers, and worked to provide legal services to remote Alaskan villagers. He also has attempted to create an e-mail network for solo practitioners to share information.



Bruce B.
Weyhrauch

The ABA General Practice, Solo and Small Firm Section <http://www.abanet.org/genpractice/home.html> provides information and assistance to lawyers in general practice, solo and small firm settings. It is the only ABA section created specifically to help these lawyers succeed and prosper.

The American Bar Association is the largest voluntary professional membership association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

Watch for the Alaska Legal Administrators Annual Salary Survey

When hiring new employees do you offer competitive wages and benefits?

Chances are your associates, paralegals, legal secretaries and office staff know what is being offered in the Alaska marketplace. Do you?

The 2001 Legal Administrators Salary Survey will be in the mail soon.

It is the only comprehensive salary and benefits survey exclusively for Alaska's legal community. By taking a short time to participate, you insure that your firm will be included in the survey and you will enjoy a substantial discount on the purchase of our survey results.

The survey data is kept confidential as data is gathered and compiled by a local accounting firm. Results will be published in the fall, just in time for the 2002 budgeting process!

Look for the salary survey in your mailbox or request one by faxing Sue Lamb at Owens & Turner, P.C. 277-3695; email: sml@owensturner.com.

276-3963

Quote of the Month

"The law isn't justice. It's a very imperfect mechanism. If you press exactly the right buttons and are also lucky, justice may show up in the answer. A mechanism is all the law was ever intended to be."

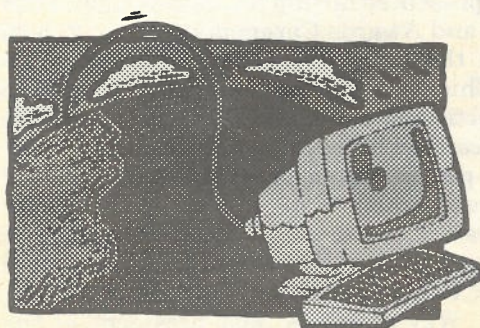
— Ramond Chandler

Basic internet security for the mildly paranoid

By JOSEPH KASHI

TESTING YOUR INTERNET SECURITY BLANKET

Now that you've assembled your own Internet security blankets, it's time to test them and see if they'll keep you warm when the wind blows. The best way that I've found to test your vulnerability to both external hacking attempts and spyware is Shields Up, an Internet-based vulnerability assessment provided free of charge by the highly reputable Gibson Research Company. Go to www.grc.com and allow Steve



Gibson's software to test your system's security. First try LeakTest, which will try to get past your firewall software from the inside, just like spyware and Trojan Horse software. Then try Steve's port probes to see how vulnerable you are to direct external attempts to hack into your system using TCP/IP's known holes. Try the port probe and other system hole detection services using both the network IP address as it appears to the outside world (ideally, you're using an address translating router and your apparent IP address is not your real, vulnerable address) and then try the probes using the IP Agent program that tests using your system's true IP address. If your system does not have any common vulnerabilities, then your probe results should state that there are no obvious security holes.

My experience in testing several different DSL connections showed that enabling the router's address translation feature stopped most random incursions and attempts to scan possibly open software access ports on my computer. As an example, on one standalone computer without a router between the DSL modem and the computer, BlackICE Defender detected three to four remote port scan attempts a day. After the router was installed and address translation enabled, BlackICE Alarm did not record a single intrusion reaching the computer for more than 15 days. When the router was removed, the intrusions again become evident. I did not delve into just what all the intrusions were or their source, but it was clear that the router's address translation was successful in hiding the computer and reducing the risk of attack on an individual computer behind the firewall. Similarly, Steve Gibson's Shields Up port scanning service reported no possible vulnerabilities after address translation was enabled.

INTERNET PRIVACY ISSUES

Privacy concerns arise whenever you browse on the web. During the past year, we've seen numerous stories both in the mainstream press and in government inquiries and litigation alleging that great amounts of our personal information are tracked and collated by web sites,

without our knowledge, merely in the act of visiting them. Cookies and scripts are used to track further activities and information about your browsing and buying habits can be accumulated. Even if you limit your web activity to buying children's books at Amazon.com and primarily read the New York Times web site, you'll want to limit the information accumulated about you. When you visit a web site, your browser will probably pass on to the Web vendor a great deal of information including, ISP, server name, your installed applications, files types in use by your system, and in some cases your user and machine names and you cookie information to the web site. (A more detailed list can be viewed at idzap.com or some of the other browser privacy service sites that offer anonymous web browsing access).

While much of the information transmitted about you helps to facilitate web browsing, it may be more than you want some random web operator to know, especially the user and machine identities. Cookies and scripts are likely to contain a lot of identity information about you, including credit card, purchasing and web site information. That's not the sort of information that you'd like anyone, particularly a hacker, to obtain, particularly in an era where identity theft is becoming a major computer crime problem.

Basically, Windows has no regard for Internet security concerns, hiding Internet information in more nooks and crannies than you'll ever be able to find and erase manually. Of the software available to help you brush over your Internet activity traces, I liked Ontrack's Internet Cleanup. It seems to do a good job at clearing out accumulations of Internet activity data, but I'm still not sure that it finds all of downloaded temporary content, although that's mostly a problem arising in connection with the funky way that modern Windows operating systems store downloaded data. In fact, forensic software vendors claim that Windows hides download information in so many places that it's very hard to brush over the traces. Still, at \$14.95, Internet Cleanup is better than nothing. Another vendor of similar software can be found at www.evidence-eliminator but I have not tried their software.

VIRUS PROTECTION

Anti-virus soft is obviously critical. A virus let loose anywhere in your organization will likely result in havoc. Included in my loose use of the of computer virus are related programs like "Trojan Horses", worms, and "spyware" Some of these do not directly destroy your virus but they shouldn't be in your computer and can adversely affect your data security.

There are three primary areas of vulnerability:

Viruses introduced directly on to an individual computer from a contaminated disk - this is the original type of computer virus transmission.

Viruses that are introduced into a computer as a result of an Internet download, particularly Email attachments. The Melissa virus is a famed example of this threat.

Viruses that spread from a contaminated computer across your office network or across the Internet to infect new victims.

There are several generic types

of viruses:

There's the traditional virus that may do damage or not, often simply slowing your system or showing a goofy message. Sometimes, though, such viruses will trash many files or the entire hard disk structure. These respond best to real time anti-virus scanning software.

So-called Trojan Horses don't cause obvious mayhem - they're more subtle. Often, a Trojan Horse will masquerade as a free and useful download or just silently hitch a ride with legitimate software. And then there's commercial "spyware", a related genre that installs when you contact some Internet sites and then surreptitiously monitors your Internet activity for undisclosed third parties commercial benefit. I consider that sort of junk to be an unethical invasion of privacy and maybe even a violation of the Electronic Communications Privacy Act. After a Trojan Horse running on your system, thanks to your conscious but unwitting assistance, it may damage your files OR it may act as a back door that let's a remote user take control of your system. In the former case, your computer may be used as one of many unwitting pawns to attack other systems, often as Denial of Service attacks on major Internet sites. In the latter case, the confidential data on your system may be totally exposed to that silent third party who can control the Trojan Horse. Don't scoff - this happens far more regularly than you might imagine. Back Orifice (a play on the name of Microsoft's Back Office business software) is only one of many programs that allow an unknown third party to remotely seize control of your system.

Worms are a third virus variant with a twist. They can be either regular viruses or Trojan Horses but are aggressively infectious, rapidly self-replicating across the Internet and other network systems. Catch these with a real time virus scanner and possibly ZoneAlarm 2.1 to monitor dial-out efforts.

You'll find a lot of useful information, particularly about security planning and virus protection at www.symantec.com, where you'll also find updates to Symantec's Norton Anti-virus software. Even if you don't own the Norton Anti-Virus software, this is a useful and informative web site, well worth the visit.

Our office was hit once by a virus many years ago when a secretary who did a lot of downloading from obscure sites infected her home computer and then brought the infections to work along with the disk that contained data upon which she had worked at home. Luckily, that was a fairly benign situation that did not spread rapidly and was caught by the real time virus scanning software running on our network. Many of today's better engineered viruses can do a lot more damage, much more quickly.

It's often the course of least resistance, and usually an incorrect one, to blame a virus infection for any difficult to explain computer anomaly. How do you know that you have a virus? The only sure diagnosis, of course, is to find and identify a

particular virus of a sort that's known to cause the kind of computer problems that you're currently experiencing. To do that, of course, you'll need to run your anti-virus software and, in fact, running anti-virus software is probably the first thing that you should do when your computer begins to act anomalously (i.e., weirdly). However, if your system is already infected, then chances are good that your anti-virus software is damaged as well. In that case, you'll probably need to run your emergency anti-virus recovery set from the floppy disks that you undoubtedly made. You did make them, didn't you?

Some of the more obvious signs of computer virus infection, per a recent Zdnet web site on virus protection, include:

- Strange sounds or music at random times.
- Odd messages and other displays on your monitor.
- Your system seems to have fewer resources, such as SDRAM memory
- Disks, files or volumes suddenly have different names or show some signs of garbling
- Programs or files are missing
- Unknown files or programs appear to have been recently created.
- Programs begin to act strangely, on a fairly consistent basis.
- More than one data file becomes corrupted.

Viruses introduced on to a single computer, usually by an infected floppy disk or Internet download, are the classic virus attack dating back to 1990 or so. Such attacks are generally handled rather well by most anti-virus programs that scan the hard disk periodically for "signatures", fragments of program code that matches an entry on the

vendor's list of viruses. In order to eradicate these viruses, you'll need software that regularly scans everything on your computer and, if you are a network administrator, on the local area network as well. Schedule

frequent virus scans of all computing resources available to you. Update your virus software as frequently as available from the vendor and be sure that you choose a vendor that provides frequent updates. Usable software in this category includes Norton Anti-Virus, Trend Micro, Ontrack's System Suite, McAfee, and Dr. Solomon's. Our office uses Ontrack's System Suite 3.0, a very complete and powerful set of Windows utilities which includes a real time Trend Micro virus scanning option that scans all file activity on each computer as the file executes. Real time scanning is clearly the best approach to protecting your own PC.

Network anti-virus protection is more complex: you'll want to virus scan ALL network traffic in real time as it crosses the network cabling. Your goal here is to prevent network traffic from infecting many different computers in your firm. When that happens, eliminating the viruses becomes tedious at best and probably very difficult. Every network should have some form of network virus

**YOU'LL FIND A LOT OF
USEFUL INFORMATION,
PARTICULARLY ABOUT
SECURITY PLANNING AND
VIRUS PROTECTION AT
WWW.SYMANTEC.COM**

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Basic internet security for the mildly paranoid

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protection. Our own office used IBM Anti-virus running at the Novell NetWare file server level and found it to be quite satisfactory. However, since IBM sold off its anti-virus software technology to Symantec, this software is no longer updated. However, Symantec and several others provide network virus protection that's expensive, but not nearly so expensive as data loss and network unavailability. These include several McAfee offerings, including VirusScan Enterprise Edition for "total" PC, network and download protection (go www.nai.com), Panda's corporate antivirus software for network file servers, Lotus Notes and Microsoft Exchange, and McAfee Netshield 4.5 for NetWare and NT/2000 servers. Installing real time virus scanning on each individual PC is an excellent backup to real time network virus scanning. For a good defense in depth, you should probably be using both approaches simultaneously. Modern computer hardware is so fast that you'll probably not really notice any degradation of system performance.

Email viruses are becoming a very serious threat to good system functioning. Panda alleges that about 87% of current computer virus infections stem directly from Email-borne viruses. Some of the Email viruses that circulated during 2000 badly disrupted even relatively secure systems like the US Department of Defense. Elmendorf Air Force Base in Anchorage, for example, had its Email off-line for days as a result of one such Email virus attack.

There are several effective means of dealing with Email viruses. Firstly, of course, a good anti-virus program can scan incoming Email in real time, checking for known Email viruses. This works to some extent, but isn't fool-proof. Many viruses are shape-changing, deliberately metamorphosized into a different viral signature that might not be picked up by your virus scanner. In any event, your virus scanning signature may be out of date or you may end up as the victim of a totally new virus, such as the Melissa virus, that sweeps across the Internet before publicity and virus protection product catches up with it. ZoneAlarm 2.1 does monitor Email downloads and flags any Emails that contain attachments with potentially dangerous file extensions and changes the file extension to a non-executable extension. That provides some additional protection.

In order to beat Email viruses, you should take several mutually supporting actions:

- Run an anti-virus program that scans Email in real time as it is downloaded. Internet Guard Dog works is one good example of a program that provides this sort of protection. You can download Guard Dog and other similar anti-virus programs from www.zdnet.com.

Real time scanning is also included in the Trend Micro virus protection module of System Suite 3.0, but real time virus scanning is not the default configuration. You must affirmatively enable real time scanning in

the virus protection configuration.

- Download Microsoft's security patches for various versions of Outlook, but note that these patches DO NOT apply to the Outlook Express Email program that installs as part of MS operating systems. You're still on your own there.

- Turn off the Windows Visual Basic scripting host - it's an ideal, and often used, entre for some very damaging viruses.

- Don't open unfamiliar or unexpected email attachments, at least not automatically, especially when Email viruses become pandemic. Many Email viruses work by disguising themselves as

attachments, often apparently coming from friends whose address book has been hijacked, as yours will be, as a means of further spreading the damaging virus.

REDUCE YOUR LOCAL AREA NETWORK'S VULNERABILITY TO EXTERNAL INTRUSION

The default NETBIOS networking found in Windows 95 and 98 leaves some security holes that could allow hacker attacks of your network. Changing Microsoft's default settings can greatly reduce that risk. Other holes can be created by the configuration of your hardware routers and firewalls through which your office accesses the Internet. There are several configuration changes which you can make to increase your security against external intruders. Be sure that you have the technical ability to make, and if necessary undo, these changes before attempting them. If done incorrectly, your network will become unusable. If in doubt about your abilities, hire a competent network consultant.

Use a non-Internet protocol for file and print sharing on your network if you use Microsoft Network Client. The default setup binds these internal networks services to the TCP/IP protocol, leaving your system vulnerable. Instead of TCP/IP, bind your file and print sharing to a different protocol such as IPX or NetBEUI. To do this, uncheck network bindings to File and Printer Sharing, Microsoft Networking Client and Windows Logon if bound to the TCP/IP protocol for a particular adapter. (Either NIC or dial-up adapters). You should not use TCP/IP as a protocol for these functions unless absolutely necessary for your network's operation. Because a hacker must use the Internet's TCP/IP software protocol to communicate with your computer, a hacker must also be able to use TCP/IP internally on your local area network as the medium of invasion. If TCP/IP is not available internally on your office network, then a hacker usually can't get to your file servers and other data storage. While not bulletproof, this can add another layer of protection. Novell's older IPX protocol is particularly resistant to external hacking.

Disable NetBIOS over TCP/IP. If you turn off the network bindings listed above, you should be able to disable this protocol in your network for each adapter shown as using the TCP/IP protocol. NetBIOS is a basic networking component the helps with

file and printer sharing on a peer-to-peer network. When installing the TCP/IP protocol, Windows generally defaults to using NetBIOS over TCP/IP, which can allow a hacker on the Internet to possibly access or even control your shared resources. Disabling the use of NetBIOS over TCP/IP shuts down this avenue of remote access and possible control over your system.

If you are connected to the Internet, your computer uses "ports" (these are software entry points, not hardware, nomenclature to the contrary) to communicate. If you're hosting web sites or other services, for example, you'll need to open certain ports that allow traffic to come in from the Internet and to access computers on your network. Knowing the IP address of the computer using these ports is a important piece of knowledge for a

hacker. Closing unnecessary ports through careful firewall configuration is a key element in reducing the risk of successful attack.

If possible, also use firewall software that allows you to filter out Internet data packets from known risky sources and that implements "stateful" packet inspection. Packet filtering excludes packets from certain sources - methods to implement packet filtering vary. Stateful packet inspection keeps track of incoming and outgoing requests from the applications running on your network and the communications parameters used. When Internet traffic comes in to your network, stateful packet filtering checks to see if the incoming traffic matches a request that you sent out, checking that source, protocol, etc. all match. If they don't, the incoming traffic is rejected.

The Rules of the Internet Road

By ROBERT J. AMBROGI

A growing number of Web sites focus on specific topics of Internet law. A good example, launched in March 2000, is CyberCrime, the Web site of the Computer Crime and Intellectual Property Section of the U.S. Department of Justice.

The site provides in-depth coverage of issues such as encryption, electronic privacy laws, search and seizure of computers, e-commerce, hacker investigations, and intellectual property crimes, supplemented by libraries of full-text cases, laws and legal pleadings.

Dedicated to the law of electronic banking on the Internet, Cyberbanking and Law seeks to show how electronic banking works and to explain its legal framework. Sponsored by the Economics Law Laboratory, Luxembourg, and the Institute for Computer Law, Saarbrücken, Germany, the site addresses the technological and legal aspects in English, French and German.

Features of the site include a journal with articles on Internet banking, the full text of statutes and decisions relating to online banking from countries throughout the world, a library of research papers, and an annotated collection of links to sites dealing with electronic banking and payment.

DOMAIN NAMES

For lawyers wanting to learn more about domain names, the best place to start is the Internet Corporation for Assigned Names and Numbers.

ICANN is the nonprofit corporation formed in October 1998 to manage the Internet's domain names and IP addresses. Its site provides detailed information on domain names, including the new "pro" domain approved in November 2000 for use by lawyers, doctors and accountants. A key feature is the section on resolution of domain-name disputes.

Besides detailing the applicable rules and procedures, it tracks every case filed under the rules, showing the date filed, case number, name in dispute and final outcome, if any, along with a link to the full text of the decision or order, where available.

2B OR NOT 2B?

That was the question that plagued the National Conference of Commissioners on Uniform State Laws in the late 1990s as its efforts to craft a Uniform Commercial Code provision on software licensing stirred controversy within the legal profession and the technology industry.

The end result was not a UCC provision at all, but the Uniform Computer Information Transactions Act, which the NCCUSL approved in July 1999. Uniform Computer Information Transactions Act is a comprehensive site providing detailed information on the drafting process and the final act, and tracking its status as state legislatures consider its adoption. Carol A. Kunze, a California lawyer who participated in the drafting process, maintains the site.

Two other useful sites focusing on specific areas of Internet law are: Internet Jurisdiction: A joint project of Chicago-Kent College of Law and the American Bar Association, this site is somewhat diffusely organized but hides a wealth of information on jurisdictional issues raised by the Internet. Follow the link to "Project Documentation" for substantive articles providing



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Learning by mistakes — lessons on what not to do when upgrading your office

By JAMES E. SPRINGER

I have never learned anything by doing it right the first time. I always have to make mistakes. In trying to automate a solo practice law office in a community of Waynedale, being 15 minutes from downtown Fort Wayne, I realized that one of the secrets of success would be to automate in order to be competitive. One of the first articles that I read when I started reading Law Office Computing said only add one software in a three month period if you want to succeed. This article is about what happens when you don't follow that advice.

Being dyslexic and having eyes that don't focus, I transpose numbers and trying to dial phone numbers I would have at least three mistakes a day. The decision was made to work up with the computer to have the numbers in the computer and automatic dialing, hoping to then have automatic bill and timekeeping, etc., related to it and organizing the files. Up through the end of 1999 we had Corel Law Office 6, Time Matters 2 for our case management, and Timeslips 6 for the billing, Quicken for most of our bookkeeping and had most recently tried Quick Books to integrate with Time Matters 2.

Of course, the Quicken and Quick Books did not integrate with the Time Matters. In geek-speak, we needed to have everything in the 32 bit rather than the 16 bit applications. I had been reading Law Office Computing and going to various tech shows for several years, but not being very computer literate, I have to then depend on others to hook things up, get them working and to teach me how to exist within the new environment.

At the 2000 ABA Tech Show, the Newsletter Editors saw a shoot out on case management systems which included Amicus, Time Matters 3 and Tabs. I had been thinking of moving to Time Matters 3. But as soon as I saw the graphic manner in which Amicus was designed, I was hooked. I knew that was what I wanted for my practice.

Then came the shoot out for time and billing and bookkeeping. Again Timeslips and PC Law Jr. were banging it out head to head. Again, I was very, very impressed with the PC Law Jr. integrated with the case management programs, did your timekeeping, billing, taxes, check writing, all with the

smooth flow. After the online research and being put into contact with a consultant who handled both Amicus, PC Law and WordPerfect, the dialog began and the decision was made. We could transfer everything from our Time Matters to the Amicus and from the Quicken and Quick Books and Timeslips into the PC Law Jr. They would then be made to integrate and we would do this in a Corel WordPerfect Law Office 2000 Suite. We would then be trained on the nuances of each and with the books, could take off within a relatively short span of time. WRONG.

The switch from the Corel Law Office 6 to Corel WordPerfect Law Office 2000 went very smoothly and has not caused us any problems. The problem was that the variables and the nomenclature in the Amicus and those in PC Law Jr. are different, although they can be integrated. We had the data variables in Quicken, Quick Books and Timeslips which all integrated to the PC Law Jr., but not smoothly. The Time Matters essentially integrated into the Amicus. However, it was the integration from the Amicus to the PC Law Jr. and back where we then had all kinds of problems.

Not only were those the problems of linking the two sets of software together, but now all of the new nomenclature, all of the new ideas and methods overwhelmed the two staff people and myself. Both my assistant and my paralegal are pretty sharp and have reasonably good computer skills. But it was simply too much knowledge for all of us to try and absorb all at once, as well as trying to fix the problems as we found them while trying to learn the new software.

Had we put in the Amicus change along with the upgrade of Corel, worked with it for three months and then tried to install the PC Law

Jr. after we had worked the bugs out of the other, we would have been much better off. We would have only been trying to learn one thing or one new set of systems at a time. Instead, we have now spent the better part of a year in frustration. We still don't have our books in order and we still do not have all of the WordPerfect client files into the Amicus client files, as we should. Sometimes you can find something through Amicus, other times you have to go to WordPerfect directly. The staff therefore, has a tendency to do it the old way, i.e. go to WordPerfect first, which becomes counter-productive in an integrated system. Unfortunately, with trying to learn two completely new software systems and the large amount of information they have and the operations they can perform, everyone is overwhelmed and frustrated. At tax time, I had to eventually abandon the data in the programs, stack all the checks by account and do the taxes by hand.

As we get each step closer to operating the way it should, I become more and more impressed with the things we can do in Amicus and PC Law. Especially the ability to eventually look up a client's ledger in PC Law through Amicus in order to know the complete financial status of the file when talking to a client in the evening after the staff has left for the day.

I hope that as soon as we get things stabilized, to then move on to the next item, that being Hot Docs Advanced with the Indiana Hot Docs and Estate Planning installed.

The lesson from my experience is clear. Do not install more than one change of program, the upgrades excluded, in a three-month period. Do not think you can just have a half day of training and be able to go into new programs and have them work. On the brighter side, it's so nice to be able to look into an Amicus client file, open it and look at your chronological list, scan down your documents and be able to hyper-link directly to letter, pleadings and other documents in order and to bring them up to check the language. It eliminates some of the yelling at the secretary to bring in the Jones file because you have Jones. It also makes trying to play catch up on Saturday morning a much more enjoyable, fruitful and profitable experience.

I would not want to go back to Time Matters and the staff would not want to go back to Timeslips, although I do believe we will probably keep Quicken around for taxes and as a back up system for the future. The secret is to approach it like the old bull on top of the hill rather than the young bull, and take one step at a time.

The author practices in Fort Wayne, IN.

THE LESSON FROM MY EXPERIENCE IS CLEAR. DO NOT INSTALL MORE THAN ONE CHANGE OF PROGRAM, THE UPGRADES EXCLUDED, IN A THREE-MONTH PERIOD. DO NOT THINK YOU CAN JUST HAVE A HALF DAY OF TRAINING AND BE ABLE TO GO INTO NEW PROGRAMS AND HAVE THEM WORK.

The Rules of the Internet Road

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Follow the link to "Project Documentation" for substantive articles providing overviews of jurisdictional issues in various countries and for various areas of law. Then go to the page listing the project's working groups. (www.kentlaw.edu/cyberlaw.)

Each group has its own page, with its own collection of pertinent articles, court opinions, analysis, links and other materials.

The Link Controversy Page <http://www.jura.uni-tuebingen.de/student/stefan.bechtold/lcp.html>: This is a comprehensive collection of links from sources throughout the world, intended to provide an overview of the legal problems of using hyperlinks, online images and frames on the Web. Links are mostly arranged by country, while a section devoted to specific linking cases collects links to news stories and articles pertaining to each case. Stefan Bechtold, a law professor at the University of Tuebingen, Germany, maintains the site.

SCHOLARLY PERSPECTIVE

For those seeking a scholarly perspective on Internet law, try Harvard Law School's Berkman Center for Internet and Society, a research program founded in 1995 to explore, study and help develop cyberspace. Today, with a range of programs, the center's most cutting-edge work may be in its open-platform projects, aimed at democratizing systems of governance, law and education. (www.cyber.law.harvard.edu).



An example of this is Openlaw, an experiment in crafting legal argument in an open forum, in which Berkman lawyers develop arguments, draft pleadings, and edit briefs in public, online. Nonlawyers and lawyers alike are invited to join the process by adding thoughts to the "brainstorm" outlines, drafting and commenting on drafts in progress.

Another academic resource is UCLA's Online Institute for Cyberspace Law and Policy (www.gseis.ucla.edu/iclp/hp.html). It features an extensive bibliography of books and journal articles in the field, with links to the actual works when they are available online. The site gives extensive coverage to controversial issues of Internet law, with sections devoted to topics such as Napster and obscenity. An outline organizes major cases, statutes and other developments by their topics, while a chronology traces key events in the development of Internet law during the decade of the 1990s.

Robert J. Ambrogi is author of the forthcoming book, "The Essential Guide to the Best (and Worst) Legal Sites on the Web," which can be ordered through Amazon.com. (Reprinted with permission from law.com)

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GETTING TOGETHER

ADR and the Fortune

1000 ☐ Drew Peterson

As a small city mediator of a variety of different kinds disputes, I have seen a number of mediations involving millions of dollars, and even a couple involving tens of millions in dispute.

Contrary to the opinion of many,

mediation and other forms of alternative dispute resolution (ADR) are not just limited to their use by those of moderate income. While proponents of ADR often emphasize its cost-effective aspects, one of the biggest growth areas in the use of ADR techniques has been with America's largest corporations. Indeed, a recent article published on the Internet through Mediation.Com (www.bickerman.com/corporations.shtml) highlights two recent major studies of litigation trends in Corporate America. Both reveal that the use of ADR by the nation's largest corporations is increasing.

THE SURVEYS

The first survey is an on going study of the country's 1,000 largest corporations, conducted by Cornell University in cooperation with the Foundation for Prevention and Early Resolution of Conflict (PERC) a New York based non-profit organization. The Cornell/PERC study is the largest empirical study of its kind to date. The study found that during the previous years the majority of U.S. Corporations had used one or more forms of ADR to resolve a broad range of disputes, including employment, environmental, sexual harassment, contracts, securities, and age discrimination claims. The Cornell/PERC study concludes that this use of ADR by corporations is likely to significantly increase in the future, due to the rising cost of litigation and an increase in ADR provisions in contracts and court mandates.

A second survey of general counsel and outside corporate attorneys conducted by Deloitte & Touche, also revealed a substantial increase in the use of ADR. The study found an increase of as much as 28 per cent in the previous three years, especially in the area of mediation.

KINDS OF ADR USED

Mediation and arbitration are, by far, the most prevalent form of ADR in corporate America. 88 per cent of large corporations report having used mediation in the past, while 79 per cent have used some form of arbitration. U.S. Corporations have also been experimenting with other forms of ADR, such as med-arb, mini-trials, fact-finding, peer review, and early neutral evaluation.

Despite the variety, the clear trend is towards mediation. The Deloitte & Touche study found that where once arbitration was the primary ADR method chosen by in-house counsel, mediation is now the method of choice. According to the Cornell/PERC study, over 84 per cent say they are likely to use mediation in the future, compared to only 69 per cent who say they will use arbitration.

One reason for the trend towards mediation is the increasing realiza-

tion that arbitration, in many instances, is nearly as time-consuming and expensive as conventional litigation. Often the discovery process in arbitration is just as onerous as in litigation, and delays are common.

In addition, binding arbitration carries a risk beyond litigation; not only do the parties surrender control of the process to a third party, but unlike a judge, whose decision may be appealed, an arbitrator's decision is only appealable under very limited circumstances. Flagrant factual errors or misapplication of the law are overlooked by the courts, who are reluctant to review arbitral awards.

Corporations also are increasingly encountering resistance by the courts in enforcing agreements to arbitrate. Courts are becoming skeptical of the fairness of such agreements, particularly in the context of employment and health benefits.

The Cornell / PERC study concludes that the corporate view is that mediation is the more satisfactory process, because it is cost effective, and especially because it preserves good relationships. Mediation offers great flexibility in the ability to develop suitable procedures, and thereby leads to more appropriate outcomes. Where arbitration is still used in corporate America, it is likely mandated by existing and often long standing contracts.

ADR USAGE BY CORPORATE AGE AND SIZE

The Cornell/PERC study also reports some interesting findings on ADR use by company size and age. It found that ADR is used less by the relatively new and smaller corporations, and is disproportionately favored by the larger and longer established "blue chip" corporations. Corporations in the top 250 of the Fortune 1,000 are several times more likely to engage in ADR than to litigate. The study theorizes that these older firms tend to be more established in the market, and are likely to have an institutional memory of past legal disputes that has encouraged them to avoid litigation.

In contrast, the most litigious corporations fell disproportionately into the lower 250 corporations by size. Such corporations tend to be younger, less well established companies in emerging technology sectors, where the law is relatively undeveloped and competition is keen. These firms tend to litigate to foster a favorable legal environment and to establish themselves in the global marketplace.

RESERVATIONS ABOUT ADR

Despite the favorable experiences with ADR, companies surveyed by Cornell/PERC have concerns about the qualifications of mediators and arbitrators, particularly when it

comes to resolving complex cases requiring specialized knowledge. Companies are especially concerned about the qualifications of arbitrators, whose rulings are binding.

Qualifications of mediators are also questioned. According to the Cornell/PERC study, 30 per cent of those surveyed said they lack confidence in mediators, while 20 per cent complained of the lack of experienced mediators available generally. There was great concern that there is no national accreditation system for neutrals, and that virtually anyone can claim to be a neutral as a result. Unless this concern is addressed, the Cornell/PERC authors conclude, it

will act as a seriously limiting factor on the future growth of ADR.

In conclusion, ADR is here to stay in the United States, not just in family and small claims court, but in corporate, disputes as well-- especially those corporations that are larger, older, and in traditional areas of commerce. Smaller and high-tech corporations are less currently likely to use ADR. And mediation is increasingly the ADR method of choice for corporations, who like the friendlier and more cost-effective aspects of ADR, though they remain concerned about the lack of regulation of neutrals.

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TALES FROM THE INTERIOR

Kicking & screaming: The history of computers as I see it □ William Satterberg



"I hate you! I hate you! I hate you," I screamed. I pounded my fists on the table. I began to cry uncontrollably. It was unfair. There was no reason whatsoever why I should have been beaten like that. It had to be illegal.

"There, there, Bill," my secretary said. "It's only a computer. You'll get the hang of it someday," she promised. "No!" I swore. "Never!" I began to hold my breath. I would do it until I turned blue in the face. Contrary to when I was younger, it only took a few seconds this time. Practicing the best of the lessons learned at Anger Management, I smashed the keyboard. Only then did I feel better. So much for that esoteric, sensitivity training.

Why lie? I have a complete, unfettered hatred for computers. I admit it. I used to claim that I had no serious prejudices in life. But now, I realize that I despise computers. I also despise those people who like computers.

Nothing frustrates me more than watching some judge sitting serenely at the bench, smiling sweetly as she types into her computer. It was much better when Judge Blair used to doodle on his calendar pad. In addition, I dread having to go to those "educational" seminars where I am shown all those new things that supposedly will make trials easier. Easy, perhaps, if one wants a courtroom circus. I must confess that I get a little secret delight every time I hear that somebody's computer has crashed. Like the time that one attorney, doing his Powerpoint closing argument to a jury, kept getting error messages on the screen. Not that I dislike the attorney. I admire his computer skills tremendously. Still, I received a certain evil satisfaction knowing that, true to my predictions, the computer

had awaited the most critical moment in the presentation of a trial to go on the blitz. But, then again, I have been well-trained to expect that. That is also why I still handwrite my time slips, rather than risk losing the time records like one local law firm reportedly recently did.

My experiences with computers began in high school. I was a science nerd at West Anchorage High. In my junior year, I attended a summer science training program at the University of Washington, where I studied oceanography for the better part of the summer. Unfortunately, I was also exposed to computer and calculus classes, neither of which I found pleasant.

Back then, the computer language of choice was Fortran IV. Fortran IV was the language of science. Fortran IV was respected far above the language of business-people, known as Cobol. Under Fortran IV, a person had to write their own programs, manually typing them into a keypunch machine. If even the tiniest mistake were made, the entire batch would be rejected without explanation.

During the summer science program, there were some real nerds in our group, besides me. Where I enjoyed playing with my chemicals, these people actually enjoyed writing diabolical "do-loops" which would

drive the University of Washington computer bananas, sacrificing valuable time budgeted for scientific research to mindless snipe hunts.

I actually got to see the mystical University computer once on a guided tour. Various magnetic tape reels whirled back and forth, secure behind a plate glass wall. Human worker bees buzzed around the machine, carefully tending to it, nursing its every desire. As my colleagues watched in fascination, I became terrified. I had just seen *2001, A Space Odysey*. I knew what was in store for me and my world. I was looking at HAL personified. It was then that I decided that I did not need to know how to run a computer.

The *piece de resistance* came at the end of the summer. One of our prize students was walking across campus with an armload of keypunched data cards in a large cardboard box when he tripped. In seconds, his entire summer's work

sprawled across the wet, muddy

sidewalk. In many respects, looking back, that may be where the producers came up with that famous scene in *The Paper Chase* where the law student dropped his thesis from the

second story window. It was witnessing that devastating experience on the wet sidewalk that made me realize that I never would be a computer programmer. I do not think that my laughter helped much either, since the student was bigger and faster than me, as I later learned. Fortunately, after that summer, I did not have to cope with computers. At West Anchorage High, the slide rule was still king.

During college, with practice, I was able to avoid the computer lab room. Although slide rules were still in vogue, there was now the Hewlett Packard calculator. Since I ultimately elected to abandon chemistry to pursue a career in law, the necessity of computer skills never materialized. In triumph, I sold my calculator at a book sale.

During law school, there was a new device that emerged in legal offices known as a "Mag Card." The Mag Card was the elite of the memory typewriters. It allowed someone to make corrections without having to use WhiteOut. As for myself, I tended to buy WhiteOut by the case. If WhiteOut had been sold in spray cans, I would have used those. As usual, I avoided Mag Cards due to my growing fear of electronics, coupled with abject poverty, which limited me to a Smith-Corona electric typewriter.

Mag Cards were still in use when I left law school and began to work for the State of Alaska's Attorney General's Office. It was about then that computers also began to hit the market. Two units, known as the IBM Displaywriter, and something else called a "Wang" soon began to compete for the affections of the State. Although IBM was a name that was known to me, the concept of a brand new "Wang" certainly held intrigue. That was before somebody explained that Wang was a computer.

When I left the Attorney General's Office in 1980, IBM Displaywriters had won out and were beginning to make widespread appearance. My timing, once again, was perfect.

I left the Attorney General's office to work for the Trust Territory for the Pacific Islands on Saipan. It was on Saipan, an old CIA base, where I was introduced to a monolith known as a "System 6," which had an air-conditioned room of its own. The secretary in charge of the System 6 insisted on calling herself a "Systems Administrator." She was extremely protective and territorial. The security clearance required to enter the System 6 room, in retrospect, far exceeded anything that was required to go anywhere else where I worked during that period of time, despite the highly sensitive area of the Pacific in which I was stationed. I think it actually had more to do with the fact that it was the only air-conditioned room in the building. In many respects, the System 6 was the modern equivalent of the black obelisk of Kubrick's *2001*, worshipped and feared by all who worked in the office. Wisely, I stayed hidden in my stuffy office.

Following Saipan, I entered private practice. I worked for the prestigious law firm of Birch, Horton, Bittner, (and a whole bunch of other names) in Fairbanks, Alaska. By then, Displaywriters were the rage. To my surprise, every secretary had a Displaywriter on her desk, and was able to work independently. It was during that period of time that I learned a new litany of swear words, many of which I cherish to this day. To my surprise, many of the "sweet little secretaries" had a dark side that could only be summoned forth by an out-of-control Displaywriter.

After my tenure at Birch, Horton, Bittner (and a whole bunch of other names), I opened my own practice. Early on, I was wisely advised by a friend that I had to make two basic decisions. One was to hire a very competent secretary, and recognize that she knew everything and to respect her accordingly. The other was to buy a computer. By then, personal computers were coming into their own. Displaywriters were quickly being replaced by what were known as "PC's."

At the same time, there were two respected attorneys in Fairbanks who had become computer experts. A momentous battle was taking place between the expertise of these two individuals. One was the famous Andy Kleinfeld, who has now gone on to become a highly respected Ninth Circuit Court of Appeals judge. The other was Jim DeWitt, who still practices in Fairbanks for Guess and Rudd. In a sense, it was sort of like that Wall Street news magazine commercial portraying the two successful businessmen. In retrospect, I viewed it more as a pro-wrestling match.

In the corner on the left, Jim DeWitt utilized an Apple system. In the corner on the far right, Andy Kleinfeld chose Radio Shack. Jim referred to his Radio Shack's TRS 80 as a "trash 80." And, as for Andy, I often felt that Andy thought Jim's Apples were rotten.

Seeking earnestly to learn, I listened attentively to both individuals as they explained the attributes of their own system, the clear drawbacks of their competitor's. Each espoused confidence that his system would be the system of the future. I would be well advised to follow their advice, I was told by each. Confused by all of this well-intentioned wisdom, as usual, I chose

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Problems with Chemical Dependency?
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for confidential help



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Kicking & screaming: The history of computers as I see it

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to follow neither person's suggestions.

At the time, computer companies in the United States were developing their own proprietary languages. This was well before the days of Bill Gates and Microsoft. There were no guarantees whatsoever as to which language would ever actually succeed in the marketplace. Certainly, Grand-daddy IBM claimed a substantial entitlement to the process. IBM guarded its languages jealously. Apple was equally confident that its system would prevail. In addition, there were numerous other systems out there that were vying for first position.

It was then that I visited Yukon Office Products, a company that has since gone out of business, to buy a system that had been sold to me known as a "Victor" system. (It should be noted, parenthetically, that whenever a customer buys something that is good, they "buy" it. When the product malfunctions, however, always keep in mind that somebody "sold" it to the customer.) In this case, somebody sold me a Victor system. Fortunately, Victor at least utilized an MS-DOS operating system that later would become commonplace.

It was shortly after I placed the Victor in service that I learned that my new secretary could swear like the best of them. For many an hour, I cringed behind the closed door of my office, hiding in fear as she lambasted the computer, those who made it, and the stupid idiot who bought it. Eventually, however, the Victor won reluctant acceptance.

After a couple of years, my office began to expand. In time, there were three secretaries working with me, and three Victors. Our computer training program proved most effective. Sometimes, all three ladies could even swear in three-part harmony.

One day, I heard a loud outburst. I calmly chalked it up to just another computer glitch. Since I had learned on previous occasions to let the tantrums run their course, I did not come out from under my desk to see what was happening. A few seconds later I heard another angry bellow. It was now time to address the issue. I emerged from my sanctuary.

"What happened?" I timidly asked. One secretary explained to me that her computer had crashed. It was then that the other one became irate and tattled. "But, then, she crashed mine!"

"How did that happen?" I asked.

"All I did was this," the culprit responded, preparing to push the same buttons on yet my third and only remaining Victor. "Stop!" I screamed, frantically diving headlong for the keyboard. To my amazement, no one seemed interested in helping to avert the impending disaster.

God must have been with me. At the last second, I stopped my de facto saboteur from pushing the dreaded Doomsday button. I then had a problem. Two of my computers were down, mortally wounded. The third computer was on its last legs. My office was destined for implosion. Meltdown was imminent.

For the next three days, various computer consultants attempted to resuscitate the equipment. Each day, some new computer wizard would sit for hours behind a green screen, mumbling various incantations from behind thick, over-sized, double-lensed glasses, only to finally announce that there was nothing that could be done to help me, except to

give me an invoice. I was finished.

It was then that I remembered that there might be a way out of the crack. For several months, I had been having a fight with a local attorney in town, Don Logan, over allegedly missing paperclips. In frustration, I had banished Don from my office. I had demanded that he never return. Recognizing, however, that it was the right thing to do to grant forgiveness, I called Don. In a rare moment of magnanimously granting absolution, I begged Don to come back and to save my computers. I told Don that if he could resurrect my computers, I would forget completely the dastardly deeds that he had done. I promised that I would never mention his scandals again for awhile. As I expected, Don agreed, but indicated that he would prefer to work in the office during the evening, as opposed to being exposed to normal people during the day. That certainly was not a problem.

I went home that night, and resigned myself to the fact that I would never see my beloved Victors operating again. Not that the Victors were necessarily that beloved, but I had grown to accept the fact that they had their own idiosyncrasies. They had become part of the office, so to speak, much like 2001's HAL. I had eventually planned to make them into planters or boat anchors, although I had been quite careful not to discuss it in front of them. No sense in offending anything.

When I came to work the next morning, I was stunned. All three Victors were up and running. Don was sprawled face down on the floor of my office. I woke Don up and told him that all was forgiven. I asked how he had made the miracle happen. From the vacant look in Don's eyes, I soon realized that he probably could never replicate the process. Still, the computers worked, regardless.

Several years ago, when I was vainly trying to learn aerobatics, I was advised simply to "fly the attitude, with plenty of altitude" I realized that this was exactly what Don had done. For some reason, Don had entered the computers and had brought them back to life, finding a pathway that hitherto had never existed. Don had mastered a Zen, of sorts, like Chevy Chase in *Caddyshack*.

I gleefully contacted the computer techies who had been swarming my office for the past three days. I proudly boasted to each that my computers were back up and running, and that I had solved the problem on my own. Each "expert" responded that it was impossible. My computers had been doomed to never make ozone again. Two of the "experts" even came over, looked at the operating systems, and promptly announced that it simply was not happening. The third techie wisely stayed away, apparently not wanting to become a believer in the impossible.

It was then that I realized that computer experts were really nothing more than misguided individuals who had spent years sitting in front of a green screen until their brains had fried. No longer would I bow when they passed by. The "I'm not worthy" thing was over.

After several years, it was time to replace the Victors. This became apparent when my secretaries requested manual typewriters. Obviously, the Victors had become the losers. By then, the industry was overrun with "IBM clones." Initially, I was skeptical of the concept of a

clone. All I could envision was a scene similar to the cone-heads on *Saturday Night Live*. Not the real thing. In time, however, I was convinced that the clones would do the job, and on a much cheaper basis. It was then a matter of finding out which would do best.

Fortunately, my prayers were answered when Gateway hit the market. Although various people told me that Gateways were good computers, what really made the decision to buy Gateways was not the price, not the capability, nor the reputation. It was the box. As far as I was concerned, any company that had the self-confidence to put a picture of a cow on their box had to be all right. I also liked the marketing strategy since, by then, I had developed a healthy disdain for computer salespersons.

One problem with computer salespersons is that, once the word gets out that you are shopping for a computer, they beat a path to your door that never stops. My father once told me that the problem with a car salespersons is that they will not leave you alone until you buy a car. The same adage is true with respect to computer salespersons. Each one will seek to enthrall you with descriptions of megabytes, kilobytes, troglodytes, RAMS, EWE's, ROM's, MOM's, and all sorts of other terminology that makes absolutely no sense, and which will be obsolete, regardless, in less than a year. The answer? Skip the technical stuff. What does the box look like? Sooner or later, it will all come down to the box.

To date, the Gateway computers have functioned relatively well. Not perfectly, but relatively well. But, like any device, breakdowns do occur. Even my secretaries have had their

share of breakdowns. I have begun to notice a pattern, of sorts, with respect to the computer breakdowns, however. Invariably, when our latest computer nerd cannot solve the problem, they will blame it on some sort of a newfound "virus." The convenient thing about these viruses is that they are never identified. Rather, viruses simply exist, and explain away any inadequacies on the part of the computer nerd.

I am convinced that viruses have actually been created by the very companies that seek to cure them. What is more profitable than to create a disease, and then market the cure? Just like it takes two lawyers to get rich. Although I usually am a strong opponent of capital punishment, I am strongly in favor of legitimizing on-the-spot punishment for those hackers and virus-makers who have begun to promulgate the world. Anyone who has ever had the frustration in dealing with a computer when it has gone down, destroying all of your files, and carrying away months of time-billing records will undoubtedly appreciate the sheer pleasure that will flow from watching whoever created the virus twist slowly at the end of the long printer cable. In the end, I even suspect that the judge, sitting serenely behind her computer, will rule that it is justifiable homicide. And speaking again of judges, just recently, one Fairbanks jurist, Master Alicemary Closuit, began to try to teach me how I could download CD's and other paraphernalia from various web sites. I remarked, in protest, that "I'm being dragged kicking and screaming into the computer age." Smiling sweetly, Master Closuit agreed. "Yes, Bill, you are. Whether you like it or not." Truer words couldn't have been said.

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1. The prosecutors see who your lawyer is and they high-five each other.
2. During your initial consultation he tries to sell you Amway.
3. He tells you that his last good case was a "Budweiser."
4. He picks the jury by playing "duck-duck-goose."
5. During the trial you catch him playing his GameBoy.
6. He asks a hostile witness to "pull my finger."
7. Every couple of minutes he yells, "I call Jack Daniels to the stand!" and proceeds to drink a shot.
8. He frequently gives juror No. 4 the finger.
9. He places a large "No Refunds" sign on the defense table.
10. Just before he says "Your Honor," he makes those little quotation marks in the air with his fingers.
11. Whenever his objection is overruled, he tells the judge, "Whatever."
12. He giggles every time he hears the word "briefs."
13. He begins closing arguments with, "As Ally McBeal once said..."
14. He keeps citing the legal case of *Godzilla v. Mothra*.
15. Just before trial starts he whispers, "The judge is the one with the little hammer, right?"

--Submitted by Wayne Anthony Ross

Fire! How to survive & recover your practice

By ROBERT RIDGWAY

Since my law office was destroyed by fire on Saturday, August 28, 1999, the two comments I have most often heard are "It is a lawyer's worst nightmare" and "You should write an article." I can assure you that it is a nightmare and here is an article.

I awoke from a sound sleep on the first day of my vacation to the ringing of the phone. A glance at the clock showed that it was 4:47 a.m. and since there is seldom anything good that comes from such an early

morning phone call, I developed an immediate pit in my stomach, covered with just a touch of anger at whomever would call that early in the morning.

"Bob, this is Nancy." Nancy is a client, whom I immediately thought was in some sort of trouble.

"Did you know that the buildings are on fire?" she continued. I answered "No" and asked if the buildings included my office. She said that she couldn't tell but that it was really bad and the whole block was on fire. As I left my house, a glance toward town where a huge red glow lit up the very early morning sky caused the pit in my stomach to grow.

A few minutes later, I was standing in the street across from my office where I had practiced law for the past 25 years, looking at a true inferno. It appeared that, indeed, the whole block was on fire. The building housing my office was on fire, but the fire had just started in the back area of my office. I approached a fireman about entering my office to retrieve some things, but realized the stupidity of my request when I finally noticed that even at that distance the intense heat was barely tolerable and I was having difficulty breathing from all of the smoke and ash flying through the air. So I retreated back across the street to watch 28 years of law practice go up in smoke. I was not alone, as only four structures on the entire block escaped total destruction and another was only partially saved. Six other businesses lost virtually everything.

What did I lose? It is easy to say that I lost everything but that is not exactly true. From the standpoint of furniture, equipment, inventory, and library, it is an accurate statement.

My favorite comment is that we did not save even a paperclip. All closed client and bankruptcy trustee files and old financial records burned. Everything sitting out on top of shelves, file cabinets, and tables as well as everything hanging on the walls was destroyed. Anything plastic that was not burned was melted. The two upper floors and roof of the building collapsed into about one-half of my office, making much of it inaccessible to retrieve anything.

So, was it a nightmare? Yes. And, as I keep telling my secretaries, the true extent of the nightmare will probably not be known for years to come. But the immediate impact of the nightmare has been eased by a great community, a dedicated staff, tremendous cooperation from the courts, some planning, and some pure luck.

As I watched the fire continue to burn and move further and farther into my office, a never-ending procession of thoughts, memories, heartaches, and questions filled my head. Then wonderful things began to happen. My secretary became an instant hero on the street when it became known and buzzed through the crowd that she had an off-site backup disk for our main computer in her purse at home.

Offers of help began immediately, and by midmorning I had received invitations to share space in three other law offices, two accounting firms, and several other spaces, and actually had keys to two places. When I returned home later that morning, the answering machine was full of messages offering every kind of help imaginable from office space, records reconstruction, computers, and office furniture to "anything you need." Even the often criticized phone company came through and efficiently handled the forwarding of my business telephones and fax line to my home by the afternoon of the fire.

Then the luck came into play. An old safe without a fireproof rating turned out to be mostly fire-proof when a good part of it was under water. It protected all of my current financial records, although computer tapes and disks in it were destroyed from the heat. The contents of two file cabinets, which were very tightly packed and just happened to be in a front office in a protected cove, did

not burn but were badly damaged from water and smoke. Those file cabinets contained current client files, some current bankruptcy trustee records and documents, and records pertaining to office operations. Some badly scorched files were retrieved from other areas and my personal desk. Even though the computer at my desk had been under water for hours, its hard drive survived and my computer consultants were able to retrieve the stored information from it.

"Where do you begin?" is the most often asked question. I began with dedicated staff members who jumped right in and focused on two areas first thing Monday morning: keeping things going and putting things back together. Because I had intended to be on vacation and therefore had cleared my calendar of all appointments and court appearances for the week after the fire, the adjustment was easier than it might have been for a normally scheduled week. By Monday morning we had a space from which to operate in a local accountant's office; by Tuesday we had a computer set up with the material from Jeanne's backup disc installed. We were in business and moving forward. Through the cooperation of the court a special order was entered allowing a commercial copier service to remove a designated number of original court files

each evening. These were copied to recreate my files and returned to the court the next morning.

While it was important to have the court documents, all of the other materials typically found in a file such as correspondence, telephone messages, and notes made from the hearings are missed the most. All of the material removed from the fire scene had been taken to my home, and the process of going through it and deciding what was useless and what might be salvaged took a couple of days. This work had to be done out of doors, due to the incredible smell that permeated everything and because everything was covered with thick black smoke and ash.

We found a company that could restore records. We learned that paper begins to mildew within 24 hours of becoming wet and that, once mildew sets in, the paper grows together and cannot be salvaged. The restoration process began by freezing the records to stop the mildew. The frozen files were removed one by one to be sanitized and deodorized.

We also learned that after wet paper is dried it takes up about twice as much space as it did before, so entire files had to be photocopied and files recreated. Mainly, we learned

that records retention is a very labor-intensive and expensive process. And that is where the value of planning became clear.

I can remember the first time my insurance agent talked to me about business records restoration insurance. I was resistant at the time because of the cost, but agreed to some limited coverage. Over the years that insurance coverage has increased and kept pace with my developing practice. It appears that the coverage will be sufficient to restore current client records and bankruptcy files.

For those of you who now feel a little chill in thinking about your own circumstances, I can tell you that it takes about \$1,000 per file drawer to restore smoke and water-damaged files. In addition, remember that fireproof file cabinets usually are not water- and smoke-proof. Being in a ground floor office, I had from two to four feet of water in the office. The water coming out of my front door mail slot flowed like it was coming from a faucet. The planning aspect has a couple of other dimensions.

Earlier I mentioned the off-site computer backup disk. Keeping such a disk has been a policy in my office for a long time, and fortunately my staff followed through with that policy. It is important, however, to look at what is being backed up. We had our data backed up, but not

our programs. Unless you have your initial installation material protected or off-site, that material will be gone.

With the exception of some records of one client, I had no original client documents at my office. Additionally, most files were put away and not "piled high on the floor". Sure, I lost things that were not put away and I regret that, but most of what I lost had been put away. And that takes me to what I call "being practically prepared," the third part of the planning process. I do not believe that most of us can afford to keep every record in fireproof file cabinets or safes. I also do not believe it is practical to be so completely paranoid that you have virtually everything put away all of the time. However, an occasional glance around the office with an assessment as to the consequences of everything you see being gone tomorrow is quite sobering.

Otherwise, I can only reassert the following advice:

1. Be aware of your surroundings and assess your risks.
2. Keep current backups of all computer programs and data off-site.
3. Review all aspects of your insurance coverage and make sure that your coverage is adequate for your potential loss.
4. Consider all of your risks—not only fire, but also the potential damage from water, smoke, and building collapse.
5. Do not keep any original documents belonging to others in your office. If you must do so, make sure they are protected.

Most of this advice paid off for me. Hopefully you will never need it. Robert Ridgway is an attorney-bankruptcy trustee from Pendleton, OR. Reprinted from the ABA GPLink Spring-Summer 2001 issue.

BUT THE IMMEDIATE IMPACT OF THE NIGHTMARE HAS BEEN EASED BY A GREAT COMMUNITY, A DEDICATED STAFF, TREMENDOUS COOPERATION FROM THE COURTS, SOME PLANNING, AND SOME PURE LUCK.

I BEGAN WITH DEDICATED STAFF MEMBERS WHO JUMPED RIGHT IN AND FOCUSED ON TWO AREAS FIRST THING MONDAY MORNING: KEEPING THINGS GOING AND PUTTING THINGS BACK TOGETHER.

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