The Alaska BAR RAG

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Inside:

Territorial Lawyer members increase

BY MARGARET R. RUSSELL

The guest list for the annual "Territorial Lawyers Dinner" (and/or Picnic) was expanded this year to include all lawyers in practice for 40 years or longer, whether or not they were admitted before Alaska became a state.

Leroy Barker, one of the annual event's founders, said the natural attrition of the original group was taking its toll on the number of Territorial Lawyers still alive and well enough to attend.

Two of the lawyers attending the 6th annual event this year, who were not previously eligible, were Alaska District Court Judge James Wanamaker and former Anchorage practitioner Joe Young, who now lives in Sun Valley, Idaho. The reunion was held June 3 at the Mahogany House, an Anchorage B & B.

Many of the Anchorage Territorial Lawyers regularly attend the gathering. They include Bob Opland, Charles Tulin, Jerry Wade, Gene Williams, Judge Seaborn Buckalew, John Hughes (accompanied by his daughter Mary Hughes), Al Maffei, M. Ashley Dickerson, Russ Arnett, Roger Cremo, Jim Delaney, George Hayes and banker Dan Cuddy. Don Burr also was present this year as was *Ev Harris of Mesa, Arizona.* Hayes was one of the earliest attorneys general for the new state, and Harris was the last of the United States Commissioners before he began his long career in private practice in Anchorage.

Most lawyers bring a spouse or other guest, and several widows of local lawyers, including Lucy Groh and Priscilla Thorsness, also attend every year. The members of this core group often comment that the annual party is the only chance they get to stay in touch with their many old friends in the legal community.

Also present this year was Jack Stern, now a resident of Seattle, who practiced in Alaska until 1986. Stern was one of several lawyers admitted on the cusp of Alaska's transition from territory to statehood. Stern said that he, Hayes, the late George Boney and Pete Walton took the bar examination in October of 1958, and then were forced to endure a long wait for the results, which finally were published in March 1959.

Stern's practice was substantially limited to motor carrier and communications matters, and took him to many remote areas in Alaska. When Stern moved to Seattle, he entered into the freight forwarding business in which he said he "stills works every day."

Opland also recalls a torturous wait for results of the bar examination after he took the test in 1954. The 18 candidates that year also included Russ Arnett, Ken Atkinson, Bob LaFollette, Pete LaBate and Dave Thorsness.

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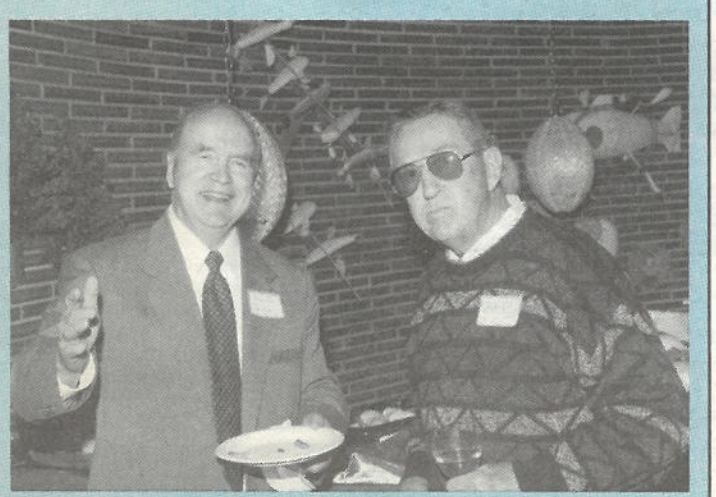

Charlie Tulin and Don Burr get together at Territorial Lawyers dinner.

Peril in the office fish-tank

— See page 20

New website launched for legal help

Alaska Legal Services Corporation and a consortium of justice community partners announce the launch of www.AlaskaLawHelp.org, a new web site offering legal self-help and referral information for modest-means Alaskans.

The approximately 80,000 Alaskans living in poverty often need legal assistance with basic necessities such as housing, income maintenance, and protection from abuse but cannot afford an attorney. In response to this need, members of Alaska's legal community have created this statewide web site to expand access to the civil justice system for modest-means Alaskans and for the advocates who assist them.

The new site features self-help and legal education materials, downloadable forms and publications, a directory of legal and social services providers, links to government web sites, and Alaska Court System information and resources. Visitors to the site can learn about their legal rights and responsibilities, find sources of legal assistance in or near their communities, and obtain

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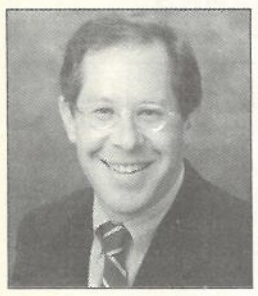
President's Column

Death, taxes and bar dues

☐ Lawrence Ostrovsky



During my five years on the Board of Governors, most of the comments I've received have concerned Bar dues. That's understandable. Some of us serve on committees. Some of us serve on boards and panels. Some of us are disciplined. But all of us pay Bar dues.

The dues are substantial and there's no shortage of opinions about whether the amount is appropriate. Though it's difficult to make direct comparisons to other bars because of our particular size, location and functions, its beneficial to see how the Alaska Bar Association's budget is put together. But many members may not have had the benefit of a briefing on the basic elements of the Bar's budget. One of my goals as board president is to present this information to the membership. Hopefully this will begin to stimulate a long-term, informed, dialogue on the future of the Bar.

The Board of Governors is having a retreat on September 19 at the Holy Spirit Retreat Center (in an attempt at inspiration) to consider long term budget trends and how the Bar Association should prepare for the future. I'd like to invite Bar members to join our discussion between 9:00 a.m. and 12:00 noon about short and long-term budget issues, and about what services the Bar should provide and how it should provide them. Although not necessary, if possible, please let the Bar staff know if you plan to attend so that we can be sure to have enough chairs, etc.

A number of pie charts, produced by Karen Schmidlkofer, the Bar's controller, are on the facing page. They illustrate the structure of the Bar's finances and some of the challenges the Bar is facing.

Where Does the Money Come From ?

The first pie chart shows where the Bar's revenue comes from. This usually isn't as interesting a question as where the money goes, but it's important to understand nonetheless. The bulk of the Bar's revenue, approximately 70%, comes from dues. This year, the Bar projects taking in about $1.3 million in dues, out of total revenues of slightly over $1.9 million. The Bar's expenditures are expected to be slightly over $2 million.

The other main revenue sources are admissions, namely the bar exam and Rule 81 fees from out-of-state lawyers, CLEs, and the convention. Admissions is actually kind of a wash in that it costs just about what it brings in. This year, for example, the Bar estimates that it will show a gain for admissions of less than $3,000.

CLEs, on the other hand, are heavily subsidized. While CLEs are estimated to bring in almost $122,000 this year, the cost of administering the program results in a net loss of about $250,000. In addition, voluntary CLE discounts on dues will cost the Bar about $67,000 this year.

Similarly, although a revenue source, the annual convention actually costs the Bar money. In 2003, for example, the convention is projected to bring in about $72,000, but cost about $100,000. The convention is less heavily subsidized when it's in Anchorage and attendance is high. It's more heavily subsidized when it's held up north or in southeast.

Where Does the Money Go?

People may be indifferent about where the money comes from, but everyone has opinions about where the money goes.

Not surprisingly, about half of the

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Editor's Column

The loser pays

☐ Thomas Van Flein

Alaska enjoys some fame and notoriety because of its wholesale adoption of the "loser pays" rule (with several exceptions not important here). What is important here is that the court system labels half the litigants "losers."

It may seem harsh to be labeled a "loser" (particularly when that label is affixed to a public document) and on top of the insult, of course, is the injury of paying a percentage of the other side's fees and costs. But in looking at other options, it is not so harsh after all.

Consider the "loser pays" rule set forth in the Code of Hammurabi, 1780 BCE (Translated by L. W. King). "If any one bring an accusation of any crime before the elders, and does not prove what he has charged . . . he shall be put to death." This would probably keep the D.A.'s office kind of edgy. An acquittal for the defendant would lead to an early retirement for the prosecutor. Verdicts would be taken by cell phone, well away from anxious bailiffs looking for the nearest D.A.

But the Hammurabi Code was strict with Judges also: "If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgment." Wow. One error and you are off the bench. With a stiff fine just for good measure. Appellate opinions would close with a remand for further proceedings "consistent with this opinion . . . and appointment of a new judge." The obvious loophole in this code is that it only applies to written decisions, so I suspect most decisions were given orally, probably off the record.

Court employees were not overlooked. "If any one steal the property of a temple or of the court, he shall be put to death." That would make you think twice before pocketing that pen or stapler "for the home office." Actually, the death penalty seemed to be the standard punishment under this code for just about any infraction. Burglary . . . "If any one break a hole into a house (break in to steal), he shall be put to death before that hole and be buried." Robbery . . . "if any one is committing a robbery and is caught, then he shall be put to death."

Under the Hammurabi Code, tort reformers would blush. Medical malpractice insurance was non-existent, but physicians still paid dearly for errors: "If a physician make a large incision with the operating knife, and kill him, or open a tumor with the operating knife, and cut out the eye, his hands shall be cut off." Today's system of paying money damages for errors appears rather meek in light of prior law.

Construction defect litigation carried high stakes: "If a builder build a house for some one, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death." If nothing else, this law would make the builder return your calls faster.

A successful defamation claim could lead to a physical mark against the tortfeasor: "If any one 'point the finger' (slander) at a sister of god or the wife of any one, and can not prove it, this man shall be taken before the judges and his brow shall be marked (by cutting the skin, or perhaps hair.)" Instead of money damages for personal injury, the defendant may pay with his own personal injury: "If he break another man's bone, his bone shall be broken." Even 4,000 years ago doctor's liens were honored: "If during a quarrel one man strike another and wound him, then he shall swear, 'I did not injure him wittingly,' and pay the physicians."

Other provisions were more enlightened. There was an act of God defense to repayment of debt contracts: "If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year." Today, of course, instead of washing our "debt-tablet" we would hold our credit cards under the sink for a minute or two.

There was even a progressive law ensuring investments, making the broker responsible for any loss, something a lot people today would likely welcome: "If a merchant entrust money to an agent (broker) for some investment, and the broker suffer a loss in the place to which he goes, he

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The Alaska BAR RAG

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April 28 - 30, 2004 Annual Convention (Anchorage)

Death, taxes and bar dues

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Bar's costs are for personnel. The Bar allocates personnel and other administrative costs to the specific programs it runs. Three quarters of the budget is spent in just a few areas. As the pie chart shows, discipline takes the lion's share with about 30% of costs. General administration (such as the executive director, financial and support staff) that is not tied to specific programs like admissions, discipline or CLE takes about 20%. CLE takes about 18% and admissions about 9%.

In the time I've served on the Board, we've reviewed the annual budgets with the objective of ensuring the efficient and effective delivery of Bar services. As with all businesses, we've looked at cost-saving measures and have paid a lot of attention to technology.

For example, the Bar has considered delivering CLEs electronically, perhaps particularly important in Alaska with its many rural areas. Still, it seems that most lawyers prefer their CLEs in person. So it may be difficult to reduce CLE costs significantly by going electronic.

The discipline function, handled by three attorneys, is very labor intensive and the Board has considered changes to streamline the discipline process. During the past five years there has been significant progress on reducing case backlogs.

Notwithstanding the enviable offices, the Bar's recent move to the Atwood Building has made a significant positive contribution to the bottom line. The Atwood space is an economical $1.11/sq. ft. The Bar sought this space after the Peterson Tower raised its lease cost. This move alone will save the Bar $595,704 over eight years.

What's in the Future?

Rules, geography, policy and highly experienced staff are the major factors that drive the Bar's budget.

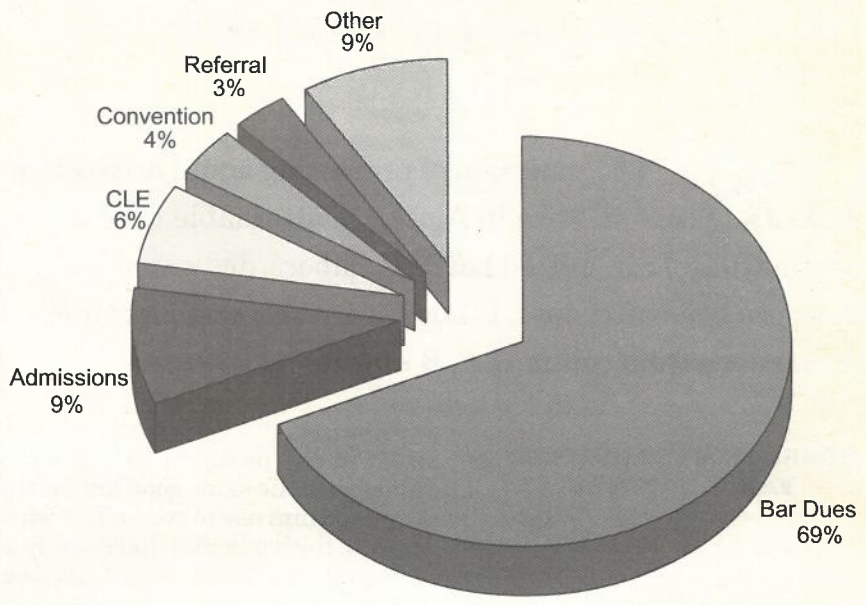
Under its rules, the Bar manages admissions and conducts discipline. Only 14 other state bars are responsible for both of these functions. Geography requires the Bar Association to serve a far flung membership. Geographic representation on the Board incurs substantial travel cost for board meetings. The policy of rotating the convention location means more expense than simply holding the convention in Anchorage each year or not having conventions at all. Similarly, the policy of providing CLEs costs more than turning CLE provision over to private providers. And finally, the Bar has an experienced and professional staff to perform these functions. In short, the budget--and by extension the dues--is driven by rules and policies adopted over the years.

In 1993, the Bar membership voted to raise dues from $310 to the current $450. This dues increase was designed to allow the Bar Association to accumulate a surplus so there could be steady, predictable budgeting and so that dues would not have to be adjusted every year. The surplus was predicted to last ten years. It's now going on its 11th year and is predicted to last at least two or three more years.

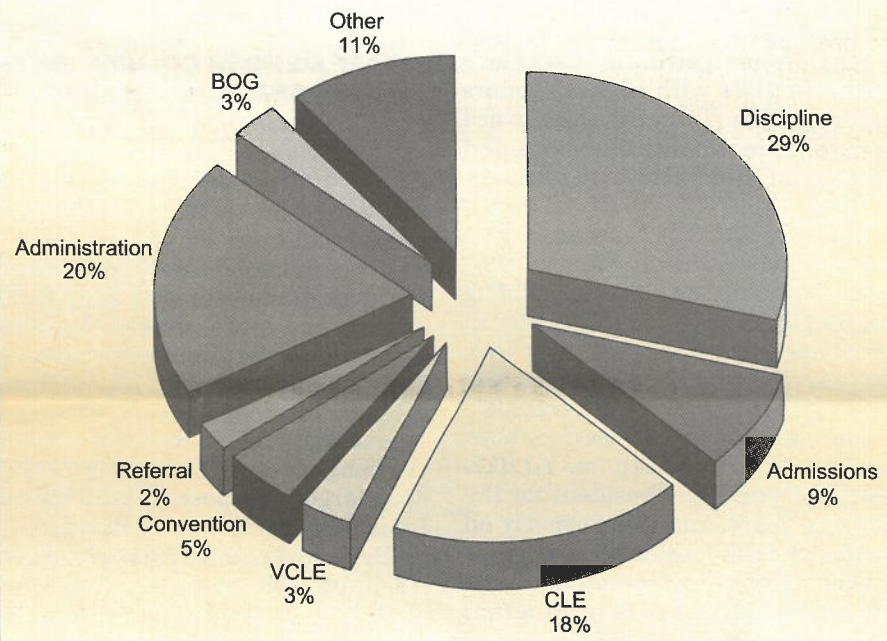
Currently, the Bar's operations are financed by both dues and the surplus. This year, for example, the Bar will draw about $116,000 from the surplus.

In anticipation of the time when the current dues and surplus are no longer sufficient to support the functions and services of the Bar, I believe it is important that the membership consider and discuss what kinds of services we want the Bar Association to deliver in the future. I hope that members are able to attend the retreat in September to advance the dialogue.

2003 REVENUE BUDGET



2003 EXPENSE BUDGET



The loser pays

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shall make good the capital to the merchant." Based on this, it would appear strict liability arising out of a fiduciary duty has an ancient basis.

Of course even King Hammurabi could not envision Enron, Worldcom and other investment schemes causing us to "suffer a loss" in our retirement programs, because if he could have, the punishment would have been death. Or a mark. Or a broken bone. Or maybe just a cold-rinse. Anything but what we really have—a diminishing account that will allow retirement . . . for one or two months. In this sense, Wall St. has its own "loser pays" rule. Those of us with 401K's and other retirement accounts appear to be the losers, and how we have paid.

CLASSIFIED ADVERTISING

INTERESTED IN SUBMITTING AN ARTICLE TO THE ALASKA BAR RAG?

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

- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Editorial copy deadlines: Friday closest to Feb. 28, April 30, June 30, Aug. 31, Oct. 31, Dec. 31.
- Author information: Make certain the author's byline or identity is on the top or bottom of the manuscript.
- Ideal manuscript length: No more than 3 single-spaced or 5 double-spaced pages, non-justified.
- Format: Electronic files should be in text, Word, or Word Perfect format.
- Fax: 14-point type preferred, followed by hard copy, disk, or e-mail attachment.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
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ALSC President's Report

ALSC promotes equal access to justice

☐ Greg Razo

ALSC's mission of promoting equal access to justice in Alaska is attainable only through a combination of committed board members, dedicated staff, and selfless pro bono attorneys. I thought for my opening column, I'd take one each from columns A, B and C.

BOARD MEMBER COLUMN: VANCE SANDERS

Outgoing ALSC President Vance Sanders wrote such nice passages about several people in his last column, but modestly omitted mentioning himself; so I think one of my first duties as incoming President is to make up for that omission.

Vance came to Alaska in 1984, one of a wave of North Carolinians who invaded ALSC in a brief span. He did both his undergraduate and law school study at the University of North Carolina, getting his Bachelor's degree in 1981 with highest honors and earning the Terry Stanford award for excellence in political science, and staying in Chapel Hill to get his J.D. in 1984.

He worked in ALSC's Juneau office, as a staff attorney from 1984 to 1987, and subsequently as the supervising attorney there until 1992. He's been in private practice since 1992, first with the firm of Council and Sanders, and since 1998 in his own solo practice.

His community service has been exemplary. He's been on ALSC's Board for years, as President for the past two years; and was formerly on the Board of the Disability Law Center as well. He was instrumental in setting up the Alaska Pro Bono Program Inc. and serving on its first Board of Directors. I know from watching him on those Boards that he's diligent and dedicated in his pursuit of the principles of equal access to justice.

He litigated some of the earliest Alaska Native self-rule issues, and has become a recognized expert in the area of disability trusts. He's also adept in the family law area, and most recently has been developing a focus on mediation.

Just as importantly, Vance is one of the nicest people I know. Compassionate, courteous, and personable, he has a great sense of humor. Although he feels the same tension as many of us at balancing the needs of professional and family life, he makes it a point to set aside time for his kids.

His wife Rachel was recently thrown by a horse while they were outside, and what everyone hoped was a minor injury turned out to require several surgeries and a long recuperation period, requiring Vance to take on more of the household responsibilities than in the past; but he's handling them with the same good humor that I've seen him use to good effect when, despite the bonhomie that usually accompanies our ALSC Board meetings, the going gets bogged down, as it occasionally does.

Anyway, Vance is the sort of person that everyone likes to get to know, and I'm proud to call him my friend; along with all the other Board members, I again wish Rachel a speedy recovery, knowing that she and the kids are in good hands.

STAFF MEMBER COLUMN: BETH HEUER AND ALASKALAWHELP

ALSC's most patient employee by far, Beth Heuer is the Administrative and Technology Coordinator, who has worked for ALSC in one capacity or another since 1982.

For years, she has had the challenging task of making sure that ALSC stays in the good graces of the Legal Services Corporation (never an easy assignment, but made all the more difficult in 1996 when ALSC chose to sue the LSC!), and the equally challenging task of dragging ALSC's staff, largely composed of quill-fixated Luddites, into the 21st century.

Beth does so many tasks for ALSC it's impossible to enumerate them. She's taken the Board minutes for years; once she hit sixty meetings in a row, we insisted that she skip the next one, so our September meeting will be the first without her since 1988! She works incredibly long hours, and has the dubious distinction of having the largest supply of "banked" sick leave of any ALSC employee, because she never uses up her full complement of personal leave during the year.

When she and her husband moved from Anchorage to Fairbanks in 1991, former E.D. Robert Hickerson recognized the value of her work to the point where he insisted that she keep the same position and continue working for ALSC from Fairbanks.

She was a member of the ALSC Management Team during Robert's extended illness, and the other three Team members readily admitted that she was the only one of the four who really knew what she was doing. (Since then, we have hired Andy Harrington as our E.D., but he still readily admits that Beth is the only one who knows what she is doing.)

Beth's hallmark is the special measure of patience it takes to anticipate the needs of a group of passionate attorneys working in the high-stress and low-pay environment that ALSC asks all its employees to accept. It's safe to say that ALSC could not have accomplished what it has without Beth's skills and abilities over the years.

And, on top of all that, she has written the grants and gathered the money and assembled the team to launch ALSC's newest effort, the AlaskaLawHelp Project, about which you'll be reading a lot more in the months to come. This is a statewide website project funded by a Legal Services Corporation Technology Initiative Grant.

A new website with an emphasis on being user-friendly, the AlaskaLawHelp project will have two components: one, a self-help area for pro se litigants or other laypersons researching a particular area; and two, an advanced sector for use by pro bono attorneys wanting to bone up on a particular area. Beth and her team are working with an organization known as ProBonoNet and are incorporating a technology and user interface that has been tried and tested in other states. Work on the layperson side is underway already; work on the advocate-oriented sign is starting up now.

I think that AlaskaLawHelp will be of immense benefit to all the people that ALSC cannot represent or advise directly, as well as to the pro bono attorneys and other advocates trying to assist low-income Alaskans, and I'm really excited that ALSC is at the cutting edge of this application of the new technology available to us.

Beth's team on this project includes Roy Roehl, a web-designer and high school teacher and football coach (of the much-admired West Valley Wolfpack, no less!) whose knowledge of cyberspace is as sharp as his mastery of the gridiron; and attorney Victor Henderson, who is taking a break after eleven years of prosecution work and four years in private practice in Georgia, to pursue this new vista in law-related community education.

However, the ALSCLawHelp team is much larger than that. There are several Alaskan private attorneys who have volunteered to moderate the subject matter sections within one or the other of the two components.

There are, however, still opportunities for those wanting to apply their expertise in a particular area, and this is a great way to stay on top of the law in your area of concentration. Pro Bono credit is available.

Of course, the hands-down choice to head up the bankruptcy page would be Tom Yerbich; but, for reasons that follow, this has become an opportunity for some other enterprising attorney.

MINI-PRO BONO CORNER COLUMN: TOM YERBICH

Katherine Alteneder has been doing a great job of highlighting pro bono efforts by Alaskan attorneys over the last few months. I'm told that the press of business is preventing her from getting anything in for this issue, so I thought I'd use a bit of my column to make up for that.

ALSC's pro bono coordinator Erick Cordero tells me that Tom Yerbich, who for years contributed a column himself to the Bar Rag, will be closing his office down as of June. He is truly one of Alaska's pro bono all-stars.

Tom graduated from McGeorge School of Law in Sacramento California in 1971 and was admitted to the California Bar in 1972. He has been practicing law in Alaska since 1977. He has been involved with the Bankruptcy Law Section, the Tax Section and with other sections from the American Bar Association, and the American Bankruptcy Institute. His areas of expertise include business law, corporate law, and bankruptcy; it is in the latter area that he has made his greatest contribution to pro bono.

Even before Seth Eames began to terrorize members of the Bar, Tom was already doing pro bono on his own. He became one of Seth's first volunteers and has been ever since.

"Perhaps in spite of his better judgment, he was always willing to accept my call, with the practically inevitable result being another Pro Bono client for his office," Seth recalls. In 1997 Tom received the ABA's Senior Division Pro Bono Award and the 2000 Pro Bono Service Award for his dedication and for the countless hours he has donated to low-income clients.

His receipt of those awards didn't slow him down; ALSC's current pro bono coordinator Erick Cordero reports that Tom has taken a remarkable 24 pro bono cases over the last three years!

Besides representing pro bono clients, Tom has helped with ALSC's chapter 7 bankruptcy clinics and has on many occasions mentored and trained numerous attorneys wanting to learn about bankruptcy and consumer law. He has published several booklets, such as the "Handbook on Fundamentals of Consumer Bankruptcy Law and Procedure in Alaska," used in ALSC's bankruptcy clinics. He also serves as the Court Rules Attorney in the US District Court, having just completed a comprehensive rewrite of those rules.

In his own words, "Pro Bono, by and large, has been a fulfilling experience. It gives me a feeling of personal satisfaction to help someone who really needs the help and is financially unable to obtain it." After Tom closes his office in June, it will be up to all the rest of us to make sure that the pro bono standard is carried on in the same generous way in which he has carried it for so many years.

Thank you Tom, and Beth, and Vance. Alaska is a better place due to your efforts.

Bar Letters

Remembrance shared

I read with great interest and fond memories the interview with Judge Kleinfeld in the May-June issue of the Alaska Bar Rag. I clerked for Andy from 1988-1989, along with Sean Martin, and wanted to share some remembrances of my clerkship with Andy.

I attended UCLA School of Law, and as my wife and I were hiking one day in the crowded mountains outside LA, I remarked that for a year after law school I just wanted to go somewhere where we could hike in peace. I suggested Montana, and my wife said why not Alaska - her aunt and uncle had lived in Fairbanks when she grew up, and she had fond memories of their good life in Alaska.

I researched the federal judges in Alaska, and read everything Andy had published at the time. What comes out in Andy's writings is who he really is: a brilliant, ethical and analytical thinker with a strong sense of history, morality and policy. I wrote Andy a letter stating that I had read all of his publications, explained exactly why I wanted to clerk for him, and that I hoped to hear from him.

He called me soon thereafter, and was friendly, humorous and down to earth - he offered me the clerkship and I eagerly accepted. After taking the California bar, we headed north in our Honda Civic, taking the Alaska Marine Highway to Haines and driving the rest of the way - very slowly!

The year clerking with Andy exceeded anything I could have hoped for. Behind his keen intellect and quick mind I found a caring, passionate jurist and a dear friend. While my peers worked on the typical diet of drug cases in lower 48 federal courts, I worked on the breadth of federal issues only Alaska has to offer, including complicated challenging cases of first impression that I looked forward to debating with Andy.

Andy split his time between Anchorage and Fairbanks, and with his typical aplomb told me that while his current clerks lived in Anchorage, Fairbanks was a wonderful place and he would certainly be glad to have me live in Fairbanks - my wife unfortunately nixed that and we spent the year in Anchorage.

One of my best memories in a year full of great memories was the first trial by court that was assigned to me. It was a complex construction case, and still being in "student" mode - I suggested to Andy we just stay up late and do the findings of fact right then. I spent nearly all night with Andy going through the testimony and documents of the case, trading analysis and marveling at his insights and reasoning. Law school does not prepare you for such an intense and challenging experience - we issued the draft findings of fact the next day, but the lessons from that night have stayed with me these 15 years or so.

And nearly every Monday for an entire year, Andy would ask Sean and I where we would like to go for dinner, and with his twinkling smile would say each week, as if it were a completely novel idea, "Harry's is always nice." And nearly every Monday we ate at Harry's with Andy, enjoying his friendship, his openness and his mentoring.

I left Anchorage after my clerkship, returned for nearly 5 years and left again - but clerking for Andy is something that remains with me - and when I have needed his guidance, he has always offered it in the same spirit as he offered the clerkship - as a friend, a mentor, a unique jurist and a committed family man.

—Marty Barrack

"Skepticism" sustained

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATER OF:)
(Minor) dob 01/24/95)
(Minor) dob 06-19/90)
(Minor) dob 03/04/93)
)
A Minor(s) Under the Age of)
Eighteen (18) Years.)
Case No. 3AAN-02-287/332/333 CP

ORDER

At the adjudication hearing on this matter held on June 12, 2003, the Court found, inter alia, a failure to provide treatment for mental injury, AS 47.10.011. While the Court was making this finding, Mr. Janidlo's eyebrows raised skeptically. Mr. Janidlo's eyebrows are sustained. The court withdraws this finding only.

Dated this 12th day of June, 2003 at Anchorage, Alaska
/s/John Suddock
Superior Court Judge

Submitted to the Bar Rag by Thom Janidlo, who commented: "An order with humor worth its weight in gold. Most child protection matters are serious in both content and results. It is helpful for those of us who practice in this area to lighten up at times. This order has helped a lot."

QUOTE OF THE MONTH

"A jury consists of twelve persons chosen to decide who has the better lawyer."
— Robert Frost

25 YEAR PIN RECIPIENTS RECEIVE AWARD AT CONVENTION

L-R: Steve Van Goor; George Skladal; Paul Carnarsky; Linda Wilson; John McKay; Lee Holen; David Freeman; Mary Guss; Gayle Horetski; Deborah Williams; John Lohff. Not pictured: Julia Tucker was also present to receive the award. (Photo reprinted from previous issue to correct caption for posterity.)

Regan awarded for public service

Mark Regan, recently of Juneau, now of Bethel, was awarded the first Jay A. Rabinowitz award for Public Service at the Alaska Bar Convention in Fairbanks in May 2003. Fairbanks lawyer, Barbara Schuhmann is shown here presenting Mark with the award from the Alaska Bar Foundation.

Regan is a longtime lawyer with Alaska Legal Services, which provides legal aid to the poor. Alaska Legal Services in funded largely by donations.

He is the son of the late Dickerson Regan and Virginia Breeze, both of Juneau and the grandson of pioneer Juneau physician Dr. William Whitehead.

Regan is a nationally recognized expert on Medicaid and worked from 1992 to 1996 for the National Health Law Program training lawyers throughout the country on Medicaid.

He is one of the largest individual contributors to the Robert Hickerson Partners in Justice campaign. Through a generous salary withholding plan, Regan contributed over $10,000 to the 2002-2003 campaign, which pays for legal aid for those who cannot afford it.

When Alaska Legal Services closed several rural offices for lack of funds in 1996, Regan volunteered to work in Juneau for lower than scale wages until the organization could work through its fiscal crisis.

The Jay Rabinowitz award includes a $1,000 grant in recognition of Regan's services. Those who know him suspect he will donate that, too, to Alaska Legal Services.

Juneau lawyer Mark Regan receives the first Alaska Bar Foundation Jay Rabinowitz Public Service Award presented by Alaska Bar Foundation Trustee Barbara Schuhmann.

Regan is a magna cum laude 1983 graduate of Harvard Law School. He worked as a law clerk for Justice Rabinowitz in Fairbanks in 1983-84.

Shortly after his clerk position ended, Regan began his career with Alaska Legal Services in Barrow, where he was the only legal services attorney. The office had previously had as many as three lawyers.

Throughout his career, he has maintained a heavy day-to-day caseload while working on large statewide issues. These include ANSCA village corporation land distributions, Alaska Native Allotment cases, class action on Food Stamps overpayment collection procedure, hunting and fishing rights and Indian clan property. He has argued at least six cases before the Alaska Supreme Court.

Regan moved from Barrow to Anchorage in 1987 where he worked exclusively on allotment cases. He transferred to Juneau form 1987 to 1991. After working as a Medicaid expert for the national health law program, he returned to Juneau in 1996 and became the Alaska Legal Services supervising attorney here in 1999. He moved to the Bethel office in April.

Regan has been both treasurer and secretary of the Juneau Bar Association . He worked on numerous state committees, including the Indian Child Welfare Act Advisory Committee and the Alaska Medicaid Rate Committee.

Regan's father, Dickerson Regan, opened the first Alaska Legal Services office in Juneau in 1966 and later worked in the Fairbanks office. His grandfather, Dr. William Whitehead, was named by Governor William A. Egan in 1959 to the state's first Alaska Judicial Council. The council was charged with nominating candidates for the state's first judicial offices.

Council members chose Dr. Whitehead as the first chair. He held that position until Governor Egan named the first state Supreme Court and Chief Justice Buell Nesbett became chair, as required by the state constitution.

Mark, 42, was born in Juneau nine days before the Juneau Bar Association hosted a dinner for the new state Supreme Court in the Baranof Hotel in September 1959. His grandparents and his parents attended that dinner. Mark stayed home.

Bar People

The Law Office of Baxter Bruce & Sullivan is pleased to announce that **Richard L. Nelson** has joined our firm as an Associate Attorney.

Mr. Nelson received a Bachelor of Science, magna cum laude from Baylor University and earned his Juris Doctor, magna cum laude from Baylor University School of Law in 1978. Richard is admitted to practice in the states of Texas and Alaska. Some of Mr. Nelson's career highlights include the following trials:

- Syntek Finance Corporation v. MetLife, et al – Mr. Nelson represented MetLife in a two month jury trial – unanimous defense verdict in lender liability/antitrust case, rejecting Plaintiff's liability and damage claims totaling $80 million and awarding MetLife $6.7 million on its counterclaim
- Herzing, et al v. MetLife, et al – two month jury trial – unanimous defense verdict to a MetLife insurance fraud/securities fraud suit, rejecting Plaintiffs' liability and damage claims totaling $450 million
- In General Projection Systems, Inc. v. Burlington Northern Railroad, et al – Mr. Nelson represented Plaintiff in a one month jury trial – unanimous Plaintiff's verdict in high-tech case, awarding Plaintiff $1 million actual damages and $7.5 million punitive damages and rejecting Burlington's counterclaim of $10 million

Richard practices in the areas of business litigation and personal injury. If Richard can be of any assistance, you may contact him at (907) 789-3166; fax: (907) 789-1913; or at his e-mail address at rnelson@baxterbrucelaw.com.

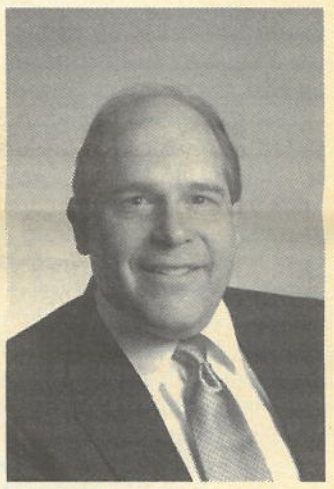
Jim Stanley, formerly with Stanley & Schadt, is now with Foster Pepper Rubini & Reeves LLC..... **Gordon Schadt** has formed the firm of Schadt Law Offices.

Hartig, Rhodes law firm expands

The law firm of Hartig, Rhodes, Hoge and Lekisch has announced that Michael Jungreis became a shareholder of the firm effective June 1, 2003.

The firm also announced that Todd J. Timmermans is now "of counsel" to the firm, and that Vikram N. Chaobal has joined the firm as a new associate.

Jungreis has practiced law in Alaska since 1979, was Section Chief for the Federal Deposit Insurance Agency and supervised the FDIC's litigation in Alaska. He was with Hoge and Lekisch when that firm consolidated with Hartig Rhodes in 2000.



Michael Jungreis

His practice focuses on complex commercial litigation, assisting businesses in their transactions and intellectual property law. He is active in the Alaska Bar Association and various civic and business organizations.

Timmermans has practiced law with several Anchorage firms since 1992 before joining Hartig Rhodes as "of counsel." His primary practice is in the area of real estate, business and commercial law and employment and labor law. He is a past president of the Hillside Rotary Club and is active in the Alaska and Anchorage Bar Associations.

Todd J. Timmermans

Chaobal joined the firm this year as a new associate. Born in Bombay, India he was raised in Anchorage. He is a Cornelius Honor Society graduate of Lewis and Clark Law School and is currently finishing his Master of Science degree in Environmental Quality Science at UAA.

Mr. Chaobal's practice areas include environmental, natural resources and intellectual property law.

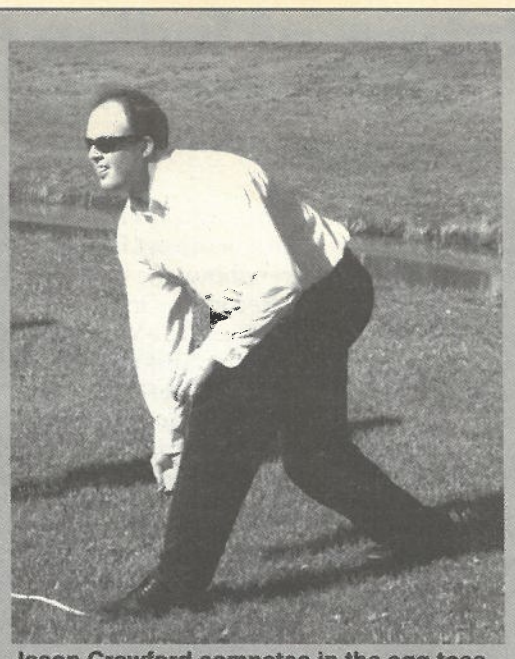
Hartig, Rhodes, Hoge and Lekisch has been serving the Alaska business community as well as companies doing business in Alaska since 1971.

Vikram Chaobal

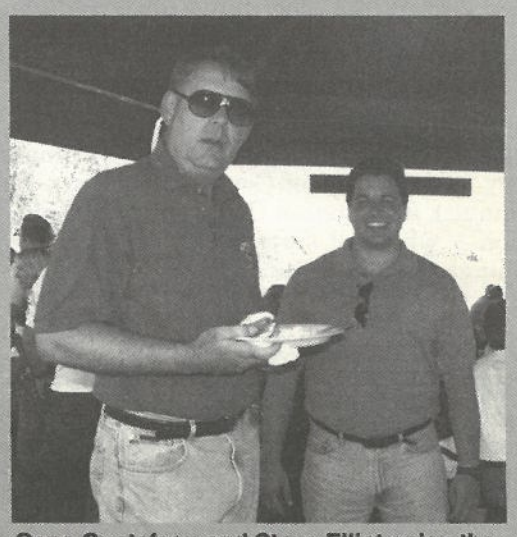
PICNIC IN JULY

Rita Allee shows off her skill in the egg toss.

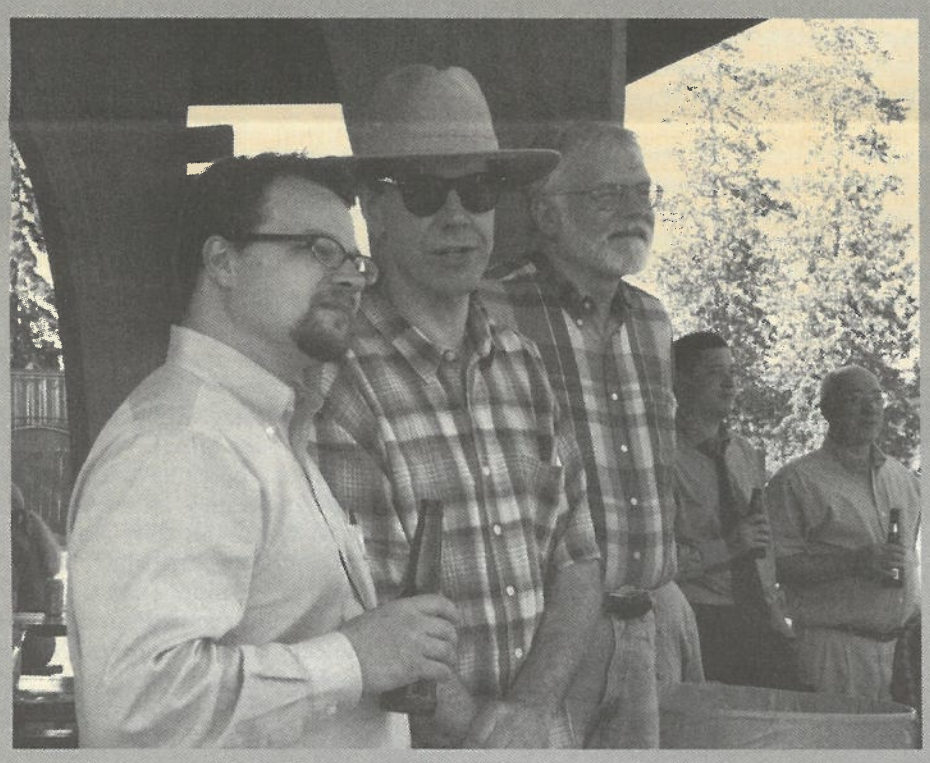
The TVBA recently held its annual Christmas picnic for the entire local legal community. This year, in celebration of 25 years in her practice, Rita Allee sponsored the cost of the traditional pig roast for the event. The party was well attended with food and drink and games and prizes for kids of all ages.



Jason Crawford competes in the egg toss.



Gene Gustafson and Steve Elliot enjoy the food.



John Tiemessen, Roger Brunner and Mark Andrews survey the games.

Ken Jacobus and John Hagey participate in the egg toss.

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

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

Nature of Indian law and tribal court practice are unique

BY GABRIEL S. GALANDA

On July 26, 2002, Indian[1] lawyers and judges and members of the Northwest Indian Bar Association from throughout the State traveled to the Quinault Beach Resort in Ocean Shores, to attend the summer meeting of the WSBA Board of Governors. During a question-and-answer presentation about the unique nature of Indian law and tribal court practice, the pervading theme was one of relevance. Tribal attorneys and judges made it clear that the WSBA and its policies neither relevant to legal practice on the reservation, nor to the tribal members' lives they affect on a day-to-day basis. The Board of Governors's response indicated its keen desire to make the WSBA germane to reservation practicioners and its commitment to make Indian law relevant to members of the State bar.

Although the discussion between tribal practitioners and the WSBA's legislative arm highlighted a disconnect within the State bar, the dynamic at the meeting in Ocean Shores gave rise to a concerted effort to bridge gap between reservation and state legal communities. That synergy resulted in the recent appointment of the first Native female attorney to the Board of Governors – Fawn Sharp (Quinault), Reservation Counsel for the Quinault Nation – who will serve as an ambassador for Washington tribes. That synergy has also fueled the Northwest Indian Bar Association – a not-for-profit organization of Indian attorneys, judges and advocates in Washington, Idaho, Oregon, Alaska, British Columbia and the Yukon Territory – into . Moreover, it is through that synergy that the WSBA dedicated this edition of *Bar News* to Indian law and that Indian attorneys and tribal judges from across Washington share the following perspectives on tribal law and practice. This brief introduction to Indian law seeks to provide you some legal context for the articles that follow.[2]

TRIBAL SELF-GOVERNANCE

United States Supreme Court precedent explains that Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. *Worcester v. Georgia*, 31 U.S. 515, 559 (1832). Although no longer "possessed of the full attributes of sovereignty," Washington tribes remain a "separate people, with the power of regulating their internal and social relations." *U.S. v. Kagama*, 118 U.S. 375, 381-82 (1886). In short, the tribes possess "the right . . . to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959).

Much like the Washington State government, tribal governments are elaborate entities, consisting of executive, legislative, and judicial branches. The office of the tribal chairman (like that of the State governor) and the tribal council (the State legislature) operate the tribe under a tribal constitution and code of laws. The tribal court interprets and applies the tribe's law and, although the court may resemble Anglo-American courts, it does so in a significantly different way. The article by Judges Edythe Chenoisis (Quinault), Jane Smith (Colville) and Cynthia Jordan poignantly describe the unique spirit of the 25 tribal courts in Washington.

WASHINGTON TRIBES IN THE 21ST CENTURY

Indian tribes in Washington are accustomed to legal and political involvement in the State, having aggressively defended repeated attacks on their treaty-based rights in federal and state tribunals, since the turn of the 20th century. *See e.g., U.S. v. Winans,* 198 U.S. 371 (1905); *Tulee v. Washington*, 315 U.S. 681 (1942); *Washington v. Washington Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979); *State v. Alexis*, 89 Wn. 492 (1916); *State v. Meninock*, 115 Wn. 528 (1921); *State v. Tulee*, 7 Wn.2d 124 (1941). However, only since the early 1990s have the tribes in Washington become an economic force to be reckoned with. Washington tribes are now aggressively creating and operating new businesses in the areas of real estate development, banking and finance, media, telecommunications, wholesale and retail trade, tourism, and gaming. Consider these facts:

- Washington tribes occupy more than 3.2 million acres of reservation lands.
- Washington tribes currently employ nearly 15,000 Indian and non-Indian employees. By comparison, Microsoft employs 20,000 Washingtonians.
- In 1997, Washington tribes paid over $5.3 million dollars to the State in employment taxes.
- Annually, Washington tribes contribute $1 billion to the State's overall economy.

The dramatic rise in tribal economic development has fueled increased interaction between tribes and non-Indian citizens who enter Indian reservations in Washington for business, employment or leisure activities. As a result, an array of legal matters arise and Indian law has been transformed from a legal niche involving only reservation attorneys and tribal members into a body of law that intersects every area of legal practice and engages attorneys and clients of all types. The articles by Rion Ramirez (Turtle Mountain Chippewa/Pascua Yaqui) and Jill Conrad (Nez Perce) highlight some of the transactional and litigation issues that every attorney in Washington should become somewhat familiar with.

Indian legal issues are not confined to business transactions and employment situations. Litigation arising from an adoption involving an Indian child, a bequest of real property within the exterior boundaries of a reservation, or an automobile accident on the reservation may involve complex jurisdictional and choice of law issues. A consumer collection matter involving a party of property on the reservation may present jurisdictional difficulties that exist nowhere else. The applicability of a state excise tax to a reservation sale of a carton of cigarettes may hinge upon a detailed reading of the interplay between taxation law and Indian law principles. The general practitioner or public lawyer in Washington will likely become involved in a case that will require an analysis and application of federal Indian law.

THE ROLE OF INDIAN ATTORNEYS

In 1970, President Richard Nixon delivered a historical address to Congress, from which the notions tribal self-determination and self-sufficiency were born. President Nixon proclaimed:

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. . . . The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

President Nixon proceeded to introduce a number of legislative measures that sought to bolster tribal self-rule, cultural survival, and economic development. Congress made many of Nixon's initiatives into law, thereby laying the groundwork for the economic prosperity Washington tribes are experiencing thirty years later.

In keeping with the spirit of tribal self-determination and self-sufficiency, tribes seek to

NIBA knows so very well that Native Americans are the most under- represented ethnic demographic in the legal profession. In Washington, for example, Indian attorneys comprise only .7% of the WSBA – 93 of the 22,400 bar members. Nationally, according to the American Indian Law Center in Albuquerque, the bar includes a mere 3,000 Native practitioners.

THE NORTHWEST INDIAN BAR ASSOCIATION

NIBA is a not-for-profit organization of Indian attorneys, judges and advocates in Alaska, Idaho, Oregon, Washington, British Columbia and the Yukon Territory, which aspires to improve the legal landscape for tribes in Washington and throughout the Pacific Northwest. The purposes and goals of NIBA are:

- To represent and foster the education and welfare of Indian attorneys, paralegals and tribal court personnel of the Pacific Northwest;
- To provide role models and mentors in the legal profession for Indian people, particularly Native American youth and law students; and
- To encourage and promote pro bono legal work and civic involvement that benefits Indian people on reservations and in urban areas throughout the Pacific Northwest.

The Northwest Indian Bar Association (NIBA) Is Improving the Legal and Political Landscape for Pacific Northwest Indian People

Just the Facts

- NIBA pronounced "knee-buh"
- Although the terms "Native American" or "American Indian" are considered PC, "Indian" or "Native" are widely accepted in Indian Country
- NIBA incorporated as a 501(c)(3) non-profit educational entity and a 501(c)(6) political group
- NIBA founded in 1991 by 8 Indian attorneys in Seattle; in 2003, NIBA has over 150 members – 50 of whom are Native – from around the Pacific Northwest and far beyond
- NIBA members include American Indians, Alaska Natives, Native Hawaiians, First Peoples from Canada, and indigenous people from beyond North America
- NIBA members enrolled with or descendants of the following tribal communities: Quinault, Puyallup, Spokane, Colville, Yakama, Jamestown S'Klallam, Port Gamble S'Klallam, Hoh, Samish, Salish & Kootenai, Umatilla, Grand Ronde, Tlingit, Tsimpshean, Aleut, Inupiaq, Mentasta, Round Valley, Hoopa, Turtle Mountain Chippewa, Minnesota Chippewa, Pawnee, Cherokee, Choctaw, Osage, Comanche, Caddo, Georgia Creek, Alabama-Coushatta, Muscogee Creek, Delaware, Seneca, Sioux, Sisseton-Wahpeton Sioux, Oneida, Blackfeet, Navajo, Yaqui, Western Shoshone of Duck Valley, Gros Ventre, Ojibway, Cowichan, Esquinault
- NIBA members work for reservation attorneys' offices, tribal courts and governmental entities, corporate law firms, lobbying firms, local, state and federal government agencies, legal aid providers, and law schools and undergraduate institutions
- NIBA members practice on all 42 Northwest Indian reservations; in Alaska Native communities such as the Aleutian and Pribilof Islands, Mentasta Lake and Bristol Bay; in rural towns like Bellingham and Omak, WA, Bend, OR, and Moscow and Green Creek, ID; and, in such large cities as Seattle, Portland, Boise, Anchorage, and Washington, DC

(Footnotes)

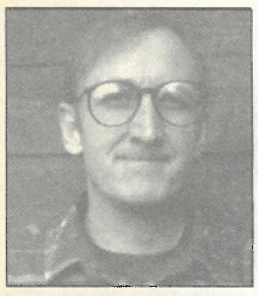
[1] As solely a matter of personal preference, I use the terms "Indian" or "Native" rather than "American Indian" or "Native American." For those of you striving for political correctness, you will not likely engender ill will amongst your Indian colleagues by using any of these terms. Although, as anthropologist Phil Konstantin states, there is something to be said for the totally PC term of: "Modern Descendents Of Pre-Columbian Inhabitants Of The Post-Pangean Continent Between Northern Atlantic And Pacific Oceans." In the end, it is what comes from your heart that is more important than what comes from your mouth.

[2] For a more thorough introduction to the application of Indian law in Washington, check out "Reservations of Right: A Practitioner's Guide to Indian Law" at http://www.wsba.org/DeNovo/2001/06/galanda.htm.

Eclectic Blues

A time of abundance for some

Dan Branch



The sun came to visit Juneau last May and stayed for a month. Dougites and Juneaurians were rendered passive by 60-degree days and lingering sunsets. Plants grew while the locals sunbathed. Blueberry buds swelled and bulbs bloomed and the first of the year's 700,000 cruise ship tourists wandered off the boats assuming that it was just another day in a sun-struck paradise.

Rain returned in June but the benefits of a sunny warm May are still being felt. This has been a summer of abundance. Rich colored flowers crowd downtown gardens while their wild cousins fill the Kowee Creek Meadow and the flatlands behind Boy Scout Beach. In early July flurries of fluffy white cottonwood seeds floated across Chicken Ridge to form drifts in leeward of the House of Wickersham.

This rare abundance spread down Gastineau Channel where in May large dolly vardens chased down salmon smolt like sharks. With luck, and a decently tied smolt pattern, someone with a fly rod could catch a 20-inch dolly within walking distance of downtown. Salmon fishermen were catching their limit of King Salmon trolling off False Outer Point.

It's also been a great summer for whale-watching. On a weekend kayak trip to Berners' Bay my wife and I paddled along with a feeding humpback for almost an hour. Earlier in the day we had watched whales breach and feed off the beach while we had morning coffee. Humpbacks and orcas have been regular visitors to Auke Bay. I even saw a whale feeding off of Sandy Beach, near downtown Douglas.

With all this abundance, I naturally expected to catch king salmon this year. By early May the kings were feeding at the breadline and I had access to a boat. I'd spent long winter evenings reading "How to Catch Trophy Alaska Sportfish." My fishing buddies and I even attended a seminar on selecting and affixing herring on sli- tie hooks. We were ready and on the water even before the legislature left town.

Last fall I wrote about my fishing buddies and our different approaches to salmon fishing. Type "O" blood flows through my veins feeding ancient hunter-gather instincts. I fish for food. They have farmer blood and tend to lounge in the cabin smoking cigars and drinking coffee.

This spring, with the family freezer free of last year's silver salmon, I gladly accepted an invitation from one of my farmer friends to board his C Dory to hunt for kings. We cruised the breadline, one of many boats, dragging our specially tied herring behind the C Dory. The boat's electronic fishfinder revealed the presence of many fish in the water. We expected action and the captain got it, hooking and then landing a decent sized dolly varden. He was going to return it to the sea. Thinking to justify time spent fishing to my wife, I asked him to give it to me. Spring-caught dollies are tasty and some fresh meet would help at home with my effort to justify the next fishing trip.

We didn't catch any more fish that trip or during the next four or five trips we made to the fishing ground. Then, on a day when we shared our secret fishing spot with 75 other boats, the captain hooked a big fish that took him deep. With great effort he brought it to the boat before it dived again. Twenty minutes later I netted a 39-pound white king salmon for him.

Encouraged by the captain's success we returned again and again to the fishing grounds. One day we'd catch nothing but dog salmon. Another day we'd flirt with pinks. The captain caught another nice king. I had chances but couldn't land a big fish.

Now, its July and the spawning kings have moved into fresh water. There are a few feeder kings nosing around headlands and passes. Soon it will take more than 100 hours of trolling to catch one. I'm afraid that the door is closed on kings for the year. I'll have to wait until next May to catch one of those Himalayas of the fish world. We'll have to fill the freezer with silver salmon and the fat blueberries that will ripen in August.

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

Comments are sought on proposed amendments to Local Bankruptcy Rules

3015-1; 3015-2 (new); 3015-3 (new); 5005-1; 9004-1; 9033-2 (new); LBF 6A (new) & 6B (new)

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

Written comments on the preliminary draft are due not later than August 29, 2003

Address all communications on rules to:

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

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

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

Comments are sought on proposed amendments to Local Rules

Local (Civil) Rule 51.1

Magistrate Judge Rule 4

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

Written comments on the preliminary draft rules are due not later than August 29, 2003

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Court Rules Attorney
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564
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Over 65 students from across Alaska recently gathered in Anchorage for a full-day program designed to encourage minority students to consider the law and judgeships as career goals. The Color of Justice program was sponsored by the National Association of Women Judges in cooperation with the Alaska Court System, Cook Inlet Tribal Council, Inc., and Seattle University School of Law. The day's activities included panel discussions, mock trials with attorney mentors, and small group discussions focusing on career preparation. Here, students gather in the supreme court courtroom with program presenters, including Justice Dana Fabe, center

Judges, lawyers and community leaders shared personal and professional insights about their career choices during the Color of Justice program. Standing, L-R: Judge Stephanie Joannides, Color of Justice coordinator; Gail Schubert, Anchorage attorney and Board President, Alaska Native Heritage Center; Steve Burnett, Seattle University School of Law; Susan Anderson, CEO, Cook Inlet Foundation; Lori Bannai, Seattle University School of Law; and Judge Beverly Cutler, District Chair, National Association of Women Judges. Seated, L-R: Heather Kendall-Miller, Native American Rights Fund; Judge Larry Card; and Justice Dana Fabe.

Where was Bertrand Russell when they really needed him?

By peter J. Aschenbrenner

The New Palace of Westminster is where the Law Lords do their work. The reader will have in mind all those spires and the Clock Tower ringing the hour. The bell is Big Ben, of course.

It was spring in England and I was going to sit in on oral argument in *MacDonald v. Ministry of Defense*. The Lord Chancellor appoints high court judges, and from them, the court of appeals judges. From this bench, he ennobles Law Lords who are appointed to life peerages. That makes them Lords of Appeal in Ordinary. Lords (five-at-a-time) are selected by the Lord Chancellor who is the Prime Minister's appointee; it's like having John Ashcroft pull together an ad hoc Supreme Court. For more see Parliament.uk/about_lords/the_law_lords; there are 12 Law Lords working full time with 13 in reserve. (As this goes to press, Lord Falconer, Secretary of State for Constitutional Affairs, announced a long anticipated proposal for creation of a British Supreme Court which will move the functions of the Law Lords outside the House of Lords.)

To get to Committee Room No. 1, I passed through security at the public (St. Stephen's) entrance. Westminster Hall is on the left; this is where Charles I was tried in 1647. Within a dozen years the Stuarts had hunted down and murdered most of the men who voted to convict him.

When the *MacDonald* case was called for the morning session, the doorkeepers ushered everyone out of the courtroom into the corridor. This passage was decorated in a style that might be called "Royal Windsor High School." We stood at a respectful distance while their Lordships trooped out from a distant doorway. As they approached, their Lordships gave us a polite bow and both teams of barristers returned the favor. The Law Lords got to the courtroom first, settled in and then the doorkeepers admitted counsel and the public. It all made perfect sense to honour the court in this manner. It's just not *our* sense. And the visitor can lose that really good view of the Thames he had snagged by showing up early.

The lawyer for the Ministry of Defense said that MacDonald wasn't being discriminated against because MOD would have fired a gay servicewoman who was attracted to women; MacDonald said that he was being discriminated against because a straight woman – attracted to men – wouldn't be cashiered. The *MacDonald* case had come back from Strasbourg – seat of the European Court for Human Rights – for further proceedings; the case seemed to be headed back to an industrial tribunal.

Their Lordships were stuck with a devilish issue: In a discrimination case, who gets compared with whom? Was Parliament telling judges to measure the gay man's share of distributive justice by a straight woman's situation or was his due to be measured by a gay woman?

In one exchange, Lord Hope struggled with this scenario. An officer spies a male hunk postered on the wall of a service member's billet. What has the officer seen? Without knowing the gender of the service member, our earnest officer can't be sure that he has seen evidence of an offense against military morals. The situation seemed to oblige further viewing as to who is living in close quarters with the quite possibly but not necessarily offending gent-on-the-wall. Their Lordships were not amused that Parliament had left them in this pass, for they, quite literally, were obliged to skulk about Camp Ashby-de-la-Zouche or Fort Swinburne-by-the-Sea in search of enlightenment. Or instruct military moralizers to do so.

The problem Parliament tossed at the Lord Chancellor's top court judges had a distinctly British flavour. In fact, it's the problem that troubled Bertrand Russell through a series of works leading up to his 1910 Principia Mathematica; try the 1925 edition, Appendix C.

Assume the world is divided up into tucky and fluffy; everything is either tucky or fluffy but not both. How does an observer tell if something is tucky or fluffy? It occurred to Russell that an observer would have to resort to rules that discriminate tucky from fluffy or true from false. A dyadic pair (as he called them) would call for an apparatus of rules to sort these things from those things. These sorting or parsing rules would require more rules that would govern the deploying of sorting rules, supply a check of results for errors, train people to work the rules, and so forth. Consequently, the world couldn't be divided into *just* tucky and fluffy.

A hundred years ago Russell took lodgings in rural Oxfordshire and went to work writing up all of these sorting and parsing rules for classes of this and classes of that. And, of course, those very famous classes of classes. He worked with his tutor, Alfred North Whitehead, who (later) sneered at Americans for not being theoretical enough about their philosophy. *If it works, it works*, he dismissed us.

And the Principia has soldiered on through the last century or so, now mostly ignored. But lawyers and judges, the artisans of the law, also have their own heavy lifting to do and no one today even dreams that you could write down all of the rules *we* use to manage ideas. The *MacDonald* case also demonstrates that the work is just as hard for us as it was for these two fellows from Trinity College, Cambridge.

With that, I return the reader to the predicament in Committee Room No. 1. There are two pairs, very exclusive classes indeed. One pair: gay man and that gay woman (MOD's offering). But there is also the gay man and that straight woman, according to MacDonald's counsel. Like I said, you need a regime to help judges sort out this class from that class, and that's more than Parliament had supplied their Lordships.

I toured the building after the hearing was over, the case being taken under advisement. As I crossed the main axis of Westminster I could see into the House of Commons, familiar to us from Prime Minister's question time; Ms. Betty Boothroyd, as Madam Speaker, was presiding from the woolsack. It was time for a division of the House. Without electronic voting equipment, the M.P.s do this the old-fashioned (might I say dyadic?) way; members form two lines under the watchful eyes of the whips, who administer party discipline.

But no matter how many times the House divides, it still isn't going to supply all of the answers to go with those neatly recorded yeas and nays. Full employment for lawyers, judges, and, of course, Bertrand Russell, a Lord in his own right. (Adverts for anti-nuclear protests traded on his title, listing him on the speaker's roll as Earl Russell, and thereby lending *noblesse* to the proceedings.)

The last word goes to Chief Justice Lord Holt (1642-1710); he deplored "reports [of judicial decisions], making us appear to posterity for a parcel of blockheads." Fifoot, Lord Mansfield 14.

I express my sympathy for those who report judges-at-work, and, of course, the judges themselves. Managing A and not-A turns out to be a monumental problem for both legislators and judges, no matter what intellect they bring to the task.

But it is judges who must grapple with classes of things, at work in public. And overlooking the Thames on that Thursday afternoon, there were learned counsel arguing the merits of discrimination back at the judges, and, in this case, interrupting their Lordships at will. I highly commend a performance at Westminister to judicial tourists.

Mentors who met with students during he Color of Justice program included, L-R: Kyan Olanna, Law Clerk to Chief Justice Bryner; Aaron Schutt, Anchorage attorney; and Dr. MJ Longley, Chief of perations, Cook Inlet Tribal Council.

Attorney Discipline

ALASKA SUPREME COURT CENSURES HAROLD TOBEY

On May 22, 2003, the Alaska Supreme Court publicly censured attorney Harold W. Tobey (Member No. 6812043), who formerly practiced law in Anchorage, Alaska, for negligent handling of client monies.

Mr. Tobey represented a client over a period of years on a variety of matters. Mr. Tobey failed to maintain accurate billing records for his client. Accounting discrepancies were compounded when Mr. Tobey's law office converted to a computer accounting system and a $26,000 billing error against the client's interests occurred that the firm overlooked.

When the client fell behind on his payment, Mr. Tobey had his client sign a promissory note for the fees without explaining the legal ramifications of a promissory note and without obtaining his client's informed consent to the higher interest rate set out in the note. As the debt on legal fees grew, Mr. Tobey had his client sign two new promissory notes. He also obtained a deed of trust on the client's property without advising his client to obtain independent counsel.

Mr. Tobey's firm filed suit on the promissory note. After obtaining a judgment on the note, Mr. Tobey obtained a writ of execution and levied on the client's real property despite earlier representations that they would not take the client's property.

Mr. Tobey committed ethical misconduct under the former Code of Professional Responsibility by charging unreasonable fees, failing to keep complete and accurate accounting records, and by failing to exercise his independent professional judgment on behalf of his client.

Notwithstanding his retirement from the active practice of law, Mr. Tobey agreed that a public censure was appropriate for the seriousness of the ethical violations that occurred in the representation of his client. The Disciplinary Board approved the Stipulation for Discipline by Consent for public censure prior to its being presented to the Supreme Court.

PATRICK BLACKBURN DISBARRED FOR NEGLECT, CONVERSION AND OTHER MISCONDUCT

The Alaska Supreme Court on April 8, 2003 disbarred former Anchorage lawyer Patrick Blackburn (Member No. 9610050). The order came after Blackburn failed to respond to formal disciplinary charges, with the effect that the charges were deemed admitted.

During late 2000 and early 2001 the Bar Association received 17 grievances against Blackburn. These generally involved charges by Blackburn's clients and the courts that he accepted fees then did little or no work, failed to appear at court hearings, failed to communicate with clients or the courts and failed to account for or refund unearned fees. In one case Blackburn settled a claim but failed to deliver the settlement money to the client. In another case he accepted cash from a client for delivery to a third party but kept the money. He eventually abandoned his practice and left for the Lower 48.

In addition to the disciplinary charges, 25 clients filed fee arbitration petitions against Blackburn. Other clients filed claims with the Lawyers Fund for Client Protection, which can partially reimburse clients injured by lawyer fraud. The fee arbitrations were converted to LFCP claims, and the fund paid $47,000 to 51 clients. The Bar Association appointed a trustee lawyer to close Blackburn's practice

Under the Bar Rules, Blackburn is eligible to apply for reinstatement in five years. But under the Supreme Court's disbarment order he first must pass the ethics portion of the Alaska bar exam, reimburse the LFCP fund, reimburse the Bar for the trustee lawyer's fees, pay all fee arbitration awards, pay for any other losses caused by his misconduct, and submit evidence of his psychological fitness.

The public documents on this case can be reviewed at the Bar Association office in Anchorage.

GETTING TOGETHER

Family mediation & elderly parents

☐ Drew Peterson

For some reason, no doubt related to my age, I have had a number of experiences over the past couple years with mediation of cases involving elderly parents. The cases have also led to my recognition of a number of recent articles on the subject in the mediation literature. As a result, I have become much more aware of the appropriateness of using family mediation in estate and guardianship cases, as well as other cases involving elderly parents.

PERSONAL EXPERIENCES

In one recent case, I mediated a will and estate dispute between five adult children who had grown up in two separate family units, with minimal communication all around. By the simple method of getting them together in person and by phone, they were able to face diverse concerns that they had based on past miscommunications and realize that they all had the same goals. The outcome was a totally satisfactory and rapid resolution of an estate which looked initially likely it could engender years of litigation.

In a second case, while not quite as satisfactory for all parties as the first, three siblings were able to successfully resolve the immediate issues of care of their elderly parents. Though disputes remained between the siblings, they all at least got a chance to tell their story and to be listened to. As a result, the siblings were enabled to make a decision that none of them was truly happy with, but which all of them were willing to support.

Finally, and most memorable for me, I was able to use the mediation method within my own extended family, to get all of my siblings and an elderly parent on board with a care plan for a second elderly parent going through a health crisis. While not exactly a true mediation (I served in a mediator-like role, though obviously not neutral), the process worked excellently to confront issues of care and estate-planning, which we realized in retrospect, should have been dealt with years before. By getting all the siblings on the same page, we were even able to negotiate directly with our caretaker mother, who we were all afraid could be endangering her own health under the stress of caring for her spouse.

MEDIATION IN ESTATE SETTLEMENT

A recent article on Mediate.Com, by Rikk Larsen, is entitled Mediation in Today's Estate Settlement World (http://www.mediate.com). Larsen summarizes key benefits for the use of the mediation process in the estate settlement processes. To wit:

- Mediation facilitates effective communication between family members at a time when such communication is critical to success.
- Mediation allows key emotional issues to be aired in a supportive environment. By its very nature, mediation can create an environment where complex issues can be shared and discussed before they escalate out of control.
- The power of neutrality in mediation is substantial, and should not be underestimated. While a mediator should probably be familiar with the key elements of legal, financial and tax planning related to the estate settlement process, the mediation process has the ability to rise above the narrow legal focus of those disciplines.

Unfortunately, Larsen concludes that the use of mediation in the estate settlement process remains uncommon. He believes that the gatekeepers to the process, the lawyers, financial planners and CPAs who traditionally get the first call to help families through the estate settlement maze, rarely suggest mediation to their clients. To change this, Larsen suggests that those of us in the mediation field should:

- Convince the traditional estate settlement professionals that mediation is not a threat but a positive team option that can make their job easier and provide better services to their clients.
- Work with the probate courts to include mediation as a formal court approved option.
- Continue general marketing to the public by word of mouth, published articles, and involvement in professional associations.

By doing so, Larsen believes mediation can make a major and beneficial contribution to the estate settlement process.

MEDIATION IN ESTATE-PLANNING

A second article in Mediate.Com, by David Gage and John A. Gromola also published in the Elder's Advisor; The Journal of Elder Law and Post-Retirement Planning, discusses the use of mediation in the estate-planning process. Gage and Gromola assert that with the use of mediation the estate-planning process could be less prone to conflicts, and a more rewarding and rich experience for everyone involved.

According to Gage and Gromola, a big part of the problem of effective estate planning is a lack of communication and miscommunication between family members, as well as between family members and their advisors. Changing the patterns of communication that typically occurs can make a huge difference in the family's experience as well as in the advisors' experience of the process. Parents need to be encouraged to have serious conversations between themselves and their adult children and other heirs about settling estates, dividing property, and their own dying.

People do not typically explain their thinking or their feelings well, which can lean to vast room for misperceptions to flourish. People also have trouble listening to each other, and make assumptions about what they are hearing. Avoiding such conversation, however, can lead to a host of other problems.

In our culture, the authors assert, there seems to be an underlying assumption that people are better off not discussing their intentions with family members. It is particularly difficult for us to discuss death on any terms, whether our own death or that of other family members.

Such difficulties in communication among family members lead to problems for the estate-planning professionals as well, especially in dealing with families and networks that do not necessarily have solid, healthy relationships. Conflicts of interest can arise between such family members, especially in estate-planning with a couple who are not in sync, thereby placing the estate-planning professionals themselves in jeopardy of malpractice exposure, or worse.

According to the article, mediators are uniquely positioned to help the estate-planning professionals with the preparatory work of clarifying the real needs and interests of the parties and their heirs, thereby increasing the likelihood that everyone will be comfortable and satisfied with the plan as developed.

MEDIATION IS AN INFORMAL, FLEXIBLE PROCESS THAT ENCOURAGES PARTIES TO CREATE CONSENSUS AGREEMENTS THAT HAVE THE BEST POTENTIAL OR WORKING IN THE LONG TERM FOR EVERYONE INVOLVED.

The mediation process is designed to achieve successful resolution of highly emotional and contentious conflict. The mediators are neutral and work for the common good of all of the people involved. They may work for the entire family even while recognizing the different roles, authority and position of the various family members and other heirs.

Mediation is an informal, flexible process that encourages parties to create consensus agreements that have the best potential or working in the long term for everyone involved. The fact that mediation is confidential and cannot be used in later court proceedings also encourages people to be open and candid through the mediation process. This is often otherwise not the case.

MEDIATING ISSUES OF PARENT CARE

Another article on point is found in the Fall 2001 *Mediation Quarterly*, entitled Resolving Middle-Age Sibling Conflict Regarding Parent Care, by Deborah B. Gentry. Gentry asserts that sibling and other family conflict is inevitable when confronting elderly care decisions. Mediation provides substantial benefits for resolving such conflicts, although such benefits are not unlimited.

Focusing primarily on adult sibling conflicts regarding their elderly parents, Gentry points to the following as possible points of contention:

- Old rivalries and power struggles together
- Diverse outcomes and desires
- Limited resources of time, space or money
- Incompatible expectations or standards about how to get things done
- Different philosophies and values
- Power balances, such as those related to gender, birth order, age, access and control over resources and/or status as an "insider" or "outsider."

Mediation provides the family, heirs, and other related individuals with a new and different approach to resolving such interpersonal conflicts. While not perhaps appropriate to all situations, especially where another problem solving method has been used historically and is the method of choice for all disputants, mediation provides a viable alternative where there is no such unanimity of approach by the involved parties.

Gentry concludes by noting that though the sibling pair relationship is unique, the potential for closeness or distance is present just as it is with other family relationships. Conflicts between siblings surface regularly though life. Such conflict need not be feared or avoided, but can be an opportunity for growth. While mediation should not be considered a panacea for such sibling disputes, its many potential benefits should be considered.

CONCLUSION

Mediation is time-limited, goal-focused conflict resolution process. Benefits that can result include a sense of having one's concerns genuinely listened to, modeling of improved communication skills, a sense of mutual ownership in resolutions reached, and a greater willingness to abide by such decisions. All of these benefits can be extremely useful in negotiating issues involving elderly parents.

In sum, mediation is highly recommended as a component of estate and guardianship proceedings involving elderly parents. As is true in other substantive areas of mediation, there is little to be lost and much to be gained in by incorporating mediation into the resolution of such legal issues.

INVITATION FOR PUBLIC COMMENT ON THE REAPPOINTMENT OF U.S. BANKRUPTCY JUDGE DONALD MACDONALD IV

The current term of the Honorable Donald MacDonald IV, U.S. Bankruptcy Judge for the District of Alaska, is due to expire July 1, 2004. The U.S. Court of Appeals for the Ninth Circuit is considering the reappointment of the judge to a new term of office of 14 years. The court invites comments from the bar and public about Judge MacDonald's performance as a bankruptcy judge. The duties of a bankruptcy judge are specified by statute, and include conducting hearings and trials, making final determinations, and entering orders and judgements.

Members of the bar and public are invited to submit comments concerning Judge MacDonald for consideration by the Court of Appeals in determining whether or not to reappoint him. Anonymous responses will not be accepted. However, respondents who do not wish to have their identities disclosed should so indicate in the response, and such requests will be honored.

Comments should be submitted no later than **August 15, 2003** to the following address:

Gregory Walters, Circuit ExecutiveOffice of the Circuit Executive
P.O. Box 193939
San Francisco, CA 94119-3939
Attn: Reappointment of U.S. Bankruptcy Judge Donald MacDonald IV
Fax: (415) 556-6179

Voluntary Continuing Legal Education (VCLE) Rule
Third Reporting Period January 1, 2002 - December 31, 2002

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 approved continuing legal education in 2002.
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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Warren W. Matthews

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Voluntary Continuing Legal Education (VCLE) Rule
Third Reporting Period January 1, 2002 - December 31, 2002

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 approved continuing legal education in 2002.
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.

Continued from pg 12

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J. Jeffrey Mayhook
Dennis L. McCarty
James H. McCollum
James H. McComas
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John R. Neeleman
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Lance B. Nelson
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High Tech In The Law Office

Fast Track profits expand services

Following a record 189% growth in revenue during 2002 over 2001, Fast Track Litigation Support LLC, a provider of electronic discovery and litigation support services, has invested in litigation support infrastructure.

Recent changes and additions include a new in-house, full-scale document scanning, imaging, and OCR service; expanded capabilities in computer forensics and electronic discovery; and a restructuring of its onshore document coding/indexing service.

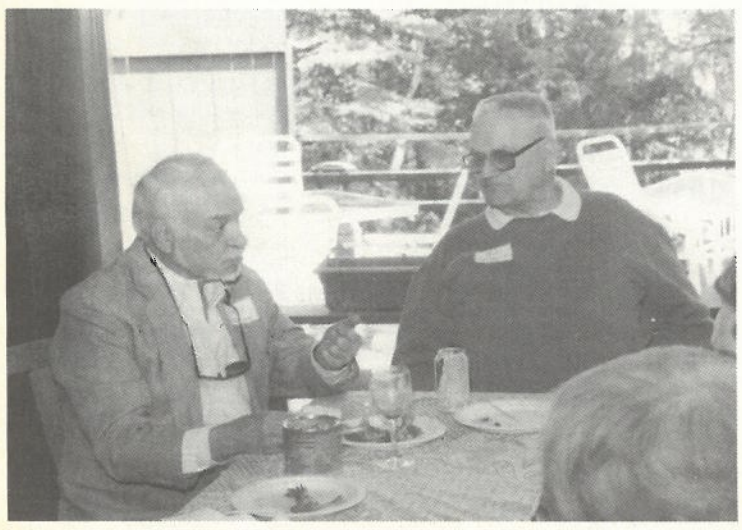
"The goal since this company was started 10 years ago has been to provide a single source solution for litigation support," said company president, general counsel, and co-founder Patricia Nieuwenhuizen. Fast Track began offering full-scale document imaging and OCR services in-house as a new service in March.

Significant resources are also being invested into expanding Fast Track's electronic discovery and computer forensics capabilities. "Staying abreast in this field is just part of the territory. New courtroom decisions and new technologies are affecting it almost weekly. At the same time, the demand for electronic discovery continues to increase as more and more litigators are finding electronic data to be an essential component of their cases," said Nieuwenhuizen.

Recent updates and developments-in-progress to its proprietary electronic discovery tool, Paramount System, include greater file recognition and expanded searching capabilities.

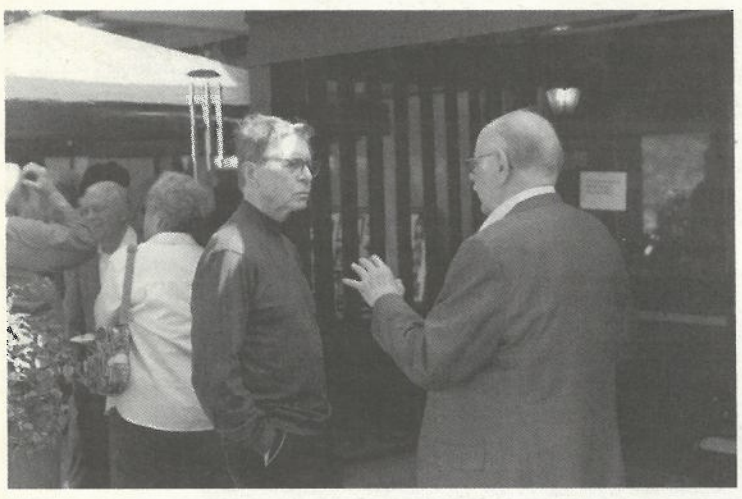
Another major development this year has been the recently completed restructuring of document coding services. Recognizing the need for a comparatively priced, more-secure alternative to offshore coding, Fast Track converted its entire Document Coding/Indexing department to a code-from-image process. "Offshore coding seems to be an increasingly tempting option in the tightened economy. Concerns over document security and service quality, however, sometimes outweigh cost-savings," says the company. "We wanted to provide our clients with the cost savings of offshore coding while continuing to deliver the peace-of-mind of onshore coding."

Judge Seaborn Buckalew, Gene Williams, and Jim Delaney



Ken Atkinson and Bob Opland

Dick McVeigh and Bob Ely



George Hayes and Judge Jim von der Heydt

Hugh Wade and Jack Roderick, last Anchorage Borough mayor

Territorial lawyers expand annual 'admissions policy'

Continued from page 1

The results were announced some five months later on the front page of the *Anchorage Times* accompanied by large pictures of the nine who had passed. Russ Arnett's wife Betty was teaching third grade at North Star Elementary School when her principal handed her an announcement in the shape of a heart that her husband had passed. (Anchorage lawyer Ann Liburd was one of her students that day. She recalls that Mrs. Arnett first "turned bright red," and then proceeded to teach her students about lawyers and the Bar Association.)

One of the lawyers who graded Opland's test later told him it was clear from his answers that there were some areas of the law he didn't give a damn about and some he really cared about. Opland went on to serve as an Assistant District Attorney and then District Attorney before entering private practice doing primarily insurance defense work. He and Charles Hagans were partners for years, and they partnered for shorter periods with Dave Bendell, Tom Boedeker and James Johnston.

Opland remembers Hagans as a quiet man but one determined to do things his own way. Opland and Hagans were partners for a year before Opland learned that Hagans was a carrier pilot on a liberty ship carrier that flew in the Aleutians campaign.

Opland came to Anchorage in 1938 on the vessel North Star, the larger of two wooden ships (the other was the Boxer) that served Alaska at the time. Father Bernard Hubbard, the priest/explorer for whom the Hubbard Glacier was named, was aboard the same voyage. Also on board was Josephine Crumrein, an artist known for her depictions of sled dogs and Eskimo children. Some of Crumrein's works hung for years in the hallways of the old Anchorage Hotel.

AS OFTEN HAPPENS IN CONVERSATION AMONG THE EARLY PRACTITIONERS, THE NAME OF GEORGE MCLAUGHLIN AROSE IN OPLAND'S REMINISCENCE.

Opland recalled that, when the North Star reached Seward, the ship was held in the harbor for five days waiting for Secretary of the Interior Harold Ickes to arrive by train and join the voyage. When the train arrived, however, Ickes got off and immediately boarded a Coast Guard cutter that promptly left the harbor and the waiting North Star behind.

As often happens in conversation among the early practitioners, the name of George McLaughlin arose in Opland's reminiscence. Opland touched on several aspects of McLaughlin's history and personality. McLaughlin was another World War II warrior; he served with Merrill's Marauders behind the lines in China and Burma. He was a good friend of Bill Egan, who was President of the Alaska Constitutional Convention and the first Governor of Alaska.

On the lighter side, Senior U.S. District Court Judge James Fitzgerald recalled McLaughlin referring to himself, a Roman Catholic, as "a weed in the Pope's garden." Fitzgerald said that McLaughlin's mother-in-law, a staunch Lutheran, visited her daughter and son-in-law every Sunday after church services. McLaughlin used that opportunity to slip anti-Catholic tracts he had clipped out for the purpose into her Bible for her later discovery.

Anchorage lawyer Ken Atkinson described McLaughlin, whose full name was George Malcolm Sean Patrick McLaughlin, as a New York Irishman with "street smarts." He graduated from Fordham Law School (where he was a classmate of the great football coach Vince Lombardi) and then came to Anchorage, where he served as a city magistrate and became deeply involved in Alaska's quest for statehood. McLaughlin was a delegate to the Constitutional Convention and served as chairman of the Judiciary Committee. Atkinson recalls that McLaughlin was adamant that the judiciary not be an elected office and credits him to a large extent for Alaska's adoption of the Missouri Plan, which still governs the judicial selection process.

Atkinson said he and McLaughlin became partners in a criminal and business practice right after Atkinson was admitted to the bar in 1955. Three years later, McLaughlin died suddenly of a heart attack at the age of 44.

McLaughlin was a close ally and confidant of Bill Egan. He ran Egan's winning campaign for senator under the Tennessee Plan in 1957 against newspaper publisher Robert Atwood, and Egan's campaign for governor in 1958, prior to McLaughlin's untimely death in June of that year. During that period, Atkinson stayed out of politics because he thought one politician in the office was enough. Someone had to mind the store.

McLaughlin's death on June 22, 1958, occurred just days before Congress voted to admit Alaska to the Union. Atkinson, who was just 32 when McLaughlin died, said he "thought it was the end of the world."

Atkinson remained in private practice in Anchorage. He turned down two requests in the early years to practice in other cities where one-lawyer or one-firm communities had constant conflict of interest problems. The firm of Ziegler, Cloudy and Jernberg pressed

Continued on page 15

The Group gathers again

Territorial lawyers expand annual 'admissions policy'

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both Atkinson and Cliff Groh to come to Ketchikan, and another lawyer asked Atkinson to set up practice in Kodiak. Atkinson noted that he now has been in practice for 48 years, but he admits that at this point he practices only "grudgingly."

Kenai lawyer Jamie Fischer, who regularly attends the Territorial Lawyers gatherings, has found a way to remain part of the legal community while enjoying retirement from practice. Fischer describes himself as the "executive administrator pro bono" of the Kenai Bar Association to which he was appointed by President Bob Cowan. Fischer has been an integral part of that organization since he and Jim Hornaday founded it on Washington's birthday in 1967.

Fischer said the Kenai Bar Association has just "struggled along" over the years but he knows its existence played a part in the Kenai Peninsula's obtaining a superior court. The magistrates serving the Peninsula prior to statehood had been based in Kenai, Seldovia and Homer. When Judge Fitzgerald took over administration of the new Third Judicial District, he created an atmosphere for judges to sit in Kodiak, Kenai and Anchorage. No superior court judge was seated at Kodiak at the time but Jim Hanson was assigned to the Kenai superior court and served until about 1985 or 1986. He retired three times but each time was called back for additional service.

Fischer arrived in Anchorage in 1955. He was admitted to the Bar in 1956 and first took a job with the construction company Morrison-Knudson. He left to open his own law office just when the state was admitted to the Union. He recalls missing the celebration, including a large bonfire, because he was too busy setting up his office. He moved to Kenai in 1961, where he practiced until 1978, when he took a federal job.

Fischer was a representative in the first Alaska State Legislature. He recalls that Judge James von der Heydt, who was then in private practice, lobbied the legislature on behalf of the City of Nome. Because Kenai was so closely associated with the Swanson River oil fields in those days, von der Heydt took to calling Fischer "oil slick." According to Fischer, even though von der Heydt was the lobbyist and Fischer the legislator, Fischer was always the one who ended up buying the milkshakes they ordered when they got together.

Fischer also recalled his early relationship with then-Superior Court Judge James Fitzgerald, who sat on the Kenai bench on occasion. During one uncontested divorce proceeding, the second divorce of the same parties, Fischer asked Judge Fitzgerald to provide in the decree that the parties could not marry a third time without first applying to the court for permission. Fitzgerald denied the request stating, "Mr. Fischer, these parties have a right to make the same mistake over and over and over again."

Fischer and his wife spent many years after his retirement from his private law practice in Juneau, where she worked for the legislature and Fischer worked pro bono for Alaska Legal Services. They returned to Kenai in 1995, where his wife died in 1997.

Just as Fischer concluded his reminiscences, Judge von der Heydt approached and greeted him from a distance with a hearty, "Hi there, Oil Slick."

Charles Tulin said he still is practicing full time in the same office building, near the Hilton Hotel, where he established his practice right after he was admitted in 1956. He claims he still follows the same schedule and is still using the same desk. Tulin vividly recalls the 1964 earthquake. When the shaking started at 5:35 p.m, he ran down the stairs and into the street where he ran right into Jack Stern. Stern also remembers the dramatic moment.

DURING HIS FIVE YEARS IN PRIVATE PRACTICE, CUDDY HAD WHAT HE CALLED A "MONOPOLY" ON ADOPTIONS.

Tulin's most memorable court appearance took place in the Old Federal Building long before courthouses had security screening. Tulin was attending a family law hearing at which he represented the husband Lloyd Duggan. During the hearing, the wife shot Tulin's client. She then dropped the gun and Duggan picked it up. An FBI agent was called to the scene and found Duggan holding the gun. When the agent asked what happened, Duggan responded simply, "She shot me." Eventually, he handed the gun over to the agent. Duggan survived his gunshot wounds but was killed just 180 days later while performing an aerobatic maneuver.

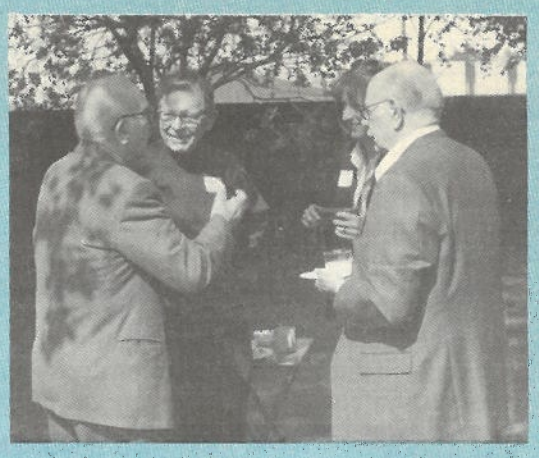
Anchorage banker Dan Cuddy, who was admitted in 1947, no longer practices law but remains an active member of the bar. He claims to hold the oldest law license in the state. He also was the last person to be admitted under the rule that permitted a person to sit for the bar without having graduated from law school if he had clerked a requisite period of time for an Alaska lawyer. Cuddy clerked for his father, Warren Cuddy, who practiced in Anchorage before he went into the banking business.

Cuddy thinks a person still should be allowed to sit for the examination without having a law degree. In his view, a person who can compete successfully in the examination with a Harvard Law graduate, should be admitted to practice.

During his five years in private practice, Cuddy had what he called a "monopoly" on adoptions. In most cases, the pregnant mother came to him for help. He did not charge the mother for his services and paid all the court fees himself. (Cuddy added mischievously that he later added the fees on to those for his divorce cases, which he did not enjoy handling.) His only requirement of the adopting parents was that they purchase a new outfit of clothing for the natural mother.

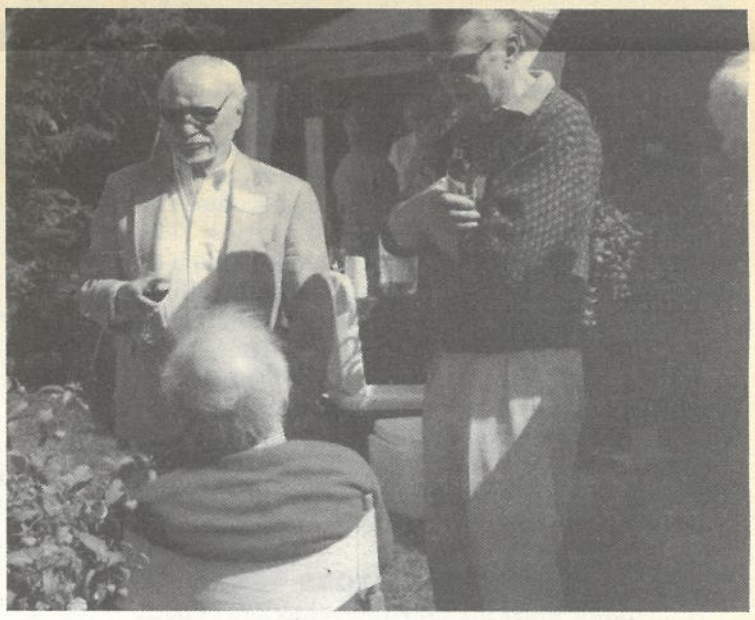
Cuddy and his wife Betty personally went to the hospital to pick up the newborn and then delivered the baby to the adopting parents. The state of Alaska gave them no problems with the way they handled the adoptions. The nuns running Providence Hospital did object, however, if the adopting parents were not Catholic. Cuddy took his problem with the nuns to the hospital chaplain, a friend and former client. The problems with the nuns then stopped.

Cuddy left the practice of law and went into banking when his father died after having taken over the First National Bank. The community was growing and Cuddy thought going into the banking business would be a wise move. Cuddy said he has never missed his practice because "ninety percent of practicing law is sadness." He also believes that in most cases one or the other party is lying and as a result, a lawyer often must defend a liar. Cuddy views banking, on the other hand, as ninety-eight percent happiness because it gives him an opportunity to give someone else a start.



John Hughes, George Hayes, Mary Hughes and Judge von der Heydt

Ev Harris and Ken Jensen



Ken Atkinson and Joe Young

Charles Tulin and Russ Arnett

Attorneys comment on mediation & domestic violence

By Allen M. Bailey and Carmen Kay Denny

Drew Peterson's flippant dismissal of the objections of "feminists and domestic violence advocates" to mediating high-conflict divorce and custody cases (The Alaska Bar Rag, May-June 2003, p. 34) minimizes the importance of research over the past 25 years which has shown that domestic violence victims may be abused and even seriously endangered during the separation period when Peterson would have them "accomplish more" by mediating issues with the perpetrator.

It completely ignores the effects of domestic abuse on children and custody arrangements.

The contention implies that parties can mediate outside the letter of Alaska family law and it opens the door for increased use of court-ordered settlement conferences which place perpetrator and victim in positions similar to those of m ediation, where they must negotiate on an equal playing field.

The argument's blithe broad-brush picture of the successes for battered women who mediate is a complete mischaracterization of the terrible mental and emotional toll required of any victim who must sit with his or her perpetrator.

THE BOTTOM LINE: how is a client, whose spouse shoved the barrel of a .44 magnum revolver into her or his ear and threatened to kill, supposed to benefit from a "heart to heart" (The Bar Rag, Id.) talk with the battering partner and negotiate custody of their children or anything else?

THE ARGUMENT'S BLITHE BROAD-BRUSH PICTURE OF THE SUCCESSES FOR BATTERED WOMEN WHO MEDIATE IS A COMPLETE MISCHARACTERIZATION OF THE TERRIBLE MENTAL AND EMOTIONAL TOLL REQUIRED OF ANY VICTIM WHO MUST SIT WITH HIS OR HER PERPETRATOR.

DOMESTIC VIOLENCE MEANS ABUSE

"Abuse is defined as a pattern of coercive behavior in an intimate relationship through which one person attempts to control another. Abusers employ a variety of tactics to exercise power and control over a partner, including physical, psychological, financial and sexual abuse, intimidation, humiliation and creation of fear." (Effects of Domestic Abuse on Child Witnesses, Wiley Family Law Update, 1997, p. 203.) If repeated over time, a pattern of interaction based on fear or threat of loss becomes the dominant relationship style of the parties. The victim begins to develop coping behaviors, such as dissociation, lying, crying, hiding, swearing, yelling, wakefulness, loss of appetite, passivity, helplessness, stealing and anything else deemed necessary to protect the children or one self. (Some mothers have shut their eyes when dad improperly sleeps with daughter to avoid retaliation.) Accompanying emotional states, such as anxiety, distrust and paranoia evolve. We question whether this type of a spouse/victim can participate in mediation.

SKILLED MEDIATORS

A mediator must manage the behaviors of both the victim and the perpetrator in Mr. Peterson's "feel good" sessions. The victim of violence may experience post traumatic stress while in the presence of the perpetrator and manifest behaviors appropriate for survival but not for conflict resolution. Such coping behaviors can run a range from outwardly aggressive to total passivity; either way, negotiations are skewed because of emotional duress. Post traumatic stress reactions shut down rational thinking so that the victim-party may be "negotiating" from a place of instinct or emotion, not from a place of reasoned articulation. In rare circumstances, the victim may decompensate, requiring immediate medical attention.

How many Alaskan mediators are trained to identify and address these coping behaviors? How many settlement judges are trained to respond appropriately to these situations?

Screening for potential abuse should be done at the outset. In Alaska, few attorneys who ask the court to order mediation are specially trained in assessing the dynamics of abuse. Generally, the research suggests that parties do not report domestic violence, even to their lawyers. (See Alaska Child Visitation Mediation Pilot Project; Report to the Legislature, Feb. 1992, Alaska Judicial Council, p.22-3.) If a party has obtained an ex parte order under AS 18.66.100, the court has a preview. Otherwise, Civil Rule 100 does not require that a party be assessed to determine if (s)he has stopped the violent and abusive behaviors, accepts responsibility for the abuse and recognizes the partner's right to autonomy.

ALASKA FAMILY LAW

Mr. Peterson failed to establish the legal framework in which the Connecticut mediations he discusses occurred. Does Connecticut have mandatory mediation? In some state family courts, parties are required to attend one or more mediations to resolve custody and visitation before returning to court. (See Alaska Child Visitation Mediation Pilot Project at 38-51.) In such instances, the victim is pressured by both the mediator and the perpetrator to come to agreement in a demonstrably coercive situation.

Reports of more beneficial financial arrangements after mediation don't tell us whether the batterers actually make those promised payments.

Further, Civil Rule 90.3 applies to all child support calculations, regardless of whether the amount owed is determined in mediation or in court. Civil Rule 90.3 Commentary, Sec. I.B. Mr. Peterson would have us believe that a batterer may put away the calculations requiring a minimum child support payment of 20% of net income per year and voluntarily negotiate to pay *more*? We find that an incredulous leap of logic! Mr. Peterson's panacea of "proper training for mediators in cases involving power imbalances" is not enough to protect victims or children in violent homes, either physically or financially.

ALASKA CIVIL RULE 100

Civil Rule 100 does effectively establish a rebuttable presumption that mediation should not occur between parties where domestic violence has occurred. It allows the victim to proceed if (s)he feels safe and empowered. However, it does not establish protocols to minimize risk and maximize safety for victims. Nor does it address the long-term emotional and psychological damage and physical danger inherent whenever a mediating couple (or a settlement judge) follows Alaska's joint legal custody statute in cases of domestic violence. Finally, the system is internally inconsistent, in that cases where there has been domestic violence may not be ordered to mediate, but the judge can still order the parties to a settlement conference.

REAL CASE EXAMPLES

The emotional damage sustained by a child who is called a "whore" or "bitch" by her mother whenever the mother is intoxicated and unhappy is difficult to quantify; it therefore falls into the category of emotional abuse but is not sufficient evidence that the mother's substance abuse directly affects the well-being of the child to trump the joint custody statute. AS 25.24.150(c)(8). Yet, name-calling is a form of domestic abuse under AS 47.10.011(8). And, in a home where such abuse occurs, children are very much victims of that abuse. (See Effects of Domestic Abuse on Child Witnesses, Wiley Family Law Update, Chpt. 9, 1997.) However, unless there is more, the mother in this case would likely receive joint custody of the girl.

A second problem is the "see no evil" standard of many Alaska courts in applying the joint custody statute where there is a history of statutory rape (generally an under-age woman and older man) but the parties now have a child, or the young woman has declared emancipation and moved in with the perpetrator. This exemplifies the extent to which the damage and dangers of domestic violence are either misunderstood or minimized. Joint custody requires the ability to communicate and to co-parent. *Farrell v. Farrell*, 819 P.2d 896 (Alaska 1991). How can a young (victim) woman be ordered to continue to interact with her rapist because of the statute, AS 25.20.060? (But cf. AS 25.20.090(8).) It is likely her emotions, coping strategies and cognitive functioning would all go into post traumatic stress reaction, screaming "fight or flight," every time the perpetrator was around.

In fact, this is a healthy reaction; humans are designed to "survive", so the victim should NEVER be chastised for this natural response. But the joint custody best-interest predicate requires that victims do "more", be "more", and these young women have been ordered to set aside their history with rapists to accomplish co-parenting. In such cases as these, application of the joint custody statute re-victimizes the victim and perpetuates the hostile atmosphere it intends to dismantle. It fails to protect the children and it fails to protect the victim. It empowers the perpetrator, who has no consequences for continued abusive behaviors, unless the victim takes more action.

Mediators are not trained to handle post traumatic stress and attempt conflict resolution in the same sessions--nor should they be. A spouse who suffered physical or emotional abuse cannot feel safe under any circumstances under these facts and it follows that such a spouse cannot negotiate on the level playing field mediation is supposed to provide. In such cases as these, the joint custody statute must not prevail and the parties should be allowed to proceed as quickly as possible to trial.

How is a spouse, who has been raped and controlled by limiting her access to money, outside contacts, transportation and even food, going to feel safe and able to negotiate equally during those "heart to heart" (Id.) mediation sessions with someone she fears?

And finally, men are also victims. How is the client, who endured years of his wife's anger as she hit him on the head and he thought he deserved it, to come to the table and negotiate an "equitable" split of his oil company retirement assets? Male abuse victims are also numerous and often too embarrassed to file for protective orders. These people have limited support systems as their claims of abuse are often ignored because of their "size" and they are also disadvantaged in the mediation process.

BATTERER PROFILE

Batterers don't change their world view just because they are involved in mediation, suddenly treating their partners (whom they have abused and controlled) with respect and dignity. Their controlling behavior is usually enduring. Bancroft and Silverman, *The Batterer as Parent*, Sage Publications, 2002, pp. 3-28, 178-187; Jaffe, Lemon and Poisson, *Child Custody and Domestic Violence*, Sage Publications, 2003, p. 16. The Alaska Supreme Court has accepted the idea that one predicts future behavior by looking at past behavior, and for good reason. *Holl v. Holl*, 815 P.2d 379 (Alaska 1991), Appendix A.

Mr. Peterson chooses to ignore the fact that the Alaska Legislature took the behavior of batterers into account in its 1996 enactment of AS 25.20.080(f,g), 25.24.060(f,g) and 25.24.140(d,e), which state that the presence of domestic violence effectively precludes mandatory mediation. It was also among the reasons for the adoption in 2000 by the ABA House of Delegates of a recommendation "that court-mandated mediation include an opt-out prerogative in any action in which one party has perpetrated domestic violence upon the other party."

The premise that domestic violence is caused by anger on the part of the batterer suggests the logic that in order to make mediation work, you simply avoid angering the batterer! The fact is, however, that domestic violence is a form of control, not an expression of anger. *The Batterer as Parent*, p. 5. That control is propagated in mediation.

In a report to the ABA House of Delegates in 2000, the ABA Commission on Domestic Violence said that "[m]ediation is an appropriate and positive means for many parties to self-determine successful resolution of their legal conflicts." The commission added, however, that "it may be inappropriate, counterproductive and dangerous when one party has perpetrated domestic violence against the other." (That report was co-sponsored by the ABA's Section of Dispute Resolution, the people who *promote* mediation.) The ABA report explained:

A fundamental principle of mediation is that parties must be able to reach a voluntary, un-coerced agreement. This is often impossible in cases in which one party abuses the other, given the inherent power imbalance between an abuser and

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Reader Commentary

Family mediation works for women & children (who aren't victims of domestic violence)

By Christine McLeod Pate

In Drew Peterson's May-June 2003 column in the Bar Rag entitled "Mediation Works for Women and Children," Mr. Peterson.states that "the feminist and domestic violence community" are "skeptical" of mediation, because we fear that "mediation may be harmful to women and children." Mr. Peterson then goes on to cite a 1999 scholarly study from Connecticut, which he states "confirmed that women and children were not harmed by mediation . . . . and that indeed ...they obtained better outcomes through the mediation process."

IT IS NOT THAT MEDIATION IS BAD. IT IS THAT MEDIATION IS UNFAIR WHEN DOMESTIC VIOLENCE IS INVOLVED, NOT MERELY BECAUSE WOMEN AND CHILDREN ARE INVOLVED.

Mr. Peterson seems to miss a fundamental point of those of us who are "skeptical" or concerned about mediation. It is not that mediation is bad. It is that mediation is unfair when domestic violence is involved, not merely because women and children are involved.

The study cited by Mr. Peterson, performed by two mediators and two professors in Connecticut, compared various outcomes in family law cases that were mediated versus cases that were resolved through the adversarial process. 1 The study found that in mediated cases, women obtained a significantly greater percentage of assets, periodic alimony for a significantly longer duration, and significantly more child support. The study does not mention domestic violence as a variable that was analyzed. In fact, of the 199 mediated cases and 201 adversarial cases that were analyzed for the study, there is no indication that domestic violence was alleged or even screened for all. Mediation relies on parties jointly coming together to reach a consensus on the issues that they have in dispute. It relies upon people who have equal bargaining power coming to the table in good faith to work out an agreement to their differences. As Mr. Peterson states, citing his own professional experience, mediation allows parties to "talk heart to heart about the needs of their children, and their own needs and fears...." Parties are "empowered" to work out arrangements agreeable to both. Mr. Peterson also states that it leads to less conflict after the divorce, compared with other divorcing couples.

Domestic Violence is characterized by one party's assertion of power and control over the other party through tactics including physical, sexual, psychological and financial abuse. Domestic violence goes beyond individual acts of aggression to encompass an overall pattern of behavior aimed at maintaining complete control.2 Abusive partners believe that they are entitled to the services, loyalty and exclusive intimacy of their partners. The overarching attitudinal characteristic of batterers is entitlement. Batterers believe that they have special rights and privileges without reciprocal responsibilities. Other characteristics of batterers include a sense of superiority, victim blaming and denial, manipulation, and self-centeredness.3

One reason that mediation is not recommended in domestic violence cases is because there is not equal bargaining power between batterers and their partners. Abusive partners cannot negotiate in good faith with their partners because they cannot see past their own self-interest. They cannot cooperate for the mutual benefit of their family. Nor can one expect a victim of abuse to voluntarily want or be able to sit safely at the negotiating table with their abusive partner. Abuse victims have been belittled and demeaned for expressing their needs. They will likely be fearful of expressing their opinions, expecting retribution from the abusive partner. A victim of abuse will not be "empowered" by mediation, but will rather view it as one more tactic by the batterer to continue their control.

Mediation also poses clear safety risks for victims of domestic violence, merely by giving abusers physical proximity to their ex-partners. The common heard question, "why didn't she leave" reveals a common misperception about domestic violence. The fact is that separation is often the most lethal time for victims of domestic violence. Up to three-fourths of domestic assaults reported to law enforcement agencies were inflicted after separation of the victim from her abuser.4 Abusers react to separation by increasing their tactics to continue to assert control. One study revealed that 73% of the battered women seeking emergency medical services sustained injuries after leaving their batterer.5 Many battered women report being stalked and harassed by their ex-partners after they leave the relationship.

Separation can also present a new phase in an abusive relationship in that the batterer will often retaliate against the ex-partner through any means possible including using the courts and custody as a weapon.6 One such tactic includes undermining the abused victim's authority over the children. Mediation generally seeks to resolve custody disputes through joint parenting agreements. Joint custody and parenting is not recommended when there has been domestic violence.7 Joint custody demands frequent communication and contact between parents regarding a child's best interests. As stated above, there is not healthy communication between victims of abuse and their batterers. Furthermore, the more legal access the batterer has to the mother and the more legitimate power he exercise over her daily life, the greater the risk of continued, escalating violence.

I am in agreement with Mr. Peterson that in non-abusive relationships, mediation is an excellent alternative to the expense and stress of a contested family law case. But when domestic violence is involved, attorneys and judges must tread carefully. Our Legislature understood this when in 1996, several provisions were put in the law to protect domestic violence victims from abuse. The courts are prohibited, by law, from ordering mediation for issues resulting from a protective order.8 In divorce and custody cases, the court cannot order or refer a victim of domestic violence to engage in mediation unless she wants to use mediation and is told that the court will not hold her decision not to mediate against her. If the victim chooses to proceed with mediation, the mediator is required to evaluate if domestic violence has occurred between the parties. Mediation should not go forward if a "crime" of domestic violence has occurred, unless three requirements are met: the victim agrees to mediate, mediation is provided by a mediator who is trained in domestic violence and in a manner that protects the safety of the victim or any household member, taking into account an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim, and the victim is given the option of having a person of the victim's choosing available in the mediation. 9

Self determination and empowerment are central to both domestic violence advocates and mediators. It is important that all options remain open to victims of domestic violence. However, the system in place for referring parties to mediation and conducting mediation fully must take into account the legal rights and protection of abuse victims. As required by law, thorough screening for domestic violence should occur before parties are referred to mediation. Screening should include questions such as:

1. Do you have concerns about mediating in the same room with the other person?
2. Are you fearful of the other person for any reason?
3. Has the other person ever threatened to hurt you in any way?
4. Has the other person ever hit you or used physical force towards you?
5. Are you able to speak your mind and express your point of you with the other person?
6. Does the other person swear at you or call you demeaning names?
7. If you were to express your point of view, would you be afraid of what the other party might do?
8. Is the other person extremely jealous of when you spend time with friends or family?
9. Has the other person destroyed your belongings or harmed pets on purpose?
10. Has the other person ever limited your ability to get food, shelter, clothing or medical help?
11. Has the other person ever threatened to harm themselves?
12. Has the other person ever followed you without your consent?
13. Does the other person have firearms that they have threatened you with?
14. Have you ever been afraid for yourself based on how the other person has looked or acted?
15. Has the other person ever forced you into sexual situations in which you did not want to be involved?
16. Does the other person use alcohol or drugs? Are they violent when they are using?
17. Are you worried about answering some of the questions on this questionnaire?

Expansive questioning is necessary since many victims will not openly disclose domestic violence. Abuse is generally underreported as many victims choose not to disclose the abuse because of shame, guilt, or fear. Screening must occur in private so that victims are not fearful or intimidated to disclose abuse. It is also important to have flexible tools for screening because different relationships may present different challenges to the mediation. Different tools may reveal different issues of abuse that may be problematic to the mediation. If screening reveals domestic violence, mediation is generally not recommended.

If victims do choose to continue with mediation, it is imperative that the statutory protections are observed to ensure that the mediation is fair and safe. First, representation of victim is crucial

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Attorneys comment on mediation & comestic violence

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victim. . . . So though mediation programs can be developed with victims' safety in mind and in an endeavor to even the playing field, opt-out provisions are still critical.

PRESUMPTIVE JOINT CUSTODY

Social and mental health researchers have found that joint parenting is harmful to children where parents have been in violent relationships. Wallerstein and Blakeslee, *Second Chances: Men, Women and Children a Decade After Divorce*, 1996, p. 272-273; Wallerstein, Lewis and Blakeslee, *The Unexpected Legacy of Divorce*, 2000, p. 313; *The Scientific Basis of Child Custody Decisions*, Robert M. Galatzer-Levy and Louis Kraus, Eds., 1999, p. 416; "Legal Responses to Domestic Violence," 106 Harvard Law Rev. 1448, at 1610-11.

Batterers also seek physical custody even though that is unhealthy for their children, as one can see in *Borchgrevink v. Borchgrevink*, 941 P.2d 132 (Alaska 1997); *Knock v. Knock*, 621 A.2d 267 (Conn. 1993); and *Huletz v. State*, 838 P.2d 1257 (Alaska App. 1992), fn. 3. They do so, in our experience, to continue to contact and control their victims. Even Congress has recommended against placing children in the custody of batterers. *Knock*, supra. The National Council of Juvenile and Family Court Judges has made the same recommendation in its Model Code on Domestic and Family Violence. The Model Code provision states as follows. See Sec. 401 ("In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence").

Even mediators trained in power balancing, (Mr. Peterson's panacea to the problem), are often unable to accomplish meaningful conflict resolution because of the time, money or temperament constraints which necessarily walk in the door with a couple engaged in high conflict. Judges should not require blanket settlement conferences on the theory that presumptive joint custody requires parties to learn to co-parent. The issue of abuse is a critical factor in deciding whether mediation is ever appropriate and whether an abusive parent should share custody.

Family mediation works for women & children (who aren't victims of domestic violence)

Continued from page 17

to protect the victim's rights and safety in the mediation. A 2002 study done by two economists found that providing legal services to victims of abuse was the most effective means of ending the violence in their lives.10 Unfortunately, many domestic violence victims proceed pro se through the court system in family law disputes, as Alaska Legal Services and pro bono programs do not have the resources to assist each victim. Model practice would ensure that each time the court referred a victim to mediation or a mediator discovered domestic violence through screening, a pro bono attorney could be called upon to assist financially indigent victims through the mediation process. Second, shuttle mediation should be used so that the victim does not have to negotiate in the same room with the abuser.

IT IS CRUCIAL THAT ALL MEDIATORS ARE ADEQUATELY TRAINED IN DOMESTIC VIOLENCE SO THAT THEY UNDERSTAND HOW TO IDENTIFY IT AND DO NOT INADVERTENTLY FURTHER THE ABUSERS TACTICS OF CONTROL

Finally, it is crucial that all mediators are adequately trained in domestic violence so that they understand how to identify it and do not inadvertently further the abusers tactics of control. Training should include understanding the dynamics of domestic violence, effectively screening parties for domestic violence, accommodating the needs of domestic violence victims in mediation and assisting victims with safety planning. The Court system should require that persons requesting referrals from the Court for mediation in family law disputes have 5-10 hours of training in domestic violence each year. For attorneys who act as mediators, this training is compelled by both ethical rule as well as Alaska statute.11 Many family law attorneys who act as mediators do not have training in domestic violence issues. Each spring, the Alaska Network on Domestic Violence and Sexual Assault holds a CLE entitled "The Impact of Domestic Violence on Your Law Practice," providing 12 hours of training on domestic violence issues. Training is also available through many of the training opportunities that local domestic violence and sexual assault programs provide statewide.

Nationally recognized domestic violence expert Barbara Hart cautions that mediation "offers false promises to battered women - promises of cooperation, honest communication, safety, amicable post divorce collaboration in parenting, improved communication and fairness."12 It is incumbent upon attorneys and the courts to follow the law and ensure that mediation protects victims of domestic violence and their children rather than providing merely "false promises."

Footnotes

[1] Mary G. Marcus, Walter Marcus, Nancy A. Stillwell, Neville Doherty, To Mediate or Not to Mediate: Financial Outcomes in Mediated Versus Adversarial Divorces, Mediation Quarterly, Vol. 17, No. 2, pp. 143-152 (Winter 1999).

[2] Peter G. Jaffe, Nancy K. Lemon, Samantha E. Poisson, Child Custody and Domestic Violence: A Call for Safety and Accountability, 4 (2003).

[3] Lundy Bancroft and Jay G. Silverman, The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics, 5-19 (2002).

[4] U.S. Department of Justice (1983).

[5] Barbara J. Hart, Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation, Mediation Quarterly, Volume 7, No.4 at 324, (1990).

[6] Bancroft and Silverman at 62.

[7] Six sections of the American Bar Association have recommended that states amend their custody and visitation codes to include a presumption that custody not be awarded, in whole or in part, to a parent with a history of inflicting domestic violence. The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association, at 15 (August 1994).

[8] AS 18.66.130(c).

[9] A.S. 25.20.080, A.S. 25.24.060, A.S. 25.24.140.

[10] A. Farmer and J. Tiefenthaler, "Explaining the Recent Decline in Domestic Violence."

[11] See, Alaska Rules of Professional Conduct 1.1(a), "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

[12] Hart at 326.

Drew Peterson's Response to column critiques

While I am always happy to generate some controversy with my column, (otherwise I never know if anyone is actually reading it), I am mystified as to how Mr. Bailey and Ms. Denny read my little article describing a Connecticut research project on mediation as advocating the use of mediation in domestic violence cases. I do not believe that I in any way advocated such in the article. My only related point was that that those who automatically reject the use of mediation as being harmful for women and children should take another look, in view of the findings of the Connecticut study.

I do believe, and so pointed out in the article, that it is critical that mediators practicing in the family law field have training in domestic violence, and I have been involved in efforts in Alaska to make sure that they do.

I have no disagreement with Mr. Bailey's, Ms. Denny's and Ms. Pate's concerns about the potential for abuse from using mediation in serious domestic violence cases. I agree that mediation is not appropriate in such cases. That is another article, however, which I don't need to write because they have already written it.

ESTATE PLANNING CORNER

Taxes applicable in Alaska

□ Steven T. O'Hara

This column outlines wealth transfer taxes applicable here in Alaska. These taxes are primarily federal and Alaska transfer taxes.

On the federal level, there are three transfer taxes. First, there is the federal estate tax (IRC Sec. 2001 et seq.). This tax is payable by reason of an individual's death.

Second, there is the federal gift tax (IRC Sec. 2501 et seq.). This tax is considered necessary as a back-up to the estate tax. Without a gift tax, the property holder could gift her property away before death to avoid the estate tax. As suggested later, this loophole exists but has been limited, in general, to $11,000 per donee per year.

Third, there is the federal generation-skipping transfer tax (IRC Sec. 2601 et seq.). The objective of this tax is to assure that a transfer tax is paid at each generation. The federal government would like to see, for example, a tax paid when grandparent dies, when child dies, as well as when grandchild dies. The generation-skipping tax tries to catch those transfers that would avoid the payment of a transfer tax on the death of the middle generation — the child in our example. Like the estate and gift tax, however, the generation-skipping tax is not limited to family transfers. It could apply, for example, to gifts made by an unrelated party to my child, if the donor is more than 37.5 years older than my child (IRC Sec. 2651(d)).

On the State of Alaska level, there is only one transfer tax and that is the estate tax (AS 43.31.011 et seq.). The State of Alaska does not impose a gift tax or a generation-skipping tax. Alaska's estate tax chapter defines the term "transfer" to include gifts (AS 43.31.420(11)). But this definition applies only with respect to property transferred before death that is included in the decedent's gross estate for federal estate tax purposes (See, e.g., IRC Sec. 2036).

On the death of an Alaskan or a person holding property here, the state "picks up" its share of the credit, if any, that the federal government allows for death taxes actually paid to any state (AS 43.31.011 et seq.; IRC Sec. 2011). Accordingly, the Alaska estate tax is often referred to as a "pickup tax."

In other words, the Alaska estate tax can, in general, be thought of as not increasing estate taxes but rather as a revenue sharing mechanism. If no federal estate tax is owed on death, then the federal estate tax death credit is unnecessary and not used, which means there is no Alaska estate tax due.

Significant other transfer taxes exist in other jurisdictions. Accordingly, whenever a client resides or has property located outside Alaska, whether that outside place is another state or a foreign country, the client ought to seek counsel on the possibility of additional transfer tax exposure. This issue may arise other than in the traditional estate planning context.

For example, suppose a client who is domiciled outside Alaska calls and says she owns real estate in Alaska and wishes to transfer it into an Alaska limited liability company and wants help in the formation of the LLC. Transfer of that real estate into the LLC owned by the client may cause inclusion of that property in the client's state gross estate, for estate tax purposes, as an intangible asset. This would be a problem if the client is domiciled in a state that has a significant estate tax of its own.

There are numerous credits, deductions, exclusions, and exemptions that apply with respect to the transfer taxes. The most widely known of these items is the unified credit, also known as the applicable exclusion amount (IRC Sec. 2010). The effect of this exclusion in 2003 is to exempt transfers of up to $1,000,000 per donor from the imposition of *any gift or estate tax* regardless of the donee, assuming no other transfers. Beginning in 2004, the estate tax and gift tax systems part company. In 2004, the applicable exclusion amount remains at $1,000,000 for gift tax purposes (IRC Sec. 2505). For estate tax purposes, the 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, before decreasing back to $1,000,000 in 2011 (IRC Sec. 2010; *Economic Growth and Tax Relief Reconciliation Act of 2001*, Sec. 901).

Thus, if a client who has never made a taxable gift dies in 2006 with assets of $2,000,000, generally no federal estate tax will be triggered by reason of the client's death. By contrast, if the client in 2006 gifts his $2,000,000 in assets to his daughter immediately prior to his death, then approximately $300,000 in federal gift tax could be due and payable.

Also familiar to clients is the unlimited marital deduction. Gifts or devises to spouses are generally not considered taxable transfers (IRC Secs. 2056, 2523, & 2651(c)). A major exception is a transfer to a spouse who is not a U.S. citizen. The exception to the rule is simple and draconian. Gifts to spouses who are not U.S. citizens do not qualify for the marital deduction (IRC Secs. 2056(d) & 2523(i)). This exception is a significant pitfall for the unwary.

Another commonly known item is the $11,000 annual exclusion from taxable gifts (IRC Sec. 2503(b)). This exclusion is the foundation of much of estate planning. The exclusion is $11,000 per donor per donee per year. By way of illustration, consider a wealthy couple with four children and eight grandchildren. On December 31 of last year they could have transferred $264,000 to their descendants without making a taxable gift, and then on January 1 of this year they could have done the same, assuming no other gifts. Here the tax-free gifts would total $528,000 in two days.

As mentioned earlier, gifts to spouses who are not U.S. citizens do not qualify for the marital deduction. There is an important exception, however, to this general rule. Congress has increased the $11,000 exclusion to a $112,000 exclusion in the case of gifts to a spouse who is not a U.S. citizen (IRC Sec. 2523(i)(2)).

Of significant importance is that the annual exclusions apply only to gifts of present interests (IRC Sec. 2503(b)). In other words, a gift of a future interest generally does not qualify for the $11,000 or $112,000-alien-spouse exclusion. Most gifts made in trust are gifts of future interests.

There is, of course, a deduction available for charitable gifts and devises (IRC Secs. 2522 & 2055; *see also* IRC Sec. 2651(f)(3)).

In the generation-skipping tax arena, there are several significant exceptions, the most important of which is that each of us has been given a "GST exemption" amount (IRC Sec. 2631). In contrast to the applicable exclusion amounts, which are automatically applied on taxable gifts and on death, the GST exemption may be allocated in the discretion of the transferor or his personal representative (IRC Sec. 2632).

The GST exemption is currently $1,120,000 for individuals who have never used any GST exemption (IRC Sec. 2631). This exemption is scheduled to increase to $1,500,000 in 2004, $2,000,000 in 2006, and $3,500,000 in 2009, before decreasing to around $1,000,000 in 2011 (*Id.* and *Economic Growth and Tax Relief Reconciliation Act of 2001*, Sec. 901).

Finally, although it is not a transfer tax, the federal income tax must be mentioned. Before any transfer, the federal income tax consequences (to the donor, to her estate, and to the donee) must be considered.

TALES FROM THE INTERIOR

Something fishy

☐ William Satterberg

I have never really done well with fish. Maybe it is because fish swim. I don't swim well. Sometimes, I can barely keep my head above the water. I certainly don't swim like a fish. But I used to drink like one. As such, there exists a natural conflict between fish and me. Still, fish started me practicing law.

In 1970, I was busted for alleged commercial fishing violations in Bristol Bay. I was accused of two unrelated sets of charges, to be exact. Prior to that, I had a promising career in chemistry. It was then, when the cases were being successfully resolved by a *pro se* litigant, that I was told by Judge Paul Jones that I had potential as a lawyer. Little did I realize how central a role fish would continue to play in my existence.

Several years later, while fishing on the Little Susitna River outside of Anchorage, I again received a citation. This time, it was for having accidentally snagged a red salmon. Well, actually, I had accidentally snagged three red salmon, which is why I had a three-count citation. I was really accident prone that day. Once again, I had been hooked by a fish. And, once again, successful plea bargaining saved me.

Since my last encounter with a red salmon, I have spent countless dollars to avenge myself upon fish. I have spent funds on broken boats, broken fishing gear, broken trailer axles, broken boat engines, and more broken boats. I have just been broke, generally, as well. All for fish. And to think that I am considered an amateur when compared to the likes of attorneys Mike Brain or Mike Kramer.

Many years ago, as part of my deductible approach to office furnishings, I purchased an octagon-shaped, large aquarium from then-local attorney Gary Vancil. Gary had utilized the aquarium for his exotic collection of tropical fish until it cracked. Distraught, Gary moved to Hawaii and has yet to return.

I initially stocked the aquarium with a bright variety of tropical fish. The delicate little creatures would dance gaily around the inside of the glass, waiting eagerly for me to trickle little morsels of food on the surface of the water. Classical music and the obligatory morning latte heralded what was to be the "Renaissance Man" phase of my life. For several months I behaved truly "properly." I even contemplated writing poetry instead of *Bar Rag* articles. Eventually, however, that phase of my life went away, too.

My death as a Renaissance Man did not come rapidly. In fact, it was insidious. One day, my daughters gave me some Cichlidae as fish. The literature I researched said that Cichlidae could provide hours of enjoyment in the aquarium. What the literature did not tell me was that the Cichlidae prefer to feast upon other fish, as opposed to the fish food that I would sparingly drop onto the surface of their chamber.

At first, I did not notice the disappearance of my tropical gay little beginners-of-the-aquatic-food-chain. In time, I had several rather fat little Cichlidae in the aquarium. Ironically, there were no more of the colorful, entertaining tropical fish that previously had so happily darted about. In retrospect, I suspect that maybe they weren't darting happily about after all, but were being chased instead.

Having studied science and actually having taken a fair amount of biology during my freshman high school career, I intelligently concluded that the other fish simply succumbed to the well proven natural process of evaporation. As for the Cichlidae, with the exception that they would occasionally swim around and nip each other's tails, they were actually doing much better.

Better, that is, until a local attorney at the time, Don Logan, and his sidekick, Jane, decided to give me some April first birthday presents. These new presents were two new fish. The two newest fish were dropped off without fanfare. In fact, they were dropped off without permission. They consisted of two innocent looking South American fish, both with a pronounced overbite, aptly named Don and Jane. Once again, I consulted my fish encyclopedia. I learned that Don and Jane were two young piranhas who didn't care much for each other.

Moreover, Don and Jane certainly didn't care for any other fish in the tank, either. Within two weeks, all of my Cichlidae had also mysteriously evaporated. Again applying proven scientific method, I decided that it was time to check the mineral content of the water, since I hadn't changed it for well over two years. Not wanting to upset the ecobalance, I decided to monitor the situation closely for another year or two, despite the swamplike odor in the office. To their credit, Don and Jane seemed to be doing rather well in the scummy tank, despite the ragged chunks that each fish would occasionally mysteriously miss from their bodies.

I was never able to figure out which fish was actually Don and which one was actually Jane. Despite my efforts, I could not find an identification collar that would stay on either one of them. The idea of tattooing them proved equally ineffective as well. Although Don Logan had a rather crude theory of identification which is still unfit for print, I had to consider the source and I eventually discounted it.

When I felt like it, I would occasionally feed Don and Jane. They seemed delighted to receive virtually any morsel that would land in the tank. Often, they would even mischievously leap out of the water and bite my fingers. Having grown accustomed to this playfulness from my neighborhood's stray Rottweiler, I thought nothing of it.

Eventually, Spring Break arrived. Realizing that Don and Jane should be self-sufficient, and might enjoy being left alone to breed in private, (although that had never bothered them in the past) I chose not to ask anyone to take care of them. Besides, a five day vacation would do them good in not having to look at humans all of the time. Moreover, if I were lucky, perhaps they would grace me with a whole little bunch of little Dons and Janes. I was not to be so lucky. Tragedy was in the wings.

As soon as I returned from Spring Break, I noticed that something was amiss. Don and Jane, who had both grown to a remarkable size in their three to four years of time with me, were no longer swimming blissfully together. Don, (or was it Jane), was happily swimming around the aquarium. Otherwise, either Jane, (or was it Don), was floating inverted on the surface of the aquarium with his (or her) backside half-missing. My vice-like steel mind, coupled with my years of handling criminal defense cases, immediately told me that this was not simply a clear-cut case of evaporation like the two other incidents. Rather, I suspected something nefarious. Despite repeated questioning, under which the remaining piranha actually seemed to enjoy the bright lights, no confession was ever extracted. Don, (or was it Jane), was given a suitable burial in the toilet, just like so many of my earlier turtles had been given when my mother used to tearfully explain to me that they were "just sleeping, Billy."

I finally concluded that Don's (or was it Jane's) death was most likely the result of suicide. After all, I could not bring myself to think that the remaining piranha would have eaten the bottom half of its soulmate.

Still, something fishy was going on. Undoubtedly, the problem rested with the quality of the water in the tank. The conclusion was certainly logical. I had noticed that, since the much earlier disappearance of the gay tropical fish, the water in the tank had become increasingly cloudy and sinister over the years. The peculiar smell had increased, as well. Roll-on deodorant didn't help any more. As spontaneous visual entertainment, pieces of flotsam and jetsam would regularly drift to the surface, coupled with the occasional dorsal fin, eyeball, or skeleton of a half-eaten cow. It was a great conversation piece.

I eventually suspected that it was time to clean the tank. The mere mention of the task caused my staff to gag. Fortunately, it was summer and I had the office's high school summer helper assist me. Actually, he didn't assist at all. Instead, he did the whole job because something else came up for me at the last minute, just as it had for my staff. I chalked it up to another bad Taco Bell burrito.

The office's summer helpers have an enviable job. They usually are able to experience law first hand. In preparation for their legal careers, they are privileged to mow the lawn, wash cars, carry out the trash, and rake leaves. It is a good legal education. Still, for unknown reasons, none of the high school interns who I have ever employed, with the exception of one, Billy Pearson, have ever gone to law school. Moreover, as I recall, it was Billy Pearson who I blamed for the next tragic act.

Tasked with cleaning out the fish tank, Billy decided that he would do a first rate, crackerjack job. As his first step in this most challenging project, Billy located the janitor's bucket in the upstairs closet. He next filled the bucket with water, dipped the remaining piranha out of the tank, and dropped it into the cleaning bucket to swim about. Not wanting to cause any distress to the piranha in its temporary environment, Billy had previously scrubbed the cleaning bucket thoroughly, removing any of the caked residue with a good, cheap industrial-grade disinfectant.

Having relocated the remaining piranha to its temporary home, Billy then spent the next two minutes scrupulously scrubbing the aquarium. Upon completing his chore Billy once again turned his attention to the surviving piranha. To his horror, Billy quickly realized that his future career was sinking fast - almost as fast as the piranha. Contrary to the expected fishy behavior, the remaining piranha was now drifting upside down in the cleaning bucket. The fish was obviously playing possum or had severe ballast problems. Try as Billy might to convince me that I owned an aerobatic piranha, I pointed out that I felt that there might have been an evil spirit in the cleaning bucket, such as leftover Clorox, which had taken its toll.

Later on, I found a secretary who had witnessed the event. She reluctantly told me that, upon entering the cleaning bucket, the little creature rolled over in less than a second. Clearly, it was Alaska's first case of death by lethal ingestion. At least it was quick and merciful.

In the end, the piranha's demise

Continued on page 21

Something fishy

Continued from page 20

was probably appropriate, since newly discovered evidence did point to the fact that Don, (or was it Jane), had been murdered, possibly by its mate, although the State Troopers were never called on the issue because their best investigator had been reassigned to traffic patrol.

As often happens, I also suspected that the Fairbanks District Attorney Office would be unwilling to prosecute the matter, so I didn't call them, either. Locked in mourning, for several years the office went fishless. The sole exceptions were the occasional halibut trips, and the time that the rotten king salmon was found in the broken refrigerator of the office next door, upsetting an attorney whose name I still will not ever mention again in one of my articles lest sparks fly.

In December of 2002, office style once again changed. Whether it resulted from a glut on the market, or as a symbolic gesture, several members of the office received an attractive glass vase containing a colorful Chinese fighting fish. Exemplifying the true personality of the office, these fish related to each other in typical fashion, snarling and biting at each other through the glass at every chance. Understandably, both of the upstairs personnel, Honey and Yvonne, took an instant liking to their aggressive, antisocial mascots. After all, they say every pet mimics its master (or mistress). Still, as long as the two fish didn't get too close together, they actually seemed to look forward to each other's company. Another office romance appeared to be in the making. But, like the bulk of our other office romances, it was not to last very long.

March 17, 2003, was a sober day in the Satterberg Law Office. Although March 17 is traditionally a day of celebration for many, when Irish and non-Irish alike honor St. Patrick's Day, toasting each other and speaking in a fake Irish brogue, such was not the case as far as the office staff was concerned.

We originally had planned a festive office lunch complete with a traditional Irish fare of Mexican food and moose sausage. As usual, I ate a quick bite and raced off to the courthouse to deal with another last minute, planned emergency. When I returned, immediately I noticed that the office mood had changed. Another tragedy had struck.

The office restroom was in shambles. It first appeared that the upstairs toilet had clogged again, with "the ladies" of the office using the toilet to discard those unmentionable things that are not supposed to be discarded, but apparently kept in perpetuity.

Because of flooding in previous years, the office now has a lift station installed in the basement. The lift station quickly and efficiently reduces even the most repugnant sewage to a despicable goo by using razor sharp knife blades to cut up whatever goes down the commode. The primordial ooze is then pumped out into the Fairbanks sewers where it is eventually recycled into safe drinking water. (This is one reason why I have a well at my house.)

Although there have been numerous warnings given to staff and customers alike not to use the toilet for improper disposal, nobody follows the rules when they are upset with me. As such, the rules are almost always ignored.

The bathroom obviously needed attention. Plumbing parts were strewn all over the floor. It appeared as if somebody had, in a total panic, dismantled half of the bathroom in order to stop another impending flood or to find a lost contact lens. Recognizing opportunity, my accompanying client volunteered that he could do better plumbing work in partial satisfaction of his growing bill.

Flabbergasted, I asked what had happened. I was answered by an awkward silence. Our calendaring clerk, Yvonne, simply stared straight ahead, obviously in shock. Yvonne clearly did not want to address any questions. For once, everyone else found something to do. Moreover, our office receptionist, Honey, was nowhere to be found. Although this absence was not unusual, the coincidence of it concerned me.

Confessions were not plentiful, but I persisted in my inquiries, even threatening to bring out the rubber hose. Eventually, someone muttered that Honey had dismantled the bathroom sink. I waited for an explanation. None was forthcoming. Rather, it was business as usual. Simple question asked, simple answer given.

I pressed further. Someone in the area again remarked that "Honey has taken apart the bathroom sink." And, once again, everyone else concurred that the answer was sufficient and nodded in apparent agreement.

Recalling that, when my oldest daughter, Marianne, was five years old, she had once completely disassembled her bicycle in our garage simply out of curiosity, I decided to explore Honey's curiosity. Perhaps, Honey was attempting to further her continuing education, or possibly planning to move to a different position with the firm. After all, most plumbers are reported to make significantly more money than lawyers.

"Okay, so Honey tore apart the sink." I concluded. "Might I ask why?"

Concerned looks were exchanged. Yvonne, meanwhile, continued to stare out the window, focusing on an unseen object somewhere in the far distance. Obviously, Yvonne and Honey were up to something once again.

Eventually, someone drew me privately aside out of earshot and confided, "Bill, if you *really* must know, when you were in court, Yvonne poured her fighting fish down the bathroom sink's drain."

"Okay? . . .," I queried.

"Honey was trying to save the fish. She figured it was caught in the trap," came the whispered answer.

"So? . . ." I quietly asked again.

"So, it wasn't there!" several people simultaneously loudly blurted.

I then recognized that the office was in a collective state of shock. Everyone's worst fears were realized. Yvonne's fighting fish was now fighting it out with the whirling blades of the basement's sewage lift station. The fish needed to be rescued immediately. I asked if there were any courageous volunteers. Nobody moved. There wasn't even the slightest degree of interest. All eyes turned to me, plaintively looking for a solution. Meanwhile, Yvonne still stared catatonically out the window.

Trying to make the best out of an obviously bad situation, I reassured everyone that the fighting fish probably was safe in the warm and comforting sludge of Fairbanks.

A sensitive person by nature, I tried to cheer them up. I pointed out that, somewhere, sometime, someone in Fairbanks will be sitting on a bathroom stool and Yvonne's little fighting fish will emerge to playfully nip at whatever might happen to draw its attention. (This is one reason why I am now glad I have a septic tank at my house.) Sensing opportunity, I added that it would be standard policy to leave the office toilet seat up at all times. After all, such precautions would force users to evaluate the area surrounding the scene of the crime, and could also cut down on future embarrassing worker's compensation claims.

People were sensitive over Yvonne's loss. The next day, an anonymous person compassionately wrote on the outside of Yvonne's glass fish vase "In Memoriam, March 17, 2003." Honey, moreover, sympathetically began to withdraw certain affections from her own fighting fish.

As for myself, I must confess that I was somewhat inwardly pleased with the outcome. Previously, the staff had been spending entirely too much time in the bathroom. Certainly, the concept of doing extended legal research in the restroom would now be viewed quite differently. After all, there would always be a risk that could unexpectedly attach to prolonged cogitation.

This does not mean that the issue was over. To the contrary, Honey's impromptu repair job cost over $200. Because the office building is old, new, obsolete plumbing parts were unable to be found. Frustrated, I ultimately replaced the entire bathroom sink.

Additional expenses were also entailed. The next day, in order to help Yvonne grieve in her tragic loss, I thoughtfully bought lunch for the entire staff. As an added bonus, I was able to score a special purchase of day-old sushi from the local Fred Meyer's. Still suffering from guilt, Yvonne chose not to join us for the wake.

Eventually, the office quieted down after the loss of yet another mascot. (Several years earlier, the office iguana, Zeegar, was the first to go.) Although there is still one fighting fish, it is difficult to fight with oneself, although I have had more than one client allegedly attempt that process. Ultimately, I suspect that Honey's fighting fish will go the same direction as Yvonne's. When that happens, we will have to look for new diversions. Hopefully, no one will spontaneously dismantle the plumbing again.

In the interim, and out of fairness to all who happen to come to Fairbanks, please be cautioned that there is prowling amid the great labyrinth of sewers of Alaska's second largest city a dysfunctional blue and purple Chinese fighting fish. Do not try to capture it, but immediately call the animal shelter, instead. The little fish is *extremely* upset and is quite unpredictable. Please also beware that the orphan may unexpectedly pop up in any Fairbanks toilet at any moment, with only the slightest bit of provocation.

To combat this domestic terror, my strongest warning is that everyone's toilet seats should be left up at all times when not in actual use. It is not that difficult of a task, and it is obviously the courteous thing to do. Besides, like the wise use of seatbelts when operating an automobile, most men will agree that it is a good habit to encourage, as well.

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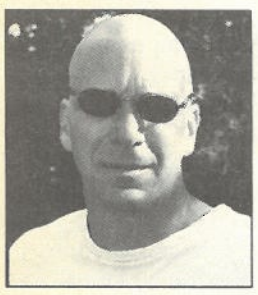
Winston Burbank
Helen Burd
Susan Carney
John Cashion
Daniel & Rachel Cheyette
William Choquette
Susan Clark
Terri-Lynn Coleman
Stephan Collins
Jeffrey Conrad
Diana Conway
Elizabeth Cooper
Elizabeth Corcoran
Robert Cowan
James Crary
Caroline Crenna
Janet Crepps
Carolyn Crinkley
Susan Crocker
Paul Cronin
Beverly Cutler
Jan DeYoung
Lisa Doehl
Joseph Donohue
Margaret Dowling
Rafael Droz
Paul Eaglin
Jonathan Ealy
Dennis Eamick
Charles Easaw
Randall Farleigh
James Fisher
Alexis Foote
Tena Foster
William Fuld
Mark Fullmer
Stephanie Galbraith Moore
Una Gandbhir
Douglas Gardner
Josie Garton
Francis Glass
James Gorski
Gregory Grebe
Douglas Gregg
Adam Gurewitz
Andrew Haas
Richard Hacker
Edward Hakala
Marvin Hamilton
Mark Handley
Joseph Henri
Dan Hensley
William Hitchcock
Lindsey Holmes
Roger Holmes
Barbara Hood
Grant Hunter
Ed Husted
Barry Jackson
Erling Johansen
Christine Johnson
Barbara Karl
Daniel Karmun
Kathy Keck
Jeffrey Killip
G. Rodney Kleedehn
Margot Knuth
Erica Kracker
Karen Lambert
Jeanne LaVonne
V. Bonnie Lembo
Gregory Lessmeier
Michael Lessmeier
C. Russell Lewis
Robert Lindekugel
Paul Lisankie
John Maltas
George Blair McCune
Laurel McLaughlin
Douglas Mertz
Timothy Middleton
Molly Mulvaney
Johanna Munson
Abigail Newbury
Heather Noble
Russell Nogg
William Oberly
Lawrence Ostrovsky
Bradley Owens
Susan Phillips
Jeffrey Pickett
Maureen Pie'
Mary Plumb-Mentjes
Elizabeth Ratner
Colleen Ray
Audrey Renschen
Joyce Rivers
J. Michael Robbins
Ryan Roley
Erin Rose
Linda Rosenthal
Stephen Routh
Verne Rupright
Stefan Saldanha
Jean Sato
A. William Saupe
Kristine Schmidt
Julie Scott Retirement Plans
Timothy Seaver
David Seid
S. Jay Seymour
Philip Shanahan
Nancy Simel
Connie Sipe
Thomas Slagle
Terri Spigelmyer
Michael Stanley
Michael Stark
Stacy Steinberg
John Steiner
Trevor Stephens
Janna Stewart
Susan Stewart
Jean Streeter
Nicole Stucki
Joseph Sullivan
Saralyn Tabachnick
Sen Tan
Christopher Taylor
Francine Taylor
Valerie Therrien
Ellen Toll
Mark Torgerson
Patrick Travers
Eric Troyer and Corine Leishkow
Julia Tucker
Heather Van Meter
Valerie VanBrocklin
Corinne Vorenkamp
Jennifer Wagner
Thomas and Anitra Waldo
Jayne Wallingford and James Brooks
Julie Webb
Michael Wenig
D. Kevin Williams
L. Eugene Williams
Roy Williams
Teresa Williams
Linda Wilson
Lisa Wilson
Ethan Windahl
Sheldon Winters
Jill Wittenbrader
Jonathan Woodman
Lach and Mary Zemp
Larry Zervos

Confessions of a fringe-sucker

Rick Friedman



"The function of a hero is not to be perfect, but to expand our conception of what is possible."

— Jim McComas

I am a fringe-sucker. Have been for years.

In the spring of '79 I was getting ready to graduate from law school. I knew I was heading to Sitka to open my own practice. I approached one of my heroes, Irving Younger. He was one of the most animated lawyers I had ever met. He was truly excited about the law, and excited about sharing his excitement.

I secured an audience with Younger—not an easy task—and managed to stammer out that I was going to Alaska to start a practice. Did he have any advice he could give me? He was busy and preoccupied. "I've never practiced law in Alaska, how can I give you advice?" I pointed out that he had himself embarked on many careers in the law, having been in the U.S. Attorneys office, private practice, a law professor and a judge. Surely those experiences gave him some insight and wisdom he could share? "Most of that was in New York, it wouldn't be relevant to anything you will be doing in Alaska."

Our four-minute discussion was over. He clearly did not share my excitement about the adventure I was about to undertake.

I approached another heroic law professor, David Rosenberg. He was the only reason I hadn't dropped out of law school after the first year. A truly great teacher and great lawyer. His advice: read the National Law Journal, cover to cover, every week; read every state and federal Supreme Court opinion. What about learning the craft and the tricks of litigation? After all, we all know law school doesn't prepare you for that—and I would not have anyone to teach me. His answer: "Your opponents will teach you all you need to know."

In a way, this was good advice. And I followed it. But it wasn't enough. The fault may have been mine, for not asking the right question: *How do I screw up my courage to embark on this path of practicing law, learn what I need to learn to do a good job for my clients, in the meantime, not make any mistakes that will hurt my clients or embarrass me, earn a living, find and keep a sense of personal and professional purpose, not lose my way, and not be crushed beneath the superior power of my opponents?*

When I arrived in Sitka, the lawyers there were a friendly, helpful, welcoming lot. But they were all struggling with this same question. It took me several years to realize we are all forever struggling with this same question. And no one can fully answer it for anyone else. Nevertheless, those who have wrestled with it longer might have things to say to those just starting out.

Or maybe not. Some lawyers are like that saying about bush pilots: there are those with 1,000 hours of experience, and then there are those with one hour of experience, repeated 1,000 times. And then there are those—I'm back to lawyers again—who have learned much, and have no interest in sharing. Which brings me back to sucking fringe.

It is the early 80's, and I am reading the National Law Journal, cover to cover, every week. And there on the first page is a picture of a lawyer wearing a fringe jacket, and an article about the impossible case he just won. As I read the article, I was impressed that any lawyer would even *take* the case, much less win a multi-million dollar award. Many of his quotes in the article were corny. But he had a trial track record that required me to take him seriously. More importantly, even from that first article, I could tell that here was a man willing to *publicly* struggle with the big and little questions of practicing law. He was not afraid of looking foolish or weak; he was not afraid of other people's opinions. Or, more precisely, he was not afraid of letting others see his fear. He recognized that practicing law, at its best, is an inward journey—*and he was willing to share.*

SOME LAWYERS ARE LIKE THAT SAYING ABOUT BUSH PILOTS: THERE ARE THOSE WITH 1,000 HOURS OF EXPERIENCE, AND THEN THERE ARE THOSE WITH ONE HOUR OF EXPERIENCE, REPEATED 1,000 TIMES.

It's not surprising that Gerry Spence has such a devoted following. He has shared his strength; he has shared his wisdom; his fears, his foibles, his eccentricities, his vanity, his kindness and his meanness. He has showed it all. In doing so, he has helped light the paths the rest of us are following.

"Fringe-sucker" was originally a term of derision applied by Spence students to people they thought had gone over-board in their adoration of him. He certainly attracts his share of lost souls, dressed in fringe jackets, rigorously following his form and missing his substance. He also has his share of sycophants, clinging to him like those suckerfish on the skin of a shark. I prefer to think of the term fringe-sucker as a badge of honor—signifying those who have accepted the challenge of law as an inward journey—and recognizing that there is a master of this art that walks the earth at the same time we do.

For 15 years I read every published word by or about Spence that I could get my hands on. I bought every CLE tape that had anything to do with him. I tried to learn everything he was trying to teach. And what he taught was working for me. I still had to do the hard work, but I did not feel so alone.

Unlike other successful lawyers, he was willing to talk about his failings and failures. Failing the bar exam, losing his first eight trials, descending into the depths of alcoholism. Next to his, my difficulties seemed puny and surmountable. He was my hero.

I got my chance to meet him in the mid-nineties. I received a call from one of his partners. They had a case in Alaska, would I be local counsel? They would do all the work, I would just need to make sure things got properly filed. I never liked these arrangements—it had been years since I'd agreed to one. But I saw my chance. I would do it, for no fee, if the partner would arrange a dinner with Gerry Spence for me. The partner quickly and incredulously agreed. I told this story, many years later, to a long-term Spence devotee, who had seen every variety of fringe-sucker. "You don't just suck fringe," she told me, "you swallow." She was right.

One of the lessons I've learned from Spence is that we all have something to share. With all of his great failings, he still has great gifts to share. The same is true of us all. It is because of, not despite, our shared failures, fears, and disappointments that this sharing is valuable, to individuals struggling with the sometimes overwhelming challenges of our profession, as well as to the profession itself.

Lawyer-to-lawyer sharing (what the Bar Association types call "mentoring") can reshape and invigorate the lives of everyone involved. My wife, more fortunate than I in the early years of practice, had the benefit of several talented, experienced lawyers willing to share their time and insights with her. She still speaks enthusiastically of the lessons learned from Doug Baily, Julian Mason and Mark Ashburn. There is no question that they play a part in every one of her victories.

The act of sharing can be scary, tedious, frustrating, or even a waste of time. Yet, it is one good answer to the question I wish I had posed to my law professors years ago. As anyone who has put their heart into a CLE presentation knows, the act of sharing often enriches the person doing the sharing far more than the recipient. The sharing does not have to be formal – sometimes even the most casual offhanded advice or encouragement can change a recipient's life forever.

At my first meeting with Spence, he had just finished the Randy Weaver defense in Idaho. We sat in the Crows Nest and I finally had the chance to ask him all the questions that had built up over the years. He was kind enough to try to give me his best answers. Finally, I worked up the courage to ask him what I most wanted to know. He had achieved more than anyone could hope for in the practice of law. He had the trial victories, published books, financial success and the adoration of tens of thousands of young lawyers. He was pushing 70. Given the mental, physical and emotional strain of trial practice, why was he still doing it?

He did not need time to search for an answer: "It's the best way I've found to learn about myself." Like much of what he teaches, I wasn't ready for what he had to say. It sounded too pat, and a little narcissistic. It was only years later that it started to dawn on me that without ever saying it explicitly, he had been preaching "law as an inward journey" for years. And I had been following his example, without completely understanding where he was leading. While he was finding himself, he was showing me the way.

Speaking of sharing, I can't help but share my opinion of Justice Matthews' concurring opinion in *State v. Sandsness*, (Alaska Op.# S-9910; 5/23/03). Justice Matthews, joined by Chief Justice Fabe, expressed the opinion that *Division of Corrections v. Neakok*, 721 P.2d 1121 (Alaska 1986) should be overruled. He states: "The result of *Neakok*, I believe, has been to cause corrections officials to err on the side of restrictiveness when considering discretionary parole." It is hard to know if this statement is based upon a hunch, a guess, or some state study of some kind, as the justices do not explain the basis for their belief. Assuming *Neakok* does put pressure on corrections officials to err on the side of restrictiveness, I would like to share my own hunch about the pressure these officials are under.

My suspicion is that by underfunding the Department of Corrections and various rehabilitative programs, the Legislature has is put enormous pressure on corrections officials to err on the side of *granting* discretionary parole. This under-funding has been a problem for at least the last 25 years—and continues to get worse.

There are no political consequences when an under-funded Department of Corrections improperly releases a prisoner who then hurts an innocent member of the public. The Legislature is free to balance the budget on the backs of individual crime victims. But it is the traditional role of courts to protect individuals against majority expediencies. Putting pressure on the government to be more solicitous of the rights of potential victims is not a bad thing. Again, that is a primary function of the courts.

To the extent that Justices Matthews' and Fabe's concurrence is based on a concern for the rights of prisoners, one can only wonder what they hope the prisoners will gain from an under-funded system that is pressured to release them unprepared and unsupervised back into the general population. It is illogical and inconsistent with human nature to assume that making the Department of Corrections *less* responsible to the public will make them *more* responsible to the prison population.

We can only hope that these two Justices' comments about *Neakok* are a reflection of their struggle with admittedly difficult policy questions and not documentation of any disdain for the jury system.

Minimalism in the Mexican Riviera

By S.J. Lee

My husband and I recently traveled to the Cabo San Lucas region in Mexico. The Mexican peninsula is a common route for Alaskans, but we had yet to visit there. We took off on April Fool's Day, arriving around 3 p.m. to sun, desert, and ocean.

After clearing the airport's token "customs" operation, and ridding ourselves of condo and timeshare salesmen who surrounded us like moths, we picked up our rental car and headed to San Jose del Cabo, the first stop on our 10-day trip. Definitely the quieter of the two main towns comprising Cabo, it contains many retired Americans and Canadians as well as locals. Cabo San Lucas is about 12 easy miles away, and definitely the rowdier and more active of the two towns. Both were too touristy for us.

We spent our first three nights in a B&B in San Jose del Cabo, with two full days on half-day snorkel/dive boats which left from Cabo San Lucas. Experiencing the Mexican version of dive and water operations, I feel like I've seen a wide range now and Mexico definitely qualifies as the most rugged of all of our experiences,-or perhaps I should say "minimalist"? Instead of roomy, spacious boats, we were on small motor boats, with just enough room for divers, their gear and the tanks. You jumped in over the side, hauled out the same way, and left to flop about gracelessly on the boat's bottom, like sea lions out of water, flippers and all.

Unlike other experiences, where my husband has been quite the rookie, he got to enjoy always being the most experienced diver of the bunch. His diving experiences were remarkable and what they let you do with what you see is also remarkable;-he reported seeing and touching clouds of bright fish, small stingrays, puffers, eels, and clouds of whales' favorite food, krill. Given how close we always were to the shore, it was amazing that the reefs and sealife were in such abundance. I sunned on the boat, and snorkeled around and peered up close and personal at huge pelicans sitting low on rocks jutting out of the water, and just enjoyed the fish and sealife.

When we weren't in the water, we wandered around the two towns, checking out their neighborhoods, restaurants, and local life. I practiced my Spanish, and was delighted to see how far two years of high school Spanish got me.

On our second night, we made the eating discovery of the trip: Tacquerias, basically glorified (or not so glorified) Mexican taco stands, ranging from small closet-sized to much larger. All were completely run by locals lucky to speak any English, with grills where you made your choice of tacos (fish, shrimp, beef, scallops, etc.), which were then grilled up and served on small tortillas. On the side were little trays containing chopped radishes, limes, whole roasted hot peppers and onions, salsa, variations on guacamole, and many other items. Every stand had slightly different garnishes. They tasted delicious, were ridiculously cheap, hard to get enough of, and I have been sorry to eat Americanized tacos back in the U.S. after experiencing those. After that, we avoided anything more Americanized, and had great fun looking for little tacquerias everywhere we went, which were sometimes everywhere, and sometimes hard to find. We did eat at one more touristy spot which is quite popular and rightfully so, as it had fabulous chile rellenos stuffed with minced pork, beef, dried fruits, raisins, cinnamon and all manner of delicious things that blended together just beautifully. It was hard not to go back there again for the same dish.

Next, we headed out to Todos Santos, a small and very charming artist's community about 1.5 hours north up the peninsula's western shoreline from Cabo San Lucas. It too was desert, running to the ocean the whole way, which is a contrast I've never seen before. Todos Santos is quite the little oasis thanks to run-off from the surrounding mountains for much of the year, and they have a little agriculture industry there. The town itself was very charming-narrow streets, crowing roosters, and genuine artists at work in their galleries all over town. The Mexican love of intense and bold colors was evident everywhere--entire walls of bright fuschia, yellow, turquoise, and other shades with doors and shutters painted contrasting bright colors--and this wasn't even the art!

Several places allow you to wander around where the artists were working, asking only that you be quiet. We wandered around the galleries for awhile, and checked into our B&B, an old building from the 1600's which had served as a school, a jail, and all manner of things over the centuries. The rooms had heavily beamed 16 foot ceilings, French doors leading to a stone and tile courtyard, and netted bedding.

The next day we set out before sunrise for another 1.5-hour drive to our next stop at La Paz, a city of about 330,000 on the eastern side of the peninsula. From that point on, we felt like we were really in Mexico--very few tourists or tourist-places. En route the sun rose over the desert which made for a very pretty drive. We wanted to get there early as we had a full day snorkel/dive cruise booked starting at 8:30. However, due to lousy directions to the dock and other miscommunication, we did not find it until way too late to go out that day. We booked for the next day instead, and after being grumpy for a bit, we began to readjust our schedule and our attitudes.

The B&B in Todos Santos (l); and preparing for ocean dive(r).

La Paz stretches along the ocean and has a long and beautiful waterfront or "malecon" as they call it. We wandered around it for awhile that morning, then set off into the side streets to see what we could find. While at a little place, having coffee, I looked around and realized the little hotel attached was mostly empty with the doors wide open. I snooped around and found the rooms basic, clean, all with bright Mexican accents and the ever-important refrigerator! They all opened up onto a courtyard heavy with bird life and activity and had little spiral staircases leading up to the second floor rooms.

Clear up on the highest point at the tip-top of another spiral staircase was a cute little sunroof complete with chairs, tables and a view of the malecon. We inquired about rates and were checking in about 5 minutes after picking out our room, which had two huge floor to ceiling windows coming together into kind of a prow, opening directly onto the middle of the court yard.

After settling in, we decided to look for places we had originally planned to visit the next day. The first we found was a fabulous pottery business. There was a store that overflowed into the big courtyard where the potters worked: one throwing pottery, another with his huge range of other shopping and then stuffing themselves into "taxis" (vans) for the rides home. The scene was hectic, friendly, energizing and a lot of fun. It ended quite abruptly about 8 or 9 p.m. when everyone went home and everything shut down, leaving the two of us rather puzzled and bewildered on the empty streets and sidewalks.

The next morning, we headed back to the dock where we jumped aboard with about four other divers for the 1.5-hour ride to the diving site. The route itself was quite beautiful with small islands full of cactus and bird life.

But, what a dive site! Called "Islamorados," it consists of a sea lion colony, all of whom are quite used to diving and swimming with humans. The instructions were to do nothing but swim normally until approached by them. My husband and his group went down and soon enough, a mom with three youngsters (not new pups, but still young) came to play; they were quite rambunctious and playful, "just like puppies," Eddy said. They pulled and yanked on fins, masks and zipper pulls dangling from wetsuits, stayed still for stomach-scratching and one even gave Eddy's hand a playful and very light nibble. Mom did little but cruise by occasionally, checking to see if all was OK.

Alone, I snorkled over in front of the area where most of them were congregated, and though one never came close enough to touch, they were generally on all sides of me most of the time, zooming around, playing, and leaving me in their bubble wakes. It is something else to be in the water that close to so many animals of such huge size. Although I was very aware of how vulnerable I was, I was generally unafraid. They were unbelievably noisy and rowdy, constantly calling to each other, bellowing, barking and

Continued on page 25

Mexican Riviera rating: 'a lot of fun'

Continued from page 24

carrying on. It was pretty neat to be in the middle of all that noise.

When a male and two females cruised close by, I was quite intimidated as they had said if you saw a bull, go the other way. What a joke, given how fast they move! They seemed totally unaware of my presence, but I'm sure they were just indifferent. I also thought about how impossible an experience like that would be in the U.S., and how lucky we were to have done it--although it does leave you wondering about the wisdom of it and its impact on the sea lions. There was no feeding of them whatsoever, so at least that was good.

Reluctantly, my falling body temperature drove me back to the boat where I soaked up the sun to still my chattering teeth. We then went on to two more dive sites that were more focused on fish. I went in for one more dive, but sat one out, and basked on the sun deck, listening to the call of the sea birds and slap of the waves, which were the only sounds. That tour was a full day, and we camped out that night in La Paz in a rather nice, quiet, RV court that afforded us a lot of room to spread out and dry our things and a lot of hot water to shower in.

The next morning, I got up fairly early and drove down for a run from one end of the malecon to the other and back, and when done, happened upon an espresso and sweet shop owned and operated by an ex pat from Washington. She was quite interesting, and while I was there, unloaded a large tray of homemade chocolate chip cookies which I was glad to see. We headed out of La Paz that morning, me reluctantly, as I would have been glad to stay another day there, just wandering around and seeing more.

We headed southeast in the general direction of our circle tour, passing through some beautiful and mountainous desert country and some tiny, quaint little towns along the way. Our two-lane highway wound up and down and through the hills for a very nice drive and scenery along the way. We came across a lot of the free-ranging Mexican cattle we'd heard about and been warned to be careful of while driving. They're very handsome cattle, very Old West looking, with beards, and many with horns. They sure added to the ambiance of the country, wandering around the brush while grazing. You never knew where they'd appear.

After about two hours, we were on the east side of the peninsula, which is more windy in the spring and winter months than the west. We stopped for the night in a tiny little town on the coast, full of retired westerners, called Los Barriles, staying at another trailer park. Being the only tenters that night, we had the entire area to ourselves and pitched our tent under a very bushy, low shrubby tree. As dusk came, what seemed like hundreds of birds came to roost there, and their chattering was quite entertaining until the sun set. Then, it became so quiet, we would not have known they were there!

Later, we happened on a fabulous tacqueria very popular with the local transplants that we'd noticed earlier. At that time it was closed and looked like nothing more than a lean-to catering to surfers.

By dinnertime, it had opened up into a much more developed, finished space and was packing them in. We walked around that night, and while out, watched the cows come home--literally. After night fell, about a dozen cows came wandering down the shoulder of the road; we realized they were quite purposeful and knew exactly where they were going--they crossed the road and wandered into their yard, and there they were, home for the night!

Our appetizers that night were homemade tamales sold to us by a family out of the back of their truck on the roadside, followed by beer and tacos at the place we'd seen earlier. We went out to the beach and did some star gazing which was of top quality throughout most of our trip given the lack of development and lights.

The next a.m. we set out early again for our last water adventure in "Cabo Pulmo", which was about an hour farther down the coast, after a turn off the paved highway onto a dirt and gravel road. Cabo Pulmo is no more than an scattering of diving businesses, a few places to sleep, and some food/beer joints, amidst cactus, the ocean, and Mexican cows.

After setting up an afternoon outing, we headed farther down to the beach and made camp under a "palapa" (a permanent sun shade shaped like an umbrella and made of palm fronds) smack on the beach.

We did little until it was time to go, and met our boat and dive captain about 500 feet from our tent. There were two other divers from New York City going on their final certification dive with us;-we sure thought they'd picked a rather remote location to do so!

I sat out the first spot, but the second one was another sea lion colony. My husband kindly decided he wanted to stay with me this time, and we talked the dive master into letting him dive alone. The lax Mexican enforcement of standard diving laws, "rules" and procedures and our dive master's distraction by the other two novice divers worked to our advantage. We anchored very close to a sea lion rookery, and while the other three went diving, Eddy and I swam around the haulout, watching the sea lions zip around below us. One big female passed very closely underneath me, leaving me in a wake of her bubbles.

There were also some big and colorful fish. Before you knew it, we heard a loud whistle from our dive master signaling us to return to the boat with everyone else. It was a great end to the water part of our trip. Returning to shore, we also got the thrill of a Mexican-style exit from the water, basically a shout of "hang on!" followed by a fast run right straight up onto the beach.

After cleaning up, we headed to a very friendly local spot where we sat for a few hours in the late afternoon sun and had cold cervezas and fabulous seafood tacos. It was obviously the local watering hole and a table full of very nice Mexican gentlemen tried hard to inquire about what we'd done that day, if we'd had fun, and how sorry they were not to speak more English. After more star gazing at our tent site, we read and fell asleep to the crash of the waves on our beach. It was a great day.

The next a.m., we woke early and headed back to "civilization," or Cabo San Lucas itself, for our last night. It was a very nice two-hour drive and we got into town before 11 a.m. We checked out an inn our guidebook recommended and found it to be a delight and quite reasonable. It was set on a little knoll above town about 15 feet from what had once been a small bull fighting ring, but was now full of flowers and shrubs. The place was still within easy walking distance of town and after "Estella," the very gracious owner, greeted us and showed us around her little oasis, we checked in, newly appreciative of beds, showers, pools, all that sort of thing! Exhaustion suddenly caught up with us and we took a long and early siesta by the pool. Later, we headed out to sightsee and have dinner.

The next day, we departed, but not until around 4 p.m. After a gourmet breakfast on our garden veranda at Estella's place, we wandered around the touristy outdoor markets looking for something we might want to take home. Finally, we settled on a marionette for a friend's daughter.

At last, we headed to the airport for a very painless flight home, with a change of planes in LA. After that it was a straight shot to Anchorage.

Mexico is a lot of fun and we've talked since about going back to explore the mid-section of the peninsula and the rest of the Mexican Mediterranean, where the desert meets the ocean in a spectacular way.

Fall 2003 CLE Calendar

Date	Time	Title	Location
August 13	4:00 – 5:00 p.m. (Reception to follow)	Off the Record with the 9th Circuit CLE #2003-020 1.0 General CLE Credit	Anchorage Hotel Captain Cook
September 17	8:30 a.m. – 4:30 p.m.	Strategies for Disability and Elder Care CLE #2003-014A 6.0 CLE Credits, including 1 ethics credit	Anchorage Hotel Captain Cook
September 18	8:30 a.m. – 4:30 p.m.	Strategies for Disability and Elder Care CLE #2003-014B 6.0 CLE Credits, including 1 ethics credit	Fairbanks Chena River Convention Center
September 22	8:30 a.m. – 4:30 p.m.	Strategies for Disability and Elder Care CLE #2003-014C 6.0 CLE Credits, including 1 ethics credit	Juneau Baranof Hotel
September 25	All Day	Masters at Trial (NV) Presented in cooperation with ABOTA CLE #2003-016 CLE Credits TBA	Anchorage Hotel Captain Cook
September 30	8:30 a.m. – 12:15 p.m.	Business Research and Due Diligence on the Internet with Carole Levitt CLE #2003-018 3.0 General CLE Credits	Anchorage Hotel Captain Cook
October 2	9:00 a.m. – 12:15 p.m.	Discover the Internet: Super Search Strategies and Investigative Resources for Discovery with Carole Levitt CLE #2003-025 3.0 General CLE Credits	Fairbanks Chena River Convention Center
October 3	8:30 a.m. – 5:15 p.m.	5th Biennial Nonprofits Program CLE #2003-011 6.5 General CLE Credits	Anchorage Hotel Captain Cook
October 10	8:30 a.m. – 4:30 p.m.	Working with Immigrant Victims of Crime CLE #2003-019 5.75 General CLE Credits	Anchorage Downtown Marriott Hotel

SINCE 1896
ALASKA BAR ASSOCIATION

Mildred Robinson Hermann: Queen Mother of Alaska Statehood

Mildred R. Hermann of Juneau. In 1934 first woman admitted to practice law in Alaska. Shown in Fairbanks signing the new Alaska State Constitution, 1956. Photo courtesy of Anchorage Museum of History and Art B65.9.2

BY KRISTIN BORAAS

Second of 2 excerpts

Mildred and Statehood

ALASKA'S SITUATION

Mildred's driving force for much of her career was the fight to secure statehood for the Territory of Alaska. Alaska was purchased from Russia in 1867 and functioned as aUnited States Territory for the next 91 years. Harding's Folly attracted adventurers, gold seekers, con-men and hermits. Everyone owned a gun and knew how to shoot it, and nobody wanted to be told what to do. In an area one third the size of the continental United States, only 200,000 people lived.

Native Americans suffered crushing racism and bigotry, and men outnumbered women 50 to 1.

Individualism and self-reliance were the guiding values, but strong communities allowed people to survive. Life could be hard in Alaska, and Alaskans were never ignorant of the fact that life was made harder by outside interests. These interests controlled and profited from Alaska's resources, yet weren't taxed on this income. Congress had the authority to nullify any law passed by the Territorial government, and consistently bent to industry interest groups. Consequently, Alaskans had little opportunity for self-government. These inequities prompted Alaska to fight for her own star on the flag, and Mildred Hermann was a powerful force in this fight.

REASONS FOR STATEHOOD

Mildred and other statehood supporters offered several arguments in support of a new star on the flag. Economic reasons were powerful, but concern about the health and services available to Alaskans was also a consideration. Put succinctly, Alaskans endured the United States' tax burden without benefiting from any of the money, and in addition were barred from caring for themselves through taxes or self-government.

The exodus of money from Alaska to Outside industry interests was a powerful motivator for statehood. Money flowed out of Alaska, but the territory was barred from collecting taxes on virtually all business enterprises, including banks, newspapers, radio stations, bus, air and steamship lines, construction companies and building contractors. Non-residents who worked in Alaska in the summers paid only a $5 school tax to the Territory of Alaska, yet collected thousands of dollars in income that left Alaska and was spent elsewhere. The fishing and mining industries, which extracted enormous amounts of natural resources, were taxed only marginally.

Alaskans had little political power. They were not allowed to vote for President and did not have a voting representative in either the Senate or the House, yet were subject to decisions based in Washington, D.C., over three thousand miles away. Further, they were required to serve in the military and pay taxes like any other US citizen. The individual with the most power over activities in the Territory was the Secretary of the Interior, whose multiple agencies had a huge impact on the state. While a Territorial legislature existed, all of its decisions had to be approved by Congress, who had complete discretion in adopting new laws or policies.

There were personal affronts as well, since Alaskan residents, while US citizens, were required to clear US customs like foreign nationals when traveling to the rest of the country. Since many Alaskans, like Mildred, moved from other states, the sudden transformation to second class citizen was particularly galling.

LIFE COULD BE HARD IN ALASKA, AND ALASKANS WERE NEVER IGNORANT OF THE FACT THAT LIFE WAS MADE HARDER BY OUTSIDE INTERESTS.

Another issue which prompted Mildred to advocate statehood was the question of health care. While the federal government was responsible for Alaskans' welfare, Alaskans suffered from poor health care and other inadequate facilities. As outlined in a speech to Congress by Ernest Gruening, Alaska's Territorial Governor from 1939 to 1953, Alaskans sickened and died from tuberculosis at a rate comparable to India and China during that time period. The death rate from tuberculosis in Alaska was nine times the rest of the United States, and Indian and Eskimo populations suffered a disproportionate amount from the illness. Over 5% of Alaska's population was ill with tuberculosis, and the disease continued to spread. The Federal Government failed to provide money to supply hospital beds in order to halt the disease, and money requested by a special session of the Territorial Legislature in order to provide necessary bed space to isolate these patients was refused by the United States Senate in 1947. Mildred was particularly sensitive to this issue as proven by her position as the first Vice President for the Alaska Tuberculosis Society and a board member for eighteen years.[54]

MILDRED'S MOTIVATION

Mildred first became concerned with Alaska's situation during her years in Juneau. Her involvement and education in these issues likely stemmed from the mentorship of Judge James Wickersham, the man who first taught her law, and who continued to support her as her career took shape. Judge Wickersham was a strong early supporter of statehood, and saw his success through Mildred.

She was a staunch Republican her entire life, and saw statehood as a means to "enlightened capitalism" rather than "cut-throat capitalism." Her vision of capitalism would prevent Alaska's exploitation from powerful outside forces like canneries and oil companies.

THE ALASKA STATEHOOD COMMITTEE

In 1949, Mildred Hermann was appointed to the Alaska Statehood Committee, the official organization responsible for publicizing and organizing statewide support for Alaska's admittance into the Union. The 1949 Legislature provided for the Committee in Senate Bill 49, and authorized $80,000 for its use. Alaska Territorial Gov. Ernest Gruening appointed the Committee's 11 members, mindful of the members' political party, gender, race, and geographic location. He knew that he needed "at least one woman." He picked Mildred, whom he describes as a "Republican, former President of the State Federation of Women's Clubs, an attorney, and a public-spirited citizen from Juneau." She was the only woman on the committee. Also appointed were Frank Peratrovich and Percy Ipalook, American Indian and Eskimo respectively. Mildred's appointment was confirmed by a joint session of the legislature, and she was then elected Secretary of the Committee.

As a part of her work on the committee, Mildred traveled Alaska, speaking in community centers, churches and homes about the goals and hopes for Alaska which could be achieved through statehood. During the Constitutional Convention she traveled to Nome during the winter break to speak about statehood. In the 1950s most areas of Alaska were accessible only by bush plane or boat. Letters took weeks, and supplies were often unreliable. But Mildred traveled throughout the state, prostheletizing the value of statehood, and the injustices Alaska and Alaskans would continue to suffer without it.

The Statehood Committee was also responsible for developing a transition plan for Alaska's transformation from territory to state, as well as the planning and preparation for a constitutional convention. Mildred was extremely focused on the Constitutional Convention, and in fact was later elected as a delegate to the Convention.

Mildred & the Constitution

AN AMBITIOUS WINTER

In the winter of 1955-1956 fifty-five Alaskans convened in Fairbanks to write the Constitution for the (future) State of Alaska.[63] Members of Congress who supported statehood for Hawaii cited the development of a Hawaii Constitution as a demonstration of Hawaiians' ability to organize and self-govern. It also was cited as a display of political sophistication, and Alaskans decided they needed to show Congress that they too had the ability and skills to run a state. The Convention would last 76 days, around three months, and would involve the most influential and well-known citizens of Alaska. Delegates were elected to fill their post, either by a regional or statewide election.

SHAPING THE DISCUSSION

Mildred had a lot to say at the Constitutional Convention, and what she said changed the course of Alaskan history. Because other delegates respected her opinion, Mildred's stand on a particular issue quickly became their own. Mildred's voice shaped the discussion on important issues like whether the Alaskan legislature should be unicameral or bicameral, the establishment of a fish and game commission in the constitution, and the inclusion of women as a protected class in the equal rights provision. Hers was also the most outspoken voice on the belief that the Constitution should not include legislation, and only govern the structure of the new state's laws, not their content.

She held a firm belief that the role of the delegates was to provide a framework for the future of Alaska, not to include legislation for specific projects or interests. "I think one of the fundamental things this body is going to have to do, whether they like it or not, is to develop faith and trust in the future legislatures of Alaska."

Although recognized as a feminist, Mildred was the deciding voice on the decision not to include sex as a protected class in Alaska's equal rights amendment. Delegate John Rosswog, who proposed the inclusion of the term "sex" in the provision, said that the use of the word "person" throughout the constitution did not insure that both genders would be protected and included in its application. Delegate Helen Fischer supported him, citing states where women were not allowed to serve on juries. But Mildred had the final say:

"I think it is wholly unnecessary to put that word in the constitution. I agree...that whenever the word person occurs it does refer to persons of both sexes. Alaska was the first political subdivision under the American flag to give the women the right of suffrage. That was accomplished in 1913, six years before the national Congress got around to amending the Constitution to provide the same thing. I think Alaska as a Territory and even before it had a legislature amply provided for the political and civil rights of its women and we have nothing at all to complain about in those respects. There are some things we may want to see changed in regard to property rights and things of that sort, but I think it is an unnecessary incorporation into the text of the constitution and raises the inference perhaps in the minds of people that we need that protection because we do not already have it. As a matter of fact, we do...I am going to be against the amendment." It failed.

Mildred was instrumental in another fundamental choice facing the delegates: whether Alaska should have a unicameral or bicameral legislature. Rural Alaskans worried that a unicameral house, based solely on population, would give Anchorage and other cities a stranglehold on legislative decisions. Consequently, the Bush population advocated a bicameral system with a population-based House and an region-based Senate. Another argument in favor of bicameralism was the ability of the Senate to moderate the actions of a "hot, impetuous House."

Supporters of a unicameral system argued that it would be more efficient,

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SINCE 1896
ALASKA BAR ASSOCIATION

Mildred Robinson Hermann: Queen Mother of Alaska Statehood

Continued from page 26

would better analyze the proposals before it, and would be easier for the media to cover.

Mildred argued in support of a bicameral system, relying on her long involvement and observation of the Territorial Alaska legislature to note that legislatures had consistently rejected proposals for a unicameral system.

Mildred's sense of historical perspective and her intelligent discourse made her one of the most influential delegates to the convention. She shaped the resulting constitution more than almost anyone in the room, and certainly more than any other woman.

'NAGGING WIFE' OR 'QUEEN MOTHER?'

On Day 25 of the Convention, in frustration over the slow speed of committee work, Mildred stated, "I am giving due warning to everybody here that if we don't get some of the work out by the first of the week I am going to become the nagging wife of this Convention. I am going to get up and remind you of it every time I can get the floor." With a little humor and perhaps a little fear, Delegate Barr responded, "Mr. President, I think everything Mrs. Hermann has done she has done well so if she is going to become the "nagging wife" I am going to run for cover." In this manner Mildred took on the role and label of the Convention's "nagging wife." Although her words were humorous, they display a serious concern about the ability of the delegates to finish their work in the allotted time. Mildred was going to do what she could to push her colleagues along, and every morning she would point out the blackboard displaying the remaining days left in the convention, along with each committee's progress. Mildred even proposed that each committee give a daily report on its progress, a proposal rejected by the convention delegates as inefficient. Delegate Rivers, while opposing the proposal, did try to reassure Mildred by saying, "I think the weekly report serves our purpose quite well, and after the four committee reports I mentioned are in I feel sure Delegate Hermann will not be inclined to think there is not enough work on the floor."

Mildred was very involved in the discussions on the floor of the convention. She made a substantive contribution to the discussion of the floor virtually every day of the 76 days the Convention ran. She was comfortable working long hours, and occasionally would suggest that committees work through lunch in order to make progress. Mildred at the convention sounds like the very worst sort of law student: always eager to talk, extremely detail oriented, and completely engrossed in her work, to the exclusion of other activities. One can only imagine the groans in the convention hall when Mildred suggested longer hours, or a reduced lunch period.

The "nagging wife" label was likely exacerbated by Mildred's ubiquitous rolling pin. She was said to have picked it up during heated arguments, to the point that some debate exists as to whether she was using it to emphasize or threaten. Perhaps Mildred just felt more comfortable with a rolling pin within easy reach, a sort of personal talisman or a reminder of her own values.

However, Mildred was not only a "nagging wife," she was also a "Queen Mother." Mildred was awarded the title "Queen Mother of the Convention" from her fellow delegates, who recognized her dedication and ability. Mildred's arguments were persuasive and her loyalties lay solely with everyday Alaskans, and people respected these qualities. Her fellow delegates honored her opinion, and demonstrated it through both their words and actions.

In rather humorous move, Mildred's beloved rolling pin received its own place of honor in Alaskan history. How they got it away from her we don't know, but the members of the convention all signed the rolling pin, and it now sits on display at the University of Alaska, Fairbanks, an entertaining piece of their collection documenting the convention.

And in a last gesture of appreciation, Mildred was given the privilege of closing the Constitutional Convention, and the last words of the convention were hers, thanking her mentor for his vision. She said, "I move when we go forth from this assembly today, we do so in memory of two great Alaskans who pioneered the statehood movement – Judge James Wickersham and Judge Anthony J. Dimond. Mr. President, I now move that we adjourn sine die."

Mildred and the Senate

THE NEXT STEP

After the emotional ending of the Convention, Mildred and other dedicated statehood supporters prepared for the next stage in the battle – the Congressional Hearings on Alaskan Statehood. In 1958, Mildred and other Alaskan representatives went before the Senate and argued for Alaska's inclusion in the Union. They received intense questioning from skeptical Congressmen. Since Alaska was expected to vote Democratic and Hawaii expected to vote Republican, many Republicans supported statehood for Hawaii and not for Alaska. This was not Mildred's first time on the Hill advocating for Alaska. She had traveled to Washington, D.C. four times before to present her case to Congress.

SHE WAS ALSO A "QUEEN." MILDRED WAS AWARDED THE TITLE "QUEEN MOTHER OF THE CONVENTION" FROM HER FELLOW DELEGATES, WHO RECOGNIZED HER DEDICATION AND ABILITY.

PRESENTING THE ECONOMICS OF STATEHOOD

Mildred's role at the hearings was to present a detailed economic analysis of the expected costs of statehood, as well as the revenue Alaska could expect to produce. These economic tables and predictions were in part developed by economist George W. Rogers, and were meant to refute the numbers presented by senators opposed to Alaska statehood. Hers became the definitive analysis of statehood's economic impact on Alaska. Mildred offered a highly persuasive argument in support of Alaska's ability to pay its own way as a state. In describing her role at the hearings she said,

"On four successive Congressional senatorial hearings on the subject of statehood, it has been my privilege, which was not always appreciated at the time, to present the fiscal picture of statehood. Invariably the principal opposition that was centered against statehood on the part of the senate or house committees, or members of it, has been on the theory that we cannot afford it, that we have not yet proved that we can afford statehood, so that for four successive hearings which I attended I had to prove that we could. I was extremely successful in doing it because after each hearing they voted that they were convinced that we could afford statehood on the basis of the figures presented by me with the support of the other witnesses who testified in behalf of statehood."

Mildred's articulate speech and easy-going demeanor prompting one Senator to say that she was the most best witness he had ever observed. Mildred was also quite good at presenting herself in front of juries. Judge Stewart remembers her as a persuasive speaker who spoke with "positive force and determination." He also found that, "she had a way of speaking that was appealing without being grating."

Of course public speaking cannot always go smoothly. During her questioning at the Congressional hearings, one Senator asked Mildred if the potential state could afford to do all the things its people planned for. Her response was widely quoted by anti-statehood forces who mocked its idyllic and self-sacrificing tone. She stated, "If we cannot buy steak, we will eat beans. We will fit the pattern to the cloth. If we cannot make the kind of a dress we want, we will make one that will cover us anyway, and we are perfectly willing to pull in our belts and do without some things for the purpose of statehood." While these words may be chided as idealistic, Mildred spoke out of a firm belief in the ultimate benefits statehood held for Alaska, and the importance of equality of citizenship for these people she had chosen as her own. Rather than demonstrating any naïveté in its speaker, this speech illustrates the idealism of an activist and the realism of a people who would rather take care of themselves with some sacrifice than be exploited and neglected by a paternalistic United States. As Territorial Governor Gruening states, Mildred's words demonstrated the "common sense and realism which typified the spirit of the statehood advocates," while noting that "Mildred's 'We will eat beans' became the phrase with which the statehood foes twitted its friends."

ALASKA'S REVOLUTION

Mildred and others in the Alaskan statehood movement saw many similarities between the motivations and emotions of Revolutionary America and Alaskans goal of statehood. When asked if Alaskans supporting statehood did so as a result of high-pressure tactics and irrational emotion, Mildred replied,

"Well, I think that is pretty much bushwa...A whole lot of high pressuring was done to make them think it was going to cost them too much but not at all to make them see the advantages. The case for statehood was clearly and plainly presented and I don't think that the emotional strain which this particular witness mentioned had anything to do with it. All people come out fighting for something that is vital and as big as statehood and very naturally that is the emotion that was back of the vote...That is the kind of emotion that led us to declare our independence of Great Britain in 1776."

This comparison between Alaskan statehood and US independence was not idle. Mildred and may other statehood supporters clearly viewed the battle for statehood as an attempt to ensure the people of Alaska got what they deserved: a voice in their governance. Our Revolutionary War was fought on strikingly similar grounds. Even the battle cry was the same, "No Taxation Without Representation." As stated above, Alaskans during this period paid taxes at the same rate as other US citizens. However, the benefits they received were minimal. The road system was abysmal, and basic health care was simply substandard.

Ultimately, Mildred and her colleagues prevailed. On January 2, 1959 Alaska was admitted into the United States of America as the 49th State. Mildred's obsession for the past two decades had become a reality. She and the rest of Alaska gleefully celebrated their new status as a State.

Mildred After Statehood

After her successes in leading Alaska to statehood and a constitution, Mildred joined the staff of the *Anchorage Times*, chronicling the activities of the new State Legislature. She was hired by the paper in March of 1959. The new State Capitol was sited in Juneau, where Mildred made her home, and her instrumental position in forming the constitution gave her a unique and thorough understanding of the decisions made by the legislature in following it. She had already reported, on radio and in the paper, on the 10 territorial legislative sessions over the previous 20 years. Mildred also returned to her legal work during this time, representing numerous defendants out of Juneau.

Mildred Moves On

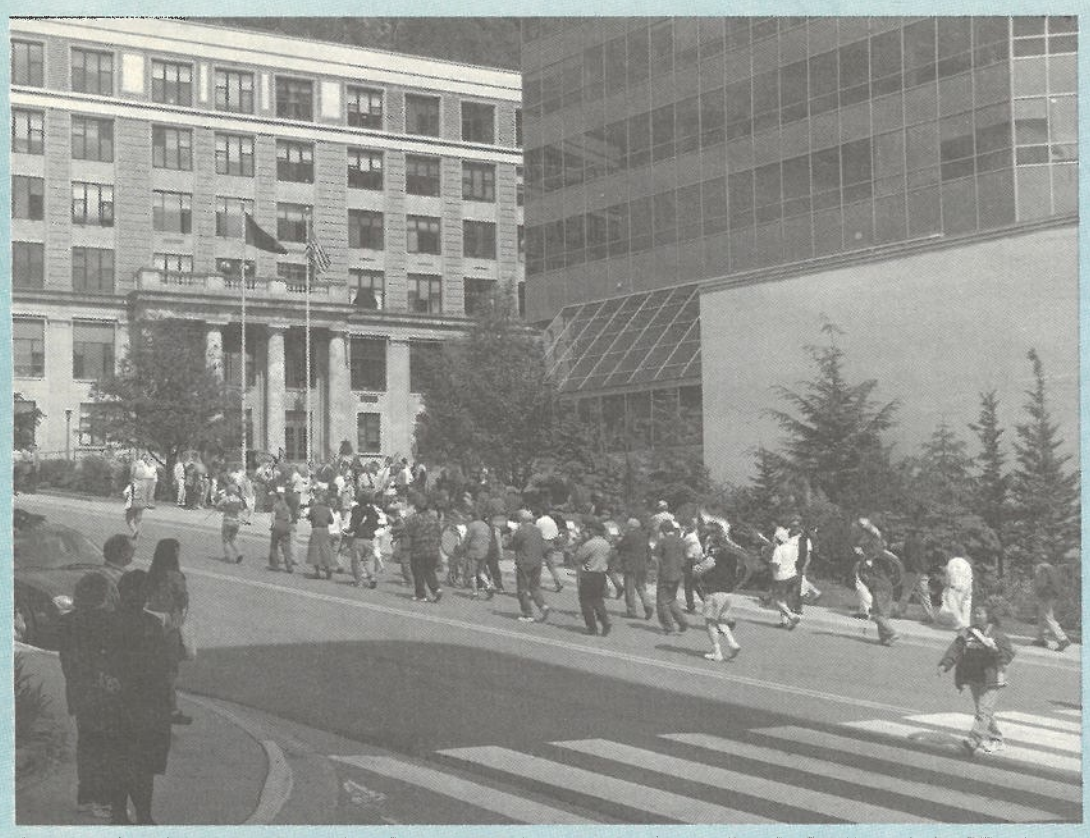
Mildred Robinson Hermann, the Queen Mother of Alaska's Statehood, died on March 16, 1964, at St. Ann's Hospital in Juneau. Her death resulted from complications of a fall. All the major papers in Alaska ran a front page announcement of her death. She was 73 years old.

Mildred lived her life full of insight and action. She did not fight the system, she shaped it; she was not interested in special treatment for her gender, but fairness. During one of the opening days of the Convention, the preacher offering the daily prayer hoped the delegates, "would have no cobwebs in their brains and no lead in their feet."

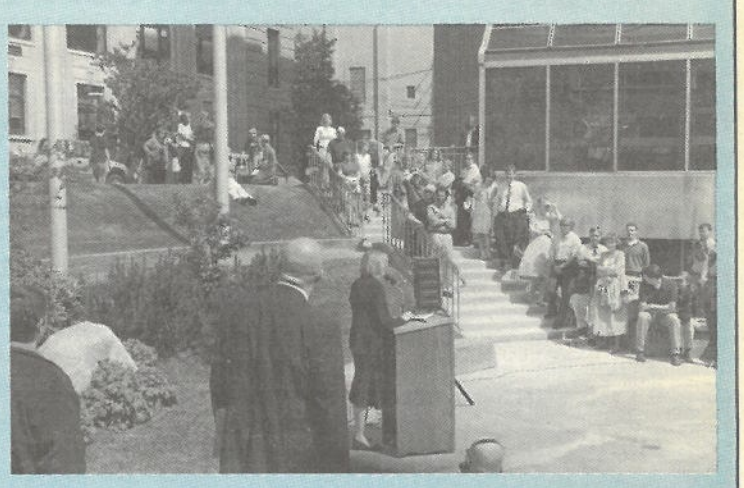
Mildred, as much as she delighted in these words, didn't need the help.

Former Alaskan Kristin J. Boraas is an associate in the Seattle office of Preston Gates & Ellis, LLP. This paper was drafted in conjunction with the "Women in the Law" class she took in her third year of law school. The full text of this paper and others written on early women lawyers around the country are available at the Women's Legal History Biography Project at: http://www.law.stanford.edu/library/wlhbp/.

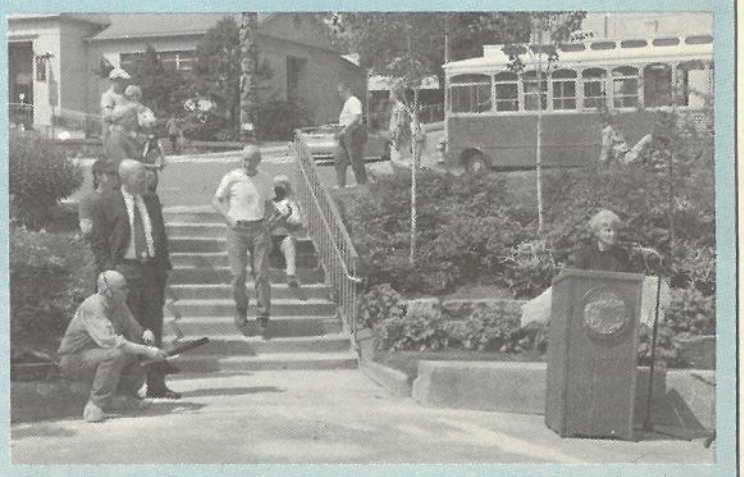
Juneau dedicates Rabinowitz Memorial



The Juneau Volunteer Marching Band leads the procession to the dedication of the "Rabinowitz Grove" (just to the left of flagpoles) in June. The grove includes two birch trees, one crab apple tree, and a 3,000-pound boulder. The Juneau Bar Association organized the grove, raised funds, and dedicated a bronze plaque which honors Jay's long Alaska service and his perpetual devotion to the Brooklyn Dodgers.



Chief Justice Dana Fabe helps dedicate the "Rabinowitz Grove" in the courtyard between the Capitol and the Dimond Courthouse.



Mrs. Rabinowitz thanks everyone (as long-time friend and colleague Justice Walter Carpeneti, far left, listens) at the dedication of the "Rabinowitz Grove."

Photos by Joe Sonneman

AlaskaLawHelp.org launched through collaborative efforts

Continued from page 1

information about Alaska courts with a few simple clicks of the mouse. The site is easily accessible from any computer with Internet access, including those at libraries and community centers. No membership is required, and no information is collected from site users.

AlaskaLawHelp.org currently provides civil legal information on family law, domestic violence, senior's issues, health law, housing, consumer issues, public benefits, wills, disability law, employment, and how the legal system works. Self-paced instructional modules on child support, how to file a motion, special education, and eligibility for help through Alaska Legal Services Corporation can be accessed from the site. A second phase of the project will add new legal topics, forms, legal education publications, and additional self-paced instructional modules. The site will also be expanded to offer a collection of advocate-oriented resources for legal services providers, pro bono attorneys, and other advocates who serve the low-income community.

ALSC's Executive Director Andy Harrington notes, "ALSC and our partners have known for some time that low-income Alaskans' need for civil representation is outstripping our ability to supply attorneys, and thus more and more people are representing themselves in court. We're excited at this opportunity to use Internet technology to give people the tools they need in order to do so effectively. It's very much in line with ALSC's mission and carrying that mission into the future."

A SECOND PHASE OF THE PROJECT WILL ADD NEW LEGAL TOPICS, FORMS, LEGAL EDUCATION PUBLICATIONS, AND ADDITIONAL SELF-PACED INSTRUCTIONAL MODULES.

AlaskaLawHelp.org was built through the collaborative efforts of the Alaska Court System, Disability Law Center of Alaska, Catholic Social Services Immigration and Refugee Services Program, the Family Law Self-Help Center, the Alaska Network on Domestic Violence and Sexual Assault, the Alaska Native Justice Center, the Alaska Bar Association, Alaska Pro Bono Program, Alaska Legal Services Corporation, and a number of social services and advocacy organizations throughout the state.

AlaskaLawHelp.org is part of a national effort to utilize technology to provide free civil legal information to low and modest-means populations. The technology for the web site was made possible through a Technology Initiative Grant from the Legal Services Corporation and was developed by Probono.net.

For more information, contact ALSC Administrative and Technology Coordinator Beth Heuer at (907) 452-5181 or bheuer@alsc-law.org.