The Alaska BAR RAG

Inside:

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Chief Justice tracks judicial issues

Chief Justice Warren W. Matthews delivered his State of the Judiciary address before the Alaska Legislature on Mar, 8, 2000. While the statewide media reported principally on his request for additional funding and the need for additional judges, the Chief Justice's address touched on a wide range of issues of interest to the Alaska bar and justice system. The following is the text of his address.

Warren W. Matthews

President Pearce, Speaker Porter, members of the 21st Alaska Legislature, I am pleased to come before you once again to report on the state of the Alaska judiciary. The first State of the Judiciary address was given by Chief Justice George F. Boney on January 20, 1972. Each year since then the chiefjustice has appeared before you to make an annual report. I am happy to be able to continue this tradition. I think that it is valuable, and I hope you think so as well.

I have divided this report into four parts. First, I will discuss the basics — caseload, staffing, facilities, and the budget. Second, I will talk about court system efforts made in furtherance of legislative programs. Third, I will talk about why judicial independence in adjudication is essential. And fourth, I will mention restorative justice and therapeutic court trends that might change the way courts do business in the future.

THE BASICS
CASELOAD
TRIAL COURTS

In the trial courts, we saw a moderate increase in total case filings in fiscal year 1999. There were 156,212 new cases filed. This represents a 5.4% increase in filings from 1998. Most of the increases occurred in the district courts. Statewide, superior court case filings were little changed. But there were major increases in some locations. In the Second District, consisting of Barrow, Kotzebue and Nome, total felony filings were up 19% from 1998 and 28% from 1997. In 1999 we disposed of 9% more cases than in 1998. Anchorage was particularly efficient, increasing its disposition rate by some 20%.

It is a much discussed question whether this year marks the beginning of the new millennium or the end of the old. I won't enter that fray, but at least it is clear that this year marks the end of the 90's. I looked at the statistics concerning trial court filings in the 90's to see what the longer term trends have been. This is what I have found. First, total non-traffic filings have increased at almost exactly the same rate as the state's population, about 14% in each case. During the same period, the number of trial judges has increased by only 4%, from 47 in 1990 to 49 in 1999. Two categories of cases have grown at a much faster rate than would have been

Continued on page 28

PYROTECHNIC FASCINATION

—PAGE 24

BOG proposes fee increases

The Alaska Bar Association Board of Governors is proposing increases in two fee structures within the bar. The proposed rules were approved for publication and comment at the Jan. 21 meeting of the Board.

Under a proposed amendment to association bylaws and Rule 61, the penalty for late payment of bar dues would be increased to $20 per week (up from $10 per week); with the penalty cap raised to $200 (from $100). A second proposal would raise the annual fee for outside counsel particpating in a local Civil Rule 81 case to $350, up from $250. (Full texts of the proposed amendments are found at page 22.)

In other action in January, the Board of Governors increased the fee for reciprocity admission to the Alaska Bar to $1,500, effective July 1, 2000. The fee currently is $1,000.

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— Page 16

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President's Column

Judicial independence and our responsibility

☐ Kirsten Tinglum

The trouble with writing this particular column is that I am doomed to bore you, irritate you, and appear to be brown-nosing (this reaction is I'm sure familiar to those who have endured one of my oral arguments). Unfortunately, it's too important an issue to avoid for those reasons.

The topic is judicial independence, and our responsibility, as lawyers, to keep it alive and healthy. At the risk of seeming glib, but with the hope of retaining your interest, I would ask you to think about the subject by taking this quick self-examination.

The first part is an easy test. To pass, you need only be able to provide answers to 3 out of the 4 questions:

1) Name one judge you don't like.

2) Name one judge who has written, in your opinion, an idiotic decision (to make it easier, it can be one you lost).

3) Name one judge whose decisions are colored by a fear of reversal;

4) Name a judge who you are sure does not vote the same way you do in general elections.

The second part is more difficult, even though, to pass, you need answer "yes" to only one question:

1) Name an Alaska judge who is corrupt;

2) Name an Alaska judge who you would preempt on the grounds that he or she is politically or financially beholden to a political or religious (or anti-religious) faction adverse to the outcome you would seek for your client;

3) Name an Alaska judge who is a bigot;

4) Name an Alaska judge who would knowingly and callously work an injustice in order to retain his or her seat on the bench.

You cannot pass this second test. Think about that, and pause, for a moment, to acknowledge the difference between Test No.1 and Test No.2. The answers to Test No.1 are easy because judges and lawyers are human. Passing Test No.2 is impossible because we are fortunate enough to practice in a state where our judges have been appointed based on merit, and are, as a result, independent. If you ever talk to lawyers from the Lower 48 or read about practice Outside, you know that there are many counties and states where it is as easy to pass the second test as it is the first.

JUSTICE W. MATTHEWS' COMMENTS ON JUDICIAL INDEPENDENCE PAGE 29

As lawyers, we are the citizen group that has the greatest knowledge of, interest in and responsibility for preserving the independence of our judiciary. We are the people who will feel most keenly and immediately any erosion of that independence.

Next fall, 31 of Alaska's 57 judges, over 50%, will stand for retention. Historically, on average, one-third of Alaska voters vote against retention of the entire slate. This blanket disapproval may occur for reasons that would fall into Test No. 1. It may reflect a general public distrust for our entire legal system. It may reflect a skepticism of any powerful figures in government. Whatever the reasons, this voting pattern makes our judiciary vulnerable to last minute attacks rooted in the political passion or prejudice of the moment.

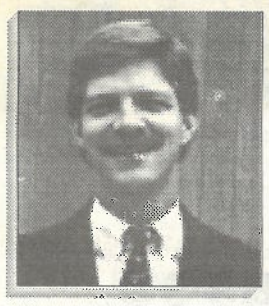
As lawyers, we cannot afford to allow judicial retention elections to turn into popularity contests. In the short run, we risk losing a good judge to an unjustified attack by a special interest group (remember: The judge whose single controversial decision you dislike may also be the judge most experienced, sophisticated and wise in the area in which you actually practice). In the longer run, we will see an inevitable erosion of independence, as judges will be unable to avoid considering (if not weighing) the consequences of a particular decision with any powerful special interest group, and will necessarily wonder, from time to time, where his or her own support might come from if an attack should occur. You don't want a judge thinking about either of these things while deciding your client's case.

So be conscious of the value of our independent judiciary — it must not be taken for granted. Educate your clients, your kids, the guys in the locker room at your athletic club, of the difference between a popular judiciary and an independent one. Be vigilant. Stand prepared, especially over the next nine months, to actively protect our legal system from attacks on its independent judiciary, whether you testify before the legislature, write a letter to the editor, or contribute time or money to an effort to educate the public on the issue. If lawyers fail to act, no one else will, either.

Editor's Column

Who wants to be the *Bar Rag* editor?

☐ Peter Maassen



The time has come for your editor of the past six years, *viz.* me, to step down. That's the little story. The big story is that the Fox television network has picked up the next episode of "Who Wants to Be the *Bar Rag* Editor?" and will air it in May. All members of the Alaska Bar Association are encouraged to participate. Serious contestants need to be aware, however, that the swimwear competition has been eliminated; washboard glutes alone won't cut it anymore (as they did in my day).

I reach the end of this particular road with pride in my record of achievement. Under my leadership, the *Bar Rag* was threatened only once with a libel suit, which went away without a detectable increase in your Bar dues. No readers canceled their subscriptions to protest our editorial policies (you can't cancel, ha ha ha! This is the official publication of a mandatory bar!). I retained our Latin motto in the face of the English-only law (and learned much about our prison system as a result). I campaigned fearlessly, and against well-financed opposition, to eliminate the phrases "dictated but not read," "to wit," and "further your affiant sayeth naught" from our professional jargon. I tackled the controversial conjugations of "lie" and "lay" and "plead" and "pled." I castigated the practice of having one's secretary place one's calls ("Please hold for Mr. Smith because any time he would have spent waiting for you is more important than the time you will now spend waiting for him").

My one single failure is the phrase "is violative of," a longer and more circumlocutious version of the verb "violates" that continues to appear in our state's published opinions, *e.g. Henash v. Ipalook*, 985 P.2d 442, 447 (Alaska 1999) ("is violative of due process"); *Peter v. Progressive Corp.*, 986 P.2d 865, 874 n. 57 (Alaska 1999) ("are otherwise violative of the Civil Rules"). It pains me to leave the *Bar Rag* with this one wrong unrighted, but no life of letters is lackful of its failures.

You, too, can make a difference on matters of such import to the Bar. Or you can set your sights higher. Seriously (wink, wink) — no, I mean it, seriously (this is hard for me) — there is much that the *Bar Rag* could be that it isn't. A more active editor than I was could more aggressively seek out story ideas, assign reporters (many more lawyers claim to be willing to write for the *Bar Rag* than actually do), and publish more hard news that is of interest to the Bar. There is plenty of room at the *Bar Rag* for an editor who is more interested in journalism than just lolling about in the lavish perks of the office, as I've done.

On the other hand, 99/100ths of the real work that gets done on this paper is done by the managing editor, Sally J Suddock, and designer Sue Bybee. My successor could be even more of a mere figurehead than I've been — even the Editor's Column is wholly optional (although the *Bar Rag* bylaws stipulate that you can't have your picture in the paper unless you write a column; hence my prodigious output). Do what you can, do what you want, to make of the paper what you will.

Anyone interested in serving as editor should write a letter of interest to Deborah O'Regan, the Executive Director of the Alaska Bar Association, and she, along with the other Powers Who Be, will figure out what to do next. Anyone who wants to ask me about the duties of the position is welcome to call.

As for me, it'll be somewhat wrenching to give up the *Bar Rag* limo and the *Bar Rag* villa after all these years. I plan on keeping the ceremonial mace, of course, since I designed it and chose my wardrobe to match the jewels. Also, I may still write an occasional column, if my successor neglects to establish any editorial standards that would preclude it.

And finally, for those of you who have complimented my writing style and my sense of humor, I love you both, and I'll see you tonight at home for dinner, at the usual time.

The Alaska BAR RAG

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Bar Letters

Another prosecutor replies

This is in response to Drew Peterson's "letter" in the November/December *Bar Rag*. I'm curious to what "Mr. Prosecutor" Mr. Peterson's letter is directed. I was not asked to participate in a seminar of restorative Justice. Neither was the other 'Mr." Prosecutor in town, Eric Johnson of the Office of Special Prosecutions and Appeals. I asked our resident *Ms.* Prosecutor, Anchorage District Attorney Susan Parkes, if she'd been contacted; she said she hadn't.

I actually would welcome the opportunity to participate in a restorative justice forum. We have been working with the Conflict Resolution Center establishing a restorative justice pilot project. It has been recommended by the Criminal Justice Assessment Commission for examination for statewide application. We have already sent a prosecutor to Wisconsin to receive training at a nationally recognized training center and have the materials ready in our office. Oh, I almost forgot about our three year participation in the Criminal Justice Assessment Commission, a body comprised of all major participants in the criminal justice system whose purpose was to reevaluate how we go about seeking justice.

Perhaps if we had received an invitation we could have discussed a program we implemented to assist individuals who have lost their driving privileges in "restoring" their driver's licenses leading to insured, safer drivers on the road. Hundreds of people who have not had licenses in years are now legally on the road instead of jail. All were handled outside the court system.

Perhaps we could have discussed the program we implemented to intervene in low-level domestic violence before it could progress along its inevitable path and how we wish we had the resources to send the victims of that violence to their own counseling. Victim counseling should be integrated into any program that seeks to "restore" the relationship between parties, which is often the victim's primary objective.

Perhaps we could have discussed our participation and the leadership of the court system in implementing a mental health court-within-a-court. It is only the third one in the entire country. It identifies individuals charged with crimes whose contacts with the criminal justice system are driven by mental health, head injury, or developmental disabilities. It assists them in finding the medical, social, and housing help they need. Participants in this program have had a recidivism rate of less than 20% of those who were eligible but did not participate in the program. The victims of those offenders have been unanimous in their support of the program.

Perhaps we could have discussed our participation in the creation of a similar drug court and our assistance with the federal grant that the Alaska Court System is seeking in order to implement that rehabilitative program.

Perhaps we could have discussed our participation in the Naltrexone project that seeks to break the cycle of alcohol addiction through the use of medication, intensive community involvement, and supervision by the court and prosecutors. We could also have discussed our participation in and support of the Partners for Downtown Progress in its efforts to procure a grant from the Robert Wood Johnson Foundation for funding of a program to assist chronic alcoholic misdemeanors in improving their lives, stopping their "revolving door" returns to the criminal justice system.

We could also have discussed how many of our number volunteer with the Anchorage Youth Court which does exactly what "his" system proposes. Youth are judged by their peers, defended by their peers, and, yes, prosecuted by their peers.

We could have discussed our participation in the first recorded circle sentencing in Anchorage.

It was an attorney from this office that drafted the legislation that relaxed the juvenile confidentiality law and attended community council, rotary, and chamber of commerce meetings to gather support for it. The original draft sought to open the proceedings and allow use of the records if the juvenile reoffended within two years of his eighteenth birthday. We do believe that youthful offenders can he rehabilitated and sought balance between protecting the young from their stupid mistakes and the public from potentially dangerous people.

Had you invited one of us, Mr. Peterson, we would have been happy to discuss the parameters of victims' rights. Is our system opposed to participation by victims? Our system seeks to involve victims in every stage of our intervention in their lives. I have two members of my staff whose primary duty is to involve domestic violence victims in the almost 2,000 of those cases we prosecute each year.

I personally sit on no less than five boards, task forces, caucuses, etc. that deal with victim's rights; some of these include "your" friend Janice Lenhart. I lobbied in Juneau for the automated victim notification bill. I am most incensed at your reckless and libelous statement that our efforts to protect the "public" do not include the victims of crimes.

In closing I challenge Mr. Peterson to do two things. One, quit ranting. It usually is counter-productive and, as in this case, occurs in ignorance of the entire situation. Second, get some less morally bankrupt friends unless, of course, you believe in being judged by the company you keep.

Sincerely,

—John Marston Richard
Chief Municipal Prosecutor,
Anchorage

Thanks for sending the *Rag*

Again I received a copy of the *Alaska Bar Rag* and wanted to repeat my appreciation for the consideration shown by including the surviving spouses on your subscriptions list.

I am certain that I speak for others when I tell you that it makes a big difference in my life to realize that although Cliff is no longer with me I am not cut off from news and activities of his beloved friends and associates.

—Lucy Groh

Young replies to ALSC

In the November-December edition of the *Alaska Bar Rag* you ran an article criticizing my vote on funding for the Legal Services Corporation (LSC). I would like to clarify my position on the funding of the LSC.

Funding the Legal Services Corporation has developed into more than just an issue of providing money for the LSC to use for payment of legal services to the underprivileged citizens of the United States. In 1997, the LSC Inspector General found that the 1998 LSC fact book contained grossly inflated numbers for their total cases. John McKay, the LSC President, was aware that the LSC was misrepresenting the true number of cases and he failed to contact Congress about this inaccuracy.

As a result, the Inspector General closely examined the records for six LSC programs and discovered that only 50,235 of the 148,989 cases that the LSC reported were cases that actually existed. Therefore, the House of Representatives reduced the fiscal year 2000 (FY2000) budget to only $141 million for LSC. The House of Representatives felt that this amount of funding was fair for the actual number of persons that the LSC really served. However, Representative Serrano of New York offered an amendment which passed without my support to increase the funding of the LSC to $250 million just prior to the House of Representatives passing H.R. 2670, the Commerce, Justice, State, and Judiciary Appropriation bill which contained the funding for the LSC.

The President vetoed the House and Senate's conference committee's version of this legislation. Therefore, the LSC's funding was again re-examined by Congress. The conferees expressed great concern over the misrepresentations of the LSC's number of reported cases and statistical reports. However the committee appropriated $305 million for the LSC, which I supported on the floor of the House of Representatives. As the result of an across the board spending reduction, the LSC's final FY00 budget is $303.9 million, an increase from FY99.

Be assured that I will continue to review the steps taken by the Legal Services Corporation to correct this misrepresentation.

—Don Young
Congressman

A special thank you

My mother, my siblings and myself want to thank everyone who have been so generous with their prayers and offers of assistance since the accident in December. The response from the Bar has been overwhelming. Although we are endeavoring to individually thank everyone who has sent a condolence card, phoned, sent flowers, cooked a meal, driven Eileen to various medical appointments, etc., we realize that it is still going to take us weeks to write those individual thank yous. We are also fearful that we may miss or forget someone's kindness. While we are still uncertain as to all the life lessons we are to take from this experience, both as a family and as individuals, we have come to appreciate our friends even more. We have been touched by all the kindnesses, in particular those from people we don't even know.

There are some members of the Bar whom we could neve adequately thank for their support and companionship the night of the accident. Words do not exist to adequately convey what their support meant to us.

To update you: Our mother is recovering back in New York. Eileen's friend, Ken, has recovered sufficiently from his injuries that he was able to return to work. Eileen is still recuperating. Her return date to teaching is still uncertain. She is out of the wheelchair and is maneuvering with one crutch these days.

—Thank You,
Patricia, Maryann Elizabeth,
Thomas, Eileen Foley
and Kathleen Rehm

Assistance needed

I am writing to request your assistance with the governance of the Alaska Women's Resource Center (AWRC). Briefly, AWRC has served the community for 25 years and currently provides a variety of much needed services. I have enclosed a copy of our brochure and most recent annual report for you perusal.

As a non-profit entity, our volunteer Board of Directors sets our policies and accepts fiduciary responsibility for the agency. We strive to have members of our Board that mirror the diverse population that we serve.

In reviewing the desired and current expertise on the Board, we find that we are without any legal expertise. This is a critical element on any Board, but this is of particular necessity for a non-profit agency. We are hoping that you can let the legal community know that we are looking for a Board member.

Any interested party can reach me directly at 279-6316. I would be more than happy to speak with them about how we serve the community and how they can help as a board member.

Thank you in advance for your assistance.

—Diane H. Heard
Executive Director

Publishing problem

There is a problem with the publishing of the Alaska Rules of Court. The publisher does not publish a notation of the particular rules that have been amended since the last edition when it republishes every few months in a bound format.

Twenty years ago they used a loose leaf format and you could check which rules were being changed by looking at the loose leaf supplements.

The court system used to send out notice of changes in rules.

Proposed rule changes are published but one never knows which ones are going to be changed and which ones are just going to be discussed and left as they are.

I would respectfully request that the appropriate powers that can control these matters order the Book Publishing Company to list what sections and rules have been amended in the index upon each publication so we can easily check the rule changes for civil rules and bar rules that affect our practice, or appellate rules if we are appellate lawyers.

—Steve M. Sims

Some tidbits on major matters

☐ Arthur H. Peterson

This report will be short. Maybe the next one will be more fully developed.

The Alaska Legal Services Corporation met March 3 and 4, with the first day of the meeting being devoted to what we have termed the "Post-LASH" development. You will recall that ALSC was one of the plaintiffs in *Legal Aid Society of Hawaii v. Legal Services Corporation*, challenging the Congressional, and consequent administrative, restrictions on what LSC-funded programs could do. See my report in the March/April 1997 *Bar* Rag. We got a TRO, but ultimately lost the case.

However, as a result of the case, the LSC adopted regulations providing for establishing a separate entity to provide the services and serve the people excluded under those restrictions. ALSC has been studying the many issues involved in setting up a separate organization, and on March 3 we brought together a number of interested people from related programs. And the American Bar Association sent three people to advise us: Greg McConnell, director of the ABA Center for Pro Bono; John Asher, Colorado Legal Services; and Carl Poirot, San Diego Volunteer Lawyers Program.

ALSC HAS BEEN STUDYING THE MANY ISSUES INVOLVED IN SETTING UP A SEPARATE ORGANIZATION, AND ON MARCH 3 WE BROUGHT TOGETHER A NUMBER OF INTERESTED PEOPLE FROM RELATED PROGRAMS.

The basic idea is to have this separate outfit handle Alaska's pro bono program. We have not resolved all issues, especially those related to funding, and are continuing to work.

One of the Alaska Supreme Court's Access to Civil Justice Task Force recommendations will suggest such a step. The final report of the task force should be issued soon. Drafts have circulated, comments on them offered, and the volunteer drafter of the report, Ilona Bessenyey, has had a baby. Congratulations, Ilona.

The governor's budget includes the same $125,000 that was appropriated for the current fiscal year, and President Clinton has requested $350 million for the national LSC. Several municipalities and Native corporations have contributed.

Speaking of contributions, the latest figures on the Partners in Justice fundraising campaign for ALSC show approximately $160,000 so far. That's up more than $15,000 over last year. Several individuals have contributed $1,000 and one person put in $1,250. I hope to have more detail in the next report. Thank you to those who have already contributed. We are now trying to wrap up this year's campaign.

Since my last report, in the November/December 1999 *Bar Rag*, I have heard from Congressman Don Young, explaining his negative vote on the successful House floor amendment, which many of his Republican colleagues supported. That's the one that raised the House figure from the Appropriations Committee's suggested $141 million to the House-approved $250 million. And I recently replied to him, trying to provide information and a perspective that will help him support LSC funding in the future. In Alaska, especially, low-income people have no alternative to the LSC-funded programs.

So, more later.

Kott urges Knowles to name woman to Superior Court

Rep. Pete Kott, Chairman of the House Judiciary Committee, is urging Gov. Tony Knowles to name a woman to the open seat on Superior Court in Anchorage held by Judge Brian Shortell, who retired Feb. 1.

In a letter to the Governor Feb. 23, Kott said the percentage of women serving as state judges in Alaska has declined during Knowles' tenure. Kott wrote that, according to the National Center for State Courts, a national judges group based in Williamsburg, VA, Alaska is barely keeping pace with the national average of 20% women serving on all state courts.

The Alaska Judicial Council, which screens and recommends judicial appointments, this week sent Governor Knowles a list of approved candidates that includes two women. Kott said this presents an opportunity for the Governor to improve his record of appointing women to the state bench.

"During your tenure as Governor of Alaska, the presence of women judges serving on the state bench has declined on a percentage basis. You have made 18 appointments to the state court bench, but only three, or 16%, have been women. The issue is not a lack qualified candidates, but rather an unwillingness to recognize that putting more women on the state bench needs to be a priority," Kott wrote.

Kott said any of the recommended candidates would be fine additions to the state bench, but that appointing a woman would reverse the decline in women serving as state judges since Knowles took office, and help make Alaska's judicial ranks more balanced and reflective of the state 's overall population.

—Press Release, Rep. Pete Kott

Alaskans Against the Death Penalty hosts annual dinner/dance fundraiser

Alaskans Against the Death Penalty has announced its Annual Dinner/Dance Fundraiser to be held during the Academy of Trial Lawyers Litigators Conference, on Friday the 21st of April. The Dinner/Dance will take place at the Prince Hotel in Girdwood, and will begin at 6.30 pm.

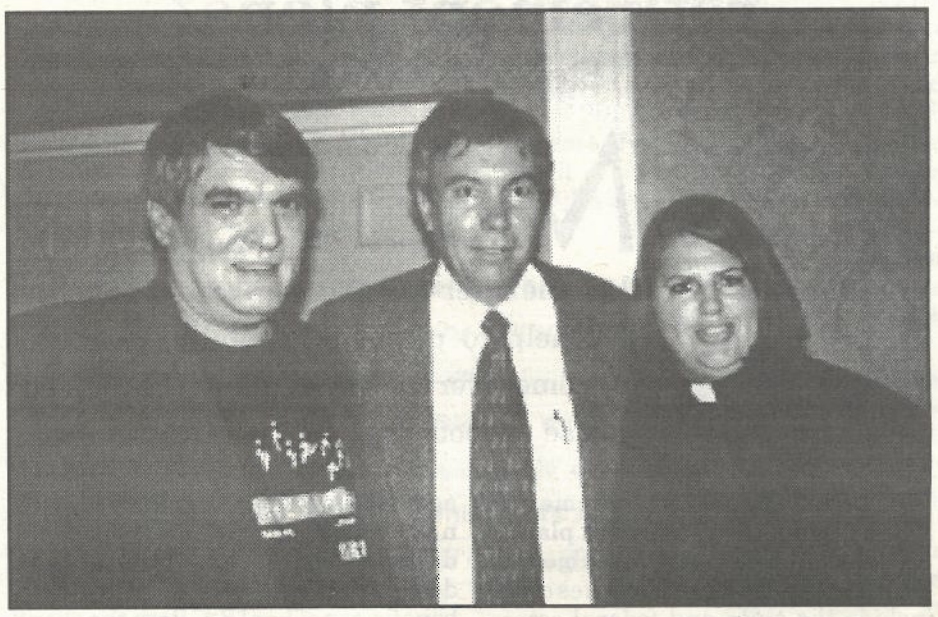
The Dinner/Dance is a great opportunity for Alaskans who are committed to preventing passage of a death penalty law in Alaska to get together for an evening of edifying fun. In addition to a delightful meal, three distinguished speakers will share some of their experiences and observations about the struggle to abolish the death penalty nationally, and the related battle to keep it from ever becoming law on the Last Frontier. The speakers are Bill Pelke, Speedy Rice, and the Reverend Melodee Smith.

Bill Pelke is an Alaskan with roots in the national struggle against the death penalty. Having learned after his grandmother's murder that killing the perpetrator of a crime does not bring the victim back to life, Bill has devoted himself since retirement from a career in the steel industry to the cause of abolition. Bill is a founding board member of Murder Victims Families for Reconciliation, has served on the board of National Coalition to Abolish the Death Penalty, and is a member of the Alaskans Against the Death Penalty Board as well.

Speedy Rice is Externship Director at Gonzaga University School of Law in Spokane, Washington. He has recently expressed the moral outrage shared by so many opponents of the death penalty in the foreword to the striking ad campaign, "We, On Death Row." "We, On Death Row" is a project funded by United Colors of Benetton that presents photographs and interviews of death-row inmates in a compelling manner, guaranteed to provoke reflection in its audience.

The Reverend Melodee Smith is both minister and attorney. Melodee's work in the legal field ranges from private representation of capital clients, to public defense, to domestic violence advocacy. She is ordained as a minister of the United Church of Christ, allowing her to bring spiritual healing to clients and the wider world.

Tickets for the Alaskans Against the Death Penalty Dinner/Dance are $100 individually, or $150 for couples.



L to R: Bill Pelke, Vice President of Alaskans Against The Death Penalty; David Kaczynski, brother of Unabomber Ted Kaczynski;and Rev. Melodee Smith, minister's attorney in Philadelphia Sept., 1999 at the Conference of National Coalition to Abolish the Death Penalty.

They can be purchased in conjunction with registration for the ATLA's 4th Annual Litigators Conference, or from AADP board members. For more information, call Cynthia Strout at 276 0377. —*Press Release*

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We are the process of building a database of bar members' e-mail addresses.

Send e-mail addresses and e-mail address changes to info@alaskabar.org.

ESTATE PLANNING CORNER

Who benefits from retirement plans?

☐ Steven T. O'Hara

Many of our clients have bulging retirement plan or account balances. The good news here is that the after-tax plan or account benefits will help to provide, hopefully, a secure retirement for the owner or her U.S. citizen spouse (or both).

The bad news is that if premature death occurs, the retirement plan or account balance could be subject to multiple levels of tax. The taxes could include the state and federal estate taxes as well as the federal income tax. State income tax could be imposed if the beneficiary resides in a state that has an income tax. Generation-skipping tax could also be imposed if the beneficiary is two or more generations younger than the decedent.

Even where the only applicable taxes are the Alaska and federal estate taxes and the federal income tax, these taxes can significantly reduce the plan or account benefit.

Consider a 60-year-old client with a traditional Individual Retirement Account located in Alaska. The client has no other assets. She is not married and has never made a taxable gift. She has one child, a son 30 years of age. He is single, unemployed with no assets of his own and no dependents. The client has designated her son as the death beneficiary of her IRA. Both the client and her son are domiciled in Alaska.

Suppose the client dies in 2000, with her son surviving her. Although the son could receive the IRA balance (not needed to pay estate taxes) over his lifetime (and thus defer income tax), suppose the son receives all the funds over three years. Suppose he receives 70% of the total in 2000, 15% of the total in 2001, and the balance in 2002.

Under these facts, what might the net after-tax benefit to the son be if the client's IRA has, at her death, a balance of $1,000,000? What if the IRA balance is $2,000,000? What if it is $3,000,000?

If the IRA balance is $1,000,000, the estate taxes by reason of the client's death would total $125,000 — $33,000 payable to the State of Alaska and $92,000 payable to the IRS.

For the years in which the son receives distributions from the IRA, he will get an income tax deduction to offset the *federal* estate tax paid on the IRA. But the son will not get an income tax deduction to offset the estate tax paid to the State of Alaska (IRC Sec. 691(c)(2)(A)).

If the son receives $700,000 from the IRA in 2000, his income tax liability might be $237,000 for 2000. If the son then receives $150,000 from the IRA in each of 2001 and 2002, his income tax liability for each year might be $37,000, for a total of $74,000 for both those years. (The itemized deductions, exemptions and income tax rates used throughout this article derive from 1999 since those for 2000 and later years are not currently available.)

Thus if the client's IRA balance is $1,000,000 at her death, the net after-tax benefit to her son might be $564,000 (i.e., $1,000,000 minus $125,000 (estate taxes) and minus $311,000 (income taxes)).

There are at least four points noteworthy here. First, the estate taxes of $125,000 are based on the gross amount of $1,000,000, even though this gross amount is "encumbered" by taxes. In other words, even though part of the IRA must be paid to the taxing authorities, who in this sense "own" part of the IRA at the client's death, the total gross amount is subject to estate taxes.

Second, when the son takes a distribution from the IRA in order to pay the $125,000 in estate taxes, he must report the $125,000 distribution as income and thus must withdraw more to pay the income tax on the $125,000 distribution. In other words, he must "gross up" each distribution to cover not only the estate taxes or whatever else he needs or wants the money for, but also to cover the income tax on the distribution.

Third, there is tax upon tax here. As mentioned, the son gets an income tax deduction to offset federal estate tax but not Alaska estate tax. So the son must pay income tax on the estate tax paid to the State of Alaska. Moreover, the federal income tax deduction is an itemized deduction that is reduced where the taxpayer, as in our example, exceeds certain income levels (IRC Sec. 68). So, to a limited extent, the son must also pay income tax on the estate tax paid to the IRS.

Finally, the distributions are taxed as ordinary income, not as capital gain, and no "step-up" in tax basis is available.

If the client's IRA balance is $2,000,000 at her death, the estate taxes would total $560,000 — $100,000 payable to the State of Alaska and $460,000 payable to the IRS. If her son receives $1,400,000 from the IRA in 2000, his income tax liability might be $420,000 for 2000. If the son then receives $300,000 from the IRA in each of 2001 and 2002, his income tax liability for each year might be $73,000, for a total of $146,000 for both those years. Thus the son's net after-tax benefit might be $874,000 (i.e., $2,000,000 minus $560,000 (estate taxes) and minus $566,000 (income taxes)).

If the client's IRA balance is $3,000,000 at her death, the estate taxes would total $1,070,000 — $182,000 payable to the State of Alaska and $888,000 payable to the IRS. If her son receives $2,100,000 from the IRA in 2000, his income tax liability might be $587,000 for 2000. If the son then receives $450,000 from the IRA in each of 2001 and 2002, his income tax liability for each year might be $107,000, for a total of $214,000 for both years. Thus the son's net after-tax benefit might be $1,129,000 (i.e., $3,000,000 minus $1,070,000 (estate taxes) and minus $801,000 (income taxes)).

These numbers are summarized at the end of this article. The upshot is that our clients and their families benefit from retirement plans, to be sure, and so do the taxing authorities.

Retirement Plan	Estate Taxes	Federal Income Tax	Net Benefit
$1,000,000	$125,000 (13%)	$311,000 (31%)	$564,000 (56%)
$2,000,000	$560,000 (28%)	$566,000 (28%)	$874,000 (44%)
$3,000,000	$1,070,000 (35%)	$801,000 (27%)	$1,129,000 (38%)

U.S. DISTRICT COURT PROPOSED RULE

[PROPOSED REVISED] D.Ak LR 3.1

Papers to Accompany Initial Filing

(a) Every complaint or other document initiating a civil action or removing a civil action to this court shall be accompanied by a completed civil cover sheet, on a form available from the clerk, and a notice of related cases, if required by D.Ak.LR 40.2 This requirement is for administrative purposes, and entries on the cover sheet do not affect the legal status of the action.

(b) Any non-governmental corporation which is or seeks to become a party to a proceeding in this court must file a statement identifying all its parent corporations. The statement shall be filed contemporaneously with the first pleading or motion filed by the corporation. This requirement is for the purpose of allowing judicial officers to evaluate recusal obligations under 28 U.S.C. §455(b)(4).

Federal Court upholds Constitutionality of IOLTA

On Friday afternoon, January 28, 2000, Federal Judge James R Nowlin of the U.S. District Court for the Western District of Texas, Austin Division dismissed all claims brought by the Washington Legal Foundation and others against the Texas Equal Access to Justice Foundation — the IOLTA program in Texas.

IOLTA programs operate in all states and fund civil legal services for low-income people through the interest income received from lawyers trust accounts.

The Texas case has been in the Federal courts since 1994, going to the U.S. Supreme Court in 1998 and finally back down to the Texas District Court for trial, which took place this past September before Judge Nowlin.

In the ruling, the Court rejected all of the plaintiffs' challenges to the Texas program finding that neither it, nor the IOLTA concept that it operates under, had violated the plaintiffs' Constitutional rights and ruled specifically that the plaintiffs' First and Fifth Amendment rights had not been not infringed.

The Court stated that the Texas IOLTA program: "accomplishes and is germane to the 'government's vital policy interest' of making legal services accessible to all." And that: "improving the quality of legal services is an important state interest."

The Court also noted as to the client funds that are pooled in IOLTA accounts: "In the absence of IOLTA, the money would necessarily generate no interest for anyone but the banks;" and further that: "plaintiffs in the instant action cannot maintain they are being unfairly singled out to bear a burden when they in fact are bearing no burden at all. The IOLTA program costs plaintiffs nothing. The governmental action in this case does not implicate fundamental principles of 'justice and fairness' because there is no cost to the plaintiffs."

The full text of the Court's decision can be found on the web site of the Western New York Law center at: http:// www..wnylc.com.

—Press Release

IOLTA DECISION

On January 28, 2000, United States District Court Judge James R. Nowlin dismissed with prejudice all claims against the Texas Equal Access to Justice Foundation and its chairperson in the remanded case of Washington Legal Foundation, et al. v Texas Equal Access to Justice Foundation, et al. (The defendants, who are Justices of the Supreme Court of Texas, were dismissed from the case on January 4, 2000, based upon a finding that they were entitled to complete immunity). In his 40-page opinion, Judge Nowlin held that there was neither a taking of property from nor any just compensation due to plaintiffs and therefore, no violation of the Fifth Amendment. Judge Nowlin also held that the Texas IOLTA program did not violate plaintiffs' First Amendment rights. A copy of the opinion is available at http://www.txwd.uscourts.gov/Opinions/opinions.html.

Bill requires hearing officers

The Alaska House on Mar. 6 passed Senate Bill 229 sponsored by Sen. Drue Pearce (R-Anchorage). SB 229 makes changes to SB 133, which abolished the Alaska Public Utilities Commission (APUC) and established the Regulatory Commission of Alaska (RCA). SB 133 passed the legislature last year.

"One change that SB 229 makes is to require the use of hearing officers, not hearing examiners at RCA hearings," said Pearce. "The people conducting these hearings are called on to adjudicate legal matters, and they need to be proficient in judicial proceedings and rules of evidence and of practice. Hearing examiners are not required to be attorneys, while hearing officers are."

The final revision clarifies that the RCA may employ and utilize mediators as well as arbitrators in its hearing process. Mediation is a less formal process than arbitration, and tends to expedite the process of finding common ground among the interested parties.

SB 229 goes to the Governor for signature.

—Press release
Senate Majority

THE IMMIGRATION AND REFUGEE SERVICES PROGRAM at Catholic Social Services seeks f/t Staff Attorney to represent immigrant victims/survivors of domestic violence. Responsibilities include representing immigrants seeking domestic violence protective orders, informing immigrant victims about community resources and assisting people with accessing those resources, maintaining communication with the statewide network of shelter providers for domestic violence survivors/victims, developing and maintaining resource library on international issues related to domestic violence, and drafting affidavits for clients for protective order hearings. JD from accredited law school and license to practice in AK required. Experience working with culturally diverse clients required. Minimum two years legal experience preferred; fluency in Spanish preferred. We are a small, dynamic office dedicated to providing justice to the underserved. Excellent communication skills and computer literacy required. Send resumes and references to Robin Bronen, 3710 E. 20th Ave., 99508 (Fax 907-258-1091).

Alaska Bar Association 2000 CLE Calendar
(Programs scheduled to date – 3/15/2000)
Watch for brochures about the following upcoming programs.

Date	Topic	Live in	Time
March 24	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	JUNEAU **Centennial Hall**	1:30 – 4:45 p.m.
March 31	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	FAIRBANKS **Westmark Hotel**	9:00 a.m.– 12:15 p.m.
March 31	Off the Record – 4th Judicial District	FAIRBANKS Westmark Hotel	1:30 – 3:30 p.m.
April 6 & 7	Administrative Law Update	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m. each day
April 18	Making Your Case: Preparing Information for Electronic Presentation at Trial – U.S. District Court	Anchorage Federal Courthouse	9:00 a.m. – 12:00 p.m.
April 19 **NEW**	Restorative Justice: Working Models for Your Case & Your Community	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m.
May 17, 18 & 19	Annual Convention	Anchorage Hotel Captain Cook & Egan Convention Ctr	Full Days
	Lawyers in Alaska 2000: A Conference with Australian Practitioners		
June 26	Environmental Issues Surrounding Tourism	JUNEAU – location tba	11:20 a.m. – 1:00 p.m.
June 27	Subsistence	JUNEAU – locationa tba	8:30 a.m. – 10:10 a.m.
June 29	Antitrust and Mergers	JUNEAU – location tba	10:30 a.m. – 12:10 p.m.
July 20	Dr. Stephanie O'Malley on Naltrexone Therapy	Anchorage Hotel Captain Cook	8:30 am- 12:30p.m.
August 3 **NEW**	Off the Record with the 9th Circuit Court of Appeals Panel	Anchorage Anchorage Museum	4:40 – 6:30 p.m.
Sep 14	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	Anchorage Hotel Capt. Cook	1:30 – 4:45 p.m.
Sep 14	Professional Responsibility – in cooperation with ALPS	Anchorage Hotel Captain Cook	9:00 a.m. – 12:15 p.m.
Sep 15	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	FAIRBANKS **Westmark Hotel**	9:00 a.m.– 12:15 p.m.
Sep 15	Professional Responsibility – in cooperation with ALPS	FAIRBANKS Westmark Hotel	1:30 – 4:45 p.m.
Sep 22	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	JUNEAU **Centennial Hall**	1:30 – 4:45 p.m.
Sep 22	Professional Responsibility – in cooperation with ALPS	JUNEAU Centennial Hall	9:00 a.m. – 12:15 p.m.,
Oct 12	Real Estate Issues	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m.
Oct 18	13th Annual Alaska Native Law Conference	Anchorage Anchorage Hilton	8:30 a.m. – 5:00 p.m.
Oct 27 **TENTATIVE - NEW**	7th Annual Workers' Comp Update	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m.
Nov 1 **TENTATIVE - NEW**	Legal & Tax Issues for Nonprofits	Anchorage Hotel Captain Cook	8:30 a.m. – 4:30 p.m.
Nov 7	Admiralty Law	Anchorage Hotel Capt. Cook	8:30 a.m.– 12:30 p.m.
Dec 1 **NEW**	Leading & Succeeding in Your Law Office	Anchorage Hotel Capt. Cook	8:30 a.m. – 11:00 a.m.

We were looking for a few good lawyers... you can say we found them !

The following firms and individuals have generously supported the second annual Partners In Justice Campaign to raise awareness of and funds for our efforts to give every Alaskan, regardless of their ability to afford it, EQUAL ACCESS TO JUSTICE.

On behalf of our clients, the Board of Directors, and staff, we thank each and every person involved.

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VCLE dues reduction for 2001 set at $45

The Board of Governors has set the amount that may be deducted from 2001 bar dues for completion of the minimum hours of approved CLE at $45.

Active Bar members who complete at least 12 hours in 2000 (with a ramp-up" period starting September 2, 1999) may deduct $45 when they pay their 2001 Bar dues. 2001 Bar dues are due February 1, 2001 and are $450. Members who split their active dues payment must take the reduction in the 1st installment.

Note that this does not apply to 2000 Bar dues which are due February 1, 2000.

Other incentives to complete the minimum recommended hours of CLE include:

- inclusion in a published listing of Alaska Bar members who have completed the minimum recommended hours of approved CLE;
- eligibility to participate in the Bar's Lawyer Referral Service;
- non-compliance may be taken into account in any Bar disciplinary matter involving Alaska Rule of Professional Conduct 1.1 dealing with competency.

Alaska is the first state to adopt a CLE rule that includes incentives for compliance. Currently one-half of all Alaska Bar members attend at least one Alaska Bar Association CLE seminar each year.

Some statistics from the past two years:

Bar Exam	No. of Applicants	Pass Rate
February 1998	51	69%
July 1998	68	66%
February 1999	66	56%
July 1999	60	60%

Reciprocity Admissions	
1998	20
1999	13

Alaska Bar Association Membership

By District	
1st	301
2nd	32
3rd	1,685
4th	216
Total in Alaska	2,234

By Status	
Active in Alaska	2,234
Active Outside	434
Inactive	709
Retired	54
Honorary	1
Total Members	3,432

Lawyer Referral Service	
Total calls in 1998	7,596
Total calls in 1999	6,654

Section Membership	
1998	1,206
1999	1,666

Alaska Bar CLE Programs (Live)	
1998	42
1999	43

International Women's Day luncheon, March 10, 2000. Photo by Barbara Hood.

"Women in the Law" luncheon

Alaska's legal community commemorated International Women's Day and Women's History Month recently with a "Women in the Law" luncheon in Anchorage featuring special guest speaker Lt. Governor Fran Ulmer. An attorney by training and key figure in Alaska politics for nearly 30 years, Ulmer praised the many women who have made their mark on Alaska law and politics, and called on the crowd to continue working for women's rights and social justice. The second annual luncheon was co-sponsored by the Anchorage Association of Women Lawyers (AAWL) and the Gender Equality Section on the Alaska Bar Association. Pictured with Ulmer at the luncheon are (L-R): AAWL Program Chair Connie Aschenbrenner, Calista Corporation: AAWL Networking Chair Krista Stearns, Hicks, Boyd, Chandler & Falconer; Lt. Gov. Ulmer; AAWL President Stacy Steinberg, Robertson, Monagle & Eastaugh; Alaska Supreme Court Justice Dana Fabe, Co-Chair of the Gender Equality Section; AAWL Secretary Margaret Russell, Burr, Pease & Kurtz; AAWL E-Mail Coordinator Krissell Crandall, BP Exploration; and AAWL Treasurer Jennifer Wagner, Rice, Vollan & Taylor.

L to R: Professor Karen Musalo; Robin Bronen; Mara Kimmel; Luba Belavtseva-O'Hare; Dorothy Stefan; Karen Ferguson. Photo by Barbara Hood

Immigration CLE address political asylum

Several local and national experts on political asylum cases recently presented the CLE *"Political Asylum Law in the United States: Assisting Individuals Escaping Persecution"* in Anchorage. Sponsored by the Immigration Law Section of the Alaska Bar Association in conjunction with the Catholic Social Service Immigration and Refugee Services Program, the CLE was free to all attorneys who agreed to accept a political asylum case from the CSS/I&RS program *pro bono*.

Featured speakers at the CLE included (L-R in accompanying photo): Professor Karen Musalo, U.C.-Hastings Center for Gender and Refugee Studies in San Francisco; Robin Bronen, CSS/I&RS Director; Mara Kimmel. CSS/I&RS Immigration Staff Attorney; Luba Belavtseva-O'Hare former asylum seeker now on the CSS/I&RS staff; Dorothy Stefan District Counsel for the U.S. Immigration and Naturalization Service (INS); and Karen Ferguson, Clinical Psychologist Southcentral Foundation.

Each year the CSS/I&RS program receives many more requests for representation in asylum cases than it can effectively handle, and relies on the support of volunteer attorneys to help those fleeing persecution in their hornelands.

"We would like to extend a huge thanks to the Alaska Bar Association for sponsoring this important event and to the participating attorneys who make this critical work possible," says CSS/I&RS attorney Mara Kimmel

Board of Governors invites comments

The Board of Governors invites member comments concerning the following proposal to amend Alaska Bar Rule 5.

The proposed amendment to Bar Rule 5(1) would add new sections (d) and (e) to provide for conditional admission to the practice of law in exceptional cases involving substance abuse, psychological or financial problems where an applicant demonstrates a continuing commitment to curing the problem or problems. The proposal would permit the Board and the applicant to enter into a memorandum of agreement which would specify the terms and conditions under which the applicant could practice law in Alaska. The period of conditional admission would not exceed two years. If successful, the applicant would then be admitted to practice without condition.

The Supreme Court would review and enter an appropriate order under Rule 5(3). A memorandum of agreement would be most commonly used in cases where an applicant has a drug or alcohol problem which is amenable to professional treatment and where the applicant's practice could be supervised by a member of the Bar. Records and proceedings concerning a conditional admission would be confidential unless otherwise ordered by the Supreme Court or necessary for a disciplinary investigation or proceeding.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by April 28, 2000.

BAR RULE 5

PROPOSED AMENDMENT PROVIDING FOR CONDITIONAL ADMISSION TO THE PRACTICE OF LAW

(Additions italicized; deletions bracketed and capitalized)

Rule 5. Requirements for Admission to the Practice of Law.

Section 1.

(a) To be admitted to the practice of law in Alaska, an applicant must

(1) pass the bar examination prescribed pursuant to Rule 4;

(2) pass the Multistate Professional Responsibility Examination;

(3) be found by the Board to meet the standard of character and fitness, as required pursuant to Rule 2(1)(d);

(4) be determined by the Board to be eligible in all other respects;

(5) pay prorated active membership dues for the balance of the year in which he or she is admitted, computed from the first day of admission;

(6) attend a presentation on attorney ethics as prescribed by the Board prior to taking the oath prescribed in Section 3 of this rule;

(7) file an affidavit as required by Bar Rule 64 stating that the applicant has read and is familiar with the Alaska Rules of Professional Conduct; and

(8) take the oath prescribed in Section 3 of this rule.

(b) Within 60 days after completion of the requirements stated in subparagraphs (a)(1), (2) and (6) of Section 1 of this Rule, an applicant must file with the Alaska Bar Association the forms provided by the Board, formally accepting membership in the Association and admission to the practice of law in Alaska.

(c) The Board may conduct a character investigation of an applicant, or may continue such an investigation, after the applicant has been permitted to take, or has passed, the examination prescribed by the Board pursuant to Rule 4. The fact that the Board has permitted the applicant to take the examination, and has given the applicant notice that he or she has passed the examination, shall not thereafter preclude the Board from denying the admission of the applicant on the grounds of character and fitness as set forth in Rule 2(1)(d).

(d) The Board may recommend to the Court that an applicant be conditionally admitted to the practice of law in Alaska in exceptional cases involving substance abuse, psychological or financial problems upon such terms and conditions as are specified in a memorandum of agreement entered into between the Board and the applicant. The applicant must demonstrate a continuing commitment to curing the problem or problems and be otherwise fully eligible for admission.

(e) An applicant may be conditionally admitted to the practice of law in Alaska for a specified period not to exceed two years. If the Board certifies to the Court that the applicant has successfully met the terms and conditions specified in the memorandum of agreement in paragraph (d) at the conclusion of that specified period, the applicant will be admitted to the practice of law in Alaska without condition.

Section 2. An applicant who fails to comply with the provisions of Section 1 of this Rule shall not be eligible for certification to the Supreme Court for admission and shall be deemed to have abandoned the application.

Section 3. Upon receiving certification of the eligibility of an applicant the Supreme Court may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association *or may enter an order conditionally admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association subject to the applicant's compliance with a memorandum of agreement entered into between the Board and the applicant. All records and proceedings concerning a conditional admission shall be confidential unless otherwise ordered by the Court or unless the information is necessary for a disciplinary investigation or proceeding.* Each applicant ordered admitted *or conditionally admitted* to the practice of law shall take the following oath before any state or federal judicial officer:

...

PROPOSED BOARD REGULATIONS TO IMPLEMENT CONDITIONAL ADMISSION:

STATEMENT OF PURPOSE, TERMS, AND CONDITIONS FOR CONDITIONAL ADMISSION TO THE PRACTICE OF LAW IN ALASKA.

A. PURPOSE OF CONDITIONAL ADMISSION

The Board of Governors has a primary obligation to clients, the public, the legal system, and the legal profession to determine that applicants for admission to the practice of law in Alaska possess the requisite character and fitness. The Board recognizes that exceptional cases may arise in which applicants have substance abuse, psychological or financial problems which are amenable to treatment or supervision. To afford these individuals the opportunity to demonstrate their character and fitness, the Board may recommend to the Supreme Court that these individuals be conditionally admitted to the practice of law in Alaska upon such terms and conditions as are specified in a memorandum of agreement entered into between the Board and the applicants.

B. TERMS AND CONDITIONS IN MEMORANDUM OF AGREEMENT

The Board shall specify the terms and conditions in the memorandum of agreement between the Board and the applicant which may include, but are not limited to the following:

1. prohibiting the use of alcohol or controlled substances;

2. requiring treatment for alcohol or other chemical dependency, by professionals approved by the Lawyers' Assistance Committee or the Board;

3. requiring the individual to practice law under the supervision of an attorney admitted to the Alaska Bar Association and prescribing the terms and conditions of supervision;

4. requiring submission to periodic, random drug testing;

5. requiring the individual to report periodically to the Board or its designee;

6. requiring suspension, for any portion of the conditional admission period, of an activity for which a license to practice law is required;

7. requiring the individual to take specific actions designed to cure or end any deficiencies in his or her character and fitness;

8. requiring the applicant, upon request at any time during the period of conditional admission to provide business or personal financial records.

ETHICS OPINION: Limits to confidential settlement agreements

ALASKA BAR ASSOCIATION
ETHICS COMMITTEE
OPINION NO. 2000-2

The Effect of Confidential Settlement Agreements on Precluding Further Representation for Subsequent Clients

The Ethics Committee has been asked to determine whether a lawyer who has represented a creditor, settled the claim, and whose creditor-client has signed a confidentiality agreement with the debtor agreeing not to disclose information from the settlement, may subsequently represent another creditor against the same debtor. It is the opinion of the Ethics Committee that a lawyer is not precluded from representing a subsequent client against the debtor in the circumstances outlined below so long as the attorney abides by the confidentiality requirements of Alaska Rule of Professional Conduct 1.6. Additionally, it is the opinion of the Ethics Committee that an attempt to use a settlement agreement to preclude an attorney from representing subsequent creditors might violate Alaska Rule of Professional Conduct 5.6.

RELEVANT FACTS

The specific fact scenario presented to the Ethics Committee involves an attorney who has represented a creditor against a particular debtor in the past. As a part of the original settlement agreement between the parties, the creditor and debtor "agree not to divulge any information contained in or concerning the terms of this agreement to third parties, except as may be necessary for the execution of this agreement or as required by law." Thereafter, the terms of the settlement are complied with between the parties.

Later, the creditor's attorney is retained by another creditor in proceedings against the same debtor. The creditor attorney's demand letter is met with a response that the attorney must withdraw based upon the confidentiality clause of the original settlement agreement. The letter from the debtor's attorney in essence states that this new representation by the creditor's attorney would necessarily require the disclosure, at least implicitly, of the settlement negotiations with the debtor. This disclosure, the letter continues, breaches the confidentiality provisions of the settlement agreement, subjecting the first creditor to legal action. The debtor's attorney also alleges that this representation would violate Rules of Professional Conduct 1.7 and/or 1.9.

ANALYSIS

1. Rule of Professional Conduct 1.6 Precludes the Creditor's Attorney From Revealing the Discussions and Terms of the Prior Settlement to the Second Creditor.

Although the debtor's attorney's letter assumes that the creditor's attorney will necessarily be compelled, in the course of his representation of the second creditor, to disclose settlement results from prior negotiations with the first creditor, it is not clear that this assumption is correct or proper. Under Alaska Rule of Professional Conduct 1.6, the principle of confidentiality is set forth. This rule states:

(a) A lawyer shall not reveal a confidence or secret relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b) or Rule 3.33(a)(2). For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and *"secret" means other information gained in the professional relationship* if the client has requested it be held confidential or *if it is reasonably foreseeable that disclosures of the information would be embarrassing or detrimental to the client.* In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information. (Emphasis added.)

This rule prohibits the disclosure of client "secrets" including information gained through a professional relationship with a client when it is reasonably foreseeable that disclosures would be "detrimental to the client." In this case, the information covered by the confidential settlement agreement would constitute a client "secret" which could not later be disclosed to another client or anyone else for that matter without violating this rule, since its disclosure could result in breach of the original settlement agreement and possibly legal action against the first creditor.

Any further limitations on the attorney's representation are thereafter governed by Alaska Rule of Professional Conduct 1.7 and 1.9 as set forth in the analysis below.

2. Rule of Professional Conduct 1.7 Does Not Preclude the Attorney From Representing the Second Creditor.

The debtor's attorney claims that representation of the second creditor by the attorney violates Rule of Professional Conduct 1.7. The Ethics Committee disagrees. This rule states in pertinent part:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation...

The facts of this scenario are not clear regarding the terms of the original settlement and whether there are ongoing obligations owed by the debtor to the first creditor at the time the attorney begins his representation of the second client. For purposes of this opinion, it is assumed that no such continuing obligations exist. Under these circumstances, the second creditor will not be "directly adverse" to the first creditor because there are no ongoing obligations owed by the debtor to the first creditor which might be impacted by the second creditor's claim. Additionally, since the lawyer is no longer working for the first creditor, the lawyer's representation of the second creditor should not be "materially limited" by the lawyer's responsibilities to the first creditor. This is a decision that must of course be analyzed by the attorney with regard the facts and circumstances of each individual case.

If these circumstances are then met, the Ethics Committee does not believe that representation of the second creditor by the attorney violates Rule of Professional Responsibility 1.7.

3. Rule of Professional Conduct 1.9 Does not Preclude the Attorney From Representing the Second Creditor.

Again, the debtor's attorney claims that representation of the second creditor by the attorney will violate Rule of Professional Conduct 1.9. The only relevant provision of this rule states as follows:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

This rule is designed to ensure that a lawyer's duties of loyalty and confidentiality as to the matter in which the lawyer represented a client continue after the termination of the attorney-client relationship. Under the facts of this case, however, the attorney's representation of the second creditor does not violate the Rule of Professional Conduct 1.9 because the second creditor's interests are not materially adverse to the first creditor's interest. Again it is assumed for the purposes of this opinion that there are no ongoing obligations owed by the debtor to the first creditor at the time the attorney begins his representation of the second client.

4. Rule of Professional Conduct 5.6 Precludes an Attempt by a Party From Restricting an Attorney's Right to Practice.

The Ethics Committee believes it is important to note that an attempt by the debtor's attorney to preclude an attorney from representing subsequent creditors under these circumstances might be construed as a violation of Rule of Professional Conduct 5.6. This rule states in part that a lawyer shall not participate in offering or making "an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties." If the debtor's attorney construes the confidential settlement as precluding further representation by the creditor's counsel, then the debtor's attorney may have violated this rule by drafting or negotiating this contractual arrangement.

CONCLUSION

In summary, it is the opinion of the Ethics Committee that the terms of the confidential settlement agreement do not preclude the attorney from representing the second creditor. The attorney is precluded under Rule of Professional Conduct 1.6 from disclosing the discussions or the terms of the settlement agreement between the first creditor and the debtor with the second creditor.

Approved by the Alaska Bar Association Ethics Committee on February 3, 2000.

Adopted by the Board of Governors on March 10, 2000.

ETHICS OPINION: Insurer-insured conflicts of interest

ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 99-3

May In-House Staff Counsel For An Insurance Company Represent Insureds?

INTRODUCTION

A three-way relationship amongst a liability insurer, its insured, and defense counsel retained by the insurer to represent the insured, gives rise to numerous ethical considerations for defense counsel.[1] Insurers have attempted to institute a number of measures to control costs in recent years, including the provision of defense services directly through salaried lawyer employees. The Ethics Committee has been asked to consider the ethical propriety of this arrangement. May an insurance company employ in-house counsel (salaried employees) to represent their insured in litigation before Alaska courts?

The Committee concludes that the attorney/employee of an insurer may provide defense services to an insured so long as: (1) there is full disclosure of the attorney's relationship with the insurer; (2) the client consents after consultation; (3) the lawyer reasonably believes the representation will not be adversely affected by his employment; and (4) there is no conflict of interest between the insurer and insured.

ANALYSIS

1. *The Tripartite Relationship*

An analysis of the issues involved in this opinion requires a brief discussion of the different aspects of the relationship between the insurer, its insured, and the defense attorney retained by the insurer to represent the insured. First, the insured has contracted with the insurer for insurance. As part of this insurance, the insurer typically agrees to provide a defense, including legal representation, for the insured. Often times, the insurer has a contractual duty to provide the insured with legal representation. In exchange, the insurer typically receives the right to control the defense (and often the settlement) of the underlying claim against the insured. When the insurer retains an attorney to represent the insured, the insured becomes the attorney's client. Even though the insurer is paying for the attorney's legal services (by fee or salary), professional responsibilities of the attorney, including the duties of confidentiality and loyalty, run to the insured.[2]

2. *The Alaska Rules*

The Alaska Rules of Professional Conduct expressly recognize that an attorney may ethically represent a client, where another pays the legal fees or salary. Rule 1.8(f) provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

Rule 1.7 is also implicated:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to *a third person, or by the lawyer's own interests,* unless;

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(Emphasis added.)

3. *The Lawyer Must Maintain Independent Professional Judgment*

In all cases, the lawyer for the insured must maintain his or her professional independence, and exercise professional judgment for the sole benefit of the client. A lawyer may accept compensation from someone other than the client only if there is no interference with his independence and professional judgment. In *CHI of Alaska, Inc. v. Employers' Reins. Corp.*, 844 P.2d 1113 (Alaska 1993), the supreme court noted that appointed defense counsel owes "an absolute duty of fidelity to the insured over the interests of the insurer." *Id.* at 1116. The court further quoted with approval from a decision of the Arizona Supreme Court:

We emphasize that the attorney who represents the insured owes him an undeviating allegiance whether compensated by the insurer or the insured and cannot act as an agent of the insurance company by supplying information detrimental to the insured.

Id. (quoting *Farmers' Ins. Co. of Ariz. v. Vagnozzi*, 138 Ariz. 443, 448, 675 P.2d 703, 708 (Ariz. 1983)). Thus, regardless of who pays the lawyer's bill (or salary), the insurance defense attorney owes a duty of unfettered loyalty to the client insured.

In some states, the use of salaried staff counsel to defend the insured has been criticized on legal and ethical grounds. However, the majority of states which have considered the use of staff counsel to defend insureds have approved of the arrangement.

The early decisions uniformly approved the insurer's use of salaried lawyers to defend their insureds. The American Bar Association Committee on Ethics and Professional Responsibility has opined that ethics rules apply uniformly to all attorneys, regardless of how they are paid. In a 1950 opinion, the ABA Committee stated that a lawyer employed and compensated by an insurance company, which holds a standard contract of insurance with its insured, "may with propriety defend the insured in an action brought by a third party." ABA Comm. on Professional Ethics, Formal Op. 282 (1950). The ABA noted the "essential point of ethics" raised by the use of salaried staff counsel to defend insureds is the question of conflict of interest. The ABA opinion concludes that conflicts will not arise as long as staff counsel "represent[s] the insured as his client with undivided fidelity as the rule requires." *Id.* This position is consistent with Alaska law on defense counsel's duty of loyalty. *See CHI of Alaska, Inc.*, 844 P.2d at 1116.

Critics have sought to prohibit the use of salaried counsel on two basic grounds. First, they charge that the use of in-house counsel engages the insurance company in the unauthorized practice of law. Second, the practice is claimed to result in actual or potential conflicts of interest.

4. *The Insurer and the Unauthorized Practice of Law*

The majority of courts which have looked at the unauthorized practice of law issue have concluded the attorney-employee is not aiding a non-attorney in the practice of law. In fact, until 1986, every court and ethics group that had carefully studied the salaried counsel issue found the practice permissible. *See* Jackson, *Defending the Insured with Salaried Counsel: Legal and Ethical Considerations*, Vol. 27, No. 2 The Brief 38, 40 (Winter 1998). In *Gardner v. North Carolina State Bar*, 341 S.E.2d 517 (N.C. 1986), the North Carolina Supreme Court held that state's unauthorized practice statute precluded the use of salaried house counsel. The court initially observed that by making an appearance, the lawyer was in effect appearing for his corporate employer. If the lawyer appeared for an insured, the insurer would be appearing for someone else, in violation of North Carolina's practice of law statute. The court reasoned that the insurance company itself could not be a party to the action.[3]

The *Gardner* decision has been severely criticized. The Missouri Supreme Court refused to adopt the reasoning of the *Gardner* case, and instead chose to follow what it described as the weight of authority. *In re Allstate*, 722 S.W.2d 947 (Mo. 1987). The Missouri court noted the unauthorized practice statutes were designed to preclude a corporation with non-professional shareholders from obtaining a proprietary interest in the practice of law. In 1993, a Connecticut court also reviewed the unauthorized practice claim. *King v. Guiliani*, 1993 WL 284462 (Conn. Super. Ct. 1993). It found the *Gardner* decision unpersuasive, and chose to follow *Allstate*. The Connecticut court concluded the overwhelming weight of authority permitted the use of salaried attorney employees to represent the interests of the insured and the insurer provided there was no conflict of interest.

In 1995, the Tennessee Supreme Court overturned an ethics opinion prohibiting liability insurers' use of salaried lawyers to defend their insureds. One of the original reasons for the ethics opinion was the conclusion that the use of salaried lawyers violated Tennessee's unauthorized practice statute. Once again, the Tennessee Supreme Court rejected a *per se* rule that the use of salaried attorney employees aided non-attorneys in the practice of law.

However, the mere fact that the lawyers are employees of [an] insurance company does not necessarily compromise the attorney's independent professional judgment.

As stated with regard to the conflict of interest issue, the specific facts of each situation must be

Continued on page 13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

IN THE MATTER OF	)	
Filing Complaint and Subsequent	)	**MISCELLANEOUS**
Documents in District Court Locations	)	**GENERAL ORDER**
Replaces MGO 828 which is stricken	)	**NO. 834**
	)	

Miscellaneous General Order MGO 828 is stricken and replaced by MGO 834

In accordance with Local Rule 3.2, Venue and Place of Trial, a civil or criminal action may be filed in any of the five locations mentioned in 28 U.S.C. _81A. The purpose of this order is to establish where complaints and other papers may be presented for filing with respect to these five locations.

Anchorage: For Anchorage venue cases, complaints and subsequent papers must be presented for filing in Anchorage.

Fairbanks: For Fairbanks venue cases, complaints and subsequent papers must be presented for filing in either Fairbanks or Anchorage.

Juneau: For Juneau venue cases, complaints and subsequent papers must be presented for filing in either Juneau or Anchorage.

Ketchikan: For Ketchikan venue cases, complaints and subsequent papers must be presented for filing in either Ketchikan or Anchorage.

Nome: For Nome venue cases, complaints and subsequent papers must be presented for filing in either Nome or Anchorage.

DATED this 4th day of February 2000, at Anchorage, Alaska.

James K. Singleton, Jr. and H. Russel Holland & John W. Sedwick
Chief United States District Judge United States District Judges

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REMINDER

The U.S. District Court has placed a moratorium on the payment of attorney admission annual renewal fees of $25 for this year.

However, the initial attorney admission fee of $100 and the *pro vac vice* fee of $100 / case filing for out of state attorneys remain in effect.

ETHICS OPINION: Insurer-insureds

Continued from page 12

examined to determine if the attorney is aiding a non-attorney in the practice of law. The mere showing of the relationship of employer/ employee, without a definition of the duties, loyalties, prerogatives, and interests of the parties, is not a sufficient basis on which to conclude that the attorney employee is aiding a non-attorney in the practice of law.

Petition of Youngblood, 895 S.W.2d 322, 331 (Tenn. 1995).

Like most states, Alaska has statutes and rules prohibiting the unauthorized practice of law. Alaska Rule of Professional Conduct 5.5 prohibits a lawyer from assisting a person who is not a member of the bar in their performance of activity that constitutes the unauthorized practice of law. In addition, under Alaska Rule of Professional Conduct 5.4, a lawyer is prohibited from sharing legal fees with a non-lawyer, except under defined circumstances. Finally, and most importantly,

a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Alaska R. Professional Conduct 5.4(c).

In the Committee's view, the Alaska Rules clearly provide for the professional independence of a lawyer, even though he or she may be employed by a non-lawyer. A staff lawyer who represents the insured using the best of his or her independent professional judgment, is not aiding the insurer in the unauthorized practice of law. The Committee fails to see a distinction between the lawyer employee of an insurance company, and any other lawyer employee of a corporation, association or public entity.[4]

5. *Potential Conflicts of Interest*

The second reason usually given by critics of salaried staff counsel for objecting to the relationship is the potential for conflicts of interest. Some courts, like Kentucky, have concluded the potential for conflict is so great that a *per se* rule is required. In *American Ins. Ass'n v. Kentucky Bar Ass'n.*, 917 S.W.2d 568 (Ky. 1996), the court acknowledged the trends of other jurisdictions, but concluded, without analysis, that staff counsel would be incapable of providing undivided loyalty to the insured. Most other courts, however, have concluded the relationship of staff counsel to the insured is no different than any other potential conflict of interest situation. In the Committee's view, a *per se* rule against the use of salaried staff counsel is overly restrictive. The Rules of Professional Conduct recognize that certain situations are fraught with potential conflicts. However, the potential for conflict does not mean the lawyer must, in all cases, avoid the representation. On the contrary, the Rules recognize that a potential for conflict does not preclude employment. *See* Alaska R. Professional Conduct 1.7 cmt.[5]

Finally, the New Jersey Supreme Court Committee on Unauthorized Practice recently addressed whether the use of salaried staff counsel was prohibited by the rules of ethics. The New Jersey Committee concluded that an insured's representation by a salaried attorney was permissible. The Committee noted the ethical issues confronting in-house counsel were no different than those confronting appointed counsel in most insurance defense contexts. Consequently, whether the insured was represented by a salaried attorney or outside counsel was merely a "distinction without a difference." *See* New Jersey Supreme Court Comm. on Unauthorized Practice, Op. 23 (1996).

In the Committee's view, a *per se* rule prohibiting staff counsel would presume unethical conduct on the part of the lawyer. The Committee refuses to condone such a presumption. All lawyers practicing in this state must abide by the Alaska Rules of Professional Conduct. To presume that any lawyer will ignore his or her professional responsibilities when it would be in their employer's, but not their client's interest, would stand the ethical rules on their head.

6. *Real Conflicts of Interest*

Where an actual conflict of interest exists between the insurer and the insured, the use of salaried staff counsel should be avoided. For example, where the insurer wishes to defend under a reservation of its right to later contest coverage, the Alaska Supreme Court has recognized the existence of various conflicts of interest between the insured and insurer. *See CHI of Alaska, Inc. vs. Employers Reinsurance Corp.*, 844 P2d. 1113, 1116 (Alaska 1993). Because of these conflicts, the insured is entitled to reject appointed defense counsel and select independent counsel of his or her own choosing. *Id.* at 1118. In such a case, the Committee believes it would be inappropriate for salaried staff counsel to defend the insured. Another commonly recurring situation which may give rise to a conflict of interest is a settlement offer at or within policy limits where there is a substantial likelihood of an excess judgment.[6] In such situations, where an actual conflict is identified, the Committee believes representation by salaried staff counsel is prohibited since counsel could not reasonably believe the representation would both be adversely affected. *See* Alaska R. Professional Conduct 1.7(b)(1).

CONCLUSION

In summary, the Committee believes the use of salaried staff counsel to represent an insured is permissible so long as the following conditions are met: (1) the lawyer reasonably believes the representation will not be adversely affected by the lawyer's responsibilities to his employer/ insurer, or his own interests; (2) the client consents after consultation; and (3) there is no conflict of interest between the insured and the insurer.

Approved by the Alaska Bar Association Ethics Committee on September 2, 1999.

Adopted by the Board of Governors on October 22, 1999.

[1] *See, e.g.,* Ethics Opinion Nos. 89-3 (Duty of Defense Attorney Where Insured Objects to Insurer's Selection of Defense Counsel); 90-2 (Duty of Defense Attorney Where Insurer Directs Offer of Judgment); 99-1 (Disclosure of Detailed Information to Outside Billing Auditors). *See also CHI of Alaska, Inc. v. Employers' Reins. Corp.*, 844 P.2d 1113 (Alaska 1993); A.S. 21.89.100.

[2] Much has been written about the tripartite relationship between insured, insurer, and defense counsel. It is a triangular relationship because each of the three parties owe, in some respect, either contractual, statutory, or common law duties to the other. It is unresolved in Alaska as to whether both the insurer and the insured are clients of the defense counsel. Some would argue that the only attorney-client relationship that exists is between the defense counsel and the insured, while others have taken the position that the insurer and insured are co-clients of the defense counsel. *See CHI of Alaska*, 844 P.2d at 1116 (noting the different authorities that take the view that appointed counsel represents both the insurer and the insured); *Home Indem. Co. v. Lane, Powell, Moss & Miller*, 43 F.3d 1322, 1331 (9th Cir. 1995) (holding the Alaska Supreme Court would find an attorney-client relationship between the insurer and the counsel it retains for the insured). The Ethics Committee takes no position on this debate, and notes that there is no debate that the insured is a client.

[3] The *Gardner* court noted the substantial contrary authority from other jurisdictions, but distinguished its own unauthorized practice statute. *Gardner*, 341 S.E.2d at 522. The North Carolina statute provided: "It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this state . . . ." *Id.* at 520. Alaska's unauthorized practice laws do not contain the same prohibitions.

[4] A contrary conclusion could lead to absurd results. Corporate entities of all kinds would be prohibited from using their staff counsel in litigation matters. Banks or other lenders would be unable to pursue collections actions through their staff lawyers. Corporations of all kinds would be prohibited from using their own in-house lawyers in litigation matters. Unions and other professional organizations would be unable to use staff lawyers in litigation for and against their membership. Government and quasi-governmental bodies would similarly be prohibited from using lawyer employees. For example, employees of the Attorney General's Office who are appointed to represent individual State employees, could be aiding the unauthorized practice of law by the State. Lawyer employees of the Municipality could be aiding the Municipality in the unauthorized practice of law when they represent Municipal officers or other City employees. School District lawyers could be aiding the unauthorized practice of law by the School District when they represent teachers. Thus, the Committee fails to see a distinction if the lawyer is employed by an insurance company.

[5] A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Alaska R. Professional Conduct 1.7 cmt.

[6] In *CHI*, the Alaska Supreme Court noted three conflicts which had previously been identified. First, the insurer may offer only a token defense if it knows it may later assert non-coverage. Second, the insurer may be tempted to steer the defense toward an "uninsured theory" where there are several theories of recovery, but only some are covered under the policy. Third, the insurer may gain access to confidential information in the process of the defense which it may later use to its advantage in coverage litigation. *CHI*, 844 P2d. At 1116; *see also Continental Ins. Co. vs. Bayless & Roberts, Inc.*, 608 P2d 281, 291 (Alaska 1980).

ETHICS OPINIONS: Representing tribes & municipalities

ALASKA BAR ASSOCIATION ETHICS OPINION NO. 2000-1

MAY AN ATTORNEY REPRESENTING TRIBAL ENTITIES REPRESENT TORT CLAIMANTS HARMED BY THOSE ENTITIES IF THE U.S. IS LIABLE FOR ANY DAMAGES?

The Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450, provides opportunities for Native American tribal entities to perform certain functions performed previously by the federal government. The tribal entities perform these functions under "self-determination contracts" with a government agency, such as the Indian Health Service, Public Health Service or Bureau of Indian Affairs. 25 U.S.C. §450f. When a tribal entity is acting under a self-determination contract, the United States is liable for its torts as provided in the Federal Tort Claims Act, and the Attorney General defends the action. 25 U.S.C. §450f(c)(1); 28 U.S.C. §2674; Interior and Relations Agencies Appropriations Act of 1990, Pub. L. 101-512.

The question presented is whether an attorney representing a tribal entity may represent a client with a tort claim against the tribal entity or its employees under a self-determination contract. The question commonly arises in two contexts. The first is a medical malpractice claim arising from a tribal entity-operated *health clinic*. The second is a tort caused by the tribal entity's actions as a landowner or construction contractor.

The committee concludes that representation of the tort claimant is a conflict of interest as set out in Alaska R. P.C. 1.7.

THE GOVERNING RULE

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(c) A lawyer shall act with reasonable diligence in determining whether a conflict of interest, as described in paragraphs (a) and (b) of this rule, or Rules 1.8, 1.9 and 1.10 exists.

DISCUSSION

Representation of both a tort claimant and the tortfeasor is an obvious conflict of interest under the Alaska R.P.C. 1.7. The comment to Rule 1.7 provides:

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated.

This obvious conflict of interest can be distinguished from our two hypothetical situations by only one fact. The tortfeasors in our situations—the tribal entity and its employees—are insulated by statute from liability for torts committed within the scope of the self-determination contract. The existence or absence of actual liability alone, however, should not govern whether there is a conflict of interest.

Rule 1.7 protects clients from problems created by competing loyalties. The comment to Alaska R.P.C. 1.7 provides:

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interest. The conflict in effect forecloses alternatives that would otherwise be available to the client.

Despite any direct liability, representation of the tortfeasor and the tort claimants will result in competing loyalties. These competing loyalties could affect the choice of claims made, discovery, witnesses, and the handling of witnesses at trial, particularly during cross-examination, thereby interfering with the attorney's exercise of professional judgment.

The problem of competing loyalties will exist regardless of any liability insurance or the particular facts of the claim. The conflict may be stronger in some cases than others, however. The conflict is stronger, for example, if there is a question that the tortfeasor's conduct exceeded the scope of the self-determination contract. A conflict nevertheless should exist in every case. The particular facts, however, may affect whether the client can consent to the conflict under Rule 1.7(a)(2), (b)(2).

In sum, the committee concludes that representing both a Native American tribal entity and a person with a tort claim arising out of the tribal entity's conduct under a self-determination contract with the U.S. government is a conflict of interest as set out in Alaska R.P.C. 1.7.

Approved by the Alaska Bar Association Ethics Committee on December 2, 1999.

Adopted by the Board of Governors on January 21, 2000.

ALASKA BAR ASSOCIATION ETHICS OPINION NO. 99-2

May A Municipal Attorney Represent A Quasi-Judicial Municipal Board That Is Hearing A Disputed Matter In Which The Municipality Is A Party To The Dispute?

The Committee has been asked if a municipal attorney may represent a quasi-judicial municipal board hearing a disputed matter in which the municipality is a party to the dispute. The Committee concludes that the lawyer may do so, but only in accordance with Alaska Rule of Professional Conduct 1.7.

In the facts presented, the municipality employs a very small staff of attorneys. The attorneys provide general legal advice to municipal agencies and represent the municipality in disputed matters. On occasion, the municipality is a party in a disputed hearing heard by a quasi-judicial board comprised of citizen volunteers. One municipal attorney sits at counsel table and advocates for the municipality's position (the "advocate"). Another municipal attorney sits with the board and provides it with procedural advice (the "neutral"). The attorneys do not discuss the matter with each other outside the hearing room, intending to be separated by what is colloquially known as an "ethical screen."

This phrase refers to an imaginary barrier between lawyers in the same office preventing communication about the matter. *E.g.*, Stevens, "Can the State Attorney General Represent Two Agencies Opposed in Litigation," 2 Georgetown Journal of Legal Ethics 757, 797 (1989). Ethical screens, or "Chinese Walls," are meant to protect against conflicts of interest much as "the Great Wall served ancient Chinese emperors, an elaborate and extraordinary, yet effective and impregnable, barrier against transgression." C. Wolfram, Modern Legal Ethics, § 7.6.4, at 401 n. 65.[1]

As an initial matter, the Committee notes that lawyers representing government entities are subject to the Rules of Professional Conduct in the course of representing their client. ABA Formal Opinion 97-405.[2] Among these are the rules relating to conflicts of interest. *Id.*, at 4 ("it seems clear that the general conflict of interest provisions of the Model Rules serve to protect the interests of a government client just as they protect the lawyer's private clients"). Alaska Rule of Professional Conduct 1.7 provides:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client ~~in the same or a substantially related matter~~*, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation [...].

(*Publisher's Revision: This ethics opinion was drafted prior to the January 15, 1999 amendment to ARPC 1.7(a). This strikethrough shows the language removed by the amendment.)

Rule 1.7 is primarily based on the duty of loyalty owed to the lawyer's clients and the duty to preserve client confidences. *Comment*, Annotated Model Rule of Professional Conduct 1.7 (Chicago: ABA, Third Ed. 1995), at 19. The rule "applies both when the representation of a client is directly adverse to another client and when representation of one client would be materially limited by other interests or responsibilities of the lawyer." Id. (citations omitted).

Many commentators have concluded that different agencies within a government entity should be considered separate clients when they have opposing positions in matters in controversy. Josephson & Pearce, "To Whom Does the Government Lawyer Owe the Duty of Loyalty When Clients Are in Conflict," 29 Howard Law J. 540; Stern & Gressman, *Supreme Court Practice* (5th Ed. 1978), at 768. The authorities recognize, however, that the attorney-client relationship is "subtly different" for government attorneys as compared to the private bar. *Humphrey v. McLaren*, 402 N.W.2d 535, 542 (Minn. 1987). The attorney general, for example, has a "dual role as representative of a state agency and guardian of the public interest." *Deukmejian v. Brown*, 624 P.2d 1206, 1209 (Calif. 1981). State courts have allowed the attorney general to concurrently represent conflicting interests within the government, when the attorney general "can ensure independent representation for the competing parties." *Hawai'i v. Klattenhoff*, 801 P.2d 548, 604 (Hawaii 1990).

Adversity and independence are the issues. In the facts presented, the municipal agency and the citizen board are not directly adverse. Thus, Rule 1.7(a) (adversity) does not squarely apply. However, the roles of the two municipal attorneys participating in the hearing differ substantially. The advocate attorney argues for the municipal agency's position. The neutral attorney provides advice to the citizen board on its options. While the advocate acts in a conventional role, the neutral is in a more complex position, and the concerns of Rule 1.7(b) (independence) are implicated.

The municipality, a party to the proceeding, employs the neutral attorney. The neutral has personal interests in maintaining good relations with the municipality as an employer, the municipal agency as a client, and the "advocate" municipal attorney as a colleague or possibly a supervisor. Regardless of the temporary assignment to the board, the neutral owes a duty of loyalty to the municipality:

Simply put, an attorney must be loyal to her client and ensure that every professional decision she makes on behalf of the client is in the client's best interest.

Freund v. Butterworth, 117 F.3d 1543 (11th Cir. 1997).

The facts presented involve a very small law office, where the attorneys are in daily contact, as compared to a larger governmental law office with "a large staff which can be assigned in such manner as to afford independent legal counsel and representation to the various agencies." *Superintendent of Insurance v. Attorney General*, 558 A.2d 1197, 1204 (SJC Maine, 1989), *quoting*, *Allain v. Mississippi PUC*, 418 So.2d 779, 784 (Miss. 1982).

Even with the best intentioned ethical screen in place, the neutral attorney may be reluctant to give advice to the board that goes against the municipality's interests, that undercuts the arguments of the municipal staff or that contradicts the arguments of her colleague or supervisor, the advocate. The neutral is in a position of potentially conflicting loyalties, and her ability

Continued on page 15

Board of Governors takes action

At the Board of Governors meeting on January 21, 2000, the Board took the following action:

• Heard the status report by the Internet Committee: asked them to look into the cost and steps to implement home pages for each Section, setting up a Membership Directory, and a master calendar. Voted to only publish member name, status and member number on website unless the member givesspecific permission.

• Approved purchase of new phone system.

• Voted against referring an applicant's appeal from the July 1999 exam to a hearing master but agreed to send her scores of representative samples and allow her to submit amended appeal within 30 days.

• Denied an applicant's admissions appeal.

• Approved 6 reciprocity applicants; approved a Rule 43 waiver for an attorney to work at ALSC..

• Granted an applicant's special accommodations request for double time and a separate room for the July 2000 exam, due to a disability.

• Adopted the ethics opinion entitled "May an Attorney Representing Tribal Entities Represent Tort Claimants Harmed by Those Entities if the U. S. is Liable for Any Damages?"

• Voted to publish a proposed increase in the penalty for late bar dues payment, from $10/week to $20/week, and to increase the cap on the penalty from $100 to $200.

• Voted to increase the fee for Reciprocity admission from $1,000 to $1,500 for any application received after July 1.

• Voted to publish a proposed increase in the Rule 81 fee from $250/year to $350/year (per attorney/per case).

• Voted to send to the Supreme Court draft language for the comment to ARPC 1.5 regarding disclosure to the client of potential responsibility for costs under Civil Rule 82.

• Referred the issue of conditional admission to the Bar to a Board subcommittee.

• Voted to publish a proposed housekeeping change to Lawyers' Fund for Client Protection Rule 56.

• Voted to publish a proposed amendment to Bar Rule 2(3) which would provide that a graduate of an unaccredited law school may be eligible to take the bar exam after 5 of 7 years practice in another state (changing it from simply 5 years.)

• Tabled ARPC 1.8(e) until March.

• Denied a request by a magistrate to transfer to inactive status.

• Approved the October minutes as corrected.

• Tabled the issue of a bilingual attorney directory until March.

• Appointed a Board subcommittee on Judicial Independence.

• Board members Schuhmann & Weyhrauch agreed to review the Bar's group insurance benefits.

ETHICS OPINION 99-2

Continued from page 14

to independently represent the board may be questioned:

Loyalty to a client is [...] impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.

Comment, ARPC 1.7(b); *cf.*, *Smiley v. Director, Office of Workers Compensation*, 984 F.2d 278, 282 (9th Cir. 1992), *citing*, former DR 5-105.[3]

In these circumstances, the Committee believes that the neutral attorney's representation of the board will likely be "materially limited" by her responsibilities and loyalties towards the municipality. Rule 1.7(b). The neutral has an obligation to examine very closely the propriety of her representation of the board under Rule 1.7(b)(1) and (b)(2) before proceeding further.

Under Rule 1.7(b)(1), if the neutral attorney believes that representation of the board will be "adversely affected" by her responsibilities to the municipality or any other relevant consideration, such as her personal interests, the neutral must decline the representation. Under Rule 1.7(b)(2), even if the neutral believes that her representation of the board "will not be adversely affected" by her other responsibilities, she must nonetheless consult both clients and obtain their informed consent before proceeding. *Cf.* ABA Formal Opinion 97-405, at 5 ("In such a case the lawyer could continue the representation only if she reasonably believes it would not be adversely affected, and even then only if she obtained consent of the affected clients.").[4]

A final consideration, in addition to those of Rule 1.7, is public confidence in the legal system. Alaska lawyers have "a special responsibility for the quality of justice." Preamble, Alaska Rules of Professional Conduct. It is sometimes said that a government attorney has "the public interest" as a client. *E.g., EPA v. Pollution Control Board*, 372 N.E.2d 50, 53 (Ill. 1977). It is assuredly in the public interest for government attorneys in Alaska to take whatever steps are required to preserve public confidence in the "quality of justice" at all levels of Alaska's legal system.

In these facts, parties appearing before the municipal board may not understand the role played by the neutral municipal attorney in a proceeding where another municipal attorney appears as an advocate, and may not believe they are being treated fairly. Both attorneys should be cognizant of their duty to maintain public confidence in the legal system, and should take whatever steps they believe appropriate under the circumstances of the matter. In some cases, maintaining public confidence in the fairness of the legal system may require a board to have independent counsel. As a routine matter, however, the Committee does not believe independent counsel to be required in the circumstances presented here.[5]

Approved by the Alaska Bar Association Ethics Committee on December 3, 1998.

Adopted by the Board of Governors on January 15, 1999.

[1] Of course, as a matter of historical fact, wave upon wave of invaders swept into ancient China, starting with the Hsiung-Nu and ending with the Mongols. These invaders were neither deterred nor delayed by the "Great Wall," and routinely and repeatedly breached it. J. K. Fairbanks, *A New History of China* (Cambridge: Harvard U. Press, 1994). Increasingly, courts view ethical barriers as equally ineffective in preventing breaches of attorneys' ethical responsibilities. *E.g., Cardonna v. General Motors Corp.*, 942 F.Supp. 968, 977-978 (D.N.J. 1996); *Towne Development of Chandler, Inc., v. Arizona Superior Court*, 842 P.2d 1377 (Arizona, 1992).

[2] "While lawyers who serve as public officers or employees are singled out for special treatment under a few rules, *e.g.*, Rule 1.11 ('Successive Government and Private Employment') and 3.8 ('Special Responsibilities of a Prosecutor'), it has generally been assumed – correctly in our view – that such lawyers are in most other respects subject to the same obligations in representing their government client that apply to lawyers representing private clients." Id., at 4. n. 1 (citations omitted).

[3] Although the "neutral" attorney's advice to the board may be intended to be limited to procedure, the Committee notes that decisions on procedural matters frequently have substantive impacts on the outcome of any case.

[4] The Committee's discussion centers on the neutral attorney because of the facts presented in the opinion request. The advocate attorney has the same responsibilities under Rule 1.7(b) towards the municipality as the neutral attorney has towards the board. If the circumstances demand it, the advocate must act accordingly.

[5] The Committee does not express any opinion on the due process issues presented by this fact situation.

Board of Governors invites comments

The Board of Governors invites member comments concerning the following proposed amendments to the Alaska Bar Rules:

The amendment to **Bar Rule 56** removes a technical restriction on the ability of the Bar Association to use the name of a respondent lawyer in a Lawyers' Fund for Client Protection matter in communications with the person making a claim against the Fund. As presently worded, the lawyer's name cannot be used in those communications unless and until the Board has directed that a payment be made from the Fund to the person making the claim. Since the proceedings are confidential, there appears to be little reason for the current restriction.

The amendment to **Bar Rule 2** makes practice requirements to qualify for reciprocity admission or to sit for the Bar Examination if a non-accredited law school graduate the same. Presently, Bar Rule 2(2) allows a person who has passed a written examination required by a reciprocal state, territory or the District of Columbia for admission to active practice and who has engaged in active practice on one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date of the application to qualify for reciprocity admission.

Later in the Rule, Section (3) permits an individual who is not a graduate of an ABA or AALS law school but who has been licensed to practice law in one or more jurisdictions of the United States for five years immediately preceding the date of an application, has been engaged in active practice for those five years, and meets the other requirements of the rule, to sit for the Alaska Bar Examination as a general applicant.

Thus, Section (3) imposes a more stringent practice requirement (five years immediately preceding application) to sit for the exam than Section (2) does to qualify for reciprocity admission (five of the seven years immediately preceding application).

The proposed amendment would make both practice requirements uniform at five of the seven years immediately preceding application.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by April 28, 2000.

BAR RULE 56

PROPOSED AMENDMENT DELETING THE RESTRICTION ON USE OF LAWYER'S NAME IN WRITTEN COMMUNCATIONS TO THE APPLICANT

(Additions italicized deletions bracketed and capitalized)

Rule 56. Applicant May Be Advised.

The applicant may be advised of the status of the Alaska Bar Association's consideration of the applicant's application and shall be advised of the final determination of the Alaska Bar Association upon the same. [IN WRITTEN COMMUNICATIONS TO THE APPLICANT THE LAWYER'S NAME SHALL NOT APPEAR UNLESS AND UNTIL THE BOARD HAS DIRECTED THAT A PAYMENT BE MADE TO THE APPLICANT FROM THE FUND.]

BAR RULE 2
PROPOSED AMENDMENT MAKING LENGTH OF PRACTICE REQUIREMENT PARALLEL TO EARLIER SECTION OF THE RULE

(Additions italicized; deletions bracketed and capitalized)

Rule 2. Eligibility for Examination.

Section 3.

(a) An individual who has not graduated from a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools shall be eligible to take the bar examination as a general applicant if he/she (1) has been licensed to practice law in one or more jurisdictions in the United States for five *of the seven* years immediately preceding the date of his/her first or subsequent applications for admission to the practice of law in Alaska, (2) was engaged in the active practice of law [DURING] *for* [THOSE] five *of those seven* years, and (3) meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

2000 Alaska Bar Association

Annual Convention Highlights

May 17, 18 and 19 • Hotel Captain Cook & Egan Center, Anchorage

Convention events will be held at both the Hotel Captain Cook and the Egan Center. Room assignments for each event will be available at the convention registration check-in at the Aft Deck of the Hotel Captain Cook.

TUESDAY, MAY 16

U.S. DISTRICT COURTROOM TECHNOLOGY TOURS
At 10:00 a.m. and 3:00 p.m., there will be a one-hour tour and demonstration of litigation technology currently available in the U.S. District Court. Go to Courtroom 1 of the Federal Building, 222 W. 7th Avenue. No pre-registration is required, but space is limited.

WEDNESDAY, MAY 17

Location of CLEs and Social Events will be available at the convention registration area. Events will be at the Hotel Captain Cook and at the Egan Convention Center.

7:30 a.m. **Convention Registration and Exhibit Area open.**
Location: Aft Deck, Hotel Captain Cook

7:30 a.m. **Continental Breakfast**

8:00 a.m. - 12:00 noon **Trial Advocacy Skills Series, Part 4**
Mutual Understanding: Interpreting & Translating in Alaska's Legal System
(Bench & Bar)
Presented in cooperation with the Alaska Academy of Trial Lawyers, the Federal Defender's Office, the Alaska Public Defender Agency, and the Office of Public Advocacy

8:30 a.m. – 12:00 noon **Section Presentations**
(Bench & Bar)
Times and topics will vary. Watch for information on section presentations on the Bar's website – www.alaskabar.org. The schedule of section presentations will also be available at the registration area.

8:30 a.m. – 12 :00 noon **State Judges Program** (Bench only)

12:00 noon - 1:30 p.m. **Lunch: State of the Judiciaries Address**
(Bench and Bar)

Chief Judge James K. Singleton, Jr., U.S. District Court
Chief Justice Warren Matthews, Alaska Supreme Court

1:45 – 3:45 p.m. **Scientific Method: How Law and Science Meet in the Courtroom**
Judge Michael Donohue, Spokane Circuit Court and Magistrate Judge Matthew Jamin, Kodiak

3:45 – 4:00 p.m. **Break**
Coffee Service sponsored by Hagen Insurance

4:00 – 5:15 p.m. **Ethics: Practicing Law in the 21st Century & Beyond**
(Bench & Bar)
Members of the Anchorage Inns of Court and Bar Counsel Steve Van Goor

4:00 – 5:15 p.m. **State Judges Program**
(Bench only)

4:00 p.m. **Hospitality Suite opens** – Crow's Nest 3, Tower 3, Hotel Captain Cook – Hosted by the Anchorage Bar Association

5:45 p.m. **Alaska Bar Family Fun Run & Walk**
Race Marshal Tim Middleton
Prizes for Men's, Women's, Boys' and Girls' Divisions courtesy of West Group

THURSDAY, MAY 18

7:30 a.m. **Exhibit area and registration desk open.**

7:30 a.m. **Section Chairs Breakfast**

8:00 a.m. **Continental Breakfast**
Continental breakfast sponsored by Just Resolutions

8:30 a.m. - 12 noon **U.S. Supreme Court Opinions Update**
(Bench & Bar)
Professor Peter Arenella, University of California at Los Angeles School of Law
Professor Erwin Chemerinsky, University of Southern California Law Center


Erwin Chemerinsky


Peter Arenella

Morning coffee service sponsored by Document Technology, Inc.

12:00 noon - 1:30 p.m. **State Judges Lunch** (Bench only)
Bar Members Lunch

1:45 – 5:00 p.m. **Trial Evidence: Hearsay** (Bench & Bar)
Professor Thomas Mauet,
Director of Trial Advocacy, College of Law, University of Arizona

4:00 p.m. **Hospitality Suite opens** – Crow's Nest 3, Tower 3, Hotel Captain Cook – Hosted by the Anchorage Bar Association

7:00 -7:30 p.m. **Awards Reception** (Bench & Bar)
Sponsored by Lexis Law Publishing

7:30 - 10:00 p.m. **Awards Banquet** (Bench & Bar)

Program:
25-Year Pins, Anchorage Bar Service Award, Pro Bono Awards, Alaska Bar Layperson Service Award, Alaska Bar Professionalism Award, and Alaska Bar Distinguished Service Award

10:15 p.m. **Poetry Reading** (Bench & Bar)
Hear verses serious and not-so-serious from members of the bench and bar.

FRIDAY, MAY 19

7:30 a.m. **Exhibit area and registration desk open**

7:30 a.m. **Local Bar President's Breakfast**

8:00 a.m. **Continental Breakfast**
Continental breakfast sponsored by Brady & Company/American Equity Insurance Company

8:30 a.m. – 12:00 noon **A Look at Recent Appellate Decisions in Tort Law** (Bench & Bar)
Judge Eric Sanders, Superior Court, 3rd Judicial District, Moderator; **Judge Daniel Hensley,** 3rd Judicial District, Superior Court and **Joseph Huddleston,** Hughes Thorsness Powell Huddleston & Bauman; **Susan Orlansky,** Feldman & Orlansky; **Michael Schneider,** Sole Practitioner; **Gail Voigtlander,** Alaska Attorney General's Office

Morning coffee service sponsored by the Alaska Association of Legal Administrators

12:00 – 1:30 p.m. **Lunch & Alaska Bar Association Annual Meeting** (Bench & Bar)

1:45 – 2:30 p.m. **Technology in the Courtroom: The Future of Legal Practice in the Courts**
(Bench & Bar)
Phil Shuey, Attorney and Consultant in Law Office and Change Management, Phoenix, Arizona


Phil Shuey

This program is presented with underwriting by West Group.

2:30 – 2:45 p.m. **Break**
Coffee service sponsored by West Group

2:45 – 5:15 p.m. **Technology in the Courtroom: What's Here Now and What's on the Horizon**
(Bench & Bar)


Brian O'Neill

Brian O'Neill, Faegre & Benson LLP, Minneapolis, Lead Counsel in *Exxon Valdez*; **Karen Loeffler,** U.S. Attorneys' Office; **Timothy Petumenos,** Birch, Horton, Bittner, and Cherot; **Magistrate Judge Matthew Jamin,** U.S. District Court; **Stephen Bouch,** State Court Deputy Administrative Director; **Joyce Tsongas,** Trial Consultant, Portland

4:00 p.m. **Hospitality Suite opens** – Crow's Nest 3, Tower 3, Hotel Captain Cook – Hosted by the Anchorage Bar Association

6:30 - 8:00 p.m. **President's Reception** (Bench & Bar)
Music sponsored by Document Technology, Inc.

SPONSORS

Alaska Association of Legal Administrators
Alaska Court System
American Equity Insurance Company
Anchorage Bar Association
ALPS — Attorneys Liability Protection Society
AVIS Rent a Car
Brady & Company
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Document Technology, Inc.
Hagen Insurance Co.
Just Resolutions
Lexis Law Publishing
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West Group

EXHIBITORS

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Alaska USA
ALPS — Attorneys Liability Protection Society
Book Publishing Company
Brady & Company
Bureau of National Affairs — BNA
Document Technology, Inc.
Downtown Legal Copies, LLC
Hagen Insurance Co.
Lexis Law Publishing
Litigation Support Services
Pacific Office Center
Signature Technologies, LLC
West Group

CONVENTION INFORMATION

MEETING SITES
Convention events will be held at both the Hotel Captain Cook and the Egan Convention Center. Room assignments for each event will be available at the convention

CONVENTION REGISTRATION AREA
Come to the Aft Deck of the Hotel Captain Cook for the convention registration area. The registration desk will open at 7:30 a.m. on Wednesday, May 17.

HOTEL
The **Hotel Captain Cook** is the convention hotel for the 2000 convention. Located at 5th and K Street in Anchorage, the phone is 907-276-6000/fax907-278-5366.

A block of rooms has been reserved for the Alaska Bar. Rates are $150 plus 8% tax single or double .

Please make your reservations by May 1. Book your reservations now!

To make a reservation, please call the hotel at 907-276-6000 or toll free nationwide at 800-843-1950. .Be sure to state that you are with the Alaska Bar Association.

Check-in time is 3:00 p.m. and check-out time is 12 noon.

TRAVEL
Jay Moffett at World Express Travel, phone 907-786-3274/fax 907-786-3279, is our official convention travel agent. Please contact Jay for assistance in making your travel reservations.

CAR RENTAL
AVIS Rent a Car is the official convention car rental agency. Special car rental rates are available for all Alaska Bar members. Call AVIS nationwide at 800-331-1600. Be sure to give the discount number W027400.

HOSPITALITY SUITE
The Hospitality Suite hosted by the Anchorage Bar Association will be open starting Wednesday, May 17 from 4:00 p.m. daily in Crow's Nest 3, Tower 3, Hotel Captain Cook.

Legal Research with Lexis
Lexis will offer complimentary hands-on legal research training to familiarize lawyers and judges with the latest techniques, strategies and products. The training will be on-going during the convention. To register, call Marcus Wiener at 907-688-3198. However, advance registration is not required. Visit the Bar convention registration area for information on times and location of training.

Legal Research with WESTLAW
WESTLAW will offer complimentary hands-on legal research training to familiarize lawyers and judges with the latest techniques, strategies and products. The training will be on-going during the convention. To register, call Allan Milloy at 907-345-4851, Keith Beeler at 907-258-3891 or Chris Jalbert at 1-800-500-9378.However, advance registration is not required. Visit the Bar convention registration area for information on times and location of training.

VISIT THE CONVENTION EXHIBITORS AND WIN A NORDSTROM SHOPPING SPREE COURTESY OF ALPS!

Visit the exhibitors to qualify for a Nordstrom shopping spree! Three Nordstrom gift certificates donated by **ALPS** will be raffled off at the convention! Details will be at the convention registration desk.

REGISTRATON FEES
CLEs
Early Bird Registration (Before April 20)
All 3 days: $175
Any one full day of CLE: $90
Any half day CLE (Morning or afternoon): $50

Registration (After April 20)
All 3 days: $195
Any one full day of CLE: $110
Any half day CLE (morning or afternoon): $70

Special Events

Lunches: $20

President's Reception: $25

Awards Reception and Banquet: $40

State of Judiciaries Address: No charge

Alaska Bar Association Annual Business Meeting: No charge

Poetry Reading: No charge

Fun Run: No charge

RESOLUTIONS FOR ANNUAL BUSINESS MEETING, MAY 19, 2000

Resolutions for Annual Business Meeting, May 19, 2000.

COMES NOW the Kenai Peninsula Bar Association and hereby proposes the following Resolution for consideration by the Alaska Bar Association:

RESOLUTION

That there be created a Fifth Judicial District, to include the Kenal Peninsula, Prince William Sound/Copper River Basin, Kodiak, the Aleutian Islands, and other geographically compatible areas to be determined by the Alaska Court System.

DATED this 3 day of March, 2000.

KENAI PENINSULA BAR ASSOCIATION
by: ROBERT MERLE COWAN - ABA #7505012
President

Submission of Resolution for Consideration at the Annual Business Meeting, May 19, 2000.

COMES NOW the Kodiak Bar Bar Association and hereby proposes the following Resolution for consideration by the Alaska Bar Association:

RESOLUTION

That there be created a Fifth Judicial District, to include the Kenal Peninsula, Prince William Sound/Copper River Basin, Kodiak, the Aleutian Islands, and other geographically compatible areas to be determined by the Alaska Court System.

DATED this 9 day of March, 2000.

KODIAK BAR ASSOCIATION
by: L. BEN HANCOCK, ABA 69-11-034
President

MORE RESOLUTIONS — SEE PAGE 24

CONVENTION HIGHLIGHTS

Trial Advocacy Skills, Part 4:
Mutual Understanding: Interpreting and Translating in Alaska's Legal System
Presented in cooperation with the Alaska Trial Lawyers Academy, the Federal Defender's Office, the Alaska Public Defender Agency, and the Office of Public Advocacy

This program will give an overview of accessing interpretation/translation resources, ethical and practical considerations in using interpreters, cultural contexts and differences among languages, how to select an interpreter, national standards for interpreters, training interpreters, and resources available including telephonic networking, sign language, and advisement videos. A diverse panel of speakers including Native and non-Native representatives, lawyers, and judges will address these issues.

Scientific Method: How Law and Science Meet in the Courtroom
Judge Michael Donohue of the Spokane Circuit Court is a faculty member of the National Judicial College and frequent lecturer on judicial studies. He joins Magistrate Judge Matthew Jamin of Kodiak in a presentation exploring the judge's role as gatekeeper developed in Daubert, Kumho Tire and Coon. The focus will be on scientific principles and methodology, scientific validity, the five specific factors noted in Daubert, discussion of terms such as null hypothesis and confidence interval, and procedural tools available to judges. Don't miss this cutting edge topic!

Section Presentations
The Bar's Substantive Law Sections have been invited to discuss the latest cases, trends, and issues in their respective areas. Check the registration table for section times and topics.

Ethics: Practicing Law in the 21st Century and Beyond
Members of the Anchorage Inns of Court and Bar Counsel Steve Van Goor present a demonstration and discussion of real life ethical problems. The rapid pace of change in the practice of law has created new challenges for lawyers in the 21st century. Join your colleagues in a discussion about strategies and responses to evolving ethical issues.

U.S. Supreme Court Opinions
No Alaska Bar Convention would be complete without the fascinating and insightful Supreme Court review by UCLA School of Law Professor Peter Arenella and USC Law Center Professor Erwin Chemerinsky. These nationally recognized constitutional law experts provide an historical and contemporary context for the decisions handed down by our highest court.

Trial Evidence: Hearsay
Thomas Mauet uses his vast experience as a trial lawyer, law professor and judge to help you look at and organize hearsay evidence. Recognized internationally as an expert in the art of advocacy, Professor Mauet will help you understand hearsay, the hearsay – non-hearsay dichotomy, and key hearsay exceptions, such as party admissions, prior statements, spontaneous statements, statements against interest, and former testimony. Don't miss this dynamic and practical program by the author of the best selling advocacy text Fundamentals of Trial Techniques.

A Look at Recent Appellate Decisions in Tort Law
This program includes an analysis of the appellate decisions of the Alaska Supreme Court interpreting the 1997 legislation, and other hot topics in tort law. Join our panel members as they take a look at these issues: Judge Eric Sanders, moderator; Judge Daniel Hensley, Joseph Huddleston, Susan Orlansky, Michael Schneider, and Gail Voigtlander.

Technology in the Courtroom: The Future of Legal Practice in the Courts
The practice of law in the court system is being dynamically impacted by challenges such as alternate dispute resolution, new technology used by the court, counsel and clients, and burgeoning court dockets. Listen as Phil Shuey, attorney and nationally recognized consultant in law office and change management, tells us how these pressures on the court system will force dramatic changes in the future litigation process.

Technology in the Courtroom: What's Here Now and What's on the Horizon
A panel with Brian O'Neill, Faegre & Benson LLP, Minneapolis, lead counsel in Exxon Valdez, and local practitioners and court administrators focuses on using technology at trial. Karen Loeffler, U. S. Attorney's Office, and Timothy Petumenos, Birch, Horton, Bittner and Cherot, discuss how to effectively use the technology that is available now in the federal and state courtrooms in Alaska. Magistrate Judge Matthew Jamin, U.S. District Court and Stephen Bouch, State Court Deputy Administrative Director, give us a preview of technology acquisition plans for both court systems in the coming months and years. Joyce Tsongas, Trial Consultant, Portland, discusses the role of trial consultants in today's high tech courtroom. And Brian O'Neill describes for us other technologies that are currently available and some that are just on the horizon. Learn what your opposing counsel may be using at your next trial!

Call the Alaska Bar office 907-272-7469/fax 907-272-2932
or e-mail info @alaskabar.org or check our website www.alaskabar.org
for more information.

Voice recognition

By Joseph L. Kashi

I've had the opportunity to use voice recognition products ever since IBM shipped the first truly viable voice recognition software in 1994. IBM's software run reasonably well on old 486 systems thanks to IBM's use of a dedicated digital signal processor (DSP) card that was optimized to recognize voice input and separate it into recognizable electronic signals. Ever since, I've frequently maintained that useable voice recognition was just around the corner. Unfortunately, routine daily use of voice recognition technology stills seems to be "just around the corner", even though the newest technology is markedly better.

I recently had the opportunity to use Version 4.0 of Dragon System's newest voice recognition software for lawyers, Naturally Speaking Deluxe, Legal Suite. Version 4.0 is a noticeable improvement over Version 3.52, but it still requires more effort than it should. I really wanted to dictate this article directly into my computer, but ultimately found using a hand-held tape recorder, in conjunction with an efficient paralegal, to be more efficient, at least as a use of my own personal time. The obvious incentive to use voice recognition is the possibility that we can reduce overhead by freeing up highly trained employees to do more complex and demanding tasks such as reviewing medical records and assisting us in preparing our cases, but facile usefulness remains somewhat elusive.

For my tests, I used a quite fast desktop computer based upon a 650 megahertz AMD K-7 Athlon processor and a very fast IBM Ultra2 Wide SCSI hard disk. Initially, the system included 128 megabytes of PC100 SDRAM and a 64 bit PCI Soundblaster card. Overall, this is a faster system then used by most attorneys. Dragon's web site claimed that the speed of the processor does not affect overall recognition accuracy and that processor speed only improved the speed of recognition, rather than its correctness.

When I initially tested version 3.52 on a 500 megahertz Intel system, my initial reaction was that I needed a computer roughly 50% faster. With the 650 megahertz Athloon, I did boost my performance by about 50%, as measured with the Ziff-Davis high-end NT benchmarks. Unfortunately, my belief is that I still need another 50% performance in order to provide real time voice ription.

Because Dragon 4.0 did not seem to perform noticeably faster or more accurately on the 650 megahertz system, I decided to run some diagnostics while using Naturally Speaking Deluxe 4.0. Windows NT 4.0's Task Manager displays the amount of physical memory actually in use and the percentage of CPU cycles being consumed by applications then running. Surprisingly, with Dragon Deluxe 4.0, I found that I was using as much as 160 MB memory when recognizing or correcting text. That memory requirement, while using only Dragon within Word Perfect 9, exceeded the 128 megabytes of SDRAM then installed on my computer, already a generous amount by contemporary standards. Increasing memory to 256 megabytes seemed to help somewhat. At least, I didn't run out of SDRAM memory and be forced to rely upon far slower virtual memory swapping to the computer's hard disk.

Even after increasing my SDRAM to 256 megabytes, I found that Dragon still ran rather slowly. Windows NT's Task Manager showed that, during recognition, my system was consuming 100% of all CPU capabilities for very substantial blocks of time, indicating that the speech recognition process saturated even a very fast AMD Athlon system.

Believing that part of the resource hogging might be due to Windows NT's clearly greater hardware requirements, I ran the same test on Windows 98 Second Edition, which typically runs quite well with 64 MB SDRAM. Again, Dragon demanded in excess of the 128 megabytes of SDRAM installed on that Windows 98 SE system, which itself was a 700 megahertz AMD K7-Athlon system. And, Naturally Speaking 4.0 again used 100% of all CPU cycles for significant blocks of time. WordPerfect 9 itself consumed only about 10 MB and far less CPU time.

The conclusion seems inescapable to me that Naturally Speaking remains a real resource hog, exceeding the capabilities of even the fastest, most powerful computers that you're likely to find on anyone's desktop.

Naturally Speaking version 4 is bundled with Corel's Legal Suite 2000. One major improvement is the inclusion of VXI's Parrot microphone which includes an intermediate battery-powered amplifier. That amplifier not only helps match different sound cards to Dragon's software but also boosts the critical signal to noise ratio. If the ratio of microphone input to system noise is too low, then your voice input is garbled by too much system "static" and is that much harder to correctly recognize. On the other hand, if the input is too loud, then the system will overload and also produce accuracy degrading sound distortion.

It's important to control your sound input level. Too little input volume, of course, reduces accuracy, but so does too high a volume. If your input volume is too high, whether because of changes in your system's settings or because of a different placement of the headset's microphone that day, you will have a tendency toward excessively high volume, which results in over-modulation and distorted wave forms. Again, those distorted wave forms also reduce sound accuracy. As a result, it's wise to use Dragon's Audio Setup Wizard each time you begin dictating to both set the correct microphone volume for that session and to check for acceptable sound input quality. For example, if the batteries on the microphone run down, as suddenly happened to me one day, then the signal to noise ratio becomes unusable. Microphone placement is critical: I've found that moving too close results in distorting overload while moving it a bit further from my mouth results in degraded signal to noise ratio.

Sound card quality is very important. While working on this test, I tried both a SoundBlaster Live PCI card. The input on the new SoundBlaster Live and the old SoundBlaster PCI 64 bit card was essentially equivalent and made no perceptible difference in voice recognition accuracy. Older, lower end sound cards, though, seem to give lower quality input to the processor, resulting in an unacceptable signal to noise ratio. If you are experiencing poor recognition even after you've trained your system and switched to an amplified headset, then substantially upgrading your sound card is the next logical step.

Setting the sound card sampling rate also seems to help. I found that the default sampling rate does not sample the sound input often enough and tends to clip words, greatly reducing recognition accuracy. In fact, you can sometimes hear the clipping if you playback your recorded speech input. Adjusting your sound card for the highest possible frequency and sampling rate should help improve recognition.

Training the voice recognition system clearly helps a great deal. The more you train the system, the more accurate it will be. I suggest that your initial system training take no shortcuts - use the most extensive training text available.

TRAINING THE VOICE RECOGNITION SYSTEM CLEARLY HELPS A GREAT DEAL. THE MORE YOU TRAIN THE SYSTEM, THE MORE ACCURATE IT WILL BE. I SUGGEST THAT YOUR INITIAL SYSTEM TRAINING TAKE NO SHORTCUTS - USE THE MOST EXTENSIVE TRAINING TEXT AVAILABLE.

However, even with a highly trained system, you'll still get inaccuracies, although their frequency will be reduced. Inaccuracies with a highly trained Naturally Speaking system tend to be words whose sounds are quite similar or otherwise readily confused. When I tested Naturally Speaking 4.0 with the Gettysburg Address, the following words, among others, were inaccurately recognized from time to time no matter how extensively I trained the system for these very words:

conceded versus conceived
war versus were
our versus are.

As far as I can tell, Dragon simply attempts to recognize each word more or less in isolation, rather than using the sophisticated linguistic models which IBM pioneered but apparently later ceased using, in early versions of VoiceType. Those IBM linguistic models looked at each recognized word in context and, using statistical models for proper English usage, corrected homonyms - words that sound essentially the same but in fact are quite different. Dragon does not appear to handle homonyms well.

Ultimately, the current approach to voice recognition is self-limiting. Ultimately, really facile and useful voice recognition will become feasible as a daily assistant only if and when vendors stop relying solely upon brute force and adopt new, more sophisticated approaches.

HOW MIGHT DRAGON IMPROVE THE PRODUCT?

Improve recognition accuracy and reduce CPU demands by making better use of the Digital Signal Processing capabilities found in the newest AMD and Intel processors.

Use a more sophisticated linguistic model that recognizes words in their context.

SUGGESTIONS FOR MAXIMIZING VOICE RECOGNITION USEFULNESS

Get the fastest computer that you can afford, at least a 700 MHz AMD Athlon or 733 MHz Pentium III system. Because AMD's Athlon provides generally equivalent performance using much less expensive PC100 memory, it's the cost-effective choice.

Add lots of SDRAM - 256 MB seems to be a reasonable amount. Luckily, wholesale SDRAM prices have again dropped to about $220 for 256 MB.

Use a powered microphone and be sure that the batteries are fresh.

Upgrade older sound cards.

Adjust your sound card's sampling rate and frequency to the highest possible rates and frequencies.

Before starting each dictation session, use Dragon's Audio Wizard to adjust the microphone sound level and to check whether the signal to noise ratio is acceptable.

THE EFFECTS OF TRAINING YOUR SYSTEM

Here are several unedited, uncorrected results of dictating the Gettysburg Address into a Naturally Speaking 4.0 system that I had already trained to my voice using Dragon's introductory voice training material. I made seven attempts, training inaccurately recognized words after each attempt. As you can see, the first effort is pretty bad but accuracy does improve after a few hours of training the system repeatedly to the same text.

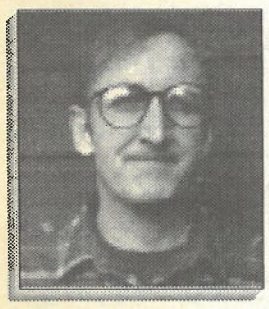
FIRST ATTEMPT - SYSTEM GENERALLY TRAINED

The said start and seven years ago are father is not forth upon this continent Indian nation, conceded liberty and dedicated to the proposition that all men are created equal. They now engaged in a great similar or, testing whether that nation or any nation so conceived and said dedicated cataloging and/or. Id. At on a great battlefield a that were. We have come to dedicate a promotion of that the old as a final resting place for those prohibited die otherwise in fact that nation to my delay in it is altogether 15 and proper that we should do this delay and but in a larger sense crime we cannot dedicate cone we cannot concentrate, we cannot have no this ground. The buy demand, willing and dead Mistretta here have concentrated it filed by the output power to add or detract. The road where widow without no longer the member while we say here, but it can never forget what they did here. It is for us in the living rather to be and dedicated here to the unfinished work which there was that there have classify 700 the advanced. It is rather for us to be owed dedicated to the great task remaining before us-bad fountains on that we take increased devotion to that clause for which the date of the last for a measure of devotion-better with you are highly was so that the

Continued on page 19

For Luann and the child she left behind

☐ Dan Branch



This was written in late winter, the season of repose. It should be true spring when it appears in print. In Juneau, with luck, warm weather will have cracked open the cotton wood buds and filled the air with Balm of Gilded. Even now, rich purple spears of crocus blossoms are forming in the lee of buildings.

It's been mild this winter. The Taku winds never came. The temperature never dropped below zero. Still, the season tested us. On Presidents day in February, Luann, a young mother and her 10 year old child drowned at Fish Creek Pond.

There were other deaths this winter, but the incident at Fish Creek Pond was hardest to accept. The young mother was on an outing with her 10 year old and twelve month old sons. They brought along a friend for the ten year old. It was warm for February but there was still ice covering the pond when they arrived.

The older children tried out the pond ice while the mother walked on the beach, her infant son riding in a backpack. The ice upon which the older boys stood broke from the shore and drifted away. They struggled, then slipped into the water. One boy made it to shore. The other began to drown.

Facing a horrible choice, Luann watched her oldest child struggle in the cold pond water. If she stayed on the beach he would die. She would spend the rest of her life in blame for the death and her failure to effect a rescue. Swimming out to save the older son meant leaving his infant brother alone on the beach. We now know it also meant leaving the child alone for life.

A witness on the other side of the pond watched the mother throw off coat and boots and crash into the pond. The witness faced her own terrible choice—run for help, jump in herself, or go for the infant, waiting on the beach for Luann's return. The witness ran for help. I don't think anyone was there to see the mother and son drown.

The deaths, like those of young people every where, hit hard. The mother had worked and was well liked at my daughter's school. Her son left behind many friends at his school.

In the odd way of death, the dual tragedies brought small communities together. Some met to ask why such a thing would have to happen. More held little wakes all over town.

My daughter's class spent a day honoring the mother's memory, and that of her son. They told stories, and cried, and drew pictures, then told more stories. Parents, taking breaks from work, dropped by to make sure the kids were ok. They were.

Luann and her family were churched and from what I read in the newspaper, their congregation comforted with rituals and love. A community formed at the church where people from various parts of the family's life gathered for goodbyes.

The mother and son brought blessings in life. Their passing brought us a little closer together as a community. Now that the ceremonies of death are over, we are left to puzzle why they are gone. Poems provides organization for the task. This one is for Luann and the child she left behind:

Dead When He Broke Through The Ice

Her life ended
when her child slipped
through
dishonest ice

Her death
a rush through
black water
panic
then Peace

Gone now
from her lover
and the
infant son
she left
swaddled
on the beach

In His light
she lives with her child
away from despair
irony

Gone the anger
over having to
choose
one child for
another

She lives
where no one
second guesses.

Voice recognition

Continued from page 18

stud shall not have died in vain that this nation and guide shall have made no benefit of the Id., and that the amendment other paper crime a by the per crime a that the panel shall not position if MDS.

FOURTH ATTEMPT - SYSTEM TRAINED THREE TIMES TO THIS TEXT

For score and seven years ago are father is not forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great Civil War, testing whether that nation or any nation so conceived and so dedicated can long and/or. We are met on a great battlefield of that were. We have come to dedicate a portion of that field as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But in a larger sense, we cannot dedicate, we cannot consecrate, we cannot have wrote this ground. The brave men, living and dead who struggled here have consecrated it far about our poorer power to add or detract. The world where literal note nor longer remember what we say here, but it can never forget what they did here. It is for us in the living that to be dedicated here to the unfinished work which they are far here have that's far so nobly advanced. It is rather for us to be dedicated to the great task remaining before us-that the premises upon and dead we take increased devotion to that cause for which they gave the last will measure of demotion-that we here highly resolve that these and dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that government other people, by the people, for the people shall not perish from the earth.

SEVENTH ATTEMPT - SYSTEM TRAINED SIX TIMES TO THIS TEXT

For score and seven years ago are fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great Civil War, testing whether that nation or any nation so conceived and so dedicated can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead who struggled here have consecrated it far above our poor power to Adler detract. The world with little note nor long remember what we say here, that it can never forget what they did here. It is for us to the living rather to be dedicated here to the unfinished work which they were filed here have thus far so nobly advanced. It is rather for us to be your dedicated to the great task remaining before us-that from these honored dead we take increased devotion to that cause for which investigated the last full measure of devotion-that we here highly resolve that these dead shall not have died in vain, that this nation undergone shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.

L to R: Shirley Mae Springer Staten; Heather Kendall-Miller with daughter Ruth; Randall Patterson; John McKay; Mike Doogan; Bill Saupe; Les Gara; Brant McGee; Rich Curtner; CC Ryder.

Celebrity waiters pitch in at Snow City Cafe

KNBA Radio personality CC Ryder, Anchorage Daily News columnist **Mike Doogan, dancer Rona Mason**, and international musical performer Shirley Mae Springer Staten were among the local celebrities who pitched in to serve dinner to over 100 people at "Freedom Cafe," a benefit for the Immigration and Refugee Services program of Catholic Social Services, held on Tuesday, March 7, 2000, at Snow City Cafe in Anchorage. Members of the legal community also turned out in force to support CSS-I&RS, which is the only low-cost legal assistance program for immigrants and refugees in Alaska. Attorneys waiting tables and collecting tips for the cause included Public Advocate Brant McGee, Federal Public Defender Rich Curtner, Native American Rights Fund attorney Heather Kendall-Miller, and private attorneys Les Gara, John McKay, Randall Patterson, and William Saupe. Snow City Cafe contributed 20% of the evening's proceeds to the program as well, and several thousand dollars were raised.

The Immigration and Refugee Services program serves thousands of people each year with a staff of six. Currently, the program coordinates efforts to provide legal representation to may El Salvadorans in Alaska who are seeking political asylum after fleeing violence and persecution in their homeland. The program coordinates efforts to provide legal representation to may El Salvadorans in Alaska who are seeking political asylum after fleeing violence and persecution in their homeland. The program also helps resettle refugees in Alaska, including many Kosovar refugees who escaped the Balkan conflict last year. In addition to such efforts, CSS-I&RS helps educate the public about complex immigration laws, and provides individual representation to immigrants and refugees.

Neil Slotnick named Deputy Commissioner at Revenue

A state attorney who has specialized in commercial law, Neil Slotnick has been chosen as deputy commissioner at Revenue, Gov. Tony Knowles announced Jan. 27. Slotnick has worked as an assistant attorney general since 1991 at the Department of Law, where he has supervised the commercial law section since 1994.

"Neil brings a strong legal background to the job, including years of experience dealing with state tax laws, including corporate taxes, charitable gaming and alcohol and tobacco statutes and regulations," Knowles said. "He also has worked on state investment issues and the Constitutional Budget Reserve Fund. His knowledge from working on dozens of cases over the years makes him a valuable addition to the staff at the Department of Revenue."

Slotnick, 43, is a graduate of Stanford Law School in California. He clerked for Alaska Supreme Court Justice Jay Rabinowitz in Fairbanks from 1990 to 1991. Born in Fairbanks, Slotnick was a member of the Laborers' Union and worked as a retail business manager in the community before pursuing his law career.

His work at the Attorney General's Office has included state tax issues, charitable gaming laws, investments and constitutional issues. His responsibilities at Revenue will include the Oil and Gas and Income & Excise Audit Divisions and the Treasury Division.

Slotnick replaces Deputy Commissioner Ross Kinney, who retired from the job last month. In his new job, Slotnik will earn approximately $80,700 annually.

—Governor's Office press release

Foster Pepper Rubini Reeves LLC Adds Two Attorneys

Rebecca Hiatt and Joseph Levesque have joined the Anchorage law firm of Foster Pepper Rubini Reeves LLC.

Hiatt is an associate practicing in litigation with an emphasis on employment discrimination. Prior to joining the firm she was a deputy magistrate and law clerk for the State of Alaska in Nome, Kotzebue and Barrow, Alaska. Hiatt received her J.D from the University of Illinois, College of Law in 1997 and her B.A. from the University of Wisconsin in 1993. She is admitted to practice in Illinois and Alaska.

Levesque, who joins the firm as of counsel, focuses his practice on general municipal law and litigation. He was formally the Borough Attorney for the North Slope Borough, where he was responsible for all legal issues for the Borough and supervision of Assistant Borough Attorneys and staff. Levesque received his J.D. from the University of Puget Sound in 1986 and his B.A. from the University of Alaska at Anchorage in 1980.

Foster Pepper & Shefelman PLLC, with offices in Anchorage, Portland, Spokane and Seattle, provides a full range of legal services to businesses, municipalities, and individuals.

Bar People

Robert Owens, formerly with Copeland, Landye, et.al., has announced the formation of his own firm.....**Dick Ellmers** is closing his practice in King Salmon.....**Michelle Stone Bittner**, formerly with Birch, Horton, et.al., is now a senior attorney with Alaska Communications Systems.....**Roger Belman**, formerly with Guess & Rudd, is now with Dorsey & Whitney.....**Dawn Collinsworth**, formerly with Walker & Associates, is now with the Office of General Counsel, U.S. Dept. of Agriculture.....**Robert Collins** has transferred from the Anchorage D.A.'s office to the Palmer D.A.'s office.

Jeremy Vermilyea has relocated to Portland, OR.....The firm of **Baxter Bruce Brand & Douglas** is now the firm of Baxter Bruce Brand. **James Douglas** has left the firm.....**Diane DiPietro-Wilson** has relocated from Kake to Dubuque, IA.....**Roberta Erwin**, formerly with Wade & DeYoung, has joined Bob Erwin in practice, and the firm is now known as Erwin & Erwin.....**John Eberhart** has relocated from Brisbane, Australia to Fairbanks..... **Jim Fosler**, formerly with Feldman & Orlansky, is now with Keesal, Young & Logan.....**Joan Fortin** has relocated from Anchorage to Portland, OR.

Martha King, has relocated from Anchorage to Window Rock, AZ where she is with the Office of the Navajo Government Development.....**Michael Lindeman & John Abbott** have formed the firm of Abbott & Lindeman.....**Patrick Lavin**, formerly with Greenpeace, is now with the Alaska Human Rights Commission.....**Lawrence Mendel** has relocated from Anchorage to Davis, CA.....**Bonnie Paskvan**, formerly with Hartig, Rhodes, et.al., is now Corporate Counsel with General Communication, Inc.....**Daveed Schwartz** will be leaving the A.G.'s Fair Business Practices Section, and relocating to Nevada where he will be the head of the Attorney General's Anti-Trust Division.

Daniel Weber has relocated from Anchorage and is now a Magistrate in Galena.....**David Weber**, formerly with Alaska Communications Systems, is now with Vasquez & Weber.....**Hugh Wade**, formerly Of Counsel to Wade & DeYoung, is now with the Law Offices of Hugh G. Wade & Marion C. Kelly.....**D.K. "Kirby" Wright** is now with CH2M Hill in Denver, CO.

Kathleen Tobin Erb, formerly with Dorsey & Whitney, is now with Birch Horton, et.al.....**Philip J. Graves**, formerly with Irell & Manella LLP and Loeb & Loeb LLP, has joined Thomas & Walton LLP, in Los Angeles, California, expanding the firm's practice in the areas of intellectual property and business litigation.....**Rhonda Fehlen** has closed her practice and is now with the Anchorage Municipal Attorney's Office.

The law firm of Cook Schuhmann & Groseclose has announced the appointment of **Zane D. Wilson** as managing shareholder of the firm, effective Jan. 1. **Cassandra J. Tilly and Craig B. Partyka** also have joined the firm as associates.

Wilson attended the University of Alaska Fairbanks and received his Juris Doctorate degree from the University of Arizona, Tuscon in 1991 and was admitted to the Alaska bar the same year. His practice areas include collections, commercial, insurance, worker's compensation defense, construction, and general civil litigation.

Tilly holds a degree in music from Rice University, Houston, Texas, and received her Juris Doctorate at Northwestern School of Law, Lewis & Clark College, Portland, Oregon in 1999. She was admitted to the Alaska Bar in 1999. Her practice areas include commercial, corporations, employment, environment, partnerships, products liability, real estate, wills and probate.

Partyka attended the University of Rochester in Rochester, New York and received an Associate Bachelor of Arts degree in 1987 and in 1999 he received his Juris Doctorate from the Willamette School of Law in Salem, Oregon. Partyka was admitted to the Alaska bar in 1999. His practice areas include family & general practice.

Jean S. Sagan, has opened a law office at 7311 Street, Suite 203, Anchorage 99501. Ms. Sagan served as in-house legal counsel for the University of Alaska Anchorage and Associate General Counsel for the University of Alaska Statewide System from 1988 through 1999. She is a member of the Alaska and Kansas bars. Ms. Sagan will be engaging in a general legal practice with an emphasis in administrative process, employment matters, civil rights/nondiscrimination, and education. Her office telephone is 907/222-6070 and the fax is 222-6071. She can also be reached at jeansagan@hotmail.com.

Anchorage Municipal Attorney **Mary K. Hughes** was recently appointed to the Strategic Planning Committee of the International Municipal Lawyers Association (IMLA) by its president. Ms. Hughes is in her third term as regional vice president of IMLA and served as Alaska state chair from 1995 to 1997.

Help identify conflicts between decisions

Conflicts. The Ninth Circuit Court of Appeals asks for your help in assisting it to identify perceived conflictsbetween decisions of the court in two circumstances:

- conflicts between two or more unpublished memorandum dispositions, and
- conflicts between a published opinion and an unpublished memorandum disposition.

Form. A form for notifying the court of the existence of a possible conflict between decision is available on the court's Web site at <http://www.ca9.uscourts.gov>. You may mail, e-mail, or fax your completed form back to the court. If possible, your response would be appreciated by **March 31,** but the court will welcome responses at any time. The response you provide may be submitted anonymously and will not affect the disposition of any pending case.

Evaluation Committee Efforts. The Evaluation Committee of the Ninth Circuit Court of Appeals is undertaking this effort to identify and remedy possible inconsistencies in circuit law as part of the court of appeals' broader ongoing response to issues and concerns raised by the final Report of the commission on Structural Alternatives for the Federal Courts of Appeals (available online at <http://app.comm.uscourts.gov>. Last summer the committee conducted a circuit-wide solicitation of comments from the judiciary and the bar, and this specific call for help in identifying possible conflicts in one result of the earlier request for comments.

Perception of Conflicts. The Ninth Circuit decides nearly 4,500 cases each year; one-fifth of the cases are decided by a formal, written signed, published opinion, while four-fifths are decided by shorter, written, unpublished memorandum dispositions which are only provided to the parties in the case (and can usually be found on Westlaw or Lexis).

Some judges and attorneys who practice before the court reported to the study commission and in surveys that they thought that the Ninth Circuit Court of appeals may have some difficulty maintaining consistency among its decisions because of the large number of cases that it decides each year. While two scholarly empirical studies that have examined the issue concluded that no such problem exists, the court is conducting this self-examination to obtain specific examples so it can try to remedy any perceives problems.

If you are aware of conflicts between decision for the type described above, please assist the court by completing the form and returning it at your earliest convenience. Thank you for helping us to improve the administration of justice!

Perkins Coie announces three new attorneys in Anchorage

Perkins Coie LLP, the Pacific Northwest's largest law firm, announced the addition of three new attorneys in its Anchorage office.

Jessica C. Carey

"We are very pleased that these new lawyers have joined our firm. Our growth reflects our commitment to meeting our clients' needs for legal services in Alaska, said Tom Daniel, managing partner of Perkins Coie's Anchorage office.

Jessica C. Carey joins the firm's's litigation practice. Before joining the firm, she was an associate with Kirkland & Ellis in Washington, D.C. She received her J.D. from Duke University School of Law and her B.A. from Agnes Scott College, where she was a member of Phi Beta Kappa. After graduating from law school, she completed a one-year clerkship with the Honorable Sidney R. Thomas on the U.S. Court of Appeals for the Ninth Circuit.

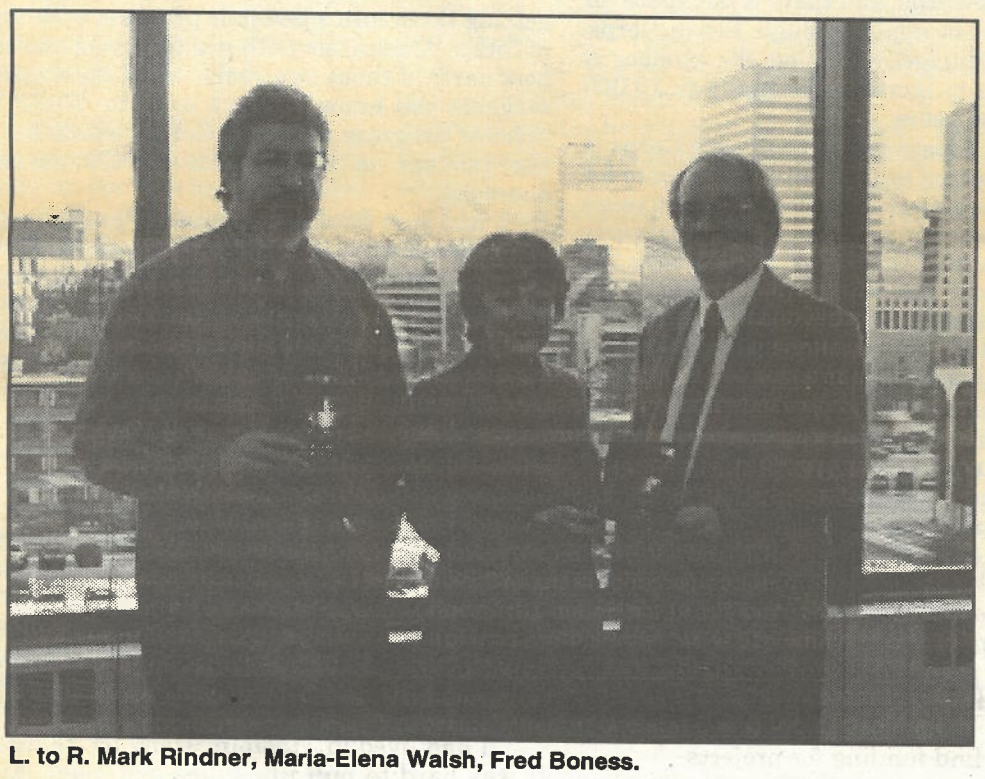
Eric B. Fjelstad

Eric B. Fjelstad will continue his practice in environmental and natural resources law. Fjelstad was formerly a partner with the Ziegler Law Firm in Ketchikan. He received his J.D. from Northwestern School of Law and his B.A. from Marquette University.

Amy J. Shimek

Amy J. Shimek will focus her practice on business transactions and corporate law. Shirnek recently completed a two-year clerkship with the Honorable John W. Sedwick on the United States District Court, District of Alaska. She received her J.D. from the University of Denver College of Law and her B.A. from the University of California in Santa Barbara.

Perkins Coie is the Pacific Northwest's largest law firm's, with more than 480 attorneys serving clients from 14 offices in North America and Asia including Anchorage, Bellevue, Boise, Denver, Los Angeles, Menlo Park, Olympia, Portland, San Francisco, Seattle, Spokane, Washington, D.C., Taipei and Hong Kong. Perkins Coie represents entrepreneurs in nearly every type of business, from traditional enterprises such as manufacturing, aerospace, banking and real estate to emerging fields such as electronic commerce, life sciences, technology and telecommunications. The firm offers a full range of representation in areas as diverse as intellectual property, antitrust, trade secrets, labor and employment, real estate, environmental and land use law, and product liability, as well as business and finance.www.perkinscoie.e com



L. to R. Mark Rindner, Maria-Elena Walsh, Fred Boness.

The Alaska Legal Services Corporation has begun its 2000 drive for contributions and membership in the Alaska Pro Bono Panel. Voluntary contributions and volunteer pro bono attorney participation assists the ALSC in serving hundreds of Alaskans who otherwise would have no access to justice.

The first attorney to return his membership card in the Millennium Year was Fred Boness, who served as managing partner of Preston, Gates & Ellis and has been a pro bono panel contributing member since the program's inception. ALSC Pro-Bono Coordinator Maria-Elena Walsh and Pro Bono Committee chair Mark Rindner, of Lane Powell Spears Lubersky presented Boness with the special panel membership card on Feb. 9 at the Alaska Bar Association office.

The new Year 2000 pro bono membership card features a silver "knight in shining armor," representing the good deeds Alaska attorneys perform to advance equal justice statewide.
Walsh said ALSC is in the process of updating information on all the pro bono panel members. "So, even long-time members of the panel need to fill out and return their registrations cards," she said. "And we need new panel members."

Attorney Discipline

ATTORNEY ADMONISHED FOR VULGAR SPEECH AT COURT

Attorney X, a man, represented the husband in a divorce. Attorney Y, a woman, represented the wife. Before a hearing, in the presence of the clients, Attorney Y asked Attorney X whether he had taken a certain procedural step. Attorney X replied, "Of course not, you stupid b——." Attorney Y told the judge about the remark when court went into session. The judge directed Attorney X to apologize, which he did.

Abusive speech between counsel, even if made off the record, affects how the public views the integrity of the legal process. Attorney X could have accomplished his client's purposes without the scurrilous content. Bar Counsel gave Attorney X the benefit of the doubt on whether this was an isolated incident. An Area Division Member approved imposition of a written private admonition, which the attorney accepted.

LAWYER ADMONISHED AFTER CALLER ID SHOWS PHONE CALL TO OPPOSING PARTY

Attorney X represented Husband in a divorce. Opposing Counsel telephoned Attorney X to advise that he represented Wife. Later Opposing Counsel, in phone calls and letters, communicated with Attorney X about the case. Despite this, Attorney X telephoned Wife to discuss the case, asking her to settle. Wife refused to discuss the case, told Attorney X to talk to her lawyer, and hung up. Her caller ID showed that she had received a call from Attorney X's number. She immediately asked Friend to verify this, and Friend prepared an affidavit to this effect.

Attorney X did not confirm that he made the offending call but did not deny it. Bar Counsel interviewed those involved (including Wife, Friend and members of Attorney X's and Opposing Counsel's staff). The evidence appeared clear and convincing that Attorney X violated Alaska Rule of Professional Conduct 4.2, which prohibits communication with a person that a lawyer knows is represented by counsel.

The misconduct was isolated and not likely to be repeated; it did not cause prejudice to Wife's case and was not aggravated by other factors. Relevant sanction standards indicated that private discipline would be appropriate. Bar Counsel requested and received approval from an Area Discipline Division Member to impose a written private admonition on Attorney X. The attorney declined his option to demand a formal hearing and accepted the admonition.

ANCHORAGE LAWYER DISBARRED

The Alaska Supreme Court on December 29, 1999, disbarred Anchorage lawyer Donald M. Johnson. The professional discipline followed findings of misconduct in three separate grievances.

Following investigation of the grievances and presentation of formal charges by Bar Counsel, a hearing committee considered appropriate sanctions for conduct deemed admitted due to Johnson's failure to respond to the Bar's charges. The committee stated the most serious ethical violation among the several presented involved a loan that Johnson induced a client to make to him in 1989. Johnson utilized both his confidential knowledge of his client's affairs and his position of influence over the client as her attorney in a way that resulted in improper financial gain to him and significant injury to her. Moreover, Johnson let many years pass without any significant effort to repay the obligation despite repeated false assurances that he was about to pay back the loan.

The other discipline matters concerned issues of neglect and failure to cooperate with Bar Counsel's investigation. The committee noted that its recommended disciplines of written private admonition and public censure for the neglect issues would be subsumed in the disbarment recommendation. The committee considered Johnson's failure to cooperate with the pending disciplinary investigations to be serious and aggravated on the grounds that Johnson had been privately disciplined in 1988, in part, for failing to respond to a disciplinary investigation. The committee recommended a one-year suspension for this violation, noting that its recommendation would be subsumed in the disbarment recommendation.
The Disciplinary Board and the Supreme Court accepted the hearing committee's findings of fact, conclusions of law and disbarment recommendation.

Johnson will be eligible to apply for reinstatement to practice in five years from the effective date of his disbarment. The public record of proceedings before the hearing committee, the Disciplinary Board and the Supreme Court is available for inspection at the Bar Association office in Anchorage.

Abroad with the Peace Corps:

Serving and learning in the land of "Namaste"

By Elizabeth Cuadra

"Namaste, Didi!" Little girls, on the trail or on the village street, would greet me this way, smiling mischievously, their dark eyes shining. *Namaste* means "Greetings to what is holy within you." *Didi* means "elder sister." These greetings symbolize the spirituality embedded within everyday life in Nepal, as well as the welcoming attitude of most rural Nepalis toward westerners, especially Americans — at least those who take the trouble to learn and honor local customs and learn something of their language.

What would a grandmother-aged woman like myself be doing living and working in rural Nepal, you may ask. Why, serving as a Peace Corps Volunteer (PCV), working as a horticulture extensionist, assigned to a district office of the Department of Agriculture Development in His Majesty's Government. Any of you other U.S. citizens who are experienced gardeners (especially Master Gardeners), in good health, willing to learn a new language, ready to undergo some hardship while keeping your sense of humor, mentally and physically a little tough but also somewhat creative, can do the same thing — and there are PCV jobs waiting for you in many countries, especially in Africa and South America. Being a lawyer is no impediment, though lawyering is not among the skills which Peace Corps seeks.

Peace Corps is not only for young people just out of college, though for them it is an excellent stepping stone toward a career in international development. Some people do it in mid-career, or while pondering a change of career path. Nowadays, about 7% of the roughly 6,700 PCVs (serving in about 80 countries) are past age 50. (I was 66 when I got home, some current PCVs are in their 70s, and the record is held by a man who was 86 when he retired from Peace Corps.) Seniors in the Peace Corps is not a new tradition, though the numbers are increasing. For example, not long after President Kennedy and Sargent Shriver started the Peace Corps in 1961, Jimmy Carter's mother, Miss Lillian, was a PCV in an African country.

The Peace Corps recruits people with a variety of skills and experience. Some PCVs teach math, science or English (or teach the teachers) in their assigned country. Others are experienced nurses who teach at nursing schools in the host country. Others work in youth development, community development, safe drinking water and sanitation, forest conservation, soil conservation, national parks and wildlife management. In some countries, especially Eastern Europe, volunteers experienced in business or accounting are in high demand to help locals learn business development.

Author giving the "classroom" portion of a training for farmers on how to improve soil fertility using organic methods. (Practice on making compost by improved methods followed). (Dhankuta Dist.) Photoby K.R. Chaudhary

If you want to learn more about opportunities, and how to apply, contact Peace Corps, at 1-800-424-8580 (your nearest recruiting office is in Seattle)and visit their web site: www.peacecorps.gov. Do not expect to leave the following month! The paperwork process, after you file your completed application, can take as long as 12 to 18 months, and there is not space for as many people as apply, though Peace Corps' newly expanded budget will allow the number of PCVs worldwide to increase gradually to 10,000 over the next few years.

Every PCV's experience in the Peace Corps is unique. The expected tour of duty is the same for all: three months of training followed by two years of work, though anyone who wishes to resign early and go home may do so (and some do). But after the training ends and the work begins, everyone's experience is different. This is partly because the elements of culture shock differ somewhat from one PCV to another, as well as the things we miss back home (I missed my Siberian husky dog and Alaskan seafood, while some of the young PCVs missed a sweetheart they left back home). The uniqueness is mostly because each of us tends to create our own program. I reveled in the freedom I was given (as well as moral support and help from both my local Nepali supervisor and my Peace Corps program officer) to create my own program, centered on my assigned horticulture activities but by no means limited to that primary assignment. All PCVs may, after the first six months at post, take on a secondary project, and can get help to find funding for projects.

At first,I was posted to a district in the western part of the Terai, the hot southern lowlands, a difficult adaptation for an Alaskan. There, in Tulsipur, Dang District, working with two local extension agents, I helped local farmers learn better ways to grow vegetables for family use and for sale. I also supplied vegetable seeds (donations I'd obtained from seed companies back home) for variety trials and possible later seed production. At the invitation of a local school's headmaster, I taught the seventh and eighth graders' conversational English classes. My relationship with those youngsters, and the satisfaction of getting them into a pen pals program with a class of Sitka, Alaska, seventh graders, was one of the best parts of those two years. (Tell the classroom teachers you know to check into the World Wise Schools program at Peace Corps, which can put the teacher in touch with a PCV currently overseas.)

I had just begun a secondary project, an on-farm demonstration program to show farmers how to improve soil fertility by using organic methods (e.g., green manuring, legumes to add nitrogen, and improved ways to make and use compost), when Peace Corps/Nepal's Country Director (in Kathmandu) ordered the evacuation of all PCV's in my area back to Kathmandu. The Maoist insurgency, which then had been going on in some parts of Nepal for about three years, was spreading into our area, and the Maoists had started targeting some development projects — especially American-funded projects. In a district adjoining mine, a jeep belonging to a 75% USAID-funded agricultural project had been blown up with two project employees in it. USAID moved its project to another part of Nepal, and Peace Corps evacuated us.

I had lived in Tulsipur, Dang for 13 months. It was hard to pull up stakes and leave my soil fertility project, leave the school children, and leave my new friends and my Nepali counterpart,

Continued on page 23

Nepali farmer checking the header tank of her small drip-irrigation system for a vegetable plot. (The author introduced drip irrigation into district - Dhankuta, Nepal) Photo by Elizabeth Cuadra

Farm women (Santang, Dhankuta) cut and sell firewood in the spring dry season to get cash to buy food -- an unsustainable resource at this rate of cutting. The author organized handicrafts training to enable an alternate cash source.

Abroad with the Peace Corps

Continued from page 22

who had become like a brother to me. I would miss the luscious taste of ripe mangoes and papayas. I would miss the comical little spotted owlets that perched upon the branches of my trees at sunset and slept in the attic of my house (with the bats) by day. But I would *not* miss the putrid smell of open drains along the streets in the town center, nor the four kinds of poisonous snakes, nor the almost weekly creature feature during the hot monsoon season (creatures invading my rooms, from baby bats doing flight training, to millipedes to snakes), which had stretched my sense of humor to the limit.

The evacuation turned out to be a blessing in disguise, and the best was yet to come. On return to Kathmandu, I was met at the Country Office door with the news that I could visit any or all of three potential new posts (all of them in the cool, green hills of northern or eastern Nepal) and choose the one I liked best! And so I chose Dhankuta District (south and a little east of Mt. Makalu, for those of you who are aficionados of mountain climbing and the Himalayas).

I lived in Dhankuta, the town that is the district center, working out of the extension office there, living in a tiny apartment with a view toward the northern hills. My landlady and close neighbor was Raj Kumari Chemjung, the chief trainer at the cottage industries office. She all but adopted me as a sister. There, in the hill country, the people were mostly of the Newari, Rai and Limbu ethnic groups, each with its own language besides Nepali. All my activities involved walking, uphill and down, and so it was no problem to keep off the 40 pounds I had, gratefully, lost during my first year in country. My food was rice, stir-fried and spiced vegetables, eggs, bread (sometimes with peanut butter), lentils or other legumes, water buffalo milk, eggs, citrus fruit in season (in December, from the trees in the back yard, which smelled of orange blossoms in the spring) — meat very seldom (chicken, goat, or water buffalo — beef is not ordinarily eaten in Nepal, as cattle are sacred to Hindus).

During those remaining ten months of my service, I was networking, learning of needs and local people's desires for change, acting as a facilitator to put together projects, find funding for them, and help local people implement them. A new, little NGO (nongovernmental organization) was concerned about rural mothers' lack of knowledge about nutrition, a concern I shared; so we co-designed (and I found funding for and monitored) a program in which the NGO gave 3-day trainings in basic nutrition and 3-day trainings in kitchen gardening, for 75 rural mothers (25 in each of 3 wards in the district). There are major dietary deficiency-related diseases in Nepal — lack of vitamins A and C, iron, iodine, and protein — all of which can be prevented by wise kitchen gardening and feeding of pregnant and nursing mothers and young children, as most rural families have a little land.

Much of my work was focussed on Santang, a farming area that needed more agricultural extension help and to which I could walk and return home in a day. These hill farmers had no irrigation and could grow no food in the dry season. The women, every spring dry season, would cut wood from the few remaining trees and carry it on their backs to sell as cooking fuel in the town's fast-food shops, in order to buy rice for their families. I had designed and team-taught a 4-day course the prior autumn on growing vegetables for 25 of these farm women, but they needed another way to earn money during the dry season. I was introducing low-tech, inexpensive drip irrigation systems into the district, but at Santang there were only a few small water sources that would continue to flow throughout the dry season.

So, after assessing the interest among potential trainees, and with cooperation from the cottage industries office and my Agriculture supervisor as well as donations from friends back home, I set up and monitored a handicraft training program. The trainees learned to make woven, wool shoulder bags, for which there is a local market and also an international sales potential. Those ten students (with one teacher) cheerfully worked six days per week, five hours per day for six weeks in an open-sided and cleaned animal shed, learning to make their own looms and to make the shoulder bags. By the end of the training they had used 20 kg of yarn and made 60 shoulder bags, had sold 13 to me to bring home (10 for donors), 16 to members of our district agriculture technical staff, and were selling them at a local handicraft shop. Soon, they had received a special order for 30 from a British INGO based in Dhankuta, and had taken samples to one of the producer-friendly export shops in Kathmandu. There is a tradition of hand-loomed textiles in the Dhankuta area. This new women's handicraft group has a good chance to succeed at this new endeavor, and supplement their family incomes by this sustainable method.

In one final push, during my last month at post, I designed and team-taught a half-day training for farmers on ways to improve soil fertility by organic methods. We repeated this training for farmer groups at nine locations throughout the district. To reach the training sites, I walked eleven days on trails through the hills, carrying only a day pack, water bottle and filter, and a walking stick — a tiring but highly pleasurable close to my work in Nepal. On the way back to Kathmandu, I visited the child I have been sponsoring through Childreach, who lives in PLAN International's project area, east of Biratnagar.

Why would anyone want to go halfway around the world to do these kinds of things? In my case, it was largely wanderlust — wanting to travel without being a tourist, to experience a very different culture and get to know the local people on their own terms, and to be of some help in alleviating poverty if I could. Lying on a beach or staying in a look-alike international hotel is not my idea of fun. Instead, I enjoyed sitting cross-legged on the floor of a farmhouse, chatting with the women while sipping their homemade millet beer; or listening to the chanting of Buddhist monks; or hiking near to those snowy peaks, the Himals, that are the glowing roof of the world; or basking in the affection that radiates from a classroom-full of children for whom I have had the good fortune to become a window to another part of the world. Peace Corps asks, "How far are you willing to go to make a difference?." They also warn us that being a PCV will be "the toughest job you ever loved." This is true, but serving as a Peace Corps Volunteer can be a mind-expanding, life-changing experience.

For those who first would like to try shorter-term volunteer experiences, there are lots of organizations which offer them, to nearly all parts of the world. Most of them are two or three weeks long, short enough for a person who is still working full time. Many such groups (such as Global Volunteers, and the service programs of Elderhostel) can be found on the internet. These service trips are no more expensive than a similar-length journey as a tourist, and probably less so by the time you take the allowable deduction on your next IRS return. Anyone who would like a one-page list of references to get you started finding such organizations, feel free to leave your name and address on my telephone recorder, (907) 789-2084, or give me your request in an email to: cuadra@gci.net. Then get out a world map and start scheming!

Author at the U.S. Ambassador's reception following swearing-in (after training) of new PCVs (her training group). Photo by Dr. Gyan K. Shvestha, Horticulture teacher.

Handicrafts teacher using a backstrap loom to make a wool shoulder bag ("jhola") beginning the training organized by the author, funded by her friends back home (Dhaukuta, Nepal) Photo by Elizabeth Cuadra

Prithri Lamichhane (agricultural technician), pleased with his "Provider" variety bush beans, from USA seeds donated by Seeds of Change. (Dang District, Nepal) Photo by Elizabeth Cuadra.

Bed-wetting to fire-art

☐ William Satterberg

Even as a child, I never really used to wet my bed that much. As such, my fascination with fire and explosives often puzzled my parents. Regardless of how you view it, I have had a long love affair of sorts with things that go boom, snap, crackle, and pop. Maybe it had something to do with the cereal that I would eat.

My first experience with fire was an inadvertent one. At six years old, I was fascinated by the artificial fireplaces in the local department store. I would sit for hours, watching the "flames" dance merrily as a light behind colored paper would appear to flicker. Being somewhat of an inventive rascal, I soon decided to design a similar contraption, so that I could enjoy the hours of fascination in the privacy of my bedroom.

To accomplish this task, I took a lamp, grabbed some construction paper, and scribbled pictures of a flame. For once, scribbling was an acceptable art form. I then carefully laid the paper on top of the lamp, so that I could have my own special effects. Fortunately, my mother entered the bedroom just seconds before the paper burst into its own real flame. It was about then, I believe, that I became introduced to the concept of motivational child psychology.

In my later years, I became an expert in the area of neighborhood napalm. My best napalm mixture was to take flour and gasoline, and mix a light paste. After I got the hang of it, I found that the mixture did tend to have that splatter effect one wished for. Admiral Zumwalt would have been proud of me. Admittedly, my first few tries left something to be desired, such as my eyebrows. On the other hand, once I learned that raspberry gelatin was better than flour in making the paste, I became rather accomplished.

It was about that time that word of my proficiency leaked out among the various parents in the area. I soon found that some of my friends were no longer able to play with me, even after they got out of the burn unit. Before long, gasoline became a prohibited item in my bedroom, also.

For several years, like most normal kids in Anchorage, Alaska, I confined myself to fireworks. I was a child of the '50's/'60's, in that regard, which was a delightful period of time to grow up. Such items as "real M-80's" and "cherry bombs" had still not been outlawed, which gave rise to hours of delight. One of my best friends at the time, Steve Pendergrast, a/k/a Two Fingers, had taught me some cute tricks with cherry bombs. One such trick was to drop a cherry bomb down an old discarded 20-millimeter anti-aircraft gun shell and pour in a handful of pea gravel. If you were quick enough, you could the blast your nearest friend.

In time, the regulators had their way, and M-80's and cherry bombs became accessible only on the Indian reservations of Washington State. It was about that same period in life that I decided that I would study chemistry. In short, if I couldn't buy 'em, I'd build 'em.

My initial fascination with chemistry came when I saw a demonstration of the effects of sodium and water put on by my high school chemistry instructor. I always had a strong affinity for that fellow, who had a strong liking, himself, for certain organic solvents. It was perhaps his regular consumption of those organic solvents which allowed him to tolerate me in chemistry class. It was also that consumption of solvents, I believe, which allowed him to let me become one of his favorite lab technicians, thereby gaining invaluable access to the coveted chemicals cabinet. And access to the chemicals cabinet produced even more hours of endless delight.

My initial escapades were guarded. Occasionally, I would purloin a small portion of sodium metal. In the interests of pure science, I would then conduct lab experiments to demonstrate to various friends how the combination of sodium and water would produce volatile hydrogen gas, which would then spontaneously ignite. Because the reaction was what was termed an exothermic, or heat releasing, reaction, the combinations would invariably result in an explosion.

The best location to conduct these experiments, I soon discovered, was in the boys' bathroom at West High. As my bravado increased, it was not long before I discovered that potassium had even greater explosive powers than sodium. Unfortunately, potassium rarely, if ever, gave you time to get out of the restroom before it went off. I eventually solved that problem by utilizing a common matchbox. By weighting the lower end of the matchbox with hydrogen-producing calcium and then placing a smaller portion of sodium or potassium on top of the matchbox, I usually found just enough time to escape. This design also allowed a generous contribution of hydrogen gas to be made before the sodium or potassium hit the water, which was an added benefit, depending upon one's point of view. The explosions were quite memorable, indeed.

I conducted these secret experiments to the interest of many. I later was surprised to learn that certain individuals in the school system were less than impressed with my creative efforts, and sought me out.

Another experiment which was often conducted was to dry out the urinal in the men's bathroom and to then place a small parcel of sodium in the bottom of the fixture. This was probably one of the first examples of the time-delayed booby-trap. Although drying out the urinal was not necessarily an enjoyable job, since it required the use of paper towels, the labors associated with that task were amply rewarded later. Invariably, glees of excitement which would come out of the boys' restroom when, after the recess bell rang, various students would go to relieve themselves only to discover that sodium reacted quite violently when placed in the presence of uric acid.

My finale as a high school lab assistant was when Steve Johnson and I made nitroglycerin. It is actually a very simple process, but, for reasons of censorship, is not one which I will repeat at this given point in time. One note of caution, however, is that you should always have an ice bath readily available when you start to concoct the mixture. The results can be quite drastic if the ingredients are simply poured down the drain of the chemistry lab without greater precautions taken. The leftover fumes, as well, can cause a tremendous headache after the drain blows out.

Once our nitroglycerin had been built, our biggest problem was to find a method of detonating the mixture without detonating ourselves in the process. Nitroglycerin is relatively stable if kept cool, and provided that it is not kept in a confined container. If you don't want to explode it, you can simply light it on fire and it will burn up.

But burning was not the desired result. We wanted an explosion. The answer for a detonator, we soon learned, was quickly and easily found by resorting to our old elementary school days, utilizing Black Cat Firecrackers with extended fuses. Steve and I set off two explosions on our own, both of which were successful. It was the third explosion, however, in which I had no part (honest, officer!), that put an end to our high school chemistry experiments.

During my senior year, which was also during the Vietnam War years, there was concern about student unrest. Admittedly, student unrest in Anchorage, Alaska, was not necessarily a big thing, especially in the high schools. We tended to sleep a lot during classes. Our idea of a protest at that time was a food fight in the cafeteria.

You can well imagine the concern which was caused, therefore, when Steve decided to set off a vial of nitroglycerin in the lockers by the drafting room at West High. According to Steve, it was simply to be an exercise in making a loud noise, and nothing more. But, according to Steve Stripling and Joan Greenfield, who were the high school sweetheart team, and who happened to be walking around the corner when the charge went off, it was something more than a large noise.

According to Steve, "You won't believe it, Bill! We heard this loud boom and the lid flew off the center locker. The whole bank of lockers then fell off the wall flat into the hallway. Did you have something to do with it, Bill?"

Quickly casting my eyes promptly downward, I denied any and all complicity in the operation, and blamed Steve.

But that did not satisfy the FBI, who later conducted its own investigation. I was absolved of any and all complicity in this particular explosion, since I, in fact, did have an alibi. Steve Johnson, my lab partner, on the other hand, confessed, and, in the process, not only had to repay the school for the damage to the lockers, but lost all of his home chemistry privileges, as well, for the next two weeks. For some reason, my role as a lab assistant ended shortly thereafter, as well. Fortunately, because I was on my way to college, I was not that concerned with my loss of employment.

In college, I graduated to larger scale explosives. My roommate was an ex-Vietnam veteran, known as "C.J." C.J. held an even greater morbid fascination than I with explosives. C.J. actually knew how to wire up detonators to detonation cord and dynamite, and to construct his own rudimentary explosives out of standard chemicals often found on household shelves.

When I asked C.J. where he learned all of this, he would simply

Continued on page 25

RESOLUTIONS FOR ANNUAL BUSINESS MEETING, MAY 19, 2000

RESOLUTION

RESOLVED, That the Alaska Bar Association is urged to establish and implement effective procedures for the discovery and investigation of any apparent violation of its laws prohibiting the unauthorized practice of law and to pursue active enforcement of those laws;

FURTHER RESOLVED, That the Alaska Bar Association is urged to encourage all members of the public to report to the designated authority each instance of an apparent violation of the laws prohibiting the unauthorized practice of law;

FURTHER RESOLVED, That the Alaska Bar Association is urged to establish and support a mechanism for reporting to the Alaska Attorney General and for eliminating instances of the unauthorized practice of law by individuals or organizations;

FURTHER RESOLVED, That each member of the bar is encouraged to report to the Alaska Bar Association and Alaska Attorney General each instance of an apparent violation of any law prohibiting the unauthorized practice of law;

FURTHER RESOLVED, That the Supreme Court of Alaska is urged to immediately complete the implementation of an unauthorized practice of law rule for the State of Alaska.

ANCHORAGE BAR ASSOCIATION
by: Linda J. Durr, PLS
Admin. Director

RESOLUTION

RESOLVED, that the Alaska Bar Association shall provide to local bar associations:

(1) free mailing lists on disks,

(2) free mailing labels, and

(3) free copying and mailing services, where the local bar association mailing can be included in an Alaska Bar Association mailing.

ANCHORAGE BAR ASSOCIATION
by: Linda J. Durr, PLS
Admin. Director

Fire-art: The Patty snow pile must go

Continued from page 24

reply, "The Navy." Prior to that, I had never known that the Navy could teach someone so much about explosives.

I still remember the time that the University of Alaska had its Engineers' Day in 1971. This usually occurred in the spring, when the student engineers played pranks in waking up the University campus by setting off explosive charges. C.J. and I roomed in Lathrop Hall. As usual, we had had a rough evening the night before, and were not prone to wake up before one in the afternoon, even if it were a Tuesday. At 6:00 a.m. on that Engineers' Day, however, the campus rocked with explosions. It should be noted that, one year, the engineers set off such a large explosion that all the windows were knocked out of the Eielson Building. Following a couple of rude, nearby explosions, C.J. climbed out of bed, cursing loudly. He went to the closet where he kept various stores and pulled out a small stick of dynamite and a detonator. Deftly, he wrapped the two together and walked to a window in the back hallway of the building. Before long, he saw somebody scurrying through the brush. C.J. lobbed the stick of dynamite in the general direction. Seconds later, after that blast of well-placed return fire, all further explosions in our area of the campus ceased.

Then there was the time that C.J. and I built the famous, "NMR tube" bomb. There will never be another one like it. In chemistry, an NMR is a machine. Back in those days, when computers utilized such archaic languages as Fortran and Cobol, the data paper would roll off very thick cardboard tubes. The NMR also had such a paper tube. C.J. and I had saved a couple of these tubes for the express purpose of building the bomb to end all bombs. (Eat your heart out, Sadaam!) Once again, I will not discuss the construction of the item, except to state that it used a number of very highly volatile, powdered metals, known for their propensity to engage in a rapid oxidation/reduction reaction, otherwise known as a "redox" reaction. Redox is one of the more feared chemical reactions to a chemist, because the ion exchange occurs virtually instantaneously. Stated simply, you could almost always expect a large explosion in an uncontrolled redox reaction.

C.J. and I giggled in macabre delight as we built our bomb. After the bomb had been built, it sat on our bookshelf for a number of weeks, attracting the attention of many a drunk partygoer.

One night, during a party in our room, our dormitory advisor, Steve Johnson (not the same one) asked what the "firecracker on the shelf" was. C.J. told him that it was "a very big firecracker." Steve laughed and asked, "How big?" "*Very* big!" was the answer to our Doubting Thomas. C.J. told Steve he'd let him set it off if Steve wanted to really find out. Steve, being intoxicated at the time, quickly volunteered.

A site was selected. The University Physical Plant had built a large snow pile in the parking lot below the Patty Gym. We suggested to Steve that he climb to the top of the snow pile, stuff his arm in the top of the pile up to his shoulder to make a hole, light the bomb's fuse, drop it in and then get away. It all made common sense, actually. C.J. and I figured that, with two to three hundred yards separating the snow pile from the building, there should be little window damage. Steve was game, moreover, which was more than I could say for either C.J. or myself. We did not even want to get near to the bomb.

After summoning up some more courage, Steve trudged out to the snow pile as ordered, climbed the pile with some degree of difficulty, rammed in his arm, lit the bomb, and dropped it in. Everything was going well until that point. Steve then rolled down the snow pile, stumbled about 60 yards, and turned around to watch his handiwork. In a panic, C.J. and I yelled to Steve to get further away. In an inebriated response, he swung around and asked, "What?" Before we could answer, Steve disappeared in a cloud of snow. The resultant concussion shook the building. Seconds later, a sober Steve ran out of the snow cloud, straight for the building at full speed. Approximately 30 seconds after that, the University of Alaska fire engines started up. To our surprise, someone had apparently reported a large explosion in the lower campus area. One thing I knew for certain was that it was not our residential advisor, who was still running full speed for the building. On balance, I think that the only thing that saved my college career was the fact that Steve was the one who had set off the explosion. After all, he would have been the only credible witness to report us.

After that, my experience with explosives in college dwindled rapidly. The only other memorable event, which occurred during a dormitory party, was when I painted contact explosive on the bottom of the rubber bumpers to the women's toilet seats. This antic provided an entertaining evening for all, with the laundry machines going full bore the next day.

During college, I had taken Blasting as an elective. The class was taught by a man who had an alcohol problem, just like my teacher in high school chemistry. On balance, given the stress of the occupation, I could understand the man's issues with alcohol. The field laboratory experiments were particularly enjoyable, however. Those who survived the class rated it very high at the end of the year. Unfortunately, my training would lie in dormancy for several more years.

After that, I entered law school and temporarily gained a respectable life. That transition did not end my fascination with explosives. Rather, my style and technique simply changed. During law school, I could not afford fireworks or explosives, and confined myself simply to studying and playing pinball, while others watched Bruce Lee movies. Eventually, I graduated from law school and became a private lawyer. My early practice received a boost when I began to represent a local fireworks distributor. I still count that individual as among one of my best clients. Needless to say, in addition to receiving rather substantial discounts at times on various products, I also was able to procure certain hard to find items at various times of the year.

Human beings are a curious, yet easily bored lot. I am no different. Eventually, my fascination with run-of-the-mill fireworks once again reverted to the more explosive genre. Having long since divested myself of my chemistry set, I opted for more commercial brands, like DuPont.

It was then that my fascination with dynamite once again emerged. To my surprise, I soon learned that the concept of explosive technology had come a long ways since I used to let dynamite crystallize on the shelves of my basement storage room. Not only was the material more stable, I learned, but certain items like ammonium nitrate are actually rather benign by themselves, until mixed with fuel oil. I had come of age!

Every New Year's, we have a fireworks display at our house. In addition to the standard run-of-the-mill mortars, sky rockets, and kids' fireworks, we have taken to setting off rather large charges of detonation cord and dynamite. Due to the fact that we had some cracked windows as a result of one year's dynamite demonstration, we now tend to confine ourselves to detonation cord. By "we" I actually mean myself—both of me.

The first time that we ever set off any detonation cord for New Year's was when we were having a party at a neighbor's house. We decided to lay approximately 100 feet of the material out along the road, in a combined effort where various people brought together fuse, detonators, detonation cord, and liquid courage. The result was spectacular, if you didn't consider the anxiety of wondering whether or not a car would come around the corner during the 30 seconds that the fuse burned. According to one witness, the evidence of the explosion first came with a low rumble up the valley, which then rippled down the hill to his house. Although the property had been thickly covered with recent snow in the general vicinity, anybody who took a look at an area of approximately 100 feet in diameter near my house would have noticed that the trees were remarkably clear of any type of snow on the limbs or bows. After that, we decided not to use the road as a staging center. From then on, we use a vacant area. Two years ago, I decided to set off the "mother of all charges". The end result was that, once again, the noise could be heard for quite a distance. That spring, we also discovered that a six foot circle of grass had been scalped off the back yard lawn. To many, it looked like we had been visited by an alien saucer. Both of me decided to adopt that explanation when later questioned.

Thenceforth, we used the driveway for the locus of our charges. We've also reduced the size of the charges with the net result being that the windows were no longer cracking, the neighbors in Nenana are no longer complaining, and the local dogs usually come home within two weeks.

I can go on much longer, but I won't. Let's face it, every one of us has our dark side. I just thought that I would bring mine to light, on at least one area. If time ever permits, and if you wish to celebrate New Year's, give me a call. We may let you light the fuse. Better yet, if you really make an impression upon us, we will let you hold the charge.

Financial reporting essentials for law firms

By Ellen Freedman

Is one of the following a familiar scene at your firm?

Scene One: Each month-end the books are "closed". Then reports are run and distributed. You receive a rather large stack of reports. The reports contain important information. Yet, aside from pulling out the work-in-process (WIP) for billing, the reports are barely touched. Generally, the bulk of the reports sit on the credenza or desk corner or floor until the next month, when the old stack is replaced by the new.

Scene Two: Month end does not really have meaning except for payroll tax liabilities, and expenses due on the first of the month, like rent. Your firm is small, and therefore your "needs" for financial information are limited largely to what you need to get a bill out the door, and how much cash is in the bank.

If either of these scenes creates a strong sense of deja vu, your financial reporting could use an overhaul.

When it comes to financial reporting, most firms err by operating at either extreme noted above - too much or too little. It does not help you make good decisions to weigh you down with mountains of paper which you will never find time to wade through. Nor can you make good business decisions in the absence of data.

I suggest you prepare a one page synopsis which identifies and summarizes each of the key statistics which should be monitored regularly in a law firm. It should show totals for the current month, year-to-date, and the prior year-to-date, too. All on one page. (The numbers are readily available off today's Time & Billing software packages.) And because the key statistics report is so simple to understand and become comfortable with, it is guaranteed to become your most used financial tool -in some cases the only tool used. Following are the nine key statistics you should review monthly:

BILLABLE HOURS

For firms which still worship at the altar of the billable hour, it is imperative to monitor hours regularly. Firms which work exclusively on alternate billing arrangements, like contingency, flat fee and such, need not monitor hours, and in fact may not even keep a record of hours.

FEES BILLED

One must be careful to note whether any adjustments in the current month might throw off the total.

BILLING REALIZATION

This area can dramatically impact profitability. Billing realization is computed as fees billed divided by the actual value of the time which was billed. For example, if $1,000 worth of time (10 hours @$100/hr) is billed out for $900, the billing realization is 90%, meaning the firm has billed out at ninety cents on the dollar. Benchmark realization numbers can be obtained from the Altman Weil Pensa Survey of Law Firm Economics. If the firm is not attaining or surpassing the benchmark numbers for realization, efforts should be focused in this area. Improvement of even one percent overall can have a dramatic impact on the bottom line. Of course, realization can only be computed when time is accurately recorded.

FEES RECEIVED

This number will normally get the most scrutiny, aside from billable hours. In firms where compensation is directly tied to receipts (e.g. "Eat What You Kill"), receipts will be looked at from several perspectives, usually by originating and responsible attorney. But it is not necessary to take such a detailed look at receipts every month. Generally, just tracking the overall volume on a month to month basis is sufficient.

WORK IN PROGRESS (WIP)

At some firms this report is called pre-bills or bill drafts. It accounts for all unbilled time and costs incurred for clients. It gives an instant view of the firm's active inventory. Old unbillable time and costs should routinely be written off, so the WIP is an accurate predictor of billings to come over the next 30 - 60 days for non-contingent matters.

ACCOUNTS RECEIVABLE (A/R)

If your receivables keep increasing while your billable hours and fees billed remain the same, it means that you are not achieving the revenues you have worked hard to attain. Even though you review the aggregate total, you should still monitor individually any past due or unusually large receivables.

COST WRITE-OFF

This number represents the costs which are written off or down or "adjusted" at time of billing. Well managed firms have thresholds established for write-offs, beyond which the proposed write-off must be reviewed by another partner. The details of write-offs must be dutifully reviewed each and every month. Keep an eye out for noteworthy-sized write-offs, even if the aggregate total is unremarkable. These should be footnoted on the Key Statistics Report.

ACCOUNTS RECEIVABLE WRITE-OFF

If there is a problem with the bill, at least from the client's perspective, there will likely be some accommodation made by the firm. No matter how happy the clients are or how well the firm follows up on outstanding invoices, there will always be a certain percentage of write-offs. The IRS is concerned that invoices not be written off until a reasonable effort is made to collect. In law firms I've always found that the opposite problem exists. That is to say that attorneys, for some reason, just can't bring themselves to write off receivables. The firm is better off being more aggressive in writing off items which are highly unlikely to ever be paid. Then the A/R will more accurately reflect the cash revenue potential of the firm.

CASH ON HAND

This is the final number to monitor regularly. You'd be a rare attorney indeed if you weren't already asking for this number daily or weekly. If the overall numbers don't make "sense", this is one of the first places it will be evident.

The idea of looking at a one page synopsis of all the key statistics is to get a quick glimpse at the overall health of the firm, and to develop a clear sense of the work-to-revenue cycle of your firm. If any of the numbers requires further exploration, and if you have time to do so, you can always look at a more detailed report. But why spend the manpower processing and printing reports you will never get to? On the other hand, if you're one of those who has not been receiving reports, reviewing a one page report will not be too time consuming or difficult.

Ellen Freedman is the Law Practice Management Coordinator for the Pennsylvania Bar Association. Article courtesy of American Bar Association GP, Solo & Small Firm Section newsletter exchange.

REMINDER

The U.S. District Court has placed a moratorium on the payment of the Attorney Admission Annual Renewal Fee of $25 for the current calendar year. However, the initial Attorney Admission Fee of $100 and the Pro Hac Vice fee of $100/case filing for out of state attorneys are still in effect. A moratorium has not been placed on either of these two fees.

PROPOSAL FOR DUES PENALTY INCREASE

Proposed Amendments raising the penalty for late payment of Bar dues from $10/week to $20/week, and raising the maximum penalty from $160 to $200.

Bylaws, Article III, Sections 3(a) & 3(c)

Sec. 3. DELINQUENT AND SUSPENDED MEMBERS.

(a) Delinquent Payment Penalties. Any member failing to pay his or her membership fees when due shall, during the period of time in which the fees remain unpaid, be subject to a penalty of [$10] $20 per week of delinquency. For purposes of determining the appropriate penalty assessment, each fraction of a week shall be considered a whole week. In no instance may the penalty assessed for delinquent payment exceed [$160] $200.

* * *

(c) Reinstatement. Any suspended member whose suspension for nonpayment has been in effect for less than one year, upon payment of all accrued fees and late payment penalties, shall be reinstated as a member of the Alaska Bar upon certification by the Executive Director to the Alaska Supreme Court and the clerks of court that the fees and penalties have been paid. Any member who has been suspended for one year or more, upon a determination of good moral character by the Board, in accordance with Board Policy, and upon payment of all accrued membership fees, in addition to a penalty of [$160] $200, shall be reinstated as a member of the Alaska Bar upon certification by the Executive Director to the Alaska Supreme Court and the clerks of court that the member is of good moral character and that the requisite dues and penalties have been paid.

* * *

Bar Rule 61. Suspension for Nonpayment of Alaska Bar Membership Fees and Fee Arbitration Awards.

(b)(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of [$10] $20 per week of delinquency (each portion of a week to be considered a whole week) but not exceeding a total of [$160] $200 in penalties shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

(2) Any member who has been suspended for a year or more, upon determination of character and fitness as set forth in Rule 2(1)(d) by the Board, upon payment of all accrued dues, in addition to a penalty of [$160] $200, shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the member meets the standard of character and fitness set forth in Rule 2(1)(d) and that dues and penalties have been paid.

PROPOSAL FOR OUTSIDE COUNSEL FEE INCREASE

Proposed amendment raising the annual fee for Outside Counsel to participate in a local case from $250 to $350.

Bylaws, Article III, Section 4.

Sec. 4. REQUIRED FEE FOR OTHER ATTORNEYS. The required fee for other attorneys under Civil Rule 81(a)(2) is [$250] $350 annually, with $10 of that fee contributed to the Lawyers' Fund for Client Protection, until the attorney notifies the Alaska Bar Association that the case in which the attorney is participating is closed or the attorney has withdrawn from the case. Attorneys appearing under Civil Rule 81 in cases prior to the effective date of this rule will begin paying the [$250] $350 annual fee on January 1, 1995.

Prosecutors redux

☐ Drew Peterson

I have been writing this column on appropriate dispute resolution (ADR), for over twelve years now, since 1987, with an occasional vacation. I realize that for the most part it has not been very titillating stuff, as I describe the latest academic ADA book or article, or wax philosophic on my own favorite ADA flavor of the month. My friends change the subject when I ask them how they felt about a recent article, and I accuse them of reading it only for purposes of overcoming insomnia. Occasionally I will get a request for a reprint, or a comment about an article written long in the past that someone actually remembers.

Thus I was pretty surprised to have created a firestorm with my article on transformative justice in the November-December, 1999 issue. I guess somebody out there is reading the column after all.

If you did not see the irate response letters in the last issue of the Bar Rag, you can check out another in the early pages of this issue.

In the last few years I have written four or five separate articles about transformative justice. Until the article in question, however, the others have all been academic in nature, reviewing a book or article, and pretty passive in their tone.

The offending article consisted of a rant I wrote after having invited a prominent prosecutor to participate on a CLE panel on restorative justice. The prosecutor in question was not one of the people who wrote to complain about the article. When asked to participate on a CLE panel, the individual I spoke with rudely responded not only "no," but "hell no!" In his opinion it would not only be inappropriate but even irresponsible to participate in such a program. He did not explain his reasoning in depth, but the implication was that restorative justice was a dangerous and subversive concept. I was advised to contact someone from the criminal defense bar, since they no doubt approved of "that sort of thing."

I initially wrote my response to this conversation with no intention of publishing it. After considering it for a time, however, and showing the article to some colleagues, I decided that what the heck: I would see what sort of a reaction it might get. I was not expecting much after my past experience with the column. I was therefore both thrilled and shocked to see the reaction that it did provoke, not only from prosecutors, but from the defense bar as well.

I don't mean necessarily to prolong the controversy here, and I am truthfully thrilled to see any kind of debate on the subject of restorative justice, which I see as part of the wave of the future of our legal system. I thought I would add a few more brief comments to the debate, however, without the emotional rantings of my original article.

I WAS STRUCK FIRST WITH THE EMOTIONAL NATURE OF THE LETTERS THEMSELVES, COMPLAINING ABOUT MY OWN EMOTIONAL TONE. I BELIEVE THAT IS INDICATIVE OF WHAT AN IMPORTANT DEBATE THIS IS, AND ONE THAT TUGS AT THE EMOTIONS OF ALL WHO ARE ENGAGED IN IT.

I was struck first with the emotional nature of the letters themselves, complaining about my own emotional tone. I believe that is indicative of what an important debate this is, and one that tugs at the emotions of all who are engaged in it. The criminal law system deals with society at its worst, and in turn provides in its present incarnation, I believe, one of the worst examples of how not to respond to societal problems. The current emphasis of the American criminal justice system on retribution, revenge, and punishment, is a classic example of trying to right wrongs with more wrong, and the outcome has become a nightmare for all of us. Economically, morally, ethically, or any other way we look at it, I believe that the current criminal justice system can only be considered a failure.

The most exciting thing about the transformative justice model is that it places the emphasis back onto morally defensible concepts such as community responsibility, victim involvement, transformation, and even on occasion, forgiveness. Thus it is not surprising that many from the criminal bar, such as the individuals who wrote to claim participation in the restorative justice model, have joined the bandwagon. I must say, however, that I find it a bit disingenuous for them to claim being at the forefront of the movement, rather than as relatively reluctant followers. I know my friend Janice Leinhart, from Alaska's Victims for Justice, would give many prosecutors high marks for assisting her in her efforts to open juvenile criminal hearings to victims. Yet my observations were that it was Janice herself, with her particularly loving methods of advocacy, along with her fellow victims who led the drive for victim participation to at least a limited extent, in criminal proceedings. While some in the criminal bar supported her efforts in the end, this was only after much initial apprehension and concern.

I BELIEVE THAT RESTORATIVE JUSTICE IS PART OF A GLACIAL LIKE CONSCIOUSNESS SHIFT THAT IS CHANGING THE WAY WE ALL THINK ABOUT THE WORLD. WE ARE MOVING FROM AN EITHER-OR TO A BOTH-AND VIEW OF REALITY.

I also noted that none of the criminal attorneys responding to my article even touched my comments about homosexual rape in the prisons, the ugly boil on the buttocks on the current prison system. To discuss criminal justice in the United States without addressing this horrible and widespread reality seems to me to be a cop out at best.

I was particularly stuck by the comments of the criminal defense attorney objecting to my use of terms like "heinous", "incorrigible" and stupid" in reference to her clients, and "technicalities" in reference to her "efforts to uphold and defend the constitution." Speaking as the friend of an individual whose nine year old daughter was raped and murdered by a juvenile offender who is now once again on the streets exercising his constitutional rights (we all have stories like that to tell), I think I am entitled to some strong language, especially in what I had already characterized as a "rant." To think that the public should feel otherwise about criminal defendants, particularly in the atmosphere of our current retributive system, seems to me naive at best.

In my article I told part of the story about my Minnesota Judge friend who has become a believer in circle sentencing. What I didn't mention was his comment to me that the majority of his judge colleagues just think he is "nuts" for advocating such a touchy-feely method of justice.

I believe that restorative justice is part of a glacial like consciousness shift that is changing the way we all think about the world. We are moving from an either-or to a both-and view of reality. Instead of viewing the world in terms of right or wrong, good or bad, true or false, or righteous and evil, we are seeing things in terms of multiple evolving realities, connectivity, and impermanence. In this new consciousness the universe is constantly recreating itself, and things can only be understood by understanding the context in which they occur. Relationships are more important than things.

Concepts of justice are moving from a "just-us" view that asserts that the existence of community is dependent upon the conformity of its members, to a "just-is" view that community is what life is all about. Community does not require agreement, like-mindedness, conformity or coercion. It only requires that we care about each other and take responsibility for the health and harmony of those parts of communities of which we are a part.

Victor Hugo said that there is nothing so powerful as an idea whose time has come. In contrast, I have been struck in the past few years by the power residing in the old ideas of the world which want to continue the status quo. In all due respect to those criminal attorneys participating in some aspects of the restorative justice movement, my impression is that the majority of the criminal justice power structure is still aligned with the prosecutor whom I originally sought to engage in debate, who felt that even the debate itself was dangerous.

Dangerous or not, however, the debate continues, and the shift in consciousness to a more enlightened way of looking at the world is occurring. I am delighted to be participating in the debate and engaging others in it as well, even if perhaps causing more of a stir than I had expected.

AMERICAN LAWYERS GO TO CHINA

Sandy Keith, former Chief Justice of the Minnesota Supreme Court, will lead a delegation of American Lawyers to China (Xi'an), May 7 through May 20, 2000, for an exchange of information about the Chinese legal system and that of the United States. Anyone interested in participating in this service/exchange trip should contact Julie Fredricks at Global Volunteers (organizers of the trip) in St. Paul, Minnesota, toll-free: (800) 487-1074, email@globalvolunteers.org. Global Volunteers sponsors many kinds of service trips, mostly overseas. Ask for their catalog or visit their web site: www.globalvolunteers.org

Chief Justice tracks judicial issues

Continued from page 1

predicted by our population growth. They are felonies and children's cases. Felony filings increased during the 90's by 26% and children's cases increased by some 39%. These are labor-intensive cases because a high percentage of them go to trial. Finally, traffic cases are up by 47%.

Although this might be a little too much to absorb, I'd like to add one further statistic. According to the Uniform Crime Reports, the crime rate in Alaska has decreased since 1990 by 7%. If this is right, the fact that felony filings have increased faster than the rate of our population growth looks like very good news. Fewer crimes are committed, but more of them are solved and more criminals are brought to justice.

APPELLATE COURTS

In the appellate courts the filing rate showed no important changes for 1999. Indeed, there has been little change in filings over the past three years. Our time-to-disposition statistics have improved in some respects, although they are still not what we would like them to be. The average time between submission of a case to the supreme court for decision and publication of an opinion was more than a month faster this year than last — 7.9 months this year as compared to 9.1 months in 1998. It is also worth noting that the 1999 time is nearly three months faster than just two years before, when the time was 10.7 months. In the court of appeals the time between submission to the court and publication was 6.8 months, about two weeks faster than in 1998.

OUR TIME-TO-DISPOSITION STATISTICS HAVE IMPROVED IN SOME RESPECTS, ALTHOUGH THEY ARE STILL NOT WHAT WE WOULD LIKE THEM TO BE.

We continue to make a special effort to expedite cases involving child custody. In 1999, 50% of these cases went from submission to publication within 49 days, 75% of the cases were completed in 68 days, and 90% of the cases went from submission to publication in 85 days or less. These are all significant improvements over prior years.

I looked at the case filing statistics in the appellate courts over the decade. Unlike in the trial court, where the growth of case filings has matched or exceeded population growth, no particular trends are evident in the appellate filings.

I have touched on disposition rates in the trial and appellate courts. Before leaving this subject, I want to emphasize that delay is a matter of serious concern to us. We are looking at the problem systematically and we have taken a number of steps that we hope will reduce delay.

Last year I appointed a Time Standards Committee. The committee was charged with the task of recommending time standards for Alaska's trial courts for particular types of cases. The committee has finished its work. It has made its recommendation and its recommendations have been adopted by the supreme court. The standards cover all categories of cases. I'll give you an example of how they are designed to work. The standards for felonies provide that 75% of all felony cases should be processed to judgment (excluding sentencing) within 120 days, 90% should go to judgment within 210 days, and 98% within 270 days. Expressing the standards in terms of percentiles leaves room for the truly extraordinary cases that cannot be brought to judgment within prescribed periods. Now that the standards are in place, we will be asking our area court administrators to manage the case flow in their districts in compliance with the standards.

Also on the subject of delay reduction, we have a committee charged with reducing appellate delay. This committee has been examining various aspects of appellate operations to see where appeals might be accelerated. The committee has also been charged with developing time standards for appellate case processing and we look forward to its recommendations.

An appellate settlement program is being developed that will identify cases that are appropriate for settlement before they get too far along in the appellate process. We anticipate that settlement conferences will be conducted by retired judges and justices and by private neutrals. The primary goal of this program will be to reduce costs and delays for parties in cases that are relatively routine and where the result is thought to be predictable. Currently, trial courts have the authority to order settlement conferences and they often do so with good results. Senior Justice Rabinowitz, for example, has acted as a settlement conference judge in the First District in 65 cases over the past 18 months. In 60 of those cases a settlement was reached. If our new appellate rule can even partially approach this level of success, the appellate settlement program will be fully worthwhile.

NEW JUDGES

Since I spoke to you last, we have welcomed a new judge to the superior court and two new judges to the district court. In April, Patricia Collins of Ketchikan was appointed to serve as a superior court judge in Juneau. Judge Collins filled the vacancy created by Justice Carpeneti's appointment to the supreme court. Judge Collins at the time of her appointment was serving as a district court judge in Ketchikan and had done so since 1995.

In August, Governor Knowles appointed Kevin Miller of Ketchikan to fill the district court vacancy created by Judge Collins's appointment. Judge Miller had been in private practice in Ketchikan before his appointment. In September, the Governor appointed Samuel Adams of Anchorage to the Anchorage district court. Judge Adams filled the vacancy created by the retirement of Judge Bill Fuld. Prior to his appointment Judge Adams had worked in private practice and for 11 years was a prosecutor in the district attorney's office in Anchorage.

THE PRIMARY GOAL OF THIS PROGRAM WILL BE TO REDUCE COSTS AND DELAYS FOR PARTIES IN CASES THAT ARE RELATIVELY ROUTINE AND WHERE THE RESULT IS THOUGHT TO BE PREDICTABLE.

Each of these three new judges is very well qualified, and we wish them the best in their judicial careers.

NEED FOR A NEW JUDICIAL POSITION

Last year I spoke to you about the need for an additional judge in Bethel, but we did not request funding for a new Bethel position at that time. The Bethel court continues to experience rapid growth. The one superior court judge presently in Bethel carries a caseload far in excess of any other superior court judge in the state. Not only are the numbers of cases in his caseload extraordinarily high, but the composition of the caseload is difficult and labor intensive with a heavy concentration of violent felonies and children's proceedings.

We have dealt with Bethel's growing caseload with regular assignments from Fairbanks and Anchorage of both sitting and retired judges. Senior Justice Allen Compton has graciously volunteered to help out in Bethel, and he currently is calendared to try seven termination of parental rights cases there beginning this month. Senior Judge Bill Fuld is also doing much work in Bethel.

But the practice of serving the caseload in Bethel with retired judges and judges who sit elsewhere is expensive and inefficient. After a full analysis of the Bethel situation and a series of meetings, the supreme court last month decided that an additional judge in Bethel will be necessary. Funding for this position is not in our budget request this year. We will continue to attempt to meet Bethel's needs with existing resources. But there is now no longer any question in our view as to the need for an additional judge in Bethel, and next year we will ask you for funds for such a position.

NEW FACILITIES

This year I can report on three building projects which should improve court services in their respective communities.

The first is in Bethel. There the court has just moved into a new space. The new Bethel courthouse, which comes from the renovation of an existing building, provides two full-size courtrooms and has a hearing room for non-jury proceedings. The new facility also provides for a jury assembly area, which is a vast improvement over the old courthouse where people who were drawn for jury service had to line the hallways and sit on the floor. Security for members of the public and court staff is also much improved since prisoners can now be transported directly from a holding cell to the courtroom, rather than through crowded public hallways.

The second new facility is in Palmer. There we are in the final stages of an expansion that will provide two additional courtrooms and associated spaces. Palmer is also one of our fastest growing courts. The new space is sorely needed to address caseload increases.

The third, and by far the largest, new facility will be in Fairbanks. The new Fairbanks courthouse will have five stories and contain fourteen courtrooms. It will improve security and is specifically designed to accommodate the unique needs presented by domestic violence and children's proceedings. Construction of the new Fairbanks courthouse has begun. Steel erection should start this month and we are still on schedule for substantial completion in January of 2001.

Good courthouses are essential to the functioning of the judicial branch. We thank you for providing these fine new facilities.

Continued on page 29

Bar Rar Articles Welcome: Guidelines

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

Chief Justice tracks judicial issues

Continued from page 28

BUDGET

We are one of the three co-equal branches of state government. We have a resident presence in 41 cities and villages across the state. In some of these communities I think we are the only direct state government presence. Nonetheless our budget represents only about 1.3% of the state's total operating budget. We recognize that it is a core responsibility of the legislature to decide the level of appropriations for the judiciary along with all other branches of government. This is our constitutional system. We respect your role and appreciate its complexity.

Last year our appropriations were cut by approximately $300,000. That reduction has necessarily had an effect on our operations. We found ways of increasing our efficiency, but we could not absorb this cut without some reduction in service to the public. We were able to save some money by closing a magistrate court in the city of Pelican. We are able to justify this because the caseload there was low and seemed to be getting lower. But we also had to eliminate 24-hour service in Anchorage for domestic violence victims. We closed the courthouse during the night hours and were thereby able to realize a savings in contract security services. But this means that domestic violence petitioners must now go to the police department rather than the court for after-hours assistance.

Our budget request for fiscal year 2001 has been submitted and I will not discuss it in detail here. But I do want to mention two items. We have made a capital request of $1,450,000 for the first half of a two-phase project to obtain a comprehensive centralized case management system. Our current system is old and inadequate. It also cannot provide the type of justice-related information that is needed by law enforcement agencies. And the system we have hinders our ability to gather information about prior criminal histories of defendants and their compliance with sentences that have been imposed. I urge your support for this item.

WITH OUR ALREADY SMALL BUDGET AND INCREASING CASELOAD, IT IS NOT POSSIBLE TO REDUCE EXPENDITURES WITHOUT ALSO REDUCING SERVICE LEVELS.

The second item that I want to mention is $109,800 to increase jury pay from $25 to $27.50 per day. We have requested larger increases in the past without success and so we decided to request small incremental changes. Our goal is to pay a fee that more nearly compensates jurors for their out-of-pocket expenses. The current pay was set in July of 1981, and since then the cost of living has increased over 55%. Statewide more than 28,000 Alaskans are called to jury service each year. The right to jury trial is basic to our system. Jurors serve at considerable personal sacrifice, and we believe that our system should at least try to defray their out-of-pocket costs.

Let me relate an anecdote that puts a human face on jury service in some of our smaller communities. It shows the sacrifices and frustrations that often accompany such service. Presiding Judge Beistline of Fairbanks told me recently about a jury trial that he was conducting in Fort Yukon. A young man who lived 20 miles from the courthouse was summoned to jury duty. It was winter and the only way to town was by snow machine. His snow machine broke down halfway to the courthouse and the young man walked the last 10 miles to town. He arrived covered with frost but ready to serve. Word of his predicament reached the courthouse before he did and so when he entered the courtroom he received a standing ovation from everybody who was there. As a postscript, it turned out that he was related to one of the parties so he had to be excused, and after some hot coffee and cookies he began his journey back to deal with the broken machine.

Again, we depend on the jury system, jurors must make considerable sacrifices to serve, and we believe it is appropriate to raise the level of juror fees.

IMPLEMENTATION OF LEGISLATION

Although each branch of government has core areas where it must act independently, there are also many areas of shared responsibility. These take many and varied forms. What I propose to do now is list a number of activities the court system took last year in response to legislative initiatives.

MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

In 1997 you enacted legislation to encourage broader use of mediation. The Alaska Court System agrees with this goal. I will briefly describe the mediation programs which are now underway.

• The Third District has established a child custody and visitation mediation program. This is funded through a federal grant. The court provides trained mediators to low-income parents in order to help them resolve contested child custody or visitation issues. The program is in place in Anchorage, Fairbanks and Kenai, and is scheduled to begin soon in Southeast Alaska. So far our statistics show that 82 cases have been referred and that complete or partial agreements have been reached in about 70% of these cases.

• There are mediation programs for child-in-need-of-aid cases in Anchorage, Bethel, Fairbanks, Kenai, and Kotzebue. These are also funded by a federal grant. Two months ago we provided 32 hours of specialized mediation training to 15 contract mediators. Two weeks ago the programs opened for business. We are anticipating a heavy demand for this service and we will be tracking referrals and resolutions.

OUR CURRENT SYSTEM IS OLD AND INADEQUATE. IT ALSO CANNOT PROVIDE THE TYPE OF JUSTICE-RELATED INFORMATION THAT IS NEEDED BY LAW ENFORCEMENT AGENCIES.

• In Juneau, Presiding Judge Larry Weeks reports that the judges continue to order the mediation of many domestic relations cases by private mediators. A high percentage of mediated cases are partially or wholly resolved.

• The Anchorage district court recently began a project using trained volunteer mediators to mediate small claims cases. The mediators make themselves available one day a week to any person who has a small claims trial scheduled.

• Also in Anchorage, a nonprofit corporation, the Resolution Center, is conducting a juvenile mediation program based upon principles of restorative justice. Under this program, when a youth is accused of a crime, Department of Health and Social Services intake officers evaluate the case to see whether it is appropriate for referral. If it is, and if the offender and the victim both agree to participate, a team of volunteer mediators conducts a meeting between the offender and the victim. At the meeting, the victim relates the effects of the crime and the offender is expected to take responsibility for his or her actions. The victim and the offender often negotiate a sentence, which can include the payment of money, community work service and, necessarily, an apology. This program seems to be working well. It handled 104 cases in 1999. Offenders paid over $10,000 in restitution and the recidivism rate of offenders is said to be low.

AGAIN, WE DEPEND ON THE JURY SYSTEM, JURORS MUST MAKE CONSIDERABLE SACRIFICES TO SERVE, AND WE BELIEVE IT IS APPROPRIATE TO RAISE THE LEVEL OF JUROR FEES.

• Also on the subject of mediation, the supreme court amended the rules of professional conduct governing lawyers. They must now inform their clients about mediation and alternative dispute resolution in any matter involving or expected to involve litigation. The court also facilitates private mediation by maintaining a directory of mediators on its home page.

CHILD PROTECTION, SUPPORT AND CUSTODY

In 1998 the legislature made important changes in the child protection statutes. To reflect these changes, the supreme court has revised the rules governing child protection proceedings. We also added new provisions to ensure that these cases proceed expeditiously.

The legislature recently enacted a law requiring that a person's occupational or driver's license be suspended for nonpayment of child support. As required by this law, we promulgated rules that provide for judicial review of such suspensions. Also, as required by federal law, we conducted a comprehensive review of the child support rule. As a result of this review we made a number of substantive changes.

A number of legislators were critical of the fact that practices concerning appointment of child custody investigators and the use of guardians ad litem varied significantly among our judicial districts. The supreme court conducted a review of this subject. As a result, we adopted new rules governing the use of investigators and guardians. The rules should ensure uniform practices statewide.

CRIMINAL RULE 39 UPDATE

In 1990 you passed legislation allowing the court to order reimbursement of some of the costs of appointed counsel for criminal defendants who are convicted. In response we promulgated Criminal Rule 39. This rule continues to work well. In 1999 the state collected more than $800,000 from judgments entered under this rule, and the Municipality of Anchorage collected another $300,000. In the current year the state has collected more than $900,000. You have before you a bill that would authorize expansion of this program to all who receive appointed counsel regardless of whether they are convicted. We favor this, for it is our view that the duty to pay for appointed counsel should not depend on the ultimate resolution of a particular case.

DISTRICT COURT RULE 8 UPDATE

Last year I reported that we had changed the primary method for dealing with the situation where people do not respond to traffic citations and citations for other minor offenses. Now, instead of issuing bench warrants, money judgments are entered. The year 1999 was the first full year in which this new rule was in effect. The Municipality of Anchorage reports collections of approximately $1,500,000 under this rule. And these collections represent over 12,000 bench warrants that did not have to be served, saving another significant sum. The new rule appears to be a successful method for enforcing sanctions for minor municipal and state violations.

JUDICIAL INDEPENDENCE

The legislative resolve that invited Chief Justice Boney to make the first State of the Judiciary address some 28 years ago mentioned that it was important to strengthen the understanding between the legislative and judicial branches and that an annual State of the Judiciary address would further that goal. In the spirit of this resolution, I think it is worthwhile to discuss the subject of judicial independence.

In adjudication, judges must be independent. By this I mean they must be able to decide cases without fear or favor. Plainly put, cases must be decided based on the judge's considered judgment as to the law and the facts, uninfluenced by public opinion and without apprehension of personal consequences to the judge.

In English history, under the Stuart kings, judges were not independent. When a judge made a decision that displeased the king, the king could simply remove him. Even the great Lord Coke was dismissed for not ruling the way King James wanted him to rule. Service at the pleasure of the king was changed in England before the American Revolution. Instead of serving at the whim of the king, judges served during good behavior and for a fixed salary. Neither the king nor parliament could then influence judicial decisions.

But this change was not brought wholesale to the American colonies. One of the listed tyrannies in our Declaration of Independence was a charge that the king controlled the judges. The Declaration states that the king "has obstructed the administration of justice . . . , he has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries." The founders of our country took judicial independence seriously. They built it into our constitution by creating an independent judicial branch staffed by judges who were tenured for life.

Continued on page 30

Chief Justice tracks judicial issues

Continued from page 29

But it is interesting that when American justice was first brought to Alaska after the Alaska Purchase, judicial independence was not brought with it. (In much the same way that judicial independence was left behind when English justice was brought to the original colonies.) I'll briefly tell you the story of Alaska's first judge. His name was Ward McAlister. He arrived in Sitka in 1884 and was immediately presented with a series of cases that quickly led to his judicial downfall.

BUT IT IS INTERESTING THAT WHEN AMERICAN JUSTICE WAS FIRST BROUGHT TO ALASKA AFTER THE ALASKA PURCHASE, JUDICIAL INDEPENDENCE WAS NOT BROUGHT WITH IT.

Sheldon Jackson was a Presbyterian missionary of national prominence. He had founded a boarding school for Natives in Sitka. He had a contract with the government to educate Native children at the school for a monthly fee for each student. To ensure financial and educational stability, Reverend Jackson had the Native parents sign agreements with the school that relinquished custody and control of the children for a five-year period. As might be expected, sometimes these children wanted to go home, and sometimes their parents wanted them to come home. But this was contrary to the agreement and so the Reverend Jackson held the Native children at the school. The U.S. Attorney brought a series of habeas corpus petitions on behalf of the Native parents before Judge McAlister. The U.S. Attorney argued that these contracts were indentured servitude and therefore illegal. Judge McAlister agreed and so ruled. He was clearly right, at least by today's standards. But the Reverend Jackson was outraged. He wrote to many people in positions of influence, including another Presbyterian minister, who was President Cleveland's brother, and to President Cleveland's daughter, who was a dedicated supporter of his missionary work. Without a hearing or much hesitation, President Cleveland fired Judge McAlister and, for completeness, the U.S. Attorney.

Reverend Jackson's efforts were legally helpful to his cause. We can read the resulting case in the Alaska Federal Reports.[1] Judge McAlister's replacement as the judge for Alaska decided the next habeas corpus petition by a Native mother seeking to regain custody of her child from the mission school in favor of Reverend Jackson. The new judge held that the five-year contract was valid, and thus the Native mother had no right to bring her child home.

This is an excellent illustration of what happens when judicial independence is not safeguarded. A judge ruled in accordance with the law and the facts. But because the ruling was against the interests of a powerful litigant, the judge was removed. His replacement was duly instructed by events. When the issue next arose, the new judge ruled in favor of the powerful litigant.

We are proud of our constitutional freedoms. But they are often not popular when applied in actual cases. In order to preserve our freedoms, judges must be able to rule without the threat of repercussions. Credible threats, as in the case of Judge McAlister and his successor, have the effect of biasing and distorting fair decision making. And that is why judicial independence is such an essential part of our system.

WE ARE PROUD OF OUR CONSTITUTIONAL FREEDOMS. BUT THEY ARE OFTEN NOT POPULAR WHEN APPLIED IN ACTUAL CASES.

LOOKING TO THE FUTURE

Speaking to you 28 years ago, Chief Justice Boney remarked that Abraham Lincoln would feel very much at home in most of the courts in America, since they really haven't changed very much since he practiced law in the 1840's in Illinois. In many respects that is still true in Alaska and in the other states. I find it comforting in a way, because common law trials are well designed to achieve justice. But it is also worthwhile to reflect on a trend that might signal an important shift in the way courts do business.

I'm speaking of the restorative justice and therapeutic court movements. Nationally the best known therapeutic court is the drug court, although the same model has been applied to other types of chronic destructive behavior. In the therapeutic court a single judge is assigned a certain class of cases and the judge uses the threat of sanctions to compel compliance with a long term treatment plan. Nationwide some remarkable successes have been reported in drug courts. Recidivism is said to be greatly reduced. In the therapeutic court the judge retains active control over cases for a long period of time, and many hearings are scheduled to ensure that defendants are complying with rehabilitation plans. Thus therapeutic courts are labor intensive and expensive. But advocates say the added costs are much less, viewed overall, than the costs of recidivism experienced in the present system.

In Alaska, the only therapeutic court is the mental health court conducted in the Anchorage district court. This project focuses on misdemeanor offenders who suffer from mental disabilities. These people have historically cycled through the district court following arrests for disorderly conduct or trespassing. In the mental health court, treatment is ordered and monitored closely, as an alternative to incarceration. The project was started in 1998 as a collaboration between the court system, the Department of Corrections, and a number of law enforcement and social service agencies. The program is funded in part by a grant from the Alaska Mental Health Trust. To date, the mental health court has handled the cases of 139 people. Positive results have been achieved. For example, one evaluation studied 36 mental health court participants. In the year prior to their participation, these individuals spent collectively 3,062 days in jail. In the year of their participation in mental health court, jail days were reduced to 585. Alaska Psychiatric Institution days were similarly reduced. Much credit for the initiative that led to the establishment of the mental health court should go to District Court Judge Stephanie Rhoades. We hope to see the program continue, and we also hope that the model can be used outside of Anchorage.

WE HAVE RECENTLY COMPLETED A STUDY OF THE FEASIBILITY OF A DRUG COURT FOR ANCHORAGE. THIS WAS FOUND TO BE FEASIBLE AND A FEDERAL GRANT TO BEGIN OPERATING SUCH A PROJECT HAS BEEN APPLIED FOR.

We have recently completed a study of the feasibility of a drug court for Anchorage. This was found to be feasible and a federal grant to begin operating such a project has been applied for.

The term restorative justice refers to an approach to criminal sentencing that is intended to be therapeutic not only for the offender, but also for the victim and the community. The goals of restorative justice are sometimes described as accountability and rehabilitation for offenders, restitution and healing for victims, and for the community. In each case a plan involving punishment, rehabilitation, restitution, apology, and often absolution is agreed to by all concerned, and then implementation of the plan is closely supervised. In Alaska, one adaptation of restorative justice is the use of sentencing circles. These have been used most systematically by Mike Jackson, our magistrate in Kake. He convenes sentencing circles that use restorative justice principles and local customs and traditions. Magistrate Jackson has convened 20 circles to date, usually involving misdemeanor assault and alcohol-related crimes. He reports that the process has worked well in most cases and that some offenders have turned their lives around after years of problems.

WE ARE ENCOURAGING THERAPEUTIC COURT AND RESTORATIVE JUSTICE INITIATIVES. WE WILL MONITOR THE RESULTS. ONLY TIME WILL TELL WHETHER THESE MOVEMENTS BECOME IMPORTANT PERMANENT ELEMENTS OF THE ADMINISTRATION OF JUSTICE IN ALASKA.

We are encouraging therapeutic court and restorative justice initiatives. We will monitor the results. Only time will tell whether these movements become important permanent elements of the administration of justice in Alaska.

But I should add that the youth court movement is a specific example of restorative justice, and it seems to be well on its way to becoming a permanent feature of our justice system. The Anchorage and Fairbanks youth courts are well established. Anchorage handled more than 400 cases last year and Fairbanks more than 100. Youth court defendants have performed many thousands of hours of community service. The recidivism rate in both programs is low, only around 10%. Youth courts are underway or in the process of development in many other communities. We continue to support the youth courts and applaud the efforts of the many volunteers who participate in their operation.

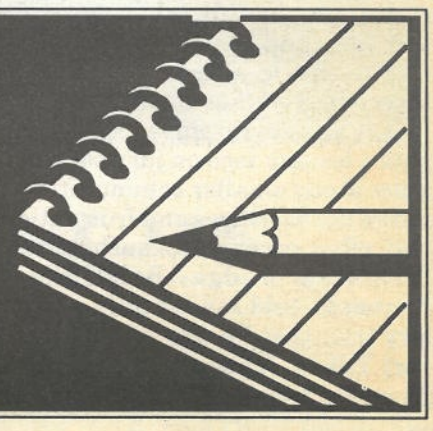
CONCLUSION

This concludes the substance of my report to you. It has been detailed, perhaps overly so, but I do not want this mass of detail to obscure the central point. The justice system in Alaska is functioning well. Cases are being promptly tried before judges who are fair and highly competent. Our non-judicial employees are doing an excellent job and their morale is good. Innovative initiatives to improve the system are underway, and we encourage them.

The Alaska Legislature has always supported the goal of providing the state with an outstanding justice system. We in the judiciary are also committed to that goal, and with your help we will continue to strive to achieve it.

On a personal note, I would like to observe that this year marks the end of my term as chief justice. This is the sixth time that I have given a State of the Judiciary address to you. I want to say that I appreciate the high degree of courtesy you have always shown me. Thank you again and I wish you well in your difficult deliberations.

FOOTNOTE: [1]See *In re Can-Ak-Couqua*, 29F. 687 (D. Alaska 1887).



Dischargeability and credit cards

☐ Thomas Yerbich

With all the hoopla generated by Visa and MasterCard behind the current push for bankruptcy reform, one should not ignore the existing provisions directed against abusive use of consumer credit. Section 523(a)(2) excepts from discharge obligations resulting from fraud. Section 523(a)(2) addresses three different areas: (1) fraud, other than a statement concerning the debtor's financial condition; (2) a written statement respecting the debtor's financial condition that is materially false, on which the creditor reasonably relies, made with the intent to deceive the creditor; and (3) for obligations incurred for luxury goods. While the first two exceptions are mutually exclusive, if the evidence does not establish the third, the creditor may still rely on either of the first two.

The third exception, "luxury goods and services," covers consumer debts owed to a single creditor for charges made, including cash advances, aggregating more than $1,000 on an open-end credit plan during the 60-day period preceding the bankruptcy filing. This provision addresses "loading up," where a debtor goes on a credit buying spree in contemplation of bankruptcy. A debt falling within the scope of § 523(a)(2)(C) is rebuttably presumed to be nondischargeable. However, only that portion of a debt incurred within the 60-day time period is subject to this presumption. Once the creditor establishes the existence of the factors to trigger the presumption, the burden is shifted to the debtor to demonstrate that the debt was not incurred in contemplation of discharge in bankruptcy. However, as the language makes clear, debts incurred for expenses reasonably necessary for support of the debtor and the debtor's dependents are not covered by the presumption. [S.Rep. No. 65, 98th Cong., 1st Sess. 58 (1985)] Moreover, if the debt is incurred for other than a consumer transaction ("incurred by an individual primarily for a personal, family or household purpose"[§ 101(8)]), *e.g.*, a charge or cash advance made for a business purpose, § 523(a)(2)(C) does not apply.

An "open end credit plan" is defined as "a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance." [15 USC § 1602(i)] Thus, while credit cards are included within the scope of this definition, an unrestricted cash loan is not. [*In re Neal*, 113 BR 607 (BAP9 1989)]

Assuming the credit card issuer is unable to establish the requisite elements for a consumer luxury item exception, the issuer may still be able to establish the fraud exception under § 523(a)(2)(A). Moreover, § 523(a)(2)(A) is not restricted to the 60-day period preceding the bankruptcy filing. To establish a debt's non-dischargeability under the section, the creditor must show by a preponderance of the evidence that: (1) the debtor made the representations; (2) that at the time he knew were false; (3) made with the intention and purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the loss and damage were the proximate result of the representations. [*In re Ettell*, 188 F3d 1141 (CA9 1999)]

Each time a card holder uses a credit card, a representation of intent to repay the debt is made. When the card holder uses the card without an intent to repay, a fraudulent representation is made to the card issuer. [*In re Anastas*, 94 F3d 1280 (CA9 1996)] The element at issue is fraudulent intent, that is, whether the debtor made the credit card purchases with the intent and purpose of deceiving the issuer. Because it normally involves transactions between the debtor and third parties (the debtor rarely makes a representation directly to the credit card creditor), establishing fraudulent intent can prove quite difficult in credit card cases.

The Ninth Circuit has adopted a totality of the circumstances test to determine if the debtor intended to defraud the issuer. Twelve nonexclusive factors are considered in determining the debtor's intent: (1) Length of time between the charges made and the filing of bankruptcy; (2) Whether or not an attorney has been consulted concerning the filing of bankruptcy before the charges were made; (3) Number of charges made; (4) Amount of the charges; (5) Financial condition of the debtor at the time the charges are made; (6) Whether the charges were above the credit limit of the account; (7) Whether the debtor made multiple charges on the same day; (8) Whether or not the debtor was employed; (9) Debtor's prospects for employment; (10) Financial sophistication of the debtor; (11) Whether there was a sudden change in the debtor's buying habits; and (12) Whether the purchases were made for luxuries or necessities. [*In re Eashai*, 87 F3d 1082 (CA9 1996)]. These factors are nonexclusive, none is dispositive, nor must a debtor's conduct satisfy a minimum number in order to prove fraudulent intent. If, on balance, the evidence supports a finding of fraudulent intent, the creditor has satisfied this element. [*In re Hashemi*, 104 F3d 1122 (CA9), *cert. den. sub nom Hashemi v. American Express Travel Related Serv. Co.*, 520 US 1230, 117 SCt 1824, 137 LEd2d 1031 (1997)]

Although some decisions focused mainly on an ability to repay, the Ninth Circuit has eschewed that approach. A person on the verge of bankruptcy may have been brought to that point by a series of unwise financial choices, such as spending beyond his means, if ability to repay were the focus of the fraud inquiry, too often would there be an unfounded judgment of non-dischargeability of credit card debt. A finding that a debt is non-dischargeable under § 523(a)(2)(A) requires a showing of actual or positive fraud, not merely fraud implied by law. [*In re Anastas, supra*] However, reckless disregard for the truth of a representation satisfies the element that the debtor has made an intentionally false representation in obtaining credit. [*Id.*]

According to the Ninth Circuit, the focus should not be on whether the debtor was hopelessly insolvent at the time the credit card charges were made. Rather, the express focus must be solely on whether the debtor maliciously and in bad faith incurred credit card debt with the intention of petitioning for bankruptcy and avoiding the debt. In *Anastas* the Ninth Circuit focused on three facts established at trial that suggested the debtor did not intend to defraud the creditor at the time the debt was incurred. First, the credit card debt was incurred over a six-month period, during which time monthly payments were consistently made. The Court believed such behavior was inconsistent with the intent to incur a debt without repaying it. Second, the debtor contacted the creditor in an attempt to work out an alternative arrangement for repaying the credit card debt. Third, the debtor testified that he always possessed the intent to repay his credit card debts, but that he had a gambling addiction that led him into unexpected financial circumstances. Although the court accepted that realistically it was unlikely that the debtor would win back enough money to pay his losses, the evidence supported his good-faith intention to do so, and therefore, the debt was dischargeable.

The cases finding an intent to defraud run the gamut. *E.g.*: a credit card kiting scheme utilizing the credit available on various credit cards to pay for living expenses and to make the minimum payments on other credit card accounts [*In re Easchai, supra*; *but compare In re Bixel*, 215 BR 772 (Bank.SD.Cal 1997) (debtor used credit card to pay off other credit cards, which were not used again, in an attempt to consolidate debts and have a single monthly payment); *see also In re Poor*, 219 BR 332 (Bank.D. Me 1998) (holding that a balance transfer was not a Acash advance@)]; making nearly 170 charges in connection with the purchase of cosmetics, expensive meals and other luxury items that, in the aggregate, exceeded debtor's annual income [*In re Hashemi, supra*]; unemployed Chapter 7 debtor, who was heavily in debt and had to rely on gifts from his parents and money borrowed from his sister to meet monthly living expenses, made 35 charges for mainly luxury goods and services in the three months preceding bankruptcy filing [*In re Golchin* 175 BR 366 (Bank.SD Cal 1993)]; payment to attorney by credit card for preparation of bankruptcy documents just outside the "presumption" period held to have been incurred at a time when the debtor knew he was going to file bankruptcy [*In re LeMaster*, 142 BR 927 (Bank.D Id 1992)]; debtor lent her credit card to her sister, who lacked the financial ability to pay, held it was reckless for debtor to count on repayment by her sister [*In re Wood*, 213 BR 866 (Bank.CD Cal 1997)].

Assuming the other elements are satisfied, a creditor must also show that it justifiably relied on the representation. A credit card issuer justifiably relies on a representation of intent to repay as long as the account is not in default and any initial investigations into a credit report do not raise red flags that would make reliance unjustifiable. [*In re Anastas, supra.*] While the Supreme Court has held that a creditor need not make an investigation [*Field v. Mans*, 516 US 59, 116 SCt 437, 133 LEd2d 351 (1995)], where the creditor disregards information it has, it acts at its own peril. For example, where a credit card issuer knew, before it issued a "pre-approved" credit card with an $8,000 limit, debtor's income was only $640 per month, it was unreasonable to expect that someone with that income could possibly make payments of $1,500 a month; the issuer simply could not justifiably rely on the debtor's ability to repay $8,000 at 15.5% interest from a monthly income of $640. [*In re Nguyen*, 232 BR 540 (Bank.ND Cal 1999) (the court also awarded the debtor $3,825 in attorney's fees under § 523(d))]

Because of the brevity of the credit card application form, the most likely basis for invoking § 523(a)(2)(B) (false financial statement) is a material overstatement of income. [*See e.g., In re Bonnifield*, 154 BR 743 (Bank.ND Cal 1993)] In addition, the fact that Federal tax payments can now be made by credit card makes § 523(a)(14) (added in 1994), which bars discharge of debts incurred to pay nondischargeable Federal taxes, potentially of even greater importance and easier for the issuer to establish. In any event, counsel for both debtors and credit card issuers should be aware of the arrows in the quiver of the credit card issuer *vis-a-vis* discharge.

The Cook Islands global volunteers experience, 1999

By James C. Hornaday

The 16 tropical South Pacific islands of the Cook Islands reminds me of the Pribilof Islands of Alaska —tiny dots of land hundreds of miles out in the Pacific Ocean. Fellow Homerites Lentfers, Broshes and Ken Castner had paved the way. Fourteen of us, Global Volunteers from scattered North American locations, arrived in Rorotonga, the capital of the Cook Islands, in early November for a three week service term. Most of the team members were medical types. Myself and three others were assigned to hospital maintenance, where we painted, washed windows and repainted a sign blown down during the last hurricane, with and under the direction of the maintenance crew..

Global Volunteers worldwide emphasizes the servant-learner approach — the locals decide on a project and the volunteers help provide funding, serve, and learn under local direction. Our director, Tom Valenti, was kept busy delivering team members to various job locations.

GLOBAL VOLUNTEERS WORLDWIDE EMPHASIZES THE SERVANT-LEARNER APPROACH -- THE LOCALS DECIDE ON A PROJECT AND THE VOLUNTEERS HELP PROVIDE FUNDING, SERVE, AND LEARN UNDER LOCAL DIRECTION.

Through the Constitution of 1964, the Cook Islands (The Cooks) are independent with a special relationship with New Zealand — defense, money, joint citizenship with New Zealand and Australia, and education connections. Cook Islanders are true Maori Polynesians and largely descended from voyagers from Somoa, Tonga, The Society Islands and the Marquessas from about 800 AD. Cook Islanders use three languages: English, Maori, and Pukapukan.

The first European contact was in 1596 by Spaniards. The British arrived in 1764 with the omnipresent explorer Captain Cook in 1773. Captain Bligh and the Bounty landed in 1789 shortly before the famous mutiny. The Russians named the islands in honor of Captain Cook.

Early English commercial contacts resulted in violence. When missionaries from the London Missionary Society arrived in 1821, the Islanders suffered substantial population losses from new illnesses, alcohol, and even a period of slavery in Peru. Britain became a hesitant landlord, eventually turning control over to New Zealand. The locals shied way from independence but the decolonialization fashion caught on, and independence came about in 1965. Opinions differ among locals on the advisability of independence.

The church established by the London Missionary Society flourishes today as the Cook Island Christian Church. Visitors are welcome to the services featuring wonderful four-part harmony and services in Maori and English. The ladies (called Mamas) all wear straw bonnets, and the children sit in the balcony to be nearer to heaven.

Wild chickens are everywhere and young dogs accompany visiting joggers; however, few dogs live over one year. Although we arrived in a heavy downpour in the summer hurricane season, we were spared the high winds, except for a gentle breeze, similar to Hawaii. I enjoyed attending Rotary meetings with Harry Napa, the owner of our resident motel, and found sports to be very popular.

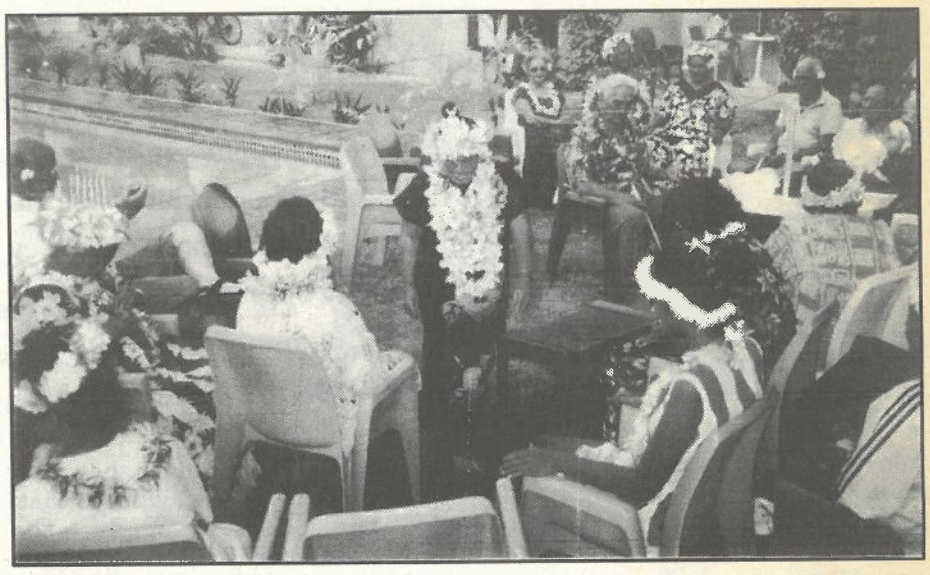
Our group enjoyed presentations on the history and culture of the islands. Cook Islands is one of few island groups that has retained ownership of lands through a complicated Ariki (royalty) hereditary procedure. The Ariki serve in an advisory capacity to the elected government.

Rorotonga, the capital, reminded me of Kauai in the Hawaii group some 30 years past before Hawaii became so commercialized. Tourism and pearls are important to the economy, and there is a laid-back, friendly attitude. Numerous dancing groups performed hulas at Island Nights, and the Cooks are famous for their drummers.

Supplies are lightered in from larger ships; crime does not appear to be a serious problem; relatives are commonly buried in the front yard; and the Islands are in a nuclear free zone. Since independence, most of the Prime Ministers have been physicians.

We visited neighboring Atutaki Island for great snorkeling, swimming, dancing and relaxing. The air strip, built by U.S. Navy Seabees in 1942, is still in use. The local mayor expressed concern that Cook Islanders were leaving, with more living in New Zealand and Australia than in the Islands. Although there is full employment on Rorotonga, some go to New Zealand for better jobs, but others remain to work at the hospital and other jobs, raise farm crops and enjoy the free coconuts, breadfruit and fish. We celebrated a Thanksgiving barbeque with a number of locals singing and dancing.

After a great three weeks, we bid farewell to the islanders and our group, spent a few days in New Zealand sightseeing, and then back to winter in Homer.



Thanksgiving

Workcrew

Hiking and sweating