The Alaska
BAR RAG

Inside:

VOLUME 25, NO. 2 | *Dignitas, semper dignitas* | $3.00 | MARCH - APRIL, 2001

Anchorage Inn of Court Update: Justice Matthews speaks on effective appellate advocacy; the Inn ponders the gas pipeline

By Sam Cason

The Anchorage Inn of Court held its February meeting on February 20, 2001. The CLE program was held at the Boney Courthouse and featured a presentation by Justice Warren Matthews of the Alaska Supreme Court. The dinner speaker was Jeff Lowenfels, President of Yukon Pacific Corp.

Justice Matthews' CLE presentation received excellent reviews. Justice Matthews presented an informal discussion of various aspects of appellate advocacy. He touched on various issues, including: oral argument (Should you or shouldn't you request it? Does it ever change any minds?); brief writing (What about those tips from "experts"? What about extensive use of footnotes?); structuring an appeal (Will the appellant actually benefit from a "shotgun" approach appealing every conceivable issue? Should the appellee feel obliged to follow the structure of appellant's argument?); and strategy (Should you give an extensive recitation of the facts? How do you respond to an incomprehensible argument?). The top 10 suggestions provided by Justice Matthews are reprinted in this edition of the Bar Rag.

Some of the advice was straightforward – be well prepared and don't read your brief to the Court. Some advice was pointed–don't engage in *ad hominem* attacks on the opposing counsel and particularly avoid personal attacks on the trial judge. During the course of the discussion, members of the Inn had the opportunity to ask questions and catch glimpses of the inner workings of the Court. Does the bench confer in advance of oral argument? For what purposes do the Justices ask questions? Justice Matthews responded graciously and with disarming candor to the numerous questions posed by the attendees. Of particular interest was the whether the Bar can expect to see a proposed "Practice of Law" rule and the Court's use of unpublished Memorandum Opinions & Judgment ("MOJ's").

After Justice Matthews spoke, we moved on for our dinner presentation. Dinner at the Hilton Chart Room was, as always, a treat. The members convened for conversation and discussion of Justice Matthews' presentation before hitting the buffet line. Due to time constraints, Jeff Lowenfels went without dinner and began his speech as the first forks were hitting the teriyaki chicken and lemon glazed halibut.

Armed with an extensive PowerPoint presentation of pie charts, bar graphs, line graphs, detailed cost comparisons, and other eye catching visual graphics (including one using the image of Heather Locklear), Lowenfels spent the next hour giving a guided tour of the CSX/Yukon Pacific perspective of the various gas pipeline proposals. With great animation and passion he pointed out that constructing a gas line along the proposed highway route (as supported by the Governor) would require rescinding existing federal law, abrogation of a current treaty with Canada, and would arrive at a distribution system that is already full. A gas pipeline with a Valdez terminus, on the other hand,

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FAMILY MEDIATION: NOT FOR EVERYONE
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Duke students trade in warm weather to pursue cold, hard facts

When Denali Kemppel leaves the warm confines of Durham, North Carolina for Anchorage with seven of her peers from the Duke University School of Law, the trip will be more than a fact-finding visit to research articles for the scholarly journal, the Alaska Law Review.

It will be a homecoming.

Kemppel, a second-year law school student, is a 1992 graduate of West High School in Anchorage, where she was born. This native Alaskan and her fellow journal staffers will be visiting March 11-19 to meet with judges, attorneys, and other Alaskan legal professionals for discussions about current legal issues. Recommendations for law review article topics are welcome, both during and following the students' fact-finding trip to the state.

Although this is her first university-sponsored trip back to Alaska, Kemppel's ties to her home state remain strong despite the 4,473 miles between Durham and Anchorage. "I go back pretty often. I went back to run the Mount Marathon, and last summer I worked for John Sedwick, a District Court judge in Anchorage," Kemppel said, adding that she makes it a point to go kayaking with her sister Nina in Prince William Sound once a year.

The great Alaskan wilderness is something Kemppel misses in North Carolina. "I

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PRESIDENT'S COLUMN

Mandatory pro bono?

☐ Bruce B. Weyhrauch

The American Bar Association adopted a rule that provides that lawyers should aspire to render at least fifty hours of pro bono public legal services per year.

In fulfilling this responsibility, the majority of those hours should be provided without fee or expectation of fee to persons of limited means or to organizations in matters designed to address the needs of persons of limited means.

Under the ABA's model rule, lawyers should participate in activities for improving the law, the legal system or the legal profession, and voluntarily contribute financial support to organizations that provide legal services to persons of limited means. You can read the rule at http://www.abanet.org/legalservices/pbpages/pbrule61.html

Florida has a rule that as part of the attorney's professional responsibility, each attorney should aspire to provide at least 20 hours of pro bono services or contribute $350 to a legal aid organization. The only mandatory requirement associated with the Florida rule is that each member of the Florida Bar must annually report whether they met the 20-hour goal. See www.flabar.org.

Some officials in other state bars occasionally consider mandatory pro bono. These ripples of interest have not built any waves of support in any other state.

I don't think that the Alaska Bar Association or the Alaska Supreme Court are ready to require mandatory pro bono service. Alaska was not willing to impose a CLE requirement on its attorneys although the majority of states have pro bono service.

In any event, it appears that Alaska Bar Association members are doing a fair job of providing pro bono service. According to the May 2000 Access to Civil Justice Task Force Report, about 960 Alaska attorneys participate in the pro bono program. That is about 43 percent of active in state attorneys.

Recommendations by the Task Force related to pro bono services include recommending that the Alaska Bar adopt the ABA's model rule on aspirational pro bono service. The Task Force also recommends encouraging public sector attorneys to provide pro bono and public service assistance. As noted in the Task Force report, some public sector attorneys are prohibited from performing outside practice of law, and thus cannot represent individuals through the pro bono program. Some public sector attorneys are restricted by internal policies or their supervisors.

The Bar, public sector employers, the court, and the pro bono program should work on these institutional barriers to free up attorneys in the public sector to provide pro bono services.

Pro bono legal service to the disadvantaged is an integral and particular part of a lawyer's pro bono public service responsibility. We should all work to maximize that service to the public.

EDITOR'S COLUMN

Bush v. Gore Redux: The votes are in

☐ Thomas Van Flein

The response to the poll regarding the decision in *Bush v. Gore* was more than we expected. There were more attorneys who voted in this poll (56) than there were attorneys who participated in the Florida election litigation—but not by much. The Bar Rag Election Committee met several times to count the votes and clear up confusion regarding smudged ballots (faxed ballots) or other voting deficiencies. The general rule adopted by the Election Committee was to count the questioned ballot in the same manner the committee person would have voted.

On March 5, 2001, the Bar Rag Statistician certified the poll as accurate, fair and 100% representative of the entire bar. It should be noted that the Bar Rag Statistician was fired from his previous job with the Census Bureau, but his project fee is within the Bar Rag budget (he works fairly cheaply: two dozen donuts, a six pack of beer and occasionally we have to pay for his parking tickets).

Here are the poll results:

83% of Alaska lawyers believe that the Supreme Court harmed its public perception; 17% do not share that belief.

14% of Alaska lawyers believe that the *Bush v. Gore* decision was decided correctly for the reasons set forth in the opinion;

2% of Alaska lawyers believe that the *Bush v. Gore* decision was decided correctly for the result only, not the reasoning;

18% of Alaska lawyers believe that the *Bush v. Gore* decision was decided incorrectly as a matter of constitutional law;

66% of Alaska lawyers believe that the *Bush v. Gore* decision was decided incorrectly as a result of unfortunate political partisanship.

The best part of the poll was the comments that accompanied the votes. Some questioned the use of faxed ballots or e-mails since it prevented a secret ballot. For the record, for those who voted, we made a notation in your permanent record regarding our opinion of your opinion. Others proudly wrote their name and address on their ballot. Others sent faxes without any fax header identifying the fax number or sender—pretty tricky. We will find out who you are soon enough.

Pam Finley remarked that she had "spent the last quarter of a century insisting to my friends that judicial decisions really were based on principles . . . now I feel like a fool." Mitchel Schapira wrote that he read all the pleadings involved in *Bush v. Gore* and noted that "the damage to the Supreme Court is horrific. Many idealistic young lawyers must have seen for the first time that decisions are not based upon rules, or law, or even common sense. . . The [*Bush v. Gore*] decision did to lawyers what Watergate did to the once noble profession of public service." We particularly enjoyed Mr. Schapira's invitation for more public debate, and his statement that he is "prepared to debate the issue with anyone who thinks that the election was not stolen from the rightful winner." One person who requests anonymity said that the "poll really reeks of partisanship. What I really want to say is 'Gore lost, Bush won, get over it!' Where exactly is the outcry regarding the 'politicization' of the Court when it, through its liberal majority, issues decisions regarding such things as partial birth abortion?"

One voter failed to fill out the ballot but wrote, "It's the U.S. Supreme Court. They win. It's over. Get over it!!!" Since that ballot was left blank, the Election Committee counted that as a vote against the decision. One voter drew pictures of dimpled, pregnant and hanging chads, and then wrote in "Pat Buchanan" and "Pat Sajak." The Election Committee concluded that this vote probably came from Fairbanks. Another voter asked the following: "How many times can I vote? Who is going to count these ballots? Is there a sunshine law? If so, why have we had two solid months of cloudy weather?" That was obviously a Juneau voter. Another voter commented that "38 out of 40 first graders understood the 'Butterfly Ballot.'"

Former Bar Rag Editor Peter Maassen wrote that he thought the "column was great." *He just wants his old job back . . . and if he can get five justices to vote for him, it's all his.*

The Alaska BAR RAG

The *Alaska Bar Rag* is published bimonthly by the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, Alaska 99501 (272-7469).

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Bar Letters

Bush v Gore "deconstruction"

Your editor's review of the Supreme Court's decision in *Bush v. Gore* was another depressing example of what passes for analysis these days. Through careful selection of a "sampling of commentary" you present only a negative view of the opinion and the majority Justices. You darkly suggest that "[t]he real question is whether the Court damaged its reputation for impartiality or, depending on your philosophical background, whether it took the shroud off the myth of judicial neutrality and exposed a fundamentally political institution masquerading as a non-partisan entity."

Are these really the only choices?

You enjoy a prerogative as editor to express your views, but I have a concern about the way you go about your work. Imagine yourself arguing an equal protection case where *Bush v. Gore* may be of some use to your client. Would you contend that the dissents were the product of four "bleary-eyed judges worried about their retirement plans," as Gore's loss meant (at least) "a four-year delay in their retirement plans"?

Although you made this argument in your column against the majority, I am confident that you would not use it in court. Instead, you would focus on the merits of the dissents, not the politics or persons of the dissenters. If your *ad hominems* are not fit for the court, why the *Bar Rag*? The Rules of the Law Game as I learned them require a focus on the rationale of the case, not the author. The reason is obvious. Even an idiot can be right.

Why do sarcasm and expose journalism rule today, and why are lawyers such willing participants? Social discourse surely suffers if a label can trump an argument.

If you don't like *Bush v Gore* or *Roe v Wade* or any other controversial decision, that's fine, but can't you articulate a basis for your position that addresses the merits? Even if everything you say about the majority in *Bush v Gore* is true, you haven't told us anything that helps us decide if the idiots got it right this time.

I cling to the notion that most judges are imperfect but honest and decent people trying to do right as best they can, and that people who say otherwise tell more about themselves than they know. I believe that the better argument, properly presented, will eventually, over time, and in the long run, prevail.

There will be some blind alleys and wrong turns, but our system rests on the fundamental but too-often unspoken assumption that we are after truth, and that courtroom arguments really do matter. If you are right and I am wrong, there is little of legitimacy left and we labor in a profession fit only for charlatans and thieves. The public's growing contempt for the judicial system can only increase if lawyers stoke the flames of cynicism.

Your effort to find the truth by focusing on the conspiratorial and personal while ignoring the interesting issues presented in *Bush v Gore* is deconstruction run amok. Your method can be turned against you as easily and as powerfully as you now wield it.

Unfortunately, its practice is not limited to the *Bar Rag*, nor to one side of the political debate, and we are all the worse for it.

—John Casperson

Editor replies

Mr. Casperson provides some thoughtful perspective regarding the means in which we may criticize or analyze appellate decisions—and the judges responsible for them. Although we agree on some important points, to a significant degree, however, he misses the mark regarding both the approach taken in the editorial and—more importantly—he displays an alarming obeisance to the outdated canard of the court system as an icon of non-political and non-philosophical divination of truth. More fundamentally, however, a closer inspection of the editorial would reveal that no position was actually taken on the merits of *Bush v. Gore*. Rather, questions were raised and commentators and scholars were quoted. It was not a digest or case analysis.

By contending that our profession is constrained to evaluate cases only on the stated basis in either the majority or dissenting opinions, Mr. Casperson unduly restricts the analysis to only that which the court says is relevant and would blind us to that which may have affected the outcome, even if the court did not so acknowledge. I agree with Mr. Casperson that appellate cases are decided by "honest and decent people trying to do right as best they can." Nothing in the editorial said otherwise. I would go further by stating that most cases are decided on their legal merits, with political influence or motivation entirely lacking. But the uproar associated with *Bush v. Gore* reflects the fact that *that* decision was an exception to the rule.

More problematic is Mr. Casperson's comparison of a *Bar Rag* editorial with the process used in appellate advocacy and briefing. That the two have separate purposes, different audiences and distinct processes is self-evident. The *Bar Rag* is a vehicle intended to provide a broad range of views and information, it is not intended to persuade the highest court how a particular decision should be made.

But Mr. Casperson's point that lawyers should not take into account philosophical or political influences that may shape appellate decision making, besides possibly ignoring reality, is regularly rejected by scholars.

For example, there are a fair number of law review articles evaluating the political philosophy of the California Supreme Court under Chief Justice Rose Bird (deemed politically "liberal") versus the successor court under Malcolm Lucas (deemed "conservative") and Chief Justice Ronald George (even more "conservative"). *See* P. Dubois, *The Negative Side of Judicial Decision Making: Depublication as a Tool of Judicial Power and Administration on State Courts*, 33 Vill. L. Rev. 469 (1988) (finding that 76.5% of the lower appellate opinions ordered depublished by the Bird Court had "conservative" outcomes); G. Uelman, *Publication and Depublication of California Court of Appeal Opinions: Is the Eraser Mightier Than the Pencil?* 26 Loy. L.A. L. Rev. 1007 (1993) ("it is not surprising that the divisions of the court of appeal, dominated by a political philosophy at odds with that of the supreme court, will see more of their opinions depublished").

The fact remains that some cases do reflect political ideology, and *Bush v. Gore* appears, at least to most lawyers and most scholars at this time, to be one of them. The editorial did not mention that 306 law professors "denounced" *Bush v. Gore* because "the five justices were acting as political proponents for candidate Bush, not as judges." (See sidebar).

If there is a public statement from even one law professor praising *Bush v. Gore* as an appropriate decision under the circumstances, we have not been made aware of it. The 306 professors concluded that the majority in *Bush v. Gore* "tarnished" the Court's "legitimacy" and because these professors have "dedicated [themselves] to the rule of law" they issued a public protest.

Moreover, if political ideology were not a factor (at least at the U.S. Supreme Court level), why do we go through such lengthy and contentious confirmation proceedings that largely focus on the political background of the appointee?

Nor was the *Bar Rag* alone in evaluating *Bush v. Gore*. The chair of the Los Angeles Bar Association wrote, just last month, that she was "saddened by the U.S. Supreme Court's opinion in *Bush v. Gore*. While I expect justices to have judicial philosophies that are implicit in their opinions and reflect the presidents that nominated them, I also expect them, and all judges, to be above partisanship and politics in the execution of their duties. I cannot discern a judicial ideology that justifies the majority or concurring opinions, leaving me to conclude, unhappily, that the goal of the majority was simply political: to stop the counting of votes in Florida and prevent the possible election of a Democrat as president." *H. K. Amado, "From the Chair" L.A. Lawyer p. 8 (Feb. 2001).*

Jeff Bleich writes in the February issue of Federal Lawyer: "*Bush v. Gore* still has people trying to figure out what happened and what was ultimately said. The Court hastily produced six opinions spanning more than 60 pages and dealing with complex and seldom-litigated questions of federal constitutional and statutory law. Unlike the presidential election, however, which had to be decided one way or another, the opinions in *Bush v. Gore* now have many asking a third, more fundamental question: Should the Court have decided the matter at all?" Mr. Casperson questions whether the speed of the decision should be raised when evaluating the content of the decision. Again, Mr. Bleich notes that "[o]ne thing that all can agree on is that the decision in *Bush v. Gore* was uncharacteristically quick."

Lastly, Mr. Casperson contends that we skewed the tenor by selecting only quotes from authors critical of the *Bush v. Gore* decision. The fact is, at the time of publication, we could not find any legal scholar or legal commentator who concluded that the decision was well reasoned and not politically motivated. We continue to find the opposite, including Clifford Levine, who wrote in *The Lawyers Journal* (January 2001) that the "Court's unique treatment of both the federal question and its application of the Equal Protection Clause makes it difficult to conclude that the decision resulted from a dispassionate application of generally accepted legal principles."

Thus, we must respectfully but firmly disagree with Mr. Casperson that by simply pointing out the possibility that a legal decision could have been improperly influenced by political considerations does not bring shame or disrepute to our profession. Rather, it serves to strengthen the very system we respect and honor, and the judges employed therein, of whom we have the highest respect.

Law professors protest *Bush v Gore* decision

In a petition circulated by four law professors in the U.S., some 306 of their colleagues said that "by stopping the vote count in Florida, the U.S. Supreme Court used its power to act as political partisans, not judges in a court of law."

Said the press release distributed Dec. 15, 2000:

"We are Professors of Law at American law schools, from every part of our country, of different political beliefs. But we all agree that when a bare majority of the U.S. Supreme Court halted the recount of ballots under Florida law, the five justices were acting as political proponents for candidate Bush, not as judges.

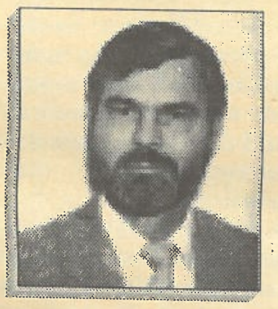
"By stopping the recount in the middle, the five justices acted to suppress the facts. Justice Scalia argued that the justices has to interfere even before the Supreme Court heard the Bush team's arguments because the recount might 'cast a cloud upon what [Bush] claims to be the legitimacy of his election.'." In other words, the conservative justices moved to avoid the 'threat' that Americans might learn that in the recount, Gore got more votes than Bush. This is presumably 'irreparable' harm because if the recount proceeded and the truth once became known, it would never again be possible to completely obscure the facts. But it is not the job of the courts to polish the image of legitimacy of the Bush presidency by preventing disturbing facts from being confirmed. Suppressing the facts to make the Bush government seem more legitimate is the job of propagandists, not judges.

"By taking power from the voters, the Supreme Court has tarnished its own legitimacy. As teachers whose lives have been dedicated to the rule of law, we protest."

The petition was signed by 306 law professors; copies of the document may be obtained from Professor David Chambers, University of Michigan, 802-295-5824, dcham@umich.edu.

Revocation of discharge: § 727(d)

☐ Thomas Yerbich



Under § 727(d) a discharge may be revoked if one of three conditions exist. (1) The discharge was obtained by fraud and the party seeking revocation of the discharge did not know of the fraud until after the discharge was granted. (2) The debtor acquired property that is property of the estate or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition or entitlement to the property, or to deliver or surrender the property to the trustee. (3) The debtor refused to obey an order of the court, other than an order to respond to a material question or to testify upon the proper invocation of the right of self-incrimination.

The action to revoke discharge may be brought by the trustee, a creditor or the U.S. trustee, and is brought as an adversary proceeding under Rule 7001, FRBP. If the grounds for revocation are fraud, the action must be brought within one year after the discharge is granted. If on other grounds, the action must be brought before the later of one year after the discharge is entered or the date the case is closed. [§ 727(e)] Although Rule 9024, FRBP makes Rule 60, FRCP applicable in bankruptcy cases, it contains an important exception: "a complaint to revoke a discharge in a chapter 7 case may only be filed within the time allowed by § 727(e) of the Code." Thus, if the complaint is not filed within the time specified, it is time barred and no relief is allowed. Moreover, once a case is closed and more than one year has lapsed since discharge was entered, reopening the case does not "resurrect" the action. [*In re Dolliver*, 255 BR 251 (Bank.D ME 2000); *In re Bevis*, 242 BR 805 (Bank.D NH 1999); *In re Blanchard*, 241 BR 461 (Bank.SD CA 1999)]

Another critical time involves the first ground for revocation: fraud. Section 727(d)(1) specifically requires that the party seeking revocation not learn of the fraud until after entry of discharge. If the party knows of the fraud before discharge entry of discharge, an objection to discharge can be brought under § 727(a). However, Rule 4004(a), FRBP requires a § 727(a) action be brought not later than 60 days after the first date set for the meeting of creditors. Rule 4004(b) permits the court to extend this time upon motion made before the time has lapsed. In most cases, discharge is entered as a matter of routine within a few days of the bar date. But what about those cases where for unknown reasons the clerical act of entering the discharge is delayed, creating a "gap period" between the last day that an objection to discharge can be filed and entry of the discharge?

For example, the last day to object to discharge is February 1, but discharge is not entered until August 1, six months later. On May 1, the trustee learns of the debtor's fraud. The time for objecting to discharge lapsed on February 1. However, since no discharge order has yet been entered, there is nothing to be revoked. The trustee waits until August 15 to file an adversary action to revoke debtor's discharge. Debtor seeks dismissal on the grounds that the trustee knew of the fraud before the discharge was entered, thus failing to meet a specific requirement for revocation. Who wins: the debtor or the trustee?

Under a strict interpretation of the Code, the debtor should win. In *In re Dietz*, 914 F2d 161 (CA9 1990) the Ninth Circuit fashioned a remedy for avoiding what might otherwise be termed an absurd and certainly unintended result. The factual situation in *Dietz* is somewhat convoluted. The complainant learned about the fraud more than 60 days after the first date of the creditors' meeting but before a discharge was entered. Then, before the discharge was even entered, brought an action to revoke the discharge or, alternatively, deny discharge. Moving to dismiss for failure to state a cause of action, the debtor raised three points:(1) there was no discharge to revoke; (2) the complaint to bar discharge was untimely; or (3) that since no discharge had yet been entered, the complainant knew of the alleged fraud before discharge. Of course, under a strict reading of the Code and the rules, the debtor was right on all three points. Unfortunately for the debtor, the court "deemed" the discharge as having been entered on the day that it could have been entered (60 days after the date first set for the meeting of creditors).

Having made that determination, the court moved to the next step: found that the complainant first learned of the fraud after entry of the "deemed" discharge and revoked the "deemed" discharge. Having done this, there was no reason to address the issue of whether the action to bar discharge was untimely. [*See also In re Emery*, 132 F3d 892 (CA2 1998) (allowing revocation if the fraud is discovered during the gap period and starting the 1-year limitation period from the date the discharge is actually entered)]

The plaintiff must prove that the debtor acquired or became entitled to acquire property of the estate and knowingly and fraudulently failed to report or deliver the property to the trustee, in order to obtain relief under § 727(d)(2). Both elements must be met and the plaintiff must prove that the debtor acted with knowing intent to defraud. [*In re Bowman*, 173 BR 922 (BAP9 1994)] This section does not apply to the concealment of property the debtor owned prior to bankruptcy or at the time debtor initiated the bankruptcy. [*In re Johnson*, 250 BR 521 (Bank.ED PA 2000); *contra In re Covino* 241 BR 673 (Bank.D ID 1999)]

Debtor's fraudulent intent may be established by showing that the debtor knowingly made an omission that misleads the trustee or that the debtor engaged in a fraudulent course of conduct. Fraudulent intent may be inferred from all the surrounding circumstances where the debtor's pattern of conduct supports a finding of fraudulent intent. The focus is on whether the debtor's actions "appear so inconsistent with [his] self-serving statement of intent that the proof leads the court to disbelieve the debtor." Fraudulent intent can be established by showing that the debtor acted so recklessly that fraud can be implied. [*In re Kasden*, 209 BR 239 (BAP8 1997)]

Suppose the debtor actively conceals the acquisition of the property and no one finds out about it until more than one year after entry of the discharge and the case has been closed. Does this active concealment toll the limitation period? The doctrine of equitable tolling, read into every federal statute of limitations, provides: "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party. " [*Holmberg v. Armbrecht*, 327 U.S. 392 (1946)] A majority of the courts addressing the issue have treated § 727(e)(2) as a statue of repose to which the doctrine of equitable tolling is inapplicable. [*In re Boyd*, 243 BR 756 (ND CA 2000); *In re Dolliver*, 255 BR 251 (Bank.D ME 2000); *In re Bevis*, 242 BR 805 (Bank.D NH 1999); *In re Blanchard*, 241 BR 461 (Bank.SD CA 1999); *see also In re Phillips*, 233 BR 712 (Bank.WD TX 1999) (holding that equitable tolling did not apply to § 727(e)(1), distinguishing *Succa*); *contra In re Pebbles*, 224 BR 519 (Bank.D MA 1998); *In re Succa*, 125 BR 168 (Bank.WD TX 1991)] One court has held that the reopening of a case within one year of the date the case is closed interrupts and tolls the running of the limitation period of § 727(e)(2). [*In re Johnson*, 187 BR 184 (Bank.SD CA (1995)] *Johnson* appears to be an anomaly and is based on misreading the "one year after" provision of § 727(e)(2) as being applicable to closing as well as discharge. Unfortunately, one must engage in linguistic gymnastics to arrive at that interpretation.

The third ground for revocation of discharge, refusal to obey an order of the court, is specifically the commission of an act specified in § 727(a)(6). The only difference is in the timing: § 727(a)(6) applies if the refusal to obey an order occurs prior to entry of the discharge and § 727(d)(3) applies if the refusal occurs after entry of the discharge. For a discussion of § 727(a)(6), see *Denial of Discharge: § 727(a)(5), (6), (7)*, 25 *Alaska Bar Rag* No. 1 (Jan/Feb 2001).

BAR COUNSEL

A matter of ethics ☐ Marc June

Every issue of *The Bar Rag* details the comings and goings of our colleagues. When those career moves involve judges, public lawyers, law clerks, or even mediators, ethical issues arise as to disqualification due to their past work. Those ethical issues can also lead to the disqualification of an entire law firm if preventative measures are not taken. For that reason, it behooves public lawyers shifting to a private practice and their soon-to-be partners to plan accordingly.

Rule 1.11 of the Alaska Rules of Professional Conduct specifically addresses the issue of successive government and private employment. With respect to the individual lawyer, Rule 1.11(a) states that there shall be no representation in connection with a matter in which the former public lawyer "participated personally and substantially," a term that is further explained in Alaska Bar Association Ethics Opinion 95-2. With respect to the lawyer's firm, Rule 1.11(a) also restricts other lawyers in the firm from undertaking or continuing representation in such matter absent some form of "screening" through either a "Chinese wall" or "cone of silence." Regardless of how one describes the method, essentially the former public lawyer is precluded from direct or indirect contact with matters concerning his former work.

The effectiveness of ethical "walls," "screening," and various other preventative measures has long been the subject of controversy. Within the last year, the Ninth Circuit Court of Appeals in *In re County of Los Angeles*, 223 F. 3d 990 (9th Cir. 2000) has had occasion to comment on the efficacy of "ethical walls" in the context of mediators that should be of interest to both former public lawyers as well as current public lawyers considering the move into private practice. The case involved a former United States Magistrate Judge who had presided over settlement negotiations in police brutality actions against the Los Angeles County sheriff. When the retired judge joined a law firm of 2 other lawyers that prosecuted such cases, his job change was met with a motion to disqualify based on confidential information he had supposedly obtained 5 years earlier and about which he had no memory!

As the law firm who hires a retired public servant, how is one to ethically protect one's self from such disqualification motions? The potential negative impacts of such tactics were highlighted by the Ninth Circuit when it noted:

> The vicarious disqualification of an entire firm can work harsh and unjust results, particularly in today's legal world where lawyers change associateions more freely than in the past. A rule that automatically disqualifies a firm in all cases substantially related to the tainted lawyer's former representation could work a serious hardship for the lawyer, the firm and the firm's clients. . . . An automatic disqualification rule would make firms be understandably more reluctant to hire mid-career lawyers, who would find themselves cast adrift as "Typhoid Marys," and clients would find their choice of cousnel substantially diminished, particularly in specialized areas of law. Such a rule also raises the specter of abuse: A motion to disqualify a law firm can be a powerful litigation tactic to deny an opposing party's counsel of choice.
>
> *Id.* at p. 996.

With respect to the Alaska Bar which has a number of small partnerships, the effects of disqualification would have a potentially greater impact than in other areas of the country.

Ultimately, the Ninth Circuit held that an ethical wall, "when implemented in a timely and effective way," can effectively protect a law firm from being disqualified as a result of its association with a former public lawyer. Here in Alaska, the same result has been reached through Rule 1.11(a) with the additional requirement that the lawyer be apportioned no part of any resulting fee and that written notice be provided to the appropriate government agency for enforcement purposes. Arguably, these latter precautions are designed to pre-empt disqualification motions by allowing the affected government agency the opportunity to raise the issue promptly.

In the matter before the Ninth Circuit, the Yagman law firm's preventative measures included not only removing from the office all of the files pertaining to police brutality cases but also agreeing not to discuss those cases with the retired judge. Comparable precautionary measures should be considered when a public lawyer is shifting to private practice in Alaska and, if implemented, prompt notice to the public lawyer's former agency may well avoid potential disqualification issues.

Quote of the Month

"I've worked for as much as $250 an hour. It's less than most lawyers will charge, but we get better results."

—*John Mullins, mercenary and soldier of fortune, Harper's, February 2001*

ESTATE PLANNING CORNER

Family limited partnerships *Part II*

☐ Steven T. O'Hara

The last issue of this column observed that Family Limited Partnerships or Limited Liability Companies (LLCs) are important tools for clients to consider in their estate planning. Through a family business entity, clients can pass on their financial skills and achieve other benefits, such as asset protection and a forum within which conflict among descendants may be resolved.

A disadvantage of Partnership or LLC ownership of an asset, as compared with outright ownership of the entire asset, is that devaluation occurs. For example, if the client gives $10,000 in cash to a descendant, the value of the gift is $10,000. But suppose the client instead funds a Family LLC with $100,000 in cash. Suppose the client then gives a 10% interest in the LLC to one of her descendants. Here the value of the gift is less than $10,000. The exact value may be unclear, but what is clear is there is no way the descendant could sell the 10% interest in the marketplace based on a proportionate share of the LLC's assets and without any discount.

This devaluation can be a major disadvantage in terms of tax basis. Recall that the concept of "basis" is important in order to shelter gain from income tax. If a client purchases stock for $100,000, her basis in that stock is $100,000 (IRC Sec. 1012). If she then sells the stock for $675,000, her taxable gain is $575,000, which is the consideration received in excess of her basis. When a lifetime gift is made, the donee takes, in general, a carryover basis in the gifted property (IRC Sec. 1015). Recall further that, under current law, a so-called stepped-up basis to fair market value is obtained, in general, on a transfer occurring by reason of death (IRC Sec. 1014).

Consider a client, an Alaska domiciliary, with three adult children. The client has never made a taxable gift, and her only asset is a share of stock. Although she purchased the stock for $100,000, it is now worth $675,000. The client forms a Family LLC and contributes the $675,000 of stock to the LLC (Cf. IRC Sec. 721(b)).

The client, over several years, gifts to her children interests in the LLC totaling 13.3% per child. At all points in time the LLC's only asset is the stock, worth $675,000.

Suppose the client dies, and her only asset is the remaining 60% interest in the LLC. Under her Will or Revocable Living Trust, the client gives this remaining property to her children in equal shares, so each owns one-third of the LLC. The LLC's only asset is the stock, which is still worth $675,000.

The three children bring their own children into the LLC as members. Later, at one of the LLC meetings a resolution passes to sell the $675,000 of stock. Here the bad news the LLC owners will soon learn is that the tax basis used to calculate gain on the sale of the $675,000 of stock is substantially less than $675,000. In other words, they will learn that there will be taxable gain on the sale of the stock.

By contrast, had the client not formed the LLC but had continued to own the stock until her death, under current law her children's basis in the stock would have been stepped-up to $675,000. So the children could then have sold the stock for as much as $675,000 at absolutely no tax cost.

Thus, a consequence of giving through a business entity is that the donees will have basis substantially less than the basis they would have had if the donor continued to own all assets outright until death. This smaller tax basis results partly from lifetime giving, which has carryover basis rules, but also from the devaluation that occurs when a client gives through a Family Limited Partnership or LLC.

Alaska Bar Online CLE with Taecan.com: Phase 2

Our free online pilot project with Taecan.com ran from December 19, 2000 through March 19, 2001 and was very successful. We got great feedback from members who took one of the 3 ethics topics available.

Beginning March 20, 2001, Alaska Bar online CLE with Taecan.com will have a registration fee of $25 per credit.

We plan to add new content and topics to the site this summer, and hope Bar members will continue to find the online CLE useful.

Call the Bar office at 907-272-7469 for more information or see our website www.alaskabar.org.

SOLID FOUNDATIONS

IOLTA grant applications/ new board member/ old board members

☐ Kenneth P. Eggers

As reported in the last issue of the Bar Rag, the Alaska Bar Foundation is soliciting grant proposals for fiscal year 2002 (July 1, 2001 to June 30, 2002) to supplement legal services programs for the economically disadvantaged and programs to enhance the administration of justice. The Foundation asks lawyers who are involved with organizations which meet the Foundation's grant guidelines to encourage those organizations to submit a grant application. The grant guidelines were set forth in the last issue of the Bar Rag.

Grant applications for the July 2001 through June 2002 funding cycle must be received by the Alaska Bar Foundation, 510 L Street, Suite 602, (P. O. Box 100279), Anchorage, Alaska 99510 no later than 5:00 p.m., April 2, 2001. For grant applications or further information, contact Kenneth P. Eggers, president, Alaska Bar Foundation, (907) 562-6474.

Fairbanks lawyer Barbara L. Schuhmann has been elected to the Second/ Fourth Judicial District seat on the Board of Trustees to fill the unexpired term of J. Foster Wallace. Barbara's term on the Board will end June 30, 2003. The other Board members are The Honorable Eric T. Sanders (Anchorage Superior Court Judge), Leroy J. Barker (Anchorage attorney), William T. Council (Juneau attorney), Susan Beeler Queary (Certified Public Accountant with the State of Alaska in Juneau), William A. Granger (Senior Vice President of the National Bank of Alaska, Anchorage) and Deborah O'Regan, ex officio member (Executive Director, Alaska Bar Association).

—Ken Eggers is president of the Alaska Bar Foundation

ORAL HISTORY WORKSHOP

Just getting started in oral history? Or need to brush up on the basics? Interested in conducting interviews, but don't know where to begin? Attend this how-to workshop that covers oral history planning, research, equipment, and interviewing techniques. Participants will practice their oral history skills through interactive demonstrations.

WHEN: **Saturday, March 31, 2001 from 9:00 am to 5:00 pm**

WHERE: **University of Alaska Anchorage Commons Building, Rm 106 Sharon Gagnon Lane (off Bragaw Ave.)**

COST: **FREE**

Bradley B. Williams, Ph.D., Director of the 9th Judicial Circuit Historical Society, will lead the workshop. Dr. Williams heads the largest court-based oral history program in the United States, and is a past president of the Southwest Oral History Association. He is a graduate of USC, San Diego State University, and the University of Iowa. He has taught at the University of Iowa and California Polytechnic University, Pomona, and has presented numerous oral history workshops. His first oral history interview was in 1977 with a member of the Winnebago Tribe, and he has over 18 years of experience as a professional historian, primarily with historical societies and museums.

For more information call Timothy Lynch 276-3222.
Jointly sponsored by
The Cook Inlet Historical Society and
The Alaska Bar Association Historians Committee.

Attorney Discipline

BRYSON RECEIVES STAYED SUSPENSION, CENSURE FOR NEGLECT, FAILURE TO COMMUNICATE

The Alaska Supreme Court has stayed a one-year suspension and has publicly censured Anchorage attorney Bill Bryson for violating the Alaska lawyer ethics code. In an order of February 8, 2001, the court disciplined Bryson for misconduct involving neglect and failure to communicate with his client.

The ethics violations happened during Bryson's representation of a client in a criminal appeal. After requesting several extensions of time to file the appeal brief, Bryson missed the last deadline. As a result, the Court of Appeals dismissed the case. Bryson did not notify his client about the dismissal and took no steps to reinstate it. Bryson did not respond to the client's requests for a status report. The client learned that his case had been dismissed after he reviewed the court file himself.

Bar Counsel found violations of Alaska Rule of Professional Conduct 1.3 (which requires a lawyer's diligence) and ARPC 1.4 (which requires a lawyer to maintain reasonable communication with a client). Bryson and Bar Counsel stipulated that Bryson should be disciplined by suspension for one year, which will be stayed pending successful completion of a one-year probation. New misconduct during the suspension period will trigger imposition of the suspension plus any discipline for the new misconduct. Meanwhile, Bryson agreed to be censured.

The Disciplinary Board approved the stipulation. The Supreme Court approved the stipulation with Justice Matthews and Senior Justice Rabinowitz dissenting — they considered the discipline too lenient. The stipulation and related documents are available for inspection at the Bar Association office in Anchorage.

•

In the Supreme Court of the State of Alaska

In the Disciplinary Matter Involving	)	
	)	Supreme Court No. S-09857
William P. Bryson,	)	
	)	Order
	)	
Respondent,	)	Date of Order: **2/8/01**

Trial Court Case # **3AN-98-00115CI**
Supreme Court No.S-09857
Order
Date of Order: 2/8/01

Before: Fabe, Chief Justice, Matthews, Justice, Rabinowitz, Senior Justice, pro tem,[1] and Greene and Smith, Justices, pro tem.[2] [Eastaugh, Bryner, and Carpeneti, Justices, not participating.]

On consideration of the stipulation for discipline by consent of the Alaska Bar Association under Alaska Bar Rule 22(h), filed September 8, 2000.

It Is ORDERED:

1. The stipulation for discipline is **ACCEPTED**. William P. Bryson is hereby suspended from the practice of law for one year with the entire suspension Stayed provided that he successfully completes a one-year probation period from the date of this order.

2. If, during the probationary period, William P. Bryson commits a new violation of Alaska Rules of Professional Conduct 1.3 or 1.4, the stay will be lifted and the one-year suspension will be imposed in addition to any discipline ordered for the new misconduct.

3. In addition, William P. Bryson is publicly censured by this court for the misconduct reflected in the stipulation for discipline.

Entered at the direction of the court.
Clerk of the Appellate Courts
/s/Marilyn May

[1] Sitting by assignment made pursuant to article IV, section 11 of the Alaska Constitution.
[2] Sitting by assignment made pursuant to article IV, section 11 of the Alaska Constitution.

MATTHEWS, Justice and RABINOWITZ, Senior Justice dissent and would reject the stipulation for discipline as too lenient. Given the three prior instances of formal discipline that have been imposed, they would remand this case to a hearing committee for formal proceedings, pursuant to Alaska Bar Rule 22(h)(2) & 22(e), based on their view that it is probable that the attorney knowingly violated the applicable rules of professional conduct and that, given the prior instances of formal discipline that have been imposed against William P. Bryson, the stipulated sanction is too lenient.

ATTORNEY X RECEIVES BOARD REPRIMAND

Attorney X delayed more than 15 months to return legal files to a client serving a lengthy sentence for second-degree murder. He also delayed handling a post-conviction relief action and merit appeal for another client. Despite the potential for serious harm, neither client suffered legal prejudice due to Attorney X's misconduct. Based on these negligent breaches of duties to clients, the Board of Governors issued a private reprimand to Attorney X at its January 20, 2001, meeting.

Prior to issuing the private reprimand the Board considered that Attorney X had earlier received two written private admonitions for failing to maintain adequate client communication and for failing to file timely an appellate brief. At that time Attorney X admitted wrongdoing and submitted evidence of a psychological stress-related disorder. As a result of the more recent complaints, Attorney X closed his private practice. He acknowledged that he was not temperamentally suited to it and that his professional lapses were in part a result of his inability to handle client demands, court deadlines and small office management.

BOARD ISSUES PRIVATE REPRIMAND

The Board of Governors reprimanded Attorney X for failing to take the necessary steps to probate two estates, to discharge duties for a client facing a DWI charge, and to litigate a personal injury lawsuit for his client. Attorney X's neglect and failure to communicate created unnecessary aggravation for his clients and caused postponement of legal remedies. None of the clients experienced severe or irreversible legal prejudice.

Attorney X had no prior disciplinary record during his 30 years of practice in Alaska. No evidence suggested that Attorney X acted out of a dishonest or selfish motive. Rather, evidence showed that personal problems primarily contributed to Attorney X's inability to handle his clients' matters promptly and diligently during an 18-month period. Although acknowledging that several factors served to mitigate the misconduct, the Board reprimanded Attorney X and ordered him to attend three hours of continuing legal education in ethics.

Representing clients in family mediation

☐ Drew Peterson

As family mediation catches on around the country, more and more of our clients are attempting mediation, or considering it.

Mediation can be an effective alternative to the often expensive, time consuming, and destructive nature of the traditional methods of resolving family disputes in court.

How should a competent family attorney represent clients in mediation? Or should they represent them at all? When should mediation be recommended and when recommended against as an alternative to family court? And what pitfalls need the clients and their counsel be aware of when involved in a family mediation?

As a practicing family mediator, I obviously favor the use of mediation in family cases. With nearly 30 years of family advocacy experience, however, I also recognize that not all family cases should be handled the same way in family mediation, and some cases should not be in mediation in the first place.

DIFFERENT KINDS OF MEDIATION

The first thing to recognize in representing family law clients in mediation is different kinds of mediation styles applicable to different kinds of cases.

Most family mediators, following the lead of the Academy of Family Mediators, utilize the "facilitative" style of mediation which is non coercive, confidential, and occurs over a series of mediation sessions. The sessions are typically about two hours each, every week or two. This allows time to consult with advisers between sessions and to proceed slowly on decision making.

Another form of mediation is based on the "settlement conference" model of marathon sessions, with agreements placed on record as soon as they are made.

Still other kinds of mediation, such as the 'mandatory mediation" found in some counties in California, arc not confidential, and may result in the mediator making recommendations to the court upon their completion, regardless of the outcome.

Knowing which style the mediator will use in advance is obviously critical in determining how to best represent your client during the mediation process, or even whether to recommend mediation in the first place.

DIFFERENT MEDIATORS

Just as there are great differences in mediation styles, there are huge differences between individual mediators.

Most significantly, mediation is an unregulated field; virtually anyone can hang out a shingle as a mediator, regardless of training or experience (and indeed in Alaska, some have). Thus it is critical to know who the mediator is, and the nature of their training and experience. You can find this out by checking with others, including other mediators themselves, especially through local mediation organizations such as the Alaska Disputes Settlement Association or ADR Section of the Alaska Bar.

Mediators are a fairly close- knit group, and are usually forthright about discussing their colleagues and who they do and do not admire. If in doubt, I recommend utilizing a "Practitioner" member of the Academy of Family Mediators; this designation requires a substantial amount of both training and experience.

WHEN TO RECOMMEND MEDIATION

I am prejudiced in this regard, and believe that virtually every case is appropriate to at least consider mediation. However, some cases are more appropriate to mediation than others. As a general rule, issues of custody and visitation are particularly appropriate for mediation, as parents are the real experts on the needs of their children. Complex property and alimony issues may be less suitable to mediation, but have often been successfully resolved in mediation as well.

Cases involving violence or substantial control issues may still be resolvable in mediation, but require special protocols and training by the mediator to have much chance of success. This is the area with the most potential for actual danger to your clients in using mediation if clients are not properly represented.

WHEN TO RECOMMEND AGAINST MEDIATION

As noted above, I believe that most cases are suitable for mediation, with the appropriate protocols and mediator training.

Cases involving serious domestic violence (DV), however, should never be handled without special DV protocols, which could well entail ensuring that the parties arc never in the same room (or building) together. Moreover, there need to be legitimate issues to resolve in such mediation, such as child support, property division, or terms of supervised visitation. Violence, itself, is not a negotiable item and should never be allowed to be used as a bargaining chip in negotiations.

While most other issues are mediatable, there is not much point in taking issues to mediation where the parties' heels are completely dug in and there is no room for compromise. Mediation does require two parties who are willing to negotiate.

The fact that the parties are totally opposed on one issue, however, does not preclude mediation on other issues. Family law typically involves a number of different issues, many of which often can be resolved in mediation even though some may remain unresolved. This can result in a substantial reduction of the overall dispute. In addition, building agreement on a number of small items will often lead to agreement on the larger items, as well.

WHEN TO ATTEND MEDIATION

Contrary to what some may hear, good representation by counsel during mediation substantially helps the mediation process and does not hinder it. Every client has the right to be represented during the mediation process, if they so choose. The major issue to consider in determining whether or not to attend a mediation session is a question of finances. Mediation with three professionals in the room effectively triples the cost of the mediation process, often without increasing its effectiveness to the same extent.

Determining whether to attend a family mediation session should involve both your evaluation of your client, and consideration of the mediation style being utilized. If a settlement conference style of mediation is being used, whereby any agreement reached will be immediately placed on record, counsel should obviously attend all critical stages. Similarly, if your client is unassertive, worried about being pressured, or worse, afraid of the other side, then you again should obviously attend, and recommend against mediation unless your presence is assured.

A special issue concerning representation arises when one side is represented during mediation and the other side is not. This can make the mediation process awkward and feel unbalanced to the non-represented party. If you do plan on attending a mediation, be sure that the other side is aware of this in advance. This will give them the chance to bring their own counsel, or do something else to balance the process. Do not try to surprise the other side by showing up unannounced to obtain a strategic advantage. Doing so will have the opposite effect, and could sabotage the mediation process.

WHEN TO NOT ATTEND

Consider the following criteria when deciding whether or not to attend a mediation session with your client:

- Is your client assertive and do you believe they will be well spoken about their wants and desires through the mediation process?
- Will the mediation occur over a series of sessions and will you have a chance to confer with your client between sessions?
- Will counsel for the other side also be absent from the mediation?

If the answer to all such questions is affirmative, then it should be OK to let the mediation go on without your attendance at all of the mediation sessions. Even so, however, you should confer with your client regularly during the mediation process, in person or by phone, to advise them through all important stages of the process.

At the most important stages of the mediation process as determined by monitoring the process and considering the needs and desires of your client, you should be even more involved, either by making arrangements in advance to attend such sessions (informing the other side) or by being specifically available by telephone to participate.

CONCLUSION

In sum, family mediation is a major force whose time has come to the world of family law. To properly represent clients, attorneys must understand the mediation process being utilized, know the mediator, and advise the client carefully through all critical stages of the mediation process. By being educated about mediation, attorneys can perform a substantial service for their clients, while at the same time helping their clients save money and enter into fair and well thought-out agreements.

2001 Bar Convention & Judicial Conference

SINCE 1896
ALASKA BAR ASSOCIATION

Ketchikan, Alaska
Thursday, Friday, and Saturday
May, 10, 11 and 12, 2001

Don't Miss this Convention in Beautiful Southeast Alaska!

Agenda Highlights

Thursday, May 10

CLEs

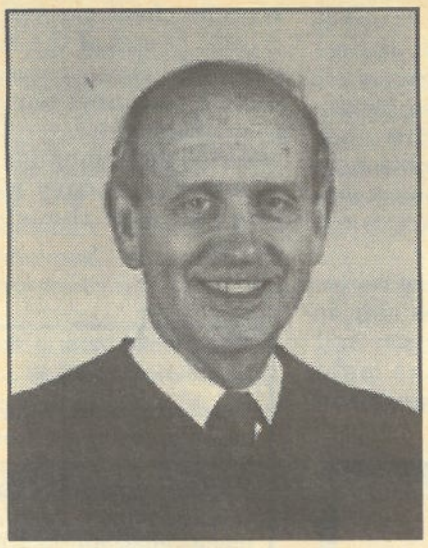
- Trial Advocacy Skills, Part 5: Jury Innovations with Judge Judith Chirlin
- Section Updates -- ADR -- Jamilia George, Program Chair
- Estate Litigation -- BethAnn Chapman, Bob Manley, Jo Kuchle
- Ethics Issues for Public Sector Attorneys with Peter Jarvis
- Ethics Update with Peter Jarvis and Bar Counsel (fulfills VCLE recommended minimum)

Lunch: Alaska Bar Business Meeting and Awards
Evening: Jetboat Tours and Dinner at Salmon Falls Resort

Friday, May 11

CLEs

U.S. Supreme Court Opinions Update -- Professors Arenella and Chemerinsky
Alaska Appellate Update: 1) Insurance -- Judge Eric Sanders, Moderator and
2) Employment -- Tom Daniel, Moderator
History of the Alaska Court -- Senior Judge Tom Stewart, Chair
State-Tribal Relations -- Geoff Currall and Mike Holman, Co-chairs
Lunch: State of the Judiciaries -- Chief Judge James Singleton and Chief Justice Dana Fabe
Evening: Bench/Bar Reception and Banquet -- Keynote by U.S. Supreme Court Justice Stephen Breyer



Justice Stephen Breyer

Professor Erwin Chemerinsky

Professor Peter Arenella

Saturday, May 12

CLEs

Appellate Off the Record -- U.S. Supreme Court Justice Stephen Breyer, 9th Circuit Senior Judge Robert Boochever, 9th Circuit Judge Andrew Kleinfeld, Alaska Supreme Court Justice Alex Bryner and Senior Justice Jay Rabinowitz -- Moderator, Bruce Weyhrauch

Ethics Update with Bar Counsel -- repeat of Thursday, May 10 program (fulfills VCLE recommended minimum)

12 noon Adjourn

Convention Information

Registration and Exhibitors
Registration and exhibitors will be at the Ted Ferry Civic Center.

Program Locations
Convention events will be held at the Ted Ferry Civic Center and at the State Courthouse.

Transportation from Hotel to Program Locations
The Bar is arranging for shuttle buses that will run on a published schedule to take attendees to and from hotels and the program locations. Taxis are also available.

Sleeping Room Accommodations
For hotel reservations, call **Salmon Falls Resort 1-800-247-9059.** For B&B reservations, call **Alaska Travelers Accommodations 1-800-928-3308.**
Make your reservations **TODAY!**

Air Reservations
Alaska Airlines is offering a special rate to the Alaska Bar and the Alaska Court System for this event. **Call the official convention travel agent, Jay Moffet, of World Express travel at 907-786-3274. Or call the Alaska Airlines Group Department at 1-800-445-4435. The booking code is CMA0261.**

Car Rental
Call Jay Moffet, the official convention travel agent, at 907-786-3274 or contact the following agencies directly: **Alaska Car Rental** at 1-800-662-0007 -- **ask for the Alaska Car Rental's special Alaska Bar Convention/ Alaska Judicial Conference rate** -- or call **Payless Car Rental** at 1-800-729-5377.

Ketchikan Convention & Visitors Bureau
For additional information on sightseeing and lodging, call 1-800-770-3300. For B&B reservations, call Alaska Travelers Accommodations at 1-800-928-3308.

Hospitality Suite
The Ketchikan Bar Association and the Anchorage Bar Association will be hosting a hospitality suite during the convention.

Registration Fees
CLEs
Early Bird Registration Before April 10
All 3 days: $175
Any one full day of CLE: $90
Any half day CLE (morning OR afternoon): $50

Registration After April 10
All 3 days: $195
Any one full day of CLE: $110
Any half day CLE (morning OR afternoon): $70

Special Events
Lunches: $20
Jetboat Tours at Salmon Falls Resort: $30
Salmon Falls Resort Dinner: $40
Awards Reception and Banquet: $40

Call the Alaska Bar office 907-272-7469/fax907-272-2932 or e-mail alaskabar@alaskabar.org for more information.

Download the convention registration form from the bar website & fax it today. See www.alaskabar.org

Convention Highlights

Attend all 3 days of the convention and fulfill ALL your VCLE Rule recommended minimum hours of approved CLE for the reporting period January 1 December 31, 2001.

APPELLATE OFF THE RECORD WITH U.S. SUPREME COURT JUSTICE STEPHEN BREYER
Supreme Court Justice Stephen Breyer joins a panel of 9th Circuit and Alaska Supreme Court judges to discuss appellate practice issues including appellate judges' expectations regarding briefs, oral argument, and motion practice. 9th Circuit Senior Judge Robert Boochever, 9th Circuit Judge Andrew Kleinfeld, Alaska Supreme Court Justice Alex Bryner and Senior Justice Jay Rabinowitz, and Bruce Weyhrauch, Moderator, round out the panel. Don't miss this rare opportunity to hear a U.S. Supreme Court Justice!

U.S. SUPREME COURT OPINIONS UPDATE
Yes, they're coming to Ketchikan! Join us for our 10th annual review of U.S. Supreme Court decisions with nationally recognized constitutional law experts, UCLA School of Law Professor Peter Arenella and USC Law Center Professor Erwin Chemerinsky. This year we will also have U.S. Supreme Court Justice Stephen Breyer in the audience as the professors give us their take on what the Supreme Court has ruled.

Trial Advocacy Skills, Part 5 -- Jury Innovations
Presented as a joint prosecution and defense practitioners program 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

Join Los Angeles Superior Court Judge Judith Chirlin and a panel of Alaska judges and lawyers for a look at how the jury system is changing in many jurisdictions and how this will impact trial practice. Learn about the latest techniques to help jurors do a better job and what might be in the future for Alaska.

ETHICS ISSUES FOR PUBLIC SECTOR ATTORNEYS
Public sector attorneys often face unique ethical issues and challenges in their practice. Peter Jarvis, Washington State Special Attorney General for the A.G.'s Ethics Committee and the Stoel Rives LLP Professional Responsibility Practice Group Chair, focuses in this session on helping public sector attorneys identify and deal with ethical problems.

ETHICS UPDATE
Learn about the newest trends in professional responsibility and how to navigate through an ever more complex world of ethical issues. Bar Counsel Steve Van Goor and Peter Jarvis, Stoel Rives LLP, Portland lead this discussion on Thursday. The program repeats on Saturday with Bar Counsel Steve Van Goor.

ESTATE LITIGATION: WHAT TO DO WITH CONTESTED WILLS
A panel of experienced probate practitioners, BethAnn Chapman, Jo Kuchle and Robert Manley, look at recent cases of contested wills and trust litigation, and discuss how to deal with estate and trust litigation, including the attorney-client privilege.

ALASKA APPELLATE UPDATE IN EMPLOYMENT LAW AND INSURANCE LAW
This year's update focuses on the issues of employment law and insurance law. A panel of Alaska judges and lawyers provides an analysis of recent appellate decisions. Judge Eric Sanders and Tom Daniel are moderators.

HISTORY OF THE ALASKA COURT
The remarkable development of the Alaska Court system is a story that is still unfolding. Members of the bench and bar who witnessed the beginnings of the Alaska Court discuss key issues and events that shaped and continue to shape our system. Senior Judge Tom Stewart is Chair.

STATE-TRIBAL RELATIONS
A panel of Alaska judges and lawyers looks at state-tribal jurisdiction and the issues that our state and the court will be facing in light of *Baker v. John*. Geoffrey Currall and Michael Holman co-chair this program.

SPONSORS

Alaska Court System
ALPS -- Attorneys Liability Protection Society
American Equity Insurance Company
Anchorage Bar Association
Brady & Company Insurance Brokerage
Dean Moburg & Associates, Court Reporters, Seattle
Document Technology, Inc.
Downtown Legal Copies, LLC
Hagen Insurance Company
Just Resolutions
Ketchikan Bar Association
Lexis Publishing
United State District Court
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EXHIBITORS

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Downtown Legal Copies, LLC
Hagen Insurance Company
Lexis Publishing
Master Products-- Litigation-Oriented Software
West Group

LEXIS
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 ongoing during the convention. To register, call Marcus Wiener at 907-688-3198. Advance registration is recommended, but not required. Visit the Bar convention registration area for information on times and location of training..

WESTLAW
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 ongoing during the convention. To register, call Allan Milloy at 907-277-0914, Keith Beeler at 907-258-3891 or Chris Jalbert at 1-800-762-5272. Advance registration is recommended, but not required. Visit the Bar convention registration area for information on times and location of training..

ATTENTION ALL TRAVELERS!

THERE'S MORE ROOM ON THE PLANES!

Alaska Airlines is making additional seating available on:

Flt 64 from Anchorage to Ketchikan on Wednesday, May 9

and on

Flt 65 from Ketchikan to Anchorage on Saturday, May 12

Call today for air reservations Alaska Airlines has a special rate for the convention. CMA 0261 is the group ID number for the Alaska Bar.

Call Jay at World Express Travel at 907-786-3274 or Alaska Airlines Group Department at 1-800-445-4435.

ALSC President's Report

ALSC/APBP . . . and justice for all

☐ Loni Levy

STAFF NOTES: ALSC executive director Robert Hickerson has taken a two-month leave for health reasons effective February 15. We wish Robert all the best. In his absence, ALSC will be managed by a team of four senior staff consisting of Bill Caldwell, Beth Heuer, Andy Harrington and Mike Sturm.

Jim Davis, recently returned from a teaching stint at Stanford Law School, is the new supervising attorney in the Anchorage office. Russ LaVigne is the new supervising attorney in the Kotzebue office where he works with staff attorney Leigh Dickey.

VICTORY FOR LEGAL SERVICES & CLIENTS

On February 28, the United States Supreme Court struck down on First Amendment grounds the Congressional restriction which prohibited all Legal Services Corporation (LSC) federally funded attorneys from raising statutory or constitutional challenges to welfare laws. (*Legal Services Corporation v. Velazquez, et al., No. 99-603*, argued Oct. 4, 2000, decided Feb. 28, 2001).

The restriction as applied forbade legal services attorneys from accepting any cases which would contest the constitutional or statutory validity of those laws. Indeed, where the propriety of such challenges became evident during the course of litigation, LSC required legal services attorneys to withdraw from the case. Most remarkably, in oral argument "the LSC advised the Court, if during litigation, a judge were to ask an LSC attorney whether there was a constitutional concern, the LSC attorney simply could not answer."

In a 5-4 decision authored by Justice Kennedy, the Court concluded that this prohibition distorted the essential role of effective advocacy and the function of the judiciary and violated the First Amendment rights of *both* lawyer and client. "An informed, independent judiciary presumes an informed, independent bar.... The [restriction] prohibits speech and expression upon which the courts must depend for the proper exercise of the judicial power. Congress cannot wrest the law from the Constitution which is its source. The Court held that this method of gagging legal services attorneys "is designed to insulate the Government's interpretation of the Constitution from judicial challenge. The Constitution does not permit the Government to confine litigants and their attorneys in this manner."

Mention must be made of the Court's observation that the end result of sustaining the prohibition would be "two tiers of cases" in which "the courts and the public would come to question the adequacy and fairness of professional representation" by legal services attorneys fettered by such Congressional restraints. However, as we all are painfully aware, the continued under funding of legal services providers by both the federal and state governments works precisely the same two tier discrimination: separating those who can afford private counsel from those who are denied meaningful access to the courts because they cannot pay for a lawyer and legal services attorneys are simply not available.

If we truly are committed to equal access to justice, and to vindication of one's legal rights regardless of her economic status, we must insist that the courts, the public, and our government provide whatever resources are necessary to achieve this end. Ironically, on the very same day that *Velazquez* was announced, our Supreme Court Chief Justice Dana Fabe delivered her state of the judiciary address, which sounded a depressingly similar note: "Access to justice is a fundamental right of all Alaskans. There are many in our community, however, who do not have the resources or the knowledge to participate equally in our justice system. It is the responsibility of the courts and of our entire profession to ensure that all Alaskans enjoy affordable access to the courts," she said.

We could not agree more but how do we make it happen?

5 OPPORTUNITIES TO HELP

• One way is to support the Partners in Justice campaign which to date has netted only $135,000, slightly over one half of its statewide goal of $250,000. PIJ needs your help and it needs it now. Please fill out the pledge slips which were mailed to you earlier in this campaign year or contact Jim Minnery at 222-4525 for additional pledge forms.

• Would you rather do than give? The Pro Bono Program offers another opportunity to promote equal access to justice. We thought we would share with you a letter recently received by Alaska Pro Bono Program Executive Director Maria Elena Walsh, because it explains better than we can what APBP does:

Dear Ms. Walsh

I came across your business card today and realized I never properly thanked you for the help you gave to me. I don't know if you remember me. I used to be a teacher but then when I wasn't and had no insurance I was hospitalized for over a month. My creditors and the doctors were calling all the time and I had to make the difficult decision to declare bankruptcy. You were leaving on a trip yet took the time to meet me in the morning and help me with the beginning paperwork. I was referred to Mr. Tom Yerbich and he and his wife (his receptionist) helped me throughout the entire process and even the aftermath.

Ms. Walsh, this meant so much to me. Now I cannot be afraid of answering the phone or getting the mail and pay my bills on time with my disability retirement from the state. Thank you so very much for not only your time and professionalism, but your caring. You made a difficult time in my life bearable. Thank You.

—Helene Katherine O'Mara

• Want your very own letter from some grateful *pro bono* client? Join the APBP Attorney of the Day Program, which continues to be a smashing success. We now have attorneys on site at the APBP offices in midtown for part of every day of the week helping to place cases with pro bono panel members and assisting with interviews of and giving brief advice to potential clients. They include MaryJane Sutliff, Edie Zukauskas, Cindy Thomas and the lawyers of Dorsey & Whitney, who pioneered this effort. The following attorneys have also joined the program and are awaiting assignments: Barbara Jones, Robert Owens, Margaret Russell, Mark Kroloff, Stephen Koteff, William Cook, Margaret Russell, Art Robson and Frank Vondersaar. We envision that volunteer attorneys of the day/morning/afternoon will soon be partnered with social service groups like Beans Café and Brother Francis to provide on site assistance for their clients.

• Or volunteer to conduct Legal Clinics on a wide variety of issues in Anchorage, Juneau, Fairbanks, Homer, Soldotna or other urban venues, or become part of the Flying Pro Bono Program which sends volunteer attorneys to rural areas of the state for clinics, intakes and *pro bono* needs assessments, all expenses paid. And you won't be working alone; APBP has recently recruited volunteers from the Alaska Association of Legal Assistants and the UAA Justice Center who have agreed to assist APBP attorneys in these endeavors.

Slots are still available in all of these programs, so call Maria Elena Walsh at 565-4311 to sign up.

• Or come to the First Annual Barristers Ball APBP fund raiser on Saturday, May 17 at the Anchorage Museum of History and Art for dinner (by the Marx Bros.) and dancing and an auction featuring "gifts of time" like garden design, home renovation services, auto maintenance, gourmet dinners cooked in your own kitchen and much, much more. Supreme Court Chief Justice Dana Fabe will be the keynote speaker at this black tie optional event. Tickets are $100 per person. Space is limited so make your reservations *today*. Call the Alaska Bar Association at 272-7469. This will be the social event of the year for members of the bar, their partners, clients and their friends.

Finally we want you to know that APBP board will be expanding and altering its composition to include representatives of some of the many organizations whose constituencies we serve. We have always understood that any *pro bono* program must , of necessity, include on its board those who are most dependent on the services it provides. A series of proposed by law amendments to accomplish were to be considered at the March 16 APBP Board meeting. Stay tuned for more information on this timely development.

Board of Governors awards grants

The Alaska Bar Association Board of Governors awarded three grants to organizations at its January meeting.

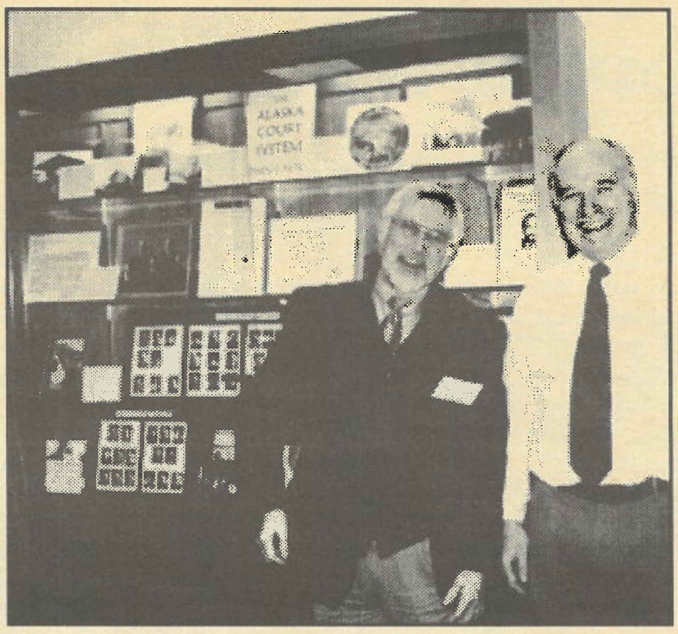
The Alaska Pro Bono Program (APBP) was awarded $8,000 to continue its Flying Pro Bono Program. Through this program attorneys travel to remote locations to conduct legal clinics. They may also teach local attorneys how to conduct legal clinics, do intakes of potential clients, assess legal needs in the rural area, and offer one-time free consultations.

This is the second year that a grant has been awarded to the Pro Bono Program. Last year visits were made to Barrow, Dutch Harbor, Homer/Kenai and Nome. Other communities on the list include Bethel, Dillingham, Metlakatla, Valdez, Glennallen, Angoon and Seward.

Catholic Social Services Immigration & Refugee Services Program received a $3,500 grant to conduct immigration clinics in Dutch Harbor (twice) and Bethel. The request was based on the tremendous need for immigration legal assistance in each of these communities.

The Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) received a $2,265 grant to videotape their CLE program, "Third Annual Impact of Domestic Violence on Your Legal Practice." The program took place March 15-16 at the Sheraton Anchorage. This amount provides for making six copies of the video, one to be kept in the Alaska Bar Association library, and five to be distributed to attorneys throughout the state. Attorneys who volunteer to take a case through ANDVSA may view the tape at no charge.

Barbara Nesbett, L, visits the display case honoring her late husband, Chief Justice Buell A. Nesbett, at the "Celebrating Our History" reception held on February 16, 2001, at the Nesbett Courthouse. With her is Emily Nenon, R, who coordinated the Nesbett display case as part of a UAA History Department project.



Prof. Stephen Haycox of the UAA History Department, L, and John Leaf, R, enjoy the display case on "The Alaska Court System — Then and Now" at the "Celebrating Our History" reception. Leaf helped coordinate the display in conjunction with a UAA History Department class taught by Professor Haycox.

"Celebrating Our History" reception honors Alaska's legal pioneers

Juliana "Jan" Wilson, was admitted to the Alaska Bar Association in 1951, and recently celebrated her 50th anniversary as a lawyer in Alaska. She is featured in the display "Pioneering Women Lawyers in Alaska." Here she enjoys a laugh at the "Celebrating Our History" reception.

Story and photos by Barbara Hood

On February 16, 2001, the Alaska Bar Association and Alaska Court System co-sponsored a reception to commemorate the recent completion of four new historical displays at the Nesbett Courthouse in Anchorage. The displays honor pioneering members of the Alaska legal community and feature collections of photos, news clippings, and other memorabilia from the Bar Association's archives and other sources. Two of the displays - "1st Chief Justice Buell A. Nesbett - 'Architect' of the Alaska Court System," and "The Alaska Court System - Then and Now"- were prepared in conjunction with UAA students under the direction of Prof. Stephen Haycox of the UAA History Department. One display - "Pioneering Women Lawyers of Alaska" was prepared in conjunction with the Bar Association's Gender Equality Section. The final display - "Serving Justice Since Statehood - Honoring 40 Years of Service by Two Judges from Alaska's First Court" - was sponsored by the Alaska Court System and Alaska Bar Association to commemorate the 40th Anniversary of the Alaska Court System, and recognizes the contributions of two of its early leaders - Judge James Fitzgerald and Judge James von der Heydt. The displays are located in the Main Lobby of the Nesbett Courthouse and in the Jury Assembly Room on the Second Floor. They are open to the public during courthouse hours. Bar members who are interested in working on future historical projects or contributing to the Bar Association's archives may contact Leroy Barker, Chair of the Bar Historians Committee, at 277-6693, or Cynthia Fellows, State Law Librarian, at 264-0583.

Armond Kirschbaum, L, and Leroy Barker, R, pause by the "History of Alaska" tile panels on display in the basement hallway of the Nesbett Courthouse during the February 16 reception. Kirschbaum designed the tile panels in 1963 for the original state courthouse at the corner of 4th and K Streets in Anchorage, and they graced the front of the building for several decades. They were moved to their present location in the late 1990's after the old courthouse was torn down. Barker is Chair of the Alaska Bar Association's Historians Committee, which co-sponsored the reception.

M. Ashley Dickerson and her escort arrive at the "Celebrating Our History" reception on February 16. Ms. Dickerson was one of the earliest women lawyers in Alaska, and the first African-American lawyer admitted to the Alaska Bar Association. She is featured in the "Pioneering Women Lawyers in Alaska" display.

Chief Justice Nesbett's grandson, David Nesbett, L, and son, Raymond Nesbett, R, at the reception honoring Alaska's first Chief Justice and other pioneering members of the legal community. Both David and Raymond have carried on the Nesbett family's long-standing ties to the Alaska legal community. David has been a member of the Alaska Bar Association since 1998, and Raymond has been a member since 1965.

Barbara Hood, L, and Leroy Barker, R, at the "Serving Justice Since Statehood" display, which honors two of Alaska's first judges, U.S. District Court Judge James M. Fitzgerald and U.S. District Court Judge James A. von der Heydt. Hood coordinated the display from materials in the Bar Association's archives; Barker is Chair of the Bar Historians Committee.

Does your law firm have a brand identity?

By Ellen Freedman

If you've done any reading lately on law firm marketing, you will undoubtedly have come across the concept of law firm branding. With the influx of marketing professionals into the legal industry, comes the introduction of many concepts which have been long recognized in the corporate world. Branding is seen as a prerequisite step before attempting the creation of a strategic plan. From my point of view, strategic planning should always precede actual marketing activities. And individuals should develop marketing plans which fit into the overall strategy of their practice group or department, with those plans dovetailing into that of the firm as a whole. And it all starts first with the branding process.

What is a law firm brand? Well, first let's identify what it *isn't*. It's not a slogan, nor a marketing strategy used by a segment (practice group or department) of the firm. Rather, it is the uniqueness, or the very essence of the firm, which gives life to its perceived identity. It is something that permeates the entire firm. It is a vision which must be shared by everyone at the firm, from top rainmaker to copy clerk. Some view a brand as nothing more than the old-fashioned concept of a firm's reputation. But while a reputation usually arises externally to the firm, and may or may not reflect qualities which please, flatter or benefit the firm, a brand is visualized and molded purposefully and strategically within the firm and then externalized.

Development of a firm brand is not entirely effortless. It will likely involve a time commitment from the lawyers. Typically, a firm must set up an uninterrupted meeting or retreat, for at least several hours, maybe even a full day, during which time the lawyers must identify the unique "sales qualities" of the firm by examining the firm closely. The list of unique qualities should be narrowed down until it contains a very brief number of points; no more than three to five. Some of these points may be unreal. In other words, they may really be unfulfilled "wishes" of the lawyers. The most important part of the process is that all lawyers agree on the items on the list, whether they are yet real or not. Consensus is critical if the brand is to be successfully marketed, both internally and externally.

> THE MOST OBVIOUS BENEFIT OF THE BRAND DEVELOPMENT IS THAT IT BUILDS RECOGNITION AND LOYALTY IN THE MARKETPLACE FOR THOSE WHO BUY LEGAL SERVICES.

Once the brand is developed, it must be successfully marketed internally first. That means that it must become real and credible for all members of the firm. It must be communicated effectively, so that everyone at the firm, up and down the ladder, is on the same page. Some changes may need to be made internally so that the brand becomes real. For example, a firm which wants to recruit and hold onto better quality associates might decide that one of the aspects of their brand is a vision of the firm as a "lifestyle" firm. And once the attorneys all agree, the firm may need to make changes in terms of billable hour requirements, telecommuting possibilities, and so forth to make this brand real. It must be "lived and seen" on a daily basis by all employees of the firm, and permeate the way they go about doing their jobs, and how they view the firm.

Once the brand has been successfully internalized, it is time for the firm to develop its strategic marketing plans firm-wide, by department, and on an individual-by-individual basis, for externalizing the brand. There are dozens of books on marketing strategies and activities available through PBA and ABA to assist in this process, plus an abundance of highly qualified marketing consultants.

The most obvious benefit of the brand development is that it builds recognition and loyalty in the marketplace for those who buy legal services. The brand implies value. People are usually willing to pay more for a brand, because there is implied quality and/or value, and as a result people feel safer purchasing a branded service or product. Of course, that has to be followed up with top notch service and legal product. I'm sure you can think of several companies which you feel lately have been "living off their reputation" and not backing up their brand with real quality or service. So your firm can't depend on the brand without ensuring you deliver on it day after day.

Another benefit to successful brand development comes in the form of attorney and staff recruitment. People want to work for employers who have good name recognition and a positive image or brand. And those who have particular needs will actively seek out employers who seem to provide a match. For example, attorneys who plan on trying to balance career and family will seek out firms with the "lifestyle" brand.

As times change, your brand may need to change, too. Markets and clients are subject to change over time, and your firm must evolve with those changes. Or you may find yourself marketing unique qualities which no longer have appeal to your clientele. So it is wise to periodically have another uninterrupted meeting to take a look at your firm and see if the vision is still current and true, or whether a course correction is called for. When your vision is complete once again, with all attorneys buying into it, market it internally at the firm, and then recreate your strategic plans to market it to your clients and prospects.

It isn't enough to have your own private vision of your firm. Nor do you want your firm's reputation to haphazardly "create itself" in the marketplace. To enhance your success you must identify and refine the vision of who you are, and market it both internally and externally, so that your clients and prospects share the vision with you, and so that it works for you as you market your services.

The author is the law practice management coordinator for the Pennsylvania Bar Association.

Online assessment tool helps reduce staff turnover

With tougher economic times raising the stake for keeping city, state and regional legal employees, turnover is especially painful in the profession because of labor shortages and high training costs.

According to a recent study, 25% of American workers are expected to change jobs in the next 12 months and 83% of American workers feel like they are "mis-employed." The departure of key people can stall a company's growth and hiring people who "fit" the job has become one of the industry's biggest challenges.

Employers can do a better job finding and keeping the right employee by assessing prospective employees online in a simple, 15-minute interview prior to their first face-to-face interview with a new online personality assessment service.

Fitability Systems, developer of the tool, says the new online assessment and interviewing system, Fitability for Employers, offers legal organizations powerful "job matching" and selection tools with no "upfront" fees, no software licenses to buy, and no training required.

Companies can outsource a fast, reliable online assessment system at www.fitability.com that streamlines the hiring for all kinds of jobs including administrative, labor, management and professional positions.

"We remove many of the hiring and retention roadblocks companies face today among a tight labor market with recent mergers, acquisitions, and downsizing in the industry," said James R. Campbell, chairman and CEO. "Companies seeking new employees can simply have them log onto the Internet and start doing '21st century H.R.' over the Web today."

Finding candidates and retaining employees that "fit well" is a big issue among businesses today who are faced with a tight labor market as well as slower economic growth. According to a recent national workplace survey conducted by public opinion research firm Zogby International and commissioned by Headhunter.net, 78 percent of the nation's workers admit they would leave their job if a better offer came along. Only 20 percent of women and 25 percent of men claim that money is the key to commitment, the survey said. "Better-fit" employees are more likely to perform well and stay longer, reducing the risk of bad placements and the associated costs.

With the easy and fast delivery of resumes over the Internet, companies are deluged with unqualified resumes. "The same type of technology that delivers the resumes can now assess candidates as well," said Campbell.

Based on the most widely researched and supported model of personality in the world - the "Big Five"- Fitability allows organizations to evaluate individuals faster while lowering recruiting and training costs. It assists in predicting a candidate's job performance and satisfaction— factors that lead to greater productivity and lower turnover. Companies can benchmark candidates or employees online in less than 20 minutes each. A hiring manager can learn as much about an applicant or employee in 5-8 minutes as it would to observe the individual's behavior over 5-8 weeks.

Fitability for Employers incorporates a library of more than 750 personality profiles and job descriptions, from 5 years of research. These profiles provide employers with quick access to skill requirements, experience necessary, training, education and more. A résumé, income history and notes section allows companies to track thousands of candidates. It also includes face-to-face interview guides and job-specific interview questions to make the final interview process easy and consistent for employee candidates.

For more information, visit http://www.fitability.com/pr.

— Press Release

New video-conferencing service reduces travel, litigation costs

DepoQuest has launched the first videoconferencing service exclusively for the legal industry, says the company. The new venture provides access to a network of more than depositions enabled 1,000 suites nationwide, including Alaska, and in many foreign countries.

Videoconferencing, simultaneous video and audio broadcasting that permits participants in different locations to view images and hear sounds at the same time, can reduce the expenses of a deposition by as much as 50%-75%, says depoQuest.

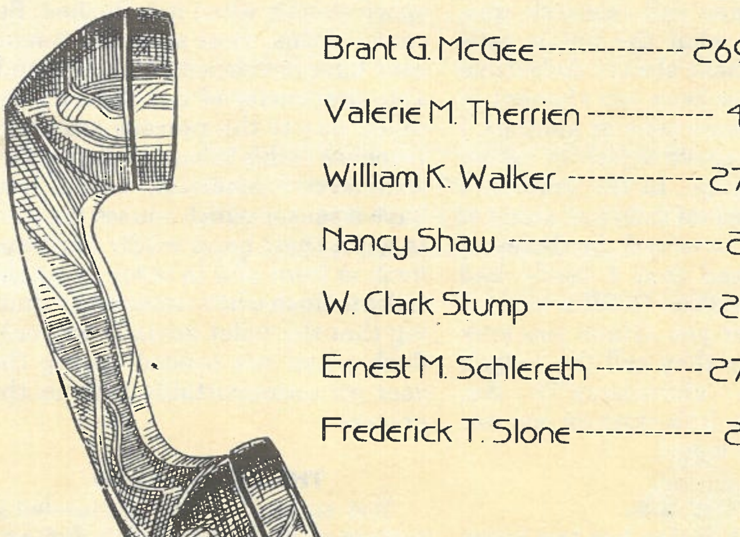
Each participant travels to a nearby executive suite equipped for a videoconference, which can involve as many sites as required. In addition to scheduling, depoQuest supervises the quality of on-site services, including the pre-testing of the transmission. Additional services include full-color document cameras for exhibits and medical records, as well as videotaping.

"Videoconferencing helps attorneys avoid their typically last-minute, costly scheduling of flights and hotels--as well as delay or cancellation--and saves hours or days away from the office and home," says depoQuest C.E.O. Elliot W. Stone. "This technology is ideal for multi-site legal proceedings such as depositions, expert and lay witness preparation, arbitrations and mediations--even, trial testimony in compatibly equipped courtrooms."

DepoQuest also provides comprehensive court reporting services in its locations.

More information on the service can be found at www.depoQuest.com.

—Press release



Toilet training

☐ William Satterberg

Panic set in. I realized that I did not have another *Bar Rag* article ready for publication. Traditionally, I rest easily for months. I usually have several exciting adventures queued up for publication. I even have some censored versions that I regularly try to sneak past the editors. In fact, some of the more entertaining accounts may never see the light of day until the subject about whom I have written has either passed on or until I have retired or left, due to the sensitive nature of the topics discussed. One attorney (whose name I shall not mention), made it quite clear that I should never write about him again. So I'm saving that article to be my last one.

Finally tackled by the much-feared writer's block, I asked my secretary for suggestions. She responded that, by now, I should have something written "in the can." Sort of like the canned briefs or pattern-affirmative defenses that some of those high-dollar insurance defense counsel always seem to use—the type of affirmative defense that claims that a seven-year-old girl pedestrian who is run over by a 3/4 ton truck is negligent because she failed to use her seat restraints.

I took the suggestion literally. I went to the office's restroom. Maybe there really was something in the can to use. However, during the office's recent toilet paper shortage, and the fact that I had put another vandal resistant wall finish in the bathroom to cut down upon the anonymous comments being left by my loyal staff and clients, there was little upon which I could base an article. In the past, some of my more famous quotes about the judiciary have come from the writing which appears in the men's bathroom just outside the judge's chambers.

Just as I was ready to give it all up, an idea struck me. Over the years, I have traveled to many countries on what politicians call research missions and on what the public calls junkets. On these always deductible trips, there has been one element in common. At some time or another, I have had to relieve myself of excess personal baggage. In the process, I have conducted an informal study of the various involved facilities. I quickly realized that I easily had enough information to fill a book, if not a chamber pot. (Have you ever wondered why they call the judge's office "the chambers"?) So, Mouseketeers, let's start on our toilet tour of the world.

THE U.S.

The United States has two types of toilets. The flush toilet is the one that most of us know, unless you grew up at "the homestead," like I did for a number of years. The homestead had what was affectionately referred to as a "gravity toilet." Although it was cold in the winter and you were visited in very unfortunate, but memorable, locations by mosquitoes in the summer, the gravity toilet never failed to work. Rank, itself, it also ranks among the world's most reliable, unless someone knocks it over with a tractor while you are inside. Eventually, the outhouse gave way to the residential toilet.

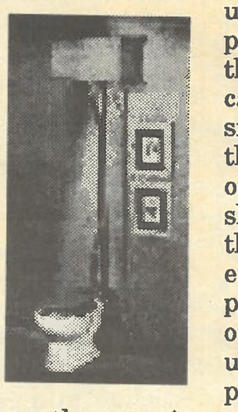
In time, however, I realized that even the normal everyday residential American toilet was not infallible. This porcelain god, which I worshiped so often in college, has a lever which always has to be jiggled following use. Otherwise, water will run continually through the night, giving rise to the much feared Satterberg family war cry– "Billy! Jiggle the handle." Well trained in the art of handle-jiggling, I spent much of my teenage years in the bathroom allegedly jiggling the handle. Another attribute of the American toilet is its uncanny ability to clog up on a moment's notice, flooding the carpeting, usually during a Christmas party.

Still, the American toilet, compared to many toilets in the world, is a remarkable invention. Setting aside the excess water usage, American toilets can always be relied upon to give a satisfying loud, gurgling swallow just at the time that you are getting on the phone with one of your best clients, trying to explain that you are lost deeply in billable research. So much for the American residential toilet which also serves as a ready, all-night water bowl for the family pets.

The American commercial toilet is a different animal. The American commercial toilet rivals a launching space shuttle when it is flushed. Because of this, most sensitive Americans have developed an understandable propensity of not flushing the toilet, due to the raucous sound. In response to this 'silent' protest, many commercial American toilets now have a sensor which causes the user to wave their hand wildly back and forth in front of it in order to get the toilet to flush when needed, recognizing that the toilet actually will only flush when not needed, giving the user an uncomfortable bath in the process.

THE BRITISH LOO

Not so in Britain. I attended a portion of my law school in Britain. Being new to Europe, it took me almost two weeks to discover how British toilets work. Whereas American toilets have a tank which is attached directly to the bowl, British toilets have a pull chain which dangles menacingly above the user's head, like Damocles' sword. To activate the mechanism, one must stand underneath a water bucket and jerk wildly up and down on the chain with the hope that, eventually, a suction process will develop to allow several gallons of water to cascade down a pipe like Niagara Falls into a commode. Fortunately, once one gets the hang of it, the process becomes rather fun.



The problem is, unless the user is prepared for the process, the user can spend several hours pulling on the chain, and then waiting for something to happen, much like the fat guy in the beer commercial who is doing the "twist" in a vain effort to take the cap off of a beer bottle. Before I went to Britain, I never realized how difficult it would be to flush a toilet. Once I got the hang of it, however, I once again would spend untold delightful hours in the "loo" pulling on the chain. It reminded me of my earlier years at home.

In the British apartment, my roommates used to joke about the extra toilet which "flushed up." Being Americans, we had no reason to understand why there would be two toilets in the same bathroom. Most of the roommates eventually decided that the "funny toilet" was for cooling ice and beer during parties. However, at least one of us figured out that it could also double as a urinal, but I decided not to tell the others. No sense ruining family harmony. Still, I avoided mixed drinks.

THE EUROPEAN VERSION

Toilets on the European Continent are even more refined than their American or British counterparts. Europeans have discovered that it takes less water to run a toilet for certain functions than for others. As such, there are two buttons on the top of the toilet. One for heavy water usage and one for light water usage. Although it takes a while to figure out which button to push, there is logic behind this theory, since Europeans seem to be much more environmentally wise than Americans. Personally, I quickly was able to figure out which button to push, but then I've always had that talent, according to my dear, departed mother.

Almost all restrooms in Europe have a bristle brush, which sits politely in a little glass by the toilet. It took me some time before I realized that the brush is not for scrubbing the back during baths, but is for other uses. This revelation occurred when one of my fastidious hosts explained the process to me one day after I had inadvertently left the brush in the bathtub. I was disappointed. After all, the brush was great for scratching all of those hard to reach places.

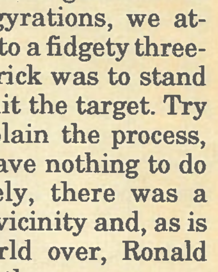
RUSSIAN COMMODES

Russia is a different matter entirely. I have been to Russia several times and consider myself an expert on Russian commodes. I am privy to all sorts of knowledge. Russian toilets are like everything else the Russians build: Large, massive, and obsolete. Whereas most Europeans think that it is politically acceptable and polite to place at least some water in the bottom of the toilet bowl, Russians, in their urge to conserve water for drinking purposes (even though everybody drinks Vodka), have developed dry toilets with a little platform. Everything that the user leaves behind simply sits there until one decides to get rid of it. It probably has something to do with the KGB, and a desire to catch American spies who might be attempting to smuggle microfilm canisters out of the country through less than obvious methods. The American DEA should take some suggestions from the Russians in this regard, since evidence-gathering would be improved substantially for these zealous investigators, although storage until trial could present some complications.

One thing with respect to the Russians which is fortunate is that there is standardization in the system. Whether one does their business in the Russian Far East, or in Moscow, and regardless of whether the business is "number one" or "number two," the toilets all seem to be the same. Communism, at least, was predictable with its communal commodes.

THE GRAVITY OF JAPAN

Several years ago, our family visited a friend and attorney who lived in Japan, Timothy Dooley. Our daughter, Marianne, was three at the time. During dinner, Mari-anne announced loudly in the middle of a subdued Japanese restaurant that she wanted "to go to the potty." Tim advised my wife to be prepared for a new experience. He explained that traditional Japanese toilets were not toilets at all, but were simply a hole in the floor with two self-explanatory footprints. A gravity toilet! As compulsive as the Japanese are reputed to be, this new process gave rise to some interesting gyrations, we attempted to explain to a fidgety three-year-old that the trick was to stand over the hole and hit the target. Try as we could to explain the process, Marianne would have nothing to do with it. Fortunately, there was a McDonald's in the vicinity and, as is often the case world over, Ronald McDonald came to the rescue.



I have not yet completed my research with respect to the toilets of the world. Undoubtedly, it still requires extensive travel, preparation, and in depth review. Undoubtedly, it will be a life-long project.

...AND TP ACCESSORIES

But it is now time to discuss briefly certain important aspects of toilet paper etiquette before I conclude.

Some countries have clear flush/don't flush policies. Those countries are Russian. In Russia, it is not uncommon for the trash can located next to the toilet to have a distinctly different purpose than as a repository only for hand towels. As outmoded as the Russian commodes are, so, too, is the Russian plumbing system equally in need of overhaul. As such, toilet paper, if found at all and when used, should not be flushed according to my Russian friends. Still, being a true patriot interested in continued American world domination, I have always done my best to damage the Russian plumbing systems when on tour. I short, I flush

Continued on page 17

The judges

☐ Dan Branch

Wearing black robes of isolation, judges sit apart and slightly elevated above the counsel tables. When not presiding, they return to offices cut off from the public by security measures. The rule against ex parte contacts completes the package.

These measures are necessary to maintain fairness and a confidence in our judicial system, but the judges pay a price. We should be thankful that some lawyers are willing to go into this mild form of exile.

Recently, the court system took steps to mitigate the mystery. In Juneau, our judges, along with representatives of the court system and the Alaska Supreme Court, attended "Meet Your Judges." This advertised event was a public forum where judges and Alaska Supreme Court justices answered the public's questions.

I expected the Juneau judges to be peppered with questions from disappointed litigants. There wasn't much of that. Instead, the judges fielded mostly thoughtful questions, such as one about whether mentally ill people get caught up in the criminal justice system and one asking for an explanation of the laws for dealing with domestic violence.

Someone asked Presiding Judge Larry Weeks why every clock in the courthouse gave a different time. He explained it was out of his hands and then shared that sometimes he brings in a ladder and adjusts the clocks in his courtroom so at least they agree.

Former Supreme Court Justice Jay Rabinowitz was asked to name the most significant opinion he drafted during his long career. He wouldn't, but he did talk about the accomplishments of the court during his long tenure. Justice Rabinowitz authored over 1,000 opinions before retiring from the court. He is most proud of the work the court did in easing the access to courts, especially in rural Alaska. This made me think of Aguchak v. Montgomery Ward.

Justice Rabinowitz was also proud of the cases where the court applied the constitutional civil liberty rules to Alaska's unique society. This required some sensitivity to the kind of society that Alaskan wants.

Some asked about settlement judges. A consensus of those on the panel strongly encouraged settlement of cases. I had the impression that for some, helping litigants settle a case before trial was one of their most important jobs. This is especially true in child custody cases. We learned from Judge Weeks, that Juneau Superior Court Judge Patricia Collins was an excellent settlement judge. Someone hinted that the secret behind her success was her willingness to deny the litigants access to toilets until they reach consensus. (But she said it was the Girl Scout cookies she used as an inducement to settle.)

This emphasis on settlement shouldn't surprise trial lawyers. Too often American courtrooms form surrogate battlefields where small fortunes are spent on discovery battles and mean-spirited motions.

Justice Walter Carpeneti was asked for tips about oral argument. He began his answer by saying how surprised he is at the number of lawyers who give up their chance to use oral argument to help their cases. He went on to advise lawyers participating in oral argument to be responsive to the justices' questions. Make sure you understand the question and answer it fully. This is the lawyer's chance to convince the justice asking the question. Don't rush your answer so you can complete your prepared presentation.

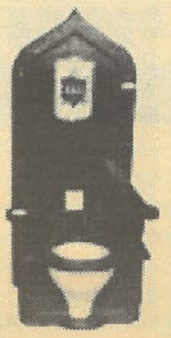
Attorneys should also limit their appeal points. Justice Carpeneti stressed the need for brevity. Written briefs should be as brief as possible. Good points get lost in long briefs. Lawyers should also resist briefing each tiny appeal point. Chief Justice Dana Fabe agreed. She observed that by the time a case is presented for oral argument, a good attorney has distilled it down to a few strong points. The case would be stronger if the distillation process occurred during brief writing.

Humankind has a long association with the W.C.

Back in the good old days of honey buckets, "classic" toilets, and good old library catalog cards for esoteric research, it doubtless would have been difficult to illustrate the state of the art, as it were, on the commode.

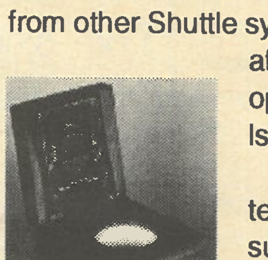
Then arrived the Internet and Web, where a search on "toilets," "loo," "water closet," "outhouse," "Japanese toilet," "bidet," "biffy," "potty," and "flush (not good, yields poker and Las Vegas)" turns up an amazing array on the human bathroom condition. Indeed, there are even websites on the history of the sanitary (and not so sanitary) device.

Take King Louis XIII and Louis the XIV, for example. They frequently gave audience to their subjects while using the toilet. King Louis the XIII actually had a commode under his throne, which prompted his court jester to remark that he found it a bit strange that while the king preferred to eat in privacy, he chose to ease himself public. The replica of throne of Louis the XIII is now on display at the Sulabh International Museum of Toilets. If the Web is to be believed, toilets, apparently, are serious stuff, worthy of at least one worldwide symposium on the subject. (*See* "History of Toilets," a paper presented by Dr. Bindeswar Pathak, Ph.D., D.Litt., Founder, Sulabh Movement at International Symposium on Public Toilets, Hong Kong, May 25-27, 1995.) (http://www.sulabhtoiletmuseum.org/index.htm).



And for space buffs who wonder about such things, NASA has an entire section on the Web devoted to the WCS (*aka* the Waste Control System) aboard the Columbia and other shuttles. One small compartment in the Shuttle's middeck functions as the bathroom for the astronauts in space. The main component stored inside this 29-inches wide area is the WCS, the Shuttle's toilet with all its accessories.

"The WCS is actually a multi-functional system used to collect and process all biological wastes from the astronauts. The main function of the system is to collect and store fecal wastes and to process urine and transfer it to the waste water tank. Other functions include the processing of condensate and waste water from other Shuttle systems. One of the first tasks of the astronauts after reaching space is to activate the WCS for operations," says NASA. (No kidding.) (http://lsda.jsc.nasa.gov/kids/L&W/hygiene.htm)



The always-fashionable French chose to integrate the device into home design, devising such fixtures as a toilet which looked like a bookcase. On this toilet was written the names of literary classics. (Perhaps the origin of the common reading room).

And a company called Jammin Johns has designed lids that, shall we say, spruce up the old powder room for guests, such as its Guitar Loo and Piano Loo. (http://jamminjohns.com/)

Few, however, have done the full-color array of the human creativity for the classic outhouse as depicted in the well-known "Outhouses of Alaska" coffee-table book. But at least one website offers not only a history of the outdoor water-closet, but best-practices instructions on how to build one. (http://waltonfeed.com/old/out.html).

— Sally J. Suddock

Toilet training

Continued from page 16

everything. (But so do the secretaries at my office, so why should I be any different?)

Westerners are a presumptuous lot. Anybody who has traveled to Russia realizes quickly that one of the first pieces of advice to the rookie traveler is to take a stash of toilet paper. There are two reasons for this. Initially, most Russian restrooms do not have toilet paper. Moreover, even if Russian toilet paper is available, it is best left untouched. Russian toilet paper is far more effective for rough sanding on furniture. Anyone who has ever seen the stern facial expressions of the Russian military leaders will understand that the resolve comes directly from the quality and effect of the Russians' toilet paper. When traveling to Russia, a visitor should always take some extra effort to squeeze extra Charmin™ into the suitcase. When leaving, always be polite and leave the Charmin behind for the host. They will be eternally grateful. To the same degree, the portable pack of Kleenex, which our mothers used to tuck into our jacket pockets just before we trudged off to elementary school, also has distinct uses for Russian travelers. Do not waste it on colds. Use the sleeve on your robe for that.

Americans apparently have figured out the Russian toilet paper crisis, which is why American commercial toilet paper normally only comes out of the dispenser at an airport restroom one sheet at a time, no matter how hard one attempts to twist the roll, hand feed it, or take other steps to get a decent share of product. Whether America is facing a toilet paper crisis, or whether it is from the Russians, I cannot say. However, I will concede that I am not impressed with the American process, either. Continental Europeans, by and large, are far much generous in supplying the necessary paper products, and try not to disguise them as cute little bathroom decorations, like their American counterparts. So much for toilet paper.

Finally, if you are ever in a crisis, one can always use the *Bar Rag*. It still beats Sears-Roebuck.

Game plan identifies contacts to keep and cultivate

It is a common occurrence. You attend a CLE program followed by a networking cocktail reception. At the end of the reception, your face is tired from smiling, and all you have to show for your time spent is a fistful of business cards.

What do you do to maximize the value of these cards? What follows is a step-by-step game plan to identify what contacts you should keep and cultivate, and those names to jettison from your Rolodex. Let's assume you left the networking reception with five new business cards.

Step 1: As soon as possible, write a standard letter to send to all the contacts you made. For example, "It was a pleasure talking with you at the ABC Networking Reception. I hope you found the CLE program as useful as I did. Please let me know if you ever are in X city again, perhaps we could have lunch or cocktails." Once you have a standard format, you can personalize each letter with a handwritten note at the bottom of the letter. For example, "I passed on your regards to Jane Doe," "I enjoyed chatting with you about your golf game," "Hang in there with those 'terrible twos' years." This personal, handwritten note saves you time from creating a new letter for each contact.

Step 2: Enter these five names into your Rolodex or electronic database such as Microsoft Outlook, Interaction or Elite's database software. Make sure you include all the information on the business cards. Now the best part: toss those cards into the trash.

Step 3: Categorize these five contacts according to a system that works for you. Favorite categories are referral source, prospect, inhouse counsel, ABA contact, etc. You define the categories as it fits into your practice. Moreover, one contact can have multiple categories. Finally, somewhere in the information, note where you were (ABC Networking Reception) and what you discussed (golf, children).

Step 4: Open your calendar and pick a date three months from the day you finish entering the five names into your Rolodex.

Step 5: Revisit the five names three months later. Now ask yourself:

• Have I written anything of substance to send these five people? · Have I read anything of substance to send these five people?

• Do I feel comfortable calling this person for lunch? · If the contact is not in your geographic locale, but you will be travelling to that contact's city:

• Do I feel comfortable calling this person when I am in town?

Maybe you will answer no to all of these questions. Maybe you will identify something of interest to one of the five contacts; an article on a new golf technique or an article about surviving the 'terrible twos.' If you have written an article on a substantive area of the law, send the article to those contacts you categorized as a "prospect" or a "referral source." Include a handwritten note on the cover letter again stating, "I enjoyed meeting you at the ABC Networking Reception and thought you might find this of interest" to help the contact remember you.

The point is that you revisit these five names every three months. After one year, if you have not sent any of the five contacts even a firm announcement, drop the contacts from your list. Keep a hard copy of the information in a "dropped name" file just in case.

The important thing is to keep your Rolodex clean and up to date. Perhaps only one contact in the five will survive. That is okay, but just make sure you are capturing the information, categorizing the contacts for targeted mailings and reviewing the data periodically.

Once the system is in place, you will find yourself reviewing three to five contacts a month. This will be the beginning of successful marketing behavior that will help you develop a book of contacts and maximize the value of those business cards.

Heather D. Jefferson is the client services coordinator with the law firm of Stradley, Ronon, Stevens & Young, of Delware. Article reprinted from the American Bar Association GP Link newsletter.

HOUSING NEEDED!

Alaska Legal Services will be hosting a NAPIL Public Interest Fellow in its Anchorage office starting in April 2001. Any shared housing or house-sitting arrangements would be very appreciated.

Alaska Legal Services also needs a house-sitting or house sharing arrangment for a 3L from Boalt this coming summer (June - August 2001).

Please contact:
James Davis
Supervising Attorney
Alaska Legal Services
1016 West Sixth Ave, Suite 200
Anchorage AK 99501
907 276 6282
jjdjr2001@yahoo.com

Recently added features to the Alaska Bar website include:

- **CLE Credit History Look Up**
  Type in your bar member number to display the number of banked VCLE credits you have from the previous year and a record of what Alaska Bar CLE seminars you have attended.
- **Event Calendar**
  Pick a type of event, date or location and have the calendar show you what Bar-related events are taking place in your area.
- **Member Directory**
  Look up the bar member number, address, phone, fax and e-mail of Alaska attorneys.
- **Section Webpages**
  Sections are setting up web pages. Find handouts from the latest meeting, general information and other items on these pages.
- **Bar Rag Updates**
  Highlights from the Alaska Bar Rag.

Alaska Bar Association Spring - Summer 2001 CLE Calendar

Date	Time	Title	Location
March 22 NV	1:30 p.m.– 4:45 p.m.	Ethics Is Not A Multiple-Choice Question: A Mandatory Program For New Lawyers In Alaska CLE #2001-888 3.0 Ethics CLEs	Juneau – Centennial Hall
March 23 NV	1:30 p.m.– 4:45 p.m.	Ethics Is Not A Multiple-Choice Question: A Mandatory Program For New Lawyers In Alaska CLE #2001-888 3.0 Ethics CLEs	Fairbanks – Westmark Hotel
April 6	9:00 a.m. – 4:30 p.m.	Depositions: Mastering Technique & Strategy through Control – with Paul Lisnek CLE #2001-003 6.00 General CLEs	Anchorage - Hotel Captain Cook
April 11	9:00 a.m. – 12:00 noon	The Sinfully Simple Will CLE #2001-004 2.75 General CLEs	Anchorage Hotel Captain Cook
April 20 NV	1:00 - 3:00 p.m.	Fairbanks Off the Record CLE #2001-021 2.0 General CLEs	Fairbanks - Westmark Hotel
May 31	9:00 a.m. – 12:00 noon	Estate Planning & Retirement Benefits: The Fundamentals - with Natalie Choate CLE #2001-005 2.75 General CLEs	Anchorage Hotel Captain Cook
June 19	8:30 a.m. - 12:30 p.m.	Revisions to Article 9 of the Uniform Commercial Code: The Essential Update CLE #2001-018 CLE Credits TBA	Anchorage Hotel Captain Cook
August 9 NV	Afternoon	Off the Record with the 9th Circuit Court of Appeals CLE #2001-019 CLE Credits TBA	Anchorage Downtown Marriott Hotel

Bar People

Firm celebrates birthday

Ruddy, Bradley, Kolkhorst & Reges celebrated its 5th birthday in February with the announcement that its affiliate is opening a law office in Sakhalin, the Russian Far East.

Senior attorney William Ruddy practices approximately one third of his time with the international law firm Russin & Vecchi in the Vladivostok office. Russin & Vecchi operates 11 independent but affiliated offices. Its Russian practice group links offices in Moscow, Vladivostok, Washington D.C., Juneau and beginning the first week of April, in Sakhalin.

Ruddy, Bradley Kolkhorst & Reges founding partner Kathy Kolkhorst practices commercial and family law; Robert Reges, who has been with the firm since 1997, is an environmental law specialist with experience in administrative law and compliance with government standards or regulations.

Founding partner James B. Bradley, a specialist in aviation law, passed away in 1997.

Associate attorney Lyudmila Botchkareva has been with the firm since 1999. In October of 2000, she became the first Russian citizen to be admitted to the Alaska bar.

Office manager Arlene Crumrine has been with the firm since 1995; secretary Dee Ojard has worked for the firm since 2000, along with clerk Yana Polyakova.

The law firm is located in the Jordan Creek Center, Suite 223. Phone 789-0047; fax 789-0783, email: rbk@alaska.net, and website at alaska.net/~rbklaw/

—Press Release

White joins Patton Boggs

Patton Boggs has announced that Michael D. White has joined the firm as of counsel in the Anchorage office.

White concentrates his practice in complex civil litigation, employment law, and commercial disputes. He provides strategic litigation counsel to clients ranging from small businesses to large multi-national corporations on a wide range of employment, contractual, and business issues. These issues range from traditional labor law to civil RICO claims, EEOC complaints, administrative law wrongful termination, employment disagreements, complex commercial disputes, sexual harassment, products liability claims, complex litigation, and general legal counseling.

Before joining Patton Boggs, White spent 13 years with the Anchorage law firm of Hartig Rhodes where he was lead trial counsel in cases which successfully recovered over $100 million in civil RICO claims arising out of a political scandal in the North Slope Borough of Alaska. He also has successfully defended employers on a myriad of issues before the State Human Rights Commission, the EEOC, the NLRB, state and federal courts, the Alaska Supreme Court, and the Ninth Circuit Court of Appeals. One noteworthy case involved successfully overturning an NLRB decision that resulted in saving a small electrical contracting company from bankruptcy.

White is President of the Anchorage Bar Association, a member of the Law Examiners Committee, and President of the Muscular Dystrophy Association of Alaska. He is also a member of the Anchorage Transportation Commission, treasurer of the National State High School Mock Championship Inc., and is the founder of the Alaska State High School Mock Trial Competition.

White obtained his J.D. *cum laude* from Willamette University College of Law in 1986 and his B.S. with highest honors from Western Oregon State College. He is admitted to the bars of Alaska, United States District Court for the District Court for the District of Alaska, Ninth circuit court of Appeals, and the United States Supreme court.

— Press Release

Law firm announces changes in Anchorage office

Susan Wright Mason

Ethan Schutt

Tom Dosik

Jeff Jarvi

The law firm of Dorsey & Whitney LLP announced several recent changes in its Anchorage office. Susan Wright Mason, a partner specializing in health care law, has become Of Counsel to the firm. Three new attorneys have recently joined the firm's Anchorage office. Ethan Schutt, a graduate of Stanford Law School, concentrates his practice in commercial transactions. Schutt formerly served as a law clerk to Justice Walter Carpeneti of the Alaska Supreme Court. Tom Dosik, a graduate of Columbia Law School with a graduate degree in tax law from N.Y.U. Law School, concentrates his practice in commercial transactions and litigation. Dosik formerly served as a law clerk for Justice Warren Matthews of the Alaska Supreme Court and as a trial attorney in the Tax Division of the U.S. Department of Justice in Washington, D.C. Jeff Jarvi, a graduate of Vanderbilt Law School, concentrates his practice in litigation. Jarvi formerly served as a law clerk for Justice Warren Matthews of the Alaska Supreme Court.

— Press Release

Michael Stephenson

Andrena Stone

Matt Singer

Firm announces promotions

Jermain, Dunnagan & Owens, P.C. announces W. Michael Stephenson and Andrena L. Stone have become shareholders. Stephenson, with the firm since 1992, practices in the area of public construction, representing primarily school districts and Native housing authorities.

Andie Stone has been with the firm since 1994. Her practice is concentrated in the area of education law.

Matthew Singer joined the firm in September 2000, following his clerkship for Alaska Supreme Court Justice Alexander Bryner. Matt practices in the areas of civil litigation, education and employment law.

Mark P. Melchert rejoined the firm in June 2000, after spending the past two years in Africa. His practice areas include commercial transactions and litigation, and corporate and business law.

— Press Release

Don't miss the 2001 Bar Convention & Judicial Conference
Ketchikan, Alaska
Thurs., Fri., and Sat., May 10, 11 and 12

The Alaska Bar Association's Gender Equality Section &
The Anchorage Association of Women Lawyers

Invite You to the 3rd Annual

Women in the Law Luncheon

In Honor of Women's History Month &
International Women's Day

Judges Who Juggle-

Life for Women Judges On & Off the Bench

Featuring:

Chief Justice Dana Fabe, Presiding Judge Elaine Andrews, and the Women Judges of the Third Judicial District

Susan Reeves, Moderator

Wednesday, March 28, 2001

11:45 AM —1:15 PM • Hotel Captain Cook

$20.00/person

For reservations, please call **566-6257** by Monday, March 26
(Please specify if a vegetarian meal is required.)

Don't Miss This Popular Event!

Help the Bar Historians and Receive a Special Prize

Bring a contribution to the Bar Historian's Archives and you'll receive a special prize and be entered to win a gift basket from Great Harvest Bread Co. New or old photos, clippings, certificates, articles, resumes, or other memorabilia—about anyone in the Alaska legal community, past or present—are all welcome. Help us save our history!

Great Door Prizes!

Justice Matthews speaks on effective appellate advocacy; the Inn ponders the gas pipeline

Continued from page 1

would be much shorter, come close enough to Anchorage to make a spur economically feasible, is already fully permitted, and would have a ready market. In addition, the Yukon Pacific route appears to provide the greatest benefit to Alaskans in the form of delivering gas and jobs.

There was earnest discussion of the merits of some of Lowenfels' positions, and he endured several probing questions regarding the substance of his remarks along with some ribbing for not giving a gardening talk. Considering everyone's nominal occupation as lawyers, a surprising number of the dinner guests had undergraduate degrees in hydrology, geology, and petroleum engineering (or at least they said so). This accounted for some lively questions for Lowenfels. Dinner closed with an announcement by Inn President Diane Vallentine that the April CLE presentation will be conducted by Bankruptcy Judge MacDonald, who has some advice for general practitioners who might find themselves (or their clients) in Bankruptcy Court.

The Anchorage Inn of Court is a local Inn of the American Inns of Court Foundation, an organization dedicated to the advancement of ethics, civility, and professionalism within the practice of law. Loosely structured after the English Inns of Court, the Inn meets once a month from September through May. Each of its meetings begins with a CLE session. Following the CLE meeting there is a dinner with a speaker which, depending on the topic, may be worth an additional CLE credit. Contact Diane Vallentine at 563-8844 for information on the next Inn of Court meeting.

Alaska Law Review students

Duke students trade in warm weather to pursue cold, hard facts

Continued from page 1

miss the opportunity to get outdoors. In Alaska, the wilderness is so accessible," she said. An accomplished cross-country skier, Kemppel hails from a big sports family; her sister Nina is skiing with the United States World Cup Team. Aside from sports, Kemppel is keenly interested in government, which is part of the reason she went to work for Alaska's senior

Denali Kemppel

U.S. Senator, Ted Stevens, after majoring in Government with a minor in Environmental Studies at Dartmouth University in New Hampshire.

"He influenced my decision to go to law school," Kemppel, whose legal interests now include corporate law, said of Sen. Stevens.

Lest anyone think Kemppel's visit will be nothing more than a trip back home to take in the raw Alaskan beauty, she and her seven fellow Duke University law students have little free time in their itinerary.

Tentative activities for the group include a lunch with Justices of the Alaska Supreme Court as well as with the Alaska Court of Appeals; attendance at oral arguments of the Alaska Supreme Court; and multiple one-on-one and group sessions with Alaska legal professionals. Members of the group will be hosted by local attorneys during their stay.

"The goal of the trip is to learn more about our constituents, generate topics for future students' notes, and to encourage members of the legal community to contribute articles about their areas of practice," said Nell Scott, current editor-in-chief of the Alaska Law Review. The students will use the ideas and suggestions from the Alaska trip as they manage the publication during the 2001-2002 academic year.

The Alaska Law Review is a scholarly journal dedicated to publishing articles examining legal issues that affect Alaska, including an annual "Year in Review" summary of important state and federal court decisions rendered in the preceding year. It is the only such scholarly journal covering Alaska law in the United States.

The Alaska Law Review has been published by the Duke University School of Law since 1983.

Appellate Advocacy Tips From Justice Warren W. Matthews

The following points were taken from Justice Matthews' presentation on February 20, 2001 to the Anchorage Inn of Court:

Oral Argument:

- Generally, it is better to request oral argument than to allow a decision on the briefs.
- At oral argument, don't just read your argument. It's fine to have notes, but make eye contact and interact with the judges.
- Oral argument does change minds and may confirm a justice's tentative opinion about the outcome of a case.
- Justices don't confer in advance of oral argument on a case. They will typically have a memorandum regarding the case.
- Justices will have a group conference on cases even if there is no oral argument.
- It is generally a mistake to dwell on the facts in oral argument. Of course, you need to mention important facts, but focus more on your legal arguments.
- It is OK to tell the court that you aren't going to argue a particular point in oral argument, but will defer to the argument on that point in the briefs.
- Give a brief summary of your argument first, then your argument. That way the justices will know what you want to talk about and you will have made your point before questions begin.
- Best way to answer a direct question from a justice is to answer yes or no, then qualify that answer, if necessary, with your response.
- It's OK to ask a justice to clarify a question.
- It's OK to tell the court that you think an issue raised in a question is outside the scope of the case.
- Don't despair in the face of hostile questioning. Stick to your case and make your points.
- Some justices use oral argument as a means of communicating to other justices what they believe to be the weaknesses of a law clerk's position in a clerk's pre-oral memorandum.
- Visual aids at oral argument are OK if they can be seen. Visual aids might be effective in cases where, for example, particular contract language is at issue.

Brief Writing

- The court expects that an appellee will respond to the appellant's argument, but the appellee is not limited to what the appellant argues.
- An appellee may wish to use his or her own organization of argument rather than the appellant's.
- Don't personally attack opposing counsel or the trial judge. Challenge the ruling, not the person.
- Pro per cases are difficult for the court. The court is counting on you to explain what and why something occurred.
- Excellent briefs read like a good narrative or story with no gaps in the story. They contain an objective discussion of the law.
- A summary of argument before each argument can be helpful. Bryan Garner recommends 75 words or less, but that can be a challenge.
- Justice Matthews tends to be in the minimalist camp on points briefed. Focus on 3-5 issues. Try not to dilute your case.
- The appellate court is interested in what the lower court ruled.
- Block quotes are useful, but not if they are too long. It is better to summarize what the cases say in your own words and then give the block quotes you need.
- Your credibility is your stock in trade with the appellate courts.
- The court finds that an unpublished Memorandum Opinion and Judgment ("MOJ") is a fast and accurate way for dealing with some cases. If the case can be resolved with reference to established law, it may be issued as an MOJ.