The Alaska BAR RAG

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Inside:

Experience seems to make people see both sides of issues

Poll says jury service leads to fairness

First-time jurors tend to make judgments before all the facts are in, but those who have previously served as jurors tend to be more fair the second time around, a national poll says.

The fourth annual Juror Outlook Survey, conducted by *The National Law Journal* and DecisionQuest, a national jury consulting firm, involved 1,007 jury-eligible adults questioned between Oct. 15 and Oct. 29, 2001. It found that 63 percent of them had been called to jury duty in the past, and 24 percent had actually served on juries. Of that group, almost 9 of 10 reported having deliberated to a verdict.

"People with prior jury service tended to be more neutral and less favorable toward one or the other," says Michael Biek, a trial consultant with DecisionQuest who analyzed the poll data. "People with jury experience are more familiar with the idea that another side of the story may be coming.

"In a civil context, it's more helpful to a defendant — they're not necessarily going to be biased in favor of the defendant, but they will be more willing to wait for the other side of the story. I would expect this would hold in a criminal context as well."

Indeed, faced with the statement that a defendant's not taking the stand in his own defense meant the person had something to hide, ex-jurors were more likely to disagree than others.

In the civil justice context, the poll suggests that ex-jurors are less likely to be initially biased in favor of the plaintiff in a lawsuit.

"They hear the same instructions again, they hear once again about making no inference," says Sanford Brook, chief judge of the Indiana Court of Appeals and associate director of public programs for the National Institute for Trial Advocacy.

"No matter what side you're on, you have to determine whether or not prior jury service is beneficial to your side and the issues you are putting in front of the jury," he says. "If I'm defending in a criminal case, and my client is not going to take the stand, and there are two people who have already served on jury trial, I want them. But if I'm in the prosecutor's seat, I'm going to want to find a reason to challenge these people for cause."

Younger respondents tended to favor plaintiffs more than older ones. Those with jury experience were generally older, retired, single homeowners with better educations than those with none.

In the context of the Sept. 11 terrorist attacks, ex-jurors were more likely to agree that law enforcement agencies should have more power to conduct investigations, such as by using more wiretaps on phone lines and monitoring Internet use. Respondents with no jury experience were more likely to say that they are unsure. That result, says Brook, reflects the general difference among age groups on law enforcement issues.

OLDER, BETTER-EDUCATED

Of those who served on a jury, 33 percent had master's degrees, and only 6 percent had not completed high school.

Related to this was the breakdown of jury service by income. A full 41 percent of respondents who earned more than $100,000 a year reported having served on

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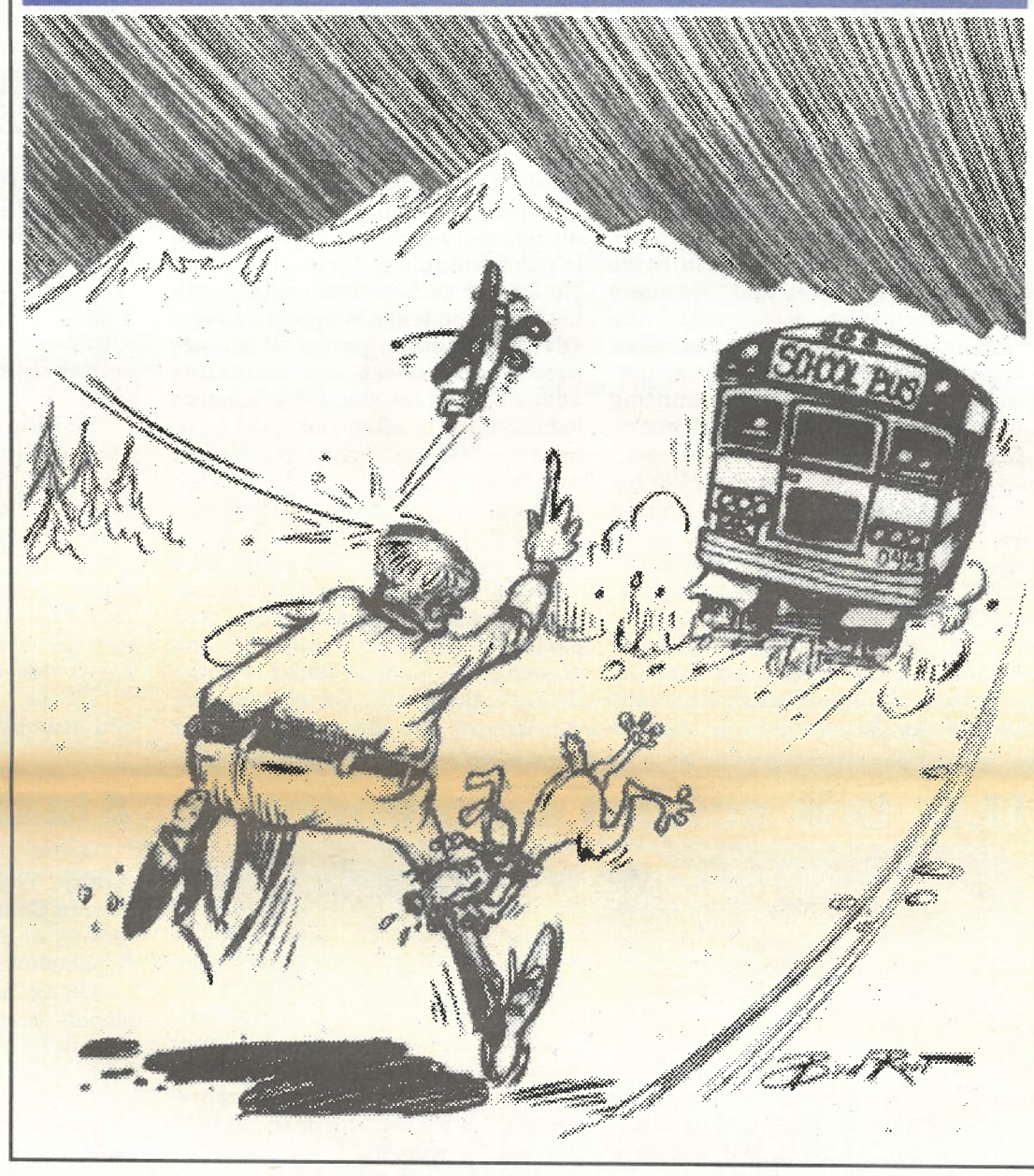
SUFFERING THE STIGMAS OF YOUTH Pg. 18



Alaska Legal Services Corporation hires executive director

Andrew R. Harrington of Fairbanks named ALSC executive director

Alaska Legal Services Corporation has hired Andrew R. Harrington of Fairbanks as its new Executive Director. Mr. Harrington, who most recently served as the supervising attorney of the organization's Fairbanks office, was unanimously selected by the ALSC board of directors following national recruitment efforts and an extensive search committee process. Andy, as he is known by his friends and colleagues, is a long-time resident of Fairbanks and will remain in that community.

ALSC is the state's sole recipient of federal Legal Services Corporation funding and provides high-quality representation and assistance to thousands of low-income Alaskans each year. On a budget of approximately $3 million, ALSC operates nine offices throughout the state and has a staff of 44.

Mr. Harrington, whose legal career at ALSC spans twenty years, has dedicated his professional life to the provision of legal assistance to those in need. Following a clerkship for Chief Justice Jay Rabinowitz in 1980-1981, he served as an associate attorney with the Law Offices of Charles E. Cole in 1981-82 prior to joining ALSC as a staff attorney. In 1996, he became the supervising attorney of the Fairbanks office. He has served as adjunct professor in the Parale-

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Editor's Column

Enron and multidisciplinary practice: No thanks

☐ Thomas Van Flein

In the last few years there has been discussion and perhaps even some controversy regarding limitations on the practice of law relative to partnerships with other professions, such as accounting. The ABA stated that the "most important issue to face the legal profession this century" is the proposed "expansion of professional service entities, principally accounting firms, into the practice of law." The Washington State Bar Association noted that "[i]n many foreign countries, accounting firms are permitted to offer legal services to the firm's clients. There are a number of large international accounting firms (e.g., PriceWaterhouseCoopers, Ernst & Young, Arthur Andersen) openly expressing their desire to become legal service providers around the world. Their goal is to provide legal services along with the traditional accounting services accounting firms currently provide."

With the Enron debacle still coming to light, the whole story remains to be told. What is clear so far is that accounting firms such as Arthur Anderson, in their zeal to provide *all* services to a client (business consulting and supposedly independent auditing, and now legal services), face insurmountable conflicts of interest. No lawyer or law firm could retain true independence in providing legal advice if the other "partners" who are providing business and marketing advice also have a say. What is sound legal advice is often not good business marketing. When the lawyer speaks up with advice that the "business consultants" don't want to hear, whose advice will the client follow? And when things go sour and allegations of negligence and fraud are made, the lawyer and law firm, now partnered up with consultants and accountants, will be listed as a defendant along with the others, irrespective of the advice the lawyer wanted to give.

The first Alaska Bar ethics opinion ever issued stated that it would not be unethical for a law firm to have a branch office "in the same suite as an insurance business so long as care is taken to prevent the insurance business from becoming a means of directing legal business to the law firm." Ethics Op. 68-1.

So, 34 years ago the issue was whether a law firm could even share the same building or office with a non-law firm; today the question is whether they should just go into business together. The Alaska Bar at that time stated that an "association between a lawyer and a public accountant is unethical only when it is or could be used as a 'feeder' of legal business to the lawyer, as an indirect method of advertising the lawyer's services, or as a method of sharing fees or responsibility for legal business between the lawyer and a layman." Ethics Op. 68-1. That, of course, is exactly what multidisciplinary practice advocates seek.

Those in favor of multidisciplinary partnerships focus on the potential for improving client service and providing a choice for legal consumers. They contend that improved client service, along with access to a wider range of resources and technology, plus the inclusion of diverse individuals with different areas of expertise should work well together.

Those opposed to multidisciplinary partnerships stress the role of the lawyer as requiring independent judgment. The New York State Bar Association Commission's report on multidisciplinary practice stated that a law firm may be disqualified from representing a client under our standards for conflicts of interest, but under accounting standards (AICPA rules) an accountant may not be required to be disqualified. The Alaska Bar Association has repeatedly stressed the need for lawyers to retain their independent judgment, reasoning that "[i]n all cases, the lawyer . . . must maintain his or her professional independence, and exercise professional judgment for the sole benefit of the client." Ethics Op. 99-3.

Whatever the potential benefits a multidisciplinary practice could theoretically provide, the potential harm is far greater, particularly to our profession. Somebody has to remain independent. Somebody has to be willing to say, "No, this is not a good idea—perhaps we should not shred the evidence; perhaps we should not hide our losses and artificially inflate our profits." Lawyers have traditionally served their clients well in this regard, and economic expediency is not a good reason to trash hundreds of years of independent thought and deliberative analysis.

As for lawyers joining a multidisciplinary practice, "just say no."

U.S. law school enrollment up, Alaska down

There was an increase of nearly 2,500 students seeking basic law degrees at American Bar Association-approved law schools in fall 2001 compared with the previous year, but that reflected in part the addition of one newly-approved school. The number of male students grew slightly more than did the number of female students. The number of minority students grew, but not as a percentage of the student body.

In Alaska, the opposite trend may be occurring. Just 35 applicants took the February 2002 bar exam here, believed to be the lowest number of applicants in the last 30 years. The highest number of applicants since statistics have been kept was in 1985, when 140 sat for the exam. The previous low was in February 2000, with 46 applicants, reports the Alaska Bar Association.

The freshman law school class in fall 2001 totaled 45,070, an increase of 1,552 students or 3.6 percent, according to newly compiled statistics [by the American Bar Association Section of Legal Education and Admissions to the Bar (http://www.abanet.org/legaled/).] The class included 22,816 men, up from 22,019, who represented 50.6 percent of the total. There were 22,254 first year women students, up from 21,499 the year before. The increases represented 3.6 percent for men and 3.5 percent for women.

Total law school enrollment for a Juris Doctor, or basic law degree, in fall 2001 was up 2,437 from the year before, to 127,610. Also in fall 2001, total law school enrollment, including students seeking advanced law degrees, was up 2,627 students, to 135,091.

The totals include students from six law schools that had been newly accredited in the prior four years, making statistical comparisons potentially misleading, said section officials. These newly accredited schools are at the University of the District of Columbia, Chapman University, Western State University, Florida Coastal School of Law, University of Nevada-Las Vegas and Appalachian School of Law.

Using as a baseline only the schools that were approved by the ABA in fall 1997, the number of students entering law school increased 4.9 percent between 1997 and 2001.

It had been anticipated that women entering law school in fall 2001 would outnumber men, but that did not happen. For the years 1999, 2000 and 2001, the percentages of women in first year classes were 48.7 percent, 49.4 percent and 49.4 percent, respectively. Among all J.D. students, women represented 49 percent in 2001, or 62,476 students, compared with 48.4 percent in 2000, or 60,633 students.

The number of minority J.D. students increased to 26,257 in 2001, a hike of 504 students, or 2 percent, compared with 2000. Among first year students, minorities also increased numerically, from 9,335 in 2000 to 9,557 in 2001. But as a percentage of the whole, minorities only held their ground among all J.D. students, and dropped fractionally among first year students. For 1999, 2000 and 2001, minorities constituted 20.2 percent, 20.6 percent and 20.6 percent of total J.D. enrollment, respectively. In the entering classes for 1999, 2000 and 2001, minority students represented 21 percent, 21.5 percent and 21.2 percent, respectively.

Among the total 26,257 minority J.D. students, 9,412 were Black, 990 were American Indian, 8,421 were Asian, 2,334 were Mexican, 689 were Puerto Rican and 4,411 were other Hispanic. Those totals do not include the 1,821 students enrolled in law schools in Puerto Rico.

The Alaska Bar Rag

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May	April 20
July	June 20
September	August 20
November	October 20

*Note: Publication dates are mid-month

Spring pondering on the P.C. of fish

The debait begins

Ross questions gender P.C.

Dear Justice Bryner:

I have read your decision in the case of *Lake And Peninsula Borough vs. Norquest Seafoods, Inc. et al.* In that decision I note that you refer to "Bristol Bay fishers."

I was born and raised in Wisconsin and have only lived in Alaska since 1968. I didn't know there were fishers in Bristol Bay. We had fishers in Wisconsin. Occasionally we would see their furry little bodies alongside some stream or lake. They were neat little animals and, I am told, are part of the weasel family. Does the Alaska Department of Fish and Game know about the fishers of Bristol Bay? Do you have a picture of one of them? I'd like to see if they look like the fishers we'd see in Wisconsin.

When I mentioned that I was going to write you and ask you about these animals, another attorney in my office suggested that you must have meant "fishermen" when you mentioned "fishers." He told me that there is a group of people (seeking to be "politically correct"), who are trying to change American language to make it less gender specific. He gave me examples such as referring to a "mailman" as a "mailperson." I asked him how a "male person" could not be considered gender specific.

And if you followed the tenets of that group, what would you do to *differentiate between a male person* who works with the U.S. Post Office and a female who works for the Post Office? Would you call one a "male mailperson" and the other a "female mailperson"? In the first case (the male mailperson), if you talked like

A Midwest fisher, possibly migrating to Bristol Bay.

that real folks would think you were a stutterer. And in the second case (the female mailperson) real folks would think you couldn't make up your mind.

My associate then tried to give me another example. He said that these politically correct folks often call a woman chairing a meeting a "chair," rather than calling her a "chairman." I told him that calling a woman a "chair" is almost as bad as calling her a "doormat." Calling one of the ladies a "chair" is very demeaning, and no gentleman would permit such a thing.

"No," I told my associate, no justice of our Supreme Court would belong to such a crazy group.

So send me a picture of a Bristol Bay fisher, if you can get me one.

Thanks a lot.

— Wayne Anthony Ross
Attorney at Law

P.S. I showed this letter to my paralegal. After reading the first paragraph, she wondered aloud whether you had really meant "fissures," rather than "fishers." If that is the case, you don't need to send a picture since I know what those "fissures" look like, having been out to "Earthquake Park" a number of years ago.

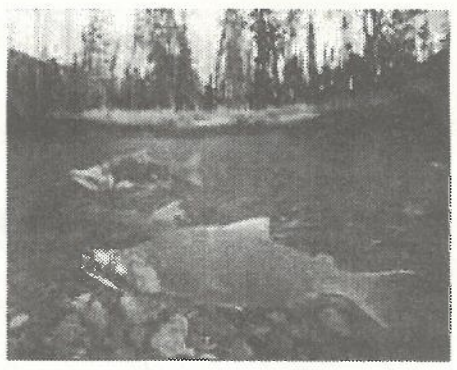
Editor rises to the bait

A brief history of the term "fishers"

Mr. Ross has baited his hook, intending to draw Justice Bryner into his net of linguistic and semantic danger.

We at the *Bar Rag* cast no aspersions on the term "fishers" (though we tend to avoid its use, preferring instead "anglers," "long liners" or "deep sea castabouts," and in the case of Russian trawlers, "poachers."). When referring to those who sport fish (note the third person passive approach that skirts the issue), particularly those who fish with me — "Treble Hook Tom"—the terms "unlucky" or "discouraged" usually modify either "fishers" or "fishermen" or "people trying to fish." Here at the *Bar Rag*, we debaited whether to wade into this issue, reluctant to spawn more controversy. Fearing an imperfect storm may be a-brewing, and not wanting to see Mr. Ross or the court system awash in a sea of confusion, we offer the following history for the edification of our readers.

The first reference to the term "fishers" in Alaska law appears in a head note in *Lind v. Markley*, 13 Alaska 665 (D. Alaska Terr. 1952).



A regular fish — sockeye salmon.

On March 21, 2002, it was reported that the noted shipping industry newspaper, "Lloyd's List," will no longer refer to ships using the feminine pronoun "she." In the future, vessels will be referred to as "it." The English Royal Navy siad through its representative that it would continue to use the female pronoun because it was a part of maritime culture.

The headnote provides that the "custom of ***salmon fishers*** who set gill nets was to respect area used by another fisherman on previous year." There are two obvious drawbacks here: One, this term is in the headnote only, thus, it is not a part of the decision, so it doesn't count. Two, as gender-neutral as that term is, in the same sentence the author falls back on "fisherman" thus obviating any genuine effort at enlightenment and equality. Simply put, this is a clear typo.

The first real use of this term came in *Woods & Rohde, Inc. v. State, Dept. of Labor*, 565 P.2d 138, 150 (Alaska 1977). The author of this decision was, of course, Justice Rabinowitz. In *Woods*, he stated: "In *Nathanson* we concluded that ***fishers*** such as Nathanson could not ***harbor*** an actual subjective expectation of privacy in conducting their crabbing operations in the waters of the state." The significance of this decision is not so much that it is the first real use of the gender-neutral term "fishers," but the pun slipped in there (by some overworked law clerk, no doubt). Using the term "harbor" when referring to a fishing case when it doesn't refer to an actual harbor is, well, kind of funny. Not knee-slapping funny, but sort of funny. Justice Rabinowitz used the term again in his dissent in *Rose v. Commercial Fisheries Entry Com'n*, 647 P.2d 154, 164 (Alaska 1982), discussing "purse seine fishers."

Thus, we go from one obscure and probably incorrect reference in the 1950's, no reference at all in the 1960's (when Mr. Ross points out he arrived in Alaska), one reference in the 1970's, and then, several references in the 1980's. By the 1990's, most of the decisions involving fishing disputes used the term. This sentence, written in 2001, reflects the modern usage of the term: "***Fishers*** and a fish packing company discussed a possible arrangement for compensating the ***fishers*** for roe herring they were to deliver to the packing company." *Magill v. Nelbro Packing Co.*, 2001 WL 995976 (Alaska 2001).

So, there you have it. The scales of justice and the scales of fish sometimes interact, and in the process it is easy to get left behind as our language changes. But don't get hooked on the term "fishers" in today's economic times. It is just a matter of time before we start calling those who fish for a living . . . farmers.

—Tom Van Flein

...And here's a Fisher by another name

Fisher . . . people, folk, types in typical Alaska river.

To: President Bob Cowan, Kenai Peninsula Bar Association, sitting and retired judges, attorneys and other nefarious characters whose livelihoods were basically created by the efforts set forth in the attached Ballad of Jamie Fisher, King of the Kenai Bar.

From: Retired State Parasite Jim Hornaday, whose judicial position also resulted from said efforts.

Re: Ballad of Jamie Fisher created and sung by Jim Hornaday, Roger Holl, Anita Necessary and Judy Queen at the legendary Jamie's retirement from the law practice from whence he was appointed President Jimmy Carter's Assistant to the Secretary of Agriculture for Alaska. (It took Jimmy Carter two years to get around to appointing him and Ronald Reagan 1 month to fire him)

Jamie Fisher
King of the Kenai Bar
1978

He came to Alaska in 58,
Left the State of Texas for the 49th State,
Took over Anchorage so we heard tell,
Married up with Helen and things went well

Jamie, Jamie Fisher,
King of the Kenai Bar

He went off to Juneau to serve a spell,
Fixin up the government and laws as well,
Took over Juneau, so we heard tell,
Tried to move the capital, they gave him hell.

Jamie, Jamie Fisher,
King of the Kenai Bar

He came to the Kenai in 61,
Picking up bottles was his idea of fun,
No one understood what he was trying to say,
He just kept on a mumbling in his own way.

Jamie, Jamie Fisher,
King of the Kenai Bar.

Fought singlehanded for the Kenai Bar,
Traveled through Alaska both near and far,
He submitted resolutions and he knew he was right,
He was in the middle of every bar fight.

Jamie, Jamie Fisher,
King of the Kenai Bar

His land is biggest and his land is best,
From the rocky plains to the mountain crest,
He's ahead of us all and a meetin the test,
Eating lots of peanuts and cleaning up the mess.

Jamie, Jamie fisher,
King of the Kenai Bar

***Best sung to the tune of "Davey Crocket"**
(Submitted by Jim Hornaday)

Anchorage Inn of Court Update

A party for the judges and a status report from Judge Elaine Andrews

By Sam Cason

At its February meeting, the Anchorage Inn of Court hosted a wine tasting reception and welcomed Anchorage's newest judges to the bench, including Judge Sharon Gleason, Judge Mark Rindner and Judge Morgan Christen. Door prizes were given away consisting of various cut gems from India (courtesy of Yale Metzger, who also graciously hosted the event at his house).

At its March meeting, Wayne Anthony Ross chaired the pupilage session regarding conflicts of interest and exercising independent judgment when advising profit or non-profit organizations and boards of directors.

At the dinner session, Judge Elaine Andrews, the Third District Presiding Judge, spoke about the current case load for the court and the time standards for resolving cases. Judge Andrews also shared the following points for counsel to consider:

(1) Counsel should closely examine the real amount in controversy. Too many cases are being filed in Superior Court that should be filed in District Court. Many cases filed in Superior Court are being settled for less than $20,000 and should have been filed in District Court.

(2) Communicate with the court. For example, if a case settles, inform the court immediately. Many pretrial orders require this, and Appellate Rule 221 mandates that if any settlement is reached on any issue while the appeal is pending, the parties "shall immediately file an appropriate notice with the clerk of the appellate courts." Trial judges have limited resources, and if they are not promptly notified of a settlement, they may be working on an order regarding summary judgment or some other issue and you may be wasting their time and slowing down other cases.

(3) Let the trial judge know as soon as possible if your trial estimates are wrong. For example, if a three week trial now looks like it will only take one week, inform the court as soon as possible.

(4) "Notice of Absence" letters: The court has seen an increase in the use of letters from counsel whereby they inform the court of their absence from the office due to a vacation or other plans. Such letters do nothing for the court or counsel. It is every attorney's obligation, including sole practitioners, to arrange coverage counsel while absent. Attorneys cannot leave cases unattended.

(5) Font size. Counsel should comply with the font size requirements set forth in the rules. Younger attorneys may not appreciate the effect of presbyopia on older judges.

(6) All motions require a response in order to be calendared and timely processed. Thus, if you will not oppose a motion, file a notice of non-opposition. Otherwise, an unopposed motion may sit for weeks in the clerk's office waiting to be calendared and the judge may not get this motion on a timely basis.

(7) Proposed orders should not merely state "It is so ordered." The order should be clear and state exactly what is being ordered, even if the order is preceded by a stipulation of the parties.

(8) Do not extend motion deadlines by stipulation so that the motion is ripe only weeks before trial. Dispositive motions and motions for rulings of law should be resolved well before trial.

(9) If you do not get a reasonably prompt ruling from the court, you may write a letter to Judge Andrews asking her to look into this. There can be many reasons why a ruling is delayed, and she can make inquiries.

(10) Time Standards. The trial courts are applying the time standards for case resolution. You can no longer "park your case" with the court.

RECOMMENDED TIME STANDARDS

CASE TYPE		75TH PERCENTILE	90TH PERCENTILE	98TH PERCENTILE
1.	Felonies	120 days	210 days	270 days
2.	Misdemeanors	75 days	120 days	180 days
3.	Civil	365 days	540 days	720 days
4.	Civil post-trials: period from motion ripe to ruling			30 days
5.	Small Claims	75 days	90 days	120 days
6.	Dissolution	60 days	90 days	180 days
7.	Divorce	270 days	365 days	540 days
8.	Post-judgment, motion for custody/ child support	90 days	120 days	180 days
9.	Juvenile Delinquency	75 days	120 days	180 days
10.	CINA adjudication			120 days
11.	Term of Parental Rights: . Filing of petition to adjudication . trial to ruling			 180 days 30 days

ESTATE PLANNING CORNER

The cost of a simple will in 2002

☐ Steven T. O'Hara

The U.S. government recently increased the cost of a simple Will. Here "cost" means a lost opportunity to save taxes and "simple Will" means a Will giving property outright to an individual who then has exposure to taxes.

The amount that may pass free of federal estate tax is known generally as the unified credit amount or, more recently, the applicable exclusion amount. From 1987 through 1998, this amount was $600,000. This $600,000 amount generally created the opportunity for two taxpayers, each with at least $600,000 in assets, to save anywhere from $235,000 to $330,000 in estate taxes. The applicable exclusion amount increased slightly after 1998 and before 2002.

Effective January 1, 2002, the applicable exclusion amount has been increased to $1,000,000. This $1,000,000 amount generally creates the opportunity for two taxpayers, each with at least $1,000,000 in assets, to save anywhere from $435,000 to $500,000 in estate taxes.

For estate-tax purposes only, the applicable exclusion amount is scheduled to increase to $1,500,000 in 2004. Then it is scheduled to increase to $2,000,000 in 2006 and $3,500,000 in 2009. Each increase will result in a greater opportunity to save estate taxes, *provided taxpayers structure their asset ownership, Wills and trusts properly.* (The applicable exclusion amount is scheduled to remain at $1,000,000 after 2002 for *gift-tax* purposes.)

Consider a husband and wife domiciled in Alaska. Both are U.S. citizens. They have no assets outside Alaska and no material debt. Neither has ever made a taxable gift. In their estate planning, they believed they did not need to consider anything beyond simple Wills because they had heard they each may pass, at death, as much as $1,000,000 to their descendants without estate taxes. They figured with combined assets of no more than $2,000,000, or $1,000,000 each, their estates would never be subject to estate taxes. So they signed simple Wills, giving all assets to the surviving spouse outright and to their descendants outright when there is no surviving spouse.

Husband has recently died. His surviving spouse now realizes that with assets of $2,000,000 (being the total value of her assets plus the assets to which she is entitled under her husband's Will), her estate would owe $435,000 in estate taxes if she died in 2002 (IRC Sec. 2001(c) and AS 43.31.011).

Thus the cost of husband's simple Will could be $435,000 in estate taxes. To avoid this tax exposure, the couple could have equalized their estates by separating assets so each owns $1,000,000 separately. Then husband could have signed a Will or living trust giving the applicable exclusion amount to a trust that would be available to his surviving spouse, but would not be included in her gross estate on her subsequent death. In general, husband could have named his surviving spouse trustee of the trust without adverse tax consequences (Adams and Abendroth, *The Unexpected Consequences of Powers of Withdrawal,* 129 *Trusts & Estates* 41 (August 1990) (discussing distribution powers held by a trustee who is also a beneficiary or related to one)).

The opportunity to eliminate or reduce taxes by giving property in trust, rather than outright, is not limited to the married couple. In other words, a simple Will signed by a single individual can also be costly.

Consider a 90-year-old client with net assets of $1,000,000. He is not married and has never made a taxable gift. He has a 65-year-old daughter with her own net assets of $1,000,000. Both the client and his daughter are domiciled in Alaska, and their respective assets are all in Alaska. The client has a simple Will, giving all to his daughter outright.

Suppose the client dies in 2002. His daughter would then learn that with assets of $2,000,000 (being the total value of her assets plus the assets to which she is entitled under her father's Will), her estate would owe $435,000 in estate taxes if she then died (IRC Sec. 2001(c) and AS 43.31.011).

Clients requesting simple Wills need to consider that the simple Will could ultimately cost their families hundreds of thousands of dollars.

First superior court clerk: A 40-year anniversary

By Kenneth D. Jensen

It's hard to believe that 40 years have passed since I graduated from law school and went to work for the Superior Court at Anchorage. I think the circumstances of that employ ment make a good story. Now, being a "crumbly" (an Australian euphemism for "old fart"), I take the liberty of telling it.

My wife Nancy has always been the most important person in my life. But the close second is E. L. (Bob) Bartlett, Senior Senator Emeritus for the State of Alaska. It was he who gave me a job on his staff so that I could attend law school at night. It was he who was my mentor, confirming my youthful belief that the singular polestar of ethical conduct is this: "If it crosses your mind that it is wrong, don't do it." More important to the subject: It was he who got me my first lawyering job as the first ever Superior Court law clerk in Alaska. Here is how it went:

Although I had grown up in Anchorage, my folks were not "downtown" people. Mostly we lived out on Lake Otis Road—then the boondocks. I wanted to be a lawyer but the closest I ever got to lawyers was skipping class at Anchorage High School to sit at the counter at the Oyster Loaf restaurant to listen to folks like John Manders, Bill Renfrew, Roger Cremo, Cliff Groh and George McLaughlin tell lawyer war stories at a booth nearby. The long and short of it is that the only person I ever met in the legal system was Magistrate Rosa Walsh who fined me $50 for throwing a firecracker in front of the old Providence Hospital on L Street.

So, when I got eligible to try to become a lawyer, I was at sea. My energies all had gone into getting there and I had not a clue about how to get a job. Nancy and I, by then, had four kids. We were dead-ass broke and I was scared to death.

I had been offered two jobs. One from Phil Holdsworth, who was a wonderful man and then Bill Egan's Commissioner of Natural Resources. He invited me to be his deputy commissioner. The other was from Rep. Ralph Rivers, a job that would have required us to live in Washington, D.C.

Neither job had much to do with lawyering.

One morning, shortly before I was to complete my last summer session course, Bob Bartlett asked me to come to his office. We sat down and he said: "What are you going to do with your law degree?" I told him about the Holdsworth and Rivers offers.

He said this: "Ken, have you been busting your ass for four years to be a goddamn bureaucrat?"

Near tears, I answered, "No, I want to be a lawyer but I don't know how to get a job. I have to be a law clerk until I pass the bar and I don't know anybody to ask for a job.

He asked, "Who hires law clerks?" I told him that lawyers and courts hire them.

I AM EVEN MORE GRATEFUL FOR HAVING HAD THE OPPORTUNITY TO SERVE IN THE COURT OF JUDGE JIM FITZGERALD WHO RECONFIRMED MY BELIEF THAT THE FIRST AND ONLY RULE OF ETHICAL CONDUCT IS "IF IT CROSSES YOUR MIND THAT IT IS WRONG, DON'T DO IT".

So, here's what happened:

The Senior Senator from the State of Alaska telephoned Superior Court Judge Jim Fitzgerald and said, "Fitz, I got a kid who has worked for me for four years and is graduating from law school. He's a good man and I think he is pretty bright. He needs a job. Do you guys hire law clerks?" After a long pause, the Senator said, "OK, give Ed (Davis) and Ralph (Moody) my best. I was sent on my way with instructions to stand by for further word

About an hour later, I was buzzed into the Senator's office again where I was given a play-by-play of the response. It went like this:

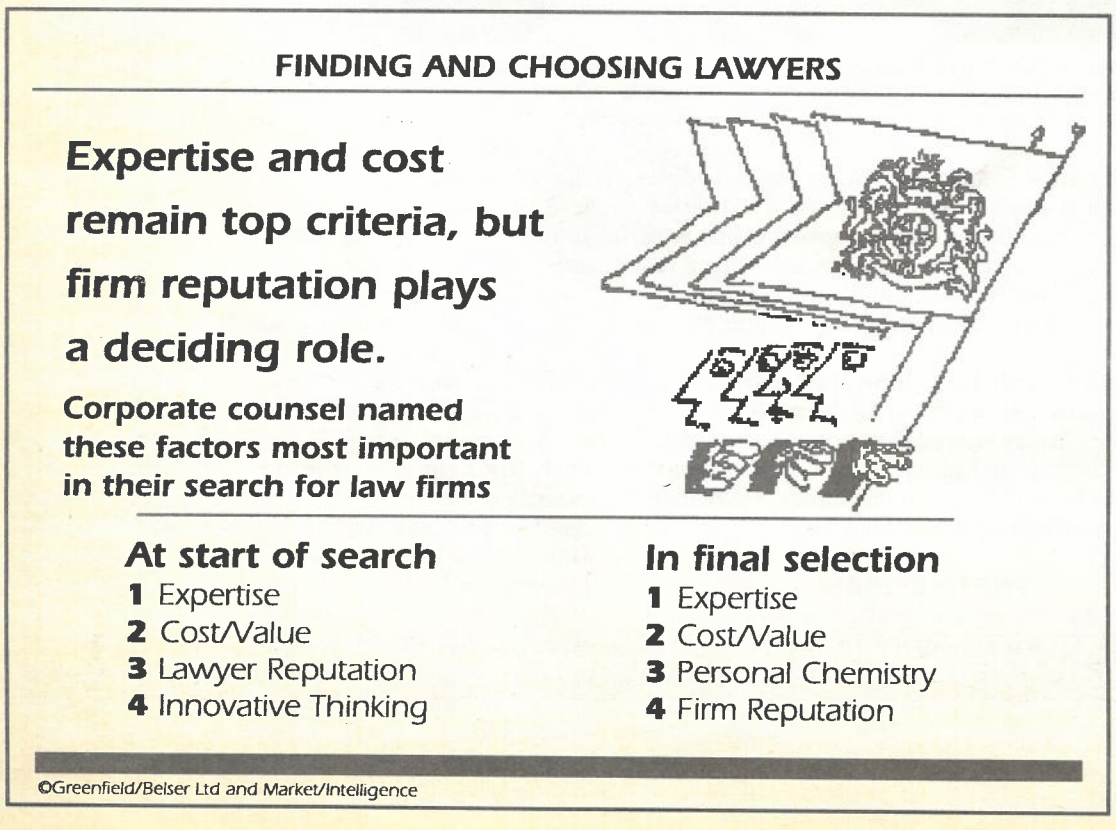
Fitzgerald: "I talked to Ralph and Ed. There are no Superior Court law clerks in Alaska but we think we can squeeze out some money to hire one. I think about the best we can do is $8,200 a year."

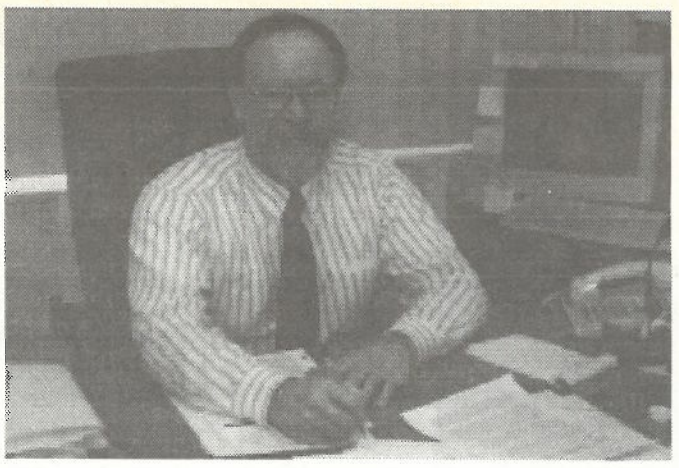
Bartlett: "Let me check. He's making more here but really wants to be a lawyer."

So, that is how it happened, as best as I recall. And, from that humble beginning the Superior Courts of the State of Alaska are now all "clerked up." I guess I am the Superior Court law clerk emeritus.

I am grateful for the opportunity to have been spared the fate of becoming a career bureaucrat. I am even more grateful for having had the opportunity to serve in the court of Judge Jim Fitzgerald who reconfirmed my belief that the first and only rule of ethical conduct is "If it crosses your mind that it is wrong, don't do it".

Thank you Senator. Thank you Judge.





Andrew R. Harrington

Alaska Legal Services Corporation hires executive director

Continued from page 1

gal Studies program at the University of Alaska, Tanana Valley Campus, and as a presenter at numerous Alaska Bar Association CLE's on elderlaw, family law, domestic violence, and Alaska Native law.

Mr. Harrington reflected, "I'm both honored and humbled by this selection. ALSC has a terrific staff of dedicated personnel, an energetic board of directors, a long history of exceptional advocacy under Robert Hickerson's leadership, and a staggering charge to advance the promise of 'equal access to justice' into a reality in Alaska. ALSC will have to evolve as the problems facing Alaska's poor continue to change. The challenge will be to implement those changes creatively, while remaining true to ALSC's fundamental values and mission."

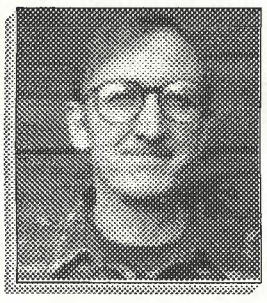
Vance Sanders, Alaska Bar Association appointee to and president of Alaska Legal Services Corporation, is "thrilled" with Mr. Harrington's hiring as executive director. "Andy is a very gifted lawyer who has contributed immeasurably to tribal law in Alaska," said Sanders. But Mr. Harrington's contributions to persons with modest means transcend Alaskans generally and Alaska tribes specifically. "Andy has been committed to low-income persons served by legal services organizations since his law school days at Harvard in the 1970's," said Sanders. "In that time, he has provided invaluable legal advice to indigent persons from Mississippi to Alaska. Most recently, he was the catalyst to the Alaska Supreme Court's decision that there are, indeed, federally recognized Indian tribes in Alaska. Simply put, wherever he has gone, poor people have benefited. By example and commitment, Andy is plainly best able to serve as our organization's executive director in this new era of state/tribal relations. And we are very proud he has honored our organization by agreeing to serve as our executive director."

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

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

ECLECTIC BLUES

Listening ☐ Dan Branch



People have been talking about subsistence since statehood. There has been some yelling, a little dialogue and lots of finger pointing. Organizations have developed banks of speakers ready to give testimony. Churches study the issue and give guidance. Nothing changes. We've all waded through words and emotion for years and got nothing but anger and despair.

The Alaskan Quakers were called to do something about our problem—something that flows naturally from their spirituality. Quakers have a tradition of listening with care to both sides of a conflict. In Alaska they decided to listen, with compassion, to all sides of the subsistence debate.

I was skeptical when I heard of their Compassionate Listening Program. After all, we have been hearing about subsistence since before the McDowell decision. Then I learned that there is a compassionate listening program in the Middle East and decided to sign on as listener.

The program is simple. The Alaskan Quakers send one coordinator and a video camera operator to Alaska towns and villages. They invite listeners and speakers to sit in one of a circle of chairs and introduce themselves. Then, the speakers answer questions that give them a chance to talk about subsistence. Since they care deeply enough about the topic to sacrifice an evening away from their families, they usually have a lot to say.

In Juneau, members of the Tlingit community spoke the first night. I've learned to expect good oratory skills from Tlingit speakers and was not disappointed. They shared stories, not speeches. Each story confirmed the importance of food gathering in their lives.

One of the speakers told how, when living in Washington state, she and her family gathered seaweed and dried it on the roof of their rental house. Her husband talked about how happy he was to find cockles and gum boots in the tide lands near their place. They tried for subsistence even in a city far from their Alaskan home.

Many of the stories confirmed the long Tlingit history of relying upon the land for food, shelter and clothing. We learned the ways that they were taught to show respect for nature and the things it gives you.

BOTH NIGHTS WE HEARD FEAR AND FRUSTRATION FROM THE SPEAKERS. THEY FEAR LOSS OF THE OPPORTUNITY TO CONTINUE ACTIVITIES OF CENTRAL IMPORTANCE IN THEIR LIVES. THEY ARE FRUSTRATED BY GOVERNMENT RULES AND THE LACK OF PROGRESS TOWARD A SOLUTION OF THE SUBSISTENCE CRISIS.

At the end of the evening the listeners were asked to say something. I couldn't summarize all that I had learned that night. I just told them that even though I had been sharing the same streets with them for seven years I had much to learn about their culture.

I expected to listen to sports hunters the next night. The three invited speakers were non-natives but they didn't consider themselves to be sports hunters. Hunting, fishing and gathering are not sports to them. These activities are a source of spiritual satisfaction and a way to strengthen family bonds.

They clearly respected Southeast Alaska's environment and the food they took from it. The speakers recognized a personal responsibility to use the resources wisely. They carefully preserved the food they gathered. When one of the speakers told how much pleasure he took in sharing his catch with his father's friends I realized that he was echoing back words I had heard the night before.

Both nights we heard fear and frustration from the speakers. They fear loss of the opportunity to continue activities of central importance in their lives. The are frustrated by government rules and the lack of progress toward a solution of the subsistence crisis.

At some point, the program coordinator will edit the video tapes made during the Juneau meetings. Each set of speakers will be given an opportunity to watch them. I hope they take the time to do it. Each group has enough in common with the other to justify respect for their differences.

Alaska Law Day 2002 events

Judge Sig Murphy holds court with an Anchorage grade school class during past Law Day activities. Judges and lawyers statewide plan to speak at schools and community events as part of Law Day 2002, coming up on May 1st.

STATEWIDE

This year, the Alaska Court System and the Alaska Bar Association have joined forces to sponsor Law Day 2002. Members of the judiciary, the legal community, and the community at large are helping guide statewide planning efforts. A steering committee of six, chaired by Alaska's Chief Justice Dana Fabe, and an advisory committee of over 20 were formed, with the goal of coordinating events in two major categories: (1) outreach to schools; and (2) outreach to communities.

SCHOOL OUTREACH

A Law Day packet of lesson plans and specific outreach recommendations will be provided to each judicial officer in the state, including the magistrates who serve in Alaska's more remote court locations. All judicial officers were asked to set aside a half-day for Law Day activities, and are being encouraged to focus their outreach efforts on middle schools and high schools. In some larger communities, letters are being sent to the principals, curriculum principals and social studies department chairs of secondary schools, seeking their participation.

The Alaska Bar Association is actively recruiting lawyers to volunteer to speak in the schools, and the committees are working closely with the Young Lawyers Division and the United Youth Courts of Alaska to ensure active participation by these groups as well.

COMMUNITY OUTREACH

The advisory committee includes representatives of Alaska Legal Services Corporation, the Alaska Native Justice Center, the Disability Law Center and other legal organizations that work to improve access to justice. The committee also includes representatives of community groups that celebrate diversity, such as Bridge Builders and the Immigration and Refugee Services Program of Catholic Social Services.

Together with local Law Day coordinators these groups are working to identify and develop community outreach events on the "equal justice" theme, including "Law Day Academy" classes to be taught at courthouses, recreation centers, and other public locations.

PHOTO EXHIBIT

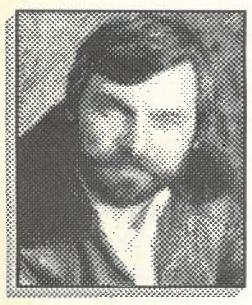
A photo-text exhibit featuring 30 Alaskans who work for equal justice, entitled "The US in JUSTICE...is EVERYONE," will serve as a visual backdrop to Law Day statewide, for both school and community events. Photos of diverse individuals and groups—from peer mediators in elementary schools to Legal Aid lawyers to judges working with the mentally ill—will be accompanied by their statements about what equal justice means to them. The exhibit will be reproduced into posters, and sets of the posters will be distributed to 50 courthouses, schools and community locations, for display during the month of May 2002.

The court system is sponsoring the exhibit with the help of a grant from the Alaska Humanities Forum. Exhibit hosts will be encouraged to hold receptions for the exhibit on Law Day, and to invite judges, lawyers, community leaders, and any community members featured in the exhibit to speak at the receptions on the equal justice theme.

For more information on participating in Law Day, contact Barbara Hood, Alaska Court System Law Day Coordinator,(907)264-8230.

Co-enabling your law office

☐ Joe Kashi



My long time, extremely competent and patient paralegal, Rose Chidester, announced her well-deserved (partial) retirement.

No longer will I be able to simply ask Rose where she had filed a particular document nor expect as a matter of course a flawless billing and accounting cycle, nor could I simply send an e-mail to Rose asking her to work some problems with the medical liens in a personal injury case. Clearly, it's time to start from scratch and to rethink all aspects of my office's automation.

Starting from scratch entailed many decisions, including the overall level of automation and the extent to which I was willing to personally perform tasks formerly done via support staff. Clearly, though, it was time to fully implement some basic "enabling technologies" on a much more consistent basis. Rather than spending a lot of time and money on frills, toys or bleeding edge technology, it seemed important to focus on solid, substantive ways to automate basic day-to-day law office functions in a way which both increases each person's effectiveness and also, by reducing unnecessary effort by skilled staff, increases my office's basic economic efficiency and cost effectiveness.

Few of the "enabling" technologies discussed below work very effectively if your office is not already networked. As a practical matter, wiring a law office with a highly capable local area, whether Microsoft and Novell, whether based upon a simple peer to peer network or dependent upon a central file server, is an obvious necessity. Without networking, a law office cannot communicate effectively and without effective communication, a law office cannot operate efficiently.

Generally accessible data files such as case notes, contact and conflict of interest information, internal Email, and calendaring are about the most basic networking applications imaginable. These basic programs so greatly improve the cost and efficiency of routine intra-office communication that any office that has not already implemented such programs is basically just waiting around for the giant asteroid to hit and cause them to become selectively extinct. Your choice of a basic internal communications program not critical so long as you use a program that allows you to dial in from outside the office to pick up messages while you're out of the office. Many offices like Microsoft Exchange and Outlook. I continue to prefer Office-Logic from LAN-ACES because of its simple interface, ease of use, and wide range of basic functions.

First and foremost among new automation initiatives to reduce unnecessary overhead was the use, to the maximum extent possible, of voice recognition and dictation programs instead of simply providing oral instructions to experienced staff. Switching to voice recognition was relatively easy in some ways because IBM's ViaVoice 9 Pro USB model is quite effective and accurate. I found that the accuracy of IBM's voice recognition software was considerably degraded, almost to the point of unusability, when I failed to use the Plantronics DSP 300 headset included by IBM as part of the Pro USB package. You can buy a complete program set, including USB headset and program at CompUSA for about $220.

Unfortunately, the maximum benefit to be realized from voice recognition technology occurs when you can simply call up voice macros, such as your letterhead already addressed to the appropriate person or call up the pleading captions in a case. Here, unfortunately, ViaVoice is simply not yet up to the task. I found that voice recognition speed and accuracy is clearly best when dictating into IBM's own SpeakPad word processing program rather than when dictating directly into Microsoft Word or into WordPerfect. Dictation directly into an application program tends to result much slower recognition speed, even when used on a very fast computer, and also often results in maddening and erratic operation, particularly wandering cursors and unpredictable deletions.

I also found that ViaVoice speech macros can be created only within IBM's own SpeakPad dictation program. ViaVoice does accurately capture the text of a proposed voice recognition macro very easily but completely fails as a means of directly setting up pleading captions and letters complete with name, address and properly formatted letterhead. Basically, ViaVoice macros lose all font and formatting information, resulting in a relatively useless plain text macro. IBM acknowledges the deficiency in its program but has not advised of any plans to correct it. Until then, a law office's use of ViaVoice 9 will be incomplete and frustrating. Frustrating because the program's basic dictation accuracy and speed is so good even as it wastes your time by forcing you to first manually find a letter addressee's correct address or litigation caption and then manually transfer your basic dictation from SpeakPad into a WordPerfect or Word document in order to set up your letterhead or case caption.

Filing and retrieving documents, obviously, is another major approach to reducing unnecessary staff overhead, allowing one to focus highly trained paraprofessional staff for the skilled tasks for which they are best suited. Over the years, I have worked with quite a number of paperless office concepts, scanners, and programs, but was ultimately content to rely upon experienced professional staff with a deep knowledge of each case. The time had come, though, to transition to electronic document scanning, filing and retrieval with a vengeance. Over the years, I have purchased quite a number scanners but found them to be inadequate or not broadly compatible with many scanning and document imaging programs. After a great deal of research, I settled upon Visioneer's new 9650 scanner with automatic document feeder. You'll have a hard time finding a 9650 in Anchorage at the moment and will find their availability to be limited even ordering through Amazon.com. Still, of the low end business scanners now on the market, the Visioneer 9650 is worth seeking out.

I found, starting with my earlier Visioneer 8650, that the automatic document feeder versions of Visioneer's scanners install easily into Windows 2000 and are broadly compatible with a wide range of imaging programs. Overall, I found that the Visioneer products tended to be less troublesome than the Hewlett-Packard scanners that I had previously purchased. The newest Visioneer scanners, particularly the USB-connected 9650, are clearly optimized for business use. The 9650, when used with the automatic document feeder to scan black-and-white text for document imaging or for optical character recognition, has an impressive (for its price) 12 page per minute scanning speed. Even faster would be nicer, of course, but certainly more expensive. Compared to less compatible, more expensive scanners sold just a few years ago, the Visioneer 9650 is a real buy at its $595 list price, particularly given that it's easy to set up using a standard internal USB port. When you purchase a Visioneer 9650, you'll also receive ScanSoft's PaperPort 7 scanning software and TextBridge OCR software.

I also considered HP's 7450 scanner, which claims a black-and-white to scanning speed of 14 pages per minute, and Epson's 1640SU, which has a scanning speed about half that of the Visioneer 9650. Because of prior unresolved difficulties with HP's automatic document feeders and HP's occasionally troublesome native Twain scanning software, and because of the higher selling price of an HP 7450 scanner, I passed on the comparable HP scanner. In fact, I moved my barely used HP 6250 into the storage room. Neither I nor the HP dealer could ever get its ADF to work consistently and reliably. Epson's 1640SU has received very high customer ratings and is about $175 less expensive

Continued on page 10

Bar People

Former Anchorage DA **Ed McNally** is now General Counsel, Office of Homeland Security, The White House.....**Marty Beckwith** is now counsel with AK Communication Systems (ACS).....**Bruce Brown**, formerly with Eide, Miller & Pate, is now with the PD's office in Bethel.

Nicholas Spiropoulos, formerly with the Anchorage Municipal Prosecutor's office, is now with Davis Black, LLC.....**Stan Ditus** is now in Henderson, Nevada.....**Ray Gardner** is now working for Westmoreland Mining LLC in Colorado Springs.

Eric A. Johnson and **Penny Agallianos** have relocated to Albany, NY.....**Bonnie Lembo** is no longer working at the District Attorney's office in Anchorage.....**Jeff Mayhook** has left in-house corporate practice and has established Mayhook Law, PLLC in Ridgefield, WA.

Michael Sean McLaughlin is now with the Office of Special Prosecutions & Appeals.....**Kevin Morford** has separated from the law firm of Verrett & Morford, and will now be a sole practitioner.....**Tim Verrett** has opened the Law Offices of Timothy C. Verrett.

Linda O'Bannon is now with Dillon & Findley in Anchorage.....Former PD **John Salemi** has opened the Law Office of John Salemi in St. Johns, MI.....**Maj. Burk Voigt** is with the Office of Staff Judge Advocate at Fort Lawton, WA.

Terry Venneberg has relocated to Auburn, WA.....**Vince Vitale** has relocated to Greenville, TX.....**Julie Willoughby**, formerly with Dillon & Findley, has opened the Law Office of Julie Willoughby in Juneau.....**Thomas Yerbich** is the U.S. District Court Rules Attorney in Anchorage as of October 2001. He was also recently named vice chairman of the Consumer Bankruptcy Committee of American Bankruptcy Institute.

Co-enabling your law office

Continued from page 9

than a Visioneer 9650, but the Epson's relatively slow scanning speed disqualified it from my perspective. After all, why spend money to reduce unnecessary staff overhead if you end up paying a staff member to feed a slow scanner?

After the scanner came the scanning software. Visioneer includes PaperPort 7, but ScanSoft's later PaperPort version 8 has many nice features not found in earlier PaperPort products, including a direct link to a Web document repository service, and some excellent graphics manipulation and photo editing features that would be useful when preparing exhibits. I've seen PaperPort selling for as low as $49.95 per copy after rebate at CompUSA. PaperPort 8 works well for small office like mine, particularly when the scanned documents are stored in a separate subdirectory folder for each client rather than in a single large, indexed database. In my office, because the networked word processing program already included separate subdirectories for each client, the simplest solution was to store the client's word processing documents in one folder of a client subdirectory and storing the scanned documents pertaining to a particular client matter another folder in the same subdirectory. Although that's not as elegant as a highly indexed client-server database, this approach is quick, easy, and intuitive for new staff members. It also makes it easy to add scanned documents as individual entries into litigation support programs without a lot of work.

PaperPort's initial set up was rather easy, but I ran into problems when I later decided to add ScanSoft's higher end Omnipage 11 OCR software, which I also purchased because of its ability to output documents in the PDF file format particularly useful for litigation support and for document exchange. Because PaperPort's built in OCR software seems to do a perfectly good job at routine optical character recognition, there's probably is no good reason for small law office to invest in an expensive copy of Omnipage 11 unless you need the ability to directly write PDF files from scanned documents

When I downloaded and installed the Web updates to Omnipage 11 and installed the newest Visioneer scanning software for my earlier 8650 scanner, my previously stable document scanning configuration went haywire, requiring me to reinstall all of my scanning, PaperPort and optical character recognition software. Sometimes, it's best to leave well enough alone.

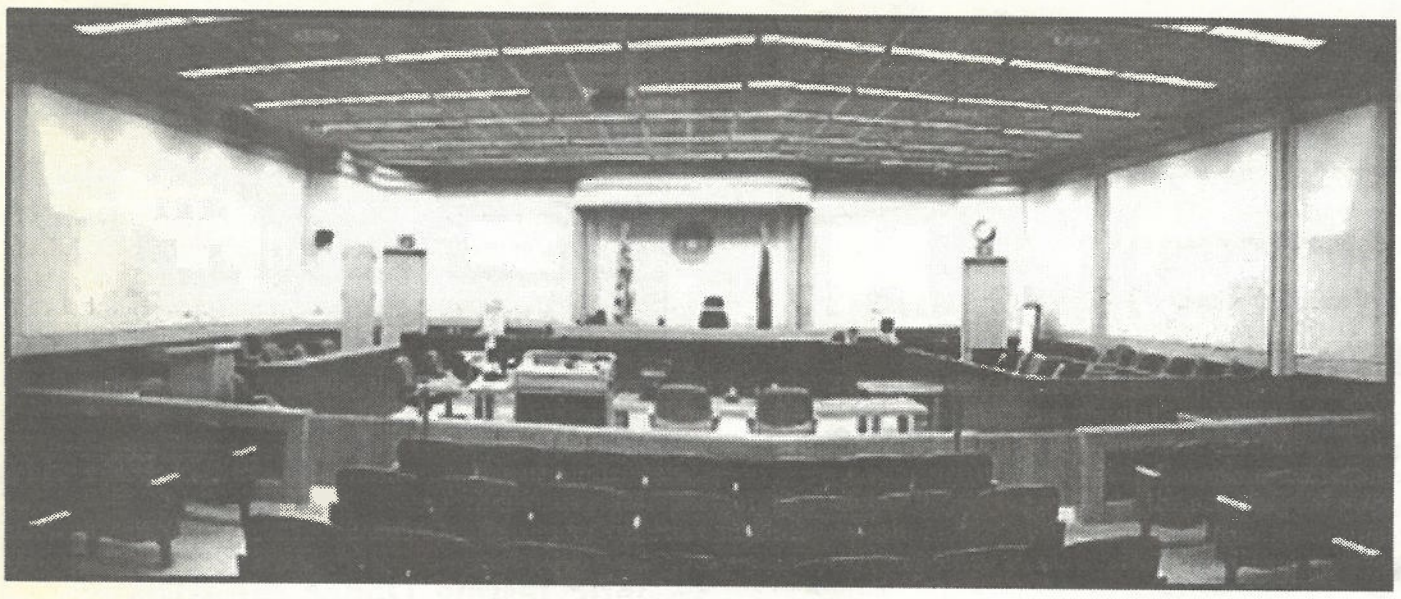
Billing, accounting and case management were the next problems. After considering several programs, Joe chose a five user network versions of PCLaw Jr. 5.5, primarily because of its tightly integrated accounting and billing functions. In the process of setting up PCLaw Jr. 5.5, Joe tried to use the included networked diary, calendar and to-do lists, finding that these functions were likewise integrated with the billing modules, although the setup seems to be, perhaps, less than intuitively obvious. After a while, it became obvious that, compared to many programs, PCLaw is rather inflexible - your initial choices when installing PCLaw are essentially cast in stone and cannot later be undone without a great deal of effort and help from Alumni's technical support. This relative inflexibility cost Joe a lot of time in setting up PCLaw.

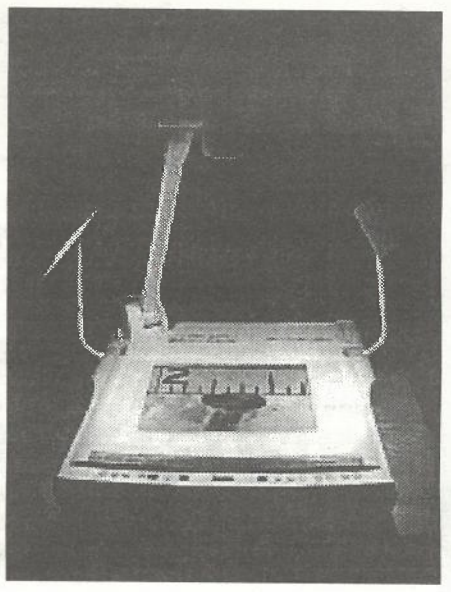
In my next column, a follow-on to this discussion of basic enabling technologies, I'll discuss some useful application programs that integrate several different office functions so that you need only enter calendaring, billing and accounting data once, from your own desk.

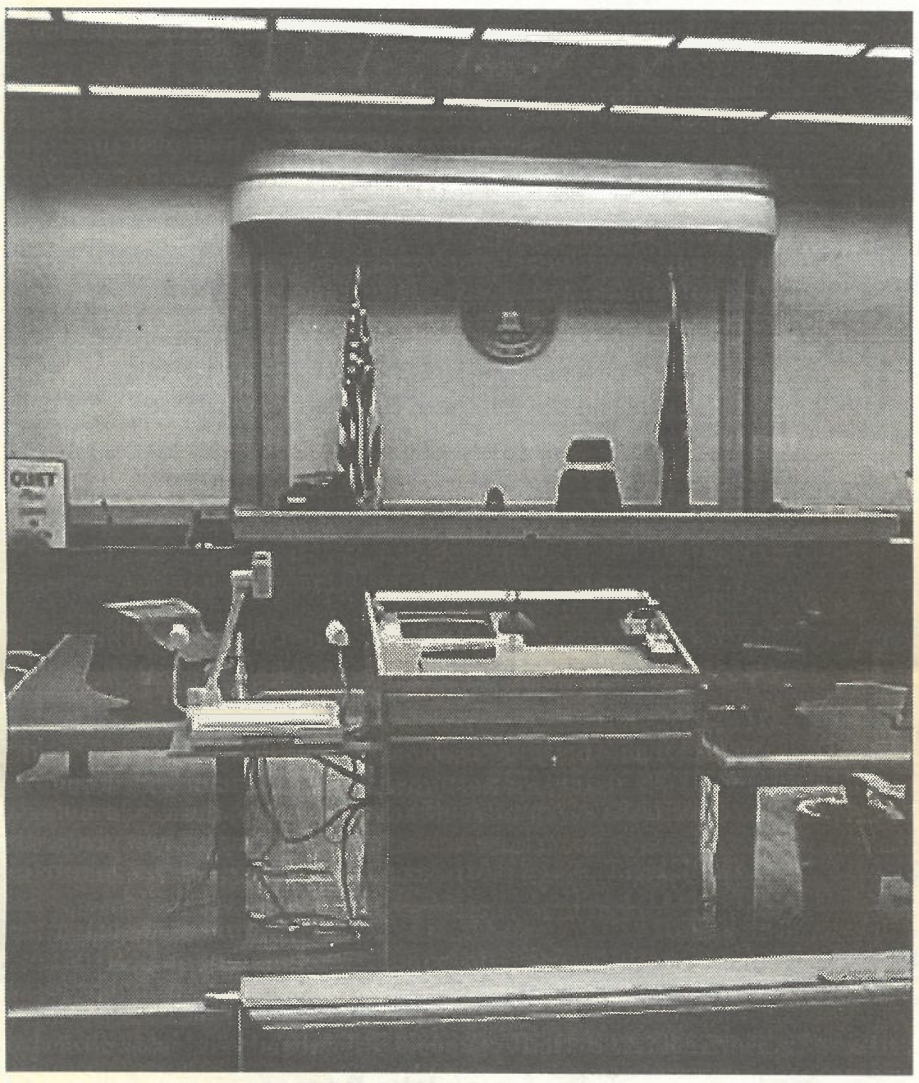
Women in Law Luncheon

Nearly 100 members of the legal community gathered in Anchorage on March 6, 2002, for the fourth annual Women in Law Luncheon. This year's theme was "Women Sustaining the Alaska Spirit: A Commitment to Public Service." Speakers included three women with long-standing careers in the public sector who shared their moving stories about what led them to public service and what held them there: L-R: Chief Shirley Warner Gifford, Chief of Police, Soldotna; Judge Morgan Christen, Anchorage Superior Court, Moderator; Judge Beverly Cutler, Palmer Superior Court; and Arliss Sturgulewski, former legislator and gubernatorial candidate. The Women in Law Luncheon is held each March to celebrate National Women's History Month and International Women's Day. It is co-sponsored by the Anchorage Association of Women Lawyers and the Gender Equality Section of the Alaska Bar Association.

Photo by Barbara Hood







USDC expands technology

By Gene Jansen

The District of Alaska has not only explored the world of digital courtrooms, it has committed many resources for technology-related improvements in its own court. The *Bar Rag* story titled, "Exploring the courtrooms of the future," in December's issue detailed how government and legal institutions worldwide have been expanding their repertoire of digital enhancements and computer training. Some of the tech tools described in the story are cutting-edge advancements, and many of them are now available in Alaska's federal courtrooms.

The District of Alaska recently announced completion of its first video-conferenced criminal proceeding. The successful Juneau-Anchorage hearing and many more like it could drastically reduce travel expenditures. Since the federal judiciary has recently shown its acceptance of new technology through rule modifications, useful courtroom improvements like video-conferencing (VC) may continue to be incorporated into the federal court system. Alaska's VC connectivity includes U.S. District Courts (USDC) in Anchorage, Fairbanks and Juneau.

Other USDC improvements, like the Digital Evidence Presentation Systems (DEPS), have been installed and are fully functional statewide. DEPS training sessions are becoming more frequent and Alaska's legal community is becoming more aware of the benefits of using DEPS during the litigation process. But the District of Alaska's DEPS equipment offers more courtroom advantages than simply placing documents on a light table and zooming in or out.

Although the potential legal implications from using complex graphics presentations in court still need to be addressed, attorneys have the option of preparing them on their personal laptops in advance of proceedings. When their court dates arrive, their complex visual presentations can be easily integrated into the DEPS for in-court viewing.

The District of Alaska has also rewired its courtroom audio systems. The USDC has been recording taped testimony of federal proceedings since the early 80s. Court participants and USDC staff who previously ordered court recordings may have had to wade through hours of cassette tapes to find a minute of needed testimony. Through the USDC's audio improvements – when requesters order a minute of testimony – they receive a minute of testimony on a recordable CD, with no wading.

Like VC and DEPS, the transition from analog recording systems to Digital Audio Recording System (DARS) has also been completed in Anchorage, Fairbanks and Juneau. DARS four-channel technology has helped to make converging voices more isolated and audible while making the duplication and transcription processes more fluid. The USDC has recently installed a networked server designated for storing audio files. It enables electronic court recorders to find and duplicate archived audio files to CDs (for transcribers or other outside parties) directly off the network.

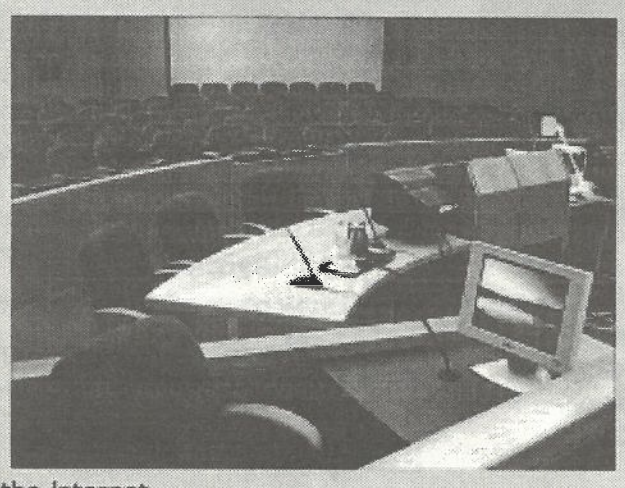
Additionally, the audio appliance provides judicial staff and federal law clerks with a means to locate and listen to court recordings straight from their office PCs.

The District of Alaska is working on many other improvements as well. Wireless microphones have made their way into Anchorage's federal courtrooms. U.S. District Court judges have made the cordless mics available for jurors to utilize during jury selection. The mics help to expedite the jury selection process by minimizing disruptions while increasing the quality of digital audio recordings.

Anchorage, Juneau and Fairbanks courtrooms have also been configured for real-time electronic court reporters. A certified Real-Time Court Reporter (RTCR) in Anchorage has already been utilized in one January trial by court. Case information is available to the public on the Internet through USDC's PACER (Public Access to Court Electronic Records) system. Call the PACER Service Center at (800) 676-6856 for access information.

Opinions posted on website

The 9th U.S. Circuit Court of Appeals is already posting Year 2002 chamber opinions to its Web site. Check the District of Alaska's Web site for recent local postings as the District of Alaska's chamber opinions continue to be published on the Internet.



U.S. Court related Web sites

U.S. Courts: http://www.akd.uscourts.gov/
U.S. District Court: http://www.akd.uscourts.gov/akd/Welcome.nsf/main/page
Chamber opinions: http://www.akd.uscourts.gov/akd/pubBASE.NSF/By+Category
Office of the Circuit Executive: http://www.ce9.uscourts.gov/
9th U.S. Circuit Court of Appeals: http://www.ca9.uscourts.gov/
Federal Judiciary Newsroom: http://www.uscourts.gov/news.html
PACER: http://pacer.psc.uscourts.gov/

Don't Miss the 2002 Bar Convention

in Anchorage!
Wednesday – Friday, May 15, 16, and 17
Hotel Captain Cook

Convention Highlights

Come to the convention –

- ✓ take a break from the usual grind
- ✓ network with peers
- ✓ fulfill your VCLE recommended minimum CLE credits

Convention programs begin 8:30 a.m. daily

WEDNESDAY, MAY 15

Scientific Evidence: The Past, Present and Future
with **Professor Edward Imwinkelried** from UC Davis School of Law – nationally known expert on evidence

Power Editing
with **Gary Kinder**, lawyer; best selling author of *Victim: The Other Side of Murder, Ship of Gold in the Deep Blue Sea* and *Light Years*; and advanced legal writing consultant

Family Law Self-Help Center: A Program Update
A look at how the Alaska Court System is addressing pro se litigant issues in family law with Center Director **Katherine Alteneder**

Ethics for Public Attorneys
with **Peter Jarvis**, Washington State Special A.G. for A.G.'s Ethics Committee; **Jan De Young**, State of Alaska Assistant Attorney General; and Bar Counsel **Steve Van Goor**

Special Programs for New Lawyers:
Primer on Billing Your Clients
Practical Tips on Judgment Collection
Presented by the Anchorage Bar Association Young Lawyers Section

Alaska Bar Annual Business Meeting & Lunch (see page 14)

THURSDAY, MAY 16

U.S. Supreme Court Update
with those fabulous Professors from UCLA and USC - **Peter Arenella and Erwin Chemerinsky**


Professor Erwin Chemerinsky


Professor Peter Arenella

NEW! Alaska Constitutional Law Update
with **Professor Erwin Chemerinsky**

State/Tribal Court Relations: Where Are We Now, Where Are We Going?
with **Vance Sanders**, Law Office of Vance A. Sanders, Juneau, Moderator; **Buddy Brown,** President, Tanana Chiefs Conference, Fairbanks; **Judge E. Ingrid Cumberlidge**, Qagan Tayagungin Village Tribal Court, Sand Point; **Andy Harrington**, Executive Director, Alaska Legal Services Corporation, Fairbanks; and **Judge Larry Zervos**, First Judicial District Superior Court, Sitka
Program co-chairs **Justice Walter Carpeneti**, Alaska Supreme Court and **Donna J. Goldsmith**, Governor's Special Assistant for Rural Affairs

Trial Advocacy Skills, Pt. 6:
Litigating Emotional Damages Cases
with **Larry Cohen**, national consultant on brain injury and emotion damages claims and national speaker on litigation, Phoenix, Arizona, and **Ray Brown** of Dillon & Findley, Anchorage.

Genetic Testing Under the ADA with
EEOC Commissioner Paul Miller, Washington, D.C.

State of Judiciaries Lunch Address
Awards Reception and Banquet

FRIDAY, MAY 17

"The Science Guys": Overview of the Scientific Method
with **Professor Jake Barnes** of Seton Hall Law School and **Dr. Michael Saks** of Arizona State University College of Law

Expert Witnesses: Choosing, Using & Abusing
with **Judge Eric Sanders,** 3rd Judicial District Superior Court, Moderator; **Larry Cohen**, Trial Attorney & Consultant, Phoenix; **Louis Menendez**, Law Office of Louis James Menendez, Juneau; **Craig Stowers**, Clapp, Peterson & Stowers, Anchorage; **Kirsten Tinglum**, Ashburn & Mason, Anchorage

Focus on Special Topics:
Forensic Identification
with **Dr. Michael Saks**

Quantitative Evidence (Statistics)
with **Professor Jake Barnes**

Biomechanics
with **Mark Shattuck,Ph.D.,** Kinetic Engineering, Woodside, CA

Bar Lunch with a Side of Ethics
with Bar Counsel **Steve Van Goor**

Section Updates
- **Employment Law**
- **Environmental & Natural Resources Law**
- **International Law**

Reception
celebrating appointment of **Judge Ralph Beistline** to U.S. District Court.

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Board proposes discipline, pro bono grievance rules

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

ALASKA RULE OF PROFESSIONAL CONDUCT 6.1

PROPOSED AMENDMENT ENCOURAGING 15 HOURS OR MORE OF PRO BONO SERVICE A YEAR

(Additions underscored; deletions have strikethroughs)

RULE 6.1 PRO BONO PUBLICO SERVICE

A lawyer ~~should~~ is encouraged to render 15 hours or more of public interest legal service a year. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Resolution approved by the bar membership at the 2001 annual meeting in Ketchikan.

ALASKA BAR RULE 29:

Following a comprehensive review of the disciplinary process in 1990, the Board issued significant policy directives that ultimately resulted in a re-organization of staff duties in the Discipline Section and the creation of the Board Discipline Liaison to work with bar counsel on a day to day basis. As a result of that coordination, a new intake procedure was developed resulting in a faster review of new grievances filed with the Bar.

In brief, when a grievance is filed, it is reviewed for technical compliance with Bar Rule 22(a) by the Bar's paralegal. If those requirements are met, the grievance is sent by assistant bar counsel to the respondent attorney with the request that the attorney provide a voluntary response to the grievance to aid assistant bar counsel in deciding whether to open a formal investigation.

When the voluntary response is received, or the time for the voluntary response has passed, assistant bar counsel will evaluate the materials and decide whether to open an investigation. If assistant bar counsel decides not to accept the grievance for investigation, the complainant and respondent are notified and no further action is taken on the grievance.

Sometimes a complainant will disagree with the decision not to open an investigation. As a result, bar counsel's office and the Board Discipline Liaison developed an appeal procedure whereby the grievance file would be sent to the Board Discipline Liaison for review. The Liaison can either affirm bar counsel's decision not to open an investigation or direct that an investigation be opened as to one or more allegations in the grievance. Bar counsel has agreed to abide by the Liaison's decision.

This informal procedure is not part of any regulation, Board policy or Bar Rule, but has been uniformly successful in significantly reducing the time previously required for intake decisions. Since 1992, the average intake processing time has been about 37 days.

The proposed amendments would formalize these procedures in Bar Rule 22.

Alaska Rule of Professional Conduct 6.1: Amendments to the current pro bono service rule have been discussed in recent years by the Pro Bono Service Committee, the Access to Civil Justice Task Force, the Alaska Rules of Professional Conduct Committee, and the membership of the Bar Association at several annual meetings—most recently, the 2001 Annual Meeting and Convention in Ketchikan.

The Alaska Rule of Professional Conduct Committee carefully studied a proposal from the Pro Bono Service Committee which had been presented at an earlier annual meeting and concluded that proposed amendment was hortatory, unenforceable, and inconsistent with the current approach to pro bono service. Judicial members of the Committee were particularly concerned that the Code of Judicial Conduct essentially prevented them from meeting the provisions of the proposed rule because judges are not permitted to practice law or give advice on matters which might come before them. Consequently, the Committee voted to recommend no amendment to ARPC 6.1.

However, the Board felt that it was important to encourage lawyers to perform 15 hours or more of public interest legal service a year and so voted at the January 24, 2002 meeting to publish the amendment reflected below.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by May 1, 2002.

BAR RULE 22

PROPOSED AMENDMENT REGARDING GRIEVANCE INTAKE PROCEDURE

(Additions underscored; deletions have strikethroughs)

Rule 22. Procedure.

(a) Grievances. Grievances will be in writing, signed by the Complainant, and contain a clear statement of the details of each act of alleged misconduct, including the approximate time and place of each. Grievances will be filed with Bar Counsel. Bar Counsel will review the grievance filed to determine whether it is properly completed and contains allegations which, if true, would constitute grounds for discipline as set forth in Rule 15. Bar Counsel may require the Complainant to provide additional information prior to accepting a grievance. Bar Counsel may request a voluntary response from the Respondent and consider that response in deciding whether to accept the grievance for investigation. If Bar Counsel determines that the allegations contained in the grievance are inadequate or insufficient to warrant an investigation, (s)he will so notify the Complainant and Respondent. If Bar Counsel does not accept the grievance for investigation and the Complainant disagrees with that decision, the grievance shall be reviewed by the Board Discipline Liaison who may affirm Bar Counsel's decision not to accept the grievance for investigation or may direct that an investigation be opened as to one or more of the allegations in the grievance.

If Bar Counsel accepts a grievance for investigation, (s)he will serve a copy of the grievance upon the Respondent for a response. Bar Counsel may require the Respondent to provide, within 20 days of service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged misconduct. Misrepresentation in a response to Bar Counsel will itself be grounds for discipline. Failure to answer within the prescribed time, or within such further time that may be granted in writing by Bar Counsel, will be deemed an admission to the allegations in the grievance.

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

Comments are sought on proposed amendments to the Local Admiralty and Civil Rules.

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

Written comments on the preliminary draft rules are due no later than May 31, 2002

Address all communications on rules to:

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

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

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CHILD SUPPORT GUIDELINES
Your Chance To Comment

The Child Support Guidelines Rule (Civil Rule 90.3) is being reviewed.

Federal law requires that the guidelines be reviewed every four years to ensure that their application results in the determination of appropriate child support amounts.

The Chief Justice of the Alaska Supreme Court has appointed a committee to review the guidelines. If you wish to suggest changes in the rule or comment on its effectiveness, please send your comments to the following office:

Special Projects
Alaska Court System
820 West 4th Avenue
Anchorage, AK 99501-2005

Deadline for Comments: May 1, 2002

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

Comments are sought on proposed amendments to the Local Bankruptcy Rules.

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

Written comments on the preliminary draft rules are due no later than May 15, 2002

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Rules Attorney
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564

or by e-mail to AKD-Rules@akd.uscourts.gov

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

Should disbarment be permanent?

The Board of Governors invites member comments concerning the following proposed amendments to Alaska Bar Rules 16 and 29:

At its March 14-15, 2002 meeting, the Board considered whether disbarment from the practice of law should be permanent, whether there should be waiting periods after an application for reinstatement has been rejected by the Alaska Supreme Court, and several other amendments to the reinstatement rule.

On the subject of permanent disbarment, the Board decided it would be appropriate to distinguish between attorneys who had been disbarred for grievances filed before the effective date of the new rule and those who are disbarred for grievances filed on or after the effective date of the new rule.

Thus, attorneys who had been disbarred for grievances filed before the effective date of the new rule would retain the ability to apply for reinstatement to the practice of law under Bar Rule 29. However, those attorneys who are disbarred for grievances filed on or after the effective date of the new rule would be permanently disbarred and unable to apply for reinstatement at all.

Regarding waiting periods, the Board decided to publish an addition to Bar Rule 29 which would require a disbarred attorney (otherwise qualified to apply for reinstatement) who has been denied reinstatement by the Supreme Court to wait five years from the effective date of the Court's most recent order denying reinstatement before applying again. In the case of a suspended attorney who had been denied reinstatement by the Supreme Court, the attorney would have to wait two years from the effective date of the Court's most recent order denying reinstatement before applying again.

Next, the Board proposed to expand the period of suspension which would qualify for automatic reinstatement from the present one year to two years.

Finally, the Board proposed to expand the time period in which bar counsel can object to automatic reinstatement of a suspended lawyer from the present 10 days to 30 days.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by May 1, 2002.

BAR RULE 16

PROPOSED AMENDMENT PROVIDING FOR PERMANENT DISBARMENT AFTER AN EFFECTIVE DATE

(Additions are underlined; deletions have strikethroughs)

Rule 16. Types of Discipline and Costs.

(a) **Discipline Imposed by the Court or Board.** A finding of misconduct by the Court or Board will be grounds for

(1) disbarment by the Court which will be permanent with no reinstatement if imposed for grievances filed on or after EFFECTIVE DATE; or

(2) suspension by the Court for a period not to exceed five years; or

(3) probation imposed by the Court; or

(4) public censure by the Court; or

(5) reprimand by the Disciplinary Board.

(b) **Discipline Imposed by the Board or Bar Counsel.** When Bar Counsel has made a finding that misconduct has occurred, the following discipline may be imposed:

(1) reprimand in person by the Board, pursuant to Rule 10(c)(8); or

(2) written private admonition by Bar Counsel, pursuant to Rule 11(a)(12).

(c) **Restitution; Reimbursement; Costs.** When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

(1) restitution to aggrieved persons or organizations;

(2) reimbursement of the Lawyers' Fund for Client Protection; or

(3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof. In imposing costs and fees, consideration shall be given to the following factors:

(A) the complexity of the disciplinary matter;

(B) the duration of the case;

(C) the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;

(D) the reasonableness of the number of Bar Counsel used;

(E) Bar Counsel's efforts to minimize fees;

(F) the reasonableness of the defenses raised by the Respondent;

(G) vexatious or bad faith conduct by the Respondent;

(H) the relationship between the amount of work performed by Bar Counsel and the significance of the matters at stake;

(I) the financial ability of the Respondent to pay attorney's fees; and

(J) the existence of other equitable factors deemed relevant.

(d) **Conditions**. Written conditions may be attached to a reprimand or to a private admonition. Failure to comply with such conditions will be grounds for reconsideration of the matter by the Board or Bar Counsel.

BAR RULE 29

PROPOSED AMENDMENTS ELMINATING REINSTATEMENT IF PERMANENTLY DISBARRED & ADDING WAITING PERIODS AFTER REJECTION OF PETITION FOR REINSTATEMENT & CHANGING THE TIME PERIOD FOR AUTOMATIC REINSTATEMENT

(Additions are underlined; deletions have strikethroughs)

RULE 29. REINSTATEMENT

(a) **Order of Reinstatement.** An attorney who has been disbarred for grievances filed before EFFECTIVE DATE or suspended may not resume practice until reinstated by order of the Court. References to a disbarred attorney or disbarment in sections (b), (c), (e) and (f) of this Rule only apply to an attorney who has been disbarred for grievances filed before EFFECTIVE DATE. An attorney who has been disbarred for grievances filed on or after EFFECTIVE DATE is permanently disbarred and may not apply for reinstatement as provided in this rule. Interim suspension will end only in accordance with Rule 26.

(b) **Petitions for Reinstatement.** An attorney who seeks reinstatement will file a verified petition for reinstatement with the Court, with a copy served upon the Director. In the petition, the attorney shall:

(1) state that (s)he has met the terms and conditions of the order imposing suspension or disbarment;

(2) state the names and addresses of all his or her employers during the period of suspension or disbarment;

(3) describe the scope and content of the work performed by the attorney for each such employer;

(4) provide the names and addresses of at least three character witnesses who had knowledge concerning the activities of the suspended or disbarred attorney during the period of his or her suspension or disbarment; and

(5) state the date upon which the suspended or disbarred attorney seeks reinstatement. An attorney who has been disbarred by order of the Court may not be reinstated until the expiration of at least five years from the effective date of the disbarment.

An attorney who has been denied reinstatement by the Court from disbarment may not file a petition for reinstatement until the expiration of at least five years from the effective date of the Court's most recent order denying reinstatement. An attorney who has been denied reinstatement by the Court from suspension may not file a petition for reinstatement until the expiration of at least two years from the effective date of the Court's most recent order denying reinstatement.

(c) **Reinstatement Proceedings.** Petitioners who have been suspended for ~~one~~ two years or less will be automatically reinstated by the Court unless Bar Counsel files an opposition to automatic reinstatement pursuant to Section (d) of this Rule.

Proceedings for attorneys who have been disbarred or suspended for more than ~~one~~ two years will be conducted as follows:

(1) upon receipt of the petition for reinstatement, the Director will refer

Continued on page 15

Resolution for Alaska Bar Annual Business Meeting and Lunch Noon, Wed., May 15

RESOLVED

That all delegates to the House of Delegates of the American Bar association from Alaska appointed by the Alaska Bar Association and all representatives to the ninth circuit court of appeals appointed by the Alaska Bar Association shall annually report to the membership of the Alaska Bar Association by submitting a report to the Alaska Bar Rag for publication, a summary of their activities on such organizations and report issues and concerns that may be related or relevant to the practice of Law in Alaska.

Adopted by the Juneau Bar association February 2002.

Should disbarment be permanent?

e-mail your response to info@Alaskabar.org or fax to 272-2932

Please circle your response.

1 **Yes.** Practicing law is a privilege, and once you have committed an offense worthy of disbarment, you should never practice again.

2 **No.** Hope and redemption are fundamental human values. People can change and very few things are unforgivable.

3 **Maybe.** Only the most extreme offense warrant a "license death penalty." Permanent disbarment should be addressed on a case-by-case basis.

Comments: _____

_____

_____

Should disbarment be permanent?

Continued from page 14

the petition to a Hearing Committee in the jurisdiction in which the Petitioner maintained an office at the time of his or her misconduct; the Hearing Committee will promptly schedule a hearing; at the hearing, the Petitioner will have the burden of demonstrating by clear and convincing evidence that (s)he has the moral qualifications, competency, and knowledge of law required for admission to the practice of law in this State and that his or her resumption of the practice of law in the State will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive of the public interest; within 30 days of the conclusion of the hearing, the Hearing Committee will issue a report setting forth its findings of fact, conclusions of law, and recommendation; the Committee will serve a copy of the report upon Petitioner and Bar Counsel, and transmit it, together with the record of the hearing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25;

(2) at its next scheduled meeting at least 30 days after receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; the petition will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation;

(3) in all proceedings concerning a petition for reinstatement, Bar Counsel may cross-examine the Petitioner's witnesses and submit evidence in opposition to the petition; and

(4) the retaking and passing of Alaska's general applicant bar examination will be conclusive evidence that the Petitioner possesses the knowledge of law necessary for reinstatement to the practice of law in Alaska, as required under Section (b)(1) of this Rule.

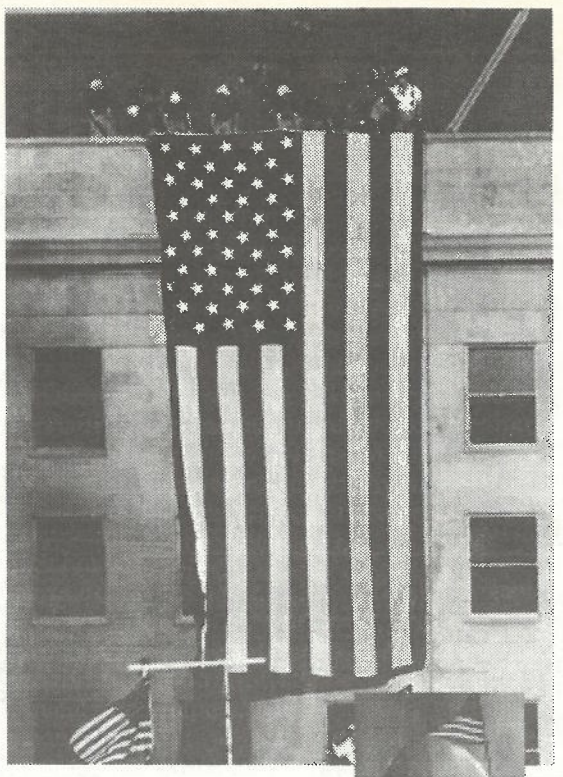
(d) **Oppositions to Automatic Reinstatement.** Within ±30 days after the Respondent files a petition for reinstatement, Bar Counsel may file an opposition to automatic reinstatement with the Court and serve a copy upon the Board and the Petitioner. The opposition to automatic reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Bar Counsel believes demonstrate that the petitioner should not be reinstated.

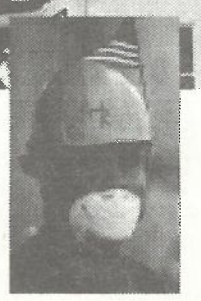
Upon receipt by the Director of a copy of the opposition to automatic reinstatement, reinstatement proceedings will be initiated in accordance with procedures outlined in Section (c)(1)-(4) of this Rule.

(e) **Expenses.** The Court may direct that the necessary expenses incurred in the investigation and processing of any petition for reinstatement be paid by the disbarred or suspended attorney.

(f) **Bar Payment of Membership Fees.** Prior to reinstatement, the disbarred or suspended attorney must pay to the Bar, in cash or by certified check, the full active membership fees due and owing the Association for the year in which reinstated.

A call for an international tribunal





Associated Press photos

Since September 11, the message of the United States has been that terrorism is an international threat whose defeat demands the cooperation of all nations. If terrorism is a threat to all nations, then the trial of terrorist suspects should be in accordance with international law. The United Nations Security Council should create a special tribunal to prosecute those arrested for the crime against humanity committed in the New York City and Pentagon attacks.

For future crimes, the U.S. should ratify the treaty founding the International Criminal Court (ICC). The court will initiate proceedings this year upon ratification by the 60th country, though it cannot adjudicate crimes committed before the treaty is ratified. It would however be the ideal court to try suspects accused in attacks that occur after its ratification.

While the U.S. could try accused terrorists in federal court or a military tribunal, an international court would have several distinct advantages over trials conducted by a single government. First, its verdicts will have infinitely more credibility in all nations – particularly among the one billion Muslims of our world, many of whom have been subjected to decades of anti-American propaganda and are likely to reject any U.S. judicial process. International prosecution would drive a critical wedge between militant fundamentalists who applaud mass murder and adherents of a moderate Islam.

Second, dozens of countries, particularly in Europe, cannot legally extradite terrorist suspects to U.S. courts or tribunals because we insist, against all international norms, upon the use of the death penalty. If we are serious about bringing international criminals to justice we must respect other nation's laws in order to achieve an optimum level of cooperation in intelligence gathering, investigation and prosecution.

Third, referrals to an international tribunal would avoid the dreadful specter of U.S. secret military tribunals – those hallmarks of authoritarian regimes that the U.S. has specifically condemned for years in China, South Africa, Iran, Chile and other former and current anti-democratic regimes. Military tribunals contravene international law, including the Geneva Convention, and are an insult to our history, our sense of fairness, and our Constitution.

WHILE THE U.S. COULD TRY ACCUSED TERRORISTS IN FEDERAL COURT OR A MILITARY TRIBUNAL, AN INTERNATIONAL COURT WOULD HAVE SEVERAL DISTINCT ADVANTAGES OVER TRIALS CONDUCTED BY A SINGLE GOVERNMENT.

For example, in 1999 the Inter-American Court of Human Rights found multiple violations of international human rights by Peru's use of military tribunals.

According to a 1984 decision by the Human Rights Committee (established by the International Covenant on Civil and Political Rights), military tribunals or special courts should only try civilians in very exceptional circumstances and should afford the full guarantees of Article 14 of the ICCPR.

Therefore, anyone tried by a military tribunal must be given the right to be presumed innocent, the right to either self-representation or counsel, the right to confront and cross-examine witnesses, the right to remain silent, and the right to appeal the conviction and sentence. The press and public may be excluded from the trial for reasons of public and national security.

The military tribunals announced by President Bush require a two-thirds vote by the judges (not jury) to convict a defendant. The commission (by a two-thirds vote) sentences the defendant and submits the sentence to either the President or Secretary of Defense for a final, non-appealable decision. In violation of Art. 14 of the ICCPR, the defendant does not have the right to appeal.

Clearly, the trial of an American civilian by a military tribunal would violate our constitution. As a result, the executive order limits itself to those who are not American citizens as of November 13, 2001. However, this distinction creates unequal protection and law and discriminates on grounds of national origin in violation of ICCPR 14(1).

Were the U.S. to support the creation of an ad hoc international court to deal with the September 11th attack, we would be following the successful precedent established by the highly acclaimed and universally respected court trying the cases of those accused of genocide and mass murder in the former Yugoslavia. We would strengthen immeasurably the fight against terrorism in practical and concrete ways. Most important, we would, in one act of humility and respect, acknowledge our full citizenship in the world community and prove to a skeptical world that we are truly in this fight together.

Meanwhile, the support of the United States is crucial to the creation of the International Criminal Court, a permanent independent judicial body established to prosecute the gravest offenses: crimes against humanity, war crimes and genocide. Perpetrators of atrocities almost always escape justice. The court will end the impunity enjoyed by those guilty of torture, ethnic slaughter, rape as a tool of war, summary executions and disappearances of political dissidents and international terrorist attacks. Governments who lack the political will or ability to prosecute their own violators of international law, such as the states of the former Yugoslavia, will see their citizens tried fairly before a world audience.

The ICC will be established in 2002 upon ratification by the 60th country. The ICC can try anyone who commits a named crime in a country that has ratified the ICC. There will be 18 judges on the ICC, drawn from those countries that have ratified the ICC. The ICC will be accountable to an Assembly of State Parties, made up of those countries who have ratified the treaty.

After World War II, the U.S. helped create the International Court of Justice to solve civil disputes between countries. An international court conducted the Nuremberg trials of Nazi war criminals. As recognized in the 1948 Genocide Treaty, nations assumed that there would be a permanent international criminal court.

We now must realize those assumptions and establish a permanent court that will try individuals for crimes against humanity. Our nation should help create, from the ashes of the terrorist targets in our own land, a lasting model of justice and a durable deterrent against those who would commit more of these outrageous crimes against all the citizens of the world.

For more information on the International Criminal Court, please visit the following websites:

- **http://www.iccnow.org**: The International NGO Coalition for the International Criminal Court:.
- **http://www.un.org/law/icc/index.html:** The official United Nations website for the ICC
- **http://www.wfa.org/wicc.html:** Website of the Washington Working Group on the ICC
- **http://www.endgenocide.org**: The Campaign to End Genocide, an initiative of the World Federalist Association

— Submitted by the International Law Section of the Alaska Bar Association.

GETTING TOGETHER

A profession in search of an occupation

☐ Drew Peterson

One of the more depressing commentaries about mediation that I have recently seen is found in an article by Barry Simon, a mediator in Los Angeles County. He commences his article by observing that "after four years of trying to enter the mediation profession, I came to the conclusion that there is no mediation profession." The article gets worse from there. It can be found online at www.mediate.com/pfriendly.cfm?id=877.

Simon did his "research" about the problems of mediation by posting his pessimistic conclusions on the Cornell University DisputeRes listserve, where he asked for comments. The complaints he received from aspiring mediators were myriad, and often contradictory:

- Mediation needs a degree / licensure path like attorneys or therapists.
- Mediators, in order to make any kind of a living, need to promote, promote, promote; being more concerned with marketing than peacemaking.
- Trainers are not up front with their students about the difficulties of the mediation profession.
- Doing "free" mediation hurts the profession, by encouraging the public to think of mediation as a community service rather than as a marketable skill.
- "Professional" mediation is becoming just another fenced off career limited to people with appropriate degrees who can pay thousands of dollars in tuition.
- National mediation associations are not doing the job of creating a real new profession.
- Mediators themselves are not doing enough advocating for themselves and the value of our work.
- Attorneys and law professors see mediation as merely a job for old judges.

Simon concludes that there are lots of frustrated and cynical mediators out there, wondering why it is not possible to make a living out of being a peacemaker.

SIMON CONCLUDES THAT THERE ARE LOTS OF FRUSTRATED AND CYNICAL MEDIATORS OUT THERE, WONDERING WHY IT IS NOT POSSIBLE TO MAKE A LIVING OUT OF BEING A PEACEMAKER.

THE HISTORY OF MEDIATION

Though it has received renewed attention in the past few decades, mediation has been around for centuries. In the federal sector, as well as in labor disputes, mediation has been a major fact of life since the creation of the Federal Mediation and Conciliation Service (FMCS) was founded in 1947.

Unfortunately, this recognition of mediation has not spilled over to the general public. What is needed, Simon asserts, is legislation that encourages all disputants to start with mediation before progressing to arbitration or litigation. Such legislation is unlikely to occur, however, because it would remove power from the judiciary and the bar.

THE POUND CONFERENCE

While mediation has been around for centuries, and was well established in the federal government since 1946, the "modern age" of mediation began in 1976 with the "Conference on the Causes of Popular Dissatisfaction with the Administration of Justice", more popularly referred to as the "Pound Conference". The intention of the Pound Conference was to help create a better system of justice in the United States. Whether or not it succeeded at this task, the conference undoubtedly did succeed at establishing mediation as an acceptable form of dispute resolution, primarily within the judiciary.

According to Simon, two very different points of view emerged from the Pound Conference. The first was Frank Sanders concept of the "multi-door courthouse" whereby disputants would be assisted to choose the conflict resolution process that would best address their particular dispute. The second point of view was the very different belief that the courts were inefficient, oppressive and unfair, and that mediation was a tool by which citizens could take back control of their lives.

SIMON CONCLUDES THAT MEDIATION IS THE PUBLIC'S DISPUTE RESOLUTION PROCESS OF CHOICE. THEY JUST DON'T KNOW IT YET.

No matter which approach was followed, mediation was acknowledged as a valid alternative to litigation. The promise of a new profession was on the horizon. At the same time, however, an on-going turf war began as to who would control the profession, the legal system or the citizenry. Not surprisingly, the legal system has had the advantage. As proof, Simon points to a recent article in the New York Times which refers to mediation as a "branch of law."

MEDIATION POST POUND

After the Pound Conference, Simon asserts that the judges took its suggestions to heart and did incorporate mediation into the court process. But rather than as a separate "door", as suggested by Professor Sanders, mediation has become a part of the litigation track. This has allowed the judges to maintain control over the process and solidify the perception of mediation as a branch of law. At the same time, instead of the disputants choosing the mediators, the attorneys do most of the choosing when told to do so by the judges; or the judges appoint the mediators directly. Meanwhile, many of the mediators were expected to volunteer their services.

According to Simon, this manner of bringing mediation into the legal system put a lid on the development of a serious mediation profession and crushed the promise of mediation glimpsed briefly at the Pound Conference. Ironically, despite their second-class status (according to Simon), court mediation programs have been a smashing success at saving taxpayer money and lightening judges' caseloads.

Even worse, this swallowing of mediation by the courts has had a chilling effect on our official mediation organizations. Whether or not mediation is a branch of law, the professional mediation organizations act as if it is. For example, rather than being advocates for mediators in court programs, they work along side court administrators seeking ways to create better mediation volunteers. Simon believes they should act more like a union, actively working on mediators' behalf to see that their labor is fairly compensated, thereby helping to create respect and value for the profession.

AND THE ANSWER IS?

According to Simon, this domination by the legal system is not going away. If anything, the legal profession will more than likely continue to take over the court mediation programs. The broader question is whether it will also take over the entire mediation profession. Simon fears that it will if we do not free ourselves as a profession from the court's domination.

Simon suggests that we begin by thinking of disputes more broadly. Only 30-40 million Americans out of 281 million take their disputes to the courthouse, he asserts. The other 240 million have disputes as well. We need only look to our own lives to recognize that disputes arise in our workplaces, schools, social organizations, churches, families and other intimate relationships. Thus the opportunities for we mediators to practice our skills is enormous.

Even more significantly, a 1992 Survey by the National Institute of Dispute Resolution concluded that once respondents were made aware of how different dispute resolution options work that 62% of them said they would go to a mediator rather than an attorney, judge or arbitrator. Thus Simon concludes that mediation is the public's dispute resolution process of choice. They just don't know it yet.

The real gatekeepers of disputes are the disputants, not the courts or attorneys. Simon asserts that we make a large mistake as mediators in walking in lock step with the court. Instead, we must create a program whereby the general public 1) becomes aware of mediation 2) puts it before litigation as their primary choice for dispute resolution, and 3) comes to understand that it is useful wherever and whenever disputes arise. Only then will mediation become a true profession. We mediators need to embrace mediation as equal to, not a servant of, litigation.

A PERSONAL PERSPECTIVE

As a professional mediator who has experienced many of the frustrations that Barry Simon speaks of, I found his article to be very provocative. On the one hand I think we have been lucky in Alaska to have avoided many of the turf battles that I have heard described in other states. I am proud of our local mediation organizations in "walking their talk" and being collaborative and inclusive of members from all backgrounds. I think we have made substantial strides towards moulding mediation into a true and independent profession in alaska. Our organizations have been true advocates for the profession, including pursuing efforts for fair compensation and to open the profession to mediators of non-legal backgrounds.

Yet even here in Alaska we mediators are experiencing some of the difficulties which Simon describes. I absolutely agree that we need to encourage public awareness of mediation as an independent profession, separate from the legal system. And Simon's article was an eye-opener for me in recognizing the huge opportunity for marketing mediation outside of the legal system.

Contrary to Simon's assertions, I do believe that mediation is a true profession, and an honorable one. I agree, however, that we continue to face many challenges, and that we could become totally preempted by the legal system if we are not careful.

NEWS FROM THE BAR

Board of Governors action items March 14 & 15, 2002

• Accepted an Area Hearing Committee's recommendation for reinstatement of a suspended lawyer.

• Heard an update on the status of the Board sunset bill.

• Voted on the recipients of the Distinguished Service Award, the Professionalism Award and the Layperson Service Award.

• Voted on another award to be presented at the convention.

• Voted to appoint Susan Orlansky to the Judicial Council.

• Voted to approve 4 reciprocity applicants for admission.

• Voted to approve 4 Rule 43 (ALSC) waivers.

• Approved the minutes of the January Board meeting.

• Tabled the ethics opinion on "Undisclosed Recording of a Conversation by a Lawyer" until the May Board meeting.

• Asked Bar Counsel to draft a proposed ARPC rule that would prohibit taping by a lawyer, for discussion purposes when this rule is brought up in May.

• Voted to publish an amendment to the Bylaws that would reflect "votes" cast rather than "ballots" in a run-off in multiple vacancy elections.

• Voted to publish an amendment to conform the Fee Arbitration rules to the statute of limitations for contract actions in AS 09.10.053 and Bar Rule 38(c)(4) and a housekeeping correction to citation in Bar Rule 37.

• Discussed whether to seek catastrophic insurance for the Lawyers' Fund for Client Protection and decided that Weyhrauch and Winfree should have a conference call with the people from ALPS.

• Voted to pay Mary Guss $5,141 for her work to date as Trustee Counsel in closing out Cliff Smith's practice.

• Devoted part of an afternoon and all of a morning to strategic planning.

• Voted to publish a proposed amendment to the Bylaws which would allow an active Bar member who practices law solely on a volunteer basis, for people who can't afford legal services, for no fee or other consideration at all, to do so and pay the inactive membership fee.

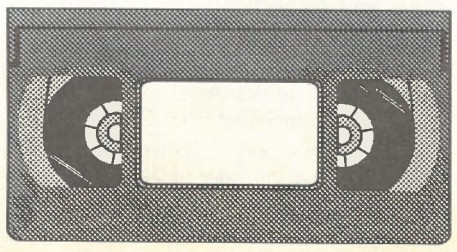
• Voted to publish proposed amendments to Bar Rules 16 & 29 that would make disbarment permenent.

Reserve these dates on your calendar now:

May 15-17, 2002!

2002 CLE Seminar Video Replay Schedule

Replay Locations:



Barrow — **Barrow Courthouse**
CLE Replay Coordinator: Karen Hegyi
Telephone: 907/852-4800/Fax: 907/852-4804

Bethel — **Bethel Courthouse Library**
CLE Replay Coordinator: Patty Nieves, Law Clerk
Telephone: 907/543-1120/Fax: 907/543-4419

Dillingham — **Jury Room, Courthouse**
CLE Replay Coordinator: Joe Faith
Telephone: 907/842-1200/Fax: 907/842-1201

Fairbanks — **Cook Schuhmann & Groseclose Conference Room**
CLE Replay Coordinator: Alena Lajiness/Barbara Schuhmann
Telephone: 907/452-1855/Fax: 907/452-8154

Homer — **Homer City Hall Conference Room**
CLE Replay Coordinator: Ron Drathman
Telephone: 907-235-8121 ext. 2222
Fax: Call 907-235-7207 and get faxing instructions

Juneau — **Dillon & Findley Conference Room**
CLE Replay Coordinator: Tom Findley
Telephone: 907/586-4000/Fax: 907/586-3777

Kenai — **Courthouse Jury Assembly Room**
CLE Replay Coordinator: Bob Cowan
Telephone: 907/283-7187/Fax: 907/283-4753

Ketchikan — **Borough Attorney's Conference Room**
CLE Replay Coordinator: Scott Brandt-Erichsen
Telephone: 907/228-6635/Fax: 907/228-6625

Kodiak — **Law Office of Jamin, Ebell, Schmitt & Mason**
CLE Replay Coordinator: Matt Jamin/Linda Brown
Telephone: 907/486-6024/Fax: 907/486-6112

Kotzebue — **Kotzebue Courthouse**
CLE Replay Coordinator: Judge Richard H. Erlich
Telephone: 907/442-3664/Fax: 907/442-3974

Nome — **Lewis & Thomas.**
CLE Replay Coordinator: Conner Thomas
Telephone: 907/443-5226/Fax: 907/443-5098

Sitka — **Pearson & Hanson**
CLE Replay Coordinator: Brian Hanson
Telephone: 907/747-3257/Fax: 907/747-4977

Parliamentary Procedure
CLE #2002-002; 3.75 General CLE Credits, Live – Anchorage, February 8th

Bethel, 4/19/2002, time tba, Law Library
Barrow, 4/12/2002, 10:00 am, Law Library
Dillingham, 4/12/2002, 10:00 am, Jury Room
Fairbanks, 3/15/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 3/15/2002, 9:00 am, Dillon & Findley
Kenai, 3/22/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 3/22/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 4/6/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 4/6/2002, 10:00 am, Jamin, Ebell et al.
Nome, 3/29/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 3/29/2002, 9:00 am, Pearson & Hanson

International Law with Speedy Rice
CLE #2002-013; 2.0 General CLE Credits, Live – Anchorage, March 7th

Bethel, 5/10/2002, time tba, Law Library
Barrow, 5/3/2002, 10:00 am, Law Library
Dillingham, 5/3/2002, 10:00 am, Jury Room
Fairbanks, 4/5/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 4/5/2002, 9:00 am, Dillon & Findley
Kenai, 4/12/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 4/12/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 4/19/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 4/19/2002, 10:00 am, Jamin, Ebell et al.
Nome, 4/26/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 4/26/2002, 9:00 am, Pearson & Hanson

Evidence in Administrative Proceedings
CLE #2002-005; CLE Credits TBA, Live – Anchorage, March 14th & 15th

Bethel, 6/7/2002, time tba, Law Library
Barrow, 5/10/2002, 10:00 am, Law Library
Dillingham, 5/10/2002, 10:00 am, Jury Room
Fairbanks, 4/19/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 4/19/2002, 9:00 am, Dillon & Findley
Kenai, 4/26/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 4/26/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 6/1/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 6/1/2002, 10:00 am, Jamin, Ebell et al.
Nome, 5/3/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 5/3/2002, 9:00 am, Pearson & Hanson

TALES FROM THE INTERIOR

I'm ok, but you're not

☐ William Satterberg

I didn't know my name wasn't "Dammit Billy" until I was 21. When my friends joined clubs and played baseball, peewee football, and enjoyed other sports, I raked the yard in the summer. I shoveled the snow in the winter. I scooped dog poop in the spring. The family's cat would mess in my room. The neighbor's dog loved to bite me. My sister, Julie, would beat me up without provocation, and the school bus would regularly leave me behind, apparently figuring that an ambulance was on the way. It was not until my 20s before I had a truly "romantic" date. After all, as I had been taught, "Good girls really did not do that type of thing, did they?"

IN SHORT, I HAD A TERRIBLY CONFUSING, DISRUPTIVE, DYSFUNCTIONAL CHILDHOOD. UNDOUBTEDLY, I WAS THE FIRST PERSON TO PUT THE "FUN" BACK INTO DYSFUNCTIONAL.

In short, I had a terribly confusing, disruptive, dysfunctional childhood. Undoubtedly, I was the first person to put the "fun" back into dysfunctional.

Over the years, I have written numerous articles. They are a cathartic experience, and belie the ordinarily very serious, sober side of me.

It was during the composition of one of those massive missives that I asked myself, "Why do I do this?" I had just received a similar question the previous day from attorney Tim Dooley of Anchorage, a friend of mine who occasionally practices law. In fact, Tim had spontaneously said, "Why do you write those articles, Bill? You're the only one who ever reads them." Tim then told me what he thought was wrong with my various masterpieces.

Depressed and alone, I began to analyze myself. I wanted to determine the motivation behind the writings.

I reminisced about my childhood, and my tender growing years. It had been a rough life. "We were so poor," my mom once told me, that "even the maid couldn't afford shoes." Toys were a rarity, even at age 17.

Once, I had longed for a gasoline-powered flying model airplane. The object of my dreams was a P-40 Warhawk. It was a beautiful aircraft. It had brilliant yellow and blue colors, with lots of decals that stared invitingly through a cellophane window on a large, cardboard box. The model was a featured display in the front window of the Spenard Hobby Shop. It was made from genuine plastic.

My birthday, April 1, was fast approaching. As usual, I left hints throughout the house. However, this time, I only wanted a flying model aircraft. As such, I gambled and decided not to offer my parents any cheaper alternatives. Nevertheless, as usual, my parents successfully ignored my entreaties, just like they did at age five for a BB gun. ("You'll put your eye out, Billy." In fact, I didn't get a BB gun until I was 32 years old. It wasn't until years later that I learned that my little sister, Julie, had been pitching my notes.) When my birthday arrived, I was elated. To my surprise, there actually was a big box on the living room table. The size and weight alone told me that it had to contain the object of my affections.

I gleefully tore open the wrapping, only to find that the present was a high wing Cessna Type-170 Birddog, gasoline powered airplane. The model was solid drab green in color. To my dismay, there were no decals, no blue and yellow stripings, and no gaping shark's mouth on the cowling. The puny engine was decidedly smaller than the P-40's. To top it off, the tires were cheap plastic - not real rubber. Clearly, I was not happy. After all, why should I have to fly a light observer craft, when I could have had the spiffy P-40 Warhawk Pursuit Fighter? I once again considered selling the boxed all-occasion cards that were still stacked in the basement in order to win a better prize.

Sensing my enthusiasm, Dad suggested that I might like another new lawn rake, instead, to add to my growing collection. On reconsideration, I decided to give the Birddog a go. Rakes ordinarily did not fly. My only experience with flying rakes to that date had been when I would step on the upturned tines and get smacked soundly in the teeth. The rake would usually fly across the yard shortly thereafter.

I waited for the day when the snow would leave Anchorage. When weather permitted, I figured that I could fly the aircraft around the backyard. If I were lucky, I could maybe even wrap it around a tree and collect on the insurance. It was then that a family acquaintance, with her spoiled son, Ricky, arrived. Ricky was three years my senior. Years later, Ricky would become a successful Anchorage businessman. Unfortunately, I did not know it at the time. If so, I would have handled matters differently.

Ricky's attention was drawn immediately to my Birddog. Ricky arrogantly claimed he knew how to fly it. After all, it was just like the P-40 Warhawk he once had, but much weaker and smaller, of course.

EVERYBODY IN MY FAMILY TOLD ME THAT I'D BE A GOOD FOOTBALL PLAYER BECAUSE I WEIGHED SO MUCH.

Over my protests, Dad announced that "Ricky" could fly my airplane. I began to cry. In response, Mom tenderly told me that I needed to learn to share. After all, Ricky was an experienced pilot. Presumably, he could teach me a thing or two.

This was all my Dad needed: A fellow pilot! Even if the pimply-faced kid was only a teenager, he was still a pilot. As the airfield was readied, I recalled that Ricky had never announced the fate of his own model aircraft. However, it was not until Ricky took off my new airplane, made one complete circle, and then apparently tried to do a vertical loop that the actual depth of Ricky's flying experience became evident. As I screamed in horror, Ricky next aimed my Birddog at the ground. In a last defiant gesture of its tragically short life, the pathetic, little Birddog dove full-speed, nose-first into the driveway. It crashed and was obviously totaled.

Both Dad and myself realized then that Ricky obviously was never destined to be a pilot. Nor would he ever be a compassionate social worker. The wings of my little Cessna had scarcely finished being torn off before Ricky told his mother that it was time to leave. No apologies were given. Instead, they both left, and so ended my model aircraft-flying career.

Fortunately, that night, I was able to salvage some satisfaction when I smeared the entire airplane liberally with a tube of Testor's model glue and lit it on fire. The resulting funeral pyre symbolized the fiery crash of the Red Baron. Although my youthful historical perspective was somewhat off, I still figured that Baron Van Richtoffen would have liked Cessnas. Besides, the Testor's glue made everything seem all right in the end, even if it did give headaches.

Later in life, I decided to pursue football. I was to be a natural. Everybody in my family told me that I'd be a good football player because I weighed so much. My true goal was to be a defensive guard. I would simply block a hole in the line. As such, at age 15, I signed up for sophomore football at West Anchorage High.

I soon learned that senior football players at West High were distinguished. Seniors were entitled to wear long hair. Conversely, first-year, rookie football players traditionally had their heads shaved bare by the upper classmen. It was a hazing. Ordinarily, it was not until a full year on the team that a player could have hair, not that any sophomores could grow hair anywhere else than on their heads, regardless. Unknown to me, my first year at West Anchorage was to be the year of the "longhairs," and those famous NFL players who were regularly chastised as hippies on television by Howard Cosell.

Not to be bullied by upperclassmen, I decided to beat them to the punch. I shaved my head bare prior to the first day of practice. There wasn't even a stubble of hair left on my skull — a prophetic example of my later years. When the first practice was held, however, I was stunned. At the initial turnout, the coach announced that they were no longer going to have rookies' heads shaved. Apparently, some lawyer had filed a lawsuit and hazing was out, except perhaps for the one bald-headed guy in the back row, who obviously was fair game. As the year progressed, I kept changing helmet sizes just to catch up with the growth of fuzz. To boot, my class pictures in the very first annual that I would treasure for the rest of my life were clearly "nerdy," as my two daughters say. (My daughters also say that no one except nerds call "yearbooks" "annuals." Annuals are supposed to be plants. But, for that matter, how do you pronounce "Caribbean," "either," "neither," and "potato"?) In short, in high school, my self-esteem was already well on the ebb.

Some more background is in order. In elementary school, all of my friends had Raleigh 10-speed bicycles. Raleighs were top of the line, with two separate gearshifts mounted on the frame. By contrast, I had a Raleigh knock-off called a "Robin Hood." My Robin Hood only had a single, three-speed thumb switch on the handlebars.

In junior high school, my friends had Honda 55 Super Sport motor scooters. The Hondas were stylish and impressive, complete with uplifted chrome tailpipes. By then, I was finally able to locate a discarded Japanese 10-speed bicycle, even though only half of the gears actually worked. ("Honest, Mom! I found it!") Not that it mattered, since the gear

Continued on page 19

Writer's Guidelines

- Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- Format: Electronic files should be in text, Word, or Word Perfect format. Please use single spaces between sentences.
- Fax: 14-point type preferred, followed by hard copy or disk.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif or .jpg format.
- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.

TALES FROM THE INTERIOR

I'm ok, but you're not

Continued from page 18

reduction ratio was virtually the same, regardless. In the end, I got to keep the bicycle. I thought that it might have something to do with my parents' desire to see me lose weight.

As I grew, my high school friends graduated from motor scooters to cars, and some even eventually graduated from high school. They used to park in the student parking lot, where they learned to smoke cigarettes. In contrast, I was vainly trying to repair a Vespa motor scooter that I had found at the local dumpster.

IT WASN'T UNTIL MY SENIOR YEAR IN COLLEGE THAT I WAS TOLD THAT LAWYERS STOOD PROBABLY A BETTER CHANCE OF A SPORTING SOCIAL LIFE THAN AN INTROVERTED CHEMISTRY STUDENT WHO WORE FADED MADRAS SHIRTS AND WHO LIKED TO MODEL SHIRT POCKET VINYL PEN HOLDERS.

It was not until my senior year, however, that I was actually able to drive a dented Volkswagen Kharman Ghia to school. The classic had its right front fender missing. As a consequence, it would throw mud all over anybody standing or driving within a 30-degree range in front of me. I only drove the car one time, since a fight nearly broke out one April when I riddled the wrestling team captain's vehicle with breakup mud. Had my sister, Julie, the team mascot, not intervened, I likely would have been history. Fortunately, Julie was well known among many high school athletic teams as intensely school-spirited, regardless of which school was involved.

In high school, I loved chemistry. I was a "science nerd." Not that anyone had actually invented the term "nerd" at that time in life. But, if they did, I epitomized it. In fact, I was so much of a science nerd that I didn't go to either the junior prom or the senior ball. Instead, I went to national science symposia. I presented papers on such exciting topics as anaerobic enzymes to audiences of sleeping fellow nerds while university professors, their heads also curiously shaved bare, looked on admiringly from behind black, horn-rimmed glasses.

It wasn't until my senior year in college that I was told that lawyers stood probably a better chance of a sporting social life than an introverted chemistry student who wore faded Madras shirts and who liked to model shirt pocket vinyl pen holders. My repressed hormones raging, I immediately switched into law. It was not until recently, however, that I actually realized that the real reason for my transition was due to, as my 18-year-old, college student daughter, Mari-anne, puts it, "a really low sense of self-esteem, Dad."

In retrospect, law school did not solve my self-esteem problems. If anything, the problems probably worsened.

In fact, first-year law students are exposed to undoubtedly the greatest masochistic group of insecure, anal-retentive sociopaths ever created, otherwise known as law professors. In my humble opinion, with few exceptions, these esteemed "Professors" are the ones who could not hack it in the private world. As such, as total failures, they become law professors, instead, like the twerpy little guy who taught me criminal law.

To satisfy their egos, law professors take out their angst daily upon poor, hapless law students, in much the same way that judges take out their angst upon poor, hapless attorneys.

In addition, every so often, as if to reaffirm their lost lawyerhood, law professors magnanimously take on some "esoteric" public interest case designed to reaffirm the unique nature of forest growth or to answer important questions about whether or not trees have standing, acquiring a wholly unjustified, outrageous attorney's fees award in the process. (There, I feel better already.)

The harassment is a never-ending cycle, which carries on throughout a lawyer's professional career. Eventually, an attorney expects that, upon attaining the elevated level of senior counsel, the spat line should finish. "Not!," as my younger 14-year-old daughter, Kathryn, often defiantly announces at the family dinner table. In fact, the plague only worsens because the community expectations are higher.

Recently, I was involved in a criminal case during which it was suggested that the case was being prosecuted aggressively by the State because I was the defendant's attorney of choice.

Apparently, although the Attorney General had allegedly referred to me as his "very good friend," the claimed intentions on the part of the State reportedly were to prosecute the case much more vigorously due to my involvement. How terrible I felt! I had to examine my status once again. Was this truly a situation where I had brought evil and despair upon my client by virtue of my nerdy namesake? Or was I just the classic pariah? Perhaps, they had simply confused me with attorney Mike Stepovich once again.

During dinner that night, as my wife prepared my favorite can of worms, I considered my future. Should I continue to practice law? Maybe I should become an insurance adjuster, or a car salesman, like others had done before me.

I thoughtfully asked myself the philosophical question, "What do you plan to do when you grow up, Billy?" In response, my family looked at me strangely. An inventory of self-worth was rapidly developing, best kept to myself. Eating heavily, I barely avoided another fit of depression. Fortunately, by my third heaping of dessert, I had rekindled a desire to be even more active in the practice of law. After all, I had to redeem my self-esteem, didn't I? The Satterberg Family honor was at stake.

I THOUGHTFULLY ASKED MYSELF THE PHILOSOPHICAL QUESTION, "WHAT DO YOU PLAN TO DO WHEN YOU GROW UP, BILLY?"

My appetite satisfied, in a moment of rare enlightenment, I recognized that the true reason I was having problems as an attorney was the low self-esteem that had followed me from childhood. I understood that it had all begun when little Ricky, the brat, had crashed my treasured model airplane. Unfortunately, the statute of limitations had long since expired. Realizing that I would have to face the crisis head-on, I immediately began a conscious program of recovery.

Now, after years of private introspection and self-therapy, I have concluded that, once my self-esteem is solidly restored, I will quit the practice of law with honor and dignity. I will move on to other things. I will let my remaining hair grow. I will stuff an earring in at least one ear (left is right), and strive to accomplish what the famous psychologist, Maslow, calls "self-actualization." I might even get a tattoo ("Welcome to Jamaica, Man, Have a Nice Day"). But, no cross-dressing—that is strictly for those California-educated counsel.) In short, I will seek my true inner self.

So, my fellow judges and counselors, the solution to my self-esteem dilemma is actually quite simple, and you are all a part of it! You should all be happy to help. All that needs to be done is for me to win a few multi-million dollar lawsuits, and some virtually un-winnable felony defenses. I then must be asked to sit as an acting judge for a year or so. Superior Court would be nice, of course, but I might even settle for a District Court position if it is not in Barrow or Nenana. (I'm told that it helps the retirement checks.) When all of that happens, I can almost promise that I really will quit law, my many insecurities cured.

The solution, obviously, is not in my hands, for I am but a fly on the proverbial windshield of life. No, the solution clearly rests in the compassionate hands of others, like the judges and my opposing counsel. Hopefully, those mentioned will hear my desperate plea and mercifully assist with my recovery. If so, by giving, they will undoubtedly gain a profound sense of personal satisfaction and fulfillment for themselves. Their elated joy of giving to me will, in turn, be my only gift back to them.

Job Recuitment Notice for Part Time Executive Director of the APBP

The Board of the Alaska Pro Bono Program is recruiting for a part time Executive Director who would be responsible for management and placement of cases which cannot be handled through any Alaska Legal Services Corporation pro bono effort due to Congressional restrictions imposed on federally funded legal services programs and for other program development as required by the Board.

Only those with a demonstrable commitment to equal access to justice need apply.

DOWNLOAD APPLICATION

A full job description is available on the APBP website: www.alaskaprobono.org. Applications will be accepted electronically through the website.

TERRITORIAL LAWYERS POTLUCK

Tuesday, May 14

6:30 p.m.

Mahogany Manor,

15th & Cordova

All pre-statehood lawyers and their spouses are welcome to attend.

Please RSVP to the Bar office at 272-7469 or info@alaskabar.org

The History of the Anchorage Bar Association II

In Part I, we traced the Anchorage Bar Association's history from congenial coffee-shop informality to the heated debates and reprisals that spawned "formal" organization.

BY PAM CRAVEZ

LAWYER DISCIPLINE GETS OUT OF HAND

Under the territorial system all complaints against lawyers went directly to the U.S. Attorney's office for investigation, then to the grand jury for indictment and finally to the territorial court for adjudication. Anchorage bar members rallied behind comrades accused of unprofessional conduct, serving as defense counsel or witnesses, but in 1955 they took a further step, lobbying the territorial legislature to pass the Integrated Bar Act.[5] Anchorage attorney and Speaker of the House, Wendell Kay, introduced the bill creating a territorial bar association.[6]

The Integrated Bar Act of 1955 took the power to discipline attorneys away from the U.S. Attorney's office and court and gave the job of investigating complaints to a new independent Alaska Bar Association. The territory-wide association, with its Board of Governors and power to discipline and admit attorneys, gave a new wrinkle to politics among Alaska lawyers.

During the 1950s more and more attorneys entered the territory, most with law degrees and expectations of a more structured and predictable practice. This gradual shift among lawyers away from the easygoing practice of the 1940s, along with the establishment of the Alaska Bar Association and proposals for a state judiciary, prompted Anchorage lawyers to formalize their own loose association. In the January of 1957 Anchorage attorneys adopted a constitution and bylaws declaring:

This Association is established to promote the Administration of Justice, to maintain the honor and dignity of the profession of the law, and generally to promote the best interests of the legal profession, in so far as the same may not conflict with the public welfare, to promote good public relations, to cultivate friendly social and business relations among its members, and to promote a spirit of friendship and cooperation between the Anchorage Bar and other bar associations within and without the Territory of Alaska.[7]

President of the Anchorage Bar, elected unanimously, was George Grigsby. Buell Nesbett was elected Vice President, L. Eugene Williams was elected secretary and Roger Cremo was treasurer.[8]

Today's "Anchorage Bar Association" descends from the gathering of lawyers presided over by George Grigsby in the 1940s and 50s. The evolution of the association, from simple, informal get togethers, to an organization with a constitution, bylaws, a steady stream of revenue from copy machines, annual family train ride, picnic, Christmas party, and philanthropic endeavors is in large part due to the many changes in Alaska and in the legal profession since the 1940s. Not only has the Anchorage bar grown from a dozen lawyers to over 1,000, but legal practice too has become more technical and rule driven. No longer does one attorney write a contract for all the parties, no longer does one judge preside over the Anchorage court. There are, however, some things about the Anchorage Bar Association that have not changed. It still provides a place for Anchorage attorneys to get together outside the context of cases and court, to socialize outside the adver-sarial relationships of work-a-day life.

THE TERRITORY-WIDE ASSOCIATION, WITH ITS BOARD OF GOVERNORS AND POWER TO DISCIPLINE AND ADMIT ATTORNEYS, GAVE A NEW WRINKLE TO POLITICS AMONG ALASKA LAWYERS.

In the 1950s and 1960s, though, the Anchorage Bar did not shy away from adversarial confrontations.

AN ACTIVIST ANCHORAGE BAR

As Alaska moved toward statehood in the 1950s Anchorage lawyers used their bar association to have a voice in the changes to come. With Grigsby still the ceremonial "President" of the Anchorage Bar Association, Anchorage attorneys elected Buell Nesbett vice president and authorized him to "act" as president. Under Nesbett, the Anchorage Bar reviewed and recommended proposals for the prospective state court system. And the bar spearheaded a successful drive to convince Congress not to reappoint Judge McCarrey to the Anchorage bench.

When the Alaska Bar Association's Board of Governors selected the first three lawyer members of the judicial council —the council which would recommend the first state judicial candidates — Anchorage lawyers rebelled. The three candidates recommended by the board of governors all had a plaintiff orientation. Many Anchorage lawyers feared a "loaded" state court bench.

In 1959, Edward Davis presided over a meeting of the Anchorage Bar at the Loussac Library in downtown Anchorage. Angry lawyers threatened to convene a special meeting to recall the board of governors if the board did not withdraw the judicial council candidates. The Anchorage Bar voted to submit Buell Nesbett's and Raymond Plummer's names to the board of governors to replace one of the three original candidates. Plummer joined Ernie Bailey of Ketchikan and Robert Parrish of Fairbanks as the third lawyer-member of the judicial council. This action of the Anchorage Bar paved the way for Edward Davis to be appointed superior court judge in Anchorage and Buell Nesbett to become the first chief justice of the Alaska Supreme Court.

Although Anchorage lawyers influenced selection of the first judiciary, in particular, the elevation of Buell Nesbett to the highest court, they soon came to regret the result. By the early 1960s, Anchorage lawyers found themselves in a new battle, this time pitted against their former vice president and now Chief Justice, Buell Nesbett.

THE COURT-BAR FIGHT

With statehood a reality and formation of the state court system underway, the backlog of cases before the court began to ease and the level of professionalism increase. Although lawyers appreciated the reforms, the public began questioning the bar's ability to police its own members. A rash of suspensions following statehood slowed to a trickle as disciplinary committees in some cities became bogged down with more work than they could handle.

In Anchorage, Dave Talbot handled disciplinary complaints with a phone call or a visit. "With any luck at all, by five the next night there is no more problem," Talbot recalled. But other cities were less efficient and Justice Nesbett began to believe the Supreme Court should get involved.

In 1964 Justice Nesbett promulgated a new set of bar rules placing the Alaska Bar Association under the Supreme Court and giving the Supreme Court a decisive role in lawyer discipline. The Alaska Bar Association Board of Governors resigned, refusing to serve under Nesbett. When Justice Nesbett sent Court Administrator Thomas Stewart to the First National Bank of Anchorage to take bar funds, the bank cashier requested the trooper accompanying Stewart draw his gun before the funds would be handed over. Within an hour the *Anchorage Times* hit the newsstands and the headline said it all "Court Takes Bar Funds at Gunpoint."

The Anchorage Bar Association took an active role in what has come to be known as the court-bar fight. Justice Nesbett complained about the Anchorage Bar to Alaska State Senator Robert McNealy in a letter dated the day after the bank fiasco:

The Anchorage Bar Association went so far as to create a special committee with one main responsibility — that of causing legislation to be introduced of a type which would harass the supreme court and which might possibly create a rift between the legislature and the court over the Alaska Bar Rules.

Not only did the Anchorage bar lobby legislators, it also actively participated in the resulting suit brought by the Alaska Bar Association against Buell Nesbett.[9] President of the Anchorage Bar, Wendell Kay, along with Anchorage lawyers David Talbot and George Boney, lead Anchorage lawyers in the battle against Justice Nesbett's takeover of the Alaska bar.[10] The three served as co-counsel in a case filed against the Supreme Court by the Alaska Bar Association, along with outside counsel, Joe Ball.

Before the court-bar fight ended in a settlement, Anchorage lawyers, along with lawyers outside of Anchorage, launched a campaign to vote Justice Harry Arend off the Alaska Supreme Court bench. Arend, up for a retention election in 1965, lost his seat in a vote orchestrated by lawyers.

ANCHORAGE BAR CIRCA 1960S

"I started eating lunch with Anchorage lawyers when I was still a law clerk," remembered Ken Jensen, who clerked in the early 1960s. Admitted in 1963, Jensen found the bar fight disturbing.

"I was very supportive of the bar position," Jensen remembered. Meetings of the Anchorage Bar Association during the bar fight took on a life of their own. "A key phrase was, 'Sometimes you have to pick up the bat and walk toward the pitcher,'" Jensen remembered. But he regretted the bar's role in throwing Justice Arend off the bench. "Harry Arend was a fine person."

In the 1960s Wendell Kay was "president for life" of the Anchorage Bar, according to Jensen. "Wendell was very kind and generous to young lawyers.... [He] ran [the bar] as a political patronage deal....There was no bar referral. Everybody who wanted a lawyer was referred to the president of the Anchorage bar....The president could decide to do the work himself or refer it out."

When Jensen joined the Anchorage bar there were only about 30 or 40 lawyers in town. "Many lawyers would attend calendar call on Friday whether they had anything on the calendar or not. Everyone was there and you could see what was going on. It was kind of a social event."

Not coincidentally, the Anchorage Bar Association also met on Fridays in one place or another. Jensen remembered meeting at various times at the Captain Cook, Westward, Elks, and the Mirmac. "We actually perceived that we were transacting business," Jensen remembered.

Jim Powell, who arrived in Anchorage in the late 1960s from Fairbanks, quickly got involved in weekly Anchorage Bar meetings. "You just didn't want to miss one of those meetings because you would be a week behind on what was happen-

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The History of the Anchorage Bar Association II

Continued from page 20

ing," Powell recalled. "During the legislative session they would discuss exactly what a committee was doing and take a position on any conceivable bill that had anything to do with the practice of law. There would be close vote," he added.

Both Powell and Jensen remember one meeting in particular where the topic wasn't legislation but the bar's minimum fee schedule.

"Charlie Hagans made an impassioned plea for the bar association to get over its dead butt.... 'Whatever you do you've got to raise that [minimum] fee to $35.' Because he'd broken away from Delaney's firm at that time... Insurance companies wouldn't pay anything above the minimum fee," Jensen said. "The [minimum] fee was actually lower than anyone was charging," Jensen added.

Throughout the 1960s and into the 1970s the Anchorage bar and bench enjoyed a close relationship. "There was a perception by the court that the Anchorage Bar Association had clout," remembered Jensen. "The bar did have active committees trying to deal with scheduling and pretrial procedures, there was a lot of interactive communications between the bar and bench. Even when [Arthur] Snowden showed up we still had considerable clout. The saga of the copy machines in the library that made the Anchorage bar rich could never have gotten underway without there being an interest on the part of Art Snowden to cooperate with the bar to keep the money from going into the treasury."

COPY MACHINES

In 1975 Alaska Court Administrator Arthur Snowden came to the Anchorage Bar Association and proposed that the association take over the running and maintenance of copy machines in the state law library.

Snowden's problem, remembered Bob Ely, was that if the court system ran the copy machines all revenues would go to the general fund and Snowden would have to apply to the legislature to get them back. The deal with the Anchorage Bar provided a sum to be returned to the state law library and the rest to go to the bar.

Over the years the Anchorage Bar has donated microfiche cabinets, replaced lost or damaged library volumes, and purchased reference books for the library. The arrangement between the Anchorage Bar and the court system has gone through a number of changes. In 1990 the contract was modified to provide the state library with 50 percent of the proceeds, the Anchorage Bar Association 35 percent and the Alaska Bar Association 15 percent. The Anchorage Bar may only use its percentage for legal education, according to Ely.

Copy machines revenues — both from the state court and later from the federal court, where the Anchorage Bar gets 100 percent of the unrestricted funds — have grown over the years, providing an easy way to identify two distinct eras in the Anchorage Bar Association, BC (Before Copiers) and AC (After Copiers).

"Before they had money they just had fun," said Harry Branson. Before Copiers, the Anchorage Bar had little money but enjoyed close-knit socializing and politicking. BC bar members looked forward to weekly luncheons, toppled a Supreme Court Justice, and regularly informed the public of its position on issues with paid advertisements in the newspapers and radio. After Copiers Anchorage Bar Association coffers filled and allowed the organization a philanthropic component. AC members still got involved in issues, such as fighting the appointment of private attorneys in conflict cases, debating the legalization of marijuana, and urging standards for judicial appointment to include "substantial private practice with a broad range of civil practice." But AC, as more and more lawyers joined the Anchorage Bar, fewer had time for weekly luncheons and easygoing socializing.

"NOUVEAU RICHE" ANCHORAGE BAR BOARD SUPPORTS PROJECTS

As attendance at weekly luncheons slowly declined Anchorage Bar board members looked at other ways to serve Anchorage lawyers. With its growing affluence, the board began to change its focus. In 1979 the Anchorage Bar board gave seed money to start the Bar Rag.

"They wanted us to change the name to Centurion or Guardian, then gave the money anyway," remembered Bar Rag founder and first editor, Harry Branson. Over the years the Anchorage Bar continued to support the Bar Rag when it's cash flow lagged.

In the early 1980s the Anchorage Bar provided grant money to conduct an oral history of the Alaska Bar Association. It further supported preserving Alaska's legal history during the Alaska Bar Association centennial. In 1996 the board donated cabinets to house historical memorabilia at the new Nesbett courthouse.

Not only has the Anchorage Bar been interested in historical work, it has also been active in promoting legal education among Anchorage youth. In 1988, the Anchorage Bar Association gave seed money to start the Anchorage Youth Court. The Youth Court, organized and staffed by the Alaska Bar Association's Young Lawyer's Association (also financially supported by the Anchorage Bar), gives Anchorage teens a peer forum for resolving small criminal matters. The bar also funds an annual moot court competition for high school students around the state.

The Anchorage Bar has supported women's issues, funding the Alaska Women's Resource Center production of a domestic violence handbook and the Joint State-Federal Courts Gender Equality Task Force production of a final report.

This is just a small fraction of the Anchorage Bar's charitable work over the years. Although it continues to support projects including alternative dispute mediation between criminals and their victims, museum exhibits, Alaska Bar Foundation scholarships, and a program of loans to lawyers referred by the bar's substance abuse committee, the Anchorage bar has not lost sight of one of its most important functions: having fun.

HOW TO THROW A PARTY

"I missed a meeting and they put me in charge of a dance," remembered Branson. "I bought good champagne and they lost a lot of money. They wouldn't appoint me again," he said.

Although the Fall/Winter Dance Branson organized in 1982 for the Anchorage Bar didn't attract many people (in 1989 a Spring Roundup also didn't come off as planned), other events have been more successful.

The Anchorage Bar Picnic — a small family affair at Sand Lake in 1976 — was reworked in 1981 by picnic chairman Judith Bazeley into a train ride to Snyder Park in Wasilla. The annual summer picnic now features pony rides and clowns and t-shirts and a sawdust pile full of coins. And, still, of course, great food and the train ride.

Although the Anchorage Bar no longer celebrates goldrush attorney George Grigsby's birthday at Christmas, it does have a bash. Now it's a holiday party geared toward the whole family and includes an appearance by Santa.

And Paul Kelley has made the Anchorage Bar's St. Patrick's Day a successful annual date for lawyers to get together.

These big three annual events, along with a generous hospitality room during annual bar conventions and a welcoming drink to new bar admittees, are basic, every year occurrences. But the bar's social activities don't end there.

MORE PARTIES

Just about everyone who went to the retirement party thrown by the Anchorage bar for Superior Court Judge Ralph Moody cringes when they remember Stan Ditus' remarks. In fact, the remarks — liberated by a few too many drinks — have lead to the bar's new policy regarding judicial retirement parties.

> **"I MISSED A MEETING AND THEY PUT ME IN CHARGE OF A DANCE," REMEMBERED BRANSON. "I BOUGHT GOOD CHAMPAGNE AND THEY LOST A LOT OF MONEY. THEY WOULDN'T APPOINT ME AGAIN," HE SAID.**

"The judges had absolutely no veto over anything embarrassing," said Bob Ely. Now they do.

The court system used to call the bar on an emergency basis, remembered Ely. "We're having a retirement party tomorrow night," Ely used to hear and then had to scramble to get something together.

"Now they work with us to put things together," Ely said. "It was [Judge] Karen Hunt's idea to have an agreement [with the court system] on retirement and installation banquets," Ely added.

Some notable retirement parties the Anchorage bar has helped fund or organize include those for Judge von der Heydt, Judge Edward Davis, Judge Harold Butcher, Justice Edmond Burke, Justice Jay Rabinowitz and, of course, Judge Ralph Moody.

EVERCHANGING ANCHORAGE BAR

As the Anchorage bar has grown from a mere dozen members to more than 1,000, over the past 50 years, the Anchorage Bar Association continues to find ways to have influence in the community and provide a place for lawyers to socialize outside of the adversarial process.

"When I was first on the [Anchorage Bar Association] board," said Bob Ely, who has been a board member off and on since the mid-1970s, "we tried to have regular meetings. It was clear there was not enough enthusiasm. So, we're essentially a board that meets and spends money. We consider grants and applications for funding initial development and start up grants."

Ely, who clerked for the last territorial judge, J.L. McCarrey in 1959, remembers when the Anchorage Bar didn't have any money and when lawyers got together at the drop of a hat. "I was most impressed by the conviviality," said Ely of the 1960s.

Still, Ely sees the current Anchorage Bar as providing a valuable service albeit different from the association of 35 years ago. Instead of weekly meetings, three popular social events bring busy Anchorage lawyers and their families together. Seed money from the Anchorage Bar has supported a number of worthwhile causes. And Ely added, "Retirement banquets make lawyers feel good about the judicial system — celebrate sacrifices and long term service on the bench."

Footnotes

1. Dorothy Tyner was interviewed as part of the Anchorage Bar Association's oral history project. Appointed to the Anchorage District Court in 1968, she became one of the first women — along with Fairbanks attorney Mary Alice Miller appointed that same year — to sit on the Alaska state court bench.
2. Interview with John Hughes.
3. Colonel Grigsby was removed from office for leaving his post during the winter months.
4. Anchorage's population grew from 4,229 to 11,254 from 1940 to 1950. See, *Alaska A History of the 49th State,* by Claus-M. Naske and Herman E. Slotnick, Wm B. Eerdmans Publishing Company, Grand Rapids, MI (1979), App. B, p. 305.
5. A rash of disciplinary cases in the 1950s galvanized the Anchorage bar, including cases against Herald Stringer, Bailey Bell and John Shaw.
6. 1955 Alaska Sess. Laws 196.
7. Constitution of the Anchorage Bar Association, Article II, Objects and Purposes, Adopted, January 5, 1957.
8. Annual election of officers, November 30, 1957. It appears that these attorneys had all held the same office during the previous year. Minutes of Anchorage Bar Association, L. Eugene Williams, Secretary.
9. *Alaska Bar Association v. Nesbett,* No. A-42-64 CIV. (D. Alaska filed July 29, 1964).
10. Kay and Talbot also served as counsel for Neil Mackay when the Supreme Court reopened a disciplinary case against Mackay in 1964.

In Memoriam

Clifford H. Smith

Clifford H. Smith of Ketchikan, age 59, died suddenly and unexpectedly on January 17th at Swedish Hospital in Seattle. Clifford was born in October of 1942 in Cathlamet, Washington and was raised on a dairy farm in Skamokawa. His father was the local Justice of the Peace. Clifford attended high school in Cathlamet, where he was an FFA standout and lettered in football and basketball for the Cathlamet Mules. He graduated from Western Washington University and Willamette School of Law in Salem, Oregon.

Clifford then moved to Juneau where he joined the local police force while studying for the bar exam. He took and passed the exam in 1968 then joined the law firm of Ziegler, Ziegler & Cloudy in Ketchikan. He was with that firm, which subsequently became Ziegler, Cloudy, Smith, King and Brown until 1982, when he opened his own office in Ketchikan. He practiced continuously in Ketchikan until his death.

Clifford was the secretary/treasurer of the Ketchikan Bar Association for many years, and in all that time maintained the tradition of never giving a formal accounting of the treasury to the members (something we were thankful for). He was always available to answer legal and ethical questions for his colleagues, and to explain the arcane workings of the German lottery, point spreads and handicapping horse races. Clifford enjoyed halibut and salmon fishing and never missed the Ketchikan Bar's annual fishing weekend to places such as Whales Resort, Waterfall Resort, Yes Bay and Bell Island. He also played golf, cribbage and poker with enthusiasm.

Clifford is survived by his wife, Sally, of Port Ludlow, Washington, two sons, Brantley of Portland and Ethan in Woodinville, two daughters, Laura Lawrence of Olympia and Elise Kertulla of Poulsbo, along with two grandchildren, Alexandar Lawrence and Natalie Smith. He is also survived by his sister Joyce King of Salem and brother Jack Smith of Naselle, Washington.

Funeral services were held in Skamokawa and Clifford was buried in Fern Hill Cemetery there, overlooking the old family farm. A memorial gathering was also held in Ketchikan sponsored by the KBA.

Clifford served his profession well. He practiced law for over 30 years. Several years ago he received a letter from the Alaska Bar Association which started by saying, "Enclosed is your 30 year pin," although in fact there was no enclosure. His staunch support of the fraternity and sorority of KBA members will long be remembered, along with his sense of humor and dedication to the profession. KBA members say good-bye dear friend. We shall long remember you.

QUOTE OF THE MONTH

It takes a long time to learn that a courtroom is the last place in the world for learning the truth.

— Alice Koller

Nominations Open for NLADA Kutak-Dodds Awards
Deadline April 5

The prestigious Kutak-Dodds awards annually honor the accomplishments of civil legal aid attorneys, public defenders or public interest advocates who, through the practice of law, are contributing in a significant way to the enhancement of human dignity and quality of life of those persons unable to afford legal representation. In commemoration of NLADA's 90th anniversary, the second prize was added in 2001 to recognize the visionaries of both the civil legal aid and public defense communities in the same year.

The 2002 Kutak-Dodds prizes will honor two equal justice advocates, one from the civil legal aid community and another from the public defense community. Each prize carries a cash prize of $10,000.

Awards Criteria

To qualify for consideration, the nominee must be an advocate employed by or affiliated with an organization serving persons who cannot afford to pay for legal representation in either civil or criminal matters. The nominee also may be an attorney working for a public interest, nonprofit organization. Nominees must have at least 10 years of experience in the public interest law community. Factors that will be considered by the selection committee include:

- Personal vision and commitment;
- Nature of the need(s)addressed by the nominee's advocacy;
- Innovation in the nominee's work;
- Successes achieved through effective advocacy; and
- Difficulty of circumstances surrounding the achievement.

The prizes honor a history of accomplishment and are not intended to fund specific future endeavors. No conditions are imposed on the recipients expenditure of the cash prize.

Nominations Process

To nominate a distinguished colleague for the 2002 Kutak-Dodds Prizes:

1. Prepare a statement of no more than five (5) double-spaced pages containing highlights of the nominee`s career as well as additional reasons you feel he or she deserves the award.
2. Attach the nominee`s resume and the names, addresses and telephone numbers of three persons who have agreed to verify the nominee's accomplishments.
3. Forward six copies of the nomination package to the Kutak-Dodds Selection Committee, NLADA, 1625 K Street, NW, Suite 800, Washington, DC 20006-1604.

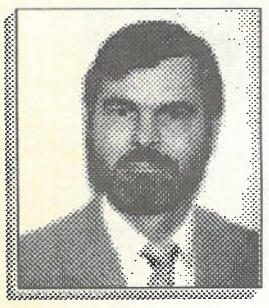
Nominations must be received by Friday, April 5, 2002. The winners will be honored at NLADA`s 12th Annual National Awards Dinner on May 30 in Washington, DC.

The Kutak-Dodds prizes, established in 1989, are jointly sponsored by the Robert J. Kutak Foundation and NLADA. They are given in memory of Robert J. Kutak and Kenneth R. Dodds, former partners in the Omaha, Nebraska Office of Kutak Rock, who were practitioners and advocates of public service, legal education and high ethical standards throughout their lives. In addition to legal services for the poor, the Kutak Foundation supports education in professional ethics, minority scholarships and a variety of other public interest projects. The Foundation is maintained entirely by Mr. Kutak`s friends and associates.

For more information, contact NLADA Development Director Mizue Suito at (202) 452-0620 ext. 217 or via e-mail m.suito@nlada.org.

Electronic service

☐ Thomas Yerbich



Rule 5(b), Federal Rules of Civil Procedure was amended effective December 1, 2001 authorizing electronic service in lieu of service by mail. Electronic service, however, is only permissible where the party to be served has consented, in writing. Rule 5 is made applicable to bankruptcy adversary proceedings by Rule 7005, Federal Rules of Bankruptcy Procedure, which is in turn incorporated into Rule 9022(a) (service of orders and judgments by the clerk). Coupled with Rule 9036 (service of notices), all notices and orders or judgments in the main case and all pleadings in an adversary action (other than the summons and complaint governed by Rule 7004) may be served electronically. Also, like service by mail, electronic service is effective when sent and the "3-day" rule applies. [Rule 6, Federal Rules of Civil Procedure; Rule 9006, Federal Rules of Bankruptcy Procedure]

At present, electronic service of pleadings in the main case is not authorized. However, a pending amendment to Rule 9014, effective December 1, 2002 absent action by Congress, authorizes service of pleadings in contested matters to be made in any manner authorized by Rule 5(b), Federal Rules of Civil Procedure. However, the current requirement that the pleading initiating a contested matter be served in the same manner as a summons and complaint under Rule 7004 remains unchanged.

Rule 5(b) only requires that the consent be in writing, without specifying more. The advisory committee notes indicate that the written consent may itself be accomplished electronically. The advisory committee notes also suggest that the party signifying consent should include in the consent any limitations or conditions on that consent, together with the telephone number of the facsimile machine and the e-mail address of the party if service by either is authorized. Proposed amendments to the local bankruptcy rules contemplate providing three basic options: (1) "blanket" consent to electronic service in all matters in which an appearance has been entered; (2) consent to electronic service in a particular bankruptcy ("main") case (when it is authorized after December 1, 2002); and (3) consent to electronic service in a particular adversary action.

The draft proposed forms also contemplate two areas in which there may be restrictions on the consent. First, if consenting to service by facsimile, there is the option to limit the number of pages to 25. Some practitioners are agreeable to electronic service, but find that large transmissions, *e.g.*, 30- or 50-page, or larger, documents overwhelm machine capability. Others are not so concerned. The proposed number, 25, tracks the number of pages currently in effect when a paper chambers copy is required to be filed with the court. Keeping the same number makes it easier for the user to remember where the break point is for "large" documents. The second is the acceptable format for e-mail attachments. In all cases, a party agreeing to accept service by e-mail must agree to accept service in Adobe Acrobat Portable Document Format ("pdf"). That requirement stems from the fact that all documents served by the court or through the CM/ECF system will be in pdf. However, a practitioner may signify that service in another format, *e.g.*, WordPerfect® or Microsoft Word®, is acceptable as well.

Come December 1, 2002, the real problem will be determining what pleadings or documents may be served electronically. The advisory committee notes to Rule 9014 broadly define a contested matter as any dispute, other than an adversary action, that requires court resolution. The document that initiates a contested matter must be served in the same manner as a summons and complaint under Rule 7004, which does not authorize electronic service. In some instances, determining the pleading that initiates a contested matter is easily ascertained. For example, an objection to a claim of exemptions, motion to terminate the stay, or an objection to a proof of claim, all "initiate" the contested matter because they are the documents that "create" the dispute. Other matters are not quite as readily apparent.

There are several estate administration matters in which the motion or application does not directly impact a particular party, but notice is given and interested parties are permitted to object. These include applications for approval of compensation, approval of disclosure statements, sale, lease or use of property other than in the ordinary course of business, and plan confirmation. In these matters there is no controversy unless a party objects. Thus, it is the "objection," not the first pleading filed, that initiates the dispute that requires court adjudication. These then, not the initial pleading, be it in the form of a motion or application, are logically the "initial pleading" that must be served in the manner prescribed in Rule 7004 and may not be served electronically.

Until there are some definitive controlling decisions in this area, if in doubt, the prudent practitioner will serve any objection in a bankruptcy case in the manner prescribed by Rule 7004 and not rely on electronic service. If electronic service is not authorized, it is not service at all and a wrong guess may be disastrous and upsetting to the malpractice carrier, not to mention the client.

UNTIL THERE ARE SOME DEFINITIVE CONTROLLING DECISIONS IN THIS AREA, IF IN DOUBT, THE PRUDENT PRACTITIONER WILL SERVE ANY OBJECTION IN A BANKRUPTCY CASE IN THE MANNER PRESCRIBED BY RULE 7004 AND NOT RELY ON ELECTRONIC SERVICE.

There is also potential problem of what, along with a notice may be electronically served. Presumably, when a notice must include a copy of another pleading, *e.g.*, notice of a confirmation hearing that must be accompanied by a copy of the plan, the notice and the accompanying documents may be served electronically. Rule 9036, not 9014, governs service in that instance because it is not yet a "contested" matter.

In summary, there are some basic rules that must be observed in using electronic service.

1. The party to be served must have consented *in writing* to electronic service.

2. Electronic service must comply with any terms and conditions imposed by the consenting party.

3. Electronic service is subject to the 3-day rule.

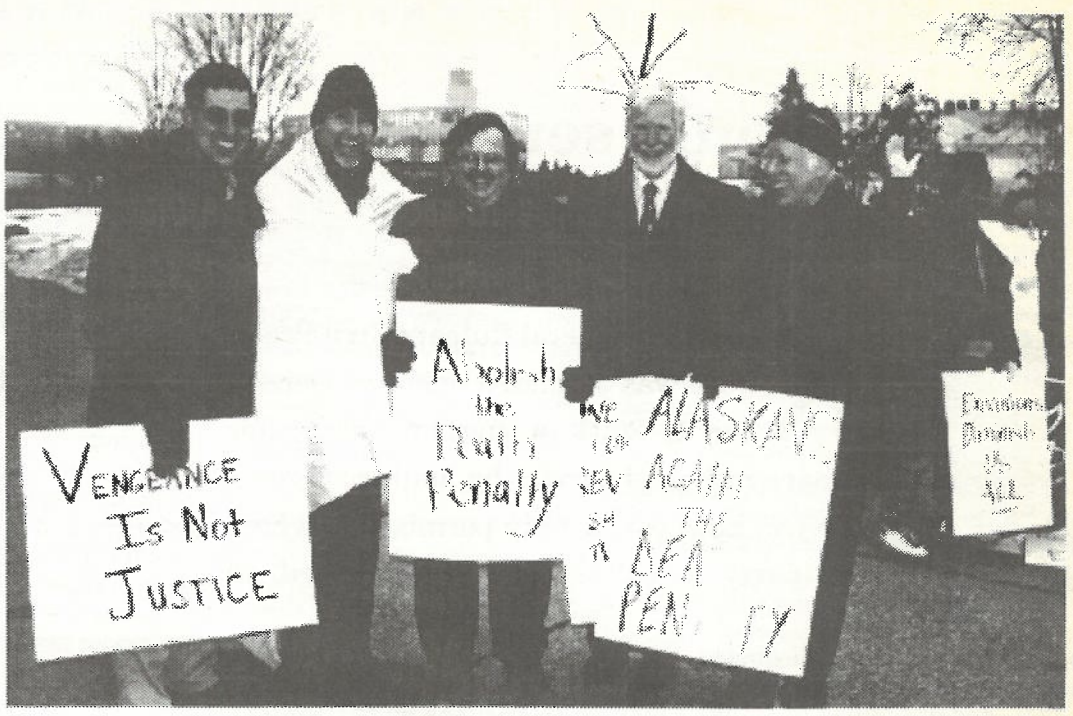
4. Service is effective when sent, but is not effective if the serving party learns that the party to be served did not receive the pleading.

5. Electronic service in bankruptcy cases, other than adversary actions, is limited to service of notices and orders or judgments until December 1, 2002.

6. Pleadings that initiate contested matters must be served in the manner prescribed for summonses and complaints in Rule 7004.

7. Electronic service in a "main" bankruptcy case is limited to notices, and pleadings and documents in contested matters other than the initial motion; other pleadings or documents may not be served electronically.

8. Unauthorized electronic service is *no service*.



Bar members and anti-death-penalty advocates attended a series of events in March during a CLE visit to Alaska by Thomas H. Rice, director of the International Criminal Law Justice Law Clinic at Gonzaga University. At left, Averil Lerman, dramatizes Alaska's first innocent death penalty victim, Eugene LaMoore, who was hanged in Juneau in 1950, after Austin Nelson had been executed for the same crime. At right, Andy Haas, Kevin McCoy, Professor Rice, Rich Curtner, and Hugh Fleischer join in an Alaskans Against the Death Penalty vigil in Anchorage's Town Square March 1. In addition to the CLE and vigil, Prof. Rice also appeared during a bar association luncheon and at a dinner hosted by the anti-death-penalty group.

Death penalty, criminal law attract debate

On March 1st, Thomas H. Speedy Rice came to Anchorage to present a CLE regarding international and domestic criminal law issues. Professor Rice is the director of the Clinical Law Externship Program and director of the International Criminal Law Justice Law Clinic at Gonzaga University School of Law. A respected expert on the death penalty, he was recently named "Abolitionist of the Year" by the Washington Coalition to Abolish the Death Penalty.

Professor Rice discussed two issues. He first spoke about the creation of the International Criminal Court, an international tribunal that will try crimes of genocide, aggression, war crimes, and crimes against humanity. The ICC treaty is ratified by 53 countries and will soon come into effect upon ratification by the 60th country. Professor Rice felt that the ICC will address a host of problems that have plagued the Rwandan and Yugoslavian ad hoc tribunals, such as ambiguous mandates and a perception of selective justice. Regardless of American ratification, American citizens can be tried by the ICC if they commit one of the listed crimes in a country that has ratified the statute or has accepted the jurisdiction of the ICC.

Professor Rice, or Speedy as he prefers, suggested that there are a few areas of the ICC that need refinement. For instance, lawyers need to develop an international criminal defense bar to ensure adequate representation. Such a bar needs to equalize the strengths between the prosecution and the defense. Speedy felt that criminal defense lawyers before the ICC should be provided guaranteed access of investigation. Also, defendants should receive a complete defense, including a greater scope of cross-examination. When America withdrew from negotiation, the French style of limited examination became the accepted model without the necessary addition of the safeguards for the accused. Professor Rice concluded that we should remain engaged in these important creative steps of the ICC criminal procedure to assist in the implementation of adequate rights for the accused.

In addition to the ICC, Speedy also discussed important American developments in criminal cases of foreign nationals. He described cases in which confessions were found involuntary because the Miranda advisement was not sufficiently translated into the defendant's mother tongue. He also discussed the duty of the police to advise foreign defendants of their right to talk with their national consular before answering any questions. One purpose of the Vienna Convention on Consular Relations, is to ensure that the foreign detainees understand their legal rights and obtain proper defense. Finally, Speedy talked about the critical first steps in representing a person about to be extradited to the U.S. on potential death penalty crimes.

—Reported by the Alaska Bar Association International Law Section

Poll says jury service leads to fairness

Continued from page 1

had served on juries, and only 11 percent of those polled with incomes less than $15,000 had done so.

"The wealthiest serving so much may be a simple function of age," says Biek. "The older you are, the more likely you are to have served, the more likely to be a homeowner, the more likely to have a high income."

Brook sees the salary information as incidental to prospective jurors' educational background. He says that educated Americans tend to believe in the greater purpose and responsibility of jury service and that such people also tend to be the wealthiest.

AMONG OTHER RESULTS:

• Respondents from California, Texas and New York were more likely to have served on juries than those from the Midwest and South.

• Potential jurors in California, Oregon and Washington were most likely to have previously served on juries, while those in Alabama, Kentucky, Mississippi and Tennessee had the lowest rate of service.

• Respondents with previous jury experience were less likely to be afraid of serving on a jury in a federal courthouse than others.

Jurors still generally respect judges, the poll suggests. Of those who had served as jurors, 82 percent said they believed that the judges in their cases did a good job. Some 13 percent said that the judges did only an "OK" job, and only 2 percent said the judges could have done much better.

LAWYERS' PERFORMANCE

Lawyers appear to be less admired. Only 45 percent of the respondents said they felt that the lawyers did a good job getting to the point and not wasting time. Some 28 percent said that the lawyers did an OK job, and 22 percent said that the attorneys could have done much better.

The poll also found that, by a three-to-one margin, individuals who served on juries in trials in which graphic exhibits were used said the exhibits helped them understand the case.

Out of the 42 percent of those polled who had both served in cases in which lawyers used charts and other graphic exhibits at trial, 75 percent of them reported that the exhibits assisted their understanding. Only 4 percent responded the graphics made the presentation more confusing.

Brook finds it disturbing that more lawyers don't use graphics at trial.

"Although the greatest percentage of trials in the U.S. are criminal trials where the least amount of money is available, I don't think we adequately train prospective trial lawyers with respect to the importance of illustrative and demonstrative evidence," he says.