The Alaska BAR RAG

Inside:

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Judges on wheels:
6,840 miles, 32 days & 684 gallons of gas

BY: JIM BLAIR
WITH ALLEN COMPTON

THE JUDICIAL SOJOURNERS

This travelogue is in the *Bar Rag* for two reasons. First, Allen Compton, my travel companion, and I are both retired Alaska judges and thought the regular readers (all 44 of them) of the Bar Rag might enjoy hearing what some old judges do after retirement.

Second, no other publication would publish it. Hey, if Bill Satterberg has a regular column, anybody has a shot. Old timers may recall that I practiced law and served as a Superior Court Judge in Fairbanks for nearly 30 years. My recollection is that I was a courteous, patient, compassionate judge. Some lawyers may have a different recollection. I retired to Parachute, Colorado in 1995 where I play golf and preside as a municipal judge in Rifle, Colorado, two days a month. Allen was a legal services lawyer, a private practitioner, a Superior Court Judge in Juneau, and a Supreme Court Justice. But he was never a municipal judge in Rifle, even for two days a month.

THE CONCEPT

In 2002 I decided I wanted to drive from my home in Colorado to Belize. I bought a 1978 Ford F150 pickup for $2900. It had new tires, four-wheel drive and a new radio. It was perfect. I soon discovered that the 400 cubic inch engine got only 10 miles to the gallon. It could pass everything except a gas station. I would definitely need a travel companion to make the trip more enjoyable and to help with expenses.

Numerous friends were contacted and invited along. Only Allen agreed to think about it. Others said that I was crazy and advised me that such a trip was unthinkable. One friend even advised that "The roads in Mexico are littered with the bodies of dead gringos." Since he lived in Phoenix I asked him to do a little checking for me to determine which road had the fewest dead gringos and that would be the route we would choose.

THE PLAN

The concept was simplicity itself. We would leave Colorado in the old truck and head South and East along the eastern Gulf Coast and then cross the Yucatan Peninsula to Belize. Then we would turn around and head West to the Pacific Coast and then turn North until we got back to the

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Archaeologists began unearthing overgrown Mayan ruins in the 1950s.

Dating to 300 B.C., the Mayan ruins of Mexico were not discovered until the mid-20th Century.

10 judgeships filled by governors in early '03

John Suddock and Philip R. Volland took the bench in February as the last judicial appointments by former Gov. Tony Knowles, as Gov. Frank Murkowski began his term with two new appointments of his own in January.

The new governor will select another 6 new judges during his first half-year in office.

Suddock and Volland were appointed to the Anchorage Superior Court to fill the vacancies of retiring Judges Elaine Andrews and Eric Sanders. Twenty three attorneys originally applied for the Superior Court judgeships; the Alaska Judicial Council moved six nominations to Knowles, who appointed Suddock and Volland in November.

The judicial council reviewed 17 applicants for Anchorage District Court vacancies that opened with the departure of Peter Ashman and Natalie K. Finn, with five nominated. Gov. Frank Murkowski appointed Brian K. Clark and Jack W. Smith to fill the vacancies on Jan. 23.

Following its meeting in Fairbanks on March 13 and 14, the Judicial Council selected J. John Franich, Randy M. Olsen, and Christopher E. Zimmerman as the most qualified applicants to fill the Fairbanks Superior Court position created by the retirement of Judge Mary Greene.

The council also nominated Winston S. Burbank and Jeffrey O'Bryant for the

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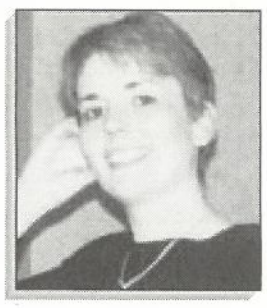
President's Column

Law Day campaign to educate public

☐ Lori M. Bodwell



Few would argue that law as a profession suffers from a poor public image. Some bars have spent money on slick public relations campaigns to convince people that lawyers are not part of a secret society whose main goals are to make money off the public and protect their own. While some may argue that money for posters in the subways and public service announcements in the media is money well spent, the only things that can change the public perception of lawyers are the actions of lawyers in dealing with the public.

The negative public opinion of lawyers encompasses many issues from exorbitant fees to lawyer advertising. One often heard complaint is that the court system is "unfair," or that judges are merely political figures who can be bought and sold. This line of thinking has, from time to time, prompted a call for additional oversight of judges' decisions and even the recall of judges who make politically unpopular decisions. These ideological campaigns against judges not only threaten the position of the targeted judge, but also put all judges on notice that politically unpopular decisions could result in the same backlash. The thought of that possibility consciously or unconsciously affects the decisions of all judges, creating a bias, or "unfair" delivery of justice.

Generally speaking, lawyers and judges understand the need for judicial independence and the role it plays in the delivery of justice. They understand that the knee jerk reaction for additional oversight will only exacerbate any perceived bias by the courts. The notion of "judicial independence", however, is not a familiar concept with the general public. Members of the legal community must take the lead in educating the public on the importance of judicial independence in promoting a fair, impartial judiciary.

Bar members do not have to search far for the opportunity to spread this important message. Traditionally, lawyers and judges take time on Law Day (this year it falls on May 1) to go into the schools to speak with youths or conduct public outreach for community members of all ages to educate the public on a law related topic. The theme of Law Day 2003 is "Independent Courts Protect Our Liberties."

As in the past, the Bar Association and the Court System are cosponsoring a statewide Law Day campaign to educate the public. One focus of the current project is the preparation of photo-text exhibits by Youth Courts around the state entitled "Liberty is a 3-Way Street: The Importance of Judicial Independence."

The Youth Court exhibits are designed to provide a "visual backdrop" for the Law Day events in the local communities. More volunteers are needed, however, to take the message of the importance of an independent judiciary to as many people as possible.

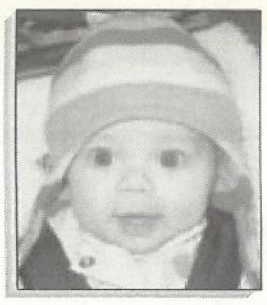
The American Bar Association has provided all state bars with extensive materials with idea and talking points for presentations to schools and community organizations. The Court System and the Bar can provide local attorneys with these materials to help prepare the presentations. A statewide steering committee has been established to help organize events. Barbara Hood is again acting as the Law Day Coordinator and can help put you in contact with Law Day organizers in your area. (bhood@courts.state.ak.us)

Participation is a great opportunity to improve the public perception of lawyers and the justice system. The time commitment is minimal, but the impact can be significant.

Editor's Column

Two arms tied: Do the courts have a right to self defense?

☐ Thomas Van Flein



Before every boxing match the referee reminds the boxers of the rules and starts the match by saying "let's fight a clean fight." Both boxers are generally equal in weight and strength, and both are allowed the full use of their arms. A fight where one was deprived of the use of one arm would not be fair or equal. If the courts of this country were represented by a boxer in the ring of public opinion, that boxer would be an emaciated boxer, with both arms tied behind his back. The opponent would probably resemble Mike Tyson.

Although the courts are, in theory, a co-equal branch of government, the other two branches are a little more equal when it comes to either attacking the courts or justifying their own institutional positions—and getting access to the media to do so. The courts generally do not have public relations departments, spokespeople, press conferences, press releases or go on campaign tours touting their own accomplishments or criticizing the other two branches. Indeed, the courts are typically silent even when faced with withering criticism and public outrage. Presumably the courts rely on the reasoning of the court decisions to speak for them, notwithstanding the fact that most of the public, press or members in other branches, will be unable to understand the reasoning in many decisions. This is not a criticism of the coherency of some decisions, but a reflection of the fact that many issues are complex and the decisions resolving those issues reflect that complexity.

The problem with this current state of affairs is that the courts, both state and federal, suffer a steady barrage of institutional and public attacks. Without any response or rebuttal from the courts, unfounded allegations or misrepresentations gain credibility and public support and result in an unwarranted lack of confidence and credibility in the court system. Such attacks are so common we probably don't think twice when a candidate accuses Alaska judges of "cuddling" criminals, or when a verdict is publicly derided as outrageous, or when a court is accused of "judicial activism."

As a side note, I have reached the conclusion that "judicial activist" (a term often used but rarely defined) should be defined as any judge or court that does not interpret the constitution in the manner advocated by the person accusing the court of "judicial activism." For the party who prevailed, the court is "wise" and "following a long line of precedent." For the other side, well, the court is engaging in "judicial activism." I can give examples of this, but that is better left for another day.

Beating up on the Ninth Circuit Court of Appeals is in vogue these days. And it is not just talk radio, with its usual cadre of cranks, complainers, whiners and snivelers, who have joined in this parade. Many in Congress, and many state legislators, have jumped on this band wagon, particularly when there are cheap votes to pander by condemning "the removal of God" from the pledge of allegiance and blaming the Ninth Circuit for "judicial activism."

An example of the unfairness of the fight for public legitimacy is the response to the Ninth Circuit decision involving the pledge of allegiance. Within days of the decision, Montana's Congressman, U.S. Representative Denny Rehberg, sponsored legislation "expressing the outrage felt by many in Congress over the Ninth Circuit Court's ruling that bans the pledge of allegiance." The Congressman then gave, according to his press release, an "impassioned speech" stating that "through a gross example of judicial activism, two federal judges stripped these words from the American vocabulary. It's bizarre decisions like this that have given the Ninth Circuit the dubious distinction of being the most overturned court in the nation." Senator Robert Byrd insisted that the Senate do something to throw "back in the face of this stupid judge." Columnist John Nowacki wrote that the "Ninth Circuit is justly known as the most judicially activist court in the nation." Our own Senator, Lisa Murkowski, recently called the Ninth Circuit "dysfunctional and out-of-touch." She proposes to split this circuit.

I am not concerned about the merits of that particular decision, or any other decision that has brought public or political scorn on the Ninth Circuit. The legal reasoning in those cases stands or falls on its own merit.

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The Alaska BAR RAG

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September	August 20
November	October 20

*Note: Publication dates are mid-month
Board of Governors meeting dates
May 5 & 6, 2003
May 7 – 9, 2003 Annual Convention (Fairbanks)

Bar Letters

The Bar Rag "legal dinosaur"

The December 2002 issue of the Oregon Bar Bulletin included a brief article about your criteria for recognizing status as a legal dinosaur. Being a 1973 admittee, I realize that I'm still years and years away from dinosaur status. Nevertheless, I thought I'd relate to you the following, hereinafter referred to as my "technology conversation." When a circa 1995 admittee (aka "baby lawyer") showed me his Handsurface Navigator and Remote Telephonic Transmitter, I demurred that I would obtain the latter of said units only when one was manufactured and duly marketed with a . . . rotary dial!

(In fact, it's been years since I've typed the old warhorse words "circa," "hereinafter," and "demurred!)

— *William Greer*

Metaphysical graffiti

I don't want to say anything, but Rick Friedman's article *Logic and Mandatory Therapy for Lawyers* (Jan.-Feb. 2003) is metaphysical nonsense. He apparently lost a case of statutory interpretation because the judge erroneously applied logic and reason instead of emotion and feeling. While I sympathize with his client and agree with his criticism of the judiciary, I cannot accept his attack on rational thought and science.

He seems obsessed by the line "the opposite of love is not hate, but the relentless pursuit of the rational mind." This statement is romantic gibberish and a disparaging reference to rational thought. Logically, if love's antonym were rational thinking love itself would be irrational, which I doubt. In this vein, a more reasonable statement is that the opposite of *hate* is rational thought; hate seems more irrational than love. Perhaps the *truest* statement is that the opposite of *ignorance, superstition and fear* is a rational mind, but that doesn't sound as glitzy as "the opposite of love." However, at bottom, rational thought is simply *an aspect* of the complex human psyche, not the "opposite" of an emotion, and the subject of love is irrelevant to statutory interpretation.

Mr. Friedman says we are not taught of justice and fairness in lawschool and judges don't like to discuss them. Further,

> *justice is not about the way things are, but the way things should be.* The search for justice is a search for the best within us, and the attempt to translate that "best" into practical, objective reality. (Emphasis added.)

This odd definition of justice invites judicial anarchy, and could only be a last-gasp argument in a case of statutory construction. It goes without saying that judges are bound by the way things are and must not exceed their authority by going beyond the law. It is clear that absent a constitutional remedy, if the plaintiff's claim falls outside the statute only the legislature can provide the "practical, objective reality" or relief sought.

Perhaps the man's views are the result of his skewed historical perspective:

> I am not opposed to logic and reason. I imagine primitive man, pulling himself up through the ooze of ignorance, superstition and fear, with only his rational mind to guide him. Emotion and idealism must have seemed like the enemy. In the Middle Ages, logic and rationalism must have seemed the only hope for the human race.

Historians view the Middle Ages (496 A.D.-1450 A.D.) as Europe's time of ignorance and superstition, where great issues were decided not by observation and reason, but by Plato and Aristotle or the Scriptures. The new ideas of the Renaissance and Enlightenment challenged mediaeval institutions, and after a series of brutal religious wars, science and reason slowly curtailed the claims of religion and superstition.

Religion could only survive in a scientific world by converting biblical "truth" and "the word of God" into simple parables, appealing to the ignorant masses, and avoiding arguments about the physical world that science or reason could refute. Though diminished in authority, religion and superstition continue today on a massive scale. Because of the legal separation of church and state in Western society it is said that we presently live in a "postreligious" world, but 90% of Americans believe in a loving, biblical God. Thanks to to those who profit from playing to the fear and ignorance of the illiterate masses, a romantic-religious-mystic outlook prevails in society, still dominated by the Bible and Plato's metaphysical approach to reality popular in medieval times. Yes, ignorance, superstition and fear are still here, and it is to these dark forces that Mr. Friedman appeals in rejecting logic and reason.

He claims that the Constitution is a document "of the heart, and not of logic" and should be construed emotionally. Instead, the Constitution embodies the concepts of the Philosophes on the rights of man, democratic government, separation of powers, and separation of church and state, and is probably the most rational political document of the 18th century, even though it excluded women, slaves and Indians.

Logic gave us the Dred Scott Case and the Holocaust, says he. I don't think so. Dred Scott was the product of racial prejudice, not reason. And the Nazis ruled by force and deceit. I always thought Hitler was crazy; now I'm being told he was a logician.

Consider some basic definitions of logic and reason. "The principal task of logic is to investigate the nature of correct thinking and valid reasoning, including the laws of rational thought." The dictionary states: "rational implies the ability to reason logically, as by drawing conclusions from inferences, and often connotes the absence of emotionalism." Reason is "sound thought or judgment, good sense; to think coherently and logically; draw inferences or conclusions from facts known or assumed, to think logically about; think out systematically, analyze."

This sounds an awful lot like what judges and lawyers do. Logic and reason provide invaluable tools and methods to reach the truth—a major goal of the judicial branch. The tools (logic and reason) are not infallible, but at least *assist* in reaching truth. For example, an argument can be logical and rational but false, and therein lies the problem. But if an argument is incoherent, irrational, illogical or contrary to law, it automatically fails the test of truth and must be rejected.

Appeals to emotion and feeling are more for the jury but even then limited by jury instructions. A judge who reached decisions based on emotion would have a high reversal rate, considering the duty to follow the law. Logical analysis enhances a judge's ability to carry out judicial duties based on *objective* standards such as the Constitution, statutes, regulations and case law. Mr. Friedman proposes that judges violate their duties and make *subjective* decisions with no standards at all. This would hardly lead to the truth. Obviously, it is not a black and white situation and the mind is not divided into neat little boxes of conscience, reason, and emotion. A good judge is simply one who is learned, compassionate, reasonable and honest, stays within the law, and avoids violating the separation of powers doctrine by invading the provinces of the other branches of government, which would really be serious.

Finally, Mr. Friedman actually questions the law's reliance on science. But as philosopher Bertrand Russell (1872-1970) said: "Whatever knowledge is attainable, must be attained by scientific methods; and what science cannot discover, mankind cannot know." Law and science are related because they have common goals: ascertaining truth based on critical evaluation of evidence. The legal system uses science mainly as a tool to reach truth, and it is reliable. There are no longer any "block theories" of the Universe; science proceeds cautiously, tentatively, in tiny increments, guided only by the philosophy of logical analysis. Scientific analysis is rational humanity's last line of defense against ignorance and superstition, and it is puzzling that Mr. Friedman assails it.

This is the main reason that appealing to emotion is wrong. Friedrich Nietzsche (1844-1900) pondered the atrocious crimes against humanity in the name of "the heart" (which is really more of a pump than a brain). Mr. Friedman's approach encourages irrational behavior and disrespect for law. He would send us back to the abyss that Zarathustra, Nietzsche's hero, finally bridged in his relentless journey from ignorance and superstitious terror to rational understanding.

It turns out that reason might not have abandoned Mr. Friedman after all. Despite his appeal to emotion, he finally admits that his "relentless pursuit of the rational mind" drove him to seek mental therapy, probably because he was too relentless. He could hardly have acted more rationally, for psychoanalysis is a rational attempt to explain emotions and feelings, and hopefully some day will give him the rational mind he has always pursued.

— *James Vollintine*

Two arms tied

Continued from page 2

Perhaps the decision on the pledge of allegiance is flat out wrong. I am sure it would be interesting to review the merits and come to our own conclusions. Nor I am concerned that the Supreme Court reverses a lot of Ninth Circuit decisions. That is its job. It generally does not grant certiorari just to pat a court on the back and say "good job." We also know that, but for one or two votes or changes in the Court's membership, many such reversals would have been affirmances.

My concern is that there has been steady erosion of public confidence in the court system as a whole. No amount of Law Day activities can counter the constant barrage of anti-court sentiment that is published almost daily in newspapers, magazines, and other media, or the constant carping by members of the other branches of government.

Do the courts of this country have a right to defend themselves as institutions, their processes, their judges, and their decisions? Perhaps, but do they have the ability or the willingness? No. A long tradition of judicial silence has been engrafted as part of the judicial code of conduct.

For example, Judicial Canon No. 5 provides that judges "should be able to take part in the public debate over proposals to change the legal system or the administration of justice" but because "many speeches are given in forums sponsored by political organizations, a question arises concerning the relationship between, on the one hand, a judge's right to speak publicly on issues concerning the legal system and the administration of justice, and, on the other hand, the prohibition contained in Section 5A(1)(d) — that a judge shall not attend the gathering of a political organization. Despite a judge's freedom to speak on legal issues, ***a judge shall not do so on behalf of a political organization or at a political gathering***." So, with communications to political organizations and political gatherings forbidden, the best fora for explaining the court's process are off limits. Of course, when the courts are under scrutiny by political organizations in political gatherings, the court, being bound by its own self imposed restrictions, will send its representative (if it has one) to a quilting club to discuss budget issues and generalities about fairness and impartiality. The debate of ideas easily becomes a route when the institution under attack doesn't attend its own debate.

So, is there a solution? Not until the courts are willing to hire their own public relations department that releases information in response to specific attacks, or sends a representative to engage in public debate will the courts be able to defend themselves. Not until the judicial canons are revised to allow the courts, and their judges, even the right to speak up, will there be a self defense. Until then, the courts will rely, by default, on a few law professors who are on the media circuit. Until then, the courts will continue to have both arms tied, and when forced into the ring of public opinion and discourse, the courts will continue to lose to the Mike Tysons they face.

Comments on a Bar Rag article?
Write the editor, or e-mail us at info@alaskabar.org

ALSC President's Report

How ALSC operates

☐ Vance Sanders & Andy Harrington

I have a story to tell, which illustrates several important points about how ALSC is operating these days.

Jennifer Beardsley is a dedicated and committed ALSC staff attorney who came from Georgia to start work in ALSC's Juneau office in September of 1999 and subsequently transferred to ALSC's Anchorage office in June of 2001.

As you know, ALSC provides representation in civil cases to low-income Alaskans.

Shortly after arriving in Anchorage, Jennifer started handling a case for a dissatisfied used car buyer. Looking at the transaction, she found several likely violations of the Alaska Unfair & Deceptive Trade Practices Act, and filed suit for declaratory and injunctive relief, against the dealership, an affiliated finance company, and an affiliated repossession and repair company.

Almost as soon as the case was filed, she began to hear from other unhappy customers of the same businesses. Eventually, sixteen individuals became plaintiffs in the case.

Now, you might ask, once there are that many clients, wouldn't it be more efficient to make it a class action? Clearly, the answer is yes; but that brings me to the first point I want to make. Since Congress has prohibited recipients of funding from the Legal Services Corporation (LSC) from filing any class actions, Beardsley could not do so.

Not only does LSC tell ALSC what it is permitted and prohibited with LSC money, it also extends these prohibitions to ALSC's other funding sources. That is, Beardsley would not have been able to file the case as a class action even if ALSC used entirely non-LSC money to pay for it.

There have been discussions in Congress about limiting these restrictions to LSC money, so that other funding sources, public and private, which provide grants to ALSC could specify on their own what prohibitions they want to apply. Such an approach seems much more in keeping with the decentralization philosophy which many agree should permeate responsible decision-making on the federal level, and it is to be hoped that eventually Congress will adopt this approach and eschew this over-reaching aspect of current LSC law.

For those of you who know of the overwhelming number of applications that flood ALSC and how hard-pressed the agency is to try to provide quality services to even the highest-priority tier of applications, you can well imagine how frustrating it was to have to forego the increased efficiency of a class action and represent sixteen separate individuals. Despite the strength of the plaintiffs' case on the merits, the sheer amount of work involved was staggering.

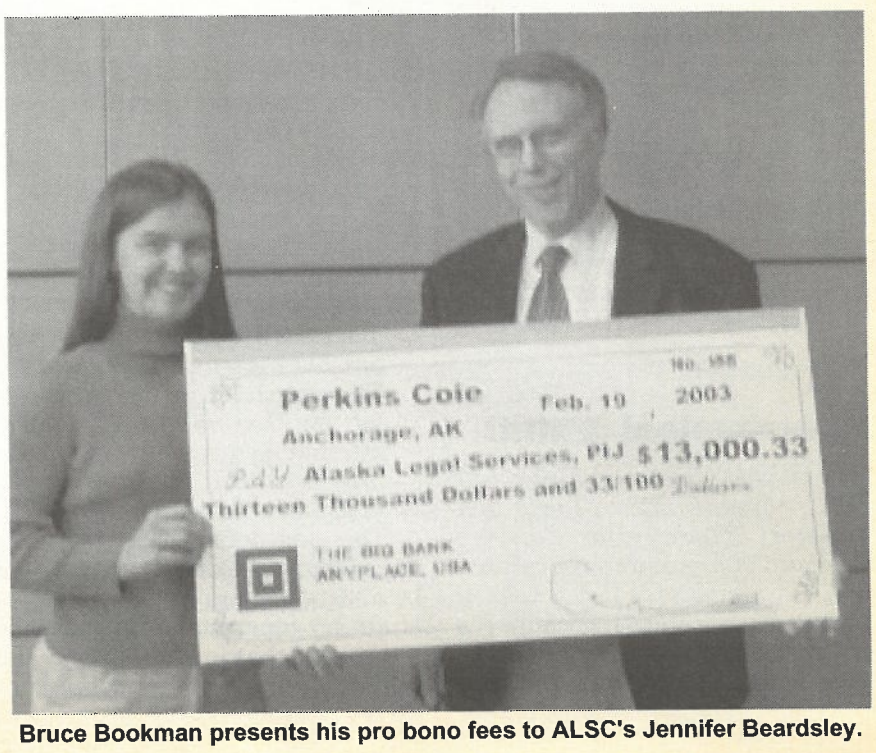
But Jennifer Beardsley hung in there, even after things got much nastier.

She came back to Anchorage after attending a consumer law training outside to find threatening calls recorded on both her office and home phone answering machines. One office message said "Your days are numbered." A second said "I hope you enjoyed your vacation, it will be the last one you ever take." A message on her home machine said that the caller was going to enjoy slitting her throat and laughing while he did so.

While it was never conclusively established that the calls stemmed from the auto dealership case, the calls did immediately follow her filing her amended complaint adding thirteen plaintiffs to the case, and at the time none of her other cases seemed particularly volatile. The police informed Ms. Beardsley that there was nothing they could do, but said to call if anything else happened.

In response, several ALSC attorneys around the State entered co-appearances with her. As one attorney commented, "Well, if they want to make death threats, at least we can make them pay long-distance charges in order to do so."

This brings up a second point I wanted to make about ALSC: the dedication of its attorneys to their clientele and the camaraderie within the organization. I feel honored to be on the Board of an organization which has dedicated employees like Jennifer Beardsley and her colleagues.



Bruce Bookman presents his pro bono fees to ALSC's Jennifer Beardsley.

To get back to Ms. Beardsley: her refusal to let the death threats dissuade her eventually led to a cessation of the nasty phone calls – but still left her with the pressure of dealing with the sixteen clients in addition to her other regular cases.

Fortunately, help came from another quarter. Bruce Bookman of the law firm of Perkins, Coie LLC got word of Jennifer's difficulties, and generously offered to step in and help. His co-counseling on this litigation made all the difference.

As a pro bono attorney, he could bring a class action where ALSC could not. Although a class action ultimately proved unnecessary as the case settled after he entered his appearance, the availability of representation on class relief through pro bono work, when ALSC itself is prohibited from providing that, is key to Alaska's obligation to provide equal access to justice.

And that brings up another point I want to make: the importance of pro bono attorneys like Bruce Bookman, who selflessly volunteered his time and skills, leading to the negotiation of a favorable settlement for ALSC's clients.

Katherine Alteneder has been writing a column for a couple of months now that emphasizes this same point, and I want to applaud her for giving credit where credit is due. Pro bono attorneys in Alaska deserve our gratitude, and our profession deserves to have this kind of work publicized and publicly appreciated.

Those of you who have done pro bono work know what I mean. Those of you who have not yet undertaken any, you could not find a finer role model for such work than Bruce Bookman.

Not only did he volunteer his time and skills to bring the case home, but he also generously donated his attorney fee under the settlement to the Hickerson Partners in Justice campaign. This is a major contribution, of $13,000, and it is a tribute to Bruce's generosity, selflessness and commitment to the principles of fairness and equal access to justice. His actions personify what is best about the practice of law in Alaska.

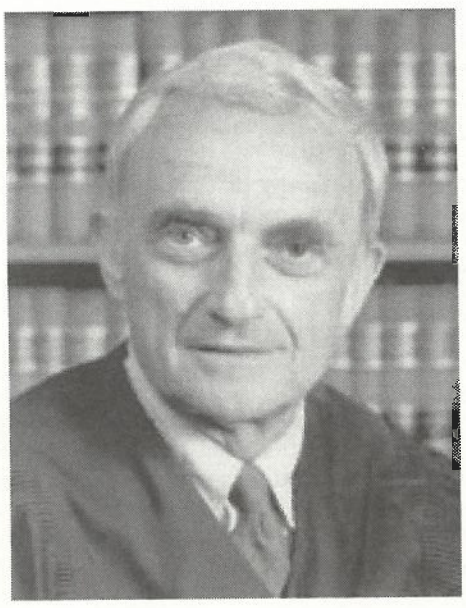
Bringing up the final point I want to make: there is still time between now and the Bar Convention to make your own contribution to the Robert Hickerson Partners in Justice Campaign. You can mail your contributions to Alaska Legal Services Corporation's accounting office, 9170 Jewel Lake Road Suite 100, Anchorage AK 99502, or the main ALSC office, 1016 West 6th Ave., Anchorage AK 99501.

Probably most readers well remember Robert and his eighteen years of dedicated service to ALSC; for recent admittees and others who may not have known him, suffice it to say that it was my honor to work closely with him while he was ALSC's Executive Director.

He had the persistent dedication of a Jennifer Beardsley and the selfless generosity of a Bruce Bookman.

And that, my friends, is saying a lot.

ANNOUNCING THE JAY RABINOWITZ PUBLIC SERVICE AWARD



Jay Rabinowitz

Beginning in 2003, this award will be given each year by the Board of Trustees of the Alaska Bar Foundation to the individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Nominations for the award are presently being solicited. Nomination forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nomination forms must be returned to the office of the Alaska Bar Association by April 15. 2003. The award will be presented at the Annual Convention of the Alaska Bar Association in May, 2003.

SINCE 1896
ALASKA BAR ASSOCIATION

ALASKA BAR FOUNDATION

Bar Letters

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Rick Friedman responds: The search for knowledge & truth

Mr. Vollintine's letter illustrated my point better than anything I could have written. Our profession is pathologically phobic when it comes to anything other than the logical, rational aspects of our humanity. The suggestion that there might more to us than our reasoning capabilities is interpreted as an attack on rational thought and science.

Mr. Vollintine gives us the false choices of all fundamentalists: it is science vs. religion, logic vs. emotion. Such an attitude places us at war with ourselves, with disastrous consequences for individuals and societies.

Scientists have been at the scene of virtually every social crime in the last 500 years. Those supporting slavery had no shortage of scientists, scientifically justifying racial inferiority and servitude. As Robert Jay Lifton points out in his book, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (Basic Books 1986), the medical and scientific community of pre-war Germany was considered the most progressive and advanced in the world. This community worked hand-in-glove with the Nazis, formulating, developing and implementing a scientific, rational, logical justification for the mass killing of the physically and mentally infirm. Simplistically stated, their science demonstrated that the societal cost of preserving these lives was not rationally or logically justified. Moreover, the science of eugenics clearly counseled that these beings be killed for the improvement of the species. The scientists ridiculed objections to this scientific line of thought as irrational romantic gibberish.

Every religious charlatan has his counterpart or parallel in the scientific community (*e.g.*, those scientists who testify for tobacco companies that cigarettes don't cause cancer). Similarly, the greatest, most courageous and gifted scientists, such as Albert Einstein or Jonas Salk, have their counterparts among the great spiritualists, such as Mohandas Gandhi and Martin Luther King. None of these giants achieved greatness (nor would have) through the unrelenting application of rational or religious doctrine. And it is interesting that the greatest leaders in the seemingly contradictory worlds of physics and spirituality arrive at remarkably similar conclusions about the nature of the world. *See*, Capra, *The Tao of Physics: An Exploration of the Parallels Between Modern Physics and Eastern Mysticism*.

It is as comforting for people like Mr. Vollintine to believe in the supremacy of rational, logical thought, as it is for the religious fundamentalist to believe in the literal truth of the Bible or Koran. Both approaches offer false protection and comfort against the unknown, and avoid the necessity of any personal journey or exploration into that territory. Imagine how much poorer the world would be today had Einstein, Salk, Gandhi and King avoided the unknown and stayed within the limits of what then was considered to be reasonable, rational, and accepted doctrine.

If scientists were the deliverers of immutable truth, we would not witness dueling scientists in virtually every litigated case in America—and these scientists would not be so easy to debunk on cross-examination. If law were simply the application of logical principles in a rational way, we would not have such differing results from intelligent, logical, rational judges.

The truth is that emotions, psychological dynamics and personal subjective values play a major role in judicial decision-making. There are basically two choices for judges. A judge can acknowledge this truth and honestly and rationally examine these factors as he or she makes a decision. Alternatively, a judge can deny such factors play any part in his or her decision-making, and thereby be left at the mercy of the unconscious application of these factors. I do not argue against rationality or logic. These are useful tools in the search for truth. But why not add other tools; our sense of justice, yes, even our emotions? Why are we so distrustful of our own humanity?

Mankind *does* know things that science cannot discover. That eminent rationalist Bertrand Russell told us so himself in his autobiography: "Three passions, simple but overwhelmingly strong have governed my life: the longing for love, the search for knowledge, and unbearable pity for the suffering of mankind." From what I know of him, Russell avoided extremism in all its forms. He apparently allowed himself to be governed by emotions. Perhaps he recognized that emotions and the search for knowledge are not enemies or strangers, but synergetic equal partners in discovering what we humans refer to as "truth." He probably would have made a good judge.

Annual seminar scheduled for May

The annual seminar for the Association of Records Managers and Administrators will be held May 1, 2003 at the BP Energy Center in Anchorage from 8 a.m. to 4 p.m. Professor William Saffady will speak on the topic: Cost Justification Concepts for Records Management Projects. He will also touch on record retention laws and legal cases. Lunch and refreshment breaks are included in the $125 fee (before April 15) or $150 after that. More information, contact Larry, at 277-6677 ext. 224 or email at hayden@alaska.com.

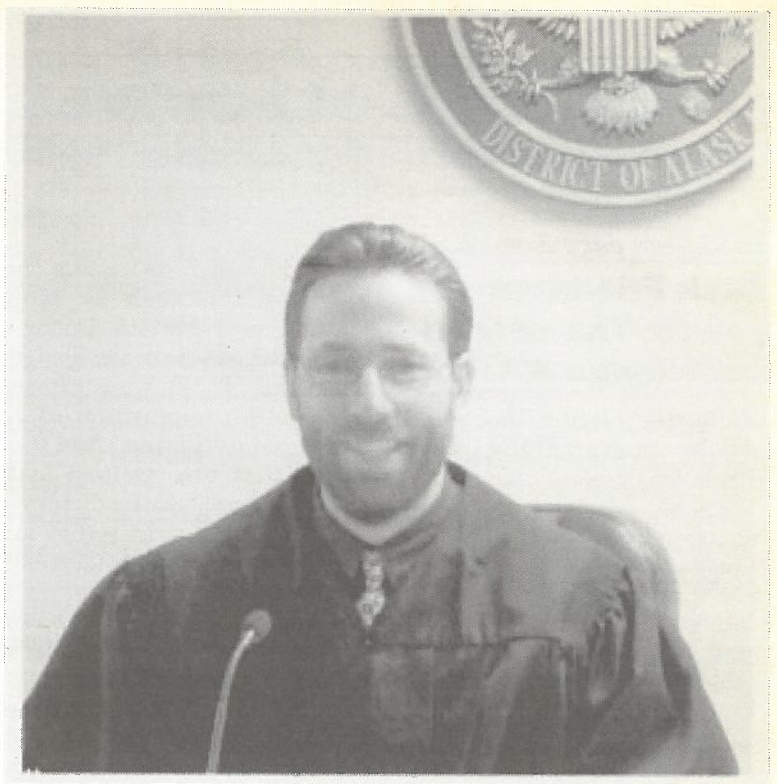
William Saffady is a professor in the College of Information and Computer Science, Long Island University, where he teaches courses on information management topics. He is the author of over 30 books and many articles on information management topics, including records management, electronic document imaging, information storage technologies, and library automation.

Bar People

Andy Fierro has opened his own law office at 310 K Street Anchorae, 99501 and is doing a general practice. His new telephone number is 264-6791.....**Chris Cyphers**, formerly with Perkins Coie, is now a partner with Preston Gates & Ellis.....**Bruce Bookman** is leaving Perkins Coie effective April 1: Bookman and Rick Helm will form Bookman & Helm, LLP.

Glenn Cravez is pleased to announce that he has reopened his practice effective January 2003. His practice continues to emphasize mediation and arbitration, wills and probate, contracts and leases, consumer transactions, and collections. Glenn can be reached at 276-3370 or gcravez@gci.net. His office address is 880 N Street, Suite 203, Anchorage, 99501.

Steve Labahn was featured in the December 9, 2002 National Law Journal. The NLJ profiles solo practitioners in its "The Practice" section.....Inactive Bar member Executive Director **Reasor** of Anchorage is enroute to Nuka Hiva and Hiva Oe in the South Seas, islands made famous by Herman Melville (MOBY DICK) and Paul Gauguin, who is buried there. Reasor is writing and producing a full length film of the Islands' true love story between an American youth and a Marquesan beauty that occurred during America's Civil War.



After spending four years as a state magistrate for the Tok District, Joseph Miller was appointed an acting District Court Judge to fill a temporary Fairbanks judicial vacancy last year. He is presently serving as the part-time United States Magistrate Judge for Fairbanks, works as a borough attorney, and has a private practice. Judge Miller is a graduate of Yale Law School and the United States Military Academy. He worked for Condon Partnow & Sharrock in Anchorage prior to his 1998 appointment as a state magistrate.

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STATE OF ALASKA
POSITION RECRUITMENT

ASSISTANT ATTORNEY GENERAL
JUNEAU

The State of Alaska, Office of the Attorney General, Government Affairs Section, is recruiting for the position of Assistant Attorney General in the Juneau office of the Civil Division. The position represents and advises the state Division of Retirement and Benefits in a variety of policy, administrative, legislation and regulation issues and matters. The successful applicant may appear before the state's superior and appellate courts in disputes that involve state benefit and health insurance programs, as well as before administrative boards and legislative committees. The work includes serving as primary counsel to the administrator of the state retirement systems.

A minimum of 3 years of licensed civil practice is desired. The position is fulltime. Salary ranges from $57,000 to $78,000, DOE and includes a complete state benefits package. Interested applicants may submit a complete resume,' the names of three professional references, and a comprehensive legal writing sample to:

James L. Baldwin
Supervising Attorney
Office of the Attorney General
P.O. Box 110300
Juneau, Alaska 99811-0300
(907) 465-2129

Recruitment closes at 4:30 p.m. April 11, 2003
The State of Alaska is an equal opportunity employer and complies with Title I of the ADA. Individuals who require accommodation to apply may call (907) 465-3600 (V) or 1-800-770-8973 (TTY).

LEGAL NURSE CONSULTANT:

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(509) 448-5762; Fax (509) 443-6607
legalnurseconsulting1@msn.com

Job Opportunity: Staff Attorney — Alaska Civil Liberties Union

Make a difference! The Alaska Civil Liberties Union Foundation seeks a fulltime Staff Attorney to work in our Anchorage office and coordinate our legal program. Salary $32,000 - $35,000, d.o.e. Generous benefits package including paid vacation and sick leave, health and dental insurance, life and disability coverage, and a pension plan. Job description and more details available on request by calling 258-0044. Applicants should submit a resume, a 5-10 page writing sample, three current references, a law school transcript and a cover letter describing the applicant's interest in this position to the attention of:

Jennifer Rudinger, Executive Director Alaska Civil Liberties Union Foundation P. O. Box 201844 Anchorage, AK 99520-1844

Applications will be reviewed on a rolling basis, and the position will remain open until filled. AA/EOE.

SUPPORT
Bar Rag
ADVERTISERS

Landye Bennett Blumstein LLP welcomes new associate

Cynthia M. Cooper

Landye Bennett Blumstein LLP proudly announces that Cynthia M. Cooper has joined the firm as an associate in the Anchorage office.

Before joining Landye Bennett Blumstein, Ms. Cooper was with the Criminal Division of the Alaska Attorney General's Office for nearly 20 years, first as an Assistant Attorney General, then as the Chief of the Office of Special Prosecutions and Appeals, and most recently as the Deputy Attorney General. In her new position, she will focus on civil litigation and corporate law.

She received her B.A. in political science at the University of Illinois, Urbana-Champaign in 1977, graduating summa cum laude with high distinction and Phi Beta Kappa. She obtained her law degree from Harvard Law School in 1980, where she served as the co-director of the Prison Legal Assistance Project. Ms. Cooper is a member of the bar of the United States Supreme Court, the United States District Court for Alaska, and the Ninth Circuit Court of Appeals. She is licensed to practice law in Alaska and Illinois.

Founded in 1955, Landye Bennett Blumstein LLP provides legal services for individuals and businesses in Alaska, Oregon and Washington. The firm emphasizes Alaska Native law, real estate, environmental law, mergers and acquisitions, high technology, intellectual property, tax and estate planning, litigation and administrative law.

A Trial Lawyer's Delight

From "We, the Lawyers," a compilation of humorous anecdotes, compiled by William F. White, Oswego, OR. (We,the lawyers@webTV.net)

Don't whisper too much to your attorney during trial

As told by Lawyer, Randall L. Kinnard of Nashville, Tennesee

When I first began practicing law in 1976, I was appointed to represent an accused defendant of burglary of a house. He was a 20 year old ruffian. He was charged, along with two other young men.

At the preliminary hearing to determine if there was probable cause that he be bound over to the Grand jury, a neighbor of the house that was burglarized made a positive identification of all three defendants. When the witness identified my client as one of the burglars, my client whispered in my ear, "Mr. Kinnard, I tell you that I was not at that house. I did not do this."

Another neighbor testified that he saw, from his house, the same three individuals break into the house during this daylight burglary. When he was once again identified, my client whispered to me, "I didn't do it." When the last witness identified the three culprits, the witness testified, "And they broke the screen to get in the house through the window." When the witness said this, my client leaned over and excitedly whispered in my ear, "There weren't no screen in the winda. The winda was already open!"

Need I add that ultimately my client was found guilty?

ESTATE PLANNING CORNER

Creditors and Alaska community property

☐ Steven T. O'Hara

Community property may be advantageous from a tax standpoint. If a married couple owns community property, then on the death of the first spouse to die it may be possible for both halves of the community property to be sold free of any income tax (IRC Sec. 1014(a) and (b)(1) and (6)). But Alaska community property, like any form of co-ownership between spouses, may be disadvantageous from a creditor standpoint.

Recall that in order to create community property under Alaska law, a couple must enter into a written community property agreement or trust (AS 34.77.030, .090, and .100). The beginning of each community property agreement or trust must contain, in capital letters, a warning that includes the following language: "THE CONSEQUENCES OF THIS AGREEMENT [OR TRUST] MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS..." (AS 34.77.090(b) and 34.77.100(b)).

As originally enacted, Alaska community property law generally subjected 100 percent of community property to the creditors of either spouse. By way of illustration, consider a husband and wife who reside in Alaska. The wife is a professional with exposure to malpractice claims. The husband recently inherited 10 acres of valuable land located in Alaska. The land had belonged to his mother, but now the land is owned solely by the husband.

Suppose after inheriting the land the husband kept the land as his separate property. Suppose a malpractice claim is filed against the wife. The claim, if true, could exceed the limits of the wife's malpractice insurance.

Under these facts, the land would not be reachable by the wife's creditor. Here the general rule would apply that a married individual's separate property is not subject to the creditor claims of his or her spouse (AS 25.15.010, .050 and .060). The land would simply be off the wife's financial statement from a state-law and creditor standpoint.

By contrast, suppose after inheriting the land the husband entered into a community property agreement or trust with his wife, classifying the land as Alaska community property. Then suppose the malpractice claim is filed, and suppose the claim relates to an act or omission that allegedly occurred, if at all, after the effective date of the community property agreement or trust (*See* AS 34.77.900(7)).

Under old Alaska community property law, the wife's creditor may have been able to reach 100 percent of the land to satisfy the claim, at least if the obligation was determined to have been incurred by the wife "in the interest of the marriage or the family" (AS 34.77.070(c)(repealed 2001)). The old law also provided that where an obligation is incurred by a spouse during marriage, the obligation was presumed to have been incurred in the interest of the marriage or the family (AS 34.77.070(a)(repealed 2001)). The old law provided that an obligation includes "an obligation attributable to an act or omission during marriage" (*Id.*).

This 100-percent-at-risk result deterred Alaskans from creating Alaska community property, especially those whose spouses were heavily invested in the late 1980's in leveraged Alaskan real estate. Many Alaskans know, from the economic depression that began about 1986 as well as other experiences, to avoid forms of asset ownership that place one spouse's assets at risk for liabilities assumed by the other spouse.

As a result, Alaska law was amended and currently provides: "An obligation incurred by only one spouse before or during marriage may be satisfied only from the property of that spouse that is not community property and from that spouse's interest in community property" (AS 34.77.070(j)).

From a creditor standpoint, this new law places a couple who own Alaska community property in generally the same position as if they owned the property as equal tenants in common.

In other words, this new law means under our example that the wife's creditor may be able to reach 50 percent of the land to satisfy the claim. This result appears to be the case because, under Alaska community property law, each spouse generally has a present undivided one-half interest in the community property (AS 34.77.030(c)).

ALASKA COMMUNITY PROPERTY FURTHER ILLUSTRATES THE RULE THAT IN ESTATE PLANNING, THE FORM OF OWNERSHIP OF THE CLIENT'S ASSETS OUGHT TO BE ANALYZED FROM BOTH A TAX AND A LOCAL-LAW STANDPOINT.

Therefore, with respect to creditors, the husband in our example would have been better off avoiding Alaska community property. Then none of the land would be at risk of loss due to his wife's creditors.

Alaska community property further illustrates the rule that in estate planning, the form of ownership of the client's assets ought to be analyzed from both a tax and a local-law standpoint. The issue is what opportunity or problem is inherent in the form of ownership.

QUOTE OF THE MONTH

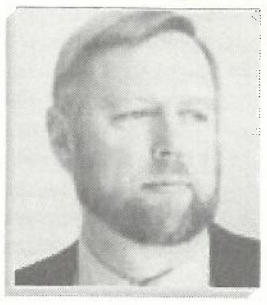
"Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws."

— *Plato*

GETTING TOGETHER

What every attorney should know about alternate dispute resolution

☐ Drew Peterson



Having gone off in my last column about the dinosaurs in our midst who still don't know even the basics of alternative dispute resolution, it seems appropriate that I devote a column to setting forth my own ideas about those basics.

The essential premise is that we have reached the stage in the development of the field where every competent legal practitioner should understand the major concepts. This includes being able to adequately explain these concepts and advise our clients about them.

DEFINITIONS

The starting point is to understand the basic vocabulary of ADR. Unfortunately those of us in the field have not made this job easy. We use conflicting and contradictory terminology:

´ *Alternate Dispute Resolution*. The most frequently cited definition for ADR. The "alternative" in this definition refers to alternatives to court. The widespread use of this definition of ADR comes from the initial emphasis placed on resolving disputes outside of the courtroom.

´ *Appropriate Dispute Resolution*. Many ADR practitioners prefer this definition of the ADR acronym. The "appropriate" in the title refers to the fact that ADR practitioners are looking for the most appropriate way to resolve any particular dispute. For instance, litigation itself may well be the most appropriate way to resolve a dispute. An example would be a case where a precedent needs to be established, or one involving an issue of fundamental rights.

´ *Collaborative Dispute Resolution*. In collaboration the disputants negotiate side-by-side rather than as adversaries, to seek the "win-win" solution. Collaborative Dispute Resolution includes mediation and other cooperative negotiation processes. It does not include arbitration or other forms of ADR where disputes are resolved by a third party and not by the parties themselves.

´ *Mediation*. Mediation is a method of assisted negotiation, with the use of a third party neutral mediator. The Mediator is the Director of the Choir. They assist disputants through a collaborative negotiation process. Along with arbitration, mediation is often misused by certain practitioners in the field, for reasons I cannot fully explain. While various levels of coercion may be used by different styles of mediators, ultimately mediation is non-binding and voluntary with the parties. "Binding Mediation" is a misnomer (in my opinion) and is really arbitration.

´ *Arbitration*. Arbitration is a form of private judging, where a neutral third party actually decides the dispute between the parties. "Non-binding Arbitration" is another misnomer: it is not really arbitration but rather a very formalistic type of mediation.

´ *Early Neutral Evaluation*. This is a form of mediation that takes place in a court setting, whereby a neutral is engaged to evaluate your case in litigation at an early stage, often before formal discovery has commenced. Such methods have had great success at obtaining early settlements of many cases, and by simplifying discovery needs even where no early settlement is possible.

´ *Mini-Trials*. This is a form of mediation used in high stakes corporate litigation. Respective counsel make an abbreviated presentation to decision makers on both sides of a dispute. After the presentations have been made, the decision makers (often CEOs of major corporations) meet with a mediator, who was also present for the presentations, and seek settlement. Mini-Trials have been successful in resolving multi-million dollar disputes.

´ *Summary Jury Trial*. Similar to Mini-Trials, this technique is used where major factual questions exist. A jury is impaneled to hear the abbreviated presentations. The jury can either be a simulated jury set up through a trial consultant service, or in some courts (e.g. in some of the United States District Courts) the jury may be actually impaneled from the normal jury pool. The jury's decision is not binding but is used as the basis for further mediated negotiations between the parties.

´ *Hybrid ADR*. The are a great number of ADR techniques which combine different techniques and methods to resolve a virtually infinite number of separate and distinct types of disputes. The majority of these hybrid methods use either mediation or arbitration, or a combination of the two, to resolve issues outside of court. A few examples of such methods are Med-Arb, Med-then-Arb, Baseball Arbitration, High-Low Arbitration, and Golf Mediation. There are many more. It is not necessary to understand all such techniques. What is important is to have access to someone who can help you understand them, and their respective advantages and disadvantages. This requires you to have enough basic understanding of the concepts of mediation and arbitration to evaluate them and their appropriateness for your clients.

ADR RULES, PROGRAMS, AND STATUTES

Legal practitioners should be familiar with the basic local court rules governing mediation, with active court mediation programs in their community, and with the primary statutes influencing the field. To wit:

´ *Alaska Civil Rule 100*. Civil Rule 100 is the general civil rule in Alaska governing mediation and other forms of ADR. Civil Rule 100 allows for mediation in any civil case upon motion of either party or by the court on its own motion. It provides for limitations based on domestic violence concerns, sets forth specific procedures, and establishes rules of confidentiality.

´ *Federal Local Rule 16.2*. This is the federal equivalent of Alaska Civil Rule 100. Even more detailed than Rule 100, it is equally broad in its potential application.

´ *Alaska Appellate Rule 222*. This Rule governs settlement conferences in Civil Appeals. While not called "mediation," Rule 222 allows parties to civil appeals, or the court on its own motion, to request a settlement conference in front of a retired or active judge or justice, or a private neutral. It sets forth procedures and rules of confidentiality similar to those contained in Civil Rule 100. Appellate Rule 222 has not been much used to date, but the program is about to become more active, focusing on family related civil appeals, with retired Superior Court Judge Elaine Andrews acting as the primary settlement conference neutral.

´ *Alaska Child Custody and Visitation Mediation Program*. Administered through the Offices of the Child Custody Investigators, this is a means-based program that uses mediation in cases involving contested parenting issues for individuals with limited income. Mediations are performed by private mediators selected by the court, and are primarily performed at the courthouse. Initially limited primarily to Anchorage, Fairbanks, and Juneau, the program is currently in effect throughout the state. Questions should be directed to Karen Largent, the Alaska Court System Dispute Resolution Coordinator.

´ *Alaska Child-In-Need-Of-Aid Mediation and Family Group Conference Programs*. Also administered by Karen Largent, this program also uses private mediators and facilitators to conduct mediation and "family group conferences" of Child-In-Need-of-Aid (and occasional Guardianship) cases in Alaska. The Mediators/Facilitators in these cases have been trained by the court system itself, in specific family-focused methods of trying to resolve these cases outside of the courtroom.

´ *The Administrative Dispute Resolution ACT of 1996 - Public Law 104-320*. This is the federal act mandating the promotion and use of ADR by all federal administrative agencies. The mandates of the act have been implemented in different ways by the different agencies, but the law's requirements apply to all agencies of the Federal Government.

´ *Uniform Arbitration Act. (AS 09.43.10 et. Seq.)* This is Alaska's codification of the Uniform Arbitration Act. Alaska courts are mandated to confirm (and award judgments based upon) awards of arbitration entered into within its jurisdiction as long as they meet the (broad) requirements of the act.

STYLES OF MEDIATION

An area of ADR receiving much attention in the past few years relates to overall styles of mediation. The discussion has focused primarily on a continuum of whether the mediator uses a more "evaluative" or a more "facilitative" style of mediation. The debate is in an early stage and is complicated on a number of levels. Certain styles of mediation have been identified and are fairly well understood, while others remain fuzzy. Some examples:

CERTAIN STYLES OF MEDIATION HAVE BEEN IDENTIFIED AND ARE FAIRLY WELL UNDERSTOOD, WHILE OTHERS REMAIN FUZZY.

´ *Facilitative Mediation*. The mediator functions as a process facilitator only and does not evaluate the case nor act as an expert. This is the style of mediation advocated by the former Academy of Family Mediation and is most often used in family mediation. It is also used in other cases where there is a need for a future relationship between the parties.

´ *Evaluative Mediation*. The mediator is knowledgeable in the field and provides his or her evaluation as to the relative merits of the case or likely outcomes in court. This is the style of mediation found most often in personal injury cases and other court-annexed non-family cases, at least where there is no continuing relationship between the disputants.

Continued on page 9

Alternate dispute resolution

Continued from page 8

´ *Settlement Conference Style Mediation*. Also called "strong-arm' mediation, this type of mediation is strongly evaluative and often coercive, as exemplified by court settlement conferences. As with other mediators, judge mediators all have their own style and many do not fit into the "strong-arm" mode.

´ *Transformative Mediation*. Exemplified most clearly by the United States Post Office's successful "Redress" employment mediation program, Transformative Mediation focuses on relationships and finding opportunities for empowerment and recognition rather than substantive resolutions of disputes.

´ *Other Mediation Styles*. Many other mediation styles exist and have been described in professional mediation literature. It is not important that we understand each of these styles in detail. Much more important is that we interview each mediator, and ideally participants in actual mediations, to discuss and analyze the particular style they use. Many mediators will employ a variety of styles, but upon inquiry you will find that they generally see themselves as falling into a certain area along the evaluative - facilitative continuum. In addition to understanding a mediator's overall style, it is important to understand their views on power balancing, and specifically how they will protect a client from any possible power imbalances which you have identified that might effect them.

POWER AND POWER BALANCING

The most controversial issue surrounding ADR is the issue of power. Thousands of pages have been written on the subject, and the best minds in the areas of mediation, domestic violence, and other ADR related disciplines have spent hundreds of hours at conferences and symposia examining the issue. To date they have only scratched the surface of this complex and disturbing subject. Nevertheless, there are a few generalizations that can now be made about power balancing and ADR:

´ *No Form of ADR is Inherently Good or Bad*. The field of ADR is no longer at a stage where various methods or strategies can be simply written off as good or bad. The issues are much more complicated that that. Non-ADR alternatives are often worse than the dangers being avoided. Each case needs to be evaluated on its own merits as to the risks involved, and how such risks can be eliminated or at least minimized.

´ *Power Should Always be Examined as a Critical Part of Any Dispute Resolution Process*. Rather than ignoring the power aspects of negotiations, the exact opposite should be true. Power should always be looked at as a critical aspect of any dispute resolution process. As a disputant, or the advocate for a disputant, power should be considered. Going to court is inherently dangerous for the less powerful party, especially if their power disadvantage includes financial disadvantages. Just as the court system has safeguards built in to balance the power of the parties, various ADR methods have similar safeguards. Not all such safeguards exist for each method. It is especially up to the attorneys, as advocates for our clients, to advise them as to how to find a method of dispute resolution that maximizes their power and does not put them at risk

´ *Just as Knowledge is Power for Our Clients, the More We Know about ADR Options, the Better Advocates We Can Be for Our Clients.* In the past there have been some who have rejected mediation or other methods of ADR as inherently harmful to their clients. As the field has grown and become more sophisticated, however, we can no longer be so cavalier, Just as there may still be forms of dispute resolution (including court) that will put our clients at a disadvantage, there may be other forms that will provide an advantage for them. It is up to us, as competent practitioners, to know the difference and to be able to guide our clients toward and through those processes which are most to their benefit.

CONCLUSION

In conclusion, ADR is a movement whose time has come. It is incumbent on all of us, as competent attorneys, to understand the basics of appropriate dispute resolution and to be effective advocates for our clients. We can do this by advising them about and representing them in such processes.

The bad news is that many of us still do not understand the basics of ADR. Through this ignorance we are endangering not only our clients, but our firms and ourselves. The good news is that the basic concepts of ADR are not that complicated. ADR is fascinating and exciting and on the cutting edge of the future of the law. With education and the welcome help of those in the legal profession knowledgeable in this exciting new area of the law, we can find ever more new and creative techniques to help our clients obtain their desired outcomes.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In the Matter of the Implementation of the Electronic Case Filing System in this Court GENERAL ORDER NO. 03-1

ORDER ESTABLISHING DEADLINES
FOR ATTORNEYS TO PARTICIPATE IN THE
ELECTRONIC CASE FILING SYSTEM

This court implemented the Case Management/Electronic Case Filing system on October 1, 2001. Attorney participation in the Electronic Case Filing ("ECF") portion of the system has, to this point, been voluntary. However, this year the court is facing substantial budget cuts and the potential loss of staff, requiring it to become more efficient. To promote greater efficiency in the administration of bankruptcy cases in this district, all attorneys appearing before this court (with a few exceptions, as listed below) will be required to participate in the ECF system. Therefore,

IT IS ORDERED that the following timeline for attorneys to become certified as ECF users has been established:

1. All attorneys representing bankruptcy trustees in this District, except for attorneys who are appearing as special counsel for the trustee and do not otherwise appear before this court, must be certified as ECF users and file all papers and pleadings electronically using the ECF system by no later than **OCTOBER 1, 2003.**

2. All other attorneys who file documents in this court, whether on behalf of a debtor, a creditor or some other interested party, must be certified as ECF users and file all papers and pleadings electronically using the ECF system by no later than **MARCH 1, 2004.**

3. Exceptions to the above deadlines will be made in the following instances:

a. For attorneys in outlying areas of the state who do not have access to high speed modems at a reasonable cost will be exempt from mandatory ECF participation, but only until such time that the region of the state in which they are practicing does acquire high speed modem or cable internet capabilities. For attorneys in such outlying areas, an affidavit regarding the cost and availability of internet access in their area must be filed in order for this exemption to apply.

b. Other attorneys subject to the deadlines stated in paragraphs 1 and 2 above may be excused from mandatory ECF participation only on motion to the court, and for good cause shown.

4. Pro se debtors and creditors in this District will not be required, at this time, to file documents via the ECF system. Such pro se filers will continue to file paper documents over the counter at the Clerk's Offices in Anchorage and the satellite Clerk's Offices which may remain open in the other areas of Alaska.

5. Institutional creditors (e.g., banks and credit unions) who are currently certified ECF users in other districts, or who become certified ECF users by this court, may, after **JUNE 1, 2003**, file proofs of claim and other documents via the ECF system.

DATED: January 28, 2003.
BY THE COURT
/s/ Herbert A. Ross

HERBERT A. ROSS
United States Bankruptcy Judge
/s/ Donald MacDonald IV

DONALD MacDONALD IV
Chief United States Bankruptcy Judge

Serve: W. Wolfe, Clerk of Court
J. George, Chief Deputy Clerk (for publication in Bar Rag/Journal of Commerce, and distribution to Clerk's Offices throughout Alaska)
C. Davidson, Librarian

Volunteer mediators sought for the Anchorage small claims mediation program

We are seeking volunteer mediators to help with the Small Claims Mediation Program, an initiative by mediators and lawyers to assist the state District Court in Anchorage in handling its small claims calendar.

The calendars are generally set for one day a week (currently, Thursdays), with a calendar call of small claims cases set for sessions at 8:30 a.m. and 10:00 a.m. The time commitment is only about 1-3 hours on the day of mediation. The volunteer mediators have been able to settle about two-thirds of the cases which go to mediation, freeing up the district court judges' time.

We seek lawyers and non-lawyers who have already had some basic mediation training. We are privileged to do this service for the court and seek to do it in a professional, non-coercive manner. If you have had no training, we would still like to invite you to participate as an observer (with the permission of the parties), to see how mediation works and if you would like to get some further training.

It is an excellent opportunity for new mediators to get practice (which is hard to come by once you've had your basic training), to do some pro bono, and for those with more experience to both serve justice and help teach the mediation process to new mediators.

If you are interested, call Rick Barrier at (907) 250-5698 or e-mail him at rbarrier@alaska.net.

Niesje Steinkruger is pretty proud of her new neon lips.

Bill Spiers thought he was going home with a new hat . . .

Jason Wiener can't wait to see what door prize he won.

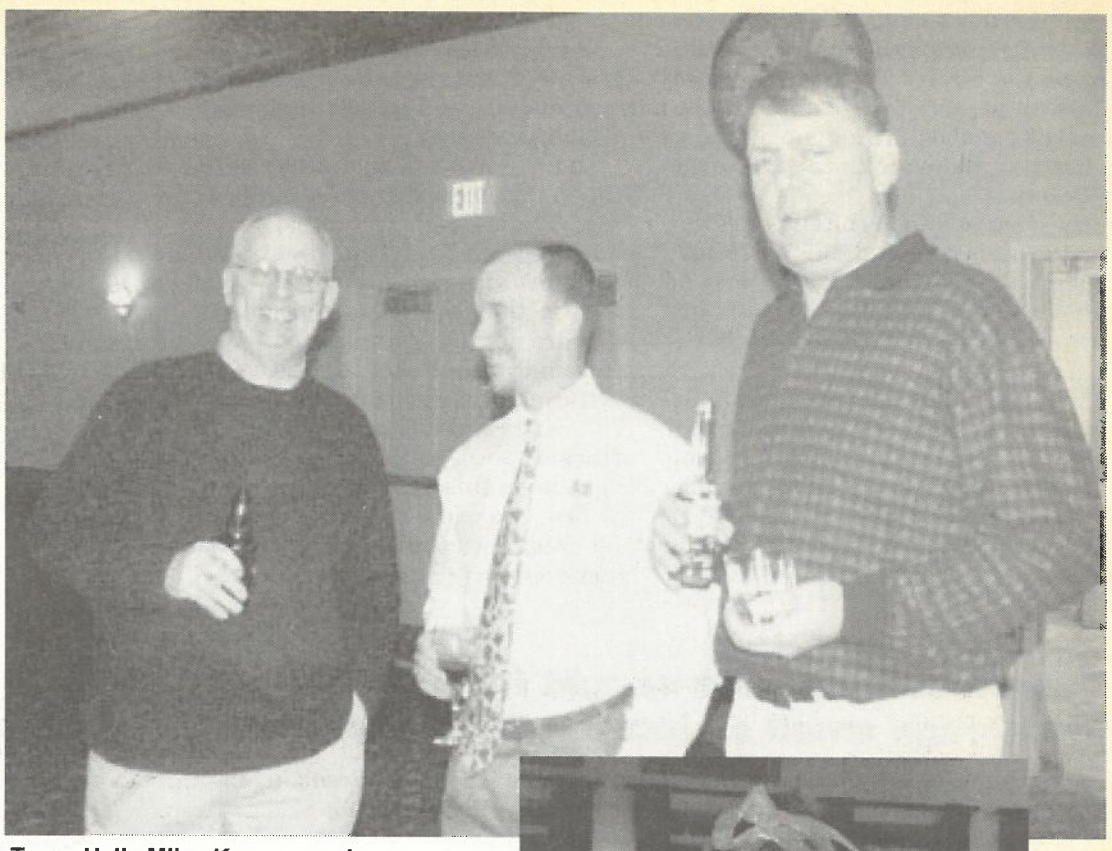
. . . But by the end of the night, Roger Brunner was sporting the latest in dead animal headgear.

Tanana Valley Bar Association holds annual dinner

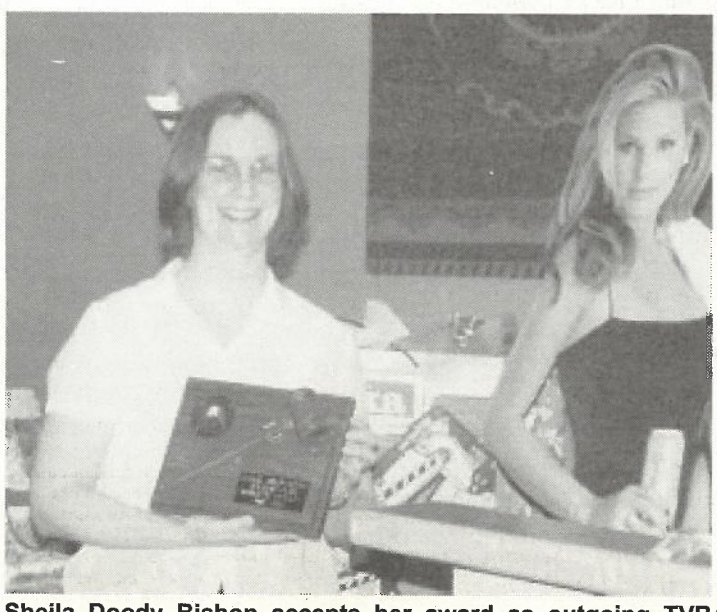
The TVBA recently held its annual 4th of July dinner at the Fairbank Princess Riverside Lodge. About 60 people were in attendance to participate in the ever popular Chinese auction and for a chance to bring home one of many glamous door prizes.

Here Ken Covell holds court with Joe Miller.

Andy Kleinfeld uses one of the door prizes to cut his meat.



Terry Hall, Mike Kramer and Gene Gustafson enjoy the festivities.



Sheila Doody Bishop accepts her award as outgoing TVBA president.

Photos by
Lori Bodwell

Charlie Cole, sporting elegant recycled headgear, unwraps his choice in the auction.

Catch-22 of child support, Alaska style

By Joe Sonneman

Catch-22, as Joseph Heller has Yossarian say, is some Catch. You have to keep flying missions, because if you ask to be relieved because the flak and danger makes you crazy, well, asking to be relieved of danger is rational, so that PROVES you're not crazy, so you have to keep flying, even though anybody repeatedly flying through flak and danger will go crazy, but you can't be relieved unless you ask or unless you complete the required number of missions, but the colonel is always raising that number just as you get close to it. Yessireebob, that's some Catch.

Alaska has a Catch-22. Alaska's Catch involves child support. Here's how it works:

An Alaskan is working in resource development, making big money, $60-90,000 a year. But then the price of gold plummets and the mine closes, or the world timber price falls and the logging camp shuts down, or the salmon run is fantastic and the price plummets or the salmon run is nothing and the price goes up but the catch is too small and either way the cannery closes or the packer packs it in. Out of a job, out of the money.

Often only minimum wage jobs are then available. The Alaska minimum wage is now $7.50 an hour. Many such jobs are only part-time, with no benefits, but even full-time that's only $15,000 a year, not much compared to that $60-90,000 of last year.

If the resource development problem is international, national, or statewide—as is often the case with gold, timber, and salmon—the parent is not "voluntarily and unreasonably unem-ployed or underemployed." There are just no other high-paying jobs, period. We're not talking about deadbeats here, but of real Alaskans with real Alaskan problems.

Lack of money often puts a severe strain on personal relationships. The family sometimes breaks up and, if there are children, the partner applies for child support under Civil Rule 90.3. R.90.3 has a formula under which the non-custodial [or 'obligor'] parent has to pay a percentage of income for child support. R.90.3(a)(2) says the obligor parent must pay 20% for one child, 27% for two, 33% for three, and 3% more for each child after three.

(The Alaska Supreme Court wrote 90.3, which some people say is letting the Judiciary write legislation, a possible constitutional problem though the Court denies it, but that's for a different article.)

A few Court Rules have comments, to help mere mortals understand them. R.90.3 is such a Rule. Comment E to R.90.3 says the Court should figure support "as a certain percentage of the income which will be earned when the support is to be paid."

That's a good rule, though—as Comment E admits—"necessarily somewhat speculative, because the relevant income figure is expected future income."

Comment E admits determining future income is hard "when the obligor has had very erratic income in the past," in which case the Comment says courts can "average the obligor's past income over several years[1]."

But in Alaska's common "had a resource job, lost it" scenario, income might have been steady—at a mine or a mill or a cannery—and now is gone almost completely. Averaging won't help here. The average of $75,000 a year, say, and $15,000 a year, for example, is $45,000, but in reality the obligor parent is now earning only $15,000, not $45,000.

Unfortunately, Comment E goes on to say courts should award specific amounts, not specific percentages, because awarding percentages of actual future income "has been rejected, because of enforcement and oversight difficulties."

That's unfortunate, because by rejecting the percentage of income approach, the Comment and Court also reject the fair "income from the period earned" principle. So the unfortunate result is form over fairness, procedure over principle,[2] simplicity for court oversight over difficulty or impossibility for obligor parents. Unfortunately, too, [a]lthough this court has frequently relied on the Commentary for guidance, we have also rejected it in some instances and authorized support calculations that conflict with it. *Murphy v. Newlynn*, 34 P.3d 331, 334 (Alaska 2001).

Or, the law is as long as the Chancellor's foot? When the Court admits it doesn't follow the Commentary, few Alaskans can well know what to expect. And thereby hangs a tale, this tale of Alaska's Catch-22. The first part of the Alaska Catch comes when someone initially determines the level of support due. The courts or the Child Support Enforcement Division (CSED, a part of the Department of Revenue), make the initial determination.

According to Charles McCormick, an Anchorage-based paternity determination supervisor for CSED, if the courts simply say support should be calculated as per R.90.3, CSED will return the determination question to the courts. But if the courts only issued a custody order, or if for any other reason a parent directly applies to CSED for child support, CSED will administratively make the initial determination of how much support is due.

Having little information about the obligor's future income in a time and place when and where the former resource development activity is not providing income, CSED [or, sometimes, the court] instead typically goes to the only hard evidence it has: tax returns showing last year's income, or (said one Juneau CSED employee) two years of tax returns, averaged.

But last year's income was, say, $60-90,000. And this year's income is, at best, $15,000 in the scenario presented here. So of course the obligor parent appeals.

CSED probably denies the appeal and, let's say, is upheld by the Department of Revenue's independent hearing officer and, later, on reconsideration, upheld again by the Commissioner of Revenue (or Commissioner's designate).

The obligor parent then appeals to the Superior Court, citing Comment E for the proposition that support should be a percentage of present $15,000 annual earnings, not of past $75,000 earnings no longer available.. The Superior Court, sitting as an intermediate court of appeals of the administrative decision, per Part VI of the Appellate Rules, generally decides to uphold the agency decision, because the decision is of the type the administrative agency is empowered to decide. That is, the setting of support levels is administrative, not legal in nature and the courts usually defer to agencies in those situations.

So the obligor parent loses again and perhaps not yet seeing the writing on the wall appeals the Superior Court's decision on initial determination to the Alaska Supreme Court. That Court will theoretically ignore the Superior Court finding and conduct a de novo review, but the Supreme Court review will also be deferential to the agency decision, with the same result likely despite the wording of Comment E that says support for a time period should be based on actual income earned in that period. Insofar as the Supreme Court considers what the Superior Court did—for example, if the Superior Court initially determined the amount of support due, the Supreme Court will likely uphold the Superior Court.[3]

The process from initial agency determination through the Supreme Court used to take about two years. The Supreme Court is working to speed the process somewhat, but even so, let's say, at least 18 months go by. The Supreme Court very likely upholds the initial determination—which you remember was based on a percentage of that high income the obligor parent has not earned for two years now. So the obligor parent is now in the hole, owing two years' worth of support at levels justified only by long-*past*—not present—income levels.

But to cushion this blow, the Supreme Court reminds the obligor parent that s/he can file for a modification of child support if circumstances changed materially[4], i.e., by more than 15%[5].

Our former resource extractor's income fell by maybe 75%, so there's no problem in meeting the "material change of circumstances" 15% rule. But now we get to Catch-22.2: modifications of child support are not retroactive![6] Even if CSED, the agency setting the support level, agrees that it made a mistake, the Rule prohibits retroactive modifications of arrearages.[7]

Yes, that's right. The obligor parent must still pay the 2 years or so of child support calculated at a percentage of the high income level the obligor once earned but has no longer! "Ah," you are perhaps thinking, "well, the obligor should simply have filed for a modification of child support at the start, while at the same time appealing the too-high initial determination."

Wonderful idea, but now we get to Catch-22.3: CSED refuses to accept (or, can "abate") an application for a modification of child support while the obligor parent is appealing the determination of child support.[8] Until very recently, CSED would also refuse to initiate reconsideration of support for at least one year after a court order;[9] even now, CSED is likely to deny a modification request closely following in time a court order on support level.[10]

Now perhaps you see the true beauty of the Alaskan Catch-22: there is NO escape from the injustice of wrongly-calculated child support obligations.

Obligor parents MUST continue to pay child support at levels based on the past income they once had, unless they immediately agree to the wrong initial determination and immediately apply for a modification. The system is saying, in effect, we'll only help you if you don't fight us. Don't even think of trying to appeal; just give in and then ask for a modification—stay wholly within the administrative ambit and call not to the Courts for help because if you appeal, you can't apply for a modification and modifications can't be retroactive, so if you lose, you will be so far behind that most likely you will *never* catch up.

Ah, yes. That's some Catch, that Catch-22, though perhaps not *quite* as bad as it used to be (because the "12-month delay" regulation is said to have recently ended).

Still, quite a Catch.

(Footnotes)

[1]*But see Zimin v. Zimin*, 837 P.2d 118, 123 (Alaska 1992) (Court properly rejected 10 year average as not generally a reliable indicator of obligor's current earning capacity).

[2]*Wright v. Wright*, 22 P.3d 875, 879 (Alaska 2001) ("We have made it clear that parties must strictly adhere to Rule 90.3's procedural requirements").

[3]*Zimin*, 837 P.2d at 124 ("Child support determinations are within the broad discretion of the trial court and will only be reversed when we are left with a definite and firm conviction that a mistake has been made;" citations omitted here). *Farrell v. Farrell*, 819 P.2d 896, 900-01 (Alaska 1991) (same point).

[4]*Wright v. Wright*, 22 P.3d 875, 878 (Alaska 2001) ("Modification of a final child support award is allowed 'upon a showing of a material change in circumstances')

[5]Rule 90.3(h)(1)("A material change in circumstances [necessary for modification] will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order").

[6]*J.L.P. v. L.A.*, 30 P.3d 590, 600 & n.37 (Alaska 2001) ("Child support may not be modified retroactively"; other citations at n.37, including R.90.3(h)(2)("Child support arrearage may not be modified retroactively, except as allowed by AS 25.27.166(d)"); *Wright*, 22 P.3d at 878 (Retroactive modification of a child support arrearage is prohibited).

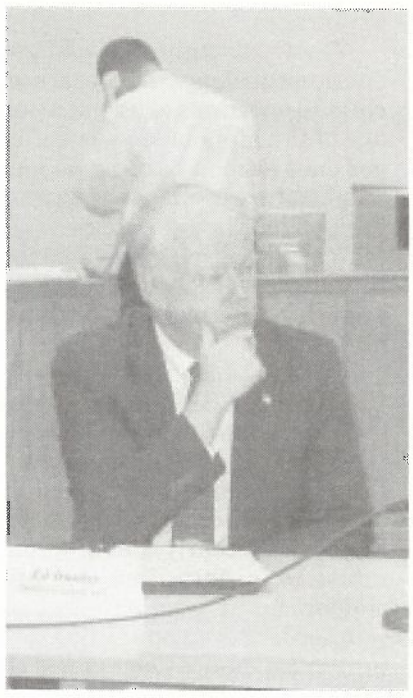
[7]*Wright*, 22 P.3d at 879 ("Even when CSED and the obligor agree that the child support obligation is incorrect, Civil Rule 90.3 prohibits retroactive modification of the obligation without a motion to modify child support;" modification can begin only from the date on which a motion or petition for modification is served).

[8]Per AS 25.27.135, a law allowing CSED to 'abate' the second of two pending actions [same causes of action] concerning child support duties..

[9]*Wright*, 22 P.3d at 877 ("CSED [Child Support Enforcement Division, in the Department of Revenue] informed [the obligor parent] that once a court order had been entered, CSED could not initiate an action for reconsideration of support for twelve months"). However, Charles McCormick, an Anchorage-based paternity determination supervisor for CSED, says that this "year-long delay" rule ended about November 1, 2002, when certain Phase III CSED regulations changed.

[10]But CSED says the modification request will get factual consideration now.

Anchorage Inn of Court Update



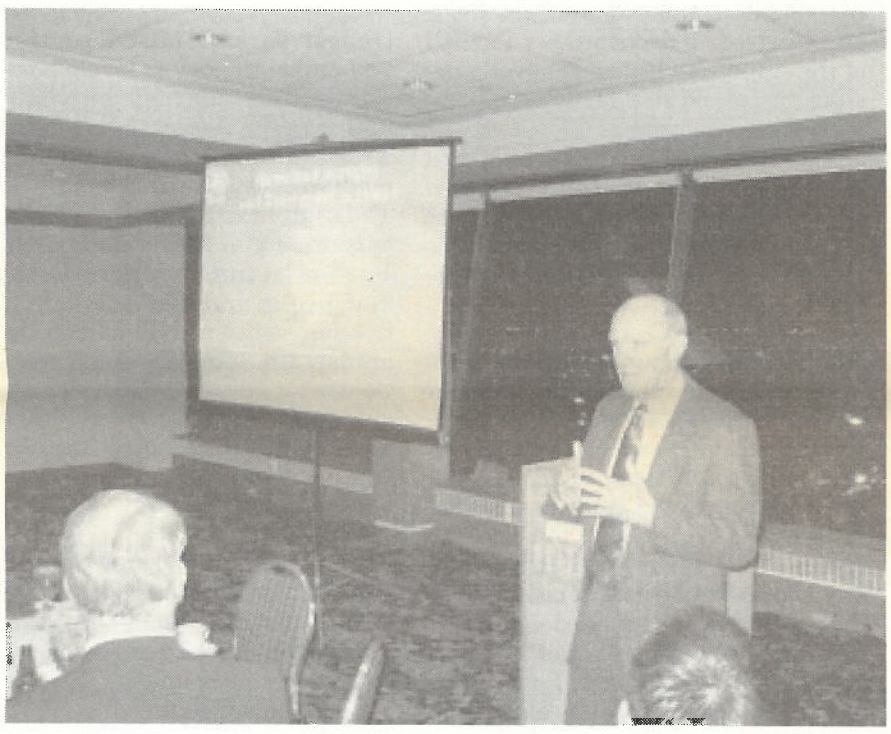
INS District Counsel Ed Dunlay explained changes in immigration procedures under the Patriot Act.

In February, the Anchorage Inn of Court hosted a panel discussion entitled "The Patriot Act: Friend or Foe?" The panel was comprised of a broad cross section interested in this issue, including U.S. Attorney Timothy Burgess, INS District Counsel Ed Dunlay, Catholic Social Services representative Mara Kimmel, ACLU representative Professor Richard Seifert and Fairbanks City Council representative Scott Kawasaki.

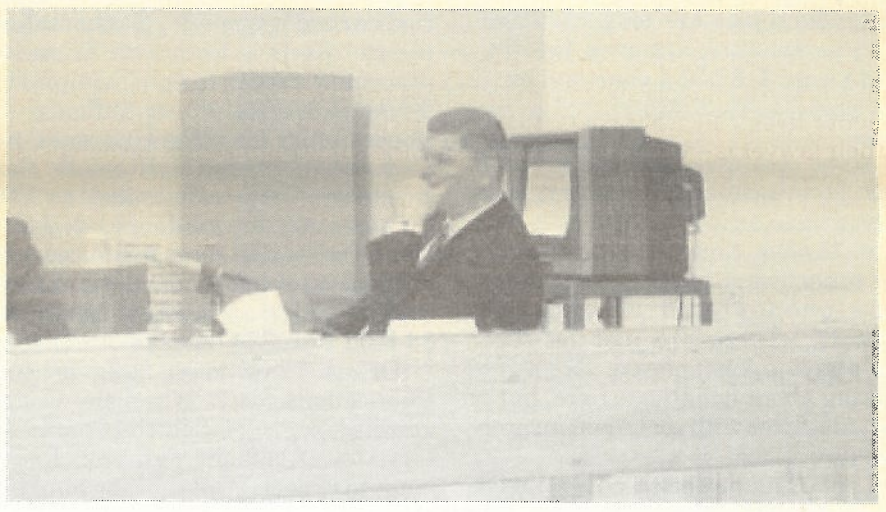
At its dinner following the panel discussion, the Inn presented Wayne Rush, the director for Alaska Homeland Security.

Panel members Mara Kimmel and Scott Kawasaki mull the nuances of the Patriot Act.

Patriot Act panel members Ed Dunlay, Mara Kimmel, Scott Kawasaki and Tim Burgess reviewed various provisions of the Patriot Act and discussed the Act's application.



Wayne Rush, Director of Homeland Security for Alaska, explains his department's duties and responsibilities.



U.S. Attorney Tim Burgess ponders a question posed by an audience member.

Photos by Yvonne Robinson

Collaborative law: The new divorce process

You and your spouse have decided to call it quits after years of trying to work out your differences. How can you get through the divorce with the least acrimony and impact on you and your children?

There is a new nationwide trend particularly suited for family law cases called **"collaborative law"** which began in 1990 as a result of one Minnesota attorney's quest for a better way to help parties resolve their differences. In the past 12 years, the movement has spread from coast to coast. As more attorneys learn about this method and adopt its concepts, the familiar terrain of family law may be changed forever. New Mexico has recently joined this movement by creating the New Mexico Collaborative Law Group, a coalition of attorneys who embrace the concepts of collaborative law. To become a member of this group, an attorney must complete training in the principles of this new process and how to successfully collaborate with other professionals. I have completed such training and am excited about the potential this method of dispute resolution brings to family law.

Divorce and other family issues are not well-suited for the traditional litigation mode of resolving disputes. The courts are ill-equipped to handle the intense emotions that accompany most family law matters. A bitter lawsuit will not give a litigant the vengeance, validation, or "pound of flesh" that most people in the throes of domestic conflict seek. In the 1980's, mediation quickly became the dispute resolution mechanism of choice. The hope was that parties who played a direct, active role in coming up with their own agreement would be more likely to abide by such an agreement, rather than being told what to do by a judge. Sometimes this hope was borne out; sometimes it was not, if the parties were not on a level playing field of emotional and intellectual strength.

Collaborative Law particularly benefits parties who must continue to have a relationship with each other post-divorce. For example, parents need to have a civil relationship since they must co-parent children together and attend numerous celebrations after the children reach adulthood. Parties often have close relationships with in-laws as well as friends "of the couple." Business owners must have open communication for the business to flourish.

In Collaborative Law, the parties craft their own agreements with the aid of their lawyers in a series of four-way meetings. From the beginning, there is open and honest financial disclosure about the parties' assets, liabilities, income and expenses. The four-way meetings are designed to ultimately create an agreement that is truly beneficial to both parties and serves the entire family's long-term best interests.

How it works. At the beginning of the case, both parties and their attorneys sign a contract that they will never go to court or threaten to go to court. If anyone involves the court, the collaboration ends and the lawyers involved are disqualified from appearing as trial counsel. In other words, the parties must hire new attorneys to proceed through the traditional litigation model. No other dispute resolution model has this disqualification stipulation as its cornerstone. Mediation and settlement facilitation are often carried out in the context of ongoing litigation with the option of returning to court if an impasse is reached. Although most cases do settle, they do so against the backdrop of an adversarial process in which the parties become polarized the longer the conflict continues. Many times the settlements occur "on the courthouse steps," most often figuratively but sometimes literally. These on-the-spot settlements can lead to buyer's remorse, lingering bitterness and post-divorce motions and court appearances.

Collaborative law is not for every attorney or every client. However, it is an exciting area in which I look forward to practicing. I wanted to make you aware of it in case it peaks your interest or that of someone you know.

— By Linda L. Ellison

Honoring those who do justice to Gideon's promise

Gideon's Heroes

"My client is homeless and has mental [health] problems. The cops said to him, 'We have your fingerprints on the brick.' He said to the DA, 'Are you sure I should be admitting this? Then the real guy who did it will still be out there.'"
– *Natasha Lapiner-Giresi, Staff Attorney, New York City Defender Services*

THE CASE: An innocent woman is nearly beaten to death in mid-town Manhattan. Screaming headlines. Pressure on police. Three eyewitnesses. They pick Bentley Grant out of a lineup. He is charged with attempted murder, and confesses.

Homeless, Grant always carried around a milk crate filled with his belongings. Police found several newspaper clippings about the attack in his milk crate when they arrested him.

This may have been enough to convince the District Attorney of Grant's guilt, but it wasn't enough for public defender Natasha Lapiner-Giresi.

Grant had no criminal record. He told Lapiner-Giresi that his confession had been coerced, and that the witnesses were mistaken. He told her everything he had done on the day in question. He had clippings about the incident in his crate because police had questioned him the day after the assault, and taken his photograph before releasing him. He clipped the articles afterward out of curiousity. Lapiner-Giresi theorized that police had taken his picture that day, created a sketch from it and showed it to the witnesses, which is why they picked Grant out of a lineup.

Lapiner-Giresi went to work, and sought the surveillance videotapes of all of the places he said he had been that day. Finally she found a record store, 20 blocks from the scene of the crime, that had a surveillance camera running at the actual time of the assault.

But the D.A.'s office got the videotape first. They balked at letting her view it, and insisted that Grant be committed to Elmhurst Hospital Prison Ward. Grant's family was "so scared that he would go to jail," says Lapiner-Giresi, "that when they went to the hospital they signed the papers to have him civilly committed."

Sure enough, in the videotape images that Lapiner-Giresi was finally allowed to view, Grant was at the record store at the exact time of the assault, carrying his milk crate. He spent another month in the prison hospital before he was released. After two months, the District Attorney dismissed the charges against Grant.

"This guy was really, really innocent," said Lapiner-Giresi. "If that tape hadn't been there, he would have gone to jail for years and years – probably 15 to 20. Everything he said was supported, but we were the only ones who believed him."

THE HERO: Natasha Lapiner-Giresi was born and raised in lower Manhattan. She grew up wanting to be a police officer, but a family friend told her, "We can always find police officers. If you really want to make a difference, you should be a lawyer."

In retrospect, she thinks he meant "prosecutor," but at the time, with friends in her neighborhood occasionally running afoul of a harsh criminal justice system, public defense felt like the place where she could make more of a difference. Now, when people ask what she does, "I never say I'm a lawyer – I always reply, 'I am a public defender.'"

"Sometimes it feels like you're beating your head against a wall," says Lapiner-Giresi, of the long days, the adversarial pressures, and the miserable circumstances of the crimes and her clients' lives. She feels a need to go the extra mile because her clients have no choice about who their lawyer is – yet have the right to get the same representation as a person with money.

One secret to keeping a sense of humor and perspective: Lapiner-Giresi is married to a stand-up comic. Together they own a wine store, and live in an apartment above it. Dinner with a roomful of comedians, and a great wine cellar, helps keep things loose.

THE OFFICE: New York City Defender Services is located one block from "Ground Zero" – the World Trade Center. It has 32 staff public defenders plus managers and support staff, handling about 16,000 cases a year – or about 500 cases per public defender. Chief Public Defender Mike Coleman is proud that his lawyers love the work that they do and make a career out of ensuring that the quality of justice people receive does not depend on how much money they have. Many gave up more lucrative private practices. They have an average of 15 years experience, and turnover is near zero.

On September 11, 2001, the office was still standing, but uninhabitable. The fire department commandeered it as a morgue. The staff trooped over to Lapiner-Giresi's apartment – the nearest working phone – to call loved ones to say they were safe. Two days later, they got a fireman to break down the door to the file room so the public defenders could grab their case files. Though the office was closed for another month, they worked out of their homes and friends' offices, and, Coleman notes, "no client was unrepresented for even a day."

QUOTE: "I feel like I can make a big difference in the lives of my clients – and the community – by helping get housing, drug treatment, mental health services, or navigate around the bureaucracy to get government services or benefits. I really care what happens to them. A quarter of them are mentally ill. I love getting up and going to work in the morning."

THE PROBLEM: Most indigent defendants are not as fortunate as Bentley Grant. "Despite progress in many jurisdictions," declared a U.S. Department of Justice report issued in 2000, "indigent defense in the United States today is in a chronic state of crisis." High caseloads and miserly funding have resulted in "legal representation of such low quality as to amount to no representation at all, delays, overturned convictions, and convictions of the innocent."

GIDEON'S PROMISE OF A FAIR TRIAL: Still unfulfilled.

40th anniversary of Supreme Court ruling

March 18 marked the 40th anniversary of the U.S. Supreme Court ruling in *Gideon v. Wainwright,* the landmark case establishing the constitutional right to counsel for people facing criminal charges who cannot afford to hire a lawyer.

Unfortunately, Gideon's promise is an empty one in many parts of the country. Public defender systems lack funding and have impossible caseloads, resulting all too often in wrongful convictions and miscarriages of justice. To commemorate this landmark ruling, the National Legal Aid & Defender Association (NLADA) has developed a "Gideon's Heroes" series to recognize those who do justice to Gideon's promise. Each month during the Gideon anniversary year, we will honor one Gideon's Hero - a public defense professional or community leader who exemplifies the type of selfless commitment to equal justice that the Gideon decision promised. January's Hero, is Ms. Lapiner-Giresa.

If you need more information on *Gideon v. Wainwright*, visit the NLADA Web site at wwwnnlada.org <http://www-nlada.org/>. Or, feel free to contact me at (202) 452-0620 ext. 230.

— Stacy S. Mayuga
Natonal Legal Aid & Defender Association, Washington, DC 20006-1604

The Young Lawyers Section of the Anchorage Bar Association sponsored the Mock Trial Championships, and several YLS volunteers donated their time to preparing and hosting the two-day event. L-R: YLS members Jeff Holloway, Krista Schwarting, Ryan Fortson, Jonathan Woodman, and Steven Bookman help prepare a presentation for volunteer competition judges.

Mock Trial team members Liz Percak-Dennett, L, and Anna Harrop, R, from Colony High School in the Mat-Su Valley, visit with Senator Lisa Murkowski, C, during the first day of competition.

Alexey Anatolievich Ryaguzov, 5th from left, and Tatiana Petrovna Setzko, 3rd from right, who were visiting Anchorage under the auspices of the Khabarovsk-Alaska Rule of Law (KAROL) Partnership, meet with members of the Valdez High School Mock Trial team during the Mock Trial Championships. At right is Judge David Mannheimer of the Alaska Court of Appeals, who hosted the KAROL delegation at the championships.

Mock Trial Championships held in Anchorage

The 14th Annual Alaska High School Mock Trial Championships were held March 7-8, 2003, at the Boney Courthouse in Anchorage. Fifteen high school teams from across the state competed in the event, and over 100 individual students participated. Seventy volunteer judges from the legal community presided over 30 mock trials in the two-day competition. The final panel of judges included Judge David Stewart of the Court of Appeals; Judge Morgan Christen and Judge Mark Rindner of the Anchorage Superior Court; Judge Nancy Nolan of Anchorage District Court; and retired Anchorage Superior Court Judge Rene Gonzalez. The Soldotna High School Mock Trial team won the championships after appearing in the finals for the first time. The team, under the coaching of Soldotna High teacher LaDawn Druce, will now represent Alaska in the national High School Mock Championships in New Orleans, Louisiana, in May 2003. The Chugiak High School team, under the coaching of teacher John Conroy, was runner-up in the championships.

FIFTEEN HIGH SCHOOL TEAMS FROM ACROSS THE STATE COMPETED IN THE EVENT, AND OVER 100 INDIVIDUAL STUDENTS PARTICIPATED.

NEWS FROM THE BAR

Board of Governors invites comments

The Board of Governors invites member comments concerning the following proposed amendments to Alaska Bar Rule 9(b), Alaska Bar Rule 30(g), and Alaska Rule of Professional Conduct 1.15(e).

Alaska Bar Rule 9(b): This proposed amendment would define the way in which the duty to assist members of the public in filing grievances can be performed.

In the last year or so, bar counsel was contacted by a fairly obstreperous grievant who alleged that members of the Bar were violating this provision when they refused to help the grievant write up a grievance that the members apparently felt was not warranted.

Bar counsel believes that this same grievant then alleged that bar counsel's office had a duty to write up the complaint for him citing this provision. While bar counsel recognize their duty to assist individuals with communications difficulties in preparing their grievances, that duty does not extend to drafting a grievance for an individual clearly able to do so on his or her own.

(Additions are underlined; deletions have strikethroughs)

Rule 9. General Principles and Jurisdiction.

(b) **Duty to Assist.** Each member of the Bar has the duty to assist any member of the public in filing grievances against members of the Bar with the Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel"). This duty may be fulfilled by assisting that person in preparing a grievance, contacting Bar Counsel regarding that person's grievance, or giving that person information for contacting Bar Counsel regarding a grievance. Each member of the Bar has the duty to assist Bar Counsel in the investigation, prosecution, and disposition of grievances ~~complaints~~ filed with or by Bar Counsel. Each member has the duty to support the members of Area Discipline Divisions in the performance of their duties.

Alaska Bar Rule 30(g): Following recommendations by the Board, the Supreme Court amended Bar Rule 29 on discipline reinstatement proceedings in October 2001 to eliminate unrealistic processing timeframes.

Bar Rule 30(g) on reinstatements from disability inactive status was patterned on the original timeframes in Bar Rule 29 when the Rules of Disciplinary Enforcement were substantially revised in 1985.

These amendments to Bar Rule 30(g) would bring the timeframes in disability proceedings in line with the Court's 2001 amendments to Bar Rule 29.

(Additions are underlined; deletions have strikethroughs)

Rule 30. Procedure: Disabled, Incapacitated or Incompetent Attorney.

(g) **Reinstatement.** No attorney transferred to disability inactive status under the provisions of this Rule may resume active or inactive status until reinstated by order of the Court. Any attorney transferred to disability inactive status under the provisions of this Rule will be entitled to apply for reinstatement to active or inactive status once a year, but initially not before one year from the date of the Court order transferring him or her to disability inactive status, or at such shorter intervals as the Court may direct in the order transferring the Respondent to inactive status or any modification thereto.

The attorney seeking transfer from disability inactive status shall file a verified application for reinstatement with the Court, with a copy served upon the Director. In the application, the attorney will

(1) state that (s)he has met the terms and conditions of the order transferring him or her to disability inactive status;

(2) state the names and addresses of all his or her employers during the period of disability inactive status;

(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 have knowledge concerning the activities of the attorney during the period of disability inactive status;

(5) provide the names and addresses of all health care providers, hospitals, and other institutions by whom or in which the attorney has been examined or treated since his or her transfer to disability inactive status.

(6) state that the disability or incapacitating condition has been removed and attach the expert opinion of a physician, psychiatrist or psychologist that the disability or incapacity has been removed.

(7) state whether any of the incidents listed in Rule 2(1)(d)(1)-(10) have occurred during the period of disability inactive status.

Upon receipt of the application for reinstatement, the Director will refer the application to a Hearing Committee in the jurisdiction in which the attorney maintained an office at the time of his or her transfer to disability inactive status; the Hearing Committee will promptly schedule a hearing ~~to take place within 30 days of the filing of the application~~; at the hearing, the attorney will have the burden of demonstrating that the attorney's disability has been removed and (s)he meets the standards of character and fitness contained in Rule 2(1)(d); 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 the attorney and Bar Counsel, and transmit it, together with the record of the hear-

Continued on page 15

NOTICE OF RULE CHANGES

I. Notice of Rules Changes effective April 15, 2003

A Notice of Rules Changes dated January 22, 2003, has been posted on the Alaska Court System's website at **www.state.ak.us/courts/rules.htm.** The notice includes recent changes to court rules adopted by the Alaska Supreme Court. Rules affected by the changes are as follows:

Changes to the Administrative Rules

- Administrative Rule 1(d) — Authority to Prescribe Procedures for Calculating Interest
- Administrative Rule 24 (c) — Appointments of Pro Tempore Appellate Jurists
- Administrative Rule 43.1 — Traffic Bail Forfeiture Schedule
- Administrative Rule 43.2 — Fish and Game Bail Forfeiture Schedule

Changes to the Alaska Bar Rules

- Alaska Bar Rule 34(c)(4) — Time Limits for Filing Petitions for Arbitration of Fee Dispute
- Alaska Bar Rule 38(c)(4) — Correction of Citation Error

Changes to the Alaska rules of Professional Conduct

- Alaska Rule of Professional Conduct 6.1 — Pro Bono Publico Service

II. Request For Comments On Proposed Rules Changes, dated January 22, 2003:

(Comments were Due February 24, 2003)

A Request for Comments on Proposed Rules Changes, dated January 22, 203, has been posted on the Alaska Court System's website, at www.state.ak.us/courts/rules.htm. Comments were due by February 24, 203.

Proposed Changes to the Appellate Rules

- Appellate Rule 206(b) — Time for Filing Motions on Bail Pending Appeal
- Appellate Rule 210(a) — Documents Filed After Notice of Appeal
- Appellate Rule 210(d) — Precluding Waiver of Excerpts by Parties
- *Appellate Rule 212(c) — Scope of "Authorities Principally Relied Upon:
- Appellate Rule 212(c)(1)(g) — Summary of Statement of Case
- Appellate Rule 213 & 505 — Oral Argument in appeals
- Appellate Rule 215(g) & 216(f) — Formal Requirements for Memoranda
- Appellate Rule 216(c) — Peremptory Challenge Appeals/Jurisdictional Limitation
- Appellate Rule 218 — Expedited Adult Guardianships
- Appellate Rule 508(d) — Costs of Administrative Record
- Appellate Rule 602 — Time — Venue — Notice — Bonds
- *Appellate Rule 605 — Excerpts of Record in administrative Appeals

Proposed Changes to the Criminal Rules

- Criminal Rule 6(m) — Grand Jury Records
- Criminal Rule 9 — Signing of Warrants
- Criminal Rule 16(e) — Sanctions
- Criminal Rule 18 — Extended Timelines for Moving Venue as of Right
- Criminal Rule 32.3 — Timelines for Distributing Judgments
- Criminal Rule 35.1 — Response Times for Post-Conviction Relief
- Criminal Rule 41 — Using Forfeited Bail for Restitution
- Criminal Rule 50(a) — Entries of Appearance

Proposed Changes to the CINA/Delinquency Rules

- CINA Rule 23 — Transfer of Jurisdiction to Tribal Court

Obtaining a Hard Copy of Notices

If you are unable to access the Notice of Rules Changes or Requests for Comments on Proposed Rules Changes online, you may obtain a hard copy of either document or or excepts from either document, by contacting Sandy Flasher in the ACS Administrative Office at 907-264-8231, or sflasher@courts.state.ak.us.

A welcoming reception for the KAROL delegation and members of the Alaskan KAROL Steering Committee was held at the home of Chief Justice Dana Fabe. Among those in attendance were: standing, L-R: Jeff Berliner, UAA; Carol Moonie; Judge David Mannheimer of the Alaska Court of Appeals, KAROL Co-Chair; Rich Curtner; Vadim Bourenin, Russian lawyer and interpreter for the delegation; Lisa Rieger; Kathy Atkinson; Svetlana Potton, interpreter; seated, middle row: Brenda Aiken, KAROL staff coordinator for the Alaska Court System; Chief Justice Dana Fabe, Alaska Supreme Court; Judge Tatiana Petrovna Setzko, Chief Judge for the District Court of Khabarovsk; Alexey Anatolievich Ryaguzov, law student at the Khabarovsk Academy of Economics and Law; Judge Patricia Collins of the Alaska Superior Court at Juneau, KAROL Co-Chair; and Elena Wilson, Program Coordinator for the Russian American Rule of Law Consortium; seated, front row: Joanne Baker, Alaska Bar Association; Barbara Armstrong, Alaska Bar Association; and Ludmila Anatolievna Plotnikova, lecturer in law at the Khabarovsk State Academy of Economics and Law.

Khabarovsk-Alaska Rule of Law Partnership (KAROL) Hosts Russian Delegation March 7-14,2003

Alaska's judges and lawyers hosted a delegation of their counterparts from the Khabarovsk region of the Russian Far East on March 7-14, 2003, in Anchorage. The delegation's visit was sponsored by the Khabarovsk-Alaska Rule of Law Partnership (KAROL), a program commenced in 2001 to foster good relations between the legal communities in Alaska and Khabarovsk, to bolster legal reforms, and to encourage the growth of institutions that will strengthen democracy. The Khabarovsk delegation included a judge, law student and law professor, along with a Russian lawyer who served as interpreter. The four attended a week of training sessions on topics such as judicial ethics, court management, organizing a Bar association, and attracting and supporting volunteers for legal programs. The delegation also attended several special events, including the Alaska High School Mock Trial Championships and the Women in Law Luncheon. The KAROL Partnership is made possible through a grant sponsored by the Foundation for Russian American Economic Cooperation (FRAEC) and the U.S. Agency for International Development (USAID).

Court system hosts ceremony for court grads

The first nine graduates of the Alaska Court System's Felony Therapeutic Courts were honored in a ceremony in the Supreme Court Courtroom of the Boney Courthouse in Anchorage on March 7. Chief Justice Dana Fabe presided over the graduation ceremony, which was attended by nearly 200 people, including many lawyers, judges, legislators, treatment providers, and friends and family of the graduates.

The nine graduates successfully completed the rigorous 18-month treatment-intensive programs of the Felony DWI Court or the Felony Drug Court. The ceremony represented a significant milestone for both the graduates and the court system, according to Superior Court Judge Stephanie Joannides, who oversees both courts.

"Many of these individuals are making progress and maintaining sobriety for the first time in years, and they are seeing the rewards of their commitment and hard work." says Joannides. "The court is also able to commemorate for the first time the success of these therapeutic programs in returning former habitual offenders to productive lives."

Participants in Felony DWI and Felony Drug Courts are identified by prosecutors and defense attorneys, and reviewed for admission by special court teams. Individuals who are accepted into the programs enter pleas to their charges, receive clinical assessments, and begin programs of structured treatment and intensive court-ordered supervision. They are required to complete their education or obtain employment.

Upon successful completion of requirements, they graduate and receive the sentence that was negotiated when they were admitted to the program. The Felony DWI Court was created as a therapeutic justice pilot project by the Alaska State Legislature in 2001.

Joining several graduates at the close of the ceremony were (starting 5th from left): Chief Justice Dana Fabe, Lt. Gov. Loren Leman, and Judge Joannides, Felony Therapeutic Court Judge.

NEWS FROM THE BAR

Board of Governors invites comments

Continued from page 14

ing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25.

At its next scheduled meeting at least 30 days after ~~Within 45 days of its~~ 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 application will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation ~~within 60 days after receipt by the Court of the Board's recommendation~~.

In all proceedings concerning an application for reinstatement from disability inactive status, Bar Counsel may cross-examine the attorney's witnesses and submit evidence in opposition to the application.

The application will be granted by the Court upon a showing that the attorney's disability has been removed and (s)he is fit to resume the practice of law. Upon application, the Court may take or direct any action it deems necessary to determine whether the attorney's disability or incapacity has been removed, including an order for an examination of the attorney by qualified medical and/or psychological experts that the Court may designate. In its discretion, the Court may order that the expense of the examination be paid by the attorney. In addition, the Court may direct that the necessary expenses incurred in the investigation and processing of any application for reinstatement from disability inactive status be paid by the attorney.

Prior to reinstatement, the 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 (s)he is reinstated.

Alaska Rule of Professional Conduct 1.15(e): President Lori Bodwell suggested a draft amendment to ARPC 1.15 which would require a bar member to give annual notice of participation or non-participation in the Bar-sponsored voluntary IOLTA program. Under IOLTA, interest on nominal amounts in a lawyer's or law firm's trust account is paid to the Alaska Bar Foundation to provide legal services to the poor.

Bar counsel consulted with Bar Foundation President Ken Eggers and Executive Director Deborah O'Regan on a draft amendment. The attached proposal parallels the current "opt out" language in Rule 1.15(d), but requires:

1) that a lawyer advise the Bar each year on the lawyer's bar dues notice that the lawyer or the lawyer's firm is not participating in the program;

2) that lawyers who are participating in the program notify the Bar of the financial institution in which their IOLTA account is maintained;

3) that lawyers who are not required to have a trust account indicate that they do not maintain a trust account; and,

4) that a lawyer notify the Bar in writing of a change in election to participate by the lawyer or the lawyer's firm.

(Additions are underlined; deletions have strikethroughs)

Rule 1.15. Safeguarding Property.

(e) If~~A~~ a lawyer or the law firm the lawyer is associated with ~~who~~ elects not to maintain the account described in paragraph (d), the lawyer shall make such election on ~~a Notice of Election form provided by the Alaska Bar Association. If a Notice of Election is not submitted, the lawyer or law firm shall maintain the account described in paragraph (d)~~the lawyer's annual bar dues notice. All other lawyers shall indicate on their annual bar dues notice the financial institution where the lawyer or the law firm the lawyer is associated with maintains the account described in paragraph (d) or that the lawyer does not maintain a trust account. ~~A~~ If the lawyer or the law firm the lawyer is associated with ~~who~~ wishes to change a previous election, the lawyer may do so at any time by notifying the Alaska Bar Association in writing.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by April 21, 2003.

HI-TECH IN THE LAW OFFICE

Shackled to Microsoft

What dominance means to the profession

BY SHARON D. NELSON
AND JOHN W. SIMEK

Question: Why does Netscape still exist?

Answer: So that Time Warner/ AOL will have standing to sue Microsoft.

Hating Microsoft is easy. Almost everyone does. There may now be as many Microsoft and Bill Gates jokes as there are lawyer jokes.

These days, the invectives hurled toward Redmond are coming more and more often from the conference rooms of law firms, where partners groan audibly at Microsoft's ever-escalating costs and bemoan the absence of viable alternatives.

The courts can exonerate Microsoft, slap it on the wrist, or hang it from it from a tree. No one needs any court to articulate what everyone already knows. Microsoft's monopoly has become so pervasive that very few law firms feel they have any choice but to play on Microsoft's terms because its products have become essential to the practice of law. What follows are reflections on the current relationship of law firms and Microsoft, possible alternatives, and some assistance in living with the current status quo.

WORD V. WORDPERFECT: HAS THE FAT LADY SUNG?

Remember the good old days when there were at least two real word processing choices and "Word vs. WordPerfect" was an ongoing Biblical war? WordPerfect adherents swore eternal fealty to Corel, and no doubt meant their oaths when spoken. But (sigh) clients gave us Word documents that WordPerfect couldn't seem to convert properly. And when we gave our clients WordPerfect documents, they in turn couldn't convert them accurately in Word. Client demand was the biggest factor driving lawyers from WordPerfect to Word, and so law firms began to abandon Corel in record numbers, albeit bemoaning the absence of their beloved "Reveal Codes" every step of the way.

It is also clear that Corel did not assist itself very much. In its mistaken belief that it "owned" the legal market, its failure to make inroads with the business market generally helped erode its market share. Nor did it seem able to make Word documents convert properly, even over a long stretch of time. Lawyers became increasingly frustrated with trying to make a sensible WordPerfect document from a Word original. The more complicated the formatting, the worse the conversion was. As all legal technologists know, lawyers do not react well when their technology frustrates them. They want it to work instantly and well and they will take any "fix" that provides them with the ability to do their jobs without technical impediments. The shift to Word was gradual at first, but became a stampede in short order.

Over the last several years, it has been commonplace for commentators to predict Corel's demise. Recently, however, Microsoft's soaring costs have helped to breathe new life into Corel as companies seek lower cost alternatives. Hewlett-Packard has decided to load Corel software rather than Microsoft Office on its Pavilion computers. Sony, now the fastest growing PC manufacturer, features WordPerfect on many of its computers – swapping WordPerfect for Word adds a hefty $470 to the price. Dell has also inked a deal with Corel to include its WordPerfect Productivity Pack on some of its computers. The Dell and HP deals are expected to cover roughly five million machines, tripling the number of instances in which WP comes bundled on new computers.

Corel disappointed much of the legal market in 2001 when it abandoned its legal suite, which had a very loyal following. Amicus, HotDocs and Deal Prooflinks disappeared with the legal suite. Though some legal-specific features were retained in WordPerfect 2002, the legal suite enjoyed great popularity and its demise undermined Corel's standing with lawyers, especially solos and small firms, which liked the bundled third party legal software.

In a curious twist, Microsoft invested $135 million in Corel in 2000, giving it a 24.6% nonvoting interest in Corel. While much was made of the "nonvoting" status of the shares, cynics pointed out that Microsoft had a kind of vote after all – it was perfectly capable of threatening to dump its 24 million shares of Corel at any moment if it really wanted to get its own way. As one commentator noted wryly, Microsoft cooperates with Corel in the same manner that an anaconda cooperates with a rodent. Microsoft seems supremely unconcerned by Corel's recent deals, which is perhaps the true barometer of their overall significance.

Currently, Microsoft Office has more than 90% of the productivity suite market. Will the recent new deals have any serious impact on WordPerfect's market share? The jury is still out, but commentators expect modest gains at best.

IN MICROSOFT'S DEFENSE

Bashing Microsoft is no particular fun because Microsoft and Gates make it so easy. Let us take the alternate route and note ruefully that which Microsoft does well. No matter how much it hurts to admit, Microsoft has been an innovative software developer par excellence. For all its many flaws, the products coming out of Redmond have historically been good, even great products, albeit released too soon and somewhat buggy.

Because it owned so many beachheads and so early on, it was not particularly Microsoft's fault that it found itself in such a favored position in the marketplace. However, just like a young man who is born to a 6'6" frame and lots of muscles, there came a decision point – what to do with all that power. Be a gentle giant (apparently not) or be an 800-pound gorilla with an ugly disposition (apparently so).

Lawyers lost (along with everyone else) when Microsoft began to muscle competitors out of business and deliberately designed its software to play very well with other Microsoft software, but not so well with third party software. Like a schoolyard bully, the sheer meanness of spirit became appallingly clear but what passed for school administration – our government – took the faint-hearted view that at least there was order on the playground. In a good economy, Microsoft's conduct was tolerated until it pushed the envelope and caused such consternation among competitors and consumers that the government finally acted to quell anticompetitive behavior that had become egregious.

As the world became dominated by Microsoft operating systems, it was only logical that software developers would develop for Microsoft first and worry about other operating systems later, if at all. This is particularly true of legal software, which is a niche market to begin with. Many developers will say they simply don't see the point of developing software for any other OS when Microsoft's position in the marketplace is so dominant. It is expensive to undertake such development, and the return simply isn't there.

What about technical support for Microsoft's products? There is good news and bad news. The majority of lawyers remain frustrated by a system in which humans have largely been cut out of the picture. Microsoft has a considerable vault of online help, but lawyers are not especially astute at locating the precise information they need, nor is the online knowledge database especially intuitive for someone who is not technically minded. Here it is worth mentioning one good, if pricey, element of Microsoft support. For $240, you may open a trouble ticket with Microsoft – a lot of money for small practitioners, but the price can seem terribly reasonable given the fact that it buys as much help as it takes to resolve the problem –and you get to talk to human beings, most of whom speak passable English and seem reasonably competent. Try getting that from many other software companies! Trying to decipher impenetrable foreign accents only to find that the speakers know their products about as well as they know English is a constant source of water cooler complaints. The truth is, if you are willing to pay good money, Microsoft is willing to provide you with some of the best technical help available.

THE WILDLY UNPOPULAR NEW LICENSING STRUCTURE

Enough kind words. For those who would like to believe that Bill Gates is the Prince of Darkness, his recent shift in licensing strategies reinforces the image. Law firms are dumbfounded and horror-struck when they realize that staying with Microsoft will cost them dearly. Microsoft has totally confused legal purchasing decisions with their new licensing programs. What we hear most often from law firms is that they don't understand the licensing options. When we explain them, they are incensed.

Wasn't it nice to upgrade when YOU wanted to and pay a discounted upgrade price to boot? You used to be able to do just that. Microsoft no longer offers software upgrades in the traditional manner. Now you have to buy Software Assurance (SA), which means you must pay in advance for the privilege of receiving any upgrades over a two or three year term. Following expiration of the SA term, you have the option of renewing for additional money or letting the agreement expire. Software Assurance requires companies to pay 29% annually of the full price of the software for the contract term without any guarantee that Microsoft will deliver a new product during the term. Microsoft has a poor record of meeting announced ship dates – what happens if your Software Assurance expires after the announced the ship date but before the product actually ships? If customers are unhappy now, imagine their fury if that scenario transpires. If upgrades are released following the SA expiration, you will have to start all over and purchase software as if you never owned a copy in the first place.

Upgrade pricing is available for individual Office Programs for the retail packaged product, but it is really nothing more than a rebate program. If you already own a qualifying product and purchase a retail version (not open license) of Office XP, Microsoft will give you a $30 rebate coupon. The message here is that your current version of Office is only worth $30. Sorry, but we haven't seen Office 97 or Office 2000 available for sale for anything less than $70-$180. Apparently, the marketplace values Microsoft Office more than Microsoft itself. Loyalty to the product obviously isn't something Microsoft is interested in rewarding.

Volume licensing programs require the purchase of at least 5 licenses. After the 5-license level, points are assigned to all the qualifying products. The more points...the greater the per unit discount. You have the option of just purchasing the licenses or adding the SA component. Recent quotes for the SA "luxury" will add approximately 50% to your software expenditure. You might want to stay away from the SA program since it is very expensive and provides little value unless you are in the habit of doing software upgrades on a fairly regular basis.

Licensing for the Microsoft operating systems are handled a little differently than the productivity packages. All operating systems acquired through volume licensing require that a licensed desktop operating system already exist and was installed by the original equipment manufacturer (OEM) that built the PC. In other words, you can't use your operating system volume license on any computer that doesn't already have an operating system installed, which makes the operating system licenses an OS upgrade instead of a new base install.

Microsoft's CEO Steve Ballmer, noting customer resistance to the new licensing structure, said disingenuously that customers' failure to understand the licensing "makes the perceived pain actually higher than perhaps the real pain." Sure Steve. It is abundantly clear that customers

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What dominance means to the profession

Continued from page 16

understood enough about the new licensing costs to start exploring alternatives. With Microsoft treading a bit more gingerly than usual in deference to its antitrust problems, it may be unable to stave off customer defections in its historically heavy-handed manner. Sunbelt Software, a Windows consulting company, conducted a survey of corporate IT management and found that 38% are considering moving to non-Microsoft products. The legal market is undoubtedly looking around in roughly the same numbers.

In contrast, Corel has kept the traditional model of offering product upgrades, retail box and open license options. Upgrade costs are less expensive than new purchases, the open license becomes cost effective for multiple instances and the retail box is the most expensive. Corel's CTL (Corel Traditional Licensing) is available for as little as one license. As more copies are licensed, volume discounts are applied. The CTL allows for usage on a laptop and/or home computer as long as the office and "remote" machine will not be using the software at the same time. Corel's CCL (Corel Contractual Licensing) is intended for medium to large organizations, requires a minimum purchase and signing a one-year agreement.

In spite of Microsoft's onerous new licensing, most analysts believe there is no way for Microsoft to lose unless there is a massive move to other products. In the absence of that tidal wave, customers will pay $440 for Office XP under volume licensing or $700 at full price. If the customer base remains stable, it is more a question of when the money will roll in rather than if the money will come in at all.

OPERATING SYSTEMS – ANY VIABLE ALTERNATIVE?

Now that you're totally confused about the Microsoft license program and options, is there any alternative for your law office? Unfortunately, not really. If you are brave enough or disgusted enough at dealing with the 800-pound Microsoft gorilla, you could always go the Linux or Macintosh route. The issue is not so much the underlying operating system as it is with the application software that you would wish to use. There are word processors made to run on the Linux platform, but are there case management, billing, tickler systems, etc. for Linux that will meet your needs? You will probably have better luck with the Macintosh. Again, make sure that there are versions of your application software that will run on OS X or whatever Mac OS you have installed. The truth is, most attorneys shake their heads sadly and remain unhappily with Microsoft rather than confront the misery of converting to a new OS and finding appropriate software.

THE TRUTH IS, MOST ATTORNEYS SHAKE THEIR HEADS SADLY AND REMAIN UNHAPPILY WITH MICROSOFT RATHER THAN CONFRONT THE MISERY OF CONVERTING TO A NEW OS AND FINDING APPROPRIATE SOFTWARE.

MICROSOFT'S SECURITY: MORE HOLES THAN SWISS CHEESE

Think for a moment of things that keep lawyers awake at night. Did someone say malpractice? Keeping clients' confidences and their proprietary data absolutely safe has been critical to the practice of law since its inception. Into the legal world, where safeguarding data is so critical, comes Microsoft, the reigning emperor of security vulnerabilities. It makes sense, of course. Rule the world, and challengers to the throne will attack you more than your competition. What hacker does not want to best Redmond? If it is global damage you wish to do, if you want your worm, virus, or Trojan horse to spread like wildfire, Microsoft is the alluring target of choice. Experts estimate that Microsoft is the target of attack more than 90% of the time. And remember that earlier comment about bringing software out too soon? This only complicates the problem, because vulnerabilities are rife in these premature releases, as we have witnessed with the unveiling of every new Microsoft product. Hence the service packs, which much of the world fails to apply, and the consequent epidemics.

How have hackers broken into the federal courts? Through Microsoft products of course, aided by the fact that court IT staff failed to follow the instructions of the Administrative Office of the U.S. Courts and patch their systems. As security debacle followed security debacle, Microsoft has worn egg on its face countless times – the embarrassment became so profound this year that Bill Gates has made a new corporate commitment that security henceforth will come first and be the overriding concern as new software is developed. Will things really change? Forgive our cynicism, but we'll reserve judgment.

LIVING PEACEABLY WITH AN 800 POUND GORILLA

If Microsoft is going to be omnipresent in the practice of law, how can lawyers live most amiably with it? First, be mindful of the security flaws and keep up with patches, service packs, etc. Be mindful of metadata problems as well as problems with WP legacy files and macros (more on that below). Understand the licensing options, as miserable as they are – perhaps have a consultant assist you in selecting the most cost-effective way of licensing/purchasing Microsoft products. If using the programs themselves is the source of your headaches, don't forget the built-in help that Windows and Office offer – both are fairly good resources, but many lawyers just don't use them. Get some professional training for Word/Office, if the budget will allow it, especially for your staff. This will help lessen their level of frustration because the Office Suite really is very powerful if you know how to use it. If looking at a book is your cup of tea, there are many excellent reference guides to the Microsoft line of products. Make Microsoft "the devil you know" and perhaps it will bedevil you less.

METADATA: A TRAP FOR THE UNWARY

So what exactly is metadata? The simple answer is that metadata is data about data. In the word processing world, metadata is associated with an individual document and contains information such as author name, number of words, revision information, title, subject, key words and a multitude of additional information. The metadata does not display with the document, but travels with the file in an electronic form. The data can be used to determine the originator of the document and/or the last person to edit or save the document. Why is this important to your law practice?

Metadata horror stories abound. One of our favorites is a case in which a law firm partner assured a client that he personally would draft a document for the client. He promptly passed the assignment off to an associate. As the author of the document, the associate's name appeared when the client looked at the Summary tab for the document after he received it via e-mail. To compound the mess, the partner billed the client at partner rates as if he had drafted the document. The client was just a tad incensed. Sometimes justice is inadvertently done.

Probably more damning is the inclusion of revision tracking. We recently spoke with a judge who received a filing from an attorney that contained meta revision information. Displaying the version information showed the various modifications made throughout the document generation and comments from attorneys within the firm that worked on the document. The Judge was not happy, especially with the candid and unprofessional comments embedded as part of the collaboration process.

Mind you, this is not simply a Word issue. Metadata exists in WordPerfect as well. But because Microsoft has the lion's share of the market, the stories on the transom tend to be about Word, and it is Microsoft that is generally tarred and feathered as a consequence.

Concerned about metadata? The simplest way to remove the metadata (assuming you don't want it to travel with the document) is to copy the final version into a brand new document. Do this via "cut and paste" and not with a file import command. In addition, there are methods to reduce the amount of metadata, which can be viewed at the following URLs. Another alternative is to use third party software specifically designed to strip and reduce the meta data in a document.

Full instructions for scrubbing metadata from Word:

http://support.microsoft.com/default.aspx?scid=kb;en-us;Q223396

WordPerfect:

http://www3.corel.com/Storage/CorDocument/Minimizing_metadata_in_WordPerfect_10_documents,0.pdf

HISTORICAL HEADACHES: LEGACY WORDPERFECT FILES AND MACROS

If you make the move to Word, what do you do with all your old WP files and macros? Many firms have chosen to archive WP files, converting them to Word on an "as needed" basis. Because many law firms still use WordPerfect, law firms often have both programs on their computers, even though Word is the day-to-day word processing program. As lawyers have learned to their chagrin, one conversion is plenty. With luck, the formatting won't be too fouled up and can be tidied up easily. Converting back and forth tends to irretrievably corrupt the document.

If you are upgrading to a newer version of Corel, the old WP files will usually translate well into the newer Corel versions. Ditto for upgrades within the Microsoft line. What about macros? If you are upgrading within the Corel product line, test the legacy macros on the newer version. Still have those legacy WP macros and converting to Word? Sorry, but you'll have to recreate the macros in Word.

WHERE LAWYERS WOULD LIKE MICROSOFT TO GO TODAY

Possible comic rejoinders aside, lawyers would be happier if Microsoft paid the sort of attention to the legal market that it once enjoyed with Corel. In fairness to Microsoft, it has recently made an effort to pay more attention to the legal market than ever before. In its development of Office XP, Microsoft worked closely with the Microsoft Legal Advisory Council, which pointed out that lawyers were looking for application and document stability, better integration with document management systems, a "reveal codes" feature and improvements to numbering and styles functions. All of these features were addressed in one manner or another in Office XP, though not always adequately (Microsoft's version of "Reveal Formatting" has a long way to go to win over the hearts of veteran WordPerfect users). Smart tags, document recovery enhancements, speech recognition, and handwriting recognition were all popular additions to Office XP, winning justified acclaim from lawyers.

Nonetheless, the dislike of Microsoft is visceral at many firms. The loudest complaints come from secretaries frustrated by what they perceive as Word's determination to do what it wants rather than what the secretaries want. Formatting issues tend to figure high on their list of grievances. From the attorneys' point of view, they regard Microsoft as a latter day highwayman, unscrupulous and devious, with impenetrable licensing language in the 76-page open license document that even lawyers can't figure out. They feel gouged by a company they see as ruthlessly wielding a monopoly.

Microsoft's challenge is to write simple, clear licenses, to revisit its pricing schemes, to integrate its products with third party legal software, to make Word's functionality legal-friendly and to deliver secure, reliable applications that are ready for prime time when they are first released. The betting money in law firms doesn't think any of this will happen. The search for viable alternatives to Microsoft products has just begun, but Redmond should beware its own complacency lest alternatives begin to appear on the horizon. If viable alternatives were really to be found, a sizeable chunk of the legal world might well embrace them. Feeling shackled to Microsoft is a powerful incentive to find a way to break free of the shackles.

The authors are the President and Vice President of Sensei Enterprises, Inc., a computer forensics and legal technology firm based in Fairfax, VA. sensei@senseient.com *(e-mail)*, http://www.senseient.com *(web site)*

HI-TECH IN THE LAW OFFICE

Rapidpat puts IP libraries on CD and DVD

Cypheron Systems, LLC, a leader in compression software and a producer of IP databases and document delivery systems, today announced the release of Rapidpat Digital Libraries(tm), or network-ready customized patent and trademark information systems on CD and DVD.

Designed for law firms and businesses with intellectual property interests, Rapidpat Digital Libraries unite document image copies and full-text data that meet an organization's custom criteria for delivery of and local access to patent and trademark information. These criteria include obtaining digital copies of existing patent and trademark portfolios, industry and product profiles, competitive criteria, and a wide array of legal information services needs.

RAPIDPAT DIGITAL LIBRARIES UNITE DOCUMENT IMAGE COPIES AND FULL-TEXT DATA THAT MEET AN ORGANIZATION'S CUSTOM CRITERIA FOR DELIVERY OF AND LOCAL ACCESS TO PATENT AND TRADEMARK INFORMATION.

Rapidpat Digital Libraries make available any range of patents and trademarks of the complete United States Patent and Trademark Office (USPTO) patent and trademark collections, from 1790 and 1884 respectively, and also make available 25 million non-US patent documents and full-text data of the world.

"For the first time, businesses can deploy in-house IP information systems that are strategically and economically advantageous. Digital Libraries increase staff productivity as they provide fast, firm-wide access to needed documents and IP information. They achieve a level of security and database scalability that online systems just can't match," commented David Anderson, co-founder of Cypheron Systems.

Prior art collections and other materials may be added to the Rapidpat Digital Library, providing organizations with a private, secure, one-stop system for accessing, sharing, and delivering document copies internally and externally as needed. Rapidpat Digital Libraries provide a centralized data repository with search, retrieval and access functionality unique to an organization's needs.

DIGITAL LIBRARIES INCREASE STAFF PRODUCTIVITY AS THEY PROVIDE FAST, FIRM-WIDE ACCESS TO NEEDED DOCUMENTS AND IP INFORMATION.

"In just a few weeks, any organization can deploy a customized system of the patent and trademark information that it needs on a private network, while at the same time reducing data acquisition costs by as much as 80% in just the first year," explained Mr. Anderson.

PROPRIETARY COMPRESSION TECHNOLOGY

Rapidpat's proprietary compression technology is applied to each document to achieve between a 12:1 and 15:1 ratio of compression over standard PDF documents. The average patent in standard PDF format is 1.5 megabytes, while the average Rapidpat PDF document weighs in at just 100k-without quality loss.

"Rapidpat's compression opens a new world of possibilities for small and large organizations alike. Applied to any database, it substantially reduces the resources needed to deploy and maintain customized, integrated database systems that achieve a centralized, one-stop IP information system," commented Mr. Anderson. "Our compression effectively reduced the size of the US patent collection of 6.5+ million documents to just 42 DVDs, allowing organizations to effectively map and deploy in-house systems that are custom its needs" noted Mr. Anderson.

COMPRESSION OF PRIOR ART COLLECTIONS AND OTHER DATA

Rapidpat's compression is also available to reduce the size of existing data repositories; prior art and other materials can be compressed and added to the Rapidpat Digital Library for an integrated, local database.

"Our compression combined with hard drive manufacturers releasing redundant hot-swappable 200+ gigabyte hard drives for less than $500 dramatically reduces the IT requirements for even a robust library. The library is a cost-effective solution for organizations who will benefit from a centralized local data repository-with potentially exponential benefits as the IP portfolio grows" noted Mr. Anderson.

CUSTOM PATENT AND TRADEMARK ALERTS

Rapidpat provides weekly and monthly Internet delivery of newly released patents and trademarks of the USPTO that meet the Digital Library profile, for the purpose of keeping each database archive current.

Rapidpat's Digital Libraries include the documents, data, software, and installation support that an organization needs to create and install a customized system. Once deployed, ongoing support, updates and customized services are available for an additional fee.

Cypheron Systems, LLC is a leading producer of compression technology and IP information systems to the legal and business communities. Its Rapidpat product line provides the complete US Patent and Trademark Office patent collection of 6.5+ million patents on DVD, and Digital Libraries provide customized local patent and trademark information systems. Rapidpat produces IP information systems that enable organizations to plan, research, create, manage and strategically apply their IP holdings and know-how to achieve product leadership. For information, visit www.rapidpat.com, or phone 201-222-0026.

Law Day Opportunities Sign-Up

Sponsored by the American Bar Association, Law Day is an annual event held on May 1, of each year to celebrate our legal system.

Once again, the Alaska Court System and the Alaska Bar Association have joined forces to promote this year's theme—"Celebrate Your Freedom: Independent Courts Protect Our Liberties." Judges and lawyers across the state will be visiting schools and community groups to speak about judicial independence, and we invite you to join them.

If you would like to participate in Law Day activities in your community and would like help linking up with a school or community group, pcontact the Alaska Bar at 272-7469. We will then send you a copy of the ABA's Law Day 2003 Planning Guide, which is full of helpful information and teaching strategies on the judicial independence theme. We will also forward your name to our Law Day contacts in each judicial district, who will be helping identify local opportunities to participate in Law Day, in both classroom and community forums. We'll make every effort to facilitate your participation and ensure a rewarding experience!

If you already plan to participate in Law Day activities but do not need help with arrangements, we'd still like to hear from you. Please complete the information below and let us know what you're planning so we can share your ideas with others and acknowledge your efforts.

Name: _____

Agency or Firm (if applicable): _____

Address: _____

Phone: _____ Fax: _____

Email: _____

_____ YES, I would like to participate in Law Day.

____ I would like help making arrangements to participate.

____ I have made my own plans to participate. Please describe:

_____

_____

_____

Please FAX this to the Bar office at 272-2932
Thank you for hleping make Law Day 2003 a success!!

Lawyer/Author to Visit Anchorage
Alfredo Vea,
Writer, criminal defense attorney, and Vietnam Veteran,
is the keynote writer for
Writing Rendezvous 2003
Alaska Center for the Book's annual writers conference

April 11-13, 2003
UAA campus

Mr. Vea will give his keynote address, "Why I Write," and a reading on Saturday, April 12 at 7 p.m.
Wilda Marston Theatre at Z.J. Loussac Public Library
This event is free and open to the public.

To register for Writing Rendezvous:
http://www.akcenter.com/wr2003.html
For info about Alfredo Vea:
http://www.penguinputnam.com/static/rguides/us/gods_go_begging.html

"Bad boys" of rock 'n roll are good

By S.J. Lee

Ages ago, when I was in law school in Lincoln, NE, the Rolling Stones were on their "Tattoo You" tour with a date in Denver, Co. I watched enviously as excited friends and others I knew piled into cars to drive straight through, party recklessly as was the norm in those days, and attend the concert.

As terminally broke as I was throughout college, even the relatively small amount of money needed for gas, food and concert tickets was well beyond my means, as were Spring Break jaunts to Galveston and other party meccas.

I clearly remember standing in my apartment on that concert weekend, assuring myself that one day the Stones would tour when I had the means to attend no matter where they were, and promising myself that when that day came, I would make the time, spend the money, and be there. That was 20 years ago.

When I heard the band was touring in 2002-2003, I didn't give it any thought, just assuming it was not going to be feasible for me. I was lucky they were on a long tour, giving me time to think about it.

Eventually, that long-ago promise I made myself surfaced, but even then I didn't seriously consider it. Thinking I had nothing to lose, though, I started surfing the web for dates, venues and costs of tickets. I started with the most obvious places first, like LA, Las Vegas, and other places commonly visited by Alaskans. Without exception, they were either sold out, had one or two horrible seats left, or had seats so highly priced as to be well beyond what I was willing to tolerate. Disappointed, I shelved the idea.

As the Stones reached the American part of their tour, I began to hear a lot about it and wondered if I'd ever really get another chance, given their ages (which have been so ridiculed by the press), and the fact that they simply don't need to tour. I got back on the computer and cast a wider net. I eventually settled on their 1/25/03 Houston concert where good tickets still remained for what were good prices, relatively speaking. By then, my perspective on "relative" had changed considerably! I purchased two and 12 weeks later my husband and I were en route for a long weekend in Houston!

The concert was held at Houston's brand new Reliant Stadium. When we found our seats, they were far far better than I'd allowed myself to believe. We weren't too far from the center stage at all, and even better, immediately next to both the long, narrow runway, and the second, much smaller stage at its end. They started on time, with little fanfare, launched right into "Brown Sugar." After seeing footage and film of the superstars for over 25 years, it was a little surreal to finally be in the same room with them. They played hard for more than 2 hours and we got very good and very long looks at all of them.

Since they started the tour, the jokes have been nonstop as to their ages and their craggy faces. The attitude seems to be how dare they age and who do they think they are, at their age, touring and behaving like rock and rollers?

Like all of us havn't aged right along with them.

Having now seen them, I can say tales of their demise are grossly exaggerated, as they look far younger in person than the cameras depict and put on a mesmerizing show that was not dependent on lasers, light shows, fireworks and other gimmicks.

Mick is clearly fit, still cool beyond belief and rarely stopped moving. He was completely into the numbers they did, communicating with and signaling the band every step of the way. His rendition of "Sympathy for the Devil" and the persona he exudes when doing that song can still raise the hairs on the back of my neck.

There can't be anyone who looks cooler playing the guitar than Keith Richards--it's pretty obvious that he still really enjoys prerforming, on stage getting into his solos or playing opposite Ron Wood.

Wood still has his kind of impish Rod Stewart looks thing going with his occasional cigarette, and Charlie Watts is buddha like in his calm and serenity. They are all really the ultimate rock stars in the good and old fashioned sense of the word. They could also be known as "no body fat" band which alone, will keep them looking younger for years to come. Their sound was great; no live recording I've heard even comes close.

The best part was when they broke off from most of their backup to traverse the catwalk to the very small stage extending into the crowd. They did three or four numbers there, all within 15 feet of us. We saw the sweat on their faces, every expression they made, the designs on their guitar straps, the frayed edging of Mick's shirt. Wood's metallic silver Nike shoes and the little signals, high-signs and private conversations they had with each other during each number.

The neatest thing was how good a time they seemed to be genuinely having. At one point, Keith stood directly in front of me, not 15 feet away, playing for awhile before moving on. He was particularly good at making eye contact with the crowd, and not a soul stood between us while he played. That 30 seconds alone would have made it all worth it.

Occasional pieces of underwear would land on the stage which Mick would eventually scoop up and let hang out of his pocket; towards the end of the show on "our" catwalk stage he stopped on our side, and gestured around as though asking what he was supposed to do with all this underwear. He then laughed, and jacked his shirt up and down really fast before moving on.

The Stones were all such total pros and it was a thrill to see them up close and personal like that. They ended with a roar, true to their image, with "Jumpin' Jack Flash." A whole lot of good late teen and college age memories came flooding back to me with each number they played and where I was at each stage in life when each hit emerged. They are the music I and millions of other Baby Boomers came of age with.

I hadn't been to a real concert in 15 or so years. Things have changed a LOT, starting with the pat-downs, separated by gender, that they did at the doors. The whole thing, from parking to crowd control, to access to different parts of the stadium was a highly organized, smoothly running machine which worked quite impressively to make things easier for all there, especially when parking and leaving. I doubt it took us more than 10 minutes to get out of the parking lot afterward. It makes you wonder why they havn't always done it that way.

Don't believe what you hear in the media. The Rolling Stones is still the greatest rock and roll band the world has ever seen.

DID YOU KNOW...
that your call to any member of THE LAWYER'S ASSISTANCE COMMITTEE will be held in complete confidence?

SINCE 1896
ALASKA BAR ASSOCIATION

If you bring a question or concern about drug or alcohol use to any member of the Lawyer's Assistance Committee, that member will:

1. Provide advice and support;
2. Discuss treatment options, if appropriate; and
3. Protect the confidentiality of your communications.

That member will not identify the caller, or the person about whom the caller has concerns, to any other committee member or the Bar Association, or anyone else. In fact, you need not even identify yourself when you call.

Contact any member of the Lawyer's Assistance Committee for confidential, one-on-one help with any substance use or abuse problem.

John E. Reese, ... Chair (Anchorage) 264-0575 (private line), 345-0625 (home)
Michelle Hall ..... (Nome) 443-2281
John McConnaughy III ..... (Anchorage) 343-6435 (private line)
Brant McGee ..... (Anchorage) 269-3501 (private line)
Alicia Porter ..... (Fairbanks) 479-2167
Nancy Shaw ..... (Anchorage) 276-7776
Frederick Slone ..... (Anchorage) 272-4471
Clark Stump ..... (Ketchikan) 225-9818
Valerie M. Therrien ..... (Fairbanks) 452-6195, 456-8113 (home)
Vanessa H. White ..... (Anchorage) 278-2354 (private line), 258-1744 (home)

Alaska Bar Association 2003 CLE Calendar
See special advertisement for all convention seminars!

Date	Time	Title	Location
April 11	9:30 – 12 noon	Effectively Presenting Evidence at Hearings, Trials and Settlement Conferences in Domestic Relations Cases CLE # 2003-013A 2.25 General CLE Credits	Anchorage Downtown Marriott
April 11	1:00 p.m. – 5:00 p.m.	An All Star Faculty Discusses & Debates - How to Present Evidence Effectively at Hearings, Trials and Settlement Conferences CLE #2003-013B 3.75 General CLE Credits	Anchorage Downtown Marriott
June 2	8:30 – 10:30 a.m.	CINA Off the Record CLE #2003-009 2.0 General CLE Credits	Anchorage Snowden Administrative Building
June 5	8:30 a.m. – 12:00 p.m.	ADR: Update on Rules and Court-Connected Programs CLE # 2003-012 3.25 General CLE Credits	Anchorage Hotel Captain Cook
September 17	8:30 a.m. – 4:30 p.m. (Program also to be scheduled in FBX in September 2003)	The Graying of Elder Law CLE #2003-014 CLE Credits TBA	Anchorage Hotel Captain Cook
September 25	All Day	Masters at Trial (NV) Presented in cooperation with ABOTA CLE #2003-016 CLE Credits TBA	Anchorage Hotel Captain Cook

TALES FROM THE INTERIOR

Dear Old Dad

William Satterberg

Thanksgiving is one of those unique Satterberg family traditions. Many people claim that Thanksgiving marks the start of the holiday season. My family views it, instead, as the commencement of a one-month period of intense shopping, interrupted by an inconvenient two-hour, turkey dinner. Not that any one of us would want to openly admit to such an addiction, of course. Fortunately, this article is not really about shopping or Thanksgiving. It is about Dear Old Dad.

For several years, the Satterberg Thanksgiving has been spent in Auburn, Washington, leaching off my sister, Julie's, gracious hospitality. Besides, Julie's living room floor is a much more comfortable sleeping platform, since Julie has gotten rid of her dogs. A secondary purpose for Thanksgiving has been for the annual family fights, otherwise known as "The Reunion."

In the beginning, the genesis of the Satterberg sojourn to Auburn was The Reunion. As if in a genetically programmed migration, the matriarchs and patriarchs of the family would all gather together, with children, grandchildren, and occasional strays in rapt attendance. Numerous well-intentioned lectures would be dispensed. Then, the dysfunctionality would begin. As "the women" dutifully cooked in the kitchen, "the men" would sit idly by in the living room, eating salami and cheese, drinking cheap beer, and cheering for their favorite football teams. Dad would always lead the charge.

Football, alone, was often the catalyst for many a heated encounter session, although Dad's attitude about "women's work" wasn't far behind. Recognizing that Dad was a diehard University of Washington Husky's fan, the rest of us would always root for "the other team." This battle, alone, would often carry over into many an exciting meal and would last for many days thereafter. On more than one occasion, moreover, dinner was either accelerated or delayed in order to accommodate a last minute field goal. During all of this "delay for game," the cooks would harangue "the men" incessantly about their male insensitivity. Not that it mattered, of course, since the turkey was usually dry by the time the guys got to it, regardless.

Dad was the main attraction at our Thanksgiving reunions. Not only did Dad deserve it, but he outright demanded it. A Swede by heritage, Dad was also a devout Republican and a diehard devotee of Archie Bunker. Dad viewed Barry Goldwater as a liberal nuisance. As such, long-stifled political opinions abounded, especially when my cousin, Dianne, would attend the bouts. Dianne's claim to fame was having been arrested as a protester at the Hanford Nuclear Plant in eastern Washington after having handcuffed herself to a fence surrounding the facility. Dianne also liked Japanese cars and did not believe in bras. Still, it was Dianne's arrest record that she would proudly boast about which really tweaked Dad. Little did I realize then that Dianne was only the first family member to be handcuffed, and that I would someday follow.

Dad's trade was plastering, although he also had a college degree. As a plasterer, Dad naturally hated lawyers, which is one reason why I entered the practice. I even thought about becoming a Democrat once. After all, I couldn't bear to let Dianne beat me on pulling Dad's chain. Little did I realize how merely threatening to change political parties would evoke such a reaction from Dad, who completely pouted through Thanksgiving dinner one year.

In his later years, Dad became diabetic. Dad was in total denial about his disease, despite the fact that glaucoma was slowly robbing him of his precious eyesight. In time, the diabetes took its toll on Dad, eventually robbing him of other body parts and functions, as well. Rather than accepting responsibility, Dad blamed his losses on the "Damned Doctors," which was one of the few times that "the Damned Democrats" and "the Damned Lawyers" went almost unscathed. Still, Dad was convinced that most Democrats became either doctors or lawyers, which is how he would skillfully weave "the Democrats" into his tirades.

After reaching seventy-five, Dad regularly used to tell people that "I don't look so good." Listeners would protest his opinion, predictably stating, "No, Bill, you look fine!" In response, Dad would reply, "No, I have glaucoma. I don't look so good." Dad also used to brag to anyone who would listen that, "Viagra makes me feel seventy again!" To his credit, Dad took his aging in stride, even if his stride was shortened a bit due to the progressive loss of his toes.

In early November, 1998, Dad unexpectedly passed away. Apparently, he expected it, even if the rest of us did not. Dad used to claim that, "If I had known I was going to live this long, I would have taken better care of myself." Eventually, however, time caught up with Dad, despite Dad's denial. Dad's death came three weeks before the regularly scheduled 1998 Satterberg Thanksgiving Reunion. Per his wishes, Dad was cremated without ceremony. In fact, "without ceremony" is an understatement. I still have Dad's urn gathering dust in a corner of my bedroom floor, although I do plan to spread his ashes someday. Meanwhile, it's nice having Dad around. Besides, for once, I can argue with him and win.

Despite Dad's death only three weeks previously, the 1998 Thanksgiving was a memorable reunion. Three years earlier, after Thanksgiving dinner, Dad had proudly called everyone into the living room and displayed his blackened left big toe, which had to be immediately amputated the next day. Most people passed on dessert that year, which left more for me. Some of the more sensitive people were close to passing out after Dad's impromptu Tom Sawyer routine. In response, the Thanksgiving feasts after that were nicknamed the "Toe-go parties," in honor of Dad's spontaneous anatomical show. In November of 1998, however, all of Dad had gone. Still, there was no sense in canceling the event. "Dear Old Dad" would have had nothing of the sort.

When the 1998 Thanksgiving arrived, over thirty people descended upon my sister's Auburn house to celebrate my father's life and Thanksgiving. Although I had been requested by many to bring Dad for the event, I privately was opposed to the request. Dad had yet to wear out his welcome at my house, so I left him behind, once again. Besides, I was limited to only two carry-ons.

After my arrival in Auburn, I was immediately pressed to produce Dad's urn. I resisted, but the family and friends were insistent. Not wanting to disappoint anyone, I went to the local Fred Meyer store. In the Farm and Garden Department, I eventually found a gaudy vase. It was just the type of gaudiness that Dad would have loved. Not just tacky, but real tacky. Genuine plastic. I next went to my sister, Julie's, woodstove and scooped out some ashes, picked out the cigarette butts, and dumped the ashes into the vase. I then glued on the lid with contractor's cement. After all, ashes were ashes, weren't they? I giggled privately over my nefarious plan. Dad would have been proud of me. I was becoming a rabble rouser "just like the old man."

In time, the guests arrived. As expected, they solemnly shuffled by and paid appropriate homage to Dad who, as far as they knew, was resting blissfully in the urn that I cradled so lovingly in my arms. A regular procession soon developed. People would talk to Dad. People would confess to Dad. People would respectfully caress Dad. Throughout all of the reverie, I stood patiently and drank my wine. So did my cousin, Linna. Only my sister, Julie, my closest of family, and my eighty-year-old Auntie Roe with the unpredictable heart condition actually knew that Dad had missed the flight to Seattle. For everyone else, it was a most austere occasion. We even passed on a full half time of football.

When it came time for the blessing, I was chosen to pray. Not ever one for public speaking, I summoned up my courage and said an acceptable grace. As an afterthought, I added a sincere request for Dad's spiritual good health. It was most touching. In short order, tears welled in people's eyes and muffled sobs could be heard. Linna, who was standing next to me, emotionally bubbled over and embraced me tightly for "Such a beautiful blessing, Billy!" It was at that point that I dropped Dad's urn, which seemed to careen in endless slow motion to the waiting floor.

Immediately, the talking went silent. Thirty-plus people stared in disbelief of what they were witnessing. Horrified gasps were heard. I had let Dad down - in the absolute sense. Still, contrary to both my plans and best expectations, Dad's cheap urn did not break. Instead, it bounced! On the second bounce, the lid flew off, and Dad's ashes scattered out across the floor.

With the audience still frozen, my sister, Julie, immediately leapt into action, as part of her role in the farce. Julie, who is well known and feared as a "neat-freak," would have absolutely nothing to do with ashes on the floor - no matter whose those ashes might be. Julie quickly dove for the nearest broom and dustpan and frantically began sweeping up Dad, while berating me openly for my insensitive clumsiness. Not wanting to sit and watch football in a feigned drunken stupor, I wildly began to brush Dad off my shirt as if he were Anthrax powder. I kicked portions of Dad down the nearest hot air heating vent, apologizing profusely all the while to anyone who would listen and begging repeatedly for Julie's forgiveness.

The collective shock rapidly subsided. In retrospect, I was proud of my family's reaction to the crisis. In short order, people began to yell at me that "Billy, that's your *father*!" that I was frantically dusting off and kicking down the vent.

"Stop, Billy!" they screamed.

"But Julie's floor!" I protested.

I was almost gang tackled.

Eventually, a compromise was reached, and Dad quit venting. Following Julie's cleanup, the remainder of Dad was reverently dumped from the dustpan back into his urn. The environmental spill contained, the next concern for those present was for Auntie Roe's heart. Throughout the entire event, Auntie Roe had stood quietly to the side and watched. In retrospect, people were amazed at how well Auntie Roe handled the matter. Auntie Roe either had nerves of steel, or was still processing what she had last seen of her dear departed brother.

However, it was not over. Obviously, It would have been over if Dad's urn had shattered as planned. Instead, I apparently had bought an expensive, cheap urn. Because of this unexpected development, there was to be a second act to the play.

As the Thanksgiving dinner progressed, it became time for the obligatory Thanksgiving Satterberg Family Toast, (or the "English Muffin" as we often call the event). Because of the occasion of Dad's earlier death, we respectfully chose a nice boxed wine, instead of cheap beer. Against some people's better judgment, I insisted upon giving the toast. We all rose together. With everyone in attention, I spoke some touching words about Dad, commenting on his rather unique philosophies of life, with an eye towards tweaking my cousin, Dianne, for one last time on my Dad's behalf.

I finished by saying that, "If Dad could be with us right now, he would raise his can in a toast, too."

"To Bill!," they all cheered in unison.

"What the hell," I replied, alone. Seizing the moment, I snatched the lid off Dad's urn and doused my drink into the remaining contents.

In retrospect, I probably should have strained the drink first, as Howie, the Vietnam marine, once did with his brother and my good high school friend, Leonard Niemi, who had died ten years earlier. Unfortunately, I did not have the presence of mind for such impromptu creativity. Besides, there had already been two traumatic events that evening.

When the screaming and fighting finally died down, I yelled from my hiding place that Dad was safe and sound in Alaska. People were

Continued on page 21

Dear Old Dad

Continued from page 20

shocked, and demanded an explanation. I explained that I had simply brought a stunt double. In the end, the family was disappointed. Moreover, some of them actually appeared to be mad at me for the ruse. After all, they had wasted all of their anger and commotion on some cheap wood ashes. Frustrated in their grief, they insisted upon the real thing for next year.

After Dad's demise, the Satterberg family reunions admittedly were much more benign. We still have the mandatory meals, football games, and snoring on the floor, but the controversial demands from my father that "women should do the dishes" are sadly missed - at least by the men. Dad, after all, was the only person stupid enough to regularly issue such suicidal challenges. Lacking Dad's tactful coaching on the finer nuances of life, shopping became king. Like many other husbands, I reluctantly would tag along.

For years, I hated shopping - until I discovered the SouthCenter Mall in Seattle. To my surprise, even Dad used to like to go to the SouthCenter Mall on weekends, riding the transit bus with the other "old people." Not that there are not other well-stocked shopping malls in the area. In fact, Seattle is a proverbial shopper's heaven. But, the Southcenter Mall has something that the other malls generally lack, and something which Dad loved.

That "something" is not a hardware or lumber store, gun shop, or neighborhood pub. Nor is it some ornate arcade, chubby Santa Claus, or similar distraction. Rather, that "something" is just a varnished, unpretentious wooden bench where Dad liked to sit like Forrest Gump, reminisce, visit with others, and rest his vanishing feet while waiting for his bus. There is even a Starbuck's coffee stand nearby, and interesting people regularly pass by the bench on their way to one of the numerous stores or the many ATM machines.

So what is so unique about Dad's bench? Nothing really, except that it is strategically placed by some understanding person directly outside of the main entrance to Victoria's Secret. It is there that I am able to share some fond moments with memories of Dear Old Dad. As I suspect Dad used to do, when no one is looking, I like to secretly fantasize a bit about whether those select patrons, too, actually cook and do dishes, and, if so, what are they really wearing? I now also understand why Dad had his extensive supply of Viagra. As Dad used to say, "Many a fine tune has been played on an old fiddle, Billy."

I only fantasize, of course, but Dad would still be proud.

Don't Miss the 2003

Alaska Bar Convention

in Fairbanks!

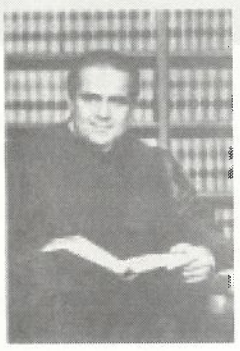
Wednesday – Friday, May 7, 8 & 9

Fairbanks Princess Riverside Lodge

Come to the convention -

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

Convention Highlights



U.S. Supreme Court Justice Antonin Scalia

U.S. Supreme Court Justice Antonin Scalia

Thursday, May 8

Awards Banquet

Don't' miss this opportunity to hear one of America's pre-eminent jurists!

Friday, May 9

State and Federal Appellate Update CLE

U.S. Supreme Court Justice Antonin Scalia joins U.S. Court of Appeals 9th Circuit Judge Andrew Kleinfeld, Alaska Supreme Court Justice Robert Eastaugh, and Alaska Court of Appeals Chief Judge Robert Coats on a panel moderated by U.S. District Court Judge Ralph Beistline.

Wednesday, May 7

Morning

The Effects of Domestic Violence on Children's Emotional, Social and Brain Development: Implications for the Community and the Justice System

Dr. Peter Jaffe

with **Dr. Peter Jaffe**, Special Advisor on Violence Prevention, and Founding Director, Centre for Children & Families in the Justice System, London Family Court Clinic, London, Ontario, Canada

Section Updates

Schedule to be posted at the convention

Afternoon

"Ethics Jeopardy" Sponsored by ALPS

with **Mark Bassingthwaighte**, ALPS Risk Coordinator, and **Steve Van Goor,** Bar Counsel. The categories are Money, Disclosure, Conflicts, and Ethics Grab Bag. And yes, we have prizes!

Program for Public Attorneys

Topic to be announced.

Alaska Bar Fun Run & Walk

Opening Reception & Dinner at The Blue Loon

with **Bob Noone and the Well-Hung Jury – "Trust Me, I'm a Lawyer"**

Thursday, May 8

Morning

U.S. Supreme Court Update

with **Professor Erwin Chemerinsky** from USC Law Center and **Professor Laurie Levenson** from Loyola University School of Law

State of the Judiciaries Lunch

Afternoon

Alaska Constitutional Law Update – 2nd Annual

with **Professor Erwin Chemerinsky**

Professor Erwin Chemerinsky

Professor Laurie Levenson

Update on the Russian Rule of Law Project

with **Judge David Mannheimer** and **Marla Greenstein**, Project Co-chairs, and **Rich Curtner**, Committee Member. This ongoing Alaska bench/bar project is helping lay the cornerstone for the rule of law in Eastern Russia.

FASD – Fetal Alcohol Spectrum Disorders: How It Impacts Judges and Lawyers in Their Practice and in the Courtroom

with **L. Diane Casto**, Alaska Office of FAS; **Judge Michael Jeffery**, Member, Alaska Statewide FAS Steering Committee; **Colleen Ray**, Co-Chair, Law & Community Health Forum Section; **Peter Braveman**, GAL, OPA, Fairbanks

Using a Property Division Spreadsheet: Helping Domestic Relations Clients, Lawyers and the Court

with **Judge Richard Savell**, Superior Court 4th Judicial District; and **Susan Thorgaard,** Computer Tech II, Alaska Court System

Awards Reception & Banquet

Keynote: **U.S. Supreme Court Justice Antonin Scalia**

Friday May 9

Morning

Trial Advocacy Skills, Part 7 – Eyewitness Identification: Science, Practice & Policy

with **Dr. Gary Wells,** Professor of Psychology, Iowa State University. Dr. Wells discusses the role of misidentification in the DNA exoneration cases, how memory works, and how eyewitness identification can be made more reliable.

Alaska Bar Association Annual Business Meeting and Lunch

State and Federal Appellate Update CLE

U.S. Supreme Court Justice Antonin Scalia joins U.S. Court of Appeals 9th Circuit Judge **Andrew Kleinfeld**, Alaska Supreme Court Justice **Robert Eastaugh**, and Alaska Court of Appeals Chief Judge **Robert Coats** on a panel moderated by U.S. District Court Judge **Ralph Beistline**.

Closing Reception

Hosted by the **Tanana Valley Bar Association**

Watch for your full-color brochure in the mail!

Call us at 907-272-7469 or e-mail us at info@alaskabar.org for more details.

Bristol Bay proposes necktie ban

Alaska Bar Association Proposed Resolution No 2003-____ (for action at the Bar convention)

Whereas, the necktie serves no useful purpose, except to assist strangulation, often of its wearer; and

Whereas, heightened security concerns have necessitated the confiscation, by judicial services officers, of dangerous devices, including nail files and pointed "pink things" in Alaska courthouses; and

Whereas, adherence to outdated and pointless convention is anathema to the freedom loving and independent thinking people of this state; and

Whereas, this year's Alaska Bar convention is being held in the long-time home of the late Jay A. Rabinowitz, for whom the Fairbanks Courthouse has been named, and who authored the wonderfully succinct dissenting opinion in *Friedman v. District Court*; and

Whereas, the necktie is no more important to the maintenance of judicial dignity than is the powdered wig;

Now, therefore, be it resolved by the Alaska Bar Association that the Supreme Court is urged to adopt a rule making the wearing of a necktie a personal choice of the person who owns the neck.

Submitted by the Bristol Bay Bar Association this 28th day of February 2003.

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.

Attorney Discipline

JODY SUTHERLAND SUSPENDED FOR MISMANAGEMENT OF CLIENT MONEY

The Alaska Supreme Court has suspended Anchorage lawyer Jody Sutherland, Member No. 8212168, for a pattern of gross neglect in the management of client funds. A Bar Association investigation and audit showed that because of the mismanagement, payments to clients were delayed and his client trust account was sometimes underfunded.

The Bar's investigation focused on Sutherland's practice during 1995 and 1996. During that period he had a high-volume debt collection practice. He delegated much of the work to employees but failed to adequately supervise them. He was generally aware of money that he received from debtors but did not always know the exact financial status of his files. In some cases he was entitled to fees from amounts collected but instead of doing an accurate accounting he withdrew fees in round figures. In other cases he sent clients checks without computing the exact amount due. These practices occasionally caused his trust account to be out of balance or underfunded, though he was not aware of it because he failed to read bank statements or reconcile his accounts. He also neglected to timely notify some clients when he had collected money for them.

Sutherland and the Bar Association stipulated that he violated Alaska Rule of Professional Conduct 1.3 (which prohibits neglect) and ARPC 1.15 (which contains the rules on safekeeping, delivering and accounting for client money). The Supreme Court on May 2, 2002 approved the stipulation and suspended Sutherland for three years, with one year stayed. Before applying for reinstatement he must take courses on ethics and law office management, and must pass the multistate ethics examination. The public documents may be reviewed at the Bar Association office in Anchorage.

5th Annual Women in Law Luncheon

March 8, 2003 — International Women's Day

Senator Lisa Murkowski was the featured speaker at the 5th Annual Women in Law Luncheon held on March 8, 2003 International Women's Day in Anchorage. Nearly 80 people attended the Saturday luncheon, which was co-sponsored by the Anchorage Association of Women Lawyers and the Gender Equality Section of the Alaska Bar Association. Special guests included members of a visiting delegation from Khabarovsk in the Russian Far East, who were in Anchorage for a week of training under the auspices of the Khabarovsk-Alaska Rule of Law (KAROL) Partnership.

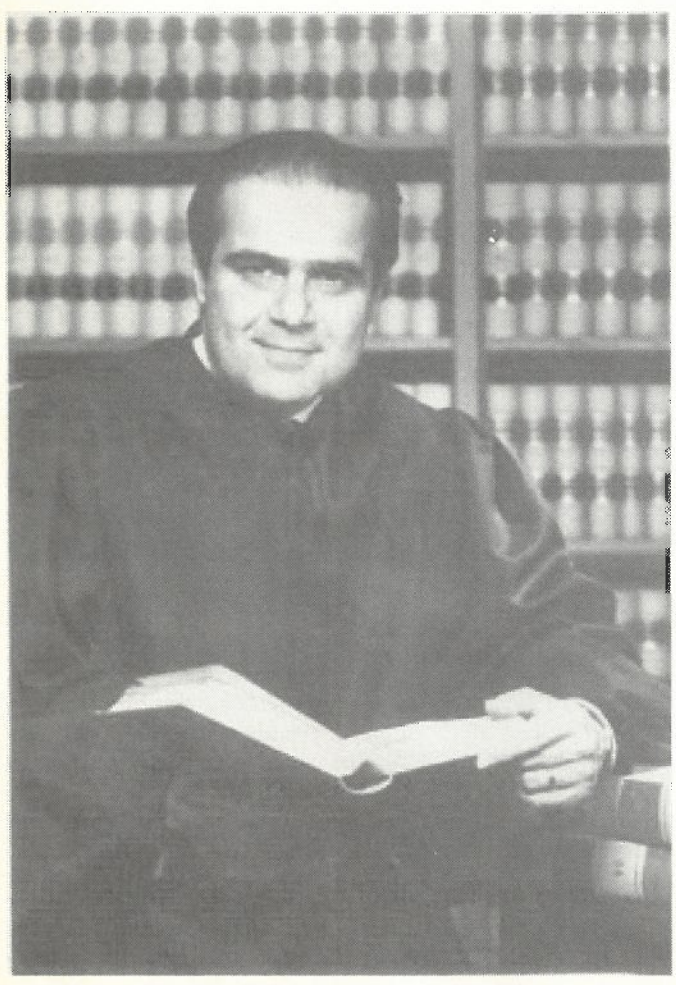
Photos by Barbara Hood

Members of AAWL and the KAROL delegation gather with Senator Murkowski and Chief Justice Dana Fabe, who introduced the senator, after the Women in Law Luncheon. L-R: Margaret Russell, AAWL Luncheon Chair; Jessica Carey Graham, AAWL President; Teresa Berwick, AAWL Vice President; Lindsey Holmes, AAWL Treasurer; Chief Justice Fabe; Ludmila Anatolievna Plotnikova, Lecturer in Law, Khabarovsk State Academy of Economics and Law; Senator Murkowski; Alexey Anatolievich Ryaguzov, Law Student, Khabarovsk Academy of Economics and Law; Tatiana Petrovna Setzko, Chief Judge for the District Court of Khabarovsk; and Vadim Bourenin, Russian lawyer and interpreter for the KAROL delegation.

L-R: Mears Middle School Student Deborah Williams, L, visited with Sen. Lisa Murkowski, after the luncheon. Deborah came to the luncheon with her aunt, Anchorage attorney Satrina Lord, R.

L-R: Michelle Meshke, Kathy Black, and Suzanne Cherot, colleagues at the law firm of Birch, Horton, Bittner and Cherot, share a laugh at the Women in Law Luncheon.

Alaska Bar Association 2003 Convention in Fairbanks



U.S. Supreme Court Justice Antonin Scalia

Join us in Fairbanks
for the
Alaska Bar Association
Annual Convention
on
May 7, 8 & 9, 2003
at the
Fairbanks Princess
Riverside Lodge
with
U.S. Supreme Court
Justice Antonin Scalia!

(As past President Bruce Weyhrauch announced at the Ketchikan 2001 convention with Justice Stephen Breyer, "We're going for the complete set!")

See page 22 for a complete listing of convention events.

PRO BONO CORNER

OPA seeks volunteers

☐ Katherine Alteneder

Last month's Pro Bono Corner discussed the increasing pro bono opportunities for practitioners, and this month we focus on the newest program seeking pro bono volunteers: the public guardian section of the Office of Public Advocacy (OPA).

Public guardian clients often present with legal needs that fall well beyond the expertise and mandated limits of staff attorneys. Therefore, pro bono attorneys with specialties in real estate, estate planning and probate, personal injury, divorce and custody, contracts, insurance law, and bankruptcy are becoming increasingly critical in providing services. Already there have been numerous success stories of pro bono attorneys preventing loss of property and housing, obtaining financial compensation for vulnerable adults who were subjected to financial exploitation, and obtaining visitation rights for parents denied access to their children. However, the needs of public guardian clients are increasing, and OPA needs to increase the pool of attorneys upon whom it can call.

Most public guardian clients do not have sufficient financial resources to retain private counsel to protect their rights. The majority of public guardian clients' income consists of government benefits available to low-income persons with disabilities. OPA currently has approximately 800 clients in various locations from Ketchikan to Barrow. The clients vary as well, ranging from young adults with Down's Syndrome to older persons with Alzheimer's to middle-aged persons suddenly disabled due to a car accident. Their legal needs also vary widely, covering the whole spectrum of civil legal problems. Please consider sharing your expertise with this extremely vulnerable population.

Anyone interested in volunteering can call Jim Parker in Anchorage at 269-3500 or John Franich in Fairbanks at 451-5933.

Now, please join us in recognizing and thanking the following

PRO BONO ALL STARS

1ST JUDICIAL DISTRICT

ALSC recognizes and thanks **Mary E. Guss** from Ketchikan and **Stephen Pearson** from Juneau. **Mary** has volunteered her time for many years, and generally takes one or more family law cases each year. **Steve** generously donates his time to ALSC's bankruptcy panel and often has more than one case on his desk at a time.

The Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) recognizes and thanks **Dennis McCarty** of Ketchikan and **Jim McGowan** of Sitka, who are always ready to lend a hand.

3RD JUDICIAL DISTRICT

ALSC & ANDVSA each recognize and thank **Bruce Bookman of Perkins Coie**, who has provided not only untold hours to both programs, but also has been a terrific role model and resource for the new associates at his firm. For ALSC, **Bruce** assumed representation of a complex consumer case, and donated his fees back to ALSC at the successful conclusion. For ANDVSA, **Bruce** has handled numerous cases involving significant domestic violence. He has also dedicated many hours to legal research projects in support of ANDVSA. **Thank you Bruce!**

ALSC also recognizes and thanks **Vanessa White** and **Paul Paslay** of Anchorage, and **Jaqueline Colson** of Kenai. **Vanessa**, who has donated countless hours on family law cases, is, by her own admission, hooked on pro bono work, "The Pro Bono work is what brings me in some days. The most important case I've ever done was a pro bono case — the kind of case that made me feel I was put on this earth for a purpose. I'm hooked – I'll be doing pro bono all my life." **Paul** is a leading volunteer in the bankruptcy area, having taught many bankruptcy classes, represented many individual bankruptcy clients and always finds more time to devote to pro bono efforts. **Jacqueline** is being recognized for her bravery in trying a new area of law. ALSC teamed her with **Allstar Jane Pettigrew**, which enabled **Jacqueline** to successfully handle her first bankruptcy matter.

OPA recognizes and thanks **Amy Menard of Gilmore and Doherty** in Anchorage for her outstanding work in a quiet title action for a vulnerable adult.

4TH JUDICIAL DISTRICT

ALSC recognizes and thanks **Randy Olsen** and **Valerie Therrien** from Fairbanks. **Randy** is an Assistant Attorney General and has donated many hours to advising ALSC family law clients. **Val**, who is always willing to donate her time for bankruptcy clinics and consultations, is being recognized in particular for her willingness to represent clients in rural Alaska, who generally have no access to any legal representation.

ANDVSA recognizes and thanks **Jason Weiner of Clapp, Peterson & Stowers, LLC** in Fairbanks. **Jason** has provided unparalleled service in a very complex family case, which seems to have a surprise at every turn. **Thank you for your perseverance Jason!**

WISH LIST

If you or your firm may be able help with any of these items, please contact the people listed below.

• **Fax machine & some office chairs.** If you think you can help, please call Deatrich Sitchler of the Alaska Civil Liberties Union at (907) 258-0044.

• **Cash donations to ANDVSA's cost coverage fund** to pay airfare for urban pro bono attorneys to represent rural clients, depositions and other costs associated with litigation. Grant sources never quite understand how big Alaska really is, so this fund is perpetually under funded. Please contact Christine Pate of the Alaska Network on Domestic Violence and Sexual Assault at (907) 747-7545 for information about making a donation.

• **Scanner.** If you think you could help with this, please call Erick Cordero of Volunteer Attorney Support at Alaska Legal Services Corp. at (907) 222-4520.

Thank you for your continued support and interest. If you have questions, concerns or ideas about how to improve pro bono services in Alaska, please conact a member of the Bar Association's Pro Bono Service Committee: Sabrina Fernandez (Chair), Katherine Alteneder, Robin Bronen, Jody Davis, Tom Dosik, Andy Harrington, Linda Kesterson, Mara Kimmel, Barbara Malchick, James McGowan, Christine Pate, Judge Mark Rindner, Mary Jane Sutliff, Bryan Timbers, Jim Valcarce, Judge John Reese (Ex Officio), Erick Cordero (Liaison), Bill Cotton (Liaison).

PROGRAMS NEEDING VOLUNTEERS

Please call one of the following programs to volunteer your expertise:

The Alaska Civil Liberties Union needs volunteers to screen intake raising potential civil liberties issues, to conduct legal research, to write demand letters, and to litigate groundbreaking civil liberties cases for us. If you can help with any of the above, please call Jennifer Rudinger at 258-0044.

• **Alaska Legal Services' Volunteer Attorney Support**, features summaries of cases needing placement on its website www.alsc-law.org , which usually include bankruptcy, consumer, family, and housing case types. Currently, there is also a need for volunteers to help draft FAQ's in areas such as energy assistance, food stamps, job discrimination, Medicaid, mobile and manufactured homes, public assistance, unemployment benefits, veterans benefits, workers compensation for AlaskaLawHelp, a soon to be launched new statewide website designed for low-income clients. Please call Erick Cordero at (907) 222-4520.

• **The Alaska Pro Bono Program** is seeking volunteers with experience in constitutional law, class actions and issues involving immigrants. Please call Bill Cotton at 274-3212.

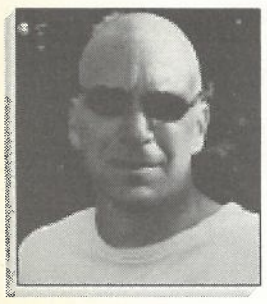
• **Alaska Network on Domestic Violence and Sexual Assault Legal Advocacy Project** is seeking volunteers in a variety of case types involving victims of domestic violence. Please call Christine Pate at (907) 747-7545.

• **The Immigration and Refugee Services Pro Bono Asylum Project** is always seeking volunteers to assist in asylum cases. There is no need for previous immigration law experience. The program will train you and provide a mentor. Please call Robin Bronen or Mara Kimmel at (907) 276-5590.

• **Office of Public Advocacy Family Guardian Volunteers** is seeking volunteer attorneys with specialties in real estate, estate planning and probate, personal injury, divorce and custody, contracts, insurance law, and bankruptcy. Please call Jim Parker in Anchorage at 269-3500 or John Franich in Fairbanks at 451-5933.

Logic and mandatory therapy for lawyers

☐ Rick Friedman



ARE YOU EMOTIONALLY CHALLENGED?

"Time expended on the case varies in inverse ratio to the certainty of liability, severity of injury and depth of pocket." Gail Roy Fraties, purporting to quote "Gucker's Maxim" in the Summer of 1980 *Bar Rag.*

This issue's column is for judges only. Everyone else should stop reading now. As promised, this is a test to take in the privacy of your own chambers, with the robe off, with no one else around. It is a serious scientific instrument, developed after consultation with some of the most knowledgeable experts on the subject of emotional dysfunction. These include Terry Venneberg, Jim Kentch, and Peter Ehrhardt. This test should not be administered to anyone who is not a judge.

Circle the appropriate response. There are directions for scoring at the end.

1. You consider sentencing criminal defendants:

a. One of the hardest things you've ever had to do;

b. All in a days work, not that bad;

c. Kind of fun;

d. Foreplay.

2. Which bests describes you:

a. I have cried in court, one or more times.

b. I have never cried in court, but came pretty close a time or two.

c. I would rather die than cry in court.

d. What could happen in court that would make someone want to cry?

e. I don't cry in or out of court, ever.

f. What is "crying?"

3. Which best describes your reaction to the following statement: "The Supreme Court is not final because it is infallible, but is infallible, because it is final."

a. Strongly agree.

b. Strongly disagree.

c. Strongly disagree; this would be grounds for contempt in my court.

d. Strongly disagree; if we were not infallible, we would not have been made judges.

4. If you learned that the sentiment expressed in question #3 was authored by Supreme Court Justice Robert H. Jackson in *Brown v. Allen*, 344 U.S. 443, 540 (1953) you would:

a. Admire his wisdom and wit.

b. Have your clerk check to see if *Brown v. Allen* has been overruled.

c. Be inclined to change from disagreement to agreement in an effort to more fully align your person with perceived authority.

d. Find your desire to align with perceived authority in direct conflict with your desire to view judges (and yourself) as infallible, and immediately put the whole line of thought out of your head.

e. Be unaware of any internal conflict, but feel a rising anger and a strong desire lash out at someone.

f. Wonder if Robert H. Jackson was any relation to Michael Jackson?

5. Describe your reaction to the following statement: It is better that 10 plaintiffs be under-compensated for their injuries, than one plaintiff be overcompensated.

a. strongly disagree.

b. answer depends on when my next retention election is being held.

c. strongly agree.

d. Anytime someone without an advanced educational degree receives more than my annual salary, it is overcompensation, and it won't happen in my court.

6. You believe summary judgment motions:

a. Should be reserved for cases with an absence of disputes over material facts;

b. Keep your law clerks busy and out of trouble;

c. Are a good way to flex judicial muscle;

d. Are a quick, efficient solution for an overcrowded calendar.

7. Matters submitted to you:

a) Are given prompt, thorough and thoughtful evaluation (emphasis on prompt),

b) Will not be ruled on until the parties settle the damn case;

c) Will be ruled on when you get around to it;

d) Will maybe just go away if you don't think about them.

8. You:

a. Sometimes fantasize about advancing to a higher judicial post.

b. Constantly fantasize about advancing to a higher judicial post.

c. Write your opinions with an eye towards whether they will help you advance to a higher judicial post.

d. Write your opinions with an eye towards whether they will help you advance to a higher judicial post and you think the rest of us can't tell.

9. Circle any of the following which accurately describe your chambers,

a. Most of the photographs are of family or friends;

b. There are more than 3 photographs of you, alone;

c. There are more than three photographs of you with a famous person;

d. You have no photographs of any kind; photographs have no place in a legal workshop.

10. [Only male judges should answer this question] When you put on your black robe, you feel:

a. Kind of silly-like—you're wearing a black dress;

b. The awesome historical majesty of the law, and are proud to be a part of it;

c. Strong and powerful;

d. Strangely aroused, but try not to think about it and channel that energy in some other direction.

11. I think Mr. Spock on *Star Trek* would make a great judge:

a. Strongly disagree.

b. Slightly disagree.

c. Not sure.

d. Strongly agree.

e. You would have to perform the Vulcan mind probe on yourself before answering.

12. Which is true for you?

a. I was never loved as a child.

b. I was never loved as an adult.

c. I was never loved as a child or as an adult.

d. I don't need love; love is for wussies.

e. I was never a child.

13. My favorite self-help book is:

a. I'm OK, You're Guilty.

b. When Bad Rulings Happen to Good Lawyers.

c. Free to Be, A Detainee.

d. Chicken Soup for the Soulless Legal Scholar.

14. What is your favorite thing about being a judge?

a. Grabbing my gavel publicly.

b. Hearing "Oyez, Oyez, Oyez;" thinking it's time for "The Three Stooges."

c. Telling everyone to be "Please be seated," then saying "Just kidding!"

d. Laughing when someone refers to "The State's Highest Court," imagining it's a drug reference.

15. I need to be a judge because:

a. "Honorable" much more impressive than "Mr." or "Ms."

b. "Being judgmental" not frowned upon.

c. Can't stand to pay for parking next to courthouse.

d. Casual use of "*nunc pro tunc*" very enjoyable.

16. The gavel makes you feel:

a. As powerful as Thor.

b. Stupid.

c. Like every problem is a nail.

d. Like a proctologist.

17. The fringe on the state flag:

a. Is kind of cute.

b. Might really (under the law merchant) void all your decisions.

c. Would look rather fetching along the hem of your robe.

d. Point that thing somewhere else [According to expert Kentch, this is a reference to the cover of the Jefferson Airplane's *Volunteers* album. If you understand this, don't even finish scoring—seek professional help immediately.].

Give yourself 0 points for each "a" answer, 1 point for each "b" answer, 2 points for each "c", 3 for each "d" answer. For each "e" or "f" answer, give yourself 5 points; if you have more than one "e" or "f" answer, seek professional help immediately.

0-17 points—you are remarkably well-adjusted for a judge or a lawyer; relax and enjoy your life.

18-25 points—conventional, once per week psychotherapy recommended.

25-32 points—conventional psychotherapy augmented by prescription drugs and abstention from all judicial conferences for at least 5 years recommended.

32-40 points—There's not much point in telling you anything, is there?

40 points and over— You will have a long and successful judicial career.

NOW, A TIP FOR OUR FRIENDS OPPOSING THE DEATH PENALTY.

This idea is inspired by attorney Jay Felix of Tucson, Arizona. It seems attorney Felix represents a woman whose adult son was on Arizona's "death row." She received a solicitation in the mail, offering to provide life insurance to any of her family members for a modest monthly fee. She ended up purchasing $30,000 in life insurance on her son, who, within a few years time met the fate decreed by Arizona justice. She then submitted her insurance claim. Mom needed to hire a lawyer to get her insurance claim paid, but who doesn't these days? In the end, the benefits were paid.

Much money and time is spent by death penalty opponents. But the quickest way to achieve change in our society is to align yourself with corporate financial interests. It would be relatively cheap to buy life insurance on all death row inmates in America. Once the polices were purchased, let the insurance companies know their insureds are in jeopardy. Watch the best legal talent in the country rush to court to save the lives of prisoners. There would be a certain congruence in having the defenders of tobacco, asbestos, the Dalcon Shield, etc., defending more ordinary murderers.

THE EDITOR SEEMS A BIT WORRIED ABOUT SOME OF THE RESPONSES TO THIS COLUMN.

I should remind him that controversy is not new to these pages. As proof, I submit a letter to Gail Fraities, c/o The Bar Rag, published here some 21 years ago:

Dear Son:

You know that through these many years I have supported you and your efforts, and that in doing so, I have often stood alone. So, too, I have been a fan of the articles you have submitted to The Bar Rag as part of the requirement of your creative writing course at Bell Island Community College.

Your last article embarrassed me and went beyond the bounds of good taste that I taught you. I won't read your articles anymore.

Love,

Mom

Judges on wheels: 6,840 miles, 32 days & 684 gallons of gas

Continued from page 1

United States. Allen kept trying to refine the plan the entire trip to no avail. We had roughly six weeks travel and were limited in funds only by the limits in our ATM accounts and our credit cards.

THE TRIP

On January 20, 2003 I left Parachute in the old truck with 89,372 miles on the odometer and 40 gallons of gas in the two tanks. I met Allen at the Grand Junction, Colorado airport at 9:30 a.m. He had traveled all night from Girdwood and had arrived at 9:00 a.m.

We had somehow missed each other and had wandered around the terminal for half an hour before we connected. This was an improbable occurrence in such a tiny terminal since he was the only passenger and I was the only person meeting the plane. I can explain it only by blaming the new security regulations that prohibit visitors from any areas where the plane and passengers are actually visible.

We started the trip immediately and drove nearly to Santa Fe the first day. The highlight of the day was when Allen discovered that the truck got only 10 miles per gallon. He told me that had I passed along this fact to him he might not have come along. This, of course, explained why I had not passed this fact along to him.

The next two days we traveled through southern New Mexico and West Texas [where the scenery is actually enhanced by litter. (See very last paragraph). The landscape is so barren we listened to Waylon Jennings over and over again. After hearing Waylon sing "Lucille" about four times, we began to discuss the legal, moral, social and philosophical issues raised by the mournful chorus:

You picked a fine time to leave me Lucille,
four hungry children and the crops in the field. . . .

One of us would ask how the feminists might view Lucille's plight and contrast that with how Jerry Falwell might respond. And where, we asked, was Social Services in this story? How many violations of the law could Harry Davis find in the Lucille scenario? With any luck at all, you may be able to read all about this in "The Lucille Chronicles" right here in the Bar Rag as soon as Allen and I get them written.

INTO MEXICO

We crossed into Mexico at Laredo which, I assume, is viewed by Texans as a place to visit in much the same way as Bethel and Barrow are viewed by some Alaskans. The weather was fairly cool and cloudy as we progressed down the east coast of Mexico through Monterrey, Ciudad Victoria, Tuxpan, Veracruz, Coatzacoalcas and Palenque to Chetumal, State of Quintana Roo, which is on the Caribbean coast almost directly south of Pensacola, Florida. It is the home of Quintana Roo University, or, as the T-shirts say, "Q. Roo U."

The East Coast of Mexico is not exactly a tourist mecca. In the winter it tends to be cloudy and rainy and there are far more mangrove swamps than beaches although there are a few beautiful beaches. The cities are fairly big and depressingly industrialized, with huge oil refineries belching out black smoke visible for miles.

At Chetumal we crossed the Mexican border into Belize. Belize is a small country with not many people. Formerly British Honduras, the lingua franca is English. Many tourists visit Belize and travel mainly to the offshore islands known as cays.

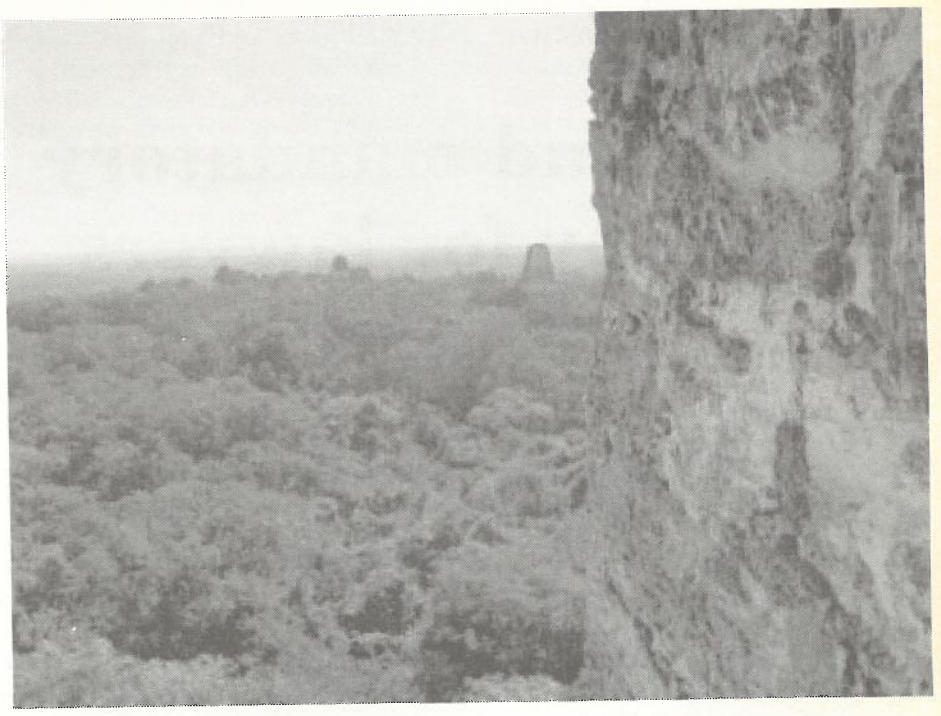
We took a water taxi to Cay Caulker about 20 miles offshore from Belize City, a ride designed to keep chiropractors and orthopedic surgeons in business, and stayed there for three days.

The cays are famous for snorkeling and diving and amazingly clear water, but we had three days of rain and clouds so we stayed on shore. There are no cars on Cay Caulker, only golf carts, so the stay was pleasant and restful. If you go to Cay Caulker you can get a huge lobster burrito at Rasta Pasta, whose motto is: "No Shirt, No Shoes, No Problema!" That could apply to all of Belize.

ON TO GUATEMALA

Belize is small enough to drive across in one day. After returning to Belize City, which is large, crowded, dirty and dingy, we drove for several hours and crossed the border into Guatemala. A few hours later we reached Tikal and spent an enjoyable day exploring the magnificent Mayan ruins hidden away in the jungle. We had also explored the Mayan ruins at Palenque, Mexico, and found them to be just as impressive as Tikal. A guidebook advised us that 49 buildings have been cleared at Tikal and another 2300 remain untouched in the jungle.

From Tikal we drove across most of Guatemala on winding, narrow, mountain roads to Guatemala City, which is huge, polluted, noisy, crowded, and dirty. Traffic is simply hysterical. We both enjoyed the very old, very beautiful city of Antigua, Guatemala, and then drove past one volcano after another to the Mexican border. Several of the volcanoes were belching out impressive plumes of black smoke.



Mayan temples peek above the Guatemalan rain forest.

A glance at a map of Mexico will show that the Mexican Pacific Coast is enormously long. We can vouch for that. We followed the coast all the way from Guatemala to Nogales, with an incursion to Oaxaca where we stayed three days. We took a seven-day stop just outside Manzanillo at Barra Navidad where we visited with two Anchorage lawyers who stay in the same room in the same hotel for nearly a month every year. That is no wonder. The weather was perfect, the surf was pounding but still swimable and the two pools were cooling and relaxing. On our trip up the coast we came through all of the present or former famous resort cities including Zihuatenajo, Ixtapa, Manzanillo, Acapulco, Puerto Vallarta, Guaymas and Hermosillo. Then we crossed the U.S. border south of Phoenix and I went on to Parachute. Upon arrival in Parachute, the odometer showed we had gone 6,840 miles in 32 days. The old truck performed admirably.

REFLECTIONS

Nearly everything we had heard about driving in Mexico, Belize and Guatemala turned out to be untrue. We encountered no bandits, pickpockets, muggers, thieves or car strippers. Nothing was ever taken from any of our hotel rooms. Toilets were uniformly clean and toilet paper was always present. There were always sinks and almost always soap and towels. And we definitely did not always stay at first class or even second class hotels. Third world, third rate had became our motto.

The many drug interdiction check points along the way were essentially non-events. Mexican soldiers, many carrying automatic rifles, would stop our truck, ask or say something in Spanish, and we would shrug and deny any understanding. They would look at us, look at the truck, smile and laugh and wave us on our way.

Nobody ever requested or even hinted at a bribe or any payment at any of the barricades or any of the border crossings. We only occasionally saw animals on the road, most frequently in Guatemala. There are many new toll roads in Mexico that improve travel conditions considerably. They are mostly four-lane and allow for very fast travel but they are quite expensive, too expensive for most Mexicans. Accordingly, truck traffic is minimal.

Where there are no toll roads, conditions rapidly deteriorate. Older Mexican roads are two-lane, narrow and have *NO* shoulders. If there is a lane marking on the right side of the road, the road drops off several inches past that line. It may drop off precipitously, even many hundreds of feet as it often did in southern Mexico or Guatemala. In places where new lanes were being constructed, there was a four-foot drop to the construction area. If there was a ditch, it was usually constructed of concrete that sloped down at a 45-degree angle from the road. If our right front wheel had ever gone over the edge, a rollover would have certainly resulted.

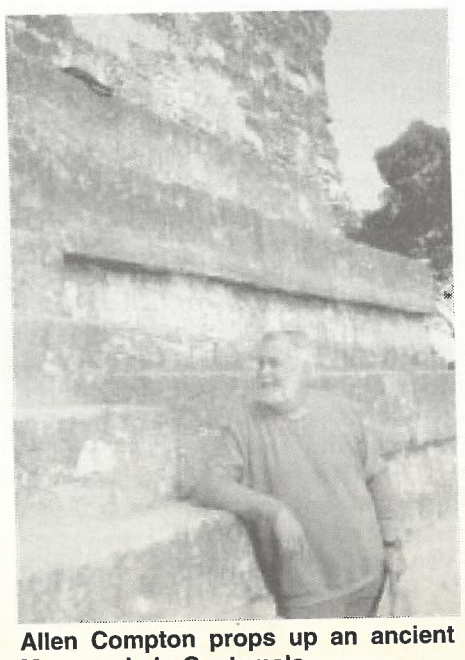
On these roads, only eight feet wide, traffic hurtled along at 60 to 65 miles per hour and traffic in the opposite lane, barely two feet from the side of our truck, was an unending stream of large, roaring, partially burned diesel fuel belching trucks. If we did not keep up with the traffic, drivers from behind would pass with absolutely no regard for yellow lines or blind curves.

The worst thing about driving in Mexico is the topes ('tow pays'). These are simply speed bumps with an attitude. They are elevated concrete or asphalt areas built up to several inches in height and roughly a foot wide.

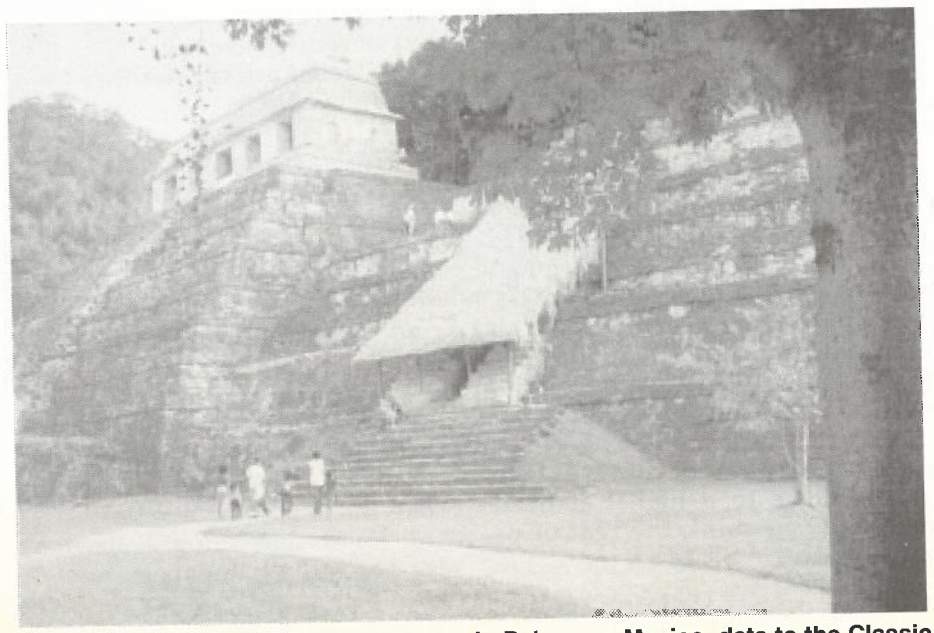
The authorities know that Mexican drivers will simply ignore any signs telling them to slow down for pedestrians or crosswalks, so they simply place these speed bumps

Continued on page 27

Photos by Jim Blair



Allen Compton props up an ancient Mayan ruin in Guatamala



The Temples of the Mayan High Priests in Palenque, Mexico, date to the Classic Maya Period of 700-800 A.D. Mayan influences in the region dates to 300 B.C. to 900 A.D.

Judges on wheels: 6,840 miles, 32 days & 684 gallons of gas

Continued from page 26

across the whole road. A tiny village gets two topes, a town may have four or even six. A city has them at regular spacing and also at unexpected places. They may even show up at a point in the country where only a dirt trail meets the highway.

Probably 90 percent of the topes are well marked and require a complete stop to navigate them. The other 10 percent will wreck your under carriage, crash your head against your roof and ruin your tires. I lost two front truck tires to unseen topes. It does not take very long before you automatically hit the brakes at the first indication of a village. Topes are a bane to anyone driving in Mexico, but they do accomplish their intended purpose.

Mexico has perfect weather in the interior and on the Pacific Coast where there are endless beaches, magnificent diving and snorkeling, lovely people, good food and fine beer.

It also has grinding poverty, a dismal lack of clean water and sewer systems, unabated air and water pollution, widespread unemployment and allegedly corrupted officials.

Plastic bottles and other food containers, paper and other trash litter the highways everywhere. Trashcans simply do not exist. Out the window it goes whenever its contents are finished or its usefulness is at an end.

We often saw trucks transporting dozens of people packed in like sardines. Traffic accidents are horrific. OSHA regulations are, of course, nonexistent. I doubt that there is an electrician in all Mexico. Electrical cords are strung any which way and conduit does not seem to exist. But I have been going to Mexico for over 40 years and things are definitely much better than they used to be and the overall attitude of the population seems to be positive.

On the other hand, we purposely avoided traveling within 100 miles of Mexico City, where 20 million souls live in conditions that rival anything written about by Gogol or Dante.

Overall, Allen and I enjoyed our long trip but neither of us would do it again. We both agreed that we might be done traveling to third world or even second world countries. Things are just so much cleaner and more convenient in the first world.

We told endless war stories about dozens (maybe even hundreds) of lawyers and judges that we knew and know in Alaska. We were saddened to think about how many of our former colleagues and friends are dead. If you have been a member of the Alaska Bar Association for more than 10 years, we probably talked about you. Our discussions were almost always favorable, but there were exceptions. If you do not believe that, I can only repeat the words of yet another country classic:

That's my story and I'm stickin' to it.

Navigator's Notes: 2 Old Judges on Wheels

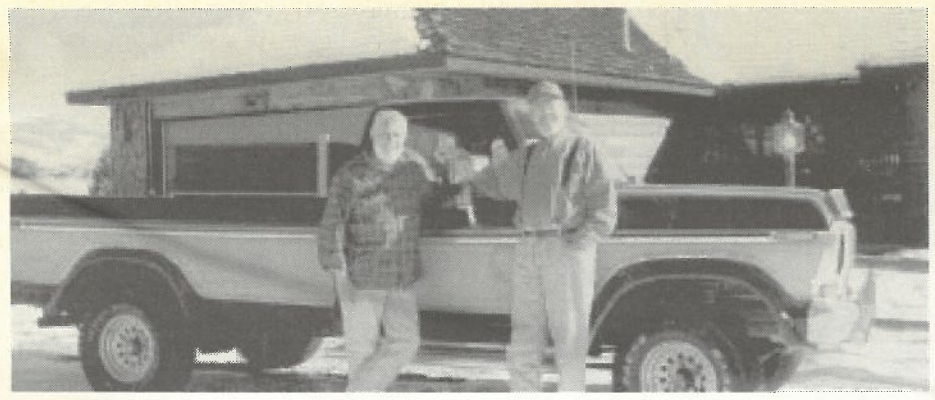
By Allen Compton

It is true that I became the unofficial Navigator of sorts for our journey into Mexico and though mostly my job was to quickly look up words in the Spanish – English dictionary. However, I did have other navigational tasks about which I will say more. These notes are intended to expose readers to yet another peril of driving in these countries. First, a couple of matters deserve comment.

Jim's observations about, and comments, on the countries we visited are generally in keeping with my own and need no elaboration. This suggests, contrary to conventional wisdom, that despite being an OF, Jim's memory of recent events is quite good.

However, and also contrary to conventional wisdom, other comments he makes suggest that his remote memory may be failing. I refer in particular to his recollection that "I was a courteous, patient, compassionate judge." You can draw your own conclusions.

His second suspect comment is not finding me at 'his' airport for about half



Navigator Allen Compton, left, and James Blair prepare for departure to Mexico from Gunnison, CO.

an hour, which is indeed true. He blames "new security regulations that prohibit visitors from any areas where the plane and passengers are actually visible." When we did cross paths at the baggage area, nowhere near any security devices, he stated somewhat aggressively that he had been at one of the food concessions in a far corner of that floor having a coffee and bagel. I am sure I heard "bagel," though I am equally sure my mind immediately translated that to "donut," since "bagel" and what Jim may have been eating do not fit comfortably in the same sentence.

It is true that I, the Navigator, "kept trying to refine the plan the entire trip to no avail." This must be taken in context. There are other driving hazards with which you must become familiar beside "topes," if you are to survive the highways and roads in these countries. One hazard is informational signage. There are plenty of signs that direct you to do or not do certain things, all of which are universally ignored. The octagonal red sign that reads "Stop" 'en Espanol' means virtually nothing, unless compliance with its direction might avoid a terrible accident.

Judging from the number of crosses and shrines on the highways and roads that mark the sites of fatal accidents, apparently little attention is paid to these. Similarly, entire community populations disregard the many signs that prohibit the dumping of trash along the highways and roads. A funded "Adopt a Highway" program in these countries would keep every man, woman, and working age child employed a lifetime and I doubt a lot of progress would be made.

Despite this genre of signs, there are almost no signs that tell you where the highway for which you are searching is located, or the one you were sure you were on has gone. You may enter a town and drive down a road you are sure is the highway on which you entered, only to find yourself at a dead end. You may be on a numbered highway and come to a rotary that you circle several times until you realize that its number is nowhere to be found. Your highway has disappeared. A sign advising you that your highway turns at a particular intersection may be placed before or after the intersection at which you are supposed to turn. All in all, it is very difficult and leads to interesting communications between confused drivers and bemused residents.

It was in this context that many of my failures as Navigator occurred. Most were simply variations on the same theme. For example, we are directed to turn onto a different, typically narrow road or street, but the sign is misplaced. As we accelerate down the wrong street, I, Navigator, say in a voice a couple of octaves above normal, "Jim, for Chrisake, we are going the wrong way on a one way street and those cars are coming right at us. We've got to pull over." Pilot: "Don't worry. My truck is bigger than their cars. They'll pull over!" Exit navigational assistance.

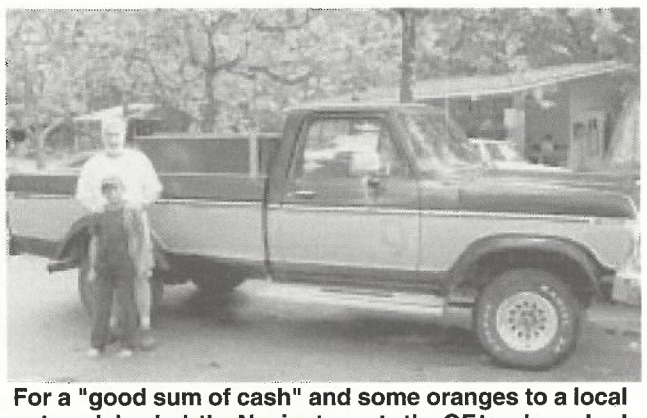
To be fair, this worked most of the time. No one ever flipped the bird or shook their fists at us or showed any particular displeasure or annoyance at our driving. They just pulled over. I came to believe that Mexican drivers are a tolerant lot quite used to other drivers performing peculiar maneuvers. A few did not stop, however, and we had to take refuge in whatever space we could find.

This 'self help' method failed somewhat miserably when we came upon a large group of Mexican bicycle road racers on a highway. The car leading the bicyclists was going understandably slowly, a few cyclists were close behind it, next came the 'peleton' and a few stragglers, and then 15 or so support cars stacked bumper to bumper immediately behind the slowest cyclist.

This mass of moving metal and flesh was proceeding at less that 30 KPH (18.6 MPH) and such a speed, on a highway, was not long to be tolerated. Despite Navigator's plea that we just stay in line until we could see our way clear, Pilot determined to pass the entire lot with a hill on the horizon. Unfortunately a car crested that hill about the time we were opposite the peleton. Pilot made the choice to take to the left hand shoulder – one of the few places in Mexico where there was a shoulder – and dodge trash rather than to drive through the peleton or to take on the oncoming car that apparently was not about to stop. Trash seemed less likely to scratch the truck than did a dozen or more bicycles.

While hanging on for dear life I wanted to see what I knew had to be the demonic look on the face of the oncoming driver, who apparently had no intention of getting out of our way, and I saw him clearly as he passed on our right. His look, and the look of other passengers in his car, was not that of a demon bent on our destruction, or winning a game of daring. It was the look of someone frozen by terror! I assume he must have been only recently permitted behind the wheel of a car and did not know the Mexican Rules of the Road yet. Yet I had to chalk up another navigational failure. We were able to complete the pass on the left hand shoulder, however, so once again Pilot prevailed.

As Jim notes, animals are not a problem ON the highways, but many farm animals graze tethered along what appear to be rights of way on the sides of or between traffic lanes, and some are even herded there, a precarious job if ever there was one. Dogs are uniformly not on any kind of leash and pigs, some large enough to create real problems for a driver, run loose. I attribute the fact that none are ON the highways to the large number of very well fed, apparently healthy vultures that populate most of Mexico. They know good road kill areas when they see them and are perhaps the most efficient sanitation experts in Mexico. Animals are a problem.



For a "good sum of cash" and some oranges to a local enterprising lad, the Navigator gets the OF truck washed in Palenque.

Despite the long distances you have to drive in Mexico, the highway from Roswell, New Mexico, to Laredo, Texas, was the most barren, dull, monochromatic stretch of road imaginable.

It was there that Jim made the quote of the journey: "Allen, this is one of the few places in America where litter would actually enhance the scenery."

We may still pursue whether Lucille's decision to leave the farm "with crops in the field" was because the father of her four kids announced that once the crops were in they were headed to West Texas. Perhaps it was indeed a fine time for Lucille to leave, for if she indeed had "finally quit living on dreams" and was "hungry for laughter," she wasn't going to find it anywhere in West Texas. Maybe Lucille did not want to be a navigator anymore.

Judgeships filled by governors

Continued from page 1

Fairbanks District Court position created by Knowles' appointment of Judge Mark I. Woods to the superior court in August. The Governor must make appointments to the Fairbanks judgeships by 45 days from the Judicial Council nominations (May 15).

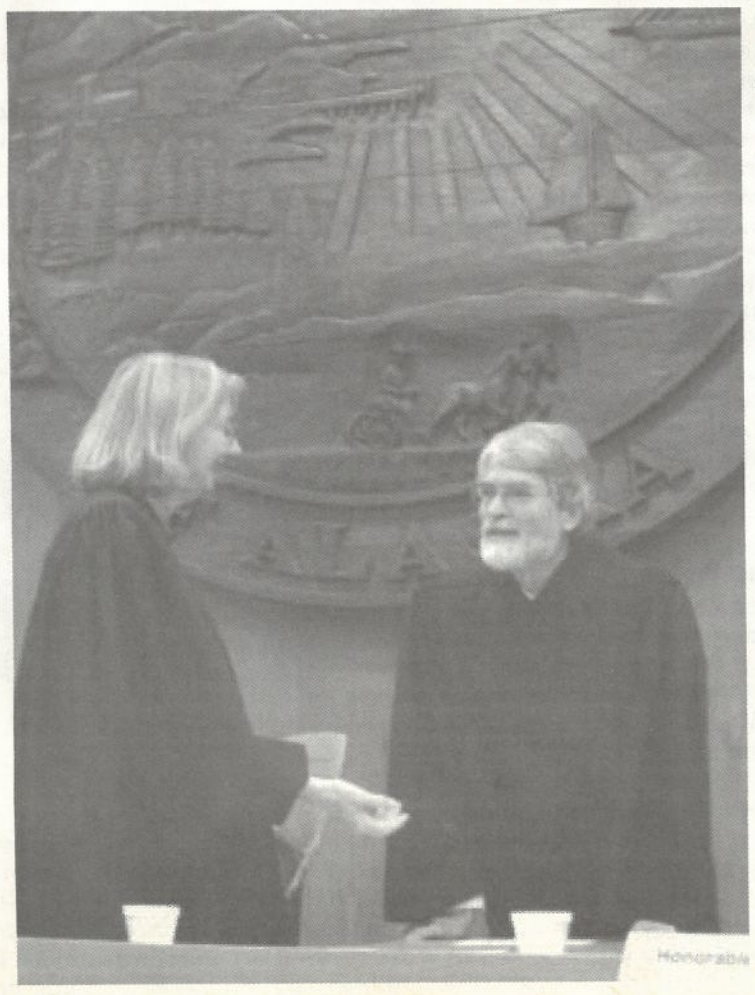
Judge Suzanne H. Lombardi has announced her retirement for the Palmer District Court; 14 attorneys have applied for this position. Interviews with the applicants are tentatively scheduled for the beginning of May in Palmer, says the judicial council.

Another judicial vacancy was created on the Kodiak Superior Court by the resignation of Judge Donald Hopwood. Completed applications for this position must be received by the Alaska Judicial Council no later than April 17, 2003.

With the six judicial vacancies he will fill early this year, the Murkowski administration could preside over the most significant change in the judiciary in more than a decade. During his administration in 1990-94, Walter J. Hickel appointed 14 judges. Knowles appointed 30 new judges during his 8-year administration from 1994-2002.

The court system currently has 58 judicial positions: 5 in the Alaska Supreme Court, 3 in the court of appeals, 32 in superior courts; and 18 in district courts.

Suddock takes the oath with Chief Justice Dana Fabe . . . and is assisted by his son Matt and daughter Kate during the traditional robing ceremony Feb. 7.



Suddock and Justice Fabe get the new court employee's paperwork signed.

Judge Phil Volland Swearing-in Reception

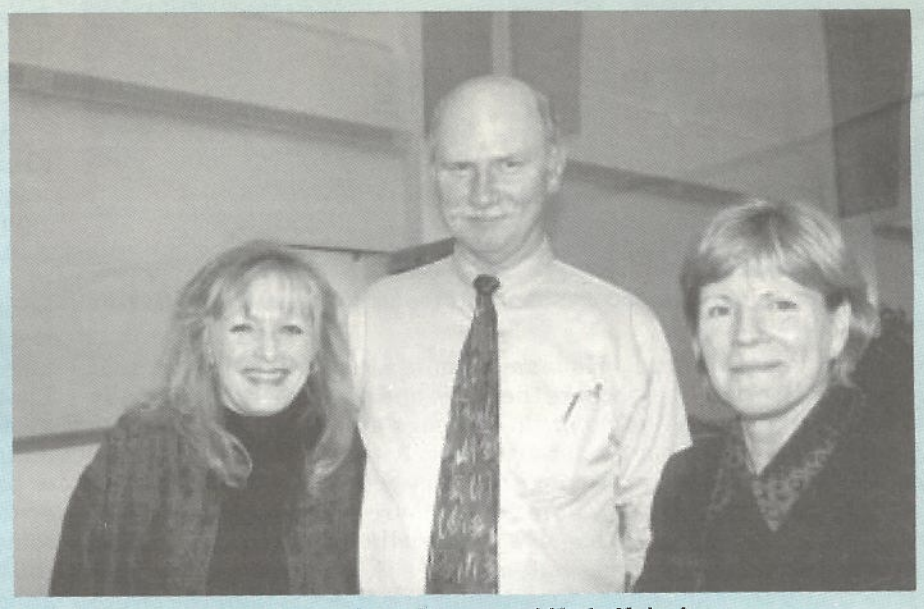
February 28, 2003, Snowden Building

Superior Court Judge Phil Volland was sworn in on February 28, 2003, in Anchorage. Over 100 family members, friends, and members of the legal community helped him celebrate at a reception in the Snowden Building.

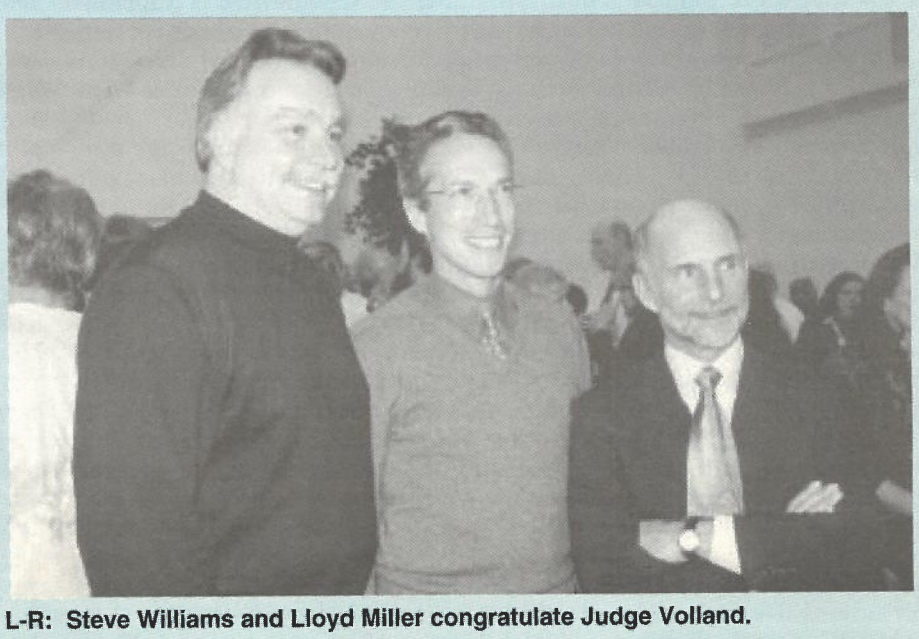
Mauri Long, front row left, and Judge Volland, center, celebrate his installation with members of their hockey team, "Dick and Jane."

L-R: Barbara Brink and Rick Vollertsen.

L-R: Judge Volland receives advice from Maria Greenstein of the Alaska Commission on Judicial conduct.



L-R: Sandy Stephens, Judge John Reese, and Karla Kolash.



L-R: Steve Williams and Lloyd Miller congratulate Judge Volland.