ALASKA BAR ASSOCIATION
ANNUAL CONVENTION
HIGHLIGHTS

•

AWARDS & REPORTS

Inside:

- 5 KEY PROSPERITY STRATEGIES
- ELVIS *IS* REALLY DEAD
- TECHNOLOGY, HUMOR & A NEW EXHIBIT

$2.00

The Alaska BAR RAG

VOLUME 21, NO. 3 — *Dignitas, semper dignitas* — MAY-JUNE, 1997

Opportunities abound for young lawyers in the Bar

BY ROB STONE

Unlike in most state bar associations, where a virtual prerequisite to Bar participation is a decade of practice and partnership in a large firm, newly admitted members of the Alaska Bar Association are encouraged to actively participate in the operation of our association.

In fact, during the past few years, the Board of Governors for the Alaska Bar established two key policies designed to increase participation among newer members. The desire for increased participation stems in part from the premise that the perspective of an attorney recently admitted to the practice may differ significantly from a practitioner who has practiced for several years. Each can provide valuable insights to the other.

The first policy change occurred when the Board of Governors established an informal policy directing the Bar President to attempt appointment of some newer members to Bar committees. As a result of this change, most, if not all, of the Bar's committees have a newer member serving.

Participation on these committees is a valuable experience for newer members. Newer members not only become more involved with the operation of the Bar, but also learn valuable practice tips along the way. For example, my two-year tenure on the Fee Arbitration Committee has increased my awareness of client concerns and the nature of their complaints. Among other things, I have found that client complaints often stem from the attorney's lack of communication. A good fee agreement, followed by detailed monthly billing statements and regular correspondence can save many headaches, not to mention a trip in front of a fee

Continued on page 5

PANNING FOR NUGGETS IN JUNEAU

L to r: An old sourdough teaches Seth Eames, Elizabeth Cabral, Rob Stone, Theresa Newman, and Jeff Engelman how to pan for gold as part of the Juneau Bar sponsored Salmon Bake.

—Photo by Stephen Van Goor

The "how dare you" syndrome, & other matters

BY ARTHUR H. PETERSON

Rep. Harold Rogers (R-Ky), chair of the U. S. House Appropriations Subcommittee on Commerce, Justice, and State, etc., presided over a hearing in February (as well as more recently) regarding the appropriation to the Legal Services Corporation (LSC). He set the tone by declaring that "1998 will be another austere year" for programs over which that subcommittee has jurisdiction.

> ***"1998 will be another austere year"***

He pointedly advised that the subcommittee is "watching closely" the cases challenging the constitutionality of the restrictions that Congress has imposed on recipients of LSC funding. He noted watching whether LSC is defending the restrictions with appropriate "zeal and enthusiasm." Apparently, some members of Congress are miffed about such cases that question their authority.

Those cases include one in Hawaii addressing several of those restrictions as they apply to non-federal money (see my report in the *Bar Rag*, March/April 1997) and a New York case in which the judge ruled that an LSC grant recipient could not be compelled to withdraw from a class action, as Congress had mandated. Application of the restrictions to recipients' activities provided with money from *non-federal sources* evidently does not strike everybody as even a teeny bit unfair.

A Texas voting rights case also has some members of Congress upset. They cite it as grounds for zeroing-out the LSC. That's like demolishing a building because one tenant is annoying the landlord.

And so it goes.

President Clinton's requested FY 98 budget includes $340 million for LSC—the same amount requested for FY 96 (when Congress appropriated $278 million) and FY 97 (when it appropriated $283 million). Even $340 million would not bring the program back up to full speed, but obviously would be better than the amount for the last two years.

Recently, Seattle Attorney John McKay, a 40-year-old Republican, was appointed president of LSC. He is a long-time, vigorous legal services supporter, and assumed his duties May 15.

In the Alaska Legislature, the House passed an FY 98 budget that included $100,000 for the Alaska Legal Services Corporation (ALSC), and the Senate's version included $90,600. Through the magic of the budgeteers, the conference committee version also provides $90,600. That's $9,400 less than in the current year. (Recall that, in the mid-1980's, ALSC received $1.2 million in annual state funding. The *need* for that amount has not diminished.)

As of this writing (early May), the ALSC board is planning to work with a "facilitator" as part of its next meeting. This person is donating her services to help the program. We expect to be working on plans for a future with minimal funding. We hope to maintain an excellent statewide system for providing free legal services to low-income Alaskans, whether that means restructuring, simply adopting new methods, or relying more heavily on the rest of the bar. We need ideas; and our process should benefit from this "facilitating."

Help us commemorate our 30th anniversary and work toward the next 30 years.

Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

Non-Profit Organization
U.S. Postage Paid
Permit No. 401
Anchorage, Alaska

President's Column

Swan Song

While I am no longer president of the Board of Governors our new president, David Bundy, has been nice enough to let me write one last article. When I first became president I wrote an article on my four priorities and said that at the end of my term I would "own up to whether I made it or not. Right now I'm wondering why I would have said that, but here goes.

First: Pro Bono Service. When I first started I wanted to explore ways in which the Alaska Bar Association could help Alaska Legal Services Corporation and the Pro Bono program in light of their incredible budget cuts. What did I do? Not enough. I gave ALSC staff an award at the convention, and I listened whenever Seth Eames called with concerns. The Board of Governors also gave a small break on CLE costs to ALSC Staff. But that was about it. There's a lot of work out there that is not going to get done if we don't all start working on this. Thank goodness there are people like the lawyers at Faulkner, Banfield, Doogan, and Holmes, and Tony Strong (the respective winners of the firm and the individual Pro Bono Service Awards this year) to set examples for us.

Second: the convention. While I didn't get far on the big question of what to do with the convention system in general (although I tried with a

Beth Kerttula

poll), I think the Juneau convention was successful (more on it later). Although I promised myself (not to mention my husband) that I was going to take some time off from volunteer work, I am staying with the issue, and will report back to the Board of Governors on it at their next meeting. I still think that cost is our major problem, and I'm still not sure how to solve it.

Third: Quality of life. After my friend Diane Vallentine saw my first article mentioning this she asked me what I would know about it. That was only half joking. I intended to devote a whole column to this topic, but I got too busy to write it. I think that says it all — that and the facts that I haven't seen enough of my family this year and that my garden has gone to weed (neither a good thing in my family). We'll see how long I actually manage to hold out and not go back to basically having two jobs. Then we'll know if I've learned anything about this or if Diane is right.

Fourth; Bar committee assignments. I almost completely failed at this goal. The only reason I can say "almost" is that in my first article I did mention that if you were interested in a committee you should let David Bundy or me know. But after that it's down hill. Not only did I not notify anybody, I didn't even know when the committee assignments were made. I can attribute this to the problem mentioned in topic number three above, and I hope that you paid more attention to the notices the Bar Association sent out than I.

Having now owned up to how I did on my goals, let me say that (again, as I mentioned in the first article), Judge Singleton is right: I was guided by events over which I had no control. Luckily not many of them were too terrible. Now let me tell you what actually did happen this year, ending with the convention.

First: Regular Bar duties. Discipline, budget, complaints, requests, bar rules — this is the somewhat boring, often difficult stuff that the Board of Governors does. All year long we do it, and I am happy to say that this is done efficiently and well. Your board deserves high grades for professionalism, fairness, and an amazing level of intellectual discussion. Chairing the board is no small task — trying to give everyone a chance to talk while trying to end a meeting on time is really hard. Thank goodness I had two strong role models: previous Board President Dan Winfree who taught me that "this train runs on time" (even if mine made more stops than his), and my father, who showed me that patience and listening pays off in trust and respect.

Second: Working with the Bar Staff. I'm not sure that's the right way to say it. What I mean is somewhere between knowing enough to just leave the staff alone and let them do what they do so phenomenally well, and still guiding, or making a decision when it needs to be made. I am one of many who sing the staff's praise. They work hard and are happy doing it. Steve Van Goor is one of the most competent people I know. Mark Woelber and Louise Driscoll make good decisions and good presentations. Deborah O'Regan could lead you through an issue no matter how difficult. Barbara Armstrong could plan the next Presidential inauguration without a hitch, and Rachel Tobin makes everything look easy. The rest of the staff are just as good, and I am thankful to have worked with them.

Continued on page 3

Editor's Column

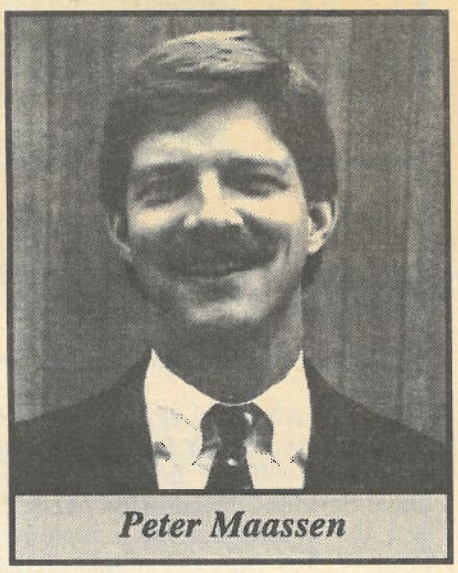
Editor exchange prompts readership survey

It was San Diego in April this year for West Publishing's annual Editor Exchange, where the editors of scores of legal publications — both bar-sponsored (like us) and for-profit -met to talk about what we do, how we could do it better, and which tastes better with tequila, lime juice or Tabasco. West is now actually the West Group, a major part of the $7-billion Thomson Corporation, and it includes not just WESTLAW (high-tech) and West Publishing (low-tech) but also Clark Boardman Callaghan, Bancroft-Whitney, and Lawyers Cooperative Publishing. It's the biggest conglomeration of legal publishers since Moses met Hammurabi in the desert.

West displayed its new omnipotence by importing the weather for the conference from its home state of Minnesota. We roasted marshmallows over bonfires on the beach and periodically ignited the toes of our tennis shoes just to make sure there was still some feeling down there.

The annual problem with West's Editor Exchange is that it leaves me for weeks afterwards musing discontentedly about the *Bar Rag* and wondering what kind of a publication it could be if we really had the time and resources to do it justice. What if we had a glossy cover? What if we came out every week, or every other week, instead of six times a year? What if we reported hard news in a timely way? How do we make all the practitioners in the state put down their dictaphones the instant their secretaries announce breathlessly, "The *Bar Rag* is here!"

All of which makes the conscientious editor in me wonder what the *Bar Rag's* readership really wants from



Peter Maassen

the bar association's only newspaper. As I see it, the major difference between the *Bar Rag* and, say, the *Anchorage Daily News* isn't the comics, but the amount of readership reaction. Writers at the big papers often write about how stirred up their readers get. The newsroom phones ring off the hook (can phones do that anymore?). The readership regularly threatens, cajoles, mocks, encourages, and corrects, keeping the paper if not on the straight and narrow at least generally aware of where the straight and narrow is in relation to current editorial policy.

The *Bar Rag* operates on a more serene plane, meaning that nearly every issue disappears into the readership pool with nary a ripple. Other attendees at the Editor Exchange have told me that they like the *Bar Rag* for its lack of stuffiness, the fact that — at least as legal periodicals go — it doesn't take itself very seriously. People I meet on the street will occasionally say things like "Read your column. You ought to be gut-shot and left to die in a public place," but these are my friends, and I expect such valuable insights from them.

To broaden our base of readership input, please answer the survey below, rip it out, and fax it back to the Bar Association at (907) 272-2932. You may decorate my photo with the jewelry, tattoos, and facial hair of your choice (but please, no imperials). The results will be seriously analyzed in a later edition if (1) there are any and (2) they are more constructive than insulting.

1. What columns/articles in the *Bar Rag* do you read regularly?

_____

2. What areas, if any, do you think need greater emphasis in the *Bar Rag (e.g.*. substantive law, current events, people news)?

_____

3. Would you read more of a shorter but more frequent *Bar Rag*?

_____

4. If you were editor of the *Bar Rag*, what would you do to improve it?

_____

5. To keep the *Bar Rag* editor happy, would you gladly absorb a dues increase of (a) ten-fold, (b) a hundred-fold, or (c) other (must be in multiples of ten)? [Circle one.]

Your Name (optional): _____

Your shoe size in centimeters (required): _____

Alaskans do well in mock trial *re:* Elvis' death

Elvis Presley, the "King," is dead! Was it by his own hand, that of another, or was it the result of what was more commonly believed, the hand of Fate?

Eight Chugiak High School student attorneys and witnesses, along with their coaches descended on Nashville, Tennessee to try the case of "The State of Tennessee v. Terry King" in the National High Schools Mock Trial Championship, held May 8-11. The Alaskan team consisted of: Zachary Bowden, David Grinder, Jessie Hight, Fredrick Jones, Jody Jorgensen, Natasha Liebig, Tanisha Morman and Lia Ossiander. The attorney coach was Shane Osowski and teacher coaches were Terry and Lyn Jorgensen.

The students worked extremely hard to extract relevant "facts" regarding Elvis Presley's death to prepare for this homicide trial. The effort was rewarded as the entire team pulled together to present openings and closings, interrogate witnesses and argue objections. In one round, the students even turned a "fallen tree" circumstantial evidence analogy on its head by discussing all of the "sawdust" around the "stump." This showed the defendant had been busy with her "saw" (the drugs used to "murder " Elvis).

Such an opportunity and outstanding learning experience would not have been possible without the assistance of the Young Lawyers' Association of Anchorage and the generous sponsorship of the Alaska State Bar, as well as the numerous law firms and individual lawyers in this city whose spirit and support we really appreciate and admire. We would all like to express our most sincere thanks to you. However, the value of the experience itself would be best offered by the students' own responses to the Nashville Mock Trial:

"We did what we went to do: work hard, perform at national level, and have fun." —Zach Bowden.

Alaska's team prepares for the national mock trial competition in Nashville.

"We corrected many people's stereotypical view of Alaskans. We showed them that we can and did compete at a national level." —Jody Jorgensen.

"We were able to embrace a new situation that will shape and influence our young lives forever." —Tanisha Morman.

"The National Competition allowed us to learn not only more about law and courtroom presentation, but showed us friendly interesting students from all over the United States. It was fun to see our hard work culminate at such a high level of competition." —Lia Ossiander.

"Each round, our abilities and capacity to use the law correctly developed. Alaska, you would have been proud if you could've seen us." —Fred Jones.

"To say that we learned a lot these past few days is an understatement. Not only did we learn about the law, but we learned a great deal about ourselves and our ability to cope with new and difficult situations. Thank you to the Bar for allowing us the privilege to participate." —Jessie Hight.

"I have never seen a team work as hard and with as much heart. We walked out with our heads up and were very competitive on the national level. It will always be one of the starting points of my future legal career. Thank you for your gracious sponsorship." —David Grinder.

A total of 42 teams participated and competition was tough. Our first morning's round saw us pitting our prosecution against Michigan's defense. This team had defeated last year's national champions in their own state, so we were extremely proud of our team's excellent performance and high scores. In this round we were defeated but went on to victory against Kansas and Arkansas.

The knockdown battle-of-the-tournament for us was against Texas. Multiple objections and rebuttals as well as a stirring closing argument were highlights for Alaska's prosecutors, who are to be commended for some brilliant performances. Witnesses and lawyers on both sides were outstanding; however, Texas, who took third place outright, defeated us. Arizona and Tennessee #1 were placed first and second respectively.

The entire program, arranged by the Tennessee Bar Association, was impressive, from the Renaissance Hotel accommodation to the final Banquet and Dance on Saturday night. Team members enjoyed such arranged activities as an evening trip to Opryland Theme Park on Friday evening. Without a doubt, however, the most valuable aspect of the trip was the opportunity to meet with teenagers from different states, exchange ideas along with pins, and learn about the southern way of life and other cultural diversities prevalent in this country. Many students, as well as adults, knew very little about Alaska and our team members proved to be very fine young ambassadors.

Albuquerque, New Mexico will be the venue for the National Mock Trial in 1998 , and to the team representing this state, we wish you all the best in the spirit of competition, thorough preparation and dedication.

—Terry Jorgensen, Shane Osowski, and Lyn Jorgensen

Swan Song

Continued from page 2

Third: Planning the Convention. This took months and a ton of hard work on everyone's part. From the theme to the food, everything had to be planned. Not only did I and the Bar staff work hard on it, but so did the Juneau Bar, and especially Mie Chinzi. She even put together a poetry reading. Not to be forgotten under this topic, Justice Estaugh and the committee on the Judicial Conference, which was held in conjunction with the Bar Convention, also worked incredibly hard on planning. It all paid off, as you will see in the next topic.

Fourth: Carrying out the Convention. This only took three days, but believe me I didn't sleep much. From 6 a.m. to midnight, panels, introductions, speeches, meetings, and emergencies - it was a lot, and I loved every minute of it. I owe so many people for all their hard work, I just want to say thank you to all of them. There were some amazing things at the convention. Just the main panel alone would have been worth the whole year to me. Where else but Alaska could you have people like Governor Hammond, Byron Mallott, Julie Kitka, Arliss Sturgulewski, Esther Wunnicke, Justice Jay Rabinowitz, Charlie Cole, and Jay Kerttula debate Alaska's greatest issues? Only Jeff Feldman could have moderated this panel, and he did so with the greatest aplomb. Current Attorney General Bruce Botelho gave a powerful speech on the case against the tobacco companies and previous Attorney General Av Gross gave an amazing banquet speech remembering the days when Alaska fought the fish barons to become a state. Mayor Dennis Egan began the convention and Lieutenant Governor Fran Ulmer closed it by reminding us that there are good reasons why we should be involved in politics and policymaking - among them the legislature (which, just before the Lieutenant Governor's speech, had rejected a number of board appointments on purely partisan political reasons) (be thankful we are an independently regulated profession). Our panel on cross cultural communication taught that without listening and understanding we will never truly have justice. Although I am exhausted, it's a good feeling. I got to say a lot of things I wanted to say (what better thing for a lawyer), and I learned a lot.

The most important thing I heard at the convention was that if more attention is not paid to the sovereignty issue and there is not a better understanding forged between the state and Native Alaskans, we will see increasing civil disobedience. This one topic deserves its own column, but access to justice, cross cultural communications, and sovereignty are to me the most important political, policy and legal issues facing Alaska, and I think the convention bore that out. Maybe David will let me have another column, or maybe I'll just volunteer for more work. That's after I see my family more, and try to rescue my garden from total disaster. I'm not making light of the issues, I'm just trying to learn a little more about that quality of life thing.

Conclusion: Well, that's it for my Presidency. I loved it. Thank you. Come to Juneau and visit, and I won't even make you weed.

The Alaska BAR RAG

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

Classified

Solid Foundations

Six organizations apply for IOLTA grants

The Alaska Bar Foundation received six applications for 1997-98 IOLTA grants. The applicants are: Alaska Native Law Section of the Alaska Bar Association; Alaska Pro Bono Program; CASA's for Children; Catholic Social Services; Alaska Women's Research Center; and Mat-Su Youth Court. A total funding of $219,000 is requested of the foundation.

The Alaska Native Law Section of the Alaska Bar Association submitted an application for a $7,000 grant to produce a video informing attorneys, students and the public of developments affecting the Alaska Native Community. The Alaska Pro Bono Program requested $180,000 to support all aspects of the program in order that it may continue to achieve the goal of assisting over 1,200 economically disadvantaged statewide. CASA's for Children applied for a $3,000 grant to continue to fulfill the emergency needs and other direct services the program provides to the children for which it advocates in Anchorage, Kenai, and the Matanuska-Susitna Valley.

Mary Hughes

Catholic Social Services' Immigration Refugee Services, the only service available in Southcentral Alaska for those new to the U.S. or who find themselves in conflict with the Immigration and Naturalization Service, requested $13,116 of IOLTA funds to partially support the naturalization project coordinator and to off set the program costs incurred during the next year. A grant of $5,000 was requested by the Alaska Women's Resource Center to help fund and maintain the position of Information and Referral Counselor, a coordinator of attorney referral and volunteer attorneys. The Mat-Su Youth Court applied for IOLTA funds of $11,000. This grant would assist funding a part-time attorney to work with the Youth Court to provide legal assistance and advice.

The Trustees of the Foundation will meet in May to award IOLTA grants which may serve two purposes: the provisioning of legal services to the disadvantaged and the administration of justice. IOLTA funds of approximately $190,000 are available to distribute.

Billingslea appointed general counsel

Everett H. Billingslea has been appointed general counsel to Washington Gov. Gary Locke. Billingslea serves as the governor's chief legal counselor. His duties include general responsibility for the legal affairs of the Governor, recommendation of judicial appointments, and other issues and policy matters as assigned by the Governor.

To accept the appointment. Billingslea left his position as in-house counsel for Quality Food Centers, Inc., (QFC) of Bellevue, Washington, the second-largest supermarket chain in the Pacific Northwest region, where he handled real estate and other general matters. Prior to joining QFC, he practiced general business law as Senior Attorney at Oceantrawl Inc. of Seattle, Washington, one of the largest seafood harvesting, processing and marketing companies in the U.S. Previously, he was an associate with Bogle & Gates, P.L.L.C., in both the Anchorage, Alaska and Seattle offices of that law firm. In addition, Billingaslea also served as law clerk for Anchorage Superior Court Judge Rene J. Gonzalez.

New Board appointment

Copeland, Landye, Bennett and Wolf, LLP, Attorneys at Law, announce the appointment of partner **Mark Copeland** to the Yale Law School Association executive committee for a four-year term.

The executive committee provides support to the law school's deans and administers the affairs of the Yale Law School Association. Members of the association include graduates, deans, and faculty.

Copeland grew up in the Portland area and currently resides in Anchorage. He received his undergraduate degree from Yale University and his L.L.B. from Yale Law School in 1967. He specializes in corporate, business, and securities law and serves as an arbitrator on securities and commercial issues. Copeland is a member of the Alaska and Oregon State Bars and the American Bar Association, and currently, serves as the vice president of finance for the Western Region Boy Scouts of America and is on the board of the Western Alaska Council.

Founded in 1955, Copeland, Landye, Bennett and Wolf, LLP provides legal services in Oregon, Alaska, and Washington. The firm emphasizes corporate, real estate, and environmental law and also provides litigation and estate planning services.

Bar People

William Whitaker of the Law Office of Charles Winegarden has become a partner in that firm and it is now Winegarden & Whitaker. The Winegarden & Whitaker firm opened another office in Kenai with Charles Winegarden staffing that location.....**Joseph M. Cooper** has become a shareholder with the law firm of Russell, Tesche & Wagg, APC. Mr. Cooper will continue to practice in the fields of workers' compensation, municipal, administrative, and employment law.....**David G. Stebing**, a former assistant attorney general is now employed as a state hearing officer for the Department of Commerce & Economic Development.....**Stacy K. Steinberg** has joined the firm of Robertson, Monagle &Eastaugh. She was previously at Green Law Offices.

Bill Ruddy recently joined the law firm of Russin & Vecchi in Vladivostok in the Russian Far East in an Of Counsel position. He expects to travel there at least twice a year. Russin & Vecchi is a Washington D.C. based law firm with approximately a dozen international offices, started by Bill's Yale Law School classmate, Jonathan Russin. The firm also has an office in Moscow, where Bill recently traveled for a firm meeting.....**Robert Reges,** will join the law firm of *Ruddy, Bradley &* Kolkhorst. He is presently an assistant attorney general and is a specialist in environmental law.

The Anchorage chapter of the National Association of Legal Secretaries recently presented two $1,000 Virginia Retzlaff memorial scholarship awards. The awards were presented to **Marcia D. Hill** and **Beth A. Kinsley**, both students at the University of Alaska Anchorage. The scholarships are available to qualified applicants pursuing a career as a legal secretary.

In Memoriam

A respected member of our community, Jim Bradley, recently passed away. A former President of the Juneau and Alaska Bar Associations, he will be missed by all. His legal expertise in aircraft litigation made him a lawyer of national prominence. His volunteer spirit and dedication to the community, most prominently as bass drummer in the Juneau Volunteer Marching Band, is an example for us all to follow.

— Juneau Bar Association

Opportunities abound for young lawyers in the Bar

Continued from page 1

arbitration panel. There are many other committees on which to serve, each of which provides valuable tools for attorneys newly admitted to the Bar.

The second most recent, and in my opinion the most significant, change toward new lawyer involvement occurred about 18 months ago. The Board of Governors created a two-year pilot program to test whether it wanted to create a new position on the Board of Governors—a New Lawyer Representative position. A pilot program was established for two reasons. First, working with a new lawyer for two years will provide the Board with sufficient information to decide whether it wants to continue the program. Second, a two-year test case allows for some of the procedural kinks to be worked out.

As the position currently exists, the New Lawyer Representative (defined as a member of the Alaska Bar admitted to practice less than 5 years) sits on the Board of Governors as a non-voting member. The new lawyer is allowed to participate in all Board discussions and is privy to all materials. Due to the confidentiality of discipline matters, however, attorneys subject to discipline may either object to the new lawyer's participation—in which case the new lawyer is excused from the matter—or consent to participation by the new lawyer. Among others, the purpose of creating this position was to allow the newer members of the Bar an opportunity to participate at the Board of Governors' meetings and provide a perspective from a newer member of the bar. The new lawyer also serves as a liaison between the Board and other newer members.

Since the Anchorage Bar Association was the only local bar with a young/new lawyer section, and since this idea was proposed by the Young Lawyers Section of the Anchorage Bar, the Board of Governors decided to run the pilot program with a YLS member. The Board directed the new lawyer, however, to explore and propose different ways to involve new lawyers from all portions of the state, as opposed to limiting the position to Anchorage attorneys. Many ideas have surfaced during the course of my first year as the new lawyer representative, and yet much must still be done before any proposals can be submitted. Some of the suggestions include: 1) holding a general bar election; 2) rotating the position from judicial district to judicial district with each incoming Bar President; or 3) holding elections within the local bars, followed by appointment by the Bar President from this "short list." There are many ideas floating around, and I welcome any suggestions or comments.

The annual Bar convention also serves as an excellent way for newer members to become involved with the Bar. Even if you participate in the Bar through its committees and/or the Board of Governors, new lawyers should nevertheless attend the annual convention. CLE's aside, there is much to be learned at the convention. While in Juneau last week for this year's convention, I was amazed that only about 100 attorneys attended. Of these 100 attorneys, less than a handful were newer attorneys. Many of the participants were either current or former judges. At first, I felt awkward. However, by the end of the convention, after meeting and speaking with many of the judges and experienced practitioners in the state, I realized that the convention experience was one I will never forget. In a few short days, I picked up several valuable insights into the practice of law; not to mention the interesting war stories. With this in mind, I encourage all members, not just the new members, to attend the convention.

In a nutshell, the Alaska Bar Association is truly a unique bar in that it allows newer attorneys to be involved, if they choose to be involved. Unfortunately, a number of practical reasons (i.e, billable hours), restrict the extent to which all attorneys, and particularly those recently admitted, may participate on Bar committees and at Bar functions. Nevertheless, you (or your law firm) spends a considerable amount of money each year in membership dues, and thus you should take the opportunity the Bar provides you to shape the Bar into the association you would like it to be.

Anchorage, Alaska

Labor Relations Manager Sought

The Municipality of Anchorage is looking for an experienced professional for its Labor Relations Manager. The individual selected will manage the Labor Relations program for the Municipality in supporting and developing the policy positions of the Administration with its represented employees including white collar, crafts, police, fire, and electric and utilities workers. Duties include: serving as chief spokesperson in labor contract negotiations; representing the Municipality's position in rights and interest arbitration proceedings; and analyzing and advising management on legislation and regulations affecting labor relations.

The position requires a bachelor's degree in business, public administration, personnel, industrial relations or a related field plus extensive experience in professional personnel and labor management relations and/or labor law. Excellent negotiation, analytical, and advocacy skills are necessary, as are effective skills in creative problem solving and verbal and written communication. Computer literacy is a plus. Public sector experience is highly desirable. Salary is $70,000+ DOE plus excellent fringe benefits. This executive level position serves at the pleasure of the mayor.

Please forward your resume and cover letter to Chuck Shelton, Manager, Employment Services. They may be delivered to him at the Employment Office in City Hall, 632 W. 6th Avenue (6th & G), Room 720; mailed to PO Box 196650, Anchorage, AK 99519-6650; or faxed to 907-343-4511. Recruiting continues until the position is filled.

Stan McCutcheon remembered

ONE HUNDRED YEARS 1896 1996 ALASKA BAR ASSOCIATION

By Ken Atkinson

The recent Bar Rag page about Stan McCutcheon brought to my mind other memories of him.

Stan did not attend law school but he was one of the best trial lawyers I have ever encountered. He was an example of a person of native intelligence, not hampered or trammeled by a formal education like most lawyers are - an education that tends to channel our thinking and procedures in the law, and, in many cases, enamours us of the legal jargon that isolates us from lay people, who serve on juries.

Stan fully immersed himself in any case he worked. He found ways to do things that most lawyers would have said you couldn't do. He knew the facts were at least as important as the law in a case. He also knew that jurors and judges were influenced by the appearance and mannerisms of the parties, attorneys and witnesses in a trial,

In 1956, four young men got into a street fight in anchorage. No weapons were involved. Just four young men mixing it up with their fists over no provocation of principle, women, or drugs, except alcohol. One of the men died in the fight. The other three were charged with second degree murder. I represented one of the men, Wendell Kay another and Stan, the third man. Stan's client was nicknamed "Chubby" as he was a burly man about 225 pounds, handy with his fists, and projected a surly belligerence when I first saw him at arraignment.

We tried to plea - bargain our clients to a manslaughter charge but the *soi-disant* tough prosecutor wouldn't go for less than second degree with a 10-year sentence to be served. You don't plead to that in a street fistfight. We prepared for trial.

When I entered the courtroom the day of trial I couldn't believe the transformation Stan had wrought on "Chubby." "Chubby" had lost at least 30 pounds, was tastefully dressed and barbered. He looked like a choir boy, and had, without overdoing it, an almost demure manner, soft spoken and polite. Most lawyers advise their clients about what to wear and how to behave in court, but I never saw a complete make-over like "Chubby." He no longer projected the image of surly aggressiveness that the prosecution intended to portray.

The outcome of the trial: Wendell's man got out on a motion, Chubby and my man were convicted of manslaughter. Each was sentenced to five years and each was paroled after serving about 2 years. The tough prosecutor literally broke down during the trial and had to be replaced by Lloyd Duggar, who while prosecuting another client of mine in a Mann Act violation a year later referred, in his final argument, to the defendant's testimony as "a monstrous tissue of implausibility." Either the jury didn't understand that phrase or disregarded it despite the nice academic ring to it, as my man was acquitted in that case.

> *'Stan did not attend law school but he was one of the best trial lawyers I have ever encountered.'*

Stan wouldn't have used that phrase to a jury.

In the early 1960s I defended a civil jury case with Stan representing the plaintiff. Stan's client had performed some construction services for the defendant Alyeska Ski Corporation during the early construction of the ski area. I represented Alyeska, which demonstrated its faith in my skills by sending up a lawyer from Denver to help me try the case. This gave Stan the opportunity several times during the trial to refer, in the presence of the jury, to the battery of Lawyers representing the defendant. Alyeska lost the case.

I learned a lot from Stan, the part of my education I didn't get in law school.

Traveling exhibition featured at Z.J. Loussac Public Library

"A More Perfect Union: Japanese Americans and the United States Constitution"

A little piece of the Smithsonian Institution is coming to Anchorage! A national traveling exhibition, **A More Perfect Union: Japanese Americans and the United States Constitution,** opened in Loussac Library's Galleria (Level 3) on May 15, 1997 and runs through June 23, 1997.

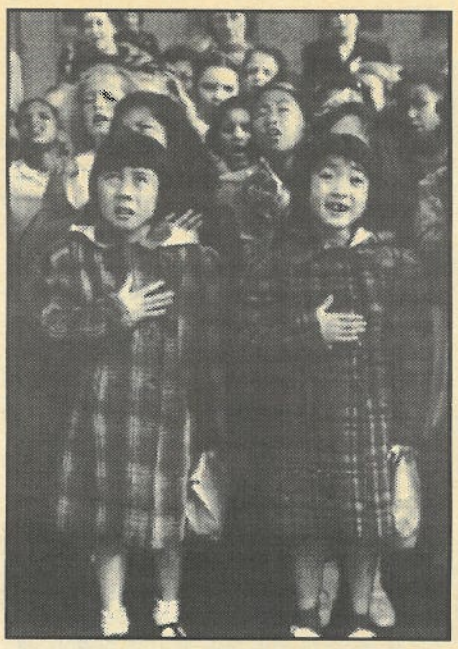
In powerful photographs, documents, and an interactive videodisc program, the exhibit examines the history of Japanese immigration to the U.S. and the events leading up to the signing of Executive Order 9066 in 1942. That order sent 120,000 people of Japanese ancestry to an internment center for the duration of the war. Two-thirds of the internees were American citizens; 118 were Alaskans.

A More Perfect Union addresses many issues surrounding the internment - the balance between constitutional rights and wartime security, the role of wartime fear and prejudice, and the political and legal process of apology and redress. The display looks at life in the centers through the eyes of the people experiencing it. The outstanding record of the 25,005 Japanese Americans who enlisted in the U.S. armed forces during World War II is also covered.

Material, including a film showing, will also be included on the Aleut relocation to southeast Alaska. This will be a chance to hear the stories of our friends and neighbors, and to understand their World War II experiences.

A More Perfect Union: Japanese Americans and the United States Constitution, is a traveling exhibition for libraries organized by the American Library Association and the National Museum of American History (NMAH) of the Smithsonian Institution. It is supported by a generous grant from the National Endowment for the Humanities, Washington, D.C., a federal agency, and in part by a grant from the Alaska Humanities Forum.

For more information, contact Michael Catoggio, Program Coordinator, at 343-2998.



Students at the Raphael Weill Public School, San Francisco, pledge allegiance to the American flag in April 1942, a few weeks prior to their evacuation.
Photo by Dorothea Lange. Courtesy of the National Archives.

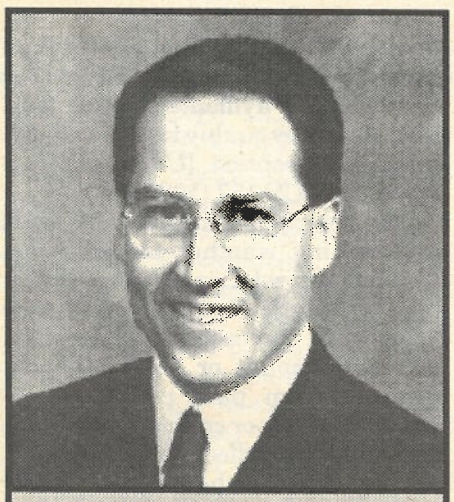
An FBI agent searches the home of a Japanese American family in 1941. The FBI and local and military police took 1,370 people of Japanese ancestry into custody in 1941, including Buddhist priests, Japanese language teachers, journalists, community leaders and members of Japanese cultural organizations.
Courtesy of the National Japanese Historical Society.

Estate Planning Corner

Will Congress abolish the estate tax?

There are reportedly 80 or so bills in Congress to reduce or eliminate the estate tax (*Departure Tax*, Wall St. J., Feb. 5, 1997, at A18, col. 2). For these purposes, the term "estate tax" includes all three of the federal wealth transfer taxes, since the gift and generation-skipping taxes are designed to close perceived loopholes in the estate tax.

Throughout most of its history, the federal government has depended upon wealth transfer taxes only during times of extraordinary revenue demands, such as wartime (Luckey, *Federal Estate, Gift, and Generation-Skipping Taxes: A Legislative History and Description of Current Law*, Congressional Research Service Report for Congress at 2 (1989)). The clearest example is the Civil War: a wealth transfer tax was enacted in 1862 and, when no longer needed, repealed in 1870 (Id. at 3-4).



Steven T. O'Hara

Wealth transfer taxes were also called upon in 1797 (revenue needed for strong naval force; tax repealed in 1802), in 1898 (revenue needed for Spanish-American War; tax repealed in 1902), and in 1916 (revenue needed to offset reduced U.S. trade tariffs during World War I) (Id. at 2-3 and 6-7).

In other words, during the 119-year period beginning in 1797 and ending in 1916, we had a federal wealth transfer tax in only 17 of those years.

Since 1916, the estate tax has been resilient if not a big revenue raiser. In 81 years, the estate tax has never been repealed.

Now, when nearly every politician in Washington is looking for numbers to throw into a projected balanced budget, the estate tax is raising more revenue. Whereas in 1987 the estate tax raised reportedly $7.5 billion, in 1995 the estate tax raised reportedly $15.1 billion (*Tax Report*, Wall St. J., Jan. 12, 1997, at Al, col. 5). Some project annual estate tax revenue to increase to $35.3 billion in the next 10 years (Id.).

The federal government will not, in this writer's opinion, abolish the estate tax anytime soon. But this writer is hopeful that in the near term, Congress and the President will at least increase the amount that may pass tax free at death, currently $600,000, since this amount has not been increased since 1987. Look for that exemption amount to increase to $1,000,000 over the upcoming years, since this improvement for moderate-sized estates may have little effect on projected revenue.

Chief of Federal Probation retires

By Laurie Maykoski

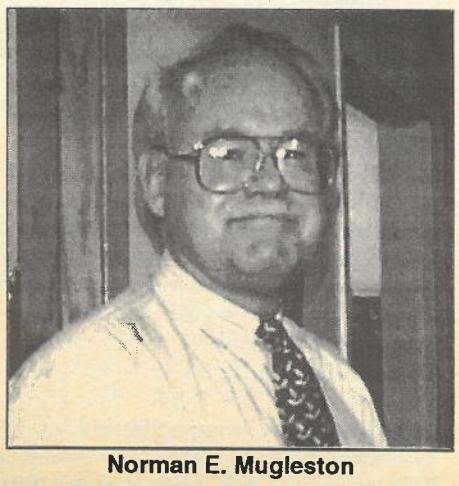
Chief U.S. Probation Officer Norman E. Mugleston is retiring on July 3, 1997, after 21 years of Federal service.

Norm started his federal career in 1976 by opening the first U.S. Probation Office in Santa Fe, New Mexico, where he was the Officer-In-Charge until 1984. Having always dreamed of living in Alaska, Norm transferred to the District of Alaska, Anchorage office in 1984 where his presence increased the staff to five officers for the entire state.

Norm was promoted to Chief U.S. Probation Officer in 1986 and had a statewide staff of five officers and four support staff. When Norm retires, he will leave behind a statewide staff of 14 officers and four support staff. Norm was sworn into the U.S. District of Alaska by then Chief U.S. District Court Judge James A. von der Heydt and has had the pleasure of serving under four chief U.S. District Court judges in the District of Alaska.

Some of Norm's important work includes time spent as a committee member to the National Advisory Committee in Exemplary Criminal Justice Projects in Washington D.C.; Policy and Planning Committee in Washington D.C.; Chairman of the Southwest Federal Regional in Dallas, Texas; two years with the Gender Bias Committee in Anchorage; The Court Oversight Committee in Anchorage; Court Security Committee in Anchorage; and five years with Criminal Justice Advisory committee in Anchorage.

Prior to working for the U.S. Probation Office, Norm was the executive director for the Governor's Council on Criminal Justice Planning in Albuquerque, the assistant director for the National Standards and Goals Juvenile Justice Task Force in San Jose, and as the director of Juvenile Probation Services for the Supreme Court in Santa Fe. Norm's immediate retirement plans include spending more time with his children and grandchildren and traveling.



Norman E. Mugleston

A retirement reception is planned for July 1, 1997, at the Egan Convention Center. Contact Victoria Irving, 271-4181, for information if you are interested in attending.

Bankruptcy Briefs

Preferential transfer exceptions

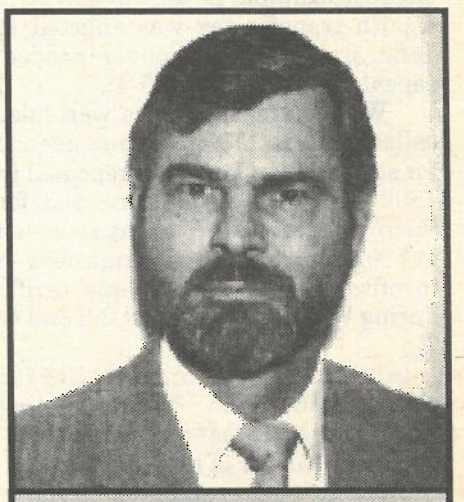
Certain transfers otherwise avoidable by the trustee as preferential are specifically excepted. These exceptions are generally of two classes: (1) the transaction does not result in a diminution in the debtor's assets to the detriment of other creditors or (2) for public policy (political?) reasons, Congress deemed the transfers entitled to exception.

1. Transfers made contemporaneously for new value given the debtor [§ 547 (c) (1)]. "New value" means money or money's worth in goods, services, or new credit, or a release of property previously transferred to the transferee, including proceeds of such property, but does not include an obligation substituted for a new obligation [§ 547 (a) (2)]. The new value need not have come from the creditor, it may be provided by a third party [*Matter of Fuel Oil Supply & Terminaling, Inc.,* 837 F2d 224 (CA5 1988)].

The otherwise preferential transfer is insulated from avoidance only to the extent that new value is given, i.e., the giving of some new value does not protect a transfer where the value received by the creditor exceeds the value given the debtor; there must be an economic quid pro quo [*In re Spada,* 903 F2d 971 (CA3 1990)]. The transferee must prove the specific new value, measured as of the date of the transfer [*In re Grand* Chevrolet, Inc., 25 F3d 728 (CA9 1994)]. Thus, a transfer of $100,000 in exchange for goods having a value of $50,000 at the time of transfer would be protected only to the extent of the $50,000 in "new value" actually received by the debtor.

The second prong of the "new value" exception is that the exchange must have been both intended and actually have occurred substantially contemporaneously. If the parties intend the transfer to be made other than in exchange for new value, *e.g.*, as satisfaction of an existing obligation, the fact the creditor may also provide substantially contemporaneous "new value" is irrelevant [*In re Wadsworth Building Components, Inc.*, 711 F2d 122 (CA9 1983)].

The Code does not define "contemporaneous" and case law provides no bright line test. Obviously, if A hands B a $20 bill and B hands A a widget worth $20, there is a contemporaneous exchange satisfying § 547 (c) (1). But what if A pays B with a $20 check, ordinarily a credit transaction? If the



Thomas Yerbich

check is presented to and honored by the drawee bank within 30 days, § 547 (c) (1) is satisfied [*In re Wolf & Vine, Inc.*, 825 F2d 197 (CA9 1987)]. However, if the check is dishonored, the transaction becomes a credit transaction and subsequent payment or honoring of the check does not constitute a contemporaneous exchange [*In re Lee,* 179 BR 149 (BAP9 1996)].

Delay in the transfer is not invariably fatal. Although some courts have equated "contemporaneous" to the 10-day period of § 547 (e) (2) (B) [*e.g., In re W.T. Vick Lumber Co.,* 170 BR 283 (Bank.ND.Ala 1995)], the majority utilize a flexible facts and circumstances test (*e.g.*, length of delay, nature of transaction, intend of the parties, possible risk of fraud) [*In re Marino,* 193 BR 907 (BAP9 1996)]. In the case of leases and insurance policies, courts have applied a "continuing new value" theory to delays between renewal and payment [*In re Adelphia Automatic Sprinkler Co,* 184 BR 224 (ED.Pa. 1995); *In re Everlock Fastening Systems, Inc.*, 171 BR 251 (Bank.ED.Mich. 1994); *but see In re Sharoff Food Service, Inc.,* 179 BR, 669 (Bank.D.Colo. 1995)]

2. Transfers made in the ordinary course of business and in accordance with ordinary business terms [§ 547 (c) (2)]. To qualify for the "ordinary course" exception, a creditor must establish that: (1) the debt and its payment are ordinary in relation to the past practices between the debtor and this particular creditor ("vertical test"); and (2) the payment was ordinary in relation to prevailing business practices in the trade or industry ("horizontal test") [*In re Food Catering & Housing, Inc.,* 971 F2d 396 (CA9 1992)]. Payments made on long-term debt may qualify for the ordinary business exception [*Union Bank v. Wolas*, 502 US 157 (1991)].

The principal factors considered in determining whether transfers are "ordinary" in relation to past practices are: (1) length of time parties were engaged in transactions at issue; (2) whether amount or form of tender differed from past practices; (3) whether debtor or creditor engaged in any unusual collection or payment activity; and (4) whether the creditor took advantage of debtor's deteriorating financial condition [*In re Grand Chevrolet, Inc., supra*].

3. Purchase money security interests perfected within 20 days after the debtor receives possession of the property provided the new value is both given to enable the debtor to acquire the new property and actually used to acquire the property [§ 547 (c) (3)]. State relation-back statutes allowing a longer period are inapplicable to the preference-avoidance analysis [*In re Beasley,* 102 F3d 334 (CA8 1996)]. Failure to perfect within the 20-day period is fatal to the application of this exception, and the creditor may not use the new value exception as an alternative [*In re Vance,* 721 F2d 259 (CA9 1983)]. However, in cases involving a non-PMSI, the more flexible new value exception applies [*In re Marino, supra*]. Moreover, while *Vance* may permit the trustee to avoid the security interest, payments made to the creditor during the preference period on the obligation may be excepted from avoidance under the new value or ordinary course of business exceptions if they otherwise qualify [*In re Grand Chevrolet, Inc., supra*].

4. The "running account" creditor who makes frequent sales to the debtor and receives periodic payments on account from the debtor by permitting the creditor to offset against an otherwise preferential transfer subsequent unsatisfied new value given to the debtor [§ 547 (c) (4)]. *E.g.*, if the creditor receives a $10,000 payment "on account" and subsequently delivers goods having a value of $5,000 for which the creditor is not paid and does not receive an unavoidable security interest, the $5,000 may be offset against the $10,000 preferential transfer. This exception contains three key elements: (1) the creditor must give unsecured new value; (2) this new value must be given after the preferential transfer; and (3) the new value must remain unpaid as of the filing date of the bankruptcy petition, unless the payment was an otherwise avoidable transfer [*In re IRFM, Inc.*, 52 F3d 228 (CA9 1995)].

5. "Floating liens" in inventory or receivables perfected during the preference period are protected except to the extent the creditor improves its position during the preference period [§ 547 (c) (5)]. To determine whether the creditor's position has improved involves a "two-point net improvement" test.' What was the creditor's position 90 days (or one year if an insider) prior to the date petition was filed and was the position better, i.e., the deficiency, if any, that an undersecured creditor had reduced on the date the petition is filed [*see Matter of Missionary Baptist Foundation of America, Inc.*, 796 F2d 752 (CA5 1986)]. This test requires a computation of: (1) the loan balance outstanding at the beginning of the preference period; (2) the value of the collateral on that day; (3) the loan balance outstanding on the day the bankruptcy petition was filed; and (4) the value of the collateral on that day [*id*]. Unless the creditor is undersecured at the first point, there can be no improvement in the position of the creditor because a payment to a fully secured creditor can not be preferential; only if an existing deficiency is reduced between the first and second points has the creditor improved its position.

6. Statutory liens not avoidable under § 545 [§ 547 (c) (6)] Under § 545 only statutory liens that are effective solely due to the debtor's "financial distress," are unperfected or unenforceable at the commencement of the case against a BFP, or are for rent or distress of rent are avoidable. In addition, payments in satisfaction of or transfers to a creditor that preclude the imposition of an unavoidable statutory lien may also be excepted from avoidance [*see Cimarron Oil Co.,* 71 BR 1005 (ND.Tex 1987)]. These transactions could fall under either the "new value" exception (contemporaneous surrender of lien rights) or as transfers to a secured creditor. However, if the statutory lien rights had no value, either because the property to which it attached had no value or the lien rights had expired at the time the payment is made, the payments would be avoidable [*see In re Nucorp Energy, Inc.*, 902 F2d 729 (CA9 1990)].

7. Payments made to a spouse, former spouse, or child of the debtor for alimony, maintenance or support [§ 547 (c) (7)]. This exception does not apply where the debt has been assigned to another entity, whether voluntarily or by operation of law. Thus, while payments to a former spouse for support are not avoidable preferential transfers, payments made to Alaska CSED are. Moreover the payments must actually have been in the nature of alimony, maintenance and support. This is determined by federal, not state, law. If an obligation has the characteristics of a support obligation, it is a support obligation irrespective of the label the state courts, or the parties themselves, place on it. Conversely, if it does not have the characteristics of a support obligation, it is not a support obligation. Factors considered in making this determination include: (1) presence of minor children; (2) imbalance of relative income of the parties; (3) whether the obligation terminates upon the death or remarriage of the recipient spouse; and (4) the nature and duration of the obligation [*In re Shaver*, 736 F2d 1314 (CA9 1984)].

8. Finally, the *de minimus* exception: transfers by an individual consumer debtor to any single creditor that, in the aggregate, do not exceed $600 [§ 547 (c) (8)].

Royal Bar Association of Juneau

March 14

March Madness swept the bar association as tournament time is upon us. The JBA team looks strong today with the addition of two players from the legislature. Senator Jim "Dunk" Duncan and Representative Kim "Silky Smooth" Elton were playing for the hometown squad today. A third recruit, a walk on freshman from Gonzaga Law, was introduced by Dan "Too Tall" Wayne, none other than Manny "Feed Me" Rios. If your office needs a new player, get in touch with Dan or Manny. Manny is leaving school and is headed for the riches of the JBA in May.

The anchor of the team, Joe "Hercules" Sonneman laid out a play detailing "Disappearing World Languages" with Professor Michael "I don't play the game" Krauss on Thursday, March 20 at 5:30 P.M. on the second floor of the Diamond Courthouse. The team thanked him, but said pass the ball to the new guys and the two legislators took to the court.

The first dish was to "Dunk" Duncan who explained in any legislative game the second half is the important part of the session. Tort reform was passed around the court and some infighting occurred among differing chambers of the legislative bodies. Apparently a conference committee will restore cohesiveness and the Governor is expected to join the team with a three-point play resulting.

"Silky-Smooth" Elton and "Dunk" Duncan went two on one against Eric "The Cleaner" Kueffner who was on defense wanting to know; where did the $60 million goal in budget cuts come from? He was left standing in the middle of the court after a "no-one knows" fast break was run.

Off the court, the spectre of federal regulation of our game was raised in regard to the elimination of Alaska's solid waste inspection program. Such an elimination is said to invite federal regulation of solid waste in Alaska and, gasp, Citizen Lawsuits. Hmmm.

Back on the court for the second half. Art "Slash" Peterson lofted a shot, saying, that oil prices are high, ALSC needs money. It looked like Sweet Music, but the legislators, countering with the fiscal gap defense, said he was playing hard rock and turned Art's shot into a brick. In the closing moments of the second half, *Venitie* was on the floor, with everyone concerned about what it would do to team cohesiveness, but most thought it would be good to know more about what this player brings to the game

—Geof Engelman, Acting Sec'y

•

April 11

We had a good turnout with Judges Carpeneti and Weeks present. Little business was done. With no business to conduct, stories were swapped. Here are a couple that were told:

Gordon Evans told us about how nervous he was for one of his first hearings as a lawyer. It was on his first day practicing with Allen Engstrom, who told Gordon that he was leaving town and needed Gordon to cover a divorce hearing set for that afternoon. Gordon quickly gathered his file and went to the clerk of court for help. The clerk suggested that Gordon listen to tapes from one of Shirley Kohls' divorce cases so that he would know what questions to ask. Gordon said that he got up to the courtroom and remembered Bud Carpeneti and Geoff Currall, who were clerking for Justice Dimond, standing in the back of the courtroom giving Gordon "a hard time." (Judge Carpeneti denies any ill motives.) Gordon got through the divorce hearing fine. When we asked him who won the hearing, Gordon smiled and said, "It was uncontested."

•

Judge Carpeneti told a story about former Ketchikan judge Hugh Gilbert, who was known for how quickly and often he ruled from the bench. Apparently believing his way to be the right way, Judge Gilbert made it a point to question the supreme court justices during one of their visits to Ketchikan about the length of time it took them to decide their cases. During this visit, one of the cases before the court was an appeal from one of Judge Gilbert's rulings. After hearing oral argument, the court asked the lawyers to remain for a few minutes while the court recessed. After about ten minutes, the court returned and issued its holding from the bench, reversing Judge Gilbert's decision. Justice Rabinowitz followed up with Judge Gilbert and asked him whether the court had handled this appeal in a sufficiently expeditious manner.

—Lach Zemp, Secretary

9th annual Pro Bono awards announced

The Pro Bono Supervisory Committee has met and decided the winners of the 1996 Alaska Pro Bono Awards.

The winner of this year's Law Firm Pro Bono Award is the firm of **Faulkner, Banfield, Doogan & Holmes**. Since 1983, when the Alaska Pro Bono Program first started, Faulkner, Banfield, Doogan & Holmes has been the mainstay of the Pro Bono Program in Southeast Alaska. The numbers alone (11 ongoing cases, 39 closed cases, 2,531.9 hours equaling more than $320,000 worth of free assistance) does not begin to adequately describe their Pro Bono contributions. As an example, before the creation of the Office of Public Advocacy, this firm took it upon themselves to create a local "conflicts" panel; they were instrumental in the creation of Alaska's IOLTA rule. Through their example, and with their support, the Juneau Bar Association became one of the very first local bar associations to boast a 75% participation rate in a Pro Bono Program.

This year's Sole Practitioner Pro Bono Award goes to **Tony Strong**. Tony has been a long-time staunch advocate for Alaska Legal Services, and for equal access to the legal system for Alaska Natives. In addition to service on the Boards of Alaska Legal Services Corporation and the Native American Rights Fund, he has been active in issues ranging from the preservation of traditional Native arts to sobriety. Through the Alaska Pro Bono Program, he has closed 7 cases and donated over 325 hours of his time.

The Pro Bono Supervisory Committee and the Board of Governors of the Alaska Bar Association also recognized **Thomas Yerbich** for the ABA's Senior Lawyer Division's Pro Bono Award. He earned this honor for consistently accepting cases through the Pro Bono Program. At last count he had seven ongoing matters, had logged 32 closed cases, had written a primer on Chapter 7 Bankruptcy procedures for people filing pro se, and had contributed well over 375 pro bono hours.

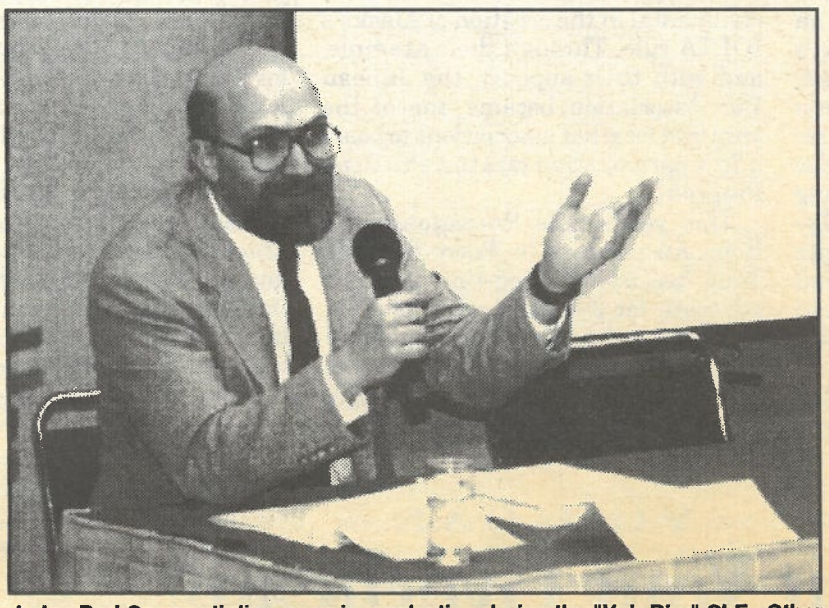
Also recognized were **Dr. Scott Mackie** and **LTD Court Reporters** for their contributions through the Alaska Pro Bono Program to assuring the highest quality legal assistance to the poor.

Two Alaska Pro Bono Awards are presented each year, one to a sole practitioner and one to a law firm or law department. It has become tradition to have these awards presented by the Chief Justice in conjunction with the Alaska Bar Association Convention Awards Banquet.

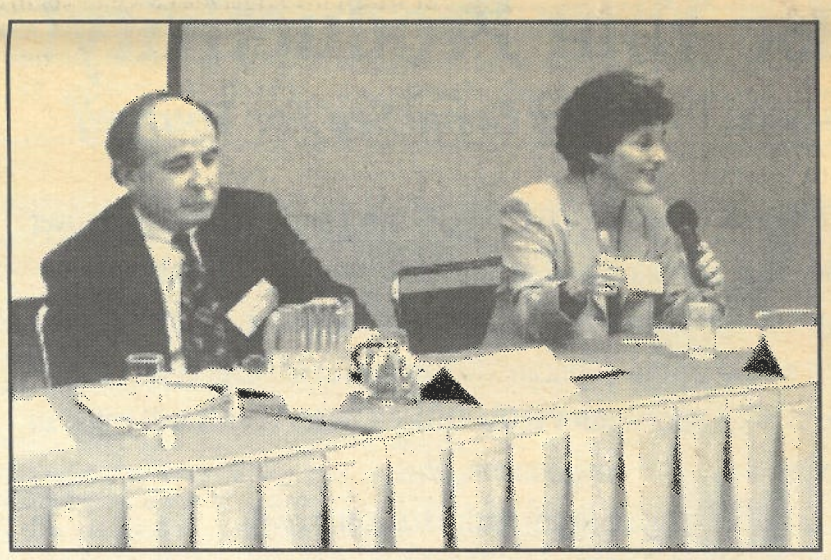
CONVENTIO

Centenn

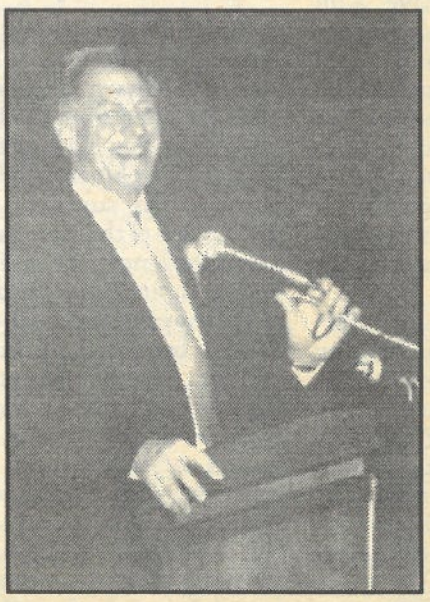
L to r: Recipients of the 25-Year Bar Membership Certificates who attended the Awards Banquet: Esther Wunnicke, Sandy Saville, Bart Rozell, David Bundy, Fred Baxter, Judge Hal Brown, Judge Jonathan Link, and Judge Sig Murphy.



Judge Bud Carpeneti discusses jury selection during the "Voir Dire" CLE. Other faculty included Presiding Judge Elaine Andrews, Ray Brown, of Dillon & Findley and Robert Hirschhorn, a trial attorney and jury consultant from Texas.



L to r: Ray Brown and Presiding Judge Elaine Andrews share their views of jury selection techniques.



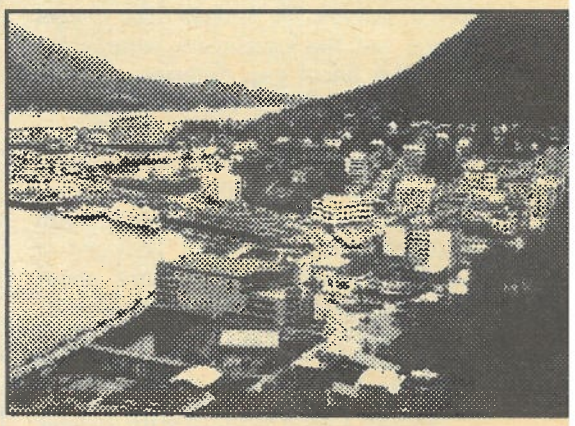
Av Gross, former Attorney General now with the firm of Gross and Burke in Juneau and awards banquet keynote speaker, delights and enlightens the audience as he recounts his experiences as Attorney General during early statehood.

L to r: Ethel Staton, outgoing public B of Governors member from Sitka, rece her plaque of appreciation from Presi Beth Kerttula. at the Annual Awards Ban

Robert Hirschhor makes a point during the "Voir Dire" CLE.

PHOTOS BY STEPHEN VAN GO

View of Juneau from the new Mt. Roberts Tram.



MacNeille & Cox Receive Bar Awards

Margie MacNeille, an Anchorage attorney, received the Alaska Bar Association Distinguished Service Award.

Margie MacNeille and Susan Cox received awards presented by the Board of Governors during the Annual Bar Convention in Juneau May 8-10.

MacNeille received the Distinguished Service award which honors an attorney for outstanding service to the membership of the Alaska Bar Association. MacNeille has served on the Law Examiners Committee since 1980. This committee is responsible for the Alaska Bar Exam. MacNeille has also chaired a Special Committee on Mandatory Continuing Legal Education and chaired the Statute, Bylaws & Rules Committee. MacNeille is also the chair of the Legislature s Ethics Committee.

Cox was the recipient of the Professionalism award. This award recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys. Cox is the Chief Assistant Attorney General and resides in Juneau. She is also a member of the Joint State-Federal Task Force on Gender Equality.

L to r: Board President Beth Kerttula presents Juneau attorney Susan Cox with the Alaska Bar Association Professionalism Award at the Annual Awards Banquet.

SPONSORS

Alaska Court System
ALPS -- Attorneys Liability Protection Socie
Anchorage Bar Association
AVIS Rent a Car
Bureau of National Affairs, Inc.
Brady & Company Insurance Brokers
Dean Moburg & Associates, Court Reporter
Seattle, Washington
Document Technology, Inc.
Hagen Insurance Co.
Juneau Bar Association
Just Resolutions
MICHIE/Lexis-Nexis

N HIGHLIGHTS

l Hall, Juneau

CLE speaker, Robert Hirschhorn, a nationally know trial attorney from Texas, strikes paydirt in the Capital with the help of an old sourdough at the Juneau Bar sponsored Salmon Bake.

David Bundy Elected President of Alaska Bar Assoc.

David H. Bundy was elected president of the Alaska Bar Association at its annual convention held at Centennial Hall in Juneau, May 8-10, 1997.

Mr. Bundy is a partner in the Anchorage firm of Bundy & Christianson and practices Bankruptcy Law.

The other officers elected at the convention are President-elect William B. Schendel, a partner with the Fairbanks firm of Schendel & Callahan; Vice President Joseph Faulhaber, Broker of Caldwell Banker Great Land Realty in Fairbanks; Treasurer Barbara Miklos, Health Care Administrator for the Section of Inmate Health; and Secretary Ray R. Brown, an Anchorage partner with the law firm of Dillon & Findley.

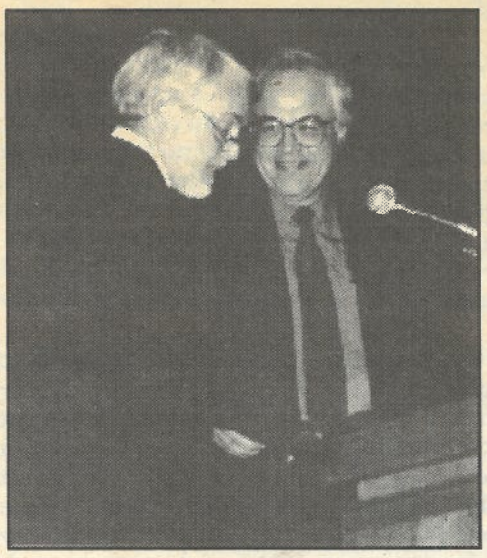
L to r: Beth Kerttula, outgoing Board President, is awarded a plaque of appreciation by incoming President David Bundy.

L to r: Outgoing Ketchikan attorney Board member Dennis McCarty is awarded a plaque of appreciation by At-Large Board member Diane Vallentine and President Beth Kerttula.

Diane Vallentine was the recipient of the Anchorage Bar Association Service Award which was presented by Ken Legacki, Anchorage Bar President.

L to r: During the "Politics, Public Policy and the Law" panel, Senator Gary Wilken from Fairbanks presents an Alaska Legislative Citation to Justice Jay Rabinowitz honoring his years of service to the people of Alaska.

L to right, Booker Drennan and Katie Drennan Corbus receive a posthumous Professionalism Award for Chad Drennan, a Juneau attorney, from Beth Kerttula, Board President.



L to r: Chief Justice Allen Compton presents Tony Strong, a Juneau attorney, with the Alaska Legal Services Pro Bono Award for an individual. The Juneau firm of Faulkner Banfield Doogan & Holmes received the Alaska Legal Services Pro Bono Award for a firm.

EXHIBITORS

Alaska Bar Foundation
Alaska Legal Services Pro Bono Program
ALPS -- Attorneys Liability Protection Society
Book Publishing Company
Brady & Company Insurance Brokers
Bureau of National Affairs, Inc.
Charter North Star Behavioral Health Systems
Dictaphone Corporation
Document Technology, Inc.
Hagen Insurance
Just Resolutions
LOCAID Security Services Inc.
MICHIE/Lexis-Nexis
Ringler Associates, Inc.
3M Alaska
West Group

Election & Advisory Poll Results

Board of Governors
3rd Judicial District

David Bundy*	300
Darrel Gardner	59
Michaela Kelley	55
Phyllis Shepherd	55
Paul Wilcox	118

1st Judicial District (3 year term)

Lisa Kirsch*	74
Dennis McCarty	69

1st Judicial District (2 year term)

Bruce Weyhrauch*	77
Shannon O'Fallon	61
James Shine	7

2nd & 4th Judicial District

Barbara Schuhmann was unopposed.

Alaska Legal Services Corporation

3rd Judicial District

John Hedland	243
Allison Mendel	150
Stephen Conn	90

The Board appointed John Hedland to the regular seat and Allison Mendel to the alternate position.

2nd Judicial District

Bryan Timbers	8
Christine Hess	3

The Board appointed Bryan Timbers to the regular seat and Christine Hess to the alternate seat.

Commission on Judicial Conduct

Jeff Feldman	478
John Scukanec	84
James Stanley	79
Larry Wood	66

The Board will forward Jeff Feldman's name for the Commission on Judicial Conduct.

NEWS FROM THE BAR

ETHICS OPINION NO. 97-2 Use Of Threats Of Criminal Prosecution In Connection With A Civil Matter

The Ethics Committee has been asked to review Ethics Opinion No. 77-3 in light of changes to Alaska Rules of Professional Conduct ("Ethical Rules") adopted in 1993 and American Bar Association Formal Opinion 92-363 relating to the Use of Threats of Prosecution in Connection with a Civil Matter. The Ethics Committee has determined that in light of the present ethical rules, Ethics Opinion No. 77-3 should be withdrawn. Under Alaska's Ethical Rules, it is ethical for a lawyer to use the possibility of presenting criminal charges against the opposing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.

Ethics Opinion No. 77-3 addressed the issue of whether an attorney or firm which represents a client in a civil case to collect a debt may also initiate a criminal prosecution for violation of a statute which makes failure to pay a crime. The opinion holds that an abuse of the ethical rules occurs only where the motive for the prosecution is solely to obtain an advantage in the civil case. The opinion goes on to state that communications from the lawyer to the offender that the offender may avoid prosecution by paying are clearly prohibited by prior Disciplinary Rule 7-105 which stated "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter."

In reviewing Ethical Opinion 77-3, it is important to first consider the purpose of prior DR 7-105 and the presence or absence of similar prohibitions in Alaska's Ethical Rules. The stated purpose for DR 7-105 was to prevent the oppressive use, and thereby the subversion, of the criminal justice system. This provision, however, was deliberately omitted in the Model Rules of Professional Conduct. The reasoning behind this omission rested on the drafters' position that "extortionate, fraudulent, or otherwise abusive threats were covered by other, more general prohibitions in the Model Rules and thus that there was no need to outlaw such threats specifically." C.W. Wolfram, *Modern Legal Ethics (1986) §13.5.5 at 718, citing Model Rule 8.4 legal background note (Proposed Final Draft, May 30, 1981).* Similar to the Model Rules, there is no counterpart to DR 7-105 in Alaska's Ethical Rules.

The American Bar Association addressed a similar issue in Formal Opinion ("ABA Opinion") 92-363. This opinion holds that the Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter to gain relief for her client, provided that the criminal matter is related to the civil claim, the lawyer has a well-founded belief that both the civil claim and the possible criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.

In reaching this decision, the ABA Opinion cites the fact that the counterpart to DR 7-105 was deliberately not contained in the Model Rules. This fact, along with the reasoning noted above, supports the conclusion that the drafters of the model rule intended to eliminate the previous prohibitions contained in DR 7-105. The ABA Opinion also cites other Model Rules which could govern an attorney's conduct similar to those in question. These rules include Model Rule 8.4(b) which provides that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Model Rule 4.4 prohibits a lawyer from using means that "have no substantial purpose other than to embarrass, delay, or burden a third person..." Threatening criminal charges to merely harass a third person would violate this rule. Additionally, Model Rule 4.1 imposes a duty on lawyers to be truthful when dealing with others on a client's behalf. A lawyer who threatens criminal prosecution, without any actual intent to so proceed would violate this rule. Finally, Model Rule 3.1 prohibits an advocate from asserting frivolous claims. A lawyer who threatens criminal prosecution that is not well founded in fact or law, or threatens such prosecutions in furtherance of a civil claim that is not well founded violates this rule.

While the Model Rules contain no provision expressly requiring that the criminal offense be related to the civil action, it is only in this circumstance that a lawyer can defend against charges of compounding a crime (or similar crimes).[1] A relatedness requirement avoids exposure to the charge of compounding, which would violate Rule 8.4(b)'s prohibition against "criminal act[s] that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It also tends to ensure that negotiations will be focused on the true value of the civil claim, which presumably includes criminal liability arising from the same facts or transaction, and discourages exploitation of extraneous matters that have nothing to do with evaluating that claim.

Alaska's Ethical Rules contain similar or identical language to the Model Rules noted above. Under these circumstances, this committee agrees with the logic of the ABA Formal Opinion No. 92-363. The holding in Ethics Opinion 77-3 is based upon the language of past DR 7-105, which is not contained in the present Ethical Rules. Additionally, other provisions within the Ethical Rules adequately address potential unethical conduct. Finally, the rule adopted under ABA Formal Opinion No. 92-363 provides clearer guidelines for practitioners and is more consistent with an attorney's obligations to zealously assert a client's position in our adversary system.

Therefore, under Alaska Ethical Rules, it is not unethical for a lawyer to use the possibility of presenting criminal charges against the oppos-

continued on page 13

David Kohfield Suspended for Neglect, Failure to Account for Client Funds, and Failure to Respond to Grievances

Anchorage attorney David E. Kohfield will serve a two year disciplinary suspension under an order issued by the Alaska Supreme Court on April 1, 1997. Kohfield neglected several clients during a period when he suffered personal problems.

In one case, the clients paid Kohfield to represent them in a bankruptcy. After filing the petition, Kohfield failed to attend hearings, failed to file necessary documents, and failed to follow through on reassurances to his clients. Eventually the bankruptcy was dismissed as a result of Kohfield's neglect. Kohfield promised to refund the clients' fee deposit, but failed to timely do so. He also failed to respond to the clients' repeated requests for information. Cases involving four other clients followed a similar pattern. When Bar Counsel opened investigations into these grievances, Kohfield failed to answer the charges or to respond to Bar Counsel's requests for information.

Bar Counsel found violations of ARPC 1.3 (which requires diligence), ARPC 1.4 (which requires a lawyer to communicate with clients), ARPC 1.15 (which requires a lawyer to safekeep, refund and account for client funds), and Bar Rule 15(a)(4) (which requires a lawyer to answer a grievance and to respond to Bar Counsel's requests for information). More serious discipline was mitigated by Kohfield's personal problems (including a family illness and the death of a close friend) and by his reimbursement (pursuant to fee arbitration awards and private agreements) of all unearned client funds. The stipulation for discipline under which the suspension was imposed is available for public review at the Bar Association office in Anchorage.

•

Darryl Jones Reprimanded for Neglect, and Failure to Communicate with Clients

Attorney Darryl Jones received a public reprimand from the Disciplinary Board after he engaged in various acts of neglect, incompetence and failure to communicate with his clients. A stipulation approved by the Board and the Supreme Court contains conditions by which Jones averted more serious discipline.

In one case, Jones tried to set a case for trial although he had not complied with mandatory pre-trial procedures. He then failed to comply with court-ordered discovery requests. After the opposing party won summary judgment, Jones failed to notify his client, who learned of it from another lawyer. In another suit, Jones served the wrong parties, used the wrong form of service, and violated other rules of service. As a result the court dismissed the case. Jones was able to reinstate it, but not as to all defendants. Jones then withdrew from the representation, but failed to promptly return his client's files. In a third case, Jones advised a mother that she could keep her child in Alaska to seek a custody change here despite a Georgia order to return the child to the father there. Timely file review and research would have revealed to Jones that an Alaska court had already declined jurisdiction. As a result of Jones' advice the mother was found in contempt in Georgia.

Jones' conduct violated ARPC 1.1 (requiring competence), ARPC 1.3 (requiring diligence), and 1.4 (requiring communication). The Supreme Court imposed discipline by suspension for a year, with the suspension stayed on the condition that Jones accept a public reprimand; that he engage in no other neglect during the next two years; that he join the Law Practice Management section of the Bar, participate in its activities, and view relevant CLE videotapes; that he submit a detailed statement of law office procedures designed to improve docket control, diligence and communication; and that he obtain legal malpractice insurance. The stipulation may be reviewed at the Bar Association office.

•

Attorney disciplined for failing to disburse settlement funds

Attorney X stipulated to discipline by consent for failing to disburse settlement funds to his client for almost two years following receipt of the monies in violation of Alaska Rule of Professional Conduct 1.15(b)

Attorney X settled a lawsuit on behalf of his client. Attorney X paid himself his fees approximately five months after dismissal of the case. Attorney X, however, did not submit to his client an accounting for his fees and expenses, and did not disburse to his client the settlement funds to which the client was entitled for a period of approximately two years. The bank statements and ledgers showed that the balance remained in the bank account and was not used for another purpose. With the exception of this matter, all client funds of Attorney X appear to have been paid out within 30 days of receipt.

This course of conduct violated ARPC 1.15(b), which requires that a lawyer promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, promptly render a full accounting regarding such property.

Attorney X's conduct caused the client to lose the use of the settlement funds for a two-year period. There were no applicable aggravating factors in this matter. Mitigating factors included lack of any prior discipline, absence of a dishonest or selfish motive, and remorse. The stipulated discipline included a private reprimand under Alaska Bar Rule 16(b)(1), regular attendance at an appropriate section meeting of the Bar Association, participation in CLEs offered by the section for the improvement of small and solo law practices, and submission to a law office practice audit at the expense of Attorney X.

NEWS FROM THE BAR

Continued from page 12

ing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influenced over the criminal process. Therefore, Ethics Opinion 77-3 is withdrawn.

Approved by the Alaska Bar Association Ethics Committee on March 6, 1997.

Adopted by the Board of Governors on March 21, 1997.

[1]See AS 11.56.790 (Alaska Compounding Statute) and AS 11.41.520 (Alaska's Extortion Statute).

ARPC 7.4
PROPOSED AMENDMENT TO ALASKA RULES OF PROFESSIONAL CONDUCT: COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION.

(Additions italicized; deletions bracketed and capitalized)

Rule 7.4. Communication of Fields of Practice and Certification.

(a) A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(2) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization[, PROVIDED THAT THE COMMUNICATION CLEARLY STATES THE ALASKA BAR ASSOCIATION DOES NOT ACCREDIT OR ENDORSE CERTIFYING ORGANIZATIONS] *but only if:*

(i) such certification is granted by the Alaska Bar Association or by an organization which was been approved by the Alaska Bar Association to grant such certification; or

(ii) such certification is granted by an organization that has not yet been approved by, or has been denied the approval available from, the Alaska Bar Association, and the absence or denial of approval is clearly stated in the communication, and in any advertising subject to Rule 7.2, such statement appears in the same sentence that communicates the certification.

(b) Unless authorized by paragraph (a) to communicate certification as a specialist, a lawyer shall not list fields of practice in any communication unless the lawyer includes the phrase "No certification as a specialist has been obtained" or "This field of practice is not presently recognized as a specialty by the Alaska Bar Association" as appropriate to the circumstances. However, if a lawyer is listed under a field of practice in a directory listing, the lawyer need not include either of the preceding phrases if the page on which the lawyer's listing is located contains the phrase "Unless otherwise noted, lawyers listed in these fields of practice are not certified as specialists."

BAR RULE 11
PROPOSED AMENDMENT RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized, deletions bracketed and capitalized)

Rule 11. Bar Counsel of the Alaska Bar Association.

(a) Powers and Duties.

The Board will appoint an attorney admitted to the practice of law in Alaska to be the Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel") who will serve at the pleasure of the Board. Bar Counsel will:

. . .

(11) *in his or her discretion, refer a grievance to a [CONCILIATOR] *mediator*, for proceedings under Rule 13[, if the grievance concerns matters other than a fee dispute or conduct referred to in Rule 15];

. . .

BAR RULE 13
PROPOSED AMENDMENTS TO PROVIDE FOR MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

Rule 13. [CONCILIATION] *Mediation* Panels

(a) Definition.

[CONCILIATION] *Mediation* panels will be established for the purpose of settling disputes between attorneys and their clients *or other persons* [not concerning fee disputes or misconduct as set out in Rule 15] *referred to the panels by Bar Counsel under guidelines set by the Board with the consent of the attorneys and the clients or other persons. However, matters likely to result in disbarment, suspension or probation or matters which involve intentional dishonesty or material misrepresentation may not be referred to mediation.* At least one [CONCILIATION] *mediation* panel will be established in each area defined in Rule 9(d).

(b) Terms.

Each [CONCILIATION] *mediation* panel will consist of at least three [ACTIVE] members [IN GOOD STANDING OF THE BAR], *qualified under guidelines set by the Board,* each of whom [MAINTAINS AN OFFICE FOR THE PRACTICE OF LAW] *resides* in the area for which he or she is appointed. The members of each [CONCILIATION] *mediation* panel will be appointed by the President subject to ratification by the Board. The members will serve staggered terms of three years, each to commence on July 1 and expire on June 30th of the third year.

(c) Powers and Duties.

A member of a [CONCILIATION] *mediation* panel will be known as a [CONCILIATOR] *mediator*. Only one [CONCILIATOR] *mediator* need act on any single matter. [CONCILIATORS] *mediators* will have the power and duty to mediate disputes referred to them by Bar Counsel pursuant to Rule 11(a)(11). *A mediator will have the power to end a mediation if the mediator determines that further efforts at mediation would be unwarranted. A mediator may recommend that the attorney seek the services of a lawyer's assistance program. A mediator may not be required to testify concerning the substance of the mediation.*

(d) Informal Proceedings.

Proceedings before a [CONCILIATOR] *mediator* will be informal *and confidential.* A [CONCILIATOR] *mediator* will not have subpoena power or the power to swear witnesses. A [CONCILIATOR] *mediator* does not have the authority to impose a resolution upon any party to the dispute.

(e) Written Agreement.

If proceedings before a [CONCILIATOR] *mediator* produce resolution of the dispute in whole or in part, the [CONCILIATOR] *mediator* will prepare a written agreement containing the resolution which will be signed by the parties to the dispute *and which will be legally enforceable as any other civil contract.*

(f) Report to Bar Counsel.

When the dispute has been resolved, or when in the judgment of the [CONCILIATOR] *mediator* further efforts at [CONCILIATION] *mediation* would be unwarranted, the [CONCILIATOR] *mediator* will submit a written report to the Bar Counsel which will include:

(1) a summary of the dispute;

(2) the contentions of the parties to the dispute;

(3) any agreement which may have been reached; *and*

(4) any matters upon which agreement was not reached[;

(5) THE OPINION OF THE CONCILIATOR ON THE MERITS OF THE DISPUTE; AND

(6) THE OPINION OF THE CONCILIATOR ON THE GOOD FAITH OR LACK OF GOOD FAITH OF THE EFFORTS MADE BY ANY ATTORNEY TO RESOLVE THE DISPUTE].

(g) [FAILURE] *Obligation* of Attorney to Participate in Good Faith.

Any attorney involved in a dispute referred to a [CONCILIATOR] *mediator* has the obligation to confer expeditiously with the [CONCILIATOR] *mediator* and with all other parties to the dispute and to cooperate in good faith with the [CONCILIATOR] *mediator* in an effort to resolve the dispute. [FAILURE BY ANY ATTORNEY TO PARTICIPATE IN GOOD FAITH IN AN EFFORT TO RESOLVE A DISPUTE SUBMITTED TO A CONCILIATOR MAY BE GROUNDS FOR DISCIPLINARY ACTION UNDER THESE RULES.]

PROPOSED BOARD GUIDELINES FOR REFERRING MATTERS TO MEDIATION
(Patterned after May 23, 1995 draft Colorado criteria)

#.# Board Guidelines For Bar Counsel Referral of Mediation Cases:

1. If the case were to be handled through the disciplinary process, it would likely result in either a dismissal or discipline no greater than a written private admonition. Examples would be failure to communicate or minor neglect.
2. No case alleging intentional dishonesty or material misrepresentation would be referred to mediation.
3. The case should involve a small number of issues (1-3), rather than numerous allegations.
4. The harm, if any, caused by the attorney's conduct should be minor.
5. The complaining party should be a client or an adverse attorney or a successor attorney.
6. The case should involve a dispute between the complaining party and the respondent-attorney which would appear to be able to be resolved by mediation and both parties agree to mediation.
7. The respondent (lawyer) cannot be one who a) has been the subject of more than two other mediation referrals within the last two years; b) has failed to abide by the terms of any previous mediation; c) who has been disciplined by a private censure or by any public discipline within the last two years

---

BAR RULE 15
PROPOSED AMENDMENT RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

Rule 15. Grounds for Discipline.

(a) Grounds for Discipline.

In addition to those standards of conduct prescribed by the Alaska Rules of Professional Conduct, Ethics Opinions adopted by the Board of Governors of the Bar, and the Code of Judicial Conduct, the following acts or omissions by a member of the Alaska Bar Association, or by any attorney who appears, participates, or otherwise engages in the practice of law in this State, individually or in concert with any other person or persons, will constitute misconduct and will be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship:

. . .

(5) [FAILURE TO COOPERATE IN A CONCILIATION, AS REQUIRED BY RULE 13(G);]

. . .

(Remaining sections renumbered)

BAR RULE 39
PROPOSED AMENDMENT RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

Rule 39. Notice of Right to Arbitration; Stay of Proceedings; Waiver by Client.

(a) Notice Requirement by Attorney to Client.

At the time of service of a summons in a civil action against his or her client for the recovery of fees for professional services rendered, an attorney will serve upon the client a written "notice of client's right to arbitrate or *mediate*," which will state:

You are notified that you have a right to file a Petition for Arbitration of Fee Dispute *or a Request for Mediation* and stay this civil action. Forms and instructions for filing a Petition for Arbitration of Fee Dispute *or a Request for Mediation* and a motion for stay are available from the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, AK 99501-1958, (907) 272-7469. If you do not file the Petition for Arbitra-

Continued on page 14

NEWS FROM THE BAR

Continued from page 13

tion of Fee Dispute *or a Request for Mediation* within twenty (20) days after your receipt of this notice, you will waive your right to arbitration or *mediation.*

Failure to give this notice will be grounds for dismissal of the civil action.

BAR RULE 40
PROPOSED AMENDMENTS RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

Rule 40. Procedure.

. . .

(c) Petition Accepted; Notification.

If Bar Counsel accepts a petition, (s)he will promptly notify both the petitioner and the respondent of the acceptance of the petition and that the matter will be held in abeyance for a period of ten days in order for both parties to have the opportunity to settle the dispute without action by an arbitrator or panel *or to request mediation under Bar Rule 13.* The notice will include a copy of the accepted petition and will advise both parties that if the matter is not settled *or mediation requested* within the ten-day period that it will be set for arbitration. *Further action on the petition will be stayed during mediation. If the dispute is resolved through mediation, the matter will be closed by settlement by the parties. If mediation is unsuccessful, the stay will be lifted and the matter set for arbitration.*

. . .

(e) Assignment to Arbitration.

If, at the end of the ten-day period, Bar Counsel has not been informed that the matter has been settled *or mediation requested*, in accordance with Rule 37(c) or (e), (s)he will select and assign an arbitrator or arbitration panel from the members of the appropriate area division to consider the matter.

BAR RULE 16(c)
PROPOSED ADDITION DEFINING THE CRITERIA FOR AWARD OF COSTS AND ATTORNEYS FEES IN DISCIPLINARY CASES

(Additions italicized; deletions bracketed and capitalized)

Rule 16. Types of Discipline and Costs.

. . .

(c) Restitution; Reimbursement; Costs.

When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

(1) restitution to aggrieved persons or organizations;

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

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

(i) the complexity of the disciplinary matter;

(ii) the duration of the case;

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

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

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

(vi) the reasonableness of the defenses raised by the respondent;

(vii) vexatious or bad faith conduct by the respondent;

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

(ix) the financial ability of the respondent to pay attorney's fees; and

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

BAR RULES 28(g) & (h)
PROPOSED AMENDMENTS TO PUBLIC NOTICE AND DISTRIBUTION OF PUBLIC DISCIPLINE

(Additions italicized; deletions bracketed and capitalized)

Rule 28. Action Necessary When [DISBARRED, SUSPENDED, OR PLACED ON PROBATION] Attorney is Disciplined.

. . .

(g) Public Notice.

The Board will cause a notice of the disbarment, suspension, [OR] interim suspension, *probation, public censure, or public reprimand* to be published in

(1) a newspaper of general circulation in the cites of Anchorage, Fairbanks, and Juneau, Alaska;

(2) an official Alaska Bar Association publication; and

(3) a newspaper of general circulation serving the community in which the disciplined attorney maintained his or her practice.

(h) Circulation of Notice; National *Lawyer Regulatory* [DISCIPLINE] Data Bank.

The Board will promptly transmit a copy of the order of disbarment, suspension, interim suspension, probation, [OR] public censure, *or reprimand, publicly imposed,* to the presiding judges of the superior court in each judicial district in Alaska; and to the Attorney General for the State of Alaska, together with the request that the Attorney General notify the appropriate administrative agencies. The presiding judges will make such orders as they deem necessary to fully protect the rights of the clients of the disbarred, suspended, or probationary attorney.

Bar Counsel will transmit to the National *Lawyer Regulatory* [DISCIPLINE] Data Bank maintained by the American Bar Association, and any jurisdiction to which Respondent has been admitted, notice of all discipline imposed by the Court and all orders granting reinstatement, *and reprimands, publicly imposed, by the Board.*

BAR RULE 41
PROPOSED AMENDMENT ELIMINATING REQUIREMENT FOR PERSONAL DELIVERY OR CERTIFIED MAIL SERVICE EXCEPT FOR SERVICE OF PETITION

(Additions italicized; deletions bracketed and capitalized)

Rule 41. Service.

Service of the petition by the Bar shall be by personal delivery or by certified mail, postage paid, to the petitioner and the respondent. Unless otherwise specifically stated in these rules, *all other* service shall be by personal delivery or by [CERTIFIED] *first class* mail, postage paid, addressed to the person on whom it is to be served at his or her office or home address as last given to the Bar. The service is complete five business days after mailing. The time for performing any act shall commence on the date after service is complete.

BAR RULE 48(a)
PROPOSED AMENDMENT CHANGING SIZE OF Lawyers' FUND FOR CLIENT PROTECTION COMMITTEE TO AT LEAST SIX MEMBERS

(Additions italicized; deletions bracketed and capitalized)

Rule 48. The Committee.

. . .

(a) The Committee shall consist of *at least* six members of the Alaska Bar Association, appointed by the President, subject to ratification by the Board[, THE TERMS OF ALL PERSONS WHO ARE MEMBERS OF THE COMMITTEE ON JANUARY 1, 1980 SHALL EXPIRE ON JUNE 30, 1980, AND THE TERMS OF ALL SUCCEEDING MEMBERS OF THE COMMITTEE SHALL COMMENCE ON JULY 1, 1980. ON THAT DATE, THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A ONE YEAR TERM, THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A TWO YEAR TERM, AND THE APPOINTMENT OF TWO MEMBERS SHALL BE FOR A THREE YEAR TERM. THEREAFTER,] Each appointment shall be for a three year term.

(b) A quorum at any meeting of the Committee shall be [THREE MEMBERS] *one half of the size of the Committee.* A member participating in Committee proceedings by telephone is present for all purposes, including purposes of a quorum. In the absence of a quorum a matter may be considered by the members present, but no action may be taken with respect thereto. The vote of a majority of the members present and voting at a meeting at which a quorum is present shall constitute the action of the Committee.

BAR RULE 61
PROPOSED AMENDMENT SHORTENING THE PERIOD IN WHICH AN ATTORNEY MUST PAY AN AWARD AND SHORTENING THE REQUIRED NOTICE BEFORE PETITION FOR SUSPENSION FOR NONPAYMENT

(Additions italicized; deletions bracketed and capitalized)

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

* * *

(c) Any member who without good cause fails to pay a final and binding fee arbitration award within [30] *15* days after it is final and biding shall be notified in writing by certified or registered mail that the Executive Director shall, after [30] *15* days, petition the Supreme Court of Alaska for an order suspending such member for nonpayment of a fee arbitration award. Upon suspension of the member for nonpayment of a fee arbitration award, the member shall not be reinstated until the award is paid or otherwise satisfied and the Executive Director has certified to the Supreme Court and the clerks of court that the award has been paid.

Proposed Amendment to Bar Rule 43 (ALSC Waiver)

The Board of Governors is proposing a rule change to Alaska Bar Rule 43. Rule 43 currently permits lawyers who are admitted in another state, but not in Alaska, to practice law for Alaska Legal Services for two years. The proposed amendment would eliminate the two year limitation and allow lawyers to practice law with ALSC, indefinitely, without being admitted to the Alaska Bar, as long as they are eligible to practice in another state.

Rule 43. Waiver to Practice Law for Alaska Legal Services Corporation

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law in the state [FOR A PERIOD OF NOT MORE THAN TWO YEARS] if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Eduation of the American Bar Association or the Association of American Law Schools when the person entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia;

(b) The person is employed by or associated with Alaska Legal Services Corporation on a full-time basis;

(c) The person has not failed the bar exam of this state.

. . .

Please send your comments on the proposed amendment to Deborah O'Regan, Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99501.

Tales from the Interior

Undeniable urge

One of the fallacies of driving while intoxicated (DWI) litigation is the infallible intoximeter.

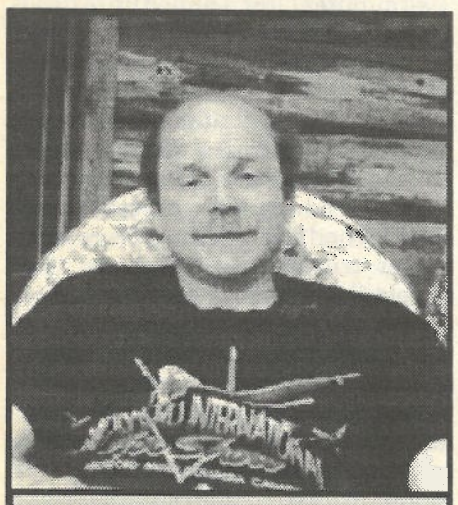
Originally, government agencies prosecuted individuals for DWI simply by taking them home at night and dropping them off to an irate spouse. Most suspects would have preferred a quiet night in jail. As time progressed, prosecutions became based upon the "under the influence" theory, by which an arrestee would be requested to perform numerous death-defying feats of balance while attempting to reconstruct the alphabet from the Phoenician era.

Then came the breathalyzer, the first scientific analysis machine. In performing the test, the arresting officer would first either break or bite the top off of the ampoule of this poisonous chemical, and then insert the little bottle into a light ray. The hapless subject next would blow like a tornado while the officer would frantically jimmy needles back and forth to arrive at the breath-alcohol content. There was no paper tape printout, nor any ability inherent in the unit to challenge the officer's reading. Defense attorneys made much out of the fact that officers were clearly biased and trying to hang their drunken clients, who were simply unable to stagger up the gallows at the time of execution.

Eventually, breathalyzer gave way to the newfangled Intoximeter 3000. As I have stated previously, no one really knows what the first 2999 models of the Intoximeter were. What we do know is that there is a machine out there now called an Intoximeter 3000, which gives a paper tape printout, has pretty red blinking lights, makes loud noises like growls and belches, and supposedly is completely foolproof. (Remarkably, police rookies still have invented numerous ways to thwart the foolproof claims of the manufacturer.)

When the Intoximeter 3000 first debuted, one of the lauded achievements was the potassium perchlorate tube which could be attached by O-rings to the unit. This tube was intended to be used to preserve a sample of the subject's breath for later testing by doubting defense counsel.

The machine was in use for several months before I represented a gentleman from Chatanika who actually wanted to have one of these potassium perchlorate tubes tested independently. It soon became quite apparent that there was a problem. In this particular case, the gentleman's Intoximeter reading was in excess of .150. The independent test of the potassium perchlorate tube, however, indicated a reading slightly less than .05. The level of legal intoxication was .10. In short, the Intoximeter said that my client was blitzed, but the perchlorate tube said that he was sober. (Even at .15, my client still was considered by most to be stone cold sober.) Wisely, the state chose not to offer the readings into evidence. In the end, the jury found my client guilty in an "under the influence" theory, but that may have had something to do with his hilarious antics on the videotaped field sobriety tests. (Incidentally, the State of Alaska no longer requires videotape field sobriety tests either, thus depriving us of the entertaining antics of drunks on television. My family now has to watch America's Funniest Home Videos.)



William Satterburg

The development which came out of the referenced case was a sequence of pretrial motions in other cases challenging the accuracy of the Intoximeter and the potassium perchlorate tube. The dispute became affectionately known as "Bar Wars". Following extensive evidentiary hearings, the State of Alaska capitulated and simply did away with the potassium perchlorate tube concept entirely, recognizing that the government employees obviously were having problems with seating the O-rings long before the space shuttle *Challenger*. Instead, defendants were offered an independent chemical test. A blood test at the state's expense was the expected choice. In an unheard-of attempt to be fair, the State of Alaska also indicated that the defendant could have the test done at the defendant's own expense at the location of the defendant's choosing. Furthermore, the test did not necessarily have to be a blood test, but could be any chemical test.

Regardless of the sodden possibilities for urine testing, for several years defendants would simply elect either to decline the blood test, or to accept the state's offer to have the blood test done at state expense. If the blood test was chosen, the defendant would be driven to a lab, punctured for two vials of blood, and the trooper would drive giggling away, knowing that results of the blood test probably would be more accurate and most likely higher than the Intoximeter readings. (My theory of the higher readings is that blood ferments when exposed to DWI litigation.)

My morbid fascination with the concept of urinalysis testing began when I was little: Potty training. The time when I was caught during recess in first grade, watering the local fir tree like my dad had taught me. Later, when my father would take me flying, he would impress upon me the need to take whatever precautions were necessary in order to avoid a forced landing, or worse.

Six months ago, I decided that my clients should not have to suffer the indignity of the needle. I had my clients request a urinalysis test. Not only was the testing cheaper, and samples readily available, but the pain and suffering associated with the needle was absent. Analysis could be done locally. To urinate clearly was a reasonable solution. But the State of Alaska did not agree, apparently fearing a flood of litigation. The first time that one of my clients requested a urine test, the cops played gamesmanship with my drunk. He was told he could not have a urine test. In ruling on one of the later motions which I showered upon the court, the judge gerrymandered around the issue, finding that my client did not specify the exact location where he wanted the test to be taken and therefore had not actually invoked the right to the urine test. My client accepted reduced charge.

In the second case, my client made the magic incantation not at the police station, but at the hospital. Again, we lost. The rationale was that the request had to be made at the police station in order to be effective. I began to sense that the judges had an aversion to my theory. An acceptable pretrial offer was again made, and another appeal went down the drain.

During the third case, my client timely made the request in the police station. He offered to pay for it himself, and suggested that the location be at the Fairbanks Memorial Hospital. Much to my surprise, the hospital balked. It would only do urinalysis testing for police agencies or under court order. Following extensive cross-examination at a pretrial hearing, the hospital staff reluctantly agreed that they might be willing to provide a container to a DWI suspect, but that they would not do any testing or be responsible for chain of custody. The decision of the court was again bitter. Because the hospital did not specifically agree to have urine testing done at the hospital, the request for the location had not been properly invoked. A reduced charge was accepted. At least I was holding my own.

> *'I still think that my dad has best idea — pass a law requiring all sober people off the road after 10 p.m.'*

The next arrest consumed four hours of state trooper's time. My client, who had blown a .12 on the intoximeter, woke me slightly after midnight. This time, I explained to the state trooper that my client wanted to have a urinalysis test done at his own expense at the residence and office of a local balding Fairbanks psychologist well known for his work with drugs and alcohol. The officer insisted he knew the address. For the next several hours, my client and two troopers drove around town vainly trying to find the location, stopping at the hospital, the parking lot of Alaska Industrial Hardware, and making two extra trips to the state troopers headquarters, during which time my client continued to accumulate more evidence.

As the evening progressed, I received numerous telephone calls at home from a trooper who went from professionally calm to extremely irate, to refusing the next day to accept any more telephone calls ever again from me. In the end, the exasperated trooper asked me if I knew of any other location where the urinalysis testing could be done. I confirmed with him that the notification form for the test indicated that the subject would be transported free to any location within the confines of the Fairbanks North Star Borough. I then explained that I lived on McGrath Road, approximately 10 miles from the station, and that I would wait for them in my garage with a clean thermos bottle and maybe even some coffee. The trooper angrily responded that I was "not qualified" to do urinalysis sampling in his opinion. Because I did not have any other ideas, my client went to jail.

When calmer arguments developed in court with respect to the fact that the officer refused to allow my client to come to my house, I stressed that we were simply talking about the taking of a sample and not the actual analysis of such. I argued that one did not have to be "qualified medical personnel" to observe a sample taken, recognizing that the independent test form references qualified personnel and not qualified *medical* personnel, parroting the state statute. To my surprise, the state's attorney agreed wholeheartedly, and acknowledged to the court that there was no person better qualified than myself to watch another man urinate. Following this stream of reasoning, the issue trickled down to a debate of whether or not independent urinalysis testing would ever be allowed. (Something about the State's opposition still bothers me, although I cannot quite put my finger on it.)

In the next case in this rising tide of litigation, I contacted the hospital and made arrangements with the lab to give my client a free plastic bottle. My client was then to take the sample with him, which delighted the lab technician to no little degree. According to plan, my client would keep the sample with him as he spent the night in jail, following chain of custody protocol. Confusion reigned within the ranks of the police, and the debate reached the highest levels. Apparently, word had leaked out about my strategy. The advice was to allow the urine sample to be taken, lest another case go into the toilet.

The Fairbanks City Police had to admit that they were beaten, and that the urinalysis sample would be given. At the hospital, my client cooperated eagerly. By then, he had long been waiting for the chance to be helpful, as his fidgeting on video showed. He gave a most generous sample of product into a single bottle which was almost too small to gather all of the valuable evidence. The police then labeled the bottle, and contacted me concerning what to do with its ultimate disposition. Flushed with excitement, I repeated that my client wanted to keep the bottle in his possession at all times, thus preserving chain of custody. The officer did not like this idea. More phone calls were made, this time to the jail. The Fairbanks Correctional Center informed everyone that it was not allowing someone to check into the jail with, among other personal effects, a fermenting bottle of urine to put under his pillow.

We were now in a classic Catch-22. The sample had been taken, and properly became evidence. My client was now being asked to part with his constitutional right to cross-examination. I was in a pickle. The jail would not keep the urine and the officer on the phone wanted a decision. Following a long pause, the officer foolishly indicated to me that he would be willing to log the urine in on a "Form 4" and keep it in the evidence locker. I sighed with relief.

Recognizing that the City of Fairbanks recently had problems with respect to the sanctity of its evidence locker, with allegations of money and other items disappearing, I innocently asked the officer whether or not he could guarantee that the urine would not evaporate. There was dead silence on the other end. I quickly realized that my humor once again was not well received. Not wanting to push the issue, I agreed that the officer had won and could take full possession of the urine. I reminded him that the urine should be refrigerated.

Continued on page 16

Undeniable urge

Continued from page 15

In the final episode of this series of cases eroding the state's position, I was leaving a reception where I had consumed only two drinks. (Evidence shows that, statistically, a driver arrested for DWI never consumes more than two drinks.) I received an urgent call from my wife on the cellular phone. A client had called from the police station in an obvious state of drunken distress. He had taken the Intoximeter exam, refused to answer questions, and now wanted to know what to do with respect to an independent test.

While driving, I contacted the client. He told me that the officers had advised him that this was his last chance to make a call before they transported him to jail. We decided to ask for a urinalysis test. Recognizing that there would be problems again with respect to locating an appropriate testing facility, I elected to bring a sample test container to him at the police department and have his sample taken there. He asked the officers whether or not they would allow me to come to the station with a container. The response was that they would wait only so long.

I had been in this predicament before, when the officers promised to wait around the station for you. Traditionally, when you arrive and announce your presence at the front desk, they are racing out the back door with your client en route to the jail. After a few minutes, a sleepy civil servant saunters up to the counter and announces that they have already left, and apologizes for the inconvenience.

I raced for the city police station, figuring that I would stop briefly at the local shopping market and buy a Tupperware drink container for the purposes of taking the sample. I kept my client busily talking to me on the cellular phone.

As I approached the shopping mall, I instructed my client what to do: For the next five minutes, he was to press the phone to his ear pretending to talk to me while I ran into the supermarket and bought a drink container. All he had to do was to say, "Uh-huh," "Yes, Bill," "No, Bill," "Could you repeat that again?," and words to that effect looking like he was getting all sorts of valuable legal advice. I ran into the supermarket. When I returned to my truck, I picked up the phone just in time to hear him say, "Of course, Bill." Two minutes later, I pulled up to headquarters, all the time keeping the conversation going with him. According to my client, the officers had become quite agitated at that point, and were beginning to question whether or not he was or was not actually receiving sage legal advice. (Of course, by then I had also had him ask the officers some rather tricky little questions. Any doubts that I might not have been on the line were quickly removed.)

While the officers were in the midst of loudly debating the correct answers to my test, I informed my client to make the following statement: "Officer! My attorney says he is at the front counter with a sample container right now." I then jumped out of my car and ran into the station. One of the officers incredulously looked around the corner, whereupon I smiled, held up the container, and asked him if he wanted a straw as well. Angrily, the sample test container was taken from me. I then announced that I wanted my client to produce the sample at the station, and that they could keep custody of it. Before the officer could protest, I quickly left the station, figuring that the Intoximeter had already been overworked enough that night, and did not need me for an additional test.

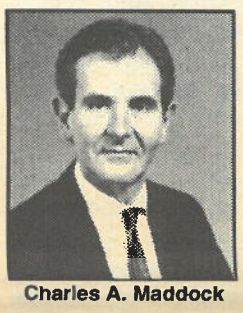
Rather than going directly home, I went shopping at Fred Meyer to look at some tools. Whenever I am depressed or simply need time to think, I go shopping. It is a "male thing."

When I saw my client the next day, he reassured me that he had given a most generous sample. From all impressions, I believe that he was probably more than prepared to do just exactly that, contrary to the assertion that he had only had two beers.

Although the urine crisis may have cleared up, I still think that my dad has the best idea—pass a law requiring all sober people off the road after 10 p.m.

Five key "prosperity" strategies, one common catalyst—marketing

By Charles A. Maddock



Charles A. Maddock

Picture a future where corporate clients expect to receive all their legal services on a fixed price or budgeted basis. Don't think it can happen? Look at the medical profession in the U.S. Over the past two decades, physician pricing has slowly but steadily evolved from fee for service to negotiated or reduced fees paid by insurers to capitated (fixed) pricing. In contrast, over just the last two years, "fixed fees" and "budgets" have replaced "hourly billing" as the billing method of choice by in-house counsel, according to client surveys conducted by Altman Weil Pensa. Clearly, the future for law firms is here.

How will lawyers compete in today's future? The current legal market is characterized by oversupply of lawyers, bill audits, profit squeeze, decreased loyalty of buyers and sellers of legal services. Will investments in technology, reengineering and leadership training breathe a robust, new vitality into the profession?

Before the end of the century, law firms will need to focus tightly on five strategic issues — and marketing is central to each of them. To successfully pursue "prosperity" business strategies, law firms must allow internal marketing functions to evolve from a respected but satellite service to a focal business process of the firm. Because marketing is integral to the pricing and delivery of legal services, it is too important to be anything else. In fact, without an integrated marketing function and the vision that it brings, the law firm might face the future as the ostrich faces the inevitable — with its head in the sand.

To compete and prosper in the future, law firms will need to implement the five business strategies summarized below. And, it will be internal marketing efforts that act as the catalyst for successful implementation and the prosperity which follows it.

Strategy 1 — Develop More Cost Effective Services

Law firms will need to proactively offer services to clients using fixed fees, budgets or any of the array of more than thirty new alternative billing techniques mentioned in Richard Reed's ABA publication, Billing Innovations (1996). Firms will need to abandon their billable hour culture, and with this change will come a shift to providing true value for the client — among firms that do it right. This means firms must understand the costs of delivering services while meeting client budgets.

Not surprisingly, pricing decisions are essential to the marketing process in other organizations but rarely involve the marketing function in law firms. Although many law firm marketing directors already are involved in pricing decisions when responding to client RFPs, marketers will need to act more as product managers, working hand-in-hand with lawyers to know the competition, the market and the economics of pricing.

In addition, marketers can help identify areas which can be outsourced more cost-effectively for the client. This may mean outsourcing services currently being handled by the firm, such as routine research. Such an objective, candid evaluation of where the firm provides real client value helps justify why the firm should be hired in the first place.

Strategy 2 — Compete More Aggressively

Law firm competitors aren't just other law firms. New sources of competition include clients who are making rather than buying legal services, accounting firms, new software applications such as expert systems and small specialty firms with low overhead that are highly technology-leveraged. In fact, many service businesses who know how to generate profits through ongoing efficiency

Continued on page 20

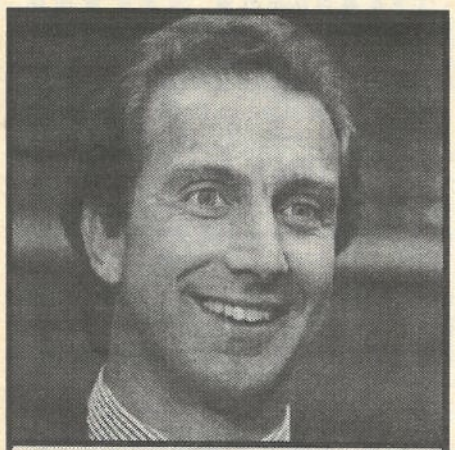
Juris Prudence

What's in a name?

What's in a name? An internet domain address or perhaps, a trademark infringement. The recent proliferation of domain names has resulted in a shortage of ".com" (as in dot corn) names. As one might expect in a free-wheeling, internet economy, such scarcity breeds a new business sector of domain name speculators and electronic brokers. And lawsuits.

Nearly a million names ending in .com, .org, and .gov have been registered to date. The popular .com designation signifies a commercial site. Globecomm, a New York- based internet address broker, has a registration database of nearly 2,600 prime domain names owned by individuals and small companies.

Speculators register names that have prospective sex appeal or unclaimed company names with the objective of selling them to their corporate owners. For example, "abc.net" is



Daniel Patrick O'Tierney

priced at $350,000. The pricetag for "billgates.com" is $1 million.

In Alaska, Mike Clemens of Wasilla registered the domain name "alaskausa.com". He has reportedly offered to sell it to Alaska USA Federal Credit Union for $18,000. The credit union is not amused. "alaskausa.com" is listed by broker Globecomm.

The internet's International Ad Hoc Committee is poised to add seven additional internet addresses ending in .firm, .store, .web, .arts, .rec, .info, and .nom. But a battle is impending over who will get to register those new names.

Currently, Network Solutions, Inc. in Virginia is the sole registrar of all existing internet address names under a government contract with the National Science Foundation. That contract expires in 1998 and contestants will be rushing to the fore for the opportunity to bid on the rights to control registrations for the seven new domains. The current $50 registration fee is expected to increase.

Meanwhile, there are approximately 20 lawsuits nationwide involving domain name disputes. The present legal trend in the federal district courts seems to indicate that those who have trademarks also have some sort of pre-emptive right to acquire corresponding domain names. But the law is by no means settled. In one pending case, for example, toy company Hasbro (manufacturer of the Clue board game) and Clue Computing are litigating over the domain name "clue.com".

The US Congress, offered companies some protection in passing the 1996 Trademark Dilution Act restricting the sale of domain names that resemble popular trademark names. However, sellers commit trademark infringement only if they solicit. Consequently, prospective sellers simply list the availability and price tag of domain names and field interested customer inquiries. Any resultant sale does not run afoul of the Act, thus far.

At this stage of the internet name game, it's first come, first served-at least until the current trademark litigation runs its course. Once again, the internet marketplace pushes the boundaries of the law.

Reprinted with permission of Alaska Business Monthly for which the author has written a regular column on legal matters of interest to the business community since 1986.

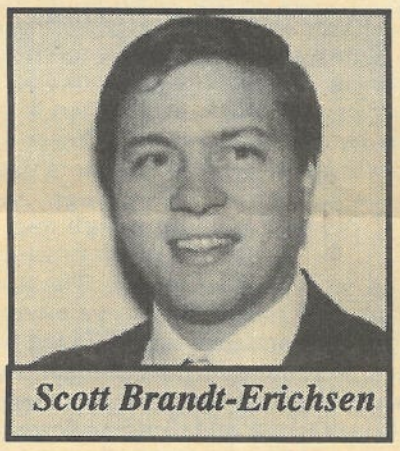
The Public Laws

Government inefficiency: An ode to the Anchorage Parking Authority

I watched with interest as the voters in Anchorage recently displayed the contradictory virtues the public often seeks in its government. Yes, I am talking about their proposition 3 regarding the enforcement of offenses involving motor vehicles by sworn police officers.

This is a recent example of situations where, for reasons of preferred public policy, an inefficiency is built into the operation of government. One of the most widely understood examples is the idea of requiring Davis-Bacon wages for public construction. Yes, this inflates the cost of public construction beyond what it would cost in the private sector. Paying more than the private sector is somewhat inefficient. But the justification for this inefficiency is that the public policy favors paying what is considered to be a reasonable wage for work done on public projects, valuing this work more than having them built as cheaply as possible. However, I do not believe that the voters were concerned about the wage rates of the folks employed to write parking tickets.

The vote on proposition 3 was more along the lines of a call for humaniz-



Scott Brandt-Erichsen

ing the cold efficiency of the enforcement mechanism that had been developed. In deference to the philosophy that government should be "more efficient" or "run like a business," a system of enforcement of vehicle laws had been developed which worked quite well.

Too well. People don't like to get caught up in the enforcement end of government, particularly when it is efficient enough to catch minor violations where there is no apparent harm. So the vote on proposition 3 was a sort of call for less efficiency and more flexibility.

A shift in philosophy directed by the electorate is a fine thing. Inefficiency has many advantages. When I visited Moscow and Leningrad in 1983 I was told of the advantages that the Soviet Union had over the United States in terms of full employment. But I noticed that part of that employment involved hundreds of people employed to sweep the streets by hand. This is not an efficient application of labor. Street-sweeping could be done cheaper and easier by machine. However, by using hand labor the policy of full employment could be served. A public policy with built in inefficiency is only sensible to the extent that the philosophy is consistent. If the street sweepers in Moscow were directed to both use full employment, but also to do the job in the quickest, cheapest manner, they could not help but fail. Likewise, for the motor vehicle enforcement, as with the Davis-Bacon wages, the mandated inefficiency carries with it a cost both in terms of the productivity of the system and the personnel costs to run the system. When these costs come home to roost, those who call for government to be run like a business should remember that the voters have indicated otherwise.

If history is any guide, public memory is short lived. There is a great propensity to demand services or public facilities on the one hand and to demand lower taxes on the other. This is sort of a variation on the Chilkoot Charlie's slogan about cheating the other guy and passing the savings on to you. It may sound somewhat appealing on the surface, but is it really what we want? The only reason this particular application of the "bipolar electorate" theory troubles me is that it has a great potential to impact the court system as well. A part of the Anchorage Charter amendment requires that all vehicle law and code enforcement violations be handled in the courts rather than in an administrative proceeding. In theory this will require that parking tickets and such be heard by magistrates or district court judges rather than hearing officers. I would not wish that fate upon even my least favorite judicial officer. Nor do I careto have a calendar of parking tickets delay other judicial functions.

Oh well, it gives me one more reason to enjoy living in Southeast.

State Bar of N.D. & ALPS help flood-ravaged Grand Forks attorneys

As the waters slowly begin to recede from this beleaguered North Dakota area and people return to what remains of their homes and businesses, it is becoming apparent that the legal profession will be among the busiest in dealing with the many consequences of all the damage. Unfortunately, it is also very apparent that attorneys in the Grand Forks area were hit hard as well. Not only have lawyers lost their houses to the flood, but high water and fire have destroyed offices and many of the files in them, leaving the legal system at a standstill.

To help, one insurance company is expending a great amount of time, money and energy in an effort to get the area's law firms back in operation. Working closely with the State Bar Association of North Dakota, the Attorneys Liability Protection Society (ALPS) of Missoula, Montana — a provider of professional liability protection — has been instrumental in establishing a Fund to cover some of the costs to get the bar and court system in the Grand Forks area operational. ALPS made an initial contribution for this recovery fund and is soliciting financial assistance from the other ALPS' affiliated bars and their membership,

"We're doing a great deal of work coordinating recovery efforts with area legal assistants and staffs of these law firms," said Sandi Tabor, the executive director of the State Bar Association of North Dakota. "We need to help educate and train them in how to reconstruct their files. Luckily, we have companies like ALPS that are playing key roles in this critical effort."

Bob Reis, ALPS' Risk Manager, was in Bismarck, North Dakota on April 29 for an meeting with bar leadership who are working on a feasible step-by-step plan for getting area attorneys operational again and the courts functioning, so the legal problems of the Grand Forks residents can be properly addressed. "The ALPS risk management department is prepared to spend whatever time and energy it takes to help get the legal system up and functioning. Clearly, we will play a supportive role, but our knowledge and experience should speed up the process," Reis said. "For the moment ALPS' efforts remain focused on fundraising and education. As soon as the firms are somewhat re-established, we will aid in a seminar designed to assist lawyers in dealing with reconstruction of their files and law practices."

Yet another effort was designed by ALPS to help individual attorneys. The company created a special section on its website (http://www.alpsnet.com/) titled, "AFTER THE FLOOD: What Can a Lawyer Do to Avoid A Professional Liability Claim and Ease the Process of Resuming Practice?" The site offers common sense ideas for re-creating or retrieving needed files, setting up a temporary office, even offering the help of its own information systems people.

At present, ALPS is focusing much energy on the bar membership in Grand Forks, and asks that contibution checks of any size be made out to North Dakota Bar Foundation (Flood Relief) and mailed to: North Dakota Bar Foundation, (Flood Relief), PO Box 2136, Bismarck, ND 58503-2138.

HI-TECH IN THE LAW OFFICE

Choosing hardware for small office networks

BY JOSEPH L. KASHI

In the last issue of the Alaska Bar Rag, I discussed how to choose some basic components for a high quality network file server. In this issue, I'll examine some other performance and reliability features that I incorporated into my new file server.

Keep it cool

First and foremost, good cooling and a highly reliable power supply are mandatory because heat build up and power supply failures are generally catastrophic. Thus, I ordered an oversized file server case with dual, redundant 450 watt power supplies from PC Power & Cooling, Carlsbad, California. The "Solid-steel Monster Case" really is a monster. It weighed 80 pounds with the redundant 450 watt power supply that switches from a failing power supply to a good one without shutting down the system. In my experience, the high-end PC Power & Cooling power supplies have been the best built, most reliable power supplies we have ever seen and they include highly desirable voltage regulation and line conditioning features absent from most other power supplies. Using these redundant, highest quality power supplies, we knew that our homebrew file server would be fed only the best 99.94% pure electrical power, relieving one major concern. The "monster" case includes at least six separate cooling fans, too, and I handwired two more directly in front of the hard disk cage. I have found other comparable redundant power supplies and cases from regional distributors.

A nice feature of the PC Power & Cooling case, though, is that you can actually install two complete and separate computers, including the NT or OS/2 application server, into a single large case. I first installed our file server system board and hard disks and later used the second system board area to install our separate "application" server on which we will run OS/2 client-server database, remote access and text search programs. It's nice that we can put this second critical computer, to be accessed by everyone in the office, in the same highly redundant power supply/case combination that houses our primary file server. Saves space, too, and looks better.

System RAM

I used the more expensive parity-checking RAM rather than the basic x32 EDO RAM used in ordinary Pentium computers. Some lower end vendors are always tempted to spend a little less and use non-parity RAM. It's crucial that your file server can verify the accuracy of transient data and programs stored in DRAM. Commonly used EDO RAM has neither the parity checking nor the error correcting capabilities desired in file server memory. EDO SIMMs are the preferred memory for desktop computers because of their good performance and low cost. Unfortunately, they are not adequate for a primary file server.

Even if you buy parity RAM, a lower-end, third-party system board may not be able to use its features. Most Pentium and Cyrix 6x86 system boards use a variation of the original Intel Triton FX chipset or the newer VX chipset, neither of which includes parity checking or error correcting features regardless of whatever type of RAM you might buy. Only system boards using the Intel 430HX Pentium chipset or the 450KX chipset installed in Pentium Pro systems will actually use any parity checking DRAM features. The ability to use parity or error checking RAM narrowed my choices markedly. Although I would have preferred using top of the line ECC error checking and correcting RAM, none was then available on the open market. Apparently, the small quantity currently produced is reserved for first-tier file server manufacturers like Compaq, HP and IBM.

Because adding RAM is one of the least expensive and most effective ways to improve both file server stability and its performance, I didn't skimp on the RAM. I initially used 64 megabytes in two 32 megabyte SIMMs for the basic file server. After adding the HP 20LT optical jukebox, I increased RAM to 128 MB. When ECC RAM becomes more readily available in a year or two, I'll consider replacing the parity RAM with ECC RAM. We'll then move that older parity RAM to some desktop workstation where it'll work just like regular memory.

Protecting Our Server

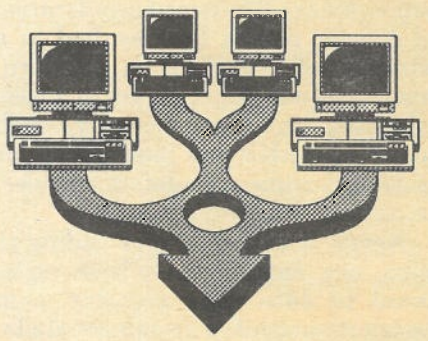
Power problems and heat buildup are the archenemies of network file server reliability. In addition to the six fans built into my PC Power and Cooling case and the two more that I later hardwired, I also bought from PC Power & Cooling a high quality CPU fan for the Pentium processor and an Alert Plus sensor. The Alert Plus detects both excessive internal case temperatures and CPU fan failure, first sounding an audible alert when the first temperature threshold is reached, and shutting down the system if the condition worsens. As noted above, I then bought two twelve volt fans from Radio Shack along with a standard hard drive Y power splitter and mounted two additional fans blowing over the otherwise too-hot hard disk area.

As always, I mounted an indoor/outdoor thermometer on the outside of the file server's case, running the outdoor probe near the inside top of the case so that I had an accurate reading of the highest internal temperature. I've never seen an external temperature readout on any commercially available file server, and never understood the omission. It's easy, inexpensive protection.

All of the redundant power supplies in the world won't protect you when the lights go out, so you'll need a BIG battery powered uninterruptible power supply (UPS) to tide the system over during small brownouts and power outages and to shut down the network and optical tower gracefully if the outage extends beyond a preset, safe time.

I bought American Power Conversion Smart-UPS 1400. There are some other high quality UPS power supplies on the market that are highly regarded and less expensive, including those made by Tripp-Lite, HP and Viewsonic/Optiquest, but I decided to go with APC because of my previously good experiences with this brand. I also bought APC's Powerchute monitoring and shut down software.

Initially, though, I thought that



my confidence in APC might have been misplaced. My Smart-UPS 1400 made a loud bang and started to burn when I first plugged it in. APC did, to its credit, cross ship without charge a replacement unit but it did take some arguing with them. So far, the replacement Smart-UPS 1400 is working like a charm over the last two months, but I put it on a fireproof surface until I felt a little more comfortable about it. I would probably buy a comparable Tripp-Lite UPS in the future, however, because of Tripp-Lite's quality, features, and included network shutdown software.

Most high quality UPS devices do include surge protection but if that built-in protection is damaged by a high voltage spike, you'll need to replace the entire expensive, heavy UPS. Our solution is to install another high quality Tripp-Lite ISOBAR surge protector between the UPS and the 110 volt wall outlet. That way, if there's a high voltage spike, only the inexpensive surge protector gets fried. Surge protect all network cables and telephone lines connected to your file server, too. They also can carry excessive voltages. Don't forget: your expansion cards work on a mere 5 voltages and Pentium and Cyrix CPUs loaf along on only about three volts.

Odds and Ends

You'll need a few other components for your top end, home brewed file server. A VGA color monitor is pretty much a necessity anymore, so I used a Boca ISA VGA card and the least expensive reliable 14" VGA monitor we could find. It's rare to use a file server's own monitor for any length of time. Because my applications server is contained within the same case as the file server and doesn't require frequent use of the VGA monitor, I simply installed a two port VGA/keyboard switch box that let me use switch the VGA monitor and keyboard back and forth as needed. A standard Fujitsu keyboard, and 3.5" floppy disk drive.

Networked CD-ROM and Optical Drives

Our legal office file server includes one internal Sony 76S SCSI CD-ROM used mostly to load system software and many externally mounted CD-ROM and rewritable optical devices. Our extensive CD-ROM library includes West Publishing's Alaska disks, US Code Annotated, and Ninth Circuit District Court and Appellate opinions; HoweData's U.S. Supreme Court series; and many Lawyer's Co-operative titles including CFR, ALR, AmJur 2nd, and AmJur Forms. Thus,

Continued on page 19

TransMedia develops computer simulation to help sharpen skills

Expert witnesses are crucial to many cases and, to that end, TransMedia has developed a computer simulation that will help sharpen the skills required when expert witnesses take the stand.

TransMedia's new courtroom simulation *Expert Witness!* has many of the features from their popular games *Objection!!* and *Civil Objection!!*, but has additional features designed specifically to enhance the learning experience and educational value of the product.

The simulated trial includes 4 levels for each of 3 expert witnesses. Including direct and cross examination. In addition to the authoritative *Xplaln* feature found In TransMedia's other games, *Expert Witness!* provides a chalkboard with strategic comments and tips to help the player understand why questions should or should not be asked. Also, before beginning the game, the player can review model testimonies designed to act as tutorials and allow players to familiarize themselves with proper foundations and qualifications without being penalized.

The game also includes varying scenarios and fact patterns with distinct testimonial, documentary, demonstrative and real evidence examples producing millions of diverse fact combinations. If the 20 questions asked during direct examination are answered quickly and accurately, the player proceeds to cross-examination. If all levels are completed successfully, the player becomes eligible to enter the Expert Witness Winner's Circle!

The program also contains state-specific rules and cites, as well as military code, and the CLE version is certified for credit in 17 states.

A professional version (non CLE certified) sells for $149 and includes a text on Testimonial Evidence entitled Rules of Evidence for Witness Testimony, A CLE certified version sells for $299 and Includes the text Comprehensive Evidence, with sections on Real, Demonstrative, and Documentary as well as Testimonial Evidence. The CLE version also includes 3 hours of audio taped lecture on evidentiary trial strategy. It is certified for credit that varies for each of 17 states.

Those who own one of TransMedia's other games can purchase Expert Witness! at a discounted price. TransMedia products are distributed by Professional Education Interactive at 1-800-832-4980.

HI-TECH IN THE LAW OFFICE

Choosing hardware for small office networks

Continued from page 18

CD-ROM networking is particularly important in our law office environment. I'll typically have up to 15 legal CD titles mounted as Novell network volumes at any one time. Each of these CD titles is, in my opinion, among the best and most useful substantive content available. After I obtained and mounted CD versions of ALR, for example, I found that the quality of my legal research on complex matters improved. Unfortunately, the quality of the search and retrieval software supplied by the various vendors varies widely.

West's own Premise 3.1x software is better in my opinion: it works just how lawyers have been trained to work and think and the new natural language searching feature is often very helpful. Lawyers' Cooperative uses various versions of the more generic Folio Views program. Although I recognize that it's a matter of personal preference and customization, I find the DOS version of Folio Views more awkward to use for general legal research. Folio's Windows version, although more useful, is almost too slow to be usable.

As a result of these circumstances, our network CD-ROM requirements are pretty stringent. Because of the many CDs that we need to mount simultaneously and because of Netware's reliance upon only SCSI CD-ROM drives, I used a mix of two external six disk Pioneer DRM-602 and DRM-604 CD-ROM changers and four individual Toshiba and Sony SCSI CD-ROM drives. Even though changers are slower than individual CD-ROM drives when installed on a network, I prefer to use a number of smaller changers for convenience sake. We have the small six disk Pioneer changers. Unfortunately, Pioneer's networkable 6- and 18-disk models have been discontinued in favor of a yet-to-be-shipped 100-disk system which is expensive overkill for most small to medium law offices, my own included. Nakamichi and Mountain 4 disk CD changers may well be a suitable replacement, although I haven't personally tested them.

> *'...it works just how lawyers have been trained to work and think and the new natural language searching feature is often very helpful.'*

To make matters more complicated, I'm also using on the Netware file server several rewritable optical disks for document imaging, including an HP 1.3GB standalone optical drive and an HP 20GB optical jukebox that holds and swaps 16 of the same 1.3GB optical disks. Although not the most current HP optical jukebox model, I bought an HP 20LT tower that includes the same HP 1.3GB rewritable optical drive and a basic disk-changing mechanism. I got a really good price on a new 20LT and didn't really need the bells and whistles built into the current 20XT model. Rewritable optical drives, particularly jukeboxes, simply do not just plug into a network and start running. You'll need some very special software and probably an additional SCSI controller in the file server.

My choice to run this jungle of wildly different optical storage devices on Novell Netware is Micro Design International's SCSI Express (407-677-8333). SCSI Express is available in both basic and jukebox enabled versions and actually runs all of the above CD-ROM and optical devices reliably. It's recommended but you'll need to be careful about two things with SCSI Express. The installation process tends to replace already loaded Netware NLM system software and can be unreliable. You'll need to first install the most recent Netware system software updates. Chances are, you'll need to call MDI's technical support and they will talk either you or your system integrator through a manual installation process. Once SCSI Express is loaded and configured, though, it seems to run very reliably and smoothly.

There are other software products that easily integrate many CD-ROM drives and CD-ROM changers into a network. However, such devices may not support changers reliably and probably don't support rewritable optical drives at all. Hence the need for more capable software like SCSI Express.

Conclusion

Specifying and building your own homebrewed file server can make a lot of sense. If you or your technician are comfortable building and maintaining such a system, you can choose the best possible components and typically get exactly what you need at the best possible price and without any compromises. I did find, though, that I encountered a great deal of trouble when some components would not work or when some apparently minor cable could not be found. In the future, I would specify exactly what I wanted in the file server, how I wanted it set up, and let a distributor build and test the system, shipping it complete with all cables and components already installed and tested. This approach, when done in connection with a reliable local network integrator who actually installs and configures your software, seems to best combine the economy and customization possible with a homebrew file server with the reliable turnkey advantages of servers built by brand name companies.

Five key "prosperity" strategies, one common catalyst—marketing

Continued from page 16

improvements look at the relatively high profits of law firms and find them attractive acquisition propositions. Already, one of the world's largest law firms is part of an accounting firm and American Express is acquiring regional accounting firms. The trend toward deregulation and acquisition for the sake of improved efficiency is likely to continue.

In addition, law firms must resolve internal competition that now exists between partners and associates and between partners and partners. As battles for clients increase, firms without a marketing strategy find themselves with shortages of good, profitable clients. The result is work hoarding or inappropriate delegation of work.

The solution calls for better identification of new sources of work, early warning systems to identify profit potential of clients, tighter case intake policies and closer scrutiny of work flow within the firm's practice areas. In short, as competition increases and work becomes more hard-fought and hard-won, firms need to closely integrate their practice management and marketing functions.

Strategy 3 — Strike "Hardwired" Relationships with Clients

Good, profitable clients who are an enjoyable, professional challenge are still out there, of course. But the rules have changed. Clients' legal budgets are under tighter scrutiny than ever. They demand ever increasing efficiency from their law firms without a sacrifice in quality. They have new tools to measure law firm performance. Most important, they expect superior service. Cost-effectiveness, quality, performance and service are how clients perceive value — and, with the rise in law firm marketing and the knowledge it provides regarding the competition, it is easier to switch law firms than ever.

Many law firms have relied on their practice group managers and marketing directors to introduce value innovations that are important to clients and help solidify the firm-client relationship. For example, as law departments downsize, firms often recruit outplaced client counsel to work within the firm. Conversely, firms often place associates within client organizations — a "win-win" for both sides if the associate learns more about the client's business and the client overcomes a temporary staffing crunch.

In addition, some firms have looked to their clients, to other service organizations and their marketing directors to develop a key client program. In this system, which advertising agencies and banks have had for years, the firm invests time and dollars into its top revenue-producing clients. This calls for making one partner a relationship manager, with ultimate client responsibility, including profit and loss and client satisfaction as measured by regular client audits. Services such as preventive law are often offered "free" as part of an annual package of services to demonstrate the importance of the relationship. Naturally, the firm also invests its time into learning more about the client's business, often inviting the client to conduct "reverse seminars" in the firm's offices.

Strategy 4 — Understand Clients & Markets Better

We live in an information age. The instantaneous transfers of intelligence from one entity to another and the acquisition of strategic knowledge for competitive advantage have been the most important business developments of the '90s. For proof, we only need to look at the spiraling growth of the Internet and, in the legal field, the now essential on-line services like Lexis-Nexis and Westlaw.

Surprisingly, for organizations that are awash in substantive legal data, law firms are surprisingly fallow in market information. In fact, one of the most surprising findings of the 1996 NALFMA Legal Directions monograph, The State of Professional Services Marketing, written by Norm Rubenstein and this author, was that law firms have little or no intelligence regarding their markets, client and prospect industries and their competitors.

Some firms are already beginning to invest the time and resources required to assess their markets rationally and analytically. Again, other service industries —particularly the large accounting firms — can serve as the model for law firms. For years, "Big Six" firms have had a research function, staffed by expert industry analysts, to provide front line information about market industry growth, locations and trends.

Research and development (R&D) is typically associated with product and service development to help improve the manufacturing and marketing processes in industry. For example, automakers conduct consumer clinics, providing potential buyers with sample cars to gather their feedback before launch. Often, changes to the smallest detail can make an important impact on marketing and profitability of the product.

In the law firm environment, marketers and lawyers can work together to develop a meaningful R&D function. In fact, firms might consider hiring industry analysts from investment banks, brokerage houses or accounting firms to support the R&D effort. The intelligence they gather can provide competitive insights to practice groups to help them make rational decisions concerning new clients and new offices, and to the firm as a whole regarding geographic expansion and merger candidates. What's more, the reports developed by the R&D function can be repackaged as white papers and delivered to clients as an added value of working with the firm.

Are law firms doing this? One firm in Great Britain hired an industry analyst from an accounting firm to lead its R&D function on an "experimental" basis. Within the year, the firm added two more analysts to research additional targeted industries.

At the same time, firms need to continually survey their clients. In a semiannual study conducted by Altman Weil Pensa, more than 60% of corporate clients responded that they had been surveyed at least once in 1995, a significant increase from the 40% who reported the same figure in 1993. Of course, firms must respond to what clients are telling them. But the practice management, service and pricing issues that are identified continue to make client surveys one of the most important marketing weapons the firm can wield.

Strategy 5 — Manage the Marketing Process Internally

This article has suggested the need for a sound marketing function in law firms. There is a corresponding need for sound management of the marketing function within the firm. As marketing becomes more and more central to the business operations of the firm, marketers need to play a leadership role in managing budgets and resources, being accountable for marketing initiatives and expenditures — and being rewarded for success.

In the near future, more lawyers can be expected to be part of the marketing process, participating in an even more meaningful way. For example, some firms have created a service ombudsman, a partner who can address any client's concerns or problems quickly and objectively, even (or especially) if he or she is not the responsible partner. Firms are also reducing or eliminating their marketing committees. Instead, they are vesting power in a marketing partner with clout to make partners and associates live up to their marketing commitments.

To demonstrate their commitment to the marketing process, firms are revising timekeeping and compensation policies to provide the time and support to market. Since many lawyers are willing to help market the firm but don't know where to begin, firms are offering sophisticated marketing training programs where appropriate. Most important, lawyers are being compensated and/or recognized for achievement of marketing goals, not just for origination of new business. These are significant changes in the management process that make marketing central to the firm.

Conclusion

Law firms have seen more change in the past five years than in the preceding fifty years. It's likely to expect the cycle of change to continue to compress. To compete in this future, law firms need to integrate the marketing process with all their other business processes. Marketing is just as important within the law firm as governance, practice management, economics/compensation, firm location and growth. Marketing cannot be seen as an add-on item. Only by dovetailing the efforts of lawyers and marketing personnel, working together to be responsible and accountable for marketing the firm and managing the marketing process, can law firms compete in the foreseeable future.

Charles Maddock is a principal at Altman Weil Pensa, with extensive experience in strategic business and marketing planning for service organizations and Fortune 100 companies. He has worked with over 200 law firms in the areas of strategy, positioning and marketing.