The Alaska BAR RAG

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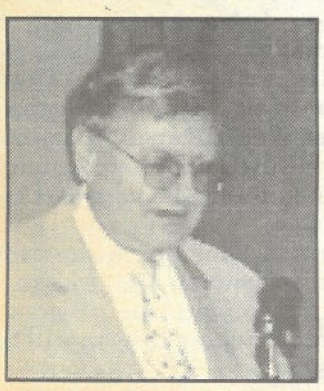
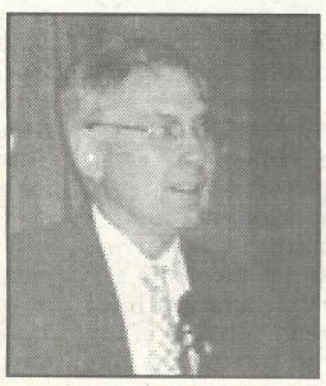
Inside:



U.S. District Court Chief Judge James Singleton



Alaska Superior Court Chief Justice Warren Matthews

Judges describe Alaska's courts & trends

Presiding judges of Alaska's federal and state courts delivered their "state of the judiciaries" message during the Alaska Bar Association convention in May, with three common messages: Workloads are up, technology is expanding in the judicial system, and alternative means of settling cases are becoming commonplace.

Chief Judge James K. Singleton, Jr., of the U.S. District Court, reported that civil cases filed at the federal level increased to 758 in 1999, compared with 514 in 1998. while criminal cases declined by 15 cases, with 249 filed last year.

"Trends in litigation in Alaska vary from Outside," he said. "Nationally, litigation is skyrocketing; ours follows the state economy, which was relatively flat" during 1999.

The chief judge also briefed the bar on new programs coming to the federal court system here.

Soon to be implemented, said Singleton, are federal regulations that require all federal courts to have an alternative dispute resolution system in place.

And of perhaps more impact to the bar, he said, is a national program to bring electronic filing of documents to the federal courts. Alaska will be one of the first to participate in the new initiative, through an intermediate pilot program by the year 2001, said Singleton. "We will be looking for beta tester (law firms) and mentors" in communities throughout the state to assist other firms and pro se filers in navigating the new system, he said.

Launched by the Administrative Office of U.S. Court Systems, the e-filing program, said Singleton, will assist the Alaska District court in "breaking down some of the problems of distance." There are issues yet to be resolved in the new process, he said, principal among them the integration of pro se litigants into the e-filing environment.

As the program is conceived, litigants/attorneys will access the online system with an account number and password, enabling them to upload virtually all case documents to the court. Singleton commented that the system at this time is "not taking into account the experience of the pro se litigant." Some 30 percent of his 275 cases, he said, have at least one pro se participant—from public interest advocates to individuals exercising their rights of self-representation. Pro se litigants may become problematic because of the volume of papers they tend to file. "Lawyers do not file everything that comes into the client's mind—not so for the pro se who wants to file the entire phone book," he said.

At the state level, the caseload also is on the increase, said Alaska Supreme Court Chief Justice Warren W. Matthews. Excluding traffic citations, he said, cases filed increased 14 percent over the past decade, with

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TWO VIEWS ON THE 9TH CIRCUIT

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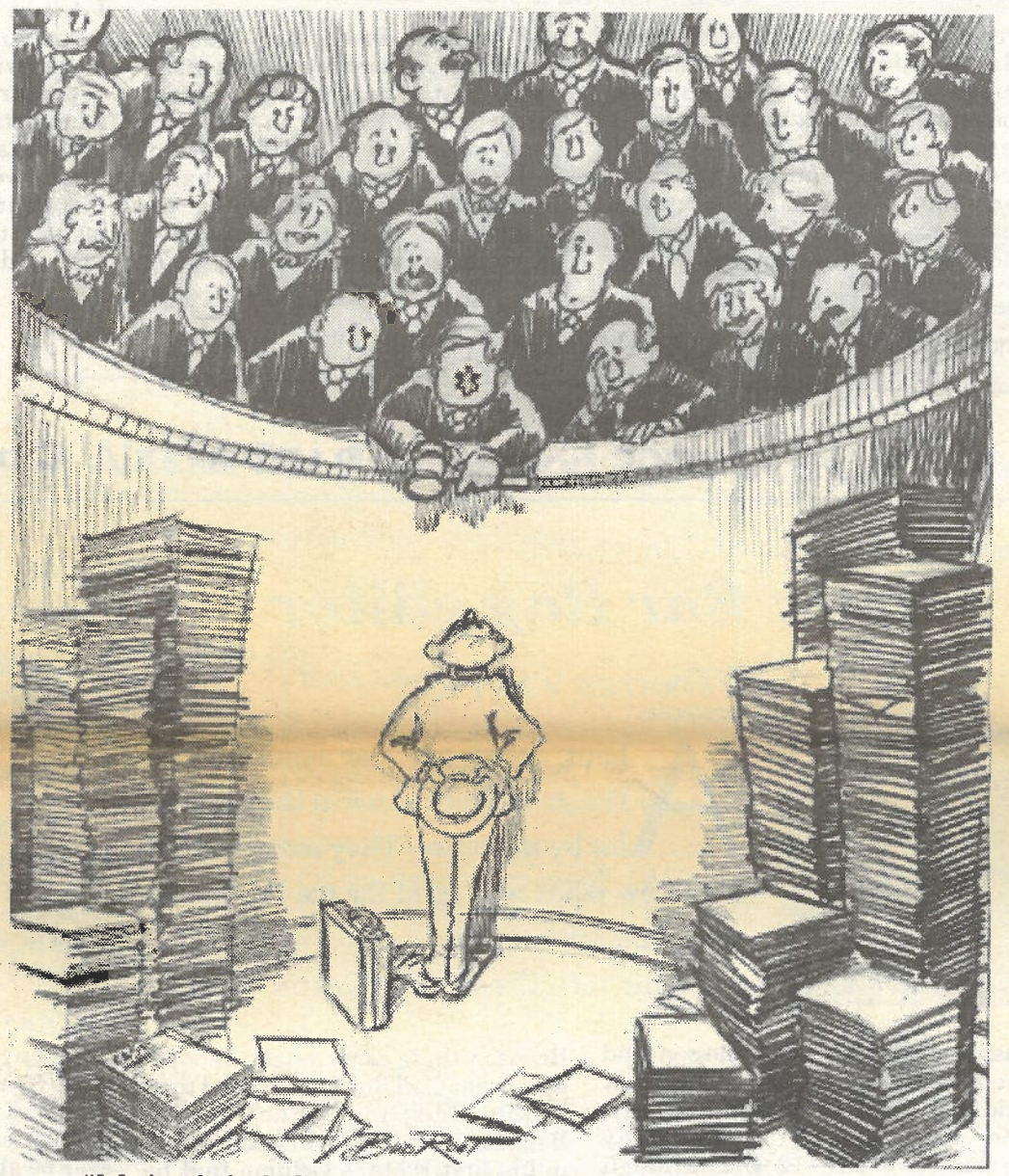

"Make it brief, counselor. Our docket's crowded."

U. S. High Court sees the last of hot type

By Tony Mauro

A notable part of the ritual of preparing and filing a Supreme Court brief is no more.

The Wilson-Epes Printing Co., the top-of-the-line firm that prints briefs for many of Washington, D.C.'s leading law firms, announced recently that, after nearly six decades, it was ending the hot-metal printing process that had become a signature of its products.

Company President Robert Dorsey says his was the last of the hot-metal legal brief printers in Washington, if not in the nation, before it finally went digital last month. The change means that Wilson-Epes will produce briefs faster and cheaper with a laser-type printing process, but certainly with less style.

Labor and equipment costs were factors in the company's decision to phase out the tradition, says Dorsey. But as he offered a glimpse of his aging Heidelberg printer and his decades-old linotype machines-all dusty and silent now — Dorsey also attributed the

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President's Column

Parting notes

☐ Kirsten Tinglum

NOTE 1:

The 2000 convention was a huge success in terms of member attendance and program quality and popularity. The two bar members most responsible for the relevance and excellence of the program were **Justice Dana Fabe** and **Judge Matt Jamin**. Both Justice Fabe and Judge Jamin devoted hours to convention committee meetings, to researching and contacting presenters, and to initiating the topics for some of the most successful seminars. Justice Fabe put together the Alaska Torts panel presentation and brought Professor Mauet to Alaska to present a comprehensive lesson on the hearsay rule. Judge Jamin introduced us to Professor Donohue and the Scientific Method, and engineered the panel presentation on Technology in the Courtroom. The technology presentation was particularly labor intensive as it involved organizing a number of diverse and skilled presenters, as well as coordinating the technology portion of the program itself.

The creativity, thought and labor that Justice Fabe and Judge Jamin donated to the convention resulted in engaging, lively and useful programs. Please join me in thanking them.

NOTE 2:

I failed to publicly thank my firm, **Ashburn & Mason**, for its donation to the Bar over the past year. My silence was due more to self-consciousness than oversight. I think I felt it would be somewhat self-congratulatory to proclaim that I work with the finest lawyers, secretaries, paralegal, legal administrator and legal receptionist in the State of Alaska. I was worried that it would sound pompous to say that their sincere willingness to have me devote hundreds of hours of my time and energy to serving the Bar (hours that otherwise would have served them directly) was a real gift to the Bar as a whole and should be an example to all small and medium-sized firms that don't think they can afford to donate that kind of time to the profession (although many do). And I probably wanted everyone to think that I had been Bar President all on my own, and did not get or need the support of a dozen other people to pull it off. But on second thought, I had better indulge in this last (official) act of self-congratulation, pomposity, and self-disclosure and thank **Mark Ashburn, Don McClintock, Bill Saupe, John McCarron, Bill Cummings, Donna McCready, Bonnie Folz, Debbie Traver, Paula Field, Debbie Botezatu, Sandra Webb, Karen Procter and Mary Hodsdon** for helping me, and for exemplifying the very best in our profession.

Kirsten Tinglum is immediate past president of The Alaska Bar now succeeded by Bruce B. Weyhrauch whose column will begin next issue.

Editor's Column

New *Bar Rag* editor

☐ Thomas Van Flein

About one week ago some hooded thugs confronted me in the parking lot by my office. They insisted that if I knew what was good for me I'd "better take that editor's job."

One of these hooligans looked suspiciously like Peter Maassen, and the monogram over his shirt pocket said "PM". In their haste to get away, one left behind a decidedly unattractive size 12 Bruno Magli shoe. The detectives assure me that they are still searching for the guys, but I figured it would be best to accept, just in case, and thus, I am the new Editor of the *Bar Rag*.

In looking back at who has held this job before me, I see that I have some big shoes to fill, including Peter Maassen's Bruno Maglis. In the beginning (long before Peter) there was the first Editor, John Abbott. Abbot said he published the first edition with "trepidation, enthusiasm and optimism."

But before John Abbot there was the word, and the word was Harry Branson (that's Judge Branson now). Credit for today's *Bar Rag* is given largely to Judge Branson. Judge Branson became the Editor and reigned for six years. According to one article, Judge Branson named it "The Bar Rag" after hearing John Reese (that's Judge Reese now) refer to the Rag's predecessor—The Bar Bulletin—in that fashion. Judge Branson initially promised to create a publication that "was read and worth reading." Based on his belief that lawyers and judges often took themselves too seriously, he also envisioned a paper that was in some respects more light-hearted than the typical legal publication. From Judge Branson there came James Bendell, who begat Gail Roy Fraties, and then Ralph Beistline (that's Judge Beistline now). Judge Beistline wrote in his first Editor's Column that he hoped to "build upon the hopes and dreams of the Bar Rag's progenitors, and to continue to improve upon what is already an excellent product." And for one brief shining year, there was Mike Schneider. And so it came to pass that the Bar Rag flourished.

Today I make the same promises those before me made, with the understanding, of course, that I won't be held to those promises—just like my predecessors. Peter Maassen advised me that the official motto of the Bar Rag, "Dignitas, Semper Dignitas" is matched by the unofficial motto: "You have to prove malice to establish libel, so there." I will keep this in mind.

I am starting my contribution to the Bar Rag with practical advice for those advising employers and drafting employment manuals. I take no credit for authoring this, as it made it to me through the Internet attached to an e-mail that said "ILOVEYOU." The true author or authors remain unknown, as they probably intended. I just hope it is not copyrighted:

REVISED EMPLOYMENT POLICIES:

SICK LEAVE: Don't even think about it. If you are able to go to the doctor, you are able to come to work.

SURGERY: Operations are prohibited. We hired you intact and intend to get all that we paid for. To have anything removed constitutes a breach of this agreement.

INTERNET GAMBLING: Using your work computer to place bets over the Internet is generally prohibited. Of course, in the event you win, your pay will be deducted by the amount of your winnings.

RETIREMENT PLAN: The Company will continue to deduct a significant percentage of your paycheck for your "retirement." If you seriously believe that you will ever be able to afford to quit this job and retire, however, you haven't been paying attention. Your money is sent to unknown market accounts and managed by people we have never met and know nothing about. As far as we can tell, there is a black hole near Wall Street where your money goes, and by the time you are 70 you will be lucky to see 10 cents on the dollar, but by then you will be too old to care.

BEREAVEMENT LEAVE: This is no excuse for missing work. There is nothing you can do for your dead friends, relatives or coworkers. You should have spent more time with them when they were alive, in any event, so long as it was not on company time. Every effort should be made to have non-employees attend to the arrangements.

YOUR OWN DEATH: This will be accepted as an excused absence. However, we require at least two weeks notice as it is your duty to train your replacement.

REST ROOM USE: Too much time is wasted in the restroom. There is now a strict 3-minute time limit in the stalls. At the end of three minutes, an alarm will sound, the toilet paper roll will retract, and the stall door will open.

PAYCHECK GUIDE: The accounting department spends far too much time answering questions about employment related paycheck deductions. The following guide has

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The Alaska BAR RAG

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

Bar Letters

Batters Up!?

I am writing to you as Commissioner of the Legal Softball League. During the past 15 years, law firms in Anchorage have come together during the summertime to play recreational softball in the League. The Legal League provides an opportunity for lawyers, staff and family members to get together once a week outside the every day stresses of a law firm. The League has always been a co-ed recreational league with its primary emphasis being fun.

Over the years, many firms, public agencies, and others associated with the legal community have fielded teams. Unfortunately, the pool of teams has dwindled over the years. Where we once had 25 or 30 teams participating, we are now down to only a handful. Last year, we had 14 teams, after starting the year with 16. This year, only 8 teams have signed. We need your help.

In years past, your firm might have fielded or sponsored a team. I would like at least 8 more teams to sign up this year. Our season will run 10 games starting May 15. We play Monday through Thursday nights only. We have a single elimination tournament at the end of the season where every team gets to play. Please contact me at your earliest convenience to let me know if you would like to provide a team this year, or know of someone else I should contact.

—Thomas A. Matthews

Applause for TVBA

The Christmas lights have been put in storage and the gifts are well used, but the generosity of the Tanana Valley Bar Association and its associated attorneys has not been forgotten.

The Rotary Club of College would like to thank the Tanana Valley Bar Association and other members of the legal community for their generous contributions to the 13th Annual Kid's Shopping Spree held on December 11, 1999 at the west Fairbanks Fred Meyer Store.

Through the support and generosity of the following organizations and individuals more than 80 children had the opportunity to shop for Christmas gifts for family members and friends: Tanana Valley Bar Association; Paul Barrett; Robin Barrett; Roger Brunner; Dave Burglin; William Caldwell; Cook, Schumann and Groseclose; James Doogan; the Public Defender's office; Clapp, Peterson and Stowers; Andrew Harrington; Richard Hompesch; Art Robson; Richard Savell; Schendell and Callahan; the Tillys; and Dan Winfree.

—Submitted by Charles Kaltenbach
Reprinted from the Fairbanks Daily News-Miner

Governor responds to Kott

In its recent edition, the *Bar Rag* ran a press release from mayoral candidate and state Rep. Pete Kott that misstates every pertinent fact about Gov. Tony Knowles' record of appointing women as judges. Please permit me to correct the record.

Gov. Knowles has had 20 opportunities to make judicial appointments, not 18 as Kott says. Of those, no female candidates were forwarded by the Judicial Council for the governor's consideration in nine instances. Obviously, the governor can't name women where none were forwarded for consideration. In the 11 instances where women's names were forwarded, the governor appointed women in four instances.

Gov. Knowles has appointed the first woman justice to the Alaska Supreme Court, the first woman judge in the First Judicial District and the first Asian American judge ever to serve in Alaska. Knowles has also named women as head of the Public Defender Agency and as Administrative Law Judge for the state, and has consistently named women to the Alaska Judicial Council and the Judicial Conduct Commission.

As a long-time women's rights activist, I find Rep. Kott's sudden interest in the cause to be heartwarming. However, I hope that the *Bar Rag* will check the facts prior to publication of releases like this in the future.

— Cindy Smith
Director, Boards and Commissions
Governor's Office

President's column appreciated

I want to take this opportunity to compliment you on the outstanding job you did as president of the Alaska Bar Association. I was particularly impressed with your columns in the Bar Rag. They addressed important and relevant issues in a refreshing, thoughtful, and articulate manner.

I know that people usually only take time to write letters to complain, but I wanted to make sure you know that your columns were read and appreciated.

—Suzanne Cherot

New editor

Continued from page 2

been prepared to help you understand these deductions:

Item	Amount
Gross pay	$1,222.02
Income tax	$244.40
Outgo tax	$45.21
State tax	$11.61
Interstate tax	$61.10
Municipal tax	$6.11
City tax	$12.22
Rural tax	$4.44
Back tax	$1.11
Front tax	$1.16
Side tax	$1.61
Up tax	$2.22
Tic-Tacs	$1.98
Thumbtacks	$3.93
Flat tax	$8.32
Surtax	$3.46
Corporate tax	$2.60
Parking fee	$5.00
F.I.C.A.	$81.88
T.G.I.F.	$9.95
Disability	$2.50
Ability	$0.25
Liability	$3.41
Unreliability	$10.99
Coffee	$6.85
Coffee Cups	$66.51
Floor rental	$16.85
Chair rental	$0.32
Desk rental	$4.32
Union dues	$5.85
Union don'ts	$3.77
Cash advance	$0.69
Cash retreats	$121.35
Overtime	$1.26
Undertime	$54.83
Eastern time	$9.00
Oxygen	$10.02
Water	$16.54
Heat	$51.42
Cool air	$26.83
Hot air	$20.00
Miscellaneous	$113.29
Sundry	$12.09
Various	$8.01
Net Take Home Pay	**$2.02**

ATTORNEY DISCIPLINE

Disciplinary Board reprimands attorney for neglect

The Disciplinary Board at its March meeting privately reprimanded Attorney X for neglecting a client matter.

Attorney X represented a client involved in a contentious child custody dispute. During the course of the representation, Attorney X experienced health problems that required medical care Outside. During a period of hospitalization and months-long recuperation, Attorney X failed to file responsive pleadings and attend a hearing, to the detriment of his client. Attorney X agreed to withdraw as counsel, but did little to assist his client during the transition.

After the client fired Attorney X, there was a dispute regarding fees. A fee arbitration was held, and Attorney X was ordered to refund money to his client. The fee arbitrators referred the matter to Bar Counsel pursuant to Alaska Bar Rule 40(q)(4). Following an investigation, Bar Counsel determined that Attorney X violated rules of professional conduct involving neglect, failure to communicate, failure to account to a client, and terminating representation. Based on mitigating factors that included medical problems, cooperative attitude toward disciplinary proceedings, absence of a selfish or dishonest motive, and a decision to retire from the practice of law, the Disciplinary Board agreed that a private reprimand was appropriate.

Attorney reprimanded for mismanaging trust account

The Board of Governors privately reprimanded Attorney X for negligently mismanaging his trust account. The Bar Association received complaints after two trust account checks bounced. The lawyer made the checks good but an audit by Bar Counsel disclosed a pattern of bookkeeping errors. Attorney X failed to accurately record some trust account transactions, kept track of others in his head, and made math errors. The lawyer did not benefit from his conduct. Bar Counsel concluded that the overdrafts were negligent, not knowing or intentional. Attorney X was a sole practitioner who was winding down his practice. He cooperated with the Bar's investigation and hired a bookkeeper to manage his trust account during the wind-down. Eventually he transferred to inactive status. In a stipulation approved by the Board, Attorney X agreed that if he applies for reinstatement to active status he will take the Multistate Professional Responsibility Examination and will take twelve hours of continuing legal education courses.

Money, *pro bono*, elections, & correspondence

☐ Arthur H. Peterson

MONEY:

The Alaska Legal Services Corporation's *1999/2000* "Partners in Justice" fundraising campaign, coordinated by Development Director Jim Minnery, has raised $197,500, statewide, as of our May 13 board of directors meeting. The goal was $200,000 in 2000. We're very close to the target.

The district numbers are, in round numbers: $26,000 from the First Judicial District; the combined Second and Fourth Judicial Districts produced $9,000,; and the Third Judicial District put in $162,000 (including some money from Lower-48 firms).

Two individuals gave more than $1,000, including $1,250 from Fairbanks Attorney Al Hooper; 10 individuals contributed $1,000 each; 32 were in the $500 through $999 range; 68 in the $300 through $499 range; and *185* in the $100 through $299 range. Nineteen law firms contributed $2,500 or more, with the largest being $10,000 from Rice, Volland & Taylor, P.C. The firm of Dillon and Findley, P.C. came in second, with $6,278.50. Eighteen firms contributed between $1,000 and $2,499, 17 contributed between $500 and $999 range, and nine firms contributed between $300 and $499.

Many businesses also contributed, including the following: Cook Inlet Region, Inc. ($7,000); Northwest Alaska Native Association ($5,000); National Bank of Alaska ($5,000); Alyeska Pipeline Service Co. ($3,500); British Petroleum ($2,000); ARCO Alaska ($1,500); and $500 each from Midnight Sun Court Reporters; Brady and Co.; Thomas, Head, & Greisen; and Fred's Bail Bonding. Every donation is greatly appreciated.

The Juneau Bar Association created a Memorial Fund, commemorating Dickerson Regan, the first attorney in the Juneau ALSC office (back in 1967). An outstanding and well-loved member of the Juneau Bar, Dick died last December. The fund will serve as a source of contributions to ALSC. This year, $1,500 is earmarked for that purpose.

Financial assistance from state and local governments remains mixed We anticipate receiving $65,000 from Juneau and $50,000 from Fairbanks. We lost, however, approximately $100,000 from Anchorage and $20,000 from the Ketchikan Borough. The North Slope Borough, which has funded our Barrow office, is experiencing fiscal difficulties, due to depreciation of the value of oil production property, and we stand to lose some of the funding for that office.

The state legislature appropriated $125,000, the amount requested by Governor Knowles. Congress funded $445,000 for attorney fees for three cases begun before the Congressional prohibition on seeking attorney fees was enacted.

President Clinton requested $340 million for the national Legal Services Corporation. The American Bar Association is recommending that this item be restored to the pre-FY 1996 level of $400 million. (Last year's appropriation was approximately $303 million.) Although Congress passed a budget resolution for FY 2001, requiring a $6.7 billion cut in discretionary domestic spending, the relevant subcommittees of the House and Senate Appropriations Committees have not, as of this writing (May 15), held their mark-up sessions on this item. One is scheduled in the House for May 23.

. . . THE ALSC BOARD HAS BEEN STUDYING THE POSSIBILITY OF CREATING A SEPARATE ORGANIZATION TO SERVE ALASKA'S INDIGENT IN THOSE CONGRESSIONALLY RESTRICTED AREAS.

PRO BONO:

In *Legal Aid Society of Hawaii v. Legal Services Corporation*, we challenged the Congressional restrictions on what LSC-funded programs could do. We lost this challenge, and the congressional limitations were upheld. As a result, the ALSC board has been studying the possibility of creating a separate organization to serve Alaska's indigent in those congressionally restricted areas. For more information, see my report on that case in the March/April 1997 Alaska *Bar Rag*. Working with the Alaska Bar Association, the *Pro Bono* Committee, other concerned organizations in Alaska, and advisors from the American Bar Association, ALSC's board formed the non-profit Alaska *Pro Bono* Program, Inc. We submitted a tentative plan to, and received approval from, the Legal Services Corporation. An application for exempt status under sec. 501 (c)(3) of the Internal Revenue Code is in the works. Subject to pending requests for funding, APBP, Inc., should be functioning by July 1.

The basic idea is to have this entity handle Alaska's pro bono program - both the restricted matters and the non-restricted ones. The anticipated first-year budget is $280,000 (including some one-time costs), funded primarily by IOLTA money. Bryan Timbers, of Nome; Loni Levy, of Anchorage; and Vance Sanders, of Juneau, are the initial board of directors, with the full ALSC board serving as the APBP board. Maria-Elena Walsh, currently ALSC's *pro bono* coordinator, will be the executive director. Loni plans to write a more detailed article on the APBP, Inc., for a future issue of the Alaska *Bar Rag*.

The APBP, Inc., board elected the following officers: Bryan Timbers, president; Vance Sanders, vice-president; and Lisa Rieger, of Anchorage, secretary/treasurer. In addition to the president, the executive committee members are Greg Razo Loni Levy; Vance Sanders; and me, of Juneau.

CONGRESSIONAL CORRESPONDENCE:

The last issue of the Alaska *Bar Rag* (March/April 2000) published a letter from Congressman Don Young. The letter referred to my article in the November/December 1999 issue of the Alaska *Bar Rag*, regarding Don's negative vote on the successful floor amendment in the U.S. House of Representatives raising the House's appropriation level for the LSC. Don had been given some poor advice, so I'd like to put his letter in context lest the comments in it be taken as gospel. So here's excerpts from our exchange of correspondence:

My June 8 1999 letter (edited somewhat for space) urged his support, as follows:

> Dear Don:
>
> In 1997, you voted for the conference committee report on the Conference, Justice, State bill containing an increase over the House version for the LSC. Last year, you voted on the House floor in favor of the successful amendment that increased the amount suggested by the House Appropriations Committee. I hope that we can count on your continued support. It's important.
>
> You know that Alaska has one of the most successful legal-aid programs in the country -- now in our 32nd year and serving over 4,000 people a year, but simply unable to serve all who need our help. There is no alternative access to justice for the poor people in our state. **Alaska and the LSQ need your continued support!**

Following Don's negative vote on the successful House floor amendment, I wrote to him on November 17, 1999:

> Dear Don:
>
> What happened?!
>
> I understand that you voted *against* last summer's successful floor amendment to increase to $250 million (from the House Appropriations Committee's suggested $141 million) the amount to be appropriated to the Legal Services Corporation. Last year you voted in favor of it.
>
> Many Republicans joined the Democrats and the Independent to support the 250 figure. The difference in those two dollar figures has a significant impact on your Alaskan constituency. Did the House leadership coerce you into that negative vote?
>
> Thanks for your attention The issue will very likely arise again next year.

Then the following was included in my "ALSC Report" in the November/December 1999 issue of the Alaska *Bar Rag:*

> Believe it or not, this summer Alaska's lone Congressman, Don Young, voted against the successful floor amendment in the U.S. House of Representatives that raised to $250 million the $141 million recommendation of the relevant subcommittee in the House! The vote was 242 in favor, obviously including many Republicans, and 178 opposed. President Clinton had requested $340 million, and the Senate had approved $300 million - the same amount that ended up in the Legal Services Corporation appropriation for the current fiscal year. He knows the great importance of this funding to his Alaskan constituency.

On February 8, 2000, I received the Congressman's January 12, 2000 reply to my last letter:

> Dear Mr Peterson:
>
> Thank you for contacting me to express your views concerning the funding of the Legal Services Corporation (LSC). I appreciate hearing your comments and concerns.
>
> Funding the Legal Services Corporation has developed into more than just an issue of providing money for the LSC to use for payment of legal services to the underprivileged citizens of the United States. In 1997, the LSC Inspector General found that the 1998 LSC fact book contained grossly inflated numbers for their total cases. John Mckay, the LSC President. was aware that the LSC was misrepresenting the true number of cases and he failed to contact Congress about this inaccuracy.
>
> As a result, the Inspector General closely examined the records for six LSC programs and discovered that only 80,235 of the 148,989 cases that the LSC reported were cases that actually existed Therefore, the House of Representatives reduced the fiscal year 2000 (FY2OOO) budget to only $141 million for LSC. The House of Representatives felt that this amount of funding was fair for the actual number of persons that the LSC really served. However, Representative Serrano of New York offered an amendment which passed without my support to increase the funding of the LSC to $250 million just prior to the House of Representatives passing H.R. 2670, the Commerce, Justice, State, and Judiciary Appropriation bill which contained the funding for the LSC.
>
> The conferees expressed great concern over the misrepresentations of the LSC's number of reported cases and statistical reports. However the committee appropriated $305 million for the LSC, which I supported on the floor of the House of Representatives. As the result of an across the board spending reduction, the LSC's final FY00 budget is $303.9 million, an increase from FY99.

And, on February 17, 2000, I received Don's February 3, 2000 letter to me, responding to my November/December "ALSC Report":

> Dear Constituent:
>
> In the November-December edition of The Alaska *Bar Rag* you ran an article criticizing my vote on funding for the Legal Services Corporation (LSC). I would like to clarify my position on the funding of the LSC.
>
> Funding the Legal Services Corporation has developed into more than just an issue of providing money for the LSC to use for payment of legal services to the underprivileged citizens of the United States. In 1997, the LSC Inspector General found that the 1998 LSC fact book contained grossly inflated numbers for their total cases. John Mckay, the LSC President, was aware that the LSC was misrepresenting the true number of cases and he failed to contact Congress about this inaccuracy.
>
> The President vetoed the House and Senate's conference committee's version of this legislation. Therefore, the LSC's funding was again re-examined by Congress. The conferees expressed great concern over the misrepresentations of the LSC's number of reported cases and statistical reports. However the committee appropriated $305 million for the LSC, which I supported on the floor of the House of Representatives. As the result of an across the board spending reduction, the LSC's final FY00 budget is $303.9 million, an increase from FY99.
>
> Be assured that I will continue to review the steps taken by the Legal Services Corporation to correct this misrepresentation.

Attempting to give Don some better information and better advice, I wrote the following on March 8, 2000:

> Dear Don:
>
> Thanks for your January 12, 2000 reply to my November 17, 1999 letter on this subject. (It reached my office February 8.) Also thanks for your February 3 "Dear Constituent" letter addressed to me at the Alaska Bar Association, regarding some comments in my "ALSC report" in the November/December 1999 *Alaska Bar Rag*.
>
> I appreciate your taking the time to respond. The substance of both of your letters is the same, with three of the five paragraphs of each letter being identical, so I will reply as though to a single letter from you.
>
> **I hope that you will find this letter helpful**. I believe that you are receiving some misleading information and poor advice back there, and I know that you want to keep the best interests of Alaskans

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Money, *pro bono*, elections, & congressional correspondence

Continued from page 4

in mind.

You say that "funding the Legal Services corporation has developed into more than just an issue of providing money for the LSC to use for payment of legal services to the underprivileged citizens of the United States." No, that purpose is *exactly* what the LSC funding serves. The 1997 report of the LSC Inspector General on erroneous case-reporting figures does not change the use to which that funding is put.

The **Alaska** LSC derives most of its budget from the national LSC. Drastic funding-cuts back in Washington have a major impact here. I know that you are familiar with the distance between communities here, our sparse population, the high percentage of low-income people in the bush, and the lack of legal assistance in those rural areas, Don, there is *no alternative* source of help for these people in our state.

You mention that the Inspector General examined the records for *six* LSC programs and found that more cases were reported than "actually existed." You need to keep in mind:

First, there are **more than 300 LSC-funded programs** across the nation, and it is grossly unfair to taint all of them with the errors of a tiny percentage. The six that were visited by the IG were checked because LSC management and the IG suspected errors in their reports. The LSC has taken aggressive action to improve the accuracy of its case statistical information.

Second, the "inflated" *case figures are not related to the money that a program receives.* The formula for allocating money to the many programs is based on poverty population, *not* number of cases. There is no "fraud" involved in those case figures. *The Inspector General has never suggested that fraud was present.*

Third, I understand that the inflation of the figures occurred because those programs were apparently counting all contacts, such as telephone inquiries, as "cases," and thus reporting them. With the procedures and guidelines clarified, the reporting has been corrected.

Fourth, NOTHING in either of your letters addresses the **Alaska** legal services program. Ours - statewide, in the nation's largest state, with the sparsest population and harshest conditions - has served as a model of how a program should operate. And the people served by our program *rely on that LSC funding!*

You mention that John McKay, the LSC president, "was aware that the LSC: was misrepresenting the true number of cases and he failed to contact Congress about this inaccuracy." Well, as you know, Mr. McKay is a good Republican, doing a fine job at the head or the LSC.

In that role, he uncovered the case service reporting problem through internal, self-initiated audits and took appropriate management actions. When LSC and the Inspector General had acquired enough information to have an accurate picture of the extent of the problem, they gave congress a full report. Then, LSC fully implemented recommendations of the General Accounting Office to improve the case service reporting system.

At the February 17, 2000 hearing on LSC's FY 2001 budget, even Rep. Tom Latham (R, IA), one LSC's harshest critics, praised LSC's progress, pronouncing himself "happy." All of this information should be available to you.

As we all know, certain members of Congress are trying to kill the LSC; some simply don't care about the fate of low-income people. The pattern of the President's budget request, the Senate's slightly lower approved amount, the House Appropriations committee's suggested very low amount, the successful House floor amendment raising the house's approved amount, and the conference Committee's final figure has been virtually identical for the past five fiscal years. The pattern was set before the IG's 1997 report, with the low figures merely reflecting the insistent position of some members of Congress - fortunately, for the people of this country, a minority.

Back here in Alaska, we appreciate your voting in favor of the Conference Report - the billion-dollar package that includes five massive spending measures, including funding for Department of Interior projects. But the LSC's 300 million is a tiny part of that package, and I hope that you will express your support for Legal Services Corporation funding earlier in the game.

LSC is one of the most effective and efficient programs in the government. It dispenses justice to millions of low-income Americans a at a cost of less than $7 per poor person. Its administrative costs are less than three percent of its budget. In Alaska, as elsewhere in the country, the staff, including the attorneys, work at salaries that are a fraction of what they could be earning in the private sector - because they are dedicated to the principle of helping the disadvantaged. How can we ask for anything greater?

Don, as I said above, I hope that you will find this letter helpful. I'm not trying to take you to task for a mistake. I'm trying to provide information and a perspective that you can use in the future, (And, by the way, you may call me "Art," as you used to do, since we've worked together or known each other for 33 years. I'm not sure when you started the more formal "Dear Mr. Peterson" or "Dear Constituent,' but that sort of salutation makes the letter look as though it did not have your full attention, and that perhaps you were relying on material supplied by certain individuals in the House leadership.)

LSC is in the budget again, with the President having requested $350 million, and some of your colleagues will no doubt try to reduce that amount again. So I trust that you will feel comfortable supporting the appropriation in its initial stages. Please help. And please repeat your 1998 *favorable* vote on the floor amendment (if the occasion arises).

Thanks.

In mid-May, congressional offices were flooded with anti-LSC postcards, and Young's office asked me to comment on them. For relevant statistics and information, I referred Don Young's staff to ALSC's Executive director Robert Hickerson, and, to follow up on the matter, sent Doug Salik of Don's staff the following:

Dear Doug:

Just wanted to confirm our phone conversations of April 3 and this morning, regarding those identical postcards that Rep. Young received, signed by individuals without any indication of the organization behind them. I understand that our Alaska LSC's executive director Robert Hickerson has provided you with the case information, etc. that you wanted.

Those cards sure are misleading. If providing legal assistance to a battered wife, or representing one of the parties in a divorce or a custody dispute, contributes to "break(ing) up an average of 200,000 marriages a year," then we're guilty. But, actually, that legal assistance *protects* children, spouses, and families, and is essential to providing justice.

The cards are also erroneous. They say that the LSC (meaning the LSC funding recipients) "defends drug dealers, child abusers, alcoholics and rapists." *No, we don't do criminal defense work.*

The cards conclude with the suggestion that LSC do "what it was created to do; namely, help poor people who can't afford to hire lawyers." That is *exactly* what LSC and its funding recipients do. And the card writer and signers expressly recognize the need for the LSC.

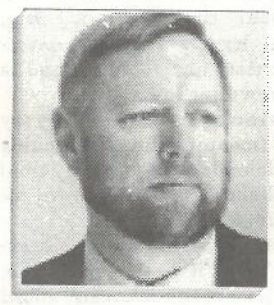
Thanks for passing along to Don this necessary information and for helping explain to him the need for federal funding for LSC.

So, that's the story. I trust that Congressman Young now has the information and advice he needs to support the necessary federal funding of the Legal Services Corporation.

GETTING TOGETHER

The practice of collaborative law

☐ Drew Peterson



For all you redneck attorneys out there who thought that restorative justice was the ultimate in touchy-feeley new-age legalspeak, I have found something even more out there for you this issue, namely the practice of collaborative law. (As you can see, I am starting to get off on this concept of confrontive journalism. What have Peter Maassen and Sally Suddock wrought?)[1]

About six years ago, I attended a conference of the Academy of Family Mediators in Minneapolis, which also happens to be my home town. At the conference I was introduced to a group of current Minneapolis lawyers who told me about this new legal practice concept they were implementing. It was called the collaborative practice of law. The concept had to do with pledging to resolve legal matters by collaborative means only, and actually withdrawing from a case if such methods were not working, or if the client decided to pursue a more traditionally adversarial approach.

The lawyers who told me about the concept were a pretty hippyish bunch, and there weren't very many of them, as far as I could tell. I thought the concept was interesting, but too far out there to make much headway in our adversarial legal world.

But now I find that the concept of collaborative law is going mainstream. Chip Rose has written a recent article about it which has been circulating through the mediator subscriber lists on the web. The article is located at the Conflict Resolution Resource Center's web site, namely at http://www.conflict-resolution.net/articles/rose.cfm?plain=t. Chip Rose is not a hippie lawyer at all, but a nationally known and respected family attorney and mediator from Santa Cruz, California.

Rose begins his article by asserting that collaborative law is the most profound development in the legal profession since the Pound Conference in the early 1970s, which many identify as the major precursor of the appropriate dispute resolution (ADR) movement. The collaborative law movement, he asserts, is such a new development that there is not yet even an agreed-upon nomenclature for describing it.

Rose defines collaborative law as an approach to dispute resolution in which the parties are represented by counsel of their own choosing; however, the attorneys are chosen because they belong to an identified group or association and have made a commitment to represent their clients in reaching a settlement without resorting to any form of litigation or any adjudicatory procedure. The role of the attorneys is to facilitate the development of a voluntary settlement without the threat or use of power. In contrast to the traditional role of attorneys in our system, Rose asserts, this is revolutionary.

THE COLLABORATIVE APPROACH BEGINS WITH A FOCUS ON THE NEEDS AND ISSUES OF THE CLIENTS AND KEEPS THEM CONNECTED TO THE PROCESS ALL THE WAY TO SETTLEMENT.

A variety of different models of collaborative law are being developed by professionals across the country, but certain common characteristics link then together. These include:

- A commitment to achieve settlement without the use of any form of litigation.
- The contractual obligation of the collaborative attorneys to withdraw from the case if any party chooses to abandon the collaborative approach.
- The focus on educating and empowering the client to become pro-active in all phases of the dispute resolution process, especially the settlement.

The pledge to withdraw if any party chooses to abandon the collaborative approach is a disincentive to any party who enters the process in bad faith. It is also a check against the tendency for attorneys to resort to their well-developed adversarial skills when the going gets tough.

Rose asserts that as attorneys gain the experience of completing a number of collaborative cases, they will acquire the same high level of skill, confidence and creativity that previously garnered them reputations in the field of litigation.

From the client's perspective, the process has a lot to offer. Above all else, the collaborative approach guarantees the clients control over the process of resolving the dispute, control over the cost of the process, and control over the outcome of the dispute. None of these guarantees is associated with the adjudicatory model of dispute resolution.

The collaborative approach begins with a focus on the needs and issues of the clients and keeps them connected to the process all the way to settlement. In contrast, the traditional legal approach uses the law as a justification for position-taking in the context of a competitive negotiation model. This competition in turn leads to a process based on strategic maneuvering that is the antitheses of cooperation and collaboration. Most of the pre-settlement procedures of litigation are primarily focused more on the role and activities of attorneys than of the clients. Predictably the clients feel separated from the process and disconnected from anything that they might do to bring about a resolution.

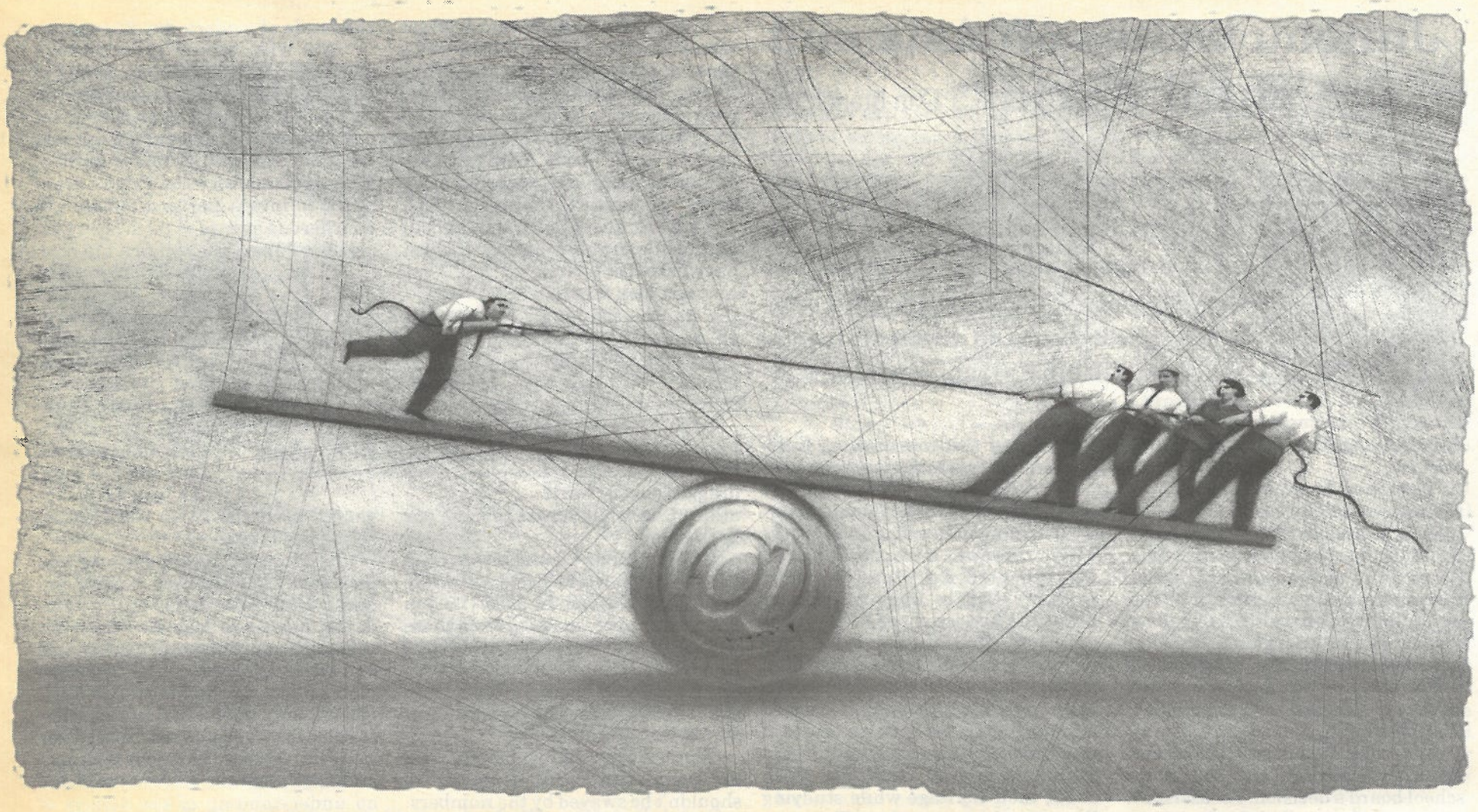
From the attorneys' perspective, the collaborative approach has the advantage of clearly defining the roles of the clients and counsel. The clients are responsible for the dispute, and it is their responsibility to make decisions on mutually acceptable outcomes that resolve the dispute. The attorneys are responsible for developing a process that allows the clients to accomplish those objectives in the most effective manner possible. It is the responsibility of the clients and not of the attorneys to resolve the dispute. This is a profound shift in the definition of the attorney-client relationship. The task of the attorney becomes more pragmatic, specific and constructive. Process tasks of the attorneys include:

- Identification of the clients' needs, interests and issues.
- Development of process rules, agendas and time lines.
- Identification and exchange of all relevant information and documents.
- Development of all possible solutions, not limited to legal remedies.
- Educating the clients on both sides of the issues, settlement possibilities, potential consequences of potential outcomes, and the needs and interests of all parties.
- Helping the parties develop settlement proposals addressing the greatest needs of each.
- Helping the parties negotiate settlement proposals based on a commitment to achieve mutually acceptable and beneficial outcomes.

Features that are attractive to attorneys interested in forming their own collaborative law groups and marketing this new approach to dispute resolution include:

- The frustration and futility of so may elements of the litigation approach. The stress and strain of the adversarial practice of law.
- The inability to focus on positive, constructive and creative solutions to problems in the context of the traditional litigation model.
- The client dissatisfaction that accompanies the traditional approach.
- The realization that the institutionalized procedures of litigation are not addressing the clients' needs nor are they providing a source of professional pride and satisfaction as much as they are creating stress and professional burnout. Rose points out that any individual attorney can apply collaborative practices to any case to good effect, regardless of the awareness of opposing counsel. The formation of a collaborative law group or association, however, creates the ability to promote and market the types of services and the kinds of skills that the consuming public wants from the legal profession. Any readers who are interested in meeting to discuss the formation of such a collaborative group in Alaska should contact this writer. I promise to put you in touch with each other, as well as to participate myself in the consideration of the formation of such a collaborative law group in Alaska.

[1] Ed note: Maassen & Suddock do not cop a plea for encouraging yellow journalism. That was Gail Roy Fraties. Dignitas, semper dignatas.



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Juneau writes off Asia and the Third World

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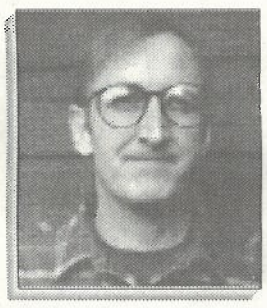


In late April of this year, the Juneau School Board conducted some intellectual budget cutting by eliminating the "world" from world history. The move came during a deliberation on whether to require students to take Western (European) Civilization Studies instead of World History.

The school board did the favor for the high school kids so they will only have to learn the history of Europe. No more messing about with Asia, Africa or South America. Think of all the intellectual space this will free up for important stuff. The egghead students were not forgotten. Students interested in the rest of the world will be able to use their elective hours to take a half-year course on one of the other civilizations.

Some of the school district professionals were a tad put out at the school board's decision. An assistant superintendent called the decision a quantum leap backwards—one towards a more ethnocentric view of the world. When the educators shared their negative thoughts, one of the school board members told them not to worry. After all, no one was ordering them to tell their students that the rest of the world doesn't exist. Besides, dropping the world from world history will free up class time for helping students look at European-America's historical roots.

While there are a bunch of Juneau students with European roots, a surprising number have family in places where the Euro is not legal tinder. My daughter, for example, would probably like to know something about the history of the lands of her ancestors. Half of them came from Japan. Most of the others came from Ireland. I've never seen a European history book which ever mentioned either country, except as a target of colonization. Kids with family in the Philippine Islands won't find much about their heritage while studying European history, either. The same can be said for African American, Native Alaskan, or Hispanic students.

Another school board member had a different explanation for ignoring the history of the most populated areas of the planet. He said that the proposed full-blown world history curriculum would focus too much on non-Western cultures.

I guess the school board forgot recent Alaskan history. There was a time, a governor or two ago, when Alaska educators were told to prepare children to be future citizens of the Pacific Rim. Kids were encouraged to learn about Asia and take Japanese language classes. Look East, to the future, they were told.

I haven't heard much lately about the Pacific Rim Revolution. It must have fizzled out. Now we must look West to the future—the land of domestic wine, fancy cars,and white people. That's how it looks in Juneau.

I THINK IT WAS HARRY TRUMAN WHO SAID THAT THOSE IGNORANT OF HISTORY ARE DOOMED TO REPEAT IT. WELL HARRY, HERE WE GO AGAIN.

After learning about the school board's decision, I dragged out our world atlas to see what we are turning our back upon.

The first thing I found is that most people in the world live somewhere other than Europe. In 1982 (Do you know how much an Atlas costs these days?) there were 2,724,900,000 people in Asia and only 666,400,000 in Europe. China, alone had 995,000,000 folks. The population of Africa was 490,300,000.

Since we're talking history and not population count, I guess we shouldn't be swayed by the numbers. How about historical accomplishments? In North Africa, some Moslem cities used gas lights to illuminate their streets while Europe suffered through the plague years in darkness and ignorance. Chinese people stretched the Great Wall 1500 miles across their county in the 3rd century B.C. In Egypt, the pharaohs built mathematically perfect pyramids while fierce bands wandered the lands of modern-day Europe.

My wife, whose grandparents came from Shikoku, Japan, points to the different hygiene approaches used by Europeans and the people they set out to colonize. For some reason, Imperial Europeans never bathed. This explains why the French were quick to invent perfume. When the odoriferous agents of civilization arrived in Japan, they were a tad ripe. The Japanese, who knew the great pleasure in bathing, took one sniff of the Europeans and named them barbarians. As ignorant of the Japanese language as they were of soap, the would-be invaders used the same word to describe the locals.

Ignorance brings arrogance and distrust. That has me worried because the Juneau Douglas High students, having to look elsewhere for information about world history, will end up as ignorant of the Southern Hemisphere as the Mario Brothers. It's unlikely they will find the information they need on the Internet or their TV. Unless they join a foreign exchange program, students will have no understanding of the history of our world.

I think it was Harry Truman who said that those ignorant of history are doomed to repeat it. Well Harry, here we go again.

Since most of you are attorneys, you'll be happy to know that the only member of the school board to vote against dissing the world was a lawyer.

Judge Karen L. Hunt to leave the bench

The woman dubbed the "teaching judge" for her educational outreach to the community is stepping down from the Alaska Superior Court bench. Judge Karen L. Hunt announced her retirement effective September 1 after 16 years in the judiciary.

Widely considered the "hardest working judge on the court" by her peers, Judge Hunt has been lauded for her innovations. Fellow jurist Milton Souter, recalls that while head of the criminal law division, Hunt initiated a weekly breakfast roundtable that included all the entities in the legal process. "I've never seen anything like it before or since," said Souter. "It was a continuing and concerted effort to develop good working relationships among the parties of the justice system such as the Department of Corrections, Public Defenders Office and Attorney General's staff."

Judge Hunt has been an instructor for the Civil Trial Advocacy Center at University of Puget Sound Law School. She coordinated the law course at the University of Alaska and is a featured lecturer in the "Masters in the Courtroom" videotape continuing legal education series. A frequent lecturer at legal conferences and colleges, she has made presentations in Alaska, Washington, Nevada, California, Washington D.C., Florida, Texas and Hawaii. She was one of four American judges invited to Russia to present seminars on the law of commercial transactions to judges of the Russian High Commercial Court. In addition she has served on the planning committee for a national conference on current sentencing patterns in the U.S.


Karen L. Hunt

Among her many civic activities, Judge Hunt is the only person to have served as president of the Anchorage Bar Association, the Alaska Bar Association and the Anchorage Association of Women Judges. Her resume lists a wide range of organizational leadership posts including Fellow of the American Bar Association, President of Commonwealth North, Trustee of Alaska Pacific University, and board member for Anchorage Arts Council, United Way, Soroptimists International, Anchorage Concert Association, Booth Memorial Home, Anchorage Opera and KAKM Public Television.

Judge Hunt was named one of the 25 most powerful people in Alaska in 1997 by the Journal of Commerce and Business. In 1992, Judge Hunt was honored as a YWCA Woman of Achievement. She received the Alaska Bar Association's Distinguished Service Award and the University of Nebraska's Outstanding Alumni Award.

As a former teacher and counselor in the Los Angeles public schools, Hunt authored two grammar texts, which are widely used to teach English as a second language. She hopes to continue combining her aptitude for teaching and her love of the law as she looks for new challenges in retirement.

— Joette Storm

Bar Election results

Board of Governors Run-off Election- 3rd District

Jonathon Katcher 276
John Treptow 251
Total votes cast:527 (there are 1, 685 members in the 3rd district)

1st District:
Brian Hanson, unoppposed

2nd & 4th District
Dan Winfree, unopposed

Public Member Seat
Anastasia Cooke Hoffman was appointed to the vacant public member seat by Governor Knowles. (There are 3 public members on the Board.)

Alaska Judicial Council
Robert Groseclose 74
Paul Ewers 33
Total votes cast:107 (there are 248 members in the 2/4 District)

The Board of Governors makes the attorney appointments to the Judicial Council based on the results of the advisory poll.

ABA Delegate
Lynn Allingham 136
Kevin Clarkson 70
Maryann Foley 196
Peter Gruenstein ..... 201 *(elected)
Total votes cast statewide:603 (there are 2,668 active members)

ALSC Board of Directors

3rd District: Lisa Rieger, unopposed for the regular seat
John Hedlund, unopposed for the alternate seat

2nd District: Bryan Timbers, unopposed for the regular seat

News from the Bar

Board of Governors takes action

At the Board of Governors meeting on May 15 & 16, 2000, the Board took the following action:

• Certified the results of the February Bar Exam. The pass rate of the 56 applicants was 57%; the pass rate of the 29 first time takers was 66%.

• Certified seven reciprocity applicants.

• Approved special accommodations for three applicants taking the July 2000 bar exam.

• Accepted a stipulation for disbarment in the matter of Dennis Bump, with the recommendation to the Supreme Court that the effective date be July 3, 1996, the date of his interim suspension.

• Voted down motions to increase the penalty for late payment of bar dues, and to increase the Rule 81 fee for Outside Counsel.

• Approved a grant of $7,500 to the Alaska Pro Bono Program for purpose of providing funding for attorneys to travel to remote Alaska locations to teach clinics to the public, and/or to train local attorneys to teach these clinics.

• A committee was appointed to determine whether the Bar should have a budget item for grants, how much it should be, and to make recommendations to the Board; Long, Bodwell, and Faulhaber were appointed to this subcommittee.

• Discussed the continuation of the New Lawyer Liaison position, and Weyhrauch will seek to appoint a Liaison from Southeast.

• Directed the CLE Director to review the Partners for Downtown Progress program for possible CLE credit, but to not otherwise provide financial sponsorship.

• Approved a stipulation for 2 year suspension, which will now go to the Supreme Court for consideration.

• Agreed to put on the August agenda the issue of auditing a lawyer's trust account if the member is suspended for nonpayment of bar dues.

• Voted to send a conditional admission rule (Bar Rule 5) to the Supreme Court; approved regulations pending the adoption of the rule.

• Voted to send Bar Rule 2(3) to the Supreme Court, which would provide that a graduate of a non-ABA accredited law school could take the Alaska Bar Exam if they have engaged in the practice of law for 5 of the 7 previous years, instead of just the previous 5 years.

• Voted to send a housekeeping rule change to Bar Rule 56 (Lawyers' Fund for Client Protection) to the Supreme Court.

• Voted to publish Bar Rule 29 on reinstatement, which would specify the burden of proof and deleting certain timeframes.

• Accepted a stipulation for a private reprimand with conditions.

• Voted to reimburse Peg Roston for her work as Trustee Counsel.

• Refered Jeff Friedman's concerns regarding certain IOLTA rules to the Alaska Rules of Professional Conduct committee.

• Voted to publish ARPC 1.5 (permitting an attorney to charge a contingent fee for a later modification of alimony or property division in a domestic relations case.)

• Appointed Bob Groseclose to the vacancy on the Judicial Council.

• Approved the March minutes as corrected.

• The Board discussed and took positions on resolutions.

• Voted to recommend the following slate of officers at the annual business meeting: President-elect – Mauri Long; Vice President – Lori Bodwell; Secretary – Brian Hanson; and Treasurer – Dan Winfree.

Op Ed

Ninth Circuit, Arctic to Mexico too big for true justice

By Senator Frank Murkowski

As Alaska's attorneys well know, the U.S. Ninth Circuit Court of Appeals extends from the Arctic Circle to the Mexican border, spans the tropics from Hawaii to Guam and the Northern Mariana Islands.

Encompassing some 14 million square miles, the Ninth Judicial Circuit, by any measure, is the largest of all U.S. Circuit Courts of Appeal — almost 60 percent larger than the next largest Circuit. The only factor more disturbing than its geographic magnitude is the magnitude of the Ninth Circuit's ever-expanding docket. It serves a population of 49 million people, well over a third more than the next largest circuit. In 1998, the Ninth Circuit had an astounding 9,450 new filings, more than 1,000 more than the next circuit.

By 2010, the Census Bureau estimates that the Ninth Circuit's population will be more than 63 million— a 29 percent increase in just a decade. This rise will inevitably create an even more daunting caseload.

For these reasons, and others, several of my colleagues have joined me in introducing two bills, which reform and modernize the Ninth Circuit. The intent of both bills is to effectively reduce the burden forced upon an overworked and overextended judiciary. Upon enactment, a more cohesive, efficient and predictable judiciary will emerge.

Legislation to split the Ninth Circuit is certainly not new. Since the day the Ninth Circuit was founded over a century ago, Congress has tinkered with the structure of the Circuit and debated its future. In 1866, Congress established the Ninth Circuit Court of Appeals consisting of California, Nevada and Oregon. Congress included Montana, Washington and Idaho when each gained Statehood. The present Ninth Circuit was completed by including Hawaii in 1911, Alaska in 1925, Arizona in 1929, Guam in 1951 and the Northern Marianas in 1977.

During that period Congress apparently thought a split was inevitable. Numerous proposals to divide the Circuit have been debated since before World War II. Federal efforts to split the Circuit restarted in 1983 when Sen. Slade Gorton, R-Wash., introduced a reorganization bill. In subsequent Congresses, similar bills attempted to reform the troubled circuit.

In 1995, the Senate Judiciary Committee reported a bill that declared the time for a split had definitely arrived: "The legislative history, in conjunction with available statistics and research concerning the Ninth Circuit, provides an ample record for an informed decision... Upon careful consideration, the time has indeed come," wrote the Judiciary Committee in its report. Congress has not been alone in advocating a split.

BY 2010, THE CENSUS BUREAU ESTIMATES THAT THE NINTH CIRCUIT'S POPULATION WILL BE MORE THAN 63 MILLION

In 1973, the Congressional Commission on the Revision of the Federal Court of Appellate System Commission, commonly known as the Hruska Commission, recommended that the Circuit be divided. That year, the American Bar Association also adopted a resolution supporting the division. (It wasn't until 1990 that the ABA returned to "neutrality" on the issue). The Hruska Commission's recommendations were never adopted since they were controversial—calling for splitting the State of California between Circuits. Instead of that radical approach, Congress, in 1978, created en banc proceedings inside the Circuit in an effort to streamline the Circuit's docket. In 1990, the U.S. Department of Justice seemingly acknowledged that the effort had not worked when it endorsed legislation to split the Circuit. In April 1997, Supreme Court Justice Anthony J. Kennedy (a former member of the Ninth Circuit for twelve years), testified before the Senate Appropriations subcommittee that he had "increasing doubts about the wisdom of retaining (the Circuit's) current size." The problem with size is multi-faceted. As a circuit grows and its caseload rises, you have an increase in the time it takes to get a hearing or ruling from the courts. If it is a truism that justice delayed is justice denied, then the Ninth Circuit's current workings are a travesty. Statistics during the 1990s showed the Circuit to be the second slowest in the nation from the time of filing to final disposition. Additionally, with such massive size, there is a natural decrease in the ability of judges to keep abreast of legal developments from within the Ninth Circuit. Inconsistent decisions and improper constitutional and statutory interpretations are not unusual. Justice is not served. Ninth Circuit Judge Diramuid O'Scannlain has said: "An appellate court must function as a unified body; and it must speak with a unified voice. It must maintain and shape a coherent body of law. ... In short, bigger is not better." Alaska's Ninth Circuit Judge Andrew Kleinfield agrees: "With so many judges on the Ninth Circuit and so many cases, there is no way a judge can read all (the) other judges' opinions... It's an impossibility." The problem of consistency has shown itself in a variety of ways. While the Ninth Circuit's reversal rate improved somewhat in 1999, the Circuit still has an appallingly high reversal rate by the U.S. Supreme Court. From 1990 to 1995, the Ninth Circuit's average rate of reversal was higher than any other circuit. During that period the High Court overturned 83 percent of the Circuit's decisions — 30 percent higher than the national average. In 1997, the reversal rate reached an astounding 95 percent, representing a third of all Supreme Court reversals between 1997 and 1999. Let's not forget what all of these reversals are. These represent people — people who had their cases wrongly decided. They are people who had to incur great expense, face unnecessary delay, and risk adverse legal rulings in order to receive justice.

STATISTICS DURING THE 1990S SHOWED THE CIRCUIT TO BE THE SECOND SLOWEST IN THE NATION FROM THE TIME OF FILING TO FINAL DISPOSITION.

Law is not created in a vacuum. At its best, judicial equity stems from a judiciary that is historically, economically, culturally and philosophically united. How can the Ninth Circuit develop such unity given its geographical breath? The uniqueness of the Northwest, in particular Alaska, can't be overstated. An effective appellate process demands mastery of state law and state issues relative to the land mass, population, and cultures that are unique to the region. Presently California is responsible for 60 percent of the appellate Circuit's filings, which means that California judges and California judicial philosophy dominate judicial decisions. The need for greater regional representation is demonstrated by the fact that the East Coast is comprised of five federal circuits. A greater division of the Ninth Circuit will enable judges, lawyers and parties to master a more manageable and predictable universe of relevant case law. A third problem is administrative. The Circuit's travel expenses are the largest in the federal system. And these costs are not just a problem for government. Plaintiffs and defendants also face delays and higher travel and attorney costs as a result of the Circuit's huge size. In 1997, I introduced legislation to simply create a new Twelfth Circuit to be comprised of Alaska, Washington, Oregon, Idaho and Montana. That was strongly opposed by the California Congressional delegation that argued a new study was needed into the wisdom of splitting the Circuit. I agreed to one more review of the issue and former Supreme Court Justice Byron R. White was selected to lead a new review of the Ninth Circuit's problems. In late 1998 the White Commission highlighted all of the concerns expressed above, but stopped short of recommending creation of a new circuit. The commission proposed, instead, that three regional administrative divisions be created within the Ninth Circuit, so that a majority of judges from a given region would decide cases from their regions — a concept that would have brought about the greater geographical and philosophical consistency that I seek. In an effort to accommodate Californians I changed my 1997 legislation and introduced a bill (S. 253) to almost exactly mirror the White Commission recommendations. Unfortunately, Californians have opposed even that measure, arguing that no changes are needed in the Ninth Circuit's machinery. In light of such intransigence I have returned to a concept similar to my original bill. In March of this year, joined by Senator Orrin Hatch, the chairman of the Senate Judiciary Committee, and four other Senators: Larry Craig, R-Idaho; Mike Crapo, R-Idaho; Gordon Smith, R Oregon; and James Inhofe, R-Okla., I in introduced a simplified bill (S. 2184) to split the existing circuit moving Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam and the Northern Mariana Islands into a new Twelfth Circuit, while leaving all of California, Arizona and Nevada in a southern Ninth Circuit, whose headquarters would remain in San Francisco. Some critics of revamping the Ninth Circuit have discounted the effort on two grounds. They argue that those of us who want to revamp the Circuit simply want to "punish" it because of its unrepresentative rulings. While it is true that I would like to see Alaska-based appeals decided by judges with greater knowledge of Alaska, I really just want to see the law — as interpreted by the U.S. Supreme Court — applied uniformly nationwide. Given the Ninth Circuit's reversal rate, there is a problem in either knowledge or philosophy that can't be denied. And critics sometimes have argued there is nothing wrong with the Ninth Circuit that more judges and money can't fix. But as early as 1954, Supreme Court Justice Felix Frankfurter warned that the circuit's growing business could not "be met by a steady increase in the number of federal judges" because this increase was "bound to depreciate the quality of the federal judiciary and thereby adversely affect the whole system." I believe his words have been prophetic. The new Circuit will result in an appellant panel that will honor Congress' original intent in establishing appellate court boundaries that respect and reflect a regional identity. It will help to foster uniform, coherent and efficient development and application of federal law. And it will not adversely affect Californians in any way. All the new system will do is permit the creation of a Circuit that will respect the historic, cultural, travel connections and legal/business ties of Alaskans. Justice has been delayed in the West for too long. It is time for reform to come and there is no earthly reason for Congress to delay a just reform bill any longer.

THERE IS NO EARTHLY REASON FOR CONGRESS TO DELAY A JUST REFORM BILL ANY LONGER.

"White Commission" excerpted findings

Another view of the Ninth Circuit

Alaska Sen. Frank Murkowski has revived the movement to reform the Ninth Circuit Court of Appeals, introducing legislation to split the circuit from California. (*See* Murkowski's op-ed article opposite.)

Another view of the Ninth circuit is found in the final report of the Commission on Structural Alternatives for the Federal Courts of Appeals, which investigated the organization of the Ninth and other circuits under compromise reorganization legislation approved by Congress in 1997. Chaired by retired Supreme Court Justice Byron R. White, the commission's membership also included Judge Gilbert S. Merritt, of the 6th Circuit; Judge Pamela Ann Rymer, of the Ninth circuit; Judge William D. Browning, of Arizona; and attorney N. Lee Cooper.

The final report of the commission, which ceased operations in March of last year, can be found at http://www.comm.uscourt.gov. Excerpts from its findings and recommendations offer another view of the wisdom of reorganizing the Ninth Circuit and its Court of Appeals, which today has 28 authorized appeals judgeships. As of 1998, the Ninth Circuit also had authorized positions for 99 district judgeships, 68 bankruptcy judgeships, and 96 magistrate judgeships—some of which were vacant or part-time positions. And 6-8 attorneys serve as mediators for civil appeals (settling, on average, 600 cases annually without the requirement of judicial attention).

The commission found that appeals judges sit regularly in San Francisco, Seattle, Portland, and Pasadena, with additional en banc proceedings scheduled twice a year in Honolulu and once annually in Anchorage. Each court of appeals judge handling an average of 288 cases in his or her annual rotation.

In brief, the commission recommended against splitting the Ninth Circuit, but, instead, recommended that the federal court system be allowed to create divisions within circuits when factors are appropriate.

Its key structural recommendations:

NINTH CIRCUIT

• Splitting the Ninth Circuit itself would be impractical and is unnecessary. As an administrative entity, the circuit should be preserved without statutory change.

• The circuit's court of appeals should continue to provide the West a single body of federal decisional law. To improve the consistency and coherence of that court's decisions, however, Congress should restructure it into smaller, regionally based divisions—adjudicative divisions—each division to decide appeals arising within its region.

• Each regional division should have from 7 to 11 active circuit judges. A majority should reside in the division, but some should serve for a term in a division other than where they reside to enhance interdivisional consistency.

• Each regional division should perform an en banc function as if it were a court of appeals. The circuit-wide en banc process should be abolished.

• A "Circuit Division," with 13 judges from all regional divisions, serving for limited terms in addition to their regular assignments, should resolve conflicts between the regional divisions.

• Recourse from decisions of regional divisions, except when the Circuit Division exercises its discretion to resolve interdivisional conflicts, and from Circuit Division decisions, should be to the Supreme Court.

CIRCUITS AND COURTS OF APPEALS IN GENERAL

• Although other courts of appeals may become large enough to require restructuring, circuit-splitting as a means to that end will rarely be feasible without extensive and undesirable circuit reconfiguration.

• To avoid the costs and disruptions of creating new circuits, Congress should authorize courts with more than 15 judgeships to restructure themselves into smaller adjudicative divisions.

• The need to restructure will vary among the circuits, but as courts reach 18 to 20 judgeships, the need for restructuring becomes especially compelling, in order to maintain consistency and coherence.

IN BRIEF, THE COMMISSION RECOMMENDED AGAINST SPLITTING THE NINTH CIRCUIT, BUT, INSTEAD, RECOMMENDED THAT THE FEDERAL COURT SYSTEM BE ALLOWED TO CREATE DIVISIONS WITHIN CIRCUITS WHEN FACTORS ARE APPROPRIATE.

The White Commission's final report discussed at length the arguments and implications for splitting the Ninth Circuit. The following are excerpts from this discussion:

With respect to the Ninth Circuit, we conclude that circuit realignment is not indicated, but that restructuring of the court of appeals is. Circuits do not decide cases; they are administrative, not adjudicative, entities with responsibilities for governance that are broader than—and have little to do with—the court of appeals itself. There is no persuasive evidence that the Ninth Circuit (or any other circuit, for that matter) is not working effectively, or that creating new circuits will improve the administration of justice in any circuit or overall. Furthermore, splitting the circuit would impose substantial costs of administrative disruption, not to mention the monetary costs of creating a new circuit.

Accordingly, we do not recommend to Congress and the President that they consider legislation to split the circuit. Nevertheless, there is consensus among appellate judges throughout the country (including about one-third of the appellate judges in the Ninth Circuit) that a court of appeals, being a court whose members must work collegially over time to develop a consistent and coherent body of law, functions more effectively with fewer judges than are currently authorized for the Ninth Circuit Court of Appeals.

In our opinion, apparently shared by more than two-thirds of all federal appellate judges, the maximum number of judges for an effective appellate court functioning as a single decisional unit is somewhere between 11 and 17. Decisional units of this size have a number of advantages. Judges can monitor the law more easily because they are responsible for monitoring fewer decisions. Smaller units may circulate for-publication opinions among all judges for whom the opinion speaks, thereby reducing inadvertent inconsistency and providing a way to address substantive conflicts or disagreements before they cause confusion or generate more litigation.

Such units may also more readily take cases en banc that do create inconsistency, or that seem wrong to a majority of the judges, thereby leading to more coherent and predictable law that provides sound guidance to lawyers and judges who are governed by it. Further, because judges who serve on decisional units of this size can sit together more frequently than is possible on larger courts, they are better able to hold each other accountable and to be accountable as a court. The bar, in turn, can better keep abreast of current law declared by a small number of judges serving in fewer panel combinations.

....

Since the court of appeals is distinct from the circuit, the court of appeals can be restructured—by creating adjudicative divisions—without splitting the circuit. Accordingly, we recommend legislation to direct the Court of Appeals for the Ninth Circuit to organize itself into regionally based adjudicative divisions and a Circuit Division for conflict correction.

The commission also responded to what it called the "debate over splitting the Circuit and its Court of Appeals," based on a focus of five arguments in the issue:

The debate over whether to split the Ninth Circuit involves numerous claims and counterclaims, almost all of which are about the court of appeals. They concern the effects of the size of the court of appeals, its geographic jurisdiction, and the court's place within the federal appellate system. We have given serious consideration to all of these arguments. We summarize the major issues below but do not dissect the arguments in detail because all of the claims and counterclaims are readily available in the literature we reviewed.

SINCE THE COURT OF APPEALS IS DISTINCT FROM THE CIRCUIT, THE COURT OF APPEALS CAN BE RESTRUCTURED--BY CREATING ADJUDICATIVE DIVISIONS--WITHOUT SPLITTING THE CIRCUIT.

...

a. The ability of the court of appeals to function effectively and timely. Proponents of a split assert that a court of 28 judgeships, plus senior judges, cannot decide cases in a timely fashion; they point to workload data showing that the Ninth Circuit ranks at or near the bottom in time from the filing of a case in the district court to the final disposition in the court of appeals. Split opponents respond that the court of appeals is among the fastest in the nation in disposition time once a case is argued or submitted to a panel, and attribute the court's overall slowness to its unfilled judgeships and resulting inability to assemble panels to hear cases ready for decision.

b. The ability of the court to produce a coherent body of circuit law. Those who favor a split assert that the multiplicity of decision makers renders it less likely that circuit judges can stay informed of the law that other panels are making, and that district judges, litigants, and parties seeking to conform their conduct to circuit law encounter more serious obstacles to assessing what that law is. The judges, they say, cannot keep up with the large volume of court of appeals decisions. Pre-publication circulation of opinions among all judges of the court is impossible. They claim an increased incidence of intracircuit conflicts because an appellate court as large as the Ninth's precludes close, regular, and frequent con-tact in joint decision making, and thus the collegiality that lets judges accommodate differences of opinion in order to produce a coherent body of law. They point to the over 3,000 possible combinations of three-judge panels on a 28-judge court. Those opposing a split respond that the court has developed a sophisticated issue-tracking system that allows judges to know when other panels are deciding like issues and an electronic opinion delivery system that allows judges to know the current law of the circuit when they are deciding cases. They say that any court with more than fifteen or sixteen judges produces a large number of three-judge panel combinations. They also assert that collegiality is an elusive concept and that counting panel combinations cannot measure the ability of judges in the late twentieth century to work together to fashion law. They note that the circuit's court of appeals judges have numerous opportunities to be with one another at meetings and symposia, and point to evidence of rancor and lack of collegiality on courts much smaller than the Ninth.

c. The ability of the court to perform its en banc function effectively. Proponents of a circuit split say that the court convenes en banc proceedings too infrequently, which helps explain the court of appeals' high reversal rate in the Supreme Court: A better en banc procedure would correct panel errors before they reach the Supreme Court. They also argue that the relative infrequency of en banc rehearings in the Ninth Circuit deprives judges and lawyers of sufficient guidance as to circuit law. Furthermore, split proponents argue that convening a different group of judges for each en banc proceeding frustrates the development of stable circuit law, and using a panel only slightly larger than a third of the court's full judgeship complement contravenes the very concept of an "en banc" court. Supporters of the court as currently structured say that its en banc process is efficient and effective. They note that very few en banc decisions are closely divided, so it is unlikely a full-court en banc would produce different results. They

Continued on page 12

Another view of the Ninth Circuit

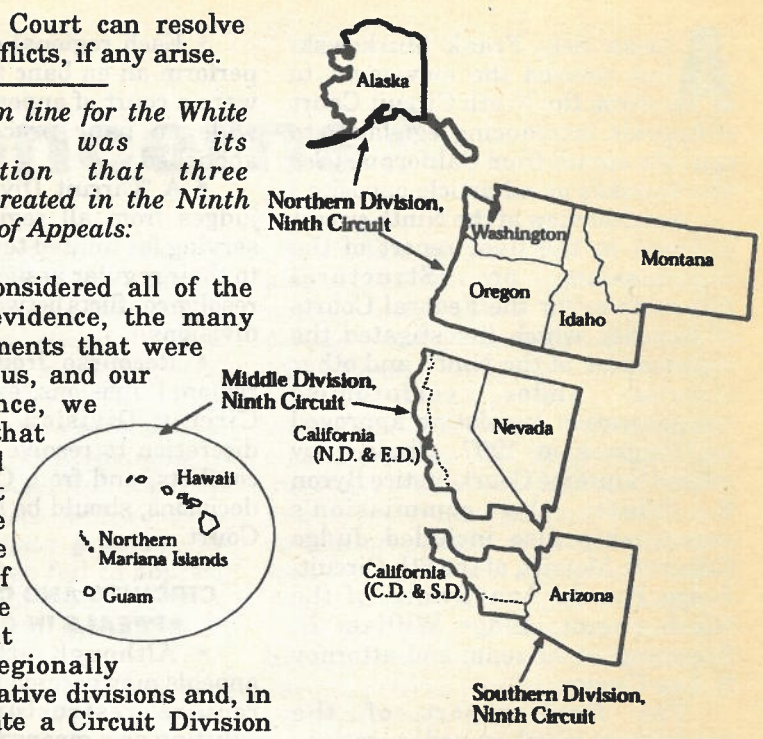
Continued from page 11

further assert that the Supreme Court takes cases from the Ninth Circuit in numbers roughly proportional to the circuit's share of the national appellate caseload, and that, over time, reversal rates have not been appreciably higher in Ninth Circuit cases than in others. They also say that to the extent the Supreme Court reverses the Ninth Circuit's Court of Appeals more than others, that is largely because novel issues arise in the diverse regions of the West that the court serves.

d. The implications of the size of the court's geographic jurisdiction for federalism, regionalism, and effective court operations. Those who would realign the circuit say that its size means that citizens of the West perceive the federal appellate judiciary as a remote institution, unfamiliar with the problems and points of view of those citizens' identifiable regions. Citizens in the northwestern states claim that judges from other regions, especially California, decide cases involving their way of life with insufficient appreciation of the legal problems that way of life engenders. They also claim that the circuit's size allows a panel of three judges to determine the law for the vast region that makes up the circuit, without an effective en banc mechanism to act as a check on that power. Finally, they assert that the size of the circuit creates special travel problems for judges who live in more remote areas. Opponents of a circuit split assert that the West is indeed one region and that the federal law under which it operates should be determined by a single federal appellate court. They say it is especially important that federal law governing the transactions and litigation of Asian-Pacific and maritime businesses operating along the western seaboard should be interpreted by a single appellate court; only historic accident allocates the eastern seaboard and Gulf Coast to six circuits. They note furthermore that decisions to which Northwestern interests object are not necessarily the product of judges from non-Northwestern states. They state also that the burdens and expense of judges' travel within the Ninth Circuit are exaggerated, and that the court's established and growing technological capacity, including electronic mail and videoconferencing, will substantially reduce the need for travel in coming years.

e. The relationship between circuit reconfiguration and intercircuit conflicts. Opponents of circuit splitting say that creating another court of appeals in-creases the likelihood of intercircuit conflicts and the corresponding burden on the Supreme Court to resolve them. Furthermore, they argue that the nation must find some way other than circuit splitting to deal with problems of large courts of appeals, inasmuch as other courts will soon be as large as the Ninth is now. Splitting circuits will balkanize federal law. Proponents of circuit reconfiguration say that federal laws susceptible to conflicting interpretations will yield conflicts even among few appellate courts, and thirteen or fourteen regional circuits will not produce notably more intercircuit conflicts than twelve. Furthermore, they argue that intercircuit conflicts have been a less persistent and intolerable problem than asserted and note that the Supreme Court can resolve additional conflicts, if any arise.

The bottom line for the White Commission was its recommendation that three divisions be created in the Ninth Circuit.Court of Appeals:



Having considered all of the arguments, evidence, the many helpful statements that were submitted to us, and our own experience, we recommend that Congress and the President by statute restructure the Court of Appeals for the Ninth Circuit into three regionally based adjudicative divisions and, in addition, create a Circuit Division for conflict correction to resolve any conflicts that arise from different decisions of the three regional divisions...

....

We propose that the Ninth Circuit Court of Appeals be organized into the three regionally based adjudicative divisions, which would hear and decide all appeals from the district courts in the respective divisions:

1. Northern Division — Districts of Alaska, Idaho, Montana, Oregon, and Eastern and Western Washington

2. Middle Division — Districts of Northern and Eastern California, Guam, Hawaii, Nevada, and the Northern Mariana Islands

3. Southern Division — Districts of Arizona and Central and Southern California

Matters arising from sources other than the district courts (e.g., tax court decisions, review and enforcement of administrative agency matters that bypass the district courts) should be taken to the court of appeals and assigned to the division that would have jurisdiction over the matter if the division were a separate court of appeals. The circuit's current Bankruptcy Appellate Panel Service should remain in place, unaffected by the divisional structure. Appeals from a decision of a bankruptcy appellate panel would be taken to the division to which the appeal would be taken in the absence of a bankruptcy appellate panel.

Board of Governors invites comments

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

The amendment to Alaska Rule of Professional Conduct 1.5 would continue the ban on contingent fees to obtain a divorce or dissolution in the first instance and to obtain the initial award of alimony, child support or division of property. It would also ban contingent fees where a later modification of child support was sought. However, the amendment would permit an attorney to charge a contingent fee for a later modification of alimony or property division, thus making these services more available to clients unable to pay hourly or flat fees.

The amendment to **Alaska Bar Rule 29** would specify a clear and convincing standard of proof for an attorney seeking reinstatement. This is the same standard imposed on bar counsel in the formal hearing process under Bar Rule 22(e). The proposed amendment would also delete timeframe language from the rule with the exception of the 30 day report requirement for the area hearing committee after the hearing has been concluded. This is similar to the time frame imposed on hearing committees in the formal hearing process under Bar Rule 20(l).

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by August 1, 2000.

ARPC 1.5

PROPOSED AMENDMENT REGARDING FEES IN DOMESTIC RELATIONS MATTERS

(Additions italicized; deletions bracketed and capitalized)

Rule 1.5 Fees.

...

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon [THE SECURING OF A DIVORCE OR UPON THE ESTABLISHMENT OR MODIFICATION OF ALIMONY OR SUPPORT, OR PROPERTY SETTLEMENT IN LIEU THEREOF; OR]:

(a) the securing of a divorce or dissolution;

(b) the initial establishment of alimony, child support or division of property; or

(c) the later modification of child support.

(2) a contingent fee for representing a defendant in a criminal case.

...

Alaska Comment

The words "if apparent to the client" were deleted from Model Rule 1.5(a)(2). An attorney should be allowed to increase his or her fees if there is a likelihood that the representation will preclude other employment. This is true regardless of whether the likelihood is apparent to the client.

The Committee concluded that advice to the client concerning potential liability for costs, attorney's fees and other expenses should be specifically set out in the written fee agreement in order that the client might be fully informed.

In addition to the definition in Rule 9.1(b), the term "client" in this rule means any person or entity legally responsible to pay the fees for professional services rendered by a lawyer.

A contingent fee agreement is prohibited in domestic relations cases with regard to proceedings to initially establish alimony, child support, or property settlement because of a strong public policy not to discourage reconciliation between the parties. That prohibition continues with regard to any later proceedings to modify child support. Contingent fee arrangements are permitted in actions to modify alimony or property division, or to collect alimony or child support payments in default. The "reasonableness" requirement of subsection (a) should be strictly observed and enforced in any such contingency fee arrangement.

Comment

...

[A CONTINGENT FEE ARRANGEMENT IS PROHIBITED IN DOMESTIC RELATIONS CASES ONLY WITH REGARD TO PROCEEDINGS TO ESTABLISH OR MODIFY ALIMONY OR CHILD SUPPORT AND PROPERTY SETTLEMENT IN LIEU OF ALIMONY OR CHILD SUPPORT, AND NOT TO PROCEEDINGS INITIATED FOR THE COLLECTION OF AMOUNTS IN DEFAULT.]

...

BAR RULE 29

PROPOSED AMENDMENT SPECIFYING BURDEN OF PROOF AND DELETING CERTAIN TIMEFRAMES FOR REINSTATEMENT PROCEEDINGS

(Additions italicized; deletions bracketed and capitalized)

Rule 29. Reinstatement.

(a) **Order of Reinstatement.** An attorney who has been disbarred or suspended may not resume practice until reinstated by order of the Court. Interim suspension will end only in accordance with Rule 26.

(b) **Petitions for Reinstatement.** An attorney who seeks reinstatement will[, 60 DAYS PRIOR TO THE ENDING DATE OF THE SUSPENSION, OR 60 DAYS PRIOR TO THE DATE ON WHICH (S)HE SEEKS REINSTATEMENT, WHICHEVER COMES LATER,] file a verified petition for reinstatement with the Court, with a copy served upon the Director. In the petition, the attorney will

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

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

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

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

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

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

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

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

(2) [WITHIN 45 DAYS OF ITS RECEIPT OF THE HEARING COMMITTEE'S REPORT,] the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; the petition will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation [WITHIN 60 DAYS AFTER RECEIPT BY THE COURT OF THE BOARD'S RECOMMENDATION];

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

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

(d) **Oppositions to Automatic Reinstatement.** Within 10 days after the Respondent files a petition for reinstatement, Bar Counsel may file an opposition to automatic reinstatement with the Court and serve a copy upon the Board and the Petitioner. The opposition to automatic reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Bar Counsel believes demonstrate that the petitioner should not be reinstated.

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

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

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

EXHIBITORS

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

Annual Conve

ANCHORAGE, AL

Judge von der Heydt with his former law clerks.

Anchorage CPA Cheryl Bowers was the recipient of the the Alaska Bar Association Layperson Service Award. Ms. Bowers has served as a public member on both the Alaska Bar Association's Discipline Committee and the Fee Arbitration committee, including on the Fee Arbitration Executive Committee. Ms. Bowers owns her own CPA firm.

Presenta

Bar President Kirsten Ting
Judge von der Heydt com

Judges 1960 - 2000. Judge Fitzgerald, Justice Rabinowitz and Judge von der Heydt.

Technology in the Courtroom Panel. Tim Petumenos, Steve Bouch, Joyce Tsonga
O'Neill, US Magistrate Judge Matt Jamin, Ellen Tingley. Not pictured Karen Loeffle

Local Bar Presidents' Breakfast.

A filled to capacity ballroom listens to Professor Peter Arenella, UCLA Sc
Law and Professor Erwin Chemerinsky, USC Law Center.

Eric Croft and Chancy Croft.

Leroy Barker and wife Suzanne Barker with outgoing Bar President Kirsten Tinglum. (center)

Justice Rabinowitz and Justice Carpeneti.

tion Highlights

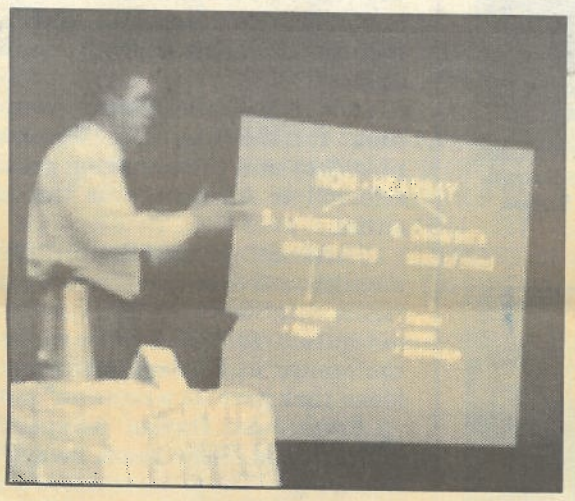
KA • MAY 17-19, 2000

n of Bar Gavels

esents gavels to Judge Fitzgerald and ating 40 years of service.

Outgoing President Kirsten Tinglum passes the gavel to in-coming President Bruce Weyhrauch of Juneau.

A West Group professional coaches a bar member on software.



Prof. Thomas Mauet discusses hearsay.

Tom Yerbich receives the award for Pro Bono Service by an individual, while Allison Mendel, recipient of the Pro Bono Award by a law firm, looks on.

Photos by Barbara Hood & Sally Suddock

Outgoing Bar Rag Editor Peter Maassen with daughter Lillian, foreground, and Board member Larry Ostrovsky.

Judge James & Karen Fitzgerald and family.

Judge James & Verna von der Heydt.

Supreme Court of the State of Alaska Community Outreach Award

Judge Karen Hunt with Chief Justice Matthews.

Judge Peter Ashman with Justice Matthews.

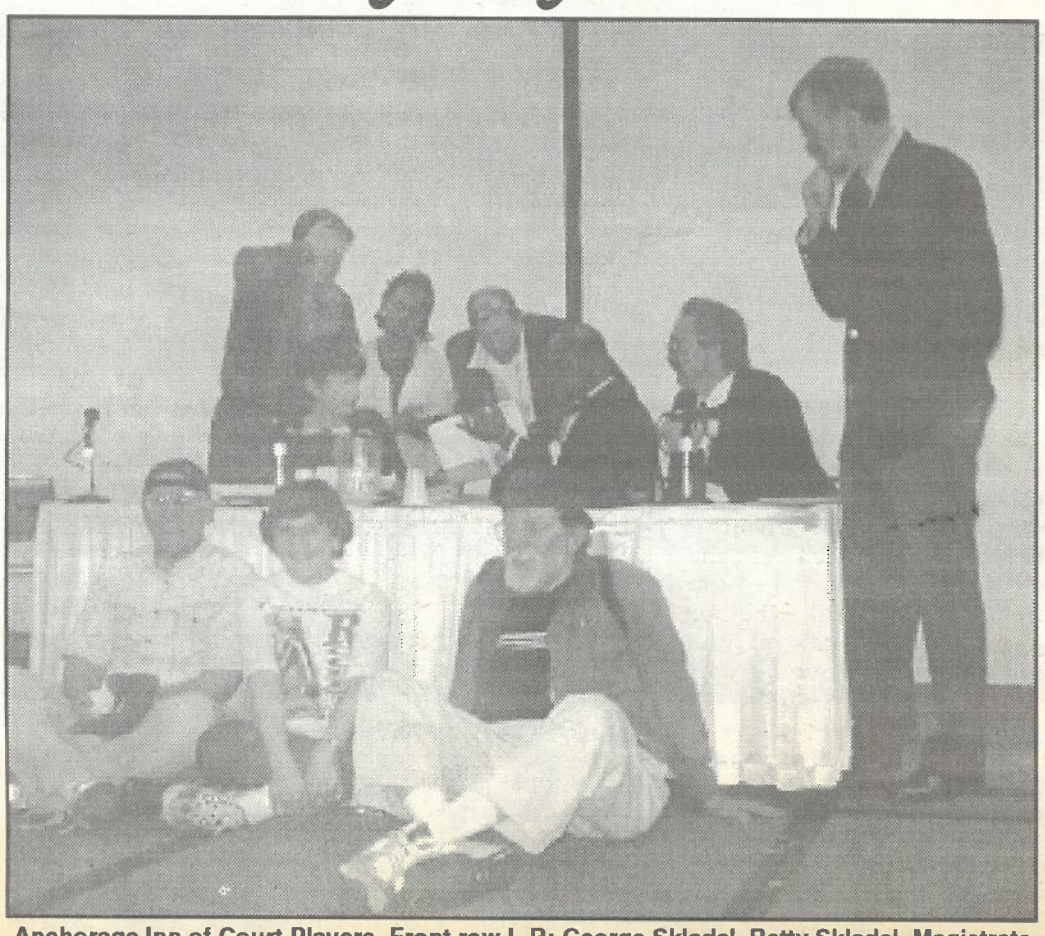
Partners for Downtown Progress Service Award

Judge James Wanamaker receives a plaque from Janet McCabe, Partners for Downtown Progress.

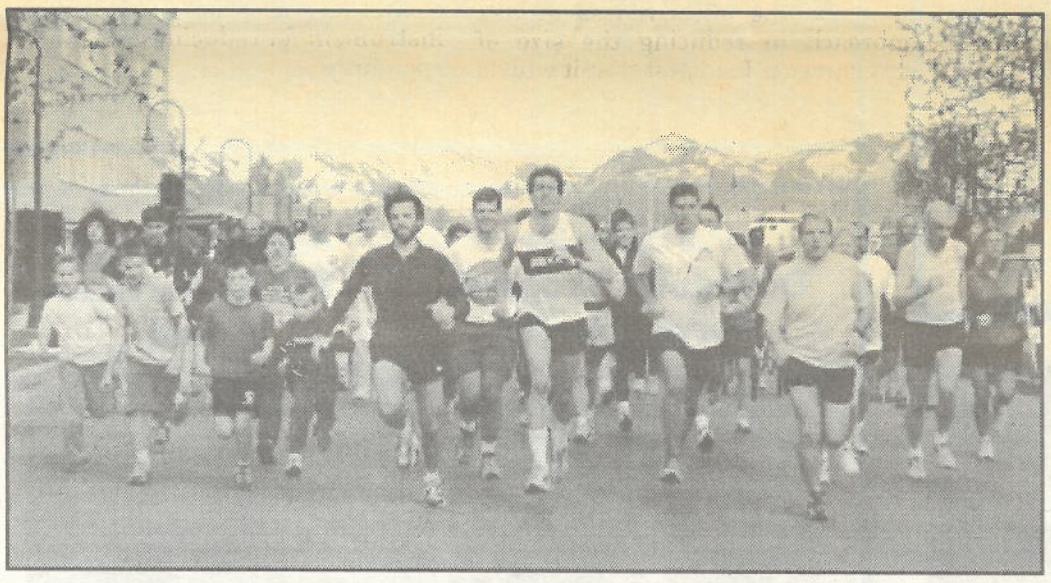
Anchorage Bar Public Service Award

Judge Sigurd Murphy receives a plaque from Michelle Boutin, President, Anchorage Bar Association.

2000 Alaska Bar Association *Annual Convention Highlights*

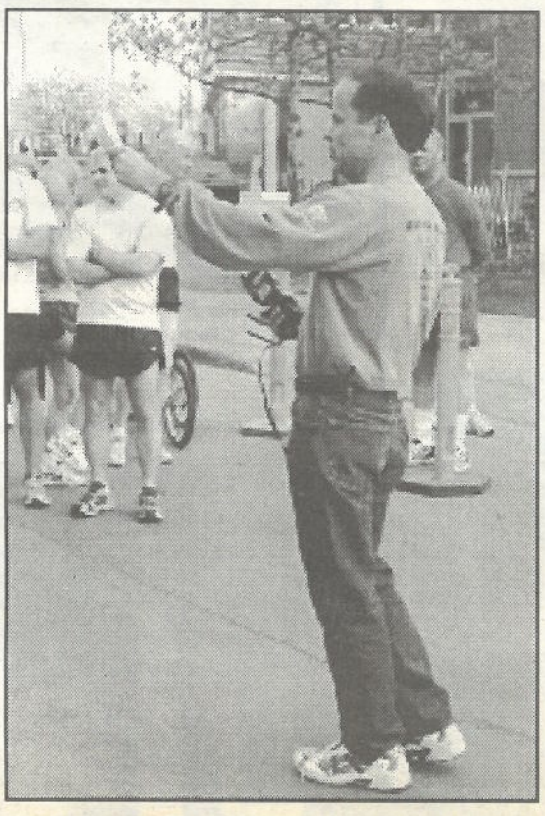


Anchorage Inn of Court Players. Front row L-R: George Skladal, Betty Skladal, Magistrate Judge Harry Branson. Back: Ted Sandberg, Marla Greenstein (seated) Stephanie Butler, Kevin Fitzgerald, Rex Butler (seated), Charlie Coe (seated), and Steve Van Goor.



Fun Runners charge photographer at race start.

Fun Run 5K



Race Director Tim Middleton instructs runners at Fun Run, sponsored by West Group.

Members exchange information

One of the features of the annual Alaska Bar Association convention is the opportunity for members of local bar associations to exchange information, tales, and challenges in their communities. This year, more than 10 cities and regions were represented at the bar presidents' breakfast at the Captain Cook Hotel, offering a round-robin portrait of the state of the local bars.

Over in Bethel, there's no formal bar association, says Chris Cooke, adding that he ascended to the informal presidency, well, kind of by accident, or acclimation, depending upon how you look at it. The challenge in the Yukon-Kuskokwim has been a crowded judicial calendar. Attorneys in the region see primarily family and criminal cases.

Up in Barrow, there are no private attorneys, says Mike Jeffery, adding that the North Slope region also has an unorganized bar association. "I'm kind of like Chris in Bethel, I just got to be the president." A superior court judge, Jeffery said the big news in 2000 is the coming move of the courthouse. He related what is both an interesting and disturbing informal statistical study that Barrow's leadership compiled, comparing nine months of the city's "dry" status with a subsequent, amended semi-wet ordinance that took effect last year. "Criminal activity is double," he said.

Readers of the Bar Rag over the last decade might notice the absence of the irreverent Tanana Valley Bar minutes that formerly left few good-natured insults unturned in Fairbanks. Congeniality has arrived in the Golden Heart City, says TVBA president Michelle McComb, who succeeded husband John Tiemessen in the post this year. "We haven't managed to insult anybody, and it took a lot of hard work to do that."

Added Michelle Boutin, president of the Anchorage bar, "note for the Bar Rag: We're sitting next to the TVBA president and getting along great." (No one from Fairbanks referred to Anchorage as the Mud Flats bar association, either.)

In Anchorage, said Boutin, the association plans to become more proactive in its outreach to minorities to increase their representation in the legal profession. The association sent a delegation to the American Bar Association president's conference in Chicago and emerged with "many excellent ideas that gave us a mission" outside of the organization."

From John Davies' perspective in the Mat-Su Valley, lawyering is "light years away from the practice of law in Anchorage." The past president of the bar there, he commented that "like Bethel, Barrow and Fairbanks, we refuse to organize, but we have a congenial contact among attorneys in the valley." When he arrived in the 1970s, he said, there were but three attorneys in Palmer and Wasilla. "Now we have 63 on our mailing list" from throughout the region. "Practice in the Mat-Su is dominated by alcohol and drug offenses and domestic violence matters—it is always hard to get a civil case through the court."

Kodiak's Alan Schmitt, who said he was "filling in for president-for-life Ben Hancock" during the bar convention, said 15 attorneys are living in town, with nine of them in active private practice. "I've been asked by our local convention bureau to bring a formal request to the bar to hold a convention in Kodiak," he said. "We have plenty of room, and we would welcome members of the bar at some time in the future."

That brought on Scott Brandt-Erichsen, the "under-secretary" of the Ketchikan Bar Association. "Our presidency is a divine right of succession," he said. "Chuck Cloudy was installed when the last one died, and he'll be there" for his lifetime. "We incorporated in 1999 because our accountant said we should for tax reasons—but we never see any treasurer's reports."

The KBA is preparing for the 2001 convention, and in the meantime, daily, lawyerly life proceeds in relaxed networking and discussion for morning coffee at the Cape Fox Hotel, where, recently, said Brandt-Erichsen, "I was on the winning side of a bet with Judge Crowe over the question of whether injunctive relief is available for presumptive defamation. " On Fridays at the Cape Fox, the KBA conducts bar business. In Ketchikan, he said, "the biggest complaint is summer tourists who swarm the town when the cruise ships dock—they just walk across the streets like Ketchikan is some kind of theme park."

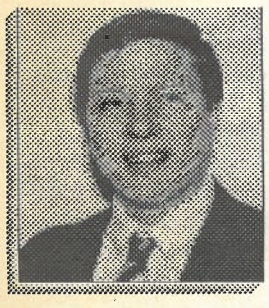
Sheri Hazeltine, president of the Juneau Bar Association, said the organization has about 100 members from among the 200 attorneys practicing in the state capital. "We also meet on Fridays, alternating between the Baranof Hotel and Second Course restaurant—and I have to add that I was up in Fairbanks recently and was astonished how polite everyone was to each other."

And finally, past Juneau bar president and incoming Alaska Bar Association President Bruce Weyhrauch commented at breakfast's end that "local bars should be given consideration and deference in the programs we consider at the state level; we should strive to stay connected."

THE PUBLIC LAWS

Tax limitations revisited

☐ Scott A. Brandt-Erichsen



At the recent Alaska Bar convention I found myself talking with the Bar Rag publisher. She reminded me that I have been somewhat remiss recently in submitting articles for the Bar Rag. I promised to try to do better in the future.

When I returned to my office, I perused my file of old Bar Rag articles and discovered that I have been repeating the same promise for some time. I was surprised to notice that I began writing articles in 1991, and consistently since 1996, have apologized for their infrequency. This self-evaluation process was not without its usefulness and amusement value. From time to time, I have made predictions, some of which have borne some relationship to reality, others of which were clearly wide of the mark. I also have to admit that I have revised my thinking on some of the issues which I have addressed in the past.

One of those predictions which has been closer to reality than most was the topic of the article which appeared last summer regarding the tax limitation initiative. For the uninitiated (pun intended) I refer to the proposal which will appear on the November ballot which will place a 10 mill limitation on the funds which could be generated by local property taxes levied by any given municipality. The proposal, patterned loosely after California's Proposition 13, which froze tax assessments as of the purchase date, would amend AS 29.45.110, AS 29.45.090(a) and AS 29.45.100. The substantive effect of the changes would restrict property tax assessments and limit total mill levies.

The assessed value of a piece of property would be fixed as of the date of purchase like the Proposition 13 scenario in California, but unlike the California model, the assessment may be increased at the rate of inflation up to a maximum rate of 2% per year. Property which is sold or improved could be reassessed at the new full and true value, but if the property remains under the same ownership, assessed value is subject to very limited increases.

The 10 mill maximum rate per municipality would apply not just to operating budget levies, but to taxes levied in order to pay bonds issued on or after January 1, 2001. Currently, the limit is 30 mills per municipality, and that is waived with respect to taxes levied to pay or secure payment of bonds. This waiver would be eliminated prospectively under the proposal, so it would not jeopardize existing bonded indebtedness.

In July of 1999, I predicted that this was the sort of proposal, which, "due to its visceral appeal to the pocketbook, is likely to gather significant public interest and therefore could stand a reasonable chance of garnering sufficient signatures for placement on the ballot." In the intervening year this has proven to be true. The petition was filed with the Lieutenant Governor on January 5, 2000, and contained well over the minimum required signatures. It was certified on January 26, 2000. The proposal will now appear on the November ballot.

A group has organized to campaign against the proposal, and another has formed to support the proposition. The campaign this fall should be interesting. I may be going out on a limb a little, but, based upon the permanent fund vote last year and the apparent impact of tax cut rhetoric on the recent Anchorage mayoral election, I would expect the proposition to pass.

Looking at numbers, the 10 mill limit applies per municipality. That means that each borough, and each city within a borough, could levy up to a 10 mill tax. This may restrict service area levies imposed by a borough because such levies would apparently count against the municipalities 10 mill limit. (Whether service areas are included is a *significant* issue).

A GROUP HAS ORGANIZED TO CAMPAIGN AGAINST THE PROPOSAL, AND ANOTHER HAS FORMED TO SUPPORT THE PROPOSITION. THE CAMPAIGN THIS FALL SHOULD BE INTERESTING.

Not every municipality would be affected. Anchorage, with a reported property tax levy of over 18 mills, would be affected. In the Bristol Bay Borough, the 10.25 mill levy is reasonably close to the limit. The Denali Borough has no property tax. The Fairbanks Borough tax of 16 mills would be impacted. The voter attitude there is unclear. Fairbanks, however, may have its hands full dealing with the question of dissolving the City of Fairbanks and creating a new borough service area. This development could further complicate the problem if the 6 mill city property tax and 16 mill borough property tax become consolidated under a single 10 mill limit.

The Haines Borough at 4.5 mills is unaffected. Even if the City of Haines and the Haines Borough are consolidated, the combined levy would be close to the 10 mill limit. Juneau, at 12 mills, is slightly over the limit. The Kenai Peninsula Borough at 8 mills is below the limit. The Cities of Kenai, Soldotna, and Homer would be below the limit. The Kodiak Island Borough at 9.25 mills is below the limit, as is the City of Kodiak at 2 mills. The Lake and Peninsula Borough has no property tax, the Matanuska-Susitna Borough with property tax of 12.5 mills would be over the limit. The Matanuska-Susitna Borough however, is also home to many of the most strongly tax averse Alaskans.

The North Slope Borough (18+ mills) and the City of Valdez (19+ mills) would both be significantly impacted both in the general mill levy for operating expenses, and in terms of limitations on bonding. Rural communities, which lie outside of organized boroughs and are not incorporated as home-rule cities, would be largely unaffected. Wrangell, with 12 mills, is one of the few which would be impacted.

Adding up the impacted electorate, in essence, it is limited to Anchorage, Fairbanks, Juneau, the North Slope, Valdez and the Matanuska-Susitna Borough. While this may represent about 2/3 to 3/4 of the voters, I am skeptical whether opponents of the initiative will prevail upon a sufficient majority in these communities to carry the day statewide. The ultimate result may find its way into the courts as a post-election challenge to the initiative. I will be watching with interest as the voters and municipal officials wrestle with this issue.

THE LONG AND SHORT OF IT IS I WOULD NOT EXPECT THE PROPOSITION TO MEANINGFULLY REDUCE LOCAL GOVERNMENT SPENDING. INSTEAD, IT MAY SIMPLY MAKE LOCAL FINANCE MORE COMPLICATED AND LESS EFFICIENT.

Among the issues debated will likely be the effectiveness of this approach in reducing the size of government. I suggest that it will do little to that end. On the one hand, if the Boroughs affected are able to convince a court that the "municipal levy" limit does not include service area levies, very few areas would be impacted. Anchorage, Juneau and others have 6-8 mills allocated for fire, roads and police service areas. If the service area levies are deducted, the limit is within relatively easy reach.

Even if this argument is unsuccessful, AS 29.35.470 authorizes the financing of service areas through "taxes, *charges* or *assessments*..." (Emphasis added). Thus, the efficiency of a tax lien may simply be traded for the cumbersome process of billing for fees and bringing suits for collection of fees. (For Anchorage, this may also require a charter amendment).

The long and short of it is I would not expect the proposition to meaningfully reduce local government spending. Instead, it may simply make local finance more complicated and less efficient. The best way to control government spending, whether for increases or decreases, is another of the options at the ballot box each year, election of those candidates who will manage public affairs in the manner desired by the voters. The property tax limitation proposal is a blunt instrument for reducing government spending.

ALSA hosts annual education conference

The Anchorage Legal Secretaries Association ("ALSA") will host the NALS Region 7 Annual Education Conference on July 14 and 15, 2000 at Hawthorn Suites Hotel.

Regional conferences are held in different locations throughout the region each year. Region 7 consists of Alaska, Washington, Oregon, Idaho, Montana and Wyoming. NALS is a national nonprofit organization dedicated to enhancing the competencies and contributions of members in the legal services profession. This is a first-time trip to Anchorage for many registrants.

Two simultaneous sessions will be presented, offering CLE credit to paralegals, attorneys, secretaries and administrators. Excellent local educators will cover topics including technology, internet, desktop publishing, court procedures, managing stress, techniques for staying organized, word processing for higher productivity, proofreading documents, cyber-security, and professionalism. There will be an in-depth session regarding Federal Rules of Civil Procedure, including filing documents electronically in federal courts. Details on CLE sessions and presenters is at www.AKLSA.org/R7Y2K/who/education.htm.

Katie Hurley, secretary at the Alaska Constitutional Convention 1955-56, will speak to the group at Saturday's closing dinner July 15, "Denali Finali," and will share anecdotes of the early days of the legal support profession. Also planned to speak at Saturday's luncheon is Pati Crofut, author of Working Parents, Happy Kids; NALS president Marie Ringholz, PLS, of Georgia; and NALS Region 7 Director, Kathy Siroky, PLS, of Montana. Metz Phones Pro and Situs are two of the exciting exhibits planned, providing hands-on look at the latest tools of business, including hand-held computing devices and software that helps keep client and other contact information organized and accessible.

The two-day seminar costs $120 for members and $140 for nonmembers. through May 1, and on May 1, registration goes up to $120/Members and $140/Nonmembers. The public may attend, and pre-registration is required. CLE credit will be awarded. Registration is limited. Lunch Friday and lunch and dinner Saturday are included in the cost of the conference registration. Registration forms are available at www.AKLSA.org/R7Y2K/ or by calling (907) 265-5715.

ALSA is a chapter of NALS, the association for legal professionals. ALSA programs provide the latest developments in law and technology, and exchange of ideas and expertise. ALSA members adhere to a Code of Ethics and Professional Responsibility and uphold the same high standards of conduct as required of attorneys. ALSA is best known in Alaska for publishing the Handbook, an indispensable aid to legal professionals in Alaska.

HI-TECH IN THE LAW OFFICE

The virtual law firm: An antidote to MDP concerns?

BY JOSEPH L. KASHI

Most attorneys have already had at least some experience working in a "virtual" law firm setting without even realizing it. Conceptually, a "virtual law firm" is neither new nor frightening. Using U.S. Mail, telephone and fax, we have regularly, but inefficiently, worked with people whom we have never physically met.

Because of burgeoning Internet-oriented technology, I believe that the virtual legal team is now possible, practical and efficient. I further suggest that technologically-enabled virtual client service teams centered around law firms may be a strong antidote to the competitive pressure from emerging multidisciplinary professional practices (MDPs) where non-legal firms, such as accounting, consulting and banking companies provide, and often cross-sell, legal services as well as their traditional lines of non-legal professional practice, sharing fees among the non-lawyer owners and partners.

This discussion consists of my own musings and tentative thoughts about how the next generation of Internet-based application programs may transform how we practice law. It does not purport to be an exhaustive analysis of law firm structure and of technology trends, nor is it yet based upon detailed statistical studies. If you have any experiences or thoughts along these lines, or criticisms of what I suggest, I'd welcome hearing from you at **kashi@alaska.net**.

Technologically, using Internet-based programs or service providers little different from the sort of third party Information Technology (IT) outsourcing now used by many major American companies as a sort of modern manifestation of the old computer service bureau. And, if you prefer to physically store and maintain your data on file server computers located on your own premises under your direct physical and administrative control, many legal software vendors are willing to accommodate you and are busy revising their case management and litigation support software to support remote access using the Internet primarily as a low cost transport medium for all of your office's data.

Over the next several years, efficient long distance collaboration among attorneys who may have never physically met will likely increase dramatically.

WHAT IS A "VIRTUAL LAW FIRM"? I BELIEVE THAT IT'S A LAW FIRM THAT:

1.) has a stable core group of experienced attorneys;

2.) has established collaborative relationships with other law firms and non-lawyer experts that possess expertise that's periodically needed to solve client problems;

3.) is glued together with efficient, high-bandwidth computer and telecommunications technology that makes the firm's case management, internal communications and litigation support information available to every attorney working on a client matter; and,

4.) expands and reduces personnel as needed.

The concept of the "virtual law firm" has been with us for decades; only our explicit articulation is new. It's already commonplace for attorneys to associate with, and to work closely with, local counsel in other states or distant cities as the need arises. Attorneys regularly associate as needed with other attorneys who have known expertise in specialized areas like mass torts, maritime law or labor law. It's already common for several law firms scattered across the country to join forces on major cases, such as tobacco litigation or the Exxon Valdez litigation, that may be too big and too widespread for any single law firm.

Attorneys now regularly work with professional and paraprofessional staff who either telecommute or otherwise work off-premises for much of their working week. We are generally comfortable working with temporary contract investigators, court reporters, attorneys, expert witnesses and researchers whom we may not physically meet very often, if at all. In large corporate legal departments, government agencies and national law firms, we often have little physical contact with at least some of the co-workers in other offices upon whom we depend and with whom we frequently work. In a very real sense, the voice telephone and later the fax machine were the first transitions away from working exclusively with people whom we typically met face to face.

Until recently, however, working both with distant counsel and with telecommuting employees has been somewhat awkward, inefficient and slow because we primarily depended upon mail, voice telephone and fax. Internet electronic mail has somewhat eased this burden over the past several years, making communication easier even as we reduce the frustration of voice mail and missed telephone calls. Likewise, electronic transmission of data files as e-mail attachments has expedited our ability to work together. However, we now can do much more to efficiently share data needed to handle a client's problem because the electronic infrastructure and application programs are now in place to make the virtual law firm both practical and a compelling model for how we'll practice in the future.

THE VIRTUAL CLIENT SERVICE TEAM: AN ANTIDOTE TO MDP CONCERNS?

Virtual law firms may also likely be one of the more effective way for attorneys to deal with the impending upheavals that multidisciplinary professional practices (MDPs) portend because virtual law firm technologies allows us to gather together a client service team encompassing every professional discipline and resource needed to solve a client's problem.

Like it or not, MDP's will probably be a fact of life for many American lawyers within a few years. We can either channel our energies into coping in a more competitive environment or we can waste our energies trying to hold back the tide. MDPs like the ability to cross-sell all of their products and services. Potential clients will probably like MDPs because they appear to potential clients to offer one stop shopping, a single point of contact with all of the professional resouces needed to solve a client's immediate problem. although clients often fail to appreciate the likelihood of potentially serious ethical problems and lack of independence.

How might the virtual law firm deal with MDP s? Serious cross-selling, conflict of interest and self-dealing ethical issues aside, my perception is that legal consumers want their problems solved in the simplest, most efficient manner and want a single point of client contact that acts as a gatekeeper and coordinator of all resources and professionals needed to solve their problems. Their lawyer can, and should, do this, but only if he or she can do it efficiently - that's where new Internet and telecommunications technology and substantive knowledge of the client's line of business become so crucial.

By leveraging new Internet technology to tie together attorneys, cooperating experts and other resources working through the attorney's office and our clients, we can assemble a client service team that provides a single, efficient and independent point of contact to solve a client's particular problem and then dissolve our virtual team when we've resolved the matter. If we're careful to ensure that no one on our team is placed in the position of becoming a witness and that every non-lawyer's work and billing is channeled through our office as part of our overall effort, then the work-product privilege should shield inter-team communications.

As attorneys become comfortable working in a multidisciplinary environment, my sense is that we will see several trends arising from the desirability of attorneys becoming more expert in the substantive businesses whom they serve.

1. We'll likely see even further specialization of legal practice, with law firms focusing upon those areas of practice where they have real substantive knowledge. Thus, we may see more boutique practices emerging and successfully competing despite a more competitive context. In fact, I believe that MDPs and large law firms will be competitive in more specialized areas of law only to the extent that they likewise develop specialized practice groups. Generalist attorneys will have an increasingly difficult time competing for high quality business when an already highly competitive environment becomes even more so and finding business if they are solo or small firm practitioners.

2. We'll see a premium placed upon recruiting attorneys with substantive backgrounds in technical disciplines, engineering, accounting and finance, and possibly some social sciences. Such attorneys will: a.) be able to better understand the overall scope of the client's objectives and problems; b.) avoid the need to first become educated in depth about the client's line of business; c.) better able to communicate with the client; and, d.) better able to effectively coordinate and combine the efforts of the different disciplines needed to solve the client's problem. For example, a law firm with a construction claims practice will likely seek out attorneys with a construction or civil engineering background because such attorneys already know what to look for, speak the specialized language used by the project manager, engineers and workmen, and have a much greater ability to understand the nuances of a substantively complicated area of practice.

3. The successful attorney will become even more computer literate because this is the only way that he or she can successfully coordinate the virtual team and effectively bring to bear all of the cooperating disciplines upon the client's problems.

4. Quality control and the training of associates will become even more important, but also more difficult, in the virtual law firm. We'll lose some of our ability to informally and efficiently review intermediate work and discuss it with staff, attorneys and experts who are not physically located in our offices. I believe that quality control issues are an underappreciated problem arising in connection with virtual law firms.

NEW TECHNOLOGIES HELP MAKE THE VIRTUAL LAW FIRM POSSIBLE

Application service providers are the next Internet frontier and the most obvious means of building either a virtual law firm or an entire virtual client service team to handle a particular client matter. Application service providers (ASPs) can be analogized to a mainframe computer that remotely stores shared application programs and common data and accessible anywhere using the Internet as a transport medium similar to the network cables that physically connect your own office computers together into your Local Area Network (LAN). In a very real sense, PC-centric computing is giving way to an updated Internet variant of mainframe computing, just as PCs supplanted early mainframe systems.

ASP computing models, in fact, have most of the hallmarks of mainframe systems: they're professionally administered, "hosted" and run on remotely located, powerful systems, and typically ave less flexibility and configurability than software running directly on your desktop PC. Someone else does your setup and configuration. Like a mainframe terminal, a PC working with remote ASP applications does little more than input data and queries and then display the results, with performance primarily dependent upon available Internet bandwidth and upon the speed of the remote host servers.

Most attorneys do not really comprehend the ultimate capabilities of a globally accessible network that allows users thousands of miles apart to work simultaneously and inexpensively with powerful applications like document storage or case manage-

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The virtual law firm: An antidote to MDP concerns?

Continued from page 18

ment, let alone personally use it to its full potential. Yet, ASP technology is already commonly used by non-legal businesses and organizations. For example, Rotary District 5010, which spans eleven time zones from Western Siberia through Alaska and Western Canada used Onelist.com to start an interactive calendar, Email and automatic reminder service for those many widely scattered Rotary clubs. District 5010's leadership merely makes a calendar entry from anywhere in the world and reminders will be automatically sent to each participant as desired. This sort of site has obvious application to virtual legal service teams. Other sites, such as Journyx and Timeslips allow you to set up an Internet billing site so that everyone can easily post their time to the client's account. Yet other sites provide Internet-based case management, litigation support, and document management. No single site currently provides a complete Internet-based legal office, but keep a close eye on WestWorks from West Group, due out later this year.

If you'd rather use your own Internet-enabled applications like Lotus Domino rather than depending solely upon Internet application vendors, you can also use the Internet simply as an ubiquitous, low cost transportation mechanism to carry your data traffic between widely scattered offices. Extranets and virtual private networks (VPNs) use the basic information transfer capabilities of the Internet, data encryption, and the inherent capabilities of new operating systems like Windows 2000 to create the equivalent of private long distance networks using their own application programs to link attorneys and clients around the country. Larger, technically savvy law firms already use extranets and virtual private networks to link the firm's remote offices, corresponding attorneys, experts and clients. Many other legal program vendors are rushing to incorporate Internet transport technology into their programs, again using the Internet mostly as a means of quickly transporting and remotely using data that is securely stored and administered on the law firm's own premises. This is one area of legal computing that's likely to expand rapidly in the next year or so, to our benefit.

CAUTIOUS ENTHUSIASM

Even though Application Service Providers and Internet-enabled programs will be a highly significant wave of our computing future, this market niche is still in its infancy and probably will not mature for several years. For example, John M. Thompson, IBM's head of electronic commerce software, concedes that the ASP business model remains mostly "theoretical" and that the ASP market is very immature. (Infoworld, January 17, 2000, page 16). Thompson expects that successful Internet providers will evolve into entities offering a combination of basic Internet access, ASP application services, and business program integration. We'll likely need to wait a few years before using an ASP application as casually as we do the word processing, case management or billing program located on the local area networks physically located in our own offices.

One impediment to general adoption of an ASP model for legal office technology will be uncertainty about the security, stability and technical ability of remote vendors. Many high-flying ASP startup companies have already run out of gas and are falling off the radar screen. However, major vendors like IBM, West Group, Microsoft, Compaq and Sun are now entering the market in a less spectacular but ultimately more stable fashion. The presence of major corporate vendors, industry-wide standardization upon generally accepted data formats like XML and PDF, and vendor stability certification programs similar to A.M. Best's rating of insurance carriers should help abate our very rational concerns about vendor stability. However, achieving this level of confidence will take years.

West Group's WestWorks Internet law office suite, now in beta testing, is probably the ASP application generating the most interest in the legal community. WestWorks includes case management, data and document storage, work processing and document assembly, and legal research. Given West's long, close relationship with the legal community and the confidence most users have in West's stability, I expect that West Works may prove to be one of the most accepted and usable ASP applications aimed at the legal market.

PROBLEMS WITH VIRTUAL LAW FIRM TECHNOLOGY

Despite the potential, there remain some obvious problems using third party ASP applications to build a virtual law firm or virtual client service team, problems that should give any prudent attorney pause before trusting his or her practice to them. These applications are very new and there is no body of experience nor long track record that informs us about the relative reliability and stability of these applications.

We also have no way of knowing what assumptions are built into how particular programs function, precluding us from evaluating their suitability, safety and accuracy. The potential for malpractice becomes an obvious, but unquantifiable, concern. Potential errors and hidden assumptions in document assembly and comprehensive practice system programs may increase the number of hidden bombs waiting in our files, but there's no easy way to ascertain them before they explode. Very few attorneys will understand, and even fewer will be able to alter, the concepts and assumptions embodied in tomorrow's pre-programmed technology.. Thus, you'll be forced to trust your technology systems without being able to fully verify correct working and substantive accuracy prior to use.

Long term security and vendor reliability will obviously be major issues. I believe that several different security issues must be addressed before ASP applications are accepted by the legal mainstream. Rather than blithely trust our practice and our career to an unproven vendor, we'll need to ensure that the vendor is likely to be around for years without going broke, or at least uses a portable data format so that we can transfer our data elsewhere without interrupting our continued use and access. We'll need to verify the vendor's record for system reliability, always available access to Internet users, and data backup/disaster recovery plans. We'll need to ensure that the vendor takes the same care to protect work product and confidentiality that we take, and that the vendor has solid antivirus and antihacking systems in operation. We'll need some sort of reliable third party verification that the ASP meets good standards in all of these areas and some sort of bonding or insurance to help us if an ASP causes us damage. Except for large, long established vendors like Sun and West, the ASP's assurances and self-certifications are probably not enough. Given the level of service that we'll expect, we should expect to pay a fair fee for these services rather than depend upon free advertising-driven sites of unknown reliability.

These initial teething problems, most of which are business rather than technical concerns, will undoubtedly be solved OVER time, just our society has solved similar problems in the construction industry and other complex, short term endeavors. In the meantime, I for one plan to approach ASPs and Internet-enabled programs with cautious enthusiasm.

THE INTERNET WILL FORCE LAW FIRMS TO MODERNIZE THEIR STRUCTURES

Why is a law firm's structure now so important? Briefly, because traditional law firm structures are no longer efficient not economically competitive in our age of rapidly advancing computing and telecommunications technology.

In the paper and pencil era, we used the brute force of many associates and paralegals to manually collect, process and communicate the vast amount of information required by any significant litigation or transaction. Because the raw data could not be readily analyzed by a single person in the pencil and paper era, we resorted to extensively summarizing the data. We added intermediate layers to supervise employees and to control the quality of the paperwork as it gradually flowed to the ultimate users.

Nasty surprises resulted in court or negotiations when our summaries did not match our evidence. Potentially important raw data and research, and a coherent overview of the entire matter, was often blurred or lost in the process. Manually processes information may get to the decision makers too late or not at all. Staffing costs become prohibitively expensive and clients have become less willing to pay such costs

To some extent, traditional law firms continue to employ these vertical "channels" as the primary conduits for information flow within a firm. But, I suggest that such hierarchical law firm structures are expensive, counter-productive anachronisms in an era where automation can leverage the effectiveness of a few highly competent staff by making all of their data immediately available, in either raw or processed form, over a computer network to whomever needs it. Continuing to insert several potentially superfluous layers of associates and junior partners between the senior litigator and those gathering the raw data is simply too expensive and causes critical information to move too slowly. Too many intermediate layers not only reduce the firm's productivity and responsiveness but badly hurt its overhead.

The traditional law firm did place great emphasis upon training less experienced staff, gradually giving them more authority as they gained experience and ability. Generally, the more experienced senior attorneys understood, and could do, everything assigned to new staff and thus could effectively mentor and supervise less experienced staff. Senior partners met with the client and set strategy, often being the only persons who really understood the Big Picture. Small portions of a matter, along with explicit directions, were given piecemeal to less senior staff. Later, as information slowly worked its way to senior attorneys, the efforts of many junior people were gradually combined and sharpened by more experienced senior associates and junior partners. Ultimately, the finished product arrived back on the desk of the partner in charge of the case. One positive benefit of this traditional approach to practicing law has been the mentoring and training inherent in this very hierarchical, almost military structure. One casualty of the Internet age will likely be the careful training previously given to promising associates.

There are several possible trends in law firm structure, most of which use technology to flatten a law firm's overall structure, allowing more efficient electronic communication between all personnel, regardless of rank or seniority.

One approach might be to form a separate, highly specialized boutique firm that already has the specialized knowledge, research and forms to work upon quick-breaking projects. Our economy's increasing demand for fast action leaves little time to become acquainted with a new practice area after taking on the project. Here, the premium upon specialization probably places this option beyond the immediate reach of most general practitioners unless they are already well-known in a particular area of practice and getting referrals from less-specialized counsel. Small specialized firms would joint venture as needed with other similar firms possessing complementary expertise.

A second approach, and in my view the most likely trend, is the virtual law firm described above, using a small permanent core group similar to military cadres or large construction contractors, and drawing upon contract professionals and paraprofessional staff as necessary for par-

Continued on page 20

Hi-Tech in the Law Office

Trial by laptop

An electronic judge on wheels delivers instant justice. There's been a minor car crunch on a city street in Brazil, and the two drivers are screaming and gesticulating, arguing angrily over who's to blame and who should pay for the damage.

Suddenly, a van screeches to a halt and out pop a judge, a court clerk and a very special laptop computer. Instant justice has arrived, cyber-style.

This is no fantasy. The laptop runs an artificial-intelligence program called the Electronic Judge, and its job is to help the human judge on the team swiftly and methodically dispense justice according to witness reports and forensic evidence at the scene of an incident. It can issue on-the-spot fines, order damages to be paid and even recommend jail sentences.

The software is being tested by three judges in the state of Espirito Santo. It forms part of a scheme called Justice-on-Wheels, which is designed to speed up Brazil's overloaded legal system by dealing immediately with straightforward cases.

The idea is not to replace judges but to make them more efficient, says Pedro Valls Feu Rosa, a judge in the state's Supreme Court of Appeals who developed the program. He was in Britain last week reporting on the project at a conference in Birmingham on AI and simulated behaviour.

After police alert the rapid justice team to minor accidents, they can be on the scene within 10 minutes. Most cases require only simple questions and no interpretation of the law—the decision-making process is purely logical, Feu Rosa claims.

Feu Rosa wrote the E-Judge program in the Visual Basic language. It presents the judge with multiple choice questions, such as "Did the driver stop at the red light?" or "Had the driver been drinking alcohol above the acceptable limit of the law?" These are the sorts of questions that human judges are normally expected to answer, based on evidence from the scene, says Feu Rosa, and they only need yes or no answers.

"If we are concerned with nothing more than pure logic, then why not give the task to a computer?" Most people are happy to have the matter sorted out on the spot, he says. The program gives more than a mere judgment: it also prints out its reasoning. If the human judge disagrees with the decision it can simply be overruled, says Feu Rosa.

He admits, however, that some people who have been judged by the program don't realize that they've been tried by software. There are also advantages to being on location, says Feu Rosa. The judge can see if witnesses had a clear view and, perhaps, check the vehicles' tire marks. The system saves months of expensive wrangling in the courts, he says.

"I know that this is a little bit different, but it works." It could be some time before a similar system takes the place of an English court. "It would have to satisfy the authorities that it was absolutely foolproof first," says a spokesman for the Lord Chancellor's office, which oversees courts in England and Wales. But it could be put to use in the U.S., where Feu Rosa says he is in discussion with insurance companies to set up a mobile system to resolve disputes over traffic accidents.

—Duncan Graham-Rowe, New Scientist magazine, 29 April 2000

e-copier technology

Been to the courthouse to review a docket and found a document you wanted to copy, but the clerk was too busy to make copies? Were you in a courthouse where you had to fill out a request form for photocopies to be made later? Did you have a home visit and the client had a document you wanted to copy, but no photocopier?

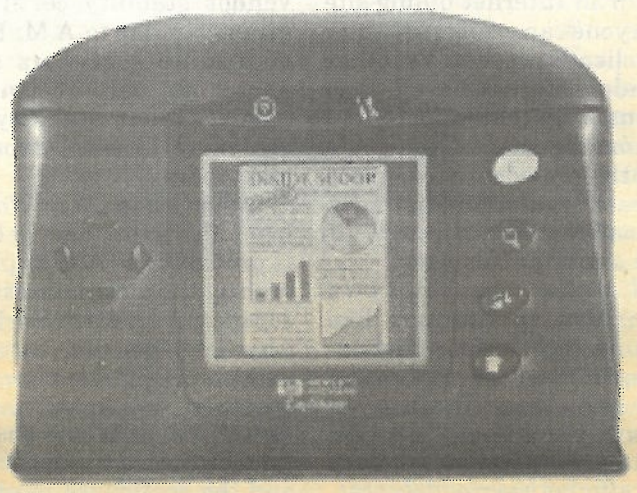
A few years back there was talk of portable hand scanners, but the actual devices never really lived up to the talk. This may have changed.

"The" gadget of the ABA Tech Show in Chicago recently was the HP CapShare 920 e-copier. It is a battery-operated device weighing just about 12 ounces. With a free-form swipe down, across and up the page, the e-copier captures a clear, accurate digital copy of the entire page. Seconds later, a copy appears on a screen in front of the unit. Run the e-copier down the next page, and the previous capture is automatically stored.

The CapShare's standard memory can store up to 50 full pages and then with just a touch of a button, transmit them to your computer via a serial or infrared or and infrared-enabled printer . The unit is compact; only about and inch and half thick and slightly more than five inches in length, and it fits neatly in the palm of your hand.

No special knowledge or technology training is necessary. The e-copier works very easily, with intuitive menu options. It begins the capture on page contact an releases the text or image to memory when lifted off the paper. The scanner stitches pages, newspaper and magazine columns and other documents seamlessly, automatically correcting text overlaps.

But that's not all. The scanner can faithfully capture documents ranging from the small business card to 11 x 14 paper and large-format flipcharts. You have the choice of



which format to use when saving documents, as well—as PDF Adobe Acrobat files, .tif or .jpg image files, or plain text.

Hewlett-Packard bundles the CapShare with OCR software (PagisPro 2.0 and TextBridge) for manipulation and editing of text. It also comes bundled with a serial cable, soft carrying case, and four batteries with a recharger (the unit uses two AA batteries to operate.)

There are several other suitable hand scanners on the market that are significantly less costly (about $129 to $199 street price). But for high quality, ease of use, versatility, and included accessories, the CapShare 920 is the top of the line. It's priced at $499, but HP's online store at www.hp.com frequently sells it for $299 to $399.

Contributing to this review was Willliam G. Schwab, who practices in a small general practice firm in Lehighton, PA. He is the editor of the Carbon County Bar Association Advocate and Middle District Bankruptcy Bar Association Adversary.

Amicus Attorney announces mobile upgrade

Gavel & Gown Software today announced the development of a new remote access feature for Amicus Attorney users. Mobility has become an important element of the legal profession. Being able to at Cess practice information from multiple locations is in high demand. Amicus Attorney's Secondary Office feature provides users with the ability to access their information whether at home, on the road, or at another office location.

The Secondary Office feature will be available with the release of Amicus Attorney version 4.1. Current Amicus Attorney IV Advanced and Client/Server edition users will be able to receive the update free of charge, subject to shipping and handling costs.

The Secondary Office feature allows users to store their practice information in an Amicus Attorney "Briefcase", which can be transferred to a secondary PC by diskette, or by e-mail. The user then works with their information at the secondary location, creates a new "Briefcase" and copies the updated information back on their PC at the office. (www.amicusattoorney.com)

The virtual law firm: An antidote to MDP concerns?

Continued from page 19

ticular projects. I believe that this model will prove the most feasible and competitive for small to medium law firms.

A third possible solution might be to generally retain our traditional vertical law firm structure but flatten it by reducing the number of intermediate lawyers and paraprofessionals who actually work up a case. Instead, we'll involve senior lawyers directly with processing and using the raw data through advanced technology. We can minimize the burden upon senior lawyers through the use of a few associates and paraprofessionals who develop raw information and then input that data into advanced document assembly, case management and litigation support programs. These programs help key lawyers find evidentiary items quickly and spot critical information and important patterns. And, easily accessed on-line and CD-ROM legal research materials allow the senior litigator to quickly research questions at his or her desk rather than relying upon library searches by associates. The quality of litigation may even improve as information flows more smoothly to the end user and as intermediate overhead costs decrease.

Regardless of which approach is taken, we'll see law firms adopting a more horizontal structure that emphasizes computer networking and electronic communication. Expect to see reduced litigation staffing, lower overhead and reductions in the number of associates and mid-level partners whose basic function is to collect and synthesize information, passing it up the chain. Contract lawyers with good knowledge of a particular practice area but without permanent employment will probably become more prevalent and develop commercial referral networks. Law firms that choose to maintain surplus capacity, or specialized services like high quality trial graphics, may find themselves contracting it out to other firms or even business clients on a regular basis.

The emergence of MDPs is not only a challenge, to say the least, but also a boon, spurring law firms to understand and adapt to new technological and market realities. Whether a firm profits and flourishes or declines into extinction depends upon our ability to direct our energies into embracing and adapting to a very competitive and technologically sophisticated future.

Estate Planning Corner

Who benefits from retirement plans? Part II

☐ Steven T. O'Hara

The last issue of this column observed that when clients die, a substantial portion of their retirement plans could end up going to the taxing authorities. One example discussed was the death of a hypothetical client whose sole asset was a traditional Individual Retirement Account with a balance of $2,000,000. Under this hypothetical, $1,126,000 (56%) went to the taxing authorities, leaving the balance of $874,000 (44%) to the client's son.

These observations lead some clients with substantial retirement plans to consider funding an irrevocable trust that is authorized to buy life insurance. The thought is if the insurance proceeds were available to assist beneficiaries in paying estate taxes, then the beneficiaries could better afford to defer taking distributions from the retirement plan.

If the retirement plan is used to pay estate taxes, then the beneficiaries must "gross up" each distribution to cover not only the estate taxes, but also to cover the income tax on the distribution. Consider the $560,000 in state and federal estate taxes that would be owed under our $2,000,000 IRA example. If the beneficiary takes a distribution from the IRA in order to pay the $560,000 in estate taxes, he must report the $560,000 distribution as income and thus must withdraw more to pay the income tax on the $560,000 distribution. In the last issue of this column, the son's three years of distributions from the $2,000,000 IRA resulted in $566,000 in income taxes.

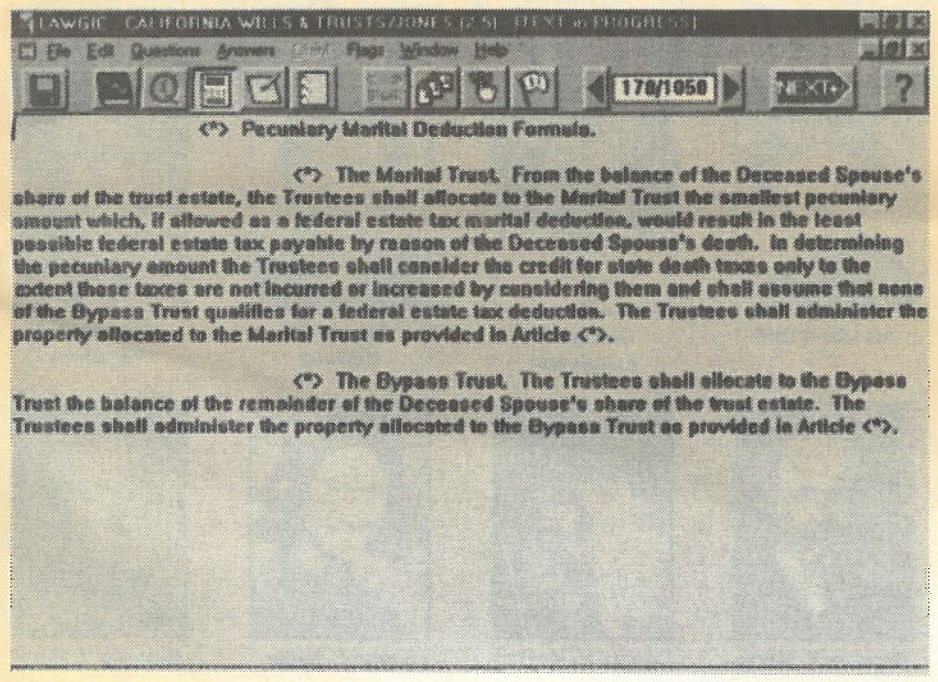
In theory the son in our example could receive the IRA balance over his lifetime and thus defer income taxes. As a practical matter, however, tax deferral is lost to the extent the son needs to take distributions from the IRA in order to pay taxes. So the availability of life insurance to assist in paying estate taxes can help the child defer income taxes.

Some clients also consider giving part or all of their retirement plans to one or more qualified charities. Clients with a charitable interest see giving part or all of their retirement plans to charity as an efficient way of funding their charitable interests because the money going to charity avoids both estate taxes and income taxes. The client in our example may figure that if 56% of her IRA would otherwise be payable to the taxing authorities, then each IRA dollar given to charity at her death would not "cost" her child a dollar. Instead, the client may figure it would "cost" her child 44 cents for each IRA dollar put to work for a charitable purpose (i.e., $1 minus 56 cents otherwise payable in tax).

Of course, clients cannot afford to give part or all of their retirement plans to charity until their non-charitable beneficiaries have a certain level of financial security. Here again life insurance can help. The acquisition of life insurance through an irrevocable trust can provide a minimum level of financial security for the client's non-charitable beneficiaries.

Clients often feel that their retirement plans provide a great deal of liquidity. But the multiple levels of tax imposed upon the plan at the death of the client can render the plan an inefficient source of funds for non-charitable beneficiaries. Where a charitable interest exists, retirement plans are a potential good source of funds in terms of tax efficiency. The acquisition of life insurance through an irrevocable trust can help clients achieve their multiple goals of providing for their families, funding their charitable interests, and maximizing tax efficiency.

Hi-Tech in the Law Office



Lawgic teaches nuts & bolts of practicing law

I want that new associate to be productive immediately and turn out some work that I can use today!

We've all heard more senior attorneys make that lament, but while law schools have done a better job training new lawyers how to think, they have done nothing to teach new lawyers the nuts and bolts of practicing law.

Each year thousands of hours are spent as newer attorneys learn the law under the guidance of senior attorneys. Wouldn't it be great if somehow the new lawyer could be prompted to think in a certain direction by a computer asking the new associate the questions necessary to prepare a document? Lawgic, a small software company from California has made giant leaps in that direction. Using a patented technology called "Intelligent Legal Technology," it has developed a software platform that combines a simple Q&A process with legal research, in-depth analysis and dynamic text generation.

This enables you or the associate to create comprehensive, high-quality documents customized to your client's unique requirements. You are prompted for legal issues and research as you answer questions. The new associate or the general practitioner who seldom practices in an area are only a click away from the most current legal information when changes in the law occur. You can be confident that you have covered all relevant legal issues. This program also allows access to up-to-date legal reference to allow the attorney to quickly address issues as they arise in drafting documents.

While the company expects to roll out state specific products in the future, currently it is focusing on employment law, estate planning, family law and business/corporate law.

Reprinted from the Carbon County (PA) Bar Association Advocate, Bill Schwab

Willliam G. Schwab practices in a small general practice firm in Lehighton, PA. He is the editor of the Carbon County Bar Association Advocate and Middle District Bankruptcy Bar Association Adversary.

College sponsors summer program

The Northwestern School of Law of Lewis and Clark College in Portland, Oregon,are sponsoring a summer program for law students adn others in "Indian Country."

Indian summer 2000, is a study, travel, and discovery program designed for law students, legal practitioners, and tribal leaders. Scholarships to attend the program will be funded by a generous grant from the Grand Ronde Tribe's Spirit Mountain Community Fund. This program is a collaborative endeavor between the law schools at Lewis and Clark and the Universities of Montana and New Mexico. Lewis and Clark will host the program.

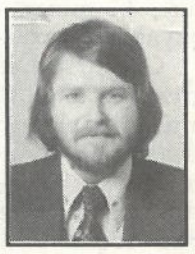
Students may choose from a five-week *Indian Law* class and three additional six-week classes including *Gaming in Indian Country, Native Natural Resources,* and *Jurisdiction and Sovereignty.* The *Indian Law* class runs from May 30 to June 22 with a field trip to Indian country on June 26-30. The three additional classes will begin with the field trip and then run from July 5 to August 3.

Law students can earn three semester hours of credit for each class. CLE credit may be available for practitioners. Law students also have opportunities for internships with local Indian law practitioners for academic credit during the program. The program will include a CLE/Tribal Workshop addressing the co-management of natural and cultural resources, and an Indian Law Career Fair on June 23 and 24 on the Lewis and Clark campus.

For further information contact Courtney B. Jaren, Program Coordinator, Lewis and Clark Law School, (503) 768-6740 or email: indianlw@lclark.edu. The project website is at www.lclark.edu

25 years of Bar Membership

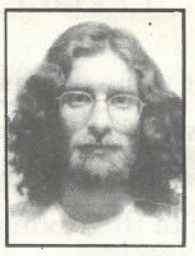

Rita T. Allee


Jacob H. Allmaras


Tommy G. Batchelor


Ralph R. Beistline


Clay C. Berry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Julius J. Brecht

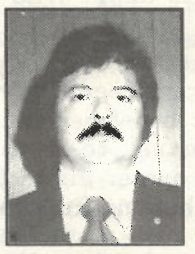

James H. Cannon


Anne D. Carpeneti


David S. Case

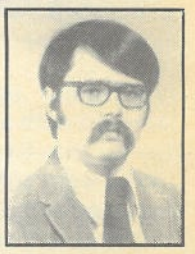

Dan K. Coffey


Robert J. Collins


William D. Cook


Robert M. Cowan


Richard L. Crabtree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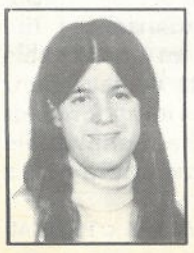
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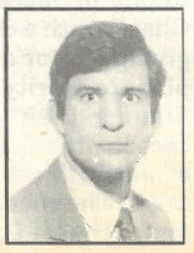
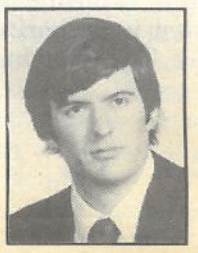
Abigail Dodge


Joseph K. Donohue


Ralph E. Duerre


Stephen M. Ellis


Pamela L. Finley


Peter A. Galbraith


Brian Mark Gray


Roger E. Henderson


Gregory D. Hoffman


Richard F. Hope


Mary K. Hughes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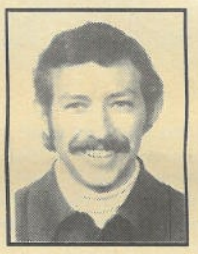
George M. Kapolchok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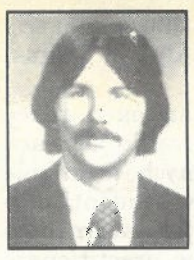
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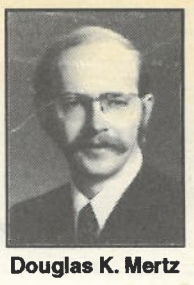
Jeffrey B. Lowenfels


Margie MacNeille


Julian L. Mason


Douglas K. Mertz


Dennis M. Mestas


Susan C. Miller

Michelle V. Minor

Mark R. Moderow

Patrick E. Murphy

Lance C. Parrish

T.W. Patch

George Peck

Frank A. Pfiffner

Bradford E. Phillips

Michael W. Price

Margaret (Peggy) Rawitz

William F. Reeves

Samuel J. Roser

Mark A. Sandberg

Eric T. Sanders

Gordon F. Schadt

Ernest M. Schlereth

Charles G. Schmidt, Jr.

Michael J. Schneider

Michael W. Sewright

Nancy Shaw

Connie J. Sipe

Craig L. Smith

Timothy H. Stearns

Kimberly Stohr

Timothy M. Stone

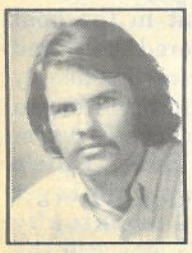
25 years of Bar Membership


Richard A. Svobodny


J.P. Tangen


Kneeland L. Taylor

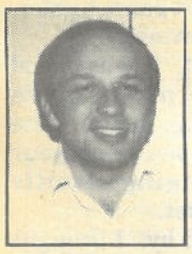

Michael A. Thompson


John R. Vacek


Thomas Waldock


David T. Walker


David Walsh


Dale J. Walther


Linda L. Walton


Patricia C. Wilder


Janis G. Williams


Nancy E. Williams


Mark I. Wood


Kent L. Yarbrough

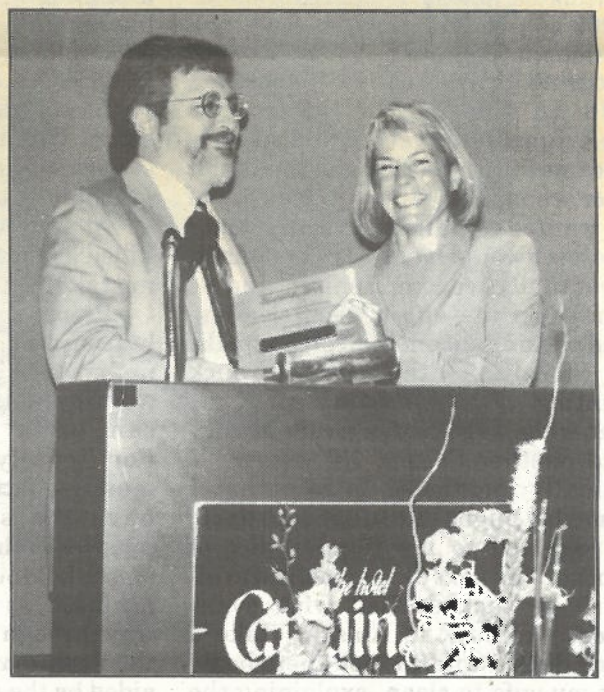

Gary A. Zipkin

NOT PICTURED — Andrew M. Brown


Bar members who were present at the Awards Banquet received their 25 year membership pin.

RINDNER, BUNDY HONORED WITH AWARDS AT CONVENTION

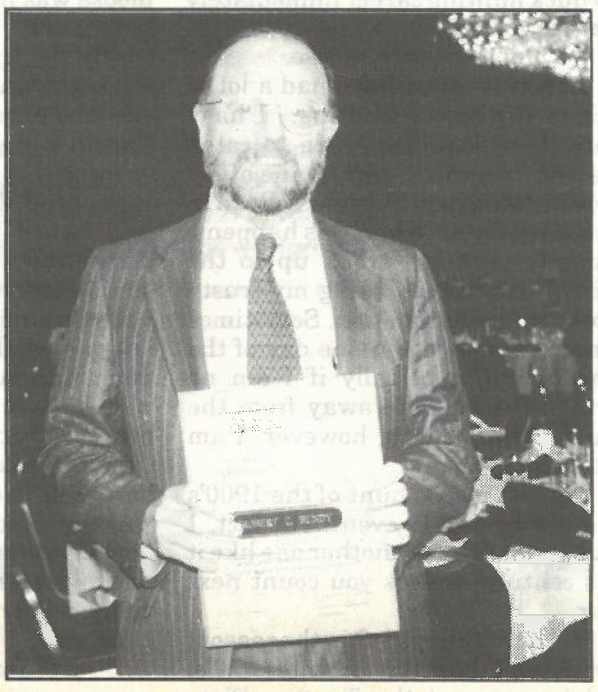
Mark Rindner Receives Alaska Bar Association Distinguished Service Award



Anchorage attorney Mark Rindner was the recipient of the the Alaska Bar Association's Distinguished Service Award, which was presented during the Bar's annual convention held May 17 – 19 in Anchorage. This award honors an attorney for outstanding service to the membership of the Alaska Bar Association.

Mr. Rindner, the Managing Partner of the Anchorage office of Lane Powell Spears Lubersky, has been very active with the Bar's Fee Arbitration program, served for nine years on the Law Examiners Committee and is currently Chair of the Bar's Pro Bono Service Committee.

Bob Bundy Receives Alaska Bar Association Professionalism Award



U.S. Attorney Robert C. Bundy received the Alaska Bar Association's Professionalism Award at its annual convention held May 17 – 19, 2000 in Anchorage. 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.

Mr. Bundy has been in practice in Alaska since 1971. He is a long-standing member of the Bar's Ethics Committee and Alaska Rules of professional Conduct Committee.

No mistake about it

☐ William Satterberg

Contrary to what some people may believe, law is not everything to me. Buried deep within my soul is an animal. That animal only emerges during September of each year, when certain other, mild-mannered attorneys and I abandon all civility, giving ourselves over to our primordial drive to be hunter/gatherers.

I once tried to explain to my wife why I hunt moose. By all logic, it's a biomass type of thing. But she would have nothing of it. She quickly countered that her cache of high-bush, low-bush, and other bush type berries were far more delectable than any smelly, bloodshot, gunshot thing that I could possibly drag in. (Perhaps she has a point.)

Older, more intelligent attorneys gave up moose hunting long ago. Instead, they now confine themselves to blasting defenseless birds. They dress themselves in fancy vests from Cabella's, wear foam hip boots, fly 185 Cessnas, and retire from the judiciary. Unfortunately, I'm not that rich. I'm also a terrible shot when it comes to blasting ducks. In point of fact, I once went duck hunting with a friend in the Minto Flats. When the day was done, by conservative estimates, at least ten boxes of shells, $200 of gasoline, $100 of food, and various mechanical breakdowns were incurred only to score one duck. To add to the insult, when this unfortunate duck died, it immediately became the focus of a major argument over whom had killed it. Neither of us wanted to claim the victory, since the loser would have to try to clean it. Eventually, we compromised, and we shared in the effort, each cleaning and packing out one-half of the spoils.

Shortly after that, I gave up duck hunting. The event that cured me was when I spoke to a local attorney and another Cessna 185 owner. I casually mentioned to him that I someday might like to eat wild duck, as opposed to my regular diet of moose. The next day, I received a full garbage sack stuffed with every species of duck in Alaska. Like a good duck hunter, I took them home for my wife to clean, explaining the sexist concept of "woman's work." My duck hunting career immediately came to a close.

So, I now stick to moose.

In retrospect, I have had a lot of luck in my moose hunting. I have more than once been able to catch one next to a road, such as one of my favorite haunts on Stampede Road in McKinley Park. When this happens, I simply back my truck up to the animal and load it, using my trusty spotlight for illumination. Sometimes I can be home within one day of the time of kill, especially if I am no farther than a mile away from the house. Often times, however, I am not so lucky...

My last moose hunt of the 1900's was a memorable event. In fact, I doubt if I will have another one like it this century, unless you count next year.

With three days left in the season, my newest hunting partner, Dale, and I, surveyed the Tanana Flats directly opposite Fairbanks. (It always seems like I end up with a new hunting partner each year.) My $10,000 Argo all-terrain vehicle had not proven its mettle earlier in the season. True to form, Dale had purchased one, as well. By the end of the season, both of us were receiving distinct spousal harassment with respect to the non-productivity of our Argos. Male ego was rapidly being eroded.

So, in desperation, we turned to the riverboat. After all, I also had to justify my riverboat, which had borne the brunt of the previous year's criticisms, before I bought my unproductive Argo.

The plan was that we would just "poke" across the river and have the proverbial "look-see". After all, any experienced moose hunter knows the rule that the best way to get a moose is to be unprepared (like the year a previous partner and I both forgot our knives). Dale and I agreed to meet back at the boat by eight o'clock, assuming we remembered where we left it. This early return was so we would be able to navigate the treacherous Tanana River safely back to the boat landing before darkness set in. On this day, eight o'clock was sunset. (In retrospect, that was probably our first mistake).

At five minutes until eight, we killed a moose (That was our second mistake)

Prior to 1999, I had never butchered a moose at night. I now understand it is easier if you have a working lantern. Butchering at night can be a painful experience. Fortunately, due to strong jaw muscles, (attorneys are reputed to have the second strongest jaw muscles in the human species), I was able to hold our one Mag light between my teeth, as we sliced and diced our way through our prey. In addition to the flashlight beam, the cutting was aided by the occasional sharp stab in the fingers, which signified that the moose was no longer the meat being butchered.

By the time we finished our job, the night was black. I've never been one who likes being kept in the dark. To add to my terror, throughout the evening, my imagination had run at high speed. More than once, we both had heard things crackle in the darkened, spooky brush that surrounded us. Personally, I could not help but imagine that my moose's angry sweethearts, wolves, coyotes, and nefarious Fish and Game agents were all over the place. But, we were brave, in retrospect.

It was midnight before the animal had been packed to the boat. (That was our third mistake.) But we were now in relative safety. In fact, it was midnight on a cloudy, moonless, rainy, windy and cold night. But we were safe.

"Time to go home!" I announced, exercising my prerogative as the boat's owner and therefore, captain.

I started the boat. (That was probably our fourth mistake.) I grabbed my trusty one million candlepower rechargeable spotlight, and turned it on. On impulse, I looked into the lens to make sure all filaments were working. The spotlight, coupled with an unfailing memory, a rapidly growing faith in a higher power, and a drive motivated by the fact that we had not taken along any sleeping bags, tents, foot coverings, heaters, extra clothing, food, coffee, or other items, (These were probably our fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth mistakes, respectively), strongly indicated that we should make it home in no time, if I could just get rid of that obnoxious sunspot that kept dancing in my field of vision.

The trip began. After 50 feet, we hit a sandbar. No problem. We were still close to shore. I quickly climbed out to clean the boat's now clogged jet unit. Because it was dark, I misjudged the depth of the water. (That was probably our thirteenth mistake). As a consequence, I soon suffered from wet leg syndrome. Once again, this was no serious problem, since I would be home shortly. Rather than remaining at the somewhat sheltered beach, we started our trip again. (Mistake number fourteen.) In less than a minute, we were motoring into the main channel of the Tanana River. Although it was dark, and I was still fighting that nagging sunspot, I was confident that we were in the main channel. I then chose to make the now-infamous right-hand turn. Although my partner challenged my navigation, it didn't matter. After all, it was my boat and I was the captain. (My fifteenth mistake.) Besides, the boat was lighter than normal anyway, since we had left all of our survival gear at home.

Halfway up the "main channel", the boat arrogantly decided that it was not the main channel after all. The now-familiar and dreaded sound of gravel dragging against the bottom of the boat began. In seconds, the again rock-clogged jet unit emitted its high-pitched whine. This time, we were in the middle of the mighty Tanana River, and not against a somewhat sheltered beach, as before. Given this crisis, I did what I do best. I panicked. After all, we were definitely doomed. Unless we beached the boat immediately, we would be swept downstream to our fate, all within sight of Fairbanks. Being a realist, I figured that the likelihood of the Alaska State Troopers scrambling a helicopter to rescue a criminal defense attorney in distress was somewhat less than the ratio of the number one to the national debt.

Despite the swiftness of the river, we were able to limp the boat to the bank. By then, it was even more dark, windy, rainy, and generally not nice weather. Finally doing something right, although it appeared to be a mistake at the time, we decided not to attempt to run the river any more that evening. Besides, we could see the lights of Fairbanks. Since we obviously were on the Fairbanks side of the river, we reasoned that we would simply walk home. We anchored up and prepared for the short hike. I reconnoitered the area. It was then that I realized that we were actually on a sandbar in the middle of the Tanana River. The now very deep, swift and real main channel still separated us from the now way-too-distant lights of Fairbanks. The siren of the Tanana had us.

Fortunately, I had my cell phone, which has since risen from the category of luxury to that of necessity. We dutifully reported to our spouses that all was well, but that we would be spending the night on a quaint little sandbar in the middle of the Tanana River. About that time, we were asked if we were prepared. Of course we were! After all, we had a blue tarp. You are not an Alaskan if you don't own at least a dozen blue tarps, and an orange pick-up truck. We would cover the boat with our blue tarp and seek shelter from the wind. We would "survive very nicely for the next six hours, thank you!" It was later that night that I learned that blue tarps were not known for their insulating value.

We set up the blue tarp and "hunkered down" for the night. ("Hunkering" is a distinct hunting term, which means "to scrunch" up. "Scrunch up" means "to hunker.") The floor of the boat was too cold to keep us warm. As such, we agreed that it was best to sit in the boat seats. I then remembered that I had stepped in the water rather deeply on the previous grounding. I began to look for anything to act as a warm covering. I soon found Dale's sweatshirt. It took me a while to get it off of him, but I eventually succeeded. After all, I was still the captain. I then announced that I had a propane heater in my "survival" kit. We were elated, if only for a brief time. Much to my dismay, I realized that I did not have any propane bottles. Predictably, about then, Dale started talking about getting a new hunting partner. In retrospect, I was surprised that he had lasted as long as he did, given the longevity of my previous partners.

So there we sat, cold and dumbfounded, staring angrily at a brand new, empty propane heater, trying to avoid eye contact.

It was a long night. It was one of those Robert Service nights where every minute takes an hour. The type of night where you hear your digital watch banging loudly underneath your jacket.

The hours crawled by. I thought about the discussion that I had with my wife on the cell phone earlier that evening. Her parting, and somewhat prophetic remark was, "Well, at least you and Dale can do some of that male bonding stuff." I stared at Dale suspiciously. "Was it his idea?", I asked myself. Dale glared back through sullen eyes. Telepathically, I sensed a feeling on his part that maybe I had something to do with this mess. "What does he think I am, anyway?" I thought. "The captain? This hunt was all his idea. I'm just an attorney."

The bone-chilling cold continued to set in. We talked about lighting a fire on the sandbar. We could keep warm next to the fire. It was a good idea, and might have actually worked, if it hadn't been for the rainstorm, and 15 knot winds, and the fact that the little amount of driftwood on the sandbar was completely soaked. Besides, neither one of us had matches, anyway.

So, we talked politics. We both soon realized that political discourse would be counterproductive, especially if we wanted to be rescued alive. After all, here we were, stuck on a sandbar, facing the rest of our lives with a person of apparently

Continued on page 25

No mistake about it

Continued from page 24

different political persuasion.

So, like all male hunters do when alone, we talked lovingly and longingly about our spouses. In that regard, we soon understandably promised not to repeat the conversation, due to considerations of secrecy and attorney/client confidences. (See my next *Weekly World News* article - "What Stranded Hunters Really Talk About").

And, of course, we talked about the success of our hunt. We decided that maybe it wasn't such a good hunt after all. Nevertheless, it was still satisfying that we were sharing the boat with a dead moose of the correct gender.

Fortunately, I was not entirely unprepared for the ordeal. I had my cell phone, which I kept alternately tucked warmly in my crotch or armpits to keep the batteries up. I also had an emergency locator beacon. Not that a locator beacon would have been that useful. We weren't lost, I reasoned, so we were not allowed to use the beacon. The beacon's instructions said only to use the device if you were lost. It was a legal issue, not easily ruled upon. Rather than being lost, we were beached in the middle of a sandbar in plain view of virtually everyone who would fly over. We were well within sight and sound of Fairbanks. No, the locator beacon was not a legally available option.

As the night wore on, sensing Dale's frustration, I took out the cell phone and offered to let Dale call home. To my surprise, wrinkling up his nose, he politely refused my generous offer. Apparently, he wasn't that desperate after all.

Eventually, it became pre-dawn light. I could actually see the river, except for that pesky sunspot that still wouldn't go away. We decided to give it a try. Once we got started again, in relatively short time, we made the boat landing, our ordeal over.

We were both soaked with moose blood and smelled like we had rolled in something. But, as successful hunters, we proudly drove into town, dragging the loaded boat behind us. Out of habit, I contacted my office. I wanted to be sure that my associate, Jim McLain, would be available for calendar call that day. No one had seen Jim, although my client was patiently waiting for him. Once again, I fell into my classic, but reliable, proven panic mode of management. Calendar call was at 8:15 a.m. It was after eight o'clock. Jim was nowhere to be seen. At 8:15, I again called the office. Jim was still not there. Drastic measures were necessary.

Pulling into the office parking lot, I left Dale in the truck, and dashed inside. My client, who was dressed nicely for court just as I had ordered, nervously awaited me. To my surprise, he had even removed the obligatory nose earring and tongue stud. By contrast, I was not as pretty. I was covered with moose blood and hair. What wasn't bloodstained or stuck with moose hair was matted with silty mud. I had unkempt hair, an unshaven face, and was sporting a set of soggy tennis shoes—the type of putrid shoes my housecat loves so much. But this was an emergency and there was precious little time to waste. My client and I ran to court. As usual, I hid as best as I could in the back of Judge Wood's courtroom, hoping not to be noticed. Judge Wood had only recently instituted his "You're late to Calendar Call! Bailiff, off with their heads!" get tough policy. Understandably, I did not want to be one of his first victims.

Eventually, my number was up. I arose in my typical, timid and shy style. I meekly asked Judge Wood's permission to appear in my casual, public defender fashion. Sort of an "as-is, where-is" thing, a First Amendment Freedom of Expression approach to life. Judge Wood did not have to say anything. The look on his face said it all for him.

My part of calendar call was surprisingly quick. Upon being excused, I thanked the court for its compassion in recognizing that I had been caught unprepared in the Alaskan Bush. In response, Judge Wood only had one comment: "Mr. Satterberg, you can leave my courtroom now," adding to the nodding approval of those in the remaining audience, as an apparent afterthought, "You stink."

I chalked the final comment up to a compliment on my practice of law, and not my appearance. After all, I take references to my appearance personally.

By the time I got home, the rumor had spread throughout Fairbanks that some "dumb attorney" had spent the night on a sandbar in the middle of the Tanana River. I tried to figure out who people were talking about until someone told me that the rumor allegedly came from my staffers. I tried to dispel the rumor. I explained in vain that it was some other dumb attorney, and certainly not myself.

That evening, I related my epic to my younger sister, Julie. Even though Julie would beat me up in the back alley when we were kids, she had mellowed with age into a rather thoughtful person. I boasted to Julie of my ordeal on the sandbar. I told her how lesser hunters would have succumbed. And I bragged about how we had once again cheated death in yet another one of my legendary moose hunts with my newest ex-partner.

It was then that Julie asked me, quite innocently, "Well, Billy, why didn't you just cuddle?" (Julie obviously still knew where and how to hit).

Astonished, I asked her, "Do you mean huddle or cuddle? 'Hunkering' and 'scrunching' I know, Julie, but what is this 'cuddling' stuff?"

Julie responded, "Billy, I mean *cuddle*. After all—women are smart. When they get cold, they simply cuddle up and keep warm. Look up the definition, Billy. 'To cuddle' means, 'to snuggle' and vice-versa. It's a women's hunting term."

"Julie!" I exclaimed, "You have got to be crazy! Can you imagine what would have happened if I had been even thinking of cuddling with my newest ex-partner?" Continuing, I indignantly roared, deepening my voice instinctively and summoning up my best male machismo, "First of all, he probably would have shot me or talked about me. After all, people talk. Secondly, it would have been my luck, just about the time we had both agreed 'to cuddle' that a State Trooper helicopter, complete with a search light and a news crew, would have flown over. I would have made the front page, after all."

Julie's response was cool and even, "Billy, if you ever call me crazy again, I'll break your nose a third time!"

Momentarily softening in light of such compelling reason, I explained myself. "No, Julie. We certainly did not cuddle. After all, we are men, and smart in the ways of the wild. Not like you women, who need to take along sleeping bags, tents, heaters, food, coffee, and prefer to pick your little red berries in broad daylight!"

"Whatever, Billy. Sorry for the advice."

"Just remember, Julie, lawyers give advice. You just stick to being a good little housewife, okay?"

"Okay, Billy. Meet you in the alley, as usual. I'll try not to hurt you too much this time. "

"Thanks, Julie. I appreciate that."

Lawyers Needed!

The Lawyer Referral Service of the Alaska Bar Association needs more lawyers to sign up with the Referral Service. In 1999 the Lawyer Referral Service received 6,654 calls from people seeking a lawyer.

Listed are the categories for which we received more than 200 requests for a referral in 1999, and the number of lawyers signed up for that category. We need more lawyers in Anchorage. However we often can only refer callers to an Anchorage attorney, because there are no attorneys listed in that category from Juneau, Fairbanks, Ketchikan, Wasilla, Palmer, Kenai, and other rural areas.

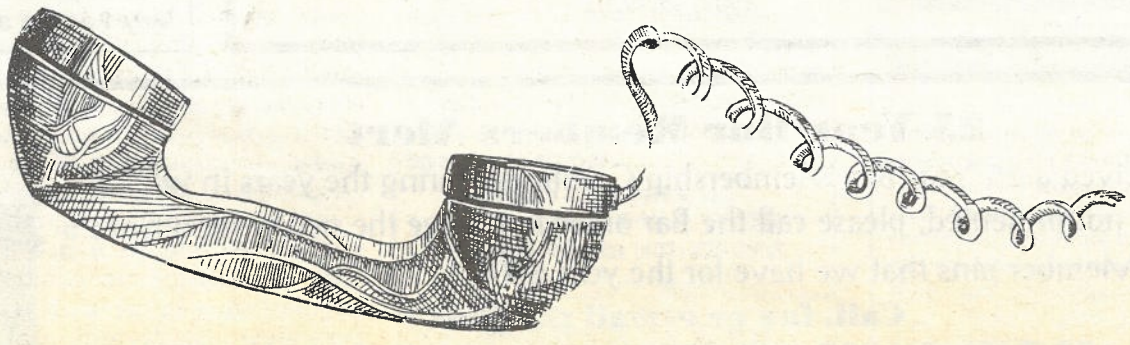
Category of Law	Number of Calls in 1999	Number of Lawyers Signed Up in that Category
Administrative	267	7
Commercial	266	25
Consumer	532	10
Labor Relations	636	2
Malpractice	334	12
Negligence	843	55
Real Estate	234	29
Workers Compensation	294	3
Criminal Misdemeanor	334	31
Criminal Felony	275	21
Divorce/Custody	1570	37

For a complete list of the 29 Lawyer Referral Service categories, or more information on the Lawyer Referral Service, please contact the Bar office at 272-7469 or alaskabar@alaskabar.org.

Problems with Chemical Dependency?

Call the Lawyers' Assistance Committee for confidential help

John E. Reese ---------- 264-0401
Brant G. McGee ---------- 269-3500
Valerie M. Therrien ---------- 452-6195
William K. Walker ---------- 277-5297
Nancy Shaw ---------- 243-7771



Heller Ehrman to receive ABA award

Heller Ehrman is the recipient of the American Bar Association's 2000 Pro Bono Publico Award, to be presented at the ABA's annual meeting in New York City on July 10.

The Pro Bono Awards, established by the ABA in 1984, identify and honor individual lawyers and law firms that have made extraordinary contributions by improving or delivering volunteer legal services to the nation's poor and disadvantaged.

Heller Ehrman's nomination was unique, coming from a collaboration of four bar associations (Seattle, Los Angeles, Santa Clara County and San Francisco). The Bar Associations nominated the firm in recognition of Heller Ehrman's longstanding history of community work in several cities where the firm has offices.

"The hard work of our associates, shareholders, legal assistants and staff has earned us this honor for the firm," said Bob Borton, chair of Heller Ehrman's Pro Bono Committee. "Pro bono work continues to be one of the things that brings excitement and a sense of purpose to our practice of law at Heller Ehrman."

Heller Ehrman is a charter signatory to the ABA's Pro Bono Challenge, which calls on leaders of the nation's top 500 law firms to adopt goals for pro bono hours equivalent to either five percent or three percent of the firm's total billable hours. In 1999, Heller Ehrman attorneys and paralegals collectively devoted more than 40,000 hours to pro bono clients and engagements. The firm is consistently ranked by The American Lawyer as one of the top law firms in the nation for its pro bono work.

Heller Ehrman's pro bono cases have included *Central American Refugee Center v. Reno* and *Duffy v. Rivland*.

In *Central American Refugee Center v. Reno*, Heller Ehrman attorneys successfully settled a class action lawsuit in 1999 against the United States Immigration and Naturalization Service, in which the class of detainees at the INS' Terminal Island Detention Center in San Pedro, California were able to secure, among other things, effective access to counsel, group legal rights presentations and adequate library and research resources—access which had previously been denied.

In *Duffy v. Rivland*, Heller Ehrman attorneys were requested by the Ninth Circuit to represent a deaf inmate alleging discrimination and due process violations against Washington State prison officials. The complaint was subsequently amended to seek broad injunctive relief on behalf of all deaf and hearing-impaired inmates, and eventually settled in an agreement requiring Washington State to provide sign-language interpreters and other assistive services in disciplinary hearings, and other settings where important inmate rights are at stake.

To be considered for the Publico Pro Bono Awards, candidates must be nominated and awardees are selected based on demonstrated dedication to the development and delivery of legal services to the poor through a pro bono program; significant work toward developing innovative delivery of volunteer legal services; satisfying previously unmet needs or extending services to the underserved; successfully litigated pro bono cases that favorably affected provision of other services to the poor; and/or successful achievement of legislation that contributed substantially to legal services to the poor. "Heller Ehrman is an excellent example of the enormous difference one firm can make through pro bono work," said Robert Weiner, chair of the ABA Standing Committee on Pro Bono and Public Service. "Heller Ehrman's extraordinary commitment of time and resources, and its dedication to serving those who cannot afford to pay reflects the best tradition of the legal profession. The firm stands as an example for all of us."

Organizations supporting Heller Ehrman's nomination for the award include: Alliance for Children's Rights, Bet Tzedek, Lambda Legal Defense and Education Fund, Mexican American Legal Defense and Educational Fund, National Immigration Law Center, AIDS Legal Referral Panel, American Civil Liberties Union Foundation of Northern California, Asian Law Caucus, Compassion in Dying Federation, Compass Community Services, East Bay Community Law Center, Immigrant Legal Resource Center, Legal Services for Children, Legal Aid Society, Lawyer's Committee for Civil Rights, National Resources Defense Council, Intergroup Clearinghouse, Santa Clara County Bar Association Law Foundation, Northwest Justice Project, Northwest Office of Earthjustice Legal Defense Fund, Inc., Legal Foundation of Washington, Public Counsel Law Center and Legal Services for Prisoners with Children.

Heller Ehrman White & McAuliffe LLP is a 470-attorney firm with offices in San Francisco, Silicon Valley, Los Angeles, San Diego, New York, Washington, D.C., Seattle, Portland, Anchorage, Hong Kong, and Singapore.

—Press release

SOLICITATION OF VOLUNTEER ATTORNEYS

The court system maintains lists of attorneys who volunteer to accept court appointments. The types of appointments are listed in Administrative Rule 12(e)(1)-(e)(2). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(e)(5).

Attorneys may add their names to the volunteer lists by contacting the area court administrator(s) for the appropriate judicial district(s):

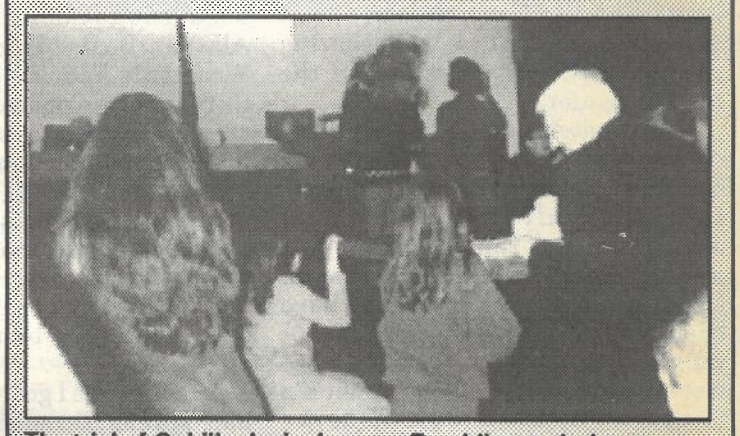
First District:
Neil Nesheim
PO Box 114100
Juneau, AK 99811-4100
(907) 463-4753

Second District:
Tom Mize
604 Barnette St. Rm 228
Fairbanks, AK 99701-4576
(907) 451-9251

Third District:
Wendy Lyford
825 W. 4th Ave.
Anchorage, AK 99501-2004
(907) 264-0415

Fourth District:
Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701-4576
(907) 452-9201

District Court Judge Peter Froehlich talks with a class in the lobby of the Dimond Courthouse on Law Day, May 1. (photo by Sheri Hazeltine)



The trial of Goldilocks in Juneau. Presiding as judge was Thomas Stwart, with the bailiff (Superior Court Judge Patricia Collins) swearing-in the Big Bad Wolf (District Court Judge Peter Froehlich). Mr. Humpty Dumpty, prosecutor, (District Attorney Rick Svobodny) is in the foreground. (photo by Sheri Hazeltine)

Law Day in Juneau a success

By Sheri L. Hazeltine

Goldilocks stood trial for criminal trespass and criminal mischief at the Dimond Courthouse in Juneau on May 1, Law Day. The prosecutor, Mr. H. Dumpty, or alias Rick Svobodny, Juneau District Attorney, was zealous in his attempt to convict Goldi. Even though witnesses included Little Red Riding Hood and the Big Bad Wolf (District Court Judge Peter Froehlich in a wolf parka) the jurors, a panel of local school children, returned after a five-minute deliberation period and declared they were hung.

The mock trial, organized by Superior Court Judge Patricia Collins, was one in a series of activities sponsored by local Juneau judges and the Juneau Bar Association for Law Day.

More than 65 justices, judges and magistrates were scheduled to make Law Day presentations in Alaska this year, according to Justice Dana Fabe, the Alaska Supreme Court's coordinator for the statewide effort, in an article in the Juneau Empire. Law Day activities began in Alaska last year and their success prompted the court to continue the program.

"It provides a wonderful opportunity for kids in communities throughout the state to meet with judges, ask questions, and learn more about the important role of the courts in our democracy," Fabe said.

Law Day is a national event observed each year on May 1 by the judiciary and members of the legal profession. Its purpose is to celebrate America's freedoms and the role of law in protecting and preserving them. This year's Law Day theme was "Celebrate Your Freedom", with a special emphasis on democracy and the diversity of our nation's citizens.

The concept of Law Day was first suggested in 1957 by Charles S. Rhyne, a Washington, D.C. lawyer who was then president of the American Bar Association. Law Day USA was established in 1961 by Congress with May 1 as the annual date.

25 Year Bar Members Alert

If you received a 25 Year Bar Membership Certificate during the years in which pins were not presented, please call the Bar office to receive the newly designed 25 Year Bar Member pins that we have for the year 2000.

Call, fax or e-mail the Bar:
907-272-7469/fax907-272-2932/ email: info@alaskabar.org

Bar People

James F. Whitehead, a shareholder in the Seattle office of Holmes Weddle & Barcott, has been elected to a three-year term on the Board of Directors of the Maritime Law Association of the United States (M LA). The MLA was organized in 1899 for the purpose of advancing reforms in the maritime law of the United States and of promoting uniformity of the maritime law and justice in its administration. The MLA has more than 3,600 members, consisting of prominent maritime lawyers, judges, and non-lawyer leaders of the maritime industry.

Holly Roberson Hill has joined the Law Offices of James B. Wright & Associates, P.C., a law firm which handles primarily business transactions, civil litigation and insurance defense. Holly has been practicing law in Alaska for nine years. She is a member of the Alaska and Missouri Bars, is a licensed Real Estate Agent and a Member of the Anchorage Board of Realtors. She has over live years of experience in environmental law or as General Counsel for the petroleum distribution industry and currently serves, by appointment of the Governor, on the Board of Storage Tank Assistance. She will be practicing in the areas of Environmental, Real Estate, Commercial, and Estates & Trusts Law.

Mark Avery, formerly with the Anchorage Municipal Prosecutor's office, is now with the DA's office in Anchorage.....**Jill Dean** reports that she is now working for the Attorney General's Office for the Commonwealth of the Northern Mariana Islands (with such other ex-Alaskans as Herb Soll and Jim

Benedetto.) "The weather here is beyond wonderful, as are the people and life generally."

Tom Dahl, formerly with the AG's office in Juneau, writes that he has retired from state service effective May 1, 2000.....**Marvin Hamilton** is now with the PD Agency in Ketchikan and writes that "the town is funky, the scenery is beautiful, the weather is wet and brisk (in March) and the PD people are great."

James Walker, formerly an Assistant Municipal Attorney in Anchorage, is now the Regulatory Affairs Manager for Matanuska Electric Association, Inc.

Anchorage attorney and arbitrator **Robert W. Landau** has been elected to membership in the National Academy of Arbitrators. The Academy, founded in 1947, is a professional and honorary organization of the leading labor and employment arbitrators in the U.S. and Canada. Mr. Landau is currently the only member of the Academy from Alaska. He has been a full-time arbitrator, mediator and administrative hearing officer since 1988. Previously he served as Deputy Commissioner of Labor and Assistant Attorney General for the State of Alaska. He is a graduate of Amherst College and the University of Virginia School of Law.

$200,000 in 2000 !!

The Partners In Justice Campaign, thanks to some 500 hundreds individual gifts and an unprecedented number of firm gifts, is just $2,000 short of its statewide goal of $200,000. The $198,000 raised directly supports the efforts of Alaska Legal Services to provide equal access to our legal system for the poorest of our state's citizens. If you have not yet sent in your contribution, or if you have and would like to give again to help us reach our goal, please send your check to:

Alaska Legal Services
1016 West 6th Ave, Suite 200
Anchorage, AK 99501

You can also make a secure donation on-line at www.ptialaska.net/~aklegal. Thanks again for the extraordinary generosity the legal community displayed. We will continue to do our part for those most in need, and least likely to afford it.

Correction

The March-April 2000 "Bar People "column in The *Alaska Bar Rag* incorrectly stated that Hugh G. Wade was formerly of counsel to Wade & De Young. This was incorrect. He remains of counsel to Wade & De Young and is still a shareholder member of that firm, in addition to maintaining his own law office adjacent to Wade & De Young's office at 4041 B Street. The Alaska Bar Rag and the Alaska Bar Association apologize for the error.

Alaska Bar Association 2000 CLE Calendar

Lawyers in Alaska 2000: A Conference with Australian Practitioners

June 26 #2000-024A	Environmental Issues Surrounding Tourism	JUNEAU – location tba	11:20 a.m. – 1:00 p.m.
June 27 #2000-024B	Subsistence	JUNEAU – locationa tba	8:30 a.m. – 10:10 a.m.
June 29 #2000-024C	Antitrust and Mergers	JUNEAU – location tba	10:30 a.m. – 12:10 p.m.
August 3 #2000-011 **NEW**	Off the Record with the 9th Circuit Court of Appeals Panel	Anchorage Anchorage Museum	4:40 – 6:30 p.m.
September 14 #2000-888	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	Anchorage Hotel Capt. Cook	1:30 – 4:45 p.m.
September 14 #2000-012	Professional Responsibility – in cooperation with ALPS	Anchorage Hotel Captain Cook	9:00 a.m. – 12:15 p.m.
September 15 #2000-888	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	FAIRBANKS **Westmark Hotel**	9:00 a.m.– 12:15 p.m.
September 15 #2000-012	Professional Responsibility – in cooperation with ALPS	FAIRBANKS Westmark Hotel	1:30 – 4:45 p.m.
September 22 #2000-888	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	JUNEAU **Centennial Hall**	1:30 – 4:45 p.m.
September 22 #2000-012	Professional Responsibility – in cooperation with ALPS	JUNEAU Centennial Hall	9:00 a.m. – 12:15 p.m.,
October 12 #2000-029	Real Estate Issues	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m.
October 12 #2000-032	Estate Planning in Juneau	Juneau Centennial Hall	Times TBA
October 18 #2000-013	13th Annual Alaska Native Law Conference	Anchorage Anchorage Hilton	8:30 a.m. – 5:00 p.m.
October 27 #2000-027	7th Annual Workers' Comp Update	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m.
November 1 #2000-028 **NEW**	Legal & Tax Issues for Nonprofits	Anchorage Hotel Captain Cook	8:30 a.m. – 4:30 p.m.
November 7 #2000-013	Admiralty Law	Anchorage Hotel Capt. Cook	8:30 a.m.– 12:30 p.m.
December 1 #2000-025	Leading & Succeeding in Your Law Office	Anchorage Hotel Capt. Cook	8:30 a.m. – 11:00 a.m.

High Court sees the last of hot type

Continued from page 1

change to the need-it-now demands of today's customers.

"They come in at the 13th hour and they need it by 8 a.m. the next day," says Dorsey, who took over the company seven years ago. The computer age has led clients to expect that if they come in with their brief on a disk, it can be printed instantly, without mistakes.

"They don't want to proofread," Dorsey says. "They want to hit the spell-check button and be done with it." That could never work with hot-metal printing, which required not only typing briefs anew — and repeated proofreading — but also a sophisticated manual rearranging of type to accommodate text and footnotes on a given page.

"With hot metal, if we pushed it, we could do a brief in three weeks," says Dorsey. "Now we can do it in three days." With a $1.2 million investment in the most high-tech printing system on the market, Wilson-Epes will be able to stay competitive and meet customer needs, Dorsey says. But Dorsey knows an era has passed.

No longer will linotype operators work through the night to cast words into lines made of molten lead. No longer will the briefs be printed on a Heidelberg press that left the printed page with a texture that lent importance to any brief or appendix, no matter how unimportant or verbose.

NO LONGER WILL THE BRIEFS BE PRINTED ON A HEIDELBERG PRESS THAT LEFT THE PRINTED PAGE WITH A TEXTURE THAT LENT IMPORTANCE TO ANY BRIEF OR APPENDIX, NO MATTER HOW UNIMPORTANT OR VERBOSE.

And no longer will lawyers — young associates or mighty partners — have to come down to the unremarkable printing shop near D.C.'s Chinatown to proofread their briefs for hours before they are due. Proofreading is still important, but computers make it a much quicker process.

"It breaks my heart," said John Roberts, a veteran Supreme Court advocate at Washington, D.C.'s Hogan & Hartson. "The ritual of going down there at the crack of dawn — it was a signature way to top off the whole project of writing a brief."

Roberts recalls fondly the ink-stained shirts he would end up with, the bad coffee he would drink at Wilson-Epes-a price worth paying for a top-quality printing job. Wilson-Epes printers knew intimately the Court's style preferences, Roberts said.

"We could always rely on them to mind our p's and q's," said Roberts. The company's new digital printing process "will do a good job, I'm sure," said Roberts. "But there's no substitute for the crisp product you would get from them before."

Dorsey is still retaining some old-fashioned touches — such as a binding method that allows open briefs to lie flat. And although collectors are clamoring for his old linotype machines and presses, Dorsey will keep some on hand for small specialty jobs and for historical value.

—Excerpted from American Lawyer Media

Morrison brings class action expertise to Alaska

BY JIM GOTTSTEIN

The increasing numbers of federal class action lawsuits in the U.S. is presenting new challenges to attorneys and the courts. Driven by such high-profile cases as the *Exxon Valdez* torts and anti-tobacco litigation, class actions are seen as a means to address damages or injury shared among common victims.

To say that the authors of Rule 23 did not envision this phenomenon would be a classic understatement. The class action response is in part an answer to the problem of what to do when a product or event injures a few hundred or even a few thousands people, but when the plaintiffs run into the hundreds of thousands, live in all 50 states (and often many foreign countries), and many potential victims do not even know that they have been exposed and will not have symptoms for many years.

To make matters more complicated, even in cases with homogeneous classes, there are not only lawyers for the plaintiffs and defendants, but absent class members often enter the case, especially when the case is settled and there is a question about who (besides class counsel) is really benefiting from the outcome.

Alaska attorneys have an exceptional professional opportunity to improve their competence in these mass tort actions through a special CLE planned for June.

Appearing in Alaska for two sessions will be Alan B. Morrison, co-founder of the Public Citizen Litigation Group and a preeminent litigator. Morrison was described in the September, 1997ABA Law Journal as "one of the most respected [U.S.] Supreme Court advocates."

He'll present two half-day CLE's June 29 and 30—one on Class Actions / Mass Torts, and the other on the intricacies of practice before the U.S. Supreme Court.

Morrison, who has taught both Civil Procedure (NYU) and Mass Torts (Harvard and Stanford), has assisted in hundreds of Supreme Court matters and argued before the Supreme Court 16 times.

The Public Citizen Litigation Group he helped found has developed a unique Supreme Court Assistance Project, which attempts to rectify the imbalance between well-financed parties represented by experienced Supreme Court practitioners and poorly financed parties, often represented by small firm practitioners or legal service attorneys with little or no Supreme Court experience. The project aims to equalize the playing field by lending its Litigation Group's experience and expertise in Supreme Court practice to the underdog, while at the same time not taking over the case.

This Supreme Court Practice CLE is a must for anyone who may ever file or defend a *Petition for Certiorari*.

As the *Exxon Valdez* case, and the current salmon price-fixing case have shown us, Alaska attorneys need to be up to date on current trends in these class actions. Morrison is making important current law in this area, and will discuss whether more of these types of cases are likely, and analyze the implications of class action law.

Each of these programs will run from 9 to 12 in the morning and have been approved for 2.5 CLE credits (5 for both days). The cost for these extraordinary CLE opportunities is $95 for either session or $150 for both. The CLEs will be held at the Captain Cook Hotel in Anchorage. The program is sponsored by the Alaska Legal Resource Center and the law offices of James B. Gottstein. For further information, call 274-7686.

State of Judiciary

Continued from page 1

the number of judges to adjudicate them increasing 4 percent. "We're seeing a shift in the mix," he said. "There's a shift to less in civil cases in favor of increases in Superior Court children's and felony cases, both of which are more time-intensive."

To reduce the workload, he said, the state is placing emphasis on "court-coerced mediation," and adding a mediation requirement to appeals. And, he said, Alaska is investigating what he called "the involved, or therapeutic, judging model that seems to be a new U.S. trend," along with "restorative justice." The models typically include negotiated sentencing, punishment and rehabilitation. The courts are examining the feasibility of establishing an Anchorage mental health court and, with a federal grant, the feasibility of a drug court. "Judicial processes and penology have been subject to fads over the years, and we will be undergoing an objective evaluation of these programs," said Matthews.

Well past the fad stage is the application of technology in the courts, and Alaska is adapting to the e-commerce model, said Matthews. The legislature approved funding for improvements for electronic case and docket management, to lay the groundwork for electronic filing of case documents. The appellate courts are moving to electronic distribution of slip opinions, at an estimated savings of $20,000 - $30,000 per year—and the potential for saving 700,000 sheets of paper annually. And another $500,000 is allocated for a new microfilming and electronic archive of case materials, which lawyers will be able to retrieve online by accessing CD-ROM archives mounted on Alaska Court System servers.

And returning to one of his themes in his State of the Judiciary Address to the legislature this year, Matthews expressed his concerns that movements afoot to change the way judges are retained could erode judicial independence. "By 'judicial independence' I mean that judges must be able to decide cases without fear or favor—using (their) perception of the facts and view of law without fearing repercussion or rewards," he said. Legislation to modify the selection and retention process in the Alaska Constitution did not come to fruition in Juneau this year, he said, "but I have a foreboding of the future" on the issue, adding that a vigilant bar might be the best defense against politicizing the judicial process.

Bar Rar Articles Welcome: Guidelines

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