The Alaska BAR RAG

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Inside:

Breyer speaks to bar convention

By Tom Miller
Ketchikan Daily News Staff Writer

For the first time ever a Supreme Court justice attended and spoke at the Alaska Bar Association's annual convention.

Associate Justice Stephen Breyer accepted an invitation to attend and spoke to about 250 lawyers, judges and other legal professionals at the convention's awards banquet on May 11 in Ketchikan.

The 2001 Bar Convention and Judicial Conference started May 10 at Ketchikan's Ted Ferry Civic Center.

"You seem to have had trouble having Supreme Court justices come to Alaska," he said. "You won't in the future."

Breyer said he was impressed by his two nights and a day in Ketchikan.

"I saw eagles flying by my window," he said.

Breyer took a tour of Ketchikan and enjoyed more than the beautiful scenery, he said. He also saw a healthy relationship between judges and lawyers and between the legal community and the community at large, he said.

"Why are we in the profession we are in if it's not to take part in the community in the spirit of public service?" he asked.

Breyer's main topic Friday night — a description of the day-to-day job of being a Supreme Court justice — was a treat for the lawyers and judges in attendance.

Breyer boiled the Supreme Court's job down to two main tasks: "The first thing is we decide what to decide," he said. "And the second thing is we decide what we decided to decide."

"THE FIRST THING IS WE DECIDE WHAT TO DECIDE," HE SAID. "AND THE SECOND THING IS WE DECIDE WHAT WE DECIDED TO DECIDE."

By that he meant that the first job is to pick and choose from among the 8,000 cases that are submitted to the Court for consideration. There are tens of millions of legal cases in America each year, Breyer said. Most of them are cases in state courts, he said. Most of those are traffic cases. About a quarter million federal cases wind their way through the system. Some 50,000 state cases are appealed into federal courts. Most cases are resolved in state court systems and in lower federal courts, said Breyer.

Of the 8,000 cases submitted to the Supreme Court, about 80 are accepted for consideration Those 80 cases are significant and important, said Breyer, but most of the action is in state courts.

"You will have more impact in state court with the cases you work on," he said.

Breyer described how he and his eight colleagues on the court carefully select the few they will decide.

First of all, he said, if lower courts have come to differing conclusions in a case, then the Supreme Court can be useful by stepping in.

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United States Supreme Court Justice Stephen Breyer poses at Hanson Float May 13 with the 28 pound king salmon he caught with local attorney and charter boat fisherman Mike Holman on board Holman's boat Double Jeopardy. Breyer was the keynote speaker at this year's annual Alaska Bar Association convention in Ketchikan. Ketchikan Daily News photo by Hall Anderson

Selecting judges in Alaska

By William Cotton

The Judicial Council has asked me to emphasize to the Bar that a decision not to nominate an attorney for a judicial vacancy does NOT mean the attorney is unqualified to be a judge. The Council is required by its bylaws to nominate only the most qualified applicants in that particular field.

The framers of Alaska's Constitution adopted a "merit" plan to select and retain the state's judges. Their discussion at the Constitutional Convention emphasizes their belief that the Judicial Council should thoroughly screen judicial applicants based on merit - that is, would the applicant make an excellent judge - rather than on political connections. The primary reasons for using this method were to ensure judicial independence and judicial accountability.

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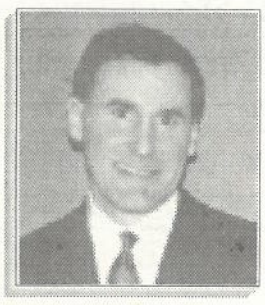
President's Column

Elements of lifestyle

☐ Bruce B. Weyhrauch



Most lawyers and Judges lead stressful lives. You probably have developed your own method of dealing with your life-style to balance your life and livelihood. Here is my list. Live long, prosper, and do good works. And thanks for letting me serve you as president this year.

• Read a novel.

• Take at least a three-week vacation without using the telephone or e-mail.

• Hug your spouse or close friend; hold a child; care for a senior citizen.

• Tell someone you love them.

• Edit the custom or supplemental dictionary on your computer and delete the jargon and misspelled words.

• Volunteer for an organization in your hometown.

• Donate to your law school.

• Exercise at least weekly.

• Call another attorney just to say hi.

• Hand write a letter to a colleague.

• Go to church, synagogue, or temple.

• Give time or money to the boy scouts or girl scouts.

• Take a walk during the day and eat an ice-cream cone.

• Eat an apple, orange and banana every day.

• Thank an elected official for serving as an elected official.

• Go visit a judge and just say hi.

• Rake your lawn or the lawn at the Pioneer Home.

• Go fishing and donate your catch to a shut-in or return it live to the water.

• Make an exotic recipe with yogurt or tofu.

• Call your mom, dad, brother, or sister.

• Write off a client's bill.

• Answer telephones for a crisis center.

• Put out a hummingbird feeder.

• Go camping.

• Fast.

• Rent an old movie like Captains Courageous and cry.

• Buy a goofy magazine that you've never bought before off a drugstore magazine rack.

• Buy some flowers for your desk.

• Buy some flowers for your neighbor or office mate.

• Ski, swim, row, play on a swing, or in a sandbox.

• Sweep your sidewalk and your neighbor's.

• Take a trip to a town in Alaska that you can't pronounce.

• Get a physical; visit the dentist.

• Sing in the shower or whistle on a walk to work.

Editor's Column

Courthouses in Alaska: Loose dogs will be shot

☐ Thomas Van Flein

From an aesthetic perspective, courthouses in Alaska have historically left a lot to be desired. This is contrary to the rest of the United States, particularly the South. You may have noticed how the courthouse in even the smallest town in the South is often in the center of the town and more often than not the nicest public building. South Carolina reports that many of its small towns have "courthouses that rival the national Capitol building (on a smaller scale)." Texas and Indiana are known for "the beauty and majesty" of their county courthouses. A courthouse in Wood County, Ohio is described as "a temple of justice."

It was often thought that the importance of the public function, in this case meting out justice, warranted an architectural style similarly worthy. Take, for example, the state courthouse in Santa Barbara. Its mission style architecture commands respect and people in the building speak in hushed tones—much to the dismay of the court reporters who have trouble recording everything.

Something happened in Alaska. Maybe it's our contrarian nature. Where other cities erected courthouses reflecting the stature of the law in society, Alaska took a more—utilitarian approach. Sure, these buildings did the job, but there were no frills—usually few windows, and certainly no arches and columns. Nor did these buildings use blue tarp and duct tape, so perhaps they were pretty fancy on a certain frontier level.

The Fairbanks courthouse (soon to be called the "old courthouse" and sometimes lovingly referred to as "the Barnette Street Bomb Shelter") is a prime example. This concrete box would fit well in any pre-1970 Soviet public works project. It's been noted that the parking garage across the street looks like a palace compared to that courthouse. One might be tempted to speculate that the architect was priming the criminal defendants for prison by making the courthouse look somewhat worse than the actual prison. Such a nefarious motive may not survive constitutional challenge, so a more likely explanation in that case was lack of money. But with all the oil money wasted in the last 20 years, somehow a new courthouse for Fairbanks never made the cut—until recently.

Fairbanks is getting a new courthouse, and it looks spiffy—in an I. M. Pei kind of way (at least to the extent it is a glass clad structure utilizing a geometric design).

It may be the nicest building in Fairbanks when complete, and the fact that it is right next to the Chena River in the heart of the downtown area signifies a new respect for the courts—or it may reflect the fact that the car dealership that used to be there moved. In any event, it probably signifies something.

Anchorage, of course, got its new courthouse five years ago. It's not grand, and you don't see people stopping to take pictures of it (except in front of the totem poles), but when compared to the old courthouse on K Street, it is a shrine. To be fair to the Boney Courthouse (Anchorage's "old courthouse"), it is newer and far nicer than Fairbanks' current courthouse. What is clear is that Anchorage gets two new courthouses for every one courthouse in Fairbanks. This is the natural order of things and cannot be changed. We checked.

Putting aside the steel, glass and concrete of the big cities, I like the courthouse in Glennallen. If you drive too fast you will pass it and say to yourself, "how odd, someone put flag poles in front of a storage shed." Inside, however, is a fine, though small, courthouse and the one courtroom I was in was decorated with stuffed animals mounted on the walls. One day its roof will leak, and you can bet the blue tarp will be out faster than you can say "capital improvement."

Maybe we really don't need anything too fancy. I once tried a case over the phone. My plane was diverted from Naknek to Cold Bay due to weather. Cold Bay in February doesn't have much going on. There were two signs in the airport that caught my attention: "Loose dogs on the runway will be shot" and "intoxicated passengers will not be allowed on board." Immediately I thought of moving to Cold Bay. These signs rivaled the signs I saw in the La Paz, Mexico airport: "No screaming, no pushing."

Who screams and pushes at the airport anymore? Not since the Beatles arrived at Kennedy Airport in 1964 has there been documented screaming and pushing. Anyway, there was (and presumably still is) a bar next to the airport called the Weathered Inn. It has an arctic entryway with a pay phone. I called the court, had my exhibits in hand (the originals were with my client, who was in court) and we presented our case. Perhaps we don't need more than a warm, dry arctic entryway to *get the job done, but it's nice to have* a respectable courthouse to fall back upon. Besides, it keeps the stray dogs out.

The Alaska BAR RAG

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Bar Letters

Move the citations[1]

For the past couple of years, the Alaska Supreme Court has been issuing opinions with the citations in the footnotes. Having given this new style a fair chance we can only hope that the Court will recognize that its experiment has failed and go back to the prior practice of including citations in the body of the text.

Placing citations in the footnotes makes the opinion harder to read. Court opinions are legal documents. The information contained within a citation is important to the reader. We need to know whether the Court is citing a case from Alaska or some other jurisdiction. We need to know whether the cited case is recent or ancient precedent. Thus, every time we come to a footnote, our eyes must glance to the bottom of the page to take in this additional information. We then have to look back up to where we previously left off to continue reading.

Even if one did not care about the information in the citation, we would still need to stop to at least look at the footnote each time. This is because not every footnote is a simple citation. Some contain substantive discussion that is (presumably) important to the Court's analysis. Every footnote represents a break in continuity that detracts from the readability of the opinion.

Lawyers, through training and practice, can easily read opinions with the citations in the body of the text. They can absorb the citation information that is important to them while skipping any information they are not interested in. This cannot be done, however, when the citations are at the bottom of the page because of the extra eye movement required.

Of course, lawyers are not the only people who read court opinions. Perhaps it is easier for a layperson to read the opinion with the citations removed. Such an argument relies on the dubious assumption that the layperson has no interest in knowing the authority relied on by the court. If the layperson does care about the citations, then he or she must also break stride and read each footnote. In addition, even without citations, legal opinions are not easy reading for a person without legal training or experience. Any alleged improved readability from removing the citations, is at best marginal, and not worth the reduced readability imposed on the vast majority of the Court's audience.

— Anonymous

[1]Frequent reader of the court's opinions who wishes to remain ananymous..

Open letter to the legal profession

Heated rhetoric has characterized recent public debate about the role of the American Bar Association Standing Committee on Federal Judiciary in the federal judicial selection process. Too often, the heat has brought little or no light, and the debate has proceeded with little understanding of what the ABA Standing Committee does and why, how it goes about its task, and -just as important - what the ABA does not do. These are significant questions. Federal judges are the ultimate guardians of the rights of all Americans. To ensure that they are independent from partisan politics, the Constitution guarantees them lifetime tenure. No one should be appointed to such a position who is not fully competent to undertake it, or simply because they are friends or supporters of a politician.

The ABA's contribution to judicial nominations first came at the express request of President Dwight D. Eisenhower in 1953. Beset by campaign loyalists who sought as their political rewards just such lifetime appointments to the federal bench, Eisenhower looked for a buffer that would allow him to place quality and competence before politics. He asked the American Bar Association to evaluate the professional qualifications of prospective nominees to the federal bench.

Eisenhower knew the ABA was in a perfect position to reach into the legal community, talk to a candidate's peers and adversaries, judges and community leaders, the very people who would know first hand about a candidate's professional qualifications. The ABA could assess the clarity of legal scholarship in the writings of prospective nominees.

The process worked. In fact it worked so well that every successive President - Democrat and Republican alike - continued to ask the ABA Standing Committee on Federal Judiciary to provide this same public service. Presidents and Senators have relied on the standing committee to evaluate the professional qualifications of each individual candidate, not against competing candidates but only against professional qualification standards - integrity, judicial temperament and professional competence. For nearly 50 years this process has helped to produce a federal judiciary that is the envy of the world. At the same time, it has insulated the Presidents and Senators from political patronage pressures. What the Standing Committee does not consider, and has never looked at, is the candidate's politics or ideology. It is true that the ABA as a national organization represents the views of its members on matters of law and justice, matters that sometimes are the subject of heated political debate. It is simply not true that the ABA committee considers those views when evaluating a judicial candidate.

Committee members are respected leaders of the legal profession, selected from your ranks because of their reputation for integrity and their commitment to professionalism. They forswear political activity on the federal level during their tenure on the committee, including making federal campaign contributions, and agree not to accept federal judicial appointment during their service and the year immediately following.

The committee operates separately and independently from the ABA itself, to the point that no member of the ABA who does not serve on that committee - not even the ABA president - knows who is being evaluated or what the committee has concluded until the evaluations are revealed to the public by the Senate.

Because the American Bar Association believes the public wants judges who are professionally qualified, we will continue with our volunteer efforts. We will continue to conduct a thorough and independent peer review of the professional qualifications of judicial nominees, and we will continue to prove our evaluations of nominees to the Administration and to individual members of the Senate Judiciary Committee. We will not let the profession down.

—Martha W. Barnett, President
American Bar Association

THANKS TO ALL ALPS SURPLUS CONTRIBUTORS

By Kenneth P. Eggers, president, Alaska Bar Foundation

The Board of Trustees of the Alaska Bar Foundation would like to extend its sincere thanks to the following judges, lawyers and law firms who so kindly donated their ALPS surplus contributions to the Alaska Bar Foundation:

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Anchorage Inn of Court

By Sam Cason

BANKRUPTCY AND MORE BANKRUPTCY

The Anchorage Inn of Court focused on bankruptcy at its April meeting, with both of the evening's presentations made possible through the courtesy of the Chief Judge for the District of Alaska, Donald MacDonald IV. The CLE focused on practice considerations for the general practitioner (i.e. not a "bankruptcy attorney") who finds him or herself in bankruptcy court. The after dinner speech and discussion focused on issues raised by the legislative changes to the Bankruptcy Code now in joint committee in Congress.

In Hollywood, all actors want to direct, and directors want to produce. Judge MacDonald has them beat. He demonstrated his versatility by writing, producing, directing and moderating a short sketch with a lighthearted look at an attorney who finds himself (mal?)-practicing in the unfamiliar forum of Bankruptcy Court. Judge MacDonald followed up with a speech laced with facts and statistics and leading the discussion that followed. Several attendees referred to his sobering look at the changes to the Bankruptcy Code as "a real eye-opener."

In the dramatic portion of the CLE presentation, former Alaska Supreme Court Justice Robert Erwin was cast as attorney Shifty Trickster. Mr. Trickster first deals with client Trudy Innocent, portrayed by guest presenter Michelle Boutin, a bankruptcy practitioner at Bundy & Christianson.

As the scene unfolds, Ms. Innocent' s scurrilous soon-to-be-ex-husband has run for the protection of bankruptcy to hide assets from her and other creditors. After she outlines the factual situation to her attorney, an amusing scene of role reversal follows with the client bewildering the attorney with myriad legal facts, code sections, and important deadlines. It soon becomes obvious that a general practitioner with no intent to ever represent a client declaring bankruptcy might fall through the looking glass, or down a rabbit hole, and find him or herself practicing with a wholly unaccustomed set of Rules.

The program ended with Mr. Trickster collecting a hefty fee to engage in some questionable bankruptcy filings for Wiley Developer, a land rich, cash poor visionary with grandiose schemes to build a 10,000-unit condominium complex in the "heart of the wilderness" near Talkeetna.

Switching from practice to jurisprudence, the Inn's dinner speech and discussion focused on the changes that are being made to Chapters 13 and 7. While most attorneys may have heard the phrase "means testing," fewer know what it may entail. Mandatory consumer counseling may have laudatory purpose, but what does it mean? Judge MacDonald was prepared with sample forms that are being drafted to implement the new requirements. Driven by formulaic application of Code sections to budgets, schedules, and worksheets, the new system promises to add significant expense to administering a consumer bankruptcy, and especially to the cost of obtaining a discharge.

One important revision to the Bankruptcy Code that attorneys with domestic relations practices should note is that support orders will have significantly greater priority than they have in the past; child support, alimony, and maintenance awards are being moved to first priority, even ahead of the costs of administration.

Leaving aside the question of whether the changes were a good idea, Judge MacDonald cited statistics from diverse sources that support the conclusion that ever-increasing consumer debt is the problem driving ever-increasing numbers of individuals to bankruptcy. Of course, there is no such quantification demonstrating the contrary view that it has become easier to obtain a discharge over the same period.

According to the book, *The Fragile Middle Class* , the credit card debt load carried by consumers going in to Chapter 7 or 13 in 1981 was $3,635 (this study included only national cards: VISA, MasterCard, American Express and Discover). Judge MacDonald followed up his speech with a brief letter describing a sharp increase in this consumer debt burden:

A second study in 1991 found the amount of credit card debt increased to an average of $11,259.00 per debtor. A study undertaken in Ohio indicated that the average credit card debt for chapter 7 & 13 debtors in Ohio in 1997 was $14,260.00. A study in one district in California indicated that the average credit card debt for a chapter 7 debtor in California was $28,955.00 as of 1997. The California data only included chapter 7 debtors. The other three studies included chapter 7 and 13 debtors.

The fact that credit card applications are issued on the basis of statistical profiles rather than any objective measure of a particular customer's ability to pay goes a long way toward explaining how grade-school age children happen to be receiving pre-approved credit card applications. One wonders, though, how "Rex Fido" could get on such a list.

As the evening drew to a close, there was a wide consensus that the Inn of Court had once again proved that it provides the best CLE bargain going. For less than the price of most daytime CLEs, the members took part in an entertaining CLE, ate a great dinner in a convivial atmosphere, and enjoyed an interesting and at times astonishing speech. A tip of the hat to Judge MacDonald for the results of his efforts.

GOD, THE INTERNET AND MEDIATION: THE INN MEETS AGAIN

The March meeting of the Anchorage Inn of Court began as always with a CLE presentation at the Boney Memorial Courthouse. This month's presentation featured attorney George Skladal as God. The Inn joined God sitting in judgment on a less than scrupulously honest litigation attorney known as John (the Ham) Bone, portrayed by Kevin Fitzgerald. Imagine God's surprise when the Archangel Gabriella (played by Marla Greenstein) mentioned that an attorney might not equate his or her professional ethical obligations with complete candor or honesty in fact. There is still whispered concern circulating about this.

Stretching his acting abilities to the limit, Fitzgerald played Ham Bone as a shifty-eyed, silver-tongued litigator making his first appearance before the bench at the pearly gates. Mr. Bone's colorful advice to associates on how to conduct discovery, engage in settlement negotiations, and contact or interview potential parties and witnesses was presented for consideration via heaven's replay/flashback capabilities. A lively group discussion dissected his advice, including a slight detour exploring the topic of how police enjoy greater latitude than attorneys in deliberately misleading people during the course of their investigation.

There was broad consensus on the questions raised by Mr. Bone's electronic and Internet discovery techniques; e.g. it is o.k. to visit the web pages of a party opponent and gather whatever information is made public without doing so through their attorney, but if you start submitting questions to the site by anonymous e-mail you may be crossing the line.

After some additional reflection on the degree and types of honesty an attorney might encounter, the CLE was adjourned and the meeting continued to the Chart Room where the dinner speaker was former Alaska Supreme Court Justice Allen T. Compton. Justice Compton, now semi-retired in Girdwood, provides arbitration and/or mediation services, and spoke on the topic of settlement and mediation. Justice Compton walked through the process from his perspective as the person actually shuttling back and forth between the parties.

Pointing out that some attorneys mediate often but settle rarely, early in the process Justice Compton likes to explore why the respective attorneys are there and why the parties have agreed to the mediation. He emphasized that attorneys need to lay the proper groundwork with their clients before agreeing to participate in the mediation. Properly preparing clients doesn't just mean "informed consent," it also involves two way communication and finding out whether a client has a particular agenda he hopes will be addressed at the mediation, or has a different impression than the attorney of what will happen. It is very easy to create unrealistic expectations, and an attorney who doesn't communicate with his client may end up with a client who has a chip on his shoulder.

An accomplished speaker, Justice Compton mixed colorful language, metaphors, and plain talk to make his points:

- It is not productive to hide the ball at a mediation if the ball is essential to reach the desired result.
- A mediator is a salesman of sorts, and the product he is selling is the desired result.
- Candor with the mediator is essential – it is not necessary to share "everything" with the mediator, but he needs to understand the fundamental factual matters and it helps to acknowledge the strengths of your adversary.
- It is sometimes a mistake to agree to exchange mediation briefs, because lawyers may be afraid to "give away" too much. He advises not exchanging briefs if that means essential information might be withheld from the mediator.

The answers to a wide range of questions during the post speech discussion provided further insights: At some point, Justice Compton usually likes to talk with the client so he can get an idea of how well he or she would present in court – often an important consideration in valuing a case for settlement. However, appellate settlement negotiations have a different emphasis; since appeals are all on paper the personal factor is taken out and the main question is what constitutes reversible error. If those present do not have settlement authority, he requires that they be readily available by phone. He does not generally start the mediation with a group opening statement, though in some cases that can be a valuable opportunity for a party to vent. Writing down the terms of the settlement and signing a document before adjournment is helpful if there are any questions or nuances, and are especially recommended in the case of conditional settlements. Often such a preliminary writing is not necessary since most lawyers like to keep the mediation simple.

The Inn appeared ready to question Justice Compton to exhaustion, but upon the moderator noting that the room wasn't rented through midnight, the discussion closed with him expressing extreme reluctance to meet with lawyers out of the presence of their clients. In order to retain credibility and the parties' trust it is essential to prevent the perception of collusion. Justice Compton received an enthusiastic round of applause and appreciation for his insights.

Books of Note

A Practical Guide to Real Estate Practice

The American Law Institute-American Bar Association (ALI-ABA) Committee on Continuing Professional Education has published *A Practical Guide to Real Estate Practice*, by Joshua Stein. The book is a commercial real estate lawyers roadmap to a better, more efficient, more client-pleasing practice.

No matter what the size of the commercial real estate transaction, certain elements are always present, says AKU-ABA. Commercial real estate lawyers must gather information about the deal; negotiate with "the other side"; draft, redraft, and re-re-draft documents, getting them all correct each time; deliver the drafts and monitor the progress through various levels of review; plan the closing and delegate the non-legal work to assistants; close the deal; and follow up on the closing. *A Practical Guide to Real Estate Practice* shows commercial real estate lawyers how to accomplish all these tasks cleanly, correctly, and impressively—under deadlines that are often unrealistic.

In this concise text, Stein, an attorney with more than 20 years of practical experience in documenting, negotiating, and closing real estate deals, shows commercial real estate lawyers how to improve their practices while delivering the best possible service to their clients. The text is designed for real estate attorneys dealing with everything from a small commercial lease to a multistate financing of dozens of sites. Each chapter also includes a checklist to make sure "all the bases are covered," a particularly crucial tool, for example, when trying to remember all the things needed for a closing.

A Practical Guide to Real Estate Practice (Order Code BK12, 320 pages, hardbound) is available through July 31, 2001, at an introductory price of $89 plus $6 shipping/handling. After July 31, the book will sell for $99 plus $6 shipping/handling. See www.ali-aba.org/aliaba/BK12.htm.

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The Effective Deposition

The National Institute for Trial Advocacy (NITA) released *The Effective Deposition: Techniques and Strategies That Work,* Revised Second Edition, by David M. Malone and Peter T. Hoffman ($49.95 paperback).

The mechanics of taking and defending depositions are simple, but to avoid mistakes you must be thoroughly familiar with the applicable rules, said NITA. Small or inadvertent mistakes can cost money and time, and prevent the use of valuable deposition testimony on behalf of your client. In this popular book, David M. Malone and Peter T. Hoffman help lawyers master critical deposition skills.

The Effective Deposition, Revised Second Edition, incorporates the 2000 amendments to the Federal Rules of Civil Procedure. These amendments focus on, among other things, the scope of discovery, the length of depositions, and what is required by the mandatory disclosures. This book discusses how to take and defend depositions under the Federal Rules as they existed through the year 2000 and note any changes due to the 2000 Amendments. Since many states still follow the pre-1993 version of the Federal Rules concerning discovery, the practice under the pre-1993 version is examined as well.

The book is divided into five sections. *(Part One: The Law)* describes the mechanics of taking and defending depositions. *(Part Two: Taking Depositions)* focuses on all stages of the deposition. The next section, *(Part Three: Defending Depositions),* provides information on how to prepare the witness to be deposed, defending the deposition, and reviewing, correcting, editing, and supplementing the transcript. *(Part Four: Using Depositions)* presents "Seven Ways to Use a Deposition at Trial," and (P*art Five: Special Types of Depositions)* focuses on videotape depositions and the expert deposition.

Books can be ordered by calling (800) 225-6482 or by visiting the NITA website at www.nita.org.

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The Digital Practice of Law

As we enter the 21st Century, more and more law firms are becoming concerned with their technology readiness as they transition into an increasingly virtual practice of law. They are concerned with the technological revolution's impact on their legal routine.

Now, attorneys, paralegals and other legal professionals can consult a new legal applications technology book available with the release of 5th Edition of "The Digital Practice of Law," by Law Partner Publishing. Authored by writer and speaker Michael R. Arkfeld, this new edition provides step-by-step practical pointers and sound advice to assist you in implementing office and case automation. Whether a novice or advanced technology user, you will find the basics, legal applications and techniques on how to use technology in your practice and litigation.

The Digital Practice of Law uses plain English to guide readers through the necessity for automating, computer basics; selection of hardware and software; networking and group computing platforms; Internet, Intranets and Extranets; management technology considerations; computer concepts; litigation applications; and multimedia presentations in legal proceedings. Also included is a comprehensive set of web resource links, which are frequently updated at the www.arkfield.com website, and a free CD-ROM with electronic discovery legal forms.

The book is available for order at the State Bar of Arizona's website at www.azbar.org, or by writing to Law Partner Publishing, 741 West Moon Valley Drive, Phoenix, Arizona, 85023. (602) 993-1937. The book is 390 pages, perfect bound and sells for $ 49.95. Author Michael R. Arkfeld is an assistant U.S. attorney for the District of Arizona.

Quote of the Month

"Laws control the lesser man. Right conduct controls the greater one."

– Chinese Proverb

Jackson AP

Unfinished business:

Another look at the Microsoft mediation

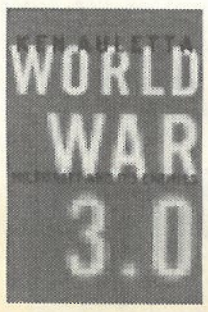
Gates AP

By James Laflin & Robert Werth

INTRODUCTION

On Nov. 18, 1999, 12 months into a trial that was eventually to last 18, Judge Thomas Penfield Jackson announced the appointment of Richard A. Posner, the chief judge of the Seventh Circuit Court of Appeals in Chicago to serve as mediator in the Microsoft antitrust case.

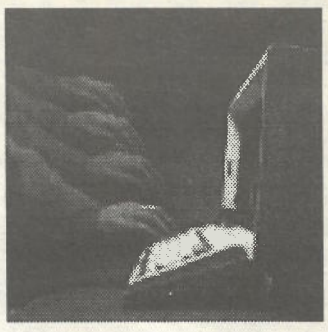
Jackson's appointment attempted to offer the parties an alternative forum in which to meet and, if possible, reach agreement. After four months of mediation during which the principals met jointly only once, Judge Posner notified Judge Jackson that an agreement could not be reached, effectively ending the mediation process. What follows is an examination of that process as reported in Ken Auletta's book, *World War 3.0, Microsoft and its Enemies*, and related article, "Final Offer: What Kept Microsoft From Settling Its Case?", which appeared January 15, 2001 in *The New Yorker* magazine.



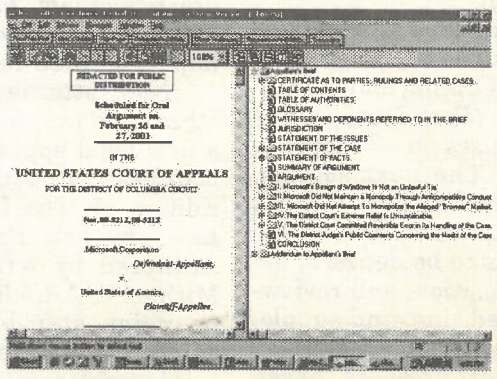
Given the distinguished lawyers and judge involved in the Microsoft mediation, the article examines why the process was still unable to yield results. Comparing the Microsoft process with another high profile mediation, one involving user rights in Idaho's Sawtooth National Forest, the article considers what can be learned from the two widely divergent approaches and offers suggestions to improve the chances of parties and mediators resolving complex public and private disputes through consensual processes.

THE MICROSOFT MEDIATION

When Judge Jackson initiated the out-of-court settlement process by appointing Judge Posner to serve as mediator in the case, Posner was neither a practiced diplomat nor experienced mediator. However, he brought other credentials to the table. As chief judge of the Seventh Circuit he had gained recognition as one of the most capable, influential members of the Federal bench, a recognized authority in the field of antitrust law; a prolific author of more than 30 books on subjects as diverse as antitrust law, economics, moral and political theory, and the impeachment of President Clinton.



"Posner's mission as a mediator was to induce Microsoft and the government to shed what he referred to as 'emotionality' and come to a rational compromise." At the outset, the parties met for lunch at a private club in what would turn out to be the only face to face meeting of the entire mediation process. In attendance were lawyers representing Microsoft, the Justice Department and three attorneys general representing the nineteen states who joined as plaintiffs in the suit. In describing protocol, Posner indicated he would refrain from evaluating the strength of either side's case, "try to deflate unrealistic expectations", and keep all talks in confidence. Each side was asked "to make a detailed presentation of the facts and remedies it would consider". Posner promised to devote himself almost full time to the process.


REDACTED FOR PUBLIC DISTRIBUTION

Scheduled for Oral Argument on February 26 and 27, 2001

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 00-5212, 00-5213

Microsoft Corporation

Defendant-Appellant,

v.

United States of America,

Plaintiff-Appellee.

To mitigate "emotionality" Judge Posner ordered separate meetings for at least the first month, the government each Monday, Microsoft each Tuesday. Two months later the process had evolved into a form of shuttle diplomacy interspersed with the judge's E-mail inquiries seeking additional information. "He began, in the words of one Microsoft negotiator, "growling at the other side, growling at us"".

After two months of work Posner outlined the first draft of a settlement proposal. Over the next several months, some nineteen draft proposals were exchanged between the government and Microsoft, via Posner, who edited them into his own language and E-mailed them either to Bill Neukom, Microsoft's General Counsel, or Assistant Attorney General Joel Klein, chief of the Justice Department's Antitrust Division. Copies went to Tom Miller, chair of the association of the nineteen state attorneys general.

By mid-February, negotiations had stalled. "Neither side believed that the other was open to a compromise, and both sides were often confused. At Microsoft, this was reflected by Bill Neukom, who said of Posner, "You keep asking yourself, 'Is he wearing his hat as a mediator, trying to motivate people to narrow their differences and come together, or is he speaking as the chief judge of the Seventh Circuit, who's an expert on antitrust law?'" Compounding this confusion, neither side could be sure whether, or which, terms contained in the successive draft proposals originated with Judge Posner or came directly from their adversary.

From late February 2000 through the end of March, Posner had extensive telephone conversations with Microsoft , sometimes with Gates directly, and Justice Department attorneys , principally Klein, in which successive draft agreements were negotiated and refined. In early March Gates seemed close to accepting the deal reflected in draft fourteen, which Posner forwarded to the Justice Department and the states, the latter which had heretofore only received copies of Posner's memos to the Justice Department and Microsoft.

The states were given 10 days to accept, or Posner would terminate the process. The state attorneys general made it clear that Joel Klein was not their spokesperson and responded separately to the proposal, expanding the list of demands on Microsoft. The states were angry with both Posner and Klein. As one state official said, "Posner was more interested in dealing with Gates and Klein and didn't perceive that he had 19 other parties to the lawsuit.... He got enamored of talking to Gates. And he's not a mediator by training, and lacked basic mediation skills." Summing up the situation as it existed in mid-March 2000, Auletta writes: "There were now three parties to the negotiations, and Posner knew they had reached an impasse."

Posner was prepared to summon the parties to Chicago for direct face-to-face negotiations starting on March 24th. Their options would be to accept the basic terms contained in the most recent draft, or face termination of the mediation. More E-mails and telephone conversations between Posner and the two sides ensued.

On March 29, Posner sent draft 18 to Microsoft, but by March 31 neither he nor the Justice Department had received a response from Microsoft. Meanwhile, the states had communicated their disapproval of parts of draft eighteen and added further conditions. Posner now realized he would have to negotiate with the nineteen state attorneys general to develop a single government proposal agreeable to all government stakeholders, state and federal. Then, even if that could be accomplished, he would still have to negotiate the divide between the government stakeholders and Microsoft. That night, before Microsoft faxed Posner its draft nineteen, he telephoned Microsoft and Klein and announced that his mediation effort was over. The next day, April 1st, he informed Judge Jackson that an agreement could not be reached. The mediation process was over.

THE SAWTOOTH NATIONAL FOREST MEDIATION

Later that same year, 1,500 miles to the west in Idaho, another mediation concluded, after lasting several months longer than Microsoft's. The dispute, though comparatively small in scale, was representative of many land use cases dogging supervisors of federal lands. In five years it had reached a pitch of "emotionality" that typifies many environmental conflicts. Nevertheless, after seven months of mediation the disputing skier and snowmobile groups reached agreement over their members' rights of winter access to public lands in the Sawtooth National Forest. This agreement and the process through which it was forged were hailed by both of Idaho's U.S. Senators, and have set a benchmark for resolving similar federal lands "user" issues across the country.

Prior to the mediation each side had contended its own members' use should exclusively prevail. In December of 1999 Sawtooth National Forest Supervisor Bill LeVere presented an ultimatum: either you resolve your dispute or I will. Had either party been dissatisfied with the federal agency decision, the parties faced the prospect of protracted and costly litigation. LeVere proposed engaging a mediator to help resolve the dispute.

As part of the mediator selection process the parties posed questions: How would you approach our conflict? What issues would you tackle, and in what order? Who should participate? How long will it take? What history or affiliations with either group do you have?

Choosing a mediator who was trained as a lawyer, each set of negotiators first met privately with the mediator and told their story. The mediator in turn posed some questions: How serious was each group about resolving this conflict? What was each group's risk assessment of their best and worst case scenarios?

Next, the entire working group met to discuss communication styles, negotiation strategies, and develop a common negotiating vocabulary. Before adjourning the group had found answers to some critical threshold questions: Were all necessary stakeholders included at the mediation table? How would each side communicate with its constituents? What about confidentiality? Who would communicate with the media, and how?

In order for the negotiation teams to familiarize themselves with the geographical boundaries of the dispute as well as each group's particular perspective, skiers instructed snowmobilers in skiing and snowmobilers led the group in maneuvering snowmobiles through the disputed areas.

To construct a comprehensive map of the area the group divided into five teams, each comprised of a skier and a snowmobiler. Each two-person team took responsibility for preparing a map of its given area and developing a proposal for solving its attendant uses. Later, each team would make presentations to the entire group. Agreement was reached on a set of criteria for evaluating the acceptability of any proposed solution.

Despite many setbacks, the negotiators persevered for seven months until reaching consensus. In September 2000, the group presented Forest Service officials with a proposed winter use map approved by all parties. The following month Bill LeVere officially accepted and implemented the map through a special order of the U.S. Forest Service.

PROCESS □ QUESTIONS □ CHOICES

These two cases, dissimilar yet each significant, have been chosen to demonstrate that every case, however varied in scope, economy and facts presents the same basic questions and choices to parties, counsel and mediators. Several of the most important are mentioned below as a

Continued on page 7

In Memoriam

Judge William H. Sanders

Judge William H. Sanders, 80, a retired Superior Court Judge, passed away Thursday, March 29 in Fort Worth, Texas from complications following Guillian-Barre Syndrome.

A memorial service will be held this summer in Anchorage. As Mr. Sanders wished, he will be interred in the Mount Olivet Cemetery in the Garden of The Good Shepherd, Fort Worth, Texas.

The son of an Alabama farmer, Mr.Sanders was born October 5, 1920 in Gurley, Ala. He obtained a Business Degree from the University of Alabama in 1942. From 1943 - 46, He was commissioned as a lieutenant in the US Army during World War II, serving in Europe as an intelligence officer with the OSS. Finishing a degree in law at the University of Alabama after the war, Mr. Sanders came to Alaska in 1947, working as a law clerk for various attorneys until he was admitted to the Alaska Bar in 1949.

He was a partner in the law firm Bell, Sanders, and Tallman from 1949 to 1963 and served in the Alaska House of Representatives from 1961-1963. Mr. Sanders was appointed judge to the Superior Court for the second judicial district headquartered in Nome in 1964, retiring in 1980. He was a member of the Alaska Bar for over 50 years. During his life he was a member of the Elks, Moose, VFW, a 32 degree Mason, Army National Guard, and past Department Commander of the American Legion, Jack Henry Post #1, in 1959. He married Margaret Timbes of Fort Worth, Texas, in 1960.

Mr. Sanders is survived by his wife of 40 years, Margaret Sanders; daughters Skyla Van Vleet and Marsland Sanders of Anchorage; grandchildren Tasha, William, Daniel, and Jack Van Vleet, all of Soldotna; aunt, Irene Sanders Brogan of California; and his close personal friend, Bill Cook of Anchorage.

Alan J. Hooper

Attorney Alan J. Hooper, 48, died unexpectedly at home on April 18.

He was born in Needham, Mass., on Sept. 11, 1952, to Claire and Bob Hooper. Al was raised in Needham and attended the University of Massachusetts and Boston University. He received his law degree in 1979 from New England College of Law, working his way through law school as a Boston cabdriver.

Al came to Alaska that year as a VISTA volunteer attorney with Alaska Legal Services Corp. and moved to Kodiak to clerk for Superior Court Judge Kay Madsen. It was in Kodiak that he met his wife Gloria Hanssen, who he married in Fairbanks in 1983.

Al greatly enjoyed living in different parts of Alaska, including positions as city attorney in Barrow and district attorney for Sitka. He and Gloria opened their law practice in Fairbanks in 1989.

He is survived by his parents, Bob and Claire Hooper or Holliston, Mass.; his wife Gloria, and children Annie, Alex, David and Michael, all of Fairbanks.

The family requests that, in lieu of flowers, memorial gifts be sent to Alaska Legal Services Corp, 1648 Cushman St., Suite 300, Fairbanks, AK 99701.

Another look at the Microsoft mediation

Continued from page 6

means of highlighting them and suggesting that significant, even outcome determinative, consequences flow from the alternatives they pose.

Thus, in every mediation an issue will exist over the degree to which the mediator should impose a process on the parties versus their negotiating their own process with the mediator. Involved are considerations of party "buy-in", as well as the need for deliberate structuring of a process reflective of case-specific goals and constraints usually best known to the parties and counsel themselves.

Second is the issue of the degree to which the mediator should limit versus encourage direct dialog between the parties and counsel. The Microsoft and Idaho mediations illustrate the tendency in commercial mediations for direct communication between opposing sides to be more limited in scope than in mediations more focused on public policy issues.

This may reflect several influences: an underlying skepticism with communication as a potent means for resolving rancorous litigated disputes, inertial default to settlement conference techniques common in the commercial/legal arena, and to some extent the ungelled, evolving state of much mediation practice. Whatever the causes of the differences in approach one of the prices paid for the control gained by a mediator through limiting parties' access to one another is, potentially, a further erosion of trust between the sides.

Thus, every mediation enacts the predicament of how much and what kind of contact between sides is best in order to bring about mutual decisions to settle since conflicts are negotiated by personalities with few guideposts for predicting either commitment to the process or future performance save their confidence in one another.

Third is the issue of to what degree the mediator should limit stakeholder participation in the mediation versus including all parties throughout the process. While the negotiation process can be undermined by the numerosity of stakeholders at the table, it can also be jeopardized by the marginalization of stakeholders who grow disaffected with a process that limits or delays their participation in it. Hence, the challenge in each mediation is to structure a process that is sufficiently inclusive without impeding effective negotiations.

Finally, the two mediations illustrate opposite ends of the spectrum of thought concerning the degree to which a mediator has the prerogative to terminate the process.

At Posner's insistance the Microsoft mediation was formally terminated on April 1, at which point the remedies portion of the trial commenced. After that date, Posner would no longer serve as a channel for further negotiations between the parties.

By contrast, the Idaho mediation was not stopped despite encountering periods of difficulty that could have been termed "impasse" and justified withdrawal by the mediator. Termination, however, was not an option in that case since the mediator's jurisdiction; negotiated at the outset, did not extend to withdrawal from the process. Nor did constraints imposed by the Forest Service prevent further mediation. In the face of party perseverance, it is worth consideration whether the mediator's authority should extend to termination of the process, or whether it should be limited to remaining a channel for the resumption of negotiations should party attitudes incline again toward that option.

These, then, represent some of the larger questions that loom in every mediation. In any given case answers to them may shift or only become apparent as the process proceeds, or may not be reached with any certain clarity, or at all. In the Microsoft case Auletta observed, "Later, lawyers on both sides wondered whether Posner had made a mistake in keeping the principals apart throughout the mediation effort. With little personal contact, it was hard for Gates and Klein and their lieutenants to think of their adversaries as flesh-and-blood human beings, and not demons. Perhaps Posner's dry, intellectual approach to legal issues ruled out the human factor, which can build trust, as well as erode it."

Although it is possible that the lawyers interviewed by Auletta were right, their point was a good one, it is also possible than no set of choices by any mediator would have brought the Microsoft case to resolution. Hindsight is a slippery game when it comes to establishing what might have resulted had other choices been made. Nevertheless, this article posits that there are choices in every mediation whose exploration may warrant greater consideration than heretofore thought: alternatives that might open unanticipated, promising avenues of approach to the personalities and issues at hand.

LOOKING AHEAD

One of the vexing difficulties for the participants in the Microsoft mediation was the fact that the pace of change driving the information technology industry far exceeds the speed with which the legal system is equipped to address real and alleged transgressions within it. In its own way, the plodding pace of the Microsoft litigation itself became, yet again, an enemy in its own right, threatening to render irrelevant or unwise rulings made a mere six months or year before. Judge Jackson may well have had something like this in mind when he ordered the parties into mediation. For it was one thing to find, as he did, that Microsoft was a monopoly that had engaged in unfair trade practices.

It was, and remains, another matter to decide what would be best to do about it. As an approach to solving the "remedy" question, mediation excels for it provides principals, potentially those most aware of the arcane details and complications of their dispute, a potent forum for jointly fashioning solutions otherwise difficult or impossible to reach within the more rigid and imposed constraints of the courtroom. This article posits that the untapped capacity in our consensual dispute resolution processes is enormous. This underutilized capacity represents lost efficiencies and wasted capital value.

If we as customers and citizens, shareholders and business partners value our economic primacy, our competitiveness, we'll pay attention, recalling the ready wisdom that success often depends not so much on what you know, as on how fast you learn.

—Los Angeles Daily Journal, San Francisco Daily Journal, and Research access to Westlaw® including Dow Jones Interactive® courtesy of West Group and Factiva.

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

Bush budget renews Legal Services funding

In his complete budget package submitted to Congress on April 10, George Bush requested an allocation of $329 million for Legal Services Corporation.

The amount is equal to "LSC's current-year funding and will be allocated as follows: $310 million for basic field programs, $4.4 million for client self-help and information technology, $12.4 million for Management and Administration, and $2.5 million for Office of the Inspector General.

The language accompanying the President's final FY2002 budget request included his most complete statement yet in support of LSC's mission.

Mr. Bush wrote: "The Federal Government, through LSC, ensures equal access to our Nation's legal system by providing funding for civil legal assistanoc to low-income persons. For millions of Americans, LSC-funded legal services is the only resource available to access the justice system. LSC provides direct grants to independent local legal services programs chosen through a system of competition. LSC programs serve clients in every State and county in the Nation. Last year, LSC-funded programs provided legal assistance and information to almost one million clients.

"Legal services clients are as diverse as the Nation, encompassing all races, ethnic groups, and ages. They include the working poor, veterans, family farmers, people with disabilities, and victims of natural disasters. The most common types of cases that people bring to LSC-funded offices are related to domestic violence, family law, housing, employment, Government benefits, and consumer matters.

LSC President John McKay said the decision means that "LSC has a new lease on bipartisan support'" adding, "This is the strongest statement yet from President Bush that he cares deeply about ensuring equal access to the justice system in America. Our mission at LSC is to make justice a reality for all Americans, regardless of their income. What's now clear is that we have a partner in the White House committed to being part of the solution."

—LSC press release

Attorney Discipline

LAWRENCE DISBARRED FOR BANKRUPTCY FRAUD

Bill Lawrence, who practiced law in Anchorage, has been disbarred by the Alaska Supreme Court. The court's disbarment order of Feb. 14, 2001 followed Lawrence's conviction on federal charges of bankruptcy fraud.

Lawrence, a businessman as well as lawyer, declared bankruptcy in 1991. In 1994 the United States Attorney indicted him on numerous counts of mail fraud and bankruptcy fraud. After two trials and an appeal to the Ninth Circuit, Lawrence was found guilty of one count of "false statement" bankruptcy fraud (by failing to declare, in his bankruptcy petition, the existence of a bank account) and one count of "concealment-of-assets" bankruptcy fraud (by concealing his ownership of an investment group). Lawrence eventually served about two-thirds of a 51-month jail sentence.

In July 1996, after the second trial, the Alaska Supreme Court placed Lawrence on interim disciplinary suspension. The Bar Association, as required by court rule, waited until the completion of appeal proceedings in late 1999 before moving to impose permanent discipline. During the disciplinary proceedings Lawrence and Bar Counsel agreed that he should be disbarred, with the effective date of disbarment to be the date of interim suspension. Because there is a five year waiting period for disbarred lawyers to apply for reinstatement to practice law, this meant that Lawrence would be eligible to apply for reinstatement in July 2001. A stipulation to this effect was approved by the Disciplinary Board and by the Supreme Court. A public file is available for inspection at the Bar Association office in Anchorage.

In the Supreme Court of the State of Alaska

In the Disability Matter Involving	)	
	)	Supreme Court No. S-10054
	)	
JEFFREY A. GOULD	)	**Order**
Respondent.	)	Date of Order; **3/23/01**
ABA Membership No. 9306021	)	

ABA File Nos. 2001B001

Before: Fabe, Chief Justice Matthews, Eastaugh, Bryner, and Carpeneti, Justices

On consideration of the joint motion by bar counsel and the respondent for the respondent's transfer to disability inactive status under Alaska Bar Rule 30 dated February 2,2001,

It Is Ordered:

1. The joint motion for transfer to disability inactive status under Alaska Bar Rule 30 is granted. Respondent Jeffrey A. Gould is immediately transferred to disability inactive status until further order of this court. A disability hearing under Rule 30(b) is not required.

2. The Bar Association shall provide the notices required in Rule 30(e) and (f). The respondent may not practice law until reinstated by order of this court under Rule 30(g).

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

In the Supreme Court of the State of Alaska

In the disciplinary Matter Involving	)	
	)	Supreme Court No. S-1005
	)	**Order**
	)	Petition for Review
PATRICK J. BLACKBURN,	)	
Respondent.	)	Date of Order; **3/7/01**

ABA Membership No. 9610050
ABA File Nos. 2000D129 - 2001D002

Before: Fabe, Chief Justice Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

On consideration of the Motion for Interim Suspension (Alaska Bar Rule 26(e)), filed 2/8/01, and no response having been received,

It Is ORDERED:

1. The motion is **Granted**. Respondent Patrick J. Blackburn is interimly suspended from the practice of law in Alaska, effective immediately.

2. Disciplinary proceedings against Mr. Blackburn will proceed as required by Bar Rule 26(j)).

3. The Bar Association shall provide the notices required by Bar Rule 28.

4. Mr. Blackburn may not practice law until reinstated by order of this court.

Entered by direction of the court.

Clerk of the Appellate Courts
/s/Marilyn May

Women in the Law Luncheon, Spring 2001

From Left to Right: Judge Natalie Finn, Judge Elaine Andrews, Judge Nancy Nolan, Judge Sharon Gleason, Judge Beverly Cutler, Chief Justice Dana Fabe, Judge Stephanie Joannides, Susan Reeves and Stacy Steinberg

New appellate settlement program

The Alaska Supreme Court has created an appellate settlement program to help parties identify cases that have the potential to settle in the early stages of the appeal. Although parties are well aware of the opportunities and advantages of settlement before filing suit, or before trial is complete, they often do not consider the benefits of settlement even after an appeal is commenced. Through this program the court hopes to expedite the resolution of disputes and reduce the cost of litigation, and add predictability and finality to the proceedings. Early settlement will also allow the parties to avoid further litigation in the event of reversal, with attendant delay and expense.

The program has two components: a mandatory settlement discussion among the parties, and an opportunity to request a settlement conference. The settlement program became effective on April 15 with the adoption of Appellate Rules 221 and 222.

Appellate Rule 221 requires attorneys in an appellate case to discuss settlement by a date specified in the opening notice. This requirement encourages all parties to evaluate the case for settlement potential in the early stages of the appeal. If full or partial settlement is reached, an appropriate notice must be filed. If no settlement is reached, the attorneys must file a certificate stating that they have discussed settlement with their clients' knowledge. A case in which one or more parties appear pro se is exempt from the requirements of Appellate Rule 221. Opening notices sent out after April 15 indicate whether a case is subject to Rule 221 and are accompanied by new forms the parties may use to comply with Rule 221, including a notice/certificate to report the results of the settlement discussion, and a dismissal by agreement if some or all of the appeal is settled.

In the event the parties do not settle the case on their own, Appellate Rule 222 permits a party to request an appellate settlement conference. Conferences may also be ordered on the court's own motion. These settlement conferences will be conducted by a settlement officer, who may be a retired judge or justice, an active judge, or a private neutral. The rule, modeled after Civil Rule 100, sets out some basic requirements for the conduct of the conference and what to do upon termination or resolution of the conference.

Questions or comments about the settlement program may be directed to Clerk of Appellate Courts Marilyn May, 264-0608, 303 K Street, Anchorage, AK 99501.

Young lawyers converge in Anchorage

More than 250 national and state leaders from the American Bar Association Young Lawyers Division attended the division's Spring National Conference, May 10-13, at the Hotel Captain Cook in Anchorage, Alaska.

"The Spring National Conference offers lawyers from around the country a wealth of innovative programming in a family-friendly environment," said YLD chair Brian Melendez of Minneapolis. "This year's conference featured a diverse and informative lineup of programs focusing on public service, affiliate outreach, bar leadership, member service, professional development, and continuing legal education."

During the conference, public service projects across the country were highlighted as model programs for YLD affiliates to implement. Among these public service project workshops are programs designed to help lawyers:

- help the parents of young children and adolescents identify the kinds of behavior that can result in criminal or civil liability,
- make the holiday wishes of needy children come true,
- organize and implement citizenship education programs for elementary, junior high, and high school pupils,
- develop a mock trial program to make pupils aware of the basic tenets of the criminal justice system,
- partner with local community organizations to raise money and provide a home for a family in need.

News from the conference will be posted at the American Bar Association Young Lawyers Division web page, at www.abanet.org/yld. The YLD is ABA's largest entity, composed of approximately 130,000 members.

Equality eluding women lawyers

The American Bar Association said last month that equality in the legal profession continues to elude women, despite women's advocacy projects throughout the country, and the perception in the profession that the position of women has improved significantly over the past decade.

The findings are detailed in "The Unfinished Agenda: Women and the Legal Profession," a report from the ABA's Commission on Women in the Profession.

Yet despite substantial progress towards equal opportunity, that agenda remains unfinished, says the report. "Women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15 percent of federal judges and law firm partners, 10 percent of law school deans and general counsels, and five percent of managing partners of large firms. On average, female lawyers earn about $20,000 less than male lawyers. Studies involving thousands of lawyers find that men are at least twice as likely as similarly qualified women to obtain partnerships.

An array of research finds that women's opportunities are limited by factors other than conscious prejudice. Major barriers include unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system, the commission found.

The report, released April 27, also proposes a series of initiatives to overcome the unequal treatment of women professionals in law.

The American Bar Association said the report provides the most comprehensive current review of the status of women in the American legal profession and justice system. It chronicles and analyzes scores of reports, surveys, and academic studies conducted throughout the country over the past two years. This is the third status report issued by the Commission since it was created in 1987. The report is published on the Web at http://www.abanet.org/women.

Breyer speaks to bar delegates

Continued from page 1

"If the lower courts are in agreement, why us?" he asked.

For the court to select from 8,000 cases, the justices must carefully screen about 150 cases a week, said Breyer. That's a lot of reading and Breyer said he would be pretending if he claimed that he could read and understand that much material.

He passes the work out to law clerks, ordering each to carefully read five cases a week. Breyer tells his clerks to look for the needle in the haystack. It might be a handwritten petition from a person without an attorney. The language might be garbled but the claim could be right, he said.

His clerks write memos about the cases and Breyer reads those. If a memo attracts his attention, he asks for more information and research about the case, he said.

The nine justices meet weekly in a large conference room to consider cases. It takes four votes to accept a case for consideration by the full court, he said. As the most junior of the nine justices, Breyer speaks last and only seldom gets a case voted in, he said.

He described the seating arrangement in the room, beginning with Chief Justice William Rehnquist at the head of the table and himself at the far end, near the door. The nine justices are the only people in the room, he said.

"My job as junior justice is, if anyone knocks at the door, I answer it."

The process continues with the reading of briefs submitted in the accepted cases. Oral arguments are scheduled. Breyer said he reads all briefs in any particular case a week before the oral argument. His clerks also read the briefs very carefully. Breyer's clerks have orders to write more memos about the cases and to answer Breyer's questions first, before delving into legal areas they find compelling.

Following oral arguments, the nine justices meet again to discuss their thoughts about cases.

"No one speaks twice until everyone has spoken once. I like that rule.... It's a rule that tends to provoke harmony in a small group."

Breyer especially appreciates the rule because, as the junior judge, he always speaks last.

The justices do not argue in these sessions, said Breyer. By this stage, they have all heard dozens of

Continued on page 11

Breyer charms Alaska bar

More than 250 attendees at the Alaska Bar Convention in Ketchikan had the opportunity to meet Supreme Court Justice Stephen Breyer for the first time in May, and heard first-hand inside tales and observations from a member of the nation's highest court.

Besides his notoriety in Southeastern for catching the biggest fish of the convention, Breyer appeared to enjoy a number of convention events and activities during his three-day stay in Alaska's First City. Accompanied by his wife Dr. Joanna Breyer, a psychologist, and the US Marshal especially assigned to him for protection, Breyer toured the city and, visited the Saxman totem park guided by Joe Williams, hiked with city attorney Steve Schweppe, Ketchikan Mayor Bob Weinstein, and Judge Trevor Stephens; took a fishing excursion; and enthused over Alaska scenery and attractions for visitors.

The justice said he was interested in a number of the CLE sessions for the Alaska bar, including the session on the history of the Alaska courts, the Off the Record session during the simultaneous Judicial Conference, and the annual Supreme Court case review.

Members of the bar who mixed and mingled with Breyer had several memorable observations on the Court's junior justice, his remarks during the annual banquet, and his candid response to questions from the audience at the conclusion of his talk:

• Appointed by President Clinton in 1994, Breyer as junior justice is seated in the traditional last seat around the table, nearest the door, during the Court's weekly conferences. "My job is, if someone knocks on the door, I open it," he told the Alaskans during his keynote speech at the convention banquet. Fortunately, he said, each justice speaks in turn during deliberations, before anyone speaks twice; without the custom, junior justices likely would have little opportunity to comment.

• Asked what one thing he might change in the Court's procedures, Breyer said he'd be inclined to increase the time attorneys are given in their oral arguments before the Court. They're now limited to 30 minutes.

• Breyer said he tends to oppose the potential televising of Supreme Court oral arguments. He and other justices who have commented on televised sessions believe that the public would see a distorted picture of these cases, and make judgements without benefit of all the complexities and issues that may be involved in the Court's decisions. "One of the justices (who I won't name), said 'over my dead body will we televise oral arguments'," Breyer said.

• The justice told Alaskans that he "didn't much like" the controversial Florida voting conflict case following the presidential election. "It was too short and intense," he said. He was among the dissenters in the case, and told the audience that "I don't much dwell on cases after they're decided...you go on to the next one, another day."

• Said one bar staffer of the justice's banquet appearance, "where else could you find a speaker who captivates an audience of lawyers for one-and-a-half hours, and they don't want him to stop?"

Selecting judges in Alaska

Continued from page 1

Judges fill a critical role in our society, making decisions about the application of the law in every aspect of life. They consider major constitutional issues, business disputes, family and custody matters and criminal cases. The convention delegates sought a system that allowed only the best people possible to be appointed as judges. They clearly envisioned that the Judicial Council would substantially restrict the governor's choices for appointment to what one delegate referred to as the "best available timber." Delegates to the Alaska Constitution recognized that governors at times will make the final appointment decision based on qualities distinct from merit.

The Council's bylaws reflect the emphasis on passing through only the very best applicants by providing that the Council shall nominate the "most qualified" attorneys in a particular field of applicants. The Council's decision not to nominate an applicant clearly does not mean the Council believes the applicant is unqualified. The Council often encourages applicants to reapply for other judgeships even when they were not nominated for the current vacancy.

SEE THE CONSTITUTIONAL CONVENTION JUDICIAL SELECTION MINUTES, PAGE 11

Council members come from diverse backgrounds: law, medicine, victims' advocacy, fishing, business, the Native community. Some have had previous legislative or executive branch experience, and the attorney members have very different areas of practice and experience. More often than not, these diverse members reach consensus on the most qualified group of applicants for a specific judgeship.

The system has consistently placed extremely well qualified attorneys on the bench. In its May 1999 report, Fostering Judicial Excellence: A Profile of Alaska's Judicial Applicants and Judges, the Council concluded that retention survey evaluations of judicial performance showed that attorneys and peace and probation officers tended to give most judges very high ratings. Voters retained most judges by high margins, suggesting that they agreed with the evaluations. The Council concluded that the selection process had succeeded in giving the governors choices among very well qualified applicants.

While no one agrees with every one of the Council's decisions, in my experience, the members have always focused on the applicants' merits, and on carrying out the Council's responsibilities as defined by the Constitution.

THE BAR SURVEY

One of the most helpful—and most controversial—tools used by the Judicial Council to evaluate judicial applicants is the Bar survey. Every attorney in Alaska has the opportunity, unprecedented in most states, to rate each applicant's abilities, experience, integrity and overall performance. Each attorney can comment to the Council in detail - and anonymously, if the attorney believes that necessary to protect confidentiality - about every applicant. The University of Alaska Anchorage Justice Center tabulates the results, assuring an objective analysis. The comments are fully transcribed for the Council members, and areas of concern are passed on to each applicant. A statistical analysis of the selection process (Fostering Judicial Excellence: A Profile of Alaska's Judicial Applicants and Judges, May 1999, Judicial Council) showed that Bar survey scores and rankings explained a significant portion of the Council's nominations for vacancies since 1984.

ONE OF THE MOST HELPFUL-- AND MOST CONTROVERSIAL-- TOOLS USED BY THE JUDICIAL COUNCIL TO EVALUATE JUDICIAL APPLICANTS IS THE BAR SURVEY.

The Council generally has found the survey valuable. Between 30% and 40% of attorneys in the state respond to each survey, giving the Council a good overview of the Bar's perceptions of the applicants' qualities. Comments provide excellent insight into direct experience with applicants, and also shed light on reputation. Do unethical attorneys rate applicants they do not know or otherwise try to manipulate the process? Unfortunately, this does occur. But I believe most attorneys are honest and make good faith ratings and comments about applicants. Clearly, the opinions of an applicant's colleagues about his or her legal ability, honesty, fairness, temperament and overall likelihood to make a good judge are important considerations.

Another comment often heard about the Bar survey is that the Council gives it the wrong amount of weight - either too much, or too little. The Council looks at a wide range of other information about the applicant, including education, experience, writing ability, written references and counsel questionnaires, public hearings, and the personal interview with each applicant. Although the Bar survey information is generally consistent with the other information, that is not always the case. The crucial point is that the Council considers the Bar survey and comments in the context of all the information about the applicant and makes its decisions to maximize excellence in the Alaska judiciary.

Response to the Survey on the Internet. The Council plans to begin a new program that will allow (not require) attorneys to fill out and submit Bar surveys on the Internet. We hope to increase the survey response rate, and save the state printing and postage costs. You can sign up for this new service by emailing me with your name, telephone number and email address at bill@ajc.state.ak.us, or wait for a mailing in the next few months with more information.

Breyer speaks to bar delegates

Continued from page 10

arguments in written briefs and in the oral arguments. Instead, each discusses how he or she is inclined to vote and what issues concern them.

The chief justice assigns the task of writing the court's opinions in the various cases to different justices. Each of the nine receive a nearly equal share of the work, "which is really, finally, my job," Breyer said.

His clerks first write long memos containing more information than Breyer needs or will likely use in his writing task.

"Then I take that and go to my word processor," he said.

The official voting follows the writing and the reading of all the opinions in each case, he said.

"Those are the mechanics" of how the court works, said Breyer. There's not a "great inside story" on how the court decides cases, as there might be in a piece of legislation, he said.

"And there's not supposed to be," Breyer said. "I'm writing drafts. That's what's going on behind the curtain."

President Bill Clinton appointed Breyer to the Supreme Court in 1994 but the job remains fascinating, he said.

"I'm still amazed to be in that job, in that room, where so much has been decided," he said.

"I'M STILL AMAZED TO BE IN THAT JOB, IN THAT ROOM, WHERE SO MUCH HAS BEEN DECIDED," HE SAID.

To look down from that historic bench and see the amazing diversity of the people and the issues in the country, makes one appreciate a system that solves problems "in a courtroom, according to law," rather than in the street, he said.

Breyer took several questions from the audience. In response to a question regarding the court's role in the recent presidential election, Breyer said, "it was difficult. It was stressful."

Breyer's vote in that case was on the losing side of the court's ruling, which effectively handed the U.S. presidency to George W. Bush. But, he said, "No matter how many losses, you go on to the next case."

Breyer said he believed all the justices in that case voted their consciences according to their interpretations of the law.

The final question, from Larry Weeks of Juneau, the presiding judge of the First Judicial District, was regarding the tone of oral arguments in the Supreme Court.

Breyer said professionalism reigns at the Supreme Court.

"I've never heard one of my colleagues make a snide remark about another," he said.

Breyer was born in San Francisco on Aug. 15, 1938. He married Joanna Hare in 1967 and has three children. He was educated at Stanford, Oxford and Harvard Law School and served as a law clerk to Justice Arthur Goldberg of the Supreme Court during the 1964 term. He has served as a special assistant to the Assistant U.S. Attorney General for Antitrust, 1965-1967, as an assistant special prosecutor of the Watergate Special Prosecution Force, 1973, as chief counsel for the U.S. Senate Judiciary Committee 1979-1980, as a judge of the United States Court of Appeals for the First Circuit from 1980-1990 and as its chief judge, 1990-1994. He has taught law at Harvard Law School, the Kennedy School of Government, College of Law, Sydney, Australia and University of Rome. He took his seat on the Supreme Court on Aug. 3, 1994.

Constitutional convention minutes on the judiciary

The following are excerpts from the minutes of Alaska's constitutional convention (1955-56) which discuss judicial selection and retention in Alaska, and the Judicial Council's role in that process. More extensive minutes are available on the Council's Internet site at www.ajc.state.ak.us.

Delegate Davis: [H]istorically, judges were always appointed until some time after the adoption of our Federal Constitution, and our Federal Constitution included that procedure in providing that judges are appointed and, in fact, are appointed for life. And, of course, the theory being appointing judges for life is that they are once appointed, completely independent .... The lifetime tenure of judges has much to recommend it. On the other hand, the lifetime tenure of judges has the possibility of being abused. Any attorney who has practiced law has seen instances where a judge appointed for a lifetime, after serving for a length of time, becomes completely unresponsive to the will of the people, refuses to change with the times and the times do change. And for that reason, strict appointment with a lifetime tenure, has its disadvantages. With that in mind then, sometime shortly after the adoption of the United States Constitution, many of the states started electing their judges with the idea that the judges would be more responsive to the public will. And the pendulum, as somebody said awhile ago, swung clear over to the other side and we had very nearly all our judges except our Federal judges being elected by the people and for relatively short terms. I grew up in the State of Idaho and we had elective judges. Their terms, even the supreme court judge terms, were only four years. The judge ran every four years and inevitably it got into politics....

The result was that the judiciary was not and could not be independent, depending on the whims of the time. Depending on the decisions a man might have made, he was or was not retained, or depending on how popular his opponent might be, completely irrespective of qualifications. Now the elective system has much to recommend it, but likewise, it has much against it. In the creation and maintenance of an independent judiciary, and I believe without qualification, I believe I could say that all of us here want an independent judiciary, a judiciary that will not be swayed by the public will at any particular moment, a judiciary that will not be subject to pressure from the executive branch of the government. .... Now the plan which has been presented here is a compromise between the plan of appointing judges for long terms and a plan for election of judges. In my opinion, it has the best features of both....[W]e have taken the best means yet devised to appoint and select qualified judges and to keep judges free from outside pressures and to get rid of judges who are not able to properly do their job.

Delegate McLaughlin (Judiciary Committee Chair): Historically, at the time of the adoption of the Federal Constitution, I don't believe that any state of the Union authorized the election of its judges. They were all appointed. When the elective system came in it was approximately the middle of the Nineteenth Century. It was found inadequate because of the fact that we will be confronted here in Alaska with not a nonpartisan judiciary, but a judiciary that in substance would be dictated and controlled by a political machine. I am a partisan myself, but I don't believe that our judiciary should be subject to the influences where they would have to go to any clubhouse to secure their nomination or have to secure funds and sometimes excessive and exorbitant funds for the purposes of being elected. I might also point out that one of the dangers of the elective system is the fact that a judge, whenever he makes a decision, he has to keep peering over his shoulder to find out whether it is popular or unpopular. If we determine the validity of our laws in terms of popularity as the general acceptance, we are then not a government of laws on which we pride ourselves. It is not the function of the judge to make the law, it is his function to determine it; and the way to keep them independent is to keep them out of politics....

What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office.... [I]t is the best compromise and the best solution to a vexing problem between those who feel we should have lifetime tenure so the judges can be absolutely independent or whether we should have short terms so the judges could be subject to popular will. The popular will should be expressed even in the control of the judiciary, but the way to control it is to put the judge on a nonpartisan ballot....

Delegate Taylor: [T]the governor does not select any appointee—that the only ones he can appoint to either the supreme court or the superior court are those men who have been selected by the judicial council, so the governor does not have any choice in the selection of the candidate for office. He merely appoints.

Delegate R.Rivers: I was a member of the bar in Seattle when I was a young fellow, over 20 years ago, and there they had the election system. The judges had to file in a competitive political field every two years, and there was always that undercurrent that litigants were contributing to the judges' campaign funds. There was nothing improper for a person to contribute to the campaign fund, but there was an undercurrent of chicanery. It does not seem to be right that a man sitting on the bench should be the subject of contributions from various and sundry people, either presently litigants or people with cases pending. The best soap-box orator often times gets elected and your better attorneys who have these qualifications we are all aware, that are required, would hesitate to throw their hats in the ring and get into that kind of a circus. I concur with Mr. Smith that this has the virtue of a screening process, an orderly screening process. We label it nonpartisan because the ability and qualifications should have nothing to do with the political party. But actually this is not only an approach at nonpartisanship although politics is bound to enter into it to a certain extent, this is a screening process which is the most important point involved. So I think that it is positive with some decency of approach and thinking the judicial council will seek for the best available timber, and we take a bow to the governor in taking his choice of two persons that are nominated, or three if we have that many to spare and are available to be nominated, but he has no alternative but to pick one of the names that are presented to him by the judicial council.

Delegate V.Rivers: I want to call your attention to the first paragraph [of the Hawaiian Legislative Handbook]. "Independence of the judiciary is a fundamental principle of our American court system. How to achieve that independence is a problem still unsolved. All agree that the first step is to find the right method of selecting judges which will insure a bench free from the influence and control of party politics, individuals or pressure groups."

Delegate Metcalf: I am one of the lay members of the Judiciary Committee.... I wish to make an observation that there is a great lack of uniformity in the distribution of justice and it is also my personal observation that lack of uniformity is due to probable pressures being exerted. Perhaps people who are fortunate to be wealthy can employ extra good lawyers and put on a real good case before the court and jury and thereby a man with money gets a lighter sentence than the person who does not have money. That is my criticism of the judicial system—lack of uniformity. To illustrate roughly, maybe I have seen a man get ten years for manslaughter for killing a man and another sentence maybe fifteen years for just shooting a leg off. There is lack of uniformity. So speaking sincerely from my heart, I would like to see and I believe this proposal here does it, it makes the judiciary courts strictly nonpartisan and as near independent so that they can be fearless and interpret the law equal to all and special privilege to none....

Delegate Barr: [W]e have heard from several able attorneys whom I consider experts in the judiciary. I am certainly not an expert. However, we must bear in mind that the courts are established for the benefit of the public and I am a member of that group. I would like to speak form that viewpoint. Now the chief value of a judge on the bench to the public is the work he does, the decisions he renders. He should have in qualifications, first, ability and experience. Secondly, he should have integrity and a willingness to render impartial decisions. Of course, the first, the ability, is without value unless he also has integrity. We have before us two methods of selecting the judges--by appointment or by election by the people. Now, I will not deny that a little political consideration at least, might enter into both methods. Of course, our interest here is to select that method with the minimum of political consideration or nonpartisanship of any kind. Under the proposed method in this Committee Proposal, whereby he is appointed by the governor, I would like to point out that two candidates are submitted by the judicial council and the governor approves of one and disapproves of the other. In other words, that is tantamount to appointment by the judicial council with approval by the governor since he has only two to select from. If anyone is going to appoint the judges, it certainly should be the experts who understand his duties more than any other group.

BRAINSTORM: My experience with depression

By Gary L. Bakke

A few years ago, life was not going well for me. Despondency grew.

I hatched a plan. Suicide is an awful burden for the survivor to carry, so I would disguise my demise as an accident. As a jogger, it was not usual for me to go out after dark. That provided a perfect opportunity for a dark, rainy night. I would wait for a semi-truck coming down the long hill approaching town. Then I would "slip" and fall in front of the oncoming truck.

When should I do it? I needed to get ready.

Because this would all be an accident, it was not possible to leave a note, but my affairs could be in order. My will was obsolete. The will had been drafted before my wife and I adopted our two sons, so they were not mentioned. Thus, my estate, such as it is, was left to my wife and to my daughters from a former marriage. I would have to fix that before I could leave.

The need to fix my will was the knot at the end of my rope, and I knew it. Once that was untied, I could slip off the end at any time. I used that knot. Whenever I was motivated to fix my will, I would stop and remember that this piece of unfinished business was important to keep me here. It was preventing a spur-of-the-moment, irreversible decision.

A "brainstorm" is what William Styron would have called it, but that word had been preempted to describe intellectual inspiration. "Melancholia" would have sufficed for him too, but even that would had been usurped by a bland noun used indifferently to describe an economic downturn and a rut in the ground. "Depression." What a wimp of a word to describe the raging maelstrom inside the head of a sufferer of this deadly disease.

Ninety percent of the population will never suffer from depression. The blues maybe, or down days, but not full-blown, out-of-control, brainstorming, dangerous depression. This is written for the other 10 percent, and for those who love and care about them.

THE ESSENCE OF DEPRESSION

For the majority, the illness will never be fully understood. In order to understand a foreign concept, we need to relate it to something in our own existence, our own history. Sadness? Insomnia? Confusion? Anger with self? Hopelessness? All are common symptoms of depression, and all are commonly experienced emotions for even healthy people. But they are not depression, and identifying with those emotions does not lead to an understanding of depression. This lack of a truly common experience creates a huge barrier to an outsider's grasp of the essence of the illness.

Depression is a disorder of mood that is virtually indescribable to one who has not personally experienced it. It makes no rational sense to the emotionally healthy, so all attempts to explain it rationally are doomed to fail. Yet it is painfully and dangerously real.

The depressed person knows he or she is ill just as surely as does one suffering from influenza or arthritis. In fact, it is a common experience of those caught in the grip of a major depression to have an alter ego that can observe the irrational thoughts. But, because of the stigma attached to any illness of the brain, many who fully understand that they are ill attempt to deny or hide their condition. Thus, during this denial, the cauldron of organic soup simmers until it boils over.

From the outside, depression may appear to be a slowing of functions. In fact, the term "depression" implies a decrease in activity. The word and the external manifestations can be deceptive. Consider the automobile traveling 35 miles per hour down a country road on a January evening — a leisurely pace at best. Now peer inside at the driver struggling to maintain control in a raging blizzard. The snowflakes pound on the windshield like the flurry of thoughts on my window of consciousness — too fast to count or focus upon individually — and the overall mass obscuring the objective. To keep the car on the road and make it home safely. Depression is not necessarily slow or leisurely from the inside.

Confusion, failure of mental focus, lapse of memory, anxiety, obstinate determination, self-defeating behavior, panic, irrational thoughts, lack of joy, failure of speech, sleep disruption, agitation, unfocused dread, slowed responses, zero emotional energy, a blizzard of thoughts, self-loathing — all of which create an immense aching solitude, a feeling of cosmic loneliness. At this point many sufferers, like me, come face to face with Camus's fundamental question:

"There is but one truly serious philosophical problem, and that is suicide. Judging whether life is or is not worth living amounts to answering the fundamental question of philosophy."

— Camus, *The Myth of Sisyphus*

From a healthy perspective, I can now say "been there and done that," but at the time I was suffering, it was impossible to put a light touch on it.

A CHEMICAL IMBALANCE

Is depression an indication of weak character? Bad genes? Early childhood trauma? Moral decadence? No. Depression is the result of a chemical imbalance, no more and no less so than diabetes or other metabolic disorders. In some people, maybe 10 percent of the population, stress depletes serotonin and norepinephrine, the chemicals that are essential to the normal function of the brain's neurotransmitters. If one were truly of weak character, would Zoloft or Prozac rebuild the missing character strength? Could anti-depressant chemicals erase the effects of childhood trauma? Again, no. It is really quite simple — chemicals replace missing chemicals.

"THERE IS BUT ONE TRULY SERIOUS PHILOSOPHICAL PROBLEM, AND THAT IS SUICIDE. JUDGING WHETHER LIFE IS OR IS NOT WORTH LIVING AMOUNTS TO ANSWERING THE FUNDAMENTAL QUESTION OF PHILOSOPHY."
-- CAMUS, *THE MYTH OF SISYPHUS*

Some people who have been in the mid-summer sun for 12 hours don't sunburn. Others may experience a serious burn in a short time. What's the difference? It's the same sun. Same sun, yes, but different individuals. So it is with stress — same stress — different individuals.

THE DOWNWARD SPIRAL

When my personal downward spiral started, I consulted with a local counselor who probably saved my life. No, she didn't cure my depression (there is no "cure"), but she did care about me, and her personal caring was exceedingly important when I had concluded that no one cared. She helped me see that I was important to my children and others in my life. Her honest caring bought time for me and started my education into my own emotional makeup. Yet, I continued down the emotional vortex toward mental meltdown. My plan to solve it all was carefully considered. It was workable, and I could implement it whenever I was ready.

My knot at the end of my rope kept me on the planet but didn't accomplish much else. Relationships deteriorated. Trust was lost. Attorneys and other acquaintances started to discuss my condition with each other. Some were frightened, some angry, some confused, and many too involved in their own lives and problems to notice. But a few stayed with me. Their patience and understanding in the face of my behavior that could not be rationally understood saved me. They helped me get to a psychiatrist.

What did they see? How did they know I needed help?

Totally irrational paranoia was probably the first clue for most. Later, as my condition continued to deteriorate, I left some specific clues. At one time, in a convulsion of emotional pain, I left the office saying that I did not know when or if I would be back. I now see that this was a subconscious cry for help.

I also attempted to ask for help directly. I had a hearing scheduled on a minor, post-judgement matter. A few days before the hearing, realizing that I was in emotional trouble, I asked the other attorney for an adjournment. I tried to be straight with him without saying that I was suffering a mental breakdown. I said that both my client and I were ready for the hearing and could be there, but that I personally needed some time and would he please accommodate my personal need.

This weak direct call for help was absolutely all I could muster. The day that attorney dismissed my personal plea was the closest I came to sliding off the end of the rope. My reaction to it left no doubt in anyone's mind that I was in big trouble. By the time of the hearing, I had to admit my condition. I asked for a conference in chambers and told the judge and opposing counsel that I would do the best I could, but that I might have to leave before the end of the proceeding. With the help of one of my partners and my legal assistant, I made it though that day — in fact, my client was 100 percent successful at the hearing. I have little doubt that if the result had been otherwise, I would not have survived the day.

EPILOGUE

I was lucky. I had caring friends and understanding partners, some emotional insight, and an easily controlled chemical imbalance. For me, Zoloft was the magic bullet: 100 mg per day of the missing chemical and life is good. Without it, I start down the same awful slide.

Are things perfect now? My emotional health is better than it has ever been, but there has been damage to my personal relationships. In the process of discussing this essay with friends and family, I scratched open some old wounds, and I was reminded how much I have hurt those who were close to me. It will never be the same, but, thankfully, in many ways it is much better. To the extent that there is permanent damage, it was caused by my behavior, not my admission that I suffered from a serious emotional illness. Denial would have gained nothing but continued pain.

My story will not be identical to anyone else's, so this is not the definitive essay on depression. We are all unique, and depression manifests itself in strange and unpredictable ways. This is my own personal story. But if you see some of yourself or an associate or loved one in some of these passages, please know that there is help.

Depression is controllable.

Wisconsin State Bar Association President Gary L. Bakke, U.W. 1965, shared this story with members of his association in the hope that others suffering from depression would seek help. This article first was published in the Wisconsin Lawyer *of December 2000, Vol. 73. No. 12, and is reprinted here with permission.*

50 Years of Bar Membership


William V. Boggess


Judge Robert Boochever


Joseph A. McLean


Michael A. Stepovich


Judge Thomas B. Stewart


Herald E. Stringer


Judge James A. Von der Heydt


Juliana Wilson

Not Pictured

Roger T. Cremo
Daniel H. Cuddy
John C. Hughes
John L. Rader
Burke Riley
William H. Sanders
Evander Cade Smith
Gladys B. Wynd

50 Year member snapshot

Joseph A. McLean was born and raised in Juneau with a family tradition close to law. His father, Hector Mclean was US Marshal in Skagway during the Klondike, and his grand-uncle, John F. McLean was the first of three lawyers admitted in 1884 when the first District Court was formed in the new territory.

After finishing the University of Washington in 1939 and awaiting military call he became a law clerk for H L Faulkner in Juneau, and while in the service in Anchorage and Valdez he clerked part-time for Tom Donohue of Dimond & Donohue.

His military service, where he rose to an infantry captain, included a year on Attu during that campaign, and concluded in Camp McCoy, Wisconsin as a major in the Judge Advocate General Dept. in 1946. In 1947 he was admitted to the Alaska Bar by examination.

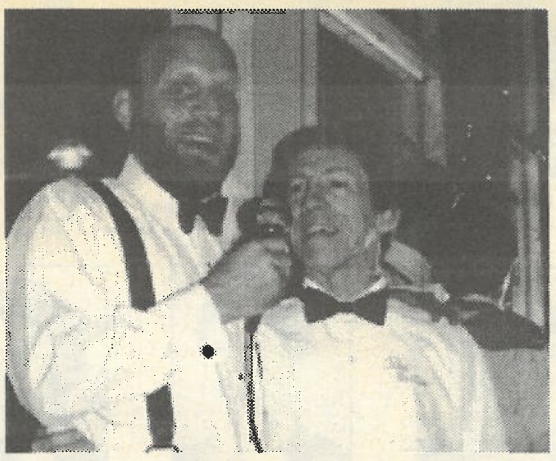
McLean served in the Alaska House in 1955-57 as Republican minority floor leader, later becoming President of the Juneau Chamber, the Alaska Chamber, Municipal League, and mayor of Juneau for two terms. He is also a commercial pilot and a fellow in the Explorers Club of New York, and recognized for mountain work in Nepal, the Andes, and in Africa. In 1962 he was admitted to appear before the Tribunal, Underwriters at Lloyds, London, for insurance work in which he specialized.

In 1970 he joined Ely, Guess & Rudd, and in 1992 retired with his wife Isabel, to Seattle.

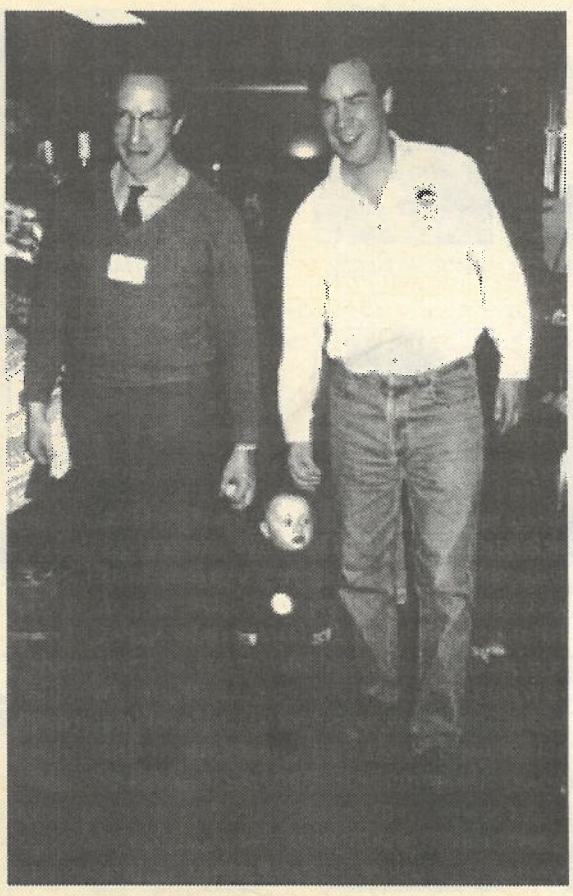
Of unusual interest to lawyers, within a few months of admission, McLean was appointed with elderly attorney Henry Roden, to defend two men accused and found guilty of first degree murder. The evidence was circumstantial with serious question of confessions which were taken up on appeal, but resulted in ultimate hangings, the last in Alaska. McLean admits this was a startling and humbling beginning of law practice in Alaska.


50 Year Members Receiving their Pins at the Convention
From Left to Right: Judge Tom Stewart, Judge Robert Boochever, Charles L. Cloudy (he will have 50 years starting in 2002, but we gave him his pin while we were in Ketchikan — he lives in Ketchikan)

Freedom Cafe


Jonathan Katcher and John McKay rock out at Freedom Cafe.


Steve Pradell at Freedom Cafe.


Lloyd Miller, L and Bob Anderson, R

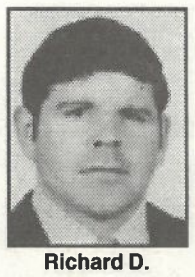

Diane Disanto and Kathleen Harrington enjoy the service of Freedom Cafe workers while youthful "friends" look over their shoulder.

25 Years
Alaska Bar Association

25 Years of Bar Membership


John P. Aaronson


James L. Baldwin


Richard D. Beeson


Michael A. Bell

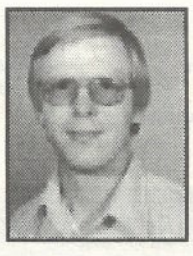

James M. Bendell


Joel Bennett

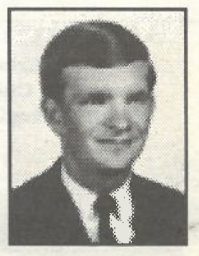

Larry G. Berry


Mark S. Bledsoe


Ronald L. Bliss


Thomas R. Boedeker


Bruce M. Botelho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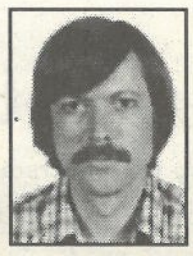

James T. Brennan

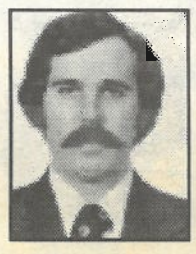

Roger L. Brunner

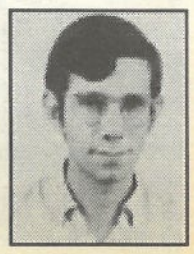

Cynthia P. Christianson


Jack D. Clark


Stephanie J. Cole


Stephen Conn


Stephen D. Cramer


James S. Crane


John B. Curtis


Kenneth J. Cusack


Lawrence R. Davidson


Douglas R. Davis


James D. Dewitt


Elliott T. Dennis


Fredric R. Dichter


John E. Duggan


Charles A. Dunnagan


Lawrence W. Erwin

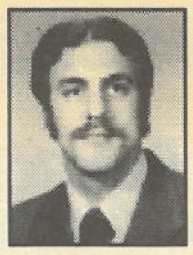

Joseph W. Evans


Michael A. Fannon


Jeffery M. Feldman


Karla Forsythe


Robert D. Frenz


Peter B. Froehlich


Richard W. Garnett, III


Sarah Elizabeth Gay


George E. Goerig, Jr.


Harry F. Goldbar

Robert L. Griffin

Robert B. Groseclose

Dean J. Guaneli

John W. Hagey

Kathleen M. Harrington

Mary Anne Henry

Shelley J. Higgins

Deborah A. Holbrook

Charles Holden

Clifford W. Hoist

Dennis Hopewell

Roger L. Hudson

Jeffery D. Jefferson

Eric M. Jensen

Brian H. Johnson

Carol A. Johnson

Daniel M. Johnson

Carolyn E. Jones

Calvin R. Jones

Joseph A. Kalamarides

Henry Clay Keene

Leonard T. Kelley

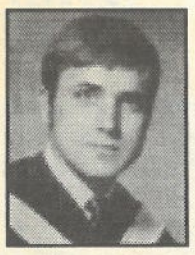
Elizabeth P. Kennedy

Thomas F. Klinkner

25 Years
Alaska Bar Association

25 Years of Bar Membership

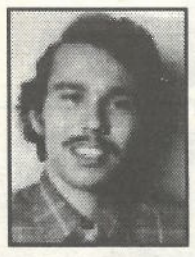

G. Thomas Koester

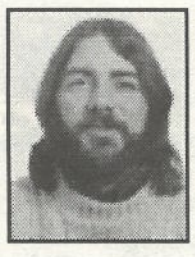

Herbert P. Kuss

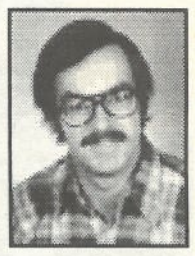

David A. Lawer


Ann C. Liburd


Leonard M. Linton, Jr.


Robert L. Manley


Jack B. McGee


Timothy A. McKeever

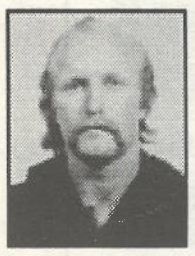

Noel McMurtray


Donald C. Mitchell

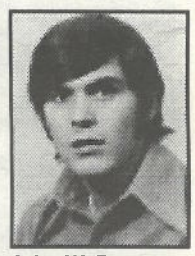

John M. Murtagh


Michael J. O'Brien


Gregory M. O'Leary


Bradley D. Owens


John B. Patterson


John W. Peterson


Timothy J. Petumenos


Elizabeth A. Ratner

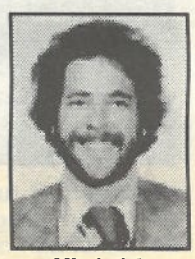

J. Michael Robbins, Esq.


John D. Roberts


David E. Rogers


Stephen D. Routh


William R. Satterberg


Mitchel J. Schapira


William B. Schendel


John A. Scukanec


Anthony M. Sholty


Brian R. Shute


James T. Stanley


Niesje J. Steinkruger


David Stewart


Douglas Strandberg


John Suddock

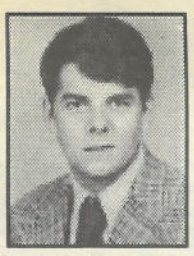

Gordon J. Tans


Sue Ellen Tatter


Allan E. Tesche


Valerie M. Therrien


Janalee R. Tierney


George Trefry


John A. Treptow

Howard S. Trickey

Steve A. U'Ren

Jeffery M. Van Abel

Louis R. Veerman

Larry A. Wiggins

Paul S. Wilcox

Joseph M. Wilson

Larry D. Wood

— Not Pictured —

Dale Dolifka
John W. Hanley, Jr.
Cameron Sharick Jensen
Kenneth M. Rosenstein

25 Year Members Receiving their Pins at the Convention

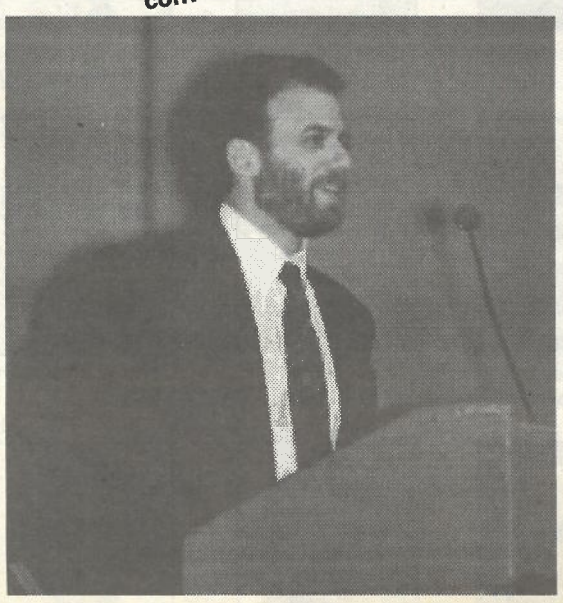
From Left to Right: Bob Manley, Anthony Sholty, Bob Linton, Roger Brunner, Paul Wilcox, Judge Peter Froehlich, Judge Niesje Steinkruger, Judge David Stewart, Deborah Holbrook, Tim Petumenos, Mary Ann Henry, Gordon Tans, U.S. Magistrate Judge John Roberts

"The Old Cannery at Letnikof" by Donna Cattoti — cover of the convention brochure.

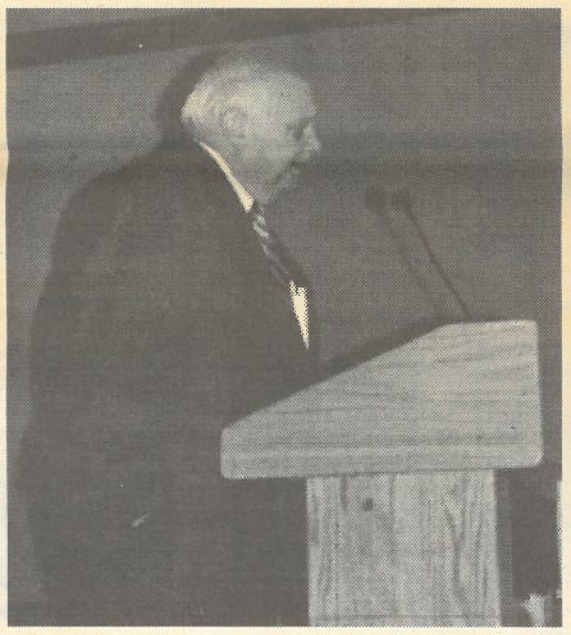
2001 Bar Conventi

Ketchikan, Alaska · Thursday, Frida

Weeks and Evans honored with awards at



Keith Levy of Juneau received one of two Alaska Pro Bono Program Individual Awards. Leslie Longenbaugh of Juneau also won an individual award. The law firm of Faulkner Banfield, Juneau, received the Pro Bono Firm Award.



Lew Williams received the Layperson Service Award for outstanding service to the Alaska Bar Association. Williams served 8 years on the Board of Governors, including several terms as Treasurer.

Judge Larry Weeks with Chief Justice Dana Fabe.

Judge Larry Weeks receives Alaska Bar Association Distinguished Service Award

Juneau Superior Court Presiding Judge Larry Weeks was the recipient of the Alaska Bar Association's Distinguished Service Award, which was presented during the Bar's annual convention held May 10-12 in Ketchikan. This award honors an attorney for outstanding service to the membership of the Alaska Bar Association.

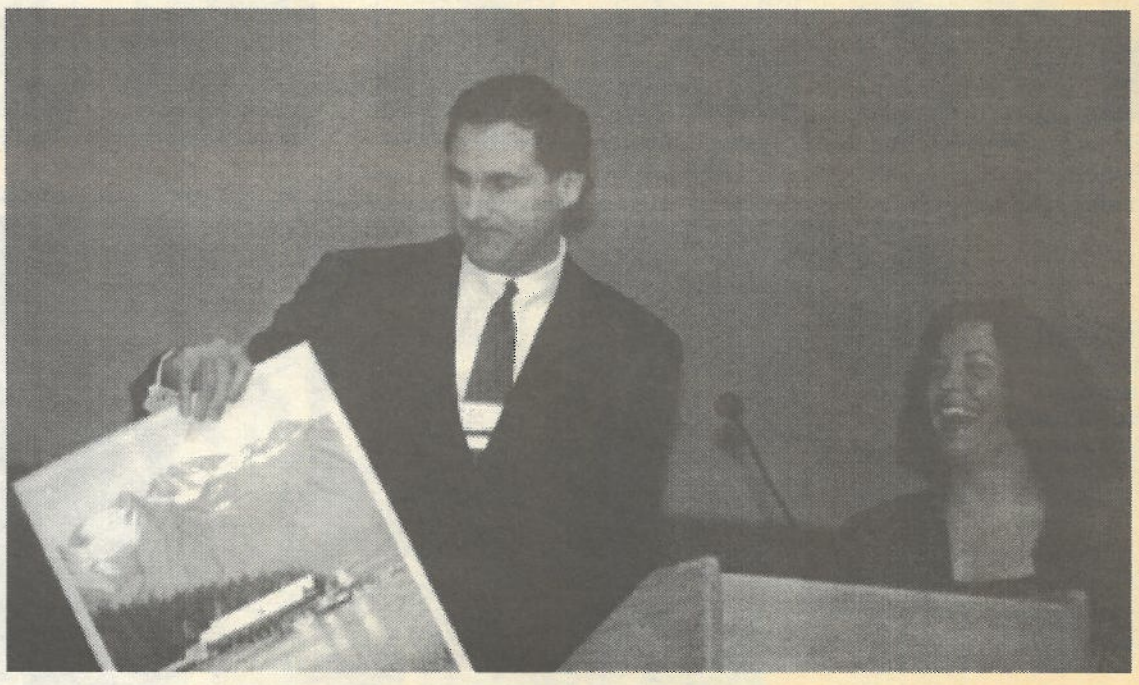
Judge Larry Weeks also received the Alaska Court System Community Outreach Award.

Gordon Evans

Gordon Evans receives tion Professionalism A

Juneau Attorney Gordo Alaska Bar Associatio Award at its annual con 12 in Ketchikan. This a attorney who exemplifies true professional, whos consistent with the hi practice, and who displa tesy and respect for clie neys.

Outgoing Board Member Venable Vermont receives chest waders.



Immediate past president Bruce Weyhrauch accepts his gift after passing the the gavel to president Mauri Long.

Donna Willard Business Meet the 1977 Conve

Photos By Cynthia F

ON HIGHLIGHTS

nd Saturday · May 10, 11 and 12, 2001

SINCE 1896
ALASKA BAR ASSOCIATION

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Bar Associa-

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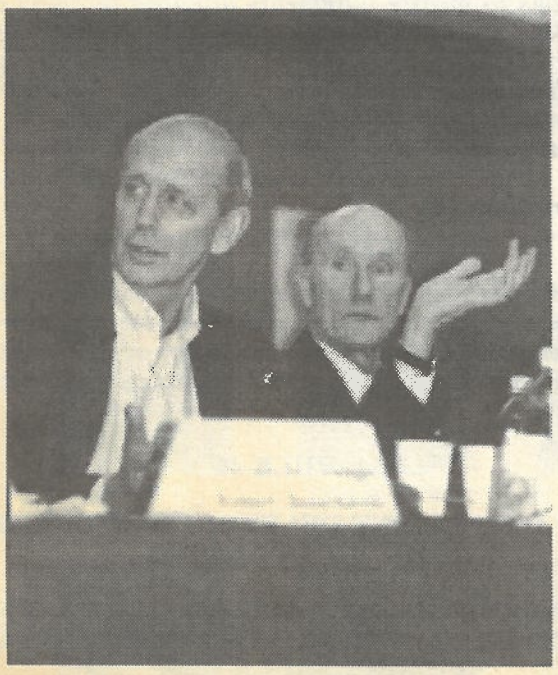

U. S. Supreme Court Justice Breyer at Appellate Off The Record and Alaska Supreme Court Justice Alex Bryner.

Suzie Erlich and Judge Don Hopwood at Salmon Falls Dinner.

The Ambulance Chase and Fun Run/Walk sponsored by West Group.

The "F.L.I.A." Runners: "Fastest Lawyers in Alaska"

Fun Run:
1st Place - Mike Kramer (Fairbanks)
2nd Place - Keith Levy (Juneau)
3rd Place - Justice Robert Eastaugh (Anchorage)

mentarian, at the Bar
wears the hat given at
Ketchikan.

Judge Tom Stewart beams while pinning on his 50 year pin.

WS

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Alaska Legal Services Corp.
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Alaska Pro Bono Project
ALPS-- Attorneys Liability Protection Society
Bureau of National Affairs - BNA
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Comments invited for proposed rule changes

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

The amendments to **Bar Rules 31(g)(3) and 54** would allow trustee counsel compensation to be paid from the Lawyers' Fund for Client Protection.

The amendment to **Alaska Rule of Professional Conduct 1.5** would permit contingent fees in domestics relations matters *only* in cases which seek the modification of alimony or a property division established by decree or judgment or the collection of delinquent alimony or child support payments or the enforcement of a property division. Further guidance is provided in the proposed amendment to the Alaska Comment section.

The amendments to **Bar Rule 45** would eliminate the Alaska domicile requirement for an active member of the Bar Association against whom a Lawyers' Fund for Client Protection claim is made and would add the failure to pay a fee arbitration award to the definition of "reimbursable loss."

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, 2001.

BAR RULE 31(g)(3)
PROPOSED AMENDMENT TO PERMIT PAYMENT OF TRUSTEE COUNSEL FEES/COSTS FROM LAWYERS' FUND FOR CLIENT PROTECTION

(Additions are italicized; deletions have strikethroughs)

Rule 31. Appointment of Trustee Counsel to Protect Client's Interests.

...

(g) **Compensation.**

(1) Any attorney serving as trustee counsel shall be entitled to compensation for reasonable fees and costs incurred in the performance of duties set forth in this Rule. Trustee counsel may seek payment of fees and costs from the estate of the unavailable attorney. Such a bill for fees and costs must be approved by the court as reasonable.

(2) An attorney who serves as trustee counsel may substitute as counsel for a client of the unavailable attorney after disclosure to the client that the client is free to select any attorney to substitute as counsel for the unavailable attorney and after obtaining the client's consent to substitution.

(3) In the event that the estate of the unavailable attorney is insufficient to compensate trustee counsel, an attorney appointed to serve as trustee counsel may submit a claim to the Board of Governors of the Alaska Bar Association. Reasonable compensation *paid from the Lawyers' Fund for Client Protection* shall be determined by the Board and will not exceed ~~$5,000~~*10,000**.

*Amendment previously published Jan/Feb 2001 *Bar Rag*.

BAR RULE 54

PROPOSED AMENDMENT PERMITTING PAYMENT OF TRUSTEE COUNSEL FEES AND COSTS

(Additions are italicized; deletions have strikethroughs)

Rule 54. Payments at Discretion of State Bar.

All payments from the Fund*, including the payment of trustee counsel compensation by the Board under Rule 31(g)(3),* shall be a matter of grace and not of right and shall be in the sole discretion of the Alaska Bar Association. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

ARPC 1.5
PROPOSED AMENDMENT REGARDING FEES IN DOMESTIC RELATIONS MATTERS

(Additions are italicized; deletions have strikethroughs)

Rule 1.5 Fees.

...

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

~~(1)~~ *a* ~~any~~ *contingent* fee in a *criminal case, or in a domestic relations matter other than one seeking only:*

(1) the modification of alimony or a property division established by decree or judgment; or

(2) the collection of delinquent alimony or child support payments, or enforcement of a property division.

~~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~~

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

A "domestic relations matter" is any matter seeking the granting or modification of divorce, dissolution, annulment of marriage, legal separation, child support, dependent adult support, adoption, guardianship or conservatorship.

Alaska Comment

[as related to paragraph (d) only]

A contingent fee arrangement is generally prohibited in domestic relations matters to terminate a marriage or to initially establish alimony, child support or property settlement because of a strong public policy encouraging reconciliation between the parties in a domestic dispute when possible, and a recognition that most domestic disputes involve parties who will of necessity continue to communicate and interrelate with each other. Because domestic relations matters generally concern an equitable balancing of interests and fairness considerations, rather than enforcement of defined rights or compensating for damages or injuries resulting from a breached duty, an arrangement for a fee contingent on result may create a conflict or perceived conflict between the attorney's desire to maximize compensation for services and the duty to advise clients in situations where client emotions frequently detract from reasonable efforts toward resolution. Contingent fees in some circumstances may also be viewed as providing a potential windfall to lawyers at the expense of children, incapacitated adults or spouses of limited means who are already severely impacted by the breakdown of a relationship. Notwithstanding the general prohibition, contingent fee arrangements are permitted in actions to modify judgments dividing property or awarding alimony, or to collect delinquent alimony or child support payments, or to enforce a property division, because the nature of the claim giving rise to these actions reflects a diminished relationship between the parties, the protection of which is outweighed by the benefit of access to the courts that may be facilitated by a contingency fee arrangement. 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 45

PROPOSED AMENDMENT DELETING REQUIREMENT OF DOMICILE IN ALASKA

PROPOSED AMENDMENT ADDING FAILURE TO PAY A FEE ARBITRATION AWARD TO THE DEFINTION OF "REIMBURSABLE LOSS"

(Additions are italicized; deletions have strikethroughs)

RULE 45. Definitions.

(a) The "Board" is the Board of Governors of the Alaska Bar Association.

(b) The "Fund" is the Lawyers' Fund for Client Protection of the Alaska Bar Association.

(c) The "Committee" is the Lawyers' Fund for Client Protection Committee.

(d) The term "lawyer" as used in this part and the rules contained therein means an active member of the Alaska Bar Association ~~domiciled in Alaska~~ at the time of the act or omission which is the basis of the application of the fund. The act or omission complained of need not have taken place within the State of Alaska in order for an application to the fund to be made or granted.

(e) The words "dishonest conduct" or "dishonest act" as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

(f) "Reimbursable losses" are only those losses of money, property or other things of value which meet all of the following tests:

(1) The loss was caused by the *lawyer's failure to pay a fee arbitration award or by the* dishonest conduct of a lawyer when

(i) acting as a lawyer, or

(ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.

(2) The loss was that of money, property, or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph (f)(1) of this rule.

(3) The *failure to pay a fee arbitration award or the* dishonest conduct occurred on or after the effective date of this part.

(4) The claim shall have been filed no later than three years after the claimant knew or should have known of the *lawyer's failure to pay a fee arbitration award or of the* dishonest conduct of the lawyer.

(5) The following shall not be an applicant:

(i) The spouse or other close relative, partner, associate or employee of the lawyer, or

(ii) An insurer, surety or bonding agency or company, or

(iii) Any business entity controlled by (1) the lawyer, (2) any person described in paragraph (i) hereof, or (3) any entity described either in paragraph (ii) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (i) or (ii) hereof, or

(iv) A governmental entity or agency, or

(v) A collection agency.

(6) The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or surety bond fund, whether of the lawyer or the applicant or otherwise.

(7) Either

(i) the lawyer

(aa) has died or has been adjudicated mentally incompetent;

(bb) has been disciplined, or has voluntarily resigned from the practice of law in Alaska;

(cc) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (f)(1) of this rule and which judgment or judgments remain unsatisfied in whole or in part;

(dd) has been ordered to pay a client under a final and binding fee arbitration award and has not done so; or

(ii) the Board has determined it to be an appropriate case for

Continued on page 19

BOG wades through 27-item March agenda

At the Board of Governors meeting on March 30 & 31, 2001, the Board took the following actions:

• Appointed a Strategic Planning Committee (Weyhrauch, Long, & Faulhaber) to work on getting a retreat facilitator, the location & a budget for doing a strategic planning session in late Sept./early Oct. The Committee is to report back to the Board in May.

• Approved the use of the Bar Association's credit card system for the Alaska Pro Bono Program's Barristers Ball.

• Tabled the issue of a VCLE discount until the May Board meeting, and will seek input from the supreme court and Bar members.

• Received information about the dues reduction given to Fairbanks attorney Ruth Bohms for providing more than 400 hours of Pro Bono work to senior citizens in 2000.

• Approved Rule 43 (ALSC) waivers for Judith DeMarsh and Elizabeth Dickey.

• Voted to publish a proposed Bylaw to form a Standing Committee on Judicial Independence.

• Voted to make the following appointments to the ALSC Board of Directors: Janine Reep to the regular seat in the 1st district, with Richard Whittaker as alternate; Bob Bundy to the regular seat in the 3rd district, with Carol Daniel as alternate; Bethany Spalding to the regular seat in the 4th district.

• Voted to nominate Jeff Feldman to the Judicial Conduct Commission.

• Appointed Board members Bodwell and Long to the 9th Circuit Lawyer Representative selection Committee, and will appoint 1-2 other lawyers to that Committee.

• Unanimously adopted the report of the Area Hearing Committee recommending that Marcus Paine be disbarred.

• Voted to adopt the stipulation that an attorney be disbarred, and to send this recommendation to the supreme court.

• Voted on the recipients for the Distinguished Service Award, the Professionalism Award, and the Layperson Service Award to be presented at the convention.

• Requested that the Executive Director set up a timeline and procedure for the implementation of evaluations of the Executive Director and the Bar Counsel. Established a Subcommittee to conduct the evaluations, which will consist of the President-elect, one immediate past president (or board member at discretion of the president) and one public member.

• Approved the Ethics opinion entitled "Attorney's Duties When Advised By Custodian that Criminal Defendant Has Breached Conditions of Client's Release."

• Approved 7 reciprocity applicants for admission.

• Approved the request to form a Law & Community Health Section.

• Approved one free slot at each CLE for Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) attorneys.

• Requested staff to do a comparison in costs between prospective pension plans.

• Voted to send to the supreme court Bar Rules 10 & 12 regarding the appointment of special bar counsel.

• Voted to send to the supreme court Bar Rule 31, regarding increasing the maximum fee that can be paid to Trustee Counsel from $5,000 to $10,000.

• Voted to table Bar Rule 45 regarding the definition of dishonest conduct for the purposes of the Lawyers' Fund for Client Protection.

• Voted to publish a proposed amendment to Bar Rule 31(g)(3) & Bar Rule 54 which would provide that Trustee Counsel be paid from the Lawyers' Fund for Client Protection.

• Voted to publish ARPC 1.5 which would allow contingent fees in certain domestic relations matters.

• Check into the option of buying a catastrophic umbrella or layer insurance for large LFCP claims.

• Get a Bar Association Visa or MasterCard and talk to vendors about paying our bills by credit card to get travel mileage for the Bar.

• Heard a report by Bar Counsel that the U.S. Supreme Court declined to accept Obermeyer's appeal; heard that the Alaska Supreme Court declined to grant an applicant a hearing in her appeal to the court.

• The nominating Committee for Board officers will be Weyhrauch, Long, Vermont and Faulhaber.

Supreme Court adopts appellate time standards

As part of its ongoing effort to reduce appellate delay, the Alaska Supreme Court has adopted appellate time standards for civil appeals. These aspirational standards apply to the time between submission of the case to the court upon oral argument or conference on the briefs, and publication of a written opinion or memorandum opinion and judgment. These supreme court time standards are similar in format to those recently adopted for the trial courts, and are consistent with the format recommended by the American Bar Association's proposed appellate time standards.

The following chart lists the standards for all appeals, and for expedited appeals, indicating the number of months between submission and the written decision:

All civil appeals		Expedited civil appeals	
50%	6 months	50%	3 months
75%	9 months	75%	4 months
90%	12 months	90%	6 months

Thus half of all civil appeals should be decided within six months of oral argument or conference, when the court takes a case under advisement, and 90% should be decided within 12 months.

In adopting the time standards, the court considered the desirability of a swift decision as well as the need for thorough research and development of a sound opinion that will be *stare decisis* in Alaska, while allowing time for the justices to reconcile differing views or prepare separate opinions in some cases.

These time standards address one part of the appellate process. In addition to the time a case spends under submission by the court, there are two other important parts of the process that occur prior to submission: the time spent by the Appellate Court Clerk's Office, and the time spent by the parties in briefing. The clerk's office has taken a number of steps to reduce delay before cases are taken under advisement by the court and to help the members of the court process cases more rapidly. Next, the supreme court's committee on appellate delay plans to work with the bar and the clerk's office to develop time standards that address pre-submission delay.

For further information about the time standards or appellate delay, and to offer any suggestions that might reduce delay at any stage of the process, please contact Clerk of Appellate Courts Marilyn May, 264-0608, 303 K Street, Anchorage, AK 99501.

Comments invited

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consideration under these rules.

(8) Reimbursable losses do not include interest on such losses or attorney fees incurred in attempts to recover them.

(g) "Notice" means the delivery of a written notice personally to the addressee or by mail to the most recent address which the addressee has provided to the Alaska Bar Association. Written notice shall be presumed to be received by the addressee five (5) days after the postmark date of certified or registered mail sent to the most current address which the addressee has provided to the Alaska Bar Association.

Proposed Amendment to Create Judicial Independence Committee

Judicial independence is important to our constitutional form of government. To that end the Board has determined to create a standing Committee on judicial independence. The mission of that Committee shall be to make recommendations to the Board for activities that the Bar can undertake to educate the public about and promote the concept of judicial independence.

Bylaw VIII, Section 1(a)(11)

(Additions are italicized; deletions have strikethroughs)

Section 1. Committees.

(a) **Standing Committees**...

(11) the Judicial Independence Committee, a Committee responsible for recommendations to the Board for activities that the Bar can undertake to explain and promote the concept of judicial independence, and to undertake to educate the public about and promote the concept of judicial independence.

You are cordially invited by the

Supreme Court of the State of Alaska

to the installation of

NANCY J NOLAN

as Judge of the

District Court of Alaska

on the eighth day of June

two thousand one

at three-thirty o'clock p. m.

Boney Memorial Courthouse

Anchorage, Alaska

A TechShow 2001 sampler

Everything for the law office & perhaps the kids

You've heard about safety in numbers, the buddy system, filing flight and hiking plans, and all the other survival techniques required in unfamiliar territory.

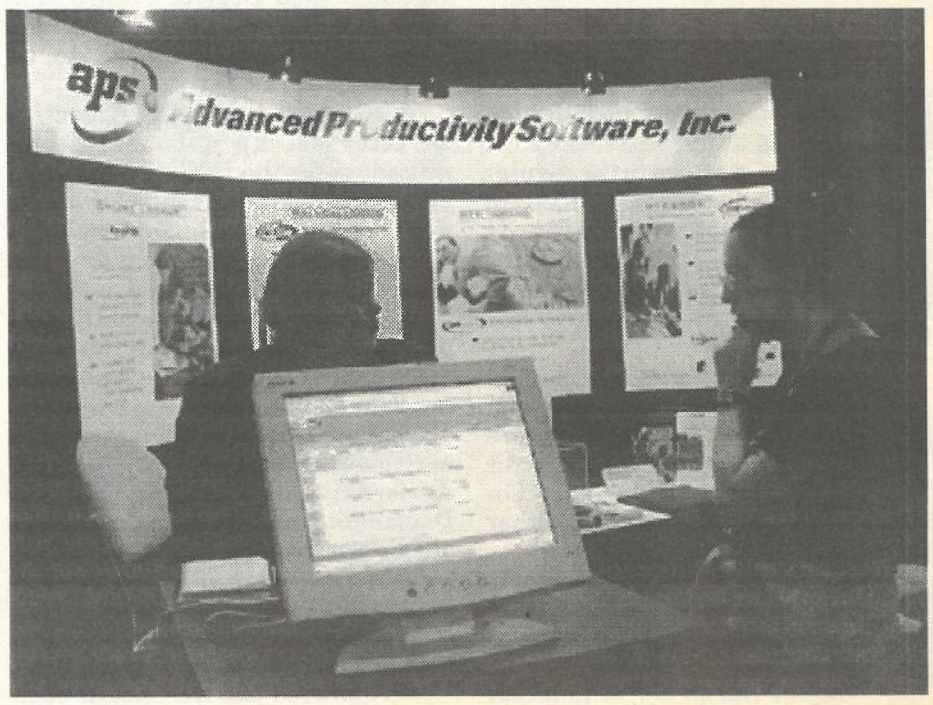
They come in handy for the American Bar Association's TechShow, organized by the Law Practice Management Section each year in Chicago. Call it Nerd Nirvana for those into the latest bleeding-edge tools of the tech trade—or Techno Terror for those just beginning to bite the bullet and get tech-savvy.

Alaska sent a delegation of four to the 15th annual TechShow this spring, and the buddy system helped the team divide and conquer an array of hardware, software, gadgets and seminars on the banks of the (yes, green) Chicago River on St. Patrick's Day weekend.

Bar Rag Editor in Chief Tom Van Flein; Managing Editor Sally Suddock, and Web Monkey Ariel Jones attacked Tech Show for a team sweep, while technology columnist Joe Kashi not only presented a seminar at the annual event, but enriched himself in technology and what other presenters had to say about the shape of law tech now and to come. Kashi also is a member of the advisory committee that organizes the event each year.

West Group made the *Bar Rag* delegation's attendance possible, as sponsor of the simultaneous ABA National Editors Conference, presented annually by the General Practice, Solo and Small Firm Section of the national bar. More than 50 editors and designers of regional bar publications attended the NEC...and used their "official press passes" for an inside track to TechShow.

Of course, the goal for any trade show is....*schwag*, aka Free Stuff. You won't see great schwag in small, regional trade shows like those commonly held in Alaska, but for exhibitions on a national level, like TechShow, the giveaways at least partially compensate for the $795 cost of entry (unless you have a press pass or other complimentary ticket, in which case the schwag is all windfall.)



APS staffer shows off a time-tracking module.

TechShow is not for the faint at heart. It requires commitment to take in some 75 seminars, workshops and CLEs; more than 100 exhibitors and nearly 300 applications, services and products over the three-day period. It's one of the bar's most popular events, drawing law-related professionals from North America and overseas.

While the annual show is not one of the largest tech expositions, its targeted attendee market is certainly one of the most affluent for office automation and technology budgets. Organizations that market to the legal community spend tens—and often hundreds—of thousands of dollars each year in promotional literature, show premiums (i.e. schwag), advertising and sponsorships to build product identity and market share. In short, TechShow is an upper-end event and it looks it—from company representatives to booth décor and giveaways.

OLD FRIENDS UPDATED

The annual coming together of law office technology features long-standing leaders in law firm services, demonstrating their latest product improvements. With the explosive growth of the Web, TechShow provides a concentrated opportunity to keep up. Interactivity, collaboration, and real-time document-sharing continue to be available, and more affordable, for even the smallest firm.

And increasingly, services and products are being deployed on the Web, for secure access to any document, any matter, from anywhere.

Lexis, West, and other giants in the industry were out in force for TechShow 2001. West promoted its newest research and document-retrieval capabilities for wireless handheld computing devices running the Palm OS, together with enhanced online research capabilities. West has repositioned many of its products and research services as an integrated group of solutions under the banner of West NetSolutions. NetSolutions offers everything from legal education to the WestWorks online practice solution, intranet deployment, and West-designed and hosted law firm web pages.

Lexis also is battling for preeminence on the Internet and Web. Coming in July will be World Edition for the Web, migrating law firm desktop activity to the Web, with an alliance with TimeMatters software for the rollout.

Summation Legal Technologies also has introduced iBlaze, porting its litigation support software tools to the Web, billing the new service as "the only online/offline litigation support solution"—a kind of secure, portable file cabinet in cyberspace, if you will.

And ProLaw, founded in 1987 with the first front-office and back-office integration software, has capitalized on the Internet with Legalex Rules, integrating court rules from all jurisdictions into its case management module. Its theme has

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TRADE SHOW SURVIVAL TIPS

Based on in-depth interviews with hundreds (OK, 3) of attendees at a couple major trade shows of national scope, here are a few hints for surviving and making the best of the experience:

• **Have a plan.** Look over the list of exhibitors and show hype to target those exhibits or seminars on your "must do" list.

• **Go with a buddy.** Too many exhibits to see? Simultaneous valuable seminars? Divide and conquer. (Four hands and two brains are better than one.)

• **Get there early.** The crowds are smaller, giving you quality time with exhibitors...and a jump on the good schwag before the masses descend.

• **Get the inside dope.** For anyone who's scoured the user manual and vendor website for hours at a time to solve a problem, the trade show exhibit is a gold mine. For the serious or casual investor, ditto. If staff in the booth is part of the company that's exhibiting, they know the tips, tricks, and competitive strategy of their product. They'll show you arcane features and time-savers you never knew existed in their technology. They'll know who are the winners and losers in their competitive market niche. And if you're wavering between several vendors for a specific tech need, a trade show is the place to be to test-drive them all. (Cautionary note: Some companies "lease" booth staff, known as literature-hangers in the trade, in the host city,. If they don't have company business cards, they won't know the product or client company very well).

• **Wear comfortable shoes.** Exhibits may have carpeting for decor, but beneath is cold, hard concrete.

• **Soft-handled bags are best.** Face it. Only bricks are heavier than printed materials. At about booth 8, your fingers or shoulder will require a visit to the clinic if you use paperbag handles. (Scope out exhibitors who offer soft, canvas bags for carrying your Stuff.) Never drag a rolly-bag behind you at a trade show. Tacky, tacky, tacky. (And it marks you as a schwag-hunter and suspect prospect). Or, be sure to register for these major events, many of which have ID cards that you simply swipe in a card-reader to lighten your load. Wait two weeks, and the literature begins flowing directly to you in reams (but no schwag in the mail).

• **Watch for show specials.** Especially when vendors are rolling out a new product (or phasing out the previous version of same), it's often possible to buy at a discount during trade show events.

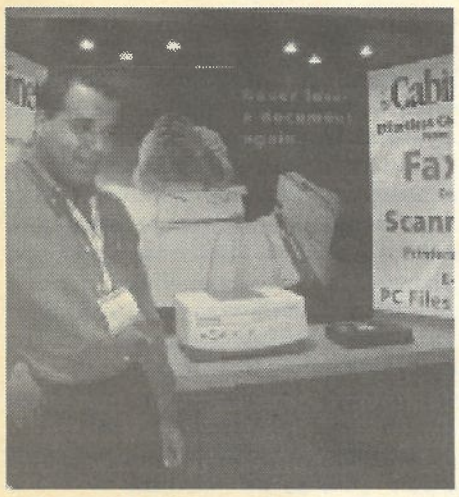
• **Try the last day.** There are some who believe that late the last day is the best time to visit a trade show. Maybe, maybe not. On the one hand, discounted product may be available for sale (rather than packed back home to the exhibitor's home office). On the other hand, all the best literature and good schwag may be gone, and booth people frequently pack it in early.)


TechShow-goer gets early time with a West rep.

• **Ship your stuff.** A little-known feature of TechShow is the Shipping Room, off in a corner somewhere, generally with no sign revealing its purpose. Pop in there with your 112 pounds of information and booty and ship it home. It beats lugging it to the airport and checking it.

Above all, think of a major trade show as a potentially fruitful educational experience—punctuated with some neat gadgets and toys if you keep your eyes and ears peeled.

TechShow brings out latest technologies



e-Cabinet copier does it all.

Continued from page 20

been expanded to "Front Office, Back Office, One Office," emphasizing online access to the entire firm via the Web.

THE DOT.COM (AND OTHER) UPSTARTS

No dot.bomb syndrome has visited law.com, which in a kind of reverse-buildout, has expanded from an online legal information and news portal into a new enterprise, Real Legal. The new service enters the practice management space on the Web with a series of applications, such as RealLegal Practice Manager, E-Brief, E-Transcript Binder, and DepoStream. The binder software allows the attorney to connect directly to the court reporter's computer, among other features. Gaining market share is a prime objective for a new product, and RealLegal distributed free copies of E-Transcript Binder at TechShow this year. The company gained national notoriety for its E-Brief application, which stores and hyperlinks all briefs, exhibit documents, case law, and audio and video in CD-ROM format. The company published the entire proceedings and record of the Oklahoma City bombing trial to CD-ROM. It also has published *Microsoft v. U.S. Department of Justice* and *Harris Trust v. Salomon Smith Barney* in the medium.

Security is a critical concern in the Web communications environment, and Pointclear Communications may have built a better mousetrap for the ubiquitous use of e-mail. Using a 128-bit public/private key encryption system, the e-mail application was designed specifically for the legal profession, with messages able to be read by any other e-mail application. The software also has a redlining feature for editing e-mail messages, and a filing and folder application to organize all correspondence. Pointclear also provides its users with a lifelong e-mail address, at no charge, independent of ISP hosts or lawfirms. And for attorneys practicing in the intellectual property space, two new services also are Web-based. One is Bountyquest.com, spawned by Amazon.com's Jeff Bezos and the *Barnes & Noble v Amazon* IP one-click legal case. The principal: Let others do the search for prior art for you. Post a bounty for the intellectual property / patent candidate, and wait for proof of prior art to come to you.

For the sale of intellectual property, financial transactions such as business loans, or calculating the risk-reward of an investment or transaction, pl-x.com (for Patent & License Exchange) is a subscriber-based service to enable the valuation of IP, and intangible asset that some industry analysts believe comprise more than 50% of today's GNP.

OTHER INTERESTING TOOLS

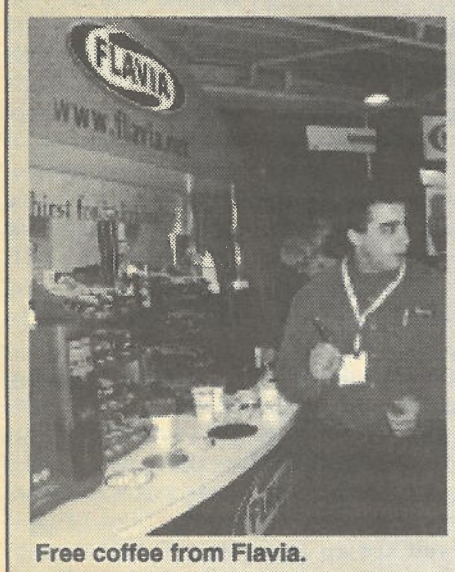
It's perhaps a little-known fact that hitting the "delete" key on a PC does not, in fact, mean that the file has been sent to oblivion, never to be seen again. It simply frees space on the media until overwritten by other data, and it can take up to overwrites before the deleted data is actually obliterated. Given enough time and money, a skilled nerd can dredge up deleted data. Computer Discovery Labs specializes in electronic forensics, dredging up file fragments, graphics and any other digital data from various media (disks, CD-ROM, etc.), or tracking down Websites visited and when.

If you're cursing the limitations of PowerPoint presentations in the courtroom, Verdict Systems, Inc., launched its new trial presentation software at TechShow in March. Sanction II seamlessly integrates documents, audio, video, and exhibit visuals into a browser-based presentation. The year-old company recently signed an agreement with the U.S. Department of Justice to deploy the software at all U.S. Attorneys' offices nationwide, after the government found that use of the software reduced court time by 15 to 20 percent. The upgraded version introduced in March also has been priced for the smaller firm (under $400), positioned against competitor product at a third or more higher cost.

ProLaw presents a uniform theme.

Top TechShow Schwag

Granted, no one goes to a trade show simply to procure free giveaway advertising-emblazoned Stuff (known affectionately as "schwag"). Exhibitors go to great extremes to stand out among perhaps hundreds of others competing for a few minutes of your time...and figuring out how to remind you to look over their product once you're back at your desk.



Free coffee from Flavia.

TechShow's no different, with the exception that the schwag is very good. Here's our list of unusual, Top Schwag from 2001 (some of which has no use whatsoever in an office, but is great for your 8-year-old kid):

West Group's pens. Ruled by gravity, the brushed-aluminum metal pens twist out four different-colored ink barrels, depending upon which end is up, parallel to the floor. RealLegal distributed great pens, too. Classy silver and blue metal barrels with soft fingerholds.

Tote bags: West and Lexis take top honors: West with a canvas, simple, friendly shape, and Lexis with a bright red and black soft bag that fits copious legal paper.

Lighted plastic ball. From Ikon. Clear plastic, good-bouncer with an LED light that blinks with every bounce.

Lighted red and blue yo-yo. Well, maybe the ASEdge yo-yo does have use in a law office, especially during interminable staff meetings.

Mini-Super Soaker squirt gun. No more wimpy water weapons with this gadget. The gun easily holds a pint of water, perhaps for calming down an hysterical client, target practice, or training a pet with a bad habit.

Beanies. ProLaw's zebra beanies have become a sought-after staple, and are a fine example of carrying a visual image throughout all marketing materials. ProLaw's product literature (although technically not schwag) also is superior, explaining the product features and functionality in a format that's more like a user-friendly manual than an unclear brochure.

CD-ROMs. These are not technically schwag, either, but are nonetheless useful. Trial versions of software, product demos, and sample data were all found at TechShow.

Some of the schwag collected by the Alaska team.

The "Best" award, though, goes to RealLegal, which distributed a full version of one of its modules, and the *Microsoft v. Department of Justice* appeal's entire, hyperlinked case binder on CD-ROM.

Computer stuff. Along with mousepads were other useful computer accessories, such as Lexis' retractable modem cords, and Quorum's bright red CD-ROM case (with trial software inside).

Clothes. Law.com's stroke of genius in windy, chilly Chicago was a Polar Fleece scarf, and FindLaw was among exhibitors that offered T-shirts.

And coffee. Flavia Beverage Systems knows what's appreciated during a busy day on the trade show floor: A cheerful coffee cart dispensing a hefty free cup of flavored latte. Wouldn't your office staff want some, too? Every day?

HI-TECH IN THE LAW OFFICE

Basic internet security for the mildly paranoid

By Joseph Kashi

Internet security takes many forms and is critical to any law office. As lawyers, we have many different ethical and professional reasons to ensure the security of our data. Security breaches such as hacking attacks expose us to serious ethical and professional problems in the event that we fail to carefully guard client confidences. Serious data loss is more likely and potentially even more serious. Here's a tour d'horizon of some basic Internet security issues and some thoughts about how to minimize the dangers of each.

If you're heavily connected to the outside world, consider calling in a security expert to probe your system for weaknesses and to implement more effective security. Most offices are now using high speed persistent Internet connections such as DSL or cable modems—these are very much more susceptible to outside attack compared to older dialup modem connections, if only because you're potentially connected to the Internet all of the time.

And, if you're allowing outside users to connect to your network system using any form of Remote Access Services, then you're even more insecure. At a minimum, be sure that you've eliminated any unnecessary entry points into your system, i.e., open, unprotected "ports", which are standard software entry points that can provide unseen "services" to remote computers.

HACKING DOES OCCUR!

Hacking does occur and it is possible whenever your computer is connected to the Internet or even a private business network, although that's a lesser problem. And, hacking can occur in the most innocuous seeming ways. Did you know that instant messengering programs such as ICQ reputedly allow the skillful hacker an entry into your system and can even bypass security hardware and software because they're already running inside of your network's security perimeter?

AND, HACKING CAN OCCUR IN THE MOST INNOCUOUS SEEMING WAYS.

Trojan Horses or spyware are obvious examples of programs that infiltrate your system and then surreptitiously transmit information to third parties. Trojan Horse programs are generally illegal programs that can be slipped into your system surreptitiously, often by a seemingly innocuous Email attachment or attractive "free" download program. However, some spyware programs, such as Spector and eBlaster are commercial products that can spy upon your computer usage and then Email to your supervisor or spouse information about the work that you're doing on your computer and the Internet sites that you are visiting. Other spyware and "ad-ware" programs even include some advanced cookies in the latest versions of Netscape that can silently send information to advertisers and others about the web sites that you've visited. ICQ, when used improperly by a skilled hacker, can be considered a Trojan Horse or spyware program.

To reduce your exposure to Trojan Horse programs and other spyware that sneak past your general security perimeter, you can take some simple precautions including:

1. Never download any program from a web site that is not published by a highly reputable source such as zdnet.com or your application program vendor;

2. Configure your Email program to NOT open attachments with .exe, .com or .vbs file extensions. These file extensions are usually associated with software programs rather than data files and thus much more likely to damage your system. However, that's not foolproof because many intrusion and virus programs now disguise their file attachment while still doing their damage.

3. Disable vbs (Visual Basic Scripting) and Active X controls if none of your programs need those features.

4. If you're using Internet Explorer, download and install the latest security patches from microsoft.com.

5. If you're using Netscape versions 4.x, disable Java scripting if you don't need that feature. It's a known security hole.

6. Install ZoneLabs' ZoneAlarm 2.1 and configure the program to ALWAYS require manual confirmation of any and all Internet connection attempts, each and every time.

Many people just scan the Internet looking for random victims or "fun". If you're using an intrusion detection program like BlackIce Defender, you'll regularly see warnings about attempted intrusions, complete with information about the type of intrusion and the IP address from which the most direct attack on your computer originated. Of course, any "reputable" hacker will be sure to first bounce a port scan or hacking attempt off of many innocent computers in order to brush over his or her tracks. My own intrustion detection software has detected random port scans and intrusion attempts from as far away as Poland, but it's entirely possible that the intrusion originated next door.

MANY PEOPLE JUST SCAN THE INTERNET LOOKING FOR RANDOM VICTIMS OR "FUN".

USE A HARDWARE ROUTER FOR ANY DSL OR CABLE MODEM CONNECTION

Whenever you connect to a high speed Internet service such as a DSL or cable modem, you've just become far more vulnerable to malicious hacking and intrusion. Your system is almost always connected to the Internet and if your computer is connected to your office's local area network, an intruder's access can include not only what's on your own system but also access to any network data to which you have access rights. These are serious problems with significant, substantive professional, ethical and malpractice concerns. The threat is not hypothetical: one attorney friend was astonished to find 113 hacking attempts into his system during the first month that he connected to the Internet through a persistent cable modem connection. It is very unlikely, of course, that such intrusion attempts were intentionally aimed at him: in all likelihood, they were intruders seeking to perpetrate the Internet equivalent of the chance mugging, but any random data loss, breach of confidentiality, or system damage is just as serious.

These problems really do happen - I've found that my own computer, in the past, would try to dial up the Internet in the middle of the night for no reason that I could discern. Hurriedly unplugging the phone line from the wall cut those incidents short, but always left me wondering what was happening. To avert any security breaches, I always thereafter unplugged the phone line when not in use and installed ZoneLabs' ZoneAlarm 2.1 personal firewall software, configured to require affirmative approval every time that a program tried to access the TCP/IP networking protocol and contact the Internet.

If you are accessing a DSL or cable modem across a law office network, then you'll certainly be using a router, computer networking hardware that automatically directs Internet access to the Internet and internal local area network requests to the local area network. Some standard network routers, such as the NexLan ISB2LAN are rather complex to configure while others, such as the Netgear RT311 and RT314 routers are very straightforward and easy to configure. Simple DSL and cable modem routers suitable for a small network often cost as little as $150. Your commercial telecommunications provider may in fact provide one without additional charge as part of its high speed Internet service. Further, if your office uses a Novell network, internally use only Novell's older IPX/SPX network protocols rather than using TCP/IP internally, if possible. IPX/SPX is significantly more resistant to external intrusion.

The default configuration of many cable and DSL routers is to allow all possible Internet services and protocols, including those whose only purpose is allow third parties to access your system externally. That's fine if you are an Internet web site server, but not a very good idea for law offices. Changing these default settings to block all unused Internet protocols can markedly improve your basic protection against Internet hackers but is probably of no value against Trojan Horses and spyware that work from inside your system. Further, change any router hardware configuration defaults that publish

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Should you buy a new operating system?

My recommendation for an operating system for business use is Windows 2000. While Windows 98 and Windows Millennium Edition are the standard systems prepackaged with computers you buy at mail order and in most stores, and will probably work fine for you, they are not as robust or business-oriented as Windows 2000. The drawback to 2000 (and Windows NT before it) in the past has been that it requires more powerful hardware, some additional RAM, and is not as backward compatible with old products, such as DOS programs and games. However, most of these issues are not particularly relevant when buying a new computer for the office today.

The new machines all have plenty enough horsepower in terms of raw CPU power (500Mz and above), and with the addition of a little extra RAM (upping from 128M to 256M is a good idea even in Windows 98), they make fine Windows 2000 machines.

Most machines have hard disks of at least 10G (20G is better) which can also handle either operating system. Windows 2000 looks and feels very similar to Windows 98, but crashes far less frequently. Also, when Windows 2000 does have an errant program, that program will crash, but the system usually stays up and other programs that may be running at the same time, like Microsoft Outlook, continue unaffected in most cases. Additionally, no matter how much RAM you put into a Windows 98 machine, it does not handle multi-tasking or multiple programs in memory as well as a Windows 2000 (or, for that matter, an old Windows NT) machine does. Finally, Microsoft is trying to phase out Windows 98 and move people to the Windows 2000 platform.

All of these are good reasons to seriously consider either ordering your next machine for the office with Windows 2000 or, if you cannot do that, upgrading to Windows 2000 as soon as you get the machine and before you start loading programs and data. Usually, a mail order upgrade from Windows 98 costs another $100.00 to $150.00 and for about $200.00 you can usually buy a CDROM and upgrade that way. It is, however, usually best to order, so that you do not have to deal with upgrade issues and also any peripherals that come with the system are more likely to work with Windows 2000, if you buy from a company that knows you need everything to work on Windows 2000.

There are still some scanners and older equipment, as well as old DOS games, that will not work properly under Windows 2000. However, most new software (including most new games) will. The bottom line is this: If you are happy with Windows 98 and not experiencing any crashes or other limitations, there is no reason to change. However, once you become accustomed to the reliability of Windows 2000, you will probably not want to go back to 98. Therefore, if you are having problems or if you are ordering a new machine for your office, you should seriously consider Windows 2000. The main caveat is to determine if you have any equipment that you plan to use that is incompatible with 2000.

—Thorne D. Harris III, Director of Technology Resource Center
New Orleans, LA

From: René B. deLaup Reprinted with permission, from the Louisiana State Bar Association Solo & Small Firm Section news, February 2001.

GETTING TOGETHER

Arbitration — how to save time and money and wish you hadn't

☐ Drew Peterson

A recent unpleasant experience has gotten me thinking about the bastard child of alternative dispute resolution (ADR), namely arbitration. ADR has been on the rise in recent years, with rapid growth throughout the legal community. The vast majority of that growth, however, has been in the area of mediation, of one flavor or another. But when thinking of ADR, one should never forget the oldest standing formal method for avoiding the courts, namely through the use of binding arbitration.

Arbitration shares three of the major advantages of mediation. With an agreement to submit disputes to arbitration, issues can (usually) be resolved privately, promptly, and less expensively than through formal litigation. The advantages of arbitration mostly end at that point, however, and the down side of arbitration is evidenced by its name. Arbitration can result in arbitrary and yes, even capricious results, usually with no recourse whatsoever, no matter how wrongly decided, except for outright fraud.

A comparison of various aspects of arbitration, mediation, and litigation, serves to illustrate the point.

INITIATION

Civil litigation is voluntary for the plaintiff, while a response is mandatory for the defendant to avoid default. In contrast, arbitration and mediation are both usually voluntary, although more and more often the parties will agree ahead of time by contract to submit any disputes of mediation or arbitration (or occasionally, both). We are also seeing a rise in mandatory arbitration for one side of a dispute only, particularly in a regulatory context, such as our own Alaska Bar Association's fee arbitration program.

FORMALITY

We are all familiar with the formal rules of litigation. Mediation, in contrast, is extremely informal, adapting itself to the particular needs of the individuals involved in the dispute. Arbitration procedures are very mixed in their formality or informality, and are one of the main things that advocates contemplating arbitration should consider in advance.

While generally less formal than court proceedings, many arbitration proceedings are only slightly less so, and can involve procedural formalities almost as complex (and as expensive) as going to court. Other arbitration proceedings are extremely informal, and will consider the grossest sort of hearsay and other seemingly improper kinds of evidence, with virtually no recourse. Many commentators believe that contractual arbitration should provide for more formal rules, at least concerning evidence, but imposing these rules can add considerably to the expense of the proceeding.

Cost.

In general, litigation is the most expensive of the various proceedings. Don't forget, however, that the cost for the judge and jury is free, aside from the initial filing fee. In arbitration you are paying the decision maker, and the savings generally come in reduced overall time involved in getting the matter decided. And of course there is usually no chance of appeal, which can result in substantial cost savings. The cost of arbitration usually involves an initial administrative fee, plus hourly or daily arbitrator's fees thereafter. Mediation is most often the least expensive of the three processes, although administrative and hourly fees are also charged.

INVOLVEMENT OF OTHERS

Many individuals are involved throughout a court proceeding, including the judge, jury, court personnel, attorneys and witnesses. With a few exceptions, court proceedings are open to the public and are a matter of public record.

Arbitration proceedings, in contrast, are private, and arbitration awards are generally confidential. The parties to arbitration are usually represented by attorneys, who present the case in much the same manner as a court proceeding, though perhaps a bit less formally. Witnesses may be called, but are not included for the entire proceeding.

Mediation is a private meeting which usually only involves the mediator, the parties, and possibly their attorneys. The parties for the most part speak for themselves, though they may use their attorneys to advise them. Other individuals are sometimes called in to assist the mediator by prior agreement of the parties, such as appraisers, accountants, or other kinds of scientific or lay experts, but usually they do not testify as witnesses but serve more as a mutual resource for the parties.

DECISION

In court, the judge or jury makes a final binding decision, and the parties lose all control over the outcome, other than their right to appeal. Similarly in arbitration the final arbitration award is declared by the arbitrator. Even appeals are not allowed, except under very limited circumstances. Mediation is substantially different than either court or arbitration in this regard. In mediation the parties retain all decision making authority. The mediator assists the parties to reach a mutually agreeable solution.

RESULT

The result in court is a final binding decision, subject to appeal. Arbitrators also make a binding decision, which is subject to limited judicial review only, on grounds much more limited than a normal appeal. In mediation, while the solution is decided by the parties involved, it can also be made legally binding, either by incorporating it into a court order or into a formal contract.

AND THE WINNER IS

All of the methods discussed, litigation, arbitration, and mediation, have their advantages and disadvantages. It will be of little surprise to the readers of this column to find that I generally prefer mediation, because it is less formal, less expensive, and retains the protections of litigation, including the right to appeal, should the parties to mediation be unable to agree. Nevertheless, arbitration does have some advantages, especially in getting issues resolved quickly, finally, and at a relatively low cost. In my own personal experience recently, the arbitrators ignored the law, and misunderstood or mischaracterized undisputed facts. Thus, the result did not feel very good to me to say the least. On the other hand I would assume that my adversary was more satisfied with the proceeding because she won, at least substantially, and also because she was listened to and given a chance to tell her story. I would have preferred mediation and would have probably agreed to the same result. However, my adversary refused to mediate and I suspect would not have been happy with the same result in mediation, because she was aware of and suspicious of my involvement with mediation, and also because she simply wanted someone else to decide the matter.

I was frustrated by my inability to appeal the obvious mistakes of the arbitrators, but I recognized that the cost of any appeal would have been out of proportion to any financial advantage gained. I was particularly pleased by the finality of the proceeding, and to be able to put the matter behind me once and for all.

In sum, arbitration is often the least satisfactory form of alternate dispute resolution. It can result in arbitrary stupid decisions, based upon poor evidence misunderstood by thoughtless unqualified arbitrators, with no recourse whatsoever except for nullifying the decision based on outright fraud. Nevertheless, while I will always recommend mediation as a first recourse for resolving disputes out of court, arbitration does also have some advantages, as long as one is aware of its drawbacks.

Basic internet security for the mildly paranoid

Continued from page 22

your hardware's true address. By enabling a router's address translation feature, your real address cannot be read by outside hackers, greatly reducing your potential vulnerability to intrusion.

Even though you don't absolutely need a router to use a DSL or cable modem on your standalone home computer, a router is still a good idea. A basic router like the Netgear RT311 (about $90 from Amazon.com) often eliminates the need to use troublesome DSL PPPoE Internet connection software at law - the router totally manages the connection between the computer and the DSL or cable modem. No fuss, no problems, no system crashes from unruly PPPoE software, more reliable Internet connections, and far fewer hacker problems if you configure your hardware properly.

Except for the least expensive routers, you'll typically use your browser to configure and access all of your router settings. I recommend that you disable any unneeded services and protocols to minimize entry points through which an intruder can gain unseen access to your system. If in doubt , call your vendor's or ISP's technical assistance and ask for help. To check (and possibly change) your router's settings, simply type the router's base URL (usually 192.168.0.1) into your browser's address line. Your router's instruction manual will provide that address. If you're not using an address translation router with unused software ports blocked, then your first line of defense, aside from pulling the phone jack out of the wall whenever you're not using the Internet, will be personal firewall software. However, anyone using a persistent high speed Internet connection such as a DSL or cable modem without installing is vulnerable to real security problems

PERSONAL FIREWALL SOFTWARE

There's a lot of "personal firewall" software on the market, much of it unreliable or irritating to use. It's not that hard to spoof many simpler personal firewalls by introducing a rogue program that's named the same as some common Internet program, iexplore.exe for example, which then bypasses most firewall software and shovels your secrets out the back door. Moral: never trust any application program all of the time - use a firewall program that requires you to manually verify each time that you actually want that program to connect to the external world. Other firewall software problems include an irritating inability to allow reconnections and unreliablity generally. Some program combinations will work on some computers while paralyzing other, similar systems. I've tried commercial products such as the McAfee and Norton firewall programs, available in most larger computer stores, but I have found that ZoneLabs Zone Alarm 2.1 seems to be the most comprehensive and least troublesome product. Earlier versions of Zone Alarm had a very irritating tendency to block reconnection to the Internet but the latest versions have eliminated most problems. McAfee Firewall and BlackICE Defender have proven somewhat more troublesome in day to day operation. Neither provides the ability to require manual affirmative approval of each outgoing Internet connection, a drawback, but BlackICE provides good intrusion detection, something that I have not found in any other generally available personal firewall software.

TALES FROM THE INTERIOR

Life's a riot

☐ William Satterberg

On April 1, 2001, I turned 50 years old. Half a century. According to Christians, the year of Jubilee. According to everyone else, way over the hill.

Two days before my birthday, my wife and I were invited to attend a dinner involving several United States politicians, the Secretary of the Interior, and some other muckety-mucks. It was to discuss issues pertaining to Alaska lands. It was an "invitation only" type of thing.

Alaska's Junior Senator, Frank Murkowski, had flown to Fairbanks with an entourage of bigwigs. The auspicious group included three other senators, the Interior secretary, the Vice-President's press secretary, a whole host of Senate staffers from various seemingly important subcommittees, and a bunch of guys who walked around in trench coats with earphones in their left ear, who continually talked to their right jacket sleeve. The dinner was at the University of Alaska Museum in Fairbanks. Because it was free, I decided to go. After all, my wife had been asking me to take her out to a nice dinner for months.

As we drove onto the University campus, I was surprised to see a large crowd of people outside of the museum, singing songs and carrying signs, most of which said, hooray for their side.

"There's something happening here," I thought. Because what it was was not exactly clear, to find an answer, I reminisced on my life in the late 60's-early 70's, when I, too, was one of the "protestors" at the University of Alaska.

I graduated from high school during the Vietnam War years. The incentive to go to college was clearly there. It was a time of heightened social awareness about things like ROTC, Timothy Leary, Alice B. Toklas, Zen, Tao, and food stamps.

I was embarking on my own. Like many others, I had declared my independence rather stupidly from my parents after graduating from high school. This obstinacy occurred when I refused to rake the yard one summer day.

My role as an independent, young adult quickly emerged. The University of Alaska presented the only economic alternative to the other schools to which I had been accepted. One of those schools, "Weed" college, located in Portland, was extremely expensive and esoteric. Thus, when all of my friends left Alaska to go to these sensitive schools on the East and West coasts and to grow their hair and burn strawberry incense, I ended up at the University of Alaska. During my freshman year, I lived in an overheated dormitory, which, during the winter, was earmarked by open windows which had frozen rabbits or six-packs of beer alternately hanging out to cool. Women were always a scarce commodity. An upper-classman's wise advice to me that "you had better get one before the snow flies," was not heeded. But, then again, at the University of Alaska, it was generally assumed that, during the course of the year, each girl would have several boyfriends. One simply had to wait their turn. Invariably, the University Health Clinic was always quite busy by April. Fortunately, everyone in line usually knew each other quite well.

I REMINISCED ON MY LIFE IN THE LATE 60'S-EARLY 70'S, WHEN I, TOO, WAS ONE OF THE "PROTESTORS" AT THE UNIVERSITY OF ALASKA.

As winter approached and the skies darkened, my thoughts turned toward the inner self. Like those students who surrounded me, I read books on Tibetan yoga, had the obligatory posters on the wall ("You have not converted a man if you have silenced him. — Jimi Hendrix,") and began to examine my personal worth. After all, what was reality?

Back then, the University of Alaska was still in its infant years One requirement for graduation then existing, and which probably still exists to this day, was that a student had to take either a year of physical education, or ROTC. Because I had always been miserable at physical education in high school, and looked like a sack of potatoes dangling from a rope when I tried to do pull-ups, I elected ROTC. I figured that, if anyone complained about my physical condition, I would just shoot them with my gun. It was my lucky day. Somewhere, they were able to find an extra large uniform, a can of Brasso, and some shiny black shoes. I was a cadet!

Like all new ROTC recruits, I admired the upperclassmen. They knew how to march, and gave snappy salutes. They also belonged to an organization known as Pershing Rifles and strutted proudly around campus in combat boots with bloused pants. So much for my shiny shoes.

Unfortunately, I soon realized that I was not cut out for ROTC. It happened one day at a party at Stevens Hall, when a cute young girl looked at me. I thought it was admiration until she pointed at me and started chanting "ROTC! ROTC! ROTC!" In virtually no time at all, I decided to leave. Not that I was exactly asked to leave, but when the "ROT — CEE" chant was picked up by all, it dawned on me that I probably should at least go back home and change out of my uniform. I decided the bit I had been told about women loving a man in uniform left a lot to be desired. After all, who wore uniforms on weekend nights, anyway?

I dropped out of ROTC to take a physical education class, instead. I joined water polo, which seemed like an easy "A." Everyone on my team did their best to drown me. They would have succeeded, had it not had been for the shallow end of the pool. I let my hair grow. I also tried to grow a mustache and/or beard or some other body hair. I figured that this thing called puberty was another one of those broken promises my parents had told me about—just like the man-in-uniform thing.

One Friday, word spread about campus that there was going to be a takeover of the school administration building that night. It was to be a grand, exciting affair. It was organized by a local University of Alaska revolutionary upperclassman, who has since become a well-respected businessman of the Alaska community.

At the time, however, this was a different matter. Our leader was reputed to have an association with the Students for the Democratic Society, or SDS (not to be confused with LDS). He assured us that it was the right thing to do. We were going to protest all sorts of things. We were free to choose. After all, it was to be a glorious people's revolution. Not wanting to miss anything, we made a list which included the Vietnam War, Nixon, capitalism, University Administration, the one mile liquor-free zone which surrounded the campus, and, most important to all of us, the quality of the food at the lower commons.

That night at the appointed hour, we all marched to Bunnell Hall. Some of us had lettered signs. Others had idealistic faces. The smart ones brought wineskins. As expected, we were met at the door by the University security police. To our surprise, security promptly announced that we could have the building if we wanted it. We just had to agree to at least leave the building in good condition and not to make a mess. After all, it was Friday. They thought we should have a right to our protest. Besides, they had a party to go to.

Properly instructed on protest etiquette and politely agreeing to comply, we entered the building. Most of us sat down in the hallway, planning to occupy the building for the entire weekend on a "love-in/protest/demonstration/whatever." The impromptu, planned speeches started. Following the usual haranguing and discussing of the "system," and the "proletariat," "bourgeoisie," and a bunch of other farm animals, it became apparent that there was not much message to the mission. Still, we were occupying Bunnell Hall. We were clearly proud of ourselves as we hummed our chants, sang our songs, and swayed back and forth.

Expressing my new-found individuality, I did the same as everyone else. It was not that I was really into the protest. It was just that I knew that most of the few good looking girls at the University would be there. It seemed like a good place to be, rather than sitting around the dormitory writing chemistry formulas.

At about 9 p.m., the security police again showed up. I figured we were going to have problems. We obviously had succumbed to a trap. Instead, they delivered a stack of cookies and milk. It was a gift from the administration. They politely asked if we were having a good time. We responded that we were doing quite well. They thanked us for being orderly and wished us a good night. It was then that I began to miss my Teddy Bear.

At about the same time, someone announced that there was another party down at Stevens Hall. A concoction of grape punch and Kool-Aid had been mixed up. The get-together promised to hold excitement for everyone who attended. Before it was over, the occupation of Bunnell Hall was nothing more than a distant memory. In the end, we did occupy Stevens Hall for the entire weekend. Unfortunately, most of the people still do not remember that part of the protest.

That was the first and only real college demonstration that I ever attended. The only other event that could be called a demonstration was when I was a senior in high school, but I was not a planned participant. My parents had taken me to the University of Washington to see if I would fit into that environment. We stayed at a nice hotel located in the University district.

As soon as the opportunity arose, I left my parents to take a walk. I explained that I wanted to tour the "U-District" on my own in order go get a "feel" for what it was like to be a university student. My parents were obviously proud of my initiative. On that particular day, however, my initiative walked me right into the

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Life's a riot

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middle of a real riot. In less than five minutes, I got a more than generous dose of tear gas. I ran back to the hotel as fast as my chubby little legs would carry me. I decided not to upset my parents, since I was having too much fun.

As I entered the hotel room, my mother was looking out of the window and commenting on all those "nice college kids" having a party in the street. "Look what's happening up the street," my mother said. "They all wanna change the world," I replied. Neither of my parents could understand why their eyes had begun to water so profusely when I entered the room. I told them it was either the smog or the fact that I was planning to go to college and they simply were too emotional about it. They both laughed loudly at the second notion. When I was pressed to explain why I also had such watery, bloodshot eyes, I quickly relented and told them that I had received a whiff of tear gas. In fact, it was the tear gas defense that I found would work for years into the future, when questioned about the same external appearance. Bill Clinton should have used it, himself.

OTHER THAN THOSE TWO IMPROMPTU ROMPS IN THE 60'S, WHERE I JUST HAPPENED TO BE AN INNOCENT BYSTANDER AT A REAL RIOT IN SEATTLE, AND A NON-PARTICIPATIVE MEMBER OF A PLANNED NON-RIOT AT THE UNIVERSITY OF ALASKA . . .

Other than those two impromptu romps in the 60's, where I just happened to be an innocent bystander at a real riot in Seattle, and a non-participative member of a planned non-riot at the University of Alaska, I had never been involved in any protests of any nature, unless you count pre-school temper tantrums. I had missed a very important part of my childhood.

As such, when my wife and I walked up to the University of Alaska Museum to attend the dinner, I felt a certain kinship for those people lined up outside of the museum's entrance. To my left, were the people who opposed the opening of ANWR. To my right were those who favored drilling. Ironically, this appeared to be a pretty good layout, since it matched political leanings, for the most part, depending upon which way one walked.

Although my wife indicated to me upon seeing the crowd that she preferred not to go to the dinner, or at least to walk up the walkway due to the chanting that was taking place, I explained that it was all part of the political process. I actually looked forward to it. I was now part of "the establishment." I figured there were clients undoubtedly on both sides of the walkway. If I were fortunate and a police charge on horseback were to break out, I would most likely have the ability to represent them all in a whole slew of criminal defense and personal injury cases—most of which could be quite lucrative. My only regret was that I did not carry enough business cards, since I had anticipated only handing out cards to the political bigwigs at the dinner.

As we walked up the walkway, the chanting rose louder. Those to the left were yelling slogans like, "Wild! Pristine!," and "Hell no, we won't go." Those on the right were bellowing slogans like, "Drill. Develop. Go ANWR!"

Although the walk was rather long, it really did not take that much time to travel the distance into the building. I actually enjoyed the attention. My wife commented again that she would have preferred to have avoided the incident. In desperation, she asked me if it was possible to put a bag over my head. How romantic! It reminded me of our first date when she first innocently asked that same question of me.

Upon entering the museum, we sat and drank wine, politely making conversation to local dignitaries while awaiting the arrival of the non-local dignitaries. It reminded me of the Cabaret scene from *Phantom of the Opera*, "See all the *crème de la crème*—them watching us and us watching them." Meanwhile, outside the building, the protest raged on. Various University of Alaska police personnel, obviously impressed with themselves, raced around in a panic, talking into their sleeves while moving repeatedly from one side of the building to the other. There was even a German Shepherd who seemed more interested in the dinner than in protecting us. At least the dog had it all figured out.

Sometimes people never learn. It was obvious to me when I walked into the building that the non-local dignitaries certainly were not going to walk up the walkway where the protesters were lined up. Recognizing that every public building has at least two entrances, it only stood to reason that the likely approach would be at the back, and not through the front door. Sure enough, as anticipated, that is exactly what happened. While my wife and I stood near the back entrance to the building, everybody on both the inside and the outside clustered around the front doors, expectantly awaiting the arrival of the entourage. Meanwhile, through the back door came all of the bigwigs. My wife and I had a delightful time visiting with them, while those protesters out front, as well as those inside, suddenly realized that they had been royally bamboozled through the old "back door trick."

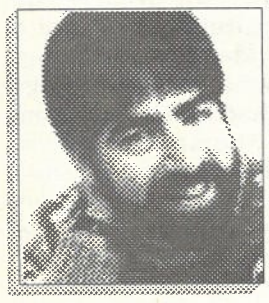
Due to the deep snow, the protesters then had to dash down the walkway, around the building, and come running up to the back door, only to find that everybody was already inside, eating hors d' oeuvres, and once again having polite meaningless conversation.

In the end, I marveled at the spontaneity of the situation. As the night drew long, and the northern lights came out, it also got cold outside. Somebody must have announced there was a party somewhere, maybe at Stevens Hall. In any event, when we left, everybody was gone. I was melancholy. I felt like the little crippled boy left behind in the Pied Piper fable when the tunnel to the mountain closed.

As I stood outside, I could swear that I detected the faint smell of strawberry incense in the air. Sadly, I realized that, somewhere in town, there was probably a very good party going on, attended by both sides, as usual, who were now undoubtedly laughing and joking gaily about their latest demonstration, the first one to be held at the University of Alaska in over 30 years.

Legal separation in Alaska

☐ Steve Pradell



In the past, family law attorneys were at a loss as to how to advise a client on whether there is a legal separation in Alaska. No statute or Alaska Supreme Court case addressed the issue. In December of 2000, the Court reviewed this important area, but left the final answers still unresolved.

In *Glasen v. Glasen*, 13 P.3rd 719 (Alaska 2000), the husband filed a complaint for legal separation in 1991 and the parties signed a separation agreement. The superior court granted a decree of legal separation incorporating the agreement. The parties then reconciled and were later found to have remained a financial and marital unit. In 1997 the husband filed for divorce and sought to enforce the 1991 separation agreement. The superior court refused to merge the separation agreement into the divorce decree and the father appealed.

The Alaska Supreme Court first reviewed the issue of whether the superior court had authority to enter the separation decree. The superior court had found that it had "inferential authority recognizing the validity of separation agreements" because the legislature referred to "legal separation" in custody and support statutes indicating that such actions may be brought. The father also argued that the court had authority to enter the separation decree because of the existence of common law actions for separate maintenance.

Unfortunately, with the issue before it, the Court stated "[w]e need not decide in this case whether courts in Alaska may enter decrees of legal separation. Instead, we affirm the superior court's decision because we conclude that the decree, even if authorized, was not a final order and that the Glasen's reconciliation dissolved the decree."

The Court found that the legal separation decree was an interim order that was "provisional and conditional, affording an opportunity for reconciliation." The separation decree failed the test of a final judgment which requires that the judgment must dispose of the entire case, ending the litigation on the merits and leaving nothing for the court to do but execute the judgement. Ultimately, the court found that the Glasen's separation decree was valid only insofar as it settled certain support and property issues between the spouses while they were separated. Reconciliation of the Glasens was found to be a separate basis for affirming the superior court's decision not to incorporate the separation decree into the divorce decree.

THE SEPARATION DECREE FAILED THE TEST OF A FINAL JUDGMENT WHICH REQUIRES THAT THE JUDGMENT MUST DISPOSE OF THE ENTIRE CASE, ENDING THE LITIGATION ON THE MERITS AND LEAVING NOTHING FOR THE COURT TO DO BUT EXECUTE THE JUDGEMENT.

Where does that leave family law practitioners? How do we advise our clients when asked if legal separations exist in this state? Clients who file a complaint for legal separation still run the risk of having their case dismissed for failure to state a cause of action. Prenuptial and postnuptial agreements are valid in Alaska if they meet certain conditions. See *Brooks v. Brooks*, 733 P.2d 1044 (Alaska 1987); *Lampert Through Thurston v. Estate of Lampert Through Stauffer*, 896 P. 2d 214 (Alaska 1995); *McBain v. Pratt*, 514 P2d 823, 826 (Alaska 1973).

Also refer to AS 13.11.085, which provides that married couples may waive all rights of the surviving spouse by written contract executed before or after marriage. A legal separation agreement may ultimately be construed as a valid postnuptial agreement. However, whether or not the court upholds the agreement in a subsequent divorce will depend upon many factors that may hinge on future events yet unknown at the time the agreement is drafted by the parties.

Steven Pradell's book, "The Alaska Family Law Handbook," (1998) is available for family law attorneys to assist their clients in understanding domestic law issues.

Alaska Bar Association 2001 Summer & Fall CLE Calendar

Date	Time	Title	Location
May 31	9:00 a.m. – 12:00 noon	Estate Planning & Retirement Benefits: The Fundamentals - with Natalie Choate CLE #2001-005 2.75 General CLEs	Anchorage Hotel Captain Cook
June 19	8:30 a.m. - 12:30 p.m.	Revisions to Article 9 of the UCC: The Essential Update CLE #2001-018 4.0 General CLE Credits	Anchorage Hotel Captain Cook
August 9	4:390 – 6:30 p.m.	Off the Record with the 9th Circuit Court of Appeals CLE #2001-019 2.0 General CLE Credits	Anchorage Downtown Marriott
FALL Date TBA	Half Day	Evidence CLE #2001-017 CLE Credits TBA	Anchorage Location TBA
FALL Dates TBA	Half-day	The Sinfully Simple Will CLE #2001-004 2.75 General CLE Credits	**Fairbanks and Juneau – locations tba**
September 13	TBA – Half Day Morning	Sanctions, Contempt, and the Out-of-Control Judge CLE #2001-008	Anchorage – Hotel Captain Cook
October 11	TBA Full Day	Recent Developments in Intellectual Property & E-Commerce on the Internet CLE #2001-007 CLE Credits TBA	Anchorage Hotel Captain Cook
October 19	Half Day Morning	Environmental Law Issues CLE #2001-016	Anchorage -Hotel Captain Cook
October 24	TBA Full Day	14th Annual Alaska Native Law Conference CLE #2001-006 CLE Credits TBA	Anchorage Hilton
November 7	TBA Half Day Morning	Public Interest Law Seminar CLE #2001-009	Anchorage- Hotel Captain Cook

Alaska Pro Bono program's 2001 award recipients

Keith Levy: Keith has been an active member of the Pro Bono Panel since 1985. He accepts complex family law cases that usually go to litigation. In addition, Keith has been conducting a monthly Divorce/Custody Legal Clinic in the Juneau area since 1996. Over the years he has devoted hundreds of hours in support of the Alaska Pro Bono Program and the Alaska Network on Domestic Violence & Sexual Assault by accepting to place cases and conducting legal clinics.

Leslie Longenbaugh: Leslie has been an active member of the Pro Bono Panel for the last 7 years. Last year she donated 487 hours to one client. - That is the highest number of hours donated to one client by a panel member. Her dedication to the client and APBP is deeply appreciated.

Faulkner Banfield, PC: BethAnn Chapman, Anthony Sholty, Zach Falcon, Leon Vance, Ann Gifford, Lach Zemp, Jr., Kelly E. Henriksen ,Mary Zemp, Eric Kueffner

All 9 members of this law firm are very active on the Pro Bono Panel. They have accepted a wide variety of cases utilizing all of the different talents and skills of their staff. It is indeed rare that an entire law firm will devote so much time to such a worthy program. As a side note, Trevor Stephens, now a First Judicial District Superior Court Judge, was also a member of this law firm and was an active member of the Pro Bono Panel.

2001 CLE Seminar Video Replay Schedule

Replay Locations:

Barrow	**Barrow Courthouse** CLE Replay Coordinator: Karen Hegyi Telephone: 907/852-4800 Fax: 907/852-4804
Dillingham	**Jury Room, Courthouse** CLE Replay Coordinator: Joe Faith Telephone: 907/842-1200 Fax: 907/842-1201
Fairbanks	**Cook Schuhmann & Groseclose Conference Room** CLE Replay Coordinator: JoAnna Claxton/Barbara Schuhmann Telephone: 907/452-1855 Fax: 907/452-8154
Homer	**Homer City Hall Conference Room** CLE Replay Coordinator: Ron Drathman Telephone: 907-235-8121 ext. 2222 Fax: Call 907-235-7207 and get faxing instructions
Juneau	**Dillon & Findley Conference Room** CLE Replay Coordinator: Tom Findley Telephone: 907/586-4000 Fax: 907/586-3777
Kenai	**Courthouse Jury Assembly Room** CLE Replay Coordinator: Bob Cowan Telephone: 907/283-7187 Fax: 907/283-4753
Ketchikan	**Borough Attorney's Conference Room** CLE Replay Coordinator: Scott Brandt-Erichsen Telephone: 907/228-6635 Fax: 907/228-6625
Kodiak	**Law Office of Jamin, Ebell, Schmitt & Mason** CLE Replay Coordinator: Matt Jamin/Linda Brown Telephone: 907/486-6024 Fax: 907/486-6112
Kotzebue	**Kotzebue Courthouse** CLE Replay Coordinator: Judge Richard H. Erlich Telephone: 907/442-3664 Fax: 907/442-3974
Nome	**Larson, Timbers & Thomas.** CLE Replay Coordinator: Conner Thomas Telephone: 907/443-5226 Fax: 907/443-5098
Sitka	**Pearson & Hanson** CLE Replay Coordinator: Brian Hanson Telephone: 907/747-3257 Fax: 907/747-4977

Schedule

Depositions: Mastering Technique & Strategy Through Control
CLE #2001-003; 6.0 General CLE Credits, Live — Anchorage, April 6
Barrow, 6/29/2001, 10:00 am, Law Library
Dillingham, 6/29/2001, 10:00 am, Jury Room
Fairbanks, 6/1/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 6/1/2001, 9:00 am, Dillon & Findley
Kenai, 6/8/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 6/8/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 6/16/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 6/16/2001, 10:00 am, Jamin, Ebell et al.
Nome, 6/22/2001, 9:00 am, Larson, Timbers et al.
Sitka, 6/22/2001, 9:00 am, Pearson & Hanson

The Sinfully Simple Will
CLE #2001-004; 3.25 General CLE Credits, Live — Anchorage, April 11
Barrow, 7/13/2001, 10:00 am, Law Library
Dillingham, 7/13/2001, 10:00 am, Jury Room
Fairbanks, 6/8/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 6/8/2001, 9:00 am, Dillon & Findley
Kenai, 6/1/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 6/1/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 6/23/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 6/23/2001, 10:00 am, Jamin, Ebell et al.
Nome, 6/15/2001, 9:00 am, Larson, Timbers et al.
Sitka, 6/15/2001, 9:00 am, Pearson & Hanson

Estate Planning with Natalie Choate
CLE #2001-005; 2.75 General CLE Credits, Live — Anchorage, May 31
Barrow, 8/3/2001, 10:00 am, Law Library
Dillingham, 8/3/2001, 10:00 am, Jury Room
Fairbanks, No Replay. Will be live in Fairbanks.
Juneau, 6/29/2001, 9:00 am, Dillon & Findley
Kenai, 7/13/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 7/13/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 7/28/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 7/28/2001, 10:00 am, Jamin, Ebell et al.
Nome, 7/20/2001, 9:00 am, Larson, Timbers et al.
Sitka, 7/20/2001, 9:00 am, Pearson & Hanson

UCC Revisions Update
CLE #2001-018; CLE Credits 4.0, Live — Anchorage, June 19
Barrow, 8/24/2001, 10:00 am, Law Library
Dillingham, 8/24/2001, 10:00 am, Jury Room
Fairbanks, 7/20/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 7/20/2001, 9:00 am, Dillon & Findley
Kenai, 7/27/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 7/27/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 8/11/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 8/11/2001, 10:00 am, Jamin, Ebell et al.
Nome, 8/3/2001, 9:00 am, Larson, Timbers et al.
Sitka, 8/3/2001, 9:00 am, Pearson & Hanson

Bar People

James H. McCollum, formerly of Bankston & McCollum, has opened the Law Offices of James H. McCollum, Suite 1940, 550 W. 7th Avenue. McCollum's primary practice areas are real estate and related litigation. His telephone number is 770-7773, Fax number is 770-7737, and email is jmccollum@gci.net.

Cook Schuhmann & Groseclose, Inc. has announced three new associates who have joined the firm. **Mila S. Leonard** has joined the firm as an associate attorney. Leonard came to Fairbanks after graduating from the University of Maryland School of Law in 1999 to clerk for Judge Richard D. Savell. She was admitted to the Alaska Bar in October 2000, and also is a member of the Tanana Valley Bar Association, the American Bar Association, and the U.S. District Court for the District of Alaska. She was the recipient of the Cunningham Award, served as president of the Maryland Law Moot Court Board and is a member of PhiBeta Kappa; areas of practice include family, immigration, environmental, business law and appellate practice, as well as general litigation.

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Peter M. LeBlanc obtained his law degree in 1999 at the New England School of Law, and was admitted to practice in February 2000 with the Massachusetts Bar and in June 2000 with the Alaska Bar. He is also a member of the Tanana Valley Bar Association. LeBlanc also is a legal advisor to the North Star Youth Court, a HIPOW Volunteer, and a member of the Fairbanks Estate Planning Council. Peter also, has worked as a legal advisor to the Matanuska Valley Youth Courts. His areas of practice will focus upon family law, collection, estate planning and civil litigation as well as business organizations.

•

Dayle L. Wallien began working as a law clerk with CS&G in 1998. She was admitted to practice in 2000 in Alaska and Washington. Wallien attended the University of Washington School of Law, Environmental Law Concentration. She also attended Central Washington University, graduating summa cum laude with a Bachelor of Arts degree in Geography in 1993. Her areas of practice focus on Alaska Native business, commercial and contract, environment & natural resources, employment, land use planning, limited liability company and real estate law.

L to R: U.S. Supreme Court Justice Stephen Breyer; Bruce Weyhrauch, Immediate Past Board of Governors President; and Dr. Joanna Breyer hiking in Ketchikan.

Hall named to new committee

United States District Court Clerk **Michael D. Hall** of the District of Alaska has been appointed a member of the newly established Public Information and Community Outreach Committee for the United States Courts for the Ninth Circuit.

The committee is exploring ways in which federal courts in the western states can strengthen ties with local communities. Committee members include judges from the circuit, district, bankruptcy and magistrate courts, along with attorneys, clerks of court and a media relations consultant.

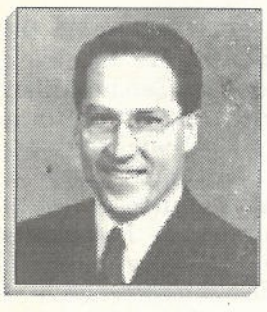
The committee plans to create an inventory of existing court outreach programs, and develop a proposal for ones that could be undertaken by federal courts on their own or in partnership with others. Examples are Law Day programs, court tours, and legal training for the media.

Committee appointments were made by Ninth Circuit Chief Judge Mary M. Schroeder and former Chief Judge Procter Hug, Jr., who also serves on the committee.

ESTATE PLANNING CORNER

More on tax basis and family-owned businesses

☐ Steven T. O'Hara



Clients often make gifts of interests in family-owned Limited Liability Companies (LLCs) and Limited Partnerships. A consequence of giving through a business entity is that the donees often will have a tax basis substantially less than the basis they would have had if the donor continued to own all assets outright until death. I discussed this consequence in the last issue of this column; here I explain this consequence in detail.

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

Initially the client is the only member of the LLC; so she does not recognize gain when she contributes the stock to the LLC (Cf. IRC Sec. 721(b)). Also, because the client is the sole member of the LLC, the LLC is ignored for federal income tax purposes. In other words, the LLC is disregarded as an entity separate from its owner (Treas. Reg. Sec. 301.7701-2(a) and 301.7701-3(b)(1)(ii)). Later, when the client brings her children in as members, the LLC is then, absent an election, treated as a partnership for federal income tax purposes (Treas. Reg. Sec. 301.7701-3(a), (b)(1)(i) and (f)(2); *Cf.* IRC Sec. 721(b) and Treas. Reg. Sec. 1.351-1(c)(5)).

The client, over the balance of her lifetime, gives her children interests in the LLC totaling 13.3% per child. The value of the client's gifts each year are less than $10,000 per child, and thus the gifts are not taxable (IRC Sec. 2503(b)). Nevertheless, the client is careful to file an annual gift tax return — with adequate disclosure — in order to preclude the Internal Revenue Service from raising any valuation or other issue in later years (Treas. Reg. Sec. 25.2504-2(b) and 301.6501(c)-1(f)(2)). At all points in time the LLC's only asset is the stock, worth $675,000.

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

If the client had not formed the LLC and instead had continued to own the stock until her death, under current law her children's tax basis in the stock would have been stepped-up to $675,000 (IRC Sec. 1014). So the children could then have sold the stock for as much as $675,000 at absolutely no tax cost.

A consequence of the client's giving through the LLC is that the donees will have basis substantially less than $675,000. In other words, if the LLC sells the stock for $675,000, there will be taxable gain.

Specifically, under current law the tax-basis analysis is as follows:

FIRST

The client's basis in the stock is her cost of $100,000 (IRC Sec. 1012). When she contributes the stock to the LLC in return for 100% of the LLC interests, the LLC takes a carryover basis of $100,000 in the stock (*Cf.* IRC Sec. 723). The client receives a basis of $100,000 in her LLC interests (*Cf.* IRC Sec. 722). Although the LLC is initially disregarded as an entity separate from its sole owner, the LLC becomes a partnership for federal income tax purposes on the day the LLC has two or more members.

SECOND

Over the years the client gives 40% of the LLC interests to her children. The client does so without ever making a taxable gift. The children receive a carryover basis of $40,000 in those interests (IRC Sec. 1015).

THIRD

At the time of her death, the client owns 60% of the LLC interests. Although the LLC owns stock worth $675,000, the value of 60% of the LLC interests is less than 60% of $675,000 (or $405,000). The valuation expert assisting with the client's estate believes that a discount of at least 10% is applicable in this case (i.e., 60% times $675,000 equals $405,000; 90% times $405,000 equals $364,500). In any event, the valuation expert believes the value of 60% of the LLC interests was roughly $364,500 on the date of the client's death (*Cf.* IRC Sec. 2032). Thus the children receive a stepped-up basis of $364,500 in the LLC interests they inherit from their mother (IRC Sec. 1014).

FOURTH

The children now own 100% of the LLC and their basis in those interests is $404,500 (i.e., $40,000 carryover basis plus $364,500 stepped-up basis).

FIFTH

By reason of the client's death, the LLC is allowed to elect to step-up 60% of its basis in the stock to $364,500 (IRC Sec. 743). So now the LLC's basis in the stock is $404,500, which is the same as the children's basis in their LLC interests (i.e., $40,000 carryover basis plus $364,500 stepped-up basis).

SIXTH

If the LLC sells the stock for $675,000, it will have taxable gain of $270,500 (i.e., $675,000 sale proceeds minus $404,500 basis equals $270,500). Assuming an applicable capital gain rate of 20%, the LLC members would owe $54,100 in tax (IRC Sec. 701).

Again, if the client had not formed the LLC and had owned the stock until her death, under current law her children's basis in the stock would have been stepped-up to $675,000. So the children could then have sold the stock for as much as $675,000 without incurring any tax — a savings of $54,100 under the facts of this case.

The upshot is that LLCs or Limited Partnerships could increase taxes down the road. This consequence needs to be figured into the analysis of whether the advantages of a family business entity outweigh the disadvantages.

Legal professionals confident about job prospects

More money and greater challenge are the reasons why 41 percent of legal professionals expect to make a job change within three years, according to a nationwide survey of more than 1,400 lawyers and paralegals commissioned by the Kelly Law Registry, a business unit of Kelly Services.

Despite the economic slowdown, 74 percent of all legal professionals surveyed are confident they can find other jobs with pay and benefits equal to or better than their current positions.

"This very affluent group of achievers appears to be restless, hard working, and seeking challenges and more money," said Terrence Murphy, vice president of Kelly Law Registry. The company compiled the survey as part of its temporary and permanent staffing services in large law firms and corporations."

The study also reveals that the majority of legal professionals believe additional training and education are necessary for career advancement and the opportunity to earn higher salaries. They also believe it is their personal responsibility to get this training, not their employers.

"Since the Kelly Law Registry began in 1987, we have seen a continuing trend building toward free-agent workers," said Murphy. "This study confirms what we have seen, that these legal professionals have a great deal of confidence in the market's demand for their skills and they take responsibility and initiative for their own success."

PARALEGALS CONFIDENT IN THEIR ABILITY TO FIND A JOB

In general, paralegals are characterized as being confident, ambitious and having a strong commitment to continuing education. Forty percent said they were confident in their ability to locate a new job. Sixty-seven percent felt they could locate another job in less than a year, and five percent felt they could do so within a week.

The legal worker survey was conducted via mail in the United States in December 2000 and January 2001 among a nationwide cross-section of 1,400 lawyers and paralegals. Research results are available online at the Kelly Services Web site, www. kellyservices.com.

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Legal workers employed by non-profit organizations are likeliest to be planning a job change

• Seventy percent of paralegals expect to be changing jobs, compared to 54 percent of lawyers.

• Respondents working as sole practitioners as well as those working on a corporate or agency legal staff are more likely than respondents working in other positions to be thinking of making a change.

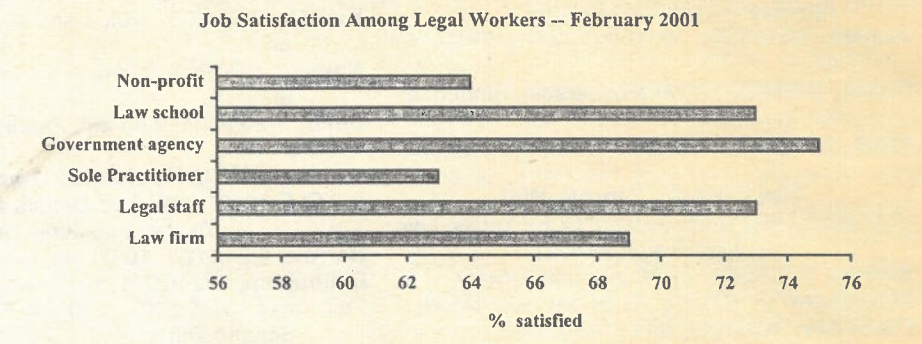
• While the likelihood of making a change decreases with job tenure, it is interesting that, of those "on the job" 15 years or more, 12 percent are thinking of making a change, and either percent of respondents older than 65 years of age are planning on a job change.

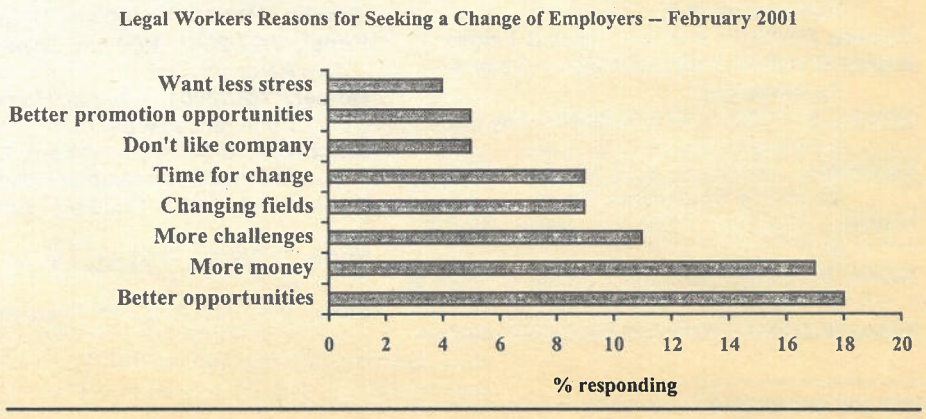
• Respondents from the southern and Pacific regions of the country are more likely than other regions to be thinking of making a change.

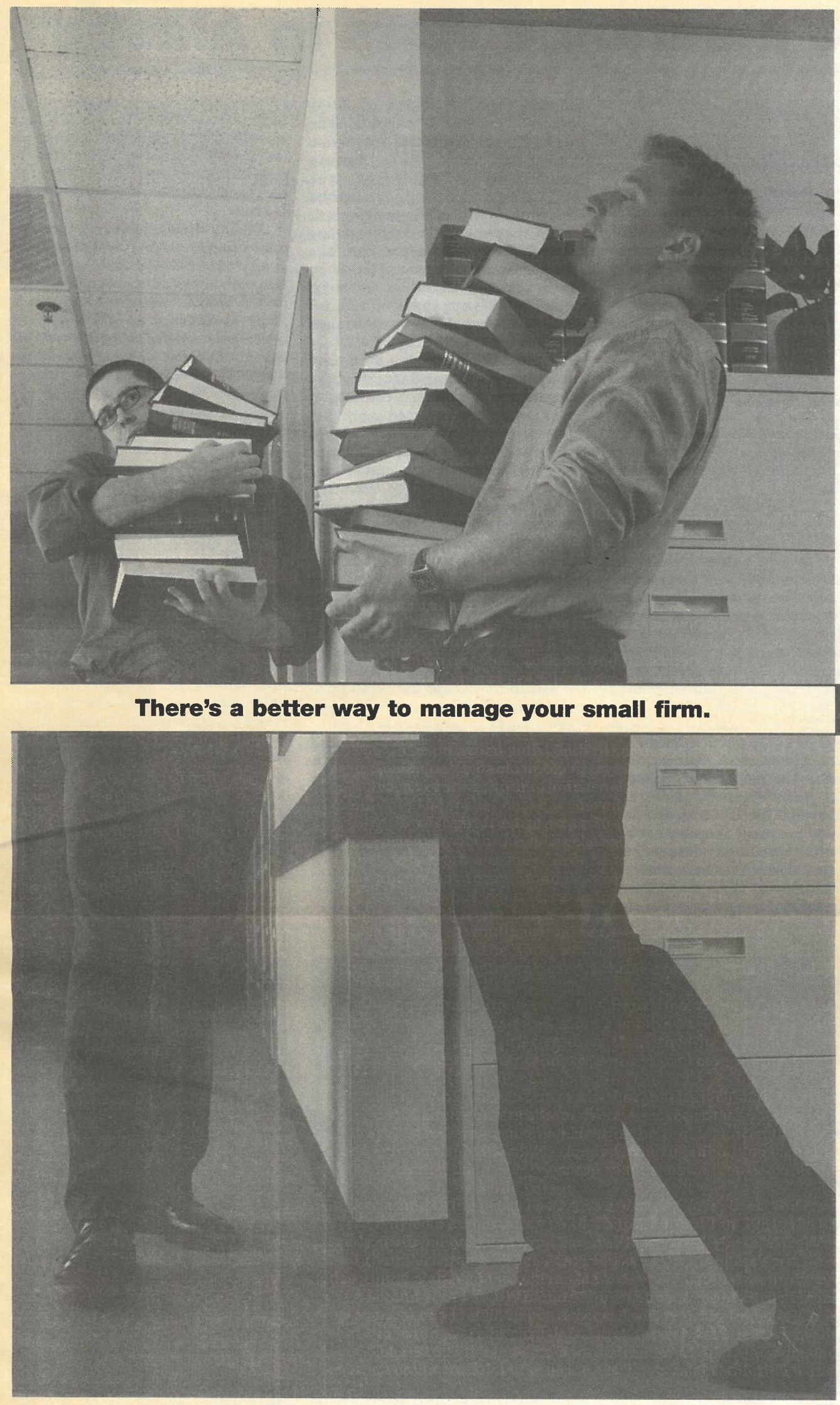
• A strong majority of respondents planning on a change believe they will change employers, which was more or less consistent across all categories.

• Of those planning on a change, 22 percent had already started pursuing a new position.

• Reasons given for wanting a change were "better opportunity" (18 percent), "more money" (17 percent), and "more challenge" (11 percent).







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AL3423

Tracking the insurance wars in Alaska

By Dave Donley

Part II - The first mandatory auto insurance law sunsets and the current law is born

I was first elected to the State House in 1986. My majority colleagues chose me to chair the Labor and Commerce Committee as a freshman. Beginning with the 1987 legislative session, I began work to make the existing, but temporary, mandatory auto insurance law permanent and make the Division of Insurance more pro-consumer.

Today I work closely with the State Division of Insurance and its new director. While I feel the current Division of Insurance is balanced fairly between industry and consumers, I do not believe this was always so. The 1987 Mission Statement of the Division of Insurance, as it appeared in the state operating budget narrative, made no specific mention of consumers. It, instead, was focused on serving the insurance industry.

> *"Promote availability of insurance through solvent insurers. Assure fair trade practices and inform the public of insurance issues to promote and facilitate conduct of business and development."*

As Chairman of the committee with oversight of the Division, I suggested to the new Cowper administration a new mission statement that more specifically included consumer protection. Despite a less than enthusiastic response from some in the Division, a new mission statement specifically including consumer protection was adopted. The new mission statement read:

> *"The mission of the Division of Insurance is to protect and serve Alaska by developing, interpreting, and enforcing the insurance statutes and regulations, by protecting Alaska insurance consumers, by enhancing the insurance business environment, and by providing information and resources to the public for knowledgeable management of their insurance affairs."*

In 1988 Gov. Cowper appointed a new Director of Insurance, Paul Roller. I worked with the new Director to get the Division to prohibit the industry practice of discounting the value of totaled automobiles by an excessive cleaning fee of sometimes over $100. The industry alleged that to bring a vehicle to its book value, it would have to be cleaned. Some insurers were automatically assessing the fee even when there was proof that the totaled vehicle had in fact been clean.

In 1987 I also introduced House Bill 44 (HB 44) to make Speaker Joe Hayes' 1984 mandatory auto insurance law permanent. Speaker Hayes had retired from the legislature in 1986 and his law was scheduled to sunset January 1, 1989. The law had been an absolute success. Estimates were that the number of uninsured drivers in Alaska had been reduced from estimates of 20-40 percent to about 9 percent. The program was low cost and when combined with the Safety Responsibility Act and the availability of some level of uninsured and underinsured coverage, was serving the public well. Despite strong insurance industry opposition, the House unanimously passed HB 44 on the first day of the 1988 session but it got bogged down in the Senate Rules Committee chaired by Senator Dick Eliason.

Senator Eliason was a long time opponent of mandatory auto insurance and had been the reason Speaker Hayes was forced to add the sunset provision to his 1984 legislation. Now Senator Eliason controlled the powerful Senate Rules committee and refused to move HB 44 or the parallel Senate version sponsored by Senator Steve Rieger.

Despite the strongest of efforts, other Senators refused to force Senator Eliason to move the bill and it did not pass. Accordingly, on January 1, 1989 Alaska's first mandatory auto insurance law ended.

There was a strong public outcry and Senators scrambled to deny responsibility saying they could not make Senator Eliason move the bill, when everyone knew that, with a simple procedural vote, they could have. Statewide polls indicated over 80 percent of Alaskans supported the mandatory law and the heat started to build against Senators for letting the law sunset.

I was reelected in 1988 and again chosen to chair the House Labor and Commerce Committee. With the start of the 1989 legislative session, I immediately introduced legislation to reinstate mandatory automobile insurance. To make a point, I had the new bill numbered HB 44 (the same as the previous sessions' bill that failed).

Despite fierce insurance industry opposition, my new HB 44 passed the House and Senate that same year and mandatory automobile insurance in Alaska was reinstated January 1, 1990. However, a lot of damage had been done during the year the law was not in force. Estimates were the number of uninsured drivers increased by over 50% and in the resulting confusion the compliance rate has never again fully recovered to 1987 levels. Today estimates are that Alaska has about a 12-16% uninsured rate, which is still not bad for a low cost system with no up front proof of insurance and no requirement of notice to the state of termination of coverage.

I took the opportunity of passing HB 44 to make other improvements in the automobile insurance laws. One such change was to require that insurance policy arbitration clauses provide that the arbitrator decided who would pay the costs of the arbitration. Previous law required parties to equally pay the arbitration costs, no matter who prevailed. This obviously put the insured or a consumer at a great disadvantage as it was economically pointless to arbitrate any claim equal to or less than one-half the cost of arbitration. By empowering arbitrators to assign

Continued on page 31

Students rank law TV

Get a group together with strong opinions and time on their hands, and you get...the latest awards for some dubious or meritorious achievement.

Law & Order ranked #1 by students.

Judging Amy judged as sappy soap.

JD Jungle magazine and law.com reported in April on the new Golden Monkey Award—for law-type TV on your networks and cable.

JD Jungle is the UCLA Law School magazine, which reported in its May issue that six students stepped forward to rank and rate more than 30 law-related programs for the 2000-2001, conducting their deliberations in the UCLA law lounge.

"Among the surprise verdicts: Reality shows took five of the top 10 spots, and 'Power of Attorney' was the worst legal show of all time," said law.com.

Law & Order won best of shows in the first annual Golden Monkey Awards for the NBC network. Students liked the authentic depiction of the criminal justice system and its "ripped from the headlines" focus. "It's definitely the most realistic," says Jesse Rothwell, a third-year law student. "They throw in an original twist," says third-year student Jason Kaplan, "so it's not just what you're expecting" from hihg-profile news cases.

Here are the rest of the Top 10:

#2: The Practice, ABC. won for its "gripping" treatment of moral and ethical dilemmas faced by lawyers. "In my professional-responsibility class, The Practice came up almost every day," says Claudia Castillo, another third-year student on the panel. JD Jungle said the students "also love the weirdly wicked plots."

#3: AllyMcBeal, Fox. The hour-long show featuring the ditzy Ally character appears to be a show everyone loves to hate. Even though students believe that the show is not really about the law (and is only set in a law firm), they voted it high, anyway.

#4: Court TV (cable). If you're not in practice, and not quite ready for prime time, trial coverage on Court TV is the next best thing to being there. "When I have free time, I'll watch for four hours straight," says Jason Fisher, second year law. The panel split when it comes to the play-by-play commentary: either the commentary fills otherwise dull TV, or it invades the "purity" of the trial.

#5: Justice Files, Discovery Channel. The UCLA students appreciates the "straightforward documentaries" featured in the programming. "Whether it focuses on DNA testing or the insanity defense, the show presents the often tedious work of lawyers in all its slow-moving glory," said the panel.

#6: Arrest & Trial. *(syndicated).* Covering actual cases, Arrest & Trial also incorporates documentary news footage. "The show also scores with the panel for being the only syndicated legal show that doesn't involve a cheesy judge," commented law.com.

#7: American Justice, A&E. Singled out for its depth and authority, the A&E real-case anthology scored points for its in-depth analysis of such cases as the Manson family murders. Students also like "the flinty, eerie voice of host and Chicago newsman Bill Kurtis."

#8: Burden of Proof, CNN. The live half-hour program — in which CNN attorney-pundits Greta Van Susteren and Roger Cossack grill news-making lawyers, judges and politicians—ranked eighth for its brainpower and intelligence. "It's less entertainment and more credible journalism," says Danielle Klausner, another third-year student.

#9: Law & Order: Special Victims Unit, NBC. The students consider "Law & Order: SVU" to an extra weekly episode of their number one show, rather than a spin-off. It's ranked 9th (rather than second or a tie for first), said the students, because "the cast lacks the sizzle of Angie Harmon, Sam Waterston, et al. "They don't have the same aura," with the exception of Detective John Munch (comedian Richard Belzer), a group favorite.

#10: The District, CBS. There aren't many lawyers in this weekly cop series, but students like it, anyway, finding the Washington D.C.-based series "extremely multifaceted. It shows all the ways a commissioner gets pulled — by politicians, by cops, by constituents."

The UCLA law students also had a flock of television shows they considered bombs, mostly because they saw them as soap operas disguised as legal shows, and sensational, outlandish, street-fighting "reality" offerings. The poorly rated sappy soaps included JAG (CBS), Ed (CBS), and Judging Amy (CBS), which is based on producer Amy Brenneman's mother, an attorney in Connecticut.

As for the reality courtroom and documentary offerings, at the bottom of the student list were Power of Attorney; and a flock of daytime television shows starring Judges Judy, Joe Brown, Mills Lane, and Hatchett & Mathis.

Taking time away from the law: Alaska offers diversions

By Scott Hendricks-Leuning

It goes without saying that the practice of law demands a lot of time. The constant pressure of deadlines, client management, case management and meeting these deadlines efficiently and economically can take its toll on lawyers.

Although trying a case in front of a jury, or arguing a motion before a judge, can be exhilarating, those activities were nothing like the adrenaline rush I experienced last July when my wife and I floated down whitewater rapids in a small raft. With little thought about the liability waiver that I had signed before donning my dry suit, I found myself anxiously anticipating more whitewater around every bend in the river.

The excitement of this trip took my mind completely away from the daily grind of paperwork that was accumulating in my office, and when I returned to work the next day I was refreshed, invigorated and ready to start a new week.

No, this whitewater adventure was not part of a vacation to an exotic foreign land. My adrenaline rush was just part of a weekend excursion to Denali National Park, one of numerous outdoor playgrounds practically located in our backyard. As attorneys working in Alaska, we have the luxury of numerous outdoor recreation activities within a short distance from our homes and offices. With summer just around the corner it's time to consider some of the vacation opportunities that abound midway between Fairbanks and Anchorage in Denali.

Every summer that my wife and I have lived in Alaska has included at least one trip to Denali National Park, and each of those trips has been unique in its own respect. We have stayed in modern hotels with all the amenities of home, log cabins designed for interior winters, and tents that are easily carried on a backpack and provide shelter from wind and rain. Our journey to Denali last summer included a two-night stay at one of Denali's premier lodging facilities, the McKinley Chalet. Located just outside of the park entrance, this lodge has over 300 rooms in several buildings along the banks of the Nenana River. As an added incentive, the McKinley Chalet offers special package deals for Alaska residents.

On our trip, we took advantage of some of the tours and programs offered at the McKinley Chalet. On our first night at the lodge we joined approximately 60 very friendly tourists at the "Cabin Nite" dinner theater. This off-off-off Broadway musical about life in the gold mining district of Kantishna gave us some good laughs, but it was the platefuls of bar-b-que ribs and grilled salmon that got most of my attention. Since our next morning included an early trip into the park, I made sure I satiated my appetite.

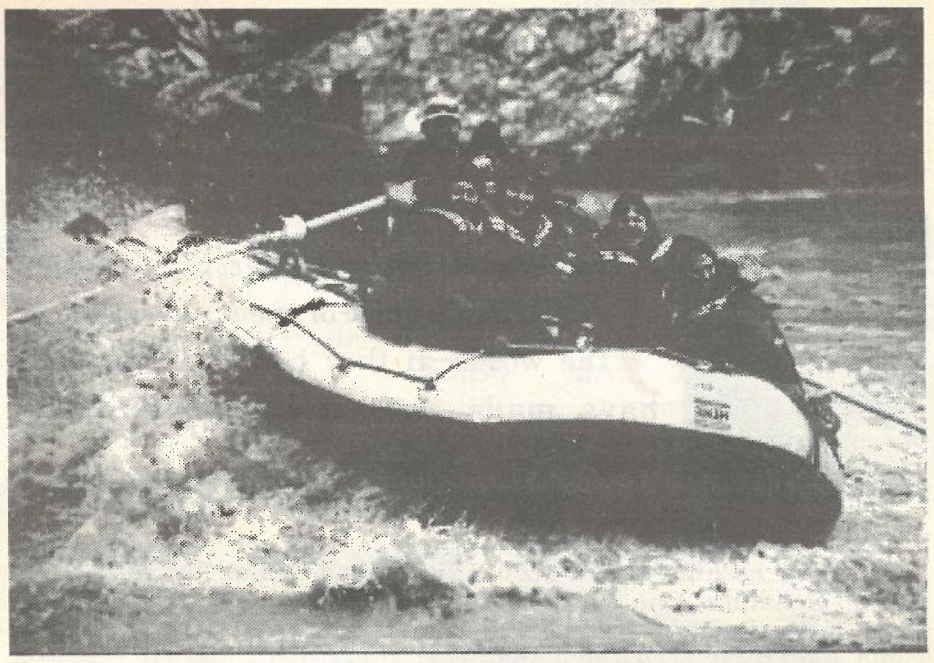
After a restful night in our room, we took the 5:45 a.m. tundra wildlife tour into the park. Unlike the national parks in the lower 48, a private vehicle cannot drive throughout the park. If you want to see more of the treasures within the park's boundaries your best bet is to travel on one of the buses that are permitted beyond the first 15 miles of road.

You have two options for buses in Denali: the green "shuttle" buses and the brown "tour" buses. Both of these buses are similar to school buses. The "shuttle" buses provide transportation from point A to point B within the park, but they are not a designated tour bus. Consequently, it is often a matter of luck as to whether your driver is well informed about the natural history in the park, and willing to share that with you, or whether your driver is simply a chauffeur.

All of my previous excursions into the park have included hitching a ride on a "shuttle" bus, and I have had excellent drivers and not-so-excellent drivers. The benefit of the "tour" bus is that your driver not only transports you into the park, but s/he also provides an informative narrative of the sights along the way. Our tour lasted approximately eight hours, and took us almost 60 miles into the park. (The tour includes a box lunch and beverage.) We saw hundreds of caribou, several grizzly bears, and we had the good fortune of watching a young wolf hunting for ptarmigan.

After we finished our bus tour, we returned to our room to change clothes and then headed to the banks of the Nenana River for a whitewater rafting trip run by the hotel. Several river guides helped us fit into dry suits and life preservers before we boarded the self-bailing rubber rafts that would take us 11 miles downriver, where we would encounter class III and IV rapids. In addition to the protective clothing, our guides gave us instructions on what to do if we fell overboard. (At that point I was thinking that I should have stuck some business cards inside of my dry suit!)

Although I had some trepidation as we approached our first rapids, that emotion was soon replaced with exhilaration. There were eight of us floating downstream with our guide,



Intrepid lawyers go rafing on the Nenana River.

and we all let out cheers and whoops of joy each time the frigid water splashed over the bow of our raft.

During the past year I have seen several health publications and studies that have stated that vacations and quality time away from work are necessary for our general well being. Although many of us may dream of vacations in exotic locations, there are plenty of opportunities for weekend or week-long vacations within driving distance of our homes and offices. If you have not been to Denali National Park recently, you may want to consider adding it to your list of destinations this summer.

American Bar Association National Lawyer Population by State

Compiled by: ABA Market Research Department, 541 N. Fairbanks Ct., Chicago, IL 60611

STATE		2001 # ATTYS RESIDENT & ACTIVE*	2000 # ATTYS RESIDENT & ACTIVE*	INDEX	2000 POPULATION (Projected)	2000 RATIO (people to lawyers)
Alabama	AL	11,144	10,897	102	4,451,000	408 :1
Alaska	AK	2,253	2,209	102	653,000	296 :1
Arizona	AZ	10,901	10,683	102	4,798,000	449 :1
Arkansas	AR	4,992	5,350	93	2,631,000	492 :1
California	CA	131,139	128,553	102	32,521,000	253 :1
Colorado	CO	16,422	19,157	86	4,168,000	218 :1
Connecticut	CT	17,560	16,918	104	3,284,000	194 :1
Delaware	DE	2,040	1,986	103	768,000	387 :1
Dist. of Columbia	DC	38,446	37,518	102	523,000	14 :1
Florida	FL	50,342	49,139	102	15,233,000	310 :1
Georgia	GA	22,254	21,362	104	7,875,000	369 :1
Hawaii	HI	3,788	3,713	102	1,257,000	339 :1
Idaho	ID	2,735	2,859	96	1,347,000	471 :1
Illinois	IL	65,231	63,113	103	12,051,000	191 :1
Indiana	IN	12,480	12,234	102	6,045,000	494 :1
Iowa	IA	6,526	6,433	101	2,900,000	451 :1
Kansas	KS	7,095	6,968	102	2,668,000	383 :1
Kentucky	KY	10,417	10,310	101	3,995,000	387 :1
Louisiana	LA	15,975	15,819	101	4,425,000	280 :1
Maine	ME	3,055	3,268	93	1,259,000	385 :1
Maryland	MD	19,943	18,776	106	5,275,000	281 :1
Massachusetts	MA	43,775	42,701	103	6,199,000	145 :1
Michigan	MI	29,928	29,732	101	9,679,000	326 :1
Minnesota	MN	20,183	18,793	107	4,830,000	257 :1
Mississippi	MS	5,925	5,809	102	2,816,000	485 :1
Missouri	MO	20,682	16,681	124	5,540,000	332 :1
Montana	MT	2,652	2,597	102	950,000	366 :1
Nebraska	NE	4,768	4,760	100	1,705,000	358 :1
Nevada	NV	4,447	4,257	104	1,871,000	440 :1
New Hampshire	NH	3,038	3,010	101	1,224,000	407 :1
New Jersey	NJ	55,687	54,581	102	8,178,000	150 :1
New Mexico	NM	4,741	4,749	100	1,860,000	392 :1
New York**	NY	117,781	117,781	100	18,146,000	154 :1
North Carolina	NC	15,678	15,239	103	7,777,000	510 :1
North Dakota	ND	1,309	1,324	99	662,000	500 :1
Ohio	OH	34,435	32,767	105	11,319,000	345 :1
Oklahoma	OK	11,397	11,335	101	3,373,000	298 :1
Oregon	OR	9,835	9,727	101	3,397,000	349 :1
Pennsylvania	PA	40,422	39,646	102	12,202,000	308 :1
Puerto Rico	PR	11,071	10,195	109	3,916,000	384 :1
Rhode Island	RI	4,465	3,976	112	998,000	251 :1
South Carolina	SC	7,505	7,645	98	3,858,000	505 :1
South Dakota	SD	1,609	1,592	101	777,000	488 :1
Tennessee	TN	13,056	12,915	101	5,657,000	438 :1
Texas	TX	64,461	60,047	107	20,119,000	335 :1
Utah	UT	5,087	4,967	102	2,207,000	444 :1
Vermont	VT	2,050	1,807	113	617,000	341 :1
Virgin Islands	VI	444	432	103	120,917	280 :1
Virginia	VA	19,023	18,002	106	6,997,000	389 :1
Washington	WA	19,920	19,770	101	5,858,000	296 :1
West Virginia	WV	3,971	3,985	100	1,841,000	462 :1
Wisconsin	WI	13,514	13,079	103	5,326,000	407 :1
Wyoming	WY	1,306	1,296	101	525,000	405 :1
TOTAL		1 048 903	1 022 462	103	278 671 917	273 1

* Individual state bar associations or licensing agencies were asked to provide the number of resident, active attorneys as of December 31, 2000.
Three states (MA, NJ, WA) and Puerto Rico, representing 130,453 lawyers or 12% of the total lawyer population, are unable to give residents only and therefore may contain duplicates of lawyers licensed in more than one state.
**No updated figure was available from New York due to a system conversion, so the 2000 statistic was used

Tracking the insurance wars

Continued from page 30

costs, consumers with legitimately but smaller claims could successfully use arbitration to be fairly compensated. Subsequently, some insurers began requiring consumers to pay half of arbitration costs "up front", which still discourages fair resolution of smaller differences.

Another change I inserted in HB 44 was to require all automobile insurance policies to also cover the insured when driving a rental car in the United States. This prevented the need for any Alaskan with full coverage auto insurance to ever need to pay for "rental car damage waiver" when renting a car in the United States, unless if they wished to cover the amount of their own policy's deductibles or they did not want to have to file a claim against their own insurance.

As I worked on HB 44, Anchorage attorney Mike Schneider first informed me that insurance companies were not following the intent of the 1984 underinsured coverage language I had crafted.

In Part III of this series – The Fight over Stacking of Uninsured and Underinsured Motorist Coverage.

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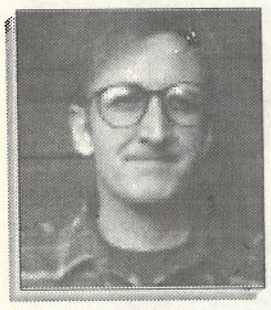
The author is an Alaska State Senator.

Fishing with existentialists

☐ Dan Branch



Jean Paul Sartre and Albert Camus never held a fishing pole or spent much time in the woods. If they had, they wouldn't have made such a big deal of the impermanence of life.

There is nothing static about fishing or nature. One springtime trip to a southeastern fishing hole would have convinced them that nothing stays the same. True Southeast spring comes when skunk cabbage form yellow blossoms and Japanese lantern flowers hang from blueberry brush. In spring, migratory bird songs would almost block out the sound of the existentialist's hiking boots on a muddy trial and the chant of river water running low over log jams.

THERE IS NOTHING STATIC ABOUT FISHING OR NATURE. ONE SPRINGTIME TRIP TO A SOUTHEASTERN FISHING HOLE WOULD HAVE CONVINCED THEM THAT NOTHING STAYS THE SAME.

With a discerning ear, old Jean Paul or Albert could notice that the bird songs change as they climb into the mountains. At sea level they would hear the robins. Later it will be varied thrush. Crossing flat ground made swamp by beavers, the existentialists might hear the confused tones of geese resting on their trip up north.

The river changes pitch too, running strong and angry over the steep parts and lazy over the flats. Later on in the season, Sartre and Camus might spot the finned back of a sockeye break the milky water as it works up a shallow stretch of river.

There are no salmon for them to see in the spring, just Dolly Varden and trout moving down to salt water. The game fish overwinter at a lake drained by the river.

THE EXISTENTIALISTS ARE READY TO FISH WHEN THEY REACH THE LAKE, BUT THE STEEP GROUND LEADING TO THE SHORE PREVENTS THEM FROM FORMING A BACK CAST.

If they are carrying five weight fly rods, Albert and Jean Paul might have plans on hooking a few at the lake.

Camus and Sartre would spend the first two hours of their hike moving through spruce and hemlock—evergreens that started life during the Enlightenment. Then, gray-green light off the lake would start showing through breaks in the forest. The light would grow strong then weak as clouds cruise past the sun.

The existentialists are ready to fish when they reach the lake, but the steep ground leading to the shore prevents them from forming a back cast. Across the water they see a beaver swamp drained by a small creek. There's a beaver house in the lake close to the swamp. Near the beaver house, a single white swan floats, head tucked in for sleep. The bird moves slowly across the lake, with the wind.

Jean Paul and Albert work through devil's club and alder thickets to the swamp and across to the mouth of the inlet stream. A nesting pair of Canada geese cry alarm and fly within shotgun range of the philosophers. When they reach the stream mouth, Sartre and Camus find that spring storms have raised the lake so its waters now cover the stream's sand bar. The existentialists pull on waders and work their way to where the water deepens.

The bar is covered with scraps of willow sticks, newly gnawed clean of bark. Under water, the sticks look like freshly stripped bones. Weeks ago, when the lake ice crumbled, there were fish here, hoping to intercept salmon fry moving out of the stream.

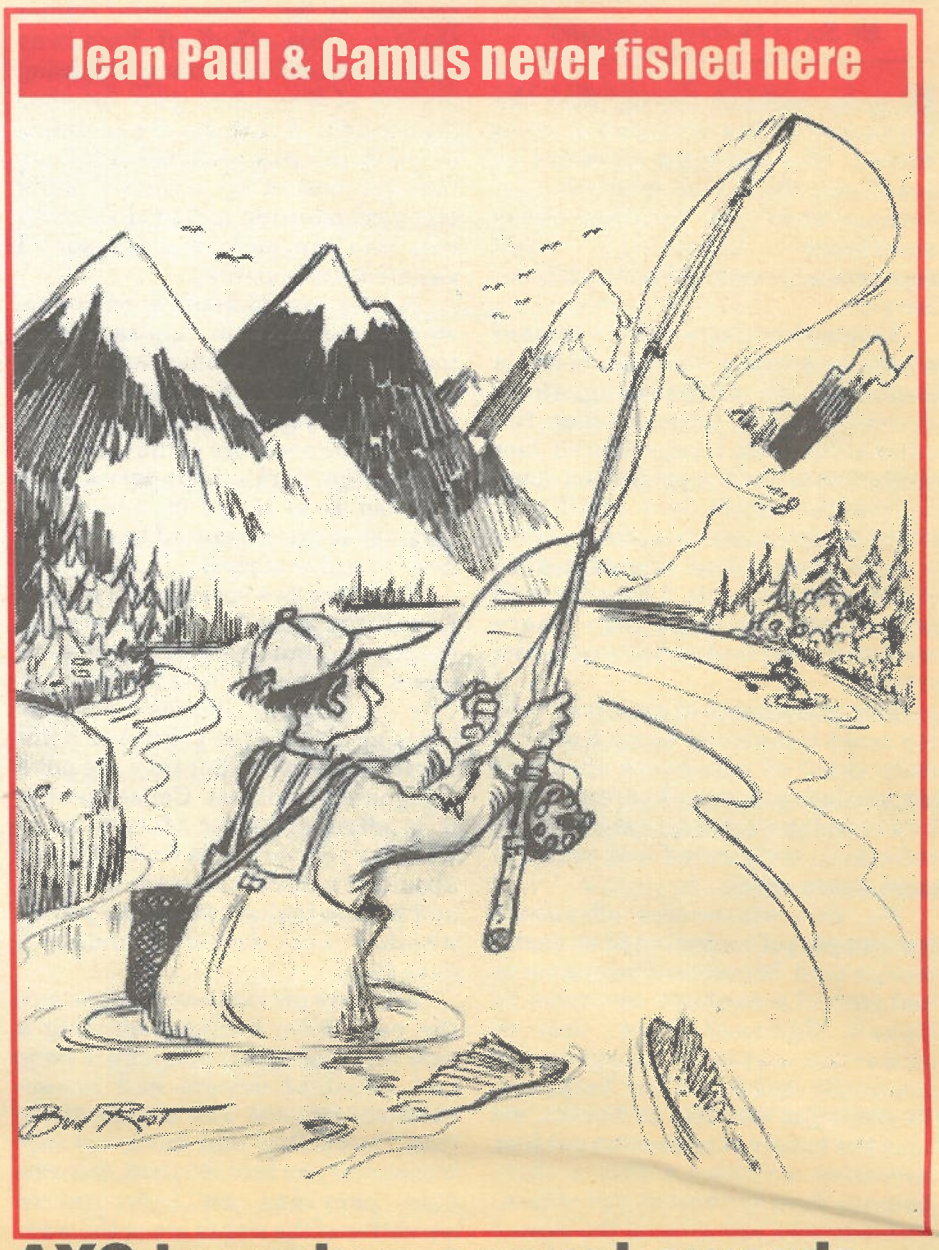
Today, the lake surface is unbroken by rising trout. Jean Paul flogs the water with an egg-sucking leech. Albert tries a gold-ribbed hare's ear nymph. The fish don't strike. Albert switches to a woolly bugger. It makes no difference.

The philosophers recross the swamp and head for the lake's outlet stream. While retracing their steps, the world is static. Even the single swan stops its drift. The clouds have formed a blanket over the sun. There is no wind. In time they reach the outlet stream.

Jean Paul ties on a silver and brown fry pattern and flings it upstream of a snag. An 8 inch cutthroat shoots from under the snag, surrenders to the fly and Jean Paul has his first fish. They move down the stream to a log jam decorated with white feathers. The picked clean bones of the other swan lie in the nest of feathers. Wondering after the bird's fate, the two philosophers continue downstream, following a bear trail through devil club and brush to the confluence of the small outlet stream and a larger glacier fed river.

On a gravel bar there, they find the boot prints of one man. Jean Paul flips his silver and brown fry pattern into the silty river, above the confluence. The strong current of the river forces the fly back into the muskeg-colored waters of the outlet stream where a 10-inch cutthroat seizes it.

Albert ties on a salmon fry pattern and joins his colleague. Each cast brings a strike. Most strikes bring a fish. They catch and release many, all 10-inch trout. A belted king fisher, watches, then flies away, complaining. The bird has broken the spell so they collapse their rods and return to the forest trail. The sun burns through to shine on red stained river rocks, glacier and mountains. An eagle joins the king fisher to complain while drying his wings in the sun.



AYC launches annual awards

The Anchorage Youth Court (AYC) has selected eight individuals for the organization's first awards to honor individuals "who give outstanding and generous service to the Anchorage community."

The awards were presented at a spring dinner and dance March 31 at the Anchorage Museum of History & Art.

The AYC sought nominations from members of its board, friends of the youth court, and major supporters, with winners chosen by the staff and board.

Recipients of the Anchorage Youth Court Awards 2001 are:

Barbara Hood: *Anchorage Attorney of the Year.* Barbara volunteers for Catholic Social Service's Immigration and Refugee Services, Amnesty International, and the Gender Equality Task Force of the Alaska Bar. Considerable efforts to record and preserve the history of the Alaska Bar, in particular women lawyers in Alaska. She was also elected an Athena winner and a YWCA Woman of the Year.

Marcia Davis: *In House Counsel of the Year.* Big sister for approximately ten years in Big Brothers/Big Sisters to two girls; volunteers for Alaska Legal Services pro bono program and chairs the Corporate Counsel section of the Bar. (Era Aviation)

Pamela Keeler: *Young Lawyer of the Year.* President of the Young Lawyer Section of the Anchorage Bar; she judges high school moot court and teaches AYC Bar classes.

Chief Justice Dana Fabe: *Judge of the Year.* Above all her interest in the youth of Anchorage -speaking to tour groups at the courthouse and at schools, doing training and swearing-in ceremonies for youth courts, participating in moot courts as a judge, and serving as a Presenter at the Alaska State Youth Court Conference in April; Co-chair of the Alaska Bar Gender Equality Section and Chair of the Access to Civil Justice Task Force and the Alaska Supreme Court Judicial Outreach Commission; other committee work in the past includes: Chair of the Alaska Supreme Court Civil Rules Committee, its Committee on Criminal Pattern Jury Instructions, its Special Committee on Contempt of Court, and Judicial Educations Committee; faculty member for numerous continuing legal and judicial education programs; and member of the Board of Trustees of the Anchorage Museum Assn. and the Board of Directors of Soroptimist International of Cook Inlet.

Ebenezer and Juliette Danguilan: *Civic Citizen of the Year.* United Nations, Alaska Chapter (she is co-president, he is secretary and newsletter editor; she has also chaired the Poetry and Essay contest for the ASD's middle and high schools); Fil-Am Association of Seniors (she is Public Relations officer, he is on the Board); Fil-Am Showtime on Public TV (she is Producer and Director, he is host of the program); Ebenezer is on the Board of the Anchorage Downtown Partnership and is a Kitchen Cabinet member for Mayor Wuerch; Juliette is an active member of Amnesty International.

James Hopper: *AYC lawyers of the Year.* James has taught AYC classes for 10 years, acts as a volunteer legal advisor in court, assisted with the AYC snow sculpture contest and the AYC Can-struction entry.

Denise Wike: *AYC Lawyer of the Year.* Denise has taught AYC classes, volunteered many hours improving AYC databases in addition to 20 hours as a legal advisor; she has also been a generous financial supporter for many years