The Alaska BAR RAG

Inside:

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So you are, will be (or want to be) a law clerk: Some observations

By Gregory S. Fisher

Judge Richard A. Posner, a celebrated scholar and circuit judge on the United States Court of Appeals for the Seventh Circuit, implies that law clerks are a necessary evil,[1] which, I suppose, is better than being an unnecessary one.

Professor Victor Williams, who teaches at Catholic University's School of Law in Washington, D.C., warns that reliance on law clerks "retards the overworked judge's development of his own judicial voice and, in some cases, his very competence."[2]

I am a law clerk. I didn't start out this way. I won't finish as one. But for the time being I'm here which at least gives me a paycheck and the belief (conceit?) that I'm holding down a necessary job.

In truth, I've been extremely fortunate to serve as a law clerk to a federal district court judge for almost four years now. It began as a brief sabbatical from private practice and has evolved into a career change of sorts. I will hold this position for another month or two at which time I will join the chambers of a Ninth Circuit Judge in Arizona.

Along the way, I've learned a little about clerkships–both applying for and performing the job. Experience being a hard school, I've learned some lessons more than once. As funny as it now seems, those lessons and my experiences may actually help someone. This article is directed to prospective or new clerks, or law students considering whether to clerk or not. Its intent is to assist those who are considering applying for a clerkship and those who've recently been hired as clerks prepare and perform their duties.

SOME CAVEATS

The observations in this article are based on my own experiences and my conversations with friends who are current or former clerks at the state or federal level. Living in Alaska, my perspective is Alaska-based. All references to state courts should be understood as referring to Alaska state courts. I don't think our experiences here in Alaska are all that much different from other state courts. But the context should be understood. My experiences include those years I spent as an assistant district attorney in Fairbanks and in private practice in Anchorage before applying for a clerkship. The experiences of my friends who have clerked have been similar yet different in many respects. To the extent that I recommend or imply any guidelines, they are intended as general recommendations.

WHY CLERK?

No matter how intelligent they may be, surprisingly few law clerks or applicants have a clear idea of why they want to clerk. Former clerks have even less of an idea. For most–perhaps the majority–it's a rung in the ladder that follows Law Review and precedes a sought after position in public or private practice.

A good clerkship looks great on one's resume and opens doors. For others, a clerkship is a way to defer career choices for a year or two, or maybe rethink one's priorities. There's no doubt that these are realistic (perhaps even valid) reasons why people seek clerkships. However, a clerkship is more than a way to pad one's resume or goof off for a year before joining the real world. A good clerkship is part advanced academic seminar and part finishing school.

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Fairbanks courthouse ridiculed no more Pg. 22

Courts, Bar sponsor varied Alaska Law Day events

The legal community celebrated Law Day this year with a variety of outreach activities across the state. From Barrow to Ketchikan, judges, lawyers, court staff and community members found themselves honoring the rule of law and this year's national Law Day theme: "Celebrate Your Freedom: Assuring Equal Justice for All." For the first time, the events were formally co-sponsored by the Alaska Court System and the Alaska Bar Association, and statewide participation by members of the legal community reached its highest level to date.

Judges and attorneys visited schools, often in teams, to discuss the justice system and current legal issues with students of all ages. For example, Anchorage Judge Dan Hensley and attorney Rex Butler spent a full day in class assemblies at Bartlett High School, discussing the challenge of equal justice and fielding questions on a range of legal topics. Judge Ray Funk conducted 10 classes in Fairbanks schools over a 10-day period, on topics ranging from jury service to right to counsel. Dean Gates, a law clerk for the 2nd judicial district, conducted a mock trial in sign language at a special camp for hearing-impaired youth. Judge Elaine Andrews paid an early Law Day visit to the 13-student school in the Aleutian village of Nikolski, near Dutch Harbor, then spent Law Day itself meeting with students at local elementary schools with attorney Melanie Osborne.

In addition to school visits, many judges and magis-

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President's Column

Annual convention provides opportunities

☐Mauri Long

It's appropriate that the President's term ends with the annual convention — for there is little energy left to tackle new projects. Fortunately, the Board of Governors completed work on its strategic plan at the May meeting preceding the convention.

One of our goals is to continue to increase participation in the annual convention, because it provides the opportunity for lawyers and judges to mingle, for lawyers on opposing sides of cases to sit and learn together and to socialize in a setting distinct from the usual adversarial roles. These opportunities encourage collegiality by giving us a chance to see our opponents and judges as people. That is important because it helps maintain and increase civility in the practice of law and in the courtroom.

If you missed the convention this year, make it the last one you missed. You missed several excellent training sessions and a great banquet. If you didn't find anything of interest to you, or you did and have thought of other areas that you would like to see covered at future conventions, please contact Barbara Armstrong or Rachel Batres at the Bar Association, because we can only give you what you want, if we know what you want to learn.

At the banquet, we honored those who have attained 25 years of Bar membership by sharing their 1977 photos accompanied by a medley of 1977 musical hits. We also honored those amongst us who have given of themselves over time to benefit the Bar and the citizens of this State. The Professionalism Award was presented to Michael J. Schneider for 27 years of making a difference by his commitment to serve his clients and those less fortunate while maintaining good relations with opposing counsel and mentoring young lawyers. The Distinguished Service Award was presented to Barb Hood, whose pictures have graced the pages of the Bar Rag for years, memorializing the events of our times. The Layperson Service Award was presented to Teri Carns for her work on many committees, commissions and task forces, along with her 27 years with the Alaska Judicial Council.

At the Business lunch, the Robert K. Hickerson Public Service Award "Justice For All" was awarded in loving memory to Robert, which honor Elizabeth Hickerson accepted along with her own thanks to the Bar, its members, and ALSC for their support of Robert and of Liz. In future years the Board of Governors will solicit nominations from all members for names of people you know who deserve to be acknowledged and thanked for their longtime service to the public.

I enjoyed my term as President and I am honored to have served the members of the Alaska Bar Association.

Editor's Column

Officers of the court? Don't be so sure

☐ Thomas Van Flein

We have always assumed that as attorneys we were also "officers of the court." At parties and special occasions, when asked what we did, many of us say in clipped military cadence, "Officer of the Court" followed by our seven-digit bar number.

For awhile it was trendy to have jackets embossed with "OOTC" on the back in the same style as "ATF" or "DEA." That trend waned somewhere around the whole Branch Davidian episode.

The belief that we really are officers of the court is not entirely unreasonable. It is mentioned in cases: "But attorneys are officers of the court, and they owe a duty of candor to the court." *Tyler v. State*, 2001 WL 1075170 p. 14 (Alaska App. 2001). It's in the Bar Rules. Bar Rule 9(a) provides that a "license to practice law in Alaska is a continuing proclamation . . . that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor, and to *act as an officer of the courts*."

No one ever really defined what it means to be an "officer of the court." Apparently there is no payment for being an "officer of the court." (The *Bar Rag* researcher checked). Nor do lawyers automatically get vested with the state retirement system for our work as "officers of the court."

The reason we don't get paid, don't get state retirement benefits, and no longer get a nifty jacket for being "officers of the court" is because, as regular lawyers, we are not really "officers of the court" in Alaska. In *DeLisio v. Alaska Superior Court,* 740 P.2d 437, 441 (Alaska 1987), the Alaska Supreme Court concluded that lawyers were akin to English barristers, who were not officers of the court:

"The role of the English barrister, on the other hand, appears to have been similar to that of today's trial attorney. Barristers have *never been* treated as officers of the court."

The *Delisio* court distinguished olde English "attorneys" from olde English "barristers" noting that "English 'attorneys' were indeed treated as officers of the court, but the English 'attorney' resembled a court clerk whose primary functions were ministerial. The court had direct control over these officers and granted them important privileges, such as exemption from suit in another court, serving in the militia and being compelled to hold another office." *Delisio,* 740 P.2d at 441.

As regular American attorneys, we do not get these special privileges. "These privileges are not now available to the American attorney and have been unavailable for some time. The Indiana Supreme Court determined over a century ago that the role of attorneys in the United States is *not* comparable to that of English attorneys." *Delisio*, 740 P.2d at 441.

There it is, in black and white; we are not officers of the court. Even more depressing, we were again foiled by the Indiana Supreme Court. Isn't that the same court that ruled that attorneys could not wear Carhartts during opening argument? *See In re Pig Farm Litigation,* 555 N.W. 2d 555 (Ind. 1984). (But see the vigorous dissent, pointing out that "Carhartts are the uniform of the working person. Old fashioned notions of decorum must give way to freedom of expression.")

Even more insulting, our profession has now been apparently deprived of "all its odious distinctions and peculiar emoluments" that we had centuries ago. *DeLisio v. Alaska Superior Court*, 740 P.2d 437, 441 (Alaska 1987). After years of law school and passing the bar examination, who wasn't looking forward to at least a few "odious distinctions" and perhaps one or two "peculiar emoluments?" I know of one or two peculiar emoluments that could come in handy once in awhile. The more peculiar the better, I always said.

Since the *Delisio* decision, the Alaska Supreme Court has made only one reference to the concept of "officer of the court" although it did so by quoting a case that preceded *Delisio* by 23 years. *Disciplinary Matter Involving Triem*, 929 P.2d 634, 640 (Alaska 1996) ("A disciplinary proceeding ... is . . . an exercise of the inherent power and jurisdiction of this court over attorneys as officers of the court") (*quoting In re Mackay*, 416 P.2d 823, 838 (Alaska 1964)).

The court of appeals continues to bring vitality to the idea, not quite ready to bury this anachronism next to the robes, wigs and 500-word sentences of our legal ancestors. *See Pinkerton v. State*, 784 P.2d 671. 674 (Alaska App. 1989) ("The prosecutor is an officer of the court"); *Miles v. State*, 825 P.2d 904, 906 (Alaska App. 1992) ("In the future, to comply with the *Cooksey / Oveson* rule, the prosecuting attorney, as an officer of the court, must certify that the issue which the defendant proposes to appeal is dispositive.")

But if lawyers are not really officers of the court, how do we reconcile the fact that court appointed psychologists were found to be officers of the court. In *Lythgoe v. Guinn*, 884 P.2d 1085, 1088 (Alaska 1994), the court stated that "appointed psychologists are non-judicial persons fulfilling quasi-judicial functions and *are classified as officers of the court* with functions intimately related to the judicial process." And what about probation officers? Probation officers are labeled "officers of the superior court" in AS 33.05.030. Perhaps,

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The Alaska BAR RAG

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Board of Governors meeting dates
August 22 & 23, 2002
October 24 & 25, 2002
(July Bar Exam results & budget)
January 23 & 24, 2003
March 13 & 14, 2003
May 5 & 6, 2003
May 7 – 9, 2003 Annual Convention (Fairbanks)

Bar Letters

Should disbarment be permanent?

***Editor's Note*:** In the last issue, the Bar Rag asked for input on a proposed rule to make disbarment permanent. The editor also asked several local clergy to comment on the values being expressed by the rule. Some replied, and 100% of respondents did not want disbarment to be permanent. The Board of Governors adopted the measure in May after considering all comments, and the rule is now pending approval before the Alaska Supreme Court.

Here are some of the letters on the topic: *Should Disbarment Be Permanent?*

Shocked & outraged

I am shocked, outraged, as well as extremely disappointed, having reviewed the Board's Proposed Rule regarding permanent disbarment. Who do you think you people are? Only God should have such power. Your proposed policy necessarily assumes that people are incapable of being rehabilitated. Even our prison systems are supposedly run with some interest in rehabilitation. Your proposed Rule suggests that the Board has no similar interest. Shame on all of you who even considered proposing such an archaic and asinine Rule. May God be with all of you who think you are so perfect, but obviously are now, as is evident from your actions.

—Herbert A. Viergutz

Maybe...

Should disbarment be permanent? Maybe. It should be addressed on a case by case basis.

—Anna M. Moran

(Faulty) assumption of infallibility

I think in addressing a major change, i.e., from disbarment with an opportunity for rehabilitation and reinstatement to, as this change proposes, permanent disbarment, one must first consider why such a radical change is being urged on the Board of Governors. What problems are being addressed that need to be addressed? Is this the best and only solution? I, personally, am not aware that there have been that many applications for reinstatement submitted to the Bar Association and, thus, remain somewhat mystified as to why the change.

As Mr. Van Goor will undoubtedly advise you, and I am sure the Board of Governors already knows, the proposal is a dramatic change from the American Bar Association standards which view disciplinary matters, including disbarments, as a method to discipline and guide the attorney, extending the hope, after rehabilitation, of readmission to the Bar as a full member. That philosophical standpoint accepts the notion that one's behavior can be modified, that one can learn from past mistakes.

It also recognizes the weaknesses in any system of justice—that we don't have all of the facts and absent absolute knowledge, injustices may occur. A method to correct that injustice ought to be available. The fallacy of our system, even when all the protections that we can perceive as necessary in a criminal process are in place, has been graphically demonstrated to all of us in the recent use of DNA testing acquitting numerous individuals previously convicted of heinous crimes. The process we have established for disciplinary proceedings through the Bar Association is hardly infallible. Absent infallibility, permanent harm should not be done. A permanent denial of reinstatement does that.

It seems to me that the philosophy of a permanent disbarment also does violence to our position as attorneys in the community. I believe as attorneys we should be focused on setting an example and providing maximum guarantees for individuals. This proposed change is regressive and makes an invalid assumption, i.e., infallibility.

Disbarment is a state action to destroy a career. I think it is more appropriate for the Bar Association to incorporate rule changes that have the effect of greater assurance that any action taken by the Bar Association is, in fact, correct. That would require at a minimum, that an attorney against whom a disciplinary action is proposed that would affect his license, would be provided a list of attorneys willing to serve to represent him in any action taken by the Bar Association against him.

Further, investigative procedures should be clearly set out, as should the composition and authority of, and procedures used by, a hearing panel. In short, recognizing the fallibility of all processes, every step imaginable should be taken to assure, prior to destroying anyone's career, that every possibility is provided to that individual through the process that we have developed over the centuries to assure the decision is correct.

—John R. Strachan

One or the other

Either people can change or (disbarment) should be addressed case by case. Otherwise I suspect that no one will ever be disbarred again.

—Deidre Ganopole

A disservice to community

I would vote no for "automatic" permanent disbarment. I believe the Bar Association needs the ability to evaluate on a case-by-case basis. It needs the ability to have options rather then a "do nothing" or "death penalty" option. There may be cases where the Alaska Bar Association would think a permanent disbarment would be too severe and therefore would take no action. This would be a disservice to the community. I would think there might be cases where disbarment would be appropriate until a person proves he is truly worthy to practice again rather than letting him practice until he "really" proves he is not worthy.

Without flexibility, the Bar Association may find its hands tied in having to do "too little" or "too much." Without flexibility, the Bar Association will not be able to extend hope, redemption, and a second chance based on additional information that may come out over time or significant changes in a person's life, which are our fundamental human values.

— Dr. Jerry Prevo
Anchorage Baptist Temple

No!

Hope and redemption are fundamental human values. People can change, and very few things are unforgivable. Given its inherent inability to "read the future," it would be lazy and arrogant for the Alaska Bar Association to enact a rule that made disbarment permanent.

— Bob Casey
(Alaska Bar Association member residing in Portland, Oregon)

Votes for redemption

In answer to the questionnaire in the recent bar rag, I subscribe to choice No. 2 — Hope and redemption are fundamental human values; people can change and very few things are unforgivable.

Thanks for seeking our input on this important matter.

— Margot O. Knuth

Low esteem? Satterberg?

Much of the latest *Bar Rag* reports on "The Good Old Days," the way things were way back when. The March-April, 2002 issue had two pages on the history of the Anchorage Bar Association and this is the second installment. Ken Jensen reflected upon his 40-year anniversary as the first Superior Court law clerk. Then, there were two full pages by Satterberg talking about his infantile childhood (normally this would be a redundancy, but, in Satterberg's case, I think not). All of this reinforced my long held opinion that nostalgia ain't what it used to be.

But, as one who spent 30 years in Alaska observing history being made, I feel qualified to relate a little history of my own. I can even recall when the esteemed Editor of this publication teamed up with several others to move a large building from Prudhoe Bay and reconstruct it near the University of Alaska to rent out to unsuspecting students in desperate need of cheap housing. But, that is another story.

What I really want to talk about here is Satterberg's article about his low self-esteem. Sure, Satterberg has low self-esteem and Bill Clinton is shy around interns.

Believe me, I know Satterberg. He was my closest neighbor for more than 10 years. We were compatible neighbors. I never complained about his occasional dynamiting and he was always available to help snowblow my roof during particularly bad winters. While I was a judge, he tried lots of cases in my court. I think he even won one case at the trial level. Of course, it didn't survive appeal.

When I quit judging, I was on the opposite side of numerous cases with Billy. He used to delight in citing cases I had decided in Superior Court against me in briefs. Judge Beistline's first trial was a judge-tried case with me on one side and Billy on the other. It went on for weeks in the dead of winter. I was perpetually arguing against decisions I had made as a judge and trying to convince Judge Beistline that my decision as a judge had been proper and well thought out but that it simply didn't apply in the case at bar. As I understand it, the case is still before the Supreme Court on the 4th appeal.

I guess that my point is that while Billy may suffer from a lot of things, lack of self-esteem is not one of them. When I was a judge, one of the bar poll categories was "lack of arrogance." For reasons that were never clear to me I seldom scored well in this category. If and when Billy ever has to face a bar poll, I suspect he will also have trouble with this category.

— Jim Blair

Officers of the court?

Continued from page 2

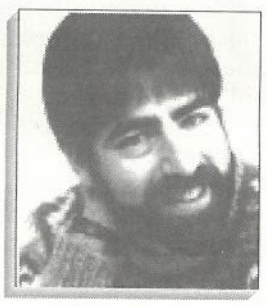
but the court in *Smith v. State, Dept. of Corrections,* 872 P.2d 1218, 1227 (Alaska 1994), reasoned that the "mere label 'officer of the court' does not necessarily make probation officers core members of the judicial branch of government."

I sense a pattern here. Lawyers, and maybe probation officers, are "officers of the court" for some purposes, like being candid with the court, but not when it comes to the good stuff like getting "peculiar emoluments." Well, they can take away those "odious distinctions" and the "peculiar emoluments" but they can't take away those nifty jackets or the pride that goes with them.

And they can't stop us from saying, "Your Honor, as an officer of the court" as long as we immediately follow that with "sort of, but not really."

Websites to bookmark for Alaska's family law lawyers

☐ Steve Pradell



Lawyers who practice in Alaska should be aware of the following important resources that are available at their fingertips on the Internet.

First, the Alaska Legal Resource Center, operated by Anchorage attorney Jim Gottstein, is a free internet service located at http://touchngo.com. The website contains Alaska Case law, including Alaska Supreme Court Opinions, Statutes, Rules, Regulations and other information beneficial to the civil and criminal law attorney. Cases are grouped both by subject matter and year of publication, and there is a word search option. This is a great tool for immediate access to Alaska law and the price is right!

Another website that I've bookmarked on the Internet is the Alaska Child Support Enforcement Division's Child Support Guidelines calculator, located at https://nutmeg.state.ak.us/iXpress/AlaskaCSED/GuidelineCalc/CalcLoginPage.

This website acts as a service for calculating child support pursuant to Alaska Civil Rule 90.3. Just plug in income information and the website will automatically perform the calculations for you, and you can print out the results.

A third website that is useful to family law lawyers solves a problem frequently encountered by those who help clients with child support matters. Finding the direct extensions and emails of personnel who work at the Child Support Enforcement Division has historically been difficult and the 800 Kids Line is almost impossible to negotiate. The following Internet website gives you direct access to the individual handling your client's case: http://www.csed.state.ak.us/Employees/EmployeeDirectory.htm.

Finally, another free service for Alaska lawyers is the weekly Alaska Appellate court slip and memorandum opinion notification service. Keep current on Appellate opinions by getting a free subscription to this service, which will automatically provide you with up-to-date information. You can subscribe to this service by logging onto: http://list.state.ak.us/guest/RemoteListSummary/ak_slip_opinions. Each week subscribers receive a message providing a list of the opinions and MOJs issued by the Supreme Court and court of appeals that week. The messages will include the case type and a link to the PDF version of the document posted on the court's website.

The internet offers resources which simplify the practice of law, shorten the time to obtain information, and reduce the overhead of lawyers who can't afford to keep a private library of law books up to date. If you are still practicing in the "dark ages," dictating your pleadings and lacking a computer on your desktop, it is time to make some changes!

Check out the above websites and bookmark those which streamline your practice. It is impressive to a client when you can cite a case and immediately access it on your computer screen during your office consultation. By saving time that could have been spent all day in the law library looking for that one case, you'll save your clients money too. Best of all, accessing the above sites won't cost you a penny.

Not so fast on the International Criminal Court

By Dan Sullivan and Chris Cyphers

In the March-April edition of the *Bar Rag*, the International Law Section of the Alaska Bar called for the United States to support and ratify the creation and adoption of the International Criminal Court (ICC). On April 11th, the Treaty of Rome establishing the ICC was ratified by more than 60 governments, thereby officially launching the ICC. The United States, however, has remained on the sidelines, refusing to ratify this new international tribunal. We should remain there until the ICC is substantially overhauled.

THE INTERNATIONAL CRIMINAL COURT IS FLAWED IN THREE FUNDAMENTAL WAYS.

The International Criminal Court is flawed in three fundamental ways. First, despite claiming that it has jurisdiction over U.S. nationals, it does not provide many of the basic legal rights we hold dear, such as trial by jury of one's peers, or protections against unreasonable searches and seizures.

Second, the ICC impinges upon national sovereignty in unacceptable ways by asserting universal jurisdiction over citizens of countries, like the U.S., that have not ratified the Treaty of Rome. This goes against all notions of customary international law, i.e, law that is based on general and consistent practice among states, not foisted upon states. As a spokesman for the U.S. State Department recently stated, "[The ICC] has a number of fundamental problems. It purports to assert jurisdiction over nationals of states not party to the treaty, contrary to the most basic principles of customary international law governing treaties."

Third, many of the ICC's ill-defined crimes would be unconstitutionally vague if adopted by a U.S. jurisdiction. Such vagueness makes the ICC the perfect tool for the politicized prosecution of foreign nationals, especially American citizens abroad, whether in the private sector or serving in our armed forces, by countries that want to show their displeasure with American foreign policy. One of the four listed crimes within the jurisdiction of the ICC is "the crime of aggression," which, unlike the three other listed crimes (genocide, crimes against humanity, and war crimes) is not defined in the treaty. Will the United States be guilty of "the crime of aggression" if, in the future, it invades Iraq or Somalia or any other country harboring terrorists? Certainly a possibility, and given recent comments by many European officials, one might even say a certainty. "War crimes," too, are vague and loosely defined such that a wily prosecutor could accuse just about any U.S. soldier operating in a hostile environment of such a violation even if her actions were justified under U.S. law. Specifically, Article 8 of the treaty states that a "war crime" includes "committing outrages upon personal dignity, in particular humiliating and degrading treatment." By this definition, even some of us attorneys are guilty of war crimes in our every day practice of law!

Imagine, then, how easy it would be for an ICC prosecutor, say a politically ambitious French socialist, to file charges against American servicemen and women as a way to publicly register his displeasure with U.S. policies abroad. In fact, this is already happening. In 1999, a group of European and Canadian law professors initiated a "complaint" before the Former Yugoslavia International Criminal Tribunal that accused American and other NATO officials of crimes against humanity for the conduct of the Kosovo air campaign. Similarly, European outrage over the supposed mistreatment of Al Queda prisoners at *Guantonomo Bay* was ultimately revealed to be based on an ill-informed view, if not overtly politicized use, of prevailing standards of international law. Still, this did not prevent many European governments from ranting against America's supposed violations of international law at Camp X-Ray.

With American men and women working abroad, especially our military who are fighting a shadowy war against terrorism and deployed in as many as 100 countries, the ICC, if not reigned in and significantly amended, could end up being the tool by which other countries sit in judgement of how well we and our servicemen and women are fighting terrorism across the globe. Such a result would be a serious set back to efforts to improve international law and bring *real* war criminals to justice.

Department of Corrections attorney visitation policy

With the opening of the Anchorage Jail, it is necessary to notify your members of our attorney visitation policy.

There are two visiting rooms specifically for attorney visiting, with the population that the facility is designed to hold, your members should expect the possibility of a wait before their visit begins.

If your members desire to use the contact visiting room, they may do so only with prior arrangement with the Security Sergeant. Allow at least 48 hours for scheduling.

Members wishing to visit with their clients within their first twenty-four hours of incarceration will he afforded every accommodation with the following exceptions:

• Prisoners will not be moved during institutional counts and meal services.

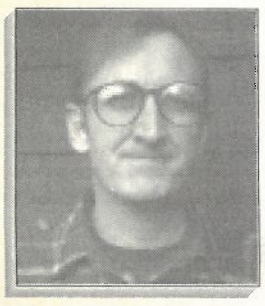
• Any prisoner visiting with an attorney will be returned to their respective units for meal service only.

The meal schedule begins with breakfast at 6:00 a.m., lunch at 11:00 a.m. and dinner at 4:00 p.m. As soon as the meal service is completed, requested prisoners will be presented for visitation. Other than the stated exceptions, your members may visit their clients anytime within their first twenty-fours of incarceration.

After the first twenty-four hours of incarceration, visitation with clients will occur between the hours of 8:00 a.m. and 10:00 p.m., except during scheduled meal service and counts.

Photo anxiety, legislature actually does good

☐ Dan Branch



On a spring evening in 1977, I sat in the Legal Services Office in Bethel, filling out an application for membership in the Alaska Bar Association. I was using a cranky old IBM Selectric. It was a struggle, but finally the machine bent to my will. The next morning the application, along with application fee (most of my get-crazy-in-Anchorage money), and a photograph were mailed to the bar association.

Three weeks before the summer bar exam I had contracted some strange intestinal disorder which forced me to read Gilbert law outlines on the honey bucket. That passed and so did I. In the fall, Judge Cook swore me in as a member of the bar.

Now, 25 years later, only one question lingers: What picture did I submit with the application? By now you know the answer because the photograph likely appears in this edition of the Bar Rag. Was it my high school graduation picture? Was it one I liberated from a law school identification card, which made me look like Rasputin's grandson? It probably wasn't a photograph taken in Bethel. There wasn't a photo studio in River City at the time. I don't remember going to an Anchorage professional photographer.

Given the uncertainty, I thought about asking the Rag not to publish my picture, but that would spoil everyone else's fun. That didn't seem fair given all the entertainment I've received from seeing other's 25-year pictures in this fine newspaper.

If the high school yearbook picture appears and you have never met me, yes I still have all that hair and my skin is as smooth as a defense attorney's closing argument. If you have met me before, you saw me on a bad day.

If Rasputin's image appears above my name, assume there was some mistake and mine is really the photograph of the best looking other guy on the page—say Brant McGee if he is celebrating his 25th year in the Bar Association. That probably won't work because Brant is well known.

Whatever picture that appears in this paper, I will survive and think back on the experience in the happy manner of sailors who remember being keel hauled in honor of their first crossing of the Equator. I'll also enjoy my continued association with the men and women of the Alaska Bar. (The lawyers' association—not the Ketchikan drinking establishment.)

NO MORE COOKIES

Picture gridlock at the Capitol building in Juneau. It's late May. The legislative session is in double-overtime and the only thing moving is the film in a Gavel to Gavel camera. It's recording frustration. In another section of the legislative halls, three Girl Scouts appear, pushing a large tub of official GSA cookies. They appear, they sell cookies, they leave.

No one in Juneau could be happier about the girls' conquest than I. For three months, those cookies had been in our closet, blocking the path to my fly fishing gear. For three months stacks of Thin Mints, Tagalongs, Trefoils and Do-Si-Dos had stood between me and the collection of fry pattern flies that I had prepared for Dolly Varden season. A late spring had made the barrier a minor nuisance, but I was starting to receive reports of Dolly sighting off the Thane Road beach. The cookies were cleared out just in time.

Those of you without Girl Scout connections may not know this, but those cookies had no business being in our closet. Cookie sales are a winter event, not a spring ritual. The whole thing starts in January when the girls go door to door soliciting sales. They are usually successful. Some people are moved to buy at the sight of young scouts struggling to their door on a Juneau January day. Others are loyal supporters of the cause or the child. Many just have a hankering for Thin Mints with their coffee.

SOME PEOPLE ARE MOVED TO BUY AT THE SIGHT OF YOUNG SCOUTS STRUGGLING TO THEIR DOOR ON A JUNEAU JANUARY DAY. OTHERS ARE LOYAL SUPPORTERS OF THE CAUSE OR THE CHILD. MANY JUST HAVE A HANKERING FOR THIN MINTS WITH THEIR COFFEE.

Six weeks later a cookie-laden barge arrives in town. Girl Scout parents haul boxcars-full from the Marine Line warehouse and the delivery process begins. The customers, now with another six weeks of winter behind them, are more than happy to receive the merchandise. Usually by March 1, there isn't one case of Tagalongs or Ole Ole cookies in the house.

Girl Scout cookies funded the ground portion of a trip that sent my daughter and her fellow scouts to England. It took years of cookie sales to pay for the trip. This year, they finally had enough money. While planning for England last winter, the scouts figured out that the trip would wipe out their savings, so they decided to order extra, as a troop, to sell at local markets and the Blockbuster store in the valley.

They made a couple of attempts to sell the extras—camping out behind a folding table loaded with Tagalongs and Thin Mints at the Alaska and Proud store. Unfortunately, most of the shoppers had that "I gave at the office" look when they passed the table. The girls did better at Blockbuster. Without the legislators' help however, there would still be a cookie wall between me and my five-weight rod and reel.

ALSC President's Report

Fundraising campaign renamed

☐ Vance Sanders

Alaska Legal Services Corporation (ALSC) is in the last phase of its annual fundraising campaign. In honor of our long-time former executive director who passed away in June 2001, the campaign was re-named Robert Hickerson Partners in Justice.

Our campaign began with a mail solicitation in December, and will end on 30 June 2002, so time is running out for attorneys, non-attorneys and support businesses to make their much-appreciated and much-needed contributions.

This year's campaign targets attorney members of the legal community and encourages attorneys to donate the dollar equivalent of at least two billable hours. We are also reaching out to non-attorneys and support businesses with ties to the legal community. Gifts may be designated as individual gifts, firm gifts, or anonymous donations. Unless otherwise designated by the donor, 10% of each donation is placed in a long-term endowment fund established to provide a secure source of funding for ALSC operations in future years. Information on regular or endowment donations to Robert Hickerson Partners in Justice can be obtained by sending an e-mail to donor@alsc-law.org or by visiting the campaign web site, which is www.partnersinjustice.org.

Those of you who attended the 2002 Alaska Bar Convention heard Third Judicial District Chair Robert Bundy's eloquent presentation about the need for these contributions, and the adverse ramifications on ALSC's clientele from declines in other funding sources. Had they been able to address the Convention attendees, First Judicial District Co-Chairs Janine Reep and Keith Levy, and Second and Fourth Judicial District Chair Charlie Cole would have personally thanked those of you who have contributed to date, and joined Mr. Bundy's spirited call to do more to ensure equal access to justice for all Alaskans.

The giving totals through 24 May 2002, as well as the giving goals for each Judicial District, follow.

First Judicial District:	$10,726	(Goal: $25,000)
Second and Fourth Judicial Districts:	$7,475	(Goal: $12,500)
Third Judicial District:	$59,314	(Goal: $87,500)
Out-of-State Contributions:	$1,436	
Total:	**$78,951**	**(Goal: $125,000)**

We sincerely thank each contributor, and recognize the following firm and individual donations.

Firm Donations

CIRI	$7,000
Feldman & Orlansky	$5,000
Heller Ehrman White & McAuliffe	$5,000
Birch Horton Bittner & Cherot	$2,000
Dorsey & Whitney Foundation	$1,750
Perkins Coie	$1,500
Clapp, Peterson & Stowers	$1,500
Clayton & Associates	$1,000
Preston Gates & Ellis	$1,000
The Carr Foundation	$1,000

Individual Donations

Carol & Tom Daniel	$1,500
Jim Gottstein	$1,500
Bill Caldwell	$1,100
Jacqueline Carr	$1,000
Lloyd Miller	$1,000
Scott Sterling	$1,000
Thomas Stewart	$1,000
Peter Michalski	$1,000

ALSC also wishes to thank the Alaska Bar Association for creation of the Robert Keith Hickerson award, which will be given annually to one who demonstrates the commitment to public service which Robert's life exemplified. The first award was given posthumously to Robert during the Alaska Bar Convention. Elizabeth Hickerson (who made possible Robert's invaluable contributions through her own devotion to provision of legal services to indigent Alaskans and commitment to this work) accepted the award on Robert's behalf. She moved many in the audience to tears with her call to service for those who are unable to afford the cost of justice. Liz and Robert were honored by the audience, which saluted them a standing ovation.

On behalf of ALSC, many thanks to the Alaska Bar Association for this wonderful way to recognize Robert's and Liz's contributions in the years to come.

Jan Ostrovsky joins Crocker Kuno

The partners of Crocker Kuno LLC are pleased to announce that Jan Ostrovsky has joined the bankruptcy boutique. Ostrovsky will join the firm following extensive experience with the Department of Justice and in private practice. At Crocker Kuno, Ostrovsky will practice in the area of bankruptcy and non-bankruptcy debtor-creditor rights. He previously practiced in Alaska for more than 15 years. "I am looking forward to working with Alaska clients again," he said.

Jan Ostrovsky

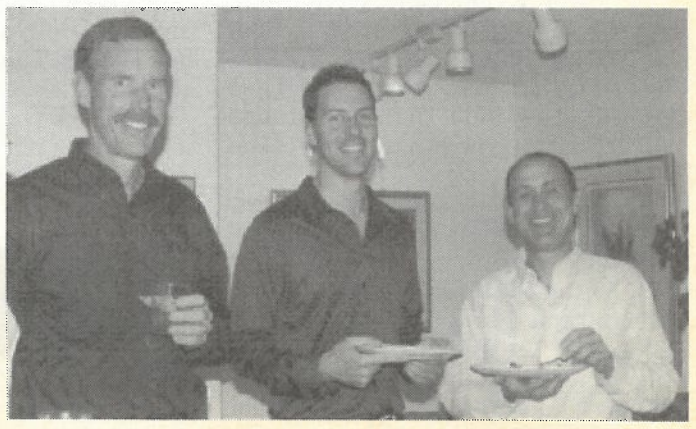
Ostrovsky served as the United States Trustee for Region 18 (Washington, Oregon, Montana, Idaho and Alaska) from 1995 through 2001. As U.S. Trustee he supervised the activities of all private case trustees in the five-state region. In addition, he and his staff regularly appeared in Court on almost every type of bankruptcy issues. Ostrovsky was selected by the Director of the U.S. Trustee Program to serve as Chairman of the Director's Advisory Committee, the program's central policy making body. He also has served as chair of the Program's Chapter 11 Subcommittee and as a member of the Chapter 7 Subcommittee.

Prior to being appointed U.S. Trustee, Ostrovsky was of counsel with Perkins Coie, and a partner with Bogle & Gates. He is an adjunct professor at the University of Washington College of Law teaching Business Reorganization.

Crocker Kuno partners and employees will celebrate the firm's fifth anniversary in business this year. The firm's philosophy is to approach law with teamwork. Crocker Kuno lawyers understand financial information and apply it in a legal context to help their clients create solutions to their business and personal issues.

Pro bono attorneys help refugees

The Immigration and Refugee Services Program of Catholic Social Services recently hosted a reception for attorneys who participated in its Pro Bono Asylum project. The attorneys and their clients gathered at the home of pro bono attorney Sandra Wicks to celebrate many successes that were achieved for program clients during a recent series of hearings held in Anchorage under the Nicaraguan Adjustment and Central American Relief Act (NACARA).



Pro Bono Asylum Project attorneys Bill Saupe, Currey Cook and Jim Parker.

IRSP Program Director Robin Bronen, center, *with UAA professor and* CSS/IRSP advisory board member Dr. Francisco Miranda, (L) and volunteer program psychologist Dr. Karen Ferguson (R).

Bar People

Kristen Pettersen was made a shareholder of Dillon & Findley last summer, and has recently relocated to Dillon & Findley's Juneau office....Assistant Attorney General **Leroy Latta** transferred from the Environmental Section to the Collections and Support Section..... **Margaret Russell** has been elected as shareholder and Jeff Holloway has joined as associate at Burr, Pease & Kurtz, P.C.....**Natasha M. Summit** recently joined the law offices of Durrell Law Group, P.C., where her practice will continue to focus on estate administration, estate planning, and business law. Ms. Summit previously practiced law with Jermain, Dunnagan and Owens, P.C., and most recently had her own solo practice in Anchorage.....As of June 1, 2002 **Cathleen N. McLaughlin** will no longer be a partner at the law firm Hagans, Ahearn, McLaughlin & Webb. The name of the firm will be Hagans, Ahearn & Webb.

Anchorage West High School competed in Washington, D.C. in May in a national "We The People" forensic law competition, representing the State of Alaska.

The "We the People" national competition is supported by most bar associations across the country, and three Alaska bar members participated in the event. **Ken Lagaki** represented the West High principal and accompanied the team to the nation's capital; **Dave Baranow** was one of the finalist judges in Washington; and **Judge Ray Funk** served as one of the judges in the Alaska elimination competition earlier this year.

Gregory Fisher has been admitted by examination to the Arizona Bar Association and effective September 2002, he will be joining the Chambers of the Honorable Barry G. Silverman, U.S. Court of Appeals, Ninth Circuit, in Phoenix, Az.

Law clerkships

Is a law clerkship right for you?

Continued from page 1

It's extremely difficult to describe the relationship between a judge or justice and law clerk. Nothing I have experienced or seen comes close. A junior staff officer to a general may be close, but the analogy somehow seems unsatisfactory since it implies a level of skill which law clerks lack. In my own mind, I've concluded that a good clerkship is a learning opportunity not unlike a medieval guild. You apprentice yourself to a master, your judge or justice. You learn from that person. Some of the lessons are painful, some terrific. Most of the lessons are indirect or implicit, and may often have little or nothing to do with the law. All of the lessons are valuable. No matter what you know or think you know, no matter what talents you have or believe you have, a good clerkship will challenge you, elevate your skills, and make you a better person both personally and professionally. You may even pick up mannerisms or styles unique to your judge or justice in the same way that Rembrandt's apprentices perfected and perpetuated their Master's art.

IN MY OWN MIND, I'VE CONCLUDED THAT A GOOD CLERKSHIP IS A LEARNING OPPORTUNITY NOT UNLIKE A MEDIEVAL GUILD.

If you are thinking about applying for a clerkship or are beginning one, you should be aware of these broader implications. A clerkship is much more than a way station or resume padder.

TYPES OF LAW CLERKS

Whether you are a clerkship applicant, thinking about applying, or have been hired, it is useful to know a little bit about the types of law clerks. Understanding these types may assist applicants identify options and help new clerks effect the transition from school or work to clerkship.

Law clerks tend to fall within one of three broad groups.

• The traditional law clerk is a recent law school graduate who has never practiced law. Traditional law clerks typically graduate from top 25 or 30 law schools with grades in the top 20% or better of their class and significant extracurricular experience such as Law Review or Moot Court.

• A rising number of law clerks are non-traditional: practicing lawyers on sabbatical or seeking a career change, perhaps to academe, perhaps elsewhere. I am a non-traditional clerk. Like traditional law clerks, non-traditional law clerks usually have strong academic and writing backgrounds. Both traditional and non-traditional clerks are hired for specific terms usually being one or two years depending upon the court and the Judge's preference.

• The third group of law clerks are career law clerks–also called "elbow clerks" in the federal system. I don't know how this term originated.

There are advantages and disadvantages associated with law clerks in any of these groups. The traditional law clerk is apt to be most familiar with developing research techniques and the latest legal developments. Good law schools are crucibles for ideas, theories and trends. The traditional law clerk usually enjoys a broader perspective on general fields of law. Law school affords one with a good grounding in the basics, as does preparation for the bar exam. However, the traditional clerk's intelligence is not tempered by experience. The traditional clerk may also lack the mature perspective that experience and specialized practice offer.

The non-traditional law clerk typically has better research skills, is more disciplined, and budgets time more efficiently. Because of his or her experience as a practicing lawyer, the non-traditional law clerk may also be able to "read between the lines." However, most practicing lawyers specialize in one legal field or a limited number of fields. Thus, the non-traditional law clerk may have more difficulty in researching and analyzing different fields of law. The non-traditional clerk's technical skills--writing, proofing, and citing--may also be less sharp. Good law schools teach good habits and skills. Unfortunately, and contrary to popular belief, these tend to grow stale in public or private practice.

Career law clerks are a distinct, but distinguished, minority. Whether they started as traditional or non-traditional law clerks, career clerks have perfected skills which materially assist their respective Judges administer their duties. To my knowledge, there are no career law clerks in the Alaska state system and only a few in the federal court system in Alaska.

THE APPLICATION PROCESS: IS A CLERKSHIP RIGHT FOR YOU?

After watching for a few years, it's my opinion that a large number of people drift into clerkships without too much forethought. Although for most people the decision and its consequences are not difficult to make or bear, if you are applying or considering applying for a clerkship you really should make an effort to question whether a clerkship is right for you. If you are still a law student, a judicial externship or internship may be the best way to see how courts operate and get an idea of how clerks work. If you are in practice, present and former clerks are an excellent–perhaps the best–source of information. Regardless of your circumstances, applying for a clerkship should not be a casual choice.

THE APPLICATION PROCESS: ARE YOU RIGHT FOR A CLERKSHIP?

If you have applied or are thinking about applying for a clerkship, you need to have a realistic sense of how competitive the hiring process is, particularly with respect to the court for which you would like to clerk. The competition for clerkships is tough. The numbers I cite here are rough estimates based on unofficial sources, but I believe that they are generally accurate. If you are a federal district court clerk, probably 115-150 other people applied for the position you secured. Of those, perhaps 15 were interviewed. If you are a federal circuit court clerk, those numbers bump to the 150-225 range (sometimes higher) with perhaps 5 to 10 interviewed. The numbers for state clerk positions run significantly less, but are nevertheless higher than the number of applicants for most jobs in private or public practice. The only significant point is that a lot of superbly qualified folks apply for clerkships.

The hiring cycle is about two years out for most federal clerkships. For example, most federal judges hired their clerks for positions opening in September 2002 between December 2000 and March 2001. I believe that is fairly common in all federal courts. That means that applications were being submitted and reviewed as early as October 2000 (or earlier) with interviews following in the subsequent months. This may change in the near future as federal judges are attempting to establish guidelines restricting hires to third year students. But even then, the hiring cycle would precede employment by about a year. It's my understanding that a similar hiring cycle affects placement with the Alaska Supreme Court or Court of Appeals. I don't know how far in advance Alaska Superior Court judges hire their clerks, but to be safe I would assume they are hiring anywhere from 6 to 12 months out.

COMPETITION FOR CLERKSHIPS IS TOUGH . . . IT IS NOT A QUICK-CYCLE DECISION

The point is that a clerkship is not, and should not be, a quick cycle decision. You not only have to believe that you are interested now, but you have to know that you will still be ready and available for the position a year or two down the road.

The bottom line is that, whether you are applying for a clerkship or have secured one, you should respect the fact that it is a highly competitive process. If you have been fortunate enough to secure a clerkship, you have been selected over a large number of other applicants most of whom had skills and qualifications as good or better than yours. This does *not* mean that you were the best applicant, just the luckiest.

WHAT SKILLS YOU NEED (OR SHOULD HAVE)

In a certain sense, the wrong people get hired as law clerks for all of the wrong reasons. State or federal judges or justices usually want to hire the best available talent. Each has his or her own criteria. However, typically judges or justices are looking for applicants with strong academic backgrounds, excellent research and writing skills, and an ability to effectively and concisely communicate ideas.

In the abstract, there's nothing wrong with these criteria. A good law clerk or applicant should enjoy research, writing, citing, and proofing. You should be comfortable studying, analyzing, and discussing law and policy. You should be (or aspire to be) a student of the court, both your immediate court and its superior branches. If you are a federal clerk, you should particularly enjoy civil procedure and Constitutional law.

However, a prospective clerk's talents are often counter-productive to the demands of the job. Intelligent people tend to be opinionated and passionate about those opinions. But strong opinions are not conducive to objective analysis. Bright young law students or lawyers are classic overachievers who have always tested well and finished at or near the top of their respective classes. A certain humility, however, is an absolute prerequisite for law clerks.

Recently graduated law students may be inclined to defer too readily to the courts they serve, and be reluctant to question premises discussed in chambers. Respect is important, but good judges need law clerks to serve as sounding boards to test theories. Bright law students and lawyers know everything except their own limitations. They can be difficult to coach. But a good clerk should be open-minded and adaptable. Intelligent law students and lawyers boast strong academic backgrounds. However, education untempered by experience can lead to disaster. Education with experience may even be a more volatile concoction for unwary law clerks.

The end result is that you should develop an appreciation for your strengths and weaknesses, and recognize that some of your supposed strengths may, in fact, be weaknesses. If you learn this, you may be able to avoid the greater pitfalls which trap other clerks.

WHAT YOU CAN EXPECT

Generalizations are difficult because each judge or justice runs his or her Chambers differently, and each court performs its own unique functions depending upon its precise role in the system. However, in broad overview, there are some similarities between all clerkships at any level such that some general observations can be risked which will probably not be too inaccurate.

Your life as a clerk will be much less stressful than it is for your colleagues in practice. Time is relative.

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Law clerkships

Is a law clerkship right for you?

Continued from page 8

There are no demanding clients. There are no billable hours. There are no marketing or client development pressures. There *are* obnoxious lawyers, but none opposing you. Overhead is not an issue. Resources don't tend to be a problem. For the most part, there are no deadlines to worry about–the court sets the deadlines. There are no uncertainties. Except for your judge or justice, you know what the result is going to be before anyone else does. There are no professional or financial risks. No one is going to sue chambers for malpractice. You will enjoy the luxury of time–of being able to think and reflect at your leisure before submitting work product.

However, in other respects, a clerk's responsibilities are much more taxing than those faced by lawyers in private or public practice.

IN OTHER RESPECTS, A CLERK'S RESPONSIBILITIES ARE MUCH MORE TAXING THAN THOSE FACED BY LAWYERS IN PRIVATE OR PUBLIC PRACTICE.

You are expected to assist the judge make decisions–usually mundane, sometimes significant–that affect the lives of other people. You do not have the luxury of specializing in a field. You may be expected to analyze and master issues in a field of law which is totally foreign to you. Although the parties' respective briefing may (or may not) be helpful, you really cannot stop with their research. Your judge or justice will be relying on you, your research, your analysis, and your conclusions. You are attempting to help your Judge or Justice reach the right result(s) for the right reason(s) in each case.

That sounds easy. It's not. If a mistake is made, and you will make a mistake somewhere along the line, you risk adversely affecting the lives of real people to say nothing of embarrassing your judge. If you are lucky, the adverse consequences attending your mistakes will be minimal and easily corrected.

As a clerk, you will have an excellent opportunity to observe practice in your community. You will read, analyze, and summarize a broad range of motions and briefing–all falling on a bell curve. You will see countless oral arguments on motions or appeals. You will probably see at least one jury trial, perhaps more, and a certain number of evidentiary or related hearings. You will get a good chance to see your judge rule on matters and, if you are fortunate, to discuss those rulings with him or her in chambers. You will read administrative and trial records.

You will know more about community norms and standards of practice than senior partners in established firms. You will see the very best and the very worst. In the federal system, you will have an opportunity to be exposed to a broad range of legal issues. In the state system, your judge may be assigned to a particular docket, in which case your opportunities may be somewhat more limited. But in either system, you will benefit from a perspective which is part ringside seat and part backstage pass rolled into one. It is a fantastic ride.

YOUR LIFE AS A CLERK WILL BE MUCH LESS STRESSFUL THAN IT IS FOR YOUR COLLEAGUES IN PRACTICE.

RULES AND YET MORE RULES

There had to be rules, right? These are my rules–guidelines that I've developed through the years to minimize the damage that I can do as a law clerk. There are only six rules–seven if you count the first rule addressing jurisdiction. I have broken a good number of these rules (but not the important ones) which I think is the prerequisite to sharing them with you.

(1) *Check Jurisdiction*: This first rule has limited applicability, but unlimited significance if you are or will be a federal clerk. Always check the grounds being asserted for subject matter jurisdiction. This was the first advice I received from my judge, and about the best practical rule to follow. Federal courts are courts of limited jurisdiction. Make sure that a basis for the court's subject matter jurisdiction exists and that it is adequate. Subject matter jurisdiction is perishable. Therefore, check the jurisdictional grounds with each motion that surfaces, and at each stage that requires your attention. Never assume that the parties have it right.

(2) *Do no harm*: For some reason–perhaps undeserved–you've been extremely lucky to be hired. Whether because of your intelligence or education or background or whatever, you have been accorded a special privilege to serve the court. Don't abuse that privilege. Be invisible. Break no trust or confidence. You are a temporary care-keeper of your judge's reputation and the reputation of the court as an institution. Never do anything to endanger the reputation of either. It's true that if the Ninth Circuit or Alaska Supreme Court reverses your judge, your name appears nowhere. Neither the Ninth Circuit nor the Alaska Supreme Court will single you out. However, judges and courts have reputations–protect your judge's.

(3) *Serve the Court*: If and when your judge or justice solicits your thoughts on an issue, be responsive, respectful, and responsible, but do not be a "yes" person. Do not be afraid to challenge your own assumptions and conclusions. Do not be afraid or reluctant to challenge assumptions or conclusions voiced by your judge or justice. He or she is counting on you to backstop the court.

(4) *Park your agenda*: We all have political or social opinions. However, whether drafting a bench memorandum, an order, an opinion, or simply responding to inquiries in chambers' conferences, a good law clerk should be scrupulously apolitical. Your judge is depending upon you for an objective and accurate analysis. You are not an advocate. Good law clerks, like good referees or linesmen in hockey, are invisible. The best reputation a law clerk can have is no reputation.

(5) *Check your ego*: You are a law clerk. You are not a judge or justice. The judge or justice is responsible for all decisions. He or she makes the final call. Your role is to offer the best advice that you can commensurate with your intellect, experience, training, and education. However, don't be surprised or disappointed if your best advice is rejected. judges tend to be pretty bright people. They may know a thing or two that you don't. On an unrelated subject, respect staff and other court personnel. They all have important jobs to do.

(6) *Remember Research Fundamentals*: Always check cases to be sure they remain good law. Never assume anything. Don't be afraid to look beyond the parties' briefing to determine whether all relevant issues have been raised and briefed. However, don't litigate cases for the parties. Keep an open mind. Don't get wedded to conclusions too quickly. Don't be afraid to challenge your own assumptions and conclusions. Develop a research protocol that enables you to diligently complete assignments in a timely and competent manner. One protocol that works for most is "rara": (1) research; (2) analyze; (3) reflect; and (4) advise. But find one on your own, formal or informal, that you can live with. Before you reach the stage of tendering advice, stop and ask yourself if your conclusions make sense. Think before you speak. Never trust your first impression of a case or file. Don't be afraid to think about the specific issue you are researching in a broader policy sense.

. . . RESPECT STAFF AND OTHER COURT PERSONNEL. THEY ALL HAVE IMPORTANT JOBS TO DO.

(7) *Maintain Perspective*: Don't forget that each file you pick up and each motion you are tasked to analyze involves real people with real problems. Those people have brought a dispute to the court. They need an answer. It would help them to get a timely answer. Justice delayed really is justice denied in many situations. Someone is apt to be disappointed. But a disappointing answer is at least an answer. Be diligent. No one may want to wade into that bankers' box of exhibits and briefing, but nothing will get done until you do. Most cases will settle. Unless you are a clerk at the Alaska Supreme Court or Ninth Circuit, your court is not writing for the ages. Don't hit for the fence on each swing when a single will do the job.

CONCLUSION

My intent in submitting this article was to assist those who are considering applying for a clerkship or those who've recently been hired as clerks. If I am successful, I will assist at least one person avoid the mistakes I have made along the years. I believe any attorney would benefit from serving a clerkship whether at the outset of one's career or mid-career on sabbatical, and I would encourage any law student or young lawyer to at least consider clerking for a state or federal court.

A BIBLIOGRAPHY

(1) A. Rubin & L. Bartell, *Law Clerk Handbook* (Federal Judicial Center rev. Ed. 1989). Authored by Judge Rubin and one of his former clerks who is now a partner at a New York firm, the Law Clerk Handbook is currently the basic training source for all federal law clerks.

(2) R. Posner, *The Federal Courts: Challenge and Reform* (1999). Judge Posner's reflections on the federal court system include several observations on law clerks and their role serving courts.

(3) B. Woodward, *The Brethren* (1979). An interesting, if dated, study of the United States Supreme Court.

(4) E. Lazarus, *Closed Chambers* (1998). Written by one of Justice Blackmun's former clerks, and a current Assistant United States Attorney, Closed Chambers is a controversial book that offers lawyers, law students, and clerks a different perspective on judicial philosophy and decision-making. The book also implicates issues related to confidentiality and clerkship ethics.

(5) http://lawclerks.ao.uscourts.gov/ Website for the Federal Law Clerk Information System. It includes a search capacity to find federal clerkships.

(6) http://www.state.ak.us/courts/prosclerk.htm Website maintained by the Alaska Court System providing general information for prospective law clerks, including salary and application information.

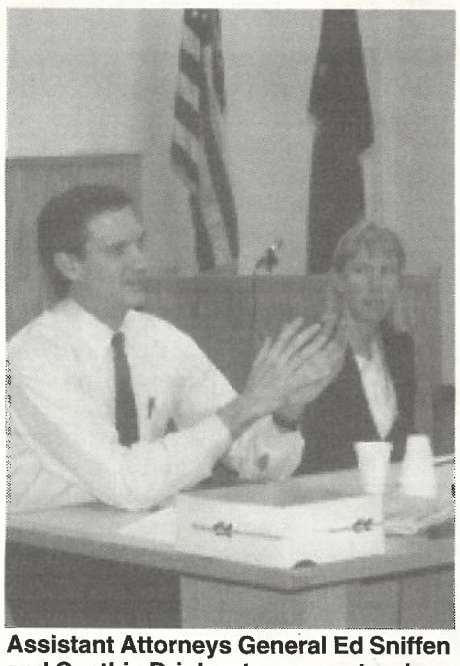
(7) http://jurist.law.pitt.edu/clerk.htm Academic website which includes articles, news, and general resources regarding law clerks.

Author's Note: The opinions and views expressed in this article, along with any mistakes, are solely the author's and do not reflect the views or opinions of any court or employer with whom the author has been associated.

[1] *See* Richard A. Posner, *The Federal Courts: Challenge and Reform* at 139-59 (1999).

[2] *See* Victor Williams, "*Justice Denied*," The American Lawyer (October 12, 2001).

Law Day 2002: Highlights



Assistant Attorneys General Ed Sniffen and Cynthia Drinkwater present a class on "Cars & Credit Cards—Consumer Tips for Teens & Young Adults" to a full courtroom of young people at the Anchorage Law Day Academy in the Boney Courthouse.

Continued from page 1

trates invited school classes into courthouses and, with the help of local attorneys, conducted tours, mock trials, and mock oral arguments. For example, Ketchikan hosted a full day of events at the courthouse, including a mock trial of "The Three Bears vs. Goldilocks" featuring Chief Justice Fabe as Goldilocks. Barrow Superior Court Judge Michael Jeffery and Magistrate Karen Hegyi presented a mock trial for a class of 6th graders with the help of local "attorney-coaches." In Juneau, Judge Peter Froehlich presided over a mock trial of "Gold E. Locks" for a grade school class with the help of local prosecutors and defense attorneys, and Justice Walter Carpeneti and his clerks heard oral arguments presented by students from Juneau-Douglas High School. Magistrates Terry Bissonette of Wrangell, Chris Ellis of Craig, Mike Jackson of Kake, Joyce Skaflestad of Hoonah, and Darlene Whitehorn of Petersburg were among the many other judicial officers who hosted presentations at courthouses.

In addition to outreach to schools, several communities held "Law Day Academies" on May 1st, where judges, lawyers and other professionals presented free classes on a wide range of legal topics for the community at large. Many also hosted displays of the Law Day 2002 photo-text exhibit, "The US in JUSTICE is...EVERYONE!", which features nearly 40 Alaskans engaged in law-related work and their statements about what "equal justice" means to them.

Law Day 2002 was a successful effort of the Bench and Bar to educate the public about our legal system, and plans are already in the works for next year. If you have any comments about this year's activities, or would like to volunteer to help with Law Day 2003, please contact Barbara Hood, ACS Law Day 2002 Coordinator, at 264-8230 or bhood@courts.state.ak.us.

Judge Larry Card speaks at the Anchorage reception for Law Day Academy and the photo-text exhibit "The US in JUSTICE...is EVERYONE!" that was held at the Boney Courthouse on Law Day. Pictured behind Judge Card is Anchorage attorney David Baranow, who moderated the panel of reception speakers. Baranow served on the Steering Committee for Law Day 2002, and Judge Card served on the Advisory Committee.

Attendees at Barrow reception are pictured in front of the Law Day photo-text exhibit, "The *US* in JUSTICE...is EVERYONE!" which was created in honor of this year's national Law Day theme, "Celebrate Your Freedom: Assuring Equal Justice for All." The exhibit was co-sponsored by the Alaska Court System and the Alaska Bar Association, and featured photos of nearly 40 Alaskans and their views on equal justice. It was displayed at 45 courthouses, schools and other community venues statewide throughout the month of May.

Law Day Academy in Anchorage featured a series of classes on legal issues at the Boney Courthouse, the Anchorage Senior Center, Mountain View Community Center, and Fairview Community Center. Here, several speakers from the panel "Domestic Violence: The Courts and Community Respond" gather outside the Supreme Court courtroom before their presentation. L-R: Angie Rosales, Municipal Prosecutor's office; Diane LoRusso, Legal Assistance Coordinator for Standing Together Against Rape (STAR); Robin Bronen, Program Director of Catholic Social Services' Immigration and Refugee Services Program; Magistrate Suzanne Cole, panel moderator; and (seated) Cynthia Toohey, Alaska Women's Resource Center.

Third Judicial District Law Day Coordinator Pat McBride (center back) visits with Law Day Academy hosts from the Anchorage Bar Association's Young Lawyers Division outside the "youth track" courtroom in the Boney courthouse. Helping prepare "diplomas" for all Academy participants are, L-R: Katie O'Halleran, Rachel Plumlee (seated), McBride, and Alexa Shelley.

Guests enjoy cake at the Barrow reception for the Law Day photo-text exhibit, "The *US* in JUSTICE...is EVERYONE!"

"I...am writing to thank you for your efforts in organizing Law Day this year. Karla Huntington and Jim Kentch taught all my social studies classes May 1, and did a fabulous job exploring issues pertinent to middle school students. Discussions of student rights, responsibilities, the district handbook and the US Constitution made for energized classes. Students had so much interest the next day was spent with me answering follow-up questions and taking advantage of this catalyst to bring up additional issues and legal process myself. Karla and Jim deserve accolades for their preparation and performance."

—E-mail to Pat McBride from Steve Ex, Social Studies Teacher, Gruening Middle School, Eagle River

Appellate clerk offers new slip opinion service

The appellate clerk's office has offered a new appellate slip opinion notification service: the ak-slip-opinions listserv. Any interested person may sign up for this free service, which began operation on April 5, 2002.

Each Friday afternoon, within hours of the official release of the supreme court and court of appeals opinions, subscribers receive an email message that lists opinions and MOJs issued that week. The message provides a 1-2 word general description of the case such as "criminal" or "workers' compensation" and a link to the Adobe Acrobat PDF version of the decision on the Alaska Court System website. Opinions in PDF look nearly identical to the print versions produced by the court, retaining all original formatting including footnotes, underlining and italics. PDF lets you read the opinions online or print them, and allows you to cut and paste text for use in your documents.

To subscribe to the ak-slip-opinions listserv, go to the following website: http://list.state.ak.us/guest/RemoteListSummary/ak_slip_opinions, enter your email address, and select the "Immediate Delivery" option. You will receive a welcome message that describes the purpose of this list and provides other list-related information. You may unsubscribe from the service at any time by following the instructions at the bottom of the weekly email message.

Questions about this new service should be sent to Marilyn May at owner-ak-slip-opinions@list.state.ak.us.

ALASKA BAR ASSOCIATION NEW OFFICERS

President: Lori Bodwell
President Elect: Larry Ostrovsky
Vice President: Brian Hanson
Secretary: Rob Johnson
Treasurer: Bill Granger
Members:
Matthew Claman
Bill Granger
Brian E. Hanson
Robert M. Johnson
Keith Levy
Sheila Selkregg
Daniel E. Winfree
New Lawyer Liaison: Jason Weiner

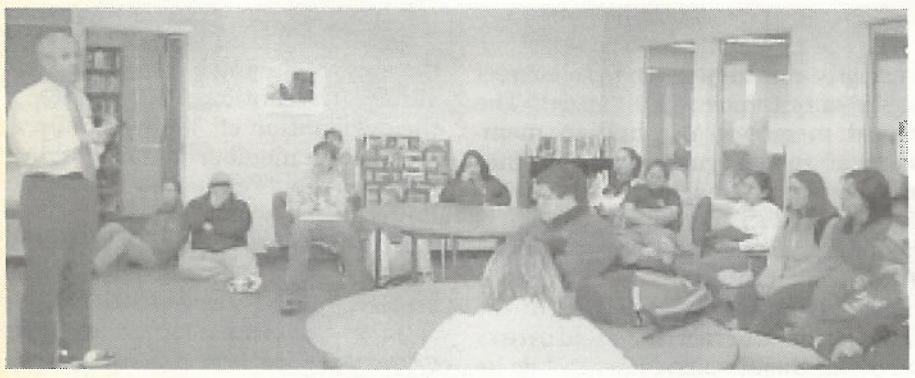
The Alaska Bar Association will be moving its office between June 28 & July 1.

(The office will be closed on June 28 & July 1)

Our new address starting July 2 will be 550 W. 7th Avenue, Ste. 1900.

Our phone & fax numbers will remain the same.

Law Day 2002: Highlights



Nome Superior Court Judge Ben Esch speaks with students about the law at Nome Beltz High School.

Judges and court staff gather in the Ketchikan courthouse for a "Meet Your Judges" panel on Law Day.

Defense counsel "Pete R. Pan" (Assistant Public Defender David Seid) and defendant "Gold E. Locks" (Shelly Travis of the Juneau Public Defender office) mount a vigorous defense during the mock trial of "The Three Bears vs. Gold E. Locks," held for Juneau school children on Law Day.

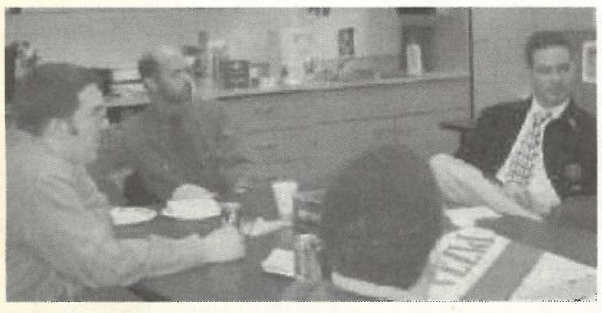
Chief Justice Dana Fabe is served with a subpoena to appear as "Goldilocks" in a mock trial presented by the Ketchikan Boy Scouts, while Stephanie Cole, administrative director of the Alaska Court System, looks on.

"Hey…I just wanted to say thanks…Law Day was a huge success here at West. The speakers were wonderful. Thanks for all your work and coordination. The visual display was very well received here also. Every presentation was super."

—E-mail to Pat McBride from Pam Orme, teacher at West High School, Anchorage, commending speakers Elizabeth Hickerson, Mark Worcester, Larry Cohn and Judge Sen Tan

"It has been two weeks since you visited with us for Law Day, and the kids still bring up some of the issues which we discussed while you were here. I think that demonstrates what an interesting topic the law is, as well as what an impression your visit made on them. I just wanted to thank you for taking the time out of your busy day to visit with our classes (twice, no less). I know the students enjoyed it, and we teachers got a lot out of it as well. I hope that we have the opportunity to visit with you again through this program because I feel it is probably one of the most worthwhile educational activities for our students. Hopefully, the attorneys and judges who participate find it just as useful."

—Letter to volunteer attorneys Jean Sagan and Dawn Reed-Slaten from Chris Rumps, teacher at S.A.V.E. High School in Anchorage.



Bethel attorneys Erin McCrum, Gary Soberay and Jim Valcarce attended a luncheon at Bethel Regional High School as part of a full day of Law Day activities that included presentations at the courthouse, the schools, and Bethel Youth Facility.

THANKYOU!!

The Alaska Court System and the Alaska Bar Association would like to thank the following planners, volunteer attorneys and community members who helped make

LAW DAY 2002

a statewide success:

Steering Committee:
Chief Justice Dana Fabe, Chair
David Baranow
Mary Bristol
Judge Raymond Funk
Barbara Hood
Pat McBride

Advisory Committee:
Katherine Alteneder, FLSHC
Judge Larry Card
Elva Cerda, Govt Hill School
LeAnn Chaney, UYCA
Magistrate Sue Charles
Susan Churchill, Bridge Builders
Larry Cohn, AJC
Justice Robert Eastaugh
David Fleurant, DLCA
Joe Garoutte, ANJC
Andy Harrington, ALSC
Carl Johnson, Anch Bar YLD
Madeleine "Loni" Levy, APBP
Antonia "Toni" Moras, UAA
Judge Sigurd Murphy
James Parker, OPA
Lisa Reiger, ALSC Board
Ed Sniffen, AG
Krista Stearns, Anc Bar YLD
Don Surgeon, PDA
Kirsten Tinglum, AkBA

Volunteer Attorneys:
Lanae Austin
Ronald Baird
David Baranow
John Bernitz
Kristen Bomengen
Ruth Botstein
Robert Briggs
Robin Bronen
Dave Brower
Thelma Buchholdt
Rex Lamont Butler
Paul Canarsky
Victor Carlson
Chris Causey
Kevin Clarkson
Larry Cohn
Eric Conrad
Judith Conte
Julia Coster
Susan Cox
Caroline Crenna
Sue Crocker
James Davis
Mary Deaver
Cynthia Drinkwater
Louise Driscoll
Paul Eaglin
Suzanne Ewy
Mary Fischer
Hugh Fleischer
Diane Foster
Gary Gantz
Doug Gardner
Howard Gathwright
Sara Gehrig
David George
Jamelia George
Mike Geraghty
Jessica Carey Graham
Marla Greenstein
Andrew Haas
Marvin Hamilton
Pat Hanley
Roger Henderson
Elizabeth Hickerson
Deborah Holbrook
Karla Huntington
Jonathan Katcher
Jim Kentch
Victor Kester
David Leonard
Averil Lerman
Tony Lombardo
Rebecca Maxey
Erin McCrum
Brant McGee
Rob Meachum
Brendan Murphy
Lisa Nelson
Kara Nyquist
Katie O'Halleran
Greg Olson
Melanie Osborne
Daniel Patrick O'Tierney
Christine McLeod Pate
Greg Peters
Rachel Plumlee
Dawn Reed-Slaten
Bob Richmond
Erin Rose
Jean Sagan
Dan Schally
James Scott
David Seid
Alexa Shelley
Gary Soberay
Ed Sniffen
Tom Temple
Kirsten Tinglum
Sara Trent
Fred Triem
Jim Valcarce
Corinne Vorenkamp
Tom Waldo
Jason Weiner
Steve West
Danna White
Robin Williams
Julie Willoughby
Sheldon Winters
Jon Woodman
Mark Worcester
Julie Wrigley
Lach Zemp

Other Volunteers:
Harry Brod, CWM
Alison Broerman, BRHS
Joseph Cantil, ANJC
Michelyn Contreras, AST
Carla Culbreth, APD
Bill Edwards, AYC
Karen Ellingstad
Joe Garoutte, ANJC
Jewell Hall, ALSC
Heather Hutson, AYC
Margaret Krause, DJJ
Trace Lewis
Diane LoRusso, STAR
Diane Miller, ALSC
Chief Walt Monegan, APD
Anne-Marie Palumbo, AGO
Carolina Paredes
Karen Lee Schamber, CITC
Cynthia Toohey, AWRC
Shelly Travis, PDA
Kimberlee Vanderhoof, CNL
Voice of the Island People Samoan Dance Group
Wat Dhama Bhavana Thai Dance Group

With special thanks to all JUDICIAL OFFICERS and STAFF of the ALASKA COURT SYSTEM who participated in Law Day activities statewide; to all local and district-wide LAW DAY COORDINATORS; to all participants in "The US in JUSTICE…is EVERYONE!" exhibit; and to all courts, schools & community centers that hosted the exhibit.
Your support is much appreciated!!

NOTE: If you participated in Law Day as a volunteer attorney or community member and we've failed to mention you, please accept our apologies and let us know about your Law Day activities by emailing us at oregand@alaskabar.org.

Military justice: A singular opportunity for significant service

By Victor Kelley

The blockbuster film *A Few Good Men* misguided the public into the military justice system through the trial preparation of defense counsel Lieutenant Daniel Kaffee and Lieutenant Commander Jo Ann Galloway. In the movie, both of the accused are convicted of a crime that does not exist. Kaffee boldly submits a defense which incorrectly and ludicrously — could subject him to court-martial charges. Though based on a true incident, the film is complete fiction. In actuality, our service members enjoy excellent statutory and administrative rights, and unlimited opportunity exists for civilian lawyers to help them exercise those rights.

IN ACTUALITY, OUR SERVICE MEMBERS ENJOY EXCELLENT STATUTORY AND ADMINISTRATIVE RIGHTS, AND UNLIMITED OPPORTUNITY EXISTS FOR CIVILIAN LAWYERS TO HELP THEM EXERCISE THOSE RIGHTS.

How often has a client consulted you for legal services and mentioned in passing that he or she has a son facing a court-martial in the Army? A daughter in the Air Force who is suffering an administrative misjustice? A spouse who needs to petition for a correction of his/her military record? The sheer number of young people serving in our armed forces, as well as veterans who have previously served, reveals numerous opportunities for lawyers to provide significant assistance to hundreds of thousands of our citizens in a legal practice that badly needs competent civilian counsel. The area of military justice is virtually untapped and is one in which, with some application, civilian lawyers can practice with complete competence.

Military criminal justice and its related administrative actions are multifaceted and include court-martial process, appellate review, nonjudicial (commander's) punishment, clemency and parole proceedings, discharge review boards and boards for correction of military records. Below is a primer of the general types of some military proceedings, the qualifications for counsel's representation at those proceedings, and some resources that will guide the reader in preparation for them.

COURTS-MARTIAL

General Court-martial: A general court-martial is empowered to adjudge any punishment authorized by the UCMJ (Uniform Code of Military Justice). Authorized punishments may include a reprimand, forfeiture of pay and allowances, a fine, reduction in pay grade, confinement, and a dishonorable discharge. In the case of officers, a court-martial may mean dismissal from the service. The military court-martial must, upon an accused's request for members, be comprised of at least five members. The accused has the right to military counsel and may, at no expense to the government, retain qualified civilian counsel.

Special Court-martial: Though a serious proceeding, a special court-martial's punishment authority is inferior to that of a general court-martial. A special court-martial is empowered to adjudge those punishments authorized by the UCMJ, subject to the maximum jurisdiction of that court, including forfeiture of 2/3 pay per month for six months, six month's confinement, reduction in pay grade, and a discharge from the service with a bad conduct discharge. Upon an accused's request, a special court-martial must be comprised of at least three members. Like a general court-martial, the accused has the right to military counsel and may retain civilian counsel.

Summary Court-martial: A summary court-martial is composed of one commissioned officer. His/her function is to "promptly adjudicate minor offenses" and he/she is charged to ensure that the interests of both the government and the accused are safeguarded. Lawful punishments include confinement for one month, restriction to limits for two months, and forfeiture of 2/3 pay for one month. The accused does not have the right to military counsel at a summary court-martial but may retain civilian counsel.

COURTS-MARTIAL APPEALS

The military rules for appellate review vary according to the court from which the appeal is taken and the offense for which the accused was convicted. Generally, the first *de facto* "appeal" is to the convening authority, who may only mitigate findings or sentence. Unless an accused waives appellate review, the Court of Criminal Appeals may review court-martial convictions. In certain circumstances, the Court of Appeals for the Armed Forces and the United States Supreme Court may also review court-martial convictions. In each of these courts, the accused may be represented by counsel and may retain civilian counsel in addition to or instead of military counsel.

Adverse Actions

The term "adverse action" refers to a number of quasi-judicial or administrative proceedings that may subject military service members to potentially career-ending sanctions short of judicial proceedings. Those adverse actions are generally governed by the relevant service regulations. During most adverse action proceedings, service members have the right to assistance of military and civilian counsel.

ADMINISTRATIVE SEPARATION BOARDS

Service separation boards are administrative in nature but do entitle the service member to administrative due process of law. These boards generally have the authority to retain the respondent or to discharge him/her with an honorable, general under honorable conditions, or other-than-honorable discharge. With a general under honorable conditions or an other-than-honorable discharge, the service member will lose substantially all his/her rights under the service department and the Department of Veterans Affairs. Military personnel have the right to military and retained civilian representation before administrative separation boards.

BOARDS FOR CORRECTION OF MILITARY RECORDS

Within each military service exists a board that is established by federal law with authorization to "correct any military record...to correct an error or remove an injustice." The board members are civilian members of the executive part of that military department. Except when a favorable decision by the board is based on fraud, a correction of the record is final and conclusive. The claimant must file a petition to the Board for Correction of Military Records within three years after he or his legal representative discovers the error or injustice. However, the board does have the authority to excuse an out-of-time filing if it finds the filing to be in the interest of justice. While a service member does not have the right to assistance of military counsel, he/she may retain civilian counsel for redress to the Board of Correction of Military Records.

BOARDS OF OFFICERS

Not unlike Administrative Separation Boards, Boards of Officers exist to administratively hear allegations of officer misconduct and neglects. Their jurisdiction is non-punitive in nature, but may result in other administrative and career-ending sanctions. Military counsel is made available for service members who are referred to a board of officers. Respondents may also retain civilian counsel for their representation.

ARTICLE 15 (NJP) AND APPEALS

Article 15, UCMJ, otherwise known as NJP (Nonjudicial Punishment) may also be called "captain's mast" in the Navy or "office hours" in the Marines. NJP is a disciplinary measure, but not as severe as a court-martial. Unless a service member is attached to or embarked on a vessel, he/she can refuse Article 15 and demand his/her right to a court-martial.

If the service member accepts Article 15, he/she may be punished with as much as restriction to limits, arrest in quarters, forfeiture of pay, correctional custody, and reduction in pay grade. If embarked on a vessel, the service member may be ordered to confinement on bread and water or diminished rations for three days. Any service member who feels that his/her punishment is unjust or disproportionate to the offense may appeal to the next senior commander within five days of imposition of punishment. An accused does have the right to consult military counsel before accepting Article 15 or demanding trial by court-martial. The accused also may speak with retained civilian counsel, and, with permission of the commander, counsel may represent the service member at the Article 15 and on appeal to the next senior commander.

THE FORMALITY OF COURTS-MARTIAL CAN BE INTIMIDATING, BUT IT CERTAINLY IS NO MORE FORMAL THAN PRACTICE IN U.S. DISTRICT COURT.

PHYSICAL EVALUATION BOARDS

Each service provides boards for evaluating the degree and extent of a service member's physical and mental fitness for continued duty. While the language and reference to the service boards may vary, the process is generally comparable. Usually, an initial finding of disability may be appealed through a tiered system in the hopes of either continuing on duty (usually until the service member is eligible for retirement), or with the view of having a reasonable disability designation awarded. Upon the designation of "30% disability," the service member is medically retired to the "Temporary Disability Retired List" with some limitations. Military counsel is available for assistance, or, if the service member prefers, he/she may retain civilian counsel for Physical Evaluation Board practice.

CLEMENCY AND PAROLE PETITIONS

All the services have clemency and parole boards that exist to consider each petition to determine whether clemency and restoration of certain civil rights is appropriate. The boards may also determine a military prisoner has earned the right to be paroled into the civilian community and complete his/her debt to society as a free individual on parole. In certain circumstances, a service member convicted by court-martial may petition the U.S. Justice Department pardon attorney for an executive pardon. Civilian counsel may represent military personnel for all clemency, parole, and pardon applications.

DISCHARGE REVIEW BOARDS

The secretary of each armed force is statutorily required to establish a Discharge Review Board. The service member must move the board to review his/her discharge within 15 years after the date of the discharge or dismissal. The review is based on the records of the armed force concerned as well as on other evidence that the petitioner may present to the board. The petitioner may present his/her case personally, via affidavit, or by counsel advocating his/her interests before the board.

PRACTICING BEFORE A MILITARY COURT

Young military lawyers are first-rate attorneys. When working with civilian counsel, military defense counsel are unusually well placed to assist lead counsel in the preparation and presentation of the case. Military advocates are "school trained" and have the advantage of being at the post as well as in a position to keep a finger on the pulse of the case. The military rules of procedure are such that all of the resources available to the United States are available to the defense. This is a stark contrast for those of us in civilian justice systems who fight for our clients against the power of the sovereign!

The formality of courts-martial can be intimidating, but it certainly is no more formal than practice in U.S. District Court. The evidentiary code is the Military Rules of Evidence (MRE), which is patterned on the federal rules. Those who practice in U.S. District Court will be immediately at ease working within the military system. The punitive articles of the UCMJ are the military criminal code. They are easily set out in the Manual for Courts-Martial, which has a description of the offense, a listing of the elements of the offense, a list of any lesser included offenses, and a set of definitions for any legal terms of art used in that article. The

Continued on page 13

Comments invited: Bar rule housekeeping changes

The Board of Governors invites member comments concerning the following proposed amendments to Alaska Bar Rules 34 and 38 and Article V, Section 6 of the Alaska Bar Association Bylaws.

Alaska Bar Rules 34 and 38: These housekeeping amendments were suggested at the February 26, 2002 meeting of the Fee Arbitration Executive Committee to conform the statute of limitations period in Bar Rule 34(c)(4) to the present statute of limitations of three years for contract actions provided in AS 09.10.053 and to correct a citation error in Bar Rule 38(c)(4) to Bar Rule 37(i)(6).

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, 2002.

BAR RULES 34(c)(4) & 38(c)(4)

HOUSEKEEPING AMENDMENTS FROM FEE ARBITRATION EXECUTIVE COMMITTEE TO CONFORM RULE 34 TO STATUTE OF LIMITATIONS IN AS 09.10.053 AND TO CORRECT CITATION IN RULE 38 TO RULE 37
(Additions are underscored; deletions have strikethroughs)

Rule 34 GENERAL PRINCIPLES AND JURISDICTION

...

(c) Fee Disputes Subject to Arbitration. All disputes concerning fees charged for professional services or costs incurred by an attorney are subject to arbitration under these Rules except for:

(1) disputes where the attorney is also admitted to practice in another state or jurisdiction and (s)he maintains no office in the State of Alaska and no material portion of the legal services were rendered in the State of Alaska, unless (s)he appeared under Alaska Civil Rule 81;

(2) disputes where the client seeks affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct; or

(3) disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to State statute or by a court rule, order or decision.

(4) disputes which occur after EFFECTIVE DATE over fees which were charged more than three (3) ~~six (6)~~ years earlier, unless the attorney or client could maintain a civil action over the disputed amount.

RULE 38. THE EXECUTIVE COMMITTEE OF THE FEE DISPUTE RESOLUTION PROGRAM

...

(c) Powers and Duties. The Executive Committee will have the powers and duties to:

1) review the general operations of the Bar's Fee Dispute Resolution Program;

(2) review the summaries of denials of Petitions prepared by Bar Counsel;

(3) formulate rules of procedure and determine matters of policy not inconsistent with these Rules;

(4) in accordance with Rule 37(i)(~~65~~), hear and determine questions regarding the interpretation and application of these Rules;

(5) approve forms developed by Bar Counsel to implement the procedures described in these Rules; and

(6) refer apparent violations of Bar Rule 35 to Bar Counsel for disciplinary investigation, including instances in which attorneys have had substantial numbers of fee arbitrations filed against them even if no individual arbitration panel has recommended referral to Bar Counsel pursuant to Bar Rule 40(q)(4).

Article V, Section 6 of the Alaska Bar Association Bylaws: Section 6 addresses procedures to be followed if there are multiple vacancies for the Board of Governors for a particular judicial district. It requires all the candidates to run on "one" slate and allows each active member to vote for no more than two candidates. Section 6 then provides that there will be a run-off "[i]f no candidate receives votes equal in number to a majority of the eligible ballots cast ... ." Emphasis added.

But this language is inconsistent with the language used earlier in the bylaw for declaring the winner in a one seat election. The first part of Section 6 provides that "[t]he gubernatorial candidate in each District and from the at-large position receiving a majority of the votes cast shall be declared elected. If no candidate receives a majority, run-off election shall be conducted between the two candidates receiving the highest number of votes." Emphasis added.

The word "majority" in the second sentence of this passage clearly refers to the "majority of the votes cast" in the sentence before it even though the second sentence doesn't explicitly say "majority of votes cast."

Thus, there is an internal inconsistency in run-off procedures between a one seat race and a multiple seat race.

But more importantly, using the "ballot" count rather than the "vote" count in multiple seat races sets a lower threshold for winning the seat in the first round than would be the case in a single seat race.

For example, say Joe, Sally and Mike are running for two Board seats in the Third Judicial District. 500 members participate in the election and may cast up to 1000 votes (one vote for each of two candidates). 700 votes are actually cast out of the possible 1000. Of those 700, Joe gets 251, Sally gets 225, and Mike gets 224. Under the current Section 6, Joe wins a seat in the first round because his 251 votes are a majority of the 500 "ballots" cast by the members voting. But if Joe, Sally, and Mike were running for just one Board seat, Joe would not win in the first round, because he would not have 351 votes—a majority of the 700 "votes" cast.

Admittedly, using majority of "votes" cast rather than "ballots" cast in multiple vacancy elections will almost always result in a run-off among the top three candidates. But that's already the case in a one seat election where the top two candidates are required to run against each other in a run-off election if neither one of them gets a majority of the "votes" cast in the first round.

Changing the language to "votes" cast rather than "ballots" cast would make the bylaw internally consistent.

Finally, it's possible that the original drafters of this bylaw simply used "votes" and "ballots" interchangeably for the same concept. That's been the effect in practice since the executive director does not recall a separate count of "ballots" in multiple vacancy races in addition to "votes."

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, 2002.

Article V, Section 6

AMENDMENT REGARDING RUN-OFF ELECTIONS WITH MULTIPLE VACANCIES
(Additions are underscored; deletions have strikethroughs)

ARTICLE V. BOARD ELECTIONS

...

Section 6. Election Results and Run-Off Procedures. The gubernatorial candidate in each District and from the at-large position receiving a majority of the votes cast shall be declared elected. If no candidate receives a majority, a run-off election shall be conducted between the two candidates receiving the highest number of votes. The candidate receiving the highest number of votes in the run-off election shall be declared elected. If only one candidate has been nominated for a vacancy on the Board, that candidate shall be declared elected. When more than one vacancy on the Board occurs in the Third District in an election, the candidates shall run on one slate and each active member entitled to vote shall cast a vote for no more than two of the candidates on the ballot. If no candidate receives votes equal in number to a majority of the number of eligible votes ~~ballots~~ cast, a run-off election shall be conducted between the three candidates receiving the highest number of votes. The two candidates receiving the highest number of votes in the run-off election shall be declared elected. If only one candidate receives votes equal to a majority of the eligible votes ~~ballots~~ cast, there shall be a run-off election between the next two candidates receiving the highest number of votes for the remaining seat.

Military justice

Continued from page 12

Manual contains the UCMJ as well as the Military Rules of Evidence, and is available through the U.S. Government Printing Office.

Civilian qualification of military accused at courts-martial is stated in Rules for Court-Martial 502 (d). Succinctly, all that is required for civilian representation to practice before courts-martial is that the person be a "member of the bar of the a Federal court or of the bar of the highest court of a State." At the outset of courts-martial proceedings, the military judge will ask civilian counsel to state his/her qualifications. Having done so, the judge will administer an oath to civilian counsel to well and faithfully represent the accused, and the trial proceeds.

At present over 1.4 million men and women serve our country in the armed forces. Military jurisdiction attaches worldwide as a result of those persons' status as service members. *Solorio v. United States*, 483 U.S. 435 (1987). Whether from courts-martial or any number of administrative proceedings, I submit that each of those people at some time in his/her service could benefit from the sound advice of counsel. If you are a member in good standing of the federal bar or any state bar of the United States, you are qualified to represent service members. A minimum investment to purchase the Manual for Courts-Martial, enables you to possess the basic library for court-martial representation. With some study, application, and work with detailed military defense counsel, you, as civilian counsel can develop an expertise in a *fairly untouched legal specialty area* and provide a singular benefit for the men and women who serve our country.

The author is president of National Military Justice Group, LLC of Birmingham, Alabama, and teaches military justice.

In the Supreme Court of the State of Alaska

In the Reinstatement Matter Involving ROBERT M. BECONOVICH, Petitioner.	)	Supreme Court No. S-10265 **Order** Petition for Review

ABA File No. 2001R001

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

Upon consideration of petitioner's 7/17/01 "Verified Petition for Reinstatement Following Suspension," the 3/14/02 "Findings, Conclusions and Recommendation of Disciplinary Board," and 1/22/02 "Area Hearing Committee's Findings of Fact, Conclusions of Law and Recommendations,"

IT IS ORDERED:

The petition for reinstatement is GRANTED, conditioned upon payment of the full amount of costs of $264.15 and attorney's fees of $1000.00 previously awarded.

Entered by direction of the court.

Clerk of the Appellate Courts
/s/ Marilyn May

Editor's Note: Effective date of reinstatement was May 13, 2002.

2002 Bar Convention

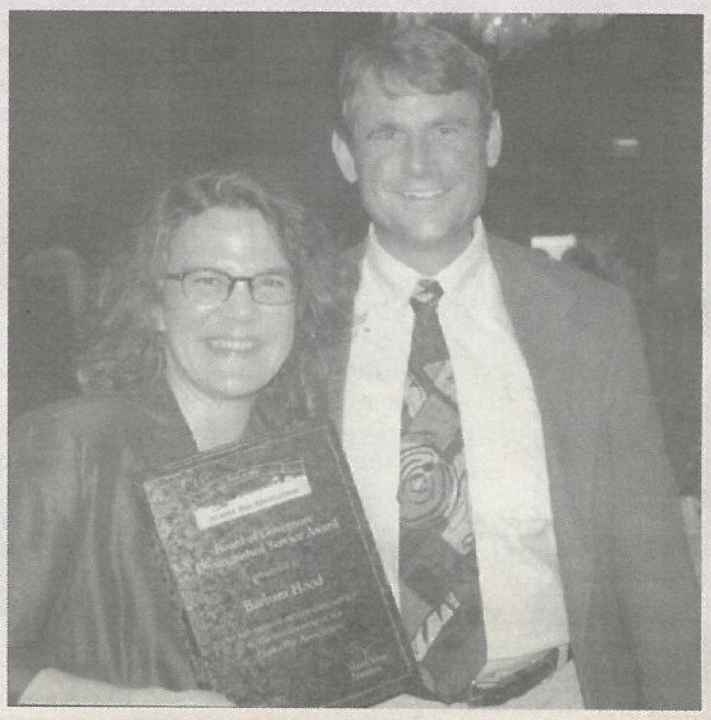
Anchorage, Alaska · Wednesday, Thurs

Chief Judge James Singleton (L), U.S. District Court, and Chief Justice Dana Fabe, Alaska Supreme Court, get together after the State of Judiciaries Address.

Justice Alex Bryner (L) and Judge Ralph Beistline chat at a reception for Beistline's appointment to U.S. District Court.

Photos By Barbara Hood

Hood and Schneider honored with a at convention



Alaska Bar Distinguished Service Award. L to R: Recipient Barbara Hood, Court Rules Attorney, with spouse, Dirk Sisson.

Alaska Bar Professiona Schneider, recipient President.

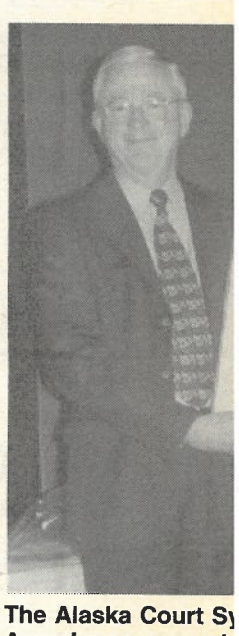
Fun Run crew L to R: Deborah O'Regan, Bar Executive Director; Keith Beeler a West Group; Rachel Batres, CLE Coordinator; and Tim Middleton, Race Direct

AWARDS RECIPIENTS HONORED AT CONVENTIO

Alaska Bar Association Layperson Service Award. Mauri Long (L), Bar President presents to Teri Carns, Alaska Judicial Council.

Alaska Court System Community Outreach Award. Judge Meg Greene (L), Superior Court, 4th Judicial District, receives award from Chief Justice Dana Fabe.

The Anchorage Bar Association Service Award went to Janet McCabe (L), Partners for Progress. Judge Jim Wanamaker, Anchorage Bar Association Board of Directors presented the award.



The Alaska Court Sy Award was presente Hitchcock (L), 3rd Juc Dana Fabe.

N HIGHLIGHTS

, and Friday · May, 15, 16 and 17, 2002

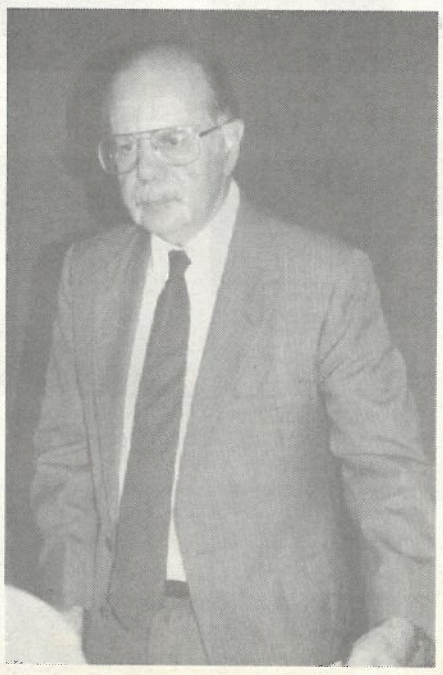
SINCE 1896
ALASKA BAR ASSOCIATION

rds

ard. L to R: Mike
auri Long, Bar

The Board of Governors has established the Robert K. Hickerson Public Service Award. The first presentation was made posthumously to Hickerson, and presented to his widow, Bar member Elizabeth Hickerson.

Scientific evidence experts



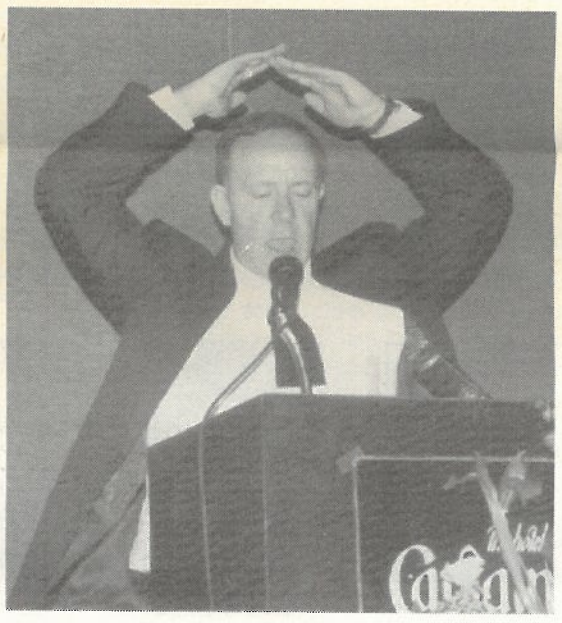
Professor Edward Imwinkelried, UC Davis School of Law, expert on scientific evidence.

L to R: Jake Barnes and Michael Saks: "The Science Guys."

Milloy,

Mauri Long (L), Bar President, passing gavel to Lori Bodwell, President-Elect.

Opening reception at Volland & Taylor. Foreground L to R: Andy Harrington, Alicia Porter, Lori Bodwell. Background standing, Scott Taylor and Jim Leik.



Andy Harrington, ALSC Executive Director, singing the "APBP" song.

mmunity Outreach
ildren's Master Bill
trict, by Chief Justice

Chief Justice Dana Fabe (L), presented the Pro Bono Awards to Jennifer Wagner, Volland & Taylor (Individual Pro Bono Service Award) and Phil Volland, Volland & Taylor (Firm Pro Bono Service Award.)

SPONSORS

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West Group
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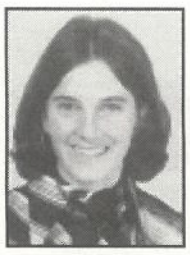
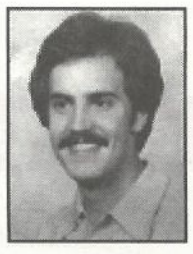
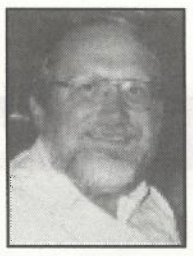
25 Years
ALASKA BAR ASSOCIATION

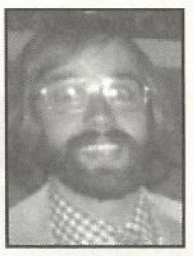
25 Years of Bar Membership


Elaine M. Andrews


Michael E. Arruda


Robert D. Bacon


Joyce E. Bamberger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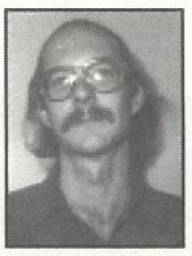
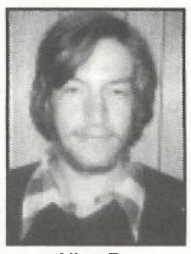
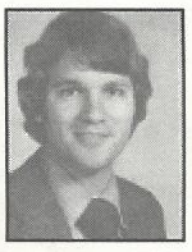

Thomas G. Beck


Martha Beckwith


Thatcher R. Beebe


Allan D. Beiswenger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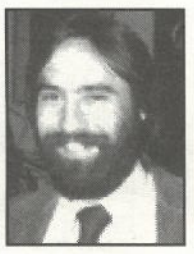
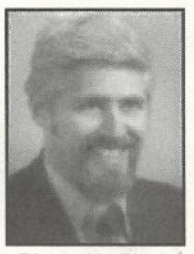
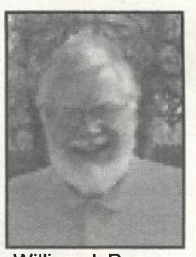
Margaret W. Berck


Robert Blasco


Richard L. Block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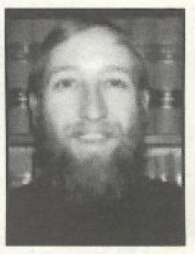
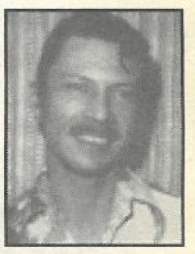
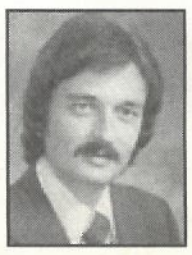
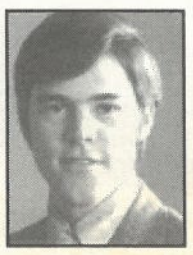

Daniel N. Branch


William H. Breck

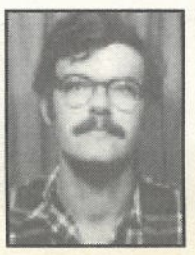

Robert L. Breckberg


Monte L. Brice


Richard B. Brown


Winston S. Burbank


Rhonda F. Butterfield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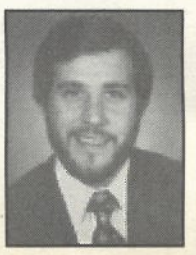
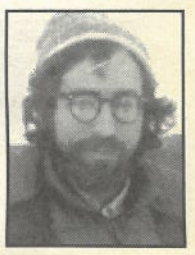
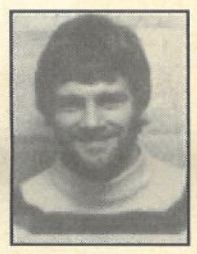

Charles W. Cohen


Norman A. Cohen


Cynthia F. Covell


Teresa B. Cramer


D. Elizabeth Cuadra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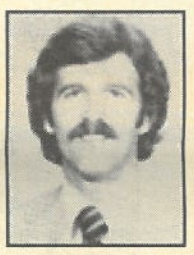
Thomas H. Dahl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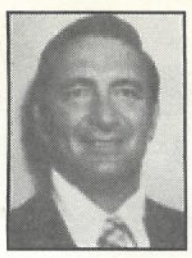
Richard F. Deuser


Doris R. Ehrens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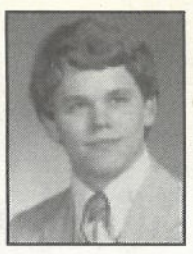
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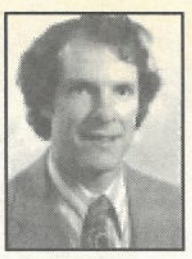
Dana Fabe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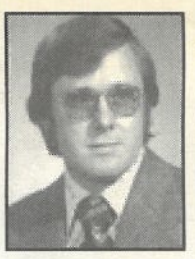
Gary J. Finnell


Kelly Fisher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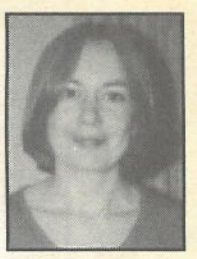

Candace A. Fry

John N. Garner

David V. George

Raymond A. Gillespie

Patrick B. Gilmore

Nancy R. Gordon

James M. Gorski

Paul H. Grant

Gregory J. Grebe

Mary E. Greene

Diane M. Griffiths

Marc Grober

Dan A. Hensley

William D. Hitchcock

Ann E. Taffel Hutchings

Steve Hutchings

Thomas M. Jahnke

Michael I. Jeffery

Monica Jenicek

Sandra Kasten

Paul W. Koval

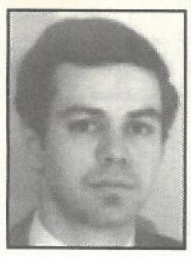
Robert Krase

Edward W. Kuhrau

Carl A. Larson

Valerie L. Leonard


James D. Linxwiler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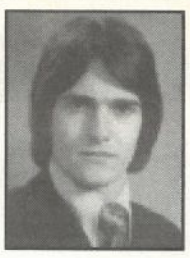
Christopher M. Maisel


Harlan C. Martens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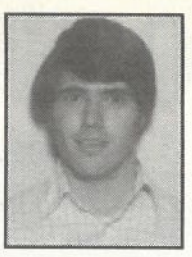
Lucinda McBurney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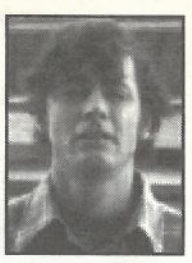
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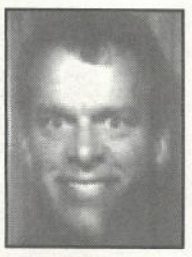
Brant G. McGee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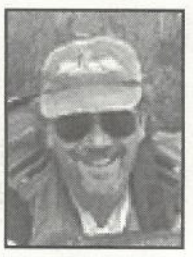
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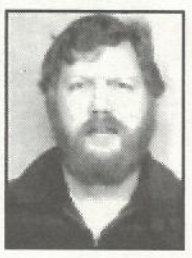
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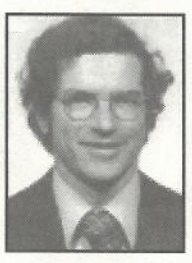
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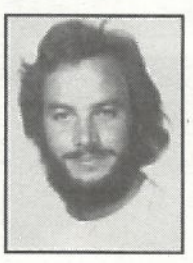
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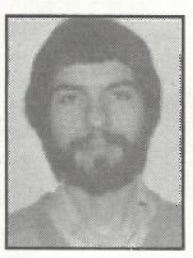
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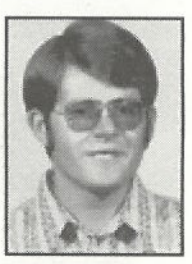
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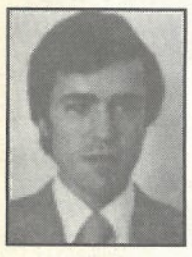
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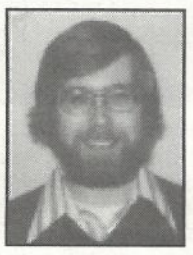
Billie D. Murphree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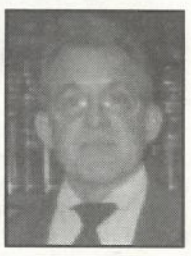
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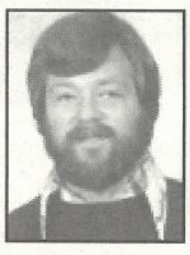
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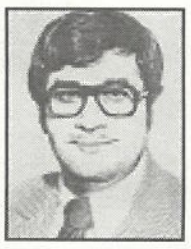
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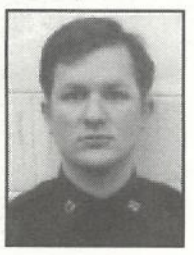
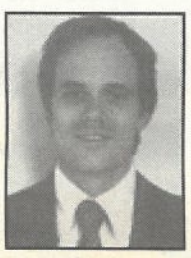
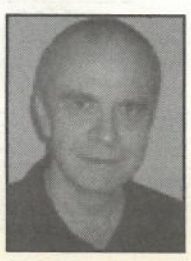

Kenneth A Norsworthy


Linda M. O'Bannon


Matt O'Meara


M. Gregory Oczkus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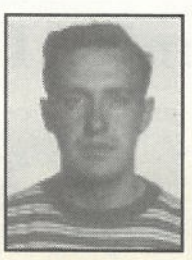
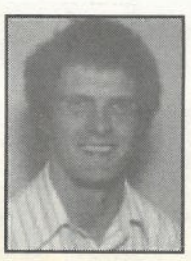
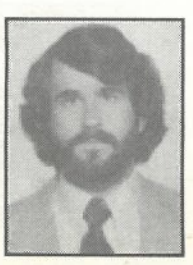
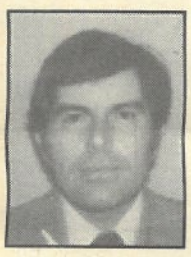
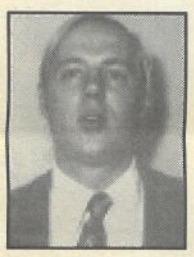

Randy M. Olsen


Paul E. Olson


Jan S. Ostrovsky


James D. Oswald

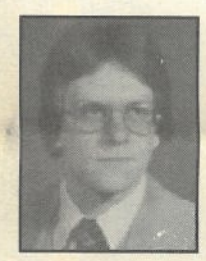

James Ottinger


Drew Peterson


Edward F. Peterson


M. Jane Pettigrew


James H. Plasman


Stephen R. Porter


Robert A. Rehbock


Barbara J. Ritchie

Thomas H. Robertson

William J. Rold

Peggy Roston

Virginia A. Rusch

James M. Seedorf

Walter Share

Wev Shea

David Shibata

Steven W. Silver

Randall G. Simpson

Edward B. Simpson, III

John W. Sivertsen, Jr.

Larri I. Spengler

Robert S. Spitzfaden

Richard N. Sutliff

Alex Swiderski

Richard B. Swinton

Waller Taylor, III

Terrence H. Thorgaard

C. Richard Turnbow

Diane F. Vallentine

Gerritt J. Van Kommer

Kenneth E. Vassar

Philip R. Volland

Paul W. Waggoner

Kenneth L. Wallack

James R. Webb

Paul M. Williams

Thomas J. Yerbich

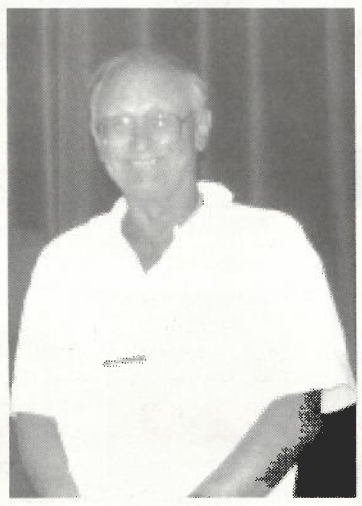
— Not Pictured —

Alexis G. Foote
R. R. DeYoung
Richard M. Rosston
Steve Sims

2002 Bar Convention Highlights

50 Years of Bar Membership

Burton C. Biss



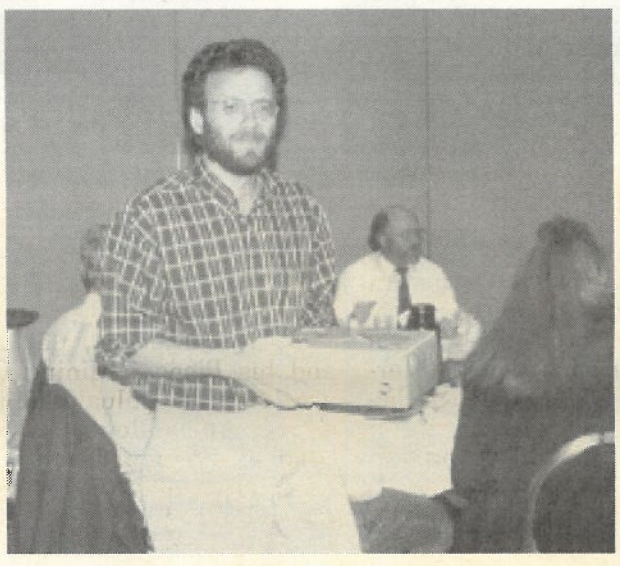
Chuck Cloudy

25-year pin recipients at banquet

Pictured L to R: bottom row: Charles Evans, Valerie Leonard, Tom Yerbich, Philip Volland, Diane Vallentine, Dick Sutliff, Virginia Rusch, Judge Elaine Andrews, Judge Dan Hensley. Back row: Bill Hitchcock, Jim Ottinger, Judge Mike Jeffery, Marty Beckwith, Monica Jenicek, Rhonda Butterfield, Linda O'Bannon, Tim Byrnes, Jamie Linxwiler, Harold Curran, Jim McCollum, Jim Gorski, Chief Justice Dana Fabe, Randall Simpson, Robert Rehbock, Kevin McCoy, Judge Meg Greene, Brant McGee, Russ Nogg, and Ken Norsworthy.

The Charmed Life of Keith Levy

Keith Levy of Juneau wins a gift basket donated by Northern Lights Realtime & Reporting.



Keith Levy wins a PDA dontated by Hagen Insurance.

Fun Run winners: Keith Levy, Men's Division; and Suzanne Dvorak, Women's Division.

News from the Bar

Board of Governors action items May 13 & 14, 2002

• The Board took the following action at its Board meeting on May 13 & 14, 2002:

• Welcomed new public Board member Sheila Selkregg, and new Board members-elect Matt Claman and Keith Levy.

• Certified the results of the February 2002 bar exam. Of the 35 applicants, 18 or 51% passed. The 23 first time takers had a 61% pass rate. The applicants graduated from 29 different law schools.

• Approved 3 reciprocity applicants for admission.

• Considered requests for special accommodations for the July 2002 bar exam: granted the request of an incomplete quadriplegic applicant for use of voice activated computer software, extra time and a separate room; granted the request of an applicant with Dyslexia and ADD for extra time and a separate room, but denied the use of a computer.

• Denied the request of a passing applicant to see his exam scores.

• Voted to allow an inactive member to transfer to active status with conditions including attending 12 hours of CLE, passing the MPRE and retaining the services of a bookkeeper to manage his trust accounts.

• Heard a report that 44% of active Bar members reported that they completed a minimum of 12 hours of CLE.

• Agreed to reconstitute the Unauthorized Practice of Law Committee, to include Board members Jon Katcher, Matt Claman and Bill Granger.

• Considered a bylaw amendment which would allow a Bar member who practices pro bono law exclusively to pay inactive member fees; voted to refer this proposal to the Pro Bono Service Committee for review and recommendation.

• Voted to accept the Lawyers' Fund for Client Protection Committee's recommendations to reimburse the clients in two matters, and to deny the request for reimbursement in a third matter.

• Considered a proposal to amend Bar Rule 22 to codify intake and intake review procedures for grievances; asked Bar Counsel to revise and redraft a procedure and standard for review; to work with Winfree and get input from Chris Cooke.

• Voted to send to the Supreme Court proposed rules 16 & 29 which would provide for permanent disbarment after an effective date; eliminating reinstatement if permanently disbarred; adding waiting periods after rejection of petition for reinstatement; changing the time periods for automatic reinstatement and for objection to automatic reinstatement.

• Appointed the following lawyers to the ALSC Board of Directors: Greg Razo and Steve Cole to the regular and alternate positions for the Kenai/Kodiak seat; Art Peterson and Keith Levy to the regular and alternate positions for the 1st District seat; and Mason Damrau and Cameron Leonard to the regular and alternate positions for the 4th District.

• Was advised that the sunset bill, HB 362, passed the Senate, extending the Board of Governors for four years.

• Approved the minutes of the March 2002 meeting.

• Reviewed the resolutions for the annual business meeting.

• Reviewed the proposed ethics opinion "Undisclosed Recording of a Conversation by a Lawyer" as well as proposed ARPC 3.11 which would prohibit recording of a conversation by a lawyer without the consent of all parties to the conversation; voted to refer proposed 3.11 to the ARPC Committee and to table consideration of the ethics opinion.

• Voted to propose the following slate of officers: President-elect: Larry Ostrovsky; Vice President: Brian Hanson; Secretary: Rob Johnson; Treasurer: Bill Granger; Lori Bodwell was elected last year to be the next president of the Association.

• Voted to publish proposed ARPC 6.1 regarding pro bono service as provided by the ABA rule.

• Met with Vance Sanders, President of ALSC, Andy Harrington, Executive Director of ALSC, Loni Levy, Executive Director of Alaska Pro Bono Program and Judge Mark Rindner of the Pro Bono Service Committee. Voted to underwrite the Alaska Pro Bono Program's Executive Committee's monthly teleconference calls for the rest of 2002 (about $3,500); to provide the same level of in-kind support for the Barristers' Ball (mailings, publicity and accounting) as in 2001; and to get an idea of what it would cost to bring the Pro Bono Coordinator in-house to the Bar Association.

The crime of 1900 & its role in the establishment of civil law in Alaska

By Dennis McCown

Think back to the great political scandals. No, not Clinton, Monica, and the cigar, worse than that. Not Watergate, the McCarthy Era, not even Teapot Dome. Think back to the late 19th Century. The Gay 90s had passed, and the United States had just won the Spanish-American War. United as a country just a generation after the Civil War, at the peak of its power and confidence as it entered a new century, the United States went through its last political crisis of the 19th Century, the so-called "Crime of 1900."

The scandal, the greatest since the *Credit Mobilier* in 1873, began with the discovery of gold in the alluvial sands of northern Alaska in 1898. The strike was made by Scandinavians—in this case, contract reindeer herders imported from Lapland to teach Eskimos how to manage the animals for sustenance and profit. It was late in the season. Snow was flying, and the ground and streams were freezing. There would be no working the claims that season, and the excited prospectors withdrew to the settlements to wait for spring. Of course, in the monotony of winter, men talked. Plans were made, imaginary fortunes spent.

THE SCANDAL, THE GREATEST SINCE THE *CREDIT MOBILIER* IN 1873, BEGAN WITH THE DISCOVERY OF GOLD IN THE ALLUVIAL SANDS OF NORTHERN ALASKA IN 1898.

As spring 1899 approached, all of Alaska knew another strike had been made. Itinerant prospectors, already frustrated after the Yukon gold rush, began a dangerous trek north. Serious prospectors among them soon went about their arcane craft plotting and staking claims along the streams. The lucky ones made big strikes right away, and the available placer deposits were quickly claimed. Nevertheless, northern Alaska was filled not only by the cries of eager *cheechakos* and sourdoughs bent on finding riches, but the wail of many busted prospectors too. The available claims were staked long before the rush really got started, and so, for every prospector returning home with bags of nuggets, there were dozens of disgruntled complainers waiting for an opportunity elsewhere.

This situation was to produce a crop of bright, experienced men ready to capitalize on this volatile situation. The first was Jafet Lindeberg, a 24-year-old Norwegian. Together with Swedes John Brynteson and Erick O. Lindblom, Lindeberg found placer deposits on Ophir Creek near Council City in March 1898. On July 22, 1898, he went before the Commissioner at St. Michael to declare his intention to become an American citizen. This was not, in the strictest sense, entirely legal, for such a declaration was supposed to be made before a court of record, and so his hasty declaration would be grieved on legal grounds.[1] Even so, it was a smart move, and it showed how Lindeberg distrusted the ruddy-faced Americans who were staking claims and jumping others. At the same time, his declaration reflected the fact that he got good advice from the very beginning, for his sister had married a promising young attorney in San Francisco by the name of W.H. Metson. Metson — slender, mustachioed, and bespectacled — was a specialist in mining law.

Brynteson, naturalized in 1896 in Michigan, and Lindblom, naturalized in Montana in 1894, were not in a similar situation, but they also distrusted the Americans around them. Unprepared to capitalize on their claims on Ophir Creek that summer, the men prospected farther to the north, where they found rich placer deposits on Anvil Creek near a place they knew only as Nome along the Alaskan coast on September 22, 1898. While other men were still stretching string and hammering stakes, Lindeberg and his partners established the Pioneer Mining Company. The original claim, "Discovery," was quickly followed by others as the Scandinavians staked claims up and down the six mile creek. Among the first was No. 9 Above (nine claims upstream on Anvil Creek, staked on October 18, 1898. Again, this was not strictly legal, for the law required that a single claim of twenty acres was legitimate only if it were actually maintained in possession and at least $100 of labor expended on it each year. The multiplicity of claims would lead to trouble, for there were soon no other plots of land available on such a short waterway. As a precaution, Lindeberg began to buy out other claims in an attempt to insulate his own properties from would-be jumpers.

A second great participant in the gold rush was Charles D. Lane, a native of Missouri. A veteran of nearly fifty years in the mining camps of California, Arizona, and Idaho, he had mastered not only placer mining, but hard-rock drilling. On his first rip to the Seward Peninsula in 1898, he saw that the main threat would not come from common claim jumpers; the vast, easy riches of Nome would attract talented men, and so, after completing the mining season of 1899, Lane headed for Washington, D.C., the cradle of America's most gifted and talented crooks. What he learned there set him on a course to counter the threat.

A third great man was attracted by the feeding frenzy, this time not to join in the hysteria, but to profit from it. He was Alexander McKenzie. McKenzie, a powerfully built, aggressive political boss with a reputation as a brawler, recognized that the wealth of Nome was not to be earned by shivering men sifting placer sands through splintery rockers, it was to be won in the halls of Congress.

Finally, the last great man of Nome arose. He was a scholarly young lawyer named Samuel Knight, whose grandfather had been appointed a federal judge by Abraham Lincoln. Born in San Francisco December 28, 1863, Knight was the nephew of Governor Huntley Haight and the son of an executive of Wells Fargo. Raised in privilege and society, educated in the best schools available, Samuel Knight had graduated from Columbia Law School in 1889. Like many young attorneys, he was undecided on a specialty and was torn between idealism and opportunistic gain. He tried a prestigious career in New York, but he soon gave up and returned to his roots in California, where he found a career niche. While other lawyers huddled in offices and dank courtrooms, Knight went out to the fading goldfields of California. Here, in the cold, numbing spray, deafened by water cannons as they blasted the hillsides to free the placer deposits, Knight discovered one of his great callings: environmentalism.[2] While his career was taking off as Assistant U.S. Attorney for the Northern District of California, he studied the legal precedents that are the basis for today's environmental laws. Challenged by destructive silting on the Sacramento River, he published an article discussing the environmental damage of hydraulic mining and the legal consequences of it.[3] Not long afterward, he became a junior partner in Page, McCutcheon, and Knight, a firm specializing in damage claims from silting of waterways and other environmental matters.

As 1899 opened, Jafet Lindeberg and his Pioneer Mining Company were buying up valuable mining properties, Alexander McKenzie was heading to Washington, Charles Lane was organizing the Wild Goose Mining and Trading Company in San Francisco, and Samuel Knight was booking clients—four great men whose destinies would join in faraway Nome, Alaska. Other men and women would also take part in the gold rush, and some would get rich there. People like Wyatt and Josephine Earp; Rose Holland, the "Sweet Pea Girl;" and the legendary dancer, Little Egypt, were attracted by the lure of quick riches, but most would be broken by their experiences in the north.

Unlike the amateurs, however, Charles Lane was gifted with vision. While other schemed, he prepared. He knew the mining season of 1900 would be difficult and short. He hired men not only to work the deposits, but to protect them. Among his very first moves, he hired the legal firm of Page, McCutcheon, and Knight. At the same time, though faced with a powerful competitor in the Pioneer Mining and Trading Company, he actively promoted cooperation between the two firms. Though the companies suffered petty boundary disputes, they began to share information and plan a common legal strategy.

The first mining season had begun in June 1899. The big rush was not yet on; the only prospectors in a position to capitalize on the unexpected strike were the true sourdoughs, most of whom were frustrated miners from the Yukon. As these prospectors poured into Nome from other parts of Alaska and Canada, they found the good placer deposits had already been claimed—and by "foreigners" to boot! Griping soon gave way to scheming, and the claim jumping began.

On June 5, 1899, nine months after the original strike on Anvil Creek, an American named Robert Chipps, who assumed the Scandinavians' claims at "Discovery" to be invalid, staked his own claim there. It was the beginning of an intense legal wrangle, welcomed, no doubt, by a half dozen lawyers already in Nome.

By July 10th, disgruntled miners who felt shut out of an opportunity to file claims tried to take claims from the "foreigners" forcibly, but their plan failed when the military intervened, acting under the rules of martial law. It was about this time that Charles Lane had arrived in Nome to buy up some claims. Quickly sizing up the situation, he decided the land could only be worked by heavy hydraulic equipment, and he bought four likely claims for a reported $300,000—a veritable fortune in those days.

Meanwhile, embittered by their failure to gain control of claims along the creek, the schemers looked for other ways to invalidate the claims of the Scandinavians. A law firm, Hubbard, Beeman, and Hume, took over the case of the "jumpers" and made it their own. In the fall of 1899, one of these lawyers, O.P. Hubbard, and Robert Chipps, the original "jumper" of the "Discovery" Claim, traveled to Washington, D.C. to

Continued on page 20

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
101 Lacey Street
Fairbanks, AK 99701-4761
(907) 451-9251

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

Fourth District:
Ron Woods
101 Lacey Street
Fairbanks, AK 99701-4761
(907) 452-9201

To be eligible to receive court appointments, a lawyer must have malpractice insurance of at least $100,000 per claim and $300,000 annual aggregate.

The crime of 1900

Mining claims spawn Alaska civil government

Continued from page 19

present the firm's plan to a selected group of Congressmen. Already suspicious of the "jumpers" in Nome, Charles Lane had followed them, and he knew what the maneuvering in Washington meant.

On March 1, 1900, Senator Thomas H. Carter of Montana introduced a bill to provide for a civil government in the territory of Alaska.[4] Senator Henry Hansbrough of North Dakota then offered the so-called "Hansbrough Amendment" to invalidate the Anvil Creek claims and permit their relocation by jumpers. By April 4th, the amendment was opposed by honest politicians like Senators Teller of Colorado, Bate of Tennessee, and Stewart of Nevada. The amendment—seen by its supporters as not going far enough—was reluctantly withdrawn and Hansbrough offered a modification. While the language was toned down in this new version, its intent was the same: to wrest control of the mining properties away from "foreigners" and award them to American claim-jumpers. Debate was acrimonious. Several prominent politicians, including President William McKinley and Senator Mark Hanna of Ohio joined Hansbrough to push through the amendment.

Having seen enough, Lane began his countermeasures. Not only planning for the upcoming mining season of 1900—which would begin in late May or early June as soon as the ice went out on the Bering Sea—he set in motion three larger plans: the construction of a narrow-gauge railroad from Nome to Anvil Creek, the establishment of a bank, and retaining Samuel Knight as his attorney. Over the winter, Nome had a population of 4,000, but with ice-out coming, the influx of dreamers and prospectors would swell the little town by at least ten times more. Ships were being chartered all up and down the Pacific Coast. Advertisements offering accommodations and supplies were in every major newspaper. San Francisco, Portland, and Seattle were wild with excitement.

With the controversial Hansbrough Amendment withdrawn, its chief architect, Alexander McKenzie, whom the attorneys in Nome had retained as a lobbyist, now changed tactics. The final bill, which provided a civil government for the territory, established three judicial districts, the second of which encompassed Nome. McKenzie, a political boss with influence in North Dakota, Montana, and Minnesota, and the former receiver of the Northern Pacific Railway during its financial troubles, was a formidable lobbyist. Scheming nimbly, McKenzie now backed another, more insidious plan. Political jockeying for the judgeship of the second district was intense. The best candidate was Judge Wickersham of Tacoma, Washington, but the successful appointee was Arthur H. Noyes of Minneapolis. His selection was facilitated by Alexander McKenzie, acting in his role as the North Dakota Republican Chairman, plus Senator Hansbrough and other officials. Noyes was appointed by President McKinley in June. In addition to Noyes, McKenzie saw to the appointment of C.L. Vawter as U.S. Marshall and Joseph K. Wood as District Attorney. McKenzie then organized the Alaska Gold Mining Company under the laws of Arizona with a theoretical capital stock of $15 million, McKenzie, of course, was president of the corporation, general manager, and majority stockholder. Next, using the good offices of O.P Hubbard, senior attorney of the Alaskan firm of Hubbard, Beeman, and Hume, he arranged the "purchase" of the claim-jumpers "titles" with company stock. McKenzie was now ready to launch his scheme, for, in the words of writer Rex Beach, "God is far off, and it's a long way to Washington."[5]

WITH A BANK, A RAILROAD, AND A STEAMSHIP, CHARLES LANE SEEMED SUITABLY PREPARED FOR ANYTHING . . .

Meanwhile, Charles Lane was very busy. Not only was he preparing for the mining season, but he was bringing his son, T.T. Lane, back from their interests in Mexico to help him in Alaska. He also bought a steamship, named it after himself, leased other steamships for cargo space, and then purchased the rolling stock, machinery, and hardware of a ten-mile narrow gauge railway. He also bought the guts of a bank, to be called the Bank of Cape Nome. Aware he would need warehouses, he contracted for materials, housing for his workers, and stores to run operations not only in the mining season of 1900, but deep into the long Alaskan winter.

With a bank, a railroad, and a steamship, Charles Lane seemed suitably prepared for anything, but his ship also had "on board rather a different crowd than has been filling the Nome ships [....] The Bar will be well represented in Nome, and law books are stowed away among the *Lane's* freight."[6]

Law books, indeed, for practically an entire law *library* had been loaded aboard the crowded ship, and the library was staffed by law clerks, secretaries, typists, and gofers. These were not amateurs going to Nome to look for gold; these were hard-nosed professionals, and among them the *San Francisco Examiner* noted, were a number of rough and hardy men whom the paper remarked had "been engaged, it is said, to discharge [the] vessel. Not a few of these men would be in their element in any kind of a 'rough house,' and handle a gun with greater facility than they can handle a derrick."

The ship was well provisioned, even taking a dairy cow to provide cream for the guests' canned strawberries. The cow, when hoisted aboard, had on its side a banner, "Bound for Cape Nome. Milk and butter to burn." Among the honored guests and mysterious passengers on board were Lanier McKee, an attorney famed for his research ability, and Mr. and Mrs. J.C. Earp. (Wyatt Earp and his wife Josephine had sailed earlier on the *Alliance*.)

Meanwhile, the Pioneer Mining and Trading Company, the "competition"—or so the newspapers had been led to believe—was aboard the *St. Paul* with W.H. Metson's own collection of legal talent and rowdy goons. Coy with reporters about the reasons for having so many strong-armed retainers, Metson laid out a red herring for the newspapers: all his preparations were for coming litigation against the Wild Goose Mining and Trading Company over disputed claims on Anvil Creek.

The excitement a hundred years ago was palpable. Newspapers published photos of returning miners toting nugget-filled sacks the size of pants legs. Special fares and accommodations were being offered, and dreamers streamed west to the ports of San Francisco, Portland, and Seattle. And so, amid the hysteria of thousands on onlookers on the piers, the rush and crush of overloaded steamships, the excitement of gold fever, and the worries about ice-out at their destination, the chartered ships set sail on a grand adventure. By June 3rd, the last steamer pulled out for Alaska. Almost overlooked in the newspaper coverage was the fact that Samuel Knight did not sail with the others. Instead, he met them a few days later in Seattle, having rushed into the city with the latest news and papers.

Six days later, on June 6, 1900, "An Act Making Further Provision for Civil Government for Alaska, and for Other Purposes" became federal law.[7]

Weather conditions were harsh in the north. Several ships were quarantined due to a smallpox outbreak, other ships broke down or were marooned. On June 10th, navigation up to the beaches at Nome became possible. Thousands of clamoring passengers, frantic to get ashore to make their fortune, were met by census enumerators armed with a form especially designed for the unique conditions offered by the gold rush. While the rest of the country was being quizzed on mundane issues, the special Nome census asked detailed questions on the origins and experiences of the adventurers. On some ships, however, the passengers and crew were uncooperative. The enumerator got only the passengers' names and little else. Such is the case with the *Charles D. Lane*, where an alphabetical list of the passengers was all the enumerator got. Curiously, Samuel knight, Lanier McKee, N.H. Vance, William Anderson, E.R. Williams, and many others known to have sailed on the steamship, did not arrive ... at least under their own names! Samuel Knight seems to have taken the sobriquet "J.O. Knight." It was a curious precaution, purpose as yet unknown.[8]

In seven weeks, 18,000 people landed at Nome. One of these, Wilfred McDaniel, who landed on June 15, 1900, said, "Here we are at last, putting into anchorage at Nome. It is now 4 a.m. The *Zealandia* makes the 20th vessel in the harbor. As far as one can see, the beach is covered with tents. It is a dreary looking place. Hills are covered with snow. Mining is going on all along the beach."[9]

IT WAS HARD WORK, FOR WHILE OTHER NOTABLES PARTICIPATED IN BALLS AND DINNERS AND PARTIES, THE YOUNG ATTORNEYS KEPT COMPLETELY OUT OF SIGHT THAT SUMMER.

It was the beginning of a second strike at Nome: the beach sands held placer deposits too. This second strike would absorb most of the new arrivals and take the pressure off the established sourdoughs and their claims along Anvil Creek. For the amateurs and dreamers, the beach sands offered the hope of easy riches, but it was cold, wet work, exposed to the salt spray and cold winds off the Bering Sea. In fact, Nome was unusual among gold camps, for the rush here would involve three separate discoveries. The first, the placer deposits along Anvil Creek, was followed by the fortuitous discovery of rich beach sands, and then the patient study that led to the discovery of ancient reefs of alluvial sands out in the tundra.

Most of the prospectors had landed by July 8th, the day new federal judge Arthur Noyes sailed for Alaska on the steamer *Senator* with Alexander McKenzie. When the ship pulled into the waters off Nome on July 19th, Judge Noyes stayed aboard, but McKenzie and Robert Chipps, the "jumper' of the "Discovery" claim, went ashore and begin preparations. By the time the judge landed two days later, McKenzie was ready. He went to the office of Hubbard, Beeman, and Hume, the lawyers who had originally hired him as their lobbyist in Washington, and he coerced Hume to sign over all the contingent interests the firm had in the "claims" of the jumpers. He also had the firm transfer a quarter of their business to the newly arrived district attorney, Joseph K. Wood, who was in cahoots with him. McKenzie then demanded a quarter interest in the practice for himself.

Moving quickly now to take over the claims, McKenzie's lawyers prepared five quick complaints against the original locators of the "Discovery" claim and the locators who had sold possessory rights to Wild Goose. These complaints were presented to Judge Noyes, who then appointed McKenzie the federal receiver of the richest disputed properties, with orders to work the claims as hard as possible during the summer's short mining season, putting the proceeds "in escrow" awaiting later decisions of his court. This action was legally suspect on two counts, first for depriving the rightful owners of the property due process of law, and second for defying the intent of receivership where a court-appointed receiver was to *protect* properties during litigation, not take advantage of them. On top of that, the action, conducted in Noyes' hotel room, was accomplished without prior notice to the original claim holders or their agents, none of whom were present at the meeting.

With court orders in hand, McKenzie acted quickly. By the time the original owners knew something was going on, McKenzie had already seized the claims. Next morning, however, in their own stunning surprise, Samuel Knight, W.H. Metson, and other attorneys representing the *united* defendant mine owners, applied to Noyes to revoke the orders appointing the receiver. Noyes was said to have been stunned to be presented with such papers, for they were well researched and *typed*, a novel feature in turn-of-the-century Alaska, especially on such short notice! McKenzie dispatched spies all over Nome to *listen* for the mysterious typewriters, not guessing until too late that they were aboard the *Charles D. Lane* at anchor offshore. Neither he nor the judge knew the steamship had been set up for the use of Knight and Metson, nor did they know whom they were facing in the two slender, bookish attorneys. A befuddled alcoholic, Noyes was ill-prepared to deal with a veritable flood of legal writs and petitions that began to pour from the attorneys in the next two months. Occupying himself with minor cases and orders,

Continued on page 21

The crime of 1900

Judge Noyes grapples with a cadre of lawyers

Continued from page 20

Noyes spent a lot of his time socializing, drinking, and conferring with McKenzie. McKenzie, however, was far more thorough. He had brought many men with him, and he hired many more; he set them to work spying on the young lawyers, searching for their true clients and patrons, gauging the level of their expertise, and searching for a weakness. It was hard work, for while other notables participated in balls and dinners and parties, the young attorneys kept completely out of sight that summer. Knight didn't even bother applying to the Alaska Bar, a notable exception in that town; he also rarely advertised. So far as is known, he was hardly out on the street, and his personal office in Charles Lanes' warehouses on Front Street were lit twenty-four hours a day. McKenzie, it is said, was so mystified by the young attorney, whom he had now recognized as his main threat, that he dispatched a spy to California to learn more about him. What he learned was disturbing. Knight had so well predicted his moves that his wife and daughter, his in-laws, the powerful Holbrook family, his brother and all his closest friends had *disappeared*. In San Francisco, the offices of Page, McCutcheon and Knight in the Mills Building were battened down as if for a siege.

On August 10th, Judge Noyes denied Knight and Metson's applications to revoke the orders appointing McKenzie a receiver for the disputed claims. Knight immediately countered with an application allowing an appeal, together with bills of exceptions for settlement and allowance. Noyes denied these and then *expanded* the power of the receiver. In September, the great storms of fall blew in. The Bering Sea turned gray and angry; there was snow in the wind. Realizing he was running out of time, Knight sent representatives to San Francisco to appear at the Ninth Circuit Court of Appeals, where they presented his case to Judge William Morrow. Morrow issued orders for the appeals and a writ of supersedeas directing Noyes and McKenzie to restore the properties to their original owners. Certified copies of the writ of *supersedeas* were returned and filed in the court in Nome, then served on Judge Noyes, who arrogantly declined to comply with them, even refusing to enter them in the record, saying the Court of Appeals had no right to issue such writs! McKenzie did not obey the orders either, for he assumed his political clout and friends, including Senator Mark Hanna from Ohio, would protect him.

On October 1st, the Ninth Circuit Court of Appeals found cause and directed federal marshals to Nome to enforce the writs and arrest McKenzie. When the marshals arrived, McKenzie refused to obey them. In a dramatic change of fortune, the big man, now jokingly called "The Grim Receiver" by the angry miners, walked down Front Street surrounded by hundreds of jeering prospectors. His awesome reputation for brawling and gunplay saved him. Nome was not California, nor Montana; vigilantes did not rule here. Instead, McKenzie survived and was arrested, though he was allowed to come and go unescorted until the departure of the steamship *St. Paul*. Meanwhile, in a display of sheer *chutzpah*, he refused to give the marshals the keys to deposit boxes at the Alaska Banking Association that held the ill-gotten gold, and the marshals had to break open the deposit boxes and return the accumulated treasure to its owners.

Seemingly oblivious to this change of fortune, Judge Noyes and his wife led a ball to celebrate the opening of a new courthouse on October 12th. Among the notables attending was Wyatt Earp. On the 15th, the miners held a raucous meeting in the same building to elect Samuel Knight and two other men their delegates to petition Congress for help. Since August, however, Knight had been secretly collecting affidavits alleging official misconduct on the part of Judge Noyes. The September 15th edition of *The Nome Daily Chronicle* reported rumors of these affidavits. What Knight had discovered was that the judge had been stupid. While McKenzie was milking the claims under his receivership for all they were worth, Judge Noyes took paltry bribes to expedite or restrict certain cases. Knight had followed this with great interest. Using stenographers, his own notary public, and the powerful resources provided by Charles Lane, Knight built a solid case for the impeachment of Arthur Noyes. So dangerous was this development, especially in view of the fact that Knight had now been elected to travel to Washington on behalf of the miners, that McKenzie is said to have offered $500 to the first man who could find Knight and stop him. On the night of October 20th, dozens of men roamed the streets of Nome, knocking at every door to "arrest" Knight for contempt of court. Fearing he was already aboard a ship in the harbor, McKenzie had every steamer searched from bow to bilge. It happened on the night of a great storm. Wind howled, snow flew, great surging waves crashed on shore, and much damage was done, but McKenzie's men were frustrated in their search. Samuel Knight was nowhere to be found. Several people claimed to have seen the lawyer disguised as a woman as he attempted to board a boat on the beach, but it was not the truth.[10]

AT GREAT PERIL TO HIMSELF AND HIS PRECIOUS VALISE FILLED WITH LEGAL DOCUMENTS, KNIGHT HAD HIRED A LIGHTER AND PUT TO SEA.

At great peril to himself and his precious valise filled with legal documents, Knight had hired a lighter and put to sea. There, about twenty miles from shore, in pitching seas, poor visibility, plunging temperatures, and high winds, he flagged down the departing steamer *St. Paul* and boarded for the trip to San Francisco. On that same ship, the last boat out that season, rode Alexander McKenzie in the custody of the marshals.

On February 11, 1901, McKenzie was found guilty of contempt of court and sentenced to one year's imprisonment in the Alameda County, California jail. On March 25th, his appeals to the Supreme Court for a writ of *certiorari* and *habeus corpus* were denied, but on May 23rd of that year, a newly reelected President McKinley pardoned him for reasons of health. Released from jail a few hours later, McKenzie raced for a train back to his home in North Dakota.

AND SO ENDED THE LAST GREAT POLITICAL CRISIS OF THE 19TH CENTURY. GOLD WOULD CASCADE FROM NOME, FOR NO ONE COULD STOP IT NOW.

In July 1901, navigation was reopened to Nome. Judge Arthur Noyes, District Attorney Joseph K. Wood, and others were summoned to San Francisco to stand trial. On September 14th, President William McKinley died, thereby saving himself from being dragged into the scandal by his close association with Noyes and McKenzie. Theodore Roosevelt became the new president, and two days later, Noyes' successor, Judge James Wickersham, opened court at Nome.

That fall, Noyes was tried for contempt of court and sentenced to pay $1,000. The Attorney General recommended he be removed from office, and President Roosevelt did just that.

In Nome, the sourdoughs went wild. They had prevailed over a corrupt and powerful federal judge and his receiver. One man, quoted by Wickersham in his memoirs, wrote, "We join with you in praise today, And raise a joyful shout In honor of the righteous laws, That knocked the jumpers out. Let's celebrate in dry champagne, The powers that wield the rod— You thank the U.S. Circuit Court, While we give thanks to God." And so ended the last great political crisis of the 19th Century. Gold would cascade from Nome, for no one could stop it now. Alexander McKenzie and Arthur Noyes would fade from history. A newspaper concluded of McKenzie, "The evil that men do lives after them while their good works are generally interred with their bones. McKenzie, therefore, will long dwell in the recollections of [Nome.] He will not only be remembered as a schemer, but as a futile one at that."[11] Charles Lane would make another fortune. W.H. Metson would buy a ditch company and several mining properties. Samuel Knight's firm would continue to represent Wild Goose Mining and Trading Company for several years, then Knight would move on to other projects. His actions during the Crime of 1900 had made his career, and fame and fortune would follow him the rest of his days. Twenty-four years later, another great political crisis erupted, the Teapot Dome Scandal, and President Coolidge would nominate Knight as the prosecuting attorney to clean up that mess too, a nomination that showed how far his star had risen. So feared was he, however, that a Senate committee refused to confirm his appointment, and so he didn't work on the Teapot Dome. Knight's greatest honor, however, came from a young down-and-out sourdough named Rex Beach, who left Alaska in poverty and embarked on a meteoric career as a writer. His first novel, *The Spoilers*,[12] would not only establish his own reputation, but Samuel Knight's as well, for Beach used Knight's daring escape from Nome as the basis for his exciting story. Made into five films, one starring John Wayne, Randolph Scott, and Marlene Dietrich, the story was but one honor for Samuel Knight, who himself preferred a quieter life of patronage, charity and service. Along with federal judge William Morrow, he founded the San Francisco chapter of the Red Cross, then threw himself into relief efforts after the Great Fire and Earthquake of 1906. He also served in the military during World War One and was a founder and trustee of the town of Hillsborough, California for many years. When he died on January 28, 1943, many of the courts in San Francisco closed for three days in his memory, a rare and public honor.

IN NOME, THE SOURDOUGHS WENT WILD. THEY HAD PREVAILED OVER A CORRUPT AND POWERFUL FEDERAL JUDGE AND HIS RECEIVER.

FOOTNOTES

[1] The basis for such declarations was set out in Section 2319 of the Revised Statutes that mining claims could only be made by "Citizens of the United States and those who have declared their intention to become such." This statute was to have complex repercussions in Alaska

[2] His interest in hydraulic mining may have arisen from the fact that his brother, Robert S. Knight, married Henryetta Chabot, whose uncle Anthony (Antoine) Chabot was a well known engineer in the California Gold Rush. Anthoy Chabot is generally credited with inventing the water cannon for placer mining, but his interest in water and water management was life-long. He designed the municipal water systems for Oakland, San Jose, and Vallejo California; He created Lake Chabot, which is today's Lake Temescal. Another lake, today called Lake Chabot, along with a golf course, several streets, and a regional park near San Leandro are named after him. A generous benefactor, Chabot gave21/2 acres for Fabiola Hospital, and he was one of the first officers of the Oakland Gas Light Company. Chabot College in nearby Hayward also benefited from him. Anthony Chabot died in 1888 and is buried in Oakland.

[3] "Federal Control of Hydraulic Mining," *Yale Law Journal*, Vol. 7, Oct. 1897-June 1898, pp. 385-392

[4] Since 1884, the territory had been governed under the general laws of Oregon.

[5] "The Looting of Alaska," published in 1906 by *Appleton's Booklover's Magazine.*

[6] *The San Francisco Examiner*, May 25, 1900

[7] *The San Francisco Examiner*, June 6, 1900

[8] The manifest of the *Charles D. Lane* at embarkation was given by the *San Francisco Examiner* on the day of departure. At destination, few of the original passengers used their real names for the 1900 Census, Nome Alaska, pp. 262-276. This precaution reflected a distrust of the federal bureaucracy and the extent to which it was affected by the conspiracy. The effect of this name-changing blinded in-coming federal judge Arthur Noyes and Alexander McKenzie to the level of talent they would soon face.

[9] *Alaska Gold: Life on the New Frontier*

[10] *The Nome Gold Digger*, October 24, 1900

[11] *Nome Weekly Chronicle*, October 20, 1900

[12] The first film version of *The Spoilers*, a silent movie produced in 1914, featured what is generally acknowledged to be the greatest, most realistic saloon brawl ever filmed. Without benefit of "sugar glass" bottles and break-away furniture, the fight was so famous that for the next forty years, in what became a clichè of Westerns, Hollywood tried to top it. The closest was the 1943 version of *The Spoilers* in which John Wayne and Randolph Scott did the honors in destroying the saloon. The 1943 film, by the way, included two lines that entered common usage: "Here come the judge;" and "That ain't chicken feed." The last version of this famous story, a 1955 film, starred Jeff Chandler and Rory Calhoun.

TALES FROM THE INTERIOR

The Fairbanks courthouse

☐ William Satterberg

Friday, July 27, 2001, was a melancholy day. I realized then that the relic Fairbanks courthouse that had nurtured so many others and myself was soon to be no more. Built in 1964, and at one time the talk of the town, the faded, yellow-paneled courthouse had become an object of ridicule and disdain. Whereas, in other cities and towns, older courthouses were still functional and often integrated into the construction of new courthouses, the Fairbanks planners wanted to have nothing to do with the old yellow albatross that was once the City's pride and joy. Rather, wiser minds had decided to build a new grandiose structure on the banks of the mighty Chena River. The new courthouse would rest on otherwise income producing, taxable property. It would be a bureaucratic centerpiece.

I SADLY REALIZED THAT IT WAS THE LAST CALENDAR CALL THAT I WOULD EVER ATTEND IN THE OLD COURTHOUSE.

As I woke up, I remembered that Friday was the day for the Tanana Valley Bar Association luncheon. A group photograph would be taken before the new structure. To entice naysayers such as myself to attend, the Association had offered exquisite door prizes, consisting primarily of Beanie Babies and surplus musical cassettes. Seldom one to miss anything free, I decided to attend.

I awoke and stumbled to the bathroom. During my obligatory shaving exercise, I again clipped that familiar zit which had plagued me during high school. In times of stress, the zit was as timely and bright as Haley's Comet. My greatest stress was when I went on dates. As a comfort, the girls I dated always suspiciously seemed to develop more blemishes than I. I snorted. The zit had chosen the day of the great, group photograph, to make its latest appearance. There was consolation in the fact that it would likely be a black and white portrait.

Shortly after arriving at work, I made my last dash to calendar call in the old building. Over the years, calendar call has rivaled the TV hit series, Romper Room. It is a delightful event where 60 to 70 attorneys and clients cram into a very small courtroom. Traditionally, Judge Wood, obviously long in need of a strong cup of coffee, attempts to separate the flax from chaff. He is tasked with deciding who will go to trial, who will continue, who will plead out, and which clients get a free place to stay for the evening.

Once again, it was standing room only. Eventually, I elbowed my way into the old Courtroom 2. As I was trying vainly to hide my technicolor zit, a member of the audience caught my attention.

"Bill!" I heard a voice. I looked around the courtroom, but saw no one who would usually talk to me. I heard the unseen voice bark again, "Bill!" This time I found the culprit. It was Bill Spires, who I simply assumed was talking to himself again. After all, Bill Spires is not a young public defender. Like myself, Bill probably engages regularly in lively self-conversations.

This time, it was different. Bill was looking directly at me. Having finally gained my attention, Bill repeatedly flicked at his nose with his finger, and would subtly point at my mid-section with each follow through. Initially, I wondered if Bill was trying to launch something at me. I decided to humor him. I mimicked Bill's strange act. To my glee, I actually was able to hit him with one of my own flicks. Bill then began to "hurrumph" and cough quietly. Clearly, he planned to escalate the battle to more gross ammunition. I had no intentions of backing down. I figured we both soon would be facing a contempt sanction. Still, Bill did not open fire as I expected. Instead, with each throat-clearing, Bill would now roll his eyes to the ceiling while dramatically pointing southward. Just as I was preparing for a disgusting, but most effective, preemptory strike, I realized that Bill was trying to draw my attention to the fact that I had not fully completed my dressing that morning. Swallowing my pride, I quickly reached down and yanked up the remaining item, forgetting for the moment the excruciating lesson taught in the movie, "There's Something About Mary." After all, I did not want to draw too much attention to myself, especially on the day of the much-touted group photograph.

I later thought about how interesting it would have looked. Imagine being remembered by children two or three hundred years from now. I would have been famous. . .

"Jimmy! I want to show you something. See that bald-headed attorney first on the left in the front row? Look at his pants! I'll bet he didn't even know his fly was open."

I would have been famous. Decades later, when others would have been vainly trying to identify who was in the photograph, I always would have been known as the bald-headed attorney in front on the left with the open fly. Leave it to Bill Spires to ruin my one attempt for eternal fame.

Following Bill's well-intentioned admonition, my mind turned to other topics. I sadly realized that it was the last calendar call that I would ever attend in the old courthouse. I would not be in town for the final calendar call the following Tuesday. I would be embarking, instead, on what Judge Wood called my "busy travel schedule." As such, it dawned on me that not only were my old courthouse calendar calls over, but even that my days of any appearances in the old courthouse were short numbered. It was then that the "melancholy" struck. . .

September, 1976, was the first time that I entered "604 Barnette." It was a time when you could enter through any door, without fear of alarms or clean-shaven, blue-shirted security guards with their squawking metal detectors. An idealistic and young law school graduate, I was newly employed by the Transportation Section of the Attorney General's Office. My cubbyhole office abutted the district attorney's office. The newest member of the office, I had a room with a large, plastered post placed strategically in its center. I could not understand why the architects had created an office that had a post as a centerpiece. Perhaps, in retrospect, that is why they decided to build a replacement building.

During my tenure with the attorney general's office, I actually grew to enjoy my cave. It had a perverse personality. The post gave me something to bang my head against on difficult days.

Over time, I developed affection for the old building. I was particularly fond of the second floor men's bathroom. It is on the north side of the building, and was that bathroom simply known as "the one opposite Judge Savell's chambers." Not only was the graffiti about Judge Savell particularly interesting, but, from time to time, somebody might even write a reply to you.

I also enjoyed the third floor. In the old days, when District Court Judges Connelly, Crutchfield, and Miller graced the bench, the doors to the third floor chambers were always open. Not only would there always be a good cup of coffee and often a pastry to be snitched, but Judge Crutchfield's commercial-grade popcorn popper invariably would round out the week with the smells of popcorn, to the delight of attorneys, judges, staff, defendants, and jurors, alike. It was an informal phase of the Fairbanks practice of law which, most disappointingly, has faded into the past.

The old courthouse was an open place. I remember one time when I allegedly got out of line during a trial before Judge VanHoomissen. Not that I ever admit I am inappropriate, as a matter of principle, but this one was close. After a tough verdict had been returned, I asked a departing juror if the jury had finally decided the case by flipping a coin, since the issues were so close. That apparently upset the juror, who told Judge VanHoomissen that I was accusing the jury of a quotient verdict. Judge VanHoomissen promptly summoned me to his chambers.

I meekly entered Judge VanHoomissen's office. I was at the very throne of Fairbanks judicial power. I could see that he was visibly agitated. His veins were standing out more than usual.

"Sit down!" he commanded. I promptly complied. He then told me to get back up and take a chair. I did that also. He then told me to put the chair back down and to sit in it. For yet a third time, I strictly complied.

"Satterberg!" he bellowed. "What the hell do you think you're doing?" Feigning the true ignorance for which I would later become famous, I told him I was rearranging his furniture just as ordered. Suddenly realizing that I really was that dumb, Judge VanHoomissen announced that my comment to the juror had not been well received. I had fostered a complaint against me. The judge then counseled that an attorney had to be most careful in talking to jurors. The wrong impression could often easily be left, despite the best of intentions. After all, attorneys were not a favored lot.

Suitably chastised, I stood to leave. It was then that Judge VanHoomissen remarked, "Bill, you still did an excellent trial."

As I left the chambers, wiping the tears from my eyes, I began to realize that the practice of law was more than simply appearing in court and going through the motions. Instead, it was an educational process, where everyone in a small town such as Fairbanks helps each other to grow. Unfortunately, modern Fairbanks has lost much of that warmth, as have other courtrooms in Alaska's larger cities. The "Bush," on the other hand, is still much the same and hopefully will never change. As such, I always enjoy my Bush appearances.

On more than one occasion in the "old" days, I had the benefit of sitting in chambers with a judge, receiving a wise critique, and knowing that the advice was offered with the best intentions. Today, many jurists are unapproachable in that regard, despite best expressions to the contrary at the once-yearly bench/bar seminars. Back then, it was an honor to know that even Chief Justice Jay Rabinowitz had an open door policy where one could joke openly without fear of widespread retribution.

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TALES FROM THE INTERIOR

Courthouse

Continued from page 18

With time, the old District Court guard of Connelly, Crutchfield, and Miller retired, to be replaced by a younger, more zealous crew. The same happened at the Superior Court level. Soon, the judges were no longer my elders, but my peers. Formalities became commonplace. Ultimately, combination locks were installed on the judge's previously open chambers. The cordial smells of popcorn, donuts, and fresh coffee eventually disappeared. Metal detectors were soon ordered and numerous signs became conspicuously posted throughout the building dictating decorum and courthouse rules. Change was predestined.

Still, the memories continued. . .

There was the time the old courthouse caught fire. It was a grand affair. Virtually every Fairbanks lawyer congregated outside the building, chanting slogans from the sixties like, "Burn, baby, burn!" Spontaneous bets were taken. Fingers were crossed with the hope that the main garage door to the Fairbanks City Fire Department would once again malfunction.

Acrid black smoke billowed from the building. Street rumors spread that the fire was allegedly started by a roofer's torch. An impromptu discussion explored the prospects of a free legal defense for the unknown worker. At the time, most attorneys actually hoped that the fire would spawn a new courthouse. The fire also was a virtual guarantee of more than one continuance. Unfortunately, to our collective surprise, the Fairbanks City Fire Department was actually working that afternoon. And, to our even greater dismay, the fire was extinguished in scarcely one hour. When it was obvious that no relight would miraculously occur, most of us took the extra gasoline home.

Another time, the air conditioning system failed. Traditionally, the courthouse air conditioning failures always occurred during the hot summer months. A testimonial to efficiency, the system never failed to cool the building during the winter. On the day of the July failure, the city sewers also coincidentally plugged up. The combined effect was that the jury that was out on deliberations for one of my cases was decidedly less than pleasant. Much to the jury's credit, it still completed the deliberations — even if it only did take a few minutes. This new method of forcing a deadlocked jury to a verdict was not lost upon the court.

The old courthouse had other idiosyncrasies. For example, the elevators would know when a late lawyer had to be on the fourth floor. As if by plan, both lifts would go into delay. Sometimes, the elevators would simply break. During such shutdowns, the close proximity of those unfortunates trapped inside would breed distinct coziness, as accused prisoners, guards, jurors, defense attorneys, and the public, alike, would panic together. For some strange reason, antisocial prosecutors usually preferred to use the stairs.

Still, the most frequented parts of the courthouse for me were the bathrooms, which is why I have returned to the subject. The second sink in the men's third floor bathroom did not have a working faucet. Toilet flushings would echo through the building. Soap was a rare commodity. And paper towels were a luxury. Graffiti also had its place in the courthouse, and not only in Judge Savell's restroom. Depending upon community attitudes, free editorial comment would regularly vary. Some of the braver souls, in fact, scrawled their own impressions of the district court on the back of the wooden backbars in the courtrooms — until carpeting was glued to the barriers. In retrospect, the carpeting was a better choice. It was much softer on tired feet. Inventive writers also scrawled their missives in the tile grout in the bathrooms, leaving the gray stall surfaces for the more unrefined. Writing surfaces abounded.

The courtroom recording devices had their own quirks. The electronics either did not work, or worked all too well, when confidential conversations were loudly broadcast for everyone to hear. The hallway telephones were a benefit, but had distinct privacy issues, since the users often had to yell simply to be heard clearly over the nearby court proceedings. To address the problem, Judge Pengilly's court clerk constantly posted reminders prohibiting the use of the adjacent phone in the hallway. Why someone simply did not just tear the phone off the wall always puzzled me. Many of my domestic violence clients have successfully used that solution in the past.

Through the years, although the courthouse never saw any shootings, it did have its share of stabbings and assaults. It all made for excitement and enjoyment, and for Friday luncheon stories to tell.

After legislative funding was secured, the location for the new building became the latest controversy. Although it made common sense to build the new courthouse directly adjacent to the existing courthouse, thus allowing the old building to be utilized as an annex, common sense only exists as a concept in one jury instruction. Politics, on the other hand, is alive and well. In short order, without the benefit of significant public meetings, a prime property site was selected on the banks of the Chena River. Although I personally opposed the location due to my previous "investment backed expectations" near the old building, it soon became apparent that the relocation was a done deal. In the last several months before the move to the new structure, virtually every local judge could be heard talking about things like, "When we move in" and "the new courthouse," and "after the move."

Construction took about one year. The building is now completed and occupied. Admittedly, it is an attractive structure. Covered with rare imitation Italian marble to connote strength (it is actually just a very thin façade, according to the architect) the building is artistically designed to convey the image of wisdom, reverence, and durability. Each courtroom is situated in the interior of the building. The rooms with the windows and the view are reserved for the judiciary and some lucky juries. An advantage to the large, exterior windowed jury rooms is that the ubiquitous 1-800-TELL JURY banners can now be displayed within clear view of the deliberators. Similarly, the judges have nice, windowed chambers, which look out across a park to the mighty Chena River, with its local colorful populace, springtime flooding, and floating bodies.

Apart from the main entrance, each courtroom has three, somewhat nondescript doors. Two of the doors are wooden doors. The third door is an ominous, steel door, complete with an electronic security lock. Not that anyone wants to send a message that the defendant is a dangerous and/or guilty party, but there likely will always be a lurking question as to whom is behind "Door Number Three."

On July 27, 2001, following calendar call, the Fairbanks lawyers descended upon the new courthouse for the advertised luncheon and free drawing. When I arrived, I discovered that the lunch cost an atrocious $14.00. I reluctantly paid my entry fee. In exchange, I was handed a raffle ticket. If I were lucky, I would win one of the coveted door prizes.

It was uplifting to see the members of the local bar and judiciary sitting down together at separate tables apart from each other and sharing a lunch by themselves. All were marveling at the efficiency and compactness of the facility, under the watchful portrait of the late Justice Jay Rabinowitz. Eventually, Judge Beistline overcame his well-known shyness and began his lunchtime speech. Following a series of brief introductions and accolades, Judge Beistline began his eulogy for the old state courthouse, quickly disclosing his lack of any intentional involvement with the new building. The speech was well received. It was brief. Fortunately, because the photographer was on a contract that required our group photograph to be taken promptly at about 1:00, there was a deadline. But, before the photograph, like children everywhere, we waited expectantly for our door prizes.

I was stunned when I won the very first giveaway. It was a beautiful blue Beanie Baby bear named Diana. I treasured it. I felt special. In the end, I was the only man to win a doll in all of the drawings. Although various other contestants tried vainly to pry Diana from my grasp, I had been well trained, having grown up with my younger sister, Julie, to keep a deathgrip on all of my dollies. I had no intentions whatsoever of sharing, either then or now.

The drawings completed, we next adjourned outside. The entire group squeezed together in an attempt to show conviviality for a picture that Judge Beistline said would go down in history. Although I seriously thought of restoring the former clothing oversight that had presented itself so well during calendar call earlier that morning, I decided against it. It would not have made a difference anyway, since the photographer made me sit in a chair on the far right side, depending upon one's point of view. (So much for attempting to create a famous Kodak moment. Still, if one ever does look at the photograph, I am the funny looking person on the far left. But, as far as certain others view it, I am on the far right.)

The courthouse was then opened for a special grand tour. We could go anywhere we liked. We explored the building like children. We were the first to try out the squeaky, non-reclining chairs. We pretended we were judges. We pretended we were clerks. And, some of us even pretended we were prisoners.

Within five minutes, one of Judge Andrew Kleinfeld's law clerks, Isha Youhas, had locked another law clerk, Matt Finley, into a holding cell. Recognizing that competition to be in Judge Kleinfeld's employ is rather intense, it was still disturbing to see just how far even Andy's law clerks would take the rivalry. A quick vote was taken as to whether or not to release Matt. After a close recount, Isha was outvoted, and Matt's release was accomplished. With my luck, it will now be some unknown guy named Matt Finley, his photograph taken by attorney Barbara Schuhmann after he was coaxed in the courthouse lock-up that they will be talking about 100 years from now, and not the bald-headed guy with the open fly.

By day's end, the new courthouse fared well. Try as we might, no one had succeeded in breaking it. Although there were both criticisms and compliments, Judge Beistline's prediction that part of history was being made was true, at least in our own minds. One hundred years from now, when Fairbanksans are again complaining about a new courthouse being built that time on the vacant corner of 6th and Barnette, and the young district attorneys are bemoaning the fact that they will have to dash frantically across town to get to hearings, some young law student will look at the photograph taken on July 27, 2001, and marvel at all of those oddly dressed counselors at law. In a moment of contemplation, she likely will ask herself, "Weren't those people weird? Who was that nerdy bald-headed guy, first on the left (or is it the right?), in the front row with the bunny ears? Isn't that distinguished, crew-cut gentleman just behind him the famous United States Supreme Court Justice Pengilly?"

Thinking about *Cassis de Dijon*

BY JOE SONNEMAN

"In this Work, when it shall be found that much is omitted, let it not be forgotten that much likewise is performed."

—*Samuel Johnson, (c. 1755).*

In law school, I studied international law—and went to summer law schools in London and Paris. I liked both the places and the studies, learning there some principles useful even in Alaska. So here for you is a short lesson from what was then (1987) called European Economic Community [EEC] Law:

After World War II, some Europeans said to themselves, in essence, "Well, here Europe is, either defeated or bombarded or both, and this upstart nation, the U.S.A., not even two hundred years old, is enormous, victorious, overshadowing us—when historically we are the pinnacle of civilization: how can we Europeans regain our rightful place?"

SOME RECOGNIZED THAT THE UNITED STATES WAS IN FACT SOVEREIGN STATES UNITED

Some recognized that the United States was in fact sovereign States united—a kind of customs union with free transit and free trade with one another—but in Europe sovereign States remained separate nations competing, with protectionist barriers to trade, borders, and cross-border taxes ... and with terrible wars.

So Europe began to change itself to be more like the United States, first by controlling coal and steel industries—ostensibly to prevent intra-European wars, but also to wage an economic peace against the U.S.—most sincerely flattering us by imitating us.

Europe expanded the Coal and Steel Agreements in various ways until now there is almost a United States of Europe. Part-way along, the European Economic Community (later called the European Common Market, and now termed the European Union) decided on tariff-less trade between their members, and set up a European Court of Justice [ECJ] to enforce the enabling treaty.

As European nations slowly shifted from centuries-old nationalist viewpoints to a more continental ideology, the ECJ sometimes had to force member countries to let go of earlier trade-protection ideas, reminding them of the newer inter-Europe free-trade goal.[1]

Several such ECJ cases became known for obvious reasons as 'the beer and wine cases.' *Cassis de Dijon* (the nickname for *Rewe-Zentral AG v. Bundesmonopolverwaltung fur Branntwein,* ECJ 120/78 (1979)) is an important 'beer and wine' case, even if cassis—though tasty—is neither beer nor wine.

A DIGRESSION ON CASSIS

Cassis actually is a blackberry liqueur.

Elegant readers may know cassis via the kir royale (cassis and champagne).

For a casual cassis cooler: pour orange juice over ice, then add an ounce of French cassis (poured gently over the back of a spoon, or down the tilted glass). Top off with sparkling water, floated atop the orange juice. Drink it layered, or stir first.

PROTECTING ONE'S OWN CASSIS MAKERS - OR NOT?

But—back to our story—apparently Germany then still wanted to protect German cassis makers from French competition. So Germany, ostensibly acting from consumer protection motives, passed a law saying that no fruit liqueur could be sold in Germany unless the liqueur contained at least 25% alcohol.

FOR THE DECADE PAST, A POPULAR PHRASE IN SOME ALASKA GOVERNMENT CIRCLES WAS THAT "CORRECTIONS IS ALASKA'S GROWTH INDUSTRY."

This sounded reasonable, but astute readers will not be too shocked to learn that all German cassis was 25% alcohol or more, and all French cassis about 15-20% (which was enough alcohol to satisfy French authorities for sale in France). So France sued Germany in a case referred to the European Court of Justice.

THE *CASSIS* PRINCIPLE

How did the European Court of Justice decide this case? Answer: by using a fine principle of justice—which principle please note!—paraphrased as "a measure which has an effect equivalent to that of a prohibited measure is itself prohibited."

Bang! That did the Germans, all right. The EEC Treaty barred EEC members from erecting trade barriers. Germany's alleged 'consumer protection' law had an effect equivalent to that of a trade barrier. So the German law was itself prohibited.

"You're not going to fool us," the ECJ in essence said: "We can see through obfuscatory fog—and what's more, we have the authority to overrule national law."

That's some principle, that ECJ principle, though phrased differently than we'd say it. Americanized, the ECJ principle might read: 'a act which has an effect like that of an illegal act is itself illegal.' Sound better? Got it? Good.

CASSIS-LIKE PRINCIPLE IN ALASKAN COURTS

Alaskan courts use this principle, in usury cases, anyway. In usury cases, Alaskan courts see through obfuscatory fog.

For example, in *McGalliard v. Liberty Leasing*, 534 P.2d 528, 529 (Alaska 1975), our Court wrote that "a third-party loan cloaked in the form of a lease is within the purview of the usury laws." The Alaska Supreme Court even "noted that on other occasions courts have looked through the form of a transaction to its substance." *Ibid.*, citing other cases and examples at 530. *See Moran v. Kenai Towing & Salvage, Inc.*, 523 P.2d 1237, 1239 (Alaska 1974) (alleged 'lease with purchase option' held in particular circumstance to be "really a device to secure repayment of a debt").

That's great; Justice is operating as it should, clear-sightedly, at least in usury matters.

Now, what about Alaska's criminal justice system, taken as a whole—how's Justice doing there?

ALASKA'S CRIMINAL JUSTICE SYSTEM & ITS DISCONTENTS

For the decade past, a popular phrase in some Alaska government circles was that "Corrections is Alaska's growth industry." Sadly, the saying was accurate.

According to the Alaska Department of Corrections website, "Inmate Profile 2000," (graph, p.5) the inmate population rose from 1,750 or so in 1984 to about 4,250 in 2000, a 240% increase, but Alaska's total population over the same time rose from about 550,000 to about 650,000, only 19% more. So the prison population rose about *12 times faster* than Alaska's whole population.

This growth is not free. A deputy Commissioner of Revenue says the average cost of a prisoner-year is now about $40,000.[2] So, to house 25 prisoners for a year, or one prisoner for 25 years, costs $1,000,000. Meanwhile some people claim Alaska faces a alleged $1 billion fiscal gap [while keeping a $1.5 billion Constitutional Budget Reserve account], so you'd think legislators would have shrunk—not grown—Department of Corrections budgets.

Not true. Corrections keeps rising as a percent of Alaska's total budget, being now [in actual 2000 general funds dollars spent] about 6.6% of the total,[3] up from the 3.08% level of 1984.[4] That is, Corrections more than doubled, in percent-of-budget terms. Other areas must get a smaller percentage, for Corrections to get a higher percentage, because percentages always total 100%.

If Alaska had now at most 2,000 prisoners—roughly 20% more than in 1984, since Alaska's population rose about 20% since then—instead of roughly 4,250 inmates, Corrections might again cost 3% of the budget. The change could save $70-90 million annually.

"If you're born in America with black skin, you're born in prison."

—Malcolm X.

Alaska's inmate population growth unequally affects Alaska's different genders and races. The Department of Corrections year 2000 "Inmate Profile" also shows that in year 2000 80% of inmates are male, and 36% of the total are Native. (Source: website "Inmate Profile"). Census data shows that in Alaska as a whole for year 2000 less than 52% of the population is male, and just under 16% are Native.[5] So Alaska holds as prisoners many more males and many more Natives than those groups' percentages in Alaska's population would suggest, were Justice equal for all.

APPLYING THE *CASSIS* PRINCIPLE

Remember the Cassis principle? The clear-sightedness of Alaska usury cases, penetrating form to get to substance?

Remembering the linguistic formula of *Cassis*, one could say of Alaska prison populations that here facially neutral measures (the Alaska criminal justice system) have disparate impacts (more-than-proportionate numbers of men and of Natives in prison) equivalent in effect to prohibited measures (discrimination by gender and race).

THE FALLACY OF DISCRIMINATORY INTENT

"Ah," a devil's advocate might say, "but is there any discriminatory intent?"

Intent is irrelevant. The ECJ in *Cassis* intentionally ignored Germany's alleged commendable consumer protection intent. Alaska courts disregard alleged intent in usury cases but see through to the reality of the transaction. A "public safety" intent must also fail if disparate impacts are the result.

"Intent" was for years the anvil on which the pottery of "facially neutral, disparate impact" U.S. employment cases shattered, because Justice was for a time blind to its own

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Cassis de Dijon: Principle is active

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results. But Congress melted that "intent" anvil with the heat of the 1964 Civil Rights Act. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (even an employer free of discriminatory intent may not use an employment practice unrelated to job performance if that practice invidiously discriminates by race).

Griggs shows the *Cassis* principle active in Federal law. An act (facially neutral intelligence tests and high school equivalency requirements) with an effect equivalent to that of a prohibited act (discrimination by race) is itself prohibited.

Note in *Cassis* that the Germans claimed an admirable consumer protection intent. Germany did not admit to intentional discrimination against French cassis. Germany's fine intentions did not stop or even slow the European Court of Justice. Nor do allegations about financial intent disrupt Alaskan courts bent on rooting out usury. So forget about "intent" here, too.

MISLED BY MOTIVE

"Yes," a devil's advocate might continue, "but look: *Cassis* and usury cases both turn on monetary interests—and money is so well known a human motivator that *there* no more is needed. After all, *Griggs* allows employee testing if the tests are justified by 'business necessity' and job performance.[6] Surely a similar principle will permit jailing people in proportions different than population statistics, if in fact the inmates committed crimes?"

But in Alaska the criminal laws and the criminal justice system (prosecutorial discretion, courts, expensive private lawyers and overworked public defenders, legislators, guards, parole boards, "good time" decisions, etc.) *themselves*, taken as a whole, have this improper discriminatory effect.

PERRY V. SINDERMANN, 408 U.S. 593 (1972) SUGGESTS A GENERAL RULE, THAT GOVERNMENT SHOULD NOT INDIRECTLY "PRODUCE A RESULT WHICH [IT] COULD NOT COMMAND DIRECTLY."

So neither the inmate's motives nor the public safety motives allegedly behind Alaska's criminal justice system can leave that system in a Stygian darkness-ness, given the clear light of widely-distributed statistics showing gender and racially discriminatory effects.

Perry v. Sindermann, 408 U.S. 593 (1972) suggests a general rule, that government should not indirectly "produce a result which [it] could not command directly." The *Perry* Court cites cases showing "this general principle" in tax exemption, welfare payments, and public employment cases.

But general principles are by definition *general* and not limited to specific cases or types of cases.

So, given that government would be wrong directly to discriminate against males and Natives—for example, by imprisoning them out of proportion to demographics, merely because of gender or race—then, using *Cassis* and *Perry* principles, government cannot legitimately indirectly produce the same effect via the criminal laws or the criminal justice system.

But Alaska Department of Corrections inmate profiles and U.S. Census statistics show that this discriminatory effect exists in present-day Alaska, despite past efforts to assure equality in sentencing. Equality in sentencing obviously was not enough to cure Alaska's criminal justice system of its improper discriminatory effects.

How is this disparate result produced? What is its cause? Partial answers may be that Alaska's laws criminalize behavior more common to some groups (men, Natives) than others, that some groups consume more or are affected more by substance abuse than others, that some people have lower incomes and less able legal representation than others, and so on. But inmates need not show causation any more than France needed to show that consumers were not disappointed by French cassis's alcohol content, or than hospital patients need show who left a sponge inside them.

HOW IS THIS DISPARATE RESULT PRODUCED? WHAT IS ITS CAUSE?

Res ipsa loquitur: the thing speaks for itself. In *Cassis* terms, the discriminatory effects of the whole Alaskan criminal justice system are equivalent to that of a prohibited act. In *Cassis de Dijon*, the ECJ neither asked Germany passed the law requiring 25% alcohol nor did the ECJ blame the French distillers for making a less intoxicating liqueur; the ECJ instead just threw out the law with improper effect. Alaska courts rooting out usurious practices similarly never blame people for entering into such a disadvantageous contract, but instead throw out the improper act, no matter how well disguised. So think not now to blame those people who because of gender or race the Alaska criminal justice system discriminates against. The problem is the system itself.

Undoubted statistics show gender and racial discriminatory results of Alaska's criminal justice system, results equivalent in effect to prohibited acts. No more is required.

CONCLUSION: PENDING ...

Drink a kir royale or cassis cooler [don't drive afterwards] to more fully appreciate the European Court of Justice's reasoning. Then ask yourself, what am I going to do about the anti-male and anti-Native discriminatory effects of Alaska's criminal justice system; what am I going to do about the 240% rise in inmate numbers (when population rose less than 20%); and what am I going to do about the more-than-doubling of Corrections spending in percent-of-budget terms?

Then, just go do it.

[1]The dream of some—and nightmare of others—is that inter-continental 'trade courts' of the GATT and WTO may through globalization be able to override nationalism and bring about world peace (as the ECJ seems to have done for Europe).

[2]Deputy Commissioner of Revenue Larry Persily, at a Juneau (public) meeting of the Fiscal Policy Caucus, Winter 2001-02.

[3]$144,573,600 for Corrections GF, out of $2,176,812,600 State total GF, according to a phone call from Alaska Office of Management and Budget.

[4]1984 figures from "State of Alaska, FY 85 Executive Budget," p. 13; where Corrections was $56.33 million of $1.828.0 million (rounded).

[5]Statistical Abstract of the United States: 2001, Tables 18 (Residents, Population, States), 21 (Residents, Population by Sex, Age, and State), and 24 (Resident Population by Race and State).

[6]Really? Business necessity trumps constitutional fairness? See Ibsen, "Enemy of the People" (business necessity a weak reed).

Deception in negotiations — should it be tolerated?

☐ Drew Peterson

One of the most interesting aspects of the negotiation process, and one of the least discussed, is the use of deception. We all use it, and are trained from an early age on how to do so, and yet we deny doing it, we justify it, or we find it unethical only when used by the other guy. The question that is seldom, if ever, addressed is "what is the legitimate use of deception in the negotiation process?"

While not necessarily answering the questions, there is an interesting article about the subject recently distributed through Mediate.Com. Written by Jeffrey Krivis, a Southern California mediator and professor at Pepperdine Law School, the article is titled "The Truth About Deception in Mediation," and can be read at www.mediate.com/pfriendly.cfm?id=919.

Krivis describes deception as the "raw material which drives negotiation of litigated cases." He begins by discussing different possibilities of deception which include:

- Honesty
- Exaggeration
- White Lies
- Partial Disclosure
- Silence as to the Other Party's Mistakes
- False Excuses
- Outright Fraud

Krivis asserts that deception is a normal part of the human condition, and that it would be a mistake to dismiss it as entirely improper. The legal exception that has been carved is for the case of outright fraud, which is considered both illegal and unethical. But where are the bright lines?

In other contexts, Krivis concludes, white lies and exaggerations are not only considered acceptable, but they are expected, when they result in righting a human wrong, maintaining fairness, or avoiding harm. He gives the examples of governmental use of undercover agents and spies, which is considered acceptable because it is necessary to stop crime, catch criminals, or protect the country. Politicians make promises that they cannot keep, while we tell our children about Santa Claus and the Tooth Fairy. Krivis places all such deceptions on about the same level.

Most of us are guilty of deception every day, whether giving a false excuse to turn down a dinner invitation, or telling someone that a new outfit looks good on them when in fact it is hideous. Our culture reinforces the idea that telling a white lie is better than hurting someone's feelings. Deception is tolerated in negotiations for similar reasons, Krivis asserts, because it can be used productively and constructively to develop concessions that lead to agreement.

CAVEAT EMPTOR

One of the central reasons why we tolerate white lies in negotiations, Krivis asserts, is that competition in our society promotes an atmosphere of freedom of choice. This freedom enables buyers and sellers to themselves define the limits of acceptability. The age-old principal is to "let the buyer beware." Competition rewards those individuals who get the best deal, even if at the expense of another. Our capitalistic and competitive model of society allows stretching of the truth for the purpose of getting a good deal.

An individual who uses white lies and stretches the truth in bargaining is believed to be a "shrewd businessperson" and admired in our society. For all we complain about used car salespeople, Krivis asserts, we do not expect them to be straightforward. In the end we admire them for their business acumen, unless they cross the line of acceptability to outright fraud.

DECEPTION BY LAWYERS

To Krivis, the litigated case is like a game of cards. It is not whether you have the best hand that determines the winners and losers, but how you play the game. You have to "know when to hold them and know when to fold them." Various forms of deception used regularly by attorneys in litigation include:

- Concealing your willingness to settle / bottom line
- Making inflated demands
- Exaggerating strengths and weaknesses
- Concealing client intentions
- Claiming lack of authority
- Failing to volunteer relevant facts.

Lawyers use such techniques all the time, and right up to the very limits of the law and ethics. By doing so, Krivis seems to be saying, lawyers play the card game of litigation to win, thereby capturing more value for their clients. They do so while balancing their positions carefully, so as to not cross over the line to risk bringing shame on their reputation, or worse, being charged with an ethical violation.

DECEPTION IN CAUCUS MEDIATION

Krivis's believes that deception in negotiation can be even further exacerbated by the use of caucus negotiation. The deception that naturally exists in negotiation, Krivis asserts, is amplified when the structure of the negotiation is cloaked in confidentiality, as is true of the mediation setting. Thus, caucused negotiation provides a breeding grounds for deceptive techniques, because the risks of being caught are substantially less than would be true of a less confidential process.

Krivis's answer to the dilemma is for the mediator to become a chameleon, who transforms the thinking patterns of the parties. By listening and gaining trust and rapport, the mediator can assist the parties in making concessions in ways that they do not perceive as making them vulnerable. The mediators can help maintain the proper pace and flow of the exchange of information; he or she can orchestrate the negotiation movement. Handled properly, Krivis asserts, the mediator can serve as an agent of reality to help place the parties in the best place for agreement.

KRIVIS ASSERTS, THE MEDIATOR CAN SERVE AS AN AGENT OF REALITY TO HELP PLACE THE PARTIES IN THE BEST PLACE FOR AGREEMENT.

WHAT ABOUT WIN-WIN?

What I admire about Krivis's article it that it actually takes on the issue of deception in negotiation and specifically by attorneys. And it takes on the subject in a straightforward fashion, by acknowledging that deception is, in fact, tolerated and even encouraged in our society and under our rules of law.

Where Krivis loses me, however, or at least fails to convince me, is by merely accepting as established truth that deception is a good thing in negotiations, in our system of laws, and in our society in general. While I think that few of us would find much fault in telling our children about Santa Claus, or saying we like our friend's new hairdo, though we in fact do not, such innoculous lies are a far cry from Krivis's list of frequent lies told by attorneys, and his acceptance of them as legitimate negotiation tactics.

THE WORLD IS SLOWLY TURNING AWAY FROM COMPETITIVE METHODS OF PROBLEM SOLVING AND TOWARDS MORE COLLABORATIVE METHODS FOR RESOLVING DISPUTES BETWEEN PEOPLE.

The flaw in Krivis's thinking, it appears to me, is that he is still thinking of the negotiations as a win-lose process. As in his example of the card game, he seems to believe that we must always have winners and losers in any negotiation process. In the last thirty years, however, ever since the Harvard Negotiation Project came out with *Getting to Yes*, (Penguin Books, 1981), the game has been changing. To use their words, instead of winners and losers, we are now looking for options for mutual gain.

MEDIATORS AND DECEPTION

As a mediator, I usually see deception as the enemy, and not as a constructive part of the mediation process. I agree with Krivis that caucus mediation is particularly dangerous in compounding deception due to the conficdential nature of the mediation process. That is one of the reasons that I avoid caucus mediation to a large extent, and prefer to have the parties talk directly to one another. Caucuses can have a legitimate place in mediation, but I believe they are often overused, especially in cases where the parties need to hear each other and understand each other's point of view, And that is true on the majority of cases, in my experience. It is hard to hear one another when you aren't even in the same room.

From a theoretical standpoint, I view mediation as a structured method of collaborative problem solving, as opposed to the competitive problem solving method exemplified by the litigation process. Instead of setting people off against each other, as the court system does, with an independent third party decision maker, mediation helps people to make their own decisions, through non coerced means. By coming together to look for solutions that work well for all sides to a dispute, parties can often come to a resolution that is better than winning in court, because the other side can also win. Such solutions strengthen long-term relationships and make it easier for parties to work together in the future.

Deception, however, is counterproductive to virtually all the goals of collaborative problem solving, at least once it reaches issues beyond the trivial. Parties work together in long term relationships based on trust and loyalty, both of which are damaged by deception.

RE-EXAMINING THE USE OF DECEPTION IN NEGOTIATION

I realize that deception is a complicated subject, and that bright lines are difficult to set. Nevertheless, I would assert that the time has come to re-examine the use of deception in the legal world, as well as in the negotiation process.

The world is slowly turning away from competitive methods of problem solving and towards more collaborative methods for resolving disputes between people. The growth of the ADR movement is just once example of this worldview change. Other examples are the reengineering movement in business management, the systems movement in psychology, and the wellness movement in medicine, just to name a few. As a part of this worldview change, I believe that it is appropriate to revisit the use of deception in negotiation, as well as in life in general. The lines of acceptable deception need to be re-drawn, and truth and honesty more treasured than has been the case in the past, especially in the American legal system.

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

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

ESTATE PLANNING CORNER

Documents have never been more complicated

☐ Steven T. O'Hara

Even William Shakespeare chose not to write his own Will; it is said he retained a lawyer for the job. Wills and Revocable Living Trusts and other estate planning documents are complicated. They use terms like "*per stirpes*" or "*per capita*" or both. In the face of taxes and other threats to wealth, estate planning documents create "bypass or credit-shelter trusts," "marital trusts," and "generation-skipping trusts."

Estate planning documents are complicated because clients' lives and taxes are complicated. Under the 2001 tax act, estate planning documents have become even more complicated.

Recall that the estate tax and the generation-skipping tax are scheduled to disappear in 2010 *but come back in full strength in 2011. For the year 2010 only*, the current basis step-up rules are scheduled to be replaced with limited basis-increase opportunities. The amount that may pass tax free at death ("applicable exclusion amount") and the amount that shelters generation-skipping transfers ("GST Exemption") are scheduled to increase to $1,500,000 in 2004, $2,000,000 in 2006 and $3,500,000 in 2009. *But these exclusion and exemption amounts are scheduled to return to about $1,000,000 in 2011.* (See my 2001 articles in this column for discussion of these topics.)

Now estate planning documents may need to be designed not only for years when the estate tax and the generation-skipping tax and the current basis-step-up rules are applicable, but also for the year 2010. For certain, they need to be designed to take into consideration the scheduled increases in the applicable exclusion amount and the GST Exemption to $3,500,000 each (*before they come crashing back to about $1,000,000 each in 2011*).

The answer to all the issues raised by the 2001 tax act appears to be "flexibility." Clients ought to create estate planning documents that are flexible in terms of giving the various players in the unfolding drama, as it were, the opportunity to move wealth around within the various trusts.

The following provisions are offered as an example of possible flexibility that a married client might adopt as part of a Revocable Living Trust that is subject to Alaska law. They contemplate that the surviving spouse might disclaim property into the Family Trust (also known as the bypass or credit-shelter trust). The surviving spouse may be a beneficiary of the Family Trust, although the surviving spouse cannot have a testamentary power over any disclaimed property without disqualifying the disclaimer under tax law (Treas. Reg. Sec. 25.2518-2(e)(5)(Examples 4 and 5)).

A longer version of this example may be obtained from the Alaska Bar Association, Section on Estate Planning and Probate.

The following provisions are for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and the circumstances of the client:

A. If my spouse survives me, then as of the date of my death the Trustee shall set apart out of Net Trust Principal a separate trust named the Family Trust and shall allocate to it:

1. All trust principal that is not Qualified Property (defined below) and which is not otherwise effectively disposed of;
2. A fraction of Qualified Property (determined and defined below); and
3. Any portion of the Marital Gift (determined and defined below) disclaimed by my spouse.

B. The numerator of the fraction shall be the largest amount, if any, which, if allocated to the Family Trust, would not increase the total of any federal estate tax and those state death taxes computed by reference to any credit allowable under IRC Section 2011 payable from all sources by reason of my death.

C. The denominator of the fraction shall be an amount equal to the value of Qualified Property, as finally determined for federal estate tax purposes.

D. "Qualified Property" means any Net Trust Principal included in determining the value of my gross estate for federal estate tax purposes (including the proceeds of such property), which is not otherwise effectively disposed of and with respect to which a federal estate tax marital deduction can be obtained by election or otherwise. I recognize that if there is no federal estate tax system in existence at the time of my death, no Net Trust Principal will be Qualified Property.

E. As of the date of my death:

1. The Family Trust, if any, shall be divided and allocated into shares, *per stirpes*, for my descendants who survive me; provided, however, that since it is my intent here to allocate a share for my spouse as well, my spouse shall be considered a child of mine (under this subparagraph 1) for purposes of the *per stirpes* allocation;
2. Notwithstanding any other provision of this instrument, if my spouse disclaims any portion of the share allocated for him, the portion disclaimed shall devolve under this instrument as if my spouse had predeceased me, and if a descendant of mine for whom a share is allocated disclaims any portion of that share, the portion disclaimed shall be distributed outright and free of trust to my spouse as of the date of my death; and
3. The shares — to the extent they remain after any disclaimer — shall be considered derived from the Family Trust and administered as provided or referenced in Article VI, subject to the directions for maintaining GST Exempt and non-Exempt principal in separate, but related, trusts, as provided elsewhere in this instrument.

F. If my spouse survives me, then as of the date of my death the Trustee — after providing for any allocation to the Family Trust — shall divide and allocate the balance of Net Trust Principal (the "Marital Gift") into two separate trusts, one named the Marital Election Trust and the other named for my spouse.

G. The Trustee shall allocate to the Marital Election Trust a fraction of the Marital Gift. The numerator of the fraction shall be an amount equal to the unused portion of my GST exemption remaining after all allocations of such exemption before or after my death other than to the Marital Election Trust. The denominator of the fraction shall be an amount equal to the value of the Marital Gift, as finally determined for federal estate tax purposes. The Trustee shall allocate the balance of the Marital Gift to the trust named for my spouse.

H. The trust named for my spouse, if any, and the Marital Election Trust, if any, shall each be administered as provided in Article VII.

Alaska Bar Association 2002 CLE Calendar

Date	Time	Title	Location
June 4	8:30 – 4:15 p.m.	PowerPoint for Litigators with Frank Rothschild CLE #2002-023 6.25 General CLE credits	Anchorage Snowden Administrative Building Training Center
June 5	8:30 – 4:15 p.m.	PowerPoint for Litigators with Frank Rothschild CLE #2002-023 6.25 General CLE credits	Fairbanks Westmark Fairbanks Hotel
June 11	8:30 – 4:15 p.m.	PowerPoint for Litigators with Frank Rothschild CLE #2002-023 6.25 General CLE credits	Juneau Centennial Hall
August 7	4:30 – 6:30 p.m.	Off the Record with the 9th Circuit Court of Appeals CLE #2002-006 1.5 General CLE Credits	Anchorage Downtown Marriott Hotel
September 20	Time tba	Due Process Rights of Foreign Nationals in the Wake of 9-11 CLE #2002-022 CLE Credits TBA	Anchorage Hotel Captain Cook
September 24	AM – half day	Sanctions, Contempt, and How to Manage the Out of Control Judge CLE #2002-003 CLE Credits TBA	Anchorage Hotel Captain Cook
October 23	Full Day	15th Annual Alaska Native Law Conference CLE #2002-008 CLE Credits TBA	Anchorage Hotel Captain Cook
December 12	8:30 – 10:00 a.m.	Ethics at the 11th Hour CLE #2002-016 1.5 Ethics Credits	Anchorage Hotel Captain Cook

In Memoriam

Lester W. Miller

Alaska lost one of its great attorneys when Lester W. Miller died in Seattle this past summer from complications related to strokes. Les was a partner with famed trial lawyer, Wendell Kay in Kay & Miller, which later became Kay, Miller, Libby, Kelly Christie & Fuld. In the 60's and early 70's, this was one of the preeminent plaintiff's trial firms. It also was local counsel to the Alaskan Federation of Natives, the Aleut League and the Natives of Kodiak, later the Aleut and Koniag Corporations and numerous native village corporations. Les had been President of the Alaska State Bar Association in 1968-69, a member of the Board of Governors and a member of the Judicial Council from 1966 to 1972.

As counsel to AFN during the period that Emil Notti and Flore Lekanof were Presidents, Les was instrumental in the lobbying, the negotiations and the policy development of the Alaska Native Claims Settlement Act. A friend of Alaska's native community, and with a particular interest in the Aleuts and the Koniags, Les was truly one of the architects of the Alaska Native Claims Settlement Act.

After the Claims Act passed in 1971, however, Les was ready to turn his energies back to trial work. In the *Abbott* case, a jury and the Alaskan Supreme Court set the standard for the design and signage of highways and awarded substantial damages to Les's client. This was one of his proudest moments. Shortly thereafter, in the *Schrinner* case, a jury and the Alaska Supreme Court found a company liable when they had picked Homer to reward their top salesman with a real drinking bash. One of their salesmen was drunk at the convention and mowed Les's client, a Homer fisherman, down. Again and again, Les was at the forefront of the development of tort law in Alaska.

In later years, Les retired, came back, suffered a stroke, and ended his career convalescing in the Northwest. When I came to Alaska to join Kay, Miller, Kelly Christie and Fuld, Alaska was a different world than today. The weekly luncheons were genuinely fun. The humor was all-pervasive, and there was no distinction between single practitioners, plaintiff's counsel and defense counsel. The standards of practice were high, but the cheap shots, inconveniences, and aggressively taking advantage of the other side were not a cornerstone of the practice of law. The general rule was to maximize the enjoyment of the practice, give the clients the best justice possible, and don't get hung up on the small stuff. The goal was to get the case to trial, have fun doing it and move on with life. As "big city practice" came to Alaska, the world of the old timers, including Les Miller, gradually died out leaving the world we live in today. I am not sure that the clients, sanity, or justice have been served and I know how Les felt.

An example, of what was common once, describes the kind of people, like Les, who were the advocates before oil and money. Names need to remain anonymous, for obvious reasons, but in the early 1970's Les, Chief Justice George Boney and some other senior members of the bar, found out that a popular solo practitioner was having marital and professional problems because he was working too hard and drinking too much. They got together, chipped in some money, sent the couple off to Hawaii for a rest and took over the lawyer's practice. Each took turns cleaning up back cases, and straightening out the office, paying off the debts, and taking care of the clients. When the lawyer came back from Hawaii, his practice was together and solvent. His family was together. His clients were well-served. This individual became one of Alaska's most respected lawyers. No complaints, grievance hearings or blights on reputation; the clients got justice, the lawyer's life and reputation was saved by caring members of the profession. This was the Alaska Bar of Les Miller and a number of our predecessors. In my opinion, we will never replace Les Miller and the others of his generation. Alaska lost a great lawyer when Les passed away.

Christy Gibbs

A celebration of life in honor of Christy Gibbs will be held at 5 p.m. on July 19, 2002 at the Millenium Hotel in Anchorage. Admitted to the bar in June, 1999, she passed away Saturday, May 18 as she was enroute to Anchorage by medivac. Burial was by cremation and her ashes will be spread at her beloved Girdwood.

Christy requested donations to Friends of Pets, S.P.C.A., the Alaska Humane Society or the Alaska Wildlife Alliance in lieu of flowers. Please come and celebrate her wonderful life with educational and legal friends and relatives July 19. Please RSVP (the caterer needs to know) by phone, 522-1312; fax, 522-0138; e-mail, gosnafu@aol.com, or drop a line to Ron West at 3220 Racquet Circle, Anchorage 99507.

—Ron West

VICTIMS' RIGHTS ASSOCIATE ATTORNEY POSITION

The newly created Alaska Office Of Victims' Rights is recruiting for an Associate Victims' Rights Attorney (Range 23 step A). The annual salary for this position is $60,192 ($5,016.00 per month). This position offers an excellent opportunity for experienced lawyers who seek a challenging and positive work environment that will be professional, ethical, dynamic, fast-paced, and team-oriented. The position requires an individual who is energetic, flexible, experienced, adaptable to changing priorities, and committed to assisting crime victims.

The Alaska Office Of Victims' Rights Advocacy is a separately identifiable and independent governmental organization created by Alaska statute 24.65.010-.250 within the legislative branch. It has statewide jurisdiction and will be located in Anchorage. It was enacted into law in 2001 to advocate in court on behalf of crime victims of felony offenses or class A misdemeanor crimes involving domestic violence or assaults. The office will also assist crime victims to ensure they receive the rights they are guaranteed under Article 1, Sec. 24 of the Alaska constitution and Title 12 of the Alaska statutes with regard to their contacts with criminal justice agencies of the state. It will also act as a liaison between state agencies and crime victims, and investigate and report on victims' complaints that agencies have not fulfilled their duties under the state constitution and laws. To accomplish these objectives the law grants the Chief Victims' Rights Advocate of the OVRA broad investigative tools that include the power to hold hearings and subpoena witnesses and records. The Chief Victims' Rights Advocate may issue reports that are critical of criminal justice agencies and may make recommendations to the governor, the legislature, a grand jury and the public.

Applications must be received by Stephen Branchflower, Chief Victims' Rights Advocate, no later than 5:00pm, Monday, June 24, 2002 at which time the application period for this position will close. Applications to Mr. Branchflower may be hand-delivered, e-mailed to LAA_Personnel@legis.state.ak.us, sent by mail or fax, or submitted through Workplace Alaska (www.state.ak.us). Before applying all interested persons should view the full job description posted on the Workplace Alaska web site. Apply on Workplace Alaska or send a complete work resume and cover letter documenting qualifications and experience related to the specific duties of the position to:

Stephen Branchflower, Chief Victims' Rights Advocate
C/O Legislative Affairs Agency, Personnel Office
State Capitol, Room 3
Juneau, AK 99801
Fax No. (907) 465- 6557
Phone (907) 465-3854
TDD No. (907) 465-4980

The Alaska Office of Victims' Rights Advocacy does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability. Persons with disabilities who require special accommodations please contact the Legislative Affairs Personnel Office. Allow sufficient notice for the Agency to accommodate your needs prior to the closing date.