The Alaska BAR RAG

Inside:

VOLUME 25, NO. 6 | *Dignitas, semper dignitas* | $3.00 | NOVEMBER - DECEMBER, 2001

9th Circuit upholds IOLTA

A 9th Circuit Court of Appeals *en banc* panel ruled earlier this month that interest on lawyers' trust accounts (IOLTA) may be used for charitable purposes and that charitable use of the funds does not constitute unjust taking.

The court ruling is in direct conflict with an earlier decision in the 5th Circuit.

A taking is a taking, a panel of the 5th U.S. Circuit Court of Appeals had ruled earlier , even when the remedy may amount to nothing more than an injunction.

But the *en banc* review in the 9th Circuit, based in San Francisco, found no constitutional violation.

The rulings are the latest in a string of court decisions on the issue of whether interest on lawyer trust account programs are constitutional.

IOLTAs are the primary way most states pay for legal assistance programs for low-income residents. Attorneys are required to deposit certain client trust funds into these accounts, with the interest paid automatically to state clearinghouses that distribute the money to qualified legal-assistance programs.

SEE RELATED IOLTA NEWS, PAGE 4

"We hold that with respect to the funds deposited into client trust accounts ... there has been no taking of property without just compensation in violation of the Fifth Amendment," wrote Judge Kim Wardlaw.

Judge Alex Kozinski dissented, joined by the author of the original panel decision and two others of the seven-member panel.

"The plaintiffs admit that, at most, IOLTA takes their right to let their principal lie fallow... We therefore hold that even if the IOLTA program constituted a taking of private property, there would be no violation because their just compensation is nil," wrote Wardlaw.

In the earlier 5th Circuit case, a three-judge panel sitting in Austin, Texas, ruled that interest earned on client funds held in state-mandated IOLTAs belongs to the client. Any appropriation of that money for a purpose not directed by the client amounts to a taking, the court said. *Washington Legal Foundation v. Texas Equal Access to Justice Foundation, No. 00-50139 (Oct. 15).*

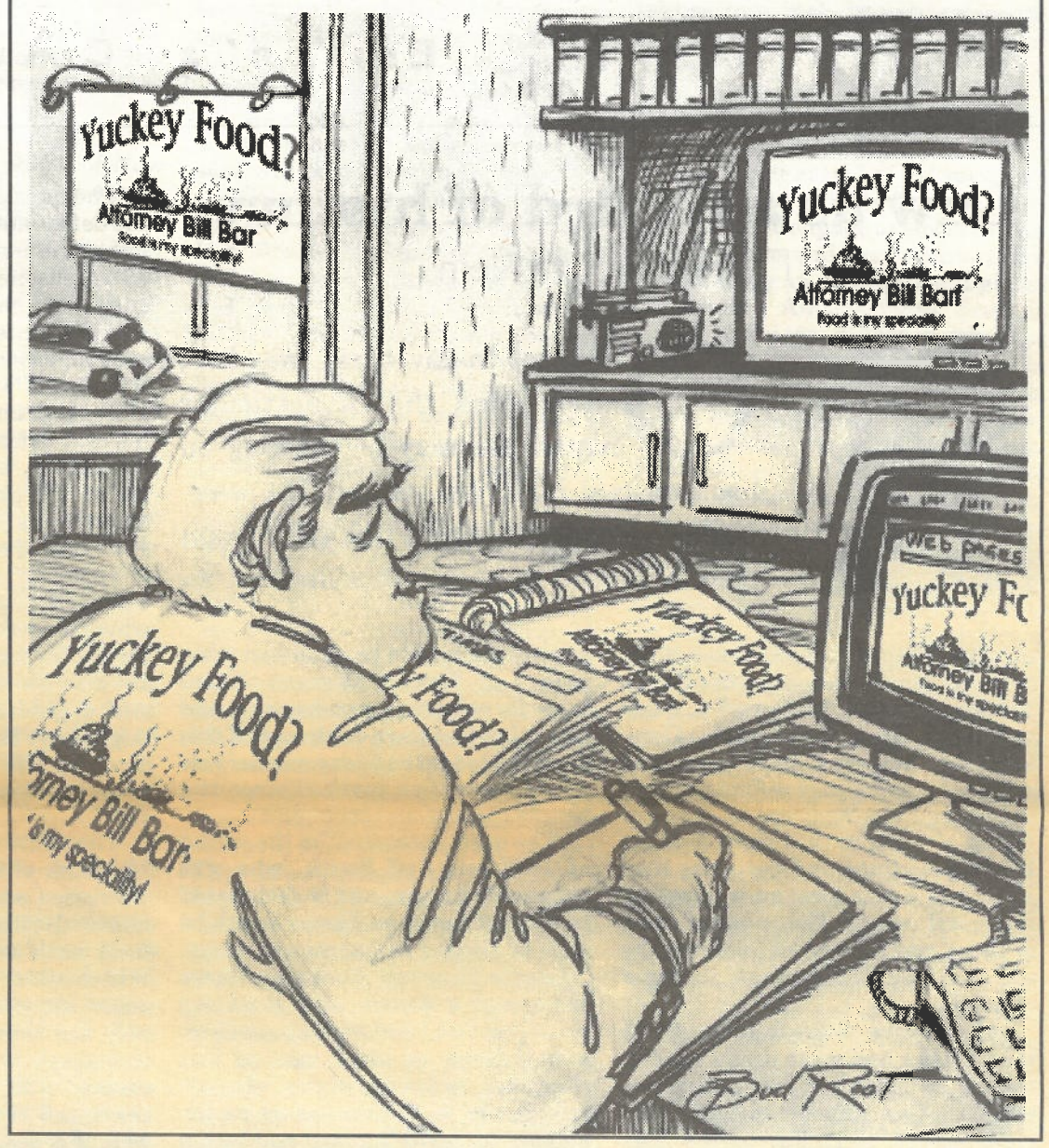
The ruling overturned a decision by the U.S. District Court for the Western District of Texas. It had ruled that clients did not incur a compensable loss because the amount of interest each earned is too small to cover a lawyer's administrative costs to send it out. Since no just compensation was due, the district court said, the IOLTA system is constitutional.

But the 5th Circuit panel, in a split decision, ruled that clients are entitled to seek declaratory and injunctive relief against the use of their money to pay for programs they may not support, even if they are not due financial compensation. In that ruling, the 5th Circuit used the same analysis Judge Andrew Kleinfeld used in the earlier 9th Circuit decision. The 5th Circuit case has been appealed, with IOLTA supporters urging a rehearing *en banc*.

"Obviously, we're disappointed," said Darrell E. Jordan of Dallas, counsel to the Texas Equal Access to Justice Foundation, which runs the state's IOLTA program. "Our position is that since the client suffers no monetary loss, no compensation is due."

In the 9th Circuit Nov. 14, the court applied a regulatory takings analysis, finding that the state has the right to regulate the use of clients' property short of appropriating it. The court further found that because no just compensation is due, the plaintiffs had no Fifth Amendment right to opt out of the IOLTA program.

Continued on page 3



U.S. District court completes first video-conferenced proceeding

The United States District Court for Alaska (USDC) piloted a video-conferenced criminal proceeding for the first time in November.

Magistrate Judge Pallenberg presided in Juneau, but the other participants were in Anchorage. "Had we not used video-conferencing for this particular hearing, the government would have paid for the defendant, a marshal, a prosecutor, a public defender and a probation officer to travel to Juneau," Judge Pallenberg said.

"On this one hearing the taxpayers saved several thousand dollars. Video-conferencing provides an economical and effective alternative to expensive travel, which should be considered in appropriate cases. I encourage litigants to make use of the technology, he said."

While minimizing travel costs is an important budget priority for court administrators throughout the United States, it is especially significant in Alaska, where court personnel are often required to travel back and forth from Anchorage to Juneau and Fairbanks. Under current federal rules, however, taking full advantage of the USDC's recently installed video-conferencing technology in criminal cases is not possible. Change is needed in Federal Rule of Criminal Procedure 43 (Presence of Defendant) to allow a broader scope of proceedings which may be conducted without requiring the judge and a defendant to be physically present in the same courtroom.

In state court, Alaska Rule of Criminal Procedure 38.2 specifically addresses and provides for criminal proceedings to be conducted using televised appearances by the defendant.

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

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

President's Column

It's worth it

☐ Mauri Long

Practicing law can be so all consuming, frustrating and draining, that I wonder at times why I get up every morning and go back at it. Recently, I was reminded.

Several years ago I represented a girls sports organization that was not getting its fair share of a limited resource. I wanted to help them out. They were great clients. The parents had worked hard to solve the problem on their own, but were unsuccessful. They really needed a lawyer to help them out. We went to work and were successful in giving not only those particular girls a chance to get good enough at their sport to obtain college scholarships, but also opened the door for many other girls to do the same.

As I said, that was several years ago. A couple of weeks ago my women's team was playing a game against a girls' team from that same organization. While we were warming up, several of the girls came over and gave me a beautiful bouquet of roses, along with a thank you card. The card was particularly satisfying. It was signed by every girl on the team (name and jersey number), with many thanks for making their "career" possible and giving them a chance to go to college. What a reward!

Like many of you, I went to law school to help people in a way they couldn't help themselves. Yea, so maybe I am a sap. But opportunities like that one, and the enduring appreciation, make all the difficult days seem a tad easier.

Wishing you all the blessings your heart desires for this holiday season.

Editor's Column

Law as a record of history

☐ Thomas Van Flein

On a day-to-day basis, we don't often think that a particular matter we may be working on has any real historical value. The overwhelming majority of time this will remain true. It is the rare case that hints at its possible historical significance at the time the case is pending—the Exxon Valdez litigation, *McDowell v. State* or *Ravin v. State*, for example. Occasionally, however, both civil and criminal proceedings reflect not only the immediate legal issues that are facing a court at that time, but the briefs, pleadings and decisions filed as part of a case form an interesting historical record. The value of some of these cases pertains more to the social milieu rather than its legal analysis.

All of us are aware to some extent that Alaska had some seedy characters in its past (not just politicians either). Can anyone question the significance that Fairbanks was founded by E.T. Barnette, who, according to the chamber of commerce, was thought to have left town with embezzled bank funds thereby dooming "E.T. Barnette to be remembered only with hatred by the people of the town he founded." Or Judge Arthur Noyes (referred to in some records as "an alcoholic, incompetent [political] crony"), sent to Nome in 1900 to bring the law, but instead implemented a scheme to take over various mining claims. It has been noted that "[i]f two deputy U.S. marshals from California had not arrived on October 15, 1900 with an arrest warrant, he might have succeeded."

A case from that time period, *Jackson v. U S*, 102 F. 473 (9th Cir. 1900), paints an interesting historical record. The judge, using the legal vernacular and other common word usage for the time, has left us with a contemporaneous record of certain events that depict life in early Alaska more vividly than a photograph could. The case arose out of the death of the infamous bandit "Soapy Smith" in Skagway. The court sets out the following in its statement of facts: "The plaintiff in error was . . . convicted in the district court of the district of Alaska for the crime of an assault with a dangerous weapon, and sentenced to 10 years at hard labor . . . The jurisdiction of the court is attacked, and the punishment prescribed claimed to be cruel and inhuman. . . ." Getting 10 years of hard labor for pointing a gun doesn't sound like a lawless town (although if this occurred today the felony murder rule might have been invoked since two people died by an accomplice).

The court notes that "in the spring of 1898 one Jeff Smith, who was commonly known, and is designated in the testimony, as 'Soapy Smith,' a man of alleged desperate character, located in Skaguay, Alaska, and there conducted a saloon and gambling house, and had gathered around him a half-dozen or more men of like character, as his associates, who are referred to in the testimony as belonging to 'Smith's gang,' and by his general conduct had made himself obnoxious to the law-abiding citizens of the town . . . a reign of terror existed." Today we might ponder what being a "desperate character" really means although we have no problem understanding how someone can make "himself obnoxious" to others (just ask my friends and family).

The crime occurred on July 8, 1898, "about half past 9 o'clock p.m., the citizens of the town assembled at Sylvester's wharf . . . to guard the approaches to the wharf. The record shows that soon thereafter Smith and his associates, including the plaintiff in error, Jackson, arrived at the approach to the wharf, where they came to a halt, and then started forward—Smith being in the lead, *with a Winchester rifle in his hand*, cursing and swearing, using violent and obscene language—and ordered the assembled citizens to get off the wharf. Smith continued right along through the center of the wharf . . . going by Tanner and Murphy, and when he got opposite Reed he wheeled around and struck at Reed with his gun. Shooting immediately occurred between Reed and Smith, resulting in the immediate death of Smith, and mortally wounding Reed, who subsequently died. . . ." I highlighted the reference to the Winchester rifle for reasons I will explain in a moment.

The question was raised whether the defendant could get a fair trial in light of his notorious reputation. The court reasoned that "if the facts were such as to show that the defendant was associated with men of low, depraved, vicious, or criminal tastes or habits, and was acting with them in such a manner as tended to prejudice his case before the jury, that was his misfortune, and not any fault or error on the part of the court." Talk about being judged by the company you keep. But the court was mindful of ensuring a fair trial. "It was, of course, the special duty of the court, which it seems to have faithfully observed throughout the whole trial, to see that the defendant, however low and degraded he or his associates might have been, was not to be prejudiced by the admission of any improper evidence." *Jackson*, 102 F. at 475-77.

The court ultimately rejected all 18 points of error and affirmed the conviction and sentence. Seemingly minor details in the statement of facts, such as a reference to Smith's Winchester, apparently take on added importance a century later. If only the court could have foreseen that people in the future would not be content with simply a reference to the brand of rifle, but its caliber as well, this decision could have helped today.

The magazine *Wild West* published a letter from Jeff Smith, who states that he is the "great-grandson of Jefferson 'Soapy' Smith'" in response to an article by Gary Blackwood called "A Tale of Two Alaskan Cities" in the August 1997 issue. In their colloquy, each historian claims, in essence, that their sources are reliable.

Soapy Smith's great-grandson wrote that "Frank Reid was not a leader. He was a self-appointed city engineer and a bartender at the Klondike saloon owned by Soapy. Reid was not a leading voice for "civilized Skagway" and did not found the Committee of 101. He did not call a meeting of the vigilantes. In fact, he was only a guard, while the real leaders met to decide Soapy's fate. As far as my research shows, Soapy never owned a derringer. *In the fight that ended his life, he had on him a Model 1892 Winchester .44-40 rifle* and a double-action Colt Army revolver. . . . Soapy was a modern man who wanted the best in life. The Derringer, and a single-action Colt on display at Skagway, Alaska, are items of the Old West, but Soapy was a man of the coming new century. . . ."

Author Gary Blackwood responded to Smith's letter, first pointing out the credibility of his sources: "My main source of information about Soapy Smith was the work of Pierre Berton, who interviewed eyewitnesses from the gold rush era, including four men who were present at Soapy's demise. . . [Berton] was careful to cross-check all statements against accounts written at the time the events took place. Berton states that, before confronting the vigilante committee, Soapy "slipped a Derringer into his sleeve, pocketed a .45 Colt revolver, and slung *a Winchester .30-30* over his shoulder."

The court decision does not mention whether the Winchester was a .44-40 or a .30-30, referring only to a "Winchester rifle." Perhaps the evidence tag can settle the debate. Nor is there any mention of a Derringer. Now these details seem significant, at least if one seeks to display "the gun" involved in the mayhem. The mayhem itself, however, and the death of two people, almost seems lost on the current historians and the focus on the weaponry used—an oversight not committed by the courts then or now.

The Alaska Bar Rag

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

9th Circuit upholds IOLTA

Continued from page 1

The court remanded the case, however, for consideration of whether the plaintiffs' First Amendment free speech rights are violated by the compulsory contribution of their funds to the state's IOLTA program. *Washington Legal Foundation v. Legal Foundation of Washington, No. 98-35154.*

SEE RELATED IOLTA ISSUES. PAGE 4

The decisions follow a 1998 U.S. Supreme Court ruling that interest earned on funds in IOLTA accounts is the private property of the client. The court remanded the case to the district court in Texas to consider the issue of whether a taking occurred and whether just compensation is due. *Phillips v. Washington Legal Foundation, 524 U.S. 156.*

The issue is likely to once again make its way to the supreme court, since all 50 states have IOLTA programs.

"We continue to believe in the constitutionality of this most important program that provides needed legal services to tens of thousands of our neediest citizens," said L. David Shear of Tampa, Fla., who chairs the American Bar's Commission on Interest on Lawyer Trust Accounts.

—ABA Journal eReport

Bar Letters

A sad reality

Bradshaw would be funny if it wasn't real.

The sad part of Bradshaw is the trial court's arrogance and lack of judicial responsibility. The merits notwithstanding, the injured victim had his case thrown out of court. Why was the innocent plaintiff (rather than his lawyer) and not the defendant (and lawyer) punished? Consider the Court's comments that "this case involves TWO extremely likable lawyers, who have TOGETHER delivered some of the most amateurish pleadings ever..." and "DEFENDANT BEGINS the descent into Alice's Wonderland...."

The Court rewarded the defendant corporation (and its insurer) for its counsel's conduct while punishing the injured worker (and his family?) for similar conduct. How can one justify such a result? The judge had many other options available which would have much better served the cause of justice. Was the Court blinded by the desire to be cute and flippant—and get published? Heck, he'll probably get promoted to the Supreme Court; after all, he's from that bastion of justice—Texas!

—Brian J. Waid

If an attorney did it . . .

I enjoyed reading the Texas decision you published on the last page of the Bar Rag. You asked for comments as to whether the court crossed acceptable lines. I think the answer becomes obvious if you switch roles and ask what would happen if an attorney expressed his or her views on a judicial opinion with language of this sort.

—Jeff Friedman

Humor misses mark

The trouble with humor is that a miss is as good as a mile. I like it when a judge writes an opinion with humor, but Bradshaw is an example where the judge's attempt at humor came off merely as petulance.

A better example, in which the judge also berated the litigant but pulled it off, is *Brunwasser v. Trans World Airlines, Inc.*, 518 F.Supp. 1321 (W.D.Pa. 1981). Or, there are great opinion writers, like Judge Brown of the 5th Circuit (See, e.g., *City of Houston v. F. A. A.*, 679 F.2d 1184 (5th Cir. 1982), or Judge Burns of Oregon, who injected wonderful humor into their writing without the kind of nastiness seen in Bradshaw. See, e.g, *U.S. v. McDonald*, 740 F.Supp. 757, fns. 15-17 (D.Alaska 1990).

—Jonathan M. Hoffman

Ruling well grounded

If in fact both attorneys drafted their pleadings in crayon on the back sides of gravy-stained paper place mats it sounds like a conspiracy to me, and the judge responded, tongue in cheek, under the common law equal dignity doctrine. The ultimate ruling appeared to be well grounded, however, notwithstanding the judge's somewhat colorful remarks outside the lines of traditional legal analysis.

— James E. Douglas

Correction:Former Supreme Court Justice Harry Arend's name was misspelled in the photo caption with Jay Rabinowitz in the July-August issue.

VCLE Reporting Year Ends December 31, 2001

The second VCLE Reporting Period is January 1, 2001 – December 31, 2001. You must complete CLE activities by December 31, 2001.

Recommended Minimums

12 hours of approved CLE credit including 1 hour of ethics.

Deadline for Reporting is February 1, 2002.

Submit your VCLE Reporting Form with your Bar Dues Payment.

VCLE Reporting Form

1. You can download a copy of the VCLE Reporting Form for 2001 on our website www.alaskabar.org. Click on "CLE and Convention," then click on "VCLE Reporting Form."

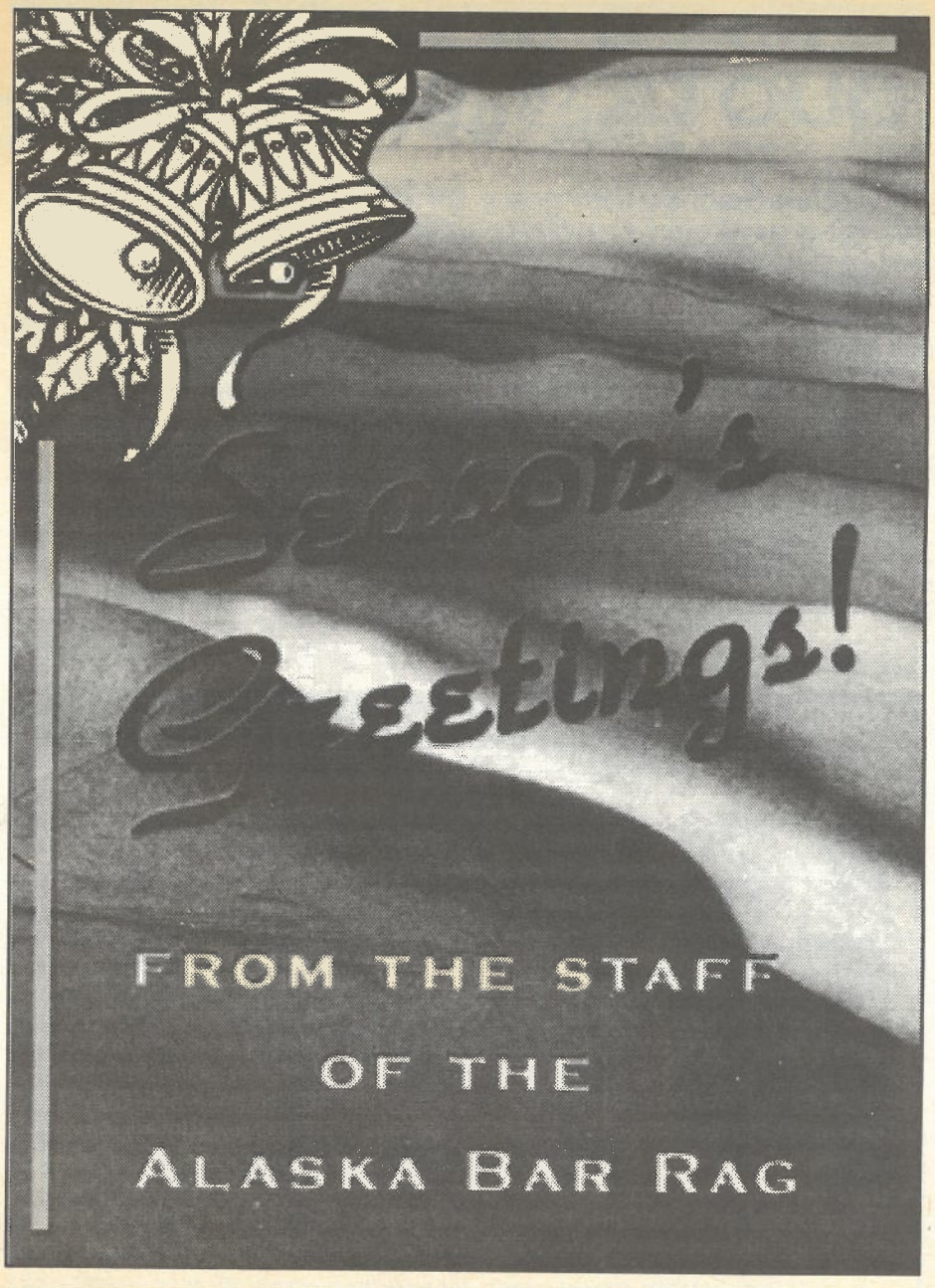
2. You will also be receiving a VCLE Reporting Form with your Bar Dues Statement in late November. Watch for it in the mail.

Return the VCLE Reporting Form with your Bar Dues Statement and Dues Payment to qualify for the Bar Dues Discount of $45 and to be included on a published list of attorneys who have voluntarily complied with the VCLE Rule.

CLE Credit History Lookup

To check on your banked VCLE credits from 2000 and to see a list of Alaska Bar CLEs you have attended, go to our website www.alaskabar.org, click on "CLE and Convention," then click "CLE Credit History Lookup."

Questions?
E-mail us at info@alaskabar.org
or call us at 907-272-7469.



Support Bar Rag advertisers!

The IOLTA Texas litigation: A primer

• The American Bar Association, the National Association of IOLTA Programs and Alaska Bar Foundation are convinced of the legality of Interest on Lawyers Trust Accounts (IOLTA), and of the sound public policy that has encouraged its growth.

• Under IOLTA no one loses anything. Lawyers often receive and hold money from or on behalf of their clients, for such things as court filing fees, real estate closings, settlements and retainers. Only nominal sums or funds held for a short period of time go into IOLTA accounts. If a client's deposit is large enough or is expected to be held for a long enough time to earn net interest for the client, the funds may not be placed in an IOLTA account.

• The interest generated from IOLTA accounts is paid to an IOLTA program which issues grants for the provision of civil legal aid to the poor, the administration of justice and law-related education, all of which are vital to our democratic system's guarantee of equal access to justice for all.

• Prior to the 1980s, nominal or short-term client funds were held in non-interest bearing checking accounts. Lawyers routinely pooled these funds in one account because it would have been prohibitively expensive to open and maintain a separate account for each client. Interest that could have been gained on these accounts did not benefit either the client or the lawyer. The only parties that benefited were the banks, which used the accounts for free.

• Under IOLTA, these same nominal or short-term funds are still pooled into one account. The only difference is that, with changes in the banking laws and the explicit permission of federal regulators, banks may remit interest on these pooled accounts to a non-profit organization: the IOLTA program.

• Although courts had dismissed previous constitutional challenges to IOLTA, on September 12, 1996, the Fifth Circuit Court of Appeals ruled that clients have a property interest in the funds generated from IOLTA accounts. This ruling applied only to the Texas IOLTA program. In April 1997, the Texas IOLTA program and the Texas Supreme Court filed a petition before the United States Supreme Court seeking to overturn the Fifth Circuit's decision.

• On June 15, 1998, the U.S. Supreme Court ruled in a 5-4 decision that, under Texas law, interest earned on client funds held in an IOLTA account is client property. The Court, however, expressed no view as to whether Texas took client property, or whether any just compensation is due. The Court remanded the case to the Fifth Circuit Court of Appeals to consider the taking and just compensation questions. The Fifth Circuit Court of Appeals remanded the case to the U.S. District Court of the Western District of Texas, Austin Division.

• Following a two-day bench trial held in September 1999, U.S. District Judge John Nowlin issued an opinion on January 28, 2000, dismissing with prejudice all claims against the Texas IOLTA program. Judge Nowlin ruled that there was neither a taking of property nor any just compensation due and therefore, no violation of the Fifth Amendment. Judge Nowlin also held that the Texas IOLTA program did not violate plaintiffs' First Amendment rights.

• The case was appealed to the Fifth Circuit Court of Appeals, which held oral arguments on February 6, 2001. On October 15, 2001, a three-judge panel of the Court held that the Texas IOLTA program violates the Fifth Amendment and reversed and remanded the case to the district court for the entry of prospective declaratory and injunctive relief. One judge dissented, pointing out that the plaintiffs failed to prove that any just compensation is due.

• The Texas IOLTA program continues to operate and has filed a petition for rehearing en banc of the October 15th decision. We believe that the program will ultimately prevail and that the constitutionality of IOLTA will be upheld.

• IOLTA programs were created by state supreme courts and legislatures only after careful consideration of the very issues litigated in the Fifth Circuit. IOLTA has succeeded because courts and legislatures carefully crafted programs that we believe comply with the law.

• IOLTA deposits generated nearly $149 million nationally and $6.4 million in Texas during 2000 to provide legal services for the poor there. Without these funds in Texas, legal aid to the poor will be jeopardized.

• There are persons everywhere in this country with desperate legal needs. IOLTA helps fill an ever-growing need without taxing the public and at no cost to lawyers or their clients.

• IOLTA has been a vital element in the ongoing efforts of the organized bar to meet the legal needs of the poor. There are, of course, other facets of the effort, which will continue in Washington and across the nation. American lawyers will not abandon America's poor.

• We will continue to develop new and creative approaches to finance legal assistance for the poor, even as we continue to urge increased funding for the Legal Services Corporation and to advocate on behalf of our view that IOLTA is constitutional and correct.

Texas IOLTA FAQ's

Q. Did the Fifth Circuit hold that the Texas IOLTA program is unconstitutional?

A. Yes.

A divided three-judge panel of the Court decided that under Texas law, the Texas IOLTA program as currently structured violates the Fifth Amendment. It reversed and remanded the case to the district court for the entry of prospective declaratory and injunctive relief. The Texas IOLTA program has filed a petition for rehearing en banc of the three-judge panel decision.

Q. Is the Texas IOLTA program continuing to operate?

A. Yes.

At the current time, no order to enjoin the Texas program from operating has been entered, and the filing of the en banc petition would stay any such order had it been entered. As a result, the program continues to operate.

Q. Does this opinion currently affect other state IOLTA programs?

A. No.

At this point, the Court's decision does not affect other IOLTA programs. The Court ruled specifically on the program operating in Texas.

Q. Should lawyers continue to participate in IOLTA programs?

A. Yes.

The IOLTA rules that exist in every state remain in effect. It is also important to remember that lawyers' compliance with these rules and their continued participation in the program help to provide equal access to justice, as the monies generated from IOLTA accounts fund programs that provide direct legal services to the poor, pro bono legal services, improvements in the administration of justice and law related education.

— Texas backgrounders by the American Bar Association and National Association of IOLTA Programs.

QUOTE OF THE MONTH

History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure. The World War II relocation camp cases, and the Red scare and McCarthy-era internal subversion cases are only the most extreme reminders that when we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to regret it.

— Justice Thurgood Marshall

Writer's Guidelines

- Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- Format: Electronic files should be in text, Word, or Word Perfect format. Please use single spaces between sentences.
- Fax: 14-point type preferred, followed by hard copy or disk.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.

Build Your Practice

Avoiding the "New Lawyer" syndrome

By Mary Ann R. Baker-Randall

Congratulations.

You've passed the bar, gotten a job, and have your first client. Maybe you're even a little further down the road and it's six months into your first job, but you still don't "feel" like a lawyer. You feel more like you're play-acting.

Being a lawyer is playing a role. You are both an advisor, a litigator or negotiator. All clients have problems they turn to an attorney to solve, whether it's Uncle Joe who had a minor fender-bender or a large corporation accused of sexual harassment. Law school probably prepared you to do the legal research necessary to develop the case. If you're lucky, law school may even have taught you basics in drafting pleadings, or perhaps you can turn to a more experienced attorney in your firm. What law school probably did not teach you is how to behave like a professional, competent lawyer, and that's something only experience can teach.

In the meantime, the following are some suggestions on lawyer behavior that may help you conceal the fact that you are a "new" lawyer:

Don't believe everything your client tells you is the gospel truth; conversely, don't treat the opposing party like a pathological liar. Rarely will both sides know all the facts, and, even if they do, rarely will they agree on those facts.

Don't come on like gang-busters from the word go. Trying to bully opposing counsel only makes you look like an elementary school yard punk with the other attorneys, judges, and professionals involved in the case, which will do little to build a reputation for competence.

Help your client to maintain a perspective on the "bigger picture". Sometimes it's easier for clients to focus on the details of litigation or negotiating a deal than to see the future ramifications of what takes place now. Hopefully, your involvement with the case will be of relatively short duration, so the client needs to develop the skills to function without a lawyer joined at the hip.

Always behave courteously and professionally. This is easier said than done, but making the dispute personal between the lawyers invariably backfires on clients and winds up costing them more. It also is the fastest way to create a bad reputation for yourself as being the lawyer nobody wants to deal with. Also, realize that many experienced lawyers maintain a "short list" of cases they simply won't take if certain obnoxious attorneys represent the other side. You do not want to make such short lists.

Remember that participating in the legal system costs clients in three ways: money out of pocket, precious time, and high-stakes emotions. When evaluating various legal options, keep in mind the multiple aspects of costs. You, as the "power litigator," may think filing multiple motions or conducting endless depositions is the correct tactical approach to wear down the other side, but delay in ultimate resolution and repeated face-offs with the other side can be extremely difficult for the client. Sometimes your own client may "blink" first and pull the plug on the case without achieving any meaningful result. This contributes to the public's perception that only the lawyers "win" in the legal system.

Act honorably at all times. If you give your word, then keep it. This means if you say you're going to call or send a document by a certain date, then do so. You will find a group of lawyers in your community whom nobody trusts, the type who require you to follow up every conversation with documentation. Engaging in the "paper wars" with opposing counsel is no fun for anyone.

Learn to say "I don't know, but I will find out." Nobody expects a new lawyer (or even an experienced one) to know all the nuances of a substantive area of law or the procedural quirks of a particular judge. Trying to bluff your way out of a situation just makes you look silly and could constitute malpractice.

Be kind to the judges' secretaries and court clerks regularly and consistently. Get to know them by name and ask them how their day is going. These people are the true gatekeepers to getting anything done. If the published rules of civil procedure or local rules tell you to do something a certain way, but the clerk tells you do it a different way - obey the clerk! Don't start arguing the Rules of Civil Procedure with him or her because you will lose every time. Ditto the judges' secretaries.

Do not curse the gods if different judges in the same district interpret the same laws differently. Many new lawyers get extremely frustrated when they prepare a case a certain way based on experience with one judge, only to have the current judge take a seemingly opposite approach. The new lawyer feels like a fool in front of the client, and the client loses faith in the lawyer. Reported case law is only the very tip of the iceberg. Call a more experienced lawyer and ask, "Have you dealt with such-and-such issue in Judge Smith's courtroom? How does she typically view such situations?" Believe me, a new lawyer will look much more competent going into the courtroom prepared with "unreported" information than trying to convince the judge she's wrong or "unfair" or not ruling like Judge X.

Last, but not least, remember that you earned a Juris Doctor degree, not a magician's wand. As the lawyer, you cannot change people's behavior and attitude, you can only try to guide them through the artificial constraints of the American legal system. Justice is a broad, amorphous concept, and our legal system is not perfect. Judges cannot fix every problem to every person's satisfaction, nor can you. As the lawyer, remember that the problem probably existed well before the client called you, so don't take personal responsibility for fixing other people's messes. All you can do is try to help them find a reasonable resolution and don't exacerbate the problem by bad lawyering. These tidbits are based on more than a decade of practicing law in more than one state and in various arenas. As a new lawyer, you are going to make substantive and procedural mistakes, which is unavoidable due to inexperience. What you can prevent, however, is bad behavior known as "new" lawyer syndrome, which diminishes your credibility with clients and fellow professionals. A bad reputation, once created, is extremely difficult, if not impossible, to overcome.

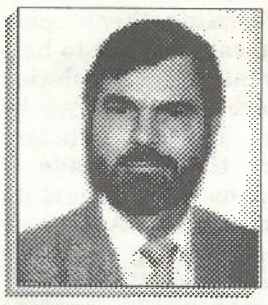
Mary Ann R. Baker-Randall, practices in Albuquerque, New Mexico and is chair of ABA GP, Solo & Small Firm Section's Family Law Group Chair .

Reprinted with permission from West Group, http: / / www.westgroup.com / aboutus / newsletters / beyondthebar / default.asp

BANKRUPTCY BRIEFS

ECF/CM rules

☐ Thomas Yerbich



Effective October 1, 2001, the Electronic Case Filing/Case Management System for Bankruptcy Court went "on line." Concurrently, numerous local rule amendments became effective. The rules, as amended, may be accessed on line either through the Bankruptcy Court website *http://www.akb.uscourts.gov* or in Adobe Acrobat ("pdf") on the Touch `n Go Legal Resource Center website *http://www.touchngo.com/lglcntr/bnkrptcy/bnkrptcy.htm*. The rules amendments affect conventional ("paper") filing as well as for electronic case filing. This article highlights the amendments that impact conventional filing. [Many of the changes are required to conform to the computer program used in the ECF/CM system.]

For those who desire to use the electronic case filing system, each must complete a training program and be certified by the clerk's office before being authorized to file documents electronically. For that reason, this article will omit coverage of the details of ECF. This article is designed to alert the practitioner who does not expect to become an ECF filer to those changes that impact him or her.

There are several changes in the *format and filing of pleadings.*

1. Pleadings should be on plain bond and, whether filed conventionally or electronically, the margins are to be set at 1 inch on all sides. The use of pleading paper is still permitted; however, the right hand margin must be set at 1", not the ½" currently used.

2. If filed conventionally, only the original of any pleadings need be filed, including the plan and disclosure statement in chapter 11 cases and monthly operating reports in chapter 11 and business chapter 13 cases, except (the additional copies are to be filed even where the original pleading is filed electronically):

A. If the pleading, including exhibits or attachments, is more than 25 pages in length, a chambers copy is to be filed concurrently.

B. The Schedules (Official Form 6) and Statement of Financial Affairs (Official Form 7) and all amendments thereto must be accompanied by:

• One copy in chapter 7, 12 and 13 cases

• Two copies in chapter 11 cases

• Three copies in chapter 9 and railroad chapter 11 cases.

3. Matrices.

• Normal type (not all caps)

• Each entry not more than 5 lines and each line not more than 40 characters (including spaces)

• Double-spaced between entries

• Flush left with a 1" left margin

• Names of individuals to be last name, first name, middle initial

• City, state (two-letter abbreviation) and zip code (preferably zip + 4 with a hyphen before the last 4 digits) must be on the last line

• Non-proportional 10 point or 10 pitch type

• Do not use punctuation (periods or commas)

• The matrix should be accompanied by copy on a disk in ASCII format.

4. Petitions and schedules to be filed as separate documents

• Petition with matrix (in original form) attached

• List of 20 largest unsecured creditors (chapter 11 cases)

• Chapter 13 Plan (chapter 13 cases)

• Schedules A – J (Form 6)

• Statement of Financial Affairs (Form 7)

• Disclosure of Compensation

5. All amended or amendments to schedules (Form 6) are to include a summary.

6. When lengthy exhibits are attached to pleadings, it is only necessary to include those pages that are to be referred to by the party submitting the pleading. If any other party believes additional pages are required, the other party may attach those pages to his or her pleading. [This rule change is intended to reduce the size of pleadings and eliminate the necessity for attaching a 25-page document when only 3 or 4 pages are necessary for determination of the matter submitted to the court for decision.] If a petition is filed conventionally, case numbers are no longer assigned by the clerk when the petition is filed conventionally. The case number is assigned electronically when the petition is scanned into the Case Management System. Therefore, case numbers will not be available until one to two business days after the case is filed. It should be noted however, that the date and time of filing remains the same as before: when the petition is filed with the court. [The case number and verification of the filing can be accessed through the electronic case management system on the court website as soon as the petition has been scanned into the system.] Accordingly, for those debtors' counsel who customarily give courtesy notice of a filing to other parties, *e.g.*, an eleventh-hour filing before a foreclosure sale, levy, or judgment debtor's examination, will be able to give the date and time of the filing but not the case number. Counsel who represent creditors should be aware that, although the case number may not yet be available, the automatic stay has nonetheless gone into effect and proceed accordingly.

Another major change relates to review of court files. With the advent of electronic filing and case management, traditional "paper" files are no longer to be maintained and review of the court files will be accomplished electronically. For those who have PACER accounts, the court files may be accessed through the Electronic Case Files on the court website in a manner similar to RACER on a "24/7" basis (except, of course, if the system is down for maintenance or the cybergods/cybergremlins have not received their desired quota of sacrificial virgins and decide to disrupt the system). [Use of this service will result in a charge against the PACER account at the rate of $0.07 per page whether viewed or viewed and printed.] For others, files may be reviewed at the Clerk's office during normal working hours using the computers provided for that purpose. Copies may be printed for $0.10/page.

Attorney Discipline

PRIVATE ADMONITION ISSUED TO ANCHORAGE LAWYER

Bar counsel issued a written private admonition to an Anchorage lawyer who engaged in unauthorized practice of law.

In 1997, lawyer X, who had practiced for 14 years in another state, relocated to Anchorage. A local firm employed him and he took the Bar. Prior to learning whether he had passed the Bar, the lawyer attended a domestic violence hearing to provide moral support to a family member who brought the DV charge against a close relative.

During the hearing, the young family member asked Lawyer X to cross-examine the defendant relative. Lawyer X entered his appearance on record by telling the court and opposing counsel his name and the firm where he worked. He did not inform the court that his admission to the Bar was pending. At the conclusion of the hearing, the court found that the violence charged in the petition had occurred.

The DV defendant brought the Bar complaint against Lawyer X in 2001, prior to the expiration of the statute of limitations under Bar Rule 18. Circumstances leading to the misconduct were unique in that they involved Lawyer X's limited representation of a family member who was alleging domestic violence by a close relative. Lawyer X responded to an emotionally charged situation by agreeing to help a family member when he was not yet licensed to practice.

Bar counsel considered that Lawyer X had no record of discipline in the other jurisdiction where Lawyer X had practiced for many years and the several years delay in the filing of the complaint. Bar counsel concluded that the private admonition was appropriate for the Rule 5.5(a) violation because the facts suggested there is no need for public discipline to protect the public from similar misconduct by Lawyer X.

ATTORNEY X ADMONISHED FOR UNAUTHORIZED INTERVIEW OF VICTIM

Attorney X received a written private admonition after privately interviewing the victim of a sexual assault, then telling the court that he had complied with the Victims' Rights Act. The lawyer's client was a juvenile and the case, though started as a criminal prosecution, was converted to a delinquency matter. The lawyer took a statement from the victim, a minor, when he ran into her at a social function, but he did not get the consent of her guardian first, which the statute requires. The court referred the matter to the Bar Association which, because of a possible conflict of interest, assigned the case to outside Special Bar Counsel. Special Bar Counsel rejected Attorney X's explanation that because the case had been converted from a criminal prosecution to a delinquency matter, his client was no longer a "defendant" covered by the statute. Special Bar Counsel concurred that the lawyer's statement to the court that he had complied with the statute was false. Special Bar Counsel found mitigating factors, and the court believed that private discipline was adequate. An Area Division Member reviewed the file and approved the imposition of a written private admonition, which Attorney X accepted.

Editor's Note: To preserve confidentiality, personal pronouns may be changed in these summaries.

Standing together ☐ Dan Branch

Standing and singing Amazing Grace, our congregation holds thin white tapers. Each taper was lit with shared flames of the altar candles. We leave the church, tapers burning, and head into the damp night.

I nurse the flame, hoping to bring it home, a symbol of peace and God's love. Others do the same, their taper flames flaring and dimming with the wind. We form a crude fan of flickering hope. It becomes a child's game, like jumping sidewalk cracks. If I can get the lit candle home it will bring my family peace. The wind picks up on 6th Street so I take the Seward Street Stairs. There, protected by maple and spruce, the candle flame steadies. I relax, and think of New York and loss.

My candle dies from inattention a block from home. Days earlier, on September 11, 20 angry men changed our world in ways they could not expect. Their efforts to terrorize brought forth a nationwide flood of courage and caring. Giving without thought for self has become surprisingly common. New York has lost it crude edge.

Old enemies of the USA are as attentive as neighbors at a funeral. Their leaders offer to stand with America, not against us. The Democratic leaders of Congress stand with our Republican president. The things that kept them apart are not important now. September 11 made people in New York and the rest of our country realize how small are our differences. It's that way in Alaska too.

When some thugs vandalized an Anchorage print shop because it was owned by an Arab American, the town pulled together behind the businessman. The mayor announced that such senseless violence would not be tolerated in Alaska's largest town. I pray that this consideration for others, born in reaction to hate-born violence, will carry us past our other differences. We no longer have the luxury of maintaining a rural—urban divide. It's time to stand together as Alaskans and Americans.

PERSPECTIVES ON 9-11

View from a small town American lawyer

It's been almost a month since the September 11th WTC and Pentagon terrorist attacks. It's been a month since that awful morning that as a parent I felt helpless that I couldn't reach and protect my 21-year old middle daughter studying in Washington from the evil in the world.[1]

Now I'm sitting on a plane at 39,000 feet flying cross country for the first time since America was attacked going to an ABA conference writing this column.

My wife has refused to accompany me. She feels our three children should not be parentless. I am very apprehensive. For a mid-day flight I have already had three glasses of wine to calm my nerves. I never drink during the day and if I have one glass of wine a week while out socially, it is a lot. I think the man behind me is a plain-clothes sky marshal. He checked in with the flight attendants when he came aboard and then took his seat. They didn't count him as a passenger when they took the passenger count before takeoff. Maybe he is just an airline employee, but the thought that he is not, gives me comfort.

While flights have been cancelled, I am surprised the flights from middle America are full. All flights this morning from the airport on our main carrier have standbys. Random checks of checked luggage were being performed. My laptop was scanned separately from my carry-on through security. The lines were long. I was lucky I am a frequent flyer and had upgraded. I had a separate line bypassing most of the two-hour wait.

We are subjecting ourselves to searches and the potential of loss of freedoms that two months ago would have been repugnant. Some may say the terrorists won. They were successful in altering our society. We now for our own safety agree to luggage searches by airport personnel. We agree that our criminal search and seizure laws should be changed to accommodate our fears. The nation's airport in Washington is going to reopen, but on only a limited basis.

President Bush has praised our society for our resilience to the attack. I question, though, whether our freedoms will ever be the same. We felt that terrorist attacks were a foreign dilemma. America was somehow immune. Now today we have already had occasion to close our borders and ground all planes—all for an unseen enemy that struck silently and without warning. Who would have ever thought this could occur a short time ago?

I am politically, fiscally and morally conservative, but at the same time I have what people have termed an "ACLU-bent" when it comes to First Amendment freedoms. America is great because of its First Amendment freedoms and diversity of ideas and beliefs. That is what troubles me today. I see the need for safety, but I resent that these very freedoms are being eroded. I am deeply troubled that people of Middle Eastern ancestry are being harassed or worse in the name of patriotism. Did we not learn anything from World War II and the detention of our citizens of Japanese ancestry?

Do I have any solutions? No. I just have questions. I just have worries. I just have my fears. I think it is important, however, that these worries and fears are expressed. Otherwise we lose the obligation each American citizen has of questioning their government in order to protect the freedoms that we have. Yes, it is an obligation. Not just a right.

In these times, while we have to be united, we have the obligation to ensure we do not do anything that permanently changes the America fabric of life that we cherish. As lawyers we must be diligent to our special role in American society.

Join me in being a guardian of America's freedom in America's new future.

William G. Schwab, GP Link Editor, A Small Town Lawyer from Rural Pennsylvania

The rule of law: our strongest weapon

By Robert E. Hirshon,
President, American Bar Association

As Americans move forward from the shocking events of September 11, we must develop actions that permit prompt and effective investigation and prosecution of those responsible for these heinous acts. Additionally, we must prepare ourselves for the possibility of war against those rogue nations that have aided and abetted the terrorists. But despite the special measures we will need to take to battle terrorism, we must remember that our strongest weapon against anarchy and human destruction continues to be the rule of law.

The terrorists who attacked our county would like nothing better than to destroy the fabric of our democracy. We cannot allow them do that; we must keep our passions in check and remain firm against ethnic or religious scapegoating. The terrorists also seek to affect our daily lives by putting us in a state of fear so that we cannot conduct business as usual. We must fight these fears by maintaining control of our lives and by finding a new comfort zone of living.

We know that some things will not be as they were before the terrorists struck. Our leaders already have united to address such complex issues as electronic surveillance, wiretapping, computer encryption and immigration procedures. As a country, we need to be ready for inconveniences, restrictions and the possible loss of some liberties. We must make sacrifices to find and combat the zealots who respect neither law nor religion.

As Americans we share a common burden, a responsibility created by our citizenship. It is one for which lawyers are particularly prepared, and which we are ready to embrace.

To help this effort I have created the American Bar Association Task Force on Terrorism and the Law. The task force draws on a range of experts: a former general counsel of the Central Intelligence Agency and the National Security Agency; a retired brigadier general from the United States Army; and experts in the law of business, immigration, civil liberties, aviation, international affairs, technology, crime and civil liability. The task force already is analyzing congressional and Administration proposals, and is prepared to help find an appropriate balance between national security and individual liberty. The task force's work will form a thoughtful basis for recommendations to federal leaders on these critical matters.

We in the American Bar Association are confident that our nation can achieve this delicate balance, and preserve the principles that have allowed our country to thrive for more than 200 years. We stand ready to assist our leaders in efforts to eradicate terrorism and preserve the rule of law throughout the world.

International law standards explained for Afghan War

Professor Mary Ellen O'Connell (Ohio State University) spoke on October 26 to the international law section of the Alaska Bar. Professor O'Connell, who is an expert in the field of the law of armed conflict, described the international law standards concerning the Afghan War.

Her comments were very insightful and helped us understand whether American actions are lawful.

Under international law, America should not automatically use force against the Afghan regime since the terrorists are not members of the government. The terrorists against whom we are defending are less than a sovereign government-they are neither insurgents nor belligerents. Under the law of armed conflict, we must justify our use of force against the country of Afghanistan.

According to Professor O'Connell, we may use force against Afghanistan if it exercised effective control over the terrorists. The standard of effective control is rooted in the 1986 decision by the International Court of Justice when it rejected Nicaraguan claims that the United States were responsible for actions by the Contras.

Further, for American force to be valid, our armed response must be proportional, necessary and discriminatory. We may only use that amount of force which is necessary to prevent against future attacks. Professor O'Connell felt that based upon the limited facts that have been made public, we are justified in our use of force.

Professor O'Connell also raised the interesting point of what would be the best forum to try the terrorists were they to be captured. They may of course be tried in American Courts. However, the best course would be to make the trial as impartial as possible. The United Nations may form an ad hoc crimes tribunal as it has with Rwanda. But, in the long run, the prosecution of terrorists really illustrates the need for America to reverse its position and support the International Criminal Court.

Andrew Haas is Chair of the Bar's International Law Section

ESTATE PLANNING CORNER

Will Congress abolish basis step-up?

☐ Steven T. O'Hara

Under current law, when a property owner dies the person then entitled to the property generally may sell the property free of any income tax. This general rule has long been subject to numerous exceptions. The exception may become the rule under the tax act recently passed by the U.S. government (known as the Economic Growth and Tax Relief Reconciliation Act of 2001).

Recall that the concept of "basis" is used in determining gain or loss from the sale or other disposition of property (IRC Sec. 1001 & 1011). If a client purchases stock for $1,000,000, for example, her basis in the stock is $1,000,000 (IRC Sec. 1012). If she then sells the stock for $3,000,000, her taxable gain is $2,000,000, which is the consideration received in excess of basis.

As a general rule under current law, when a property owner dies the person entitled to the property obtains a basis in the property that is "stepped-up" to the fair market value of the property (IRC Sec. 1014). Using our above example, if our client dies when the fair market value of her stock is $3,000,000, her estate or beneficiary will obtain under current law a fully stepped-up basis of $3,000,000 in the stock. Her estate or beneficiary could then sell the stock for as much as $3,000,000 at absolutely no income-tax cost.

The 2001 tax act provides that the current step-up-in-basis rule will not apply after December 31, 2009 (IRC Sec. 1014(f)). The Act provides that beginning in 2010, the carryover-basis rule that applies for gifts made during lifetime will apply to transfers at death (IRC Sec. 1022(a)(1)). (Recall that when a lifetime gift is made, the donee takes, in general, a carryover basis in the gifted property (IRC Sec. 1015).)

Suppose our client dies when the carryover-basis rule is in effect. Suppose the fair market value of our client's stock is $3,000,000 at the time of her death. Here her estate or beneficiary would appear to obtain a carryover basis of $1,000,000 in the stock (not a stepped-up basis of $3,000,000 as under current law).

The 2001 tax act provides, however, some tax-basis increases for certain transfers at death after December 31, 2009. These tax-basis increases are to be allocated among property by election by the decedent's personal representative (IRC Sec. 1022(d)(3)).

For individuals dying after 2009, $1,300,000 of basis increase may generally be allocated among the decedent's property (IRC Sec. 1022(b)(2)(B)). Additional basis increase may be available in an amount equal to certain tax losses that were, or could have been, realized by the decedent (IRC Sec. 1022(b)(2)(C)). For married individuals dying after 2009, an additional $3,000,000 of basis increase may generally be allocated among the decedent's property that passes to the surviving spouse (IRC Sec. 1022(c)).

Continuing our above example, suppose again that our client dies when the carryover-basis rule is in effect. Suppose at the time of her death she was unmarried and her only asset was her stock with a basis of $1,000,000 but a fair market value of $3,000,000. Suppose she had no tax losses. Under the 2001 tax act, the personal representative of the decedent's estate may elect to increase basis from $1,000,000 to $2,300,000 (i.e., $1,000,000 carryover-basis plus $1,300,000 basis-increase election). If the stock is then sold for $3,000,000, the taxable gain would be $700,000, which is the consideration received in excess of basis.

ALL THINGS BEING EQUAL, CLIENTS WILL WANT TO STRUCTURE ASSET OWNERSHIP SO THAT SUFFICIENT PROPERTY IS OWNED BY PERSONS WHO CAN MAXIMIZE ANY BASIS-INCREASE OPPORTUNITIES.

No one knows whether the carryover-basis system that appears in the 2001 tax act will be the system that goes into effect in 2010. This writer and others believe that the federal government will either continue stepped-up basis at death or adopt another variety of carryover-basis.

Nevertheless, the 2001 tax act is a reminder that clients need to retain all records that support their tax basis. These records include not only documentation on original costs, but also documentation on the costs of subsequent improvements to real estate, as an example. Records will also be needed to establish basis for any property that clients acquire by gift or inheritance. If adequate records are not maintained, then clients could be giving up the opportunity to maximize any basis increase that may be available in the future.

The 2001 tax act is also a reminder that clients need to review their asset ownership. All things being equal, clients will want to structure asset ownership so that sufficient property is owned by persons who can maximize any basis-increase opportunities.

The Alaska Network on Domestic Violence and Sexual Assault Pro Bono Program would like to thank the following individuals and law firms who accepted cases or otherwise volunteered their time in the past year:

Gayle Brown
Thom Janidlo
Tom Yerbich
Peter LeBlanc
Amy Gurton
Gail Ballou
Allen Bailey
Greg Razo
Daniel Lord
Marcia Rom
Laura Eakes-Kertz
Stacie Kraly
Kristen Bomengen
David Edgren
Russell Nogg
M. Jane Pettigrew
Robin Bronen
Elizabeth Still
Bhree Roumagoux
Allinghan & Edgren, PLLC
Sterling & DeArmond, PC
Patton Boggs, LLP
Niewohner & Associates, PC
Michael Gershel
Dani Crosby
Sandra Wicks
Nancy Driscoll
Ann Richardson
Jim McGowan
Karla Huntington
Linda O'Bannon
Molly Mulvaney
Denton Pearson
Audrey Renschen
Shannon O'Fallon
Darryl Thompson
Keith Levy
Mike Spaan
Larry Reger
Carol Giannini
Pamela Montgomery
Cole & Razo, LLC
Ashburn & Mason
Pearson & Hanson
Richmond & Quinn
Cook Schuhmann & Groseclose, INC

Thank you for helping victims of domestic violence and sexual assault!

Students encouraged to submit photos for Law Day 2002

Know a young person interested in Law Day? The American Bar Association is looking for original student photos, and awarding prizes to the top 3 it receives.

The Sixth Annual Images of Freedom National Student Photography Contest, sponsored by the American Bar's Division for Public Education, invites students across the country to submit their original photographs depicting the theme for Law Day 2002: "Celebrate Your Freedom - Assuring Equal Justice for All."

The competition gives students the opportunity to create powerful images that express how they view freedom and the laws that protect them and their communities every day. The contest is open to students ages 12-18 who are citizens or residents of the United States and have not yet graduated from high school. Entries are being accepted now, and must be postmarked no later than Feb. 15.

This year's theme focuses on America's efforts to make equal justice a reality for all citizens; highlights efforts to make legal services affordable and widely available; addresses how changing American demographics might affect the understanding of equal justice; and includes considerations of what equal justice means in diverse settings, such as schools or the health-care system.

Prizes will be awarded to the top three entries, including a $1,000 U.S. savings bond and an expense-paid trip to Washington, D.C., for the first-place finisher. Winning photographs will be displayed at library and museum venues nationwide and on the ABA Division for Public Education's Web site. For more information, contact the ABA Division for Public Education at 312/988-5735, or visit the division's Images of Freedom Web site at http://www.abanet.org/publiced/imagescontest.

Established by President Dwight D. Eisenhower in 1958, Law Day celebrates the American heritage of liberty, justice and equality under the law. It provides an opportunity to help students and the public understand how the law protects their freedoms. More than just a day to reflect on this nation's legal heritage, Law Day is a call to action that often encompasses weeks of programs and activities conducted by schools, bar associations, courts and civic groups.

One of the goals of the ABA Division for Public Education is to make the law more understandable to the public. The division conducts conferences; sponsors youth programs; publishes periodicals, books, and other resources; sponsors national awards programs; serves as a national information clearinghouse; and provides assistance to educators, lawyers and others.

LexisNexis to acquire CourtLink Corp. web service

LexisNexis, a provider of comprehensive, authoritative, business, news and legal information solutions, and CourtLink Corp., a provider of Web-based services for electronically filing legal documents and accessing and monitoring court records, jointly announced in October that they have finalized the terms of a definitive agreement in which LexisNexis will acquire CourtLink.

The transaction is subject to, among other things, approval by CourtLink shareholders.

LexisNexis has built a strong reputation as the indispensable knowledge partner to legal professionals, providing information solutions and services ranging from research products to integrated practice management and portal technology, to electronic filing and court record access.

"We firmly believe the online services and emerging markets CourtLink has pioneered will bring tremendous value to the legal profession at large," said Lou Andreozzi, president and chief executive officer, North American Legal Markets, LexisNexis.

"CourtLink is pleased to join the LexisNexis team," said Henry Givray, chairman, president and chief executive officer of CourtLink. "LexisNexis brings in-depth industry knowledge, strong respected relationships within the legal community and valuable resources that will increase our court reach as well as enhance our service offerings for both online court record access and electronic filing."

"The synergies between LexisNexis and CourtLink are strong and will benefit the customers of both companies as well as the legal and business communities," said Ann Fullenkamp, who will become chief operating officer of CourtLink after the acquisition is finalized. "As an innovator, LexisNexis always seeks to join forces with other innovators in the field. We are proud to now have CourtLink join our full suite of best-of-breed services," said Fullenkamp, who as senior vice president of emerging markets at LexisNexis was instrumental in bringing to the two companies together.

CourtLink will continue to operate from its Bellevue, WA headquarters after the acquisition, operating as a separate business unit of LexisNexis. Givray will be a key member of the transition team through March 2002. Givray said that while asked to remain with the company after the transition he has decided to explore other CEO opportunities.

The first to create a single online platform for both electronically accessing records and filing documents with the courts, CourtLink developed the industry's leading electronic filing service, as well as the leading court record access services.

With 90 courts online and over 1 million pages electronically filed and served per month, CourtLink's electronic filing service is enabling legal professionals to electronically file, serve and process legal documents, as well as to maintain electronic case files. In Colorado, CourtLink has also developed and operates the first and only statewide e-filing system.

CourtLink electronic access services enable users to search and retrieve case information from more than 200 million court records in 1,400 federal, state and local court systems through a single online source. Users include law firms, banks, insurance and title companies, screening and investigation agencies and the media.

— Press Release

Anchorage Inn of Court Update

The Anchorage Inn of Court (AIC) met three times this fall. Each meeting has two components — a pupilage presentation with 1 CLE credit followed by dinner with a featured speaker.

The September pupilage team started the year off in lighthearted style with a program of legal and ethical issues presented in a musical comedy. The dinner speaker was Anchorage Mayor George Wuerch, who submitted graciously to a thorough grilling after his speech. In October Judge Sig Murphy sat in as Bar Counsel at the pupilage program for a lively discussion of judicial issues. Kari Bazzy Garber was the dinner speaker, and gave an informative talk on developing Alaskan tribal courts.

The November pupilage presentation departed from the sketch and discussion format with a round table discussion by five active appellate attorneys who aired differing positions on various issues and offered practical pointers for those venturing into the world of appellate practice. Chief Justice Dana Fabe attended the pupilage session with a full cadre of clerks and followed dinner with a speech on the process of appellate review by the Alaska Supreme Court.

The upcoming AIC meetings promise to provide further engaging evenings. The December 17th dinner features a panel discussion by several members of the Alaska legislature who happen to also be attorneys, including Rep. Croft, Rep. Murkowski, Sen. Donley, and former Sen. Joe Josephson. They will be discussing the role of the lawyer as legislator.

Guests are welcome at the AIC monthly meetings. For information on how to become a member or just attend the next meeting, contact Gene DeVeaux at 297-6591.

— Sam Cason

Problems with Chemical Dependency?

Call the Lawyers' Assistance Committee for confidential help

John E. Reese ---------- 269-0101	Valerie M. Therrien --------- 452-6195
Leigh Michelle Hall ------- 913-2281	Nancy Shaw ---------- 243-7771
Brant G. McGee --------- 269-3500	W. Clark Stump ---------- 225-9818
John McConnaughy ---- 343-4250	Ernest M. Schiereth ------ 272-5549
Alicia Porter ---------- 479-2167	Frederick T. Stone --------- 272-4471

Lawcast to publish special edition to benefit victims

Tragedy, Recovery, Preparedness. . . and the Law Primes Attorneys on Preparing For, Recovery From Crisis Situations

Vox Juris, Inc., publisher of LAWCAST®, the world's only legal audio news services, suspended its regular legal news coverage to publish a special edition, Tragedy, Recovery, Preparedness. . . and the Law, released today.

This Special Edition of LAWCAST gives lawyers specific strategies to help their clients deal with the aftermath of the September 11 terrorist attacks and to protect their clients against the risk of tragedies to come.

The Special Report is now available for sale. Vox Juris will donate half the sale proceeds to benefit the victims of the recent national tragedies. Subscribers to the LAWCAST news services will receive the report as part of their subscription.

"The attacks on the World Trade Center and the Pentagon have forced lawyers to change their view of what is 'foreseeable' and to confront, on their client's behalf, the possibility of disasters more horrible than we previously considered imaginable," says Jason B. Meyer, President and Publisher of Vox Juris. "This special report is consistent with the LAWCAST approach to legal news: it gives lawyers the nuts-and-bolts analysis and information they need to be proactive for their clients."

"Tragedy, Recovery, Preparedness. . . and the Law" reports that: *Many businesses nationwide should make business interruption insurance claims, according to David Gauntlett, insurance and intellectual property expert. (Gauntlett also describes the precise policies businesses should now consider buying.)

*Businesses can accept the risk of relying on the stability of the Internet against physical attack, according to Philip Sbarbaro, Verisign's Deputy General Counsel and Chief Litigation Counsel.

*Employees may be entitled, under the Americans with Disability Act, to an accommodation for any newly felt fears of flying, and companies may need to give disabled workers an alternate way to escape when elevators are not working.

*It is the duty of lawyers to stand up for civil liberties in the face of public demands for tougher law enforcement, according to both ABA President Robert E. Hirshon and DRI Immediate Past President Lloyd Milliken.

Other distinguished legal experts commenting in the program include Cynthia Cohen, Electronic Frontier Foundation Legal Director; Wayne Hersh, an attorney from Los Angeles specializing in disaster preparedness; and Chicago employment attorney Kathryn Hartrick.

Mr. Meyer adds that for lawyers the September 11 attack is "doubly distressing" because attorneys have to address their clients' needs while coping with the impact on their own emotions and their own businesses. "This special edition of LAWCAST serves two purposes: it provides lawyers with a wealth of timely, relevant information not provided elsewhere that will enable them to serve their clients better; and proceeds from sales of the special edition will benefit the relief efforts as well." The report, available on audiocassette or CD and accompanied by a printed newsletter which summarizes the audio program, costs $45, plus shipping and handling.

In addition to the Special Report outlined here, LAWCAST also publishes CLE-accepted legal news services, available by subscription, for lawyers in the practices of employment law, intellectual property, computer & Internet, personal injury and corporate law.

LAWCAST is CLE-accepted in 20+ states, including New York, Texas, Florida and for full participatory credit in California. In many states, each hour of LAWCAST listened to is worth approximately 1 CLE credit. LAWCAST offers an exclusive Subscriber Services Hotline at 1-800 LAWCAST for complimentary research assistance. For information about subscribing or ordering this special edition, call 1-800 LAWCAST or visit www.lawcast.com.

*Pamela Tully Axiom Holding Company, LLC. One Harmon Plaza, 6th Floor Secaucus, NJ 07094 201-348-8998 * fax: 201-348-6999 pamt@axiominc.net*

PUBLIC POLICY

Senate Finance Committee tackles Alaska's fiscal gap

☐ Dave Donley

Most Alaskans agree that developing a new long-range fiscal plan is one of the greatest challenges facing our state. The Republican majority's five-year plan, which we completed last year, built an excellent foundation for Alaska's long term financial health, but more progress is needed. The Senate Finance Committee has proposed the essential next steps of a new long-range fiscal plan that ensures continued fiscal discipline.

The basis of government in America is our Constitution. Any successful new financial plan requires that our State Constitution is functioning properly. Two parts are not: the existing constitutional appropriation limit and the existing constitutional budget reserve provision.

The Senate Finance Committee's new fiscal plan will limit the expansion of government spending through the adoption of Senate Joint Resolution 23, which revises the existing constitutional appropriation limit. This provision currently limits state spending to about $6 billion; however the state currently only spends about $3 billion. This enormous appropriation limit occurred because of a built-in escalator clause for inflation and population. To correct this, SJR 23 proposes to base any allowable increases on the previous year's budgets and to limit those increases to only 2 percent.

The constitutional budget reserve language of the Constitution works well as a fiscal shock absorber, but it is not working as intended to control spending. The original intent of the House Republicans who proposed the CBR was that funds could be withdrawn with a simple majority vote to cover a budget deficit as long as current spending did not exceed the previous year's spending. However, a three-quarters vote of the legislature would be necessary to withdraw any funds *in excess* of the previous year's spending.

THE CONSTITUTIONAL BUDGET RESERVE LANGUAGE OF THE CONSTITUTION WORKS WELL AS A FISCAL SHOCK ABSORBER, BUT IT IS NOT WORKING AS INTENDED TO CONTROL SPENDING.

In 1994, the Alaska Supreme Court misinterpreted this provision to require the three-quarters vote to withdraw *any* funds from the CBR. Subsequently, small groups of legislators can "blackmail" the majority and hold the budget hostage. These legislators can trade their votes, which are crucial to withdraw CBR Funds, in exchange for additional spending. We estimate the cost this year to access the CBR with the three-quarters majority vote to balance the budget was nearly $150 million.

SJR 24 corrects this imbalance by proposing a constitutional amendment that makes a three-quarter vote unnecessary when spending does not exceed the previous year's. This would encourage fiscal discipline and make it more difficult to increase state spending.

If these resolutions pass, the amendments will be placed on the next state general election ballot in Fall 2002. Both these proposed constitutional amendments have already passed the Senate and hearings have begun in the House. The Senate Finance Committee's plan also includes seven other fiscal gap reducing proposals, three of which have already passed the Senate.

The past six years of fiscal discipline and budget reform by the Republican-led majority has established a strong fiscal foundation for Alaska. The next step is to build on that foundation by repairing our state constitution to reasonably limit state government growth and to restore the original intent of the CBR.

The author is an Alaska State Senator.

Comments on a Bar Rag article?

Write the editor,
or e-mail us at info@alaskabar.org

Rabinowitz Courthouse Dedication

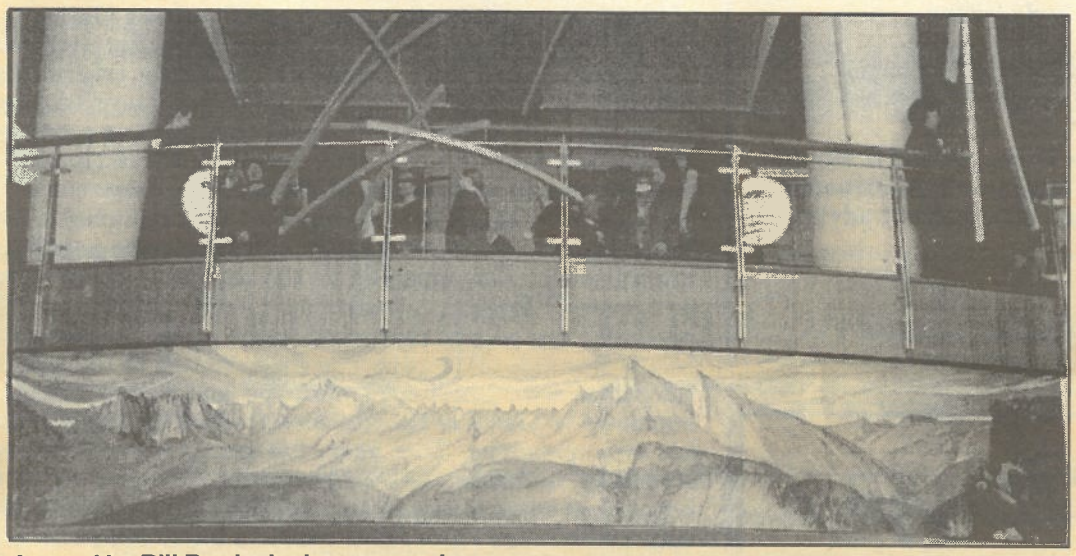
On September 21, 2001, the new Rabinowitz Fairbanks Courthouse was dedicated

Hanging sculpture dominates the entryway fo the new Fairbanks Courthouse.

DEDICATION PROGRAM

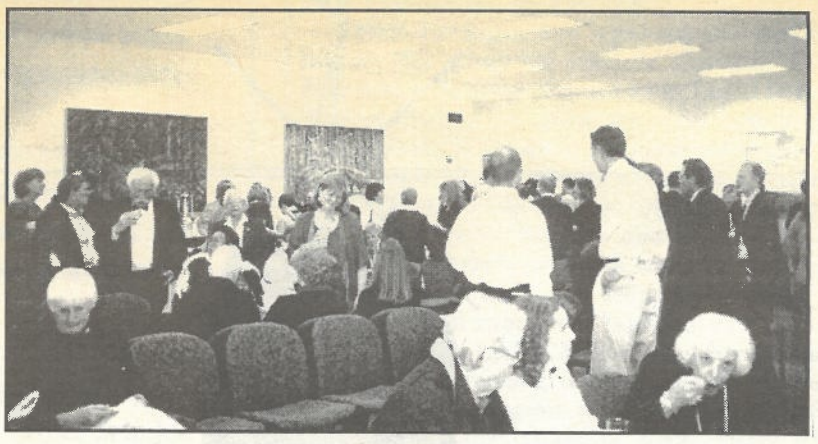
September 21, 2001
Fairbanks

Formal Program conducted in the lobby area,
3:00 p.m.-4:00 p.m.
Reception/Tours 4:00 p.m.-5:00 p.m.
Master of Ceremonies
Honorable Ralph Beistline,
Presiding Judge Fourth Judicial District
Boy Scout Flag Ceremony & Pledge of Allegiance
Midnight Sun Council Boy Scout Troop #1
Welcome & Opening Remarks
Keynote Address
Honorable Dana Fabe,
Chief Justice Alaska Supreme Court
Featured Speakers
Senator Gary Wilken, Governor Tony Knowles,
City of Fairbanks Mayor Jim Hayes &
Fairbanks North Star Borough Mayor Rhonda Boyles
Naming of the Building
Arthur H. Snowden II, Former State Court Administrative Director
Alaska Chamber Chorale
under the direction of Marvella Davis
Alaska Flag Song
Ribbon Cutting
Honorable Dana Fabe and Honorable Ralph Beistline
Alaska Chamber Chorale-Musical Selection
Adjourn to Jury Assembly Room for Refreshments
Preliminary and post-program music
Golden Heart String Quartet
Julie Beistline, Linnea Johansen, Laura Daum, Rachel Warbelow



A mural by Bill Brody depicts mountain scenery.

Probate master Ally Closuit in her new office.



Reception in new Jury Assembly Room.

Photos by Barbara Armstrong

How it came about

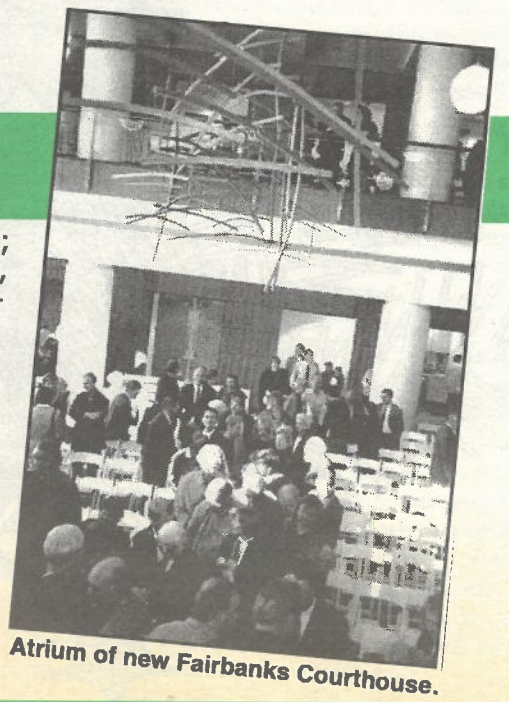
Design Team — CB Bettisworth & Co., Architect; McCool Carlson Green, Court Design; PDC Inc., Structural Engineers; Design Alaska, Civil/Mechanical Engineers; Lake & Boswell, Electrical Engineers; Land Design North, Landscape Architect; Nortech, Environmental Engineers

Site Preparation Contractor — Exclusive Landscaping, Inc.

Project Contractor — Alcan General, Inc.

Rabinowitz Courthouse Facility Advisory Committee — Stephen A. Bouch, Deputy Administrative Director; Stephanie J. Cole, Administrative Director; Kit Duke, Facilities Manager; Sharon Hotrum, succeeded by Shirley Y. Nash, Fairbanks Clerk of Court; Honorable Jane F. Kauvar, District Court Judge; James Little, DOT/PF Maintenance & Operations Director; Sgt. Chuck Lovejoy (Ret.), Judicial Services; Marilyn May, Clerk of the Appellate Court; Honorable Charles R. Pengilly, Superior Court Judge; Honorable Niesje J. Steinkruger, Superior Court Judge; Ronald J. Woods, Area Court Administrator, 4th Judicial District

Alaska Court System Project Management Staff — Charles W. Davis II, Project Manager; John Williams, Construction Administrator; Barbara Tupek, Administrative Assistant.



Atrium of new Fairbanks Courthouse.

Books of Note

Persuasive Computer Presentations: The Essential Guide for Lawyers
By Ann E. Brenden and John D. Goodhue

Persuasive Computer Presentations: The Essential Guide for Lawyers will teach you how to create effective computer presentations to be used during opening statements, direct examination, cross examination, appellate arguments and at trial. You'll also learn how to effectively use computer presentations outside the courtroom for meetings with prospective clients, in-house presentations and marketing, seminars, office meetings, electronic meetings, mediation and presentations before trial.

Included is a CD-ROM disk containing five sample presentations, including those referred to in the book, in all containing over 250 slides. Corel Presentations 9 software is also included on the disk - this is a powerful presentation program allowing the user to quickly create Web-ready slide shows, multimedia presentations and interactive demos.

2001 7 x 10 224 pages w/ CD ROM disk
Product code: 511-0462
http://www.abanet.org/lpm/catalog/511-0462.html

Or, you can order by calling toll-free 1-800-285-2221, and please feel free to call that number if you have any questions.

Price: $69.95 for Law Practice Section members/$79.95 for non-members. Note: after you enter the quantity you wish to purchase and click "add to shopping cart," you will be returned to that original page. To proceed to check-out, click on "view basket," and continue to follow the instructions. If you get an error message, click on "view basket" and your order should be in your shopping cart anyway.

ALSO NEW...

Flying Solo: A Survival Guide for the Solo Lawyer, 3rd edition
Jeffrey R. Simmons, Editor
New, Completely Revised and Updated Third Edition - Now over 800 pages
http://www.abanet.org/lpm/catalog/511-0463.html or call toll-free 1-800-285-2221

This classic ABA book has now been revised and contains 50 chapters of firsthand, practical information from over 40 contributors who are successful solo practitioners, respected consultants, law school professors and law practice management advisors.

Product code: 511-0463
http://www.abanet.org/lpm/catalog/511-0463.html
Price: $79.95 for Law Practice Section members/$89.95 for non-members.

Tips on "how to do law"

The year I graduated law school, my study cube mate, Shane, got the Missoula New Lawyers Association up and running. MNLA served primarily as a way we could network with other new lawyers and ask questions that would make us feel dumb if we asked anybody else. I mean, we all knew we were dumb, but we knew that we were all differently dumb (as in differently abled) and could help each other fill some gaps. However, on one point, we conceded we were globally dumb.

We sat through the same two semesters of Civil Procedure and the same three years of law school. Most of us agreed that, while we knew about the law, we didn't know how to do it. We didn't even know how to file our first "make me famous" lawsuit. That's like knowing the theories of great gardening and the theories of great gardening tools without knowing anything about the toolshed. Where is the shed anyway? We knew where the big white shed was (district and JP courts) and the little brick shed (muni court). But which was the right shed for the garden we had in mind? And if we found the right shed, we still didn't know what tools were inside or how to use them to get the case going.

MNLA board members decided to arrange a tour — the Annual Courthouse Tour. I took the tour again last night, eight years later. We met just inside the front doors a few minutes after 5:00. We trooped into Justice Court again, where Justice of the Peace Karen Orzech talked about her court's jurisdiction, the kinds of cases she handled in justice court, and some key rules of civil procedure in justice courts. As important, we learned some Justice Court survival tips, including her pet peeves and her "do and don't" pointers. One of her most emphatic tips was "be polite to my clerks."

In 1993, we trooped into Courtroom 1, The Big Courtroom, the imposing one with murals on the walls, original light fixtures on the high ceiling, and old barristers bookcases lining the walls, where a court reporter had set up a mini tech show of her tools. At the time, real time transcription was making its way to Missoula District Court courtrooms. The court reporter used the same machine that reporters used in Perry Mason's court but now, in addition to the paper tape, the transcript also appeared on the reporter's laptop screen as a sort-of-English translation of the paper tape. The reporter's laptop was connected to the judge's laptop on the bench. The sort-of-English was close enough to English that the judge could follow the transcript, and he could scroll up and down to places in the testimony where he wanted to ask his own questions. This year, the group was not as awe-struck by technology — we routinely see a laptop at the bench, just as we routinely turn off our cell phones and make sure we have our Palm Pilots ready to input deadlines set at the hearing.

The court reporters then and now also had a "do and don't" list of things we should avoid and things we should do to make our court appearances go more smoothly and to make the reporters' work more accurate. Those tips included making certain we introduced ourselves at the beginning of the appearance (or giving the reporter a business card), and giving the reporter a list of names and uncommon terms so that the reporter spelled them correctly.

We trooped into the Clerk of the District Court office, which is where most of us would file most of our documents. Deputy Clerk Kevin Parks described the structure of the office, that each judge has a filing clerk and a court clerk, and what each clerk's job was. Kevin walked us through the flow chart of filing a document from what the document needed to say on its face and what happen to it once we presented it for filing. We came behind the counter for that portion of his talk so we could see each the theory of filing in action, including the computer entry system and, in the back room, the old red Moroccan leather books clerks used to enter filings as early as 1867. Again, we gained valuable knowledge that we didn't learn in school. As familiar as I am now with the filing process, I learned something new again last night.

Here's the most important thing I learned on that first tour: If you're standing inside the tool shed and you're confused, just ask for help. Before you're scheduled to make your first appearance before a judge you don't know,call the judge's office and ask whether the judge expects the parties to attend scheduling conferences (some do, ours doesn't). Ask the chief clerk of the court if s/he has a few minutes to explain a certain procedure. Call the judge's court reporter and ask what you can do at the hearing to make both your jobs go more smoothly.

Here's what I've learned in the years following that first tour: Keep asking questions. I know where the tool sheds are now. I can find them in my sleep. But the tools can change. Staff members change, internal procedures change, civil procedure minutae change, judges change. I can make everything go smoother if I keep up with the changes. Get to know what's in the shed.

— From ABA GP Link Carolyn J. Stevens, October, 2001

Knowles names Morgan Christen to Superior Court

Attorney fills new seat on Anchorage Bench

An attorney in private practice with 15 years of experience in Alaska, Morgan Christen will fill a newly created position on the Anchorage Superior Court bench, Gov. Tony Knowles announced.

"Morgan Christen has distinguished herself as an outstanding attorney, earning a reputation as a tenacious and compassionate advocate," Knowles said "Her experience and skill at finding ways to resolve often complex issues will be an asset on the Anchorage Superior Court bench."

Christen, 39, studied in England, Switzerland and China before graduating from the University of Washington in 1983 with a degree in international studies. She earned her law degree from the Golden Gate University School of Law in 1986.

She worked in a private law office in California before moving to Alaska where she served as an intern with the Anchorage municipal prosecutor's office and as a law clerk for Judge Brian Shortell. Since 1987, she has worked for the Anchorage law firm of Preston, Gates & Ellis where she has worked on a variety of civil cases, including work for the state on litigation that followed the Exxon Valdez oil spill.

Involved In the local community, Christen is a member of the Anchorage Downtown Rotary, the United Way of Alaska Board of Directors, Big Brothers/Big Sisters, and the local YMCA.

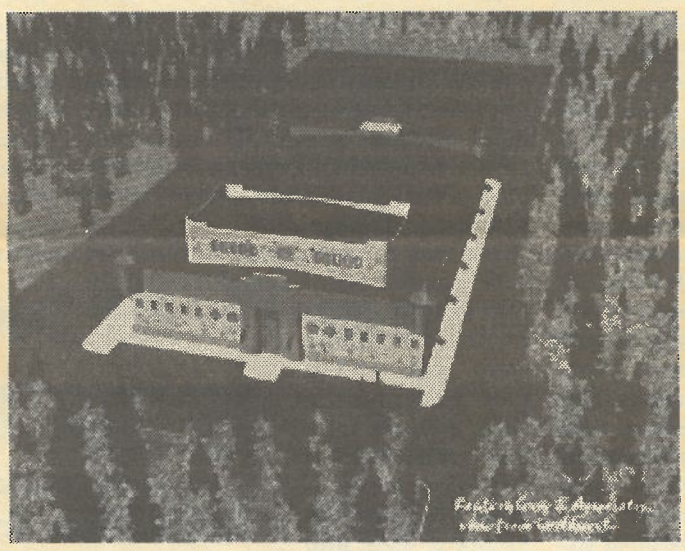
"My experience in the courts has underscored the value of making sure that all parties in a case have their concerns fully heard," Christen said. "I'm fortunate to have role models on the Anchorage bench who have shown me the tremendous power of allowing parties to speak about what a claim means to them personally. I appreciate the Governor's appointment and look forward to following that tradition on the bench."

Christen will assume her new responsibilities in January. As a Superior Court Judge, she will earn approximately $104,000 annually.

Attorney slides into new venture

Rhonda Butterfield has left the Attorney General's Office for "bluer waters" (the liquid equivalent of "greener pastures"). She is doing legal work for H2Oasis, Alaska's first indoor waterpark, due to open in March 2002. Located behind the Castle on O'Malley in South Anchorage, H2Oasis Indoor Waterpark will include a number of related recreational park features to complement its major attraction, the 475-foot Master Blaster® Water Coaster.

Butterfield also is providing legal assistance to the safety committee of the World Waterpark Association. When not traveling to warmer climes and conducting independent research on waterslides and waterparks,



she can be reached via e-mail at rbfield@gci.net, at 248-2577, or contact her at the waterpark (www.h2oasis waterpark.com).

H2Oasis Indoor Waterpark

Alaska Bar Association 2002 CLE Calendar

Date	Time	Title	Location
January 15	8:30 a.m. 3:30 p.m.	CINA: Active & Reasonable Efforts to Achieve Permanency CLE #2002-004 5.0 General CLE Credits	Anchorage Anchorage Museum
January 24 (NV)	8:00 a.m. 10:00 a.m.	Off the Record Third Judicial District CLE #2002-001 2 General CLE Credits	Anchorage Hotel Captain Cook
February 8	8:30 a.m. 12:30 p.m.	Parliamentary Law & Procedure for Attorneys CLE #2002-002 3.75 General CLE Credits	Anchorage Marriott Downtown
Spring Date TBA	TBA	Tribal Business Operations CLE #2002-007	TBA
March 14 15	Mornings	Administrative Law Update CLE #2002-005	Anchorage Egan Convention Center
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

Bar People

Laura L. Farley of LeGros, Buchanan & Paul is the new State Representative for the Defense Research Institute. Telephone (907) 277-5500; Fax (907) 274-9649.

Chrystal Sommers Brand, formerly a shareholder in the law firm of Baxter Bruce Brand P.C., is opening her own law firm specializing in family and domestic relations law. The new law office will be located at 2217 North Jordan Avenue in the Jordan Creek Office Condominiums, in Juneau.

The law firm of De Young, Freeman & Watts announces that effective October 31, 2001, the firm's name was changed to **Freeman & Watts**. The firm will continue to emphasize its practice areas of construction litigation and claims, labor and employment law (management), business and commercial law, personal injury, real estate and military law. The firm's name change reflects the retirement of R R. De Young from the firm.

After more than 27 years with the Department of Law in Juneau, **Michael Stark** is retiring effective January 1, 2002. Mike has worked for the last 21 years as lead counsel to the Alaska Department of Corrections and Alaska Parole Board, and more recently as counsel to the Alaska Police Standards Council and Division of Fire Prevention (State Fire Marshall). Before that, Mike spent a year in the Office of Special Prosecutions and Appeals, four years in the District Attorney's office in Juneau where he worked with Larry Weeks and Jim Hanley, and before the Criminal Division of the Department of Law was created in 1975, Mike worked for one year in the civil division on criminal and civil rights matters. Mike is planning to spend the month of January in Hawaii with his family to celebrate his well earned freedom; then return to Juneau where he will continue his volunteer service as president of the board at the Juneau Community Charter School. Mike will find part time work and hopes to continue to be involved in training probation/parole officers for the Department of Corrections.

2 join Delaney Wiles Hayes

Ann B. Black and **Kevin L. Donley** have joined the law firm of Delaney Wiles Hayes Gerety Ellis & Young, Inc., as associate attorneys. Both attorneys will focus their practice in litigation, and are members of the Alaska Bar Association.

Ann Black, most recently spent three years prosecuting cases as a U.S. Air Force Circuit Trial Counsel. Her prior work history includes criminal defense as a U.S. Air Force Area Defense Counsel, and base level prosecutor and corporate counsel for the U.S. Air Force. She received her J.D. from DePaul University School of Law, and Bachelor of Arts in Speech Communication from Miami University.

Kevin Donley, prior to joining Delaney Wiles, spent five years as an Assistant District Attorney in the Alaska District Attorney's Office in Anchorage, and two years as a Law Clerk to the Honorable Peter Michalski, Superior Court for the State of Alaska. He received his J.D. from Fordham University School of Law, Bachelor of Arts in English Literature from the University of Washington, and Bachelor of Arts in Accounting from Seattle University.

Cindy Thomas joins Landye Bennett Blumstein LLP

Landye Bennett Blumstein LLP has announced that Cindy L. Thomas has joined the firm as an associate in the Anchorage office.

Thomas brings a background in engineering to her law practice at Landye Bennett Blumstein, where she focuses on Federal Indian, Alaska Native, municipal, environmental and natural resources law and policy. Before joining the firm, Ms. Thomas was a National Association of Public Interest Law (NAPIL) Fellow for the Rural Alaska Community Action Program and Alaska Legal Services Corporation, and she served as a law clerk for the Native American Rights Fund. Previously, she worked as the statewide coordinator for the Rural Alaska Sanitation Coalition, an advocacy group that works to improve the environmental conditions of rural Alaska, and she was as an environmental engineer for the Tanana Chiefs Conference, Inc. Thomas is a shareholder in the Sealaska Corporation.

She received a B.S. degree in civil engineering from the University of Alaska Anchorage in 1989. Ten years later, she graduated from the University of New Mexico School of Law with a Certificate in Indian Law and the school's Outstanding Academic Achievement award. She is a member of the Alaska Bar Association and its Native Law section.

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

Exploring the courtrooms of the future

It's only a matter of time before the rapid advances in technology "catch up" with courtrooms around the world. Just within the last decade, faxed documents were accepted by the courts, and the old, 11 x 14 foolscap paper yielded to the letter-sized documents used by the rest of the business world outside of the legal community.

Today, when the details of a matter can be retrieved instantly from WestLaw, and pleadings can be distributed to trial teams in seconds via e-mail, the courts are increasingly allowing technology into the courtroom. Electronic filing of documents is becoming accepted, as are elaborate video animations, and teleconferencing, for example.

But what will the courtroom of the future look like for attorneys, the judiciary and juries? The worldwide medium of the Web offers a glimpse of the future in just a couple mouse-clicks, taking the curious on a virtual tour of the courtrooms and law practices of the information age.

WITH THE RAPID DEPLOYMENT OF INFORMATION TECHNOLOGY TOOLS ACROSS ALL BUSINESS SECTORS, THE COURTROOM 21 PROJECT TEAM'S SPEAKING AND TRAINING SCHEDULE IS INTENSE

Perhaps the most well known experiment in high-tech and the judicial system is Courtroom 21. First unveiled on Sept. 13, 1993, the courtroom is housed at the McGlothlin Courtroom at the College of William & Mary, affiliated with the National Center for State Courts (NCSC) Technology Laboratory.

Courtroom 21 is ringed with flat plasma television screens and has smaller LCD monitors installed on every desktop. Several camera domes hang from the ceiling to record and project every move, and every document and piece of evidence can be digitally projected on monitors for the jurors and audience in the room or around the world. Other technologies are used for recording the proceedings and managing documents.

COURTROOM 21'S OUTREACH

Directed by Professor Fredrick Lederer, the law school project staff keeps Courtroom 21 up and running for law students and the legal community, with 22 staffers who range from clerks and technologists to training professionals, webmasters and a master cabinet-maker.

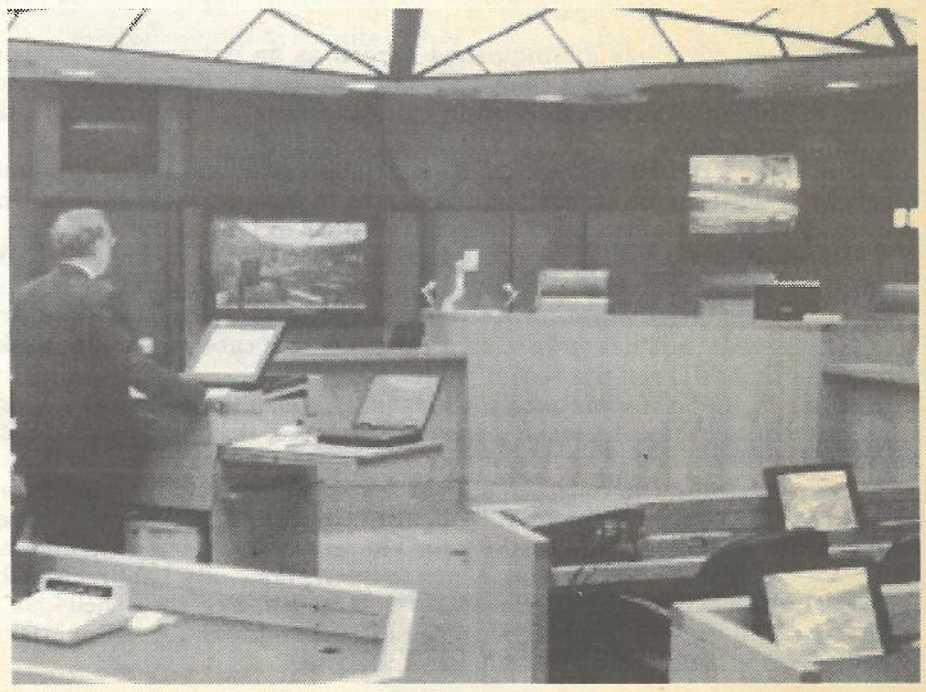
The project conducts frequent technology demonstrations in the McGlothlin Courtroom in Williamsburg, VA. Presentations customarily include not only specific hardware and software demonstrations but also discussion of the legal and pragmatic implications of use of the given technologies. Presentations can be conducted live or via two-way videoconferencing. Using "six channel" 384K Tandberg videoconferencing, project staff can conduct interactive presentations to any location in the world that has modern videoconferencing communications.

Training to the legal community outside the college of law also is offered. The master curriculum for lawyers can be taught on-site in law firm offices or in the McGlothlin Courtroom 21. The curriculum consists of four phases: general orientation; specialized lecture material that includes pretrial, trial, and post-trial matters; hands-on instruction concentrating on basic trial presentation technology; and finishing with a mock bench trial-using the technology. Training, which is tailored to the lawyers' needs, includes technology-based deposition practice and the implications of computers for discovery; use of high-technology court records systems, including digital audio and real-time electronic transcripts; electronic legal materials, including electronic pleading and briefs; evidence presentation; and the use of remote testimony via videoconferencing.

With the rapid deployment of information technology tools across all business sectors, the Courtroom 21 project team's speaking and training schedule is intense; in some cases, their time must be requested 18 months in advance.

How does the project keep up with the technology it seeks to incorporate into Courtroom 21? More than two dozen vendors of software, hardware and other tools participate in the project, along with nearly 20 high-tech courts around the country that are affiliated with the project. Lederer estimated the 300 to 500 courtrooms in the U.S. and Australia are building out high-tech capability.

And for those who want to keep their law office up to date, themselves, the Courtroom 21 website may be the best, single-point repository of who's doing what in law information technology. Each of the vendors working with the college is featured in the Technologies section of the site, with a description of their technology and links to their sites. Visitors to the website can browse technology by categories, which include court record systems; interpretation systems; courtroom and systems design; law firm applications; display devices; legal research applications; electronic filing; projection devices; evidence presentation; software; remote conferencing; infrastructure; web based applications.



IMPLICATIONS ON ETHICS AND PRACTICE

Perhaps not all are enthused by the implications of high-tech in the courtroom. When the William & Mary law school conducted its 2001 Courtroom 21 Laboratory Trial in April, using the fictitious case of United States v Linsor, the Associated Press covered the trial in detail. In a strange precursor of things to come, the principal evidence was a 3D animation that recreated a terrorist bombing and collision of two aircraft over downtown London.

"It was a fake case, but the two-way remote testimony and startlingly lifelike animation used to re-create a terrorist bombing were real...and it held the courtroom rapt with its realism," reported the AP. "They gave jurists and lawyers plenty of legal and ethical questions to consider as such courtrooms of the future are installed nationwide."

"TECHNOLOGY HAS COME TO OUR COURTROOMS, AND LAWYERS MUST NOW COPE WITH THE CONSEQUENCES," NOTES THE COURTROOM 21 PROJECT.

"The groundbreaking portion of the trial occurred when a British barrister at the University of Leeds appeared on a television placed on the prosecutor's desk. The television faced the witness box, where another television displayed a live image of the barrister's star witness sitting in Canberra, Australia."

The terrorist event, commented federal Judge James Rosenbaum, "didn't occur, wouldn't occur, and can't occur," suggesting that "each side may use the animation for their own ends, and it brings up the issues of truth and what we do as lawyers," reported the AP.

The ethical and perceptual implications of the capabilities of high-tech in the courtroom are among the issues that another high-tech law school courtroom in Arizona is exploring over time.

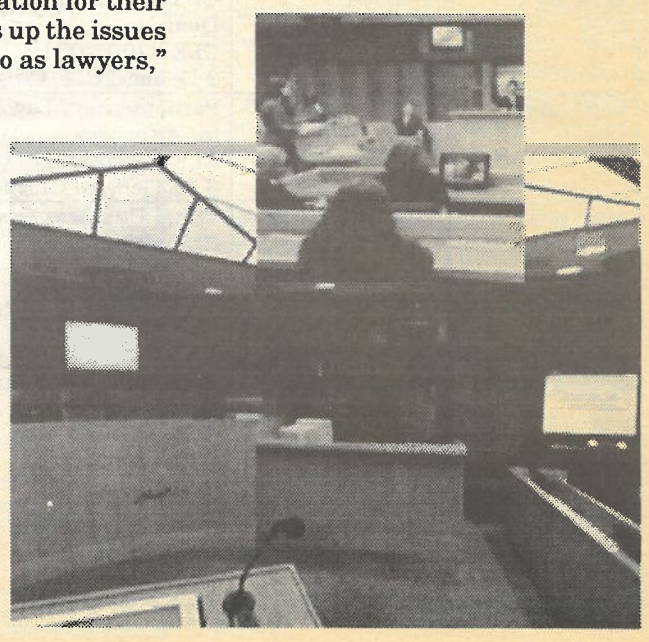
The University of Arizona Courtroom of the Future Project at Tucson was begun in the spring of 1994.

In addition to the training of law students, the Arizona facility has conducted empirical inquiry into the use of technology in the courtroom, such as how technology can increase the efficiency of the trial process and how its use affects juries, witnesses and other principals in the court. The project also is exploring design considerations for access by those with disabilities, such as real-time reporting to allow the deaf to participate in proceedings; software enhancements to modern operating systems to enable such innovations as single finger typing and control of unintentional errors; enhancements that provide access for people with impaired motor control; and voice and text recognition technologies that allow the blind to input and read data.

"Technology has come to our courtrooms, and lawyers must now cope with the consequences," notes the Courtroom 21 project. "Judges increasingly permit case-specific trial presentation technology, and the courts are rapidly adopting integrated high-technology courtrooms. As a result, today's litigator has opportunities and risks unknown to prior generations of lawyers."

More information on the two projects can be found on the Web at
—http://www.courtroom21.net/
—http://www.law.arizona.edu/courtroom.html.

— Sally J. Suddock



Overcoming barriers to settlement

☐ Drew Peterson

One of the common dilemmas facing mediators is in dealing with the common barriers to resolving cases outside of a courtroom. Indeed, all of the professionals who try to settle legal disputes face similar barriers in our attempts to find constructive solutions to problems outside of the full litigation process. John J. McCauley, a mediator in Newport Beach, California, has written an interesting article discussing methods for overcoming some common barriers to settling cases. (http://www.mediate.com/articles/ mcCauley.cfm)

McCauley asserts that there are three different needs of disputants that parties tend to believe are more reasonably satisfied in litigation than they are in mediation. They are the need to inflict pain on the enemy ("Retaliation"), the need to secure public vindication ("Reputation"), and the need to find refuge in the rule of law ("Refuge").

At first blush, McCauley asserts, mediation appears to be a paltry response to such needs of the parties. Far from satisfying Retaliation needs, for example, mediation actually stops the fun. Mediation by its nature is gentle and non-authoritarian – hardly the way to seek revenge against a wrongdoing party. Reputation needs fare little better. The use of mediation eliminates the possibility of public vindication. It is not only private, but in the end there is no one to declare who is "right" and who is "wrong." Finally, mediation would appear to be antithetical to the Rule of Law. Not only is there no judge to be the neutral acolyte of the law, but also in mediation the real decision-maker is the adversary, the very person whose evil necessitated the imposition of law in the first place.

Not to worry, however; McCauley asserts that good mediators can indeed open the way for settlement despite such needs, while addressing them at the same time.

RETALIATION NEEDS

As for the need to retaliate, McCauley asserts that this urge tends to fade rather quickly on its own accord after the heat of the opening salvos of litigation has dissipated. The pain of litigation on the party themselves quickly begins to dull the pleasure of inflicting pain on the other. What remains is often nothing more than a serious need to "vent" before serious progress can be made in the settlement process. Mediation is an excellent method for allowing parties to vent in a controlled atmosphere, and good mediators encourage such venting as long as it does not get abusive or destructive to the negotiating process.

REPUTATION AND REFUGE NEEDS

According to McCauley, the remaining needs are often more serious barriers to settlement. The good news, however, is that they only thrive in the presence of two perceptual distortions, which the mediator can harness to assist the mediation process, either directly or indirectly.

THE MYTH OF PREDICTABILITY

The first of these perceptual distortions is the myth of predictability: the common, but false belief that our system of justice has reached the point of development where there is a predictable outcome at trial of complex civil disputes. Those of us in the legal profession all know that such predictability is often more illusion than reality. Yet as the champion of our clients' causes, it is often difficult for us to effectively communicate such unpredictability to our clients, who are much more likely to believe such myths to be true. A neutral mediator is in a much better position to help the parties understand the reality of this myth.

PARTISAN'S DISTORTION

The second perceptual distortion is the universal phenomena of advocates involuntarily over-assessing their own likelihood of prevailing in court. In this case the misperception is that of the attorney's, which only feeds the client's unrealistic belief in the corollary myth of predictability. Once again the neutral mediator is in the ideal position to reestablish a more reasonable perception of the true value of a case.

THE MEDIATOR'S ROLE

The mediator does not need to fight these basic human needs for retaliation, reputation and refuge. He or she only needs to counter the perceptual distortions that drive these needs toward continued litigation. The need for refuge may remain, but a courthouse provides no place of refuge if there is a serious risk of an adverse judgment not on the merits.

Countering the partisan distortion must be done in a way that does not impair the mediator's neutrality. Close questioning about the elements of claims and their supporting evidence, accompanied by subtle skepticism, is usually enough to impact the distortion. This is particularly so where applied with equal force to all sides to the dispute, in a neutral way, so parties can hear each other's partisan versions of the same facts. Whatever the partisan's belief on the merits, they can be moved by the stubborn reality of a neutral sincerely unmoved.

Finally, McCauley points to a paradox: while the Rule of Law is surprisingly absent in litigation, it can be surprisingly present in mediation. The parties each have a self-interest in paying close attention to what the law is, because their only alternative to settling is to proceed to court. Each party's own tangible yardstick by which to gauge an acceptable outcome in mediation is his or her own perception of what a court would otherwise do.

In sum, all three strong needs of the parties for retaliation, reputation and refuge can be met and satisfied in mediation, often to a much greater extent than in litigation. Needs that are initially seen as insurmountable to a successful settlement of a dispute, evaporate as parties simply give mediation a chance.

Something to chew on

☐ William Satterberg

Lawyers invariably declare themselves an expert in a field any time they handle more than one case. Countless phonebooks, television advertisements, and newspapers now are festooned with attorneys holding themselves out with a big, toothy grins, all claiming expertise in some quasi-specialty that no one else cares about.

The nice thing about such expertise is that the legal "profession" generally does not recognize expertise. Because of this, our self-proclaimed bravado seldom goes noticed by other attorneys. But, apparently, advertising is having its effects upon the consuming public.

Every year, I am inundated by yellow pages sales people. Each vendor proclaims bigger, newer, or better ways of advertising. Each one claims they will do a better job gathering the missed clients. I am promised that, if I buy numerous yellow page categories, I stand a better chance of cornering a particular market. In fact, I am told that one of these days, if I am really lucky and play my cards just right, I may even earn a place on the coveted back cover of the local directories. I can see myself now, with my best Alfred E. Newman caricature. (photography by "Polaroid" and hair by "Nair.") When I commented one time about the fact that two local law firms already have locked up the back of the phone books, I was told by one resourceful solicitor not to worry – there was a solution. Within a month, I was visited by a person who sold vinyl telephone directory covers.

EVERY YEAR, I AM INUNDATED BY YELLOW PAGES SALES PEOPLE. EACH VENDOR PROCLAIMS BIGGER, NEWER, OR BETTER WAYS OF ADVERTISING.

Eventually, I joined the fray. I realized that, I, too, had to have a specialty that would stand out. But, what would it be? A concerned friend told me to stand back and evaluate my trial history for something unique. In response, I began to look at the cases that I had handled. Although some trials stood out, I quickly conceded that my primary problem was that virtually all local attorneys already occupied the same niches that I claimed as my specialties. In fact, the specialties were so full of attorney's names that the specialties had become generalities. I felt like I was trying to invent a Rotary Club classification.

Then, as I was eating my morning bag of donuts, an idea struck. I would specialize in food.

As a child, I always had a weight "problem." Not that I personally considered it a problem. My parents and relatives did. When I would diet, people would daily ask how I was doing. I always would answer that I had done very well until breakfast. One time, my mother was so concerned about my weight that she took me to see my pediatrician. To my later delight, he gave me something called "diet pills." Since I was due to enter college, I naturally asked for several refills in advance. I did not feel like having to walk to the store that often. The exercise was fatiguing.

As time passed, I became a true connoisseur of culinary delights. Now, whether the menu ranges from the truly exotic to the mundane, I will try it. I have eaten snake, dog, and even human (if you include biting your fingernails – I can't reach my toenails). And, like most food addicts, I have an unwavering faith in fast food restaurants. A port for the portly in any storm.

So, why does an attorney specialize in food?

Restaurants, especially the fast food kinds, have liability. I graphically learned this several years ago, when I was a nighttime soda jerk at an old-fashioned ice cream parlor. The things that would go into our concoctions could sometimes gag a maggot and, in one case, included stuff from the aforementioned gaggee, as well. Fortunately, no one ever told the management, or many promising college careers would have been over.

My first "fast food case" began with the now-infamous "McDonald's coffee." Previously, like everyone else, I was appalled by the jury's award to the patron who had so stupidly spilled scalding coffee in her lap. It was pure idiocy. It was the type of thing that anyone who knows anything should easily realize how to avoid. Don't drink coffee! Like the rest of the nation, except the brilliant attorney who handled the case, I condemned the results. It was the type of case that smeared our proud legal profession. My contempt, however, was out of a secret envy. After all, the fees must have been staggering, not to mention the client.

THIS WAS A CASE THAT I COULD SINK MY TEETH INTO.

Two months later, a client came into the office. She had spilled a cup of McDonald's hot tea water into her lap. Her burn injuries were quite substantial. Expressing my concern that she would even consider bringing such a case after the publicity that the "hot coffee case" had garnered, I immediately distinguished the case by reasoning that it was tea water and not coffee. Different rules obviously applied, especially because the injuries were so severe. Moreover, the incident had occurred at a time when McDonald's was already on notice that its coffee was too hot. In short, I predictably swallowed my indignation. Like any other self-respecting plaintiff's counsel, I leaped at the case.

Relying upon the law school rule that it is always easier to steal the research of others than to invent the law, I humbly contacted the attorney who handled the hot coffee case. He generously told me that he specialized only in hot coffee cases. This claim was not his cup of tea. I clearly was in hot water and well over my head. On the other hand, sensing economic rewards and maybe even some obscure justice, I continued my advocacy. Ultimately, the matter settled for an undisclosed sum. Both my client and myself had it our way. Still, ever since that date, lay persons regularly come up to me complaining about the sleazy McDonald's hot coffee case. I always concur with them, pointing out that it was terrible what happened with respect to "that hot coffee." Fortunately, no one has yet complained about the tea.

RELYING UPON THE LAW SCHOOL RULE THAT IT IS ALWAYS EASIER TO STEAL THE RESEARCH OF OTHERS THAN TO INVENT THE LAW, I HUMBLY CONTACTED THE ATTORNEY WHO HANDLED THE HOT COFFEE CASE.

My next case involved the "Taco Bell Travesty." An attractive young woman entered my office one lunchtime and asked for a consultation. She wanted to sue Taco Bell. As I gnawed on my burrito, I asked her to tell me her story.

Flashing a big, toothless grin, she told me that she had been eating a bean and beef burrito when she had broken one of her teeth. So genuinely affected by her tragedy, I promptly spit out my lunch. Already a hot tea expert, I decided it was time to become a beef and bean burrito expert. I asked her if she had saved the evidence. She explained that the incident had happened several days ago, and that she had been to the bathroom since then. Being more specific, I asked her about her broken tooth. Remarkably, she produced it in a tissue that she had been clutching in her hand. She also had the culprit bone chip. The tooth was so severely fractured that it had to be extracted.

This was a case that I could sink my teeth into. With the exception of the gap, this young lass had a perfect set of teeth, especially compared to my own teeth, which had more gold than the Ft. Knox mine. I promised that I would get to the root of her case. I would begin negotiations with Taco Bell. I soon learned that the defective food had come from a wholesaler who shipped the product to Alaska through a distributor, a company otherwise known in the language of the law as "Deep Pockets." It was a true food chain, ending up at a chain restaurant. Following an extensive give and take, which lasted almost three days, we reached a miserly settlement with the purveyor. As my client went on her way, I was left to deal with the leftovers.

My resume was rapidly growing. I was now an expert in McDonald's and Taco Bell. I was building a reputation in town, even if I was the only person appreciated it. Then came Wendy's.

The latest client had been eating a hamburger at Wendy's. Like the others, he allegedly broke his tooth. Allegedly, because that is the position that Wendy's took. Initially, it looked like a good claim. The tooth was obviously broken. The hamburger clearly had a piece of bone in it. The case had all of the fixings of another war chest. I decided to get directly into the meat of the matter, and prepared a claim file.

As indicated, there was no doubt that the tooth had been broken. There were local dental records to prove it. As the case developed, so, too, did Wendy's have my client's dental records. Unfortunately, Wendy's records were from a claim that was apparently made approximately four years earlier. These "other records" suggested that the same tooth had been broken while chewing on a hamburger in another state. So much for that national insurance computer thing and another good reason for my profound hatred of computers.

Ultimately, we settled the case. Having been grilled extensively by the carrier over the alleged inconsistency, the decision was made to capitulate. Regardless, I always felt that I had been given a bum steer. Later on, the owner of Wendy's became mayor of Fairbanks. I now eat there often.

Several months later, another Wendy's case walked in the door. Once again, a tooth had been fractured. This time the evidence was much stronger. Much to my dismay, the client was an accepting person who just wanted to know his rights, and moved on. He was also a good friend of the mayor.

But, that is not the end of my resume.

Recently, I had another Taco Bell case. Once again, it was a defective beef and bean burrito (no wonder my family tells me not to eat those things). As before, there was clear evidence to indicate that the client had broken his tooth. Because there also was no pre-existing possibility of injury, the case had merit. Eventually, that claim, too, resolved. One of the terms imposed by my client in that settlement was that the actual percentages of ingredients of the burrito be revealed. The results were startling. Although the amount of actual meat in the burritos is questionable, I am confident that all of us who eat at Taco Bell are getting our daily quota of bone-based calcium. Apparently, the entire leg of the animal is dropped into a voracious grinder - meat, bone, gristle, and all. Now, that's something to chew on!

Admittedly, being a self-acknowledged expert has its drawbacks. As of late, I have decided that the best thing to do is to avoid fast food restaurants. Although I lately have been able to determine types of food products that go into the tacos, the burgers, and the hot coffee/tea, the actual contents of a vanilla milkshake at an old-fashioned ice cream parlor are still personally terrifying. Who knows? Maybe those angry high school kids still use the same sort of artificial flavoring that we did when I used to cater to the public.

Deliberations of the committee on research about the future of the legal profession

The Standing Committee on Research About the Future of the Legal Profession, chaired by Robert J. Grey, Jr. of Richmond, Va., took as its charge this year to develop a report on the current state of the profession, which will serve as a platform to examine the challenges and opportunities of change and how the legal profession can and should define its own future.

Three subcommittees were appointed to look at different aspects of the legal system and legal practice. The first, which examined the trends relating to globalization, was chaired by Judah Best of Washington, D.C. The second examined how Americans access legal services, and was chaired by M. Joe Crosthwait Jr. of Midwest City, Okla. The third, which looked at the state of private law practice, was chaired by James Lee Thompson of Rockville, Md.

This report gathers the information developed by all three subcommittees, and presents a list of trends affecting the profession and a list of questions the committee has identified, some provocative, that should discussed as work moves forward.

PREFACE

The soul of any society is its law and its legal system. The American legal system, and hence our profession, are undergoing unprecedented change. The profession's clear and unalterable goal must be the preservation and advancement of those principles essential to the rule of law grounded in truth, justice and equality. The most fundamental of these are an independent bar and an independent judiciary. Our biggest challenge in reaching this goal is to recreate ourselves with a culture and a regulatory structure that preserves our core principles, protects our clients, and maintains our relevance.

We are in the midst of the biggest transformation of civilization since the caveman began bartering. The practice of law and the administration of justice are at the brink of change of an unprecedented and exponential kind and magnitude. This Age of Technological Revolution, together with the globalization of business and competition, are transforming our profession and our system of justice with at least the same intensity as they are everything else around us.

The symptoms of these monumental changes are becoming all the more familiar, while their implications, and the course of action to be taken, become increasingly enigmatic and complicated. We are increasingly seeing the many examples of how the Age of Technology and the Internet are rapidly transforming our world into a smaller and decidedly more complicated place. Be it good or bad, boundaries are blurring, and in many instances disappearing altogether. Globalization is a fact of life. Traditional and comfortable approaches and solutions are often ineffective, or even counter-productive, to addressing modern day problems, demands and needs. In so many respects, "This is the way we've always done it!" simply doesn't do it any more.

What does this unprecedented change imply for a precedent-oriented profession? How should the practice of law and the administration of justice change to take advantage of this rapidly changing world? How do we assure the survival of our core principles - those fundamental and enduring beliefs essential to the Rule of Law - in this Age of Revolution? What must we do now?

THE LODGE MEETS THE STRATEGIC INFLECTION POINT

Jennifer James, an urban cultural anthropologist, in her book *Thinking in the Future Tense*, includes the organized bar with the medical profession and others as a "lodge culture" – one that enforces and maintains a nostalgic and no longer tenable view of the world. Lodges are cooperative alliances in which the members bond together for power or protection, or both. James argues that lodges are rarely visionary, but rather content with the status quo, and unwilling to acknowledge change. In times of rapid change, they become irrelevant.

In his 1996 book *Only the Paranoid Survive*, Andy Grove, co-founder and chairman of the board of Intel Corp., gave birth to the term "Strategic Inflection Point." A strategic inflection point is a moment, often unforeseen and more often not perceived until too late, when massive, unprecedented, and fundamentally unforeseen change occurs. All bets are off, and all the rules change. The premises and assumptions upon which success had been predicated are no longer true. A strategic inflection point is not an incremental or peripheral change. It is a fundamental and revolutionary transformation.

Strategic inflection points are not unique to this new world of technology, nor are they unique to business. Indeed, human history has been and will forever be defined by them. In business, a strategic inflection point is not merely price competition or incremental change, such as a "newer, better" widget. Rather, it is a radically new product, an innovative new technology, or a novel process or provider that renders widgets and the way they have been made or provided fundamentally obsolete. It is that point at which one industry is destroyed or becomes unrecognizable, and another is created. Electricity, the horseless carriage, the telephone, the airplane, and many other new technologies and products – not the least of which are the computer and the Internet –all created new businesses and enterprises and fundamentally altered those that survived strategic inflection points.

While certainly the law itself has changed dramatically over the past 225 years, the institution we call "the law" has changed very little. Until relatively recently, lawyers have been the unique providers of legal services, in and out of court, and have been the few to possess the "mystery" of the law through law books and training and to have, if you will, the key to the courthouse.

But like the rest of the world, the legal profession and the administration of justice are in the eyes of a strategic inflection point. Heritage is no longer our destiny, for we are in an age of revolution from which we will emerge distinctly, and perhaps unrecognizably, different. But will we be the ones to lead and define that

Continued on page 18

New ABA project calls on lawyers to teach children about diversity and democracy

Since September 11, many children in the United States have witnessed events that even most adults do not understand. They have seen Americans attacked for the freedoms they enjoy. They also have seen Americans lash out at people who look different or share different beliefs. Now more than ever it is critical that children understand and appreciate the values that make America unique.

The American Bar Association is calling on lawyers to support democracy in these difficult times by helping promote respect for diversity among America's youngest citizens. The "Tolerance Through Education" initiative, created by the ABA Young Lawyers Division, sends lawyers into the classroom to help children learn to embrace diversity and tolerance.

"Our goal is that this program will help children learn to understand and respect others of diverse backgrounds," said Laura Farber, chair of the ABA Young Lawyers Division. "This helps them gain a fuller understanding and appreciation for the American form of government and for democracy around the world."

The "Tolerance Through Education" initiative will be launched in a series of three programs for students. The first program, "Welcome to School: Helping Kids Belong," is a written curriculum designed to help lawyers engage third graders in conversations and activities about respect and belonging. An 18-minute video featuring children demonstrating these values and a CD of "The Child in Me," a song written for the program, are included with the curriculum.

Third graders were selected for this program because, according to psychologists, this is when children begin to develop the norms that affect the formation of their lifelong values and beliefs, and when they begin to bully and tease classmates who look or act differently.

The ABA Young Lawyers Division created the program with the help of the California Hate Crimes Task Force, a group of educators, law enforcement officials and criminal and civil lawyers who provide schools with training on handling hate incidents, and the Alameda County Office of Education. Third graders from the Chula Vista School District in San Diego participated in and provided input for the video. The program is non-state specific.

The second program, "Playing Together for Peace," consists of role-playing and group discussions designed for lawyers to teach elementary school students how to resolve conflicts peacefully. The goal is to help children be more accepting of differences based on race, gender, economic status, religion and sexual orientation. The program will be launched at the ABA Midyear Meeting in Philadelphia in February.

In the third program lawyers will engage in outreach to junior and senior high school students to discuss hate crimes - what they are, how to prevent them and their consequences. Lawyers also will teach students about the legal issues related to hate crimes. This program will be launched at the ABA Young Lawyers Division Spring Conference in Denver, May 16-18.

Lawyers interested in implementing "Welcome to School: Helping Kids Belong" in their community's schools can contact Bernadette Norris-Weeks at 954/768-9770 or bnorris199@aol.com, or Ann Fiegen at afiegen@staff.abanet.org. For more information visit http://www.abanet.org/yld.

The American Bar Association Young Lawyers Division is the ABA's largest entity, composed of approximately 130,000 members. The mission of the Young Lawyers Division, as the national organization of young lawyers, is to provide leadership in serving the public and the profession, and to promote excellence and fulfillment in the practice of law.

The American Bar Association is the largest voluntary professional membership association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law and a wide range of services to help lawyers and judges in their work.

— Press Release

Paralegal Association News

The Alaska Association of Paralegals (AAP) has donated a videotape entitled "Paralegals: Enhancing Practice, Professionalism and Profitability" to the Alaska Bar Association for use by the legal community. The video is listed in the Bar's on-line catalog and is available for viewing free of charge. It was produced for the National Federation of Paralegal Associations (NFPA) by 12 Promises Production and was sponsored by the West Group. It is a valuable tool with which to educate both new and practicing lawyers about the benefits they can realize by including paralegals on a legal services team. The video delineates the role of a paralegal and also addresses ethical and unauthorized practice of law concerns. The video won two awards: a 2000 Telly Award for excellence and more recently, a 2001 Silver Remi Award at the Houston International Film Festival. AAP's board of directors welcomes your comments on the tape. (A list of AAP's board of directors can be found at www.alaskaparalegals.org.) If you or your office would like your own copy of the video, it is available for purchase at $35 per copy from NFPA headquarters. Interested purchasers may e-mail info@paralegals.org , call (816) 941-4000, or fax to (816) 941-NFPA. American Express®, VISA® and MasterCard® are accepted.

Deliberations of the committee on research about the future of the legal profession

Continued from page 17

change? Or are we going down the same road as the medical profession?

How a person, company or profession responds to a strategic inflection point determines their fate. To survive and prosper, we must envision, embrace, and create the future.

If the law were just another company, or just another industry about to become obsolete, it would matter little in the overall order of things what, if anything, we do. But the law is not just another business or industry. It is the foundation upon which our entire society and our system of justice and enlightened self-government are founded. Indeed, without lawyers this change would likely never have occurred! The risk is not about just our livelihoods and our businesses, although they are clearly in jeopardy. Our greatest peril is that if we cannot survive as an "industry" and as a profession, then the underlying core principles and the Rule of Law are themselves at risk.

ARE WE JUST A TRAIN?

Much to the chagrin of many members of our profession and to the surprise of yet others, the legal profession is not generally perceived by the public to be the center of the universe. The public, at least, is behaving accordingly. For us, the rapidly expanding delivery of legal services by non-legal entities should be seen as a symptom of an insidious, complicated and systemic condition that will sooner, rather than later, determine our future to the extent we do not first create it.

Peter Drucker, the famed organizational expert, in writing about the bankruptcy of Penn Central Railroad, said that the reason Penn Central failed is because it asked the wrong question. Penn Central said, "We have a train. Would you like to get on?" Drucker said the question should have been, "We are in the transportation business. Where would you like to go?" And so it is for the legal profession and the organized bar. We must first get the question right.

If all we do is drive trains to fixed destinations, and our potential passengers wish to go elsewhere (faster and cheaper, of course), we will not be able to meet their needs. The best questions for us must look beyond what we already know we do, and address the very basics. Do we have a train that can go only where the tracks go, or do we provide a form of transportation with the destination to be determined by our passengers?

Why do we exist?

If we didn't exist would we, or society, invent us?

If so, what then would we look like and what then would we do?

Are we, as some argue quite persuasively, more concerned about preserving our track right-of-way than we are with transporting our passengers? If, in the final analysis, we have no passengers, then what is the worth of all that right-of-way? What will become of those seemingly important destinations to which perhaps only we go, or to which our passengers arrange different transportation?

Most lawyers charge by the mile of track covered rather than by the destination achieved. And that, together with the fact that all we appear to have is trains, has encouraged others to enter the transportation business. We have allowed others to transport our passengers, and indeed have encouraged some of our former passengers to walk, hitchhike, or ride with strangers who lack our knowledge of and commitment to the rules of the road.

We must now critically examine who we are, what we do, and – perhaps most important – what we do that only we can do. We must be willing to share that which does not require us, and staunchly defend that which demands our unique abilities and highest of standards. We must be willing and able to discard old paradigms and engender and embrace manifest change.

This self analysis calls upon us to examine the entirety of our legal profession and of our justice system, including the manner in which we select and train law students, the manner in which we strive to make legal services accessible and affordable, how we can assure the fair and impartial application of the law across the board, and, ultimately, how we preserve inviolate the Rule of Law.

LEGAL PROFESSION

Trends Affecting the Profession and the Role of Law and Lawyers

Legal services are, and will continue to be, provided electronically over the Internet and this trend will increase.

•The increasing commoditization of some forms of legal services (e.g., transactional documents, pro se dispute forms for divorce, wills in a box, and legal information services) will continue.

• Non-lawyers are providing legal and close-to-legal services electronically over the Internet and this will increase.

• Lawyers are engaging in substantial inter-jurisdictional representation, which will increase.

• Lawyers are facing increased competition from other professionals, primarily accountants and consultants, and the Internet is making this easier for them to do.

• Lawyers will be subject to rating systems, both internally from the legal community and externally from the public.

• Courts will move to electronic filing in all cases, which will require trial and litigation lawyers to learn and understand technology.

• More lawyers will begin working at home or in non-traditional office space.

• Electronic ADR and mediation systems will be used with increasing frequency.

• Litigation will become more of a specialty practice and we may yet see the barrister/solicitor model in the United State in the future.

• More "virtual law firms" will exist with and without affiliations with legal information websites.

• The use of unbundled legal services will increase.

• Auctions for legal services and reverse auction techniques will increase at all levels.

• Non-lawyers and MDPs will do ever-increasing amounts of legal work.

PUSHING GLOBALIZATION

Globalization of the financial markets.

Demand by clients in major financial and commercial centers for legal services in multiple countries in respective individual matters or more generally.

Relaxation of restrictions in foreign countries against lawyers from those countries being partners with or employed by law firms from the Home countries.

Demand by clients that law firms have significant size to deal with major matters in multiple jurisdictions.

Demand by clients for seamless services of equivalent quality across national borders.

Enhanced communication capabilities.

Competition from an increasing number of law firms with global practices.

Competition from international accounting firms.

PART I: GLOBALIZATION

The Rise of International Deals

When the *American Lawyer* tracked European mergers and acquisitions in 1996, Shearman & Sterling had worked on just four deals and Simpson, Thacher & Bartlett had done five. By 1999 the value of European M&A deals approached $1.3 trillion. Shearman & Sterling handled at least 46 deals by the end of 1999, and Simpson, Thacher & Bartlett, the second most active U.S. firm, had already handled 34 European transactions. Steven Davis, an M&A partner at LeBoeuf, Lamb, Greene & MacRae, stated that, "the European Union is really setting up policies to encourage a single market" and "that's driving a lot of consolidation." Davis Polk's John McCarthy added that, "there is a whole separate current of deregulation occurring across lots of industries, including industries that are consolidating, like Telecom, causing markets to look to do M&A." Steven Davis concluded by saying, "there is also an emerging global market." [1]

THE GLOBAL THREE: COUDERT BROTHERS, BAKER & MCKENZIE, AND WHITE & CASE

The notion of a global practice is not new: Coudert Brothers was founded in the in 1853 and is "a truly international law firm dedicated to providing legal advice on international business transactions and dispute resolution in the major business and financial centers around the world."[2] Coudert's first non-U.S. office was opened in Paris in 1879, and Coudert was the first U.S. firm to establish an office in Hong Kong (1972), Singapore (1972), Beijing (1979) and Moscow (1988). The firm maintains that "Coudert attorneys are qualified to practice globally in a wide range of jurisdictions, and a multitude of languages."[3] We begin with a short analysis of Coudert, Baker & McKenzie and White & Case, three multi-office law firms with international practices.

Headquartered in New York, Coudert Brothers has approximately 750 lawyers worldwide, located in eight North American and 20 overseas offices, as well as associated offices in Mexico City, Budapest and Prague.[4] Coudert claims to be "a world law firm with partners from many nations – not simply an American law firm with foreign offices."[5] Coudert has a relatively smaller network of offices than do White & Case and Baker & McKenzie. For example, its large Latin American practice is managed out of New York and Mexico City, with a network of local counsel distributed among 20 countries.[6] Coudert has increased in size approximately 50 percent over the past three years. During that period of time they have acquired or promoted 220 lawyers into the partnership. The firm is governed by a managing partner and a five-person executive committee. The managing partner devotes 70 percent of his time to administration and travel among the firm's approximately 30 offices.[7] The firm attempts to integrate further by having regular regional meetings at least twice a year. They use an internal communication system that is described as "hub and spoke." There are three hubs for the dissemination of e-mail and the communications system has been described as a "seamless linking."[8] Coudert Brothers seeks to find those partners who are capable of generating considerable practices for others to service.[9] They maintain that over the years they have accumulated a depth of talent and breadth of experience. In addition, their communications system is regarded by them as a "key element of our success"[10] and is, from their point of view, a valuable service that they provide. Their offices are linked by an around-the-world, round-the-clock telecommunications system for voice and data services. "But most importantly" they maintain, they are "linked by common training and personal friendships built from the experience of working together as one firm."[11]

Baker & McKenzie is the largest law firm in the world and is the most globalized, with 1,800 lawyers working outside the U.S. "They are the law firm with the longest global pedigree, having originally grown internationally in the 1950s and 1960s to service the outflow of U.S. investment across the world."[12] Baker & McKenzie are intrinsically global in their organization. The Chicago office is not referred to as the firm's headquarters: Their publicity material identifies Chicago as merely the "founding office of the firm." Indeed, Baker & McKenzie has been termed a franchise operation and organized separately in each country in which it practices.[13]

The hundreds of partners all over the world each have an equal say in the policy of the firm. Eight partners form the Management Board of the Executive Committee, which meets regularly in different cities across the world. Baker & McKenzie "Does not have foreign offices, it simply has offices."[14] They have "BakerNet," their internal communication system. This provides instant communication between offices for their various projects and instant access for clients to their lawyers' offices. "Becoming a client of Baker & McKenzie means having global accessibility for transfer of documents, advice and information around the clock and across the globe. BakerNet is organized around three hubs centered on Chicago, serving offices from Toronto to Santiago, London servicing offices from Madrid to Almaty, and Hong Kong, serving offices from Beijing to Melbourne."[15]

Finally, Baker & McKenzie operates with a "global network of offices, with each office having strong local roots."[16] There is an attempt to maintain an inherently national nature of each country office as well as providing assistance with international matters.

White & Case has 39 offices in 27 countries. There are 291 partners in the firm, of which the majority are

Continued on page 19

Deliberations of the committee on research about the future of the legal profession

Continued from page 18

"equity" partners and a small number are "contract" partners. All told there are 1,400 lawyers at White & Case, 980 of them associates. In addition, they have approximately 85 lawyers designated "counsel" or "of counsel." Over the past three years, White & Case has been involved in a merger in Germany acquiring approximately 170 lawyers, a merger in Brussels with 25 lawyers, and in Italy adding 20 lawyers; they have also become involved in a joint venture in Singapore, which added an additional 70 lawyers.[17]

White & Case has been on a path of internationalization for over 20 years. In the past year or so, the firm grew an astounding 40 percent. White & Case is managed by a managing partner who is the head of an eight-person Board. The Board is elected by all of the partners and then picks the managing partner, who remains as the day-to-day manager of the firm. Unlike Baker & McKenzie, which has a decentralized global partnership, White & Case operates as a single partnership with New York as the headquarters.

White & Case regards themselves as having a strong name and that they are preeminent in several practice areas: (1) project finance, (2) bank finance, (3) leasing, and (4) international arbitration.

The jury remains out on whether any of these three law firms have achieved the right balance.[18] Baker & McKenzie's critics pointed to their relatively low returns per partner and quality control problems.[19] As a result, the firm has lost key partners in recent years.[20] Coudert has shown a particularly low profit per partner record and the loss of key partners.[21]

What, then, are the characteristics of a successful global operation? White & Case has defined a global legal practice as the representation of clients by a law firm in multiple countries ("Foreign countries") other than the one in which the principal office of the law firm is located (the "Homecountry").[22] We suggest that the concept of globalization contemplates a so-called "one-stop" law firm with offices in many countries around the world and which holds itself out as able to practice local as well as American and English law, and is capable of handling a wide variety of legal work for big companies and financial institutions. These three firms, more or less, fit the description. Whether they are successful financially is another matter.

INTERNATIONAL EXPANSION OF U.S. FIRMS

Based on 1997 figures of the largest 250 U.S. law firms (as measured by the number of lawyers), 100 had offices outside the U.S. The historical basis for expansion was typically client led. Thus, Citibank opened a Paris office in 1967 and so did Shearman & Sterling. Expansion beyond a single international city began in the 1960s. By 1985 the top 250 U.S. law firms had 124 foreign offices among them. By 1997 U.S. law firms had 368 foreign offices – 307 of those offices are in Western Europe, Pacific Asia or Eastern Europe, and 269 of the 307 offices are found in just 15 cities.[23]

DEVELOPING A GLOBAL PRACTICE

What are the various models for developing a global legal practice? The answer to that appears to vary with the culture of the law firm. Some use correspondent law firms in foreign countries. Others form alliances with law firms in foreign countries. Still others establish offices in foreign countries that are staffed primarily by lawyers from the home country, and there are firms that establish offices in foreign countries staffed primarily by lawyers from the foreign countries. The final model is a merger with law firms in foreign countries. While these are examples of growth, they should not be considered exclusive. In some instances, U.S. law firms have merged with law firms in foreign countries and have established offices as well.[24]

Many are looking with considerable interest at the merger of New York's Rogers & Wells, Germany's Pûnder, Volhard, Weber & Axster and Clifford Chance to create a 3,000 lawyer global firm with estimated revenues of $1.2 billion during its first full year. Analysis of their background indicates that economics has played the pivotal role in this merger. Thus, for example, Rogers & Wells lost $2.2 million operating its small London, Frankfurt and Hong Kong offices in 1998, while Pûnder was losing money in Hong Kong and barely breaking even in New York. Clifford Chance was squeezing out an 11 percent profit for its 40-lawyer practice in New York and Washington, D.C., which is far below the 40-plus percent margins it was posting in London and Western Europe and far below the profit of such offices as Moscow and Hong Kong.[25]

GLOBALIZATION BY U.K. FIRMS

London firms appear bent on a program of globalization. Let's look at several examples:

Lovells, a London-based international law firm previously known as Lovell, White & Durrant, was formed in 1998 through the merger of two London firms, Lovell, White & King and Durrant Piesse, and a subsequent merger in January 2000 with a German firm, Boesebeck Droste. Lovells currently has 1,100 lawyers worldwide in 21 offices, and three associated offices, in Alicante, Amsterdam, Beijing, Berlin, Brussels, Budapest, Chicago, Dusseldorf, Frankfurt, Hamburg, Ho Chi Minh, Hong Kong, London, Milan, Moscow, Munich, New York, Paris, Prague, Singapore, Tokyo, Vienna, Warsaw, and Zagreb. Lovells is very full service, particularly in the U.K. The senior partner of the firm has indicated that Lovells will continue its aggressive overseas expansion and that it believes the expansion is essential to serve globalizing clients. They have been particularly focused on expansion in the past few years because they feel that core European alliances are being forged now, and there will be nothing left later. They have preferred to expand by merging with smaller local firms. Lovells will continue to expand its U.S. presence and does not rule out a merger with a U.S. law firm.[26]

Herbert Smith, with more than 850 lawyers in offices in Bangkok, Beijing, Brussels, Hong Kong, London, Moscow, Paris, Singapore, and Tokyo, is frequently said to have the best litigation practice in London. They have recently announced a contractual alliance with the German firm Gleiss Lutz. There is no clear commitment to merge, but the relationship will give Herbert Smith a presence in major German cities. In January 2001, the firm also announced an alliance with a local Singapore corporate boutique, Arfat, Selvam & Gunasingham. Herbert Smith will continue to grow overseas, but believes in building around its core strengths as opposed to expanding its geographic coverage. They are interested in a merger with a top New York capital market law firm, but say that those firms are not interested in merging at this time. Herbert Smith has a lock step system and an accrual accounting system, which they believe creates serious issues in negotiating a U.S. merger. They believe that continued consolidation and the creation of global law firms is inevitable, and that the compensation and accounting issues will be dealt with.[27]

Cameron McKenna was created by the recent merger of two large U.K. firms. The firm is full service with particular strengths in banking and finance, corporate, energy, project and infrastructure finance, and property. The firm worldwide has 715 lawyers and offices all over the world with the exception of the United States. The firm has an expanded alliance with a number of firms throughout Europe, including the Netherlands, Belgium, Germany, Austria, France, and Switzerland. The alliance brands itself under the name CMS, and there is a contractual relationship governing referrals and cost sharing. There is a commitment to work toward full merger, but no agreement requiring it. Cameron McKenna is very interested in growing overseas rapidly and is in favor of the gradual approach, where the firms first form an alliance, and if that goes well, proceed to full merger. They are convinced there will be a large U.S.-U.K. merger, but believes there are serious accounting and cultural issues that will make such mergers complicated. Cameron McKenna uses a lock step system moderated by a bonus pool.[28]

Denton Wilde Sapte is also the product of a recent U.K. merger. It has 850 lawyers and 300 lawyers affiliated through alliance. Offices are particularly in the Middle East. They also have a number of alliance partners, including Spain, Germany, Austria, Denmark, Hungary and Sweden. They are a full-service firm with sector strengths in bank and finance, energy, technology and property. They are very interested in further global expansion and see a merger with a U.S. firm in their future at some point, but they are intensely focused on Europe at this time.[29]

Ashurst Morris Crisp is one of London's top corporate firms, with a stronger U.K. focus than some of the other firms listed above. It has looked to expand by merger and has had extended discussions with Clifford Chance and then last year with Latham & Watkins. This firm has 618 lawyers with ten offices. It is strong in finance, IPOs, management buyouts, and equity capital markets. Ashurst has a lock step and a strong senior partner governance model. It is interested in the United States, but only if there is a very special fit with its existing strengths. They seem less concerned about the expansion of other U.K. firms in Europe believing that steady growth in their core competencies is the more appropriate focus.[30]

Simmons & Simmons has about 800 lawyers firm wide and offices in Abu Dhabi, Brussels, Hong Kong, Lisbon, London, Madrid, Milan, New York, Paris, Rome and Shanghai. Simmons had an alliance with the Federson firm in Germany, but that firm elected to merge with White & Case. Simmons is looking to fill that hole. It seems very focused on its profit improvement strategy and improving its value proposition for its key clients and less focused on overseas expansion. It is strong in a broad spectrum of practice areas including M&A and capital markets, and has a good reputation in important sectors, including pharmaceuticals, biotech, telecom, and transportation.[31]

CRAVATH: THE LITTLE SWISS WATCH

At the other end of the spectrum are the New York law firms that are disinclined to engage in mergers with English firms and have no interest in establishing an international global leviathan. Among these firms is Cravath, Swain & Moore, which is one of the preeminent law firms in the world. The firm was founded in 1919, has approximately 400 lawyers, including 79 partners, and maintains offices in New York, London and Hong Kong only. In a brochure, Cravath "emphasizes the quality of its legal services" and goes on to say that "we are not, and will never try to be, the largest law firm measured by number of lawyers." The brochure states that the law firm stands on its record of success for clients, and that its goal "is to be the firm of choice for clients with the most demanding transactions and cases."

Cravath has one counsel and 79 partners, of which the majority are in New York, two in Hong Kong and two in London. The managing partner has said that there's been a deliberate determination not to grow and that Cravath partners "want to be partners with people we know and trust." The Managing Partner, Robert Joffe, has said that the firm feels it cannot trust lateral partners.[32]

Cravath provides services only with regard to U.S. law and takes no interest in practice elsewhere. There are no mergers contemplated, but the firm has a considerable amount of international business that it services for clients that have been with the firm for more than 50 years.[33] They do not feel a need to open an office overseas. If they have a matter that involves the application of German law, they would associate with a local German law firm. Cravath's managing partner has stated that the firm will "go find the best person we can and we'll tell the client that's what we've done." He continued by saying, "We think that's better than telling the client we're using our partner in Berlin because he just happens to be idle."[34] It is clear then that one of the countervailing forces towards the seemingly irresistible movement towards cross-Atlantic mergers is an American sense of elitism. Only time will tell whether the Cravath model is outdated or can withstand economic forces driving toward globalization. The question, as always, is, if per partner profits go down, will they change?

THE QUIET REVOLUTION: MERGERS WITHIN THE U.S.

We cannot move on without discussing the subject of the quiet revolution, the national mergers within the U.S., because they present the

Continued on page 20

Deliberations of the committee on research about the future of the legal profession

Continued from page 19

same problems of economics, competition, and threats upon professionalism presented by international globalization. Indeed, these mergers may be a precursor toward international expansion. In the last year, New York's Winthrop, Stimson, Putnam & Roberts, composed of 265 lawyers, merged with San Francisco's Pillsbury, Madison & Sutro, composed of 490 lawyers. Pillsbury Winthrop, LLP, was created with seven offices in California, as well as offices in Connecticut, New York City, Washington, D.C., Northern Virginia, and Palm Beach, Florida, as well as offices in London, Hong Kong, Singapore, Sydney and Tokyo.[35] In the same period of time Paul, Hastings, Janofsky & Walker, based in Los Angeles, a 610-lawyer firm, merged with New York's Battle Fowler, a 120-lawyer law firm; Chicago's Winston & Strawn, 607 lawyers, merged with New York's Whitman, Breed, Abbot & Morgan, 178 lawyers; and Cleveland's Squire, Sanders & Dempsey, a 550-lawyer law firm, acquired San Francisco's Graham & James, a 126-lawyer California firm.[36]

We see many of the same forces for change within the U.S. that are exhibited in the global law firms. Each presents an attempt to produce a firm that can support high profits per partner and also sustained growth.[37] In both the domestic and global firms there will be competition with other firms for clients. There will be competition with other firms for lawyers. And, in the early stages, it is apparent that the new giant national law firms are prepared to pay high salaries for particular local lawyers and will pay higher than local standards for associates. While we can all understandably yearn for the Cravath model, with its sound, friendly culture of support for highly-paid lawyers, the question becomes whether a firm that is resistant to growth and expansion like Cravath can continue to survive, particularly in the hot markets of New York and Europe. Can a Cravath, with its slow growth and relatively small opportunity for promotion, compete successfully for associates? Their loss of a valued partner to an English competitor – unheard of in the recent past – may be a harbinger of things to come.

ENTER THE BIG ACCOUNTING FIRMS

In the meantime, the big five accounting firms have announced that they wish to become leading global players in the legal profession. Four of them rank among the top 10 global employers of lawyers,[38] and many of the largest law firms in France, Spain, and other European countries are owned by or affiliated with accounting firms.[39] The managing partner of one major firm has said that the only thing that saves the large law firms in the U.S. from true competition with the accounting firms is the Securities and Exchange Commission's Regulation S-X[40] with regard to the requisite independence that auditors must have in order to provide appropriate auditing functions to their audit clients.

In its report accompanying Amendments to Rule 2-01 of Regulation S-X, the Commission finds the provision of legal services incompatible with the independence required to perform the audit function:

> We believe that there is a fundamental conflict between the role of an independent auditor and that of an attorney. The auditor's charge is to examine objectively and report, regardless of the impact on the client, while the attorney's fundamental duty is to advance the client's interest. As discussed in the Proposing Release at greater length, existing regulations, the U.S. Supreme Court, and professional legal organizations have deemed it inconsistent with the concept of auditor independence for an accountant to provide legal services to an audit client. Accordingly, we are adopting the proposed rule as to legal services with a few modifications. Final Rule 2-01(c)(4)(ix) provides than an accountant is not independent of an audit client if the accountant provides any service to an audit client under circumstances in which the person providing the service must be admitted to practice before the courts of a U. S. jurisdiction.[41]

The SEC also notes in passing that the large accounting firms are in the process of selling off some of their business because of a variety of dissatisfactions. For example, recently Ernst & Young sold its management consulting business to Cap Gemini Group S.A., a large and publicly-traded computer services company headquartered in France. KPMG has sold an equity interest in KPMG Consulting to Cisco Corporation and is in the process of registering additional shares in its consulting business to sell to the public in an initial public offering. Pricewaterhouse Coopers has announced an intention to sell portions of its consulting businesses. And Grant Thornton recently sold its e-business consulting practice.[42]

Ethics rules prohibiting American lawyers from sharing fees with non-lawyers have also affected the capacity of the accounting firms to compete in the U.S. However, it is clear that accounting firms will continue to hire U.S. tax lawyers and are beginning to form alliances with U.S. law firms. Most notably, Ernst & Young recently financed a new Washington, D.C., law firm specializing in tax law.[43] Regulation S-X does not prevent accounting firms from providing tax counseling at least to non-audit clients, and as noted, they are paying premium dollars to hire tax counselors to provide this service. It appears that the principal impact of those protections is felt by the medium sized and smaller law firms in the U.S., which depend on being able to provide a variety of counseling services including tax. What is harder to ascertain is the impact of the competition of the large accounting firms in the global market for the provision of legal services to non-audit clients where they are not impeded by U.S. ethical rules.

PROFESSIONALISM

One of the major concerns in the movement towards globalization is professionalism and the establishment of adequate standards of practice. While all of the law firms interviewed indicated that they have training programs for associates, few had such programs for partners. Where U.S. law firms grow through merger with foreign firms, there appears to be no program underway to ensure the adequacy of the new foreign partners, at least with regard to U.S. professional standards. One firm's managing partner remarked that some of the new partners received as a result of merger are "less sophisticated" than the U.S.-trained lawyers. In the largest of these global firms supervision appears minimal, and training does not appear to be part of the semiannual regional meetings that are used in order to communicate with the new foreign partners. It is also unlikely that a managing partner rushing to maintain relationships with his partners scattered in 30 offices all over the world will have a meaningful role in lawyer supervision. This situation is very close to the problems that were engendered in the early 1980s when American firms were first expanding by branching into other U.S. cities. In most of those cases these branches were merely the acquisition of existing law firms without any home city supervision or additional training. In one such instance a major New York firm branched by acquisition of an existing San Diego law firm. The branch and its parent became embroiled in litigation as a result of an alleged failure of diligence, and costs and embarrassment hung over the firm for years[42]

While no one wishes it to happen, all of the elements for a repetition of such a professional embarrassment are present in the emerging global law firms. It may well be that establishment of the quality, supervision, and control over professional conduct that is now commonplace in the U.S. offices of major law firms will only come about globally after a similar catastrophe.

FOOTNOTES

[1] *See* Anna Snider, *American lawyers on the move: US law firms seen in lead on both sides of European deals*, N.Y.L.J., Nov. 15, 1999, at S6.

[2] Coudert Brothers, *World Wide Offices—Firm Overview.*

[3] *Id.*

[4] Interview by Judah Best with Managing Partner, Coudert Brothers, May 2001.

[5] *Id.*

[6] *See* J. V. Beaverstock, R. G. Smith & P. J. Taylor, *Geographies* of Globalization: U.S. Law Firms in World *Cities*, 21 Urban Geography 95, 113 (2000) [hereinafter, *Geographies of Globalization*].

[7] Interview by Judah Best with Managing Partner, *supra*, n. 4.

[8] *Id.*

[9] *Id.*

[10] Coudert Brothers Promotional Materials, *supra* note 2 at 4.

[11] *Id* at 4.

[12] *Geographies of Globalization*, *supra* note 6 at 109.

[13] *See* M. Stevens, Power of Attorney: The Rise of the Giant Law Firms, 156, New York: Simon & Shuster (1987) [hereinafter, *Stevens*].

[14] Victoria Lee, *Who's* Afraid of Baker & McKenzie? International Fin. L. Rev., September 1993, at 9 [hereinafter, *Lee*].

[15] *Geographies of Globalization*, *supra* note 6 at 11.

[16] *Id* at 111.

[17] Interview by Judah Best with Managing Partner, White & Case, in New York, NY (Mar. 27, 2001).

[18] *Geographies of Globalization*, *supra* note 6 at 111-115.

[19] *See* D. L. Spar, *Lawyer's* Abroad: The internationalization of legal *practice*, 39 Ca. Mgmt. Rev. 8 at 22 (1977).

[20] *See Lee*, *supra* note 14 at 9-10.

[21] *See Spar*, *supra* note 19 at 23.

[22] *See* Duane Wall & Walter Driver, *One Size Doesn't Fit All: Practical Strategic Planning for Law Firms*, (Mar. 15, 2001) (unpublished outline, on file with author) [hereinafter, *Unpublished Outline*].

[23] *See Geographies of Globalization*, *supra* note 6 at 100.

[24] *See Unpublished Outline*, *supra* note 22 at 1.

[25] *See* John E. Morris, *Traitor to His Class: Watch Out World*, The Am. Law., Jan. 6, 2000.

[26] Interview by Mary Cranston with Senior Partner, Lovells (March 2001).

[27] Interview by Mary Cranston with Senior Partner and Partner, Herbert Smith (March 2001).

[28] Interview by Mary Cranston with Senior Partner and Managing Partner, CMS Cameron McKenna (Mar. 5, 2001).

[29] Interview by Mary Cranston with Managing Partner for International Strategy, Denton Wilde Sapte (March 2001).

[30] Interview by Mary Cranston with Senior Partner, Ashurst Morris Crisp (March 2001).

[31] Interview by Mary Cranston with Senior Partner and Managing Partner, Simmons & Simmons (March 2001).

[32] Interview by Judah Best Best with Managing Partner, Cravath, Swaine & Moore (March 2001).

[33] *Id.*

[34] *See The Battle of the Atlantic*, Economist, Feb. 26, 2000, *available in* LEXIS, News Library, ECON File.

[35] Investigation by Judge Joan Irion.

[36] *See* Wendy Becker, Miriam Herman, Peter Samuelson & Allen Webb, *Lawyers get down to business*, The McKinsey Quarterly, Mar. 22, 2001 [hereinafter, *Lawyers*].

[37] Pillsbury Winthrop explains "some elements" of its growth/merger as competition from large globalized firms, expanding globalization needs of clients, [and a need for] more depth in case practice areas." Pillsbury Winthrop believes that they are competitive in smaller/local offices (citing successful offices in Sacramento, Orange County, Palm Beach, as examples) as well as in their international offices (London, Sydney, Hong Kong, Singapore, and Tokyo.) Investigation by Judge Joan Irion.

[38] Graphics from The Hildebrandt Institute: **New Classes of Competitors: Four of the Big-5 Accounting Firms are Among The Top Legal Employers Worldwide**

Global ranking by number of lawyers (2000)	Firm	Number of lawyers	Number of countries
1	Clifford Chance	2,840	
2	Andersen Legal	2,784	102
3	Baker & McKenzie	2,767	
4	KPMG	1,900	70
5	Freshfields Bruckhaus Deringer	1,792	
6	PriceWaterhouseCoopers (Landwell)	1,706	100
7	Ernst & Young	1,451	145
8	Skadden, Arps	1,424	
9	Eversheds	1,415	
10	Jones, Day	1,409	
11	Allen & Overy	1,238	
12	Lovells	1,162	

Source: Legal Media Group, IFLR50: The World's Largest Law Firms, 2001

[39] *See Lawyers*, supra note 36.

[40] Interview by Judah Best.

[41] Final Rule: Revision of the Commission's Auditor Independence Requirement, Release Nos. 33-7919; 34-43602; 35-27279 (to be codified at 17 CFR Parts 210 and 240).

[42] *Id.* at 76013.