The Alaska BAR RAG

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Inside:

Are disgruntled employees the enemy within?

BY SHARON D. NELSON, AND JOHN W. SIMEK

"I can cut off their air supply whenever I want"
— A law firm system administrator

Scary, but it is all too common for disgruntled employees to strike at their employer by causing technological calamity. Whatever the reason for their disaffection, the calculated mischief that can be caused electronically has become an epidemic.

An example: the head of a local lawyer referral office resigned under pressure. Angry at her bar association, she performed wholesale deletions on the server, wiping out agency forms, procedures, correspondence, and historical records. Fortunately, she was not technically adroit and, with a little technical wizardry, all the deleted material was recovered despite the absence of backup tapes. Not every employer is that lucky.

What employers tend to worry about are power failures, system crashes, hackers and viruses. To be sure, those are all things that can and should be worried over, but the greatest danger is often close to home. It is much easier to plant worms, viruses, Trojan horses and to create all manner of other mayhem from within given an insider's knowledge.

REAL LIFE NIGHTMARES

So what are disgruntled employees up to? Here are some striking – and frightening – examples.

John, a computer programmer for a Fortune 500 company, had a feeling he'd be fired. So he created his own insurance policy. He wrote a program that instructed the computer to delete the entire customer database if John's name was ever deleted from the personnel database. Sure enough, he was fired. The customer database vanished. The company, brought to its knees, hired him back as a consultant at more than double his previous salary to rebuild (and now secure) the customer database.

. . .

An employee, knowing he was about to be fired, took the entire customer database from his company and sold it to the highest bidder among the competition.

. . .

A Forbes computer technician, angered at his termination, brought down five of eight network servers. All the data in those servers was deleted and none of it was recoverable. Forbes was compelled to shut down its New York Office for two days and sustained losses of more than $100,000.00.

. . .

A Lockheed Martin employee crashed its e-mail system by sending 60,000 colleagues a personal e-mail message requesting an electronic receipt. Lockhead Martin had to fly in a Microsoft emergency response team to repair the damage.

. . .

Prudential Insurance Co. had an employee merely frustrated with his sense that he was underpaid. His revenge consisted of purloining electronic personnel files for more than 60,000 Prudential employees. He not only sold the information over the Internet, but incriminated his former supervisor in the theft.

. . .

Omega Engineering suffered $10 million in losses

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THE PERILS OF A SNOWLESS CHRISTMAS

Alaska wins Law Day award

The American Bar Association has awarded Alaska's photo-text exhibit, "The US in JUSTIC is . . . Everyone!," an Outstanding Law Day Activity Award for 2002. The awards recognize exemplary community education projects on the importance of the rule of law in America.

Sponsored by the Alaska Court System and Alaska Bar Association, the exhibit "put a face on justice in Alaska," said the ABA. The exhibit featured 37 portraits of diverse Alaskans and their personal statements about what equal justice means to them. It was replicated and sent to over 40 locations statewide, and approximately 40,000 Alaskans had the opportunity to view it at schools, courthouses, and other public venues. According to the ABA's Law Day website, "the project succeeded in raising public awareness about our legal system and the work of judges, attorneys, legal organizations, and others in a quest for fairness and equality. The 'rule of law' is no longer abstract when a dedicated person gives it a face and a voice."

"The US in JUSTICE is...Everyone!" exhibit served as a visual backdrop for Law Day 2002 activities across Alaska and promoted the 2002 Law Day theme "Celebrate Your Freedom: Assuring Equal Justice for All." Barbara Hood, who coordinated the project, said the exhibit was specifically designed to address this year's theme. Participants were included in the exhibit based on their contributions in the areas of focus identified by the American Bar Association: (1) extending legal assistance to those in need; (2) making courts more efficient and user-friendly; and (3) making American justice equal regardless of color, gender, disability, or economic status. As a result, the exhibit met its goals of helping educate Alaskans about the many people who work for equal justice and fostering meaningful dialogue about what equal justice means and how it can be achieved in a diverse society.

Major communities in Alaska, as well as many smaller villages, displayed the exhibit on Law Day and throughout the month of May 2002. Courthouses in major cities and regional centers such as Anchorage, Barrow, Bethel, Fairbanks, Juneau, Ketchikan, Kotzebue, Nome, Sitka and Palmer mounted it prominently in public lobbies

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PRESIDENT'S COLUMN

Alaska is a great place to practice law • Lori M. Bodwell

I recently participated in that twice yearly ritual of swearing in new members of the bar. Even with only two admittees (twice the number we had at the last ceremony), the courtroom was full of relatives, friends, and colleagues. Judge Steinkruger had the honor administering the state oath and Judge Kleinfeld the federal oath.

The speeches were short, not much longer than the state oath itself, with an admittee's infant son belching loudly in all the right spots. The intimate size crowd allowed for some comments from the admittees before the requisite picture taking and, in a Fairbanks tradition, a reception compliments of Peter Aschenbrenner.

As the last speaker, I was struggling for words as all the previous folks had already repeated the theme of my comments — Alaska is a great place to practice law. (There was also a prevalent theme about Fairbanks being a great place to practice law, but I will avoid that one here as I want to convey the spirit of unity that exists in the Bar, not cause dissention and conflict.)

The point that each speaker made was that collegiality still exists in Alaska in a profession portrayed publicly more for its backstabbing than its congeniality. By the time the recent admittees receive their twenty-five year pins, they will likely know of or be acquainted with most people in their class – an impossible feat in other states where thousands of budding lawyers take the bar exam each year. Unlike their counterparts in other states, the new lawyers just admitted in Alaska have immediate opportunities to become involved in state and local bars and, as our bar ages gracefully, to assume leadership positions.

The new lawyers at the ceremony in Fairbanks were encouraged to reach out to fellow attorneys for advice and guidance as they begin their careers. They were reminded that a phone call and a hand shake can often avoid the costly trip to court. They were reminded that in small towns in a small state, an attorney's word is a valuable tool that must be guarded. If an attorney is regarded as untrustworthy, or is on the dreaded "communicate with in writing only" list, that attorney's effectiveness is compromised and, ultimately, the client suffers.

Collegiality is not, however, to be confused with the delivery of inferior legal representation, or, as my clients might think, a conspiracy among attorneys. Unlike states with law schools whose bars are often dominated by attorneys from one or a handful of schools, Alaska attracts applicants from all over the country (41 law schools in the recent round of applicants.) The free exchange of ideas through a diverse population in both formal and informal settings keeps the practice of law vibrant in Alaska. The collegiality that remains alive here proves that hard fought courtroom battles need not carry over to bitter personal disputes.

So for all the new admitees, I welcome you to the Alaska Bar and encourage you to take advantage of a good thing. Get involved in the bar, sign up for committees and participate in sections. Come to the annual convention, not just to rack up your CLE credits, but to meet your colleagues and foster that small bar feeling that makes Alaska a great place to practice law.

The opportunities are endless. This is your bar; its future is what you make it.

EDITOR'S COLUMN

"Infidels," oaths and affirmations: Alaska got it right early • Thomas Van Flein

Witnesses are "sworn in" before depositions, trial testimony and affidavits. Other than reminding witnesses, whose testimony may be fluctuating, that they are under oath, or were under oath as they are confronted with another statement, this is usually not the focal point of a trial. Evidence Rule 603 requires all witness to declare that they will testify truthfully by oath or affirmation. The modern purpose of the oath is to insure honesty with the not so subtle threat of prosecution for perjury if the witness does not tell the truth.

Professor Wigmore pointed out that, historically, the oath was used either to exclude testimony or undermine it if the witness was not of the "proper" religious persuasion and, therefore, morally incapable of truth-telling. See Jackson v. Gridley, 18 Johns 98 (N.Y. 1820) ("A person who does not believe in the existence of a God, nor in a future state of rewards and punishments, cannot be a witness in a court of justice, under any circumstances"). An interesting territorial Alaska case reveals the best and the worst of these prejudices, although the prejudice expressed went beyond religion and included race.

The time was 1897; 40 years after the Dred Scott decision holding that slaves were property, not citizens, and one year after Plessy v. Ferguson, where the Supreme Court reasoned that "a statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races."

The case was *Shelp v. U.S.*, 81 F. 694, 698-99 (D. Alaska 1897). Two "white men" were charged with "whisky peddling" to Alaska Natives. A defense attorney, perhaps reflecting the times, made what today would be an outrageously improper argument. In discussing the weight to be given to the evidence from Alaska Native witnesses by the jury, the attorney argued that "the evidence of ignorant, half-civilized barbarians, whose moral and religious sense was not developed, and who did not understand and appreciate the binding force of an oath as understood by Christian people, and who had little or no appreciation of our religious ideas, from which the oath gets its binding force and efficacy, and who had no appreciation of the enormity of perjury, that the evidence of such witnesses was not entitled to as much credit as the evidence of a witness whose moral ideas were more fully developed, and who understood the binding nature of an oath."

This is a shocking argument, though not completely out of step with the times. The trial judge addressed this argument and set forth progressive reasoning that reflected an enlightened awareness and times still to come. The trial judge issued a jury instruction as follows: "(1) It is a fact that Indians lie, and it is also a fact that white men lie, and some of the most civilized and cultured men are among the greatest liars. The evidence of Indian witnesses is entitled to as much credit and weight as the evidence of white men, and such credibility and weight are determined by the same rules of law." The trial judge followed this up with a statement still given to juries, namely, that they are to judge credibility by demeanor, or by noting conflicting or improbable testimony, etc.

The trial judge also instructed the jurors that they had the "right to use your own knowledge of this country, the habits and disposition of the Indians, and your knowledge and observation of the fact that whisky peddlers cruise about this coast, going from one Indian village to another, selling vile whisky to the natives."

On review, Judge Hawley affirmed the trial court's instructions, and made his own observations: "No witness is to be discredited simply on account of his race or color. Every witness, whether white, dark, black, or yellow . . . is competent to testify. It may be that an Indian whose religious ideas have not been as fully developed as some white men's may have as keen a perception of the facts which transpired in his presence, and be as able to satisfy a jury of the truth of his statement, as any white man could be . . . The truth is that, in law, both classes stand upon the same plane."

Now, just a century later, this "issue" has become an historical footnote, a speed bump on the way to true equality. It was refreshing to see that a federal district court judge in Alaska in 1897 did not condone the prejudicial defense argument. Indeed, five years later, a New York

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The Alaska BAR RAG

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Dan Branch
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William Satterberg
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Thomas J. Yerbich
Rick Friedman

Contributing Cartoonists
Bud Root

Design & Production:
Sue Bybee & Joy Powell

Advertising Agent:
Details, Inc.
507 E. St., Suite 211-212
Anchorage, Alaska 99501
(907) 276-0353 • Fax 279-1037

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Bar Letter

Keep the Rag!

Dear Editor:

I've noticed in recent editions the concern about readership and whether it is economically practical to continue the *Rag*. I've been a career long reader, and I can assure you that if it were discontinued the *Rag* would be sorely missed. The September/October issue was particularly enlightening.

As he gets older, Ken Eggers looks more and more like Leroy Barker.

The Ode to the TVBA by Kat Kinkade, Sally Berens, and Justin Adams was a remarkable tribute to the TVBA (one can only appreciate a meeting having attended), and Judge Andrew Kleinfeld. Is it true that sneaking knives onto an airplane is a Constitutional right?

Finally, being one myself, I belly laughed at Tom Van Flein's article on legal dinosaurs. A few more examples:

(18) You may be a legal dinosaur if ... You open a pleading from the opposing side and recognize the copy sent to you was typed with carbon paper.

(19) You may be a legal dinosaur if... When you received your fifty year pin from the Alaska Bar Association (it was supposed to be twenty-five), you were too blind to recognize the error.

Keep up the good work.

— Diane F. Vallentine

Mistaken identification – false light in the public eye

For many years, Anchorage attorney Leroy J. Barker and federal district court judge James K. Singleton have been mistaken for each other. I wonder, now that the *Bar Rag* has published Leroy Barker's picture with my name in the September-October 2002 *Rag*, if people will mistake me for these two esteemed members of our Bar. I should be so lucky.

On a more serious note, I have to wonder who has the better claim for false light in the public eye – Leroy or me. Perhaps the *Bar Rag* can conduct a poll (a/k/a a beauty contest) of its readers to answer this question. Better yet, rather than impose on your readers, I challenge the editors, instead of apologizing to both Leroy and me, to apologize to the one they feel should be most offended. The "loser" can then take whatever action he feels appropriate.*

— Kenneth P. Eggers

*I wonder if there are any attorneys out there chomping at the bit to take my case on a contingency fee basis.

Editor's Note: Challenge accepted. We thought about the classic non-apology apology. You know it when your hear it: "If I offended anyone, and I don't know how I could have, well then I apologize." But more is needed here. Upon closer inspection, we can't distinguish among Ken Eggers, Judge Singleton and Leroy Barker. In the future we will require a DNA sample from each submitted with any picture.

Anatomy of our bad hair day

So there we were in September, beyond the deadline for the Bar Rag, when suddenly, without warning, flocks of photos arrive by courier, e-mail, over the transom, and (we swear it's true) self-replicating themselves overnight.

Folks from the Bar who everyone knew suddenly didn't look like themselves in these photo clones. Captions and context became mysteriously separated. Retirement parties, picnics, wakes, and Russians conspired to upscrew the works.

Much to our dismay (as in, egad, judges, no less), some of the captions and photo credits from the last issue of the *Bar Rag* were, shall we say, somewhat inaccurate. To wit:

• Leroy Barker's archived photo inexplicably showed up with Ken Eggers' Bar Foundation column;

• Judge John Reese took the photos at Judge Andrews' retirement party (not Barb Hood; she must have been elsewhere...);

• One of the captions for Judge Andrews' retirement festivities indicated she was dancing with Mom (which she wasn't, unless she changed her dress mid-event.)

Fortunately, to their credit, judges and attorneys have a sense of humor; consequences from the errors immediately occurred (see Eggers' letter to the editor), and, in a sidebar, so to speak:

E-mail message from John Reese, actual photographer, to Barbara Hood, Oct. 8, copied to Big Cheeses at the Bar:

"I hate to complain, but I have looked at your photos of the Elaine Andrews party and must make a few comments: The photos all are a little under exposed, which could of course be blamed on bad film or processing, but far worse is the fact that of the nine photos, fully five cut off the tops of the heads of the subjects. Poor aim can be expected on occasion, but the number and consistency of these partial decapitations leads me to suspect deliberate treachery. Art tends to bring out surpressed feelings, of course. I think it would be a good idea for you to seek out professional help before your repressed anger is manifest in more than a symbolic manner. Just a suggestion. And use a light meter next time. "

Reply from Barbara Hood to John Reese et al, Oct. 8,

"We can all agree that I need professional help, so your 'slight criticism' is very well taken. But in all honesty I think the photos are terrific-great exposure, lots of action. So I was truly proud to discover that I'd taken all of them-from a full room away without a camera, no less.

"I'm really sorry about the undeserved credit. I know it's not supposed to be that big a deal, but credit is the only thing we amateurs get. So I hope you'll forgive me for sneaking into the Bar Rag office late at night to make that little change. And I promise that all the photos I submit to the next issue will be "By Hon. John Reese."

From one shutterbug to another, Barbara

P.S. I really am sorry and I'm glad you're such a good sport. If it was me I'd demand a full-page retraction! *(Managing editor note: We're working on it, 11-16-02)*

So that's the story of the *Bar Rag* gremlins in October. Your faithful Production Team sure hopes it doesn't happen again. (You can find our names in the tiny type masthead on page 2...)

"Infidels," oaths and affirmations

Continued from page 2

judge would write: "though the witness may not be excluded from testifying by reason of being an infidel, he may be interrogated as to his belief, and his infidelity be considered by the jury on the question of his credibility." Brink v. Stratton, 68 N.E. 148 (N.Y. 1903). Even 100 years ago Alaska was ahead of New York. Let's be glad that these prejudices no longer cast a shadow over our courthouse, and appreciate that Alaska courts saw the light earlier than many.

CLASSIFIED ADVERTISING

ALSC President's Report

Special challenge to law firms • Vance Sanders

Robert Hickerson Partners in Justice. The 2002-03 Robert Hickerson Partners in Justice Campaign, the proceeds of which support and expand ALSC's delivery of legal assistance to low-income Alaskans, began October 1 and will run through the May 2003 Bar Convention. Please give generously to our campaign this year.

Generous giving is not limited to individuals. This year, I am issuing a special challenge to law firms. We very much need law firms to support ALSC, either through a firm gift or through collective gifts from all partners and associates within the firms. Those gifts ensure continued delivery of quality legal services to indigent Alaskans from all walks of life.

Individual and firm contributions are more important this year than ever. Flat state and federal funding, combined with the effect of increased costs of doing business from year to year, leave ALSC vulnerable to budget shortfalls that necessitate cutting back essential client services. Bar members have the opportunity to donate through a bar dues checkoff, to have quarterly or monthly contributions charged to their credit cards, or to give a one-time gift. As you consider your charitable giving in the last quarter of 2002, please put the Partners in Justice campaign at the very top of your list.

LSC TECHNOLOGY INITIATIVES

ALSC was recently awarded two of the 54 Technology Initiative Grants made available by the federal Legal Services Corporation. Competition was fierce for the 2002 grants, for which only about 60% of the prior year's funding was available. LSC's technology grants are awarded to selected legal services programs throughout the nation and provide initial financial support for innovative projects that expand the availability of legal information to members of the low-income community. These grants are restricted in their scope and focus and cannot be used to supplement or substitute for other sources of operating funds.

FOR THE SECOND YEAR IN A ROW, ALSC RECEIVED A GRANT FOR WORK ON ITS LAWHELP STATEWIDE WEBSITE PROJECT.

For the second year in a row, ALSC received a grant for work on its LawHelp statewide website project. The website will be used to connect and organize the public interest legal community in an online environment and to effectively disseminate legal, community resource and referral, and self-help information to needy clients.

In addition, ALSC received a separate grant for a partnership project with the Alaska Court System. Katherine Alteneder, ACS Family Law Self-Help Center Director, and Jean Sagan, former ACS Administrative Attorney, formulated the idea of a partnership project, and together with ALSC's Administrative and Technology Coordinator, Beth Heuer, designed a proposal for an expansion of the LawHelp interface to provide legal information, document preparation assistance, and referrals to self-represented litigants.

On both of these technology efforts, ALSC is assisted by an advisory LawHelp stakeholder committee consisting of representatives from the Alaska Bar Association, Alaska Court System, Disability Law Center, Catholic Social Services, the Alaska Network on Domestic Violence and Sexual Assault, the Alaska Native Justice Center, and the various pro bono programs throughout the state. Members of the Bar who are interested in technology issues, particularly as they relate to the provision of legal assistance to low-income residents of our state, are encouraged to contact Beth Heuer at 907-452-5181 (Fairbanks) or by e-mail at bheuer@alsc-law.org. Opportunities abound for attorneys who are interested in reviewing substantive materials (both as client-oriented and advocate-oriented resources) or coordinating legal event calendars and news alert bulletins. This is a great way to donate pro bono hours to ALSC and to participate in a truly innovative and challenging project.

LSC VISIT TO ALASKA

In mid-June 2002, ALSC hosted a contingent of Legal Services Corporation (LSC) officials who were making their first-ever visit to Alaska. Vice-President for Programs Randi Youells, Vice-President for Government Relations and Public Affairs Mauricio Vivero, and LSC Senior Program Counsel Cyndy Schneider (who serves as ALSC's program officer) visited Fairbanks, Kotzebue, Kiana, and Anchorage from 10-14 June. They were accompanied by LSC Consultant (and former ALSC statewide litigation attorney) Jim Bamberger, who currently works as the Statewide Coordinator for Washington State's Columbia Legal Services. ALSC Board member Louie Commack (of Ambler) and Kotzebue Supervising Attorney Russ LaVigne arranged a Northwest area trip for the group that included a dinner hosted by Maniilaq and a day trip to Kiana. While in Anchorage, Randi, Mauricio, and ALSC Executive Director Andy Harrington met with Carl Marrs, Dawn Dinwoodie, and Lisa Rieger of CIRI, and with George Hieronymus of the Rasmuson Foundation, to personally thank those organizations for their generous financial support to ALSC during the past year. We understand Cyndy presented a report to the LSC Board during its 23 August meeting; the Board was reportedly "mesmerized" by the report about Alaska's unique problems, beauty, and the service delivery problems facing ALSC. Let us hope this results in more money flowing northward to address those service delivery realities.

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION CREATES THE "PIERCE-HICKERSON AWARD."

ALSC's Executive Director Andy Harrington reports that NLADA recently created an award in honor of former ALSC Executive Director Robert Hickerson. The award is named jointly in honor of Robert and Julian Pierce, a Lumbee Indian who served as Executive Director of Lumbee River Legal Services in Pembroke, North Carolina, and whose work in pursuing federal recognition for the Eastern Band of the Cherokee National paralleled Robert's own devotion to forceful advocacy for tribes in Oklahoma and in Alaska. The award was created "to recognize outstanding contributions to the advancement or preservation of Native American rights by advocates in civil legal assistance programs." Navajo leader and activist Peterson Zah of Window Rock, Arizona, was selected to receive the inaugural award at NLADA's annual conference in mid-November 2002. It is difficult to envision a more fitting way to honor Robert's lifelong devotion to this important cause.

JEWELL HALL'S RETIREMENT

Advanced Paralegal Jewell Hall retired from ALSC (where she had worked in Anchorage) on October 31 after thirty years of dedicated service to ALSC and our clients. Jewell began working for ALSC in 1972 and became a fixture in our Anchorage office. Her dedication to our clients, and their very real needs, will be sorely missed. Congratulations, Jewell. Enjoy those grandbabies!!

Helps win All-American City Award

Youth court has great 2002

This has been a great year for Anchorage Youth Court. Three outside groups gave much-deserved recognition to the 300 plus students who make up the AYC Bar Association.

Early in 2002, the Urban Institute completed a study of four youth courts located in Anchorage, Arizona, Maryland and Missouri. Researchers measured pre-court attitudes and post-court recidivism among more than 500 juveniles referred to teen court for non-violent offenses, such as shoplifting and vandalism. The study compared recidivism outcomes for teen court defendants with outcomes for youth handled by the regular juvenile justice system. The final report entitled "The Impact of Teen Court on Young Offenders" spotlighted AYC as the most successful of the four, with a 6% recidivism rate after six months. "One of the strongest *prima facie* arguments for the use of teen courts is that they expose young offenders to the pro-social influence of non-delinquent peers," the report concluded. 15 youth courts in Alaska use the AYC model.

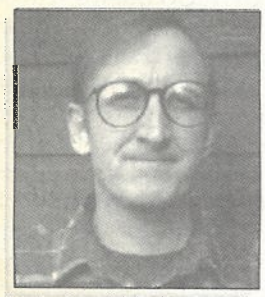
In June Mayor George Wuerch and other Anchorage representatives traveled to Kansas for the annual All-America Cities competition. Anchorage came back with the designation due largely to the presentations by Anchorage Youth Court, Special Olympics and Bridge Builders. Cathryn Posey, former AYC Bar Association member, represented AYC.

In September AYC learned that the Making a Difference Program is one of nine programs selected by Mutual of America as a "Merit Finalist" in the Community Partnership Competition. Created in 1995, the Making a Difference Program includes Anchorage Youth Court, the McLaughlin Youth Center, and the Volunteers of America's Youth Restitution Program, who collaborate to reduce youth crime.

The Anchorage Young Lawyers section of the Anchorage Bar Association founded AYC in 1989 and continues to support the organization. Currently, they are setting up a mentoring program to help students build communication and leadership skills. Also, 76 Anchorage attorneys provide volunteer assistance as Legal Advisors on court days and as teachers of the AYC Bar classes. Many Anchorage attorneys support AYC financially when they renew their Anchorage Bar Association memberships. Without the continuing and substantial support of the legal community, AYC would not be the great success it is today.

A time of change

• Dan Branch



Autumn is our time of change with the falling away of leaves and hours of light. Rain turns cold and then, with luck, to snow. This year, in Southeast, it's still a wet season.

On windless days, clouds appear to tear themselves on the tree-covered mountainsides of Douglas Island and hang in tatters on spruce and hemlock. Fog shuts down the airport for days at a time.

The crows have left Chicken Ridge and ravens spend their days haunting the Fred Meyer's parking lot. Yesterday I saw one wet eagle fly from the spruce tree across the street. He had given up plans to make a meal out of our neighbor's cat that had been sitting fat for hours on the dry side of a picture window.

The eagle has reason to complain. For him it's a time of famine.

I'm not complaining. After 13 years of living in Southeast, fall weather brings a comfort if it follows an honest summer. Some would say our summer was less than honest---that they were cheated by weeks of overcast. I remember good summer days, both wet and dry, when the woods were filled with bird song.

During our first fall in Juneau I ran into a neighbor walking up the Gold Street hill from downtown. He told me fall was his favorite time because we had the town to ourselves. It was true, I thought. The town quiets down when the last cruise ship leaves. On most weekend days you can shoot a cruise missile down Franklin street without hitting anyone. That doesn't change until the legislature returns in January.

My neighbor doesn't look forward to the opening of the legislative session but I do. The session brings a lot of energy to Juneau. The aides are mostly young adults who move in and out of the old Capitol building, talking and laughing. Bad weather doesn't seem to dampen their energy.

The legislative energy is already building. Aides are moving into the Capital building. They can be seen moving around their lighted offices on late afternoons.

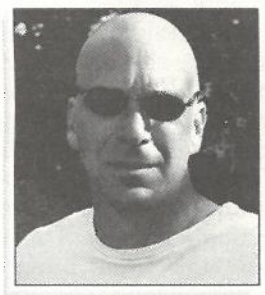
IN THE SPRING, OUR LONG NIGHTS WILL GIVE WAY TO LONG DAYS. KING SALMON WILL BEGIN NOSING AROUND FALSE OUTER POINT, BULBS WILL FLOWER, AND A NEW GOVERNMENT WILL BEGIN MAKING ITS MARK.

There are other government changes afoot. The Knowles Administration is closing shop and the Murkowski Administration is making plans to run our state government. It's a time of concern for some and promise for others.

Change is hard if exciting. It's what fall time is all about. The world turns, tilting our hemisphere further and further away from the life giving sun. The night reaches for total darkness. Our ancestors fell to human sacrifice to stop this slow slide to darkness. Today, anyone with a class in high school science under their belt knows that at solstice the earth will begin tilting back towards the sun. Still, as the hours of daylight fade, sometimes the ancient panic rises, nameless, in us. This is the time to let science rule instinct and embrace the change.

In the spring, our long nights will give way to long days. King salmon will begin nosing around False Outer Point, bulbs will flower, and a new government will begin making its mark. There will be good in all of it.

Why practicing law in Alaska is better than any other state • Rick Friedman



"We are all too prone to believe in our own programs and to follow the echo of our own slogans into a realm of illusion and unreality."

Thomas Merton, A Thomas Merton Reader, p.14 (Doubleday 1996, Revised Edition)

In order to head off any more columns about bestiality, the editor submitted six ideas for my future columns. To pacify him, I picked these three:

1. "Why practicing law in Alaska is better than in any other state;" (He apparently assumes it is.)

2. "Why practicing law in Alaska is better now than it was 20 years ago;" (This is like my kids claiming today's music is better than the music of 30 years ago, unaware that most of their favorite songs are remakes from the 60's and 70's.)

3. "The appellate court: the 13th member of your jury—or, how jury verdicts can be reversed." (Now he is just baiting me. A more accurate title would be: "The appellate court: the tail wagging the dog," but more about that later.)

"WHY PRACTICING LAW IN ALASKA IS BETTER THAN IN ANY OTHER STATE"

I have now tried cases in California, South Dakota, Idaho and Arizona. I have litigated in perhaps six to eight additional states. I'm still surprised at the parochialism of every legal community. The lawyers and judges in Sioux Falls, South Dakota are just as convinced they are in the Center of the Legal Universe as the folks in downtown L.A. Each community is equally convinced its procedures and customs are far superior to any that exist elsewhere on the planet.

In fact, from my vantage point, each community has a lot to learn from the others. The California Superior Court judge, hearing oral argument and ruling on 10 summary judgment motions in an hour and a half, could learn something from the time and attention an Alaska Superior Court Judge spends on a single motion. The converse is also true. Most summary judgment motions don't justify the painstaking (and time-consuming) analysis Alaska judges devote to them.

Some of the procedural differences are truly startling. There was the federal judge, with well over a million dollars in high-tech computer equipment in his courtroom, including individual monitor screens for each juror, who refused to let me use yellow highlighter on enlarged copies of documents being shown to the jury, saying such highlighting gave "undo emphasis" to particular portions of the document. (My partners say I am obsessing about this incident, but now that I have put it in print, perhaps I can put it behind me.) Or, did you know that in California, alternate jurors are not excused when deliberations begin, but are sent into the jury room with the other jurors and told not to participate?

I have found the quality of lawyering, or "the standard of practice," fairly similar throughout my travels. My sense is that percentage-wise, the distribution along the bell-curve continuum of awful lawyers to great lawyers is fairly uniform in all locales. A good lawyer from the backwaters need have no apprehension in going up against the biggest firm from the biggest city.

There is one aspect to practicing law in Alaska that is clearly better than in other states, and that is the quality of the state trial bench. While there are obviously great judges in all jurisdictions, the Alaska state trial bench has a depth and consistency I have not seen anywhere else. The cause of this good fortune is the subject for another column, but I am sure the fact that we do not elect our judges has a lot to do with it.

The worst of the Alaska state trial judges would be considered "average" or "above average" in most of the jurisdictions I have been. So, in that sense, I must agree with the implicit premise of the editor, that practicing law in Alaska is better than in any other state.

WHY PRACTICING LAW IN ALASKA IS BETTER NOW THAN 20 YEARS AGO

When I arrived in Ketchikan in the summer of '78 to begin an internship at the D.A.'s office, the D.A., Geoff Currall, spent two hours telling me what a great place Alaska was to be a lawyer. At that point, Geoff, who must have been in his early 30's, already had 16 or 17 children. He informed me he was taking them back east on vacation, and would be gone about six weeks. He handed me the keys to his van, told me to have a good time, and left. A good beginning for my first legal job.

Mike Thompson, who eventually became "The Honorable Michael A. Thompson," was an assistant D.A., and the only other lawyer in the Ketchikan D.A.'s office. He was left in charge. I don't think a day went by when he didn't remark, "can you believe they pay us for having this much fun?" And he meant it. He was from Arkansas, or some such place, and thought he had died and gone to heaven.

In those days, when the sun came out in Ketchikan, businesses closed. (This was before the tour ships.) When the sun came out, Mike closed the D.A.'s office, and took me in tow. We went to Ben Franklin (owned by Mike's in-laws), pulled the cheapest fishing gear we could off the racks (Mike was a big believer in disposable fishing gear), and made a beeline for Humpy Point. I can still see Mike cackling, his four-foot plastic rod bent almost in half, as he pulled in one humpy after another. In two hours we would have our limit of 6 apiece, and be heading back to town.

In the late 70's, early 80's, lawyers on different sides of a case often got along quite well, socializing with each other, sharing a drink while awaiting a verdict, comparing notes after a verdict. There was not the sense that there often is today, that the parties (and their attorneys) are engaged in some kind of holy war. In this sense, practicing law in Alaska was better 20 years ago than it is now.

THERE WAS NOT THE SENSE THAT THERE OFTEN IS TODAY, THAT THE PARTIES (AND THEIR ATTORNEYS) ARE ENGAGED IN SOME KIND OF HOLY WAR. IN THIS SENSE, PRACTICING LAW IN ALASKA WAS BETTER 20 YEARS AGO THAN IT IS NOW.

I also have the sense that the practice of law, in Alaska and elsewhere, has become more politicized over the last 20 years. Corporate America began to recognize that the only thing standing between it and the profitability of exploding Ford Pintos, asbestos pajamas, and Dalkon Shields was the American Courtroom—and more specifically, the American jury system. So, corporate America unleashed its considerable marketing and lobbying skills on what Thomas Jefferson called the most democratic of our institutions.

Sadly, in its war upon the jury system, Corporate America found no shortage of collaborators among the individuals sworn to protect and uphold that system: judges. *See Evans v. State*, ___ P.3d ___ (Alaska 2002), Op. # S-9313 (plurality opinion). Perhaps in the future we can explore what motivates such betrayals—betrayals that occur every day throughout this country. For now, it is enough to note that in this regard, practicing law is <u>not</u> better in Alaska now, than it was 20 years ago. (Can you think of any member of the 1982 Supreme Court who would have signed off on the plurality opinion in *Evans*?)

On the other hand, there is no question that the quality of the state trial court bench has improved dramatically in 20 years. While there were many good judges 20 years ago, our trial bench today is an extraordinary phenomenon. In terms of intelligence, competence, judicial attitude, work ethic, freedom from bias and the other qualities that make for good judges, our trial bench is second to none. Anyone who thinks otherwise should spend a week in any courthouse in any other state in the union. You will come back wanting to kiss the totem poles in front of the Nesbitt courthouse.

In recent years, we have seen breath-taking acts of judicial courage: Judge Michalski's ruling on homosexual marriage, Court of Appeals Judge Bryner's first opinion in the Hazelwood criminal prosecution (upholding Hazelwood's government-promised immunity) and Judge Link's decision in the Tetlow case (finding prosecutorial bad faith). Regardless of whether one agrees or disagrees with these holdings, there is no denying that they do much to disprove the implicit lesson of *Evans:* that "judicial courage" is an oxymoron.

On balance though, and at the risk of sounding hopelessly and unrealistically nostalgic, I would go back twenty years and take less competent judges in a less politically charged judicial climate.

"THE APPELLATE COURT: THE 13TH MEMBER OF YOUR JURY—OR, HOW JURY VERDICTS CAN BE REVERSED"

At the outset, note my gratitude that the editor did not ask me to address how jury verdicts can be upheld. That would be far outside my area of expertise. I do, however, feel eminently qualified to describe how jury verdicts can be reversed: get a good trial result for a plaintiff. The "how" is easy, the "why" is more interesting.

Anchorage lawyer, Don Bauermeister, unintentionally suggested to me the reason why. Don is one of the most under-appreciated lawyers in Alaska today. An accomplished poet, trial lawyer and CLE lecturer, Don is a brilliant and creative thinker. When he mentally

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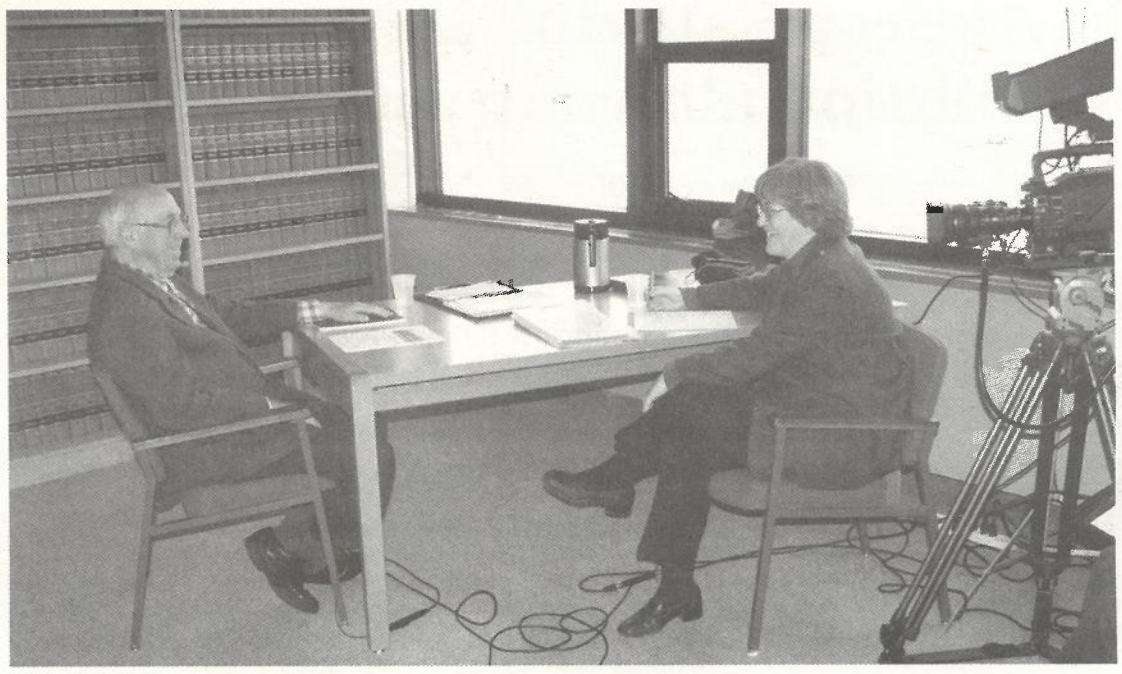
Oral histories of long-time members of the bench and bar recorded on video

The Alaska Bar Association's Historians Committee and the Alaska Court System recently launched a joint effort to record on video the oral histories of long-time members of the bench and bar. Here, Judge Thomas Stewart—territorial lawyer, secretary of the Constitutional Convention, former court administrator, and long-time superior court judge—is interviewed by Bar Historian Margaret Russell in the Boney Courthouse in Anchorage. Stewart was taped for two sessions that totaled over six hours, using video equipment available through the court system. The tapes will be preserved in the Bar Historian's Archives at the Boney Courthouse and will be available for future use by the legal community and the public. The oral history project is still in the early stages, but Bar and court



representatives hope to conduct at least one video interview each month over the coming year. For more information about how you can contribute to this important project, please contact Leroy Barker, Chair of the Bar Historian's Committee, at 277-6693.

ALL MY TRAILS

Why practicing law in Alaska is better than any other state

Continued from page 6

goes for a meandering walk, I have to all-out sprint to keep up. Don is becoming famous Outside for his CLE presentations on economics, punitive damages and the thinking of conservative jurors. It seems like not a week goes by that I don't get a call from a lawyer in Nevada or California, raving about Don's presentation and testifying to its effect on his or her own thinking.

Anyway, Don is generous with his time and his ideas. Recently, as he shared with me his evolving knowledge of perception, he cited some examples from Paul R. Ehrlich's book, *Human Natures*. Knowing I am too lazy to read the entire book myself, Don sent me the relevant chapter, part of which I will share with you:

Which of the two parallel, vertical lines is longer? Although the line on the right appears longer, each line is actually the same length. Most of us have been mildly amused by this perceptual illusion before. Here is the interesting part. When the diagram is shown in what Ehrlich calls "carpentered cultures," cultures with sophisticated exposure to lines, angles and geometry, individuals invariably perceive the line on the right as longer than the line on the left. When it is shown to people with very little exposure to lines, angles and geometric shapes, (such as people dwelling in rainforests or on wide plains), they correctly perceive that both vertical lines are of the same length.

Stated another way, those with the most education, sophistication, familiarity and knowledge about the question being asked, are least likely to get it right. Their perception has been unconsciously biased by the very experiences we would expect to give them a leg-up. The blue-ribbon architect from New York City will be unable to see the truth that is obvious to the Pygmy who has never left the Congo jungle.

Of course, convincing the New York architect to defer to the Congo Pygmy on matters of linier perception, would be like convincing many judges their perception is less accurate than that of the common mob that makes up a jury. Intelligent, self-confident and accomplished, judges are unaware that their long experience in a "carpentered environment" often makes their perceptions *less* accurate, rather than more so. This truth is not only counter-intuitive, it strikes at the heart of many judges' sense of self.

In my experience, whether on the appellate or trial bench, a judge's deference to juries is a cultural variable. There appears to be a correlation between the level of privilege in a judge's background and his or her lack of deference to a jury. There are numerous and notable exceptions—I would be the first to acknowledge—but there does appear to be a pattern.

So, returning to the question at hand, verdicts often are reversed for good, solid procedural reasons. But often, they are reversed because the appellate judges perceive the merits of the case, through their paper lenses, from their "carpentered environment," differently than the jury did. Implements are lifted from the legal toolbox to "prove" that the right line is longer than the left. The fact is that the modern trial of moderate complexity has so many potential appellate issues that an adroit appellate judge can reason to almost any result he or she (consciously or unconsciously) wants. Without a heavy dose of humility on the appellate bench, we are left with trial by appeal, not trial by jury.

WHAT I REALLY WANTED TO TALK ABOUT: LYING TO JURIES

Having hopefully satisfied the Editor's requirements, I can now address the topic that is really on my mind: *Central Bering Sea Fishermen's Association v. Anderson*, ___ P.3d ___ Op. # S-9955 (Alaska 9/6/2002). Specifically, the portion of the opinion on whether the jury should be instructed on the limits of its authority to award damages—the infamous "caps."

Anderson held it was error to instruct the jury on the punitive damages cap. (Presumably, the same holding will apply to the cap on non-economic damages.) The court stated:

> "Putting caps before the jury carried a substantial risk of suggesting the range of appropriate punitive awards. Moreover, no countervailing benefit could be gained from the instruction.[1]"

The first question is, what is wrong with "suggesting the range of appropriate punitive awards?"

In genuflecting before the Alaska State Legislature in *Evans*, the plurality noted it was an "outlandish assumption" that "damages fall within the exclusive province of the court system." The plurality told us loud and clear that the Legislature has the power to set the range of appropriate awards. If we all must defer to the wisdom of the Legislature in these matters, why shouldn't the jury be told? As a matter of law, this ***is*** the range of appropriate awards. We tell the jury all the time what is legally appropriate and inappropriate. Why keep this aspect of the law hidden like some shameful secret? It isn't, is it?

A horribly burned quadriplegic, doomed to decades of immobile agony is now legally entitled to a maximum of one million dollars in noneconomic damages. Why not tell the jurors that before they spend hours and days agonizing over the value of pain, suffering, loss of enjoyment of life and consortium? Wouldn't a defense lawyer want to invoke the Legislature's wise benchmark in arguing to a jury that a mere amputee is only entitled to $200,000? Why deprive the jury of the Legislature's wisdom and expertise?

The Court says "no countervailing benefit could be gained" from instructing on the caps. How about the benefit of a truthful and honest system? The justice system belongs to the people, not to lawyers and judges. At most, we hold it in trust for them. Every experienced trial lawyer or judge has seen jurors deliberate for days, has seen them emerge from the jury room in tears, exhausted from the struggle of trying to do justice. How can we expect them to respect a system that doesn't respect them enough to tell them the truth?

In the case of the caps, the truth is they do not have the power to award plaintiff more than a certain amount. Just like they don't have the power to award attorney fees or interest in most circumstances. Not telling them is arrogant and manipulative.

I fear this is another step in the journey towards making trials performance art. We create a big dramatic show for the benefit of "the public" and the jury. The jurors are told at the outset that they are the most important part of the system, that people have fought and died for the power they are about to wield as a jury. The verdict is announced with great fanfare. Then, the trial judge, required to follow the command of the Supreme Court and the Legislature, automatically, and behind closed doors, quietly takes part of the verdict. The trial judge, if convinced the right line is longer than the left, may also take away all or part of the verdict for reasons of his or her own. Whatever remains of the jury's decision is then picked over by the Supreme Court, many years later, when all but the parties have forgotten the case.

If we are not careful, what will be left is nothing but propaganda: the appearance of a democratic institution, actually manipulated and controlled by an affluent, educated, powerful elite—an elite morally certain the right line is longer than the left.

Rick Friedman can be contacted at Allmytrails@hotmail.com

(Footnotes)

[1] Footnotes omitted.

Appropriate dispute resolution alternatives

• Drew Peterson

One of the more interesting aspects of the appropriate dispute resolution (ADR) movement is the invention of new and ever more creative methods of dispute resolution. Mediators, arbitrators, and dispute resolution theorists have come up with literally hundreds of different methods of resolving disputes, mostly outside of the courtroom.

An article by Paul Fisher, published by Mediate.Com in 2000 (http://222.mediate.com/articles/fisher.cfm) identifies a myriad of such methods, including some that I had never heard of before.

While I found Fisher's article interesting, I should start by noting that it contains two of my pet pieves about articles about ADR. First it fails to distinguish between arbitration as a process decided by a third party and mediation as a process where the parties make their own decisions. To me this constitutes a sloppy use of language which leads to much confusion ADR processes.

Even more seriously, Fisher's article assumes that all mediations use caucus as an integral part of the mediation process. This totally negates the form of non-caucus mediations done by many family mediators, which in my mind is a preferable form of mediation for many high conflict cases.

SOME FORMS OF MEDIATION CAN BE COMBINED WITH OTHERS TO MEET THE UNIQUE NEEDS OF THE PARTIES AND THEIR ATTORNEYS IN ANY CASE.

Paul Fisher is described as a Mediator, Arbitrator, Referee and Special Master on complex multi-party real estate, construction defect, insurance, employment, professional E&O, securities and business disputes. Fisher has mediated and arbitrated hundreds of cases since 1978. Fisher begins his article by asserting that the key to successful negotiations is strategic planning. Such planning allows the parties to customize the dispute resolution process to the unique needs and interest of the parties. If the parties are involved in the creation of the dispute resolution process from the initial stages, he believes, they will be more likely to settle. Such processes can include:

TRADITIONAL CAUCUS MEDIATION

According to Fisher, traditional mediation begins with a joint session in which all parties and counsel are present, and each states its public position (opening statement) When no further progress is made in joint sessions, the mediators then meets with both sides in separate caucus sessions.

All discussions during the mediation process and all documents prepared especially for use during the mediation session are confidential under the Rule of Evidenc. The caucuses provide an opportunity for the party and attorney to candidly discuss their view of the case with the mediator. According to Fisher, this allows for an analysis of the strengths and weaknesses of each party's position, as well as the risk factors and costs of going forward to trial.

NON-CAUCUS MEDIATION

While not discussed in Fisher's article, as noted above, I should not fail to mention the possibility of mediation without caucus. By analyzing and discussing the strengths, weaknesses, risk factors, and costs of a case in front of all sides to a dispute, the parties can be together on the same page, without the worry that things are getting lost in translation through the mediator. This method of mediation is especially useful where mistrust levels are extremely high, as is true in many family cases, and is true in a great number of other cases as well.

BASEBALL MEDIATION

Fisher's next discussed mediation method is baseball mediation, which should more properly be called baseball arbitration. Under such a procedure, each side writes down its final position, either monetary or non-monetary. The neutral then decides for either one or the other position, but at no point in between. The neutral's decision takes the form of a binding judgment.

The advantage of baseball mediation is that it provides a strong incentive for both parties to present reasonable positions. The process encourages the narrowing of positions, which allows for a greater chance of settlement. The parties can exchange their final positions with each other and continue negotiations while the neutral is deliberating. The process avoids the potential of having the neutral "split the baby." The disadvantage of baseball mediation is that the parties have lost control of the settlement process and left the decision in the hands of a third party.

GOLF MEDIATION

In this twist on baseball mediation, the neutral first writes down what he or she believes to be the fairest, most reasonable final conclusion . After doing so, but keeping it confidential, each side is then asked to write down their final position. The side whose final position is closest to that of the mediator's becomes the actual award or judgment.

POCKET GOLF MEDIATION

Again the neutral formulates a monetary or non-monetary recommendation on all claims and counterclaims. The neutral then presents it to both sides in confidential caucus sessions. If both parties agree, there is a settlement. If only one party accepts, this is kept confidential, so there is no loss of face or bargaining disadvantage. According to Fisher, the process is very effective, especially where the parties are far apart in their positions.

BINDING MEDIATION

On impasse, the parties stipulate that the mediator decide a monetary and non-monetary judgment. The name for this process which I believe is more commonly used and more truly descriptive is Med-Arb.

HIGH-LOW MEDIATION

This is the same as Fisher's binding mediation except that the parties will agree ahead of time that the neutral's final judgment cannot be higher or lower than the final positions of the parties.

MEDIATION COMBINED WITH ARBITRATION

Fisher outlines a variety of distinguishable process involving arbitration and mediation conducted by the same neutral.

MEDIATION / ARBITRATION (MED / ARB)

Fisher defines Med / Arb somewhat differently than I have seen it defined by others. Under his definition, the parties agree ahead of time to a procedure whereby if there is an impasse in mediation, the mediator will then commence an arbitration, either immediately or at a set time in the future. Once the arbitration process is concluded, the neutral renders a binding award. Often combined with High-Low Mediation, the advantage of Med/Arb are that it reduces the cost of having a second neutral hear the case in arbitration. Disadvantages, however, included the fact that the award could possibly be based on something the parties tell the neutral during the confidential private caucus sessions, where the opponent has no right of cross-examination. Moreover, the parties may be inhibited from being totally candid during the private caucus sessions by knowing that the mediator may become a decision making arbitrator.

ARBITRATION / MEDIATION (ARB/MED)

Referred to sometimes as "Last Chance Mediation", in Arb/Med, the arbitration is conducted first. The neutral prepares a written award and seals it. The same neutral, now serving as a mediator, mediates the case. If the mediation is successful, the award is destroyed and no one ever sees it. If the mediation is unsuccessful, the award is then given to the parties. Again the process is often used in conjunction with High-Low Mediation.

The advantage of Arb/Med is that it creates great pressure on the parties to settle, because the neutral has already rendered an award. The disadvantage of the process is that theoretically the neutral can coerce as settlement, given the imminent ability to deliver an award against one party of the other. This reduces the parties levels of control and satisfaction with the process.

MINI-TRIAL

The emphasis here, under Fisher's definition of Mini-Trial, is for the parties to stipulate, before the fact finding stage of the process, to a condensed fact finding. Stipulations govern the limitations of time each party can take to present its case and rebuttals. Any aspects of the trail process can be limited, such as the number of witnesses, time spent on direct and cross exam, numbers of experts, etc.

Even if a traditional mediation does not result in the settlement of all claims, it is possible to assist the parties and their counsel to in designing a Mini-Trial process in order to cut litigation costs.

UNIQUE / SPECIALLY DESIGNED DESIGNER FORMS OF MEDIATION

Fisher goes on at some length about how some forms of mediation can be combined with others to meet the unique needs of the parties and their attorneys in any case. He gives an example of an Arb-Med-Arb procedure which he developed along with the parties to resolve a case in a complex home remodeling dispute. In debriefing the case, which was successfully settled, all agreed that they were in a more flexible state of mind to negotiate as settlement after first having a "satisfying bloodletting" of the other. While I am not sure that advocating satisfactory bloodletting is a goal that I would necessarily want to aspire to as a mediator, I agree that some cases require a creative approach along such lines to obtain the optimal outcome.

DOCUMENTING THE DISPUTE RESOLUTION PROCESS

Not surprisingly, Fisher emphasizes that a critical aspect of the dispute system design process is to carefully negotiate and document the particular dispute resolution process to be utilized before the process begins. All agreementrs concerning the process should be formally documented before the process begins. Similarly, any agreements reached through the process should themselves be documented as soon as reached, and signed by all parties, counsel, and also the neutral, where appropriate.

CONCLUSION

Fisher concludes that none of this is a complicated as it sounds, and that an appropriate dispute resolution mechanism can usually be ascertained within a short amount of time. Cases are more easily and quickly settled when the appropriate form of ADR is used. When parties are involved in helping decide the form of dispute resolution process they have an investment in its creation and want to see it succeed. This greatly enhances the chances of success while creating both client and counsel satisfaction. While I don't agree with all of Fisher's examples or his sloppy use of mediation / arbitration language, I do agree with his point about the advantages of well designed methods of dispute resolution.

APPELLATE JOGGERS REDUX

I wonder whether anyone other than myself noticed how Rick Friedman and I both complained on facing pages of the last issue of the *Bar Rag* about our impression that no one reads our columns. In order to assure Rick that that is certainly not the case at least with his column, I thought I would take a shot at his contest. While I am not fully cognizant of the running capacities of the Supreme Court, all of whom look fit and able to me, I have had to avoid running over a rapidly moving Justice Eastaugh on a few occasions, so he gets my vote. Now to wonder if Rick will read this.

ESTATE PLANNING CORNER

Beneficiary designations

• Steven T. O'Hara

In planning their estates, clients must consider all beneficiary designations, including under all insurance policies, tax-deferred annuities, pay-on-death accounts, and retirement plans. Here "retirement plans" include individual retirement accounts and tax qualified and non-qualified pension, profit sharing, and certain deferred compensation plans.

These types of assets do not pass by Will. For example, consider a client who prepares a Will, intending all assets to go to X, but who fails to verify that her last beneficiary designation filed with her life insurance company is consistent with her Will. Suppose the client's last designation names Y as the beneficiary of the life insurance. Under such circumstances, upon the client's death the life insurance proceeds will go to Y and not to X, regardless of what the Will says.

Even where clients remember to review their beneficiary designations, their focus is often exclusively on the primary beneficiaries. Too often clients fail to consider the contingent beneficiaries, the persons who would take if a primary beneficiary predeceases the client.

Consider an unmarried client who has $1,000,000 in an IRA. She has three adult children and many grandchildren. In completing the beneficiary designation for this retirement plan, the client names her three children in equal shares as the primary beneficiaries. The client does not name contingent beneficiaries.

Suppose the client's oldest child dies, leaving his own children surviving. Suppose the client then dies without changing the beneficiary designation. Do the client's surviving two children take all of the IRA? Or are the descendants of the deceased child entitled to their father's share?

Usually this issue is addressed in the "boilerplate" of the beneficiary form. The boilerplate usually states that the surviving two children take 100 percent of the IRA. Most clients, in this writer's experience, would want the deceased child's share to pass to his descendants.

Clients generally do not consider this issue when they — often hurriedly — complete a beneficiary designation form.

As another example, consider a married couple who have children and grandchildren. The couple owns significant wealth through retirement plans. Suppose they name each other as the primary beneficiary under the retirement plans, and then suppose they name their children as the contingent beneficiaries. Suppose one of their children dies, leaving his own children surviving. Suppose the couple then dies simultaneously.

Here again the question is whether the descendants of the predeceased child will receive any part of the significant wealth held in the retirement plans. The answer is usually "no" under the boilerplate of the beneficiary designation form.

Therefore, clients need to not only consider both primary and contingent beneficiaries, they also need to be specific about their intentions. Here it may work for the client to insert, within the beneficiary designation form, a reference to an "Attachment A." This attachment then could state something like the following:

Beneficiaries: My children X, Y, and Z, equally, provided, however, should any such child not survive me but leave descendants who survive me, his or her share to said descendants, *per stirpes*.

Alternatively, perhaps the client could simply add an asterisk after each child's name and then, in the margin of the form, insert something like the following:

*If he or she does not survive me but leaves descendants who survive me, his or her share to such descendants, *per stirpes*.

The "Attachment A" approach may be preferable. With more space, clients may have room to express their intent on the meaning of "descendants" (are adopted persons included?) and "*per stirpes*" (how do grandchildren take if all children are deceased?).

The examples throughout this article contemplate individuals as beneficiaries, rather than trusts. To maximize tax deferral under tax qualified retirement plans, clients need to have "designated beneficiaries" within the meaning of the Internal Revenue Code (IRC Section 401(a)(9)). The term "designated beneficiary" means an individual and not a trust (IRC Section 401(a)(9)(E)).

Trusts are not favored here because it may be difficult to determine the individual beneficiary, if any, who will actually receive the distributions from the retirement plan. To calculate the required minimum distributions under the retirement plan, one must look through a trust to an individual beneficiary in order to have a life expectancy on which to base minimum distributions. If a trust has a charitable organization as a beneficiary, then perhaps no individual's life expectancy can be used to maximize tax deferral under the retirement plan (Treas. Reg. Sec. 1.401(a)(9)-5,A-7(b)). Also, if a trust has more than one individual beneficiary, then perhaps the life expectancy of the oldest individual must be used to determine minimum distributions (*Id.*).

In other words, the IRS recognizes that it is possible to satisfy the requirement of having an individual "designated beneficiary" even where a trust is named as the beneficiary of a retirement plan. But the regulations on this subject are not clear. For example, the distinction between a trust "successor beneficiary" (who can be ignored) and a trust "contingent beneficiary" (whose life expectancy might determine minimum distributions) is unclear (*Id.* and Treas. Reg. Sec. 1.401(a)(9)-5,A-7(c)).

This writer's experience is that where clients intend to benefit adult children, they tend to name their children directly as beneficiaries under retirement plans. This is the case even where their other assets remain in long-term, generation-skipping trusts for their children. On the other hand, clients with minor children often designate a trust as the beneficiary where the clients intend to benefit their children. Here clients generally consider any loss of tax deferral as the cost of providing asset management for minor children.

Given the substantial wealth that clients hold through assets that pass by beneficiary designation, clients need to be as deliberate about preparing their beneficiary designation forms as they are about preparing their Wills.

Federal sentencing guidelines should be scrapped, study says

Nov. 1 marked the first anniversary of new federal sentencing guidelines, which imposed new sentencing restrictions on federal judges. In a new policy analysis reviewing the last 15 years, "Misguided Guidelines: A Critique of Federal Sentencing," Erik Luna, an associate professor of law at the University of Utah, outlines how the congressionally mandated federal sentencing guidelines undermine constitutional principles and produce unjust results. "Scores of federal defendants are sentenced under a convoluted, hypertechnical, and mechanical system that saps moral judgment from the process of punishment," says Luna.

The Guidelines have tended to shift power from impartial judges to partial prosecutors, Luna explains. "Prosecutors now decide who is entitled to leniency—and that has led to perverse results. The 'big fish' get light sentences because they turn in the 'small fish.' The small fish get harsh sentences because they have nothing to offer to the prosecution."

"Although the guidelines are frowned upon from all corners of the criminal justice system," says Luna, "the federal judiciary had been particularly adamant in its opposition to the current sentencing regime."

"Federal judges have described the guidelines as a dismal failure, a farce, and out of whack...and a dark sinister, and cynical crime management power with a certain Kafkaesque aura about it," he claims.

Luna also describes a scandalous process called "fact bargaining"—whereby prosecutors and defense attorneys, "concoct phony factual records to circumvent the guidelines and achieve just outcomes." He argues that Congress should not interfere with federal sentencing. According to Luna reform is long overdue, 15 years are enough—and that the best way to fix the problem is to "scrap the guidelines and start anew."

— Press release, CATO Institute
www.cato.org

To live a conscious life: Meditation & the law

By Dennis M. Warren

Part I

William James, the father of American psychology, believed that we have within us "unimaginable resources" that can enable us to be resilient in the face of life's demands. He believed we have the capacity to have a second, and a third, and a fourth wind. The type of renewal he was talking about is not just a burst of energy in the face of physical exhaustion. He envisioned a deep well of physical, emotional, psychological, and spiritual reserves that could be called upon, and that would spontaneously come to our aid, when needed. James believed that these resources are waiting to be tapped by all of us, just below the surface of our "normal waking consciousness."

MY OWN EXPERIENCE AFTER YEARS OF PRACTICE WITH RELAXATION, CONCENTRATION, AND MEDITATION PROCESSES, AND THAT OF MANY WITH WHOM I HAVE WORKED, HAS CHANGED MY ATTITUDE.

I used to think that James' comments must be metaphor or poetry. They sound too good to be true. But I don't feel that way anymore. My own experience after years of practice with relaxation, concentration, and meditation processes, and that of many with whom I have worked, has changed my attitude.

I've become convinced that we all have the resources within us to experience deeper levels of balance, peace, and happiness. It's possible to engage our professional lives in such a way as to be more productive, but at the same time, be more relaxed and experience greater satisfaction in our work. We can disentangle ourselves from the pressure, stress, and anxiety of intense professional demands and still perform at a high level and do quality work.

We are all familiar with the risks and punishing consequences to our bodies and health from cumulative stress. What I find much more interesting, and important, is the way stress influences our level of awareness, our intentions, and our states of mind. These are the components that determine how we experience our lives, how we relate to others, and how we make professional and personal decisions. If we can unlock the dilemma of dealing with stress-induced states of mind, the reservoir of resources James spoke of can become available to us and reshape our lives.

The real questions are: How can we mobilize these resources? How can we tap into these energies that are normally unavailable to us? Where do we start?

UNDERSTANDING THE DILEMMA

Does any of the following sound familiar? During a recent telephone discussion, I asked one of my attorney friends how the morning was going. He responded, "I'll tell you what kind of morning I'm having. It's 10:30 a.m. and I already have a stiff neck."

Some mornings the constant pressure of telephone calls, client demands, deadlines, motions by opposing counsel, and overall workload just take their toll. The quality of our attention and the level of our concentration diminishes. Our level of energy drops. Our sense of resolve and purpose fades. We lose our focus. We may go on automatic pilot, not really being creatively present for our work. The impact of these stress-induced state of minds can ruin our morning, our day, and our performance.

Stress frequently leads to the stress-induced state of mind of personalizing events. Our experience changes from events just "happening" to events happening to me. The aggressive but ethical action by opposing counsel on behalf of their client is now experienced as a personal attack, or one designed to intentionally disrupt our work schedule. Once this starts to happen, the mind personalizes almost everything. It becomes difficult, or impossible, to separate people from problems and to focus on objective issues, rather than finding fault and blame.

Stress also encourages the stress-induced state of mind of a loss of perspective and of tunnel vision. I've been fortunate to work with clients in Hawaii on a regular basis during the last decade. It's not uncommon for me to walk into the office of a client, another attorney, or friend, and be struck by the natural beauty right outside the window. When I comment on this, I frequently receive a distant and detached response: "Oh, yeah. It's something, isn't it?" The demands and pressures of daily work have resulted in the focus of awareness becoming so narrow that the beauty just outside the window, or in our lives, is no longer available to nourish and inspire.

These experiences are not unique to Hawaii. We've all had the experience of putting some special object on our desk, a piece of artwork or photo on the wall, or a special poem on our credenza, to remind us of a special relationship or accomplishment. We take these small acts to provide a source of future inspiration, something to remind us of the greater possibilities of our lives. And very shortly these objects we consider precious or inspirational disappear from our recognition. Our minds become so focused on the task at hand, and the demands of the day, we literally no longer see them.

If these stress-related states of mind continue throughout the day, we go home exhausted and dissatisfied. If they continue for months or years, something much more profound happens. They rob us of our connection to the purpose and the enjoyment of our work. Our understanding of who we are, and what we are capable of, narrows. Our personal and spiritual evolution slows down, becomes stunted, or stops altogether. Some of us wake up one morning at work and we are saddened to find our lives are less than we hoped for or planned. We may discover that we have secretly given up on the idea of things being better, but

Continued on page 11

To live a conscious life: Meditation & the law

Continued from page 10

don't know when or how that decision was made. Philosopher Alan Watts was fond of saying that each of us is "an aperture through which the universe sees and experiences itself." When stress-induced states of mind become habitual, this aperture becomes so small, the lens so clouded,that we lose touch with any greater sense of purpose in our careers and lives, and any connection to something larger than ourselves. It is a dangerous act to mistake a good career for a good life. A good career is only one part of a good life.

Many attorneys have allowed the pressures and demands of their careers, and stress-induced states of mind, to take over and smother their lives. Frequently this happens by default, unknowingly. A busy, professional life begins to gain its own momentum, pushing us forward. Stress-induced states of mind distort our perception. We stop asking questions about what is really important in our lives. Slowly, imperceptively, things start to spin out of balance.

IT IS A DANGEROUS ACT TO MISTAKE A GOOD CAREER FOR A GOOD LIFE. A GOOD CAREER IS ONLY ONE PART OF A GOOD LIFE.

This loss of perspective and balance is a very real and potential consequence of an attorney's commitment to represent clients zealously, without a counter-balancing commitment to live a rich and full life and to develop meaningful relationships. It is a dangerous act to mistake a good career for a good life. A good career is only one part of a good life.

FINDING A SANCTUARY

The possibility of creating a balanced center inside of us in the midst of a busy professional life may seem a long distance away. But it's actually as close as the next moment. Therapist Sam Keen says that "when I need solitude, I turn off the phone and fax and sit until my breath comes slow and gentle. I am able to enter into the sanctuary that always awaits me at the center of my being." One way of creating this sanctuary is through the daily use of relaxation, concentration, and meditation practices at work and home.

By taking the time to quiet our minds and open our hearts each day, and to look more deeply into our own experience, we begin to see and understand our lives more clearly, which leads to inner balance and peace. This process in turn, leads to wisdom and compassion, which inform ourdecision-making, actions, and relationships. In this sense, these practices can be a powerful source of inspiration and energy for daily living, problem-solving, and healing. The Indian sage Krishnamurta stressed that these practices are not a means to an end, they are both the means and the end.

STARTING AT THE BEGINNING THE SOURCE OF FREEDOM

All of us have a longing to escape from the pressures of our lives, to be free from those things we believe cause our uneasiness, frustration, and unhappiness. Suzuki Roshi, a wonderful meditation teacher and founder of the San Francisco Zen Center, had an interesting viewpoint on this sense of longing. "We all have an urge to be free." Suzuki would say, "But what I mean by freedom and what you mean by freedom may be two different things. What I mean by freedom is a calm and clear mind."

Suzuki's notion of freedom initially seems to run counter to our basic understanding of freedom-the release from constraint or the ability to act without constraint or censorship. This is because Suzuki wasn't defining freedom by describing the type of action one can take after one becomes free. He was talking about the underlying source of freedom-the inherent power, flexibility, and creativity which can emerge from a calm mind and open heart. Suzuki's comments also point to an important understanding: A sense of freedom, balance, and peace will only begin to emerge in our professional and personal lives when we begin to develop these same qualities in the quiet of our own minds and hearts.

An analogy may be helpful here. We're all familiar with the terrifying power of a cyclone, the furious, high velocity, rotating storm destroys anything in its path. Yet inside every cyclone is a central low pressure zone where all is calm. Specialized weather planes can fly right through the danger of a cyclone's circular dance of destruction and arrive at this place of refuge at its very center. In this place, the plane's crew can monitor and formulate strategies for dealing with the storm around them without danger. The typical response of attorneys is to try to think their way out of any problem. This training, unfortunately, does not serve us well with stress-nduced states of mind.

The storms created in our own minds, and hearts, every day by the demands and pressures of our professional and personal lives are every bit as real as the storms created by nature in the physical world. More importantly, their destructive impact on our performance, relationships, and the quality of our life is equally dangerous. Each of us has the potential for developing a calm and clear center inside ourselves where our minds and hearts are open, receptive, non-judgmental, and stable in the face of turbulence, confusion, and strong emotions. It's possible to find your center in the midst of stress. The center is already within us, waiting to be discovered and cultivated.

A NEW STRATEGY

The problem with stress-induced states of mind is that we usually don't see them coming. We may have a vague sense that something unpleasant or negative is taking place. But we usually can't define or recognize the actual *process of stress*-induced states of mind developing. We remain largely unconscious of their presence until they reach a stage of physical, mental, or emotional symptoms—difficulty concentrating, a quick temper or irritability, anxiety, a stiff neck or shoulders, headaches, indigestion, difficulty sleeping. At this point, a sense of urgency frequently sets in to solve the discomfort or pain.

The typical response of attorneys is to try to think their way out of any problem. Beginning in law school, we are taught that our minds are the primary tool for controlling, dealing with, and solving the issues we confront in the world. We are trained to have an answer for every question, a response for every situation. We spend our professional days analyzing, evaluating, judging, strategizing, and problem-solving.

THE TYPICAL RESPONSE OF ATTORNEYS IS TO TRY TO THINK THEIR WAY OUT OF ANY PROBLEM. THIS TRAINING, UNFORTUNATELY, DOES NOT SERVE US WELL WITH STRESS-INDUCED STATES OF MIND.

This training, unfortunately, does not serve us well with stress-induced states of mind. We cannot think our way out of stress-induced states of mind. We cannot conceptualize ourselves into being relaxed. We cannot intellectualize ourselves to sleep. Clearly, a different and more global strategy involving resources other than just our intellectual or conceptual capacities is necessary to deal with this situation. What we need is a strategy based in awareness and direct experience.

TO LIVE A CONSCIOUS LIFE

The answer to dealing with stress-induced states of mind, and tapping into the reservoirs of energy referred to by William James, lies in bringing our awareness and attention to that which is normally unseen, unnoticed, and ignored. Therapist R.D. Laing points to part of the strategy in this way: "The range of what we think and do is limited *by what we fail to notice.* And because we fail to notice that we fail to notice, there is little we can do to change, until we notice how failing to notice shapes our thoughts and deeds."

PROFESSIONAL ERRORS AND MISJUDGMENTS ARE A SYMPTOM OF DIVIDED CONCENTRATION AND A LACK OF INNER BALANCE.

One of the biggest challenges during our work day is to *remember* to pay attention, to actually be present in the moment. We frequently find ourselves in difficulty situations at work because we have failed to exercise care and attention-to simply be conscious and aware of what we are doing. Our focus is divided between a current project, some other pressing matter, anticipation of difficulty on yet another situation, and worrying about something that happened the day before. As a result, we are not fully present for and focused on the work underway and errors and misjudgments occur. Professional errors' and misjudgments are a symptom of divided concentration and a lack of inner balance.

A helpful way to start bringing the process of stress-induced states of mind into view is to periodically stop what you're doing during the day. Close your eyes. Take several deep breaths. Allow the body to relax. Then experientially ask these Quality of Work and Life Questions:

• *Am I working in a relaxed way?* What is the level of tension, bracing, or holding in the body, and what does it feel like? Is the mind relaxed, open, and spacious? Or tight, constricted, and narrow? Is the energy active and fluid? Or dull and blocked? How do I feel emotionally? How does it feel to work this way? Why am I working in this way?

• *Am I present and involved in my work?* Is the mind wandering repeatedly off the project at hand? Or staying focused on what is being done and how it is being done? Am I actively engaged in my work? Or am I resisting and struggling with it? Am I creatively involved in what's happening? Or on automatic pilot? How does it feel to work this way? Why am I working in this way?

Professional errors and misjudgments are a symptom of divided concentration and a lack of inner balance.

• *What can I do, right now, to deal with or improve the situation?* Do I need to take a break and clear the mind? Would doing a brief breathing, relaxation, or concentration process assist grounding and stabilizing the mind, the emotions, and my outlook? Do I need to re-evaluate today's, or my overall, workload and current schedule of appointments and commitments? Would stopping the current project, stepping back, and I re-evaluating things be helpful? Is prioritizing or reprioritizing today's work, or the work on this project, in order? Can input or guidance from a colleague or friend provide needed balance? Would straight forward and direct communication with another member of the team or opposing counsel be wise?

I assure you that regularly exploring these questions will be instructive. If we patiently and honestly look at these questions, they can serve as a direct and effective diagnostic tool. The answers can help us understand how we work and why we are not as effective, efficient, or productive as we can be. They can help us wake up to our own lives. But you may find it difficult to sit with these questions, because the mind and body are not calm, clear, and relaxed. That's where meditative practices come into play.

If we're willing to remain open to these questions, to sit with them without trying to find a solution or fix things too quickly, they can serve as the basis for developing a revised attitude and approach to our work. By understanding our working patterns, habits, and attitudes, and how we feel about our work, we can begin to fashion a vision of what needs to be changed and how we can work in a more relaxed and satisfying way. We can see what skills need to be improved or acquired to move in this direction. We can craft a daily strategy for both dealing with the stress and for slowly transforming our professional lives. The creation of a formal vision statement and daily strategy plan are two specific steps we can take to facilitate this process.

Next Issue: Meditative practices. Reprinted with permission from the Hawaii State Bar Assn. Copyright by Dennis M. Warren, warren law@earthlink.net

Comments on a Bar Rag article?
Write the editor, or e-mail us at info@alaskabar.org

Pro Bono Service Committee members and other interested Bar members met on a Saturday in October to discuss the future of pro bono services in Alaska. Front row L-R: Judge Mark Rindner; Lisa Rieger; Erick Cordero; Christine McLeod Pate; and Lori Bodwell, Bar President. Back row L-R: Mara Kimmel; Deborah O'Regan; Sabrina Fernandez; Katherine Alteneder; Barbara Malchick; Jon Katcher, BOG member; Andy Harrington; Bryan Timbers; and Barbara Hood. Photo by Gilbert Benoit

Does legal theory support invasion?

Two different legal theories have been proposed to support our invasion of Iraq: UN authority from Operation Desert Storm and American self-defense. The latter theory, which will unlikely be used, focused on whether a country can act in pre-emptive self-defense against an immediate danger presented by Iraq. Why should we wait until we are seriously injured before we fight back? In support of this position, President Bush has argued that Article 51 of The United Nations Charter (providing the right of member countries to act in self in self-defense against "armed attacks") permits the U.S. to preemptively attack another country. However, this interpretation contravenes a long-standing international law principle that was developed in response to a conflict in this country, in 1837.

In 1837, Canadians revolting against the British Government were receiving support from private militias operating from New York shores. Despite British complaints, the American Government refused to intervene. The British captured the private American gunboat *The Caroline* and, to the outrage of the Americans, sent it over Niagara Falls. The ensuing legal doctrine, drafted by Daniel Webster, condemned the British and stated that such force was permitted only if there was a "necessity of self-defense instant, overwhelming, leaving no choice of means, and no moment for deliberation.[1]" This standard remains a fundamental standard of international law.

More recently, Israel bombed an Iraqi nuclear power plant in 1981 and claimed "preemptive self-defense." The United Nations Security Council, including the United States, condemned the bombing as illegal and not justified by self-defense.

Nearly all-legal commentators believe that there is insufficient evidence of an Iraqi danger to America to satisfy that legal standard. President Bush claims that because of the increased risk of technology in the hands of "rogue states," the basic standards of self-defense must be changed.

However, changes in international law can occur only through treaties or the gradual modification of international standards that must be uniform, consistent, and widespread throughout the world—adopted by a vast majority of countries (customary international law). Such a modification has not occurred regarding self-defense. However, it may change in the future. The precedents are a product of their times. Every time that governments consider pre-emptive self-defense to be a valid policy, it strengthens the modifying force of customary international law.

—Sumbitted by the International Law Section

(Footnotes)

[1] See The Caroline Case, in J.B. Moore, Digest of International Law, vol. 2 (1906) 409. Bowett, supra note 72, at 59; R.Y. Jennings, 'The Caroline and McLeod Cases', 32 AJIL (1938) 89.

Books of Note

NITA publishes primer for Habeas Corpus practice

The National Institute for Trial Advocacy (NITA) published a new guide for attorneys, Federal Habeas Corpus Practice Commentaries and Statutes.

Practice under the habeas corpus statutes is among the most complex areas of federal litigation. It is governed not just by statute, but by the Federal Rules of Civil Procedure, two sets of procedural rules promulgated solely for habeas corpus petitions, various courts' local rules, and a significant body of case law not codified in any statute or rule.

The guide, written by Steven M. Statsinger, offers a brief, practical discussion of the habeas corpus process from the viewpoint of the author, Steven Statsinger, a federal public defender. The commentaries serve as a primer for those who are unfamiliar with the intricacies of habeas corpus practice,
while those who are experienced in these proceedings will find new, practical advice in this book.

The statutes relating to habeas corpus are in a separate section following the commentaries. This format allows for quick reference to specific statutes.

These commentaries provide guidance to practice under section 2255, but are also suitable for applications filed under the sections 2254 and 2241. They are organized around the sequence of events that normally take place in any habeas corpus proceeding. The first commentary discusses the form, content, and timing of an application for habeas corpus relief, as well as stays. This is followed by individual commentaries about the three sections under which federal relief is available: 28 USCS § 2254, 28 USCS § 2255, and 28 USCS § 2241. The series ends with commentaries relating to evidentiary hearings and discovery, relief and appeals, and second or subsequent applications.

Statsinger is a staff attorney at the Legal Aid Society, Federal Defender division SDNY.

About the book:
September 15, 2002 publication, $19.95, 70 pp., ISBN 1-55681-804-1
Books can be ordered by calling (800) 225-6482 or by visiting www.nita.org.}http://www.nita.org/

DID YOU KNOW...
that your call to any member of THE LAWYER'S ASSISTANCE COMMITTEE will be held in complete confidence?

SINCE 1896
ALASKA BAR ASSOCIATION

If you bring a question or concern about drug or alcohol use to any member of the Lawyer's Assistance Committee, that member will:

1. Provide advice and support;
2. Discuss treatment options, if appropriate; and
3. Protect the confidentiality of your communications.

That member will not identify the caller, or the person about whom the caller has concerns, to any other committee member or the Bar Association, or anyone else. In fact, you need not even identify yourself when you call.

Contact any member of the Lawyer's Assistance Committee for confidential, one-on-one help with any substance use or abuse problem.

John E. Reese, ... Chair (Anchorage) 264-0575 (private line), 345-0625 (home)
Michelle Hall ..... (Nome) 443-2281
John McConnaughy III ..... (Anchorage) 343-6435 (private line)
Brant McGee ..... (Anchorage) 269-3501 (private line)
Alicia Porter ..... (Fairbanks) 479-2167
Nancy Shaw ..... (Anchorage) 276-7776
Frederick Slone ..... (Anchorage) 272-4471
Clark Stump ..... (Ketchikan) 225-9818
Valerie M. Therrien ..... (Fairbanks) 452-6195, 456-8113 (home)
Vanessa H. White ..... (Anchorage) 278-2354 (private line), 258-1744 (home)

NOTICE

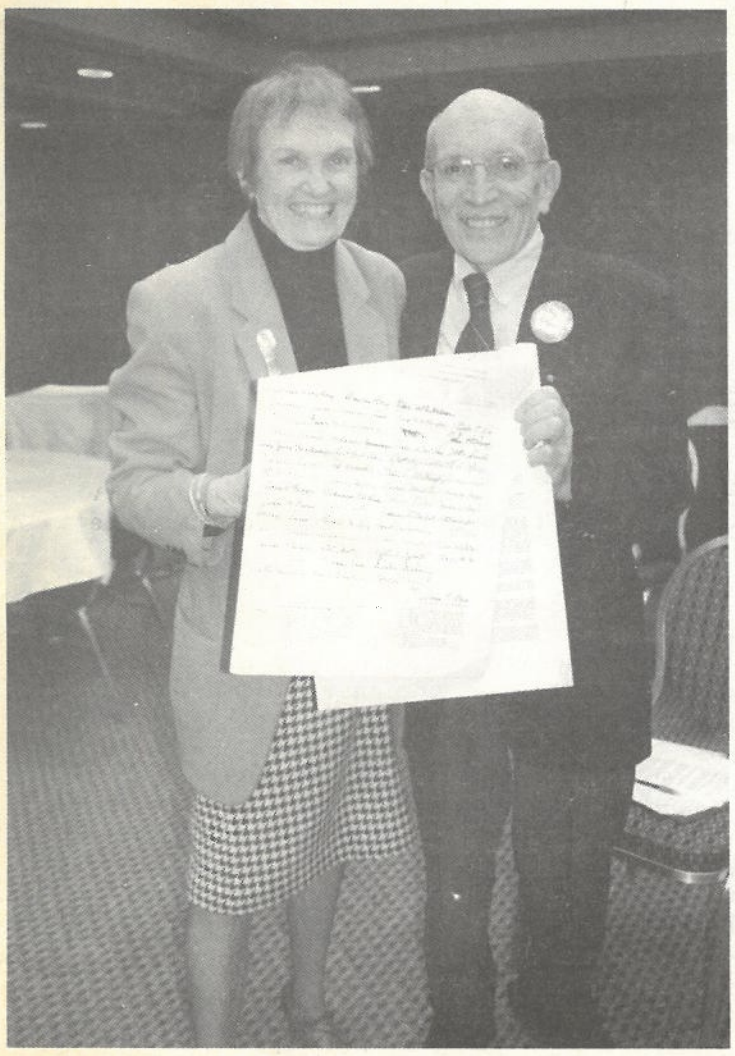
The U.S. District Court Digital Evidence Presentation System [DEPS] has been upgraded to accommodate both DVD's and Video Tape presentations. The current Local Court practice requiring that an attorney file a Motion requesting approval to use the court's DEPS equipment has been rescinded. However, the Court does require that a Notice of Intent to use the DEPS equipment be filed at least two weeks before the scheduled date of use.

Also, Attorneys are encouraged to familiarize themselves with the use of the DEPS equipment. Call 677-6114 to arrange for a date and time for training in the courtroom on the equipment.

— Michael D. Hall
Clerk of Court

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Remembering Alaska's Constitutional Convention



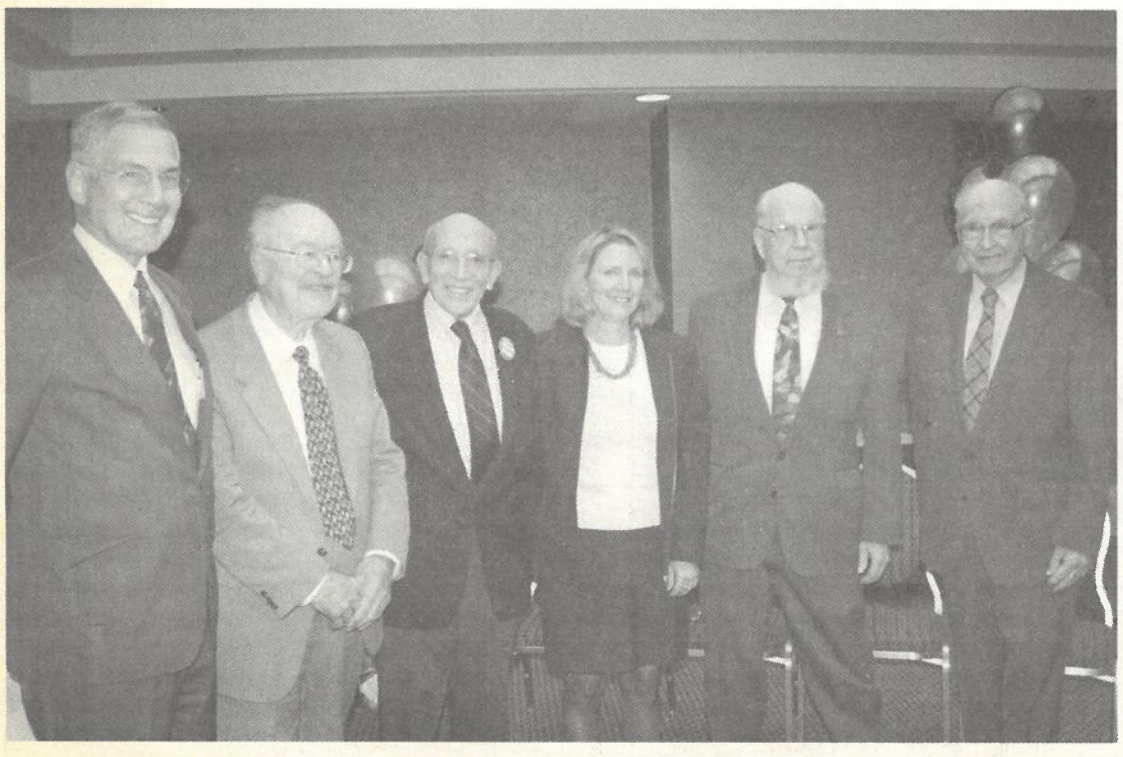
Katie Hurley and Vic Fischer hold up the signature page from a signed original copy of the Alaska Constitution. Delegates signed as many copies as there were delegates so everyone got a copy of the Constitution with original signatures.

Delegates seated L-R: Judge Seaborn Buckalew, George Sundborg, Vic Fischer, Maynard Londborg, and Jack Coghill. Standing: Kathie Hurley, Convention Chief Clerk and Judge Tom Stewart, Convention Secretary.

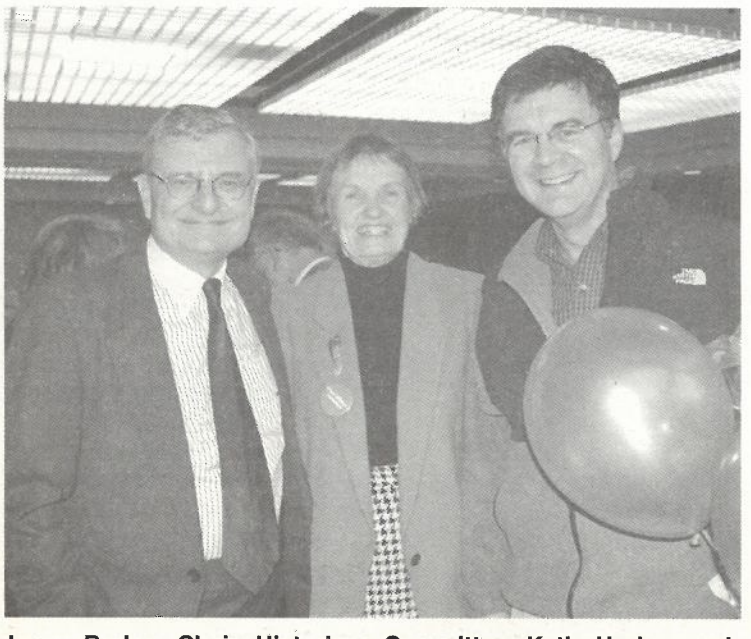
Maynard Londborg watches as Jack Coghill (right) signs a copy of the Constitution for Juneau Youth Court student Westin Eiler (standing).

Seven participants in the 1955 Alaska Constitutional Convention were the featured speakers at a luncheon sponsored by the Historians Committee of the Alaska Bar Association on October 25 at the Anchorage Hilton. Five of the featured speakers were delegates from the Convention: Judge Seaborn Buckalew, Jack Coghill, Vic Fisher, Maynard Londborg and George Sundborg. Judge Tom Stewart, Convention Secretary and Katie Hurley, Convention Clerk also spoke. More than 180 Bar members, Youth Court members, Anchorage teachers, and members of the public heard the participants reminisce about the Convention and watched a KTOO documentary, "A Constitution for Alaska." Many in the audience remarked about what a moving presentation it was, and what a valuable opportunity it provided to better understand this unique chapter in Alaska's history.

Photos by Barbara Hood



L-R: Alaska Supreme Court Justice Warren Matthews, George Sundborg, Vic Fischer, Sheila Selkregg, Maynard Londborg, and Jack Coghill



Leroy Barker, Chair, Historians Committee; Katie Hurley; and Michael Sean McLaughlin (son of Constitutional Convention delegate George McLaughlin).

NEWS FROM THE BAR

Board of Governors takes action

At the Board of Governors' meeting on October 24 & 25, 2002, the Board took the following action:

• Approved the results of the July 2003 bar exam (31 of 60 applicants passed for a pass rate of 52%; of the 42 1st time takers, 23 passed for a pass rate of 55%); and approved 2 reciprocity applicants.

• Heard a status report on the pilot program to allow Anchorage applicants to use laptop computers for the February 2003 bar exam; directed staff to put the information about this on the website.

• Heard a character report by a Board subcommittee on a reciprocity applicant and certified him for admission.

• Approved the 2003 budget as amended; amended the amount of the working capital reserve to make it equal to 4 months of expenses; and voted to give a $10,000 donation in 2003 to the Alaska Bar Foundation.

• Voted to recommend to the supreme court that Rule 65 (VCLE) be amended to eliminate the requirement for a dues discount and to instead say that incentives will be determined by the board. The dues discount for 2003 is set at zero. The incentive for 2003 will be a certificate for a free Alaska Bar CLE program. (Staff Note: The Supreme Court considered the Board's recommendation at an administrative rules conference on October 31, 2002, and later advised the Board that it rejected the elimination of the dues discount. At a special teleconference meeting on November 6, 2002, the Board voted to continue the dues discount at the present level and to include language in the dues notice asking members whether they would favor a dues discount or a free CLE in the future.)

• Heard the results of a Pro Bono Service Committee meeting at which a resolution was adopted asking the Board to create a new staff position of Pro Bono Recruitment Coordinator. Following extensive discussion, the Board took no action.

• Approved payment to Trustee Counsel Mary Guss for working on wrapping up the practice of Clifford Smith.

• Approved the purchase of an LCD projector.

• Approved telephonic quarterly meetings of the CLE Committee.

• Voted to send amendments to Bar Rules 4(5) and 5 to the supreme court which would eliminate the MBE review by failing applicants due to the NCBE's new policy, and to state the passing scaled score of 80 for the MPRE.

• Tabled Bar Rule 22 regarding grievance intake procedures until the January meeting.

• The vote to allow attorneys who do exclusively pro bono legal work to pay no bar dues failed; asked to put the issue of the amount of hours required for a pro bono dues reduction on the January agenda.

• Voted to publish an amendment to the bylaws which would eliminate run-off elections for the Board of Governors.

• Amended the Standing Policies to eliminate the provision regarding the distribution of ethics opinions since they're now on the website.

• Approved payment of one Lawyers' Fund for Client Protection claim, and asked for further investigation in another claim.

• Approved the appointment of Adam Gurewitz to the regular position on the ALSC Board and the appointment of Beth Spalding to the alternate position.

NOTICE OF PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO LOCAL CRIMINAL RULES U.S. DISTRICT COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local Criminal Rules 5.1 and 10.1 (Video Teleconferencing).

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft rules are due no later than January 10, 2003

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Clerk of the Court
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564
or
e-mail to AKD-Rules@akd.uscourts.gov

The preliminary draft of proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; or on the web at the U.S. District Court Home Page http://www.akd.uscourts.gov

Member comments invited

The Board of Governors invites member comments concerning the following proposed amendment to Article V, Section 6 of the Bylaws of the Alaska Bar Association.

The Board amended this bylaw at the August 22, 2002 meeting so that "votes cast" rather than "ballots cast" would be used in deciding run-off elections for multiple vacancies on the Board.

At the same time, the Board requested a draft revision to the bylaw that would eliminate runoffs and simply declare winners based on the candidates who received the highest number of votes in either single vacancy or multiple vacancy elections.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by January 3, 2003.

ARTICLE V, SECTION 6 AMENDMENT REGARDING VOTES NECESSARY FOR ELECTION TO OFFICE

(Additions are underscored; deletions have strikethroughs)

ARTICLE V. BOARD ELECTIONS

...

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

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:

Nelson Traverso
Linn Plous
Daniel Lord
Jason Skala
Karla Huntington
Ken Goldman
Tim Seaver
Mary Guss
Dennis McCarty
Justin Eshbacher
Vance Sanders
Anthony Sholty
Tony Lombardo
Tracy Anderson
Jessica Carey Graham
Laura Eakes-Kertz
Linda Limon
Blaine Hollis
Perkins Coie, LLP
Gruenberg, Clover & Holland
Zach Falcon
Brian Hanson
Ryan Roley
Dan Callahan
Philip Pallenberg
Jennifer Holland
Bruce Botelho
Jon Bucholdt
Michael Zelensky
David Weber
Roger Snippen
Stacie Kraly
Linda O'Bannon
Jan Rutherdale
Judy DeMarsh
Linda Kesterson
Rachel Fate
Ronda Marcy
Bachelor, Pallenberg & Associates, PC
Keith Levy
Jim McGowan
Aisha Tinker Bray
Robert Lewis
Theron Cole
Paul Eaglin
Julie Willoughby
Jude Pate
Tom Wagner
Shannon O'Fallon
Krista Schwarting
Greg Razo
Audry Renschen
Jen Beardsley
Bruce Bookman
Amanda Skiles
Guess & Rudd, PC
Schendel & Callahan
Pearson & Hanson
Faulkner Banfield, PC

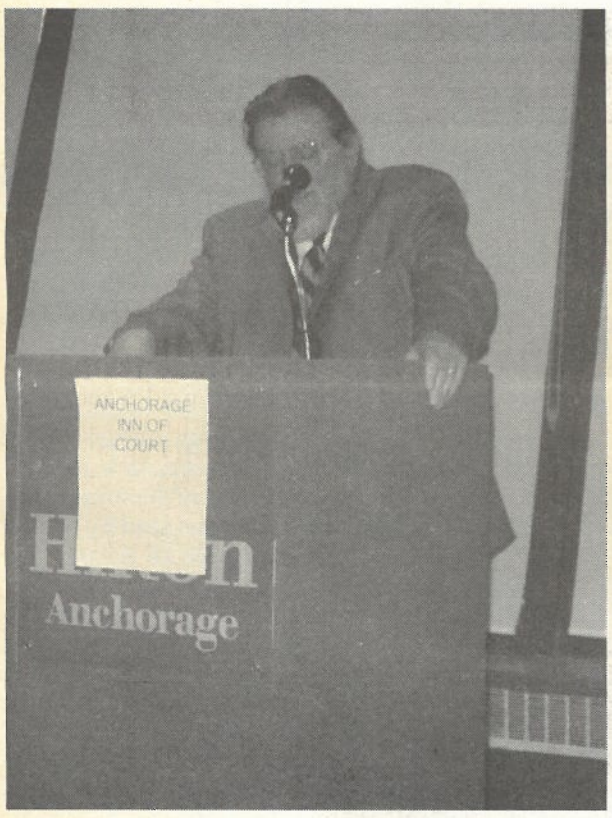
Thank you for helping victims of domestic violence and sexual assault!

Anchorage Inn of Court

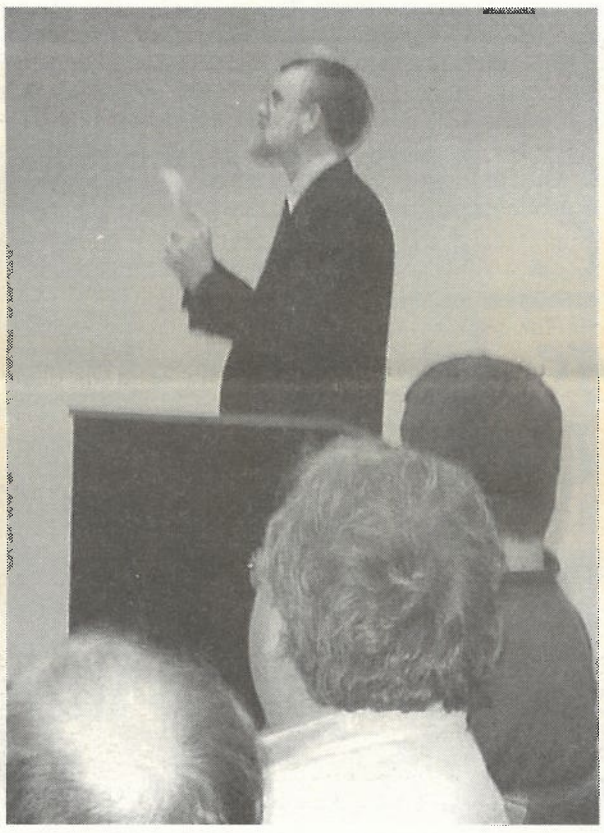
Current President Tom Van Flein (L) and Grant Callow, a former president of the Inn of Court.

Panel of contestants for "The Strongest Link," a game of ethics and trivia. Ultimately Gene DeVeaux tied for first place with Gary Zipkin. What is remarkable is that Gary Zipkin was not an official contestant but simply a member of the audience. He scored well, however, for using the word "remonstrate" correctly and in context. (L-R) John Woodman, Charlie Coe, Yale Metzger, George Skladel, Aleta Pillick, Sam Cason, Kevin Fitzgerald and Gene DeVeaux.

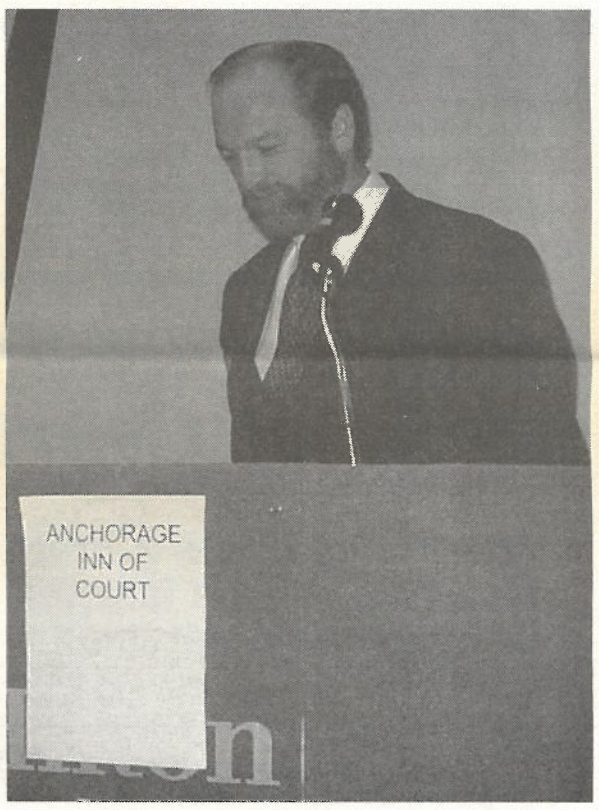
The Anchorage Inn of Court held its October meeting presenting a CLE program and hosting Judge Ralph Beistline. The CLE program consisted of a game show format with 8 contestants and hosted by Steve Van Goor. The contestants were asked ethics questions and general legal trivia. At dinner, Judge Beistline entertained everyone with his stories about being selected as a federal judge, running into Donald Rumsfeld at the White House, and getting stranded at his cabin outside Fairbanks.



Judge Harry Branson discusses a case he defended with Judge Beistline as part of his introduction of Judge Ralph Beistline.

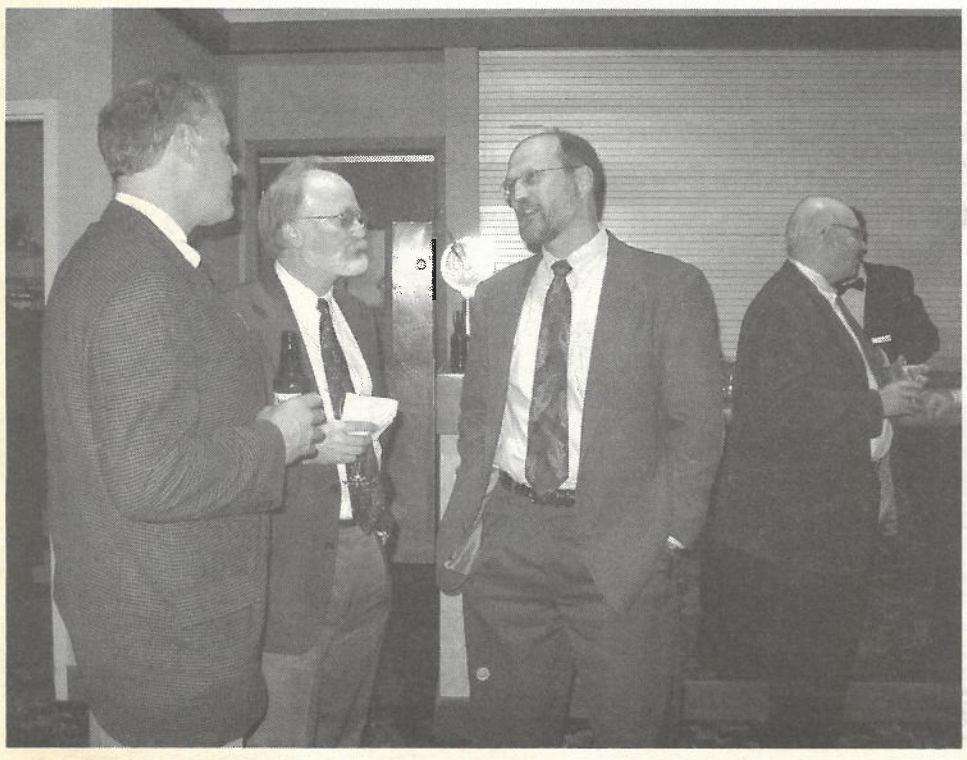


The host of the show, Steve Van Goor.

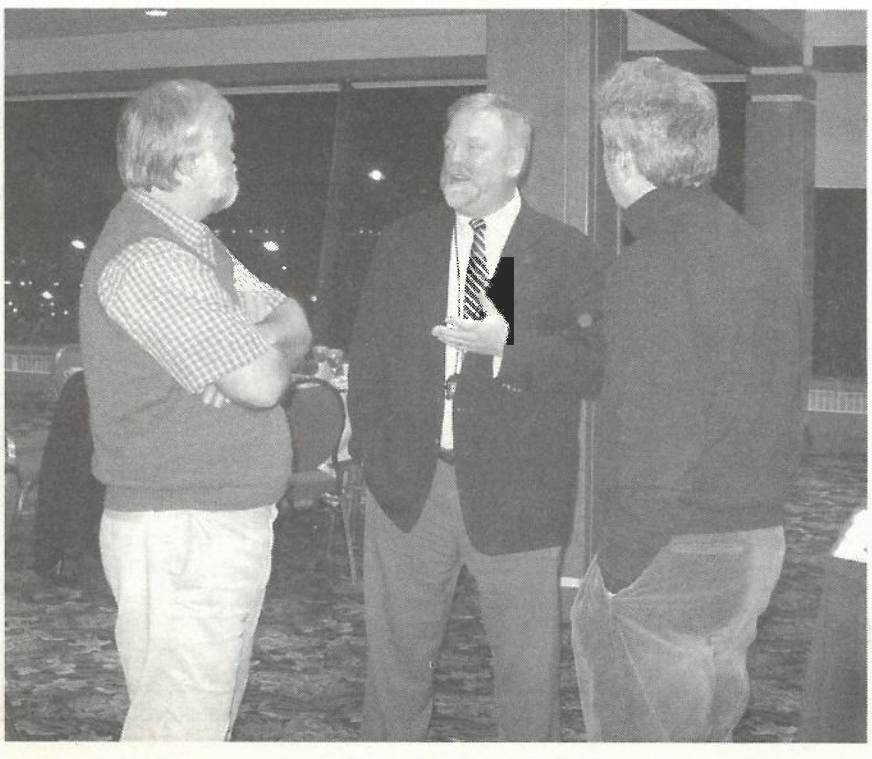


Judge Beistline describes the process of being selected a federal district court judge. Although Judge Beistline was scheduled for a short prelude before Fran Ulmer was to speak, at the meeting we learned that Fran was fogged-in in Juneau, thus leaving the full program to Judge Beistline. The consensus was that Judge Beistline should be governor.

Photos by Yvonne Robinson



L-R: Bill Ingaldson, Mike Schneider, Yale Metzger, and Bill Erwin.



L-R: Mark Bledsoe, Attorney General Bruce Botelho, and George Freeman.

HI-TECH IN THE LAW OFFICE

How will you organize your electronic file cabinet?

BY ARTHUR L. SMITH

INTRODUCTION

Ill-deserved though it may be, lawyers have a reputation as being enemies of the forest, destroying millions of trees each year to create the paper blizzard that so typifies our profession. A change is in the works, however, that may ameliorate the profession's tainted reputation. That change is the movement toward electronic record keeping and communication in the practice of law.

This change, which is driven in part by spiraling costs of creating, distributing, and storing paper documents, may be nearer at hand than you realize. The U.S. District Court in St. Louis will soon unveil its plan for electronic case management and electronic filing, with a target date of July 1, 2003 for implementation. Ready or not, lawyers who practice in the federal court will have to be prepared to cope with the prospect not only of creating and filing electronic pleadings with the court but receiving electronic service of pleadings from other parties and electronic service of orders from the court. Perhaps not immediately, but in the foreseeable future paper will virtually disappear from the federal court litigation process. Although the process of evolution moves much more slowly in the state court system, you can be sure that there will come a day when even the circuit courts will require electronic filing.

LEGAL FILING: THEN AND NOW

Lawyers and their support staffs are well accustomed to the task of managing paper files. In many, if not most, law offices, files are opened in the name of the client and then some descriptive name reflecting the specific matter on which the lawyer has been engaged. Within that file are separate pleading packets, correspondence files and sub files for evidence and discovery, or, in the case of business matters, for contracts, deeds, opinion letters, etc. Those files are then usually retained with some alphabetical or numerical scheme either in the lawyer's own file cabinets or in a common file area. Every piece of paper associated with the case is directed to this file and is (in the best of all worlds) filed in chronological or other logical fashion in the appropriate sub parts of the file.

This traditional scheme no longer suffices in an electronic era. Communications occur via electronic mail, not through an exchange of written correspondence transmitted through the mail or overnight delivery services. Often, drafts of documents are exchanged from lawyer to lawyer or lawyer to client electronically and may never actually find their way into paper form. With desktop faxing, some "faxes" are only viewed on a computer monitor and may never be reduced to paper. With the move toward electronic court filings, there will no longer be an incoming envelope containing pleadings to be added to the pleading pack.

THE ELECTRONIC FILE CABINET

With the prospect of this change on the horizon, it is appropriate to ask: How will you organize your electronic file cabinet?

If the lawyer's "file" is going to serve any useful purpose, these electronic documents have to be stored and cataloged in some manner to make them retrievable, now or in the future as both a part of the working file or as a permanent record of the services performed. It is never too soon to start developing a strategy for coping with the record keeping demands of the paperless era.

There are probably as many different approaches to electronic document filing and storage as there are law firms engaged in the practice of law. To some extent, the answer to the question posed in this article will be dictated by a variety of factors that make each law firm unique: the nature of the law practice, the way in which the computers are (or are not) networked, and the features of the software used by the law firm — and there probably are countless other factors that come into play. However, some basic approaches that can serve as a starting place for your firm.

1. ALL ELECTRONIC DOCUMENTS ARE PRINTED FOR TRADITIONAL FILING

This approach is a blend of new and old and is starkly simple in its implementation. In this approach, the lawyer has the responsibility for printing out a hard copy of the electronic mail, the pleading or the draft, along with some indicia of the date and time of creation or receipt, and passing that printed document on to a secretary who files it in a traditional paper file. Not much of a step toward the paperless world, but it is effective in one sense: it creates a permanent complete file.

2. ALL DOCUMENTS BECOME ELECTRONIC FILES FOR ELECTRONIC FILING

This approach, which works only in small firms in which only one lawyer is likely to touch a file, involves organizing the files on your hard drive by creating directories and sub-directories and sub-directories within the sub-directories for each client and matter and category of documents within that matter. Copies of the letters that you send as well as copies of documents that you receive are all kept together in a chronological order dictated by the date of document creation (or last modification) and available in some logical fashion.

This approach suffers from at least two limitations. First, it requires a great deal of discipline from the lawyer to properly "file" the electronic document in the right place on his computer; if time is short and the pressure is on to get other things out the door, it's easy enough to forget that step. Second, not all material that comes in the door will be electronic. The answer to that problem lies in scanning incoming material to create images and then saving the images to the proper location on the hard drive. Such a step is somewhat labor intensive but unavoidable if one is to create a complete and comprehensive electronic file.

3. CASE MANAGEMENT OR DOCUMENT MANAGEMENT SOFTWARE

This approach relies upon the features of the case management or document management software that the firm employs. Features and organizational schemes vary widely from software package to software package, but most such programs will enforce some sort of document management regime that allows associating related documents to a particular client and matter. If all documents are saved and categorized within either the case management software or the document management software, they are retrievable. If that software allows cataloging documents that come from external sources, such as e-mail messages, e-mail attachments, or imaged documents, the file can be complete.

CONCLUSION

None, all, or some combination of the foregoing methods might be appropriate for you in your law practice. The important thing is to remember that you need to have a file management plan as the practice of law becomes increasingly paperless.

Files are important because they contain a permanent record of the work you have performed for a client. If questions arise about your client's bill or about the quality of services performed, having that record is vital. Files also serve as the only permanent record you have when a client inevitably comes back to ask you about some matter, contract, or lawsuit that was handled several years ago. While no ethical rules specifically mandate maintaining a file, prudence and the standard of reasonable care require it.

How you go about designing your electronic file cabinet is up to you. What's important, however, is that every lawyer and law firm have a plan of attack and have general agreement among all the team players — lawyers, secretaries, legal assistants and computer professionals — so that everybody signs on and adheres to the plan. From document filing schemes to backup methodology for computers, all the parts of the firm have to work together to ensure the integrity of that electronic file.

Arthur L. Smith is a member of the St. Louis law firm of Husch & Eppenberger, LLC where he leads the firm's e-Business team. He is a former co-chair of the Technology and the Practice of Law Committee of the Bar Association of Metropolitan St. Louis. (arthur.smith@husch.com).

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Anchorage Inn of Court Update

Addressing *Evans v. State*, dinner with the Mayor and a fond farewell from Attorney General Bruce Botelho

BY SAM CASON

Did the Alaska Supreme Court issue a useful decision in *Evans v. State*, the decision addressing the constitutional challenges to the 1997 legislative tort reform statute? That was one of the issues addressed by a panel of seven members at the Anchorage Inn of Court in October. The panel, comprised of members from the plaintiff and defense bar, including Don Bauermeister, Bill Ingaldson, Gary Zipkin, Michael Jungries, Michael Schneider, Matthew Peterson and Chuck Flynn, actually reached more consensus than everyone thought possible.

As a recap for those who have not yet read the decision, the court, though evenly split 2-2, rejected any facial constitutional challenges to the statute. Since the court was evenly split, and the plurality and dissent each mentioned that the outcome could very well be different if there was an actual case and controversy before them, the panel essentially agreed that the court may have been better off simply issuing a memorandum opinion affirming the trial court based on a 2-2 vote and leaving the core issues for another day. Instead, the panel members voiced criticism that the court issued a 72-page advisory decision that essentially resolved nothing, or worse, may cloud any future case. While some members of the panel agreed with the plurality outcome, and others had considerable doubt about the plurality's logic and found the dissent persuasive, all agreed the issues remain open for debate until an actual controversy is presented.

After the panel discussion, the Inn Members attended dinner with Mayor George Wuerch, who gave an update on the state of the city.

At the November meeting, the Inn hosted outgoing Attorney General Bruce Botelho. Mr. Botelho spoke about his 9-year tenure as Alaska's Attorney General under two separate administrations, and reviewed some of what he considered to be his biggest accomplishments, and some disappointments. The Inn wishes Mr. Botelho the best for his future and we expect to see him in some other capacity down the road.

Additionally, the Inn welcomed at its dinner, Glenn Cravez, who is taking leave from his practice to head the Alaska 20/20 Program. The Alaska 20/20 Program is seeking public input from all Alaskans on creating a blue print for growth and development in the next 20 years, and simultaneously maintaining or increasing the quality of life. If you want more information about the program, contact Glenn Cravez at 907-272-5316.

HI-TECH IN THE LAW OFFICE

Pathagoras: A refreshing document assembly alternative

BY STEPHEN BIRD

INTRODUCTION

Pathagoras is described as a Microsoft Word add-on designed to improve Word's native capacity for creating, retrieving, and saving documents. As stated in the user manual, the "PathSmart and SaveSmart modules replace traditional navigation techniques for locating and saving documents, then document assembly tools enable users to create documents from a virtual check sheet of available clauses."

From this description, Pathagoras seemed complex. How would I ever get this program to do what its developer, Roy Lasris, a Virginia lawyer, tells us it can do? I set out to see if I could rise to the challenge of making sense of Pathagoras.

I should note that I haven't written about document assembly since 1994. I don't use such programs given the nature of my law practice. Yes, I probably could benefit from document assembly but (raise your hand if you've heard this excuse before) I don't have time to learn the intricacies of complex programs and/or I don't want to become dependent on a proprietary format that binds me to one company or product.

PATHSMART

The first step in using Pathagoras consists of downloading and installing the free 30-day trial version. During the installation, you are given the opportunity to practice assigning PathSmart numbers to folders. At first I found it difficult to think of folders (which, typically, have descriptive names) as numbers. However, the PathSmart feature reminded me of a nice little DOS utility that quickly took me to the directory I sought without typing the full path name. LCD (Ledbetter's Change Directory) saved me much time then and PathSmart can save time now, especially if client documents are saved into separate folders.

To assign numbers to folders, you press the PathSmart button (the runner icon), assign a number, and click the "Set Path (#)" button. You can also choose Option 1 (manually set the Smart Path) and follow the prompts.

While you can map up to twelve paths per "profile" or PathSmart screen, you can create an unlimited number of profiles, which means that you can map by number potentially every folder on every computer over an entire network.

Consider the following examples: "In actual use, a lawyer might create a profile for domestic relations (with individual paths assigned to complaint forms, answer forms, discovery forms, final decree forms etc, with a final link to the client-personalized documents). Another profile could by dedicated to estate planning (wills, trusts, and client-personalized documents), and another for real estate, and so one. The profiles can be subject oriented, or user oriented, or a combination of the two. Because the number of profiles is unlimited, so is the variety of ways that profiles can be set up."

SAVESMART

When saving an original or edited document, you click the SaveSmart icon, which then presents the PathSmart numbers and nicknames along with a "name your file here" dialog box. If you mapped the destination folder under a different profile, you select that profile from the list. At this point, Pathagoras displays a set of possible "save to" locations. You name the document, double-click one of the twelve PathSmart boxes and then "Save" the document in the proper folder.

Other time-saving features in the PathSmart and SaveSmart modules include: pre-sorts, peel-back-searches, one step "save and close," additional Alt-G (no mouse) direct mapping, and direct display options. New users may want to read the Pathagoras User Guide.

DOCUMENT ASSEMBLY

In a fantasy world, a document assembly program would read your mind, choose the best words, and then assemble the document in seconds. Pathagoras cannot read your mind, but it can assemble frequently used documents quickly. I strongly recommend new users take the time to use the instructional demo included in the program.

With Pathagoras' document assembly, you place clauses for specific documents into their own Word files. When creating a document, athagoras presents these clauses using a checkbox metaphor. It then creates a document using the clauses that you selected.

If you need to take the assembled text and personalize it for a specific client, then Pathagoras provides for "on the fly" links to standard off-the-shelf-database software such as Access, Excel, Quattro Pro, dBase, Act, even Word tables and text files which contain desired data. I'm told that if you can link to it directly or via ODBC, you can link to it with Pathagoras. Apparently, this feature becomes even more useful when working with documents that have not been previously linked to a data source or when a document has been disconnected from its data source. The connection is made through a simple menu (similar to the PathSmart menu), thus avoiding Word's Mail Merge routine.

Pathagoras also features an Instant Database (ID) that enables you to search and replace up to thirty variables in a boilerplate clause, which obviates the need to link to a case management program or other third-party database. You can also use a simple search and replace tool to insert client name, dates, etc.

With Pathagoras, the words/clauses are mine, a feature I like a lot. When I last tried document assembly in 1994, the software (ExperText) provided the words which, while editable were not my words. Having a database of clauses from another source (e.g., a "forms" company like Michie) might be helpful to a new lawyer, but it probably adds to the cost of the program. Pathagoras' downloadable demo version and reasonable price of $129 makes it an easy product to try and buy.

CONCLUSION

Once you see how Pathagoras works with folders, standard clauses, and so on, its elegance becomes apparent. If you're considering a document assembly program, I strongly recommend you read the two short pages "For Busy People" at <http://www.pathagoras.com/busypeople.html>, download the free demo, install, and then start using Pathagoras based on the Busy People suggestions.

Although many of the programs I review are from large corporations such as Microsoft, Ontrack, and Symantec, I particularly appreciate and enjoy working with smaller companies that produce good software such as ActiveWords, CrossEyes, HyperSnap, and Vopt. With a small company you often get an immediate response to emerging issues. For example, part of Pathagoras was recently rewritten to accommodate a client law firm that started client matters with a number rather than with a letter (e.g., 123Smith).

I view using document assembly somewhat like touch-typing: a little time spent up front can pay dividends for years. For more information, visit <http://www.pathagoras.com>.

Stephen Bird is a Canadian lawyer and Contributing Editor of The Lawyer's PC, published twice monthly by the West Group / Thomson (800-327-2665). Distributed by the Techno Lawyer Syndication Network.

VCLE Reporting Year Ends December 31, 2002

The third VCLE Reporting Period is
January 1, 2002 – December 31, 2002.
You must complete approved CLE activities by
December 31, 2002.

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

Deadline for Reporting is February 1, 2003.
Submit your VCLE Reporting Form with your Bar Dues Payment. VCLE Reporting Forms will be sent out shortly with your Bar Dues Statement.

VCLE Reporting Form
1. You can download a copy of the VCLE Reporting Form for 2002 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 for the 2002 Reporting Period.

CLE Credit History Lookup
To check on your banked VCLE credits from 2001 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.

SPAM AWARD OF THE YEAR

Former Alaska lawyer's jewelry offers gift alternative from Juneau

From: "Wm Spear" <bill@wmspear.com>
To: "3" <bill@wmspear.com>
Date: Wednesday, November 20, 2002 1:50 PM
Subject: Notes from Wm Spear Design.
Watch out! I'm trying to sell this stuff!

Okay, this time, for once I am going to give you a message that is more or less real spam rather than my usual gritty peregrinations where I forget to try to sell you anything.

Face it, we need money like anyone else and I'm not sure this reverse psychology is working on you people. Besides, all during the "holiday season" from Halloween to the end of Orthodox Christmas, Susan straps me down in a chair and jams hands full of extremely potent neurobending medications down my throat so that I don't act up and tell people what I really think I think of them or sink into the maws of despair and deliver brainrattling screeds about the 'trouble with this country' or the world etc. (And there is plenty wrong too, and it's mostly your fault!)

So, maybe I am not at my best for creative writing at this time of year anyway and should stick to the tried and true. Besides we just finished our screenplay (The War Pony) and I am 50,000 words into a book to go with it, so, enjoy these loss leaders, sooner or later you're gon'na have to pay for words from the Sage of the Page.

But hang on. Face it, our spam is better than most people's absolute best effort at trying to communicate, and besides, I could change my mind in the middle of this, or go off on a tangent and you would miss some really important rant. Call it "spamformation." You are bound to learn something.

ON GIFT GIVING

Okay. Just a couple of things. Some of you people still really do not get it. You do NOT give your mother a "Mom and Apple Pie" pin on Mother's day. No. You buy the pin and wear it yourself as a sign of love and respect when you go visit her and give her something else. (We also have Dragon pins) She already KNOWS she's the mom, right? No need for a pin on her to prove it. That is a staple of the Wm Spear Design ethic. Either a picture or a word, but not both. You don't need a fish pin that says "fish" across the side, right? Only if you are a very poor draftsman/woman. So, we are providing the ammunition here, but you guys have to take aim before firing. The concept is appropriateness. Your mom would feel like a fool wearing a mom pin somewhere, so, get her a nice butterfly or bird, or whatever. Nuff said on that.

Second point. Perhaps you or someone you know is affected by current economic state of affairs? This has gift giving ramifications. If you have a job and your friend has recently lost his or her job, it is not appropriate to give that person a lavish gift for Christmas or birthday etc. You are just rubbing their nose in it by implying how cool you are and what a worthless and miserable excuse for a human being they are. However true this may be, this is not a holiday sentiment. This is the basic understanding we have every day when we are on top and others are suffering, and during the holidays we are supposed to try to suspend that for a day or two. Get a grip. In addition to being thoughtless on this count, there is the fact that the other person cannot reciprocate for an expensive gift without availing him or herself of even more credit card debt at a time when they are eating Tender Vittles and sleeping in dumpsters, all of which will most likely throw them into an ever narrowing and increasingly swift vortex of despair from which they may never escape, or worse, drive them to some form of irrational violence with you as it's object.

But, you may ask, what if the situation is reversed? What if it is you who is out of work and is the sorry, pathetic excuse for humanity? Well, think about it. It is not appropriate or expected that you to give your filthy rich so-called "friend," who probably got where she did granting "sexual favors" to those slimeball "corporate executives" in the back seat of that fuming gas guzzling eco-disaster of a SUV she drives and who certainly has never paid a dime in taxes since you have known her; no, it is not right to give this person a lavish gift. First of all you can't afford a lavish gift. Second of all, even if you could afford it, would you give a person like that ANYTHING! No way! Even now while you sit home doing patriotic home service knitting socks for our troops against the War On Terror! Or the War On Drugs, she's probably down at the office right now cooking the books and bilking the stockholders of her (your former) company out of billions.

(*Voice-over modulates lower and pace slows.*) Fortunately there is an easy and convenient solution for both of these circumstances. Yes, Wm Spear Design enamels. Number one, our pins cost about as much as a cheap glass of wine in most of the fancy restaurants you go to (or used to go to, hahahah). However, the wine lasts only a few minutes (or sometimes even just a few seconds. Two tables over is your previous acquaintance chatting it up with the boss and his assistant. Did you SEE what she was wearing!!? You call that BUSINESS attire!) However, a Wm Spear pin or zipper pull is GUARANTEED TO LAST 4000 YEARS! If one of our enamels fails just call our number, conveniently placed on the back of every pin. Hang up if a woman answers.

So, on whichever side of the economic divide you fall, the obvious gift giving choice is one of our a pins or zipper pull, or, if you want to splurge a little, several of them.

Everyone has 10 good reasons for stuff. We do too. I mean we don't, but I just made these up so we would. Here are 10 good ones for buying our pins and zipper pulls instead of some other worthless junk that will end up in the landfill and reflect so poorly on you that the person probably will never speak to you again and they will probably show what you gave around the office and be laughing up a storm! You might even risk getting fired if you don't give them Bill Spear pins! (If you have one) do you have a job that involves taste, discretion or judgement? Think about it. Okay, here goes.

1 They are WORTHY. Go to the fanciest jewelry stores and see how much enameling you find. Zip. You might get lucky at a specialty shop and find a piece by Merry Lee Rae , Collette or William Harper but the fact is, enameling is way too difficult for almost anyone to master and requires way too much work and patience once one does. Even though her individual pieces sell for thousands of dollars Merry Lee figures she makes about 4 bucks an hour if she's lucky. (That's how we met actually about 20 years ago: she tracked me down because she could not believe the price and quality of our enamels). This is hand wrought jewelry, it is not pumped out of a machine somewhere or cast. They are made with real glass enamel, not epoxy or paint. If you would see them made you would not believe the amount of work that goes into them. Tiffany's might have a pair of cufflinks with one easy to do opaque enamel for several hundred dollars. Check out our Kabuki with at least 10 enamels, most of them tricky transparents, not to mention two different colors of

Continued on page 19

Lawyers Mike Heiser and Loretta Martinez visit with Chinese law student at Xi'an International College in Xi'an, China.

Discovery process: Ketchikan lawyer serves and learns in China

Thirteen American lawyers, including Ketchikan, Alaska, attorney Mike Heiser, recently gained an insider's look at the legal system of China during a unique journey to the ancient city ofXi'an in Shaanxi province.

As participants in Global Volunteers' all-lawyer team to China, these attorneys spent two weeks in October teaching principles of U.S. law and conversational English to law students and undergraduates in various universities in Xi'an, China. (Global Volunteers is a St. Paul, Minn.- based nonprofit organization that offers short-term service programs in 18 countries around the world. This was its fourth all-lawyer team to China.)

The experience was the "discovery process" in the best sense of the word. Heiser and his traveling companions were given access to several high-ranking Chinese government officials, including an attorney general and chief prosecutor for the Shaanxi provincial court. They visited with leaders of the People's Congress, toured a women's prison and held discussions with several practicing attorneys in Xi'an.

Bridges of friendship and understanding were built. "The relationships I formed are unforgettable. I made at least one lifelong friend in one of the teachers. The students I taught became 'my students' and I felt very bonded with them," said Heiser.

"I realized how alike people are in their goals, desires and issues affecting their lives even if they have different cultural backgrounds. I have gained the utmost respect for the Chinese people and their willingness to make me feel at home," Heiser continued.

"Promoting diplomacy was perhaps my primary goal. I believe I accomplished this by respecting the people I met and their values and by trying to be approachable. I now believe I can make a difference in people's lives and a difference in promoting world diplomacy."

On a lighter note, Heiser said two of the most memorable highlights were "playing badminton with a Chinese grandmother" and being the guest of honor at a party thrown by the Chinese students.

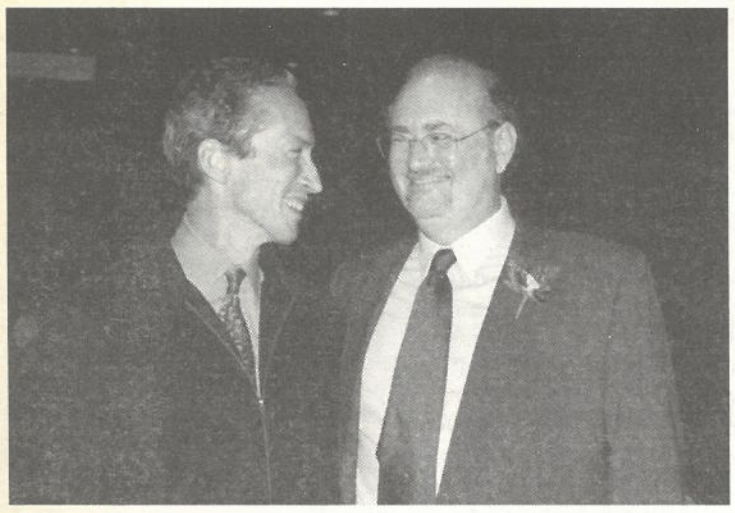
Heiser said of the latter: "They went out of their way to play and sing music for me and do a traditional Chinese dance. I do not recall ever feeling so welcome and honored."

In May 2003, Global Volunteers will send its 100th team to China to teach English in Xi'an schools. The volunteers serve at the invitation of the Sino-American Society in Xi'an, which has partnered with Global Volunteers on this program since 1996. For information on joining "Team 100" or other scheduled teams to China and 17 other countries, call 800-487-1074.

Projects also are available in Costa Rica, Cook Islands, Ecuador, Ghana, Greece, India, Ireland, Italy, Jamaica, Mexico, Poland, Romania, Spain, Tanzania, Vietnam and the United States. The cost of Global Volunteers international service programs ranges from $1,395 to $2,595 (USD), excluding airfare. U.S. programs are $500 (USD).

Included in the tax-deductible fee are meals, lodging and ground transportation in the host community and project expenses. Contact information: 800-487-1074; http://www.globalvolunteers.org.

Judge Peter Ashman retires after 16 years



Former law school classmate Lloyd Miller, L, congratulates Judge Ashman upon his retirement from the Anchorage District Court bench after 16 years. Judge Ashman now works for Norton Sound Health Corporation. Photo by Barbara Hood

L-R: Joe O'Connell, Judge Peter Ashman, and Judge John Lohff at the retirement reception for Judge Ashman. Photo by Barbara Hood

Former Alaska lawyer's jewelry offers gift alternative from Juneau

Continued from page 18

plating and jewelry grade findings hand soldered on; all for 12 bucks or so. Hey, who loves you?!

2 Although very worthy as noted, our enamels are at the same time unbelievably INEXPENSIVE. I don't mean just in relation to other enamel work, I mean in relation to anything you can buy. The median price is still about $10 dollars per each, and I think our most expensive pin is 20, maybe even 16 dollars, that's not my department. So what else are you going to get someone for ten bucks? A jar of mustard? Also, we have not raised our prices in any important or systematic way for 20 years. Check out your old catalogs. Anyone else out there say that?

3 These pins are capable of being about the most APPRORIATE gift you can give. If you can't figure out the right design for someone you are not thinking hard enough because there about 800 to choose from. Where else are you going to find a good turnip pin? Guts? (Large and small intestine). You can mix them up and make your own messages (like the rebus section of the page). Like I say we provide the ammunition, but you have to put some thought into it on your own for a direct hit. Still, we've got everything from running mummies to hummingbirds and everything in between. You don't see many new designs this past year because I am having a very hard time trying to figure out what to commit to that would actually raise the bottom line. And don't say a Bichon Friese 'cause it ain't gon'na happen.

4 If these enamels aren't UNIQUE they aren't anything. Face it. You go down to the mall and you see the same thing over and over again wherever you go in whatever part of the country. Same thing with the catalogs. Guess what? Your future gift recipient has seen the same exact stuff just the same as you and is probably shopping for you. So are they (or you) going to be really totally charmed and surprised and impressed with your imagination when they get that McGift you finally decide on at Renovation Hardware because you are just plain worn out? No way Jose! This goes for you retailers out there, too. If you think you are going to get rich trying to undercut COSTCO on cans of WD40 you can forget it. The whole reason for niche shops is to have niche products, not the same tired, dreary stuff that you see everywhere else. Your job as a shop owner is to seek out and buy stuff your customers have never seen before. That's us!!! Even though we have been around for 20 years and sell (sparingly) all over the world, the long, long odds are that your recipient will NEVER have seen our stuff

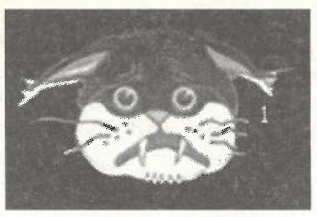
before. Fight the homogenization of chain retailing and give your local niche guy (me) a break for once. Tell your favorite local shop they should be carrying our cool enamels if they aren't.

5 ONE SIZE FITS ALL. Thass rite. No worries. Someone will always have a hat or zipper to put these things on. A lot of people just keep them "around"..on a desk, a car mirror, a back pack etc. Others wear them as costume jewelry. Let them figure it out. They will. Not to worry that you didn't get the right size.

6 You can find plenty of our designs for people of ANY AGE or ANY SEX . There's a Bill Spear pin for everyone on your list from that 8-year-old skateboarder to your 90-year-old grandma. I'll tell you what else. Buy a bunch extra because inevitably you are going to need a neato gift in a hurry. You forgot someone, someone showed up, the office party etc etc. Pack a few extras in the suitcase or you'll be sorry.

7 They are DURABLE, CHEAP AND EASY TO SHIP. Our shipping and "handling" rates are a disgrace they are so low. Where else do you buy 300 dollars worth of stuff and get it shipped for 3 bucks? (Each address, $2 for each additional address). We also SHIP THE SAME DAY we get your order, as we always have. You can pack a pin in a little box and mail it for little more than a personal letter (DON'T USE ENVELOPES, the automatic stampers etc. crush them). Use a box and there is no disappointment at the other end. It gets there in one piece. Better yet, tell us where you want them shipped and we'll send them directly from here. I'll even write a note or personally inscribe the packaging if you like. Think of it; you can cover 10 or 20 presents and pay a measly 3 bucks and no sales tax. You can't even start your car for that much let alone drive it to the mall and park it! Forget UPS, these come right to your mailbox. Alaska has some of the best US Mail Service in the nation. Why? Because we are far away and our lives have depended on it since the beginning. Okay, we also have a U.S. Senator who is Chairman of the Appropriations Committee. Get it?

8 They are CONVENIENT. You can sit down for say 40 minutes and go through our catalog and do ALL your shopping and never have to leave the house. You wouldn't believe how many people do this, and the great mail we get after Christmas about how everyone was blown away by the cool gifts they got. People who travel as a major part of their professions such as photographers and film makers regularly stock up on a big bundle of pins to grease the skids in the odd places they wind up. We can tell you stories that are not to be believed about how our pins have been used. But, why fight for overhead space when you go home for the holidays? You can pack all your gifts in a little corner of your suitcase.



9 Wm Spear's pins are ETHICAL. Nothing has to die to make our pins. You or your recipient won't have to worry and beat yourself up that you are buying something anti social or naughty when you buy our pins. Our physical manufacture is in Shanghai and we have no apologies about that. The craft simply evaporated in Taipei and my partner had no choice but to take the big risk of setting up production on the mainland (along with about half of the rest of the enterprises in Taipei). His facility is first rate. New, with bright windows and a lunch room and a little park etc. (not to mention having to carry a bunch of relatives of party bosses on the payroll who never show up). There is no slave labor or government ownership. Also, I bet you didn't know that our pins are made from RECYCLED copper. So, you can say truthfully that they are 75% recycled by weight. These enamels are truly international with the design, "intellectual content" and sales (how'm I doin'?) in the U.S.; the enamels from all over like Japan, England, Norway etc.; the finding (pin parts) from Providence RI; the gold from a variety of sources unknown, like all gold. It all comes together in Shanghai with the efforts of the world's best enamelers. We do further quality control and packaging over here.

10 Let's see. I have to think of one more to make it ten right? Everybody has ten reasons why to do or not do something. Well, how about SUPPORTING YOUR LOCAL WEIRDO? (Me). People love to whine and complain about how there is never anything new and how everything is becoming so homogenized and boring. Can't ever find anything cool. Well, here's a chance to strike a blow for diversity! And hey, we support you. We have the confidence that there are enough lunatics out there that we commit to keeping FULL INVENTORIES of all our designs. We don't put up a picture and see how it goes before we go into production like the big boys. I KNOW I am going to sell these guts pins. In this regard, ask about our 50 or more plan. If you order 50 of them (same design), we will extend to you a wholesale price (half!!!!) Hey, who loves you? But better yet, you know we will have the product to ship that day, no waiting.

Whew! Okay, that's it for the year. You're on your own now. If you can find something cooler for less buy it. Take my word, you won't. Let's see some orders roll in here. Maybe I will get inspired to actually do some more designs.

You want a deal? Okay. For the rest of the year, if you put the word "Mummy" in the special comments section or on the order form somewhere, we will give FREE SHIPPING for every (single) order over $100. Okay, now I am going to work on the web page so that we will have some improved navigation and I hope we have some time to do a bunch of neat fun stuff (but on an isolated page so you don't have to download a bunch of junk on your remote dial up when you want to place a simple order). Let's have a strong finish for the end of the year out there. No foot-dragging.

In your heart, you know he's right

—*S. Bill*

Busted (Part I)

• William Satterberg

I was told that it would happen some day. When an attorney goes out of the way to zealously represent clients, many of whom may not be entirely socially acceptable creatures, the lawyer often incurs a certain amount of attention and notoriety. Some narrow-minded police and prosecutors can take it personally.

A Japanese proverb states, "The nail that stands up gets hammered down." The Russians say, "The tallest blade of grass gets cut first."

It was Monday, April 8, 2002. I was recovering from not only my April 1 birthday, but also a long flight from Seattle. An evidentiary hearing was set before Judge Funk to determine whether or not a particular item did or did not qualify as a "weapon" within the meaning of a statute.

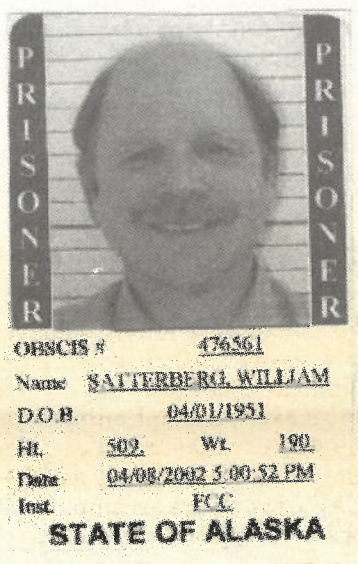
My client had been charged with carrying metal knuckles. What had been seized, however, was not a pair of brass knuckles in the traditional sense, but a funny looking item advertised as a "Ninja Key Ring" able to be purchased at a kiosk in the local mall. Forget the fact that my client was a well-known Hell's Angel, and not particularly loved by the constabulary. In my own opinion, he had been the subject of a number of vindictive arrests, and had been targeted by an overly zealous state agency, a/k/a Alaska State Troopers.

My theory in this latest arrest was that a singling out had simply occurred again. The car in which my client had been a passenger had been stopped for tinted windows. The stop was rather arbitrary, unless, of course, the officer was bent on doing his duty in stopping a lonely, law-abiding vehicle on the Parks Highway. Almost immediately upon contact, the trooper had decided that my client must have been carrying a concealed weapon in the form of a pistol. The pistol, even though clearly exposed on my client's belt upon contact, apparently in the trooper's mind, had to have been previously unexposed earlier in the day. Hence, it was concealed.

After busting my client, two searches took place when my client was handcuffed. No other weapons were found. Regardless, the jailers apparently were able to locate yet another alleged weapon, consisting of a pointy metal object that looked a lot like a key ring.

Nobody could describe the object. Still, the trooper insisted that it was a set of prohibited metal knuckles. The object certainly did not fit within any standard definition of metal knuckles. In fact, it defied definition, which is probably why it was being sold in reputable kiosks in Alaska's cheaper shopping malls. My theory of defense was that the object was not a weapon at all. Instead, the object was simply some sort of a thingamajig. Such is the stuff of which jury trials are made.

My client had been the subject of many prior "roustings" by the police. He claimed that there was a vendetta going on. Initially, I found his complaint somewhat hard to believe. I thought of calling him a "sissy," but wisely reconsidered, given his active Hells Angels status.



In time, I grew to understand the basis of my client's concerns. But, it took a judicial hearing to convince me. The infamous hearing involved a dismissal motion that I had filed to claim that the item was not a set of prohibited "metal knuckles." Unbeknownst to me, it was to turn into far more than a simple evidentiary exercise.

On occasion, whether by design or by chance, the State will not bring certain evidence into the courtroom. Instead, the State relies simply upon the testimony of the officers. (After all, who, other than a sleazy defense attorney, would ever dare to challenge the credibility of a uniformed officer of the law?) Recognizing that a failure to bring the evidence could occur for the evidentiary hearing in question, and furthermore wanting to prove that the claimed "weapon" was not a weapon at all, but simply an accessory which can be bought over the counter, my paralegal acquired a duplicate version of the device. It was a non-threatening, sissy pink in color. The price was approximately $10. A thoughtful staffer, who has since asserted her Fifth Amendment privileges, placed it in an obscure manila envelope in my client's file, labeling it "evidence."

When I drove to court on April 8, 2002, I called my office to determine whether the object was still in the file drawer. As usual, I was running late. In a panic, I asked my paralegal to search "the bucket" for me. There are times when we seem to lose cases in what we commonly term the "bucket." The "bucket" is actually the hanging Pendaflex case folder that has an affinity for loose objects. In short, there's a hole in the bucket.

After the obligatory search, I was told that the alleged weapon was not in the bucket. As the State often did, I would have to go to court this time without my evidence.

I was successful in locating a rare parking space. I ran to the court building, and proceeded quickly through security. Like all attorneys before me (but not since), I simply handed my file to the security guard, who, as before (but not since), gave it a light hefting and visual "once over" for nefarious devices. I then dashed to the courtroom as fast as my chubby, 51-year-old body would allow. Surprisingly, I was early. While waiting for Judge Funk to enter, I perused my file. After all, why not prepare for once? To my delight, there was an envelope in the file that contained the dastardly thingamajig. The proverbial bucket had lost one of its battles after all.

To my even greater amazement, the trooper had actually brought all of the items of evidence that had been seized from my client, including a gun, a baton, speed loaders, a Leatherman pocketknife, and the unmentionable, funny looking thingamajig.

When it came time to discuss the thingamajig, the district attorney displayed the toy that had been seized by the troopers. It was a large, black, heavy metal object. Admittedly, it had a sinister appearance. Mine, on the other hand, was short, pink, and small. Otherwise, however, they certainly looked the same, and were clearly designed to do the same type of work.

Seizing the moment, I decided to let the court make the comparisons. Without request, I retrieved my object from the envelope. Following proper courtroom decorum, I first presented it to the district attorney. At that time, all three troopers sitting in the back of the courtroom stiffened noticeably. In passing, I began to suspect that they were interested in my little pink thingamajig. The air was already tense. One of the troopers, who seemed to be the self-ordained leader of the pack, had previously frisked my client when we entered the courtroom. At the time, he claimed that my client could be searched any time the trooper wanted. As for myself, I found it tacky to have my client publicly frisked in the courtroom prior to a hearing, especially after having gone through security. Suppressing my well-known timidity, I commented on this behavior to the trooper. Little did I realize that my exercise of free speech would soon bring such swift retribution.

For a period of time after I exposed my thingamajig, we all attempted to discern whether or not it was, in fact, a set of metal knuckles. The thingamajig did not fit any standard definition. Constitutional vagueness issues arose, once again. After all, anything could be a weapon, I argued, as circumstances warranted.

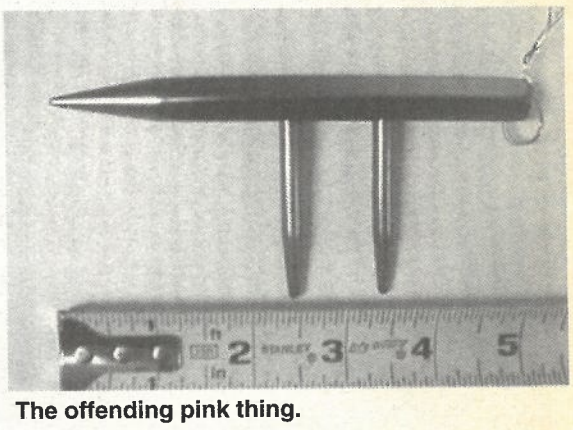
The state trooper was called to testify. The court asked the trooper to examine my thingamajig closely, which he did. When the court asked for the thingamajig to be returned, however, the atmosphere rapidly decayed. Rather than release my thingamajig, the trooper arrogantly told the court that he was how holding my own pink thing as "evidence of a crime."

I was incredulous. I could not believe that the trooper would be so audacious. I asked the trooper whether he was now intending to charge me with a crime for my little pink thing. He said that he was. I mentally chalked it up to just another example of bureaucratic pettiness from a public employee. I continued my cross-examination, confident that the court would protect me from any irresponsibility. A famous quote states that, "A foolish consistency is the hobgoblin of little minds, little philosophers, statesmen and divines." On thing for certain: the trooper was being consistent.

The remainder of my cross-examination was difficult on the trooper. That was my intention, not that I have ever felt that he has held up that well in the past. In my opinion, the trooper was being "badge heavy," not only in the initial stop and arrest, but in the courtroom frisking, and in his unexpected latest attempt to intimidate me from the stand. Evidence clearly suggested that the trooper's behavior might well have been retaliatory. In addition, because my client had been twice searched after his arrest with allegedly nothing else being located, the question which began to arise was whether or not a classic "throw down" situation might have developed (not that the police ever engage in such improprieties in Alaska, of course, but I was still concerned). Needless to say, the trooper and his two colleagues were not happy. But, then again, I was doing my job, and my job was not to win favor with the troopers.

At the close of the hearing, Judge Funk ruled that he found reason to believe that the trooper had probable cause to suspect that the thingamajig that my client possessed was metal knuckles. The motion to dismiss was denied. Ultimately, however, the jury would decide. The court then admonished me not to bring my own pink thing back to the courtroom "ever again." I explained to the court that I certainly did not intend to do so. Nor could I in any event, since the trooper had grabbed it and kept it. Judge Funk then told the troopers that they could "do whatever they had to do." (So much for my safety net.)

Initially, I found the court's stance to be rather unusual, but thought nothing of it. After all, how would anyone dare to make an issue out of a non-violent courtroom hearing? Still, earlier during the court's decision, I had an ear cocked to the rear of me. While the court was rendering its opinion, the officers were busily whispering like little kids in school about "supervisors" and things like that. I incorrectly figured they were simply in union negotiations again. Little did I realize that I was the object of their affections.



The offending pink thing.

As I stood to leave, the trooper who had testified approached me and asked me if I "had any other weap-

Continued on page 21

TALES FROM THE INTERIOR

Busted

Continued from page 20

ons." I was then asked to put my hands behind my back. I was under arrest! Needless to say, I was stunned. At worst, I had expected a misdemeanor summons or a bar complaint. A judicial dressing down in chambers, a´la´ Van Hoomissen, was also a possibility. I certainly did not expect to be arrested, however. The idea, alone, was ridiculous, especially when in a court hearing. Judge Funk was nowhere to be found, perhaps wisely realizing that he was the only other non-officer to have handled my now prohibited pink weapon and was likely next in line for an arrest, himself. Faced with the challenge to my freedom, I was my usual passive, compliant self. After all, recognizing that I was born on April 1, I figured that this could only be another one of those April Fool's jokes, even if it was April 8. People sometimes intentionally forget my birthday, but those are usually family members. I also recognized that some state troopers might not be capable of complex thinking, and possibly did not track my birthday as closely as I did.

Luck was not with me. It was made quite clear to me, however, when the trooper placed his nervous hands on me that I was, in fact, under arrest. Vaguely remembering something about my rights from my Yellow Pages ad, I immediately asked to make a phone call. I was told that I could "make it at the jail." I asked several times, in fact, to make my phone call. I was unsure of my rights. I wanted to call the district attorney to get accurate advice. Each time, I was told that I could make the call "at the jail."

I was led into the hallway and searched. I rather enjoyed the pat down and the personal attention. It was the most excitement that the new courthouse had ever seen. My personal items were taken from me. To my surprise, one of the officers began to paw through the contents of my wallet. I figured he was only after business cards, since I had no money. I actually hoped that he might take some cards to use at future accident scenes.

Following the formalities, I was tightly handcuffed and led from the court building. The handcuff marks lasted for three days. Contrary to my standard procedures, I was unable to wave to my friends. I could only wiggle my fingers behind me to improve circulation.

Ironically, it was my client, a regular arrestee, who was able to walk away free that day. As he left the building, I called after him to tell my staff that I would be slightly delayed for my last appointment, but not to cancel the meeting. The meeting was a new intake, and I desperately needed his retainer for my bail.

TO BE CONTINUED . . .

In the Supreme Court of the State of Alaska

In the disability matter involving	)	
	)	Supreme Court **S-10737**
	)	
Ronald K. Melvin,	)	**Order**
	)	
Respondent.	)	
	)	
ABA Membership No. 7906039	)	Date of Order: **8/29/02**

ABA File No.**2002B001**

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

Upon consideration of the joint motion by bar counsel and the respondent for the respondent's transfer to disability inactive status under Alaska Bar Rule 30, filed on 8/19/02,

IT IS ORDERED:

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

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

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

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

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

New communications access guide helps courts comply with ADA

To assist courts with continuity inproviding access services for persons who are deaf or hard of hearing, the National Court Reporters Foundation and the American Judges Foundation have developed model guidelines for the use of Communication Access Realtime Translation (CART) in the courtroom. CART in the Courtroom Model Guidelines offers a structure that courts can draw upon to meet their individual circumstances and help them comply with the Americans with Disabilities Act (ADA). A free copy of the guidelines is available at http://www.ncraonline.org/foundation/research/CARTguidelines.shtml.

THE CART IN THE COURTROOM MODEL GUIDELINES:

· Define CART and explain the duties of the CART provider;
· Set forth standards of ethics and professional responsibility;
· Explain how citizens can request the services of a CART provider;
· Establish procedures and protocol for the interaction of the CART provider with the hard-of-hearing or deaf citizen and court personnel; and,
· Describe the appropriate procedure for providing CART service not only in the courtroom during the trial, but also in the jury assembly room, the jury deliberation room, witness interviews and other judicial environments where communication access is necessary.

"More and more, people who are deaf or hard of hearing rely on CART to fully participate in the judicial system as jurors, litigants, attorneys, judges or observers," said Judge Tom Clark, immediate past president of the American Judges Foundation. "However, the nation's courts currently do not have a national standard on how CART should be applied based on the individual's needs. The Model Guidelines provide a framework that can be modified by any courtroom in the country to meet the communication access needs of people with hearing loss in their jurisdiction as required by the Americans with Disabilities Act."

CART, also known as realtime captioning, is a service offered by a court reporter who, using highly developed skills and special training, provides a word-for-word speech-to-text interpreting service for people who need communication access. CART providers accompany people who are deaf or hard of hearing, and, using a stenotype machine and a laptop, instantly transcribe the spoken words into text that a person with hearing loss can read on a laptop computer or other screen. Using the new Model Guidelines, courts will be able to manage the accessibility of CART services for people with hearing loss in a uniform and effective manner, benefiting both the court and the CART consumers.

The Model Guidelines for CART in the courtroom resulted from a joint task force formed by the American Judges Foundation (AJF) and the National Court Reporters Foundation (NCRF). The Guidelines reflect recommended procedures regarding the provision of CART in the nation's courts. The information and guidance offered is not mandatory but rather a suggested best practice.

THE ADA AND CART

The Americans with Disabilities Act specifically recognizes CART as an assistive technology that affords effective communication access. In August 2001, the U.S. Ninth Circuit Court of Appeals (*Duvall v. County of Kitsap, Wash.*, No. 99-35934) determined that realtime reporting is a reasonable accommodation for people who are deaf or hard of hearing under the Americans with Disabilities Act. Furthermore, in *Adams v. State*, 749 S.W. 2d 635, 639 (Tex. App. — Houston [1st. Dist.] 1988, pet. ref'd), the conviction was reversed because the trial court did not ensure understanding of the proceedings on the part of the deaf defendant.

Although the federal courts are exempt from the provisions of the Americans with Disabilities Act, in 1996 the Judicial Conference of the United States "adopted a policy that all federal courts provide reasonable accommodations to persons with communications disabilities. Each federal court shall provide, at judiciary expense, sign language interpreters or other appropriate auxiliary aids and services to participants in federal court proceedings who are deaf, hearing-impaired, or have other communications disabilities."

ABOUT AJF

The American Judges Foundation provides educational support and conducts fundraising activities in the furtherance of continuing education programs and opportunities for the membership of the American Judges Association.

ABOUT NCRF

The National Court Reporters Foundation promotes research, technology and education for the gathering, preservation and dissemination of the spoken word. NCRF is the charitable arm of the National Court Reporters Association, which is the professional organization for those who capture and integrate the spoken word into a comprehensive and accurate information base for the benefit of the public and private sectors. For further information, please call 800-272-6272 or visit http://www.ncraonline.org/foundation/index.shtml.

Are disgruntled employees the enemy within?

Continued from page 1

when a network engineer, agitated about his termination, detonated a software time bomb that he had planted in the network he helped to build. The bomb paralyzed Omega, which manufactures high tech measurement and control devices used by the Navy and NASA. When the bomb went off in the central file server, which housed more than 1,000 programs as well as the specifications for molds and templates, the server crashed, erasing and purging all programs. The incident resulted in 80 layoffs and the loss of several clients. The programmer is now serving a three-year sentence and has been ordered to pay $2 million in restitution for his violations of the federal law "Fraud and Related Activities in Connection With Computers."

A fairly common law firm nightmare is the disgruntled employee who turns the law firm into the Business Software Alliance for using unlicensed software. Very frequently, the firm has failed to monitor its licenses carefully or employees have installed unauthorized software. Since the court-imposed penalty can be up to $150,000 per copyright infringement, and since the firm is often guilty to one extent or another, it must pony up a settlement fee to avoid negative publicity, as well as covering considerable legal expenses. At least half a dozen law firm in the D.C. area have had this unhappy experience.

As horrific as these stories are, they are only the tip of the iceberg. Don't assume that disgruntled employees are all you have to worry about! There are other, often overlooked, "insiders" such as independent contractors, vendors, customers and clients – and yes, those cleaning folks who come in late at night. If you left everything up and running, you have no idea what your computer may be doing at midnight.

Many people who have access to your systems, in addition to employees, may have the wherewithal to alter or destroy data, hack into your systems, embezzle, lift proprietary data, harass, create a hostile work environment, or destroy your good will by inappropriate usage of your name. The nightmare scenarios are almost endless.

STATISTICS

The FBI reports that 85% of the companies it surveyed in 2001 had a computer intrusion. Of these, 30% came from external sources and 70% came from people associated with the company. Total losses from those willing to share information amounted to $378 million, a 43% increase over the preceding year. So why do we hear so little considering the apparent prevalence of the problem? Overwhelmingly, companies shun publicity, fearing the negative publicity. They greatly prefer to solve the problem internally and swallow the economic damage without the glare of the public spotlight. Only 36% of companies who have suffered intrusions reported those intrusions to law enforcement authorities, a figure which is at least growing from the previous year's 25%. Estimates place U.S. corporate spending on computer security at more than $300 billion per year.

IT STAFFERS: THE BETTER THEY ARE, THE MORE DANGER THEY POSE

Your IT (Information Technology) staff carries the greatest threat because they have the greatest knowledge. Yet they are frequently treated just like any other employee. Once, just once, the authors had a client who actually listened to our advice and instituted logging and other defensive measures prior to dismissing a systems administrator, just in case he had wind that something was up. The administrator was thought to be somewhat unstable and had made various threats against the client previously. We arrived at dawn and removed all of his access to the client's system, both on-site and remote access. When he arrived, he was given an exit interview and left the building with an escort. His personal items had previously been boxed for him. For several weeks, we monitored activity on the servers looking for signs of a "back door" or unauthorized access. Our client was lucky and the measures proved unnecessary. But it was still the "smart play" and the client never regretted the monies expended given the damage they knew the administrator might have inflicted.

THE DARK SIDE OF SECURITY

All law firms have come to recognize glumly that some level of security is necessary. With further reluctance, they acknowledge that they will have to spend serious sums on security. But they usually underestimate their needs, especially if they have not yet been burned by a security breach. It's no joke to say that security comes at a price, both literally and figuratively.

TRACING SECURITY BREACHES, REMEDYING THEIR EFFECTS AND PREVENTING RECURRENCES -- ALL OF THIS COSTS A GREAT DEAL MORE THAN CAREFUL PREVENTIVE MEASURES.

Security done right can be doggone expensive. Without question, it is always an extensive burden, and the aggravation factor doesn't decrease over time. Implementing security can slow systems down and impair productivity. There is almost always a tradeoff between security, system access and productivity. Yet the absence of security is always sorely lamented – after the fact. Tracing security breaches, remedying their effects and preventing recurrences – all of this costs a great deal more than careful preventive measures.

HOW TO ACHIEVE SECURITY AND SLEEP AT NIGHT

1. Have firm policies about computer/network/Internet usage. Tell people what they can and cannot do, clearly and simply. Do not file and forget these policies! Review them periodically and, for heaven's sake, enforce them!

2. Have computer security training for new employees. This can include everything from making them skeptical about opening e-mail attachments from senders they don't recognize (or unexpected attachments from senders they DO recognize) as well instructing them in the dangers of social engineering. People are by and large helpful and well-meaning. Faced with someone who says they have lost a password and need it right away, we tend to give them the password or reset it without thinking through possible implications.

3. Check references! If you employ an outside firm to provide you with computer services, check references carefully. Trust is an enormous issue when you outsource your IT work. Be sure the company has a stellar reputation itself and that its employees are regarded as trustworthy. If you hire your own internal IT staff, do the same thing. Frequently, the need is so pressing that employers admit to hiring quickly, without background checks, happy to find an IT professional who seems well qualified.

4. Use firewalls. Determine where access is needed and prevent it where access is not needed. Be especially careful with access to intranets and extranets.

5. Back up your data daily. No excuses! Limit your possible loss to a single day's work. Make sure you check your backups to make sure they are successful and that you periodically check to see that you can restore from the backup media, which can "go bad" over time.

6. Use off-site storage. "Warm" storage on site is fine, but make sure you have "cold" storage as well in case your disgruntled employee turns to arson, firebombing, etc.

7. Run virus protection software and get frequent updates. It is appalling how often we see law firms with anti-virus software – and the last update was a year or more ago. Better yet, make sure you upgrade to the new virus protection software packages that automatically get updates from the Net.

8. Limit employee access to information. Require use of passwords that are not easily guessed and re-

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Bar People

John Bosshard has relocated from Valdez to Sandy, Utah.....**Ben Brown,** former clerk to Judge Weeks, is now with the Dept. of Revenue.....**Bill Bonner** has relocated to Bradenton, Florida.....**Paul Crowley** has relocated to Lincolnville, Maine.....**Dennis Cummings** is now with the D.A.'s office in Bethel.

Jacqueline Colson has relocated from Anchorage to Soldotna.....**Glenn Cravez** is the Program Director for Alaska 20/20.....**Connie Carson**, formerly with the A.G.'s office, is now with Mendel & Associates.....**Ken Diemer** is now with OSPA in Anchorage.....**Paul Eaglin** has opened Eaglin Law Office in Fairbanks.

Robert Evans is Of Counsel to Patton Boggs in Anchorage.....**Friedman, Rubin & White** announces the merging of their Port Hadlock and Tacoma offices into their new office in Bremerton, Washington. **Kirsten Tinglum Friedman** is Of Counsel to the firm.....**Valli Fisher**, formerly Of Counsel with Tindall Bennett & Shoup, has relocated to Phoenix, Arizona.

Elizabeth Friedman is now with the Mat-Su Borough.....Former Assistant U.S. Trustee in Anchorage **Barbara Franklin** has relocated to Honoka'a, Hawaii.....**Peter Giannini**, formerly with Pletcher, Weinig & Fisher, is now with Guess & Rudd.

Patricia Huna-Jines, formerly with the Municipality of Anchorage, is now with the Division of Medical Assistance, Office of Hearings & Appeals.....**Ana Cooke Hoffman**, former Public member on the Alaska Bar Association Board of Governors, is now a Magistrate in Bethel..... **Russell Lewis**, formerly with BP Exploration (Alaska) has transferred to BP America in Houston, Texas.

Joseph Miller, former Magistrate in Tok, has relocated to Fairbanks.....**Margaret McWilliams** has relocated from ALSC in Juneau to Dillingham.....**Nancy Meade**, formerly with the A.G.'s office, is taking some time off and homeschooling her son, among other activities.....**Rebecca Patterson**, formerly with Patterson & Patterson, is now with the Municipal Prosecutor's Office in Anchorage.

Rebecca Pauli, formerly Of Counsel with Birch, Horton et.al., is now a Hearing Officer at Worker's Comp in Anchorage.....Belatedly we report that **Andrea Powell** and **Taylor Winston** have transferred from the Bethel D.A.'s office to the Anchorage D.A.'s office.....Also, belatedly the *Bar Rag* reports that **John Richard** is now with the D.A.'s office in Fairbanks.....**Richard Ray** has relocated to West Palm Beach, Florida.

Patrick Reilly writes that after 24 years of living in Seward, he is now trying a new location for a change of pace, and is now a North Slope Borough Assistant Borough Attorney in Barrow.....**Nicholas Spiropoulos**, formerly with Davis Black, is now with the Municipal Prosecutor's Office in Anchorage.....**Jayne Wallingford**, formerly with Stock & Donnelley, is now with the U.S. Attorney's office in Anchorage.

Ken Roosa, former Asst. U.S. Attorney, has joined the firm of Hedland, Brennan, Heideman & Cooke as a shareholder in the Anchorage and Bethel offices.....**Jim Benedetto** has been appointed the Federal Labor Ombudsman with the U.S. Department of the Interior's Office of Insular Affairs, on the island of Saipan in the Commonwealth of the Northern Mariana Islands.

Douglas S. Morrison has formed Environmental Law Northwest where he continues to provide a full range of environmental legal services to the business community. His practice emphasizes regulatory compliance, permitting and the defense of enforcement actions which utilizes his 18 years of practice and a strong scientific and technical background. A member of the Oregon, Washington and Alaska bars, he was previously a partner at Lane Powell Spears Lubersky LLP. He can be reached at 17371 NE 67th Court Suite 208, Redmond WA 98052; phone (425) 556-4303; fax:(425) 556-1884; e-mail: doug@envirolawnw.com.

Khabarovsk-Alaska Rule of Law Project (KAROL) Conference in Khabarovsk

Pictured at the conference are, L-R: Alaska delegation members Rita Hoffman, attorney with Dorsey & Whitney LLP, Anchorage; Judge Michael Thompson, Superior Court, Ketchikan; Judge John Lohff, District Court, Anchorage; Marla Greenstein, Alaska Commission on Judicial Conduct, Alaska delegation co-chair; and Judge David Mannheimer, Alaska Court of Appeals, Alaska delegation co-chair. Not pictured: Rich Curtner, Federal Defender, Alaska delegation. Khabarovsk delegation members Chief Judge Valery M. Vdovenkov and Deputy Chief Judge Sergei A. Gvozdev, of the Khabarovsk Court of General Jurisdiction; Judge Georgy Brusilovsky, Deputy Chairman of the Khabarovsk Region Arbitrage Court; and Deputy Chief Judge Valery D. Kim of the Khabarovsk Arbitrage Court. Photo courtesy of the KAROL project.

A delegation of Alaskan judges and lawyers made their first visit to Khabarovsk, in the Russian Federation, September 21-29, 2002, for a KAROL conference. The week-long conference focused on court administration, development of the legal profession, judicial independence, judicial ethics and community outreach. A Khabarovsk delegation will visit Alaska for the second time in late January 2003.

Are disgruntled employees the enemy within?

Continued from page 22

quire them to be changed periodically. These means combinations of alpha (multi-case) and numeric characters and/or symbols. No "Rover" or "birthdate" passwords! Don't use generic or default passwords for temporary employees. No "Guest" IDs and no "password" passwords!

9. Secure your equipment and your facilities. Turn workstations off at night unless they are utilized for remote access (walk up access should also be secured from local usage when unattended). Servers should be in a separate locked area and the area should remain locked during the day as well.

10. Monitor/filter and announce your intention to do so. Make it clear in your employee handbook that you have the right to electronically monitor employee use of your information systems, and that you own correspondence and other data generated on your system. Make it clear that employees should not be storing personal data on office computers. Make it clear that there is no reasonable expectation of privacy when it comes to firm e-mail, and that the firm has the right to access anything on its own system. Just because you have the right to snoop doesn't mean you have to do so. But spot-checking generally produces a sizeable harvest of policy violations. It seems as if, policy or no policy, the temptations of the Net are just too great. Consider whether to "filter" access to the Internet or whether to monitor employee usage of the Internet.

11. Safeguard use of your computer systems via modem by using a dial-back system for employee dial-ins. The system receives a call and then calls the employee back at a pre-approved phone number.

12. Terminate employees carefully. When it's necessary to discharge an employee who has access to critical company data, let them go without notice and don't allow them to return. Pack up their personal belongings beforehand or allow them to do so under supervision. Do NOT allow them access to a computer. Before you let employees go, remove their passwords, e-mail access, etc. If litigation is anticipated, consider collecting electronic evidence forensically and/or "retiring" the employee's computer.

ONLY ETERNAL VIGILANCE REALLY WORKS -- AND EVEN THAT ONLY BUYS YOU A BETTER SHOT AT AVOIDING OR SURVIVING TECHNOLOGICAL ASSAULTS.

What if you are victimized in spite of your best efforts? Check your insurance policy carefully to make sure you are covered. It is very unpleasant to find yourself the subject of an exclusion or to learn, after the fact, that there is a special policy or rider that you might have purchased but were unaware of. Cyberinsurance can cover much more than problems with disgruntled employees. It can cover losses from denial of service attacks, viruses, electronic embezzlement, damage or theft from outside hackers, and even copyright and privacy infringement. Cyberinsurance is such a burgeoning market that the Insurance Information Institute has predicted that it will be a $2.5 billion market by 2005. American International Group, one of the companies issuing cyberinsurance policies, has issued more than 2000 policies thus far, but surveys of businesses in general indicate that they are unaware of the existence of cyberinsurance. The cost varies widely as does the amount of coverage available, in part because there is so little history of paying out claims, so no one knows quite what to charge to make the customary margin.

In the end, the best prophylactic is using the suggestions above and constant vigilance to make sure they are truly carried out. You must also update these suggestions as technology and threats to technology alter in form. The technological juggernaut has been a blessing in many respects, but the headlong rush to move to an electronic world has sometimes suffered from a shortsighted view of the risks involved. The moral of the story is that the quote in the beginning of this article is no empty threat. "They" really can cut your air supply – unless you work hard to take appropriate countermeasures. Only eternal vigilance really works – and even that only buys you a better shot at avoiding or surviving technological assaults.

The authors are the president and vice president of Sensei Enterprises, Inc., a legal technology and computer forensics firm based in Fairfax, VA.

Voluntary Continuing Legal Education (VCLE) Rule
Second Reporting Period January 1, 2001 – December 31, 2001

Following is a list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 of ethics) of approved continuing legal education per year.

This list reflects Bar members who completed 12 or more hours and submitted the VCLE Reporting Form to the Alaska Bar office.

Alaska Bar members may have completed 12 or more hours of CLE and have chosen not to send in a form. Their names would not be reflected on this list.

We regret any omissions or errors. If your name has been omitted from this list, please contact the Bar office at 907-272-7469 or e-mail us at cle@alaskabar.org. We will publish a revised list as needed.

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Walter W. Mason
C. James Mathis
Scott L. Mattern
Warren W. Matthews
Rebecca L. Maxey
Marilyn May
J. Jeffrey Mayhook
Stephen A. McAlpine
Dennis L. McCarty
James H. McComas
John E. McConnaughy, III
Dwayne W. McConnell
Kevin F. McCoy
Donna McCready
George Blair McCune
Marcelle McDannel
Amy A. McFarlane
Mary Alice McKeen
Kirk R. McKenzie
Linda T. McKinney
Joseph H. McKinnon
Michael S. McLaughlin
Susan S. McLean
Samuel A. McQuerry
Thomas E Meacham
Robert F. Meachum
Amy Gurton Mead
Nancy B. Meade
Mary-Ellen Meddleton
Mark P. Melchert
Amy R. Menard
Allison E. Mendel
Samuel Tye Menser
Ward M. Merdes
Bryan S. Merrell
Dana J. Merriman
David H. Mersereau
Douglas K. Mertz
John R. Messenger
James K. Metcalfe
Yale H. Metzger
Bradley E. Meyen
Thomas J. Meyer
Howard J. Meyer, Jr.
Donna M. Meyers
Peter Michaelson
Peter A. Michalski
Timothy G. Middleton
Mark P. Millen
A. Fred Miller
Joseph W. Miller
Kevin G. Miller
Timothy E Miller
Michelle V. Minor
Jean M. Mischel
Kent A. Mitchell
Michael G. Mitchell
Andrew C. Mitton
Michael A. Moberly
Philip J. Moberly
Lisa C. Mock
Marjorie A. Mock
Robert J. Molloy
Richard D. Monkman
S. Joe Montague
Greg Montgomery
Douglas O. Moody
Bruce A. Moore
Colleen J. Moore
Anna M. Moran
Joseph M. Moran
Liam J. Moran
Margaret E. Moran
Kevin G. Morley
Douglas S. Morrison
Gregory Motyka
Julia D. Moudy
Molly (aka Mary E.) Mulvaney
Dennis P. Murphy
Kathleen A. Murphy
Margaret L. Murphy
Sigurd E. Murphy
David W. Murrills
John M. Murtagh
Susan D. Murto
Sheryl L. Musgrove
Phil N. Nash
Michael K. Nave
John R. Neeleman
Antone Nelson
Lance B. Nelson
Nikole M. Nelson
Vennie E. Nemecek
Raymond A. Nesbett
Mila A. Neubert
J. Mark Neumayr
M. Francis Neville
Abigail Dunning Newbury
Clark Reed Nichols
Deborah Niedermeyer
Eric Nixdorf
Heather Noble
Heather M. Nobrega
Russell A. Nogg
Nancy J. Nolan
John K. Norman
Natasha Marie Norris
Michael Norville
John J. Novak, IV
Linda M. O'Bannon
Jeffrey A. O'Bryant
Joseph D. O'Connell
Neil T. O'Donnell
Diane T. O'Gorman
Judith R. T. O'Kelley
Matt O'Meara
Deborah O'Regan
Daniel Patrick O'Tierney
Frederick J. Odsen
Ken M Odza
R. Danforth Ogg, Jr.
Randy M. Olsen
Greggory M. Olson
Aimee Anderson Oravec
Susan C. Orlansky
Melanie Baca Osborne
Shane J. Osowski
Lawrence Z. Ostrovsky
James D. Oswald
J. Stefan Otterson
Bradley D. Owens
Robert P. Owens
Thomas P. Owens, Jr.
Galen S. Paine
Philip M. Pallenberg
Christopher N. Pallister
Lance E. Palmer
Joseph P. Palmier
Douglas S. Parker
Geoffrey Y. Parker
Susan A. Parkes
James A. Parrish
Craig B. Partyka
Bonnie J. Paskvan
Paul W. Paslay
T. W. Patch
Christine M. Pate
Mary L. Pate
A. Krisan Patterson
Michael J. Patterson
Christi A. Pavia
Richard K. Payne
Max N. Peabody

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Voluntary Continuing Legal Education (VCLE) Rule
Second Reporting Period January 1, 2001 – December 31, 2001

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Denton J. Pearson
Stephen J. Pearson
George Peck
Charles R. Pengilly
Kristi Nelson Pennington
Richard D. Pennington
James B. Pentlarge
Douglas C. Perkins
Joseph J. Perkins, Jr.
Lynne Perkins-Brown
Gregory L. Peters
Drew Peterson
Laurel J. Peterson
Matthew K. Peterson
Kristen D. Pettersen
Frank A. Pfiffner
Mary S. Pieper
Aleta Pillick
Linn J. Plous
Christopher C. Poag
Richard L. Pomeroy
Tasha M. Porcello
Alicia D. Porter
Richard W. Postma
Jack G. Poulson
Andrea K. Powell
James M. Powell
Keenan R. Powell
Steven Pradell
Anne M. Preston
Glenn D. Price
J. David Price, Jr.
Chris Provost
V Fate Putman
Peter K. Putzier
Daniel T. Quinn
Cynthia K. Rabe
John H. Raforth
Laura N. Ragen
Deborah H. Randall
Retta-Rae Randall
Robert W. Randall
Margaret J. Rawitz
Colleen A. Ray
Charles W. Ray Jr.
Jody A. Reausaw
Peter R. Reckmeyer
Timothy R. Redford
John E. Reese
Susan E. Reeves
Mala J Reges
Patrick J. Reilly
David D. Reineke
Rhonda L. Reinhold
Audrey J. Renschen
Norman P. Resnick
Lisa Reynolds
Stephanie L. Rhoades
Julian C. Rice
Kristen K. Richmond
Robert L. Richmond
Douglas K. Rickey
Mark Rindner
Barbara J. Ritchie
James L. Robart
R. Bruce Roberts
J. Martin Robertson
Kenneth G. Robertson
Kari A Robinson
Lowell A. Robinson
Arthur L. Robson
Joan E. Rohlf
Ryan R. Roley
Kenneth S. Roosa
Christopher W. Rose
Erin Rose
Stephen D. Rose
Kenneth M. Rosenstein
Herbert A. Ross
Patrick G. Ross
Peggy Roston
Bhree Roumagoux
William B Rozell
Karen L Russell
Margaret R. Russell
Jan A. Rutherdale
Eric J. Sachtjen
Jean S. Sagan
Eric T. Sanders
James A. Sarafin
William R. Satterberg
Jeffrey F. Sauer
A. William Saupe
Richard D. Savell
Kevin M. Saxby
Keith E. Saxe
Daniel J. M. Schally
William B. Schendel
Judy M. Scherger
Cathy Schindler
Garth A. Schlemlein
David J. Schmid
Jack Schmidt
Kristine A. Schmidt
Robert H. Schmidt
Alan L. Schmitt
Michael J. Schneider
Michael L. Schrenk
Richard J. Schroeder
Charles F. Schuetze, LL.M.
Barbara L. Schuhmann
Martin T. Schultz
Bryan T. Schulz
Aaron Schutt
Ethan G. Schutt
Krista M. Schwarting
Daveed A. Schwartz
Thea J. Schwartz
John A. Scukanec
Walter J. Sczudlo, Jr.
Jean E. Seaton
Mitchell A. Seaver
James M. Seedorf
David M. Seid
S. Jay Seymour
Michael D. Shaffer
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Steven J. Shamburek, Esq.
Philip E. Shanahan
Cameron Sharick Jensen
Brenda G. Sheehan
Abigail Sheldon
Cherie L. Shelley
Phyllis A. Shepherd
Todd K. Sherwood
Amy J. Shimek
Robert I. Shoaf
David B. Shoemaker
Anthony M Sholty
Nancy R. Simel
John E. Simmons
Margaret Simonian
Randall G. Simpson
Matthew Singer
John W. Sivertsen, Jr.
John B. Skidmore
George Wayne Skladal
Steven E. Skrocki
Thomas J. Slagle
Eugenia G. Sleeper
Gary Sleeper
Joseph S Slusser
Christine L. Smith
Colby J. Smith
Diane A. Smith
Elizabeth-Ann Smith
Eric B. Smith
Jack W. Smith
Kevin B. Smith
Marlin D. Smith
Wm. Ronald Smith
Russell E. Smoot
Clyde E. Sniffen, Jr.
John R. Snodgrass, Jr.
D. Rebecca Snow
Harold E. Snow, Jr.
Gary Soberay
P. Marcos Sokkappa
Joseph A. Sonneman
Stephen F. Sorensen
H. Peter Sorg
Mary Southard
Michael R. Spaan
Bethany P. Spalding
Robert A. Sparks
Franklin Eleazar Spaulding
William A. Spiers
Carmen Spiropoulos
Nicholas Spiropoulos
Robert S. Spitzfaden
Anselm C. H. Staack
Joseph S. Stacey
Michael R. Stahl
Edward A. Stahla
Michael A. D. Stanley
Loren K. Stanton
Gary L. Stapp
Michael J. Stark
Krista S. Stearns
David G. Stebing
Leonard A. Steinberg
Stacy K. Steinberg
Toby N. Steinberger
John L. Steiner
Quinlan G. Steiner
Niesje J. Steinkruger
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Trevor N. Stephens
W. Michael Stephenson
Jack K. Sterne, Jr.
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Rebecca Wright Stevens
David Stewart
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James Stoetzer
Andrena L. Stone
Jack R. Stone
Kim S. Stone
Robert D. Stone
Timothy M. Stone
Douglas Strandberg
Kathleen Strasbaugh
W. Clark Stump
Daniel S. Sullivan
John F. Sullivan
Kevin J. Sullivan
Richard P. Sullivan, Jr.
Benjamin C. Summit
Natasha M. Summit
Donald L. Surgeon
Earl M. Sutherland
Richard N. Sutliff
Richard A. Svobodny
Kirsten Swanson
Alex Swiderski
Richard B. Swinton
Lester K. Syren
James W. Talbot
Sen K. Tan
J. P. Tangen
Gordon J. Tans
Laurel K. Tatsuda
Sue Ellen Tatter
Gregory C. Taylor
Kneeland L. Taylor
R. Scott Taylor
Karla Taylor-Welch
Gilbert Earle Teal II
Janet K. Tempel
Steven S. Tervooren
Wallace H. Tetlow
Valerie M. Therrien
Cindy Lynn Thomas
H. Conner Thomas
Linda S. Thomas
Colette G. Thompson
G. Nanette Thompson
Michael A. Thompson
Terry L. Thurbon
Richard S. Thwaites, Jr.
John J. Tiemessen
Craig J. Tillery
Tracey A. Tillion
Cassandra J. Tilly
John H. Tindall
Kirsten Tinglum
Allen M. Todd
Richard J. Todd
James E. Torgerson
Mark R. Torgerson
Frederick Torrisi
Breck C. Tostevin
David R. Trachtenberg
Joan Travostino
Mary P. Treiber
Sara Trent
Irene S. Tresser
Howard S. Trickey
Frederick W. Triem
Ruth D. Tronnes
Lanning M. Trueb
Jay W. Trumble
Judd E. Tuberg
Julia S. Tucker
William C. Tulin
Richard N. Ullstrom
Alma M. Upicksoun
Susan L. Urig
James J. Ustasiewski
George E. Utermohle, III
John R. Vacek
Fred H. Valdez
Diane F. Vallentine
Thomas Van Flein
Stephen J. Van Goor
Heather J. Van Meter
Peter H. Van Tuyn
Jeffrey H. Vance
Leon T Vance
Marjorie L. Vandor
Alexander K.M. Vasauskas
Robert L. Vasquez
Kenneth E. Vassar
Amy L. Vaudreuil
Elizabeth Vazquez
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Venable Vermont, Jr.
Timothy C. Verrett
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Virgil D. Vochoska
Gail T. Voigtlander
Philip R. Volland
Richard E. Vollertsen
Frank J. Vondersaar
Jennifer Wagner
Tom Wagner
Robert H. Wagstaff
Brian J. Waid
Paula J. Walashek
Robert J. Walerius
Stacy L. Walker
William K. Walker
Clayton H. Walker, Jr.
Herman G. Walker, Jr.
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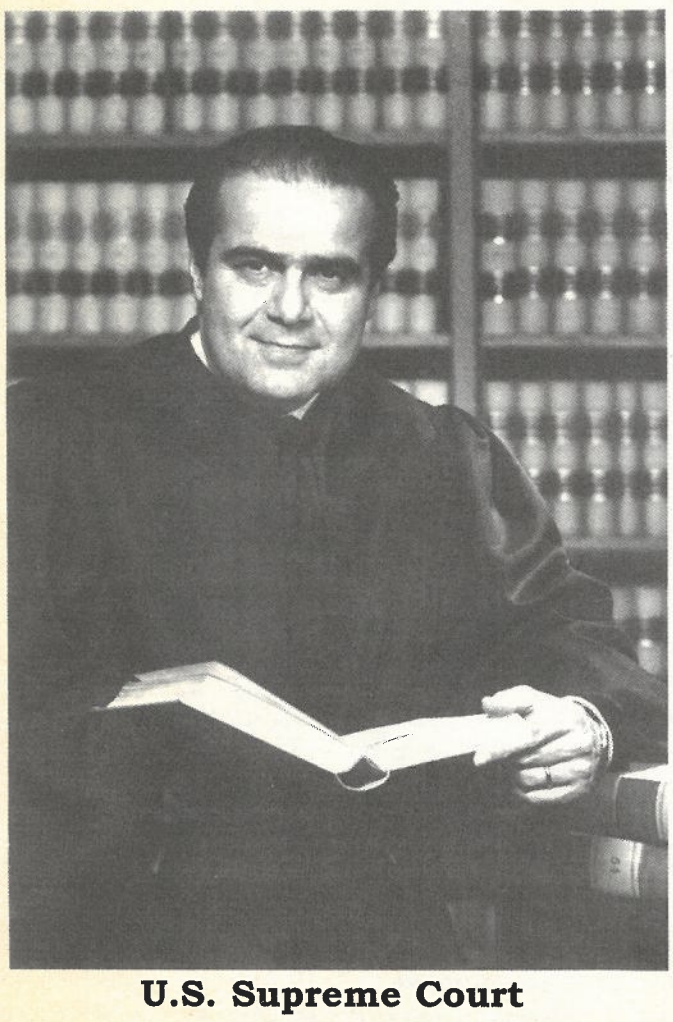
Dayle L. Wallien
Jayne L. Wallingford
Caroline P. Wanamaker
James N. Wanamaker
Heidi C. Wanner
Thomas M. Wardell
Vincent E. Watson
Daniel C. Wayne
Steven C. Weaver
Julie L. Webb
Megan R. Webb
Daniel J. Weber
David R. Weber
James A. Webster
Kathleen A. Weeks
Larry R. Weeks
Karen V. Weimer
R. Leonard Weiner
Ted Wellman
Jennifer K. Wells
Steven M. Wells
Diane L. Wendlandt
James Wendt
Stephen R. West
Susan M. West
Bruce B Weyhrauch
Paul K. Wharton
Dennis A. Wheeler
Benjamin I. Whipple
Danna M. White
John R. White
Marshall T. White
Michael N. White
Stephen M. White
Sandra J. Wicks
Paul S. Wilcox
Patricia C. Wilder
Marc G. Wilhelm
Joan M. Wilkerson
Donna C. Willard
Andrew Williams
D. Kevin Williams
Janis C. Williams
Roy V. Williams
Teresa E. Williams
J. Douglas Williams II
Richard J. Willoughby
Joan M. Wilson
Linda K. Wilson
Lisa M. F. Wilson
Zane D. Wilson
Charles A. Winegarden
Daniel E. Winfree
Linda M. Wingenbach
Taylor Elizabeth Winston
Sheldon E. Winters
Jill C. Wittenbrader
Mark H. Wittow
Mark Woelber
Tonja J. Woelber
Eric E. Wohlforth
John W. Wolfe
Michael L. Wolverton
Donn T. Wonnell
Thomas Burke Wonnell
Mark I. Wood
Michael H. Woodell
Jonathan A. Woodman
Fronda C. Woods
Glen E. Woodworth
Larry R. Woolford
Douglas A. Wooliver
Mark P. Worcester
Janel L. Wright
Julie Ann Binder Wrigley
Glen E.M. Yaguchi
Georges Henri G. Yates
Thomas J. Yerbich, LL.M.
David Young
Sharon L. Young
Gregory L. Youngmun
A. Michael Zahare
Michael J. Zelensky
Mary H Zemp
F. Lachicotte Zemp, Jr.
Larry C. Zervos
Elizabeth A. Ziegler
Christopher E. Zimmerman
Gary A. Zipkin
Patricia Zobel
Ronald M. Zobel
Isaac D. Zorea
Edith Ann Zukauskas
David L. Zwink

Alaska Bar Association
2003 Convention in Fairbanks



U.S. Supreme Court Justice Antonin Scalia

Join us in Fairbanks
for the
Alaska Bar Association
Annual Convention
on
May 7, 8 & 9, 2003
at the
Fairbanks Princess Hotel
with
U.S. Supreme Court
Justice Antonin Scalia!

(As past President Bruce Weyhrauch announced at the Ketchikan 2001 convention with Justice Stephen Breyer, "We're going for the complete set!")

2003 Budget Summary

Projected Revenue

Admissions Fees - All	174,500
CLE	121,810
Lawyer Referral Fees	63,200
The Alaska Bar Rag	16,084
Annual Convention	72,000
Substanstive Law Sections	9,025
Pattern Jury Instructions	5,040
Mgmt. Service/Law Library	3,100
Accounting Svc./Foundation	9,719
Membership Dues	1,302,665
Dues Installment Fees	13,625
Penalties on Late Dues	15,210
Labels & Copying	5,447
Investment Interest	90,000
Misc.	1,800
Total Revenue	**1,903,225**

Projected Expense

Admissions	172,411
CLE	372,567
VCLE	67,143
Lawyer Referral Service	47,585
The Alaska Bar Rag	45,257
Annual Convention	100,000
Substantive Law Sections	16,402
Pattern Jury Instructions	1,027
Mgmt. Services/Law Library	3,966
Accounting Svc./Foundation	10,269
Board of Governors	64,569
Discipline	586,708
Fee Arbitration	56,653
Administration	396,910
Committees	8,500
Alaska Law Review (Duke)	34,000
Internet/Web Page	12,280
Credit Card & Bank Fees	13,349
Public Interest Grants	10,000
Computer Training/other	1,000
Total Expenses	**2,020,597**

If you have questions or would like a copy of the entire budget detail, please contact the Bar office at 272-7469, or e-mail alaskabar@alaskabar.org.

INVITATION FOR PUBLIC COMMENT

FEDERAL PUBLIC DEFENDER

District of Alaska - Mr. Richard Curtner

The United States Court of Appeals for the Ninth Circuit is conducting evaluations of the performance of the Federal Public Defender (FPD) for the District of Alaska, **Mr. Richard Curtner**. The Court conducts these evaluations in order to determine if the incumbent FPD should be appointed to an additional four year term without a competitive recruitment. Any persons having knowledge of the performance of Mr. Curtner and/or his respective staff are invited to submit comments. The identity of all respondents will be kept confidential.

All comments must be received no later than **Friday, January 10, 2003** in order to be considered. Comments may be submitted via mail or fax to the following address:

Office of the Circuit Executive
Evaluation—FPD, District of Alaska
U.S. Courts for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939
Fax: (415) 556-6179

Report on the ABA annual meeting

The 125th Annual Meeting of the American Bar Association (the .ABA.) was held August 8 - 13, 2002, at the Marriott Wardman Park Hotel in Washington, D.C. A wide variety of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for one and a half-day sessions. The Nominating Committee also met.

The Nominating Committee sponsored a .Meet the Candidates. Forum on Sunday, August 11, 2002. Robert J. Grey, Jr. of Virginia, candidate for President-Elect, who is seeking nomination at the 2003 Midyear Meeting, gave a speech to the Nominating Committee and to the members of the Association present.

The ABA Medal, the Association's highest award, was presented to the Honorable William H. Webster, Sr. of Washington, D.C. during the House of Delegates meeting on Monday, August 12, 2002.

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the .House.) met on Monday, August 12, and Tuesday, August 13, 2002. Karen J. Mathis of Denver, Colorado, presided as Chair of the House.

The invocation for the House was delivered by a member of the ABA, Reverend Angela F. Williams, an ordained minister from Washington, D.C. The Chair of the House Committee on Credentials and Admissions, Stephen L. Tober of New Hampshire, welcomed the new members of the House. Deceased members of the House were named by the Secretary of the Association, Jack B. Middleton of New Hampshire, and were remembered by a moment of silence. Incoming ABA President-Elect Dennis W. Archer of Michigan and former ABA President Stanley L. Chauvin, Jr. of Kentucky gave moving remarks to the House about former ABA President, George E. Bushnell, Jr. of Michigan, who passed away in August. He also served our association as Chair of the House of Delegates. They spoke of Mr. Bushnell's trademark attire and pin, his lifetime of service to his community, his profession and the bar, and his friendship and good humor. Mr. Bushnell will be greatly missed.

The House again did not use electronic voting in order to conserve ABA resources.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

STATEMENT BY THE CHAIR OF THE HOUSE

Early in the House.s agenda, Chair Mathis briefly addressed the House, and called for 100% participation from members of the House in making a minimum contribution to the Fund for Justice and Education (.FJE.). Chair Mathis announced that, as of the beginning of the House session, the following delegations had achieved 100% participation: Georgia, Idaho, Massachusetts, Ohio, South Dakota, Wyoming and the Virgin Islands. Later in the House.s agenda, it was announced that the following delegations had also achieved 100% participation: California, Connecticut, Florida, Maryland, North Dakota, Oregon, South Carolina, Vermont and Washington.

STATEMENT BY THE ABA PRESIDENT

Robert E. Hirshon of Portland, Maine, President of the ABA, began

Continued on page 27

Humor . . .

Reese exempts Santa from deposition

The inalienable right of any lawyer to depose anyone at any time has been abridged by Superior Court Judge John Reese. As many will not believe this, a copy of the order is reproduced below.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BERNARD GUILD,
Plaintiff,
vs.
DORIS MAE WILLIAMS,
Defendant.

Case No.3AN-01-09916 CI

ORDER

Santa Claus will not be required to attend a deposition on Christmas Eve, nor will Mr. Prunty be required to attend a deposition on April 15th.

Counsel shall discuss a later date.

It is so ORDERED.

DATED this 12th day of April, 2002 at Anchorage, Alaska.

/s/John Reese
Superior Court Judge

— Submitted by Karen A. Kirby

Report on the ABA annual meeting

Continued from page 26

his address to the House by thanking its members for bestowing upon him the honor and privilege of serving as ABA President. President Hirshon thanked his wife and family for their support. He expressed his appreciation to Chair Mathis, Executive Director Robert A. Stein, and the members of the ABA staff for their unparalleled efforts and outstanding service. President Hirshon also thanked all of the former ABA Presidents who paved the way and asked those present to stand and be recognized by the House.

President Hirshon noted that though the year was a tumultuous one in many ways, the ABA enjoys record membership and record revenue. He attributed the success of the ABA to the fact that it is meeting its obligation to provide ABA members with practical, substantive benefits and meeting its mission to serve the public. President Hirshon stated that we often represent unpopular clients and advocate unpopular causes because, as John Adams said, .that is what lawyers do.. That fact and the many changes resulting from the tragedy of September 11, 2001, require — now more than ever . that we work professionally and collegially. He noted that while some of the recent changes were necessary and appropriate, others might unnecessarily infringe on civil liberties. President Hirshon emphasized that fundamental constitutional protections, due process, and adherence to the rule of law must be preserved.

Finally, President Hirshon observed that the House.s collegial debate at the 2002 Midyear Meeting resulted in an ABA position on military tribunals, a position which was closely tracked by the White House. Shouldn.t this success, he asked, be followed by a House debate about how this country treats illegal aliens, about the detention of immigrants, and the detention of American citizens? Shouldn.t the House debate class action reform? Shouldn.t the House tackle the Task Force Report on Corporate Responsibility? President Hirshon asserted that the House should address these issues, and that we must not lose sight of who we are — the voice of the profession and the stewards of the rule of law in the greatest democracy in the world.

ABA MEDAL

President Hirshon presented the ABA Medal, the Association.s highest award, to the Honorable William H. Webster, Sr. of Washington, D.C. An outstanding and distinguished leader in all areas of the legal profession, Judge Webster has served on the United States Court of Appeals for the Eighth Circuit, and was a former director of both the Central Intelligence Agency and the Federal Bureau of Investigation.

Judge Webster thanked President Hirshon and the ABA for this honor. He noted that most of the opportunities he was provided to serve had come to him by chance or accident, and that when such opportunities presented themselves, he had to decide whether to leave something else he loved doing. When faced with such a dilemma, he applied a two-part test. He asked himself, .is there a real need? If so, do I think I can address that need?.

Having joined the ABA in 1953, Judge Webster said that he was on the receiving end of ABA membership for 15 years. He was invited to participate in a session on commercial banking in the 1970s. At the session, he was invited to stay for the Council dinner. Judge Webster was officially involved, and remained actively involved until President Jimmy Carter asked him to serve as Director of the Federal Bureau of Investigation. Thereafter, former Supreme Court Justice Louis Powell asked him to serve as counselor to the ABA Standing Committee on Law and National Security and his ABA involvement resumed. Judge Webster said that he had been enriched by his participation in the ABA, and that he was grateful for the good thinking on rule of law issues to which he was exposed in the ABA, which thinking informs him even now.

Judge Webster concluded his remarks with three quotes that have special meaning to him. The first was former Supreme Court Justice Oliver Wendell Holmes. quote, which closes the book, Yankee From Olympus. Asking whether we have started measuring ourselves too much by .infectious greed,. Judge Webster cited the high entrance salaries of new associates as just one problem. He noted that the high salaries seem to be encouraging time requirements that do not allow young lawyers to pursue public service. Second, Judge Webster cited Edward Gibbons. quote about Athens, the world.s first democracy, and noted that what he has loved about the law is that it has led us toward responsibility, rather than away from it. Finally, Judge Webster closed with a quote from Judge Learned Hand.

Stephanie Cole, Administrative Director of the Alaska Court System, L-front, receives a pin for 25 years of service to the court from Chief Justice Dana Fabe, R-front, during a recent meeting of the court's Area Court Administrators (ACAs) and Senior Staff. Standing, L-R: Tom Mize, ACA-2nd Judicial District; Christine Johnson, Deputy Director - Operations; Susanne DiPietro, Judicial Education Coordinator; Alyce Roberts, Anchorage Clerk of Court; Kit Duke, Facilities Manager; Rhonda McLeod, Fiscal Manager; Cindy Marshall, Court Analyst; Chris Christensen, Deputy Director Legal; Guy Gallaway, Information Systems & Support Manager; Neil Nesheim, ACA - 1st Judicial District; and Ronald Woods, ACA - 4th Judicial District

Photo by Barbara Hood.

Attorney Discipline

Cathleen N. McLaughlin disbarred

On September 27, 2002, the Alaska Supreme Court disbarred Cathleen N. McLaughlin, Alaska Bar Association Member No. 8511136, from the practice of law for ethical misconduct, including misappropriation, misrepresentation and neglect. The court had earlier placed Ms. McLaughlin on interim suspension to avoid harm to clients and the public.

Grievance investigations revealed that in early 1998, Ms. McLaughlin began neglecting certain client matters. Despite doing nothing, she reported progress to her clients or gave false excuses for delays. She told legally unsophisticated clients lies about court procedures and she prepared false pleadings or correspondence to hide her neglect. Eventually she began to misappropriate client trust money to pay other clients the "settlement proceeds" she allegedly gained. Evidence showed that Ms. McLaughlin misappropriated approximately $109,000 from a client trust account to pay a settlement on a lawsuit she never filed.

In stipulating to disbarment by consent, bar counsel and Ms. McLaughlin agreed that she violated numerous rules of professional conduct prohibiting neglect, failure to communicate, falsifying evidence, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and failure to account for client funds. Bar counsel and Ms. McLaughlin agreed that she committed these acts with intent or knowledge and that she caused actual injury to her clients and the legal profession.

Bar counsel and Ms. McLaughlin agreed that her lack of a prior disciplinary record could mitigate her sanction, but that several aggravating factors outweighed the sole mitigating one. Aggravators included a dishonest motive, a pattern of misconduct, multiple offenses, and submission of false evidence, false statements or other deceptive practices during the disciplinary process, substantial experience in the practice of law, and indifference to making restitution.

In the event that Ms. McLaughlin ever seeks reinstatement to the Alaska Bar, she agreed to fulfillment of certain conditions. Among other things, she agreed to make restitution of all losses suffered by her clients and her law partners or payments made from the Lawyers' Fund for Client Protection, to allow an independent auditor or accountant to oversee her firm and trust accounting practices for a minimum of two years, and to submit a report by a licensed psychologist or psychiatrist showing that she is mentally and physically able to practice law.

Supreme Court censures attorney Coghlan

The Alaska Supreme Court issued a public censure, reprimanding Fairbanks attorney Bonnie J. Coghlan, Alaska Bar Association Member No. 7806034, for neglect of several client matters. In addition to the censure, the court imposed a one-year suspension with the entire suspension stayed provided that Ms. Coghlan successfully completes a two-year probation period under the supervision of an actively licensed Alaska Bar Association attorney member. If during the probation Ms. Coghlan commits a "new" breach of her duties to clients of diligence or communication, the one year of stayed suspension will be imposed in addition to any discipline ordered for the new misconduct.

When the court issued its order, Ms. Coghlan was on administrative suspension for her failure to pay bar dues. Accordingly, the court ordered that the two-year probation period could not begin until Ms. Coghlan paid her bar dues, ending her administrative suspension, and Ms. Coghlan paid restitution to the Alaska Bar Association for trustee counsel in related proceedings necessary because of Ms. Coghlan's failure to handle client matters diligently. The court also ordered that Ms. Coghlan fulfill the requirements for reinstatement set out in Alaska Bar rule 30(g), which are standards for reinstatement for attorneys transferred to disability inactive status prior to beginning any supervised probation.

Soon after the imposition of discipline, Ms. Coghlan went on disability inactive status. As of this date Ms. Coghlan has not commenced the two-year probationary period.

The public documents relating to the disciplinary proceedings are available for review at the offices of the Alaska Bar Association.

Upcoming CLEs in December and January

SINCE 1896
ALASKA BAR ASSOCIATION

December 6	8:00 – 10:00 am.	Off the Record with the AK Judicial Council – An Inside Look at Judicial Selection & Retention CLE #2002-027 2.0 General CLE Credits	Anchorage Hotel Captain Cook
December 12	8:30 – 10:00 a.m.	Ethics at the 11th Hour CLE #2002-016 1.5 Ethics Credits	Anchorage Hotel Captain Cook
		Watch for information on video replays of "Ethics at the 11th Hour" – including Anchorage in late December.	
January 28, 2003	8:00 – 10:00 a.m.	Off the Record: Third Judicial District CLE #2003-003 2.0 General CLE Credits	Anchorage Hotel Captain Cook

Alaska wins Law Day award

Continued from page 1

or hallways, and several have kept it on display throughout the year. Some courts invited the public to opening receptions on Law Day, which included music, dancing and speakers representing diverse segments of their communities. At least four major high schools and two major community centers also hosted the exhibit, which also received coverage in the Anchorage Daily News.

The first time Law Day partnership between the Alaska Court System and the Alaska Bar Association proved very successful and will be continued. ACS committed staff time, partial funding, and in-kind support to the exhibit itself. The AkBA helped evaluate the exhibit, prominently displayed it at its annual convention, and provided extensive coverage in the *Bar Rag*. Members of the planning committees, who represented many diverse organizations and institutions, also provided invaluable assistance, and several participated in the exhibit. The Alaska Humanities Forum was a critical partner in the project because of its important financial contribution. Finally, strong relationships were formed with 37 individual and group participants in the exhibit, all of whom appreciated the positive public attention to their efforts.

Posters from the exhibit have also been widely displayed individually. For example, Anchorage Therapeutic Courts are using their individual poster to publicize their innovative work, and the Fairbanks courthouse has put posters featuring regional court staff on permanent display. Some participants have used their posters in grant applications or board presentations. New opportunities for displaying the exhibit are arising regularly, and it remains available for future outreach purposes.

"The winning entries for Law Day 2002 showed creativity in putting together strong community teams and reaching out to various segments of the public to convey the importance of the rule of law," said the ABA. "In addition, the programs showed great promise in continuing activities throughout the year and adding activities for the next Law Day."

"The Alaska Bar Association is proud to have been a part of this project and is delighted at the recognition," says Executive Director Deborah O'Regan.

As mediators of Government Hill Elementary School, our job is to promote peace throughout our school community. On the playground, our role is to keep children safe, help students solve their own conflicts, and help students remain or become friends.

Mediators do not take sides. We encourage students to solve their conflicts with each other in a peaceful way through the 17-step mediation process. Government Hill has a diverse school population and we learn to mediate with students of all cultures!

- Erick K. Williams, Jr., Justin Rhoades, Maddie Troiano & Alivia M. Feliciano
Government Hill Elementary Peer Mediators

Erick K. Williams, Jr., Justin Rhoades, Maddie Troiano and Alivia M. Feliciano are students at Government Hill Elementary School in Anchorage. They are among 90 students at the school who have been trained in peer mediation as a constructive way to resolve conflict, and they regularly serve as peer mediators on school grounds. Many elementary schools are embracing peer mediation as a way to give students important life-long lessons about getting along peacefully in a diverse society. Each May, hundreds of young peer mediators gather for an annual "Peace Rally" on the Anchorage Park Strip to celebrate their efforts.

A sample of the 2002 Law Day posters.

Law Day 2002

Supported in part by a grant from the Alaska Humanities Forum and the National Endowment for the Humanities, a federal agency

Law Day Exhibit Poster Participants

The Alaska Court System and Alaska Bar Association would like to thank the following individuals and organizations for their participation in "The US in JUSTICE is . . . Everyone!" photo-text exhibit:

1. Chief Justice Dana Fabe,
   Alaska Supreme Court
2. Harold Curran, Cathy Aukongak, Carol Yeatman, and Nora Sund,
   Alaska Legal Services Corporation
3. Denise R. Morris & Joe Garoutte,
   Alaska Native Justice Center
4. Susan Churchill and Manju Bhargava,
   Bridge Builders
5. Robin Bronen, Mara Kimmel, Robin Wittrock, Sara Acharya, Ana Fernandez and Giuseppe Grillea,
   Immigration & Refugee Services Program
6. Thelma Buchholdt
7. Rex & Stephanie Butler
8. Sallye Werner,
   CASA Program
9. Magistrate Sue Charles,
   Alaska Court System
10. Excelia Hendrickson, Sharena Duff, Alisha Fahey, Marianna Rowland, Mong Vang, Krystal Henry, Edward Poinier, Jeffery Buchark, Karena Taylor, and Ashley Burke,
    Clark 21st Century Community Learning Center After-School Program
11. Tony Lombardo,
    Covenant House
12. Julia Coster, Cynthia Drinkwater, and Ed Sniffen,
    Office of the Attorney General
13. Gladys Langdon,
    DFYS
14. Dave Fleurant & Tom Fernette,
    Disability Law Center
15. Betty Hernandez, Judi Miller & Katherine Alteneder,
    Family Law Self-Help Center, Alaska Court System
16. Eric K. Williams, Jr., Justin Rhoades, Maddie Troiano & Alivia M. Feliciano,
    Government Hill Elementary Peer Mediators
17. Andy Harrington,
    Alaska Legal Services Corporation
18. Adrian L. Ingram, Captain, USAF,
    JAG Office, Elmendorf
19. Judge Michael I. Jeffery,
    Alaska Court System Barrow
20. Mike A. Jackson,
    Kake Circle Peacemaking
21. Essaia White,
    Kenai Peninsula Youth Court
22. Laurie Sodstrom, Christina Lewis, Jessie Chapman, Alejandro Chauvarna, Hannah Poet, Tracey Anderson, and Casey Klask,
    Ketchikan Youth Court
23. Tammy Lamont,
    Alaska Court System, Emmonak
24. Chief of Police Walt Monegan,
    Anchorage Police Department
25. Elizabeth Smith,
    North Star Youth Court
26. Galen Paine,
    Alaska Civil Liberties Union
27. Christine McLeod Pate,
    Alaska Council on Domestic Violence & Sexual Assault
28. Bryan Timbers,
    Alaska Pro Bono Program
29. Vance Sanders, Arthur H. Peterson & Janine Reep,
    Alaska Legal Services Corporation Board
30. Judge Eric Smith,
    Alaska Court System, Palmer
31. Diane LoRusso & Jovelyn deLuna,
    Standing Together Against Rape
32. Donald L. Surgeon,
    Public Defender Agency
33. Judges Stephanie Rhoades, James Wanamaker & Stephanie Joannides,
    Anchorage Therapeutic Courts
34. Diane Payne,
    Tribal Law & Policy Institute
35. Shannon Johnson,
    Traditional Council of Togiak
36. Trang Duong and Rona Mason,
    Immigration & Refugee Services Program
37. Donna Garner,
    Victims for Justice

The Alaska Court System and Alaska Bar Association would also like to thank the following people for their generous support for "The US in JUSTICE...is EVERYONE!" exhibit:

- Marita Bunch, John Hagey & Wendy Leach, North Star Youth Court
- Elva Cerda, Government Hill Elementary, Anchorage
- Jim Cucurull, Design-P/T, Anchorage
- Robert Dillon, Editor, Tundra Drums, Bethel
- Judge Richard Erlich, Kotzebue
- Ginny Espenshade, Kenai Peninsula Youth Court
- Kathy Fritz, Photographer, Sitka
- Gretchen Klein, Ketchikan Youth Court
- Kristine O'Neill, ACS Administrative Staff, Anchorage
- Patrick O'Neill, Clark Middle School, Anchorage
- Mary Treiber, ACS Rural Court Training Assistant, Ketchikan
- And the following ACS Administrative Staff:

Sylvester Perry	Tina Metrokin	Kristine O'Neill	Douglas Schwartz
Robert Crager	Diana Runyan	Becky Lorentz	David Bohna
Nara Douglas	Rose Byes	Leanne Flickinger	Pablo Estrada