The Alaska BAR RAG

Pro Bono Corner

Inside: Special *pro bono* coverage

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Rule change requires annual IOLTA certification

By Kenneth P. Eggers,

Due to a recent change in Rule 1.15, Alaska Rules of Professional Conduct, all lawyers will be required to indicate on their annual bar dues notice whether the lawyer or the lawyer's law firm: 1) elects to maintain the IOLTA trust account described in Rule 1.15; 2) elects not to maintain the IOLTA trust account; or 3) does not maintain a trust account. Prior to the change in the rule, newly admitted lawyers were sent a notice of election form, and all lawyers were obligated to notify the Alaska Bar Association if they wished to change a previously made election. A lawyer or law firm who wishes to change a previous election may do so at any time by notifying the Alaska Bar Association in writing.

Funds generated from IOLTA accounts are used to make grants solely for the following purposes: support of legal services to the economically disadvantaged and programs to improve the administration of justice. Since its inception the Alaska IOLTA program has generated in excess of $2.7 million, all of which has been used to make grants for the aforesaid purposes.

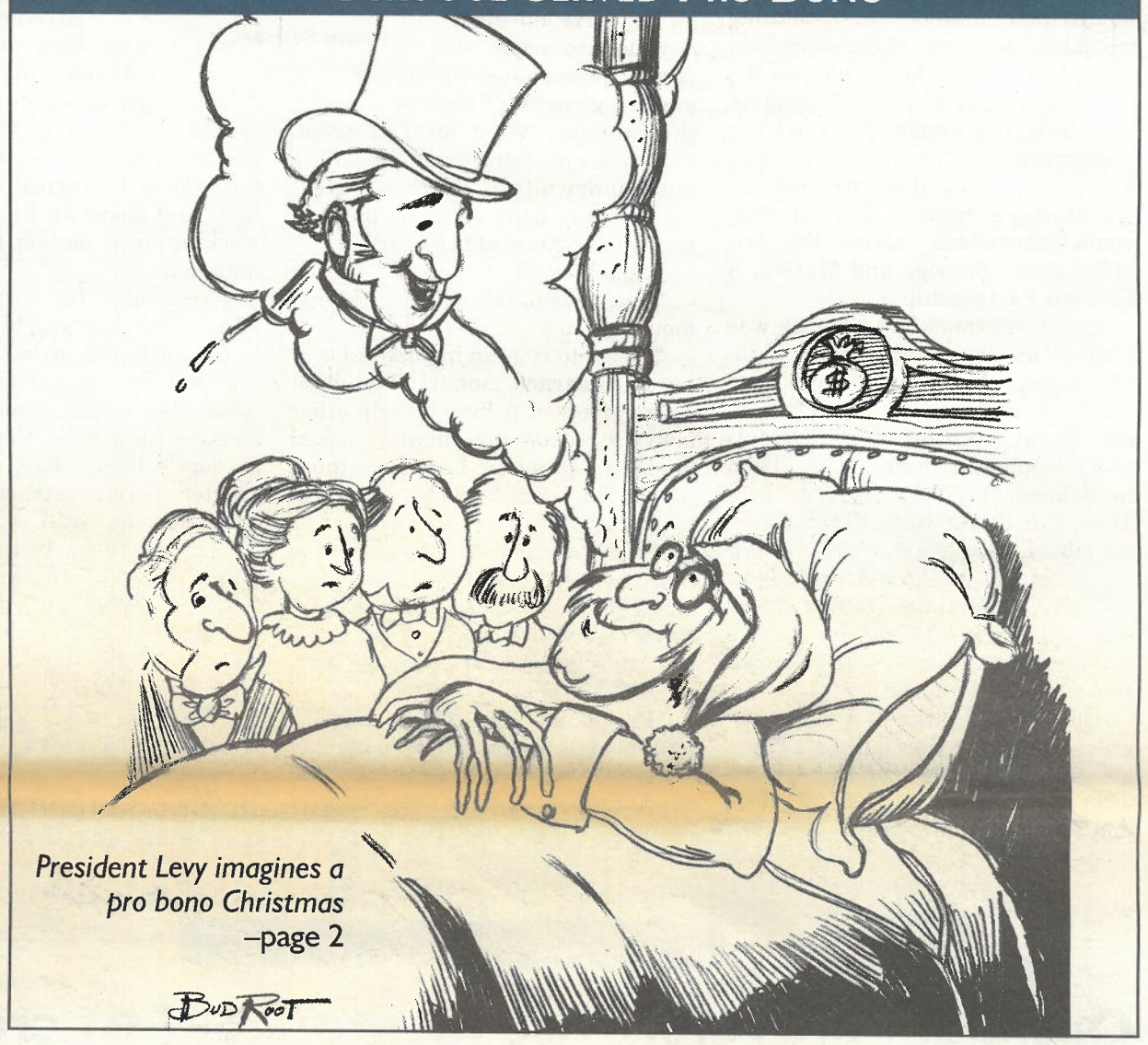
The Alaska Bar Foundation urges all lawyers to maintain an IOLTA trust account.

It has been the practice of the Alaska Bar Foundation to make grants up to the amount of the IOLTA funds that are available in June of each year when the Board of Trustees considers grant applications. The reduction in interest rates on IOLTA trust accounts has had a substantial impact on the funds available for grants. In FY '01 grants totaled $367,000. In FY '04 grants totaled $58,800.

The Board of Trustees of the Alaska Bar Foundation urges all lawyers to maintain an IOLTA trust account. If you or your law firm presently maintains an IOLTA trust account, please continue to do so. If not, please consider establishing an IOLTA trust account. Your bank or credit union should be able to assist you in setting up such an account. If you need additional assistance you can call Karen Schmidlkofer at the Alaska Bar Association, 272-7469.

Eggers is president of the Alaska Bar Foundation

If Scrooge Served Pro Bono



President Levy imagines a pro bono Christmas –page 2

BUD ROOT

Why the hell did you raise my dues?

By John Tiemessen

As members of the Board of Governors, this question (although usually with more creative expletives) is often asked of us this year. As Treasurer of your Board, I have been asked by President Levy that you quit leaving threatening e-mails at Keith_Levy@law.state.ak.us. Really, quit it. He also asked me to explain, in as succinct a manner as possible, why bar dues are increasing in 2005 (something we on the Board refer to as the "Levy Increase" or, if you prefer, the "Levy Levy").

By now most of you have received your holiday greetings from the Alaska Bar Association. This included a $100 annual dues increase. The Board of Governors proposed this increase in the fall of 2003. It was published for comment (we received three comments) and was approved in October 2004 by a 7-4 vote.

The Board of Governors consists of 12 voting members and a new-lawyer liaison. Thus, there are at least that many reasons why individual members voted for or against the dues increase. What follows are at least some of the issues that the Board wrestled with over the past several years before approving this increase.

By way of background, the last dues increase was in 1993. Wally Hickel was Governor, gasoline was $1.10 a gallon, Whitney Houston hurt our ears with "I-I-I-I-I Will Al-l-l-l-l-ways Love You-u-u-u-u-u-u," and "Jurassic Park" (the good one, not the ones that sucked) ruled the box office, and Anchorage had a population of just over 225,000 souls. Bar dues went up that year from $310 to $450. At the time it was projected that the budget surplus created by the increase would

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Featured in this Issue

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PRESIDENT'S COLUMN

Happy holidays to all, and to all some good works

By Keith Levy

This issue's column comes with an interactive feature. Pessimists should use Alternative Ending One; optimists should skip over to Alternative Ending Two. Happy holidays to one and all.

A Christmas Carol
(A Cautionary Tale, With Apologies To Charles Dickens)

There is no doubt that Marley was dead. Dead as a doornail. This must be distinctly understood, or nothing wonderful can come of the story I am going to relate. The register of his burial was signed by the clergyman, the clerk, the undertaker, and the Chief Justice of the Supreme Court. Yet Scrooge had never painted out old Marley's name. There it was, years afterwards, above the law office door: Scrooge and Marley, A Limited Partnership.

One Christmas Eve Scrooge was busy at his computer, entering billable hours. He stood, to save wear on his chair. Slowly, he typed: "Client: MegaCorp; Task: Research statutory loopholes; Hours: 1.5." Then he deleted "1.5" and entered "4.2." They can damn well afford it, he grumbled. Scrooge was well known as one of the wealthiest lawyers in the city, sometimes billing more hours than the 24 allotted to the standard day. He was also known as a tight-fisted miser.

Outside the office it was 10 degrees and snow was falling. There was a knock at the door and singing filtered in. Scrooge opened the door and was annoyed to see a group of lawyers wearing funny red hats and singing Christmas carols. Before he could slam the door shut, the singing ended and one of the carolers said "Merry Christmas Mr. Scrooge, or is it Marley?"

"Bah! Humbug!" cried Scrooge, "Mr. Marley has been dead these seven years," he added, "he died seven years ago, this very night."

"We have no doubt his devotion to equal justice is well represented by his surviving partner," replied the caroler. "What level contribution to the pro bono program can we put you down for? There is a great need for pro bono services, particularly at this time of the year."

"None."

"You wish to remain anonymous?"

"I wish to remain in possession of my hard-earned money! You want me to give you money to help other lawyers to sue my clients?" asked Scrooge. "Humbug, I say. Are there no Alaska Legal Services attorneys to do the job?"

"Regrettably, not as many as there once were," answered the caroler. "Perhaps instead of writing a check you will commit to providing pro bono services to a needy individual?"

"Pro bono, pro bono indeed," mumbled Scrooge. "I've done my share of pro bono, and I'm sick and tired of it too. Look at this," he said as he strode across the room and took a large tome from a bookshelf. The book was labeled "Accounts Receivable" and he opened it to the last set of entries. He went on to describe all of the clients who had failed to pay their bills, just in the last three months. "That's enough pro bono for a lifetime," he concluded. Seeing it would be useless to pursue the point, the carolers withdrew.

"The next morning, Christmas Day, arrived with a flood of sunshine into Scrooge's bedroom."

Arriving at home later that night, Scrooge sat down alone to a supper of warm gruel he had picked up on sale at Carrs. He ate in the dark, to save on the electric bill. Then he turned on one small light and spent an hour and a half working on a motion for summary judgment.

Eventually he turned out the light, made his way to his bedroom in the dark, put on his nightclothes, and crawled into bed. Moments later the whole house began to shake with a noise that made even Scrooge's tepid blood run cold. A specter came straight through the bedroom wall and appeared to Scrooge to be bound in chains. "What do you want with me?" said Scrooge, as cold and bitter as ever.

"Much," replied the ghost, his voice unmistakable to Scrooge, unmistakably Marley's voice.

"Who are you?" asked Scrooge, trembling just a little.

"In life I was your partner, Jacob Marley."

"Why do you trouble me? And why are you fettered in chains?"

"I wear the chains I forged in life," replied the ghost. "I made it link by link, hour by billable hour, and of my own free will I wore it. Is it strange to you? Or do you recognize that you bear a chain as long and as heavy as my own?"

Scrooge glanced about him, expecting to see fathoms of iron chain, but he could see nothing. "Jacob," he implored. "Old Jacob Marley, tell me more. Speak comfort to me, Jacob."

"I have none to give," replied the ghost. "I am here tonight to warn you, old friend, that you have yet a chance and hope of escaping my fate, Ebenezer. You will be haunted by three spirits. Without their visits," said Marley, "you cannot hope to shun the path I tread.

Continued on page 3

EDITOR'S COLUMN

Our older lawyers: Wise mentors or just cranks?

By Thomas Van Flein

"Old man take a look at my life, I'm a lot like you were." — Neil Young

I have always maintained that trial work and litigation are a young person's sport. Of course, my definition of youth is changing, particularly as I am starting my fourth decade. Nothing is more relative than age. Remember 78-year-old Rep. Henry Hyde commenting on an extra-marital affair he had when he was 50 as a "youthful indiscretion"? "Old" age is always at least 20 years beyond our current age.

But trial work and litigation involve cramming a lot of facts into our short term memory, and not infrequently getting up early and staying late—for weeks on end—with some red-eye flights and some time zone changes thrown in for good measure. There comes a point when that is not as much fun as its sounds. That point, I have decided, is about age 40. There may come a point, hopefully not soon, when our ability to physically meet that schedule may be limited.

To that end I have gained a new appreciation for the older members of our bar. If anyone makes it 40 years or more as a practicing lawyer, that fact alone entitles them to a certain elevated status.

Over the years I have worked with, or opposed, several attorneys who were at retirement age or beyond. Most demonstrated two things: (1) a genuine appreciation for the practice of law and other lawyers and (2) a far more relaxed attitude towards the practice. Some of the better and more interesting relationships I enjoyed with opposing counsel were with the old guard of our bar. Perhaps the more collegial, relaxed approach reflected another era, when the assumption was that most cases could be amicably resolved—probably over lunch somewhere. (Some say it still works that way in Ketchikan). I miss those days and I never even knew them. But ask Gene DeVeaux about them, he will tell you.

"Old" age is always at least 20 years beyond our current age.

But I don't want to revise history too much. So in fairness to the concept that the good old days were always better, I note that people have reported that "Rambo litigation" was first perfected in Fairbanks in the 1960's and then exported to New York, L.A. and Chicago. That may be myth as well, and if there was any truth to it, it was probably just the booze talking and nobody meant anything by it, anyway. For those who made it 40 years or more practicing law in Fairbanks, well they deserve even more respect. Not because of the difficult clients, but for making it to court on time even though the car tires are square and the seat is as hard as concrete.

So take some time to get to know your older colleagues. And, assuming you were on good terms with your grandparents, treat that person with the same respect and dignity you would your own grandfather or grandmother. Your client's position will not be diminished, and I suspect you may gain something in the exchange. One day, God willing, one of us may be the oldest lawyer in the room and we may need the understanding and appreciation of our younger colleagues. Indeed, if your retirement account looks like mine, I am fairly certain some of us will not be able to afford to retire, so it is likely I will be the oldest attorney in the room one day, and more likely that I will pass away at my desk. Of course my partners will not remove me as they will presume I am still working as long as the lights are on. And they will be right.

The Alaska BAR RAG

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Board of Governors meeting dates
January 27 & 28, 2005 (Thursday & Friday)
May 9 & 10, 2005 (Monday & Tuesday)
May 11 – 13, 2005 (Wed. - Friday: Annual Convention – Juneau)

PRESIDENT'S COLUMN

Happy holidays

Continued from page 2

Expect the first tomorrow, when the bell tolls one. Expect the second on the next night at the same hour, and the third on the next night at the last stroke of twelve"

"Couldn't I take them all at once and have it over, old friend?"

"Well, we don't usually do it that way. But I see we've lost quite a few readers already. All right, I will see what can be done to get through this as quickly as possible." And with that, Marley walked backward, lumbering and moaning under the weight of his chains. He passed through Scrooge's wall and was gone.

Scrooge looked out the window. Then he locked his bedroom door, climbed into bed, silently mouthed the word "humbug," and fell instantly asleep.

As the clock struck one, Scrooge woke suddenly. He sat up and, opening one eye at a time, looked around cautiously. His fear of the promised apparitions was dulled by the vision of what he saw standing before him: Nothing at all. No images of himself as a young idealistic law student, no encounters with individuals threatened with the loss of government benefits, no families being evicted from their homes, no immigrants seeking asylum, no victims of domestic violence, no lawyers struggling unsuccessfully to help all of these people. Nothing but the familiar outline of his bedroom.

"Well," he said, leaning back against the headboard. "What do you know. Just a dream, I suppose." Almost against his will, though, a thought entered his tired head. Maybe he would consider making just a small contribution to the pro bono program. Maybe he'd take a case – just one – or mentor a younger attorney. Or offer to teach a class for pro se litigants. Why not? He could afford it; he could afford to change. He would do it, he thought. He would call the pro bono folks first thing in the morning and volunteer.

Though it would be an exaggeration to say his heart was bursting with the joy of this transformation, he did allow himself to feel a little self-satisfied. And, exhausted with the toll even this small change had taken, he fell deeply and soundly asleep.

The next morning, Christmas Day, arrived with a flood of sunshine into Scrooge's bedroom. Outside, people went forth exuding the spirit of the day. Children threw snowballs and showed off Christmas gifts. Neighbors brought cheer to neighbors.

Alternative Ending One

But inside Scrooge's bedroom, nothing stirred. Scrooge remained rigid in his bed. Dead. Like old Marley, dead as a doornail.

Alternative Ending Two

Scrooge arose with energy he had not felt in years. He immediately called the office of the Bar Association, where he found the staff hard at work on Christmas morning, and promised to contribute in whatever way he could to the pro bono effort. In the months and years that followed, he made good on that promise, and then some.

Bar Letter

And thanks to . . .

For the blurb accompanying the photo of my receipt of the Rabinowitz Award on Sept. 17 at the Juneau Bar Association lunch/meeting, I had hoped that, besides mention of my donating the award money to ALSC (which might encourage others to make substantial donations to ALSC), there would be some mention of my having thanked the following (wanting to give credit where it is due, and trusting that it doesn't sound too corny):

— the selection committee: Mary Hughes, Mara Rabinowitz, Becky Snow, and Susan Burke, for the great honor they have bestowed upon me, on behalf of the Alaska Bar Foundation.

— past and present ALSC staff members for the inspiration provided me by their dedication to the principle of equal access to the justice system.

— past and present ALSC board members for their support during my almost 31 years on the board and my four terms as president and in various other offices and activities.

— my parents, my university (the University of Chicago), my late wife Carolyn Hobbs Peterson, and my present "significant other" Ann Chapman, for their respective roles in heightening my awareness of the public needs.

— my law firm, Dillon & Findley, for its support during the past 14 years of my pursuing this public service.

At the Sept. 17 ceremony, I also recommended that everyone read Michael Harrington's *The Other America* (Penguin Books, 1963), subtitled "Poverty in the United States." Harrington provides great insights into many issues and circumstances involving the poverty experienced in American society, and his book inspired many of the programs of President Lyndon Johnson's "Great Society."

— *Art Peterson*

ALSC President's Update

ALSC board articulates purpose and goals for the coming year

By Andy Harrington

The ALSC Board at its September 2004 meeting finished a year-long strategic planning process, involving input from staff and others, in an attempt to articulate ALSC's core purpose, core values, and a long-term goal. I want to take a couple of paragraphs to share the outcome of that process.

First, with the assistance of Laurie Wolf of the Foraker Group at our March 2004 meeting, we introduced ourselves to the process and the concepts involved, and started work on identification of our core purpose and a small number of core values that characterize our agency and its work.

Between the March and May meetings, individual board members held a session with staffers at each of ALSC's eight offices, to go through the same process at that level; we brought the results of those consultations back to our May meeting, and finalized that stage.

The "core purpose" at which we arrived was "access to justice for Alaskans in need." This proved to be a fairly broad consensus, and we all had the feeling that we were rediscovering and articulating a shared purpose that we had all felt subliminally throughout our involvement with ALSC.

The "core values" merited more discussion. We eventually narrowed the list down to six: empowerment, innovation, respect, compassion, fairness and professionalism. Of these, the most controversial was "empowerment," as there was some feeling that it was somewhat patronizing to think of ourselves as empowering our clientele, rather than thinking of the clientele as already having the necessary power and of our role as advocates being to help them realize what powers and rights they already have. But we couldn't come up with a succinct term that encapsulated the range of issues involved in the discussion, so "empowerment" made the list.

(As an aside, you can well imagine the difficulties of hammering out a core purpose and core values with a board comprised of a majority of attorneys accustomed to wordsmithing the minutiae to death; we were all very grateful to the board's non-attorney members who tried to keep us in line, with varying degrees of success.)

We took the core purpose and core values back to our regional offices following the May meeting, and conducted sessions with staff to come up with a long-term goal (or, as it is sometimes referred to in strategic planning parlance, a BHAG, for Big Hairy Audacious Goal). The results of those consultations were brought back to our September meeting, where, following much discussion, we finally arrived at the following (suggested by non-attorney board members Victoria Cascio and Violet Gronn):

> "ALSC shall achieve and sustain financial security providing all clients the vital legal assistance they seek by establishing and maintaining a sustainable office in every region served by a resident superior court."

This will not be an easy task. There are currently five communities which have a resident superior court with no ALSC office: Barrow, Kenai, Kodiak, Palmer and Sitka. We set a target date of the year 2020, and are calling this our "20/20 vision."

It seems an inauspicious time to set such a goal: ALSC is, for the first time in over 20 years, receiving no direct state appropriation; IOLTA rates and the resultant funding from the Bar Foundation for our pro bono program are at an all-time low; and attorney fees, from which ALSC formerly received about $180,000 per year, are no longer an available resource.

But, our thinking was, it is precisely when things seem their bleakest that it becomes most important to set your sights high.

We are anxious to work along with the existing attorneys and bar associations in these growth areas to figure out the best way to bring an ALSC office into those communities.

There are lots of ways that attorneys can fulfill our obligations to provide pro bono service to those unable to afford private counsel, and helping ALSC achieve this Big Hairy Audacious Goal could be one of them for you. If you are in one of the communities needing an ALSC office, imagine the personal satisfaction you would feel at working towards this goal and eventually helping open the office; or talk to ALSC non-attorney board member Louie Commack of Ambler, who arranged the funding from Maniilaq to enable ALSC to re-open its Kotzebue office – he can tell you how much of a sense of accomplishment that brings.

As a start, those of you who have not yet made your contribution to the Robert Hickerson Partners in Justice Campaign, take five minutes now to do so. The address for contributions appears at the end of this column, or you can go to www.alsc-law.org and make your contribution on-line.

We set aside a presumptive 10% of each donation to go into an endowment for ALSC, but contributors can specify a larger or smaller proportion to go into the endowment or into operating funds.

It will take a lot of effort to help bring equal access to justice up to this new level, but that's what our profession is really all about – or if it isn't, it should be. If we are not Partners in Justice, there is something incomplete in our profession.

Contributing writers/editors, Beth Heuer & Vance Sanders.

Pro Bono Corner

Tell us a story. If you have a funny, compelling, inspiring, or interesting story of pro bono service, we want to hear it. Or, better yet, if you know a great story about a colleague's pro bono service experience, share it. Your bar association story collector, Krista Scully, anxiously awaits your call or email. She can be reached at (907) 272-7469 or scullyk@alaskabar.org.

Thank you:

Robert K. Stewart of Davis Wright Tremaine for hosting numerous Pro Bono Services Committee meetings and the first in a series of Law Firm lunches. We deeply appreciate your contributions to pro bono in Alaska.

Training:

The Pro Bono Asylum Project will offer two trainings in December and January in Anchorage.

Asylum 101: Learn the basic legal requirements for representing an asylum applicant who has been tortured or persecuted in his or her country of origin. The training is on **December 14, 2004, from 6-7 p.m., at Catholic Social Services in Anchorage.**

Moot Court: Refine your litigation skills in the context of a deportation proceeding and learn the unique aspects of practicing in front of an Immigration Judge. The training is **January 10, 2005, 1-5 p.m., location TBA.** For additional information, please contact Robin Bronen, Program Director, at 907.276.5590 or email at robin.bronen@cssalaska.org.

The Alaska Network of Domestic Violence & Sexual Assault—Annual Spring Training. Free transportation, per diem and CLE registration fee in exchange for 20+ volunteer hours to the Alaska Network of Domestic Violence & Sexual Assault. Register to attend the annual two-day CLE entitled "The Impact of Domestic Violence on Your Legal Practice," presented in cooperation with the Alaska Bar Association scheduled for **February 21 & 22, 2005 in Anchorage**. For more information, contact Christine McLeod Pate, Pro Bono Mentoring Attorney @ 1.888.520.2666 or via email at Christine.pate@worldnet.att.net

Wish list:

Alaska Legal Services Corporation—Volunteer Attorney Support program needs a new **laser printer**. If you have a new or gently used printer to donate, please contact Erick Cordero at 907-222-4521 or ecordero@alsc-law.org. Your contribution is tax deductible.

Announcements

Annual recruitment:

The annual joint pro bono recruitment letter will arrive soon. If you haven't contributed volunteer time to the legal service organizations, we encourage you to make 2005 the year you do. Review the list below for a few ideas of how your professional expertise can be put to much needed use in Alaska.

Protect a life. A two-hour prep and protective order hearing could do just that.

Support a growing, diverse community. Representing someone in an immigration/asylum hearing changes the face of our community and protects basic human rights.

Teach a clinic. Impart your legal expertise in a teaching setting.

Impact Alaska's youth. Teaching for a youth court encourages civic engagement, youth leadership and respect for the law.

Answer the phone. The Information & Referral Hotline for ANDVSA requires just two hours once a month, once a year.

Give someone a fresh start. Sometimes a bankruptcy is what someone needs to get their life back on track. The average Chapter 7 Bankruptcy for someone without assets takes about seven hours over a period of six months.

Law Day. Be a panel member in the nation's vehicle for engaging youth & adults about the justice system.

Be a writer. Develop law-related literature and curriculum for the public and other volunteer attorneys.

Mentor. Give the gift of your time and expertise to a new practitioner.

Customize a custody agreement. A custody agreement that makes sense for a family unit benefits everyone in our community.

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.

Pro Bono Corner

Asylum project helps the persecuted

"They are hard-working people, he says, who contribute greatly to our society."

By Robin Bronen

The Immigration and Refugee Services Program at Catholic Social Services is honored to work with dozens of volunteers each year. The Pro Bono Asylum Project, a program of the Immigration & Refugee Services Program, mentors and trains attorneys who represent indigent immigrants seeking asylum due to persecution and torture in their country of origin. Clients come from many parts of the world including Ethiopia, Chile, Colombia, Kyrgystan and Myanmar (Burma).

Although volunteers usually are more comfortable staying out of the spotlight, attorney Bill Saupe's work has been exemplary. He has represented asylum seekers since the inception of the Pro Bono Asylum Project in 1999 and he embodies the essence of the program's mission, which is to create community across languages, cultures and class. Bill has shared his knowledge and skills to ensure that the immigrants and refugees residing in Alaska feel welcome in their new home.

After tackling three *pro bono* cases for Immigration and Refugee Services, Saupe has gained a deep appreciation for the plight of immigrants. "It's gratifying to know the skills you have — the skills you have been fortunate enough to have — can help people," Saupe says.

Not that his usual corporate clients aren't happy with his services as an attorney at Ashburn and Mason in Anchorage, where he has practiced primarily public utility law since 1985. When Saupe describes his first *pro bono* immigration case, his eyes mist. The Salvadoran woman, who lives in Kodiak, had fled her home 10 years earlier, forced to leave her three small children in the care of her parents. "She had been whipsawed between government and guerilla forces during the civil war," Saupe relates. "She was constantly threatened, had no work or way to support her children."

Saupe and interpreter Sonia Vasconi, also of Anchorage, flew to Kodiak to interview the woman, who was seeking legal permanent resident status under the NACARA act. The woman had worked the slime line in a Kodiak cannery for 10 years, sending nearly all her wages back to her parents in El Salvador while she managed to live on next to nothing. She couldn't return home for a visit because, until NACARA legislation, refugees who left the United States could be refused re-entry.

Saupe and Vasconi accompanied the woman to the Immigration and Naturalization Service office in Anchorage three years ago when she finally received her legal permanent resident status. "She (the client) was tearful, happy, very relieved," he recalls. "If it hadn't happened, her future was bleak." When he and Sonia flew to Kodiak he used his own financial resources. He chose to fly to Kodiak to better represent her. On his own initiative, he also has continued to provide representation to this client by filing the necessary immigration documents so she could be reunited with her minor children still in El Salvador and from whom she has been separated for at least 13 years

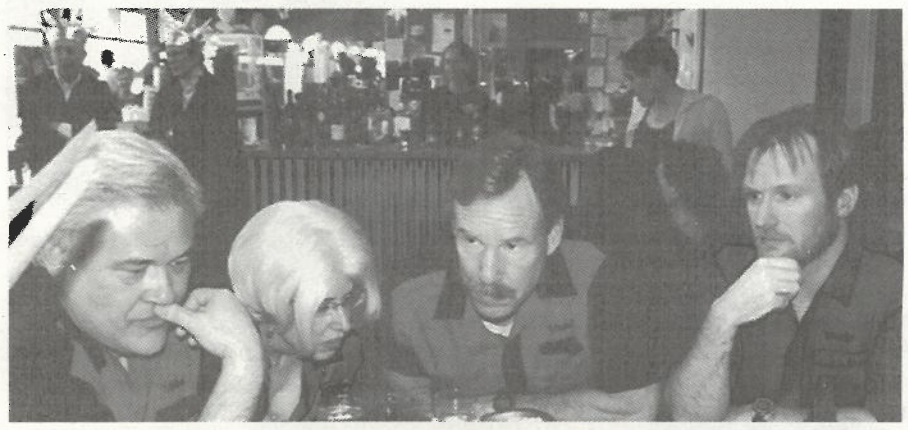
The clients he has represented for the Pro Bono Asylum Project are particularly deserving, he explains. "Not only are they not financially well-off, they often don't speak English, are poorly educated, and sometimes are illiterate even in their own language." They are hard-working people, he says, who contribute greatly to our society.

Saupe says the intricacies of immigration law can be daunting, but that the back-up support the *pro bono* attorneys receive from Immigration and Refugee Services' staff attorneys is "fabulous." In addition to always being available to answer questions, he says the staff conduct numerous training sessions. "They review drafts — they're very involved," he explains. "The support feels good in this context."

Additionally, Saupe's firm, Ashburn and Mason, have agreed to undertake some *pro bono* cases of immigrant children, who are now in the custody of the state's Office of Children's Services because of abuse or neglect by their parents. The children are in legal limbo because they don't have legal permanent resident status.

Mind Games

Mind Games 2005 is scheduled for Thursday, March 10, 2005, at Snow City Cafe. Please contact Saba Flanagan at 297-7788 or e-mail saba.flanagan@cssalaska.org to sign up to play in the Mind Games tournament this year, featuring a new game — "Cranium."



Bill Saupe (third from left) strategizes with his Ashburn & Mason teammates (Don McClintock, Carmen Clark, & Bill Cummings) at Mind Games 2004.

Pro Bono Corner

"The United Youth Courts of Alaska (UYCA) celebrated its eighth annual statewide youth court conference in Homer in November."

Alaska's Youth Courts name 2004 All-Star attorneys

By Krista Scully

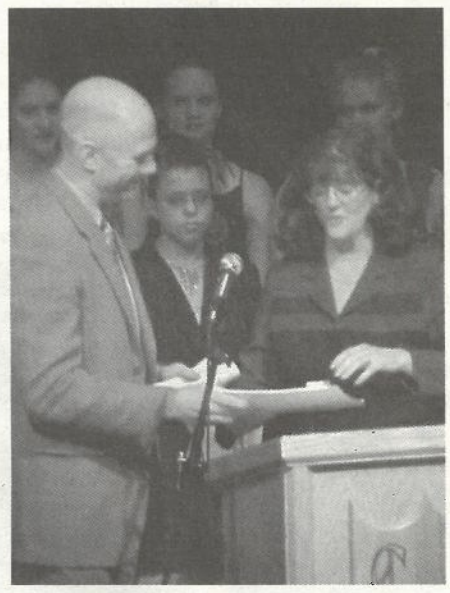
This year's theme, Many Streams, One Ocean celebrated the spirit of volunteerism and its roots within youth courts and the legal community. In honor of their extraordinary attorney and judicial volunteers, UYCA developed in partnership with the Alaska Bar Association, the first ever Youth Court All-Stars to acknowledge the hard work and contributions of nine All-Stars.

Chief Justice Alex Bryner served as the keynote speaker and as observed by Homer News reporter, Michael Armstrong, set the tone for the conference in his talk on the importance of volunteerism. He said if people were completely independent and at liberty, they would fight each other. By organizing as a society to help each other, they obtain freedom.

"It's by helping each other at the social level that we can obtain personal liberty," Bryner said. "That's the root of the instinct to volunteer. The enthusiasm we have for volunteering is the sign of a healthy society."

(Homer News—November 2004)

Please join us in congratulating the 2004 All-Stars:



Eric Conard courtesy of Mat-Su Youth Court.

Eric Conard—Mat-Su Youth Court. Eric has volunteered with the youth court since becoming a bar member in 1999. His private practice in Palmer finds him working hard on family law, real estate, bankruptcy and criminal defense cases, each of which lend expertise to his work with the youth volunteers. Eric serves on the program's advisory board, has taught five criminal law classes, attends student bar meetings and is most beloved by the students for giving them nicknames.

L. Michelle (Chelle) Hall—Nome Youth Court. Chelle has tirelessly worked as the Nome Youth Court's sole legal advisor since arriving in the community. Employed by the Public Defender Agency and a bar member since 1993, Chelle teaches youth court classes both in Nome and the nearby villages. Her classes have proven to be so popular and engaging that students often come early or stay late to learn more.

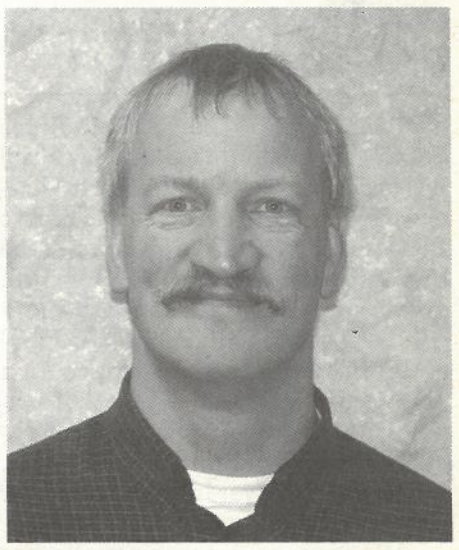
Steve Cole—Kodiak Teen Court. Steve Cole's name is synonymous with youth courts in Alaska. As the founder of Kodiak's Teen Court, he served as its sole legal advisor and instructor since 1995 until June 2004. Upon stepping down, it took two equally dynamic volunteer legal advisors to take his place. Steve's support and leadership has earned tremendous respect for youth courts statewide within the justice profession, agencies and state government leaders.

Jonathon Lack courtesy of Anchorage Youth Court.

Jonathon Lack—Anchorage Youth Court. Jonathon Lack has volunteered with Anchorage Youth Court as long as he's been an attorney in Alaska. His expertise has been widely used during those eight years including teaching the criminal law class ten times, serving as an in-court legal advisor and on the Board of Directors. Ted Madsen, Youth Bar Association President and a senior at East High School said, "...he's committed to youth court, an excellent legal advisor and everyone who gets to work with him enjoys the experience and learns."

Andrew Haas—Homer Youth Court. Andrew Haas, formerly of the Alaska Public Defender Agency, has volunteered with Homer Youth Court since its inception. The program has benefited from Andrew's travel and post-graduate educational sabbaticals to the University of South Africa and Oxford University—thus lending a global advocacy vision to their work. An enthusiastic builder of inspiration and community support for youth court, the Homer Youth Court credits Andrew for inspiring this year's conference theme: Many Streams, One Ocean as he helps youth appreciate the big picture.

Judge Charles Cranston—Kenai Youth Court. Judge Cranston, a former Assistant Attorney General and Superior Court Judge for 15 years is an integral part of the Kenai Youth Court. Since his retirement he has devoted endless hours to developing youth court training curriculum and serving as a legal advisor. When he's not coaching mock trials, attending swearing-in ceremonies or teaching youth court students, Judge Cranston plays in the local pep band and sponsors choir trips abroad.



Andy Sorensen courtesy of Alyeska Pipeline Service Co.

Andy Sorensen—Valdez Youth Court. What can we say? Valdez Youth Court thinks that Andy Sorensen is "the best thing since sliced bread!" A program volunteer since their inception in 1999, Andy has served as the sole legal advisor and trainer. His 300+ hours of service to the program have included generous fundraising efforts—both personally and professionally. Andy's employer, Alyeska Pipeline Service Co., support his efforts by rewarding his favorite program with monetary donations for every 50 hours of service.

Rick Keck—North Star Youth Court. Rick Keck, formerly of the Attorney General's Office, is a longtime, loyal volunteer to the North Star Youth Court located in Fairbanks. A man with a big heart from the Golden Heart community, Rick has given in many ways to the program—former chair of the Board of Directors, authored the legal training manual and program policy manuals and in-court legal advisor. His excellent public speaking skills and ability to recruit fellow colleagues have been an incredible asset to the youth court program.

Judge Jonathan Link—Kenai Peninsula Youth Court. The late Judge Link was a great friend to the youth court programs in Alaska. His support for the program was clear and he liked nothing more than hustling adult litigators out of the Homer courtroom to make room for a youth court proceeding. Also known for being ahead of his time, Judge Link instigated creative ways of financially supporting youth courts by assigning contempt fines as donations to the programs. His warm home hosted swearing-in dignitaries and his courtroom was always open to students eager to learn. Ginny Espenshade, Homer Youth Court director said, "Judge Link will always be held up to our students as the model of a good and decent judge and a good and decent man."

To learn more about providing volunteer service to youth courts, contact Krista Scully, Pro Bono Director at scullyk@alaskabar.org.

Pro Bono Corner

Cordero 'Cultivates optimism' in recruitment

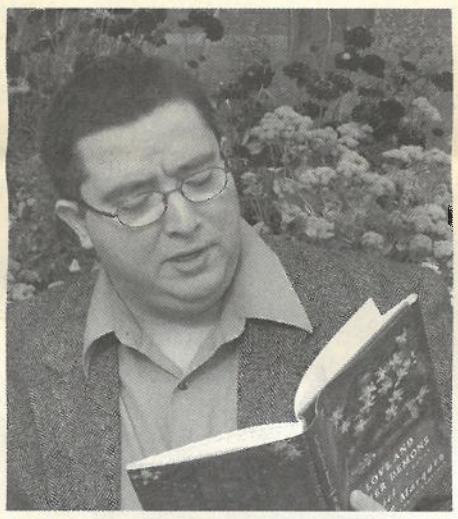
"While there's always someone with a problem, there is always someone willing to help. It gives me hope."

By Krista Scully

This interview is the first in a series profiling the pro bono coordinators in Alaska.

You've probably heard his voice on the phone, kind yet persistent, but don't know much about the man behind the voice and the work he does in our communities. It's time you met Erick Cordero, Coordinator of the Volunteer Attorney Support program at Alaska Legal Services and Pro Bono Coordinator of the Alaska Pro Bono Program Inc.

Erick lives in Palmer with his wife Karen and two small children. He's hopeless for Valentina's hot sauce on popcorn, a world traveler, poet, aspiring science fiction author, and still hopes that ALSC will open an office in Palmer or Wasilla so he will not have to commute anymore.



Cordero's favorite authors include García Marquez.

Q. How did you come to Alaska?

A. Like many people, it was a long but inevitable road. I was born and raised in Mexico City, and then got the travel bug. I finished high school in California, spent a year at a Japanese university and finished college in New Orleans at Loyola University, where I earned my Bachelors of Arts in Political Science and History. While at college, I married an Alaskan girl. We spent a few years in Washington, D.C, Texas and Mexico City. But before long she talked me into going to Alaska for a couple of months. We arrived here in 2000 with $5, a young child, another on the way and have never looked back.

Q. What kind of work did you do before becoming a pro bono coordinator?

A. Odd jobs, including public relations, campaigns, information technology and tutoring Spanish. In Washington, D.C., I worked for a national trade association as a benefits specialist and IT systems manager, and then owned a consulting business in Texas providing an array of computer and technical services to a variety of clients, including some oil companies and non-profits. When I came to Alaska, I worked briefly for a public relations firm and then as the Operations Manager for the Alaska Pro Bono Program. In 2002 ALSC and APBP joined for financial reasons and were required to restructure their pro bono cooperative arrangement. I joined ALSC as its pro bono coordinator and I continue to work with APBP as a consultant.

Q. Why did you decide to move into this area of work?

A. I was raised in the Jesuit tradition, which values public service, especially service to those less fortunate. Pro bono service was immediately appealing to me. Injustice is something that should not be tolerated.

Q. What do you enjoy most?

A. Many, many things, but especially the opportunity to help people in need, and the chance to meet so many interesting and diverse people throughout our great state. The public relations aspect of the job keeps it challenging.

Q. What surprised you most?

A. The generosity of so many attorneys and by doing pro bono work, attorneys have the ability to make such an impact in someone's life.

Q. What is the most difficult part of your job?

A. Rejection. I know I'm often the last call a busy practitioner wants to take, but some days it can be very difficult. This is especially true when I am making calls trying to recruit a volunteer for a client whose life hangs in the balance and nobody seems to be out there. I've had to cultivate the optimist in myself.

Q. What lessons and experiences have you learned from your work with two legal services agencies?

A. Two main lessons: While there's always someone with a problem, there is always someone willing to help. It gives me hope. Secondly, it changed my perception of the legal profession by watching how pro bono and volunteerism positively affects both clients and attorneys.

Q. There are a number of different pro bono programs, each specializing in different types of cases. What should people know about your programs?

A. I work for Alaska Legal Services Corporation's Volunteer Attorney Support, the oldest pro bono program in Alaska. My job involves placing ALSC eligible cases with volunteers, recruiting attorneys and recognizing their volunteer work. Each ALSC office has a different protocol when it comes to selecting the cases that are referred to me, but to be an eligible case, the client must meet the ALSC financial eligibility guidelines and other guidelines.
The majority of cases are in the areas of bankruptcy, domestic relations, consumer, landlord/tenant and public benefits. ALSC staff attorneys screen all cases and recommend appropriate ones for pro bono placement. We also accept a limited number of referrals from agencies, so long as they understand our case intake, review and acceptance protocol.

Sometimes a private attorney will call us with a case they would like to enroll in the program. The advantages of handling a pro bono case through the program include malpractice insurance, mentorship with experienced attorneys if you are new to the practice area, and occasionally the donated or discounted services of other professionals such as court reporters, process servers or private investigators. APBP on the other hand, was restructured to handle the cases that ALSC is restricted by law from handling. I have a lot of confidence in both programs.

Q. How have your programs maintained the level of service with ever-dwindling funds?

A. All programs rely more heavily on volunteers and have increased the collaborative efforts among the other legal services providers. We know that when we combine our efforts, we can be more efficient with less.

Q. Are there any projects you are currently working on or would like to undertake?

Pondering a question in the park.

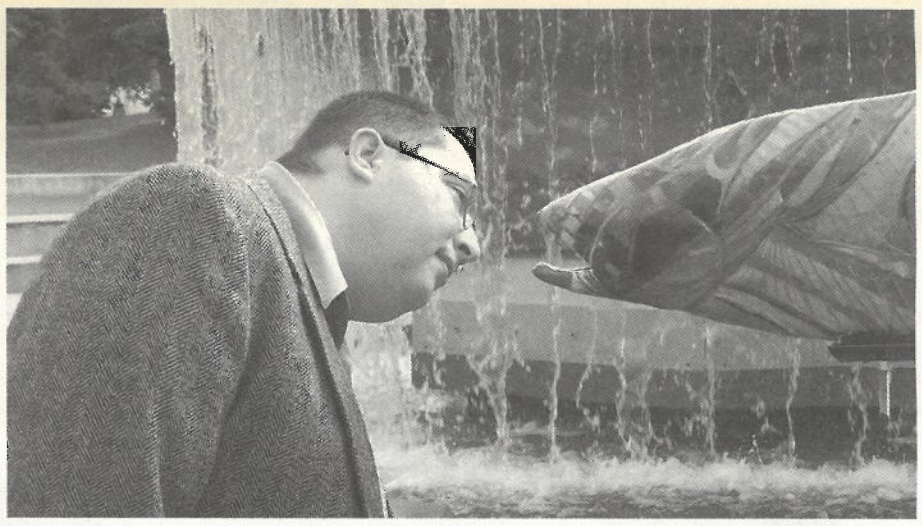
A. I have been involved in recruiting volunteer attorneys to develop content areas of AlaskaLawHelp.org. I am looking forward to facilitating the development of a training manual for bankruptcy attorneys and hopefully expanding bankruptcy clinics and attorney involvement in Juneau, Nome, Barrow, and Ketchikan. We have enhanced and expanded clinics in the Mat-Su area.

Q. What makes you come back every day?

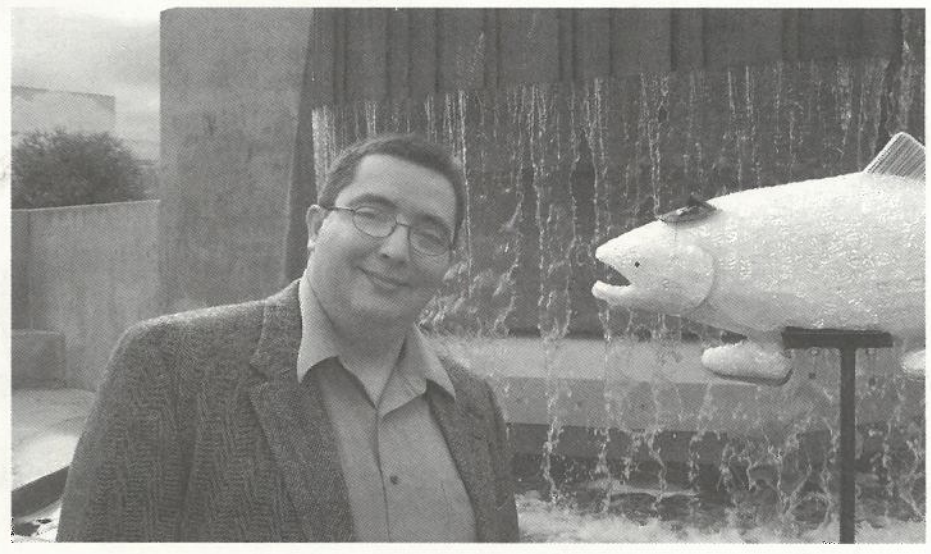
A. The clients' appreciation; the lawyers' enthusiasm; and justice being done.

So, good readers, remember Erick the next time he calls upon you for help. Or, better yet, make the call yourself.

Author's note: Thank you to Katherine Alteneder for writing contributions.



"Salmon on Parade" sculptures merit Cordero's inspection.



Photos by Krista Scully

ALL MY TRAILS

What it takes to be a trial lawyer

By Rick Friedman

"[T]he second time I ever saw you I learned what I had read in books but I never had actually believed: that love and suffering are the same thing and that the value of love is the sum of what you have to pay for it and anytime you get it cheap you have cheated yourself."

—Charlotte, The Wild Palms, William Faulkner

A reader writes: I have wanted to be a trial lawyer since my freshman year in high school. I have been practicing law for five years. During that time, I have had 7 jury trials, with mixed results. I am beginning to think I would be better off devoting my professional energy in another direction. Can you give me some suggestions on how to decide if I have what it takes to be a trial lawyer?

—Anonymous Anchorage Attorney

First, AAA, I need to thank you for sending in a question. When I first started this column, I was painfully aware of the limits of my own creativity. My hope was that people would write in and ask questions or raise issues for discussion. They didn't. And I was pretty much running dry when your email came in. So, thank you.

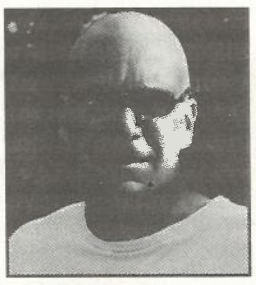
I have spent close to thirty years asking myself the same question. I have studied good and bad trial lawyers, happy and miserable trial lawyers, experienced and inexperienced trial lawyers. In fact, I have closely studied just about every trial lawyer I have come in contact with. With so much study time, you would think I could just directly answer your question, but I can't. At the risk of sounding like a New-age-self-help-pop-psychologist, I have to say that only you can decide if you have what it takes.

On the other hand, I think I know some things that might help you decide. Before getting into specifics, I need to point out three pernicious myths about trial lawyers that can get in the way of a fair and honest evaluation of this question.

Myth #1: The star system—it's a question of talent

The thrust of this myth is that you are either one of the fortunate few to have been born with the talent for trying cases—or you are not. The "fortunate few" can often be found speaking at CLEs, displaying their God-given talent for all to see. In subtle, and not-so-subtle, ways they often communicate: "I am here to teach, but what accounts for my success can't be taught."

Granted, a certain combination of intelligence, resilience and people skills is necessary to become a good trial lawyer. But more people have these qualities in sufficient quantities than the "Star System" and its proponents would suggest.



"If you are not willing to study the science, practice the craft, and live the art of trying cases, you are doomed to mediocrity."

Myth #2: Anyone can be a trial lawyer

In a sense, this myth is true. Anyone with a Bar card can go into court and represent clients. On the other hand, not everyone is suited for the job. The extreme proponents of this myth would say trying cases can be taught just like accounting can be taught. You learn the tried and true principles, you practice these principles and then you apply them.

In fact, trying cases is part science, part craft and part art. If you are not willing to study the science, practice the craft, and live the art of trying cases, you are doomed to mediocrity. Similarly, flawless application of "the principles," standing alone, will, in the end, not get you very far. This is *not* accounting.

Myth #3: Everyone should want to be a trial lawyer

As I pointed out in my last column, fewer and fewer cases are being tried. We are moving—especially in civil cases and in urban areas—to a *de facto* solicitor/barrister system. Running an active litigation practice and being in trial enough to develop and maintain trial skills is becoming more and more difficult. One important consequence is that much of the good that is being done in the justice system is being done by lawyers who rarely, if ever first-chair a jury trial.

Some are the unsung heroes of the plaintiffs' bar. They sit at their desks and come up with the legal theories that make governments and powerful corporations legally accountable. They tenaciously pull damning documents out of corporate cellars for all to see. They withstand barrage after barrage of defense motions to get justice for their clients. Some are corporate in-house counsel or government attorneys who do the "right thing" in the face of enormous pressure or risk.

Now there will probably never be a TV show about a courageous litigator winning motions to compel production of documents. But if our vocational choices were limited to what we see on TV, we would all be trial lawyers, ER doctors and those people who "pimp out" houses and cars for a living.

It seems to me the most important questions are: "Who am I?" and "What is the job that gives me the best opportunity to express who I am?" With these preliminary thoughts in mind, here are some things I think I know about what it takes to be a trial lawyer.

There are many kinds of trial lawyers

You don't say, AAA, what kind of trials you have been doing. While there are rare individuals who are good at trying any kind of case from any side of the courtroom, most of us find we are more suited to one role or another.

This is a function of skill, personality, interests and temperament. But on a more primal level, it may have much to do with your attitude towards power and authority.

If you prefer to identify with power and authority, you will probably be more comfortable as a prosecutor or a civil defense lawyer. If you like to push back against power and authority, you will probably be more comfortable as a criminal defense or civil plaintiffs' lawyer. Yes, I know, this is a gross over-simplification. But look around; it's mostly true.

Maybe you've been trying plaintiff cases and just can't get that excited about trying to get money for a broken arm. Maybe you've been defending civil cases and can't get that excited about using your ability and resources to pummel cripples, widows and orphans. Consider what you are doing, and see if your heart is in it. If it isn't, it will show.

It is very possible you have what it takes to be a prosecutor, but not what it takes to be a criminal defense lawyer. If you think you may be in the wrong trial role, talk to someone trying the type of cases you think you might want to try. There are many varieties of trial lawyers. Some only try employment cases (would you be better representing employers or employees?), some only try criminal misdemeanor cases, some only try construction cases. Of course, you may need to try many types of cases before you find where you belong.

It is also true that many trial lawyers can and do enjoy trying a wide variety of cases. When Gerry Spence was asked how he decides what cases to take, he responded "How do you decide when to fall in love?" If you take a good honest look at yourself, you will know the types of cases you should be trying.

And of course that may change over time. How many criminal defense lawyers over the age of 50 are still trying cases? Most move on to less difficult jobs.

What is your track record?

You say you have been trying cases with "mixed results." The type of cases you have been trying will help you to evaluate what "mixed results" means. The fact is, some types of cases are harder than others to try. If you've been defending criminal cases and winning 30% of the time, those are not "mixed results," those are good results. If you're prosecuting criminal cases or defending medical malpractice cases and winning 80% of the time, those are not "mixed results," those are poor results. If you are trying plaintiff, minor injury cases, and winning more than 20% of the time, consider yourself a trial genius.

Look at the people who are trying the type of cases you are trying. Over the long term, what percentage of trials are they winning? How does your record compare? This is an important piece of information, but not determinative. Some lawyers seem to have an affinity for extremely tough cases. Others are very careful to only step into the courtroom when the odds are in their favor.

This is not like baseball; the stats don't really provide an objective basis for evaluation. Don't be too hard on yourself by comparing your record defending criminal cases with the record of your friend defending small PI cases. Don't give yourself a false sense of confidence by doing the reverse.

Every time I win a trial, a small voice in my head starts saying "you had good facts; anyone could have won that case." When I lose, the voice says "that could have been won. Ray Brown could have won that case. Gerry Spence could have won that case." And the list goes on and on.

I hope for your sake, you don't have a voice like that. But you do need to find a way to try to understand your wins and losses. Why did you win? Why did you lose? What could you have done differently to improve the result? To improve the presentation?

You have to be willing to work hard

I don't know a single successful trial lawyer who doesn't work like a dog. In fact, I don't know many marginally competent trial lawyers who don't work like dogs. There is simply no substitute for it. This point was brought home to me last week as I listened to the tape of a Larry Tribe argument to the Indiana Supreme Court.

It is safe to say that Tribe is the foremost constitutional scholar in the last 100 years—maybe longer. He is also one of the most successful appellate advocates of the last 100 years. By Tribe's standards, his argument in Indiana was on a small case.

In listening to the argument, it was quickly apparent that there were numerous prior Indiana cases Tribe had to be familiar with. And of course he was. But what eventually became clear was that Tribe not only had a command of these cases, he had read

Continued on page 9

ECLECTIC BLUES

Happy memories of Harriet

By Dan Branch

Everyone thinks that their Guinea Pig is the smartest cavy ever to munch a carrot. Harriet, our smooth brain swine was. Unfortunately she passed away before we could fill out her SAT application so the world will never know the true depth of her intelligence.

Harriet was a multifaceted pet. In the morning she served as alarm clock---squeaking the family awake at 6 a.m. She even had a snooze alarm feature. Feed her four baby carrots and she would remain quiet until 7:30.

In the evening she welcomed me home with a chorus of whistles and chirps. Since she did the same thing when anyone stepped onto the front deck, Harriet also qualified as a guard pig. She was as persistent as a $2000 burglar alarm, chirping away until silenced with carrots.

At dinner time she became a garbage disposal. While Harriet lived, broccoli stumps and other vegetable refuse from our kitchen seldom made it to the Juneau landfill. At the sound of our refrigerator door being pulled open she would rise up on two legs and sniff the air like a brown bear on a salmon stream. The rustle of plastic bags brought forth a cacophony of chirps, whistles and squeaks.

One evening we learned of Harriet's mastery of the English skills when my wife asked her if she would like a treat. At mention of the word, "treat" Harriet doubled the volume of her pre-dinner song. "Treat" soon became a word not mentioned in our house except by one bearing vegetarian fare to the pig sty.

In the summer Harriet became a lawn mower, trimming the lush green growth on what must have appeared to her a vast estate. Watching her munch on our Kentucky bluegrass or dive under the rhododendron at the approach of a crow, you had the impression that she took special pleasure in harvesting her own food while encouraging new growth with her scat.

"The pig was first and foremost a consumer. Her caged circumstances made her an opportunist — eating anything that came her way. Eventually she developed what my wife called a "figure problem."

Harriet was also a companion and music critic. She would purr with contentment in my daughter's sweatshirt hood while The Presidents of the United States of America or Metallica drove the rest of the family from the room. Anything softer than punk or heavy metal bored Harriet.

The pig was first and foremost a consumer. Her caged circumstances made her an opportunist — eating anything that came her way. Eventually she developed what my wife called a "figure problem." As she approached morbid obesity we cut back on her treats. This caused her much frustration and eventually inspired an exercise program.

During the dinner preparation time, when there was much rustling of plastic bags and opening of the refrigerator door without the delivery of treats, Harriet would do her wall-up exercises. Placing her tiny front paws on the rim of her enclosure, she would attempt to lift herself up. A leaner pig would have gotten out as there was no top on the pig pen. Fortunately for us, Harriet's excess ballast prevented her from escaping into the kitchen where she could demand food.

Harriet continued her escape attempts. Months into her diet she succeeded. She was leaner pig then with the chest muscles and forepaws of her wild Peruvian cousins. As the clock neared midnight one evening she launched herself from her pen. My wife heard her paws on the hardwood floor and went to investigate. She found Harriet on a throw rug looking confused as if she wanted Susan to believe she had been carried from her pig sty by a magical creature.

The guinea pig soon used her escape powers to forage for food. She would leave her enclosure at night, scavenge the kitchen for scraps and return home where she would greet the dawn with a look of innocence. Only her trail of scat betrayed her.

The situation soon became intolerable and we were forced to purchase a new pig pen with sides too steep and tall for even Harriet to scale. This didn't stop her from trying to escape. One night she died in an attempt. Her heart burst while she leapt for freedom.

The Branch family enjoyed Harriet even though she turned from pet to adversary during her last months with us. She was a smart little rodent who joined the family on her own terms and left full of the spirit that endeared her to us.

What it takes

Continued from page 8

all the appellate briefs in all of these prior cases as well—and could discuss them in some detail.

Now Tribe is not a trial lawyer, but you get the point. It is not a coincidence that the most brilliant advocacy is often delivered by the hardest worker. If anyone does a bumper sticker for trials lawyers, it should probably say: "I'd rather be plowing through documents and reading arcane technical articles so I can impeach the other side's expert." Which is why . . .

You'd better love it

Everyone approaches trial with a mixture of excitement, anxiety, fear and dread. Everyone. Before, during and after trial, the work is physically, mentally and emotionally difficult. Emotional, mental and physical difficulty; anxiety, fear and dread; these are not usually thought of as positive things.

With respect to personal relationships, I don't know what to think of Charlotte's claim in the *The Wild Palms* that love and suffering are the same thing. There certainly seems to be some truth in it. As applied to trial work, I think she is right on target.

If you "have what it takes" to be a trial lawyer, you will have a love for the emotional, mental and physical difficulty, the anxiety fear and dread that comes with trying cases. You will be drawn to an experience most people would consider ghastly.

In short, if you love the suffering that goes with trying cases, you probably "have what it takes." Most people, for good reason, don't.

We have all seen brilliant, articulate promising trial lawyers in their 30's, who stopped trying cases in their 40's. There are too many of them to count. They had everything needed for the job, except the most important ingredient—the love of the suffering.

So, AAA, my long-winded response has allowed me to focus my thoughts to the point that I am actually able to give you what I think is some good advice. Keep trying cases. If, over time, it feels like you are forcing yourself to do something you don't really want to do, give it up. Make your contribution to the good of the world in some other way. And be proud that you can be honest enough not to try to live up to someone else's idea of what a lawyer should be.

If, on the other hand, you find you are enjoying the process, even though that seems perverse in light how miserable it makes you, you probably have a long career as a trial lawyer ahead of you.

Rick Friedman can be reached at Allmytrails@hotmail.com.

Did you know?

That articles written for the *Alaska Bar Rag* qualify for CLE credits?

When your article on a substantive legal topic is published, you can qualify for 3 CLE credits.

See the writer's guidelines in this issue; articles may be submitted to info@alaskabar.org.

FAMILY LAW

New changes in custody laws involving domestic violence matters

By Steve Pradell

As concerns about domestic violence issues have been brought to the forefront in recent years, the legislature and the governor recently enacted House Bill 385 (2004), entitled "An Act relating to awarding child custody; and providing for an effective date," which took effect on July 1, 2004.

Under the new law, AS 25.24.150 is amended by adding a rebuttable presumption that a parent who has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of a child. A parent has a "history of perpetrating domestic violence" if the court finds that, during one incident of domestic violence, the parent caused serious physical injury or the court finds that the parent has engaged in more than one incident of domestic violence.

The presumption may be overcome by a preponderance of the evidence that the perpetrating parent has successfully completed an intervention program for batterers, where reasonably available, that the parent does not engage in substance abuse, and that the best interests of the child require that parent's participation as a custodial parent because the other parent is absent, suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse that affects parenting abilities, or because of other circumstances that affect the best interests of the child.

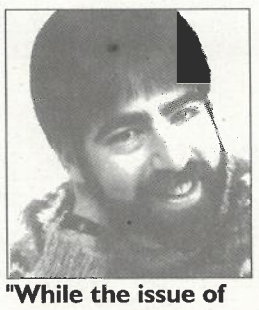
If the court finds that both parents have a "history of perpetrating domestic violence," the court shall either award sole legal and physical custody to the parent who is less likely to continue to perpetrate the violence and require that the custodial parent complete a treatment program; or if necessary to protect the welfare of the child, award sole legal or physical custody, or both, to a suitable third person if the person would not allow access to a violent parent except as ordered by the court.

If the court finds that a parent has a "history of perpetrating domestic violence," the court shall allow only supervised visitation by that parent with the child, conditioned on that parent's participating in and successfully completing an intervention program for batterers, and a parenting education program, where reasonably available, except that the court may allow unsupervised visitation if it is shown by a preponderance of the evidence that the violent parent has completed a substance abuse treatment program if the court considers it appropriate, is not abusing alcohol or psychoactive drugs, does not pose a danger of mental or physical harm to the child, and unsupervised visitation is in the child's best interests.

The new law also in serts the presumption into AS 25.20.070, which otherwise provides that "children shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody."

Additionally, the court changed one of the 9 best interest factors in AS 25.24.150 (c). Previously, the factor stated that the court shall consider "[t]he desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent." The new language requires the court to consider:

> the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child.



"While the issue of domestic violence is significant, the new laws are troubling and create numerous concerns."

While the issue of domestic violence is significant, the new laws are troubling and create numerous concerns. One factor in all custody cases which still is in the law, and was in force prior to the enactment of the new law, is that the court can consider "any evidence of domestic violence, child abuse or child neglect in the proposed custodial household or a history of violence between the parents." Therefore, superior court judges already were required to consider domestic violence evidence and use their discretion to weigh the evidence along with the 8 other factors. Now evidence of prior domestic violence, together with the presumption, may drastically increase the weight of this factor alone, greatly reduce the discretion of judges and cause them to make findings that they would otherwise not make.

Moreover, the new law may change the focus of litigators in custody cases to proving a "history of domestic violence" rather than addressing issues concerning the best interests of the children.

It is unclear whether parties in previously decided custody cases will be able to use the new law and the presumptions contained therein as "changed circumstances" to reopen old cases to ask for new relief, thus opening the floodgates to a new round of custody litigation. The law makes no mention as to when the alleged acts of domestic violence occurred, and it is possible that courts will focus on allegations of domestic violence that occurred years before a child was born in making findings which affect future custody and visitation. Also, the law does not specify whether the alleged victim of domestic violence needs to be the parent of one of the children involved in a custody action, so that those in prior relationships may be called to court to relate events which may not be relevant to present proceedings.

In Alaska, unsupervised visitation by parents is the norm. *J.F.E. v. J.A.S.*, 930 P.2d 409, 409 (Alaska 1996). Prior to the enactment of the new law, a requirement of supervised visitation must be supported by findings that specify how unsupervised visitation will adversely affect the child's physical, emotional, mental, religious, and social well-being. *Id.* at 413-14. *See, also, Fardig v. Fardig,* 56 P3d 9 (Alaska 2002). This test may now be changed in cases involving domestic violence allegations by requiring the court to focus on the parent's history, not the child's well-being.

There are individuals who may have agreed to the entry of civil or criminal domestic violence orders being issued, prior to the enactment of the statute, for various reasons that had nothing to do with custody or visitation issues. Had they known that they would be later subject to a presumption that could significantly affect their rights to custody or unsupervised visitation, perhaps they would not have agreed to the entry of such orders without a trial.

There is tension between the new law, which can award custody to a third person if the court finds that both parents have a "history of perpetrating domestic violence" and the standard for third party custody articulated in April of this year by the Alaska Supreme Court *Evans v. McTaggart*, 88 P3d 1078 (Alaska 2004). In *Evans*, the court held that in order to overcome the parental preference a non-parent must show by clear and convincing evidence that the parent is unfit or that the welfare of the child requires the child to be in the custody of the non-parent. One element of the welfare of the child requirement is that the non-parent must show that the child would suffer clear detriment if placed in the custody of the parent. The new law does not articulate all of the requirements in *Evans*.

There will most likely be considerable time spent by the courts determining the future impact of the new laws. While it is important for the court to address the impact of domestic violence upon children, the new laws may give too little discretion to judges who previously had the ability to look at each case separately on the merits. Judges who previously focused primarily on the best interests of the children now may be looking more at allegations regarding the prior behaviors of the parents in determining the best custody and visitation to award in any given case.

REMINDER

Law Day 2005

"The American Jury: We the People in Action"

The jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it how to rule well. The jury ..may be regarded as a...public school, ever open, in which every juror learns his rights.
–Alexis de Tocqueville, Democracy in America

Law Day is an opportunity for all Americans to celebrate and enjoy our freedoms. The jury is the embodiment of democracy. We entrust juries—small bodies of ordinary men and women—with decisions that involve the liberties and property of defendants. In doing so, we confirm our faith in the ability of people to make just and wise decisions, and that is the very definition of democracy. We also see the jury system as an opportunity to educate Americans in law, legal processes, and decision-making in a democracy.

On this Law Day, we can help people understand the jury system, and appreciate their role in making it effective.

The American Jury

WE THE PEOPLE IN ACTION

LAW DAY: MAY 1,2005

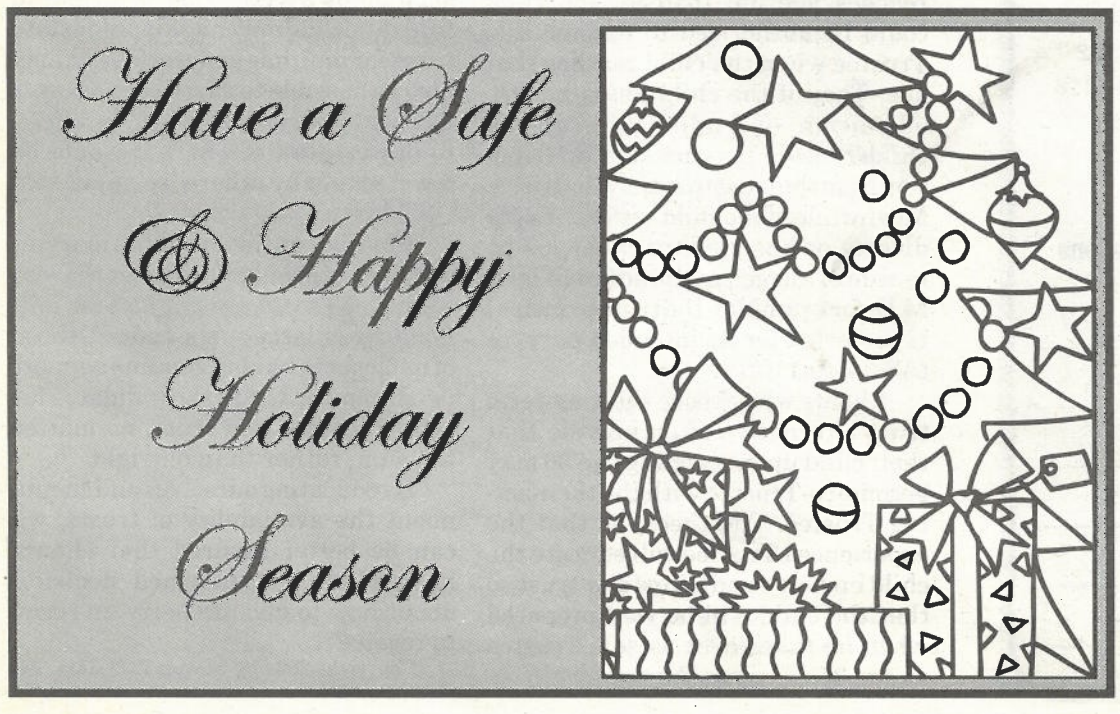
Children in Alaska Courts holds 5th forum

The fifth and final regional forum on Children in Alaska's Courts was held November 10, 2004, at the Bethel Courthouse. Over 65 Bethel residents attended the public session to hear the recommendations of the local children's justice community on ways to improve court services in cases involving children, namely Child in Need of Aid, Juvenile Delinquency, Divorce/Custody, and Domestic Violence cases. The forums were sponsored by the Alaska Court System with assistance from the State Justice Institute. A final report on the recommendations from across the state will be completed by January 2005; to obtain a copy please contact the Alaska Court System at dpendergrast@courts.state.ak.us mailto: dpendergrast@courts.state.ak.us.

Young dancers from the Bethel Yupik Immersion Program performed for participants at the start of the Children in Alaska's Courts forum in Bethel. They led the Pledge of Allegiance and sang America the Beautiful in Yupik, followed by several traditional dances. The performance was arranged by Bethel Magistrate Ana Hoffman and Bethel Clerk of Court Natalie Alexie, whose children were among the performers.

Alaska Court System representatives at the Bethel forum included, L-R, standing: Ronald Woods, Area Court Administrator, 4th Judicial District; Justice Walter Carpeneti, Alaska Supreme Court; Judge Niesje Steinkruger, Presiding Judge of the 4th Judicial District; Judge Dale Curda, Bethel Superior Court; Judge Leonard Devaney, Bethel Superior Court; Bethel Magistrate Craig McMahon; Bethel Magistrate Anastasia Hoffman; Christine Johnson, Deputy Director of the Alaska Court System; Natalie Alexie, Bethel Clerk of Court; and Peter Braveman, Child Custody Investigator for the 4th Judicial District. L-R, seated: Barbara Hood, Court Initiatives Attorney; and Susanne DiPietro, Judicial Education Coordinator.

Youth performers at the forum.



NATIVE LAW NEWS

Washington adds Indian law to state bar exam

The Washington State Bar Association (WSBA) Board of Governors voted unanimously Oct. 22 to make Washington the second state to test new lawyers' understanding of federal Indian jurisdiction on the bar exam. At the urging of the WSBA Indian Law Section and Northwest Indian Bar Association (NIBA), Washington followed the precedent set by New Mexico, which became the first state to test Indian law in 2002. The Idaho, Oregon, Oklahoma and Arizona bar associations also are considering such a test.

"We with the Northwest tribal bar applaud the WSBA and its Governors for making this brave decision--a decision that will not only enhance the competence of our profession, but will strengthen state-tribal relations in Washington and elsewhere," said Gabe Galanda, a Seattle Indian lawyer and immediate past Chair of the WSBA Indian Law Section. "With dialogue on this issue rapidly spreading throughout the national bar and Indian Country, it is only a matter of time before Indian law becomes an integral part of many state bar exams."

The Governors' decision followed the WSBA general membership's endorsement of the issue at the bar's annual business meeting in Seattle on September 16. Support also came from the Association of Washington Tribes, a consortium of Washington's 29 federally recognized tribes; the 42-tribe-member Affiliated Tribes of Northwest Indians (ATNI); the King, Spokane and Whatcom County Bar Associations; and state bar leaders such as Washington Attorney General Christine Gregoire and King County Prosecutor Norm Maleng.

•

NW Indian Bar elects leadership

The Northwest Indian Bar Association (NIBA) Oct. 29 announced the results of its annual Governing Council election in Tulalip. Seven members were elected to NIBA's 2005 Governing Council which represent Indian Country in Washington, Oregon, Idaho and Alaska:

President - Lael Echo-Hawk (Pawnee), a reservation attorney for the Tulalip Tribes near Marysville, Washington, advises the tribal government on a diverse array of legal issues. Lael, who originally hails from Alaska, is a graduate of UW Law School.

Vice President - Lisa Atkinson (No. Cherokee/Osage), is a solo practitioner in Seattle who represents tribes and tribal members on various litigation and business matters. Lisa also serves as Secretary/Treasurer for the Northwest Tribal Court Judges' Association and as a Board Member for the Edmonds Chamber of Commerce.

Treasurer - Gabe Galanda (Nomlaki/Concow), is an Associate with Williams, Kastner & Gibbs, PLLC, who litigates complex commercial and Indian law matters, and consults with tribes and non-tribal parties doing business in Indian Country.

Secretary - Christina Parker (Chippewa -Cree), who is also an in-house reservation attorney for the Tulalip Tribes and its Indian Child Welfare Program.

At-Large Member - Leona Colegrove (Quinault/Hoopa) recently joined Williams, Kastner & Gibbs, PLLC, as an Associate, after serving as tribal attorney for the Quinault Nation. Leona is Co-Chair of the Washington State Bar Association (WSBA) Committee for Diversity.

At-Large Member - Bernice Delorme (Turtle Mountain Chippewa), the first Native graduate of the University of Washington's L.L.M. in Taxation Program, is a tribal attorney with the Puyallup Tribe of Indians who advises the tribe on taxation, litigation, treaty hunting, housing, negotiation and other governmental matters.

At-Large Member - Juliana Repp (Nez Perce), is a solo practitioner in Spokane who serves on the Kalispel Enterprise Board and the Nez Perce Tribal Enterprise Board.

"Over the next year, I hope to capitalize on the momentum gained in recent years by continuing to expand our membership and provide networking opportunities," said Echo-hawk. "NIBA has been instrumental in providing a cohesive support system to Native and non-Native practitioners of Indian Law in the Northwest, and I am excited about being given the opportunity to lead such a great organization."

QUOTE OF THE MONTH

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

— Chinese proverb

ESTATE PLANNING CORNER

Gifts in trust may be more valuable

By Steven T. O'Hara

Recently the Bankruptcy Section of the Alaska Bar Association sponsored a talk on Alaska *self-settled* trusts. The upshot of the discussion was that an Alaska self-settled trust may or may not survive the settlor's bankruptcy — depending, of course, on the facts.

A trust created by oneself for oneself ("self-settled") is far from perfect. Issues abound, including tax issues.

By contrast, the law is fairly clear with respect to a trust created by, say, a parent for her child. Here it is possible to have reasonable certainty. The person creating the trust, such as a parent, may even name the primary beneficiary, such as an adult child, as Trustee of a properly-structured trust (*Cf.* AS 13.36.153).

In other words, others can do for us what we cannot do for ourselves. By the same token, we can do for our spouses, children and other beneficiaries what they cannot do for themselves.

Suppose you are a doctor, a dentist, a lawyer, an accountant, a minister, an architect, a stock broker, a commercial fisherman, a real estate investor, or a coach. Suppose you are about to marry, get divorced, guarantee a debt, or file bankruptcy. Suppose you own property with environmental contamination. Suppose you serve on a Board of Directors. Suppose you own a construction business, a small airplane, a boat, a pool, or a trampoline. Suppose you own a car —with teenagers! Suppose you or a family member has long-term care needs. Now suppose you receive a call from your long-lost Uncle. He has good news and bad news. The good news is he is about to give you $1,000,000. The bad news is he is dying. He is meeting with his lawyer, and they want to know how you want the $1,000,000 — outright or in a trust with you as Trustee.

"...an Alaska self-settled trust may or may not survive the settlor's bankruptcy..."

More and more, with our courts crammed full of lawsuits and divorces, individuals prefer to receive their inheritances in trusts that protect the property from creditors and predators.

People pay significant sums for umbrella liability insurance, for malpractice insurance, for properly-structured prenuptial agreements, and for long-term care insurance. Why? They do so to protect assets. Receiving your inheritance in trust can also provide asset protection. With the protection a trust can provide, a gift in trust may be more valuable than a gift outright.

Asset protection is not wrong. In this day and age, who would run a business outside of a corporation or a limited liability company? Conversely, more and more, who would not want to manage inherited wealth in a vehicle that helps preserve that wealth?

Besides providing protection from creditors and predators, trusts can also avoid estate taxes. Consider a 70-year-old client with $1,500,000 of assets. He is an Alaska resident, and all his assets are in Alaska. He is not married. The client has never made a taxable gift and has done no estate planning from a tax standpoint because, under current law, there would be no estate taxes payable by reason of his death (IRC Sec. 2001 & 2010 & AS 43.31.011).

Recently the client's mother died, leaving him approximately $1,500,000 of additional assets. No estate taxes were payable by reason of his mother's death.

Now if the client were to die, $705,000 in estate taxes would be payable based on his total assets of $3,000,000 (*Id.*).

This tax exposure of $705,000 could have been completely avoided. Our client's mother could have given her son his inheritance in a trust that would be available to him for his health and support needs, but which would not be taxed as part of his estate upon his death. The client could also be named Trustee of his trust if the trust is properly structured.

Long-term trusts can also save gift tax since the lifetime gift-tax exemption is significantly less than the estate-tax exemption. In other words, it may not make sense to give property outright to a child who then, during his lifetime, must pay gift tax to pass the property on to his children or grandchildren. If instead the property is given to a trust with multiple beneficiaries and the child as Trustee, it may be possible to take care of the various needs of the family and avoid gift tax.

Long-term trusts may also make sense in our garden-variety Wills. For example, suppose you represent a husband and wife who have minor children. They have designated guardians under their Wills, and they are considering providing, after both of them have died, that their assets will be held in trust until their children reach a mature age.

The clients could provide that as each child reaches age 35, the child's trust will terminate with any remaining balance paid to the child outright.

Alternatively, the clients could provide that the trust does not necessarily terminate when the child reaches age 35. Instead, the child could be authorized to become sole Trustee when the child reaches that age. Then if the child has a health, education or support need, the child-Trustee may make a distribution from the trust to satisfy that need. Meanwhile, if the child suffers a costly divorce or has creditor problems by reason of alleged malpractice (if he is M.D. for example), the trust principal is protected for its intended purpose (AS 34.40.110).

Clients who choose the long-term trust alternative often provide that their child upon reaching age 30 may become co-Trustee with the then-acting Trustee. The theory is that the experienced Trustee will educate the child on how to administer a trust so that the child will be well prepared when he takes over as sole Trustee at age 35.

Some advisors urge clients to avoid trusts, noting that trusts currently are subject to *income* tax at the top 35% rate on ordinary income over approximately $9,000 (IRC Sec. 1(e)). Trust income-tax rates are a valid concern and are one reason why this writer advises clients to consider providing that all trust net income must be distributed to the child annually. With this provision, the trust's ordinary income will be taxed at the child's income tax rates (IRC Sec. 651 & 652).

Another concern is the generation-skipping transfer ("GST") tax. Indeed, the GST tax is a major concern when dealing with clients whose assets exceed the $1,500,000 exemption from this tax (IRC Sec. 2631). For background on the GST tax and planning opportunities, see O'Hara, *Working In A World With The GST Tax*, 137 *Trusts & Estates* 47 (February 1998).

Fear of the GST tax may lead some attorneys to not even give clients the choice of creating trusts that may last for the lifetime of a child. The attorney may automatically, with no discussion other than to ask what age to use, provide that all or a significant portion of the client's assets pass outright to the child upon reaching a certain age. Such a plan often avoids GST tax because no generation is skipped; the client's child receives his inheritance in a way that subjects the assets to potential estate tax at the child's generation.

Subjecting assets to potential estate tax for fear of the GST tax could result in higher taxation for the client's family. For example, one or more of the client's children may never have children of their own, in which case exposing assets to estate tax at the children's generation could result in a windfall to the Internal Revenue Service. As another example, aggregate federal and state death taxes could exceed aggregate federal and state GST taxes if a child resides in a state that has a significant death tax but no significant GST tax.

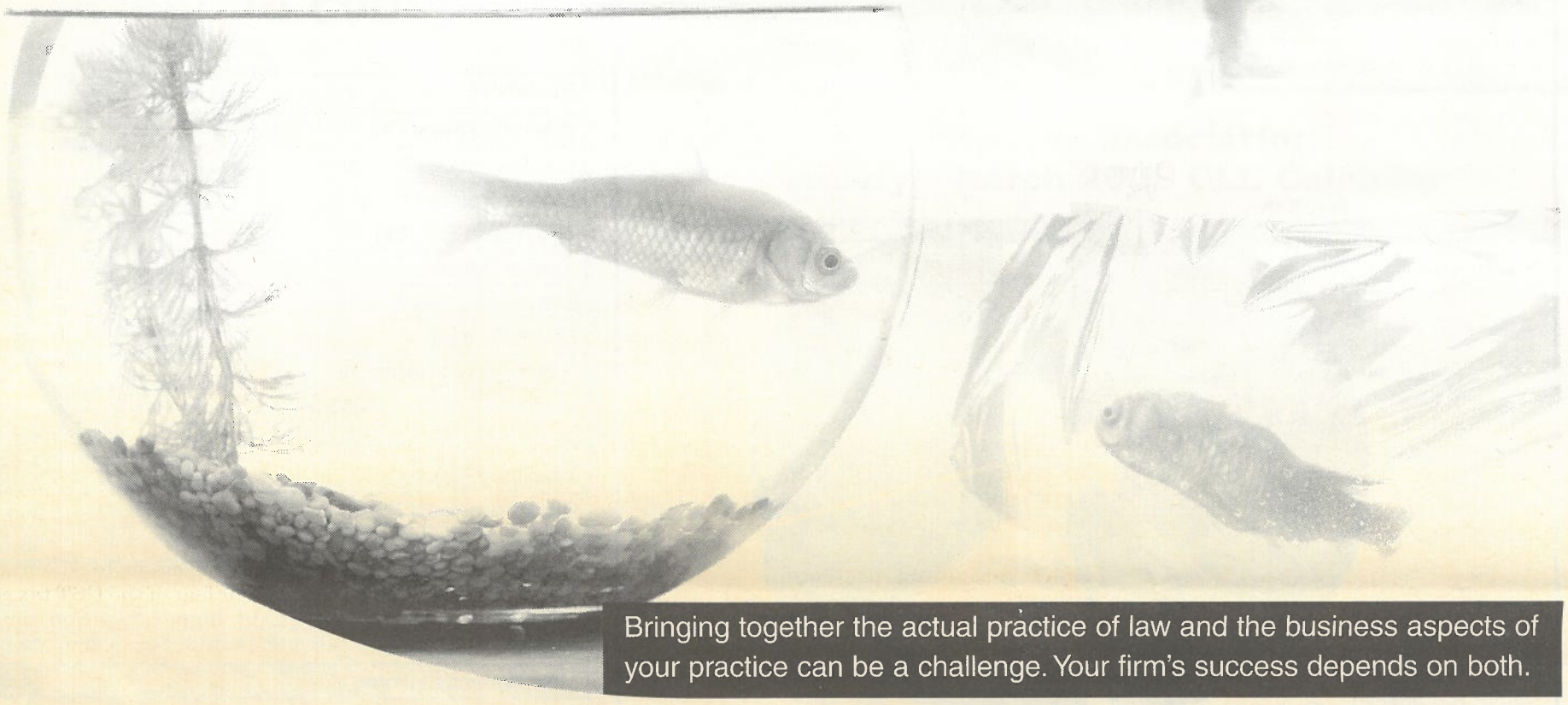
Outright gifts are of course also costly if the beneficiary later loses the assets from guaranteeing a company debt — not to mention all the other vicissitudes of life.

The best of all worlds might be to give the child his inheritance in one or more trusts and grant the child a limited power to say where the trust assets go upon the child's death. To minimize GST tax, the child may exercise the power in any number of ways, such as by giving trust principal to his grandchildren and skipping estate taxes for multiple generations. It may also be possible to exercise the power in such a way as to elect, in effect, to pay estate tax where it would be lower than any otherwise applicable GST tax.

Finally, consider that the marginal utility of a dollar is greater the less we have. Trusts are *not* just for millionaires or large sums. Indeed, those of us closer to having genuine support needs may be the best candidates for receiving assets in trust, no matter the sum, rather than outright.

By educating ourselves and clients about the availability of trusts, we can be better assured that clients have made an informed decision about how to give property and how to receive it.

Practice of law... meet business of law.



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NEWS FROM THE BAR

Alaska Bar Association Board action items -- October 28, 2004

• Voted to accept the results of the July 2004 bar exam and to defer the application of one applicant pending the completion of the character investigation.

• Approved the admission of three reciprocity applicants.

• Approved a Rule 43 waiver for Denise Bakewell.

• Voted to budget for additional travel for the Pro Bono Director and for travel on Pro Bono and Bar related issues for board members.

• Voted to amend the budget to hire a half time clerical assistant, instead of full-time pro bono assistant.

• Voted to approve the 2005 budget as modified.

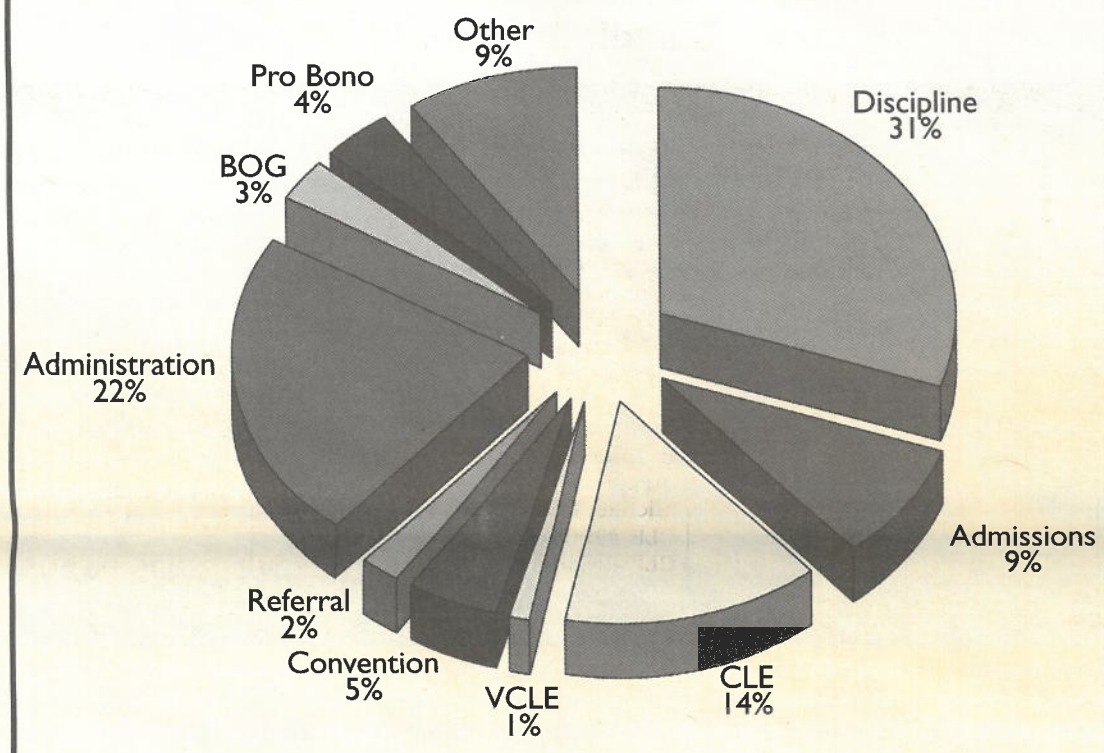
• Asked to put the issue of setting the dues amount by taking the amount of the budget and dividing it by the number of members, on the January 2005 meeting; ask the Bar Funding committee for input on this issue.

• Send to members the graph that breaks down the amount of bar dues by the cost per member of the Bar functions.

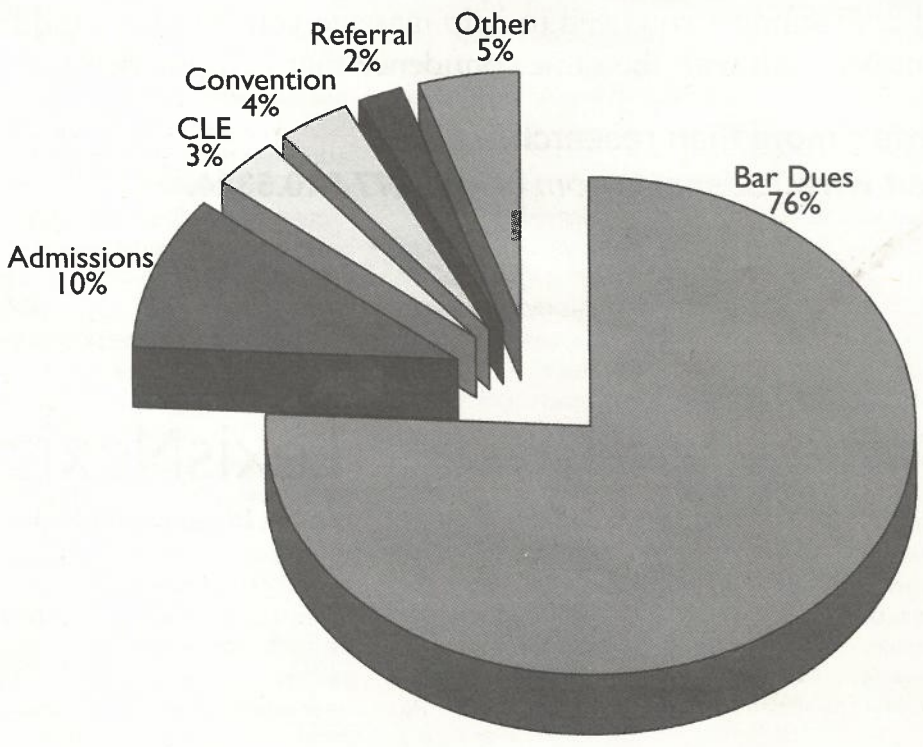
• Asked Bar Counsel to redraft the proposed rule to have an assessment by the Disciplinary Board for any discipline imposed by the Board or public discipline. The draft will be circulated among Board members for comments.

• Voted to accept the recommendations of the Lawyers' Fund for Client Protection to reimburse the claimant $10,208 from the Fund.

2005 Expense Budget



2005 Revenue Budget



Alaska Bar Association 2005 Budget

REVENUE	
Admission Fees - All	217,150
ContinuingLegalEducation	70,575
Lawyer Referral Fees	54,000
The Alaska Bar Rag	16,400
Annual Convention	80,000
Substantive Law Sections	11,495
Ethics Opinions	0
Pattern Jury Instructions	795
ManagementSvc LawLibrary	1,405
AccountingSvc Foundation	11,520
Membership Dues	1,636,330
Dues Installment Fees	11,800
Penalties on Late Dues	18,850
Disc Fee & Cost Awards	0
Labels & Copying	5,264
Investment Interest	59,000
Miscellaneous Income	1,000
SUBTOTAL REVENUE	2,195,584
EXPENSE	
Admissions	182,031
ContinuingLegalEducation	293,292
VoluntaryContinuingLegalEducation	23,520
Lawyer Referral Service	48,772
The Alaska Bar Rag	43,042
Board of Governors	65,833
Discipline	632,912
Fee Arbitration	61,322
Administration	462,053
Pro Bono	81,054
Annual Convention	105,000
Substantive Law Sections	14,018
Ethics Opinions	0
Pattern Jury Instructions	150
ManagementSvc LawLibrary	4,320
AccountingSvc Foundation	11,520
Special Projects	0
Public Interest Grants	0
Committees	13,000
Duke/Alaska Law Review	22,500
Miscellaneous Litigation	0
Internet / Web Page	12,820
Lobbyist	0
Credit Card and Bank Fees	14,933
Moving Expenses	0
Computer Training / Other / Misc.	1,000
SUBTOTAL EXPENSE	2,093,092
NET GAIN/LOSS	102,492

Why did you raise dues?

Continued from page 1

last until 1997. The plan was to run surplus budgets for two years, break even for a year, and then run increasing deficits for two years.

However, the Bar Association did better than projections. Aided by better than expected interest on the surplus as well as some belt tightening over the years, the Bar still has a surplus (projected to be about $750,000) as well as a working capital reserve of $675,000. This latter amount represents 4 months operating capital and is held in perpetual reserve (in case we ever face a legislative sunset provision) per the advice of our accountants.

The above interest revenue increase was assisted by a historical increase in dues collection of one-percent per year. This figure mirrors the net increase in membership over those years.

A significant cost savings during the 1993-2004 period was also realized by moving into very nice but very cheap state office space. Close to half a million dollars in savings were realized when the Bar moved into the old Heller Ehrman space in the Atwood building.*

*See related sidebar

Although dues collections were going up and efforts were taken to reduce expenses, Bar Association expenses still went up at a rate of two to four percent per year. This rate closely mirrors the Alaska rate of inflation.

The Alaska CPI went up 30.30 percent between 1993 and 2003. That means that to equal the value of your $450 1993 dues payment you would have needed to pay $573.01 in 2003. Although you may not find this fact comforting, in terms of real dollars, you are actually paying less in 2005 than the lawyers in 1993.

So now we will turn to Keith's constant question, why, why, why, why, now? Why for the love of God did we have to pass this thing when I am President? The answer from Jon Katcher is simple – he did not want this thing passed during the Katcher administration. The rest of us had many reasons. The fact is there is never a good time for an increase but here are some thoughts.

The Bar association is financially organized like a hybrid between a non-profit corporation and a governmental entity. We keep a capital reserve of four months expenses like a non-profit (particularly one that, in theory, could be sunsetted by the Alaska Legislature) should. However, like a governmental entity, our revenue stream is typically in very large chunks tied to the first of the year (dues), spring (convention) and mid-year (July dues payments). The significance of this periodic income stream is that prudence requires us to keep some amount of money on hand to account for emergency unbudgeted expenses. The bar is unable to generate emergency revenue through a supplemental appropriation (like the government) or a cash call (like a partnership). Under our bylaws, any such increase would have to be voted on and published for comment before we could implement it. This results in at least a six month lag between the identification of a shortfall and the implementation of an "emergency" dues increase.

Under the current projections, with no dues increase, the Bar would most likely be able to ride out 2005 before running out of money sometime in late 2006. There are some on the Board who believe that we should not have any significant surplus before we vote a dues increase. There are others who believe that, with the Bar's inability to raise emergency cash, fiduciary prudence tipped the scales in favor of a 2005 increase. A 2005 dues increase would most likely result in a larger surplus but it would not have us down to searching for coins in the couch if we had some sort of catastrophic loss. The question was less "if" than "when" we would implement the dues increase.

There is also a philosophy among some that we should examine the dues issue annually and propose dues changes from year to year. Historically, this would likely result in a two to three percent annual dues increase. The net increase over time would likely mirror historical increases. Others feel that the current system with periodic larger increases provides a needed cushion and frankly defers a very time-consuming and divisive issue to decennial rather than annual discussion.

The Bar, in response to a resolution by the Anchorage Bar has formed a member committee to look into Bar finances and services. These committees are looking into various ways to generate revenue as well as provide services that the membership wants. Another side benefit of this process, as well as this communication, is to have greater transparency in the Bar finances and services, to ensure that we are spending your money prudently on services that support both the membership and the administration of justice in Alaska.

About the Bar's office space

The Alaska Bar Association is located in office space on the top floor of the state office building, the Atwood Building. Some Bar members are surprised to learn that although the space looks like a million bucks, it costs the Bar peanuts. The office was designed in 1989 for the West Coast law firm of Heller Ehrman, which occupied the space for over 12 years. Many Bar Association members have taken advantage of the office's large conference room, its smaller library conference room, and its inviting lobby when they visit the offices for section meetings, CLE courses, bar examinations, hearings, or the other numerous events held here. Other meeting rooms and facilities are available for the Bar's use throughout the Atwood Building.

When we moved into the space it cost only $1.07 per square foot, substantially less than the then-going rate of $2.00+ per square foot for similar space in downtown Anchorage and less than the $1.90 per square foot we were paying at Peterson Towers when our lease ran out. So during our first year we saved $60,000 in rent at the new space, and even though our rent increases gradually each year, over the term of our lease we will save $506,000 over what we would have paid at our old location.

This was possible because, although the Bar is not a state agency, it is a state instrumentality (created by statute) so we are eligible to occupy space in state facilities. The Atwood Building managers did not want to tear up the Heller Ehrman office, learned the Bar was looking for new space, and thought we would fit "as is." (So, one of the conditions of moving in was that we not make any substantial changes to the space we "inherited" from Heller Ehrman.)

The Board of Governors agreed. We invite you to enjoy these excellent facilities next time you come to the Bar office for business or to participate in a Bar function.

Alaska Bar Association
January - March 2005 CLE Calendar

Date	Time	Title	Location
January 20 (NV)	8:00 – 10:00 a.m.	Off The Record – 3rd Judicial District CLE #2005-004 2.0 General CLE Credits	Anchorage Hotel Captain Cook
February 2	8:30 a.m. – 12:30 p.m.	2005: New Frontiers in Administrative Law CLE #2005-001 2.5 General CLE & 1.0 Ethics Credits	Anchorage Hotel Captain Cook
March 1	Morning Half-day	What Lawyers Do Right & Wrong in Employment Law Cases with Judge Mark Bennett and Michael Reiss CLE #2005-002 CLE Credits TBA	Anchorage Downtown Hilton
March 1	Afternoon Half-day	Proving Damages in an Employment Law Case with Judge Mark Bennett and Michael Reiss CLE #2005-003 CLE Credits TBA	Anchorage Downtown Hilton
March 7	8:30 a.m. – 12 noon	Name That Movie! Name That Rule! Ethics with Larry Cohen & Steve Van Goor CLE #2005-005 3.25 Ethics Credits	Anchorage Hotel Captain Cook
March 7	1:15 – 4:45 p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen & Ray Brown CLE #2005-006 3.25 General CLE Credits	Anchorage Hotel Captain Cook
March 8 (NV)	9:00 a.m. – 12:00 p.m.	Name That Movie! Name That Rule! Ethics with Larry Cohen & Steve Van Goor CLE #2005-007 3.25 Ethics Credits	**Fairbanks** Westmark Fairbanks
March 8 (NV)	1:15 – 4:45 p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen & Ray Brown CLE #2005-008 3.25 General CLE Credits	**Fairbanks** Westmark Fairbanks
March 9 (NV)	1:15 – 4:45 p.m. p.m.	Effective Non-Deposition Discovery Methods and Practices with Larry Cohen & Ray Brown CLE #2005-009 3.25 General CLE Credits	**Juneau** Westmark Baranof
Spring Date	Morning Half-day	Electronic Records Management in cooperation with ARMA CLE #2005-010 CLE Credits TBA	Anchorage TBA
Spring Date	Morning Half-day	Condominium Law Update CLE #2005-011 CLE Credits TBA	Anchorage TBA
March 18	8:30 a.m. – 12:30 p.m.	11th Annual Workers' Comp Update CLE #2005-012 3.75 General CLE Credits	Anchorage Hotel Captain Cook

(NV) = program will not be videotaped

TVBA Minutes

It's 'lunch'-time in Fairbanks, n/k/a luncheon in Boston

Friday, September 17, 2004

Following an entertaining recitation of the previous week's minutes, which primarily involved guessing who "Boston accent guy" and "Far side of the room guy" were, a motion was made to send the minutes to the *Bar Rag*.

Judge Savell then suggested that we refer in future minutes to all TVBA members with descriptions rather than names. The question arose: is Little Caesar a name or a description?

A balding obstreperous white man then pointed out that "balding obstreperous white man" would not be a very narrow class, so in the future Covell will be called either "balding obstreperous white man with a Muppet voice," or "Muppet man." Little Caesar will remain Little Caesar. Fortunately, there was only one other member of the bench in attendance, and thus at this juncture potential retribution is limited.

A thank you note was read from Clapp Peterson regarding Randy's retirement. Far Side of the Room Guy, n/k/a/ "Far Side" (again, is that a name or description?) wanted an update on Randy. It was reported he's riding through the storm, but trying to adjust to the horrific sound of hurricane shutters in which you can only hear, not see, the impact of various objects slamming against the metal shutters and can only try to guess what has been destroyed now. A "balding obstreperous white man" who now lives in Florida in the House that Exxon built noted he doesn't mind the shutters generally, but it's the sound of the bodies splatting against them that still gets him.

Little Caesar rhetorically asked "how many retired FPD officers are there living in mobile homes in FL?" Answer? Not as many as last week.

Little Caesar wants the resolution and minutes sent. Muppet voice agreed. Silence followed when it was realized that these two were in agreement. The look on Little Caesar's face was duly noted by all; he demanded that it also be memorialized in these minutes. This historical anomaly is thus duly noted.

Ultimately, a motion to send the resolution disclaiming any knowledge of the theft was passed, with all in favor except a possibly obstreperous but definitely balding white male prosecutor, whose vote he then stated did not count because he did not understand the motion.

Another "balding obstreperous white man" with glasses (n/k/a 4-eyes) then gave a riveting and exceptionally thorough presentation, for nearly the rest of the lunch and then some, on then Board of Governor's meeting. Ironically, he started the presentation with a sarcastic remark about Jim DeWitt's "thrilling" presentation on computer databases....

Among the highlights was 4-eyes' reconstruction of the database issue facing the Bar Association, as the program is so obsolete that it essentially cannot communicate with any other program and can "only talk to itself." Exxon goes to Florida noted that no one listens anyway, so it is unclear why this is a problem. Despite this, the Law and Technology Committee (a/k/a Jim DeWitt, its sole member) will undertake a study into the issue, and $ has been earmarked for a new system, although not nearly enough, which was 4-eyes' segue way into justifying his vote to raise the bar dues.

Speaking of unjustified expenses, inquired Muppet man, what about the report from the pro bono service coordinator? Despite her best efforts and compliments to TVBA on our egg toss—the only one on her state tour—the TVBA continued to rag on her, as only TVBA can do.

There were then entertaining discussions on the discussion regarding the Judicial Council resolution pertaining to our Governor's request for "all the qualified applicants'" names to be forwarded.

Short haired short white female also noted that she had spoken with a judicial candidate about the process, as this candidate has "gone both ways" and had her name both sent up and not sent up at different times. All of TVBA's "balding obstreperous white men" were then reduced to giggles and did not hear anything after the report that the candidate has "gone both ways."

Little Caesar noted that a "C" is acceptable, and commented that he is thus our "acceptable" representative on the bench. 4-eyes retorted "that's what you tell yourself all the time."

Finally, after much discussion on the judicial appointment process, and the Governor's recent objections despite his lack of complaint during other appointments over the past 2 years, and a couple more report items, the red-headed Magistrate from Minnesota managed to get to her presentation before we ran late. She was so adamant about getting to speak —noting that she had been sent by the Clerk of Court—that we were all excited to hear what she had to say. Imagine the disappointment when, after telling us she had been sent because the clerk was afraid we'd tossed our notices about the new electronic filing system at the courthouse as mistaken for junk mail, the red-headed Magistrate from Minnesota started to read it out aloud. After waiting for the punch line for a couple of seconds, thinking there must actually be something interesting to warrant yet another message on this topic, it became clear that junk mail read aloud is far worse than regular junk mail. Actually, disappointment is probably not the right word for the loud snores and glazed eyes on the eyes of all the "balding obstreperous white men," and the rest of us too.

And with that, we adjourned.

October 15, 2004

Under duress, I again agreed to take minutes on condition that everyone be funny so that I would not have to make things up. Unfortunately, few complied, so you can't blame me. And if anything is not strictly true in the humor reporting, you'll have to guess which items that might be.

Guests: John Franich and Sue Carney brought their legal intern, Teresa Watt. Bets were immediately placed on whether Teresa would return more frequently than Sue. Sue's odds are *much* better in this bet than in the one on whether she will show up more frequently than her non-lawyer spouse. Indeed, Sue noted it was only about her 6th appearance since 1987, and that the first time she came to one was right after the birth of John's daughter Morgan, who is now 16. Judge Savell noted that lots of people don't remember their first bar lunch; others noted Judge Savell probably does not remember last *week's* bar lunch.

Judge Olsen reported on an interesting presentation that he attended at the Judges' Conference on the topic of the interplay and overlap between mental illness and substance abuse, with tips on how to handle these issues on the courtroom. Of course, he noted, they were only talking about the attorneys. [Points to Judge Olsen for complying with the funny mandate]. Lori Bodwell suggested all you have to do is give such attorneys a drink, and it calms them right down. The question arose, does she know this from years of experience with her office mate, or from home?

John Franich gave a report on his visit, along with Judge Steinkruger, Paul Canarsky and Jeff O'Bryant, to Anchorage to visit the therapeutic court. There were lots of questions, and, in good TVBA fashion, certain complaints from unnamed sources about the idea of private court-appointed counsel having to attend weekly hearing with clients. Judge Savell urged Noreen to talk to his colleagues in Anchorage before forming opinions about it, as everything is speculative at this point as to how it will work. John also strongly suggested that people go visit the Anchorage court themselves to see how it works there; he said it changed his mind to see it in action. Steve Elliot asked how the court would deal with the license revocation issue, as unlike in felonies there is no discretion given to the court for limited licenses. John noted that will need a legislative fix.

Jason Weiner gave the treasurer's report, stating without blinking or checking that we had $4,916. He impressed us all with his knowledge, until it was pointed out he failed to account for the change. Regardless of how many pennies you add to that, however, there will be lots of money to subsidize the 4th of July party tickets and buy wine for every table. There were lots of cheers to that.

Speaking of booze, apparently the Supreme Court is out of touch, as they found the most remarkable thing about our meetings was that we no longer have martini lunches. Judge Steinkruger promised that next time the Justices are here, in November, they will all come to lunch. In their honor, it was agreed that we would all have wine or martini glasses in hand to celebrate—even Stapp and Olsen. Teri Coleman noted that she would drink to that. Judge Savell inquired whether Mormons could even pretend to drink alcohol, noting that Orthodox Jews can't eat imitation bacon because it is apparently bad karma, or whatever the appropriate phrase for "bad karma" is when translated into Judaism terms. Jason Weiner was horrified to learn there was such a thing as fake bacon.

Jason also reported that the DA's office is getting a new paralegal, which means that their responsiveness to discovery requests will increase, except for those requests from Gary Stapp. Jason also wanted to convey how impressed he was that Bob Noreen noticed that he was missing page 29 out of dozens of pages of discovery. Terry Hall seconded the commendation, observing that this meant Noreen can now count to 30.

November 19, 2004

Ray Funk addressed the multitude regarding a new bracelet that is able to determine through skin contact, whether or not a person has consumed alcohol. There was some discussion regarding safety mechanisms that would prevent a person from starting a car if they had been drinking. That, of course, led to speculation that a car could probably be driven by blowing alcohol-laden breath into the engine's cylinders and igniting the fumes.

Judge Savell introduced his new Trial Scheduling Device, more commonly referred to as the "Smile-o-meter." If, during the Pretrial Scheduling conference, one of the attorneys smiles way too broadly upon learning that Judge Savell is soon to retire, the good Judge makes sure that he manages to squeeze in that particular trial before he "pulls the plug."

Magistrate Ali Closuit presented a practice tip with respect to the new DVRO's. The practice tip essentially is that your clients should come to court with photos of the kids because if she is forced to grant a DVRO, the perpetrator will need a photo to remember what the kids looked like.

Judge Savell commented on the recent appearance of sling shot holes in various windows around town, including the courthouse. Coincidentally, it appears Judge Savell and one of his issue went to a "blue state" but found a "red state" store, i.e. an Army-Navy store, that contained all kinds of weapons of minimal destruction. As Judge Savell perused the goods for sale, his daughter whispered, "What are we doing here?" to which His Honor replied (in a loud voice so as to blend in to his surroundings), "We're buying weapons." Judge Savell bought a sling shot.

Representatives from College Rotary made their annual pitch for monies to provide a Christmas shopping spree for disadvantaged youths. It appears that this act of good will and charity towards the Fairbanks Community was started by Paul Barrett who, in an attempt to atone for the many sins of the TVBA and with an eye to the future, believed that encouraging children to take merchandise from Fred Meyer without paying for it would, in time, be good for business.

Judge Kleinfeld shared a recent email from one of his former clerks. The clerk is now working in Boston and decided to attend a Boston Bar Association lunch. Regarding that event, he reported, "I could not help making comparisons to the TVBA. First of all, it wasn't actually a lunch, it was a luncheon. I'm not exactly sure what the difference is, but something tells me the TVBA doesn't often have luncheons. Second, in contrast to the 20-30 faithful with whom you lunch each week, I luncheoned with about 1,500. For some reason, it just didn't have the same sense of community. I can't quite put my finger on why. Maybe it was the absence of minutes. Finally, the beards per capita were definitely down from what I had become accustomed to over my year there. Less objectionable were the ties per capita. Oh, and this luncheon thing apparently comes around about once per year. A close-knit group indeed."

ALASKA TEACHING JUSTICE NETWORK

Save the Dates!

EDUCATING ON LAW & DEMOCRACY

2005 ALASKA STATEWIDE CONFERENCE
ON LAW-RELATED EDUCATION

Friday, March 4, 2005

Rabinowitz Courthouse 101 Lacey Street Fairbanks, Alaska
8:00 a.m. – 5:00 p.m.

- **4 WORKSHOPS**
- **LUNCHEON**
- **RECEPTION**
- **Refreshments, entertainment & door prizes**

Held in conjunction with special full-day seminars on

TEACHING ABOUT CONTROVERSIAL ISSUES

Presented by the Constitutional Rights Foundation Chicago
Saturday, March 5, 2005, Fairbanks
Monday, March 7, 2005, Anchorage

Educator & CLE Credits
DEADLINE TO REGISTER: FRIDAY, FEBRUARY 18, 2005

REGISTRATION FORM —Alaska Bar CLE No. 2005-050
March 2005 Conference & Seminar

Name: _____

Title: _____

Name of Organization/Affiliation: _____

Mailing Address: _____

City/Village: _____ State: _____ Zip: _____

Daytime Phone: _____ Fax: _____

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Please check all categories that apply:

_____ Teacher
_____ Education official
_____ Youth Organization
_____ Law Enforcement
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_____ Attorney (Bar #)
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Please check the events you plan to attend:

____ EDUCATING ON LAW & DEMOCRACY

2nd Annual Alaska Conference on Law-Related Education
Friday, March 4, 2005 8:30 AM – 5:00 PM

Rabinowitz Courthouse 101 Lacey Street Fairbanks, Alaska

Cost: $35 / person. Luncheon included.

____ TEACHING ABOUT CONTROVERSIAL ISSUES
A Full Day Seminar by the Constitutional Rights Foundation Chicago
_____Saturday, March 5, 9:00 AM-3:30 PM;
Rabinowitz Courthouse—Fairbanks
OR
_____Monday, March 7, 9:00 AM-3:30 PM;
Snowden Training Center—Anchorage
Cost: Free. Luncheon included.

DEADLINE FOR ADVANCE REGISTRATION: FEBRUARY 18, 2005
Space is limited, so register early!

Signature Date

Please complete and mail by February 18, 2005, to:
The Alaska Bar Association, Attn: ATJN P.O. Box 100279 Anchorage, AK 99510-0279
Conference registrants must include a check for $35 made out to the Alaska Bar Association.
For additional information, please visit our website: http://www.alaskabar

March 4, 2005
Educating on Law & Democracy Conference

Educators to be trained on teaching controversial issues

As school districts and the state are discussing Alaska history courses as a requirement for graduation, the Alaska Teaching Justice Network is preparing for a 2-day series of seminars on the value of issue-based education.

Incorporating the discussion and debate of current local, national, and international issues and events in the classroom is one of the six promising approaches that have been recommended by the Carnegie Corporation and Center for Information and Research on Civic Learning and Engagement. The research study, *The Civic Mission of Schools,* was published in 2003.

While research suggests that discussion of controversial issues in the classroom can help develop civic knowledge, support for democratic values, participation in political discussions, and political engagement, research also has found that teachers use such discussion sparingly.

The Teaching Justice Network will explore the controversial-teaching method during its Education on Law & Democracy conference in March, 2005. Presented by the Constitutional Rights Foundation of Chicago, the one-day seminar will be held in Fairbanks March 5 and Anchorage March 7.

In this seminar, teachers will develop a rationale for discussing controversial issues in the classroom and analyze barriers to using discussion as an instructional tool. Topics covered in the seminar will include:

- Establishing a climate conductive to discussion.
- Choosing appropriate controversial issues.
- Selecting discussion models and teaching students the skills needed to participate in each type of discussion.
- Locating materials for student use in preparing for discussion.
- Involving reticent students in discussion.
- Providing meaningful feedback on students' discussion skills.
- Evaluating discussion.

Teachers will be introduced to two discussion models—the civil conversation and the structured academic controversy—and have the opportunity to participate in discussions using both models. The discussions will focus on two current issues of particular interest to Alaska's students and teachers; the issues will be chosen to reflect important types of controversial public issues: constitutional issues and policy issues. Time will be provided for teachers to adapt the materials and models demonstrated for use in their own classrooms.

Registration forms for the event are available at the network's website at www.alaskabar.org/teachingjustice.

For more information, contact Barbara Hood at bhood@courts.state.ak.us (907-264-8230).

CLE Course Materials available for free download on the Bar website

All CLE course materials
two years old and older are now available
for free
on the bar website.
For more information,
please go to the CLE catalog at
www.alaskabar.org http://www.alaskabar.org

Bar People

Bankston, Gronning, O'Hara, Sedor, Mills, Givens & Heaphey, P.C. is pleased to announce that **Barbra Z. Nault** has become a shareholder; **Lea Filippi**, former Assistant Attorney General for the State of Alaska and **Pamela J. Keeler**, former Trust Officer, First National Bank Alaska, have joined the firm as Associates. (After 20 years in the Atwood Building, the firm is settled into its new offices at 601 W. 5th Avenue, Ste. 900)

Wilkerson & Associates has changed its name to Wilkerson, Hozubin & Burke, P.C. and **Wally Tetlow**, formerly with the Office of Public Advocacy, has joined the firm as an associate.

Guess & Rudd announces that **Jonathan Woodman** (Anchorage office) **and Aisha Tinker Bray** (Fairbanks office) have become shareholders of the firm, and that **Matthew Cooper**, **Christina Rankin** and **Pamela Weiss** have become associated with the firm.

After 29 years at Burr, Pease & Kurtz, **Ralph Duerre** is now an Anchorage Assistant Municipal Attorney.

Dave Ingram has retired from his position as a hearing officer for the State of Alaska and has opened a law practice in Juneau.

Lynn Allingham is now General Counsel to the Aleutian/Pribilof Islands Association... **Bill Bonner** has relocated to Boise, ID...**Vicki Bussard**, formerly with Tindall, Bennett & Shoup, is now with Hartig Rhodes Hoge & Lekisch...**Randal Buckendorf** is now at BP as Senior Environmental Attorney. **Christian Bataille** is now associated with the firm of Walther & Flanigan.

Jacqueline Colson has relocated from Anchorage to Soldotna...**John Corso** has relocated from Alaska to Washington state...The firm of Clapp & Peterson (fka Clapp, Peterson & Stowers) has hired **John Thorsness** and **John Wood**...**Blake Call**, **Michael Hanson** and **Barry Kell** have formed the law firm of Call, Hanson & Kell.

Paul Davis has joined the Anchorage firm of Preston Gates & Ellis...**Jeanne Dickey**, with BP, is relocating to Trinidad...**Steve DeLisio** has retired...**Zach Falcon** is no longer with Faulkner Banfield, but is now at the Dept. of Law...**Sheri Hazeltine** has relocated from Florida to Juneau...**Monique Hegna**, formerly with Lynch & Blum, is now with Preston Gates & Ellis.

Elizabeth Hickerson retired from the Department of Law (Attorney General's Office) effective September 1, 2004...**Paul Jones**, formerly with the Anchorage Municipal Attorney's Office, is now with Kemppel, Huffman & Ellis...**Douglas Johnson**, formerly with Beard, Stacey, *et.al.*, has now opened the Law Offices of Douglas G. Johnson in Anchorage...**Richard Johannsen** is with the American Embassy in Copenhagen, Denmark.

Jeff Killip, formerly with the Attorney General's Office, is now with the Southcentral Foundation, Health Systems Administrator/Program Manager, Behavior Health Services – Fireweed Clinic...**Barbara Kissner** is now the Senior Staff Attorney for the 5th Judicial Circuit in Marion County, Florida...**Chadwick McGrady**, former law clerk for Judge Mark Wood, opened his own law office in Wasilla on August 1, 2004...**Maurice McClure**, formerly with the Municipality of Anchorage, is now with the Office of Special Prosecutions & Appeals, Attorney General's Office.

Robert Manley & **Peter Brautigam** have formed the firm of Manley & Brautigam... **Margaret McWilliams**, formerly with ALSC in Fairbanks, is now with the Oregon Law Center in Coos Bay, OR...**Jeffrey Magid**, formerly with Guess & Rudd, is now with the firm of P. Dennis Maloney, P.C...**Doug Moody**, formerly with the Public Defender Agency, is now with the firm of Eide Miller & Pate...**Zach Manzella**, formerly with UAA, is now with the Law Offices of Steve Sims...**Mary Pinkel**, formerly with Ingaldson, Maassen & Fitzgerald, is now with the Disability Law Center of Alaska.

Anne Preston, formerly a Master with the Superior Court in Kenai, has relocated to Weslaco, Texas...**William Pearson**, former law clerk to Judge Michael Thompson, has joined the Anchorage firm of Foley & Foley as an associate.

Pat Reilly, formerly with the North Slope Borough Attorney's Office, is heading to Boston for a year at the Kennedy School of Government...**Virginia Rusch**, formerly with the Attorney General's Office, has opened the Law Office of Virginia Rusch.

Jean Sagan is now with the Growth Company, Inc. in Anchorage...**Scott Schillinger** has joined the firm of Davison & Davison as an associate...**Greg Silvey**, formerly Of Counsel to Guess & Rudd, has relocated to Seattle with the firm of Reed McClure...**Pamela Scott-Washington** has joined the firm of Gorton & Logue...**John Simmons** reports that he has retired from his position as Assistant Borough Attorney with the Kenai Peninsula Borough...**Margaret Stock** has been promoted to Associate Professor at the U.S. Military Academy at West Point.

Lynn Stimler has relocated from Anchorage to Kanuela, Hawaii...**Krista Schwarting**, formerly with Holmes Weddle & Barcott, is now with the Alaska Workers' Compensation Board...**Ken Truitt**, formerly with the Attorney General's Office in Juneau, is now General Counsel to South East Alaska Health Consortium...**Linda Thomas** has relocated from Anchorage to Palm Coast, Florida...**Peter Van Tuyn**, formerly with Trustees for Alaska, is now with the firm Bessenyey & Van Tuyn...**Terrance Thorgaard** has relocated from Fairbanks to Santa Rosa Beach, Florida...**Richard Willoughby** has relocated from Anchorage to La Grande, Oregon.

Joan Clover will be teaching the Family Law Course at UAA's Justice Center beginning in January.

Alaska firm makes mag "A-List"

Heller Ehrman White & McAuliffe LLP has been recognized again this year by The American Lawyer as one of the top 20 law firms in the United States.

"We are extremely proud to be on The American Lawyer's 'A-List' again this year," said Heller Ehrman Chairman Barry S. Levin. "We're honored to be listed along with so many outstanding firms and pleased that The American Lawyer recognizes the role of these important measures to our profession."

Heller Ehrman ranked Number 2 on the 2004 "A-List" and was one of only three West Coast-based firms - and the only firm with an Alaska office -- to make the list. For additional information about "The A-List" and the methodology for rankings, please visit www.americanlawyer.com.

— Press Releases

Kelley & Kelley changes name to Kelley & Canterbury

Kelley & Kelley changed its name to Kelley & Canterbury, LLC as of January 1, 2004. Kelley & Canterbury consists of **Leonard T. Kelley, Michaela Kelley Canterbury** and **Christopher C. Canterbury**. Kelley & Canterbury, LLC is also proud to announce that it has a new valley location at 816 S. Cobb Street in Palmer. Leonard T. Kelley and Michaela Kelley Canterbury practice primarily in the Anchorage office and Christopher C. Canterbury practices primarily at the Palmer location.

Coffee on at new Call, Hanson & Kell

Blake Call, Mike Hanson, & **Barry Kell** (the three amigos) are pleased to announce the formation of their new firm: Call, Hanson & Kell, P.C. Blake leaves ten years at Hughes Thorsness, Mike leaves 13 years at Allstate Staff Counsel and Barry is melding his firm into the new organization. CH&K will emphasize the defense of insureds in civil litigation, coverage determinations, extra-contractual litigation and general civil litigation. CH&K is located at 250 H Street and the coffee is always on.

Lindemuth is Dorsey & Whitney partner

The law firm of Dorsey & Whitney LLP announced Dec. 1 that **Jahna Lindemuth** of Dorsey's Anchorage office was elected to partner. She is among 13 attorneys who became partners at Dorsey & Whitney firm-wide this year. Jim Reeves, head of Dorsey's Anchorage office, said, "We are very pleased and proud that the firm has recognized Jahna Lindemuth's talents and accomplishments by selecting her to become a partner. She is an excellent lawyer. The skills she has demonstrated in the representation of her clients in litigation and alternative dispute resolution strengthen the firm's ability to provide a broad spectrum of legal services to the business community." Lindemuth has been a member of Dorsey's Trial Group in the Anchorage office since 1999. Her practice focuses on complex commercial litigation and appeals, including construction law, attorney malpractice defense, Indian law, and bankruptcy litigation. Ms. Lindemuth was born and raised in Anchorage. She clerked for Justice Robert Eastaugh at the Alaska Supreme Court, and she holds a B.A., summa cum laude, from Drew University and a J.D., Order of the Coif, from the University of California at Berkeley.

Dorsey & Whitney also announced that two associates have joined the firm's Anchorage office.

Carolyn Heyman-Layne joined the firm in December 2003 and has continued her practice in healthcare regulatory and corporate work, including compliance with HIPAA, Stark and Anti-Kickback law. Ms. Heyman-Layne will also practice various aspects of corporate law. Ms. Heyman-Layne returns to Alaska after working as an associate in the healthcare section of a large Pennsylvania firm.

Michal Stryszak joined Dorsey's Trial Group in October 2004 following a clerkship with Justice Robert Eastaugh of the Supreme Court of Alaska. Previously, Mr. Stryszak practiced securities law in New York and clerked for the Federal Court of Australia in Melbourne. He is fluent in Polish and proficient in German.

— Press Releases

New name chosen

Clapp, Peterson & Stowers has changed its name to Clapp, Peterson, Van Flein, Tiemessen & Thorsness. A committee of six came up with that name.

Names that were rejected or received only one vote included: The Peterson Law Group; The Van Flein Institute for Law and Public Policy, John Thorsness and Associates; and John Tiemessen and Friends. Servicemarks that were rejected included: "Defending the Faith for a Fee" and "Representing the Elite, the Monied and the Powerful Because Someone Has To And It Might As Well Be Us."

Inspector Maigret's Guide to Venue

By Peter J. Aschenbrenner

Alert readers may have enjoyed Inspector Maigret, who stars in the novels of Georges Simenon, not to mention the TV and film versions of these detective stories. Readers and viewers from common law countries may be intrigued by the judge who (sometimes) pads about after Maigret, sometimes addled, sometimes overly (un)helpful, often in the way, and always wrong. It's Inspector Maigret who, like Sherlock Holmes, is allowed the flashes of brilliance that make detective stories fun for the reader and so very un-fun for the judges.

But who are these judges? In the French legal system, the juge d'instruction has a wide range of powers at her disposal to collect necessary evidence. Recently, these judges work in teams, especially when white-collar crime or terrorism is involved. Perhaps the fuddled image of the juge d'instruction that Simenon gave the public had something to do with these reforms.

Common law lawyers and judges are bred to loathe the inquisitorial system of justice, which is what we call it. The idea of a judge loping about the countryside, with or without the assistance of a brilliant member of the Police Judiciaire such as Maigret, is a travesty of justice, even if that kind of justice may also be quite continental.

Take a venue. In this venue the judge is not confined to the bench. The judge may ask questions as she wishes. The judge may hear what she wishes and interrupt as she wishes. The judge may look at any documents she wishes to see. The judge may talk with the parties together or individually, usually in private. The judge may decide on her own say-so, make up her own mind, as to what she will disclose to any side. She may agree to be bound or not bound by any confidence made.

What have I just described? I've described, of course, the conduct of a judge in a settlement venue and also (in part) the conduct of a juge d'instruction. Of course, I've simplified matters.

Americans use a venue style in settlement proceedings which, if Inspector Maigret presented the ethics of discourse to them, Americans would probably dislike at first glance. Take this venue style out of France and put it into Alaska, put one of our own state court judges in charge, and you have something much more homely.

Now here's the problem. If American lawyers and judges want unrepresented parties to participate enthusiastically and with appropriate motivation in settlement conferences – and to be satisfied consumers of these services – and if there are going to be situations in which settlement conferences fail, then how do we introduce this venue to these consumers?

Let's start first with the inevitable challenges to the judicial conduct. To be more precise: the judge may fail the ethical bar in (1) negotiating the parties' switch from trial judge (in adversarial venue) to settlement venue, or (2) in her participation in the settlement venue, or (3) in her conduct back in the adversarial venue.

What might be needed here is waiver or perhaps, a bit of consent, or even acknowledgement or appreciation from the consumers. After all, it is weird to the person-in-the-street who walks into a courtroom and doesn't fully realize that everything others say about her will be taken down and may be used against her in a court of law and she'll never know what they said. But that is one of the several differences in the ethics of discourse, with its significant twin being the judge's soliciting and giving opinions on the value of the case.

Of course, the Alaska Court System expects its judges to do both jobs, delivering justice in an adversarial context and managing settlement conferences. So when Canon 3 calls on a judge (in the typical case) to perform "the duties of judicial office impartially and diligently" that aspiration should be read to require the judge to bring the parties along with her in making the switch from one type of venue to another and then back again.

Lawyers and judges in Alaska's larger cities may dismiss these issues, because other judges are available to engage parties in the ex parte conversations that adversarial venue condemns and which are essential in settlement venue. True, the plaintiffs' half of the civil litigants paid the price of a ticket to the doubleheader, but the other half isn't there willingly at all. The burdens on access to judicial services are real enough and there is an expectation gulf when a party (counselled or not) moves into settlement venue. It's the consumer's point of view that this little essay draws attention to. By the way, a good website for Maigret fans is www.trussel.com/f_maig.htm.

How we treat prisoners is important

On November 8th, a Federal District Court decision brought a grinding halt to military trials of suspected terrorists. The Court ruled that those persons detained at Guantanamo Bay are presumably prisoners of war under the Geneva Convention, entitled to minimum due process standards. Because there is a lot of charged rhetoric on how to handle terrorists, it is worthwhile to understand the trial court's ruling–a decision that will likely be reviewed by the US Supreme Court. As lawyers, we must be able to dispassionately explain the law to the public, free of political gloss.

Salim Ahmed Hamdan, a former driver for Osama bin Laden, was arrested in 2001 and brought to Guantanamo Bay in 2002. In July 2004, Hamdan was charged with conspiracy to commit four crimes (including murder and terrorism). In ruling on a motion to dismiss, the Court examined the Third Geneva Convention, which states that a prisoner of war must generally be sentenced by the same procedure as made available to the occupying power's military. While an Afghan POW does not have as many due process rights as an American in a Court-Martial, he generally must be present during the trial against him.

International legal experts feel that the clearest violation of the Geneva Convention in Guantanamo is the failure to determine whether individuals are POW's. Under Art. 5 of the Third Geneva Convention, "should any doubt arise" whether belligerents are POW's, they should enjoy POW status "until such time as their status has been determined by a competent tribunal." The District Court affirmed this requirement, relying upon both US Army's regulations and international law that whenever a detainee makes a claim, his status is "in doubt" until determined by a tribunal. The Court held that the classification of non-POW status by President Bush was not a decision by a "tribunal." Therefore, until a tribunal rejects POW status, the detainee enjoys the protection of the Geneva Convention as a POW.

How we treat prisoners in Guantanamo is important for two reasons. First, it establishes a minimum due process standards for aliens. A Guantanamo detainee may be tried in his absence, if disclosure of information would endanger witnesses, "other national security interests," or the integrity of intelligence or law enforcement sources. While the detainee's attorney may be present at the hearing, the attorney may not discuss that evidence with the defendant. He can never turn to his client and ask, "did that really happen?" The defendant's absence is not merely a hypothetical. Hamdan had already been absent during a portion of his pre-trial hearing and was scheduled to be excluded for two day's of trial testimony.

Second, the Geneva Convention is important to all governments. When its provisions are weakened, soldiers of all countries are put at risk. As the District Court warned, "The government has asserted a position starkly different from the positions and behavior of the United States in previous conflicts, one that can only weaken the United States' own ability to demand application of the Geneva Conventions to Americans captured during armed conflicts abroad."

—Submitted by the International Law Section of the Bar Association

Coming to the Juneau Convention in 2005!

Justice Sandra Day O'Connor U.S. Supreme Court

Alaska Bar Association Annual Convention and Judicial Conference
Juneau, Alaska
May 11 - 13, 2005

Photo from the Collection of The Supreme Court Historical Society. Photographed by Richard Strauss, Smithsonian Institution

Left to right, attorneys Mike Abourezk, Peter Kahana and Michael White, client Kay Bergonzi and outgoing ATLA President David Casey attend Sharp award. Michael White accepted the award for both himself and for Rick Friedman who was unable to attend.

White and Friedman receive ATLA Steven J. Sharp Public Service Award

The Association of Trial Lawyers of America (ATLA) presented its prestigious 2004 Steven J. Sharp Public Service Award to Alaska attorneys Rick Friedman and Michael White, and to co-counsel Mike Abourezk and Peter Kahana, as well as client Kay Bergonzi, for their effort in bringing justice to thousands of cancer patients.

Kay Bergonzi, a breast cancer survivor and single mother, agreed to be the representative plaintiff in a class action against Central States Health & Life Company of Omaha (CSO) on behalf of all the cancer patients the company had shortchanged, even though she would have gotten more money from an individual lawsuit.

From left to right: attorneys Mike Abourezk, Peter Kahana and Michael White, client Kay Bergonzi and outgoing ATLA President David Casey. Michael White accepted the award for both himself and for Rick Friedman who was unable to attend.

The award reads as follows:

The Association of Trial Lawyers of America hereby confers the Steven J. Sharp Public Service Award upon Michael N. White/Richard H. Friedman

In recognition of his contribution toward a safer; more just America and his advocacy on behalf of the late Carol Abourezk, lead client Kay Bergonzi, and other cancer patients. He made it his mission to find out how many cancer patients were being cheated by their insurance company, and he succeeded in securing justice for them now and into the future. His perseverance, in the face of overwhelming odds against a major insurance company, is inspirational. His fight for justice will help present and future cancer patients get the support they need in their battle with this deadly disease. His work has sent a clear message about the importance of the civil justice system and its role in securing fairness for all Americans.

July 6; 2004.

Rhoades donates $10,000 award

Anchorage District Court Judge Stephanie Rhoades has received a national award from the *Foundation for the Improvement of Justice* for her pioneering work with mental health courts in Alaska and elsewhere.

Judge Rhoades has donated her monetary award to a fund that helps therapeutic court participants meet emergent needs such as housing, medications, clothing, and food. The funds are made available when needed to prevent or minimize the consequences of crises and to avoid periods of instability that can impede a participant's recovery and rehabilitation.

Judge Rhoades oversees the Anchorage Mental Health Court, which works to divert misdemeanor offenders who suffer from mental disabilities from jail and into appropriate community treatment programs. The award recognizes Judge Rhoades for the "commendable improvements" in mental health courts that have resulted from her innovative efforts, as well as her dedication to cultivating therapeutic justice principles throughout the Alaska Court System. "She continues to extend her wealth of knowledge beyond practice, through educating others on both a state and a national basis," according to the award announcement.

The *Foundation for the Improvement of Justice* encourages improvement in our nation's justice systems through annual awards that recognize innovative programs that are proven effective and show promise as models for others. In 2004, eight organizations and individuals received the prestigious awards, which are each accompanied by checks for $10,000. Judge Rhoades was also named "Statewide Citizen of the Year" by the Alaska Chapter of the National Association of Social Workers (NASW) at its annual meeting in October. The award recognizes work that improves the quality of life for individuals, families, and community; demonstrates outstanding leadership; and exemplifies social work values.

Call for nominations for the 2005 Jay Rabinowitz Service Award

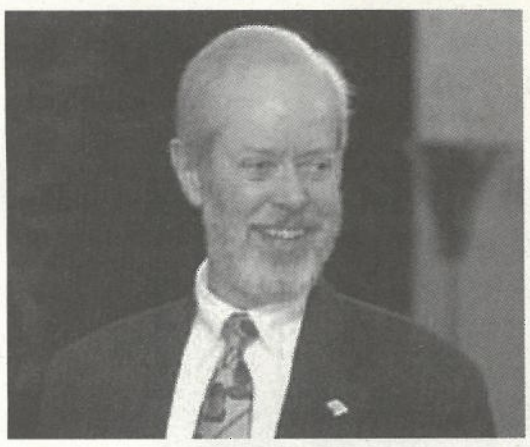
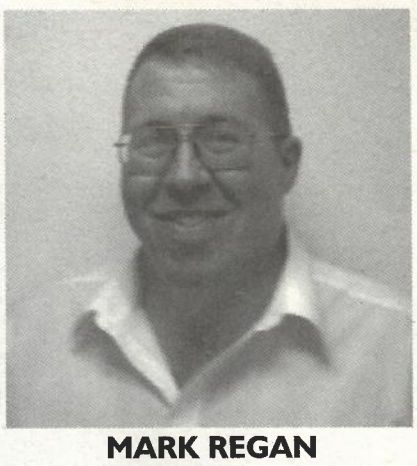
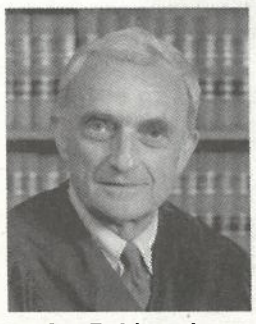


Photo courtesy of the Juneau Empire.

ART PETERSON
2004 Recipient



MARK REGAN
2003 Recipient



Jay Rabinowitz

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2005 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900. P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2005. The award will be presented at the Annual Convention of the Alaska Bar Association in May 2005.

Since 1896
Alaska Bar Association

Alaska Bar Foundation

Off the Record:
An Informal Bench/Bar Exchange

Thursday, January 20, 2005
8:00 a.m. – 10:00 a.m.
Hotel Captain Cook, Anchorage
CLE No. 2005-004
2 General CLE Credits
Registration Fee: $35 includes full breakfast

This is your opportunity to bring questions, problems, and suggestions to resolve areas of mutual concern to the court and the bar.

Presented in cooperation with the Alaska Court System and the Anchorage Bar Association

Faculty

Chief Justice Alex Bryner,	Alaska Supreme Court
Judge David Stewart,	Court of Appeals
Marilyn May,	Clerk of the Appellate Courts
Presiding Judge Dan Hensley,	Superior Court, 3rd Judicial District
Judge Morgan Christen,	Superior Court, 3rd Judicial District
Judge Greg Motyka,	District Court, 3rd Judicial District
Wendy Lyford,	Area Court Administrator, 3rd Judicial District
Cheryl McKay,	President, Anchorage Bar Association Moderator

Join bench and court system representatives for this annual breakfast discussion about problems and solutions to issues of mutual concern. Your questions and suggestions are welcome.

Fax or e-mail your questions for the court in advance to 907-272-2932 or info@alaskabar.org

Watch for the brochure. Or register by phone, fax or e-mail: 907-272-7469/fax907-272-2932/e-mail info@alaskabar.org.

American Bar calls for jury reform

The American Bar Association has released draft of recommendations to revamp the jury system, ranging from increasing juror pay and providing protection of jurors' privacy, to enabling juries to make inquiries in civil and criminal trials.

ABA President Robert J. Grey presented the recommendations Dec. 9 in Washington, D.C. during a meeting with jurors and a follow-up press conference, as part of the ABA's American Jury Initiative. He was joined by Supreme Court Justice Sandra Day O'Connor.

The bar's American Jury Project committee recommended a series of reforms in the courts that would improve the trial process, encourage increased participation by citizen jurors, and make the experience less cumbersome.

The bar's American Jury Project committee recommended a series of reforms in the courts that would improve the trial process, encourage increased participation by citizen jurors, and make the experience less cumbersome. Among its 19 recommended "principles," the ABA called on states to:

- Increase juror pay.
- Allow jurors to decline responding to embarrassing or unnecessary questions during *voir dire*, with a judge's permission.
- Keep private the home and work addresses and phone numbers of jurors, unless a compelling reason exists to reveal such information.
- Allow jurors to discuss a case among themselves before a civil trial concludes.
- In civil trials, allow jurors to submit written questions to the court.
- Give judges the option to allow written questions from the jury in criminal trials, as well.
- Allow jurors to take notes in any trial proceeding.
- Provide jurors with written instructions for deliberations.
- Prohibit employers from firing or laying off people who serve on juries.

The report and recommendations released Dec. 9 are drafts that evolved from a series of ABA studies on the state of the trial courts in the U.S. "The ABA currently has a significant body of work relating to jury standards. These standards cover general principles on the right to jury trial, jury selection, conducting a jury trial, deliberations and decision-making, post-verdict activity and other principles and practices relating to jury management. The first task of the American Jury Project has been to review the current standards and determine how they should be consolidated, improved or updated," says the American Bar.

Grey formed two groups in mid-2004 to accomplish the work of the American Jury Initiative.

The first group (which released its report Dec. 9) is the 23-member American Jury Project. Chaired by Phoenix lawyer Patricia Refo, the American Jury Project is working to produce a single set of modern jury principles that the ABA can propose as a model for courts around the country. The revised principles will be brought before the ABA House of Delegates during the ABA Midyear Meeting in February 2005 in Salt Lake City.

The Commission is charged with outreach to the public, the legal profession, and the courts.

The second group is the 21-member Commission on the American Jury. The Commission's honorary chair is U.S. Supreme Court Justice Sandra Day O'Connor. The Commission's co-chairs are New York Chief Judge Judith Kaye, Chicago lawyer Manuel Sanchez, and Oscar Criner, foreman of the Arthur Andersen Jury in 2002. The Commission is charged with outreach to the public, the legal profession, and the courts. (The 2005 Law Day activities is May will carry the theme of the role of juries in a democracy.)

Grey said on Dec. 9 that some of the American Jury Project proposals, such as note-taking, are simple and should not meet with much resistance from attorneys.

Other proposals, such as giving jurors summaries in the middle of trials, allowing them to ask questions and limiting *voir dire*, will likely be the subject of debate when the proposals are put up for ratification by ABA's House of Delegates.

"This is not rocket science that we are talking about, but it is stuff that bucks tradition and custom," Grey said in the Washington press conference.

Project chair Refo said almost all of the proposals have been adopted in part by various jurisdictions, but no court has adopted all in their entirety. She highlighted juror privacy and pay as two major issues.

"Jurors should not have to surrender their privacy at the courthouse door," she said. (The media also would be prohibited from taking juror photos.) The report also recommends that judges explain to jurors how the information they provide will be used and how long it will be kept on file. Jurors should also be informed that they can answer sensitive questions privately to the court and to parties, the report says.

Refo said that budget challenges in many states may make it difficult to increase stipends for jury service. Even so, she said, "It's absolutely critical that we find a way to adequately sponsor jurors for the time they spend in service."

In a Harris poll of more than 1,000 individuals across the U.S. taken for the American Bar in August, nearly 90 percent of respondents said they had been called for jury duty, but less than half actually served; some 84 percent of respondents said they believe jury service is "an important civic responsibility I should meet even if it is inconvenient," while just 34 percent said "jury duty is a privilege I look forward to fulfilling."

HI-TECH IN THE LAW OFFICE

How might law practice evolve over the next 20 years?

Structuring and managing a virtual law firm: A technological approach

By Joseph Kashi

Technology drives the direction of our economy and culture and hence our clients' needs. That, in turn, drives how we practice law.

Particularly over the past several years, technology has not only made structuring a virtual law firm relatively straightforward but also economically alluring due to greater flexibility and potentially lower overhead. Sooner or later, strong market niches will emerge favoring some form of virtual law firm. Whether a firm profits and thrives, or declines into irrelevance, depends upon its ability to direct its energies into embracing and adapting to a very competitive and technologically sophisticated future.

I believe that how well we use technology and cope with increasingly complex client problems whose solution requires input from several disciplines may be some of the most decisive factors determining how well we'll thrive in the 21st Century. How we structure our law practices may be key.

Most attorneys have already had at least some experience working in a "virtual" law firm setting without even realizing it. Over the next several years, efficient long distance collaboration among attorneys who may not have even physically meet will likely dramatically increase as Internet technologies finally make the process fast, easy and efficient.

I'll examine several possible models of how attorneys can leverage new technology to realize the "virtual law firm" as a viable means of organizing law practices. This article includes my tentative thoughts about how the Internet's next generation of application programs may transform how we practice law. If you have any experiences or thoughts along these lines, or criticisms of what I suggest, I'd welcome hearing from you at kashi@alaska.net.

What is a "virtual law firm?" I believe that it's a law firm that:

1. has a stable core group of attorneys;

2. has established collaborative relationships with other, specialized law firms that possess expertise that's occasionally needed;

3. is glued together with appropriate computer and telecommunications technology; and,

4. expands and reduces personnel as needed.

"This article proposes some thoughts about making discovery of electronic evidence a systematic and increasingly efficient process."

The concept of the "virtual law firm" has been with us for decades; only our explicit articulation is new. It's already commonplace for attorneys to associate and work closely with local counsel in other states or distant cities as the need arises. Attorneys regularly associate as needed with other attorneys who have known expertise in specialized areas like mass torts, maritime law or labor law.

It's already common for several law firms scattered across the country to join forces on major cases, such as tobacco litigation or the Exxon Valdez litigation, that are too big for any single law firm. Attorneys now regularly work with professional and paraprofessional staff who either telecommute or otherwise work off-premises. We are comfortable working with temporary contract investigators, court reporters, attorneys, expert witnesses and researchers whom we may not physically meet very often, if at all. In large corporate legal departments, government agencies and national law firms, we often have little physical contact with at least some of the co-workers upon whom we depend and with whom we frequently work. Solo practitioners expand the range of legal resources available to their clients, perhaps by consulting Martindale-Hubble directories when referring clients to attorneys in other jurisdictions. In a very real sense, the voice telephone and later the fax machine were the first transitions away from working exclusively with people whom we typically met face to face.

Until the past several years, however, working both with distant counsel and with telecommuting employees has been somewhat awkward and slow, primarily dependent upon telephone and fax. Email has recently eased this burden, making communication easier even as we reduce the frustration of voice mail and missed telephone calls. Likewise, electronic transmission of data files as e-mail attachments has expedited our ability to work together. But Email and easy data file transmission are only a beginning, a mere taste of what is to come. The Internet is potentially far more useful.

Here are some of the changes and opportunities that I anticipate as we transition toward a virtual law firm environment.

Providing non-legal services

We'll likely see a virtual law firm that thrives by offering a passel of subsidiary services that are needed by our clients but are perhaps somewhat outside the boundaries of traditional law practice, such as general consulting, risk management, technology, preparation of non-litigation exhibits and similar services as part of our overall client services. The services that we might offer are limited only by our imaginations and by applicable ethical and statutory standards.

A few examples and possibilities readily come to mind. CaseShare, a spinoff of Holland and Hart, Denver, now provides virtual private network services, intranet and database programming, computer graphics, and other technology services not only to litigators but also to non-litigation technology clients. I can easily foresee specialized construction law firms, or their subsidiaries, providing more operational services such as project management. Construction claim law firms are already advising their clients how to structure transactions, are writing the contracts for all of the involved parties, and are helping their clients ride herd upon lagging contractors and vendors. It's only a small step, a step with manageable ethical concerns, for that law firm to hire professional engineers and the other specialized personnel necessary to fully flesh out the ability to help a client inspect and oversee a project from inception through the final claims process. As it is, most of our clients contact us whenever they hit a snag in their business dealings.

As attorneys become comfortable working in a virtual environment, my sense is that we will see several trends arising from the desirability of attorneys becoming more expert in the substantive businesses whom they serve. In addition, the successful attorney must become even more computer literate because this is the only way that he or she can successfully coordinate the virtual team and effectively bring to bear all of the cooperating disciplines upon the client's problems.

Legal practice will become more specialized

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

Hiring and training employees

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

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

The traditional law firm places great emphasis upon grooming promising attorneys and staff for the long haul, training less experienced staff, gradually giving them more authority as they gained experience and ability. Generally, the more experienced senior attorneys understood, and could do, everything assigned to new staff and thus could effectively mentor and supervise less experienced staff. Senior partners met with the client and set strategy, often being the only persons who really understood the Big Picture. Small portions of a matter, along with explicit directions, were given piecemeal to less senior staff. Later, as information slowly worked its way to senior attorneys, the efforts of many junior people were gradually combined and sharpened by more experienced senior associates and junior partners. Ultimately, the finished product arrived back on the desk of the partner in charge of the case, who theoretically checked the work for quality and judgment.

The days of the generic junior attorney and staffer are gone along with the pencil and paper era. We need to hire and retain better trained, technically adept staff, many of whom must have skills that most lawyers currently comprehend only with difficulty. Such employees are in high demand and very mobile. Rather than directing such employees in detail, we need to motivate and lead them. We'll need to adapt our management style to a more collegial, democratic approach that better suits an increasingly professional staff.

We now require employees who are comfortable working with advanced computer systems and who can learn readily new techniques and approaches. Because advanced technology requires advanced skills, we'll have to invest a substantial amount of time and money in train-

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How might law practice evolve over the next 20 years?

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ing employees to a mix of constantly evolving skills through specialized outside trainers. And, rather than training new staff, the senior partners will need to take the same training themselves. Employees with specialized knowledge are no longer interchangeable and, unless we maintain a professionally rewarding place of employment, employee mobility will increase as law firms compete for better educated, more productive paraprofessional staff.

The virtual law firm has some real staffing advantages. Although there is a strong premium upon highly knowledgeable senior staff, routine clerical chores such as filing and low level data entry, conversely, either disappear or become simpler and require less case-specific knowledge. That allows a firm to be less dependant upon highly experienced and costly clerical employees.

The internet is forcing law firms to restructure

Internet based legal applications are not yet able to fully compete with the features, stability and maturity of tried and true desktop applications. Until they catch up, performance and security issues will limit the range of features. However, when that day arrives in the near future, and as mainstream web-based legal applications mature, they'll clearly influence not only how and where we practice law but also how we organize our law firms, or should I say our practice associations. One thing is sure, though: traditional law firm structure will change greatly.

Mainstream use of Internet-based legal practice systems will force law firms to change into radically different, flexible practice associations that respond more quickly to market and technological changes. Future law firms will likely adopt a more flexible and democratic horizontal structure that facilitates the quick and efficient flow of critical information, something that's critical to the quick parry and thrust of almost any law practice. Further, almost every other industry has found that flexible business structures also lend themselves to better profit margins. Thus, like the U.S. military, law firms--particularly litigators-- need to "re-engineer" their operations to emphasize excellent internal communications and fast, precision delivery by a small, often ad hoc team. Information has always been power, methaphorically, but it's now king.

Why are a law firm's structure and internal communications becoming paramount? In the paper and pencil era, we used the brute force of many associates and paralegals to manually collect and process the vast amount of information required by any significant litigation or transaction. Because the raw data could not be readily analyzed by a single person in the pencil and paper era, we resorted to extensively summarizing the data. We added intermediate layers to supervise employees and to control the quality of the paperwork as it gradually flowed to the ultimate users. Nasty surprises resulted in court or negotiations when our summaries did not match our evidence. Potentially important raw data and research, and a coherent overview of the entire matter, is often blurred or lost in the process. Information may get to the decision makers too late. Staffing costs became prohibitively expensive and clients have become less willing to pay such costs. Continuing to insert several potentially superfluous layers of associates and junior partners between the senior litigator and those gathering the raw data simply causes critical information to move too slowly. Too many intermediate layers and clerical staff not only reduce the firm's productivity and responsiveness but badly hurts its overhead, increasing costs to the point where either profits or competitiveness are stifled.

To some decreasing extent, traditional law firms continue to employ these vertical "channels" as the primary conduits for information flow within a firm. But, those sorts of law firms are expensive, counterproductive anachronisms in an era where a fast Internet connection makes a paralegal on the other side of the continent almost as accessible as one down the hall. As a result, an Internet-based virtual law firm can leverage the effectiveness of a few highly competent staff, regardless of where they live. As we enter the era of web-hosted document-imaging files, we don't even need to be overly concerned about where the paper files, if any, are located.

I've identified below several possible models of how the forward-looking law firm might consider structuring itself. There are several possible structural solutions, most of which use networking technology to flatten a law firm's overall structure, allowing freer electronic communication between all personnel, regardless of rank, seniority or geographical location.

Ad hoc teams. One approach may be to form within the firm small ad hoc action teams. Such teams would form and dissolve in response to individual projects or to specific aspects of a very large case, with their results quickly available to the ultimate decision-makers. These teams should include professionals already knowledgeable in specialized areas, to ensure a competent immediate response. Action teams should have their own budgets and their choice of the firm's personnel. The team's members would cooperatively process and share information through remote networking technologies. This approach might be particularly useful in medium to large litigation firms. Web-hosted applications are particularly useful to this sort of action team.

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

Most commonly, the law firm of the future will likely tend toward the virtual law firm, combining a small permanent core group similar to military cadres or large construction contractors, drawing upon contract professionals and paraprofessional staff as necessary for particular projects. This firm's ability to maintain a broad network of cooperating joint venture partners with expertise in different areas of the law will be crucial to future growth into new areas of practice when existing practice areas stagnate. I believe that this model will prove the most feasible for the average small to medium law firm of the future. This approach will only work efficiently if and when the data, documents, and case management and collaborative technology are immediately available across the Internet in a responsive, high bandwidth technological environment. . Although practicing with people we rarely meet physically may seem unnerving, upon reflection we see that we do it all of the time using plain, old-fashioned telephone service. The only difference is that Internet technology makes the process smoother and more efficient. One possible advantage to this structure, compared to the preceding two law firm structural models, is that the core group will already be familiar about working with each other, reducing possible personal clashes, startup times and initial confusion.

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

Many of these thoughts about structuring a virtual law firm won't be directly applicable to your situation. However, cost-effective technology is pushing the entire economy, and thus law firms, to become much more streamlined and efficient. Making the leap is now more a question of changing our mindset and working habits than a technological issue.

Most likely, a slimmed down traditional law firm structural model will hybridize with the pure Internet-based virtual law firm to produce an intermediate law firm model that has both solidity and flexibility, a model which I believe will retain long term viability.

Regardless of which approach is taken, we'll see law firms adopting a more horizontal structure that emphasizes networking, document imaging and electronic communication. Expect to see radically different law firms that feature reduced litigation staffing, lower overhead and reductions in the number of clerical staff, associates and mid-level partners.

There's little future in simply hunkering down and waiting for the asteroid to hit.

TALES FROM THE INTERIOR

I was a law school pimp

By William Satterberg

I have not always been a lawyer. In fact, during my growth years, I have had numerous jobs, including construction worker, firefighter, soda fountain jerk, just plain jerk, and, perhaps most notorious of all, law school pimp. At least, I was sort of a pimp. It took time for me to grow into the position of being a pimp. Moreover, my qualifications were not that immediately apparent, but I still had potential for the position. As usual, there was a training period to be endured. Only after one has proceeded through a full course of training, do they become qualified for this most esteemed position. The entry requirements, as well, are rather stringent. Not everybody makes the grade. It is a rigorous program that concentrates upon developing clientele, employee management, and those certain legal issues to be inevitably encountered.

My pimp career began innocently enough. The transition was subtle. During my college years, I was a student travel representative for Alaska Airlines. My job required me to sell tickets to naïve students who wanted to return home for vacations and other events. Alaska Airlines was a fairly user friendly company at the time.

As such, I was able not only to develop my own advertising campaign, but actually operated a defacto campus travel agency, complete with commissions, coveted familiarization trips, and slick media advertising produced by a now defunct agency in Seattle. I was touted by Alaska Airlines as the "Lone Arranger," due to the fact that I was the only student travel representative at the University of Alaska. It was during those tender, formative years that I learned my valuable sales skills. These skills would stand me good throughout the later years of my life and form the basis for a promising trial career. After all, most trials are simply exercises in marketing.

I took special delight in throwing people's baggage across the pavement, to the horrified look of passengers who mouthed silent obscenities at me through the jet's windows. The best trick, however, was to leave a dog kennel on the ramp as the jet backed out from the gate.

My first year as a student travel agent for Alaska Airlines was surprisingly successful. My studies in chemistry, to the contrary, were less than impressive. During that period, I developed a respectable clientele, sold lots of airline tickets and got swell prizes. Buoyed by my unprecedented success, I seriously began to consider a career with the airline. Not only was the prospect of being a pilot attractive, but my promise as a theoretical chemist was rapidly dwindling. Obviously, something had to give.

During the summer of my junior year in college, out of pity for my poverty, the airline hired me to be a ramp worker. The decision came in large part from the guilt trip that I laid upon the management, effectively maintaining that they had created me and now owned me. They could not allow me to walk the streets of my hometown of Anchorage unemployed for the whole summer, simply expecting that I might return to continue my college career. Besides, although I worked in sales, I was able to convince them that I was not necessarily a wimp. I insisted that my aspirations were not to become a flight attendant, but a pilot. As such, when the airline reluctantly hired me during the summer of my junior year to be a ramp worker, perhaps it was for the comic relief. After all, the job required manual labor – a new concept for me.

"Only after one has proceeded through a full course of training, do they become qualified for this most esteemed position."

Admittedly, ramp work was much different than ticket sales. First of all, all of the other ramp workers thought that I was a wimp. In response, I told them not to believe my mother. I took care to gently explain to them that my sensitivities were not as a flight attendant prospect. Still, I was the campus ticket agent. That factor, alone, was good enough to create reasonable suspicion, along with my daily mother's notes attached to my gaily colored cartoon lunchbox. In addition, being "college educated," I could speak English rather fluently, comparatively speaking. As such, I had to endeavor seriously to unlearn my English. If I wanted to be a respected ramp worker, my first task was to pick up profanity, starting out first with the simple phrases, and then moving into conjoined modifiers. After all, I was a "cherry."

On the other hand, there were certain things associated with being a ramp worker that were most enjoyable. For example, I was issued a set of stained blue coveralls (everyone else had white coveralls) which, even though they did not have my correct name on them, still fit rather loosely. The name thing was not really that important. After all, I really did not mind being called Linda. I also got my own time card, and began to learn the mysteries of straight-time versus overtime, and how to engage in creative time accounting, later to prove a "must" for all successful lawyers. For a long time, I thought that straight-time only pertained to people who do not plan to be flight attendants.

I also was issued a set of kneepads, which I refused to wear. My suspicions were alerted. The wimp thing was already getting old. I did not want to encourage anybody. Kneepads were simply too obvious.

In addition to the obvious, I also began to learn the subtle benefits of being a ramp worker. For example, I eventually was able to swagger around on the tarmac below the jet, looking up at passengers with their noses pressed against the glass watching me work. Before long, I could scratch myself publicly just like a baseball player while feigning total oblivion to those who gawked in shock. I also got to drive fun toys, including belt loaders, mail tugs, (it took me a while to figure out the spelling), and the infamous "biffy truck." I took special delight in throwing people's baggage across the pavement, to the horrified look of passengers who mouthed silent obscenities at me through the jet's windows. The best trick, however, was to leave a dog kennel on the ramp as the jet backed out from the gate. That stunt always brought a quick response. I also learned that it was expected to blame the mistake on someone who had skipped work that day.

Ramp workers were a team. We all got to sit together at a separate table in the Northwest Airlines lunchroom during our breaks. That is, everybody except the biffy truck driver. He got his own table. As it turned out, I learned that whoever was unfortunate enough to be assigned biffy truck duty ordinarily had upset the management, and, in retaliation, was given the most unpleasant task of having to empty the jet's sewage pots. These drivers were the "untouchables" and always found themselves relegated to having to eat in the corner by themselves. You could always tell the biffy truck drivers by both their distinctive smell, and the fact that the blue "biffy juice" never seemed to come out of their hands or out of their coveralls. They were a special breed with a close personal bond. Suffice it to state that I, as a rookie, did my fair share of turns as biffy truck driver.

For example, I learned that once freight entered the belly of the aircraft, its future could be most uncertain. Boxes of peaches and apples were always fair game for accidental breakage.

There were other advantages of being a ramp worker, however. For example, I learned that once freight entered the belly of the aircraft, its future could be most uncertain. Boxes of peaches and apples were always fair game for accidental breakage. Traditionally, when the first load of king crab came in from Kodiak, a box would always break open accidentally in the warehouse at a time when everybody just happened to have plastic bags in their back pockets in order to help clean up the mess. Even the biffy truck driver got to pick up some pieces. Needless to say, the crab could not be sold on the market, so we had to dispose of it by whichever way was most convenient.

I also learned about other tricks of the trade. For example, I learned that, even though the belly of a Boeing 727 might appear to be full, there was always the ability to cram in more freight. It was simply a question space management. As an experienced lead worker told me once as he was kicking with all his might to stuff boxes of Sunrise Bakery bread bound for Nome, Alaska, into holes that simply did not exist, "Remember one thing, Bill. Bread *always* fits anywhere."

Eventually, the airline became wise to the shenanigans of its ramp workers, and the fact that the freight did not always show up either in good shape, or at all, to the Bush communities. Apparently, somebody had the audacity to complain. As such, when I returned for my second summer of employment, new rules were in place. The FAA was watching us. Different tactics had to be employed. Fortunately, ramp workers were eternally inventive. This formed another basis of my training for my later years as a pimp.

Following my first year as a ramp worker, I had returned to the University and continued on as a ticket agent. When I returned to work for the airline the following summer, my coworkers again were somewhat suspicious, and began to wonder whether or not I had alternating persuasions. Once again, it took me some period of time to convince them that my chosen career was to be a pilot, and not a flight attendant. Regardless, for several weeks, I was relegated to familiar biffy truck duty. I figured that they were just testing me.

By the conclusion of the second summer, I left actually believing that I had finally been accepted by the ramp workers as one of their own. True I was a rookie, but I had even survived my baptism of biffy juice when the sewage safety valve malfunctioned on a Boeing 727 one afternoon, and completely coated both myself and my coworker with the delightful blue daiquiri. I maintain to this date that it was a valve malfunction, even if my coworker still insists that I pulled the remote valve before he had hooked up the hose. Fortunately, the juice matched our blue coveralls. With the exception of the occasional piece of toilet paper which hung from an earlobe or was pasted to the back of the uniform, nobody was much the wiser, unless they got close enough to smell us. Still, my second year as a rampee went well, mainly because there were new recruits to pick on, and I was able to escape much of the hazing that I had to endure the previous year.

My third summer was when the surprise came. By then, I had finished my first year of law school. Any respect which I had earned the previous two years with my coworkers had been lost. I was now one of "them lawyer guys." Everybody on the shift wanted to ask me for lawyer advice and to say "some lawyer things." Not that it mattered much. As destiny was about to show, I was no longer able to work as an esteemed ramp rat. Rather, I had been assigned by management to work with "*them wimmin*" in fleet service.

Fleet service was every ramp rats' worst fear. Fleet service was that group of two middle-aged ladies, Ruth and Alice, each of whom weighed approximately 120 pounds, and who were charged with cleaning the interior of the aircraft when it would arrive in Anchorage. In addition to cleaning the aircraft, which included scrubbing down toilets, mopping up vomit, and crossing seatbelts while simultaneously broom sweeping the floor, the ladies in fleet service were also given the task of stocking the galley with food and beverages.

It was the requirement that the galleys be stocked with heavy food carriers that created the problem, ultimately, with the airline. Apparently, some bureaucratic OSHA representative had unilaterally decided that neither Ruth nor Alice, nor any middle-aged woman for that matter, was physically capable of lifting the 120 pound carriers in order to place the food onto the shelves into the first

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TALES FROM THE INTERIOR

I was a law school pimp

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class cabin. Ramp rats, fortunately, did not have to deal with such mundane issues. Ramp rats were protected by Union regulations to lifting no more than 80 pounds, individually, after which they could demand help. Why the women were complaining about the 120 pound carriers was beyond me. After all, they had been doing it for years.

Regardless, when I returned to Anchorage for the summer of my first year of law school, I was told that I had now been assigned to fleet service. I complained about my new post, but without success. It was a take it or leave it proposition. By then, the secret idea of going to flight attendant school had lost its appeal, so I decided that I would reluctantly accept the only option given to me, and work with the women. In some respects, it made sense. By then, the ramp rats were beginning to give me quite a bit of guff with respect to my lawyer education. The women seemed to be much more sensitive and actually to my liking. Besides, they certainly smelled better. The way I looked at it, perhaps, during the summer, exposure to the women would not be that bad after all. I might actually grow to like the idea of being a flight attendant once again.

It was not long before I began to realize that fleet service had distinct benefits.

First of all, I was the only man on the crew. The status of being the sole male gave me a certain amount of attention from the two females with whom I had to work. Admittedly, they were both married, and old enough to be my mother, but I still enjoyed the attention. It was something that I had yet to experience in any regular form. Nor did I mind them calling me Linda. I had actually grown accustomed to the name over the past two summers.

Secondly, I soon realized that, although ramp rats were able to pilfer and pillage among freight bound for Kotzebue and Nome, I had the enviable treat of being able to eat leftover first class meals, complete with leftover wine, at the end of shift. Moreover, I could sit in a luxury first class cabin during my dining and pretend to be rich just like Red Skelton's "Freddy the Freeloader." Not only that, but I soon learned how to turn on the auxiliary power unit for the jet. For amusement, I would sometimes sit in the captain's seat during late evening hours and play with the controls. It was amazing how responsive the jet was once the hydraulics were activated. Not that I was necessarily breaking the rules. In fact, I had been instructed on how to turn on the auxiliary power unit, so that I could clean the aircraft in the late evening hours by myself. I correctly figured that, as long as I did not play with the landing gear lever, no one would ever get wise to my games. The throttles were a different issue, however.

Fleet service also had additional advantages. For once in my life, I did not smell like biffy juice every night. I rarely broke a sweat, even though I very seldom did so as a ramp rat, either. Furthermore, as time developed, I actually developed a unique friendship with both Ruth and Alice. Although the women originally regarded me with understandable suspicion, wondering if I would ever be capable of lifting the carriers like they could, they eventually grew to respect me. They even began to share their innermost secrets with me. It was then that I realized that I had a distinct advantage to being on fleet service.

Ruth and Alice activated a calculated plan to find a girlfriend for me. To do this, they began to talk me up with the various flight attendants who would come into town. Years later, I learned that Ruth and Alice had extolled my various strong points while, at the same time, scrupulously avoiding issues pertaining to my self-proclaimed sexual prowess.

Alaska Airlines, enacting one of its many desperate cost cutting measures, decided that same year that it would no longer allow its flight attendants to go into the Operations room to kill the intervals between flights reading magazines, primping, or engaging in a social session. Rather, the flight attendants were told that they were no better than fleet service, and that they, too, could help clean up the aircraft during layovers. Clearly, I had stumbled onto something which many men would kill for.

Initially, there was little communication between myself and the flight attendants. Generally, they were rather upset that they had to engage in such lowly tasks as cleaning off seats, fluffing pillows, and crossing seatbelts. Eventually, however, the crews began to loosen up, and that is when Ruth and Alice made their move for me.

Whether the actions that followed were born out of true compassion, occupational boredom, or a desire to play a cruel joke upon the prissy flight attendants may never be known. It does not matter. The results were the same.

Ruth and Alice activated a calculated plan to find a girlfriend for me. To do this, they began to talk me up with the various flight attendants who would come into town. Years later, I learned that Ruth and Alice had extolled my various strong points while, at the same time, scrupulously avoiding issues pertaining to my self-proclaimed sexual prowess.

Obviously, the conversations were quite brief with the flight attendants, but they nevertheless were effective. Before long, I found myself actually being asked on various dates, or, in the alternative, having Ruth or Alice strongly suggest that I speak to a particular flight attendant who happened to be working in my section of the aircraft. Their nefarious plan worked. By the middle of the summer, the nerdy first-year law student had an active dating life. To deal with complex scheduling issues, I actually had a room on standby at the Anchorage International Inn. Time had become a valuable commodity and could not be wasted commuting to work. Moreover, I learned that it was best not to take my dates home with me, after my litter sister, Julie, once caught me in a compromising situation and insisted upon an outrageous bribe. Although I was certain that Dad would approve of my escapades, I knew that Mom would have distinct opinions and reservations, which were best left unexpressed. After all, Mom was still packing my lunchbox for me.

As matters developed, I was fortunate. The three flight attendants who I ultimately ended up dating all had separate flight schedules, although two of them were best friends. With a little planning, I was able to arrange my own schedule so that I was always available to go out with one of them when they were in town. I figured it was a symbiotic sort of thing, in that we all benefited. Besides, Stacey and Terry, being the best of friends, seemed to have no objection to sharing me. Denise, on the other hand, had obvious designs towards marriage, and actually asked me to take her to meet my parents one time. Mom, as always, was quite polite and forthcoming. Dad, on the other hand, sat at the end of the table and kept giving me the 'ole college wink. For once, Dad was convinced that I might not become a flight attendant, after all. In my haste, I had previously forgotten to tell him that the flight attendants that I was dating were female. Dad was obviously relieved over my choices.

The remainder of the summer went remarkably fast. In addition, I soon developed a surplus of activity in the social department. I was on the edge of an overload. My reputation as a local Don Juan with the airline grew quickly. Predictably, it was not long before the ramp rats on the tarmac below realized that I had the best of all jobs. Accordingly, when the mid-summer change of shift schedule became open for bid, it did not surprise me when I saw that several of those who had openly criticized me for being a

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INTERESTED IN SUBMITTING AN ARTICLE TO THE ALASKA BAR RAG?

The Bar Rag welcomes articles from attorneys and associated professionals in the legal community. Priority is given to articles and newsworthy items submitted by Alaska-based individuals; items from other regions are used on a space-available basis. We recommend that you follow the writers' guidelines below:

- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Editorial copy deadlines: Friday closest to Feb. 15, May 15, August 15, and Nov. 15.
- Author information: Make certain the author's byline or identity is on the top or bottom of the manuscript.
- Ideal manuscript length: No more than 3 single-spaced or 5 double-spaced pages, non-justified.
- Format: Electronic files should be in text, Word, or Word Perfect format.
- Fax: 14-point type preferred, followed by hard copy, disk, or e-mail attachment.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
- Digital Photos: If digital photos are submitted via e-mail, please reduce to 70 percent of size if possible and provide at medium-resolution or better. (Low-resolution .jpg format photos do not reproduce well in print.)

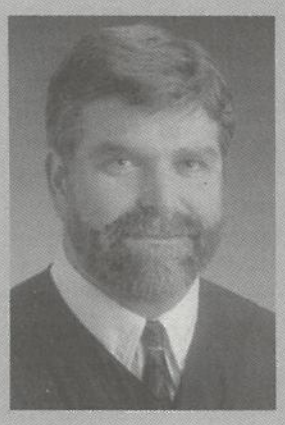
A Special Note on File Nomenclature (i.e. filenames): Use descriptive filenames, such as "author_name.doc." Generic file names such as "Bar Rag September" or "Bar Rag article" or "Bar article 09-03-01" are non-topic or -author descriptive and are likely to get lost or confused among the many submissions the Bar Rag receives with similar names such as these. Use, instead, filenames such as "Smith letter" or "Smith column" or "immigration_law."

Submission Information:
By e-mail: Subject line: "Bar Rag submission." Send to info@alaskabar.org
By fax: 907-272-2932.
By mail: Bar Rag Editor, c/o Alaska Bar Association, 550 W. 7th Avenue, Suite 1900, Anchorage, AK 99501

IN MEMORIAM 2004

Hon. Samuel D. Adams

The Alaska Court System is greatly saddened by the news that Anchorage District Court Judge Samuel D. Adams, 48, died Tuesday, September 21, 2004, while on a hunting trip. Born in Anchorage in 1956, Judge Adams was a 1980 graduate of the University of Alaska Anchorage and received his law degree from the University of Oregon in 1985. He served as a Law Clerk for Palmer Superior Court Judge Beverly Cutler from 1985-86, then worked in private practice for several years before joining the Alaska Department of Law in 1988. From 1988-1999, he served as a state prosecutor in a variety of capacities, pursuing welfare fraud cases, felony property crimes, and fish and game violations, among other matters. Judge Adams was appointed to the Anchorage District Court by Governor Tony Knowles in 1999 and served with great distinction until his untimely death.



Throughout his tenure on the bench, Judge Adams impressed both those who worked with him and those who appeared before him with his compassion, his thoroughness, and his ever-friendly manner. According to Anchorage Clerk of Court Alyce Roberts, "he worked well with everyone because he was so down-to-earth and easy to talk to. His death is a tragic loss to all of us, and it's a very sad day at the Anchorage courthouse."

Chief Justice Alexander Bryner of the Alaska Supreme Court remembers Judge Adams as "a fine jurist whose warm sense of humor, wealth of life experience, and personable nature brought a needed human touch to court proceedings. He respected everyone and handled cases with great care. In turn, he enjoyed wide respect from attorneys, litigants, and his fellow judicial officers. The people of Alaska have lost a dedicated public servant, and we at the court have lost a very good friend."

Judge Adams is survived by his wife, Catherine Call, and three children. The Alaska Court System extends its deepest sympathy to his family.

John Jason 'Jake' Ketscher

John Jason 'Jake' Ketscher died Friday, April 9, 2004. He was 31.

Mr. Ketscher was born March 28, 1973, in Fairbanks, to David and Tamara Ketscher. The next day, he was on a bush plane to Bettles, where his parents established Sourdough Outfitters and Bettles Trading Post. He shot his first moose at age 9 and mushed a dog team from Anaktuvuk Pass to the Gates of the Arctic at 12. He guided trips in the Brooks Range, achieved Eagle Scout ranking and received his pilot's license at 17.

"Jake's parents raised him in the Lord, and he was baptized in the icy Koyukuk River at 12. He read through the Bible almost every year, in addition to classical theology and church history," according to his family.

He attended Bettles Field School for five years, was home schooled for three years and attended high school in California. He graduated from the University of Alaska Fairbanks with a major in political science and was recognized as the Outstanding Political Science Student. He received his law degree from the University of Wyoming.

Hired by the state Public Defenders Office, he moved to Kodiak. He married Christy Van Doren on Aug. 5, 2001. On Sept. 20, 2002, their son Paul Arktos Ketscher was born. "The family did not have a television, instead holding family devotions, reading books and taking 'Creation Appreciation' walks," said his family.

In Kodiak, Mr. Ketscher was active at Holy Trinity Lutheran Church, the Lions Club, the City Planning and Zoning Commission and the Public Safety Board. He served as a member-at-large of the UAF Alumni Association. The Ketscher family moved to Kenai in December 2003, when he accepted the position of assistant district attorney.

Mr. Ketscher is survived by wife, Christy; son, Paul Arktos Ketscher; parents, David and Tamara Ketscher of Reedley, Calif.; grandparents, Leon and Peggy Gearhart of Fresno, Calif.; father- and mother-in-law, Philip and Connie Van Doren of North Bend, Ore.

Donations may be made to the Jake Ketscher Memorial Fund at any Wells Fargo Bank.

TALES FROM THE INTERIOR

I was a law school pimp

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sissy and who had kicked my lunch pails were now bidding for my same position, trying to use their seniority to bump me back to being a ramp rat. The threat was real. The attacks came from all quadrants, except one. It was to that one quadrant that I appealed for sanctuary.

By then, Ruth and Alice had clearly grown to like me. I was their success story. It was like an airline version of My Fair Lady. These ladies had single-handedly turned me from a nerd into a celebrated flight line stud muffin in Anchorage. As such, they were not about to lose me. Ruth and Alice went directly to management. They pointed out how ramp had never wanted to work with fleet service. Using some innovative legal research, they convincingly argued that ramp workers could not be assigned to fleet service due to Union restrictions. They reminded management how ramp had been successful in its earlier arguments to not be assigned to fleet service as a separate unit within the airline, which is why I had to be hired separately. Ruth and Alice then brought home the point that I was the senior male member of fleet service and that, because fleet service was a separate section, I clearly had seniority for bidding. The argument was most compelling. It was then that I learned certain aspects about making legal presentations. Not only were Ruth's and Alice's arguments thoughtful and well laid out, but my tears helped, as well. To this day, at various times, I have remembered to use all of their tactics in the courtroom. Justice won out.

In the end, I was told that I had retained my fleet service position. Ruth, Alice and I gleefully giggled, hugged each other, and jumped for joy. It was then that I realized that I had a most marketable commodity. The ramp rats' efforts to throw me off of fleet service had failed. Adopting different tactics, my adversaries then disclosed to me the real motive behind their sneak attack. It was not personal, after all. They were just lonely for female companionship. After hearing of their plight, I took pity on them. They, too, wanted to go out with gorgeous flight attendants. It was then that I forgivingly explained to the lowly ramp rats that I could assist them in achieving their desires, but for a price, of course. After all, I was training to become a lawyer. For the remaining weeks of the summer, a diabolical plan emerged. If it worked, it would be a win/win affair.

Adapting Ruth's and Alice's proven techniques, I would talk up a particular ramp worker to a flight attendant, extolling the worker's virtues, and explaining that he did, in fact, likely have an IQ above 10. Admittedly, the discussions regarding the intelligence portion did take a little bit of psychological engineering on my part, and I had to play rather fast and loose with the facts on more than one occasion. Often, the topic was best avoided entirely. I would also describe the physical attributes of the ramp worker, trying to explain to the flight attendant that, once he showered and shaved, he did not really look that bad. To further pique the female interest, I would emphasize the strengths of the worker, such as his ability to crush an aluminum beer can against his forehead with one hand while emitting a prolonged belch. Meanwhile, the ramp worker would dance around below the aircraft, waving and grinning stupidly at every chance he got to the flight attendant who would sneak quick glances out of the window while appearing to be cleaning the aircraft.

If interest existed, I would then arrange a meeting. To do this, I would propose to the ramp worker that he could work my shift the next time the flight attendant came into town. I was also clear, however, that I was not going to be taking any days off and using up my own vacation time at $100 per day. Rather, I would get paid for that day, and the ramp worker would not. In the airline industry, it was called "trading days." It was a simple enough formula, which allowed me to enjoy virtually the last half of my summer working approximately three-day weeks, while actually being paid for five-day weeks, and often getting undeserved overtime in the process. I did not have to worry about collections, since collections were self-enforcing. If the ramp worker decided that he did not like the deal, he could simply stand out on the tarmac and drool, while I pulled the shades down on that side of the aircraft and told his prospective victim the real truth about his undisclosed doctor's visits.

In short time, I had a lucrative business going. To my delight, I was even able to trade my blue coveralls for white ones to a guy named Bill. Life was good.

All went well for the remainder of the summer until the very end. That was when Alaska Airlines made an unplanned change in its flight schedules. On one of those rare days when I came to work, I soon realized that my fate had turned. Fortunately Ruth and Alice forewarned me that I had a problem in the Operations office. Apparently, Terry, Stacey, and Denise had all flown into Anchorage on the same flight, having been reassigned. During the flight, after having served the passengers, Denise had apparently launched off into a flight attendant's gossip session about her law student boyfriend in Alaska who worked for the company, and who was the latest one that she thought she might try to marry. That person was me. Denise bubbled on about me incessantly, I understand, during which time both Terry and Stacey began to put two and two together. Apparently, Terry and Stacey sympathetically realized that their own combined plans for me that evening, which would have been most legendary but rather short term in duration, were interfering with Denise's long term goals. Unfortunately, Terry and Stacey's loyalties were not to be with me that day.

Although I had always fantasized about a double date with Terry and Stacey, that fantasy was not to pass. Neither was the marriage with Denise. These three ladies, after comparing notes, decided that there were other things to do in Anchorage, and that I was not to be one of them. They all went shopping together that night.

There was little, if anything, that I could do about the event. Out of caution, after that day, I decided to exhaust my sick leave. Besides, I was scheduled to return to law school the following week, regardless. With Ruth and Alice chuckling in the background, and obviously carrying on a very lively and pointed conversation, I cleaned the aircraft myself that day. Still, for a period of time with Alaska Airlines, I really did clean up, and never had to work. I was obviously well on my way to becoming a successful solicitor.

It's enough to drive you to drink

Back to the 'Fault Divorce' future

By Kenneth Kirk

The usual, Jimmy. Come to think of it, make it a double. And hold the vermouth.

Aw, Jimmy, you can read me like a glove. You're right, there's something bothering me. Wanna know what it is? Sure you do. It's domestic violence, that's what.

No, no, not the missus. She was pretty torqued about that incident at her nephew's wedding, but all she did was throw out my back issues of Playboy and give me cold leftovers for a few nights. I told you about that, right? Sure. No, I'm talking about domestic violence allegations in divorce cases.

Yeah, I know, people have been making those kinds of accusations for years. One of my first divorce cases started out as a restraining order case. I was the only lawyer this guy could get on short notice, and after I handled the hearing okay, he hired me for the main event.

But I'll tell you, I don't much like doing them. You don't get much time to prepare, you don't know if it's going to be a few hours on record, or just a quick "he said, she said", and you have to sit there waiting for your case to come up, sometimes for hours.

Well, sure, sometimes the case is legit. Somebody gets pounded, you gotta have some kind of quick and easy procedure to get some protection. But it keeps getting worse. When I started out, they used to give 'em out like candy, so everybody got a little cooling off period, but there was no real harm in it.

Then they made the consequences tougher. Certain kinds of jobs you couldn't even get if you'd had one of these, you couldn't carry a gun, all kinds of stuff. And they couldn't give out mutual orders any more, so if Miss Thing gets an order against Bubba, and she's calling him the next day, not a thing they could do about it. Course if he returns the call, he goes to jail. Really harsh. So they started getting more cautious about when they gave them out. You know, Jimmy, I'm almost down to just the ice here. C'mon, top it off.

So now it gets worse. They just passed a new custody law[1]. If you can prove two incidents of domestic violence, throughout the entire relationship, you get custody. You want to overcome the presumption, you have to take a bunch of classes and prove the other parent is unfit. Heck, you may have to do that just to get unsupervised visitation.

The worst part, though, is that the judge can't hold it against the other parent if she's alienating the kids. Matter of fact, she can take off to another state without leaving an address, hide the kids, change their names, refuse to follow visitation orders, and the judge is supposed to act like it never happened. All she has to do is when she's finally tracked down, claim there were two incidents over the course of, say, twenty years.

Okay, I see your point, but you're thinking about wife beating. I'm talking about domestic violence as it's defined in the statutes[2]. It can be all kinds of things, some of which don't even involve touching. It can be threatening, harassing, or throwing a plate at the wall.

Well that's my point, Jimmy, stuff like that happens when a couple is breaking up. People get a little crazy, do stuff they wouldn't normally do. Some guy grabs his wife by the arm, as she's going out the door, and says "wait, stay and let's talk about it" and now he's screwed in the divorce case.

How does it happen? The legislature gets sold a bill of goods, that's how. The anti-male radicals go down there to Juneau, they start talking about the worst cases, the ones where some guy shoots his wife, himself, and maybe a cop too. Like any restraining order is gonna stop someone if he's decided to do that. Then they start in about the "cycle of violence", like all domestic violence situations have the same dynamic. Bull. The typical situation where somebody, say, yelled in somebody's face or kicked a door when they were splitting up, has nothing in common with the few guys who knock the wife around on a regular basis. Whole different deal. But that's the scenario the politicians get sold. So they keep defining domestic violence down, while upping the consequences.

The legislature gets sold a bill of goods, that's how. The anti-male radicals go down there to Juneau, they start talking about the worst cases, the ones where some guy shoots his wife, himself, and maybe a cop too.

Yeah, another double, Jimmy. This ain't gonna be fun.

You know what it reminds me of? Fault divorce. You remember that, from the old days. You had to prove real grounds for divorce, so people would hire private eyes to sneak around with cameras and try to catch the spouse stepping out. And if that didn't work, they'd hire call girls or gigolos to seduce their own spouse. Dirty, I know, but if you pulled it off, you won everything. Now, if you can goad your spouse into shoving you, or even just lie well enough to convince the judge that he did, you win almost everything. It ain't that hard, you scream in somebody's face long enough, he's gonna react eventually.

We're back to the future, in a way. Except, since the party who didn't want to split the sheets is more likely to react badly, now it's the unfaithful spouse who's more likely to get the advantage. It's like we've spun full circle.

Back in law school, I swore I'd never do divorces in a fault state. So now we're there, for all practical purposes. My old man said if the town ever got a traffic signal, he'd move. They finally put one up, he didn't move. I guess that's where I am.

Call me a cab, Jimmy, I'm outta here.

Footnotes)
[1]HB 385, modifying AS 25.24.150.
[2]AS 18.66.990(3)

Attorney Discipline

Lawyer admonished for obstructing discovery

Attorney X received a written private admonition for obstructing an opposing party's timely access to evidence. The attorney represented Spouse in a divorce. Opposing counsel submitted discovery requests and scheduled Spouse's deposition so that the discovery responses were due before and could be discussed at the deposition. In an exchange of e-mails, Spouse approved the discovery responses prepared by Attorney X and agreed to sign them. The attorney advised Spouse that it would be better if the opposing party didn't have the information before the deposition, and to blame the delay on Attorney X. Opposing counsel conducted Spouse's deposition without the discovery responses, but learned of the delay tactic when Attorney X inadvertently produced a copy of the e-mail exchange with the discovery responses.

Bar Counsel found a violation of ARPC 3.2, which requires a lawyer to take reasonable steps to expedite litigation, consistent with the interests of the client, and ARPC 3.4(a), which prohibits unlawful obstruction of another party's access to evidence. Attorney X had no prior discipline and an otherwise good record for professionalism, and the misconduct caused delay but no permanent harm, so under Bar Rule 22(d) Bar Counsel requested permission from an Area Discipline Division Member to impose an admonition. After reviewing the file the Area Member approved the admonition, and Attorney X accepted it.

SINCE 1896
ALASKA BAR ASSOCIATION

DID YOU KNOW...

That the members of the Lawyer's Assistance Committee work independently?

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, nor the person about whom the caller has concerns, to any other committee member, 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.

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258-1744 (home)
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ANNOUNCES TWO NEW PARTNERS

Kirsten Tinglum Friedman

Ms. Friedman, admitted in Alaska and Washington, has practiced extensively in various types of litigation with emphasis on representing injured patients in medical malpractice cases.

James Hertz

Mr. Hertz, admitted in South Dakota and Washington, has an extensive practice in insurance bad faith litigation. He is also experienced in intellectual property litigation.

— REPRESENTATIVE RESULTS —

TRIALS

Medical Malpractice — $2,000,000 (*Alaska*)
Business Tort— $152,000,000 (*Alaska*)
Bad Faith — $84,000,000 (*Arizona*)
Bad Faith — $17,300,000 (*Arizona*)
Bad Faith — $16,500,000 (*Alaska*)
Bad Faith — $20,000,000 (*California*)
Jones Act — $1,200,000 (*Alaska*)
Business Tort— $12,000,000 (*Alaska*)
Defamation— $1,100,000 (*Alaska*)
Wrongful Discharge — $700,000 (*Alaska*)

SETTLEMENTS

Air Crash — $2,000,000
Air Crash — $1,500,000
Class action: Bad Faith $20,000,000 (*South Dakota*)
Bad Faith — $10,000,000 (*Michigan*)
Jones Act — $6,750,000 (*Alaska*)

The firm and both new partners welcome consultations, joint ventures and referrals.

Please visit our Web site at www.frwlaw.us